

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. 13 OF 14)

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1 helps you. And if you want to use the mouse to kind of
2 explain where you were, where everyone was, and the dynamics.
3 Do you recognize that?

4 A I do.

5 Q So --

6 A This -- oh, go ahead.

7 Q Go ahead.

8 A No, no, I'm done.

9 Q Just give us the general set up with the mouth.
10 Where are you; where is the perimeter?

11 A So this is an aerial photo of that same address.
12 This photo is not -- I repeat -- is not taken by the Las Vegas
13 Metropolitan Police Department. This photo is almost looking
14 practically 90 degrees downward. But this, Dewey, is that
15 east-west street. This is Lindell that runs north to south.
16 The officers had blocked off the east end of Dewey to a
17 designated area west that was -- would not be depicted in this
18 photograph, to give us, the investigators, an opportunity to
19 investigate our crime scene.

20 Q Show us the cul-de-sac area that you were kind of
21 using as your term.

22 A If I could draw everyone's attention to centrally
23 located in the photograph, there almost looks like a rectangle
24 of what is a dark texture. It's actually asphalt. That
25 little area, in my mind, is a mini cul-de-sac. But again, I

1 don't know what the traffic engineers would refer to that, but
2 in my mind, that's what it is similar to.

3 Q And I want to direct your attention now to these two
4 houses that compose that little cul-de-sac area. Were there
5 -- because of the way it was oriented, were there any
6 streetlights along this area?

7 A There was ambient lighting in the area; it is a
8 residential neighborhood. But the streetlights in that
9 particular neighborhood appeared to line the south side of
10 Dewey, and then there were other lights that were on Lindell,
11 again, which is the north-south street just to the east of our
12 target residence.

13 Q So I want to go -- show you Exhibit 12. Was it this
14 bright, or do the CSAs do something to kind of illuminate the
15 area for you?

16 A Well, part of the CSAs or the crime scene analysts
17 is that they document the scene right after they get there as
18 they found it, if you will. And then, as they -- as they do
19 their work, then they'll start to document evidence. This
20 particular photograph is just looking from west, to east, to
21 the front of the residence.

22 Q So when the CSAs are there, are you and Detective
23 Jaeger there?

24 A Yes.

25 Q And what are you guys concerned with? What are you

1 guys looking for and trying to document?

2 A Well, if I could back up and give a little context.
3 As part of our response as homicide detectives is that we
4 don't just roll out with two detectives. We will typically
5 take upwards of six, maybe even more, depending on that
6 particular investigation. And then, what occurs when we get
7 there is we receive what is known as a briefing from the
8 patrol officers. They have in fact conducted a preliminary
9 investigation, which that will be imparted to us.

10 Now, we as the Homicide Section working in
11 conjunction with the Crime Scene Section, we will now divide
12 our labor. What I mean by that is that the detectives are
13 assigned different roles in these investigations.

14 Detective Jaeger, his responsibility this particular
15 night was to document the crime scene in accordance with the
16 crime scene analysts. My job is to go out and interview
17 percipient witnesses, as well as locate sources of video
18 surveillance. And you can see that, as these investigations
19 go, there is a lot of work to be done that can't just be
20 handled by two detectives.

21 Q Take me to that ramp there, RV ramp, I guess, for
22 lack of a better word. Did you guys direct your attention to
23 that area, and, I guess, why?

24 A Yes. I'm going to take the mouse over to that.
25 It's actually on the south side of the house. It's a -- for

1 lack of a better term, it's like an RV parking area, and that
2 was our crime scene.

3 Q Showing you State's Exhibit 17. Is that what you're
4 referring to?

5 A Yes.

6 Q So take me through, when you're looking at this as a
7 homicide detective, what parts are you looking at? What's
8 this telling you?

9 A Well, it's telling me as the investigator is that
10 that's where the victim came to rest and was removed from,
11 where he was then being transported to the hospital. But
12 then, of course, all of those personal effects have to be
13 viewed and examined to see what role, if any, they have in
14 this investigation.

15 Q Was there any blood trail coming to this area or
16 going away, or was it this static pooling we see?

17 A No. The blood that you see depicted kind of on the
18 lefthand side of that photo as well as on the right hand photo
19 was the source of the blood, and it didn't leave that
20 particular area, meaning it didn't extend beyond the RV
21 parking.

22 Q The pieces of paper in the photo, what were they?

23 A Mail.

24 Q Was there something unique about some of the pieces
25 of mail?

1 A Yes. Some of the mail appeared to have been torn in
2 half.

3 Q I want to show you State's Exhibit 23. Do you
4 recognize that vehicle?

5 A I do.

6 Q Did you subsequently learn whose vehicle it was?

7 A Yes.

8 Q And whose was it?

9 A It belonged to the victim.

10 Q And this area back here, is it bright? Is it light?
11 Is -- did you -- did the CSAs darken this? Take us how this
12 scene actually appeared.

13 A So this is a photograph of the rear of the vehicle,
14 so the person taking the photograph is going from west to
15 east. The area to the left and to the right of the vehicle is
16 running along that south edge of the residence, 5536 West
17 Dewey Drive, and going in toward the direction of their
18 backyard.

19 Q Remember how I asked you about the pooling versus
20 blood trail?

21 A Correct.

22 Q Was this vehicle processed for prints that night?

23 A It was not.

24 Q And was there a discussion and a determination made
25 as to why not?

1 A Yes.

2 Q And why?

3 A The evidence at the scene suggested that the vehicle
4 did not have a role as it relates to the shooting. Where the
5 shooting approximately takes place, where you had earlier seen
6 the blood and the mail, is that is approximately 20 feet west
7 of the vehicle.

8 Q Were there items inside the vehicle?

9 A Yes.

10 Q Who did they belong to?

11 A Mr. Valenzuela.

12 Q So how long do you guys stay at the scene; do you
13 know?

14 A Many, many hours.

15 Q Only at night? Or is it --

16 A No, this -- this investigation extended into the
17 early morning hours. I believe, in some of these photographs,
18 you may even begin to depict that the sun is coming up.

19 Q And showing you State's Exhibit 59, is that the
20 morning?

21 A Yes.

22 Q So why do you guys stay until the morning, and what
23 are you doing?

24 A There's a lot to do. There are many witnesses to
25 interview. Again, I had talked about looking for sources of

1 video surveillance. These are residential areas. We also
2 conduct what is known as a canvass. That canvass is twofold.
3 That is to locate potential witnesses who may have gone back
4 into their residence, because that's their home, they don't
5 want to be out in front of their houses; and also, sources of
6 video surveillance, as well as utilizing the sun to help us
7 locate evidence.

8 Q So let's go to that, and then I want to back up to
9 when it was night. Showing you Exhibit 63. When the sun
10 comes up, do you guys locate something else?

11 A Yes.

12 Q What was it?

13 A I believe it was a bullet or bullet fragment.

14 Q And could it have been both?

15 A Yes.

16 Q This particular one, do you know what this cone
17 would have represented?

18 A That is on the north side of the vehicle, which is
19 -- and then, in between that landscape areas on the south side
20 of the residence, I believe it was a bullet fragment, but I
21 could be mistaken on that.

22 Q And do you remember if it was a large or small
23 caliber?

24 A No, I believe that was -- I take that back. I
25 believe that was the bullet. Small or large caliber?

1 Q Yeah. Do you remember, or no?
2 A No.
3 Q Okay. At night, when you guys were still there at
4 night, do you guys recover some spent cartridges?
5 A Yes.
6 Q Do you recall what kind?
7 A Yes, there were two different calibers of cartridge
8 cases.
9 Q And what were they?
10 A .45 and .22.
11 Q And how many of each? Do you remember?
12 A One .22, and three .45 caliber cartridge cases.
13 Q So, showing you Exhibit 39, do you see those yellow
14 markers?
15 A Yes.
16 Q What are they?
17 A That is -- when I was talking about the photographs,
18 how the crime scene analysts come in and they take overall
19 photographs of the scene before any evidence markers go down,
20 well, in subsequent photos they will take are going to
21 document the evidence. Those are evidence markers.
22 Q And I'm going to show you two kind of photos at the
23 same time. So if we look at those evidence markers --
24 MR. BROOKS: And I'm going to put, Your Honor, two
25 at the same time, Exhibit 46 and Exhibit 50, up on the screen.

1 BY MR. BROOKS:

2 Q Is there a difference between those two spent
3 cartridges, and what is it?

4 A Yes. The one on the left marked number 1 is a .22
5 caliber cartridge case. The one on the right, which is marked
6 2, that's a .45 caliber cartridge case.

7 Q And 3 and 4, would they have also been .45s?

8 A Yes.

9 Q In this photograph, where would the victim have
10 been?

11 A If I can draw everyone's attention up to that small
12 wall, just forward of that small wall, you'll see some
13 clothing, as well as some apparent blood right along that
14 planter wall.

15 Q During the course of the night, do you get some
16 information from a patrol officer who's on the perimeter?

17 A Yes.

18 Q What was the information concerning?

19 A That there was video surveillance potentially of the
20 suspects involved in this murder at a nearby convenience
21 store.

22 Q Well, at this point in time, would you have had a
23 car or something that you were interested in?

24 A Yes.

25 Q Why?

1 A Part of the interview with the jogger was that he
2 was able to provide a license plate.

3 Q And did you guys take that down?

4 A Indeed.

5 Q At this point in time though, do you have any idea,
6 you know, whether that's valid or what kind of car that is?

7 A It's just part of the preliminary investigation;
8 part of our role to investigate.

9 Q And then, subsequently, you talked about this
10 surveillance video at a -- is it a convenience store?

11 A Yes.

12 Q What was the tip you got there, and who do you send
13 to the -- to the convenience store?

14 A That there was several individuals that had
15 congregated at the convenience store, and it was somewhat
16 concerning to the Clerk. And the Clerk just wanted to pass
17 the information along, which prompted us to take a further
18 look into what it was that he was observing. And we were able
19 to then recover that video, I believe sometime after 6:00
20 A.M., by having one of the other detectives -- I believe in
21 this case, it was Detective Cody. She was able to respond out
22 to the convenience store and get a copy of the video
23 surveillance once management, who provides access to the video
24 surveillance system, was made available to us.

25 Q So did you go to Short Line Express, or just

1 Detective Cody that night?

2 A I did not go to the convenience store.

3 Q Okay.

4 MR. BROOKS: Your Honor, may I approach?

5 THE COURT: You may.

6 BY MR. BROOKS:

7 Q Detective, showing you State's Proposed Exhibit 2
8 and 7, do you recognize the addresses and the overhead aerial
9 maps depicted in these two photos?

10 A I do.

11 Q And do they fairly and accurately depict the
12 convenience store in one, and the convenience store's distance
13 from the crime scene in the other?

14 A Approximately, yes.

15 MR. BROOKS: Your Honor, State moves for admission
16 of Exhibits 2 and 7.

17 THE COURT: Any objection?

18 MR. SANFT: No objection, Your Honor.

19 MR. RUGGEROLI: No objection.

20 THE COURT: They're admitted.

21 (State's Exhibits 2 and 7 are admitted)

22 BY MR. BROOKS:

23 Q So, Detective, before we get to that convenience
24 store, take us -- you mentioned getting a briefing from patrol
25 officers initially. Is there something else that happens at

1 the very beginning when people are deployed to the scene?

2 A I'm not following you. Sorry.

3 Q So is the victim usually still present at the scene
4 in this case?

5 A Oh. In this particular case, the victim had been
6 transported to the hospital, which is where he died.

7 Q Did first responders show up at his house?

8 A Which is the scene of the shooting. Yes, they did.

9 Q Yes. And what is their main goal when they show up?

10 A First responders, at least in the case of the Las
11 Vegas Metropolitan Police Department, is patrol officers are
12 given specific assignments about -- because they will be the
13 first individuals to arrive at scenes. Our officers are
14 tasked with doing numerous things, and the first thing that
15 they're -- is to preserve life. What I mean by that is they
16 need to be positioned that if the threat is still at that
17 particular scene, then they can take action, or if the threat
18 is gone, then at which time, they're concerned about the
19 welfare of the individuals at that particular scene.

20 So in some cases, the officers may engage in
21 life-saving efforts as a supplement to the responding EMS
22 personnel, typically the fire department and ambulance
23 personnel, who will then come, assess the situation, and if
24 the individual that was injured needs to be transported,
25 meaning not deceased at the scene, then transport that person

1 to a nearby hospital.

2 Q Is their concern scene preservation or life-saving
3 treatment?

4 A I'm sorry?

5 Q So is your concern as a detective -- a homicide
6 detective more the investigative side?

7 A Well, I would -- mine is actually both.

8 Q Okay.

9 A If the opportunity to save a life is there, let's
10 save a life, and then the scene preservation comes secondary.

11 Q Were there some photos of the blood and shoe prints
12 taken in this case?

13 A Yes.

14 Q And I want to show you State's Exhibit 90. Did you
15 subsequently look at the photographs taken of the
16 firefighters' and EMS' shoes?

17 A Yes.

18 Q And showing you 83, was there a reason why further
19 footprint analysis wasn't done in this case?

20 A Yes. In this particular case, when I made reference
21 to that we want to examine the items that were out there, and
22 I made mention of the mail, well, in this particular case, as
23 you can see in the previous photograph, there is apparent
24 footwear in blood on that mail.

25 Now, as a detective, I have to view that and I have

1 to determine, is this related to the suspects, or is this
2 related to first responders who are occupying a very small
3 part of, you know, an area; many, many people trying to save a
4 life? And in this particular case, the apparent footwear in
5 blood that was visible at the scene was related -- or was
6 limited to first responders and family members that had come
7 out of the residence following the gunshots.

8 Q When you say family members, I want to show you
9 Exhibit 87. Do you recognize that?

10 A Yes.

11 Q And whose was that?

12 A It was one of the occupants of the residence; a
13 family member.

14 Q And so, after doing -- even looking at that, you
15 didn't do further testing on footprint analysis on --

16 A No, because we were able to identify whose feet were
17 causing the impressions, meaning it was not going to be
18 connected to the suspects. It was limited to the individuals
19 that responded immediately after the shooting.

20 Q So, Short Line. Is video surveillance recovered?

21 A It was.

22 Q Did you and Detective Cody have a chance to look at
23 it?

24 A We did.

25 Q Did you have a chance to look at it with the

1 knowledge of the license plate that the jogger gave you?

2 A Yes.

3 Q I want to show you just a still shot, so Exhibit
4 325. Fair to say that's kind of blurry and not as clear as
5 you saw it that day?

6 A Yeah, this particular photograph is a little on the
7 pixelated side.

8 Q And so, when you and Detective Cody were looking at
9 this, what -- did you guys make a determination?

10 A Well, we'd been given a vehicle description, and the
11 vehicle that is in the middle -- because, as you can tell,
12 there's three white vehicles there. One's an SUV, one's a
13 larger four-door sedan, and then I believe the -- kind of on
14 the lefthand side is a smaller four-door sedan. The vehicle
15 that we were interested in was the vehicle in the middle.

16 Q What was the vehicle description? Do you recall
17 what you were told?

18 A It originally was a white Crown Victoria. Now, that
19 is manufactured by Ford. Ford had another company connected
20 to Ford called Mercury. I don't know if they still exist, but
21 Mercury put out an identical vehicle, which a lot of the auto
22 makers do that. In this particular case, it's a Crown -- or,
23 excuse me, it's a Grand Marquis. But from appearances, unless
24 you were looking at the emblems, the Crown Victoria and the
25 Grand Marquis look almost identical.

1 Q And do you see where I'm taking this mouse right
2 here?

3 A Yes.

4 Q Did you guys watch it, back it up, pause it
5 repeatedly, and were you able to come to a determination as to
6 any of the numbers?

7 A Yes. So, on that front license plate, which I know
8 it's a little blurry, but one of the corners of the front
9 license plate was sort of bent upward, and that allowed the
10 surveillance camera, which was exterior mounted to the
11 building, to pick up what appeared to be the first three
12 digits of the license plate. In this case, they were 473.

13 Q Did that match what the jogger had told you?

14 A It did.

15 Q So if Detective Cody gets this video surveillance
16 around 6:00 A.M., and you're watching it, what's the next step
17 that you do in the investigation? Where do you go next?

18 A Well, staying with the video, is that this is the
19 exterior footage, but there's going to be some interior
20 footage, and there's going to be individuals of note to us
21 that we need to review; how they're depicted, how they're
22 dressed, where they go, what they do. And then we will
23 utilize the stills or snapshots from that video as we move
24 forward with our investigation.

25 Q And turning your attention around 9:10 A.M., did you

1 -- that day, so August 9th, did you go somewhere, and where
2 did you go here in Las Vegas?

3 A Specifically?

4 Q Were you part of an autopsy?

5 A Yes.

6 Q Explain what that means.

7 A From the scene, we -- my partner and I, Detective
8 Jaeger, were able to then go to the Clark County Coroner's
9 Office and attend the autopsy of the victim.

10 Q Do you recall who the doctor was that did it?

11 A It was Lary Simms.

12 Q Have you -- had -- are you aware that he
13 subsequently retired?

14 A Yes.

15 Q Were you there when the bullets or spent cartridges
16 were taken out of the body?

17 A Yes.

18 Q Do you recall how many gunshot wounds there were?

19 A Approximately, but understanding that one bullet
20 caused multiple injuries. So not necessarily counting holes,
21 and then identifying every hole to a -- to a cart -- or,
22 excuse me, a bullet projectile. Keeping in mind that
23 sometimes bullets travel through bodies and strike multiple
24 limbs.

25 Q Okay, then we'll just stay with the ones that are

1 easily definable. Was there a head shot?

2 A Yes.

3 Q Was there also one in the stomach or abdomen?

4 A Yes.

5 Q Do you recall where the one in the abdomen entered,
6 and where was it pulled out during the autopsy?

7 A It was left of center, if you think of the midline,
8 so to the left of it. And it was sort of a downward angle,
9 and I believe it ended up coming to rest near the flank or the
10 back.

11 Q Do you recall any organs that Dr. Simms mentioned it
12 hitting?

13 A Yes, I believe spleen and the left kidney.

14 Q So after the autopsy -- and where do you go? Do you
15 recall?

16 A Well, we -- continuing with the investigation, we
17 will meet with the other detectives, see what they've
18 discovered, see what they've learned, relay information
19 related to the autopsy, and then our first order of business
20 is the location of that vehicle and who's connected to it.

21 Q Are you able to track down who recently bought the
22 vehicle?

23 A Eventually, yes.

24 Q And are you able to get an address for that person?

25 A Are we referring to the registered owner, or?

1 Q No, who had bought the vehicle on the day it was
2 being used there on August 9th, 2017.

3 A Yes, we were eventually able to identify the new
4 owner.

5 Q And did you get an address at some point?

6 A Yes.

7 Q Do you go to that house?

8 A We did.

9 Q What was that address?

10 A 919 Bagpipe Court in North Las Vegas.

11 Q So, by the time you've finally identified who owns
12 the vehicle and identified an address, what time is it, and
13 how long have you guys been on?

14 A Well, we worked this investigation into the late
15 afternoon hours, and it was decided at that point by Detective
16 Jaeger and myself that we needed to break because we needed
17 sleep. In fact, all of the team needed sleep. So at which
18 point, we ended the investigation for the day with the intent
19 to go back to our respective homes and get some much-needed
20 rest, and then we would reconvene and continue with the
21 investigation.

22 Q Does someone do a little extra work?

23 A Yes, Detective Cody, an outstanding detective. On
24 the way home, she elected to spot check the 919 Bagpipe Court
25 residence again, and found the vehicle in front of the

1 residence.

2 Q Does she alert the other detectives?

3 A Yes, she --

4 Q So --

5 A Oh.

6 Q Go ahead, yep.

7 A Yeah, she immediately brought that to the attention
8 of all of us as we were migrating to our homes.

9 Q And what happens when she alerts you guys?

10 A Well, then obviously we're not getting sleep, and we
11 are now focused on dealing with that particular vehicle.

12 Q So your job when everyone gets alerted, what do you
13 start doing in relation to this 919 Bagpipe address and the
14 car?

15 A Well, Detective Jaeger and I returned to the office,
16 where we were doing a work-up. And as the detectives -- the
17 other remaining detectives were going to where Detective Cody
18 was, because our vehicle did in fact at one point go mobile,
19 and then they were following it, preparing to stop the
20 vehicle.

21 Q Eventually, is that vehicle stopped?

22 A It is.

23 Q Like a Dotty's parking lot area?

24 A I believe it was a dispensary at the -- sort of the
25 intersection of Martin Luther King Boulevard and Cheyenne

1 Avenue.

2 Q Okay. Showing you Exhibit 150. Is -- I guess, is

3 that what you're referring to when you talk about dispensary?

4 A Yes.

5 Q Is this the vehicle?

6 A It is.

7 Q What are the first three numbers?

8 A 473.

9 Q And does the rest of it match what the jogger told

10 you?

11 A It does.

12 Q So what happens with the vehicle at this point?

13 A Well, the vehicle -- the officers are going to

14 remove the occupants of the vehicle and take them in custody,

15 and then the vehicle's going to be preserved. What I mean by

16 that, it's going to be sealed, and then brought to the LVMPD

17 Crime Lab for further processing and searching.

18 Q The -- is the driver taken in -- into custody?

19 A He was.

20 Q Do you have an opportunity to come into contact with

21 him at some point?

22 A I did.

23 Q Showing you Exhibit 144, who was the driver and

24 owner of that vehicle at that point?

25 A His name is DeMario Lofton, hyphen, Robinson.

1 Q And the 919 Bagpipe address, what's happening at
2 that address or for that address?

3 A Based on Detective Cody's observation of seeing
4 individuals come from the house and occupy the vehicle, and
5 then drive the vehicle away, then obviously the nexus to that
6 particular residence is made, in which case, it causes my
7 partner, Detective Jaeger, to obtain what is known as a search
8 warrant, not only for the vehicle, but for that particular
9 residence.

10 Q Is a search warrant executed on that 919 Bagpipe
11 address?

12 A It was.

13 Q Was a firearm and some bullets found?

14 A Yes.

15 MR. BROOKS: Your Honor, permission to approach?

16 THE COURT: You may.

17 BY MR. BROOKS:

18 Q Detective, showing you State's Proposed Exhibit 228
19 and 229, do you recognize what's depicted therein?

20 A Yes.

21 Q And what is it?

22 A It's a firearm, a handgun magazine, and cartridges,
23 which are unspent bullets. And then, the other photo are
24 up-close -- or, excuse me, up-close photo of the cartridges to
25 identify their headstamp.

1 Q And based on the ruler in this photo, are you aware
2 of who took that?

3 A Yes, it's a crime scene analyst.

4 MR. BROOKS: And Your Honor, State moves for
5 admission of these particular exhibits.

6 MR. SANFT: No -- no objection, Your Honor

7 THE COURT: Any objection?

8 MR. RUGGEROLI: No objection.

9 THE COURT: Thank you. They're admitted.

10 (State's Exhibits 228 and 229 are admitted)

11 BY MR. BROOKS:

12 Q Does that Interarms firearm -- Interarms Star .45
13 end up becoming relevant later on in your investigation?

14 A Yes.

15 Q So when the officers get to 919 Bagpipe, is a second
16 suspect who you end up coming in contact with taken into
17 custody?

18 A Yes.

19 Q Do you recognize State's Exhibit 130?

20 A I do.

21 Q Who is it?

22 A That is DeShawn Lofton -- or, excuse me, DeShawn
23 Robinson.

24 Q So DeMario goes by Lofton-Robinson?

25 A Yes. His -- DeMario's last name is hyphenated,

1 Lofton-Robinson. DeShawn, his younger brother, is just
2 Robinson.

3 Q When making contact with DeMario and DeShawn, do you
4 take their cell phones into custody?

5 A Yes.

6 Q So, showing you Exhibit 338, do you recognize the
7 handwriting there?

8 A I do.

9 Q Do you recognize your initials and P number?

10 A Yes, and my signature.

11 Q And what kind of phone was this?

12 A That is going to be a ZTE, I believe it was like a
13 Max Pro cell phone. In this case, it's showing ZTE 981.

14 Q And if I show you 342, do you recognize the person
15 depicted therein?

16 A Yes.

17 Q Who is that? And by "person," I guess I mean the
18 one in the background.

19 A Yes. In the background, the male of the male/female
20 combination, that is DeMario.

21 Q And do you learn that the phone number for DeMario's
22 cell phone is 702-619-7426?

23 A I do.

24 Q Eventually, do you execute a search warrant and have
25 a forensic examination done on the phone and the contents

1 therein?

2 A I do.

3 Q Showing you a blurry Exhibit 348, do you recognize
4 that?

5 A I do.

6 Q Showing you Exhibit 333, is that the cell phone that
7 was inside there?

8 A Yes. So the previous photo was the evidence
9 packaging bearing my signature on it. That is the actual
10 device that was within the evidence packaging, which was a
11 Samsung Galaxy cell phone.

12 Q And is this the phone you got from DeShawn Robinson?

13 A Yes.

14 Q And was the phone number 702-338-4380?

15 A It was.

16 Q Your first kind of evidentiary lead here, do you get
17 a break as far as a message in this phone?

18 A Which phone are we referring to?

19 Q DeShawn's.

20 A Yes.

21 Q And do you recall just kind of generally what the
22 substance was?

23 A Yes. It was a Facebook Messenger thread, meaning a
24 conversation.

25 Q And were there people referenced that were of

1 interest to you?

2 A Yes.

3 Q And what were the names?

4 A Because it's Facebook Messenger, it's -- it's
5 communication between two Facebook accounts, or in some cases,
6 more; but in this particular case, it was just two Facebook
7 accounts. The person communicating with DeShawn's phone was a
8 Facebook vanity name of Ray Logan, L-o-g-a-n.

9 Q And --

10 THE COURT: Okay, Mr. Brooks, we just need to take a
11 short recess.

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

20 We'll be in recess for probably at least five
21 minutes. Officer Hawkes will let you know when we're ready.
22 Thank you.

23 THE MARSHAL: Thank you. All rise for the exiting
24 jury, please. Jurors.

25 (Outside the presence of the jurors at 11:25 a.m.)

1 THE MARSHAL: Thank you, everyone. Please be
2 seated.

3 THE COURT: Okay. The record will reflect the
4 hearing is taking place outside the presence of the panel.
5 Medical came over to, I guess, give him his aspirin.

6 MR. SANFT: Thank you, Your Honor.

7 (Pause in the proceedings at 11:25 a.m., until 11:31 a.m.)

8 (Outside the presence of the jurors)

9 THE COURT: Okay, everybody good? You're good, Mr.
10 Wheeler?

11 DEFENDANT WHEELER: Yeah, thank you.

12 THE COURT: Okay.

13 MR. PESCI: Judge, I apologize. If we could just
14 make a record to -- to just what has been done. Is that okay?

15 THE COURT: Okay.

16 MR. PESCI: To some extent.

17 THE COURT: Right. Apparently, someone called
18 medical. Medical came over. And then I left. So I assume
19 that Mr. Wheeler went back and he was attended to. And you're
20 okay now?

21 DEFENDANT WHEELER: Yes.

22 MR. PESCI: Okay.

23 THE COURT: And they gave you something for your
24 headache?

25 DEFENDANT WHEELER: Yes, ma'am.

1 THE COURT: Okay.
2 MR. PESCI: Thank you, Your Honor.
3 (Pause in the proceedings)
4 THE MARSHAL: All rise for the entering jury,
5 please.
6 (Within the presence of the jurors at 11:33 a.m.)
7 THE MARSHAL: Thank you, everyone. Please be
8 seated.
9 THE COURT: Does the State stipulate to the presence
10 of the panel?
11 MR. PESCI: Yes, Your Honor.
12 THE COURT: Mr. Sanft?
13 MR. SANFT: Yes, Your Honor.
14 THE COURT: Mr. Ruggeroli?
15 MR. RUGGEROLI: Yes, Your Honor.
16 THE COURT: Thank you.
17 You may proceed with your direct.
18 BY MR. BROOKS:
19 Q Detective, I'm not totally sure where I was, so I'm
20 going to back up to DeMario Lofton-Robinson's phone. When you
21 get it and give it to Detective Flink, do you ask her to
22 search for a couple things in particular?
23 A Yes.
24 Q And what were those things that you asked her to
25 search for?

1 A It's a particular number, as well as some key words.
2 Q And what was the key words?
3 A Sace, S-a-c-e.
4 Q And what was the particular number at that point in
5 time?
6 A At that time, it was limited to just a handful of
7 digits, but it was 702, and then 934. As far as the other
8 four, I did not know.
9 Q And were those two separate possible things, or were
10 they the same thing?
11 A That was to be determined.
12 Q Okay. So at that point in time, you wanted Sace,
13 and you wanted some number with 934?
14 A Yes. It was unclear if those two things were
15 connected or if they were involving different individuals
16 potentially.
17 Q Now, turning to that line of questioning when we
18 were talking about DeShawn Robinson's phone and the Facebook
19 Messenger thread in it.
20 A Yes.
21 Q Who was it from?
22 A It was from another Facebook account by the vanity
23 name of Ray Logan.
24 Q At that point in time, was it a private account, or
25 were you able to look at the person's Facebook account?

1 A After that information was made available to us,
2 specifically me from Detective Flink, I was then able to go to
3 Facebook and conduct just an online check of Ray Logan and had
4 some access to the particular account, meaning that with
5 Facebook, if you're familiar with it, you can essentially set
6 up your privacy to significant, to open, and somewhere in
7 between, and it had allowed me to navigate through the
8 account, looking at photos.

9 Q Showing you Exhibit 360. Do you recognize the name
10 Ray Logan there?

11 A I do.

12 Q And is there like a profile picture associated with
13 it?

14 A There is.

15 Q When searching Facebook, were you able to locate
16 that photo?

17 A Yes.

18 Q Showing you Exhibit 149. Do you recognize that?

19 A I do.

20 Q Is Ray Logan in that photo?

21 A The person using the account under the vanity name
22 Ray Logan, yes.

23 Q And which one is that person using that name?

24 A It would be the individual that's on the right hand
25 side, wearing a white shirt, looks like a goatee, and then a

1 white hat.

2 Q Subsequently, are you able to learn that person's
3 legal name?

4 A Yes.

5 Q What is it?

6 A Raekwon Robertson.

7 Q And do you see that person here in court today?

8 A I do.

9 Q Could you point to him and identify an article of
10 clothing they're wearing?

11 A Unfortunately, he's behind the monitor, but he's
12 wearing a blue button-up shirt.

13 MR. BROOKS: Your Honor, let the record reflect
14 identification of Defendant Raekwon Robertson.

15 THE COURT: So reflected.

16 BY MR. BROOKS:

17 Q So the Facebook thread, or the text thread in
18 DeShawn's phone from Ray to DeShawn, was there a particular
19 text that had evidentiary value to you, and was there any
20 names in it?

21 A Yes. This communication appeared to occur
22 approximately 12 hours before the shooting death of the
23 victim, so somewhere around 11:53 A.M. on the 8th of August
24 2017. And it -- there were two parts of it. It was -- one of
25 them was asking if DJ was interested in hitting a house, and

1 then the follow up correspondence almost was like a roll call.
2 And what I mean by that is it went through several individuals
3 by their monikers and talking about their potential
4 involvement in the aforementioned text, which was hitting a
5 house.

6 Q And when you say monikers, you don't necessarily
7 mean anything bad, you just -- do young people refer to it as
8 Facebook handles sometimes?

9 A Indeed.

10 Q Like a nickname?

11 A A nickname.

12 Q Okay. Showing you that text thread, Exhibit 336, do
13 you recognize what you were just referring to?

14 A I do.

15 Q Could you read me that second part that you were
16 just talking about?

17 A Starting under the Tuesday at 11:40, or?

18 Q Yes.

19 A Yes. The incoming would be, "Ask DJ if he trying
20 hit a house tonight," which is then followed by, "Me, you,
21 Sace, and him. Sace already said yeah."

22 Q At this point in time, had you identified who went
23 by the name Sace?

24 A Not yet. We were still working on it.

25 Q Is that one of the reasons why you asked Detective

1 Flink to look into --

2 A Yes, that was one of the particular words that we
3 were interested in seeing if there's anything connected to it.

4 Q Do you subsequently have the opportunity to learn
5 who Sace was?

6 A Yes.

7 Q Showing you State's Proposed Exhibit 326, do you
8 recognize this, and what is it?

9 A Yes. This is a photograph from a different Facebook
10 account under the vanity name of Young Sace Versace.

11 Q Do you recognize the person depicted in that
12 photograph?

13 A Yes. We would later identify the person depicted in
14 that photograph as a Davontae Wheeler.

15 MR. BROOKS: Your Honor, State moves for admission
16 of Exhibit 326.

17 MR. SANFT: No objection, Your Honor.

18 MR. RUGGEROLI: No objection.

19 THE COURT: It's admitted.

20 (State's Exhibit 326 is admitted)

21 BY MR. BROOKS:

22 Q So that person that you just referred to, Davontae
23 Wheeler, do you see him here in court today?

24 A I do.

25 Q Could you point to him and identify an article of

1 clothing he's wearing?

2 A Yes, he's at the end of the table. He's wearing a
3 gray blazer, and a black tie, blue shirt.

4 MR. BROOKS: Your Honor, let the record reflect
5 identification of Defendant Davontae Wheeler.

6 THE COURT: So reflected.

7 BY MR. BROOKS:

8 Q At this point in time, I want to fast-forward to
9 August 15th, 2017. Had you guys been investigating from
10 August 9th all the way to the 15th?

11 A Yes.

12 Q And do you subsequently -- or do you at some point
13 learn the residences for Raekwon Robertson and Davontae
14 Wheeler?

15 A I did.

16 Q When you do that, what do you do?

17 A We -- in my particular case is I made Application
18 for Search Warrants for those particular residences.

19 Q Let's start with Raekwon Robertson. Do you
20 recognize what's depicted here in 235?

21 A I do.

22 Q And what is it, and what do you do for this
23 residence?

24 A This is a building within a condominium complex
25 located at 6647 West Tropicana Avenue.

1 Q Do you send officers there?
2 A Yes. That -- there were officers that ultimately
3 went to that location, specifically Space or Unit number 104,
4 and were able to make contact with the occupants and freeze
5 the residence in anticipation of serving the search warrant.
6 Q Is Raekwon Robertson taken into custody that day?
7 A He was.
8 Q Did you have an opportunity to come into contact
9 with him at some point?
10 A I did.
11 Q Showing you Exhibit 140, do you recognize the person
12 depicted therein?
13 A I do.
14 Q Who is it?
15 A It's Raekwon Robertson.
16 Q At this point in time, do you have a search warrant,
17 and then an execution for a buccal swab?
18 A Yes.
19 Q For Raekwon Robertson?
20 A I did.
21 Q And what is that, and why do you do it?
22 A That is the manner in which we recover skin cells
23 via the application of what looks like an elongated Q-tip, and
24 then it just goes inside the mouth of the individual that you
25 are wanting those cells from, and this is for purposes of DNA

1 comparison at a later date. But it's just the application of
2 those swabs inside the mouth to scrape the inner lining of
3 some skin cells.

4 Q Do you do it, or does someone else do it?

5 A Typically, the crime scene analysts, as part of
6 their function, do it, but on cases -- in some cases, the
7 detectives in such cases will do it ourselves.

8 Q If a crime scene analyst had done a buccal swab on
9 Mr. Robertson, would she necessarily know a lot about the
10 investigation or even who he is?

11 A I'd be speculating. Most the time, it's -- it is
12 going to be the same -- we try to keep the same crime scene
13 analyst crew with us throughout the duration of these
14 investigations, but depending on the date, and the time, and
15 days off, we may not. So I can't answer that question
16 specifically.

17 Q And after doing the buccal swab on Mr. Robertson,
18 would she though put it in an envelope, seal it, put her P
19 number on it, so that you could then have that tested later
20 on?

21 A Absolutely, because that item -- that buccal swab
22 kit represents evidence.

23 Q At the same time that this is happening at this West
24 Tropicana address, is something else happening in the north
25 side of town?

1 A Yes. So the searching of these particular
2 residences, depending on how large they are, can take quite a
3 bit of time in light of manpower. So if you only have a
4 limited number of detectives and crime scene analysts, and
5 it's a large structure, then it's going to take a while.

6 Once this residence was prepared for searching, I
7 had requested detectives from my squad to go and start that
8 search. And then, throughout their search, they're going to
9 report back to Detective Jaeger and I, depending on the
10 circumstance. At the same time, there was another
11 apprehension that was taking place across town. And as it
12 related to that particular individual being arrested, also, we
13 had to then search the residence connected to that person as
14 well.

15 Q So who was that other person?

16 A That was Davontae Wheeler.

17 Q And do you remember the address?

18 A I do. It was 3300 Civic Center -- I believe it's
19 Drive, and it's in North Las Vegas.

20 Q And were there two apartments of interest with
21 regard to Mr. Wheeler?

22 A Yes. There -- the two apartments, they were
23 separate units, but they shared the same patio.

24 Q Showing you Exhibit 278. Is that what you're
25 referring to?

1 A Yes.

2 Q And I don't know if you remember, but do you

3 remember who lived in who? Was it someone related to Mr.

4 Wheeler? What was it?

5 A Yes. Based on some information that we had gathered

6 from representatives of the apartment complex, we learned that

7 the two groups were connected, and I believe there was some

8 kind of kinship that existed there as well.

9 Q And Mr. Wheeler's taken into custody that day?

10 A He was.

11 Q Do you have an opportunity to come in contact with

12 him at that point that day?

13 A I did.

14 Q Showing you State's Exhibit 135, do you recognize

15 the person depicted therein?

16 A I do.

17 Q Who is it?

18 A Davontae Wheeler.

19 Q Was a buccal swab taken pursuant to a search warrant

20 of Mr. Wheeler?

21 A It was.

22 Q And the search of their houses, was that pursuant to

23 a search warrant also?

24 A Indeed.

25 Q I want to show you a couple maps, Detective.

1 Showing you State's Proposed Exhibits 6 and 7 [sic], do you
2 recognize the addresses that are depicted and highlighted in
3 these maps?

4 A I do.

5 Q And do they fairly and accurately depict the
6 addresses of interest in this case?

7 A Yes, they do.

8 Q At least some of them?

9 A Yes.

10 MR. BROOKS: Your Honor, State moves for admission
11 of these particular exhibits.

12 MR. SANFT: No objection, Your Honor.

13 MR. RUGGEROLI: No objection.

14 THE COURT: They're admitted.

15 (State's Exhibits 6 and 8 are admitted)

16 BY MR. BROOKS:

17 Q So, Detective, if you could -- it's not the clearest
18 map. Could you explain to the jury kind of the layout and
19 where everything is?

20 A And I'll try to go in chronological order, utilizing
21 this mouse. So down here in the lower lefthand corner of the
22 map, which is a satellite imagery of Las Vegas Valley, 90
23 degrees to it, you'll see a pin which is dropped at 5536 West
24 Dewey Drive, which was our crime scene, which is where the
25 victim was shot and killed.

1 Then, just above that -- well, let me back up.
2 Going south, almost to the bottom of the page, you'll see
3 another pin that's dropped, and that's at 7325 South Jones
4 Boulevard, which was the convenience store where we had
5 recovered video surveillance from.

6 Going all the way to the top, almost centrally
7 located to the map is 919 Bagpipe Court; this is in North Las
8 Vegas, which is where the first search warrant was executed
9 and where the vehicle was located as well. Dropping back down
10 to 6647, which is going to be just above the Dewey, is Raekwon
11 Robertson's address. And then going finally back up again to
12 the top of the page at 3300 Civic Center Drive, in the
13 apartments was Davontae Wheeler's residence.

14 Q Since you ended there, let's pick up our question
15 there. And Detective, I messed up. For purposes of the
16 record, the two maps I just showed you were Exhibit 6, which
17 was what you were just putting on the overhead, and 8.*

18 THE COURT: Thank you, thank you.

19 BY MR. BROOKS:

20 Q So that 3300 Civic Center, did you get a chance to
21 look at all the evidence and compare it with the video
22 surveillance that had been of primary interest to you?

23 A Yes.

24 Q Were there any items from Mr. Wheeler's residence
25 that had evidentiary value?

1 A Yes.

2 Q What were they?

3 A Beginning with a firearm that was recovered from the
4 residence. There was also a holster that was recovered from
5 the residence, there was a pair of shoes that were recovered
6 from the residence, as well as a ball cap that was recovered
7 from the residence.

8 Q And that firearm, was it processed for prints?

9 A It was.

10 Q And did you submit to have those prints analyzed by
11 the Las Vegas Metropolitan Police Department Forensic
12 Laboratory?

13 A Yes.

14 Q The firearm and the magazine inside it?

15 A Yes.

16 Q And do the results help you in the investigation?

17 A They do.

18 Q And what was the result?

19 A There was a fingerprint on the magazine that came
20 back to Davontae Wheeler.

21 Q And you mentioned -- was it hats and shoes?

22 A Yes.

23 Q What -- I want to show you Exhibit 324. Do you
24 recognize that?

25 A I do.

1 Q Is it a blurry, albeit fair and accurate depiction
2 of the video surveillance that you watched?

3 A Yes, but now this is interior footage of the
4 convenience store.

5 Q And I want to turn your attention to the person with
6 his hand on his right hip, wearing a hat. Do you see him?

7 A I do.

8 Q Was that hat of interest to you?

9 A It was.

10 Q Do you locate something at this 3300 Civic Center
11 address in relation to that hat?

12 A We do.

13 Q What was it?

14 A It was a Chicago Blackhawks, which is a NHL hockey
15 team, ball cap. And then, if you notice on the bill, there is
16 actually a circular sticker. That sticker was still on the
17 hat when it was recovered.

18 Q Showing you Exhibit 309, do you recognize that?

19 A Yes.

20 Q Is that the hat?

21 A It is.

22 Q And then, I want to show you Exhibit 323. Do you
23 see the hat and the person wearing it in this photograph?

24 A I do. He has his back turned to the camera.

25 Q And you mentioned some shoes. What kind of shoes

1 were you looking for?

2 A I'm not going to be able to say this correctly, but
3 I believe they're a line of Nikes. And in this case, they
4 almost look like a maroon, but sometimes video surveillance
5 can alter the color. When it could be red, it looks maroon or
6 vice versa. They're Nike Huaraches. I know I'm not stating
7 that correctly.

8 Q Showing you Exhibit 311, do you recognize the shoes
9 depicted there?

10 A Yes. On the bottom of that photograph, not the
11 black pair, but the red or maroon pair, it appears to be the
12 same shoes.

13 Q So, showing you now at the same time Exhibits 323
14 and 324 side by side. After viewing the video surveillance
15 and having contact with these people, do you have an
16 identification as to who this is in that video?

17 A Yes.

18 Q And who is this person in the hat?

19 A Davontae Wheeler.

20 Q And what was the name that he went by?

21 A Sace.

22 Q So now, let's jump to the Bagpipe address, even
23 though it was earlier in time. And could you identify here in
24 Exhibit 323 the two people associated with that address?

25 A Yes. Beyond Davontae, you'll see three males. They

1 all appear to be wearing black tops. The one that's in line
2 with him, it's actually not black, it's just a darker color.
3 He's looking -- he appears to be looking back at Davontae.
4 That is DeMario. And to DeMario's right, in the direction of
5 the front counter, is his younger brother, DeShawn.

6 Q And could you use the mouse, just for purposes?

7 A I can. So, Davontae Wheeler, DeMario
8 Lofton-Robinson, DeShawn Robinson.

9 Q Now, turning your attention to this West Tropicana
10 address that's closer to Dewey, were any items of evidentiary
11 value found during the search of that residence?

12 A Yes.

13 Q What were they?

14 A A firearm, ammunition, and clothing.

15 Q And the firearm, what was it?

16 A It was a Taurus, I believe Model PT22, .22 caliber
17 semiautomatic pistol.

18 Q Was it the smaller gun?

19 A Yes, it's a .22 caliber handgun. It's smaller in
20 size and it shoots a smaller-caliber round.

21 Q Did you find any unspent cartridges there?

22 A Yes.

23 Q And what was the headstamp on them?

24 A Predominantly, the letter C.

25 Q Did that have interest to you?

1 A Yes.

2 Q Why?

3 A It appeared to match the .22 caliber cartridge case
4 found at 5536 West Dewey.

5 Q Did you find any clothing of interest at Mr.
6 Robertson's apartment?

7 A Mr. Robertson's apartment or condominium?

8 Q Residence.

9 A Yes, a pair of shoes and a black hooded sweatshirt.

10 Q Showing you Exhibit 266, are those the shoes?

11 A Yes.

12 Q Now, I only have the photos, so I can't show you any
13 shoes. But in Exhibit 323, do you see Raekwon Robertson in
14 that photograph?

15 A Yes, I'll utilize the mouse, but to the left of
16 DeMario is Raekwon Robertson.

17 Q Detective, are you familiar with the acronym GSR?

18 A I am.

19 Q What does it stand for?

20 A Gunshot residue.

21 Q And is it an investigative tool that sometimes you
22 would use?

23 A It can be utilized as a forensic technique.

24 Q In this particular case, I want to turn your
25 attention to DeShawn Robinson. When was the time of the

1 shooting in this case, and when was the first point in time
2 that you made contact with DeShawn Robinson?

3 A Well, based on the -- the two event numbers that we
4 had talked about earlier, I believe that the shooting took
5 place within those two calls, the 0027 and the 0029 events,
6 which is in that area of 11 to 12 minutes after midnight. The
7 interviews that will take place with the brothers don't occur
8 until around midnight that same day -- excuse me, August 9th,
9 2017, so almost a 24-hour period of time.

10 Q So, with DeShawn, how many -- how many hours would
11 you say? Almost 24 until you come into contact with -- or a
12 police person comes in contact with DeShawn?

13 A Approximately.

14 Q So, with gunshot residue, would it have been
15 possible, probable, or smart to gunshot residue test DeShawn?

16 MR. SANFT: Your Honor, I'm going to object to this
17 particular question. I don't believe that this detective is a
18 gunshot residue expert. I believe that should have come
19 through a crime scene analyst.

20 THE COURT: Okay. If you can lay a little --

21 MR. BROOKS: Sure.

22 THE COURT: -- more foundation.

23 BY MR. BROOKS:

24 Q Detective, does Las Vegas Metropolitan Police
25 Department have a policy with regard to gunshot residue, and

1 what is it?

2 A Yes, they do. The policy is in place to help
3 prevent contamination, because it is a forensic test that's
4 utilized and applied by the crime scene analysts on whoever
5 the detective or the officer is dealing with, but just like a
6 lot of tests, there has to be limitations, again, to ensure
7 that we don't get contamination. And the Las Vegas
8 Metropolitan Police Department, regarding gunshot residue
9 testing, has like five -- or I believe four or five different
10 items of criteria that prohibit the use of the test.

11 Q And what are those criteria, and how did it apply in
12 this case?

13 A Well, most notably, the first one is that if it's in
14 excess of four hours from the shooting episode, then the test
15 is not to be used. The second one is if a person is placed in
16 handcuffs, it is not to be used, because again, that area that
17 they're typically going to swab is the hands; and if you think
18 about how handcuffs work, they're in close proximity to the
19 hands. Another thing is if they are placed -- if that
20 individual is placed in the back of a -- or in a patrol
21 vehicle, a police car. And then, the other ones deal with I
22 believe suicide and some other matters.

23 Q Had Mr. DeShawn Robinson been cuffed?

24 A Yes.

25 Q Had Mr. DeShawn Robinson been in the back of a

1 police car?

2 A I don't know if it was marked or unmarked, but yes,
3 he would have traveled from his apprehension site to the LVMPD
4 headquarters via an LVMPD vehicle.

5 MR. RUGGEROLI: Judge, I'm going to object. I don't
6 believe he has personal knowledge. I think he's relying on
7 information gathered from other sources, and so he can't
8 testify.

9 THE COURT: If you want to lay a foundation.
10 BY MR. BROOKS:

11 Q Did DeShawn Robinson drive himself to the Metro
12 headquarters?

13 A No, sir.

14 Q Was he taken into custody at the 919 Bagpipe
15 address?

16 A DeShawn Robinson?

17 Q DeShawn.

18 A Yes.

19 Q And so how would he have gotten from 919 Bagpipe --
20 do you allow family or friends to drive a suspect?

21 A No, sir.

22 Q So would a Metro officer or detective have taken
23 him?

24 A Yes.

25 Q So rather -- regardless of whether he was in a

1 detective's unmarked car or a patrol officer's car, would the
2 policy apply?

3 A Indeed.

4 Q The last line of questioning -- back up. Sorry,
5 Detective. Davontae Wheeler's phone. Do you come in contact
6 or come into custody of Mr. Wheeler's phone?

7 A Yes.

8 Q Is it a -- what kind of brand?

9 A It's a Samsung Emerge, I believe, but it's spelled
10 E-m-e-r-g-e.

11 Q And is the phone number associated with that and the
12 Facebook handle that we referred to 702-801-0516?

13 A Yes, it was.

14 MR. BROOKS: Nothing further, Your Honor.

15 THE COURT: Mr. Sanft, cross-examination?

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

17 CROSS-EXAMINATION

18 BY MR. SANFT:

19 Q Detective, would it be fair to say that in terms of
20 what you do, investigating potential crime scenes, that you
21 have a lot of tools at your disposal, right?

22 A Yes.

23 Q Meaning -- and what I mean, tools, I'm talking that
24 when you're determining whodunit or who done what, not only is
25 it yourself that's involved; you've got other officers to lean

1 on for assistance in terms of other detectives, you've got
2 other officers that are at the scene, you've got crime scene
3 analysts, you've got people that work in a lab that can help
4 you make that determination as to what happened and who done
5 what, fair?

6 A Correct.

7 Q Okay. Now, in terms of your work on this particular
8 case, we talked a little bit about the details of it. I
9 represent Mr. Robertson that's over here to my left -- or to
10 my -- yeah, to my left.

11 With regard to Mr. Robertson, you had said at some
12 point there was a warrant that was executed on his home. And
13 just for the jury's edification once again, State's Exhibit
14 number 6, located at this particular address that's down here
15 at the bottom left, which is the 6647 West Tropicana Avenue;
16 is that fair?

17 A Correct.

18 Q Okay. How far away from this map, for instance, is
19 the address of 5536 West Dewey Drive compared to 6647 West
20 Tropicana?

21 A The distance between those two residences?

22 Q Yes.

23 A Without looking at the map, I couldn't give you -- I
24 would be approximating, and I don't think that's fair. But as
25 you can tell just by the placement of the two pins, it's

1 close.

2 Q Okay. And once again, the distance between the 7325
3 South Jones Boulevard, which is where the convenience store
4 is, it's quite a distance further from where the Dewey
5 residence is in comparison to where the Tropicana residence
6 is, fair?

7 A Quite a bit, sir.

8 Q Well, I'm just looking at the map again.

9 A Yeah, I would -- I would, you know, approximate that
10 just to be a handful of miles.

11 Q Sure, okay. Now, in addition to that, when you had
12 searched the 6647 West Tropicana Avenue, you talked to this
13 jury about what you found inside the home. How did you
14 determine that that was Mr. Robertson's residence?

15 A As a matter of clarification, I did not participate
16 in the search. I was the affiant for the search warrant, but
17 because of my duties related to interviews with Detective
18 Jaeger, we dispatched the other detectives and the crime scene
19 analysts on our behalf to go and fulfill those roles. Part of
20 their job, those detectives that are working on my -- our
21 behalf, rather --

22 MR. BROOKS: Judge, can we approach briefly?

23 THE COURT: Sure.

24 (Bench conference)

25 MR. BROOKS: I just -- I -- I just --

1 MR. PESCI: About how he got the address.
2 MR. BROOKS: I just --
3 MR. SANFT: Oh, no, I --
4 MR. BROOKS: I didn't want you to get surprised.
5 There's a misdemeanor citation with some booking information,
6 and then the CAT team and the pen --
7 MR. SANFT: I'm not getting into any of that.
8 MR. BROOKS: Oh, okay.
9 MR. PESCI: You just asked about how he got to the
10 address.
11 THE COURT: Okay, but you just asked him, how did
12 you know that was my client's address?
13 MR. SANFT: Well, I guess we can ask the question.
14 I opened the door, right? On the misdemeanor --
15 MR. PESCI: No, no, no, we're not trying to get that
16 in. We're just saying that's how he (indiscernible).
17 MR. SANFT: Okay. Yeah, then I'm not going to --
18 I'll move onto the next question.
19 THE COURT: Okay, well then just withdraw your
20 question.
21 MR. SANFT: Yeah.
22 (End of bench conference)
23 MR. SANFT: I'm going to withdraw that last
24 question.
25 BY MR. SANFT:

1 Q Let me ask you this. Showing you what's been marked
2 and admitted State's Exhibit number 235. As far as you
3 understand, this is the residence where the search occurred,
4 fair?

5 A Yes.

6 Q Okay. And as part of this team effort, the
7 residence was searched?

8 A Yes.

9 Q Are you aware that multiple people lived in that
10 residence?

11 A It was my understanding that the residence was
12 occupied by two individuals based on the interviews that were
13 performed with the occupants.

14 Q Okay, meaning Raekwon Robertson and his brother?

15 A It was my understanding that Raekwon lived there
16 with his mother, and that the other brother that was there
17 that particular day was visiting.

18 Q Okay. Now, I'm showing you what's been marked and
19 admitted as State's Exhibit number 239. Would it be accurate
20 to say that, based upon your training and experience with
21 regard to searches of homes, that one of the things you do is
22 verify who lives where?

23 A Absolutely.

24 Q Okay. So, for instance, personal information like
25 mail, pictures, that kind of thing will help you determine who

1 resides where?

2 A Potentially.

3 Q Okay. As far as you know, was any of that
4 information gathered during the course of this search?

5 A I am unaware if the detectives recovered any mail,
6 but they may have documented it with photographs.

7 Q Okay. Now, you talked a little bit about this
8 brother that you understood did not live there?

9 A It was my understanding that he was a visitor;
10 almost a daily visitor though.

11 Q Okay. And this particular individual, do you have
12 any photographs of this individual that we can show the jury?

13 A No.

14 Q And him being a brother with regards to my client,
15 that was your understanding; is that fair?

16 A Yes.

17 Q Okay. Now, in addition to that, we talked a little
18 bit about the sweatshirt or the hoodie that was found in this
19 particular residence. Let me make sure. I don't know if I
20 have it here. Do you recall that line of questioning by the
21 State? I apologize.

22 A Yes, I do. I believe it was two garments.

23 Q A sweatshirt and something else?

24 A I think there were almost two sweatshirts, so they
25 must have been very similar, that were recovered.

1 Q Okay. With regards to those sweatshirts, I guess
2 the reason why you picked them up is because the individuals
3 that were allegedly involved -- or that were involved in the
4 actual shooting were wearing potentially black hoodies, fair?

5 A It wasn't me, just a matter of note, that did pick
6 it up. It was the other detectives that would have picked up
7 those or requested the crime scene analyst to recover them.

8 Q Okay. And once again, the reason why that was of
9 interest to people on your team was because the individuals
10 that were present at the scene of the shooting were wearing
11 those black hoodies?

12 A And also, going back to the video surveillance, the
13 officers and the detectives, when they went out there, they
14 actually were equipped with the stills from the service
15 station -- or the convenience store, excuse me.

16 Q So with regards to that particular photograph,
17 showing you what's been marked and admitted State's Exhibit
18 number 323, the individual that you say is Raekwon Robertson
19 is the one that's standing right here, right?

20 A Indeed.

21 Q Just based upon this photograph alone, you couldn't
22 tell this jury with absolute certainty that that is Raekwon
23 Robertson, right? Just based upon this photograph.

24 A No.

25 Q So there's nothing that's necessarily distinguishing

1 in terms of characteristics, outside of the fact that you've
2 got a black male adult wearing what looks like to be a black
3 hoodie that resembles potentially this person that's sitting
4 over here to my left?

5 A You're correct.

6 Q Okay. Now, in terms of that hoodie that this
7 particular person is wearing, is there anything that tells you
8 that this is a unique hoodie, or anything at all that would
9 indicate to you that it's different from any other black
10 hoodie that's out there?

11 A Not that I can note.

12 Q Okay. Now, we talked a little about the shoes in
13 this case. State's Exhibit number 266. These are shoes that
14 I believe was from -- taken from this particular address that
15 we're talking about?

16 A That's correct, sir.

17 Q Okay. Do you know whose shoes those are?

18 A The shoes were recovered from the residence, but I
19 don't know if the detectives, when they actually selected
20 them, turned to somebody and said, whose shoes are these?

21 Q Okay. And did you ever at any point ever run any
22 type of DNA testing to determine whose shoes these were?

23 A No.

24 Q Okay. Now, were you aware that the firearm that was
25 recovered from that residence was tested for DNA?

1 A Yes.

2 Q And that the DNA did come back with a potential
3 match for this person over here to my left?

4 A I wouldn't call the identification potential.

5 Q Okay, let -- okay. So it came back with a match of
6 this person over here being one of the people that was in the
7 DNA profile, right?

8 A Yes.

9 Q But you're also aware that there is another profile
10 that was on that firearm as well?

11 A Yes.

12 Q Okay. And then, are you also aware that the clip
13 that was inside the firearm was actually not to a profile from
14 my client, but from some other person?

15 A Yes.

16 Q Okay. Going back again to the search of the home.
17 You had said something about GSR, right?

18 A Yes.

19 Q The gunshot residue testing. And you said that that
20 was, according to -- that you have a policy with Metro about
21 when testing was supposed to be done?

22 A The parameters that allow us to then use that
23 testing, yes.

24 Q You're talking about the rule, right? This is the
25 policy that's in place by Metro; by your employer?

1 A Yes.

2 Q Okay. Do you know the reason for the four-hour
3 rule?

4 A It's my understanding, based on the policy, is to
5 avoid contamination.

6 Q Okay. And when you say contamination, tell the jury
7 what you mean by contamination.

8 A I would -- I would believe that contamination is
9 going to be referred to maybe as a false positive, or -- or
10 given the fact there's been such a duration of time, that it's
11 conceivable that the person may have washed their hands or
12 their -- or maybe taken a shower, in which case, you could --
13 the longer that goes, the likelihood that that's probably
14 going to happen -- because people are going to bathe, they're
15 going to clean, they're going to change their appearance, and
16 that evidence -- that forensic evidence may not be existent
17 anymore. It may have been there at one point.

18 So I think it's important to set a standard that,
19 beyond that, the likelihood is that won't be there, or -- or
20 in the case that if they come into contact with other
21 surfaces, or the handcuffs, or something like that, they would
22 get a false positive, which wouldn't be appropriate either.

23 Q Let me ask you this though. Once again, you're not
24 an expert in the realm of gunshot residue. You're talking
25 specifically about the policy behind why there's a limit of

1 four hours and not something else, right?

2 A Yes, because that policy governs my work.

3 Q Okay. But once again, with gunshot residue, just
4 explain to the jury a little bit. This is when you discharge
5 a firearm, there are things that come out of that discharge
6 that could cling onto things like skin, clothes, that kind of
7 stuff, or it's particles that get ejected with the bullet when
8 it comes out of a gun, right?

9 A Yes.

10 Q And that would help you make a determination whether
11 a person actually fired a firearm within a certain period of
12 time? In this case, you're saying four hours?

13 A Not necessarily fired. You can get a positive hit
14 on it is if the person who is not discharging the firearm is
15 actually standing next to another person that's discharging a
16 firearm, which I think also speaks to why our officers, when
17 they go out to the range, and they shoot, and they wear their
18 handcuffs and their duty belts, is that that could be
19 contamination going onto their property, which they will then
20 use to effect arrests. You can see why we have some concern.

21 Q Right. But once again, this is based upon your
22 experience with this area; not necessarily being an expert,
23 but in terms of your experience in this area. If no one
24 touches something -- say you discharge a firearm, and then you
25 have a piece of clothing you have on, but you don't do

1 anything with the piece of clothing. You don't wash it; you
2 just take it off and you put it in a corner of a room. Are
3 you telling this jury that somehow it evaporates -- that the
4 gunshot residue evaporates at some point?

5 A Well, because I'm not an expert, I couldn't tell you
6 what ultimately will happen to that potential evidence.

7 Q Okay. Thank you, I appreciate that. In addition to
8 -- going back to the photograph that we have here, you had
9 videotape that you looked at as part of your investigation in
10 this case, right?

11 A From the convenience store?

12 Q Right.

13 A Yes.

14 Q Anything at all in the mannerisms and the way these
15 individuals were there that would indicate to you that,
16 potentially, you know, they were out to commit a crime?

17 A I would be speculating, sir.

18 Q No, well, I'm just asking in terms of their -- their
19 behavior in the store. I'm talking -- we've looked at some of
20 the video, but I'm just asking you, was there anything that
21 tells you as a trained, you know, police officer, hey, you
22 know what, these guys look like they're going to do something?

23 A No.

24 Q Okay. In fact, like this photograph right here, it
25 looks like the individual that you -- you're saying is Raekwon

1 Robertson is laughing with these other individuals that are
2 there, right?

3 A Or having a conversation.

4 Q Sure, okay. Now, in addition to that, with your
5 tools and what you could use to help you make a determination
6 in this case as to whodunit, right? The idea is someone
7 committed a crime, someone shot someone in cold blood, and
8 killed them. In terms of you determining who those people
9 are, how about electronics? We've talked a little bit about
10 cell phones. At some point, you do believe that you have the
11 cell phone number of this individual here, this Raekwon
12 Robertson, right?

13 A Yes.

14 Q Did you at any point ever subpoena the cell phone
15 records in terms of the pinging of towers to try to
16 triangulate where this particular person's cell phone was at
17 the time of the shooting?

18 A Yes. As part of this investigation, cell phone
19 records were obtained pursuant to search warrant.

20 Q Okay. And I would be interested to know, with
21 regards to that part of the investigation, was there any
22 determination at that point that this person's cell phone was
23 pinging off of any towers in the area of -- going back again
24 to State's Exhibit number 6, this area of the Dewey Drive
25 area?

1 A Well, the one thing about cell phone towers is that
2 the distance which they'll service can vary. Sometimes they
3 can be upwards of three miles; sometimes they can be -- the
4 cell site, not necessarily a cell tower, can be literally
5 yards. So it just depends on the circumstances and what
6 device is in that particular area. But as you can imagine,
7 those two residences are fairly close, and I would -- and I
8 would gather that they're within three miles.

9 Q Okay. So, once again, based upon your experience in
10 dealing specifically with cell phone towers and so forth, can
11 you tell this jury, for instance, the cell phone towers that
12 are located around the area of 5536 West Dewey?

13 A No, not without reviewing the telecommunications
14 companies and then correlating that with the provider in the
15 particular service. So each one of the four major
16 telecommunication companies, the cell phone companies, they
17 have their own towers. Sometimes the towers are together,
18 albeit -- for instance, Verizon and Sprint. But as far as
19 where they are as related to this map, I couldn't tell you
20 without looking at a list first.

21 Q Okay. But you are telling this jury that it was
22 done?

23 A Yes, the records were sought in this investigation.

24 Q Okay, "sought" is not the same thing. You know, I'm
25 a lawyer, so I deal with semantics all the time. I'm asking

1 you, you may have requested those records, but did you ever
2 receive those records and conduct that kind of analysis that
3 you're telling this jury about right now?

4 A Yes, I did review those records.

5 Q Okay. And with regards to your records, do you have
6 any testimony that, for instance, this area down here, that my
7 client's cell phone was pinged off of 7325 South Jones
8 Boulevard?

9 A Without looking at the records, I couldn't tell you.

10 Q Now --

11 MR. SANFT: I apologize. If I could just have a
12 quick second here.

13 THE WITNESS: Take your time.

14 MR. SANFT: Thank you. Your Honor, I have no
15 further questions. Thank you.

16 THE COURT: Thank you. Mr. Ruggeroli?

17 CROSS-EXAMINATION

18 BY MR. RUGGEROLI:

19 Q Good afternoon, Detective.

20 A Sir.

21 Q I'm going to pick up on a couple of the things
22 you've talked about. You understand I only represent Mr.
23 Wheeler, which is at the -- he's at the far end of that table
24 to your right, correct?

25 A I do.

1 Q You indicated that no prints of Mr. Valenzuela's
2 vehicle were processed?

3 A Yes.

4 Q Was that your call or Detective Jaeger's?

5 A Detective Jaeger's.

6 Q And so you have a general idea of the conclusion
7 that was made not to process it, but it was his call and not
8 yours?

9 A Yes, in concert with the crime scene analysts.

10 Q Now, some of the decision-making, did you play a
11 role in? Did you give any feedback?

12 A Well, there's -- there is a -- ongoing conversations
13 that Detective Jaeger and I would have, as well as with the
14 other detectives, because, you know, we deploy out, we do some
15 aspect of the investigation, we come back together, we discuss
16 what we've learned, we go back out. This happens multiple
17 times at a scene. Specific, that night, I can't tell you.

18 Q Right. And so, who was lead on this?

19 A We're co-detectives on it.

20 Q And so, you really can answer for your ultimate
21 decisions, but Jaeger, he's separate from you? This
22 particular incident -- or instance of requesting for the --
23 Mr. Valenzuela's vehicle to be processed, that wasn't your
24 ultimate decision?

25 A That was not my decision, sir.

1 Q And you showed up at what time on the early morning
2 of August 9th, 2017?

3 A Unfortunately, without reviewing the CAD, I can't
4 tell you my exact arrival time.

5 Q It was still dark though?

6 A Oh, yes.

7 Q And so, a number of detectives have different
8 responsibilities during the investigation. You show up, and
9 it's really the early portion of the investigation, correct?

10 A Yeah, we -- that's why we have that very essential
11 portion of the investigation, what is known as a briefing,
12 where the patrol officers -- in some cases, the patrol
13 detectives -- will share with us the preliminary details of
14 the preliminary investigation, and then we move as a unit in
15 the follow up investigation.

16 Q Now, there was a section of Lindell that had police
17 or caution tape. That's that yellow tape, crime scene tape
18 that was put up; is that correct?

19 A Correct.

20 Q And who would have made the determination to place
21 it there?

22 A That night, it would have been -- that
23 responsibility would have fallen on the patrol officers and
24 probably their supervisors.

25 Q Okay. Did you have any responsibility in making the

1 determination how wide the scope of the crime scene was?

2 A No.

3 Q Did you have information later though from the
4 jogger that the suspected vehicle was actually beyond the
5 scope of that containing crime scene tape out on the side of
6 Lindell?

7 A My understanding is that the vehicle was -- if you
8 were looking at 5536 west to east, you're staring at the front
9 of the entrance, if you could look through the house to
10 Lindell, that's where the vehicle was parked, facing south, so
11 on the west side of Lindell.

12 Q Right. And so you did not personally decide to
13 limit the taping of the crime scene to where it was,
14 sectioning off Lindell?

15 A No, sir.

16 Q That was not your decision?

17 A That is not my decision, sir.

18 Q You did look for evidence that night?

19 A Yes.

20 Q Early morning of the 9th?

21 A Yes.

22 Q You did a number of things. Did you personally ever
23 go over on Lindell to where that vehicle was said to have been
24 earlier to view and see if there was any evidence?

25 A Absolutely. I actually parked on Lindell.

1 Q And did you ask to expand the crime scene?
2 A No.
3 Q You also testified to looking at some photos of the
4 blood pooling, correct?
5 A Yes.
6 Q And the shoes that were worn by some of the
7 individuals that had been present?
8 A Yes.
9 Q Now, you were not there when those individuals were
10 present?
11 A I don't recall if -- typically, what will happen in
12 those matters is that we will bring the -- or the first
13 responders, EMS, back to the scene, because that is a decision
14 regarding the footwear impression that detectives make. That
15 is not requested by patrol officers.
16 Q Right. And so, limiting it to you specifically, did
17 you make that determination?
18 A No.
19 Q Okay. And I noticed that you were using glasses to
20 look at the photographs of the shoes. You had those with you
21 today on the stand, correct?
22 A Yeah. Who knew when you turn 45 that you have to
23 wear the readers?
24 Q And was it your call -- again, it was Detective
25 Jaeger's call to not consult with a footprint expert?

1 A Yeah. Under these circumstances, there was no need
2 to.
3 Q Well, you weren't the one that made that call?
4 A With respect to?
5 Q The footprints in particular.
6 A Oh, it was evident that the footwear -- the
7 impressions were made by first responders and family
8 responding. They were not indicative of the suspects'
9 footwear.
10 Q Okay. So you actually observed that?
11 A Oh, I've seen that many times that night.
12 Q Did you do that with the naked eye?
13 A Yes.
14 Q And did you use your glasses when you did that that
15 night?
16 A And my flashlight.
17 Q Did you take the photos, or were you present when
18 the photos were taken?
19 A I would have been there, yes.
20 Q Do you recall specifically how many footprints
21 total? And if a person has two feet, how many total
22 footprints would you have been aware of?
23 A No, I'd have to look at some photographs to -- to --
24 to see the number of -- of footwear impressions.
25 Q And you're not a footprint expert?

1 A No, sir.

2 Q Never testified as one?

3 A No, sir.

4 Q This investigation stretched out into the daytime

5 hours and then later into the night on August 9th, correct?

6 A A very long day.

7 Q And you indicated that because of some extra work by

8 Detective Cody, your much-needed break for sleep was

9 interrupted and you responded to the Bagpipe address?

10 A Yes.

11 Q Okay, but you also went downtown and did paperwork

12 for warrants, things like that?

13 A The -- the paperwork that you're referring to would

14 have been done out of headquarters, and then -- but that was

15 done telephonically for the follow up search warrant as

16 authored by Detective Jaeger.

17 Q Did you author any reports?

18 A Yes.

19 Q Which ones specifically?

20 A The subsequent search warrants at 6647 West

21 Tropicana Avenue, Unit 104. The search warrants related to

22 the electronic storage devices, i.e., cell phones, I authored,

23 as well as the search warrant for 3300 Civic Center Drive.

24 Q Now, you were shown a photograph of the firearm

25 located at Bagpipe. Were you there at the time?

1 A No.

2 Q Okay. Your understanding is that the .45 recovered
3 from Bagpipe -- because there were two .45s recovered
4 regarding this incident, correct?

5 A During the investigation, yes, sir.

6 Q All right. So we're still dealing with the October
7 9th, correct?

8 A Yes.

9 Q The Star .45 caliber firearm located at Bagpipe,
10 correct?

11 A Yes.

12 Q And the Lofton-Robinson -- or Robinsons lived at
13 that address?

14 A They did.

15 Q Later -- and I'm skipping ahead a little bit, just
16 to kind of clarify. On August 15th, you did a search warrant,
17 same year, of the Civic Center Drive, and that's when the
18 Taurus .45 caliber firearm was located?

19 A Yes.

20 Q That firearm was later forensically tested, correct?

21 A For latent prints, yes.

22 Q But also, for the -- the -- whether or not it had
23 fired the expended cartridge cases and the bullets?

24 A Yes. There was ballistic testing sought with all
25 three firearms.

1 Q Right. And so, you're aware that the Taurus .45
2 caliber firearm located at Civic Center was excluded as firing
3 any of the cartridge cases or bullets?

4 A That's correct, sir.

5 Q Now, you also testified that you had viewed a cell
6 phone string between -- and I wanted to ask you if you would
7 clarify between -- I thought you had originally said DeShawn
8 and Mr. Robertson. You followed up and got information about
9 Mr. Wheeler's cell phone, correct?

10 A Yes.

11 Q And you're aware that, as far as Mr. Wheeler's cell
12 phone, there was an analysis -- a Cellebrite analysis done,
13 and the conclusion of that was that there are texts a couple
14 of hours before the crime and several hours after the crime,
15 but no mention of the crime for Mr. Wheeler's phone?

16 A For Mr. Wheeler's phone. That is correct, sir.

17 Q And there are also some texts between -- or some
18 communication texts between Lofton with Mr. Wheeler, but
19 nothing logically around the time of the crime?

20 A Yes, sir.

21 Q You mentioned that you were aware of or were
22 involved with some buccal swabs, correct?

23 A Yes, sir.

24 Q And you actually had the opportunity to follow up on
25 a number of individuals regarding potential suspects in this

1 case, correct?

2 A There was talk of other individuals.

3 Q So, going back to closer to August 9th, you're

4 learning information and you're following up on leads; that's

5 what you do, correct?

6 A Yes.

7 Q And the vehicle and the surveillance footage was

8 very important information because it led you to the next

9 step?

10 A Yes.

11 Q The vehicle led you to Mr. Robinson -- or

12 Lofton-Robinson?

13 A Yes, sir.

14 Q But also his brother DeShawn? And you were shown a

15 picture of DeShawn?

16 A Correct.

17 Q Now, DeShawn lives -- or resided at the same

18 location at Bagpipe, correct?

19 A Yes.

20 Q I'm going to skip ahead a little bit, because you

21 were asked about gunshot residue. Just reiterating again,

22 you're not an expert?

23 A I am not an expert.

24 Q Never testified as an expert --

25 A Never testified as --

1 Q -- regarding --
2 A -- an expert in GSR.
3 Q Okay. You claimed that he was interviewed 24 hours
4 after the shooting?
5 A That's an approximation.
6 Q Okay. It wouldn't surprise you that you're several
7 hours off?
8 A Well, I'd have to look at the time of the transcript
9 when it was initiated, but I know that it was closer to 24
10 hours than certainly within four hours of the shooting
11 incident.
12 Q You were not present when DeShawn Robinson spoke to
13 detectives?
14 A I was not in the interview. Yes, sir, but I was in
15 the building conducting a simultaneous interview.
16 Q And you -- I know why you are saying you wouldn't
17 have done it, but you did not request that he was processed
18 for any gunshot residue?
19 A We would have been in violation of the policy.
20 Q But you personally?
21 A Me personally, no.
22 Q And just one more time, if you could clarify, does
23 the policy apply equally to hands and to clothing?
24 A The policy just says, within an excess of four
25 hours, it's not to be conducted.

1 Q Now, are you sure that it's limited or not limited?
2 I really would like to know if you know specifically, does
3 that apply to any item, including skin or -- and/or fabric?

4 A It doesn't make -- it doesn't discern between the
5 two surface areas. It just says that it won't be done within
6 four hours -- or after four hours, excuse me, of the shooting
7 incident.

8 Q Now, I was asking you some questions about -- part
9 of your role as a detective -- and you were co-lead,
10 detective, correct, with Jaeger?

11 A Yes.

12 Q You would be able to direct crime scene analysts to
13 follow up and do certain things?

14 A Throughout the duration of the investigation,
15 absolutely.

16 Q And so you -- you did make some directives regarding
17 collection of buccal swabs so that you can collect DNA from
18 certain individuals, correct?

19 A Yes.

20 Q And that would have included DeShawn Robinson?

21 A Yes.

22 Q DeMario Lofton-Robinson?

23 A Yes.

24 Q Anthony Robinson?

25 A Yes.

1 Q And that Anthony Robinson is DeShawn and DeMario's
2 brother -- one of their brothers, correct?
3 A Yes.
4 Q You also requested and received DNA from a buccal
5 swab regarding the sister's boyfriend, and his name is
6 Johnquiel Brown, correct?
7 A Yes.
8 Q These are all African Americans approximately within
9 the same age range, correct?
10 A They were close. Yes, sir.
11 Q Now, later in your investigation, not -- not all the
12 way to August 15th, 2017, but after August 9th, you became
13 aware that there's another individual -- another brother named
14 Adrian Robinson, correct?
15 A We were familiar with Adrian, yes.
16 Q And he's also an African American?
17 A He is.
18 Q Within the same age range approximately?
19 A Slightly older.
20 Q Okay. You did not cause him to have a buccal swab?
21 A No.
22 Q Now, a number of items -- and I'm going back to the
23 9th. A number of items were located at the scene that you
24 would have -- or Jaeger would have ordered to be collected,
25 including cigarette butts?

1 A Two of them.

2 Q And there was a fidget spinner?

3 A Yes.

4 Q There were some glasses?

5 A Yes.

6 Q And some other items located at the crime scene?

7 A Yes.

8 Q In order to do a full analysis in terms of DNA, they

9 can only test for subjects that they have exemplars from,

10 correct? So if they have Adrian Robinson, they can check to

11 see if Adrian Robinson is one of the sources from the

12 cigarettes?

13 A They?

14 Q The experts that do the DNA analysis that we've

15 heard from.

16 A I wasn't here for their testimony, so if a forensic

17 scientist did testify, I don't know.

18 Q Okay, but if they don't have a source to test with

19 -- and my point is, you didn't get DNA from Adrian Robinson?

20 A We did not.

21 Q Okay. Early on, you were making some personal

22 determinations as far as suspects, correct?

23 A Based on the evidence.

24 Q And the open carry in the video from the Short Line

25 Express initially was very important?

1 A It is of note.

2 Q Right. You find out later that that gun is excluded
3 as being a part of the shooting of the expended cartridge
4 cases and the bullets?

5 A Well, I believe that that's going to be the same
6 firearm as depicted in the video, but I don't know.

7 Q And so, also along the course, you're getting
8 information and following up regarding other potential
9 suspects?

10 A Well, as the investigation moves forward, we are
11 gathering the information, but it's coming from very reliable
12 sources, so it's starting to narrow down, narrow down, narrow
13 down.

14 Q And it's fair to say that you would have viewed
15 Adrian Robinson at some point as a potential suspect?

16 A We did, but it was -- it was fairly easy to
17 eliminate him as a potential suspect.

18 Q I'm going to maybe let you answer some other
19 questions on that, but it's fair to say that you did have some
20 information that could have implicated him as one of the
21 people involved?

22 A We'd gotten some information that he was potentially
23 involved or otherwise depicted in the video surveillance from
24 the convenience store, but it's not the same individual.

25 Q And you've talked about nicknames a little bit,

1 correct?

2 A I referred to them as monikers, I believe, which is
3 akin to a nickname.

4 Q Okay, and he goes by Gotti?

5 A Gotti, G-o-t-t-i.

6 Q Okay. And you also had received some information
7 that there would have been a fifth person present at the Short
8 Line Express?

9 A That information we were never able to confirm.

10 Q Well, but you did speak with an individual that had
11 been present at Short Line Express, correct?

12 A His name?

13 Q Marcell Solomon.

14 A Yes.

15 Q Okay.

16 MR. RUGGEROLI: I have nothing further. Thank you.

17 THE COURT: Any redirect?

18 MR. BROOKS: Briefly, Your Honor. May we approach?

19 THE COURT: Of course.

20 (Bench conference)

21 MR. BROOKS: Hey, Judge, two things. So I just
22 wanted to lead him through this, because I didn't want to do
23 this, but Mr. Sanft asked, based on this photo alone, is there
24 any way you can determine that it's Raekwon Robinson.

25 THE COURT: Right.

1 MR. BROOKS: The problem is, he also has
2 surveillance photos from the other incident. So he's looking
3 not only at video, but the surveillance from the other
4 incidents, and speaking to other people. So I just wanted to
5 say, you know, were there other independent sources of
6 verification for the reason that you make the identification
7 in that video.

8 MR. SANFT: We have no objection to that.

9 THE COURT: Yeah.

10 MR. BROOKS: And then, Mr. Sanft was asking about
11 the CDRs and stuff, and you know how --

12 THE COURT: Yeah.

13 MR. BROOKS: -- Mitch Dosch didn't remember? Sorry,
14 I don't have a hard copy. Can I show him his Affidavit for a
15 Search Warrant for Raekwon Robertson where he actually details
16 the CDR for the specific thing that Mr. Sanft is asking to
17 refresh his recollection?

18 THE COURT: Yeah, that's fine. That's fine.

19 (End of bench conference)

20 THE COURT: Okay, you may proceed.

21 REDIRECT EXAMINATION

22 BY MR. BROOKS:

23 Q Detective Dosch, do you remember the line of
24 questioning when the photo -- the surveillance photo was up,
25 and it said -- Mr. Sanft asked you, based on this photo alone,

1 is there any way you can determine that this is Raekwon
2 Robertson? Do you remember that question?

3 A I do.

4 Q Did you have other independent sources that
5 confirmed your identification that you gave here in court
6 today that that's Raekwon Robertson?

7 A Yes.

8 Q Do you remember the line of questioning about CDRs
9 and cell phones?

10 A CDRs, yes. That's call detail records.

11 Q And do you remember Mr. Sanft was asking you about
12 Mr. Robertson's cell phone and whether you analyzed and
13 reviewed the cell phone records in that case?

14 A The cell phone records connected to his cell phone.

15 Q And the tower sites?

16 A Yes.

17 Q You said you did, but you didn't remember?

18 A Yes.

19 Q If I showed you your Application for a Search
20 Warrant and allowed you to read a certain portion of it, would
21 that help refresh your recollection?

22 A Yes.

23 Q If you could, I want you to start right here on page
24 10 when it says "On August 8th" for me. Read that, down into
25 this page.

1 A I will. Just give me a second to -- I just want to
2 make sure that I've got it on -- cued up correctly.

3 Q If you could read right there. Yeah.

4 A Got it. "On August 8th" --

5 Q Oh, no, not out loud. Just read it to yourself,
6 please.

7 A Oh, sorry. And then keep reading to down there?

8 Q Just down here, briefly.

9 A All the way down, concluding at --

10 Q Yeah.

11 A Yes.

12 Q Does that refresh your recollection on the analysis
13 you did on Mr. Robertson's cell phone on August 8th, 2017?

14 A It does.

15 Q So, call detail records, do they give you a location
16 all the time, or do you have to be using the phone?

17 A Well, there's sort of multiple parts of that. Call
18 detail records, CDRs, as they're known, dealing with the
19 incoming/outgoing phone calls and/or text messages. As
20 another component to those phone records, we get what is known
21 as -- what most people would refer to as cell tower, but the
22 truth is, is that cell tower -- I mean, "cell sites" is the
23 term that we like to use because they can affix that equipment
24 to not just towers, but to buildings. So cell sites is
25 another part, and that means where that phone is interfacing

1 -- where that phone call is interfacing with.

2 Q So, Mr. Robertson's phone, do you recall on August
3 8th around 11:36 P.M. what tower it hit off of?

4 A Yes. There was a one second in duration phone call
5 that hit off a tower that was 16 -- approximately 1,600 feet,
6 I believe, north of the convenience store. Now, this was the
7 time that the men were gathered at the convenience store.

8 Q When you analyzed these records for Mr. Robertson,
9 did you also analyze it with an eye toward that residence?

10 A The 6647 West Tropicana?

11 Q His historical usage, yes.

12 A Yes.

13 Q And did you have other independent sources of
14 verification as to that being his residence?

15 A Yes.

16 MR. BROOKS: Nothing further, Your Honor.

17 THE COURT: Any recross?

18 MR. SANFT: Yes, Your Honor.

19 RECROSS-EXAMINATION

20 BY MR. SANFT:

21 Q So, going back to these call detail records, I just
22 want to make sure we're clear. The only ping that we had was
23 1,600 feet from the 7325 South Jones Boulevard location?

24 A Yes.

25 Q And with regard to these pings that come off these

1 towers, it's fair to say that you're talking about
2 information, data that comes off of those towers onto a phone,
3 or vice versa, right?

4 A That's probably the best way to describe it. Yes,
5 sir.

6 Q Okay. So, for instance, in a case where you have
7 say apps on a smart phone that are constantly accessing data,
8 meaning, for instance, if you're just having it update even
9 when you're not looking at a phone, that would be pinging as
10 well, wouldn't it?

11 A Yes. Some -- for the phones, for the smartphones,
12 they refer to them as data sets, and they come from different
13 sources, not necessarily always the same tower where the
14 telecommunications is going on.

15 Q So in this particular case, with regard to data sets
16 and so forth, we don't have any information about that?

17 A We do not, sir.

18 Q Okay.

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

20 MR. RUGGEROLI: I had no questions, Your Honor.

21 Thank you.

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

23 MR. BROOKS: No, Your Honor.

24 THE COURT: Okay. Thank you very much for your
25 testimony here today. You may step down, and you are excused

1 from your subpoena. Can I have the attorneys approach for a
2 moment?

3 MR. PESCI: Yes, Your Honor.

4 (Bench conference)

5 THE COURT: Thank you. So you're going to rest,
6 right?

7 MR. PESCI: Assuming 8 is actually in, because he
8 said 7, and I'm not sure if 8 was ever moved in.

9 THE COURT: Is 8 in? Exhibit 8?

10 MR. PESCI: At this point, I believe everything is
11 in. 8's the only one I have a question about.

12 THE CLERK: Yes.

13 MR. PESCI: So everything's --

14 THE CLERK: Oh, yeah. (Indiscernible).

15 MR. PESCI: Everything's in?

16 THE CLERK: Everything except for what was objected
17 to.

18 MR. PESCI: Gotcha.

19 THE COURT: Do you have -- I can't remember if you
20 told me you were calling any witness. I know Mr. Ruggeroli
21 did.

22 MR. RUGGEROLI: And he's been here since 11:00. I
23 could do him very quick. I don't know how much you have.

24 THE COURT: Okay, I was just going to ask you if it
25 was going to be quick.

1 MR. RUGGEROLI: Very quick.
2 THE COURT: And then we could let them go to lunch,
3 and then we could do instructions, and --
4 MR. RUGGEROLI: Yes.
5 THE COURT: -- come back and do closings.
6 MR. SANFT: I think we still need to ask the
7 defendants whether they want to testify or not.
8 THE COURT: That's right. I'll have to do it
9 before --
10 MR. RUGGEROLI: Well --
11 THE COURT: Well, I could do it after --
12 MR. RUGGEROLI: Yeah, let's --
13 THE COURT: -- your person testifies.
14 MR. SANFT: Sure, okay.
15 MR. RUGGEROLI: If we have my guy testify, and then
16 break for lunch.
17 THE COURT: Yeah, perfect.
18 MR. RUGGEROLI: Okay, thank you.
19 THE COURT: Perfect. Thank you.
20 (End of bench conference)
21 THE COURT: Okay. Does the State have any other
22 witnesses or evidence to present?
23 MR. PESCI: No. Assuming everything has been
24 admitted, Your Honor, the State rests.
25 THE COURT: Thank you. And Mr. Ruggeroli, you can

1 call your first witness.

2 MR. RUGGEROLI: Thank you, Your Honor. The defense
3 calls Marcell Solomon.

4 THE MARSHAL: He's not back yet. He had to run
5 downstairs and feed the meter. And that was about halfway
6 through his testimony, so he should be coming up any second.

7 THE COURT: Okay, okay. Those darn meters.

8 THE MARSHAL: Maybe a short break, Your Honor? He's
9 not out there.

10 THE COURT: Why don't we just wait a couple
11 minutes --

12 THE MARSHAL: Okay.

13 THE COURT: -- and see if --

14 (Pause in the proceedings)

15 THE MARSHAL: And if you'll please step up into the
16 witness stand. Remain standing, raise your right hand, and
17 face the Clerk.

18 MARCELL SOLOMON, DEFENDANT WHEELER'S WITNESS, SWORN

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

21 THE WITNESS: Marcell Solomon.

22 THE CLERK: Please spell your first and last name.

23 THE WITNESS: M-a-r-c-e-l-l. Solomon,
24 S-o-l-o-m-o-n.

25 MR. RUGGEROLI: May I, Your Honor?

1 THE COURT: Thank you. You may.

2 MR. RUGGEROLI: Thank you.

3 DIRECT EXAMINATION

4 BY MR. RUGGEROLI:

5 Q Mr. Solomon, good afternoon.

6 A Hello.

7 Q Thank you for your patience. Have you ever had a
8 chance to meet with me or speak with me?

9 A No.

10 Q I'm going to direct your attention to an incident
11 that occurred on August 9th, 2017.

12 A Okay.

13 Q Do you recall that incident?

14 A Vaguely.

15 Q Did you have occasion to speak with police at some
16 point about what you had observed?

17 A Yes.

18 Q And was that at a Short Line Express?

19 A No. They came to my house.

20 Q Okay, but were you answering questions about what
21 happened at a Short Line Express?

22 A Short Line Express? I'm not too familiar with that.

23 Q Do you recall speaking with the detectives?

24 MR. RUGGEROLI: And Judge, may I approach to refresh
25 his recollection?

1 THE COURT: Sure.

2 BY MR. RUGGEROLI:

3 Q If you could read this to yourself, please.

4 A "Short Line Express" --

5 Q No, no, just to yourself, please.

6 A Okay, okay.

7 Q Okay. Does that refresh your recollection?

8 A Yes.

9 Q Okay. During this conversation with police, you

10 were specifically asked about if you remember how many people

11 were in the car.

12 A Yes.

13 Q Do you recall that?

14 A Yes.

15 Q And you answered, "Five. I'd say two in the front

16 and" --

17 MR. PESCI: Judge, objection, leading. This is

18 direct examination.

19 THE COURT: You are leading. The objection's

20 sustained.

21 BY MR. RUGGEROLI:

22 Q Do you recall how you described the individuals in

23 the car?

24 A Not -- I just said it was four guys and they asked

25 me for a Black and Mild. So that was pretty much --

1 Q Do you recall indicating five; two in the front,
2 three in the back?

3 A I said four or five.

4 MR. RUGGEROLI: May I approach?

5 THE COURT: You may.

6 BY MR. RUGGEROLI:

7 Q If you could read this to yourself, please.

8 A Yes.

9 Q Okay. So you did make a number of statements. It
10 is accurate -- did this refreshed your recollection --

11 A Yes.

12 Q -- that you did say five?

13 A Yes.

14 Q Two in the front, and three in the back, correct?

15 A Yes.

16 MR. RUGGEROLI: I have nothing further.

17 THE COURT: Cross -- cross-examination?

18 MR. PESCI: Yes, thank you.

19 CROSS-EXAMINATION

20 BY MR. PESCI:

21 Q Sir, this that you're being asked about occurred
22 back in August of 2017; is that correct?

23 A Yes.

24 MR. RUGGEROLI: Judge, I'm sorry. I was required to
25 refresh after learning that he didn't remember. Are we

1 refreshing his recollection?

2 THE COURT: Are you trying to refresh his
3 recollection yet?

4 MR. PESCI: Yeah, I'm following up on what he
5 asked --

6 THE COURT: Okay.

7 MR. PESCI: -- with specific cites --

8 THE COURT: I'll allow it. Go ahead.

9 MR. PESCI: -- that he referenced. Portions, and
10 not all of it.

11 BY MR. PESCI:

12 Q Sir, do you remember the event happening back in
13 August of 2017?

14 A Yes, vaguely.

15 Q Okay. Vaguely, right? It's been a long time?

16 A Yeah.

17 Q Okay. Now, do you recall, as defense counsel just
18 asked you, being approached by some detectives about a month
19 after the event occurred, and they asked you some questions?

20 A Yes.

21 Q All right. And do you remember them talking to you
22 and showing you some video?

23 A Pictures.

24 Q Pictures? Okay, and then recording your
25 conversation?

1 A Yeah, I vaguely remember they were recording it.
2 Q Okay.
3 A Yeah.
4 Q So this transcript of that incident, would that help
5 to refresh your recollection as to what you said?
6 A Yes.
7 Q All right. So that would be beneficial to you to be
8 able to kind of review what it is you said?
9 A Yes.
10 Q All right. Looking at the top, there seems to be
11 page numbers. Do you see those at the center?
12 A Yes.
13 Q Okay. Now, on page 3, directing your attention,
14 there are A's and there are Q's. Do you see those letters on
15 the far left?
16 A Yes.
17 Q A being an answer, Q being a question. Do you
18 follow that?
19 A Yes.
20 Q Okay. So is it accurate that you in fact told the
21 detectives that your interaction with these people, it was a
22 real quick interaction?
23 A Yes.
24 Q All right. And then, they -- they showed you some
25 video or some surveillance; is that correct?

1 A Showed me pictures.

2 Q Okay. I want you to look to your right and see if
3 you recognize what's been marked and is in evidence as video
4 from the Short Line Express. Do you recognize the vehicle on
5 the lefthand side?

6 A Yes.

7 Q What do -- do you recognize that as being your
8 vehicle?

9 A Yes.

10 Q All right. And as you told the detectives, you pull
11 into the Short Line Express, there's a brief interaction with
12 some individuals in a car, and you go inside and make a
13 purchase?

14 A Yes.

15 Q And if we're going to watch this for a second --

16 MR. RUGGEROLI: Judge, could we have the exhibit
17 number, please?

18 MR. PESCI: It's the Short Line Express video. I
19 don't know the number; I can ask really fast. Court's
20 indulgence. Short Line Express video, it's 328. We've got a
21 cued up portion --

22 THE COURT: Thank you.

23 MR. PESCI: -- so we don't have to put that in and
24 go through all of that.

25 BY MR. PESCI:

1 Q So do you recognize yourself in that video?
2 A Yes.
3 Q And that's the extent of your interaction with the
4 people in the car; isn't that correct?
5 A I went --
6 Q On the front end; at the beginning?
7 A On the front end, yes.
8 Q Okay, so that's how fast it was that you interacted
9 with them?
10 A Yeah.
11 Q Okay. And so, based on that being a fast
12 interaction, you were not able to definitively say if there
13 were four or five people in there?
14 A No.
15 Q Okay. In fact, looking at your statement, isn't it
16 accurate that you originally told them there was like four or
17 five of them in the car?
18 A Yes.
19 Q That's on page 3, correct?
20 A Yeah.
21 Q All right, so --
22 A (Indiscernible).
23 Q No doubt, there are portions where you say five, but
24 there are also portions where you say four?
25 A Yes.

1 Q Okay. And then, in fact, on page 3, staying with
2 that same page, the last A from the bottom, don't you in fact
3 describe it, "Two in the front, and two in the back"?
4 A On page 3?
5 Q Yeah, page 3, the last A.
6 A Yeah, I do.
7 Q And do you -- so you're describing two people you
8 saw on the front, and two people in the back?
9 A Um-hum.
10 Q Is that -- I'm sorry, is that a yes?
11 THE COURT: Is that a yes?
12 THE WITNESS: Yes.
13 THE COURT: Thank you.
14 BY MR. PESCI:
15 Q It's okay, it's just because we're recording
16 everything, so I apologize.
17 A Gotcha.
18 Q And that's based on this limited time frame you have
19 right here, correct?
20 A Yes.
21 Q All right. And then, after you make the purchase,
22 do you come back out and hand those items off?
23 A Yes.
24 Q Okay. And was it a long time, or did you just kind
25 of hand it off and go your way?

1 A Hand it off and went my way.

2 Q Is about, in essence, the same amount of time that
3 we saw at the front end?

4 A Just about.

5 Q Okay. So it's pretty safe to say that this was a
6 very brief interaction with them, correct?

7 A Yes.

8 Q All right. I want to turn to page 6 of that
9 statement, last answer at the bottom. Did you again indicate
10 that you knew that there were two guys in the back seat?

11 A Yes.

12 Q Okay. And then, when you first interacted with
13 them, did you explain to the cops that you were kind of a
14 little bit taken off guard when you first saw them?

15 A I don't know if I said taken off guard, but yeah, I
16 was -- I had noticed that they were in the car and they were
17 looking my direction, so --

18 Q Okay.

19 A -- it immediately got my attention.

20 Q Good point. I apologize. If you look at page 5,
21 were you specifically asked -- second to last Q at the bottom,
22 were you specifically asked, "Were you a little bit
23 apprehensive of seeing them?"

24 A Yes.

25 Q And you said, "Yeah"?

1 A Yeah.

2 Q Okay. And that was -- that was the hit or the --

3 that you got off of that initial interaction; is that correct?

4 A Yeah, I was -- he asked me apprehensive, but he also

5 asked me was I intimidated by them.

6 Q Right.

7 A And so, I'm sorry, I got confused by that point.

8 And I said, no, I was not.

9 Q Right. So you weren't intimidated, but at first,

10 you're just kind of like --

11 A Yeah, I mean, I got out of the car, yeah, and they

12 got my attention.

13 Q What's going on here?

14 A Yeah.

15 Q Okay. And then, did you -- did you get a sense that

16 you were a little bit concerned of what they might be up to?

17 A When I got out the car, I just -- if I can just dive

18 in deeper what I seen.

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

20 relevance.

21 THE COURT: Overruled. You can answer.

22 THE WITNESS: Yeah. I just -- I seen them drinking

23 beers and stuff like that, so that's what caught my attention

24 first was just that. I'm like, oh, don't get caught driving

25 with that, you know? That's -- that's pretty much it, you

1 know?
2 BY MR. PESCI:
3 Q Did you relay some of that -- those ideas or
4 feelings you had to a friend of yours named Gabby after the
5 fact?
6 A Yes.
7 Q Okay. So that was kind of your thought process as
8 to what you encountered with them at that time?
9 A Yes.
10 MR. PESCI: Okay, thank you. Pass the witness.
11 THE COURT: Mr. Sanft, I'm assuming you didn't have
12 any questions?
13 MR. SANFT: I do have one question, if I can ask it.
14 THE COURT: Okay, go ahead.
15 CROSS-EXAMINATION
16 BY MR. SANFT:
17 Q Sir, and once again, I forget your name. Mr.
18 Solomon?
19 A Yes.
20 Q All right. These individuals that came up to you,
21 they asked you for something, for a favor, and that was to go
22 into the store and buy them cigarettes?
23 A It was Black and Mild, I believe.
24 Q Black and Mild, that's a form of cigarette?
25 A Yes.

1 Q Okay.

2 A Tobacco, or --

3 Q And I mean, you understand that they were asking you
4 to do something that -- why wouldn't they do that themselves?

5 MR. PESCI: Objection, calls for speculation.

6 MR. SANFT: Well, let me ask you this.

7 THE COURT: You can ask him if he knows.

8 BY MR. SANFT:

9 Q Do you know?

10 A I believe they didn't have ID.

11 MR. SANFT: Okay. No further questions, Your Honor.

12 THE COURT: Mr. Ruggeroli?

13 MR. RUGGEROLI: Thank you, Judge.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. RUGGEROLI:

17 Q Mr. Solomon, do you still have that transcript?

18 A Yes, I do.

19 Q Could you look at the front page?

20 A Yes.

21 Q You were asked about Q's and A's, right?

22 A Yes.

23 Q On the first page, looking at the A's, there's no
24 number five or four, correct?

25 A Just Q1, A -- I'm not exactly sure what you're

1 asking me. I apologize.

2 Q Well, why don't we go through to page 3, okay?

3 A Page 3? Okay.

4 Q Okay, and then your answer, the A, right?

5 A Um-hum.

6 Q The very first thing you said regarding a number,

7 you said, "There was five of them." That's the very first

8 thing you said, correct?

9 A Yes.

10 Q And then, later, you added, "Four or five," correct?

11 A Yes.

12 Q But that was the first mention -- that was the --

13 A "Five of them," yeah.

14 Q -- first number, five?

15 A It was.

16 Q And then, go to page 4.

17 A Um-hum.

18 Q You were asked specifically how many people in the

19 car, and the A there says, "I want to say five."

20 A "Say five," yes.

21 Q "Two in the front, and three in the back"?

22 A Yeah.

23 Q Correct? Just a little further down, asked again

24 about believe there was a number five. Answer, "I want to say

25 five of them," right?

1 A Um-hum.
2 Q Is that a yes?
3 A Yes.
4 Q And we're now a number of years past the time that
5 you made these statements, correct?
6 A Yes.
7 Q All you were trying to do was try and be helpful?
8 A Yes.
9 Q But there's no doubt that you used the number five?
10 A Yeah, I did.
11 Q And that was the first number you used?
12 A Yes.
13 MR. RUGGEROLI: Nothing further.
14 THE COURT: Thank you. Any recross?
15 RECCROSS-EXAMINATION
16 BY MR. PESCI:
17 Q And there's no doubt you said to them in that very
18 same sentence, "Four or five"?
19 A Yes.
20 Q And that this was a very short interaction?
21 A Yeah.
22 MR. PESCI: Thank you very much.
23 THE COURT: Okay. Anything else for Mr. Solomon
24 from either side?
25 MR. SANFT: No, Your Honor.

1 MR. PESCI: No, Your Honor.
2 MR. RUGGEROLI: No.
3 THE COURT: Okay. Mr. Solomon, thank you very much
4 for being here.
5 THE WITNESS: All right, thank you.
6 THE COURT: Thank you for your testimony. You may
7 step down, and you are excused from your subpoena.
8 Okay. At this time, we are going to recess for
9 lunch. During this recess, you're admonished not to talk or
10 converse amongst yourselves or with anyone else on any subject
11 connected with this trial, or read, watch, or listen to any
12 report of or commentary on the trial, or any person connected
13 with this trial, by any medium of information, including,
14 without limitation, newspapers, television, the internet, or
15 radio, or form or express any opinion on any subject connected
16 with this trial until the case is finally submitted to you.
17 We'll be in recess until 2:30. Thank you.
18 THE MARSHAL: All rise for the exiting jury, please.
19 Jurors.
20 (Outside the presence of the jurors at 12:59 p.m.)
21 THE COURT: Okay. The record will reflect that the
22 hearing is taking place outside the presence of the jury
23 panel.
24 Mr. Robertson, you do understand that you have heard
25 all the evidence that will be introduced by the State of

1 Nevada against you in this matter, correct?
2 DEFENDANT ROBERTSON: Yes.
3 THE COURT: And we talked yesterday about your right
4 to testify?
5 DEFENDANT ROBERTSON: Yes.
6 THE COURT: And you've had an opportunity to discuss
7 with your lawyer whether you should testify or not?
8 DEFENDANT ROBERTSON: Yes, I discussed with him.
9 THE COURT: Okay, and have you made a decision?
10 DEFENDANT ROBERTSON: Yes, I would not like to
11 testify.
12 THE COURT: Okay. And Mr. Wheeler, you know, we
13 talked about this yesterday, and you understand that you have
14 heard all of the evidence that will be introduced against you
15 by the State of Nevada in this matter?
16 DEFENDANT WHEELER: Yes, ma'am.
17 THE COURT: And you've had an opportunity to discuss
18 with your lawyer whether you should testify or not; is that
19 correct?
20 DEFENDANT WHEELER: Yes, ma'am.
21 THE COURT: And have you made a decision?
22 DEFENDANT WHEELER: I still -- no, I still haven't.
23 THE COURT: You still have not made a decision?
24 DEFENDANT WHEELER: No, I still -- I think I need a
25 little bit more time to talk to my lawyer, just a little bit

1 more time. Just small circle of --
2 THE COURT: Okay, because we're at the end of the
3 trial.
4 DEFENDANT WHEELER: Yeah, small --
5 THE COURT: I mean, if you want more time to talk to
6 your lawyer --
7 DEFENDANT WHEELER: Yeah.
8 THE COURT: -- that's fine. We're going to break
9 for lunch, and when you come back, you're going to have to
10 tell me whether you're going to testify or not. If you want
11 to testify, that's fine, I just need to know --
12 DEFENDANT WHEELER: Okay.
13 THE COURT: -- before we end the case.
14 DEFENDANT WHEELER: All righty.
15 THE COURT: Okay?
16 DEFENDANT WHEELER: All right.
17 THE COURT: So, Mr. Ruggeroli, you'll talk to him
18 before --
19 MR. RUGGEROLI: I'll talk to him right now.
20 THE COURT: All right, perfect. And what I thought,
21 you could come back in like 45 minutes, and then we could do
22 -- is that -- 45 minutes to an hour, and then we could do
23 instructions back in chambers, and then come out and formally
24 settle them.
25 MR. PESCI: Okay.

1 THE COURT: They don't look that -- they don't look
2 that bad.

3 MR. SANFT: No, Your Honor, they don't.

4 THE COURT: And Mr. Sanft, you're not going to
5 submit any?

6 MR. SANFT: No, Your Honor. I believe that the
7 instructions that I would want are currently in the proposed
8 instructions by the State.

9 THE COURT: Okay. And so, I just want to ask, the
10 defense is going to request the second degree murder
11 instructions?

12 MR. RUGGEROLI: This is --

13 THE COURT: They're in.

14 MR. RUGGEROLI: I know. This is something that I
15 was going to finalize with him. I believe that -- I don't
16 have an objection at this time because it was provided.

17 THE COURT: Okay, because they're in. I just need
18 to know, because if you're going to want that --

19 MR. RUGGEROLI: Right.

20 THE COURT: There's other instructions regarding
21 aiding, and abetting, and conspiracy that we need.

22 MR. RUGGEROLI: Thank you, Judge.

23 MR. SANFT: Yes, Your Honor.

24 MR. RUGGEROLI: Can we make it an hour, please?
25 Because I do need to talk to him for a minute.

1 THE COURT: Can we what?
2 MR. RUGGEROLI: Make it an hour to come back?
3 THE COURT: Yeah.
4 MR. RUGGEROLI: Okay.
5 THE COURT: Yeah.
6 MR. BROOKS: And Judge --
7 THE COURT: Okay.
8 MR. BROOKS: -- I am doing a PowerPoint, so I do
9 need to know if I need to pull some like second degree murder
10 slides. And that's --
11 THE COURT: Yeah.
12 MR. PESCI: We have to give the instruction. We
13 can't -- we can't not give second. We're going to get
14 reversed if we do that.
15 MR. SANFT: We -- and we don't -- on behalf of Mr.
16 Robertson, we don't have an objection to the inclusion of
17 second.
18 THE COURT: Okay.
19 MR. SANFT: I just want -- I don't --
20 THE COURT: All right.
21 MR. SANFT: I don't know what the issue would be
22 over here with regards to that, but on behalf of Mr.
23 Robertson, we don't have any concern of that.
24 THE COURT: Okay. All right, so I'll see you after
25 lunch.

1 (Court recessed at 1:02 P.M. until 3:16 P.M.)
2 (Outside the presence of the jurors)
3 THE MARSHAL: Please come to order. Court is now in
4 session. Please be seated.
5 THE COURT: Okay. The record will reflect that the
6 hearing is taking place outside the presence of the jury
7 panel. Is the State familiar with Court's Proposed 1 through
8 39?
9 MR. PESCI: Yes, Your Honor.
10 THE COURT: Any objections?
11 MR. PESCI: No, Your Honor.
12 THE COURT: Any further instruction that you would
13 like to propose at this time?
14 MR. PESCI: No, Your Honor.
15 THE COURT: And you're familiar with the Verdict
16 Forms?
17 MR. PESCI: Yes, Your Honor.
18 THE COURT: Any objection?
19 MR. PESCI: No, Your Honor.
20 THE COURT: Okay. Mr. Sanft, you're familiar with
21 Court's Proposed 1 through 39?
22 MR. SANFT: I am, Your Honor.
23 THE COURT: Any --
24 MR. PESCI: I apologize, I interrupt. I actually
25 don't have the Verdict Form attached.

1 THE COURT: Yeah, I usually don't attach it, but
2 it's --
3 MR. PESCI: Okay, all right.
4 THE COURT: They're lodged with the Clerk. If you
5 want -- do you need a copy?
6 MR. PESCI: Is it all right if I look, just --
7 THE COURT: Yeah, of course.
8 MR. PESCI: -- a last double-check --
9 THE COURT: Absolutely.
10 MR. PESCI: -- because you just asked if we agree
11 with them? Thanks. Thank you, Your Honor.
12 THE COURT: No objection?
13 MR. PESCI: No objection.
14 THE COURT: Okay. Mr. Sanft, you're familiar with
15 Court's Proposed 1 through 39?
16 MR. SANFT: I am, Your Honor.
17 THE COURT: Any objection?
18 MR. SANFT: No, ma'am.
19 THE COURT: Any further instructions you'd like to
20 propose?
21 MR. SANFT: No, Your Honor.
22 THE COURT: Okay. Mr. -- I'm sorry. And you're
23 familiar with the Verdict Form, Mr. Sanft?
24 MR. SANFT: I am, Your Honor.
25 THE COURT: Any objection?

1 MR. SANFT: No objection, Your Honor.
2 THE COURT: Thank you. Mr. Ruggeroli, and you're
3 familiar with Court's Proposed 1 through 39?
4 MR. RUGGEROLI: Yes, Your Honor.
5 THE COURT: Any objection?
6 MR. RUGGEROLI: Judge, I, as you know, submitted --
7 THE COURT: Sure.
8 MR. RUGGEROLI: -- a proposed set of instructions
9 that had three. Those are my proposals. You heard and have
10 those. I would have preferred --
11 THE COURT: Do you have them for the Clerk to mark?
12 THE CLERK: I have them.
13 THE COURT: Perfect, thank you.
14 MR. RUGGEROLI: So, other than those, Judge, I have
15 no further objections. And those are not really objections;
16 those are proposed instructions.
17 THE COURT: Right. And it -- it was my belief that
18 all of those instructions that you had proposed, almost
19 identical language is already in the instructions, so --
20 MR. RUGGEROLI: Thank you, Judge.
21 THE COURT: Those will just be marked and made part
22 of the record. And you're familiar with the Verdict Form?
23 MR. RUGGEROLI: Yes, Your Honor.
24 THE COURT: Any objection?
25 MR. RUGGEROLI: No, Your Honor.

1 MR. PESCI: Judge, can I perfect the record on what
2 was last done as far as the defense proposed?

3 THE COURT: Absolutely.

4 MR. PESCI: So in the document that I believe is now
5 a defense proposed, or --

6 THE COURT: It's -- well, it's Court's exhibit next
7 in line.

8 MR. PESCI: Court's exhibit. So instruction --

9 THE CLERK: (Indiscernible). Yes. Okay.

10 THE COURT: Yeah, it's Court Proposed --

11 THE CLERK: I just --

12 THE COURT: Yeah, sorry. I usually mark these as
13 Court's exhibit next in line.

14 THE CLERK: It will be number 4.

15 THE COURT: So it will be Court's Exhibit next in
16 line number 4.

17 MR. PESCI: Thank you, Your Honor. It's a four-page
18 document. Pages 2 of 4 and 3 of 4 I believe were covered by
19 the State's, as you've marked it now, 8. And there was
20 discussion about that, how this was covered by the State's
21 proposed exhibit, and the same arguments can be made from
22 that.

23 Additionally, page 4 of the defense proposed
24 instruction corresponds to what's now been marked as the
25 Court's 9. I want to make an additional record. Originally,

1 what read in the record in the State's original proposed was a
2 portion that said, quote, "If the prosecutor does not believe
3 DeShawn Robinson testified in a way that secured the
4 negotiation, they have the right to ask the Court to void the
5 negotiation, and he could be recharged with the original
6 offenses."

7 It was the defense's request; specifically, Mr.
8 Wheeler's request, his counsel, to have that line stricken.
9 That was in the State's proposed, and we need to, I think,
10 make a record of the fact that it was the defense's request to
11 strike that.

12 MR. RUGGEROLI: Correct.

13 THE COURT: Okay.

14 MR. PESCI: Additionally --

15 THE COURT: And Mr. Sanft, you had no objection?

16 MR. SANFT: I have no objection, Your Honor. We'd
17 submit it.

18 THE COURT: Okay.

19 MR. PESCI: Additionally, on defense's proposed
20 instruction, now Court's exhibit next in order, page 4,
21 there's also a line that talks about -- let's say lines 5
22 through 9. The State objected to that language because the
23 position of the State was it was superfluous language as far
24 as what would or would not possibly be utilized as evidence
25 against DeShawn Robinson, as he is not in trial on this case.

1 MR. RUGGEROLI: I have nothing further, Judge.

2 THE COURT: Okay. Mr. Ruggeroli, I just wanted to
3 ask you one more thing. I know a couple days ago, you
4 indicated you were going to propose another exhibit regarding
5 the Agreement to Testify.

6 MR. RUGGEROLI: Thank you, Judge. After
7 consideration, I want to withdraw that. There was discussion
8 about --

9 THE COURT: Okay.

10 MR. RUGGEROLI: -- how far we may have opened up
11 with our line of questioning, specifically allowing -- we had
12 a long conversation about this and argument. But in looking
13 at the language, I did take it out, so I went and I followed
14 up. And thinking about it strategically, I think we're better
15 off not altering the exhibit that the State has already
16 submitted that does not have the language.

17 THE COURT: Okay.

18 MR. RUGGEROLI: So you're accurate. That exhibit
19 doesn't need to be changed at all in my opinion.

20 THE COURT: Okay. I just want to make sure we --
21 it's the -- DeShawn Robinson's Guilty Plea Agreement and
22 Agreement to Testify.

23 THE CLERK: Yeah.

24 THE COURT: I just had this up here for the last few
25 days. I wanted to make sure that you were able to pose it if

1 you wanted to.

2 MR. RUGGEROLI: Thank you, Judge.

3 Judge, are you looking for the one that I would have
4 generated?

5 THE COURT: No.

6 MR. RUGGEROLI: Okay.

7 THE COURT: I'm looking for the one --

8 MR. RUGGEROLI: The one the State did?

9 THE COURT: -- that we actually admitted so that
10 it's clear that you're satisfied with that and you don't want
11 any modifications.

12 MR. PESCI: Hey, Parker?

13 MR. BROOKS: Yes, sir.

14 MR. PESCI: Do you know what number, the Agreement
15 to Testify?

16 THE COURT: Yeah. Mr. Robertson --

17 MR. BROOKS: 337, if I remember correctly.

18 THE COURT: Did you say 327?

19 MR. BROOKS: I thought 337, but I could be totally
20 wrong.

21 THE CLERK: Yes, it is 337.

22 THE COURT: That's pretty good. Okay. So, again,
23 Mr. Ruggeroli, you're satisfied with 337 --

24 MR. RUGGEROLI: Correct.

25 THE COURT: -- as being admitted --

1 MR. RUGGEROLI: Yes.

2 THE COURT: -- with the things that the State had
3 taken out?

4 MR. RUGGEROLI: Yes. They removed the portion
5 regarding truth out. And our discussion had been that if they
6 -- the defendants waived, which they did, then we would want
7 the opportunity to include other language because our desire
8 was to go beyond the portion regarding truth. I am
9 withdrawing my request to submit that as a defense proposed
10 exhibit.

11 THE COURT: Okay. And then, Mr. Wheeler, have you
12 made a determination as to whether you're going to testify or
13 not?

14 DEFENDANT WHEELER: Yes, ma'am, I have.

15 THE COURT: Okay.

16 DEFENDANT WHEELER: I'm not going to testify.

17 THE COURT: Okay. So when the panel comes in, the
18 defense is going to rest?

19 MR. RUGGEROLI: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. RUGGEROLI: Can I make a request based on --

22 THE COURT: Of course.

23 MR. RUGGEROLI: -- logistics for the closure of the
24 case? Are we able to finalize instructions, read them to the
25 jury, but can we do closing tomorrow; tomorrow morning?

1 THE COURT: I was just hoping we could --
2 MR. RUGGEROLI: I know.
3 THE COURT: -- do them tonight.
4 MR. PESCI: Judge, the State's objection is that we
5 now have what was Alt. number 1 --
6 THE COURT: Right.
7 MR. PESCI: -- is taking position of Juror number --
8 THE COURT: 10.
9 MR. PESCI: -- I think it's 10.
10 THE COURT: Um-hum.
11 MR. PESCI: And she is the one that, respectfully,
12 you have promised --
13 THE COURT: Right.
14 MR. PESCI: -- she can go to --
15 THE COURT: I did.
16 MR. PESCI: -- her granddaughter's -- or she can
17 take her granddaughter to -- I believe it's Salt Lake for a
18 gymnastic competition.
19 THE COURT: Yeah, it's Friday, so, I mean, I
20 wouldn't be able to start until 10:30. So I would rather get
21 them out tonight so when they come back tomorrow they can just
22 deliberate.
23 MR. RUGGEROLI: Understood.
24 THE COURT: Okay.
25 MR. RUGGEROLI: Thank you, Judge.

1 THE COURT: Let's bring them in.

2 MR. SANFT: Your Honor, I do have one further
3 matter. In speaking with my client earlier today, he'd
4 informed me that while we were at sidebar during today's
5 trial, that he observed Juror number 1 and Juror number 2
6 speaking specifically to the issue of guilt, saying that Juror
7 number 1 had told Juror number 2, "They're guilty." Right?

8 DEFENDANT ROBERTSON: Yes.

9 MR. SANFT: So I don't know what to do with that
10 information, but they're -- if that is true, we have two
11 jurors sitting in the jury box discussing this case prior to
12 deliberation, then I think that there is a problem. And I
13 don't know how to fix it; I don't even know how to handle that
14 particular issue.

15 MR. PESCI: So I think you'd have to take those
16 jurors in individually and canvass them. And for the record,
17 I have seen nothing of the sort. I did not hear anything to
18 that effect. Mr. Brooks, you sit closer to this jury pool.
19 Did you --

20 MR. BROOKS: Well, I haven't been paying attention.

21 THE COURT: And --

22 MR. SANFT: This happened while we were at sidebar,
23 Your Honor. That's the reason why I don't anticipate that the
24 State would have known.

25 THE COURT: When? Which sidebar? While the

1 detective was -- well, I guess he's the only one that
2 testified today.

3 MR. SANFT: Yeah. I think the very last time we
4 were at sidebar today, Your Honor, is when Mr. Robertson had
5 observed that interaction occurring.

6 THE COURT: And you heard them?

7 DEFENDANT ROBERTSON: Yes.

8 THE COURT: Okay. Why don't we bring in Juror
9 number 1.

10 (Within the presence of Juror No. 1)

11 THE COURT: Okay. The record will reflect that
12 Juror number 1, Vito Casucci, is present in the courtroom
13 outside the presence of the other jurors. Thank you very
14 much. I just need to ask you a question. At any time --
15 everything okay?

16 THE MARSHAL: Yes, ma'am.

17 THE COURT: Okay. At any time today during the
18 proceedings, were you ever talking with any of the other
19 jurors about an ultimate conclusion in this case?

20 JUROR NO. 1: No, Your Honor.

21 THE COURT: Okay. I am going to ask you to step
22 outside, but before I do, I am going to order you not to
23 discuss with any of your other fellow jurors anything that
24 we've discussed in here, and if anyone insists on speaking to
25 you further, you can make that fact known to me by telling

1 Officer Hawkes.

2 I just have one more question. Have you heard any
3 other juror discuss the ultimate conclusion in this matter --
4 and you haven't deliberated -- prior to any deliberations?

5 JUROR NO. 1: No, ma'am.

6 THE COURT: Okay, thank you very much.

7 (Outside the presence of Juror No. 1)

8 (Within the presence of Juror No. 2)

9 THE COURT: Okay, the record will reflect Ms.
10 Morrison is present in the courtroom and that this hearing is
11 taking place outside the presence of the other jurors. Thank
12 you very much for coming in here. I just have a couple
13 questions for you.

14 JUROR NO. 2: Okay.

15 THE COURT: During any of the proceedings today,
16 have you discussed with any other juror what your ultimate
17 decision or verdict would be in this matter?

18 JUROR NO. 2: No.

19 THE COURT: Okay. And you're willing to obviously
20 keep an open mind and wait until you've been instructed on the
21 law by the Court --

22 JUROR NO. 2: Absolutely.

23 THE COURT: -- and until you go back to the
24 deliberation room to reach a decision?

25 JUROR NO. 2: Yes.

1 THE COURT: Okay. Have you heard any other jurors
2 discussing an ultimate conclusion?
3 JUROR NO. 2: No.
4 THE COURT: Okay, thank you very much.
5 JUROR NO. 2: Um-hum.
6 THE COURT: I'm going to ask you to step back
7 outside with the other jurors. Ms. Morrison, I just need to
8 give you further instructions.
9 JUROR NO. 2: Okay.
10 THE COURT: So -- no, you can stand right there.
11 JUROR NO. 2: Okay.
12 THE COURT: I just don't want you to discuss with
13 any of your fellow jurors anything that we've discussed in
14 here.
15 JUROR NO. 2: Okay.
16 THE COURT: And if anyone insists on speaking to you
17 about what we have spoken about in here, I'd ask that you
18 obviously not respond, and then let Officer Hawkes know so he
19 can bring it to my attention.
20 JUROR NO. 2: Okay.
21 THE COURT: Okay? Thank you, Ms. Morrison.
22 JUROR NO. 2: Sure.
23 (Outside the presence of Juror No. 2)
24 THE COURT: The record will reflect that Ms.
25 Morrison has left the courtroom, and that this hearing is

1 taking place outside the presence of the jurors.
2 MR. SANFT: We have nothing further, Your Honor.
3 THE COURT: Okay, and Mr. Ruggeroli?
4 MR. RUGGEROLI: No, Your Honor.
5 THE COURT: And the State?
6 MR. PESCI: No, thank you.
7 THE COURT: Okay. We can bring them all in.
8 THE MARSHAL: All rise for the entering jury,
9 please.
10 (Within the presence of the jurors at 3:30 p.m.)
11 THE COURT: Does the State stipulate to the presence
12 of the panel?
13 MR. PESCI: Yes, Your Honor.
14 THE MARSHAL: Thank you, everyone. Please be
15 seated.
16 THE COURT: Mr. Sanft?
17 MR. SANFT: Yes, Your Honor.
18 THE COURT: Mr. Ruggeroli?
19 MR. RUGGEROLI: Yes, Your Honor.
20 THE COURT: Okay. Mr. Ruggeroli, do you have any
21 further witnesses that you intend to call?
22 MR. RUGGEROLI: No, Your Honor. On behalf of Mr.
23 Wheeler, the defense rests.
24 THE COURT: Okay. Mr. Sanft? Are you --
25 MR. SANFT: We have no further witnesses. We also

1 rest as well, Your Honor.

2 THE COURT: Okay, and nothing further from the
3 State?

4 MR. PESCI: That's correct, Your Honor.

5 THE COURT: Okay. At this time, ladies and
6 gentlemen, I am going to instruct you on the law that applies.
7 Officer Hawkes is passing the jury instructions to you. As I
8 told you in the beginning of this trial, you will all be given
9 a packet of jury instructions. I am required by law to read
10 them to you; however, you can follow along, and each of you
11 will have these instructions when you go back to deliberate
12 upon your verdict.

13 (THE COURT READS THE JURY INSTRUCTIONS TO THE JURY ALOUD)

14 THE COURT: The State of Nevada may open and close
15 the arguments.

16 STATE'S CLOSING ARGUMENT

17 MR. BROOKS: Conspiracy to commit robbery. That's
18 Count 1, and that's where I'm going to start with this closing
19 argument today, and we'll start the explanation because that's
20 where everything really began.

21 So on Tuesday, August 8th, 2017, Gabriel Valenzuela,
22 who at that time was 24-years-old, was a nursing student at
23 CSN. He was returning home just after midnight on Wednesday,
24 August 9th, 2017. Gabriel would become a victim of a
25 well-constructed, but poorly executed plan.

1 What's a conspiracy? Conspiracy is an agreement or
2 mutual understanding between two or more people. A defendant
3 must intend to commit or aid in the commission of the specific
4 crime agreed to.

5 Here, what's the mutual understanding between two or
6 more people? Well, DeShawn Robinson gets a text that day at
7 11:40 A.M. of the day of the shooting, and who's it from?
8 It's from Ray Logan. What did we learn? We learned that
9 Facebook profile picture the detective showed you today, the
10 white -- the person in white right there is Raekwon Robertson.
11 That's his Facebook account sending a message to DeShawn
12 Robinson's phone. We have more than two people, because what
13 is it? "Ask DJ if he trying to hit a house tonight. Me, you,
14 Sace. Sace already said yeah." So we have a mutual
15 understanding between four people.

16 Now, that might not mean anything to you, "Hit a
17 house." Might not be something that's a mutual understanding
18 if you and your kids said it, but it was a mutual
19 understanding and an agreement between those four guys.

20 The crime is the agreement to do something unlawful.
21 So the crime is actually that agreement; it doesn't matter
22 whether it was successful or not. And if you think about it
23 as a public policy reason, you can imagine why that would be
24 something you'd criminalize, because DeShawn, DeMario, and
25 because Davontae Wheeler's house is up there, I submit to you

1 he probably got in the car with them, and what did they do?
2 They drove across the city to where Raekwon Robertson lives
3 and where the victim lives.

4 What was talked about during that car ride? You can
5 think about that and say, oh, I get it, the agreement to do
6 the crime. And then you all get together, you're talking.
7 You got your firearms with you, they're loaded. And you got
8 your friends with you, and that makes you a little tougher.
9 When you're with a group, you're a little stronger. You go to
10 hit on that girl at a bar, it's never fun when you're by
11 yourself, but if you got your boys just down on the other end
12 of that bar, you're more likely to go do it.

13 And that is what happened that night. These four
14 guys get together, three of them carrying firearms. They go
15 to a convenience store at around 11:27 to 11:30 P.M., and that
16 convenience store is near the victim's residence.

17 How do we know who these four guys and what their
18 intent was? Well, their intent was to hit a house and they're
19 armed with loaded handguns. DeMario Lofton-Robinson, depicted
20 right there, look at his pocket. What did DeShawn tell you?
21 He was carrying that Interarms Star handgun, that
22 semiautomatic .45 pistol, and you can see it right there
23 bulging out of his pants. The sweater found in the back of
24 his car that he was wearing that night with the Jordan symbol
25 right there that you can see.

1 And when DeMario and DeShawn's residence is
2 searched, 919 Bagpipe, on August 9th, 2017, that firearm is
3 found by Trigger the dog during the sniffing that Adrian
4 Sandoval told you he released the dog, she goes up, hits on
5 that pink backpack, stays there. The detectives go open it
6 up, and there's the gun with six unspent cartridges left.

7 DeShawn Robinson. DeShawn Robinson came in here and
8 testified in front of you. That's him. He picked himself out
9 right there in the video surveillance. Raekwon Robertson in
10 the black hoodie right there, the black hoodie in August, the
11 reason that Lucy and Robert thought something was odd, and
12 Lucy ends up calling 311 after Robert Mason calls her and
13 says, hey, I just saw four guys in black hoodies kind of
14 against this wall. It's August.

15 What happens when Raekwon Robertson's house is
16 searched? The Taurus .22 handgun with .22 caliber bullets
17 right there, hidden underneath that drawer. When the drawer's
18 pulled out, it's right underneath that dresser. Additionally,
19 the Vans or Top-Siders, whatever the wording would be, that
20 can be depicted in that video surveillance is found in his
21 closet.

22 Davontae Wheeler shown there open carrying on the
23 side, right on his right side. The gun is found wedged in
24 beneath his bed against the -- against that little -- I don't
25 know what that cushion thing is -- with a holster. The

1 Millennium Taurus .45 with his fingerprint on the magazine
2 that's loaded in that gun. His Huaraches found on the floor
3 of the apartment that he's wearing in that video surveillance,
4 and a Chicago Blackhawks hat that's evident right there in
5 that photo. So that's who the four people are that agreed to
6 go do this crime.

7 Why this house? Look at it. You guys have seen the
8 photos over and over; we showed them to you. It's a corner
9 house. The wall. Look how that wall provides concealment
10 from that front door. Look where that front door would be;
11 you're hidden from the street.

12 Where's your getaway car? It's parked on Lindell,
13 facing south. Easy way out. It's on the dark side of the
14 street. Because of that weird mini-cul-de-sac, there's no
15 real lighting there. So, although this is lit up, the garage
16 door is up now -- you guys saw the video surveillance of the
17 body cam -- those garage doors weren't up. That lighting
18 wasn't there when this happened.

19 Why pick that house? Those are why, because you
20 were going to hit that house and it's an ideal spot. Look how
21 dark it is without that artificial lighting behind that Honda
22 right there. Look where the front door would be, hidden by
23 that eight -- I don't know, eight, ten-foot wall. And there's
24 your car, ready to head south and get out of there on Lindell.
25 You have, at most, one neighbor on your side of the street

1 that's actually kind of looking at the house right there.

2 Well-constructed plan, well-constructed conspiracy,
3 but it meets an unexpected jogger. Who expects someone to be
4 jogging at midnight? But Robert Mason jogs past and takes
5 down the license plate number.

6 (Video is played)

7 (Stopped playing of video)

8 MR. BROOKS: And that car was located within 24
9 hours, and it is 473YZE. Notice the curling on that license
10 plate. Notice the curling on the license plate when it's
11 impounded there at the CSA lab for Metro, and right there in
12 the video surveillance.

13 So what happens when the car's impounded? Vehicle
14 is located, and there's .45 caliber bullets right there in the
15 glove box, and the two pair of Jordan shoes; one you can see
16 DeMario wearing, and one you can see DeShawn wearing, size 9
17 and size 11. And then, the car is processed for prints. As
18 you can imagine, DeMario is the driver and owner of that
19 vehicle, so Prints 4 and 5 on that driver's side door come
20 back to him. Additionally, on the hood, his prints are on the
21 hood, almost like you were sitting there, hanging out, talking
22 to people.

23 DeShawn. Where was the younger brother's
24 fingerprints? Back passenger's side, right there. Where
25 else? Window of that back passenger side, which, when you

1 look at the video surveillance, that's right where he's
2 getting out; that's where he was seated that night. And you
3 heard from the DNA expert who came in here and talked about
4 the DNA that was presumptively positive for blood on the back
5 of that seat. Who did that come back to? DeShawn Robinson.
6 Additionally, DeShawn's palm print can be found right there on
7 the corner of that car.

8 What about Davontae Wheeler? When the car was
9 processed and the fingerprints were examined, Davontae
10 Wheeler, who was riding shotgun that night when you look at
11 the video surveillance, right there on the window, on the
12 hood. On the hood, almost like he was sitting there, talking
13 with DeMario. Those right there are all Davontae Wheeler's
14 fingerprints, palm prints on the car.

15 What about Raekwon Robertson? Also on the hood, and
16 then right behind the driver's seat where he was seated.
17 That's what happens when they process that car.

18 Now, the conspiracy, like I said, is the agreement.
19 It doesn't matter whether or not it was successful. Once you
20 agree to commit the crime, you get in the car, got your guns,
21 you're driving that way, you're guilty of a conspiracy.
22 Doesn't matter -- you don't have to actually finish it off.

23 So they went to hit a house that night, but instead,
24 what happened? What did you guys learn? An easier target
25 walked -- not jogged -- right into their plan. Why go into

1 the house? We can't see what's in there. Why kick down the
2 door or why pry open the door? This guy is by himself,
3 walking in a driveway, carrying mail, sorting through mail,
4 paying attention to that around midnight, and that's who they
5 hit instead.

6 Gabriel Valenzuela was wearing his Polo cargo shorts
7 because that's what you wear in August here in Las Vegas.
8 It's not New York City in November. He was wearing a t-shirt.
9 And he became their easy target to hit. They had their guns;
10 they were loaded. It's not like they were trying to sneak in
11 and out of a house. So they said, "Give me everything you
12 got." They saw an opportunity to hit Gabriel Valenzuela.
13 They asked for everything he had, and that right there is when
14 this turns into what we're going to transition now: the
15 attempted robbery.

16 So what's a robbery? Robbery is the unlawful taking
17 of personal property. So that's whether the taking was fully
18 completed with or without the victim's knowledge, and that
19 unlawful taking of personal property has to happen against the
20 victim's will. Well, what was this taking attempted as? The
21 taking was by means of force or violence, or fear of injury to
22 his person.

23 So there's two kind of -- there's a few things, but
24 the two I'm going to focus on is this force, this display of
25 force that you heard about; the grabbing, where the two guys

1 had him by the collar; the display of guns. Why do you have
2 the gun right there on your hip? Why do the other people have
3 guns? Why do you pull the guns? To obtain or retain someone
4 else's property, or to prevent or overcome resistance to the
5 taking of that property.

6 Maybe Gabriel said, no, you can't have my stuff, and
7 so rather than just show the guns, something else happened.
8 But you heard DeShawn say nothing ended up being taken. Once
9 the shots were fired, we all kind of headed to the car, we got
10 out of there. So this is an attempt robbery with use of a
11 deadly weapon.

12 What's an attempt? An attempt is an act done with
13 the intent to commit a crime, and tending but failing to
14 accomplish it. So, because nothing was taken because that
15 plan went awry, they took off running. They intended for it
16 to happen; they intended to take his stuff. "Give me
17 everything you got." They performed some acts towards that,
18 showing guns, grabbing him, encircling him. They failed to
19 consummate because they didn't actually make away with the
20 property. That's why it's an attempt robbery.

21 Not going to spend a lot of time on this. Deadly
22 weapon. You have an instruction in there that says, "You are
23 instructed a firearm is a deadly weapon." I submit to you, a
24 deadly weapon was used.

25 So this is going to be kind of like a weird part.

1 I'm going to try to kind of take this out of order and explain
2 a legal thing here for you guys. In there, when you look at
3 the Indictment that was just read to you, for each crime,
4 you'll see, it says, "By directly or indirectly committing the
5 acts," "By conspiring to commit the crime," or, "By aiding and
6 abetting in the commission of the crime." So there's three
7 different theories of liability where the law will hold you
8 accountable.

9 For instance, you could -- if we drove to a 7-Eleven
10 -- me and Mr. Pesci drive to 7-Eleven. Let's say he's just
11 the getaway driver. Let's say he just stayed in the car the
12 whole time, but he knows my plan, and I'm carrying a gun on
13 me, I go in, and I hold up the store Clerk. I'm directly
14 committing the robbery there, but he conspired with me because
15 we planned it, loaded the gun. He drove me there, took the
16 route, and he aided and abetted me in the commission of that
17 crime. Waited outside, I got the money, I run back to the
18 car, we take off together. So, to put this in kind of just
19 plain words, you can do it, you can agree to do it, and you
20 can help someone do it.

21 Now, you must be unanimous that the defendant --
22 each defendant is liable under one of those three theories.
23 You don't have to agree on the theory of liability. Some of
24 you, three or four, might think, oh, I think they directly did
25 this crime. And then three or four others, you say, oh, I

1 think this defendant did it, but he conspired to do it, and he
2 helped them, and assisted, and he intended that it happen.
3 And then, one or two others might say, yeah, I think he aided
4 and abetted with the specific intent that they go hit this
5 house and that they go rob Gabriel Valenzuela.

6 You just all have to be in -- have a unanimous
7 opinion that the defendants are liable; you don't all have to
8 be unanimous on the specific theory of liability, okay? So if
9 you find there's a conspiracy or the defendants aided and
10 abetted with the intent that the crime be committed, that they
11 actually take Gabriel Valenzuela's stuff, that they hit him,
12 that they hit the house, that they brought those guns to use
13 them, the acts of one are the acts of all. The State's not
14 required to prove what each defendant precisely did.

15 Now, in this situation, you had DeShawn Robinson
16 come in and tell you kind of the interactions. You have some
17 of the forensics that say which gun was fired, which gun --
18 the cartridges go back to this gun, the DNA's on this person,
19 the fingerprints on this one, so you know. But if we didn't
20 have some of that, a defendant doesn't get the benefit --
21 doesn't get to get away because the State can't prove exactly
22 what happened in a dark alley one night. If three people go
23 in this dark alley, and one guy walks away all beat up, and
24 the other three, you know, have his stuff, you can infer what
25 happened. You can infer what happened in that alleyway.

1 So now let's move to Count 3. Now, just like I just
2 went through the three different theories of liability, I'm
3 going to go through two different theories of first degree
4 murder. So the first one, we're going to talk about murder
5 generally, and then I'm going to talk about the theory that we
6 often see on television.

7 So what is murder? Murder is the unlawful killing
8 of a human being with malice aforethought, either express or
9 implied. What does that mean? Malice aforethought is doing
10 something wrong intentionally; intentionally doing a wrongful
11 act without legal cause, or excuse, or what the law considers
12 adequate provocation. So malice aforethought's not an
13 accident. Gun didn't just happen to discharge. Malice
14 aforethought's not mischance.

15 So what is -- now, that's murder. What is first
16 degree murder? Well, we've heard it on television a lot, but
17 let's talk about this willful, deliberate, and premeditated.

18 Willful. So murder of the first degree is that
19 which is perpetrated by the means of any willful, deliberate,
20 and premeditated killing. Willfulness is the intent to kill;
21 you intended to kill someone.

22 What do we have here? A bullet, center mass. Why
23 put a bullet in someone's center mass where all their vital
24 organs are? You heard Detective Dosch today. That
25 smaller-caliber bullet clipped the kidney and the spleen. You

1 do that to incapacitate someone. You do that, you send a
2 projectile into their body, in order to stop their life. This
3 wasn't a warning shot. This wasn't some sort of situation
4 where -- put it in some guy's arm, just, "Hey, back away."
5 What else do you have? Head shot. Why do you put a large
6 caliber round in someone's head? You intend to kill them.

7 Deliberation. Deliberation is the process of
8 determining upon a course of action to kill as a result of
9 thought, including weighing the reasons for and against the
10 action and considering the consequences of the actions.
11 Weighing the pros and cons; discussing it while you're driving
12 there; looking for certain houses with your loaded firearms;
13 knowing that your firearm's loaded, watching one bullet get
14 shot, another, another. Four cartridges at the scene.

15 This was deliberate and the consequences were
16 weighed. The pros and cons, they were decided upon all night.
17 An Interarms Star, the Millennium Taurus .45, and the Taurus
18 .22. Why do you have two .45 caliber semiautomatic handguns?
19 Those are large rounds.

20 Premeditation. Premeditation is a design, a
21 determination to kill, distinctly formed in the mind by the
22 time of the killing. It need not be for a day, an hour, or
23 even a minute. It can be as instantaneous as successive
24 thoughts of the mind. There's no time requirement. Doesn't
25 have to be that premeditated -- when you see someone waiting

1 outside of someone's house, and, you know, an ex-girlfriend's
2 scorning you, and you're hiding in her bushes. That doesn't
3 -- that's not what premeditation is. Premeditation can be
4 instantaneous, successive thoughts of the mind.

5 What do we have here for premeditation? First shot.
6 How's the first shot fired? Davontae Wheeler is on the left,
7 DeMario's on the victim's right. They're holding him, they're
8 grabbing him, take -- "Give us your property, give us what you
9 got," and the first shot's fired in his stomach. The next
10 shot is fired in his head.

11 What about the -- what about the third round that we
12 had evidence of? Now, I submit to you, when you look at the
13 forensics, look at the entry. You see an entry wound on that
14 right side of the leg, and then you saw an exit wound -- you
15 have the photos -- right parallel centrally to that one, as
16 though it went in straight, exiting that right leg. And then
17 an entry wound on the left leg, and a .45 caliber bullet found
18 in the upper portion of that calf area in the left leg.

19 Was it the same bullet? Was it one bullet that
20 entered that right leg and went into the left leg, or was it
21 two? Either way, how does a bullet go right through that
22 right leg and right out in a nice straight line? No one was
23 laying on the ground like a sniper and firing that large
24 caliber bullet.

25 I submit to you, what probably happened was -- we

1 learned the first shot was to the stomach. Was the second
2 shot to his head? Was he on the ground, and do they do one
3 more shot just to make sure he can't get up? Just one more
4 while standing over him? Does it go in the right leg, out the
5 right leg, into the left leg, and get caught right there until
6 it's taken out in the autopsy? The right tibia and fibula is
7 broken. The left tibia and fibula is broken. Can't stand,
8 can't get away. Only thing he can do at that point in time is
9 bleed out right there on the driveway. That's premeditated.

10 Now, there's another way, like I talked about, of
11 being liable for first degree murder. So that one we just
12 went -- we just went over is the willful, premeditated murder.
13 This one we refer to as the felony murder rule, okay? It is
14 first degree murder. And what it says is, "There is a kind of
15 murder which carries with it conclusive evidence of
16 premeditation and malice aforethought." So we just kind of
17 went over malice; we went over premeditation. This is
18 conclusive evidence of it.

19 And what it is, is when a murder's committed in the
20 perpetration of or attempted perpetration of a robbery. So
21 what this law is saying is, you don't get to roll up to
22 someone's house, all with loaded firearms, try to take their
23 stuff, and when something goes bad, oh, a human life was
24 taken, but it's not murder. The law says this is first degree
25 murder if that happens. If you were attempting to rob someone

1 with loaded firearms, and you're intending to take their
2 property against their will, and someone dies, you're guilty
3 of first degree murder.

4 Now, DeShawn kind of laid out the dynamics, and I
5 want to go through it a few different ways. So what did we
6 learn? We learned that Gabriel was in the middle of his
7 driveway, sorting through his mail. Raekwon was directly in
8 front of him, DeMario was on the victim's right, Davontae was
9 on the victim's left, and DeShawn was right near and behind
10 Raekwon. Gabriel was encircled. Why do you encircle him?
11 Why do you put hands on him and grab his collar? Because you
12 intended to take his stuff against his will.

13 Let's look at it with the photo. How did that --
14 where is everyone located? Raekwon, DeMario, Davontae,
15 DeShawn, and Gabriel. What do they have on him? Because
16 Gabriel doesn't have anything on them. What's Raekwon have?
17 .22 caliber Taurus. What does DeMario have? .45 Interarms
18 Star. What does Davontae have? The .45 Millennium Taurus.

19 MR. RUGGEROLI: Judge, I'm going to object, because
20 the testimony was very clear. Mr. Wheeler's gun was excluded
21 as being used for the cartridge cases. And I'm not clear if
22 it's being suggested that this gun is being used at the scene,
23 but the pictures are coming up simultaneously, and that would
24 misstate the evidence that's been presented.

25 THE COURT: Okay. Mr. Brooks, do you want to

1 clarify?

2 MR. BROOKS: My wording was, "What does he have on
3 him?" And the pictures --

4 THE COURT: Okay.

5 MR. BROOKS: -- actually aren't coming up
6 simultaneously; they're coming up in the animation's
7 succession.

8 THE COURT: Okay, thank you.

9 MR. BROOKS: Now, let's look at the evidence.
10 First, with Raekwon and the gun with Raekwon's DNA on it found
11 at his house. Taurus .22. Right there, Marker number 1, is
12 what? You learned it was a cartridge case with a "C" on the
13 headstamp, a .22 caliber cartridge case, which, when tested,
14 was identified as having been fired from that Taurus .22.

15 And when Raekwon's residence is searched, with the
16 gun, what's found? .22 caliber bullets or unspent cartridges
17 with the headstamp "C" matching exactly like that "C" right
18 there left at the scene. And what was in Gabriel? A
19 smaller-caliber bullet that entered on that left side of the
20 abdomen, came to rest around L1, and was taken out during the
21 autopsy.

22 And Anya Lester came in here and testified, and
23 said, I can't identify that bullet as having been fired from
24 that Taurus .22, but it does share similar and general
25 riffling characteristics as having been fired with that

1 Taurus. So the cartridge is identified to that Taurus. The
2 bullet found, which ricochets off organs, has similar general
3 riffling characteristics; twists and spacing. And Raekwon's
4 DNA was individually included in the mixture as being found on
5 that Taurus .22.

6 What about DeMario? DeMario was armed with the
7 Interarms Star .45. Now, when Mr. Ruggeroli just objected
8 there, he's correct, and at no point am I or Mr. Pesci going
9 to stand up here today and tell you that number 2, number 3,
10 or number 4, the .45 caliber cartridge cases found at the
11 scene, came from the gun Davontae Wheeler has his fingerprints
12 on and is found at his house. It was identified, those
13 cartridge cases, to having been fired from that Star .45.
14 Additionally, in the early morning hours, the bullet that's
15 found right there, marked by that cone, was recovered and
16 identified as having been fired from that Star .45.

17 Now, think about where that bullet is, and consider
18 it in conjunction with DeShawn's testimony. DeShawn told you
19 that if where you guys are is Raekwon, and where I am is
20 essentially the victim, Raekwon was in the front of him. Who
21 was to the victim's right? It was DeMario, his brother. Who
22 was to the left? It was Davontae Wheeler. As they're
23 grabbing him, the first shot goes in.

24 Now, think about what would happen. The first shot
25 goes in, they kind of scatter. What happens? What did you

1 learn? You learned that the head shot comes entry wound in
2 the right side, exit wound out of the left front skull here.
3 Where would it have traveled? Where was it found? Right over
4 in those bushes, which would make sense from that direction.
5 Additionally, the bullet found in the victim's leg is found,
6 recovered, tested, and identified as having been fired by that
7 .45.

8 First degree felony murder. They wanted his stuff,
9 they tried to rob him, they killed him while trying. That's
10 first degree felony murder. It's not second degree. The law
11 holds them accountable for conspiring to go and rob some
12 person of their property when a life's taken.

13 Now, you have an instruction in there. "In order to
14 use a deadly weapon, there need not be conduct which actually
15 produces harm, but only conduct which produces a fear of harm
16 or force by means or display of the deadly weapon in aiding
17 the commission of the crime." Think about that.

18 If in that circumstance where I gave that hypo, Mr.
19 Pesci drives me to the store, I go in the store armed, and I
20 hold the gun up, and I tell the Clerk, "Give me all your
21 money," but I don't fire it, I don't shoot it, I still robbed
22 with use of a deadly weapon, because why do I pull the gun?
23 Why am I displaying that gun? As a means of intimidation.
24 Give me what you got so I don't have to ask too many times.
25 Give me what you got; look what I got.

1 So you don't actually have to fire. If you have
2 that gun holstered on the side of your body, and you're
3 grabbing at the victim while your friends are shooting, and
4 you're telling him, "Give all your stuff," why is it there,
5 why is it loaded, and why is it displayed? You use a deadly
6 weapon when you're displaying it for that intimidation
7 purposes. It does not have to be fired.

8 Moreover, in the felony murder rule, when those four
9 guys go to commit that robbery, it doesn't matter who pulled
10 the trigger; they all intended that the robbery be
11 accomplished. It wasn't. They intended to take his stuff,
12 "Give me what you got." So you don't have to be the trigger
13 man. Just because I pulled the trigger, if Mr. Pesci's
14 holding the guy up for me when I pull that trigger, he's
15 liable as though he used the deadly weapon, too. He's liable
16 under the felony murder theory, first degree, also.

17 Now, Raekwon Robertson and Davontae Wheeler can't be
18 merely present. You can't think they were just a spectator.
19 So mere presence at the scene of the crime and knowledge that
20 a crime is being committed, that's not sufficient. You must
21 -- you need to be a participant. Can't be merely a knowing
22 spectator.

23 So let's look at this. Were these two guys merely
24 knowing spectators? They didn't bring crowbars to the house.
25 They didn't bring little devices to pick the lock or tools to

1 go in and shimmy a door. Why do you bring loaded firearms?
2 Because you might need to use it. Why are you wearing hoodies
3 in August and huddled up against a wall? Why do you pick that
4 house? You're not just a spectator.

5 And why do DeMario and Davontae hold Gabriel
6 Valenzuela by the collar while Raekwon fires the first shot?
7 You're not a knowing spectator. You're not just, oh, I was
8 merely present, propping someone up while grabbing them by the
9 collar, and then watching my friends fire more rounds into his
10 skull and legs.

11 29 calls between Sace and Lil Homey DeMario between
12 August 2nd and August 9th, 2017. Weren't just random people.
13 Weren't just, oh, I just happened to be in the store with
14 them, I didn't know them. Marcell Solomon came in here and
15 testified. It's not like, oh, I just -- I was like Marcell;
16 I just happened to be there and I was buying cigarettes for
17 them also. That's not what happened.

18 And DeShawn and Raekwon are calling each other on
19 the day of the plan to hit the house. So you have the text
20 messages of, let's ask DJ if he wanted to hit a house tonight,
21 but DeShawn and Raekwon are also calling each other that day.
22 Merely present?

23 Look at that headstamp. That's the R-P .45s. You
24 had the evidence and you saw there were a couple kind of
25 scattered around on Davontae Wheeler's floor, one in his

1 pocket, where the search warrant -- not his pocket at that
2 same time, but a pocket of his pants at his residence, and
3 then a couple just on the floor, those R-Ps, and his gun was
4 loaded with those R-Ps. And one of the cartridges at the
5 scene is an R-P. You saw three different .45 caliber
6 cartridges: a Winchester, an R-P, and the NFC. And then,
7 didn't really make sense.

8 And then DeShawn came in here, and we were asking
9 him about what was being talked about in the car, and he said
10 they were switching bullets. So why does DeMario's gun have
11 three different headstamp .45s? I submit to you, that's why
12 there's loose bullets; that's where he got them from. Are you
13 merely present if you're switching bullets, giving people
14 different headstamps?

15 Now, if the jury -- if you guys return a verdict of
16 guilty on first degree murder, it must be unanimous; however,
17 it doesn't have to be unanimous on the theory of first degree
18 murder. So some of you could think, "I think it was willful,
19 deliberate, and premeditated. I think it's first degree
20 there." And some of you might think, "I think it was felony
21 murder. I think they were trying to rob him, something went
22 bad, and Gabriel Valenzuela's life got taken." You just have
23 to be unanimous that it's first degree murder; you don't all
24 have to agree which one of those two, okay?

25 Now, if the evidence in the case convinces you

1 beyond a reasonable doubt of guilt of the defendant, you
2 should so find, even though you may believe one or more
3 persons are also guilty. If you guys are sitting there, and
4 have sat through this entire trial, and think, I think DeMario
5 Lofton-Robinson is guilty of first degree murder, I submit to
6 you, you're probably right, but that's not what you're here
7 for. You are not here to consider that. You're here only to
8 consider the charges against Raekwon Robertson and Davontae
9 Wheeler.

10 Second degree murder, there's an instruction in
11 there, "All murder which is not murder of the first degree is
12 murder of the second degree." This isn't second degree
13 murder. This was willful, deliberate, premeditated, and it
14 was committed during the attempted robbery of Gabriel
15 Valenzuela, so this isn't second degree murder.

16 Now, this is your Verdict Form, and I know this
17 seems weird, but sometimes people have trouble filling it out,
18 and so just going to go through it. You're going to select
19 one box in each one of these counts. There's three counts and
20 there's two different defendants, so you have a Verdict Form
21 for each defendant; one for Raekwon Robertson and one for
22 Davontae Wheeler.

23 I submit to you that both of them are guilty of
24 conspiracy to commit robbery, both of them are guilty of
25 attempted robbery with use of a deadly weapon, and both of

1 them are guilty of first degree murder with use of a deadly
2 weapon. Thank you.

3 THE COURT: Thank you. Mr. Sanft, you may address
4 the panel in your closing argument.

5 MR. SANFT: Yes, Your Honor. Your Honor, may we
6 approach, please?

7 THE COURT: Of course.

8 (Bench conference)

9 MR. SANFT: Are we just going to go all the way
10 through with everybody tonight?

11 THE COURT: Yeah.

12 MR. SANFT: Okay.

13 MR. PESCI: What?

14 MR. SANFT: Are we going to go all the way through
15 with everybody --

16 MR. PESCI: Okay.

17 MR. SANFT: -- tonight?

18 THE COURT: Yeah.

19 MR. SANFT: Okay.

20 (End of bench conference)

21 DEFENDANT ROBERTSON'S CLOSING ARGUMENT

22 MR. SANFT: You remember when we first met, and I
23 had an opportunity to address you in the opening about
24 reserving your judgment until the end? If you've been sitting
25 here the entire time, already making a decision as to what you

1 believe the State of Nevada has proven beyond a reasonable
2 doubt, then you haven't done your job.

3 Once again, I don't believe that's the case. I
4 don't believe that anyone here has made up their minds.
5 However, what I need for you to remember the entire time that
6 you're here is it's not until you go back into that
7 deliberation room, and have that conversation, have that
8 deliberation, get an opportunity to review everything, that
9 that decision ought to be made, okay? That's what we picked
10 you as jurors for and that's what we expect from you.

11 Now, in this case, what's going to happen is your
12 notes and your recollection will govern in this case, and you
13 will get back the exhibits. Everything that we've shown to
14 you, the pictures that we have and the maps that we've shown
15 to you, those things go back with you, and that, with your
16 recollection, is what's going to govern this case.

17 Why is that important? It's because during the time
18 that we've spent together in this trial, there may have been
19 things that I have heard that maybe you didn't hear. And when
20 you go back as the 12 individuals that will form this jury and
21 deliberate, whatever you think are the facts in this case will
22 govern, not what I say and not what the State of Nevada says.
23 So what you recall the facts to be is what the facts are. Now
24 I will tell you what I believe the facts have shown in this
25 case, but that doesn't mean anything. It's what you recall it

1 to be.

2 And the jury instructions in this case are the
3 things that the Judge has read to you that you have in front
4 of you, and the most important jury instruction in this case
5 is Jury Instruction number 5. Now, if I can have you turn
6 with me to Jury Instruction number 5. This is the instruction
7 and what the law is in the State of Nevada specifically as to
8 what the definition is of reasonable doubt. It's in here.
9 There's no other explanation for it. It's what is contained
10 within that one page, and this is what the State of Nevada has
11 to prove to you.

12 And in that instruction, it says that, "The
13 defendant," in this case, Mr. Robertson, "is presumed innocent
14 until the contrary is proved. This presumption places upon
15 the State of Nevada the burden of proving beyond a reasonable
16 doubt every element of the crime charged and that the
17 defendant," in this case, Mr. Robertson, "is the person who
18 committed the offense."

19 "A reasonable doubt is one based on reason. It is
20 not mere possible doubt, but is such a doubt that would govern
21 or control a person in the more weighty affairs of life. If
22 the minds of the jurors, after the entire comparison and
23 consideration of all the evidence," all the evidence, "are in
24 such a condition that they can say they feel an abiding
25 conviction of the truth of the charge, there is not a

1 reasonable doubt. Doubt to be reasonable must be actual, not
2 mere possibility or speculation."

3 That's reasonable doubt. That's what the State of
4 Nevada has to demonstrate to you. Why is that important in
5 this case? The idea of mere possibility or speculation. I'm
6 going to come back to that at the end, but that portion of
7 this instruction is important in this case.

8 Now, the core of the State's case, I believe, rests
9 upon the testimony of DeShawn Robinson. He got up on the
10 stand and he testified. The law is very cautious about
11 individuals like DeShawn Robinson. It's very cautious, and
12 let me tell you how. When you look at the jury instruction
13 here, this is Jury Instruction number -- number 9. The jury
14 instruction says this: "You have heard testimony from DeShawn
15 Robinson, who was previously charged with conspiracy to commit
16 robbery, attempt robbery with use of deadly weapon, and murder
17 with use of deadly weapon."

18 And just to get to the point, at the very end of
19 that paragraph, the law says the following: "You should view
20 his testimony with greater caution than that of other
21 witnesses." That's important. That's very important in this
22 case, and I'm going to go over the reasons why. But if you'd
23 turn with me to this instruction, which is Instruction number
24 11.

25 Instruction number 11 tells you how to weigh his

1 testimony against the evidence that's been presented by the
2 State of Nevada. So take out their core, take out Mr.
3 Robinson's testimony, and focus specifically on the evidence
4 that we have in front of you, and imagine that Mr. Robinson
5 isn't even there, and that's what that jury instruction says.
6 "In determining whether an accomplice" -- and this
7 is here at the bottom on line 17 of Instruction number 11.
8 "In determining whether an accomplice has been corroborated,
9 you must first assume the testimony of the accomplice has been
10 removed from the case," meaning you have to basically exclude
11 everything that he said to you on the stand and focus on what
12 the other evidence is.
13 "You must then determine whether there was
14 sufficient evidence which tends to connect the defendant with
15 the commission of the offense. If there is not sufficient
16 independent evidence" -- bless you -- "which tends to connect
17 the defendant with the commission of the offense, the
18 testimony of the accomplice is not corroborated. If there is
19 such sufficient independent evidence which you believe, then
20 the testimony of the accomplice is corroborated."
21 So you have to basically say, let's not even imagine
22 him here. What evidence do we have that tends to connect Mr.
23 Robertson to a murder; to the murder of this innocent person
24 that died here in this case? We have a gun, right? There was
25 a gun that they found that's Mr. -- that's in Mr. Robertson's

1 possession or in his house. You have a text message, you've
2 seen that text message, and we have a convenience store video.

3 What other things do we have besides that? Well,
4 okay, we have fingerprints, but I'm going to get to that in
5 terms of what's on the car. Outside of that one thing, what
6 else do we have? Those are the things that the State of
7 Nevada has demonstrated to you, if you exclude Mr. Robinson's
8 statements up on the stand, that would demonstrate to you that
9 my client's guilty of murder.

10 Now, in this case, let's talk about the gun. Same
11 caliber as the bullet found in the victim. It's a .22. It's
12 not an exotic caliber. Anyone ever heard of a .22 rifle, a
13 .22 firearm? It's not exotic. The gun is found in Mr.
14 Robertson's apartment, and DNA of Mr. Robertson is found on
15 the gun, right? We can all agree to that. That's what you
16 heard, this is what the State of Nevada has proven to you
17 during the time that we spent together, but how do we know
18 that that gun was used in a murder, right?

19 So we had someone testify and talk about riffling on
20 the inside and so forth, but the bullet in this case does not
21 demonstrate that. What does it demonstrate to you? It
22 demonstrates that there is generally similar riffling that is
23 not unique. She said it; she testified to that on
24 cross-examination. There are other gun manufacturers that
25 would have that same riffling.

1 So how can you differentiate between the gun that
2 Mr. Robertson had versus the gun that fired the bullet that
3 killed this person? The only thing that we have is we can't
4 determine that it came from that gun. Once again, remember,
5 it's your recollection. If you recall that this expert said
6 something completely different from what I'm telling you right
7 now, then that governs. But what I recall that expert
8 testifying to is that gun cannot be conclusively determined to
9 be the gun that fired that bullet that killed that person in
10 this case. Not beyond a reasonable doubt.

11 Now, DNA. It would make sense, right? If it's Mr.
12 Robertson's gun, his DNA would be on it. But there's another
13 set of DNA that's on that gun. Do we know who it is? No. We
14 have an interesting thing though, because Mr. Robertson's DNA
15 is found on the actual gun, but what DNA is found on the clip
16 inside the gun? It's not Mr. Robertson's DNA. It's some
17 other person, some other profile that's on the inside of the
18 magazine.

19 Why is that important to you? Because if you're
20 going to fire a gun -- say you just pick up the gun and hold
21 it. Does that mean you want to fire the gun? No. But if you
22 really want to fire the gun, what are you going to do? You're
23 going to load the gun. You're going to take the clip out,
24 you're going to put bullets in that gun, and you're going to
25 shove that clip back in that gun. That's what typically

1 happens if you're intending on using that gun, but it's not
2 Mr. Robertson's profile that's located on that magazine in
3 that gun.

4 Now, State says, well, this is a well-constructed
5 but poorly executed plan. I would have no problem with that
6 statement but for the fact that they're including Mr.
7 Robertson in the idea that somehow he came up with the plan.
8 We had one text that says, "Hey, let's go hit a house
9 tonight." Do we have any proof beyond a reasonable doubt that
10 that actually happened? What we have is, and what we're going
11 to get to is, we don't; nothing beyond a reasonable doubt that
12 tells you as you sit here right now that Mr. Robertson
13 actually went out and did exactly that, or did something that
14 led to the death of this individual.

15 Let me show you this. The convenience store robbery
16 (sic), right? The timing of it. You'll have an opportunity
17 to take back that video and look at it, and you'll refer to
18 your notes as to when you believe that that video was taken in
19 terms of what time. But look at the individuals as they come
20 in, and look at the person that they are saying is Mr.
21 Robertson in this case. Do they look like people that are
22 going to go out and commit a crime? Does it feel that way
23 when you look through this video; determine that, hey, these
24 guys are shifty?

25 We've had some discussion about the Clerk who says,

1 you know what, I felt uncomfortable when four individuals I
2 didn't know walk into the store. The Clerk was white. Those
3 individuals were black. They walk into the store, and he
4 says, oh, I don't recognize them, so I felt uncomfortable.
5 Really?

6 So what the State does is when they cross-examined
7 Mr. Solomon today on the stand, they asked him, did you feel
8 uncomfortable? And the answer was he didn't feel
9 uncomfortable, but these people had approached him, and he
10 felt apprehensive for a second; why are you approaching me?
11 And the reason why he was uncomfortable is because now they're
12 asking him to go and buy cigarettes for them. Does that sound
13 like they're -- Mr. Robertson's somehow planning this
14 get-together to go and commit a crime?

15 In addition to that, what we don't have in this case
16 that would have been important is the distance between the
17 store, and the residence, and the crime scene. That's not
18 established in this case. What we have is a map, and that map
19 is State's Exhibit number 6. In that map, you're going to see
20 where the store is, and you're going to see where the shooting
21 takes place, and then you're going to see where my client
22 lives, and then you're going to figure out the time.

23 And what you're going to look at when you realize
24 how much time potentially is there, there's too much time to
25 sit here and say beyond a reasonable doubt that that guy

1 committed a murder. Because here's the thing; you know what
2 would make better sense? They're in a convenience store,
3 Solomon goes in and buys them cigarettes, they come out with
4 the cigarettes, they're smoking the cigarettes, and they
5 leave. Then they go and commit the murder ten minutes later,
6 right next to the convenience store, the next neighborhood
7 over, something along those lines.

8 You have at least 30 minutes between the time that
9 they're in the convenience store to the time of the murder in
10 this case where there's too many things that could have
11 happened, including the fact that my client had been home.
12 You know why? Because he doesn't live in North Las Vegas; he
13 just lives down the street. So what evidence do you have that
14 would show you beyond a reasonable doubt that my client was
15 present during the shooting of this person? Too much time.

16 Now, that instruction that I pointed out to you,
17 which is Instruction number 11, the first part of it talks
18 about how, okay, well, "A conviction shall not be had on the
19 testimony of an accomplice unless the accomplice is
20 corroborated by other evidence which in and of itself, and
21 without the aid of the testimony of the accomplice, tends to
22 connect the defendant in the commission of the offense,"
23 right? "Tends to connect."

24 But I want you to turn with me to the middle of that
25 instruction, and this is Instruction number 11. This is the

1 middle paragraph, and this is what it says: "You are
2 instructed that DeShawn Robinson is an accomplice. However,
3 it is not necessary that the corroborating evidence be
4 sufficient in itself to establish every element of the offense
5 charged or that it corroborate every fact to which the
6 accomplice testifies." Here's the key: "Evidence to
7 corroborate accomplice testimony does not suffice if it merely
8 casts grave suspicion on a defendant."

9 You're sitting here right now, thinking in your
10 minds, there's just too much. Take that guy out of the
11 equation that testified, there's just too much other evidence.
12 But is it really too much evidence beyond a reasonable doubt,
13 or are we just talking about a feeling of grave suspicion?
14 Gosh, there's just too many little bits and pieces that
15 connects that guy to a murder. The gun. Well, we can't tell
16 if the gun is really firing in this case. Oh, well, because
17 of the location. Well, there's all kinds of reasons why he's
18 in the area.

19 But when you look at that instruction, it says very
20 clearly you have to consider the fact that, if it just shows
21 that you're gravely suspicious, that's not enough to say that
22 that guy did it beyond a reasonable doubt.

23 Continue on. Line 13. "Further, where the
24 connecting evidence shows no more than an opportunity to
25 commit a crime, simply proves suspicion, or it equally

1 supports a reasonable explanation pointing to innocent conduct
2 on part of the defendant, the evidence is deemed to be
3 insufficient." So think about it. You're feeling one way,
4 and you're saying to yourself, no, there's just too many
5 little bits and pieces that help me feel good about the idea
6 that I'm going to solve this murder, but can you say that it's
7 beyond a reasonable doubt or if it's just grave suspicion?

8 Now, in addition to that, you have to ask yourself,
9 can you say as you sit here right now that you have an abiding
10 conviction of the truth of the charge? Meaning that, can you
11 feel 100 percent that that guy was present, and that guy
12 pulled out a gun and shot this man in cold blood? Can you
13 feel that abiding conviction of the truth of the charge, or is
14 it, once again, grave suspicion?

15 Now, the State says, well, it's -- wearing a hoodie
16 in August. You know, people wear things all the time. I
17 don't know. August, yeah, I would say that it's a pretty hot
18 time of year, but I've seen hoodies being worn by people in
19 August and it doesn't tell me that that is a crime being
20 committed or going to be committed.

21 In addition to that, calls between people without
22 you knowing what the substance of those calls are, just
23 because there's (indiscernible) doesn't mean that there's a
24 crime. How can you say that? But because of the fact that
25 we're taking these little bits and pieces, we're trying to say

1 -- State of Nevada is -- we've proven our case to you beyond a
2 reasonable doubt; you are going to connect those little bits
3 and pieces for us.

4 What evidence could have helped us? The detective
5 says today, "We don't do that after four hours." But it's
6 interesting because everything that he talked about was stuff
7 that deals specifically with contamination of evidence.
8 Meaning, if you're going to -- if your hands -- in this case,
9 if you're firing a gun, there's a presumption that maybe
10 there's what's called gunshot residue on your hands; but if
11 you come in contact with something else, then it becomes
12 contaminated because something else may have gunshot residue
13 on it; i.e., handcuffs, because police officers fire guns and
14 they may have gunshot residue on those handcuffs; or you get
15 in the back of a police car, there may be gunshot residue in
16 the back of a police car.

17 But the question that was asked wasn't about this
18 four-hour period, but it was about the idea that, hey, if you
19 got a black hoodie, and you're thinking, oh, yeah, guy with
20 black hoodie shot a gun, and then you go to a house like my
21 client's house, and you go in and there's a black hoodie, why
22 wouldn't you just at least test it to see if that black hoodie
23 had gunshot residue on it? Why not? What would preclude you
24 from giving you the evidence that you need to say beyond a
25 reasonable doubt that he committed a murder? That would have

1 helped us, right?

2 It would have helped us if we had a third-party
3 witness. Say the runner walks -- runs right past and says,
4 "You know what, I looked directly into that guy's eyes.
5 That's the guy who didn't fire." It would have been good,
6 right? Because it would have put him at the scene. I
7 wouldn't have this discussion. We wouldn't be sitting here
8 looking at me like, okay, sit down already. We wouldn't be
9 doing that, but we don't have that.

10 And you know what also would have helped us in this
11 case, is this. Don't you think that should have happened? We
12 have one ping, and that's it. We don't have anything to
13 determine at all that his cell phone was even in the area of
14 where this happened. That's it.

15 But let's take a look at DeShawn for a second. If
16 you recall, one of the first things he says to me, "I lied,"
17 right? Great witness. "I lied." Great. Right, he lied.
18 But when did he lie? Did he lie when he first got arrested?
19 Because what he told detectives when he first got arrested was
20 not what he told you on the stand here yesterday or the day
21 before, so when did he lie?

22 Did he lie when he talked to detectives? Because he
23 told you that, but could he have lied now, talking to you?
24 Did he lie when he was meeting with detectives in a proffer?
25 We don't have evidence of what happened during that proffer.

1 We don't know what he told detectives at that point.

2 But think about this. He entered in an Alford plea
3 with the Court, meaning he told the Court, look, here's my
4 guilty plea. And what I asked him specifically on the stand
5 is he didn't get up and tell the Judge what he told you;
6 somebody else did. Somebody else got up and said, here's what
7 the charges are, and here's what the evidence is that we would
8 need to prove this person's guilty of the crime. He never did
9 that. So we don't have anything that says, this is the
10 details that he's been consistent about the entire time.

11 The only details we have is the first time he got
12 arrested, which, by the way, don't you think, hey, you know
13 what, I committed a crime, I killed somebody or I helped kill
14 somebody, you'd call the police? It wasn't until he got
15 arrested that he goes and he sits down with detectives, and
16 then he lies to them. So which one do you believe? Do you
17 believe what he told you today, or yesterday, or the day
18 before on the stand? What makes that any different from what
19 he told detectives the first time around and what he didn't
20 tell the Court when he entered in his plea?

21 Where's the credibility? Where's the thing that
22 tells you, I can believe this person 100 percent? He has been
23 waiting for over a year for this benefit. The benefit in this
24 case is when he told you, "I had to get it off my chest. I
25 went and talked to -- I told the State. I just had to get

1 this off my chest." He told you he walked in without a
2 negotiation, and then he walked out with the State of Nevada
3 agreeing to drop the murder charge against him. Really? Is
4 that how that works? His benefit was he's not looking at a
5 murder charge, the most significant, serious charge that we
6 can imagine in this community.

7 And he has another benefit. Because of his age,
8 he's been kept in juvenile detention. He told you that being
9 in the adult jail is not where he wants to be. He's had
10 multiple opportunities to benefit from getting up here.

11 And let me tell you one other thing. His testimony
12 to you on the stand was very significantly different from what
13 he told detectives initially. During that time period, during
14 the time that he got arrested to the time he talked to you,
15 he's had opportunity to talk to the detectives, and to review
16 discovery in his case, to go over the facts for himself
17 because he's a defendant. He's had an opportunity to see what
18 exactly it is that the State of Nevada has charged or alleged
19 in this case.

20 And as we look at it, he doesn't care about these
21 two guys. His future depends on him talking about two guys
22 that he barely knows, according to what he says, and they're
23 not his brother. It would have been interesting if his
24 brother was sitting right over there. That would be a
25 different thing, but it's not. It's not his family, it's not

1 his blood. It's just two guys. He doesn't care about them,
2 so why not do whatever he can to get the benefit, which is to
3 get the murder charge dropped against him?

4 Now, going back again to what I had said about "not
5 mere possibility or speculation," which is Instruction number
6 5. This is what the State of Nevada wants you to rely on,
7 because we can't account for that time, and we don't have
8 anybody that says 100 percent -- we don't have evidence
9 outside of this person who's lying that this man over here was
10 present and pulled the gun out and shot this person. We don't
11 have physical evidence; we don't have anything tying him to
12 that actual shooting.

13 What the State of Nevada would like for you to do is
14 to speculate. They would like for you to basically rely on
15 the idea that, hey, we've proven it to you beyond a reasonable
16 doubt, so help us out and make that jump for us so we can say
17 it's beyond a reasonable doubt. That's all this is.

18 So as you sit here right now, you have to ask
19 yourself, have they proven to you beyond a reasonable doubt
20 that that man pulled out a gun and shot this man in cold
21 blood? Is it grave suspicion, and do you have an abiding
22 conviction of the truth? Can you say that you have an abiding
23 conviction that that man did that?

24 Now, when I had asked you in voir dire about this,
25 you know, where there's smoke, there's fire, it's important in

1 this case, because he's sitting right there. And yeah, he's
2 connected to these people. There's his fingerprints on the
3 car, and he's in the convenience store, if you believe that.
4 Yeah, of course, he's all those things; he's there, he's
5 there. But could he have been there at the time that the
6 shooting took place?

7 So when the State says, well, you know, to me,
8 that's all that smoke; well, if there's smoke, there must be
9 fire, right? But there are times when there is smoke when
10 there is no fire. How many times have we ever seen where you
11 have that happen? You're at a light, and you're looking at
12 the car in front of you, and there is this smoke coming out of
13 the car. Is that a fire, or is that a guy vaping inside of
14 his car?

15 That's the question of the day. Just because
16 there's smoke, and the State of Nevada says, oh, there's
17 smoke, he's part of it, he's responsible, he pulled out a gun
18 and shot somebody, is it really the case? If you dig deep
19 enough, just because there's smoke doesn't necessarily mean
20 that there is fire. It could be something completely
21 different. You have to have the courage to hold the State of
22 Nevada to its burden.

23 This is a case that is horrible. This is a case
24 that should never have happened in our community. We watched
25 video of this family being torn apart, seeing this person

1 laying on the ground bleeding for no reason whatsoever. If it
2 hasn't affected you emotionally, it should. We want someone
3 to pay the price for this, we want someone to be held
4 responsible, but you cannot rush to judgment and think, well,
5 if there's smoke, there's fire; he must be the guy because the
6 State of Nevada tells you that that must be the guy.

7 You have to have the courage to say, maybe we don't
8 have the right guy here because maybe the State of Nevada has
9 not proven its case beyond a reasonable doubt. And when you
10 do so in this case, what you will have to come back with is a
11 verdict of not guilty. Thank you.

12 THE COURT: Thank you. Mr. Ruggeroli?

13 MR. RUGGEROLI: Your Honor, may I approach the Clerk
14 for an exhibit?

15 THE COURT: Yes, of course.

16 (Pause in the proceedings)

17 MR. RUGGEROLI: May I, Your Honor?

18 THE COURT: Yes, yes, thank you.

19 MR. RUGGEROLI: Thank you.

20 DEFENDANT WHEELER'S CLOSING ARGUMENT

21 MR. RUGGEROLI: Ladies and gentlemen of the jury,
22 I'm going to ask that you pay attention to what I say. I do
23 have a few things to put on the overhead, but really, I
24 believe that you've paid attention to many of the details.
25 And a lot of the things that I'm going to mention have been

1 already mentioned by Mr. Sanft potentially or are already
2 covered in the instructions.

3 But I'm sure that you have paid attention, and so if
4 you remember something, keep note of it, because I would not
5 be surprised if you have more items of particular interest to
6 my client, Mr. Wheeler, than I might have been able to keep up
7 with.

8 I want to remind you that I only represent Mr.
9 Wheeler. I am not here to accuse anybody at all, and
10 everything that I'm talking to you about has to do with my
11 defense of Mr. Wheeler solely in this case.

12 In this case, at the beginning, I did say to you
13 that the State was not going to meet their burden as to Mr.
14 Wheeler beyond a reasonable doubt. And after listening to the
15 evidence and paying attention to what the State's case against
16 Mr. Wheeler was, I believe that you'll find that he is still
17 not guilty because the State has not removed that presumption
18 of innocence. They did not prove their case against him
19 beyond a reasonable doubt.

20 I said in the opening, and it remains true at
21 closing argument, in order to have confidence of guilt for you
22 to comfortably convict someone and to have belief beyond a
23 reasonable doubt, you deserve to have evidence that consists
24 of essentially three things.

25 One, a reliable -- reliable and trustworthy

1 testimony from the witness. And in this particular case, the
2 main witness against Mr. Wheeler was DeShawn Robinson. I also
3 said at the opening statement that you should not have a
4 situation that is so suspicious and convoluted. And third,
5 you deserve to have a situation where there hasn't been a rush
6 to judgment by the police, and you deserve, at minimum, an
7 adequate investigation.

8 Now, after listening to everything, I would argue to
9 you that you do not have any of those three. You have
10 unreliable and untrustworthy testimony from DeShawn Robinson.
11 You have a suspicious and convoluted situation with
12 insufficient or no corroboration specifically regarding
13 whether Mr. Wheeler was present at the scene on Dewey.

14 And this is very, very important, because I said to
15 you in the beginning -- and I'm going to bring it up because
16 the State I don't think addressed this in their closing
17 argument. I said that there were five people present at the
18 Short Line Express, but there were only four present at the
19 Dewey address. That's a situation that needs more
20 explanation, but not from the defense, because I don't have
21 any burden, and this is borne out by the jury instructions.

22 The burden is on the State, and I'm going to likely
23 repeat that a number of times, but you all were asked
24 questions during the selection process about whether or not a
25 defense -- a defense attorney, a defendant, has any burden to

1 prove anything.

2 I don't have a burden to prove who was present. The
3 State has the burden of proving that my client was present at
4 the scene, and the only evidence they have is the
5 untrustworthy and unreliable testimony of DeShawn Robinson.
6 He has a motive to lie.

7 Additionally, the State did rush to judgment. If
8 you look at what was testified to, they started their
9 investigation in the very early morning hours of August 9th,
10 2017, and then they got information which led them to the
11 Short Line Express, and they got video, and on that video was
12 someone that had open carry. That, and I'm arguing to you, is
13 what directed the path of the initial steps of the
14 investigation, and it limited what they allowed themselves to
15 consider, including alternative suspects, including other
16 witnesses.

17 And you heard from Mr. Solomon. I said that there
18 would be an independent witness. I'm going to get back to him
19 in a minute. But based on that rush to judgment about open
20 carry, "Let's follow this," it essentially put blinders on the
21 investigation. And because of that, you did not have an
22 adequate investigation to find Mr. Wheeler guilty beyond a
23 reasonable doubt.

24 You're able to consider your common sense
25 considerations about a number of things that are discussed.

1 There is a jury instruction regarding that. And if you trust
2 your common sense, at a minimum, you're going to see that Mr.
3 Robinson's testimony is highly suspect.

4 Some of the evidence in this case that I want to
5 touch on now is that we've got Mr. Robinson claiming in one
6 particular portion of his testimony -- and he had to be shown
7 his actual statement to the police. "We pulled into the
8 apartments on Tropicana and Jones and had to pick up another
9 dude. I'm like, why are you trying to pick somebody else up?
10 There's already four people in the car."

11 I asked him -- this was my last question -- if
12 you've got four in the car, you already have four, and you
13 pick up one more, how many does that make? Five. Well, I
14 would submit to you, ladies and gentlemen, that they picked
15 somebody up on Tropicana, and then there was a fifth, and they
16 had to pick up the fifth person.

17 If you believe that Mr. Wheeler was present, it
18 would make sense that he's the fifth person. The jogger, Mr.
19 Mason, testified. So we're going from Short Line, five. Mr.
20 Solomon, he did waver, but he's only trying to be honest.
21 Remember, I asked him, what was the first number that you
22 used? Five. And you also said that there were two in the
23 front seat, and three in the back seat. Those were his
24 statements.

25 He equivocated a little bit because it's been a long

1 time; he's trying to be honest. He went back and saw that
2 there was some wavering. That number five is very important
3 because that is doubt. That is doubt that that fifth person,
4 who we're suggesting would be Mr. Wheeler, was not present,
5 and was one of four at the Dewey address.

6 We have the four -- four people established by Mr.
7 Mason, because Mr. Mason was doing his best to be honest with
8 you, but he testified that there were four dark-skinned, black
9 male adults, all wearing dark clothing at Dewey. He said that
10 he looked in the vehicle and he didn't see anybody else there.
11 He was very attentive to a number of details.

12 But in State's 323 -- I'm going to go back a little
13 bit. He said that there were four dark-skinned individuals.
14 And the reason why that's important is because, in making a
15 description, I think he's just trying to be helpful. He also
16 says that they were black male adults in dark clothing. It's
17 been suggested that Mr. Wheeler is there in the white hat,
18 which is not dark, and that that is either red or maroon that
19 he's wearing, with red or maroon shoes. You can't see them so
20 much. Red or maroon shoes.

21 And if you look at him, even his posture and pose is
22 -- there's three others there, all wearing dark, and if you
23 had to pick one that did not belong, it would be the
24 individual in red with the white cap.

25 Additionally -- and this is important because you

1 did not hear this on the State's closing argument. Who's
2 Adrian Robinson? Adrian Robinson is the brother of DeShawn
3 Robinson, who's also the brother of DeMario Lofton-Robinson.
4 Similar in age, similar in features. And you didn't hear
5 almost anything about that person, which I'm going to suggest
6 to you -- and again, please note, I can't prove who the fifth
7 person was. I can't prove certain things because I'm not
8 obligated to, and as a defense attorney, I don't do Metro's
9 job.

10 They have -- had evidence though. You heard DeShawn
11 get surprised when I said, well, wait, who's Adrian? Because
12 you spoke to the police the day after the shooting. You
13 mentioned your brother Anthony; you mentioned your sister's
14 boyfriend Johnquiel Brown. The police followed up on them,
15 they got their DNA, they did the work on them, but they didn't
16 follow up and get DNA for Adrian. Adrian is a missing link
17 here and you don't have sufficient investigation to exclude
18 him.

19 I don't have a burden to prove that it was him, but
20 I'm saying that that individual there, if you had to pick one
21 that does not match, one person looks like they're going out
22 and doing things; the others are dressed very similarly in
23 dark clothing.

24 I would also submit to you that his skin pigment is
25 lighter, significantly lighter. So when you have Mr. Mason,

1 who's just a guy jogging, trying to do the best that he can to
2 ID, and he doesn't say, well, you know, there was one guy that
3 had a white hat; and he doesn't say, well, one of them was
4 wearing red; and he doesn't say, by the way, there were three
5 dark-skinned black male adults, and say that there was one of
6 the four that was light-skinned, he just includes a
7 description, these are doubts for you. These are reasonable
8 doubts, because Mr. Wheeler was not present at Dewey.

9 Additionally, it's hopefully very clear to you now,
10 especially because the State did clarify this during their
11 closing argument, that the gun that was found in Mr. Wheeler's
12 house has been completely excluded from having fired the three
13 cartridge cases that were recovered or any of the bullets at
14 the scene. So that gun is excluded.

15 So, in addition to being dressed dissimilarly, and
16 having a very conspicuous light-colored hat, and having
17 conspicuously lighter-colored skin than the others, you've got
18 an individual that also supposedly is going out with an open
19 carry, advertising to the world before the fact that he's
20 going to be a part of this sophisticated scheme to rob
21 somebody.

22 The evidence doesn't establish that. It certainly
23 doesn't establish that beyond a reasonable doubt, and I would
24 say that it's actually illogical that individual would be
25 dressed like that and go through with this in the way that the

1 State is trying to prove to you beyond a reasonable doubt.
2 Mr. Wheeler was not a part of any conspiracy to commit a
3 crime.

4 The State has shown you a text that doesn't have any
5 bearing directly from Mr. Wheeler. Supposedly, you've got a
6 text from Mr. Robertson to DeShawn, but I asked the detective
7 that had the opportunity to analyze his phone, Mr. Wheeler's
8 phone, and this is very important because you don't have texts
9 from Mr. Wheeler concerning this crime. I asked her, and it's
10 in her report, and she agreed.

11 There are texts a couple of hours before the crime
12 -- and this is regarding Mr. Wheeler and Mr. Robertson. There
13 are texts a couple of hours before the crime and several hours
14 after, but no mention of the crime. Additionally, in terms of
15 Mr. Lofton, there's nothing logically around the time of the
16 crime.

17 There is no conspiracy. DeShawn is the one that's
18 making a statement about what he thought, and there's no
19 evidence that Mr. Wheeler was a part of this conspiracy.
20 There's no evidence, reliable evidence, believable,
21 trustworthy evidence beyond a reasonable doubt that Mr.
22 Wheeler was a co-conspirator or aided and abetting (sic)
23 before this crime that happened on Dewey.

24 There's no reliable, trustworthy, credible, or
25 believable evidence beyond a reasonable doubt that Mr. Wheeler

1 was present at Dewey. The only evidence that he was at Dewey
2 comes from DeShawn Robinson, who is not trustworthy, who's not
3 credible, and has motives that are highly suspect.

4 After hearing the evidence in this case, you may
5 have more questions than answers, but it would not be a
6 stretch to say that you have more doubts than certainty.
7 There's a jury instruction that was mentioned, it's number 9.
8 And this deals with the agreement that Mr. Robinson entered,
9 and the fact that he has received a benefit, and he hasn't
10 been sentenced yet.

11 And I would like you to just refer to number 9,
12 refer to number 10, and 11 when you go back. It's already
13 been touched on, so I'm not going to post those, but I am
14 going to ask, on number 11 -- this was touched on a little bit
15 by Mr. Sanft. When you're determining whether an accomplice
16 has been corroborated -- so Mr. Robinson, whether or not he's
17 been corroborated -- assume that the testimony has been
18 removed.

19 So what testimony or what evidence is there in this
20 case that Mr. Wheeler was actually present at the scene at
21 Dewey when this shooting happened? Mr. Mason cannot
22 corroborate that. Mr. Mason said that there were four
23 dark-skinned, black male adults, all wearing dark clothing.
24 That would exclude Mr. Wheeler. It doesn't corroborate
25 DeShawn.

1 What evidence do you have that Mr. Wheeler was
2 present? Well, do you have DNA? No, Mr. Wheeler has been
3 excluded from DNA. The police found cigarettes, which the
4 expert testified that that could be a very good source that
5 would hold saliva, and then be capable of being used, but --
6 this is really important. They tested the DNA with the known
7 contributors and ruled some people out for the cigarette
8 butts. That was right at the scene. They couldn't exclude
9 Adrian because the detectives didn't get his DNA.

10 So these loose ends keep multiplying, which are
11 doubts as to who was actually present at Dewey. They didn't
12 follow up and you don't have that evidence. They have
13 cigarette butts, they have a fidget spinner, they have
14 glasses, but they don't have a source from Adrian to test to
15 exclude him. So there's no corroboration for DeShawn Robinson
16 as far as Mr. Wheeler being present at Dewey.

17 Mr. Mason, I would point out, was also not asked to
18 identify whether or not Mr. Wheeler was one of the individuals
19 when he was in court, so there's no evidence of Mr. Mason
20 identifying Mr. Wheeler. I mentioned to you that there's no
21 DNA from Mr. Wheeler. There's no fingerprint evidence from
22 the crime scene. The limited fingerprint evidence was simply
23 of the firearm. There's no footprint evidence.

24 Now, Detective Dosch I think got a little ahead of
25 himself and he started to make statements that he couldn't

1 back up, because he had to rely on other people, other
2 detectives, other sources, and he's not an expert. I asked
3 him, everybody's got -- well, not everybody, but you would
4 think the people that were there have two feet. And so I
5 wanted to know, how many would that mean total; how many
6 footprints? He didn't remember. There's no evidence.

7 I would also like you to consult with your notes and
8 see if anybody recalls, but I believe that Mr. Relato, Mr.
9 Valenzuela's cousin, I thought he may have also testified that
10 he was not wearing shoes. Now, as Mr. Sanft said, you're the
11 arbiters of what the facts are, but somebody may have been
12 paying attention, and I think that Mr. Relato indicated that
13 he was not wearing shoes. And there was no testimony about
14 whether or not the detective paid attention to whether there
15 were actually footprints as opposed to footwear prints.

16 There's also no evidence of blood spatter. We
17 didn't have an expert. Mr. Sanft mentioned a number of things
18 that would have been helpful, but the way that DeShawn's
19 highly suspicious account of this event occurred, if you were
20 to believe it, is that Mr. Valenzuela was essentially being
21 pulled apart at safe enough distance that shots could be fired
22 from DeMario, and not only did nobody else get hit, but then
23 there's no blood spatter that would have got on whoever else
24 was holding him. There's no evidence of blood spatter on any
25 of their clothing, and that's different from gunshot residue.

1 There's also no gunshot residue. We don't have any
2 photos of whether or not DeShawn or DeMario, who were arrested
3 pretty much that day or very late the next day, had any
4 injuries from a scuffle. Did that happen? Wouldn't it have
5 been helpful if the detectives would have photographed not
6 only Mr. Valenzuela's palm to see if he had any skin under his
7 fingernails and things like that, but what about DeMario and
8 DeShawn? If there was a scuffle, follow up on that and see if
9 they've got any fresh injuries.

10 I mentioned to you, there is some evidence of
11 alternative suspects, specifically regarding Adrian, but it is
12 limited because of the lack of initiative by the police.

13 This has already been touched on, but DeShawn's own
14 story -- again, he made statements which he said, I lied to
15 the detectives. I asked him, you indicate five here. How
16 does it help your story to create five if there is no five?
17 It doesn't help you avoid being a suspect in this case. It
18 doesn't really make sense. What makes sense is there was
19 five. That makes sense because you've got an independent
20 witness, Mr. Solomon, making statements that there were five
21 at the Short Line Express, and then Mr. Mason saying only four
22 at the Dewey address.

23 He hasn't -- DeShawn hasn't been sentenced yet, so
24 he still has some obligations. So I asked him, how do we know
25 that you didn't shoot? And that seemed to stir him up. But

1 then I followed up, I said, because all you're giving the jury
2 is your word; you don't have corroborating evidence. You
3 didn't videotape it; you didn't take pictures of it. You're
4 the one that admitted to being present, you're the one that
5 actually says, I was there when this atrocity occurred, and
6 you're the one that got the benefit of this bargain where you
7 didn't even have to admit guilt. And now you're showing up to
8 court, prior to sentencing, and you're telling the jury this
9 version of events. But you didn't tell the detectives you had
10 another brother, and your story is highly convoluted and
11 suspicious. And I would suggest to you that he has a motive
12 to protect that other individual.

13 These are all questions, but really, the translation
14 is -- and it goes back to Instruction number 5 about
15 reasonable doubt. These things are all reasonable doubts as
16 to whether the State proved that Mr. Wheeler is guilty beyond
17 a reasonable doubt.

18 Is DeShawn protecting a fifth person? I don't have
19 a burden to prove it, but that is a reasonable doubt. Is that
20 person Adrian Robinson, his brother, who matches the
21 description of the people that were present? I can't prove
22 it, but that is a reasonable doubt. DeShawn admitted to
23 lying; that is more reasonable doubt. He has motives. He has
24 reasons that he may mislead. These are all reasonable doubts.

25 The police could have done a better job once they

1 realized that Mr. Wheeler's gun was excluded from having been
2 used. They could have supplemented their reports. There's no
3 reason not to go out and get the DNA from Adrian to make the
4 exclusion of the cigarette butts or any other piece of
5 evidence. There's no evidence that they did anything that
6 they should have done regarding eliminating that alternative
7 suspect, not to mention others that they may have followed up
8 on.

9 So please consult with your notes when you consider
10 all these things. I would not be surprised if you had
11 additional items; things that are reasonable doubts as to Mr.
12 Wheeler's guilt.

13 Keep in mind that Detective Dosch was not present
14 during the interview of DeShawn. He is not an expert. He was
15 not the one that made the call about a number of things
16 regarding the investigation, because I asked him, well, was it
17 you or Detective Jaeger that would do and say don't test Mr.
18 Valenzuela's car? Well, that really would have been Jaeger.
19 Well, we don't have any evidence from Detective Jaeger. We
20 only have Detective Dosch, and he can't answer for Detective
21 Jaeger.

22 Should they have probably processed the car? Well,
23 he didn't think so, but it wasn't really his decision.
24 Certainly would have been helpful because, although he didn't
25 say he thought that there were any reasons why the car would

1 have been involved, I'm sure you could think of some why it
2 may have been.

3 Additionally, who set the crime scene and limited
4 it? This is Exhibit 39, and I put this up on the board with
5 one of the crime scene analysts. And you'll see, if north is
6 up, east would be where Lindell was, and the crime scene is
7 here, which, all the way out on the wing here, number 10, I
8 asked him about this fidget spinner, so it's a bit removed
9 from that crime scene.

10 But importantly, they sectioned off this part, which
11 is on the east side of this diagram. And there was limited
12 testimony about what they did to follow up, and why limit it
13 to just these parameters? Who made those decisions? Dosch
14 wasn't the only one; he was the co-lead detective.

15 Can't see DNA, so how do we know that there wasn't
16 suspect DNA on Mr. Valenzuela's vehicle? It just wasn't
17 tested. No fidget spinner, no cigarettes. Detective Dosch is
18 not a shoe expert. None of the shell casings came back. And
19 now, again, I'm really focused on evidence supposedly against
20 Mr. Wheeler. No cell phone triangulation regarding Mr.
21 Wheeler. The DNA was excluded as to Mr. Wheeler. No blood
22 spatter. I mentioned the struggle and potential fresh wounds.
23 No identification in court.

24 So what you have is a situation where there are
25 doubts. I think that it is very, very reasonable doubt to

1 suggest that there are five people present at the Short Line
2 Express, four people present at Dewey. Mr. Wheeler should be
3 excluded as one of those four individuals because of Mr.
4 Mason's testimony and because of Mr. DeShawn Robinson's
5 untrustworthy testimony. His gun was not used.

6 And so, you must hold the State to its burden, and
7 that is a high burden. The State did not meet that burden as
8 to Mr. Wheeler. And I'd like you to think about this because
9 this is really such a very important role that you're playing.
10 As a community, we can't afford to get the wrong person. We
11 can't afford to convict somebody that wasn't present, but we
12 can't afford to convict somebody that the State doesn't prove
13 beyond a reasonable doubt is guilty.

14 They haven't established a conspiracy. They haven't
15 established aiding and abetting by Mr. Wheeler. They have not
16 proven their case to you beyond a reasonable doubt.

17 So if you do what I asked you from the beginning a
18 good jury does, do what a good juror does: evaluate the
19 trustworthiness or the lack thereof of the witnesses; don't
20 rush to judgment, don't do what the police did; pay attention
21 to all the details; ask yourself, are there reasonable doubts;
22 fulfill your duty as jurors; and if you do so in this case, I
23 believe that you will find there are too many reasonable
24 doubts, and you will find Mr. Wheeler not guilty of all
25 counts. Thank you.

1 THE COURT: Thank you very much. And the State may
2 begin their rebuttal.

3 MR. PESCI: Thank you, Your Honor.

4 STATE'S REBUTTAL CLOSING ARGUMENT

5 MR. PESCI: Ladies and gentlemen, anybody need to
6 stretch; need to stand up for a second? If you do, please do.
7 We're almost there. I beg your indulgence for a little bit
8 longer.

9 So, at the very beginning of this trial, during the
10 jury selection, there were some questions asking about
11 everyone's opinions of firearms. There was even some
12 questions about open carry. You heard some questions to your
13 other jurors. People expressed -- a few people expressed an
14 uncomfortableness with the concept of open carry.

15 Now, I'm not allowed to do this, but I wish I could.
16 Just maybe pretend right now I've got a gun on my hip, and the
17 whole time I'm arguing to you, pretend I've got a gun on my
18 hip. And ask yourself, ladies and gentlemen, if I with a gun
19 on my hip were to come up, and demand, and say, "Give me
20 everything you got," or if my co-defendant said, "Give me
21 everything you got" when I've got a gun on my hip, even if I
22 don't take it out, but it's displayed, open carrying, would
23 the victim be uncomfortable, just like some of the jurors said
24 that they would be if they saw someone walking in open carry?

25 Now, mind you, open carry's legal. That's a legal

1 thing, right? But there's still an uncomfortableness
2 associated with it that some of the jurors said. And ask
3 yourself, would the victim be feeling that uncomfortableness
4 when it's more than just a gun on the hip; it's, "Give me what
5 you got," it's another person pulling out a gun? And ask
6 yourself, was a deadly weapon used?

7 The instruction specifically tells you that you can
8 use a deadly weapon even if you don't pull it out. A deadly
9 weapon was used by everybody in this case, including Davontae
10 Wheeler, who didn't shoot. We have never said he shot.
11 There's this argument that somehow we're saying that. No,
12 we're not saying that. We're saying he had a gun, it was on
13 his hip at least, and it was displayed, and it was utilized,
14 just like some of the jurors who had that fear, to be
15 intimidated -- the victim to be intimidated.

16 Now, you were told during the jury selection --
17 staying with this jury selection -- to be careful, cautious;
18 don't rush to judgment; "Where there's smoke, there's fire,"
19 you can't accept that concept. We just saw a great picture
20 about someone vaping, right? So you shouldn't rush to
21 judgment by saying, where there's smoke, there's fire, right?
22 That should be applied to these defendants; that's the way I
23 understood it, right?

24 But somehow, some way, I don't even comprehend how
25 Adrian Robinson has come into this case as the fifth person

1 who really did this. Is there any smoke, let alone fire,
2 around Adrian Robinson? You were told a few minutes ago they
3 did not get DNA from Adrian Robinson. You heard from every
4 single CSA who took a buccal swab from a defendant that they
5 had to have a search warrant from a judge to get in there and
6 start taking someone's DNA. You don't get to willy-nilly walk
7 up to someone and say, you know what, I think you might be the
8 fifth person; open your mouth, I want to take some buccal
9 swabs. You have to be connected to the case. You have to be
10 somehow tied into this.

11 You were told, quote, "You do not have sufficient
12 evidence to exclude Adrian Robinson." You have no evidence to
13 include Adrian Robinson, zero, but somehow we're supposed to
14 allow the concept of smoke and fire being applied to him so
15 that we can make a fifth person be the real killer who did
16 this, right?

17 Detective Dosch, he took the stand. He said, spoke
18 to him and he was excluded. That's the evidence. Speculation
19 by attorneys, that's not evidence. Detective Dosch said he
20 was excluded.

21 And ask yourself -- put Detective Dosch to the side.
22 There is the convenience store video. Point to me, please,
23 Adrian Robinson. We were told he was an African American
24 male. Defense counsel was trying to make that point. He's
25 the same or relatively the same age, right? Where is he?

1 There are four people in this picture. There is no fifth
2 mythical person. Adrian Robinson is nowhere to be found.
3 That's why he's excluded.

4 You were told cell phone triangulation -- I mean,
5 that there's no idea of what the distances in maps are. It's
6 Exhibit 7. Exhibit 7, you have it in evidence. The distance
7 between the murder scene and the convenience store, right
8 there. You can drive it in eight minutes at 2.8 miles. So
9 you were told there's not enough time. Well, it only takes
10 eight minutes to get from the convenience store, where we just
11 have all these guys, right, our four guys, to get to the
12 murder scene.

13 Now, what did Detective Dosch say? On August 8th at
14 approximately 11:36 P.M., Robertson called a number. The
15 phone call lasted one second in duration. The time of this
16 phone activity was at the time the four suspects were
17 congregated at the convenience store located at 7325 South
18 Jones Boulevard. Robertson's phone hit off a cell phone tower
19 located approximately 1,600 feet north of the convenience
20 store. Oh, yeah, there is something tying him. The phone
21 record's tying him. He's pinging, because remember, the phone
22 is pinging when he's using it; making a call, making a text.

23 There he is within 1,600 feet of the convenience
24 store -- Robertson, that is. That's only eight minutes to
25 drive. Remember, the call comes out 12:11 A.M. More than

1 enough time to leave the convenience store -- which is on
2 video, you can watch it -- and drive away, and get less than
3 three miles to the murder scene. Very nearby; plenty of time
4 to go do it. Cell phone triangulation puts him there.

5 Gunshot residue. You were asked -- or heard some
6 arguments about gunshot residue; how it should have been done,
7 how it wasn't done. Remember, you heard from Detective Dosch
8 that it's within four hours. That's the policy of Metro.
9 Within four hours, right? August 9th at 12:11 A.M. is when it
10 happens. The search warrant that got to that sweatshirt that
11 defense counsel intimated should have been tested was done on
12 August 15th. We're not at four hours; we're not even at four
13 days, right? We're up to days, days.

14 And ask yourself this. I mean, really, let's say
15 the gunshot residue test was done. You heard -- remember, it
16 says that you either shot or you were in proximity, right?
17 And then the detective said that there are those concerns
18 because you can have false positives, because someone who has
19 been cuffed like the defendants have been, or someone who's
20 been in a cop car like the defendants have been, could have
21 that transferred.

22 So let's just assume for the sake of our
23 conversation that the gunshot residue was done on that
24 sweatshirt and it came back positive. Do you think you might
25 have heard something about, oh, my client got cuffed, my

1 client got put in a cop car, so you really can't say that my
2 client was actually the one who shot the gun? Just imagine.

3 The felony murder rule. At the very beginning,
4 staying with the theme of questions during jury selection, I
5 asked all of you would you follow the law even if you didn't
6 necessarily agree with it, right?

7 The felony murder rule is a strict liability rule,
8 the concept being, even if I'm just the guy with a gun on my
9 hip and I don't pull the trigger, I'm a first degree murderer
10 for what the other guy with the .22 or the other guy with the
11 .45 did if I'm in fact a part of a conspiracy to commit
12 robbery, and that I'm attempting to commit robbery, and the
13 person dies. The law. This is the law. You said you'd
14 follow it. The law says even if it was unintentional or
15 accidental, if it's during a felony, the attempted robbery, it
16 is first degree murder.

17 Now, you were told that DeShawn Robinson was
18 unreliable, untrustworthy. Specifically, you were told he was
19 highly suspect, and today you were actually told that there's
20 no corroboration of DeShawn Robinson. Really? Well, let's go
21 through a walk of the evidence.

22 DeShawn Robinson's testimony is the jogger ran by,
23 was wearing a red shirt, and black shorts. How the heck did
24 he get that right? How the heck did he get that right if
25 DeShawn's unreliable, he's untrustworthy? The jogger went by

1 fast. That was his testimony, Robert Mason. He got it right
2 because he saw him. He got it right because he was there.
3 He's right.

4 This is independent corroboration. His testimony is
5 he had a red shirt and black shorts. That's the evidence.
6 It's the body-worn camera. That stuff's amazing now, right?
7 Body-worn camera, cops have it on, you get to see exactly
8 what's happening. He got that right.

9 He placed himself with Davontae Wheeler, Raekwon
10 Robertson, and his brother. He's throwing his brother under
11 the bus, and you're being told he's not trustworthy. If he's
12 really bought and paid for by the State, and he's saying what
13 we want, why is he throwing his brother under the bus? Just
14 throw these two. That's even more why you can trust him,
15 because he's telling you even the things that implicate his
16 brother.

17 That he's in the same spot near the wall by the
18 victim's house that the jogger, Robert Mason, said. That's
19 the spot that DeShawn said he was; that's the spot that Robert
20 Mason said. Robert Mason is not a person who's entered a
21 plea. Robert Mason's not a co-defendant. Robert Mason is not
22 someone you're supposed to look at more suspectly. Robert
23 Mason corroborates DeShawn; DeShawn corroborates Robert Mason.
24 Robert Mason has no axe to grind, no murder charge to get out
25 from under, and they're in lockstep.

1 He placed the car -- DeShawn, that is. He placed
2 the car in the same place the jogger, Robert Mason, said. The
3 exact same place. That is even more independent corroboration
4 why you can appreciate and understand that you can trust what
5 it is that DeShawn told you. The instruction says that you go
6 to it with an eye of suspicion, right? We talked about that
7 in jury selection. But then I said, if you look at all the
8 evidence and you're convinced, could you come back with a
9 verdict? And your answers were yes. Here's the other
10 evidence. It's what Robert Mason is telling you. It's the
11 exact spot that Robert Mason said it was.

12 Now, DeShawn pointed to everyone in the surveillance
13 footage. He picked himself out, he picked his brother out.
14 And then, ask yourself, is he right? Well, low and behold,
15 where he's pointing out his brother, that sweatshirt is in his
16 car. The very sweatshirt is in his car. That's independently
17 corroborating him. And then, the shoes, right? He points out
18 his brother, and then, low and behold, shoes fitting the
19 description of the brother, in addition to the sweatshirt, are
20 found in that car.

21 Raekwon Robertson, he points him out, and then you
22 have testimony about those shoes. Look at the shoes Raekwon
23 Robertson's wearing in the convenience store. Again, DeShawn
24 picked him out. Those shoes are found in the apartment of
25 Raekwon Robertson.

1 Davontae Wheeler, DeShawn points him out, right?
2 And then, how do you know that he's credible? Because low and
3 behold, when they do the search of Davontae Wheeler's
4 apartment, there are the shoes. There's the hat. Look how
5 distinct that is. Further independent corroboration.

6 DeShawn said he was sitting in the back seat behind
7 the passenger's side. Watch the video, ladies and gentlemen.
8 You have it, the Short Line Express video. We have all these
9 individuals outside. Check it out. There's a conversation
10 among which three just prior to going to the murder scene?
11 Look who's just kind of sitting there and eventually makes his
12 way over. Where did he say he went? To the back right door.

13 That video is not a co-defendant. That video is not
14 trying to get out from a murder charge. That video is
15 independent corroboration of what DeShawn said. There he is,
16 the very location he said he would be. The video confirms
17 that. Why you can believe DeShawn, why you can trust what he
18 says happened at Dewey, because all these situations where
19 he's telling you it happens a certain way, independent
20 evidence is corroborating what he told you.

21 DeShawn said where everyone was in the car.
22 Remember, he went through and he said Davontae was in the
23 passenger seat in the front, DeMario, his brother, was
24 driving, Raekwon was in the back on the lefthand side, and he
25 put himself, DeShawn, on the back right. That's where

1 everybody is.

2 DeShawn said DeMario, Davontae, and Raekwon all had
3 guns. This is what DeShawn told you. Was that independently
4 corroborated? Well, let's see. At Bagpipe, we've got the
5 .45. That's evidence against his brother. At West Tropicana,
6 we've got the .22, and then there's also the gun at Civic
7 Center. But I just kind of go off on a tangent right now a
8 little bit, I apologize.

9 But the gun that shot the cartridge case, per Anya
10 Lester, that gun, she testified -- Anya Lester took the stand
11 and she said that gun shot that cartridge case. Now, we could
12 have a debate about the bullet, right? But that gun,
13 unequivocally, she said, per her analysis, shot that cartridge
14 case.

15 The bullet was mangled because it penetrated the
16 belly of our poor victim and hit items, and was not able to
17 make a definitive conclusion as far as inclusion, but it
18 couldn't be excluded either. That bullet as it sits there is
19 not excluded. It's not included, but it's not excluded, and
20 it has similar riffling characteristics.

21 Remember she told you about how there's lands and
22 grooves? Those are similar. How it twists to the right?
23 Those are similar. We're not going to give a defendant an
24 advantage for shooting someone in the stomach and deforming a
25 bullet, and say that, oh, it doesn't match, when you know the

1 cartridge case undeniably matches and has been shot by that
2 gun.

3 Now, the third gun. Going back, DeShawn said that
4 there was a gun also with Davontae Wheeler. Low and behold,
5 interesting, the open-carry-holding-gun guy has decided to
6 pretty much hide his gun. Why is it stuck down in that
7 crevice and not in the holster that we heard so much about?
8 But that gun is found, right?

9 The victim had glasses and a white t-shirt. DeShawn
10 told you that. There's not a lot of time for DeShawn to see
11 and understand all these things, but he saw that, right?
12 There it is, independent evidence, the glasses of the victim.
13 The shirt of the victim, white. Further independent evidence.

14 He identifies Ray Logan's apartment. There's the
15 apartment. That gun has Ray Logan -- that's a defendant here
16 in court -- Raekwon Robertson's DNA. Is it part of a mixture?
17 Yeah, it is, but it's still his DNA.

18 And then, DeShawn explained that bullets were
19 exchanged among them. Prior to the shooting, there's an
20 exchange of bullets, right? There's two different .45s. One
21 does the shooting, the Interarms found at the Bagpipe
22 residence, but there are multiple manufacturers that are found
23 there, right? Those are those four bullets. One's a .22, the
24 other three are .45s, right? We've got the .22, we've got the
25 .45s. There are different headstamps on the .45s. There's an

1 R-P .45, NFCR, and the Winchester, right?

2 So those are at the murder scene; R-P, NFCR, .45
3 Winchester. Where have you seen those? Where have you seen
4 those calibers? R-P .45 Autos, right, from the murder scene?
5 Let's go to Civic Center, Davontae Wheeler's place, right?
6 His gun didn't shoot; never said it did. What's he got in
7 there? R-P .45s. DeShawn says they're passing them around,
8 and low and behold, a type -- a manufacturing type that
9 Davontae Wheeler has makes its way to the gun, the Interarms,
10 that expels that R-P .45 at the scene. There's R-Ps on the
11 floor, there's R-Ps in his pocket. They're all R-Ps.

12 What about at Bagpipe, right? Bagpipe, they're all
13 R-Ps. Bagpipe again is where DeMario and DeShawn are. NFCRs,
14 those are at the scene; those are inside that car. The
15 exchanging that he talked about was inside the car when that
16 was happening, right? Inside the glove box is this box of
17 ammunition that is NFCR. Remember, there's an NFCR at the
18 murder scene.

19 What about the forensic corroboration of DeShawn?
20 Again, you were told that he's not corroborated; he's
21 untrustworthy, right? There was no evidence to corroborate.
22 That's what you were just told. DNA puts DeShawn in the back
23 seat on the right side. That's where he said he was, right?
24 That's exactly where he said.

25 Fingerprints put each defendant where DeShawn said.

1 Imagine that. Each and every defendant has fingerprints in
2 the area that DeShawn said they were in all around that car.
3 DeShawn said he was on the right rear window; that's where his
4 fingerprint is. DeShawn said DeMario on the driver's side,
5 and that's where DeShawn said he was (sic). Raekwon Robertson
6 he said was on the left rear door; that's where the
7 fingerprint is. And he said Davontae was on the right front;
8 that's where the fingerprint is, as well as on the hood,
9 because there's even more places they were touching that car,
10 right? Right where he said the fingerprints would be.

11 DNA connects Raekwon Robertson to the .22 Taurus.
12 The expert, Allison Rubino, testified that's his DNA on that
13 gun. The fingerprints connect Davontae Wheeler to the Taurus
14 .45. You heard the fingerprint on the magazine is Davontae
15 Wheeler's. So you've got fingerprints and DNA attaching these
16 defendants to these guns, the guns that DeShawn said they had
17 and they used. All of that corroborates.

18 And then, you were told some -- well, at least you
19 were asked -- there were some questions asked about DNA
20 numbers and how they don't matter or they might not matter.
21 DeShawn's DNA is on the seat back and the armrest, and he's
22 individually included, and the likelihood ratio is 1.76
23 octillion, right? 2.56 octillion.

24 Now, the law requires independent corroboration, we
25 just explained all that, and one form of that is the DNA.

1 DeShawn's DNA is in that car where he said he was to the tune
2 of 27 zeros, right? And the concept was Raekwon DNA is on the
3 .22, and that he was individually included, and the ratio was
4 33.3 million. And that's less than octillion, it sure is.
5 33.3 million is still a really big number, right?

6 And then there was this back and forth about, well,
7 do the numbers matter? I mean, is there any doubt that it's
8 his? Because it's at his house, right? It's at his house.
9 But as far as the numbers mattering, you've heard, and
10 appropriately so, repeatedly by defense counsel for Mr.
11 Wheeler that his client was excluded from the DNA. That's
12 appropriate. And you remember, the expert said there's a
13 number associated with excluded. When the number is so low,
14 you're excluded. So the numbers, they matter. They matter to
15 the exclusion, and they matter to the inclusion. And Raekwon
16 is included on that gun.

17 Now, DeShawn said that Raekwon is the one who said,
18 "Give me everything you got," right? And that then, Sace --
19 that's what Raekwon -- that's what DeShawn described Davontae
20 as having that name, and his brother.

21 So, Sace, Davontae Wheeler, and his brother DeMario
22 tugged on the victim's clothes. That's the aiding and
23 abetting, working together, even though you're not the shooter
24 at that point, to try to get the attempted robbery -- to try
25 to get the property, right? Raekwon shot the victim, DeMario

1 then shot the victim. That's what he told you. So those
2 three are the ones encircling the victim and making the
3 decisions.

4 Now, I want you to watch this video again, and watch
5 the three who are together and the one who's not.

6 (Video is played)

7 MR. PESCI: Raekwon stops Davontae and DeMario.
8 There's a conversation, there's a discussion, and DeShawn is
9 sitting at the table on his phone. After the discussion, get
10 in the car, and the car leaves. And 20 minutes later -- 20,
11 25 minutes later, the victim's dead. This corroborates what
12 DeShawn said.

13 Who are the three that are doing things at the scene
14 per DeShawn? The three you just saw in that video congregate
15 together, and then, in fact, the individual who's the first
16 one to shoot per DeShawn, Raekwon, is the one making the
17 gestures and commenting. That's the dynamics of this group of
18 four. Raekwon, Davontae, and DeMario. DeShawn's just on his
19 phone to the side.

20 You know, you were told about reasonable doubt. A
21 reasonable doubt is one based on reason. That instruction
22 that you were read to has this portion as well, and it's very
23 important. "A reasonable doubt is one based on reason. Doubt
24 to be reasonable must be actual, not mere possibility or
25 speculation." There is nothing that connects Adrian to any of

1 this. That is nothing but speculation. Nothing but.

2 (Video is played)

3 This is going to play. It's going to take a little
4 while, and I apologize for that, but please keep your eyes
5 trained on the vehicle, and watch for the mythical, magical
6 fifth person who's supposedly Adrian Peterson (phonetic) who's
7 really the killer that allegedly exonerates Mr. Wheeler. Oh,
8 we got one out, right? DeShawn. Another one out of the back
9 left, Raekwon. DeMario coming out of the driver's seat. Now
10 we've got Davontae.

11 Keep watching the car. You see two empty seats in
12 the front? Do you see a human being in that car? Please
13 don't stop watching. It's a little long, but it's worth the
14 time, because the magical, mythical person has got to be in
15 the car because we've already looked at the convenience store
16 still frame where there are only four guys. Nobody in there
17 fits the description of Adrian, so that person's got to be in
18 the car.

19 Maybe with the lights that's shining on this car as
20 it's leaving, we'll get a good silhouette of the fifth person
21 inside the car. Let's see, the lights are going to come on.
22 Oh, wait. Wait a second, hold on. We just got lights flashed
23 on that car for us to find the fifth person. Oh, didn't see
24 the fifth person. Well, there's more time, maybe he'll show
25 up.

1 Now, earlier, we heard -- keep watching, please.
2 You heard from Nikolaus Spahn, who worked, that one of the
3 individuals was his regular. That was the guy who had the
4 blue t-shirt and kind of long hair. That individual just got
5 in the car that's parked, from our perspective, to the left.
6 Now, that car is going to leave. But wait, we've got the guys
7 coming back out.

8 So now since that car is no longer pinned in on the
9 left and the right by other cars, I'm sure the fifth person
10 who's been in there no doubt now feels free to exit, and get
11 out, and talk to his buddies, or maybe go use the bathroom,
12 which, by the way, you only saw three come out, right? So now
13 we've got somebody still inside.

14 And you know, if this video feels a little long, ask
15 yourself, what do you think Nikolaus Spahn was feeling like
16 when there was a person with an open carry gun on their hip in
17 the bathroom, if it felt long. And somehow, he's supposed to
18 be this bad guy because he was a little cautious, or
19 suspicious, or concerned.

20 So we've got a vehicle that pulls into the side of
21 the car. This is not Marcell Solomon's vehicle, right? He
22 comes in later. But this car that just pulled in did not pull
23 in the parking stall immediately to the side of the car. This
24 car is still unencumbered as far as people parking on the left
25 or the right that could potentially box in the fifth person

1 from getting out and going to hang out with the other people,
2 because, I mean, obviously, it's a great idea in August in Las
3 Vegas to sit in the car that's turned off.

4 MR. RUGGEROLI: Judge, there's no evidence that the
5 car was turned off.

6 MR. PESCI: There's no evidence the car was on. Do
7 you see the lights?

8 MR. RUGGEROLI: Judge, he's arguing facts not in
9 evidence.

10 THE COURT: Overruled, overruled. The jury knows
11 what the evidence was.

12 MR. PESCI: Look at this. We've got people going in
13 the car. Surely, the fifth person, when the other two people
14 come over to the car, is going to say something, is going to
15 maybe get out, maybe get a little air, whether the car is on
16 or not. Well, those two left. No fifth person yet.

17 Now they're getting back in the car, each to the
18 location that we said earlier, and you don't see anybody
19 having to move over to make room. You don't see anybody
20 getting out of the car to make space for the four that get in.
21 There is no evidence anywhere in any way putting a fifth
22 person in that car.

23 Reasonable doubt is one based on reason. It must be
24 actual, not mere possibility or speculation. On August 8th,
25 2017 at 11:40, nobody had been charged, no one had been given

1 a proffer, and no one had cut a deal. And then we have that
2 Facebook Messenger thread. DeShawn's not a co-defendant
3 that's been charged and that's cut a deal. When this happens,
4 it's long before any of that. "Ask DJ if he trying to hit a
5 house tonight. Me, you, Sace, and him. Sace already said
6 yeah."

7 Now, don't rely just on the fact that it says Sace
8 or he said yeah. Rely on everything Sace did after that
9 you've seen to let you know that, in fact, Sace already did
10 say yeah. All that we just laid out that what Davontae
11 Wheeler did shows you that at this point, 12 hours before,
12 when it's represented from Ray Logan that Sace already said
13 yeah, is borne out by the evidence that you've seen.

14 "We're going to go hit a house tonight." What on
15 God's green earth are they doing at midnight outside that
16 house that isn't related to trying to rob somebody? "Me,"
17 meaning Raekwon sending it, "You," Deshawn receiving it,
18 "Sace," Davontae Wheeler, and "Him," referring back to DJ;
19 that's DeMario. That's his own brother, right? "Hit a
20 house."

21 This individual running by in and of himself is
22 enough evidence to tie this all together, but when you couple
23 it with what DeShawn said, you have the information to get you
24 to this conclusion of their guilt. He described four African
25 males all dressed in dark hoodies, he described the car, he

1 got the exact license plate.

2 So if it's not them -- you just watched the video
3 where it drove off -- what on earth happened in the next 20 to
4 25 minutes to have four other individuals who are not these
5 four defendants, and get their guns, and shoot, and then plant
6 those guns in their houses? How is that possible? How is
7 that possible?

8 He got that license plate. That's the car involved.
9 That car leads them to these defendants. It leads it to these
10 defendants back to the Short Line Express, and then to all of
11 their locations, because it's just 20 to 30 minutes later,
12 less than three miles away, when they hit a house. And as
13 they're going to hit the house, they have this poor victim
14 there. What four other guys did this? Who were the other
15 people that took over their car, had the same description,
16 used those guns, and then planted those guns in their houses?

17 It's got to be actual, not mere speculation. That
18 gun is the gun that shot him. When they shot him in the
19 stomach and they shot him in the head, there was the intent to
20 kill. That's first degree, willful, deliberate, premeditated.
21 When they attempted to rob him and he died in the process,
22 that's felony murder. They're first degree murderers, ladies
23 and gentlemen. Tell them you know that, too.

24 THE COURT: Thank you very much.

25 At this time, the Clerk will swear the Officers of

1 the Court, who will take charge of the jury panel.

2 (JUDICIAL EXECUTIVE ASSISTANT AND MARSHAL SWORN
3 TO TAKE CHARGE OF THE JURY AND ALTERNATE)

4 THE COURT: Okay. Before I do excuse the ladies and
5 gentlemen of the jury, I'm going to excuse you to go back for
6 a few minutes. I know it is late. I'm going to ask you to
7 pick your foreperson, and then you will get further
8 instructions.

9 Mr. Randall, you have been selected -- you've been
10 selected to be our alternate juror, so I'm not going to
11 require you to stay at the courthouse tonight. I'm not going
12 to discharge you yet. I'm going to ask you to -- you're going
13 to meet with Ms. Rocha out in the vestibule. She's going to
14 get your phone number; she's going to take charge of all of
15 your -- your notebook and your instructions. I just ask that
16 you don't go more than 45 minutes from the courthouse so that
17 if we need you to come back to deliberate, we can get you back
18 here quickly and --

19 JUROR NO. 14: Tonight, too?

20 THE COURT: No, it won't be tonight.

21 JUROR NO. 14: Oh, okay.

22 THE COURT: No, it won't be tonight. It would be
23 tomorrow.

24 JUROR NO. 14: Okay.

25 THE COURT: And when the jury has reached a verdict,

1 we will call you and let you know either that you've been
2 discharged or that your service is required to come back. So,
3 Mr. Randall, you can step down and can go see Ms. Rocha.

4 Ladies and gentlemen of the jury, you can collect
5 your notebooks, your instructions, and go with Officer Hawkes.
6 Again, I'm just going to ask you to select a foreperson, and
7 then you'll be excused with direction to come back tomorrow
8 morning. Thank you.

9 THE MARSHAL: Thank you. All rise for the exiting
10 jury, please. Jurors.

11 THE CLERK: Mr. Pesci, do you have a laptop?

12 MR. PESCI: No, but I'll get one.

13 THE CLERK: Okay.

14 THE COURT: Oh, of course.

15 THE CLERK: We start court at 8:30, so if you want
16 to just pop in and you can drop it off to me whenever --

17 MR. PESCI: Will do.

18 THE CLERK: -- during court. That's fine.

19 (Jury retires to deliberate at 6:13 p.m.)

20 THE COURT: Okay. The record will reflect that the
21 hearing is taking place outside the presence of the jury
22 panel.

23 MR. RUGGEROLI: Thank you, Judge.

24 THE COURT: Mr. Ruggeroli, did you have something?

25 MR. RUGGEROLI: I do want to lodge an objection as

1 to the rebuttal. Specifically, the video that was played was
2 almost in its entirety, approximate -- it was over 20 minutes.
3 So when the State did their initial closing, that video was
4 not included. My closing argument obviously just made
5 reference; didn't show the video.

6 But by the State saving that until rebuttal, it did
7 not allow an opportunity to make any comments about the
8 unilateral statements that Mr. Pesci was making, in
9 particular, one that I had to object to, because there was
10 certainly no evidence that the car had been turned off in the
11 August heat, and there was no evidence of that whatsoever, and
12 so I did object to that. And I just wanted clarify whether or
13 not the PowerPoint is being submitted for potential appellate
14 purposes.

15 THE COURT: Right. The Clerk just asked me --

16 MR. RUGGEROLI: Thank you.

17 THE COURT: -- to make sure both sides do give the
18 Clerk a copy of your PowerPoint.

19 MR. RUGGEROLI: Yes, and I didn't use one, so.

20 THE COURT: Right. Mr. Sanft did --

21 MR. RUGGEROLI: Thank you.

22 THE COURT: -- and the State.

23 MR. SANFT: Your Honor, I'm emailing mine now to
24 your court Clerk, if that's okay with the Clerk.

25 THE COURT: Thank you. Is that -- that's okay,

1 right?

2 MR. BROOKS: Sorry, Judge. What was the objection?

3 MR. RUGGEROLI: I'm objecting that by only playing
4 the -- actually, the entirety of that clip during rebuttal, it
5 did not allow the defense an opportunity to comment on the
6 statements that were being made about the content. So when
7 they went through their witnesses, they showed very short
8 portions of the video. It has been admitted. But by saving
9 it -- not using it at all in the closing, and saving it
10 exclusively for rebuttal, and then playing it in its entirety,
11 and then making -- and editorializing over it, it denied us
12 the opportunity to respond, and so I'm objecting.

13 THE COURT: Isn't that kind of rebuttal?

14 MR. RUGGEROLI: But it's not, because --

15 THE COURT: I mean --

16 MR. RUGGEROLI: It did not allow me the opportunity
17 -- he was not rebutting my commentary about the video. My
18 commentary wasn't about whether or not somebody was in the
19 car; that was never even mentioned. So --

20 THE COURT: Well, you argued to the jury that there
21 had to be five people, right?

22 MR. RUGGEROLI: Present, but I specifically did not
23 say that the individual was in the car. I know that --

24 THE COURT: Okay.

25 MR. RUGGEROLI: -- this seems like semantics in some

1 way.

2 THE COURT: Okay.

3 MR. RUGGEROLI: But I think I have to object because
4 by saving it, playing the entirety, not with any witnesses,
5 not during closing, but only in rebuttal, it denied us the
6 opportunity to editorialize or to respond to the
7 editorializing, which becomes an exclusive representation of
8 the car is off; apparently, all the windows are up. One
9 portion of that video, you cannot see at least a fourth of the
10 back seat of that car, and so I just had no opportunity to
11 make any statements about it whatsoever because it was played
12 in the entirety.

13 MR. PESCI: So, Judge, in response, I think what I'm
14 hearing is defense counsel doesn't like the statutes of the
15 State of Nevada which dictate that rebuttal is done by the
16 State of Nevada; that we open and close it. So there is no
17 law that provides them to have a surrebuttal to the State's
18 rebuttal. We have the burden of proof.

19 That is evidence that's been admitted, not objected
20 to, and anybody could have commented during their closing
21 arguments about whatever they wanted to. And I was
22 specifically responding to the argument that there is a fifth
23 person; that Adrian Peterson, the fifth person, must be the
24 one. So it is completely in response to what the arguments
25 were made, and it's completely appropriate to play it. And by

1 the way, it was eight minutes.

2 And I was trying to also make the point about how
3 long it was that Davontae Wheeler was in the bathroom that
4 Nikolaus Spahn -- and the intimation was that he's a racist
5 because he says he thinks something bad's going on because
6 someone's in the bathroom for a long time. So I wanted the
7 jury to be able to see the length of that video, feel the
8 length of that video to put in context what was said about
9 him, and also, deliberately to respond to the allegation of a
10 fifth person.

11 MR. RUGGEROLI: Just briefly, Judge. I never
12 referred to Mr. Spahn as a racist.

13 THE COURT: Well, it wasn't you.

14 MR. RUGGEROLI: I didn't --

15 MR. SANFT: I implied --

16 MR. RUGGEROLI: Okay.

17 MR. SANFT: I implied it.

18 MR. PESCI: That was implied.

19 MR. RUGGEROLI: The other thing --

20 MR. SANFT: I definitely implied it. That was me.

21 THE COURT: Right. Mr. Ruggeroli --

22 MR. RUGGEROLI: Yeah.

23 THE COURT: It was implied by Mr. Sanft. I think
24 he's -- he's willing to own up to it.

25 MR. SANFT: That is correct. That was my intention,

1 so.

2 MR. RUGGEROLI: The only other argument, Judge, is
3 I'm not objecting to the statutes; I'm objecting to evidence,
4 and that's my job. I object to saving this for rebuttal,
5 which is not actually rebuttal, you're doing a second closing
6 argument. It's not rebutting; it's going in and saving the
7 evidence until it can't be responded to. That's all.

8 THE COURT: Okay, the objection's noted. Okay. The
9 jury's going to be instructed to come back tomorrow morning at
10 9:00 A.M.

11 MR. RUGGEROLI: Thank you, Judge.

12 THE COURT: I have a criminal calendar, so,
13 obviously, it wouldn't be until after we're done if we get a
14 verdict.

15 (Court recessed at 6:18 p.m.)
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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, TRANSCRIBER
VERBATIM DIGITAL REPORTING, LLC



3096

2-10-20

MARKER

#

CASE NO.



EXHIBIT

Mobile Uploads



3097

Comment

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Young Sace Versace

June 14 · 🌐

This shit here is way bigger then me god put a niggah here for a reason. #blessed #real

👍 Like 💬 Comment ➦ Share

👍❤️ 21



Nae Arradondo Love your smile 😊👍

Like · Reply · ❤️ 1 · June 14 at 8:13am

➦ 🌐 Young Sace Versace replied · 1 Reply



Eric Kristoff Patterson Than me***

Like · Reply · June 14 at 8:15am

➦ 🌐 Young Sace Versace replied · 1 Reply



Germaine Tabor Looking good nephew 🤩🤩🤩 love you.

Like · Reply · 🌐 1 · June 14 at 12:44pm



Norniece Norment Hey handsome grandson. Lol

Like · Reply · 🌐 1 · June 14 at 6:21pm



Write a comment...



MARK

CASE

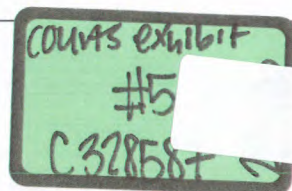


EXHIBIT

Angela Segura II

702 576 3920

gh Seg



3098

2-19-00

ORIGINAL

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10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 STATE OF NEVADA

13 Plaintiff,

Case No. C-17-328587-3

14 vs.

Dept No. XII

15 DAVONTAE AMARRI WHEELER,
16 #5909081.

17 Defendant.

18 **DEFENDANT WHEELER'S PROPOSED JURY INSTRUCTIONS**

19 Attached hereto is Defendant Wheeler's proposed jury instructions which consists of
20 three proposed instructions.

21 DATED this 18th day of February, 2020.

22 **JAMES J. RUGGEROLI**

23 By: /s/ James J. Ruggeroli

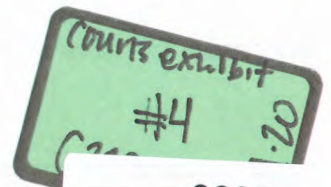
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INSTRUCTION NO. _____

If you believe that a witness willfully lied as to a material fact, you should distrust the rest of his or her testimony and you may, but are not obligated to, disregard all of the testimony.

Milligan v. State, 708 P.2d 289, 294 (1985) (Instruction No. 6 in the Guilt Phase.

“The part of the instruction with which Milligan takes exception reads:

If you believe that a witness willfully lied as to a material fact, you should distrust the rest of his testimony and you may, but are not obliged to, disregard all the testimony Milligan asserts that the instruction erroneously instructs the jury as to matters of fact in violation of the Nevada Constitution, article 6 section 2 and NRS 175.161(1).

We have noted initially that Milligan failed to object to the instruction at trial, nevertheless, we have considered the instruction and conclude that it was not error. When the instruction is read in its entirety, it is clear that the jury was properly instructed that it was the ultimate judge of the weight and worth of the evidence”).

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INSTRUCTION NO. _____

The degree of credit due a witness should be determined by his or her character, conduct, manner upon the stand, fears, bias, impartiality, reasonableness or unreasonableness of the statements he or she makes, and the strength or weakness of his or her recollections, are viewed in the light of all the other facts in evidence.

INSTRUCTION NO. _____

You are instructed that Deshawn Robinson has entered into a guilty plea agreement and an agreement to testify against the Defendants on behalf of the State of Nevada. Mr. Robinson has not been sentenced yet pursuant to that agreement.

You are instructed that pursuant to the terms of the agreements, if the agreement is declared null and void as a result of violation of the terms and conditions by Deshawn Robinson, the District Attorney will use any statements made by regarding this investigation against him, in any subsequent criminal trial/prosecution arising from this case.

NRS 175.282: If a prosecuting attorney enters into an agreement with a defendant in which the defendant agrees to testify against another defendant in exchange for a plea of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for a recommendation of a reduced sentence, the court shall:

1. After excising any portion it deems irrelevant or prejudicial, permit the jury to inspect the agreement;
2. If the defendant who is testifying has not entered a plea or been sentenced pursuant to the agreement, instruct the jury regarding the possible related pressures on the defendant by providing the jury with an appropriate cautionary instruction; and
3. Allow the defense counsel to cross-examine fully the defendant who is testifying concerning the agreement.

EXHIBIT(S) LIST

Case No.: C328587-2&3

Hearing / Trial Date: 02/11/20

Dept. No.: XII

Judge: MICHELLE LEAVITT

Plaintiff: STATE OF NEVADA

Court Clerk: HALY PANNULLO

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

STATE'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted |
|----------------|-------------------------------------|--------------|-----------|---------------|
| 1 | map | 2-13-20 | NO | 2-13-20 |
| 2 | map | 2-19-20 | NO | 2-19-20 |
| 3 | map | 2-13-20 | NO | 2-13-20 |
| 4 | map | 2-13-20 | NO | 2-13-20 |
| 5 | map | 2-13-20 | NO | 2-13-20 |
| 6 | map | 2-19-20 | NO | 2-19-20 |
| 7 | map | 2-19-20 | NO | 2-19-20 |
| 8 | map | 2-19-20 | NO | 2-19-20 |
| 9 | Photo - 5536 address | 2-13-20 | STIP | 2-13-20 |
| 10 | Photo - house - outside | 2-13-20 | NO | 2-13-20 |
| 11 | Photo - house - outside | 2-13-20 | NO | 2-13-20 |
| 12 | Photo - house - outside - drive way | 2-13-20 | NO | 2-13-20 |
| 13 | Photo - driveway | 2-13-20 | STIP | 2-13-20 |
| 14 | Photo - driveway | 2-13-20 | NO | 2-13-20 |
| 15 | Photo - driveway - side walk | 2-13-20 | STIP | 2-13-20 |
| 16 | Photo - side walk + street | ↓ | ↓ | ↓ |
| 17 | Photo - Crime Scene | 2-13-20 | STIP | 2-13-20 |

EXHIBIT(S) LIST

Case No: C328587-2&3

STATE OF NEVADA

VS.

RAEKWON ROBERTSON & DAVONTAE Wheeler

STATE'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted |
|----------------|---|--------------|-----------|---------------|
| 18 | Photo - Crime scene | 2-13-20 | Stip | 2-13-20 |
| 19 | Photo - Crime scene | | | |
| 20 | Photo - Crime scene | | | |
| 21 | Photo - back of car + drive way | | | |
| 22 | Photo - drive way + green vehicle | | | |
| 23 | Photo - drive way + green vehicle | | | |
| 24 | Photo - green vehicle + open driver door | | | |
| 25 | Photo - front of green car vehicle | | | |
| 26 | Photo - back of green vehicle | | | |
| 27 | Photo - front of green vehicle | | | |
| 28 | Photo - drive side vehicle | | | |
| 29 | Photo - inside front of vehicle | | | |
| 30 | Photo - speedometer area of vehicle | 2-13-20 | Stip | 2-13-20 |
| 31 | Photo - back seats of vehicle | 2-13-20 | NO | 2-13-20 |
| 32 | Photo - back seats of vehicle | | | |
| 33 | Photo - front seats of vehicle | 2-13-20 | NO | 2-13-20 |
| 34 | Photo - passenger seat of vehicle | 2-13-20 | Stip | 2-13-20 |
| 35 | Photo - drivers licence | 2-13-20 | NO | 2-13-20 |
| 36 | Photo - receipt | 2-13-20 | NO | 2-13-20 |
| 37 | Dewey Dr. map | 2-13-20 | Stip | 2-13-20 |
| 38 | Photo - house - street view | | | |
| 39 | Photo - side walk / drive way | | | |
| 40 | Photo - 1, 3 & 4 markers | | | |
| 41 | Photo - markers + Crime scene | | | |
| 42 | Photo - orange cones(2) + sidewalk | 2-13-20 | Stip | 2-13-20 |

EXHIBIT(S) LIST

Case No: C328587-2&3

STATE OF NEVADA

VS.

RAEKWON ROBERTSON & DAVONTAE Wheeler

STATE'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted |
|----------------|-----------------------------------|--------------|-----------|---------------|
| 43 | Photo - Crime Scene | 2-13-20 | Stip | 2-13-20 |
| 44 | Photo - Shell on cement | | | |
| 45 | Photo - yellow ruler + shell | | | |
| 46 | Photo - yellow ruler + shell | | | |
| 47 | Photo - Shell + side walk | | | |
| 48 | Photo - " " " | | | |
| 49 | Photo - #2 yellow ruler + shell | | | |
| 50 | Photo - " " " " | | | |
| 51 | Photo - Crack of sidewalk + shell | | | |
| 52 | Photo - #3 yellow marker + shell | | | |
| 53 | Photo - " " " " | | | |
| 54 | Photo - Shell on cement | | | |
| 55 | Photo - #4 yellow ruler + shell | | | |
| 56 | Photo - " " " " | 2-13-20 | Stip | 2-13-20 |
| 57 | Photo - Crime scene - day time | 2-13-20 | Stip | 2-13-20 |
| 58 | Photo - Police vehicle on road | | | |
| 59 | Photo - house - street view | | | |
| 60 | Photo - front of Honda vehicle | | | |
| 61 | Photo - Close up - yard | | | |
| 62 | Photo - grass | | | |
| 63 | Photo - Side yard + orange cone | | | |
| 64 | Photo - Orange cone in grass | | | |
| 65 | Photo - white ruler + item | | | |
| 66 | Photo - " " " " | | | |
| 67 | Photo - back of green vehicle | 2-13-20 | Stip | 2-13-20 |

EXHIBIT(S) LIST

Case No: C328587-2&3

STATE OF NEVADA

VS. RAEKWON ROBERTSON & DAVONTAE Wheeler

STATE'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted |
|----------------|---|--------------|-----------|---------------|
| ws 68 | Photo - Orange cone on cement | 2-13-20 | Stip | 2-13-20 |
| ws 69 | Photo - White ruler + item | ↓ | ↓ | ↓ |
| ws 70 | Photo - White ruler + item | ↓ | ↓ | ↓ |
| ws 71 | Photo - front of Market | 2-13-20 | Stip | 2-13-20 |
| ws 72 | Photo - Phone screen shot | 2-13-20 | NO | 2-13-20 |
| ws 73 | Photo - 2 orange cones - Street | 2-13-20 | Stip | 2-13-20 |
| ws 74 | Photo - 3 orange cones - Crime scene | ↓ | ↓ | ↓ |
| ws 75 | Photo - 1 orange cone - Crime scene | 2-13-20 | Stip | 2-13-20 |
| ws 76 | Photo - Orange cone + apple phone | 2-13-20 | NO | 2-13-20 |
| ws 77 | Photo - Orange cone + glasses | ↓ | ↓ | ↓ |
| ws 78 | Photo - ripped mail | 2-13-20 | NO | 2-13-20 |
| ws 79 | Photo - Orange cone - Street | 2-13-20 | Stip | 2-13-20 |
| ws 80 | Photo - Orange cone + item | 2-13-20 | Stip | 2-13-20 |
| ws 81 | Photo - Fire fighter | 2-13-20 | Stip | 2-13-20 |
| ws 82 | Photo - man - face | ↓ | ↓ | ↓ |
| ws 83 | Photo - bottom of shoe | ↓ | ↓ | ↓ |
| ws 84 | Photo - paramedic | ↓ | ↓ | ↓ |
| ws 85 | Photo - man - blonde hair | ↓ | ↓ | ↓ |
| ws 86 | Photo - bottom of shoe | ↓ | ↓ | ↓ |
| ws 87 | Photo - bottom of Nike shoe | ↓ | ↓ | ↓ |
| ws 88 | Photo - shoe prints | ↓ | ↓ | ↓ |
| ws 89 | Photo - shoe prints + items on sidewalk | ↓ | ↓ | ↓ |
| ws 90 | Photo - shoe prints | ↓ | ↓ | ↓ |
| ws 91 | Photo - Crime scene | ↓ | ↓ | ↓ |
| ws 92 | Photo - Crime scene | 2-13-20 | Stip | 2-13-20 |

EXHIBIT(S) LIST

Case No: C328587-2&3

STATE OF NEVADA

VS.

RAEKWON ROBERTSON & DAVONTAE Wheeler

STATE'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted |
|----------------|---------------------------------------|--------------|-----------|---------------|
| 93 | Photo - Coroner - Case tag | 2-14-20 | NO | 2-14-20 |
| 94 | Photo - Coroner - Wound | | NO | ↓ |
| 95 | Photo - Coroner - Wound - closeup | | NO | 2-14-20 |
| 96 | Photo - Coroner - Wound - front | | obj | ██████████ w |
| 97 | Photo - Coroner - Wound - front | | obj | 2-14-20 |
| 98 | Photo - Coroner - left side | | obj | |
| 99 | Photo - Coroner - Wound | | NO | |
| 100 | Photo - Coroner - back right foot | | | |
| 101 | Photo - Coroner - Wound | | | |
| 102 | Photo - Coroner - Wound - right ankle | | | |
| 103 | Photo - Coroner - front of hand | | | |
| 104 | Photo - Coroner - bullet + ruler | | | |
| 105 | Photo - Coroner - bullet + ruler | | | |
| 106 | Photo - Coroner - back of bullet | | | |
| 107 | Photo - Coroner - bullet + ruler | | | |
| 108 | Photo - Coroner - ruler + item | | | |
| 109 | Photo - Coroner - 3 pieces + ruler | | | |
| 110 | Photo - Coroner - blue lock | | | |
| 111 | Photo - Coroner - back left ankle | | NO | |
| 112 | Photo - Coroner - back lower half | | obj | |
| 113 | Photo - Coroner - Wound + ruler | | NO | |
| 114 | Photo - Coroner - back upper half | | NO | |
| 115 | Photo - Coroner - Wound | | obj | |
| 116 | Photo - Coroner - green arrow | ↓ | NO | ↓ |
| 117 | Photo - Coroner - Xray | 2-14-20 | NO | 2-14-20 |

EXHIBIT(S) LIST

Case No: C328587-2&3

STATE OF NEVADA

VS.

RAEKWON ROBERTSON & DAVONTAE Wheeler

STATE'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted | |
|----------------|--|--------------|-----------|---------------|----|
| 118 | Photo - Coroner - Xray | 2.14.20 | NO | 2.14.20 | wa |
| 119 | Photo - Coroner - #13 mark + item | ↓ | ↓ | ↓ | wa |
| 120 | Photo - Coroner - " " " | ↓ | ↓ | ↓ | wa |
| 121 | Photo - Coroner - Shorts - beige | ↓ | NO | ↓ | wa |
| 122 | Photo - Coroner - Xray | ↓ | obj | ↓ | wa |
| 123 | Photo - Coroner - Xray | ↓ | obj | ↓ | wa |
| 124 | Photo - Coroner - #12 mark + item | ↓ | NO | ↓ | wa |
| 125 | Photo - Coroner - #12 mark + items(3) | ↓ | ↓ | ↓ | wa |
| 126 | Photo - Coroner - Xray | ↓ | ↓ | ↓ | wa |
| 127 | Photo - Coroner - Xray | ↓ | ↓ | ↓ | wa |
| 128 | Photo - Coroner - #14 mark + item | ↓ | ↓ | ↓ | wa |
| 129 | Photo - Coroner - " " " | 2.14.20 | NO | 2.14.20 | wa |
| 130 | Photo - Defendant - black shirt + jeans | 2.14.20 | NO | 2.14.20 | wa |
| 131 | Photo - " " " | ↓ | ↓ | ↓ | wa |
| 132 | Photo - " " " | ↓ | ↓ | ↓ | wa |
| 133 | Photo - " " " | ↓ | ↓ | ↓ | wa |
| 134 | Photo - " " " | 2.14.20 | NO | 2.14.20 | wa |
| 135 | Photo - Defendant - Aripe shirt | 2.18.20 | NO | 2.18.20 | wa |
| 136 | Photo - " " " | ↓ | ↓ | ↓ | wa |
| 137 | Photo - " " " | ↓ | ↓ | ↓ | wa |
| 138 | Photo - " " " | ↓ | ↓ | ↓ | wa |
| 139 | Photo - tattoo on chest | ↓ | ↓ | ↓ | wa |
| 140 | Photo - defendant - White shirt + shorts | ↓ | ↓ | ↓ | wa |
| 141 | Photo - " " " | ↓ | ↓ | ↓ | wa |
| 142 | Photo - " " " | 2.18.20 | NO | 2.18.20 | wa |

EXHIBIT(S) LIST

Case No: C328587-2&3

STATE OF NEVADA

VS. RAEKWON ROBERTSON & DAVONTAE Wheeler

STATE'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted | |
|----------------|--|--------------|-----------|---------------|----|
| 143 | Photo - defendant - white shirt + shorts | 2.18.20 | NO | 2.18.20 | wa |
| 144 | Photo - defendant - blue shirt | 2.14.20 | NO | 2.14.20 | wa |
| 145 | Photo - espana shirt - defendant | ↓ | ↓ | ↓ | wa |
| 146 | Photo - " " - " | ↓ | ↓ | ↓ | wa |
| 147 | Photo - " " - " | ↓ | ↓ | ↓ | wa |
| 148 | Photo - defendant - front face | 2.14.20 | NO | 2.14.20 | wa |
| 149 | Photo - 2 defendants | 2.14.20 | Obj | 2.14.20 | wa |
| 150 | Photo - white car - front | 2.14.20 | NO | 2.14.20 | wa |
| 151 | Photo - " " - back | 2.14.20 | NO | 2.14.20 | wa |
| 152 | Photo - " " - driver side | ↓ | ↓ | ↓ | wa |
| 153 | Photo - " " - front left | ↓ | ↓ | ↓ | wa |
| 154 | Photo - " " - driver door | 2.14.20 | NO | 2.14.20 | wa |
| 155 | Photo - " " - front | 2.13.20 | NO | 2.13.20 | wa |
| 156 | Photo - " " - top | 2.14.20 | NO | 2.14.20 | wa |
| 157 | Photo - " " - back left | ↓ | ↓ | ↓ | wa |
| 158 | Photo - " " - back | ↓ | ↓ | ↓ | wa |
| 159 | Photo - " " - back right | 2.14.20 | NO | 2.14.20 | wa |
| 160 | Photo - lab - vehicle | 2.14.20 | NO | 2.14.20 | wa |
| 161 | Photo - lab - vehicle | ↓ | ↓ | ↓ | wa |
| 162 | Photo - lab - vehicle | ↓ | ↓ | ↓ | wa |
| 163 | Photo - lab - vehicle | ↓ | ↓ | ↓ | wa |
| 164 | Photo - lab - vehicle | ↓ | ↓ | ↓ | wa |
| 165 | Photo - lab - vehicle - window | ↓ | ↓ | ↓ | wa |
| 166 | Photo - lab - vehicle - window | ↓ | ↓ | ↓ | wa |
| 167 | Photo - lab - vehicle - outside mirror | 2.14.20 | NO | 2.14.20 | wa |

EXHIBIT(S) LIST

Case No: C328587-2&3

STATE OF NEVADA

VS. RAEKWON ROBERTSON & DAVONTAE Wheeler

STATE'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted | |
|----------------|--------------------------------|--------------|-----------|---------------|----|
| 1168 | Photo-lab-vehicle | 2-14-20 | NO | 2-14-20 | WA |
| 1169 | Photo-lab-vehicle | ↓ | ↓ | ↓ | WA |
| 1170 | Photo-lab-vehicle | ↓ | ↓ | ↓ | WA |
| 1171 | Photo-lab-" | ↓ | ↓ | ↓ | WA |
| 1172 | Photo-lab-" | ↓ | ↓ | ↓ | WA |
| 1173 | Photo-lab- " Warning tape | ↓ | ↓ | ↓ | WA |
| 1174 | Photo-lab-vehicle | ↓ | ↓ | ↓ | WA |
| 1175 | Photo-lab-vehicle | 2-14-20 | NO | 2-14-20 | WA |
| 1176 | Photo-Receipt-hand written | 2-14-20 | NO | 2-14-20 | WA |
| 1177 | Photo-barcode on green surface | ↓ | ↓ | ↓ | WA |
| 1178 | Photo- " " " " | ↓ | ↓ | ↓ | WA |
| 1179 | Photo-Ammunition | ↓ | ↓ | ↓ | WA |
| 1180 | Photo-Ammunition | 2-14-20 | NO | 2-14-20 | WA |
| 1181 | Photo-2 red shoes | 2-14-20 | NO | 2-14-20 | WA |
| 1182 | Photo- " " " - Side | ↓ | ↓ | ↓ | WA |
| 1183 | Photo- " " " - Inside | ↓ | ↓ | ↓ | WA |
| 1184 | Photo- " " " - Top | ↓ | ↓ | ↓ | WA |
| 1185 | Photo- " " " - Side | ↓ | ↓ | ↓ | WA |
| 1186 | Photo- " " " - Inside-size 9 | ↓ | ↓ | ↓ | WA |
| 1187 | Photo-black sweater | ↓ | ↓ | ↓ | WA |
| 1188 | Photo- " " - back | ↓ | ↓ | ↓ | WA |
| 1189 | Photo-Receipt | ↓ | ↓ | ↓ | WA |
| 1190 | Photo-records | ↓ | ↓ | ↓ | WA |
| 1191 | Photo-back seats | ↓ | ↓ | ↓ | WA |
| 1192 | Photo-Inside vehicle at lab | 2-14-20 | NO | 2-14-20 | WA |

EXHIBIT(S) LIST

Case No: C328587-2&3

STATE OF NEVADA

VS.

RAEKWON ROBERTSON & DAVONTAE Wheeler

STATE'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted | |
|----------------|--------------------------------|--------------|-----------|---------------|----|
| 193 | Photo - trunk of vehicle | 2-14-20 | NO | 2-14-20 | WA |
| 194 | Photo - Nike boxes | | | | WA |
| 195 | Photo - back of passenger seat | | | | WA |
| 196 | Photo - mark & ruler | | | | WA |
| 197 | Photo - car door - inside | | | | WA |
| 198 | Photo - mark & ruler | | | | WA |
| 199 | Photo - inside car door | | | | WA |
| 200 | Photo - mark & ruler | | | | WA |
| 201 | Photo - items pulled from car | | | | WA |
| 202 | Photo - " " " " | | | | WA |
| 203 | Photo - " " " " | | | | WA |
| 204 | Photo - " " " " | | | | WA |
| 205 | Photo - " " " " | | | | WA |
| 206 | Photo - " " " " | | | | WA |
| 207 | Photo - driver rear seat items | | | | WA |
| 208 | Photo - LR floor items | | | | WA |
| 209 | Photo - RF seat items | | | | WA |
| 210 | Photo - RR floor items | | | | WA |
| 211 | Photo - Autozone receipt | | | | WA |
| 212 | Photo - Terribles receipt | | | | WA |
| 213 | Photo - shoe palace receipt | | | | WA |
| 214 | Photo - cigar packages | 2-14-20 | NO | 2-14-20 | WA |
| 215 | Photo - 3 vehicle driveway | 2-13-20 | Stop | 2-13-20 | WA |
| 216 | Photo - front porch | | | | WA |
| 217 | Photo - inside house | 2-13-20 | Stop | 2-13-20 | WA |

EXHIBIT(S) LIST

Case No: C328587-2&3

STATE OF NEVADA

VS.

RAEKWON ROBERTSON & DAVONTAE Wheeler

STATE'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted | |
|----------------|-------------------------------------|--------------|-----------|---------------|----|
| 218 | Photo - hallway | 2-13-20 | Stip | 2-13-20 | WA |
| 219 | Photo - 2 doorways | | | | WA |
| 220 | Photo - bedroom | | | | WA |
| 221 | Photo - bedroom | | | | WA |
| 222 | Photo - pink backpack | | | | WA |
| 223 | Photo - inside backpack | | | | WA |
| 224 | Photo - Firearm | | | | WA |
| 225 | Photo - firearm | | | | WA |
| 226 | Photo - " | | | | WA |
| 227 | Photo - " | 2-13-20 | Stip | 2-13-20 | WA |
| 228 | Photo - " | 2-19-20 | NO | 2-19-20 | WA |
| 229 | Photo - ammunition | 2-19-20 | NO | 2-19-20 | WA |
| 230 | Photo - shoes + items | 2-13-20 | Stip | 2-13-20 | WA |
| 231 | Photo - shoes | | | | WA |
| 232 | Photo - top of red shoes | | | | WA |
| 233 | Photo - red shoes - side | | | | WA |
| 234 | Photo - red shoes - bottom | 2-13-20 | Stip | 2-13-20 | WA |
| 235 | Photo - 6647 address | 2-14-20 | NO | 2-14-20 | WA |
| 236 | Photo - stairs attached to building | 2-18-20 | NO | 2-18-20 | WA |
| 237 | Photo - front door | | | | WA |
| 238 | Photo - living room | | | | WA |
| 239 | Photo - bedroom | | | | WA |
| 240 | Photo - bedroom | | | | WA |
| 241 | Photo - dresser | | | | WA |
| 242 | Photo - dresser | 2-18-20 | NO | 2-18-20 | WA |

EXHIBIT(S) LIST

Case No: C328587-2&3

STATE OF NEVADA

VS. RAEKWON ROBERTSON & DAVONTAE Wheeler

STATE'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted | |
|----------------|-----------------------------|--------------|-----------|---------------|----|
| 243 | Photo- MISSING drawer | 2-18-20 | NO | 2-18-20 | wa |
| 244 | Photo- firearm & ammunition | | | | wa |
| 245 | Photo- Ammunition | | | | wa |
| 246 | Photo- firearm & ammunition | | | | wa |
| 247 | Photo- 2 boxes - ammunition | | | | wa |
| 248 | Photo- item on floor | | | | wa |
| 249 | Photo- mini-mag | | | | wa |
| 250 | Photo- Firearm | | | | wa |
| 251 | Photo- firearm | | | | wa |
| 252 | photo- firearm | | | | wa |
| 253 | Photo- Firearm | | | | wa |
| 254 | Photo- Ammunition | | | | wa |
| 255 | Photo- fire arm-open | | | | wa |
| 256 | Photo- fire arm | | | | wa |
| 257 | Photo- Ammunition | | | | wa |
| 258 | Photo- Ammunition | | | | wa |
| 259 | Photo- Ammunition | | | | wa |
| 260 | Photo- hanging sweater | | | | wa |
| 261 | Photo- tag for clothing | | | | wa |
| 262 | Photo- Shelf & items | | | | wa |
| 263 | Photo- belts & hats on hook | | | | wa |
| 264 | Photo- black sweater | | | | wa |
| 265 | Photo- shoes on shelf | | | | wa |
| 266 | Photo- 1 pair of shoes | 2-18-20 | NO | 2-18-20 | wa |
| 267 | Intentionally left blank | | | | |

EXHIBIT(S) LIST

Case No: C328587-2&3

STATE OF NEVADA

VS. RAEKWON ROBERTSON & DAVONTAE Wheeler

STATE'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted |
|----------------|---------------------------------------|--------------|-----------|---------------|
| 267 | Intentionally left blank | | | |
| 268 | | | | |
| 269 | | | | |
| 270 | | | | |
| 271 | | | | |
| 272 | | | | |
| 273 | | | | |
| 274 | | | | |
| 275 | | | | |
| 276 | Intentionally left blank | | | |
| 277 | Photo - yard | 2-14-20 | NO | 2-14-20 WA |
| 278 | Photo - 2 doorways | | | WA |
| 279 | Photo - doorway & courtyard | | | WA |
| 280 | Photo - door way (2F) | | | WA |
| 281 | Photo - doorway - inside view | | | WA |
| 282 | Photo - items on arm of couch | | | WA |
| 283 | Photo - Samsung phone | | | WA |
| 284 | Photo - Samsung phone - back | | | WA |
| 285 | Photo - pile of clothes | | | WA |
| 286 | Photo - black sweater/shirt & belt | | | WA |
| 287 | Photo - items & lighters on furniture | | | WA |
| 288 | Photo - items on arm of furniture | | | WA |
| 289 | Photo - gun holster & water bottle | | | WA |
| 290 | Photo - furniture | ✓ | ✓ | ✓ WA |
| 291 | Photo - part of firearm in furniture | 2-14-20 | NO | 2-14-20 WA |

EXHIBIT(S) LIST

Case No: C328587-2&3

STATE OF NEVADA

VS. RAEKWON ROBERTSON & DAVONTAE Wheeler

STATE'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted | |
|----------------|----------------------------|--------------|-----------|---------------|----|
| 292 | Photo - Millennium firearm | 2-14-20 | NO | 2-14-20 | WA |
| 293 | Photo - " " | ↓ | ↓ | ↓ | WA |
| 294 | Photo - " " | ↓ | ↓ | ↓ | WA |
| 295 | Photo - " " | ↓ | ↓ | ↓ | WA |
| 296 | Photo - part of firearm | ↓ | ↓ | ↓ | WA |
| 297 | Photo - part of firearm | ↓ | ↓ | ↓ | WA |
| 298 | Photo - " " + Ammunition | ↓ | ↓ | ↓ | WA |
| 299 | Photo - ammunition | ↓ | ↓ | ↓ | WA |
| 300 | Photo - closet doorway | ↓ | ↓ | ↓ | WA |
| 301 | Photo - bullet in floor | ↓ | ↓ | ↓ | WA |
| 302 | Photo - " " " | ↓ | ↓ | ↓ | WA |
| 303 | Photo - 2 bullets | ↓ | ↓ | ↓ | WA |
| 304 | Photo - 1 bullet | ↓ | ↓ | ↓ | WA |
| 305 | Photo - 1 Bullet | ↓ | ↓ | ↓ | WA |
| 306 | Photo - marked part of gun | ↓ | ↓ | ↓ | WA |
| 307 | Photo - metric ruler | ↓ | ↓ | ↓ | WA |
| 308 | Photo - Kitchen | 2-14-20 | NO | 2-14-20 | WA |
| 309 | Photo - Hat | 2-14-20 | NO | 2-14-20 | WA |
| 310 | Photo - Inside of Hat | ↓ | ↓ | ↓ | WA |
| 311 | Photo - Floor + Items | ↓ | ↓ | ↓ | WA |
| 312 | Photo - Nike air shoes | 2-14-20 | No | 2-14-20 | WA |
| 313 | Photo - nike air shoes | ↓ | ↓ | ↓ | WA |
| 314 | Photo - red shoes - side | ↓ | ↓ | ↓ | WA |
| 315 | Photo - " " " | ↓ | ↓ | ↓ | WA |
| 316 | Photo - Inside of shoe | 2-14-20 | NO | 2-14-19 | WA |

EXHIBIT(S) LIST

Case No: C328587-2&3

STATE OF NEVADA

VS.

RAEKWON ROBERTSON & DAVONTAE

Wheeler

STATE'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted | |
|----------------|------------------------------------|--------------|-----------|---------------|----|
| 317 | Photo- 2G | 2-14-20 | NO | 2-14-20 | wa |
| 318 | Photo- 2G doorway | ↓ | ↓ | ↓ | wa |
| 319 | Photo- living room | 2-14-20 | NO | 2-14-20 | wa |
| 320 | Photo- Still- Market | 2-13-20 | NO | 2-13-20 | wa |
| 321 | Photo- Still- inside market | ↓ | ↓ | ↓ | wa |
| 322 | Photo- Still- 6 people in market | ↓ | ↓ | ↓ | wa |
| 323 | Photo- " " " " " | ↓ | ↓ | ↓ | wa |
| 324 | Photo- " " " " " | ↓ | ↓ | ↓ | wa |
| 325 | Photo- Still- 5 Vehicles - Chevron | 2-13-20 | NO | 2-13-20 | wa |
| 326 | Photo- Social media post | 2-19-20 | NO | 2-19-20 | wa |
| 327 | CD- Calleja BWC | 2-13-20 | STIP | 2-13-20 | wa |
| 328 | CD- 9 clips - shortline express | 2-13-20 | NO | 2-13-20 | wa |
| 329 | CD- Boyel BWC | 2-13-20 | NO | 2-13-20 | wa |
| 330 | CD- 911 call | 2-13-20 | NO | 2-13-20 | wa |
| 331 | CD | 2-13-20 | NO | 2-13-20 | wa |
| 332 | DMV records | 2-14-20 | NO | 2-14-20 | wa |
| 333 | Photo- Samsung Phone | 2-14-20 | NO | 2-14-20 | wa |
| 334 | Photo- back of Samsung phone | ↓ | ↓ | ↓ | wa |
| 335 | Photo- Samsung phone - on | ↓ | ↓ NO | ↓ | wa |
| 336 | Photo- Message on phone | 2-14-20 | obj | 2-14-20 | wa |
| 337 | GPA - sealed | 2-14-20 | obj | 2-14-20 | wa |
| 338 | Photo- evidence envelope | 2-18-20 | NO | 2-18-20 | wa |
| 339 | Photo- back of evidence envelope | ↓ | ↓ | ↓ | wa |
| 340 | Photo- phone | ↓ | ↓ | ↓ | wa |
| 341 | Photo- back of phone (zte) | 2-18-20 | NO | 2-18-20 | wa |

EXHIBIT(S) LIST

Case No: C328587-2&3

STATE OF NEVADA

VS. RAEKWON ROBERTSON & DAVONTAE *Wheller*

STATE'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted | |
|----------------|--|--------------|-----------|---------------|----|
| 342 | Photo - HomeScreen of Phone | 2-18-20 | NO | 2-18-20 | WA |
| 343 | Photo - Photo of two people in phone | ↓ | ↓ | ↓ | WA |
| 344 | Photo - Memory Card Slot | 2-18-20 | NO | 2-18-20 | WA |
| 345 | Photo - Phone - Messaging - Side | 2-18-20 | NO | 2-18-20 | WA |
| 346 | Photo - Phone - History | ↓ | ↓ | ↓ | WA |
| 347 | Photo - Phone - History | 2-18-20 | NO | 2-18-20 | WA |
| 348 | Photo - Evidence Envelope | 2-18-20 | NO | 2-18-20 | WA |
| 349 | Photo - back of Evidence Envelope | ↓ | ↓ | ↓ | WA |
| 350 | Photo - open Samsung phone | ↓ | ↓ | ↓ | WA |
| 351 | Photo - Samsung battery | ↓ | ↓ | ↓ | WA |
| 352 | Photo - Phone - battery removed | 2-18-20 | NO | 2-18-20 | WA |
| 353 | Web History | 2-18-20 | NO | 2-18-20 | WA |
| 354 | Photo - Evidence Envelope | 2-18-20 | NO | 2-18-20 | WA |
| 355 | Photo - back of Evidence Envelope | ↓ | ↓ | ↓ | WA |
| 356 | Photo - Samsung phone | ↓ | ↓ | ↓ | WA |
| 357 | Photo - back of Samsung phone | ↓ | ↓ | ↓ | WA |
| 358 | Photo - Open Samsung phone | ↓ | ↓ | ↓ | WA |
| 359 | Photo - Phone - removed battery | ↓ | ↓ | ↓ | WA |
| 360 | Photo - Phone - Messaging - Kay Logan | ↓ | ↓ | ↓ | WA |
| 361 | Photo - Phone - Messaging - Youngsacre verse | 2-18-20 | NO | 2-18-20 | WA |
| | | | | | |
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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

COURT'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted | |
|----------------|--|--------------|-----------|---------------|----|
| 1 | JURY LIST | 2-12-20 | | 2-12-20 | wt |
| 2 | Juror Notebook | 2-13-20 | | 2-13-20 | wt |
| 3 | Question from juror #7 - asked | 2-13-20 | | 2-13-20 | wt |
| 4 | Defendant's proposed instructions (not used) | 2-19-20 | | 2-19-20 | wt |
| 5 | foreperson | 2-19-20 | | 2-19-20 | wt |
| 6 | State's closing PP PP | 2-20-20 | | 2-20-20 | wt |
| 7 | State's rebuttal PP PP | ↓ | | ↓ | wt |
| 8 | Closing PP (Robertson) | 2-20-20 | | 2-20-20 | wt |
| 9 | Question from foreperson during deliberation | 2-20-20 | | 2-20-20 | wt |
| 10 | Question from juror #5 during deliberation | 2-24-20 | | 2-24-20 | wt |
| 11 | States opening Powerpoint | 2-14-20 | | 2-14-20 | wt |
| | | | | | |
| | | | | | |
| | | | | | |
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| | | | | | |
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