

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON ROBERTSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 81400

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Michelle Leavitt, District Judge
District Court No. C-17-328587-2

APPELLANT'S APPENDIX
VOL. 1 OF 7

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Attorney for Appellant Raekwon Robertson

Electronically Filed
Nov 12 2020 05:31 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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Transcript- Jury Trial, Day 8	7	AA001634	2/24/20

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Transcript- Status Check, Homicide Trial	1	AA000072	6/6/18
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Transcript- Status Check, Trial Setting	1	AA000007	1/19/18
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Transcript-Status Check, Trial Readiness	1	AA000129	12/18/19
Transcript-Status Check, Trial Readiness	1	AA000132	1/15/20
Verdict	7	AA001632	2/24/20


CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 21st of October, 2020, a copy of the foregoing Appendix was served by electronic filing as follows:

District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

Nevada Attorney General
100 N. Carson St.
Carson City NV 89701

DATED this 21st of October, 2020.



Michael Sanft, Esq. (8245)
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Attorney for Appellant Raekwon
Robertson

ORIGINAL

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

DEC 14 2017

BY, Nancy Maldonado
NANCY MALDONADO, DEPUTY

C-17-328587-2
IND
Indictment
4706313



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO: C-17-328587-2

-vs-

DEPT NO: III

DEMARIO LOFTON-ROBINSON, aka,
Demario Loftonrobinson, #5318925
RAEKWON SETREY ROBERTSON,
aka, Raekwon Robertson, #8252804
DAVONTAE AMARRI WHEELER,
#5909081

INDICTMENT

Defendant(s).

STATE OF NEVADA }
COUNTY OF CLARK } ss.

The Defendant(s) above named, DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson, RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, DAVONTAE AMARRI WHEELER, accused by the Clark County Grand Jury of the crime(s) of BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060 - NOC 50426); CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147); ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138); ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165 - NOC 50145) and MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS

1 200.010, 200.030, 193.165 - NOC 50001), committed at and within the County of Clark, State
2 of Nevada, on or between August 2, 2017 and August 9, 2017, as follows:

3 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

4 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
5 about August 2, 2017 willfully, unlawfully, and feloniously enter, with intent to commit a
6 felony, to wit: robbery, that certain business occupied by FIESTA DISCOUNT MARKET
7 AND SMOKE SHOP, located at 701 West Charleston Boulevard, Las Vegas, Clark County,
8 Nevada, while possessing and/or gaining possession of a handgun, a deadly weapon, during
9 the commission of the crime and/or before leaving the structure.

10 COUNT 2 - CONSPIRACY TO COMMIT ROBBERY

11 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
12 about August 2, 2017 willfully, unlawfully, and feloniously conspire with ANTONIO JONES
13 to commit a robbery, by the conspirators committing the acts as set forth in Counts 3 and 4,
14 said acts being incorporated by this reference as though fully set forth herein.

15 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

16 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
17 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
18 personal property, to wit: a wallet, cellular telephone, and makeup case, from the person of
19 MARIAH ROMATKO, or in her presence, by means of force or violence, or fear of injury to,
20 and without the consent and against the will of MARIAH ROMATKO, with use of a deadly
21 weapon, to wit: a handgun, the Defendant being criminally liable under one or more of the
22 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
23 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
24 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
25 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
26 crime, with the intent that this crime be committed.

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1 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
3 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
4 personal property, to wit: U.S. Currency, from the person of AGNES STEIN, or in her
5 presence, by means of force or violence, or fear of injury to, and without the consent and
6 against the will of AGNES STEIN, with use of a deadly weapon, to wit: a handgun, the
7 Defendant being criminally liable under one or more of the following principles of criminal
8 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the
9 commission of this crime, with the intent that this crime be committed, by counseling,
10 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
11 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
12 crime be committed.

13 COUNT 5 - CONSPIRACY TO COMMIT ROBBERY

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

20 COUNT 6 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

21 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
22 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI
23 WHEELER, did, on or about August 9, 2017, willfully, unlawfully, and feloniously attempt to
24 take personal property, to wit: U.S. Currency and/or property, from the person of GABRIEL
25 VALENZUELA, or in his presence, by means of force or violence, or fear of injury to, and
26 without the consent and against the will of GABRIEL VALENZUELA, by pointing a firearm
27 at the said GABRIEL VALENZUELA and demanding said U.S. Currency and/or property,
28 with use of a deadly weapon, to wit: a firearm, the Defendants being criminally liable under

1 one or more of the following principles of criminal liability, to wit: (1) by directly committing
2 this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that
3 this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or
4 otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to
5 commit this crime, with the intent that this crime be committed, Defendant and/or DEMARIO
6 LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON
7 and/or unknown co-conspirators aiding or abetting and/or conspiring by Defendant and/or
8 DEMARIO LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON
9 ROBERTSON and/or unknown co-conspirators acting in concert throughout.

10 COUNT 7 - MURDER WITH USE OF A DEADLY WEAPON

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

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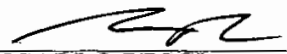
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1 commanding, inducing, and/or otherwise procuring the other to commit the crime; and/or (3)
2 pursuant to a conspiracy to commit murder and/or robbery; Defendants and/or unknown co-
3 conspirators aiding or abetting and/or conspiring by Defendants and/or unknown co-
4 conspirators acting in concert throughout.

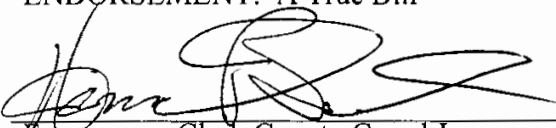
5 DATED this 13th day of December, 2017.

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

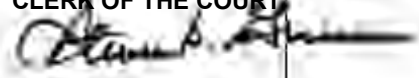
9 BY


10 GIANCARLO PESCI
11 Chief Deputy District Attorney
12 Nevada Bar #007135

13 ENDORSEMENT: A True Bill

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



1 **RTRAN**

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-17-328587
DEPT. XX

10 vs.

11 DEMARIO LOFTON-ROBINSON,
12 AKA, DEMARIO LOFTONROBINSON,
13 RAEKWON SETREY ROBERTSON,
14 AKA, RAEKWON ROBERTSON,
15 DAVONTAE AMARRI WHEELER,
16 Defendants.

17 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE
18 TUESDAY, JANUARY 09, 2018

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21 **RECORDER'S TRANSCRIPT OF HEARING:**
22 **STATUS CHECK: TRIAL SETTING**

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25 SEE APPEARANCES ON PAGE 2

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

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APPEARANCES:

For the State:	GIANCARLO PESCI Deputy District Attorney
For Defendant Lofton-Robinson:	SCOTT L. BINDRUP Chief Deputy Special Public Defender
For Defendant Robertson:	MACE J. YAMPOLSKY, ESQ.
For Defendant Wheeler:	JAMES J. RUGGEROLI, ESQ.

1 [Las Vegas, Nevada, Tuesday, January 09, 2018, at 9:52 a.m.]

2

3 THE COURT: State of Nevada versus Demario Lofton-
4 Robinson, Raekwon Robertson, and Davonte Wheeler, case number
5 C328587. Counsel, please note your appearances for the record.

6 MR. RUGGEROLI: Good morning, Your Honor. James
7 Ruggeroli appearing on behalf of Mr. Wheeler. He's present in custody.

8 MR. YAMPOLSKY: Mace Yampolsky appearing with
9 Raekwon Robertson. He's present in custody.

10 MR. BINDRUP: Scott Bindrup on behalf of Lofton-Robinson.

11 MR. PESCI: Giancarlo Pesci on behalf of the State.

12 THE COURT: Okay, I'm showing this as the time to do a trial
13 setting. This was indicted in December, is that correct?

14 MR. PESCI: Yes, Your Honor.

15 THE COURT: Okay. How long had the defendants been in
16 custody prior to the indictment?

17 MR. PESCI: I think the arrest date was in August.

18 THE COURT: Okay. All right, have the parties talked at all as
19 to a trial setting date?

20 MR. BINDRUP: No.

21 MR. RUGGEROLI: No.

22 THE COURT: Okay. Well let me hear -- Mr. Ruggeroli, you're
23 standing at the desk and closest to me, I'll let you -- do you have any
24 thoughts?

25 MR. RUGGEROLI: Judge, other than April, my calendar is

1 pretty open.

2 THE COURT: Okay. Mr. Bindrup.

3 MR. BINDRUP: I'd ask for an October 15th trial setting. I have
4 another matter, it's a capital case on that same date. And, quite frankly,
5 I think this particular case will be trial ready. And the other one I have a
6 question on at this juncture, but I'd like to at least be in a posture if -- for
7 something to go on that date.

8 THE COURT: Mr. Yampolsky.

9 MR. YAMPOLSKY: I'm reasonably flexible, but I would
10 request at least May.

11 THE COURT: Okay. All right, what's your schedule during
12 the summer, Mr. Bindrup?

13 MR. BINDRUP: Not good unless you set something like
14 September, maybe, which is only -- I mean, realistically, with the
15 October 15th work for other Counsel.

16 THE COURT: Okay. I mean --

17 MR. PESCI: Fine with the State.

18 THE COURT: I'm generally like to -- with these cases not do
19 anything more out than a year from when they're arrested, which is
20 August. What's your calendar look like in June -- or July or August, Mr.
21 Bindrup?

22 MR. BINDRUP: Not good. But give me a date, and I'll try to
23 make it work.

24 THE COURT: How many days do we think this one will take?

25 MR. BINDRUP: Two weeks.

1 MR. PESCI: I agree with that.

2 THE COURT: Okay.

3 THE CLERK: How about July 30th for trial?

4 THE COURT: Mr. Ruggeroli?

5 MR. RUGGEROLI: Judge, that's fine.

6 THE COURT: Mr. Yampolsky?

7 MR. YAMPOLSKY: Sounds okay for me.

8 THE COURT: All right.

9 MR. BINDRUP: You know my response already, Judge.

10 THE COURT: I'm concerned about, you know, getting the
11 defendants. If their Counsel indicate they're going to be ready to trial
12 especially since -- like I said, it's a general rule; I'd like to keep it.
13 People are in custody, and I hate things to drag past a year unless it's
14 necessary. And, obviously, sometimes it is but let's go ahead and we'll
15 work on that basis.

16 How are we doing with discovery?

17 MR. PESCI: We provided everything that we have.

18 THE COURT: Okay. Any issues that you guys have right now
19 with the discovery that's been provided, Mr. Ruggeroli?

20 MR. RUGGEROLI: Judge, I know that we've requested
21 ballistics' testing specifically on a firearm that was allegedly obtained
22 from either my client's residence or a family member's. I haven't heard
23 back; I'm sure the State is working on it, but that is something that's very
24 important to us.

25 MR. PESCI: I don't have it completed.

1 THE COURT: Okay, but are you working on it?

2 MR. PESCI: I believe that the forensic request had been
3 done. I can't speak specifically to which thing he's asking for, but I
4 believe forensics had been requested.

5 THE COURT: All right, forensics; ballistics.

6 Mr. Yampolsky, your perspective?

7 MR. YAMPOLSKY: Right now, I'm fine. I know my client
8 wanted to discuss a quote unquote evidentiary hearing. I'm happy to
9 discuss that with him. At this stage of the game, I don't know of any
10 evidentiary hearings that I would request. But I'm always working --

11 THE COURT: Okay. Well, I mean -- obviously, if something
12 comes up, you can file a motion and we'll deal with it. Any issues you
13 got with discovery?

14 MR. YAMPOLSKY: No.

15 THE COURT: All right. Mr. Bindrup, what's your perspective?

16 MR. BINDRUP: If you give us enough time for a status check
17 date, I'll try to -- again, got 3 or 4 individuals, plus a homicide detective
18 to do the vault, and then also with Mr. Pesci to do the file review. So if
19 you -- I know you like to set these within a month, but I don't think we'll
20 be able to coordinate schedules that quickly. So if you could put it out a
21 little bit longer, the status check.

22 THE COURT: What I'm going to do with this one is based
23 upon what I'm hearing, I'll put it out to the April stack for a status check.
24 I'll expect us to have the ballistics done, or a specific schedule as to
25 when those are going to be done by the April status check; that we do

1 any vault or evidence review with the State by that time; gives you plenty
2 of time to schedule it.

3 MR BINDRUP: So that would be April 4th, Your Honor?

4 THE CLERK: Will be April 5th at 8:30.

5 MR. BINDRUP: I ask for April 4th. It'll be -- no, I just have -- I
6 have other matters set April 4th, that's all.

7 THE CLERK: April 4th is a Wednesday.

8 THE COURT: No, no.

9 MR. BINDRUP: Oh, really? Okay, so it is -- it would be the
10 5th?

11 THE COURT: Yeah.

12 MR. BINDRUP: Okay, that's fine.

13 THE CLERK: In here.

14 MR. PESCI: Could we get a calendar call date?

15 THE CLERK: Not yet.

16 THE COURT: All right, go ahead and give everybody the
17 dates that they need.

18 THE CLERK: Okay. Calendar call is July 24th at 8:30; jury
19 trial, July 30th at nine a.m., and the status check is April 5th at 8:30.

20 MR. PESCI: Thank you very much.

21 MR. BINDRUP: And, Your Honor, the grand jury transcript, I
22 just barely got it. I got the copy to my client this morning. May I request
23 that we have 30 days from today in which to file a writ if we deem it
24 necessary?

25 THE COURT: Well, usually, it's 21 days. I mean, I can't

1 imagine there's a lot of surprise. What's the State's position?

2 MR. PESCI: I'll submit it, Judge.

3 MR. BINDRUP: So could we have 30 days from today?

4 THE COURT: All right, 30 days.

5 MR. BINDRUP: Thank you. I appreciate it.

6 MR. RUGGEROLI: That will apply to all defendants?

7 THE COURT: That will apply to all defendants.

8 MR. RUGGEROLI: Thank you, Judge.

9 THE COURT: Anything else?

10 MR. RUGGEROLI: No, Judge.

11 MR. PESCI: No. Thank you.

12 MR. RUGGEROLI: Thank you.

13 MR. BINDRUP: Thanks.

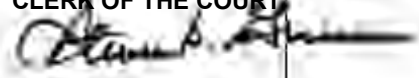
14 THE COURT: All right. Thank you, guys.

15 [Hearing concluded at 9:59 a.m.]

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

24 

25 Angie Calvillo
Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-17-328587
DEPT. XX

10 vs.

11 DEMARIO LOFTON-ROBINSON,
12 AKA, DEMARIO LOFTONROBINSON,
13 RAEKWON SETREY ROBERTSON,
14 AKA, RAEKWON ROBERTSON,
15 DAVONTAE AMARRI WHEELER,
16 Defendants.

17 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE
18 THURSDAY, APRIL 05, 2018

19
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21 **RECORDER'S TRANSCRIPT OF HEARING:**
22 **STATUS CHECK: HOMICIDE TRIAL**

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24
25 SEE APPEARANCES ON PAGE 2

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

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APPEARANCES:

For the State:	GIANCARLO PESCI Deputy District Attorney
For Defendant Lofton-Robinson:	SCOTT L. BINDRUP Chief Deputy Special Public Defender
For Defendants Wheeler and Robertson:	JAMES J. RUGGEROLI, ESQ.

1 [Las Vegas, Nevada, Thursday, April 05, 2018, at 10:39 a.m.]

2
3 THE COURT: State of Nevada versus Demario Lofton-
4 Robinson, Raekwon Robertson, and Davonte Wheeler, case number
5 C328587. Counsel, please note your appearances for the record.

6 MR. PESCI: Giancarlo Pesci on behalf of the State.

7 MR. RUGGEROLI: Good morning, Your Honor. James
8 Ruggeroni appearing on behalf of Mr. Wheeler who's present in custody.

9 MR. BINDRUP: Scott Bindrup on behalf of Mr. Lofton-
10 Robinson.

11 MR. RUGGEROLI: And, Judge, I can stand in for Mr. Sanft.

12 THE COURT: Okay.

13 MR. RUGGEROLI: If the Court would accept that.

14 THE COURT: All right. I'm showing this as a status check.

15 Mr. Ruggeroni, last time you stated you had requested
16 the ballistic testing on the firearm; Mr. Pesci indicated forensics had
17 been requested. Where do we, sort of, stand with that?

18 MR. RUGGEROLI: Judge, if you recall, we had filed a Petition
19 for Writ of Habeas Corpus. The State subsequently did obtain those
20 ballistic results; you have ordered them to return to the grand jury to
21 provide --

22 THE COURT: Oh, that's right. Okay, I remember this now, I
23 apologize.

24 MR. RUGGEROLI: Yeah. It's my understanding the State will
25 proceed within the next couple of weeks.

1 MR. PESCI: That's correct. We have time.

2 THE COURT: Okay. All right.

3 THE DEFENDANT WHEELER: Excuse me -- excuse me,
4 Your Honor, may I ask may I get a time exactly, a time to when --

5 THE COURT: I'm sorry, is this your client, Mr. Ruggeroli?

6 MR. RUGGEROLI: It is, Judge.

7 THE DEFENDANT WHEELER: That's my --

8 MR. RUGGEROLI: And we would request the time, date and
9 place of any proceedings so that I can fully advise my client of his right
10 to be present. I discussed that with him this morning. I'm sure Mr. Pesci
11 will provide me with those dates.

12 MR. PESCI: Assuming he signs a waiver and all those things.
13 Defense Counsel told me that his client is discussing the idea of possibly
14 testifying at the grand jury. We'll go through that process assuming
15 that's what he wants to do.

16 THE COURT: Okay. Well, I mean, you know the process in
17 which you need to do.

18 MR. PESCI: Yes.

19 THE COURT: So I'll leave that up -- but I will -- there is no
20 issue with informing them of the date of the proceeding?

21 MR. PESCI: Well he's got to sign a waiver, Judge.

22 THE COURT: Okay.

23 MR. PESCI: And so when he goes through that process -- it's
24 within the next two weeks and so he's got time to do that. He's already
25 been given a Marcum notice, so he's already on notice.

1 THE COURT: Okay, so the Marcum notice has been given?

2 MR. PESCI: That's correct.

3 THE COURT: Okay. All right. So your attorney can explain
4 to you the whole procedure as it relates. The key thing I was concerned
5 about was whether or not the Marcum notice had been provided.

6 MR. PESCI: Yeah, months and months ago.

7 THE COURT: Okay. All right. So you can talk with your
8 attorney in terms of what you want to do as far as appearing before the
9 grand jury.

10 [Colloquy between Mr. Ruggeroli and Defendant Wheeler]

11 MR. RUGGEROLI: Thank you, Judge.

12 THE COURT: Sure. All right.

13 And then, Mr. Bindrup, how's -- were you able to get the
14 vault review in?

15 [Colloquy between Mr. Pesci and Mr. Bindrup]

16 MR. BINDRUP: We did complete the vault review. We have
17 not done a -- we need to follow up with a file review with the DA's office.

18 THE COURT: Okay. All right, so we got the vault review at
19 least done. The file review is still to be done, right?

20 MR. BINDRUP: Right.

21 THE COURT: Okay. All right, any other forensics from the
22 State's side that you're aware of, Mr. Pesci?

23 MR. PESCI: No.

24 THE COURT: Okay, anything else from the Defense side in
25 terms of forensics that you think happened or you want?

1 MR. RUGGEROLI: Not at this point, Judge. We'll be
2 following up with everything.

3 THE COURT: All right, any discovery issues as far as -- with
4 the State at this point?

5 MR. RUGGEROLI: No, Judge.

6 THE COURT: Okay, anything I can help you with in terms of
7 getting records, investigation or anything like that?

8 MR. RUGGEROLI: Not at this point, Judge.

9 THE COURT: All right, we're set for trial at the end of July.
10 Let me hear from you, Mr. Bindrup. Do you concur with all those
11 comments by Mr. Ruggeroli?

12 MR. BINDRUP: Yes. Other than -- if there's going to be a
13 superseding than this, I do not expect that to be a valid trial date but
14 we'll see how it goes.

15 THE COURT: Okay. Well the superseding is not going to
16 dramatically change what's already out there, is it?

17 MR. PESCI: We'll see, Judge.

18 THE COURT: We'll see, okay. All right.

19 MR. PESCI: I mean, I have no new charges are pending. I
20 mean, you've ordered me as far as the firearm's report.

21 THE COURT: Right. Well we'll see what happens. All right,
22 we'll see what happens.

23 MR. PESCI: Things always change in cases especially with
24 co-defendants.

25 THE COURT: No, I understand. All right. So, you know,

1 that's up to the State in terms of how it wants to proceed in terms of the
2 charges, so we'll see what happens with that. All right. And, in fact,
3 because of that, why don't we go ahead; we'll set this then for a status
4 check on the May homicide stack, and that way -- you would anticipate
5 any new indictment by then?

6 MR. PESCI: Yes.

7 THE COURT: Okay, so that way we'll know where we're at, at
8 that point in time.

9 THE CLERK: May 3rd at 8:30.

10 MR. RUGGEROLI: Thank you, Judge.

11 MR. PESCI: Thank you.

12 MR. BINDRUP: Thank you.

13 [Hearing concluded at 10:45 a.m.]
14
15

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

18 

19 Angie Calvillo
20 Court Recorder/Transcriber
21
22
23
24
25

ORIGINAL

1 IND

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

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

APR 19 2018

BY

DULCE MARIE ROMEA, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

CASE NO: C-17-328587-2

11 -vs-

DEPT NO: XX

12 DEMARIO LOFTON-ROBINSON, aka,
13 Demario Loftonrobinson, #5318925
14 RAEKWON SETREY ROBERTSON,
15 aka, Raekwon Robertson, #8252804
16 DAVONTAE AMARRI WHEELER,
17 #5909081

SUPERSEDING
INDICTMENT

18 Defendant(s).

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

19 The Defendant(s) above named, DEMARIO LOFTON-ROBINSON, aka, Demario
20 Loftonrobinson, RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson,
21 DAVONTAE AMARRI WHEELER, accused by the Clark County Grand Jury of the crime(s)
22 of BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS
23 205.060 - NOC 50426); CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS
24 200.380, 199.480 - NOC 50147); ROBBERY WITH USE OF A DEADLY WEAPON
25 (Category B Felony - NRS 200.380, 193.165 - NOC 50138); ATTEMPT ROBBERY WITH
26 USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165 - NOC
27 50145) and MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS

28 C-17-328587-2
SIND
Superseding Indictment
4739689



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AA000022

1 200.010, 200.030, 193.165 - NOC 50001), committed at and within the County of Clark, State
2 of Nevada, on or between August 2, 2017 and August 9, 2017, as follows:

3 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

4 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
5 about August 2, 2017 willfully, unlawfully, and feloniously enter, with intent to commit a
6 felony, to wit: robbery, that certain business occupied by FIESTA DISCOUNT MARKET
7 AND SMOKE SHOP, located at 701 West Charleston Boulevard, Las Vegas, Clark County,
8 Nevada, while possessing and/or gaining possession of a handgun, a deadly weapon, during
9 the commission of the crime and/or before leaving the structure.

10 COUNT 2 - CONSPIRACY TO COMMIT ROBBERY

11 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
12 about August 2, 2017 willfully, unlawfully, and feloniously conspire with ANTONIO JONES
13 to commit a robbery, by the conspirators committing the acts as set forth in Counts 3 and 4,
14 said acts being incorporated by this reference as though fully set forth herein.

15 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

16 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
17 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
18 personal property, to wit: a wallet, cellular telephone, and makeup case, from the person of
19 MARIAH ROMATKO, or in her presence, by means of force or violence, or fear of injury to,
20 and without the consent and against the will of MARIAH ROMATKO, with use of a deadly
21 weapon, to wit: a handgun, the Defendant being criminally liable under one or more of the
22 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
23 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
24 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
25 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
26 crime, with the intent that this crime be committed.

27 //

28 //

1 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
3 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
4 personal property, to wit: U.S. Currency, from the person of AGNES STEIN, or in her
5 presence, by means of force or violence, or fear of injury to, and without the consent and
6 against the will of AGNES STEIN, with use of a deadly weapon, to wit: a handgun, the
7 Defendant being criminally liable under one or more of the following principles of criminal
8 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the
9 commission of this crime, with the intent that this crime be committed, by counseling,
10 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
11 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
12 crime be committed.

13 COUNT 5 - CONSPIRACY TO COMMIT ROBBERY

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

20 COUNT 6 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

21 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
22 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI
23 WHEELER, did, on or about August 9, 2017, willfully, unlawfully, and feloniously attempt to
24 take personal property, to wit: U.S. Currency and/or property, from the person of GABRIEL
25 VALENZUELA, or in his presence, by means of force or violence, or fear of injury to, and
26 without the consent and against the will of GABRIEL VALENZUELA, by pointing a firearm
27 at the said GABRIEL VALENZUELA and demanding said U.S. Currency and/or property,
28 with use of a deadly weapon, to wit: a firearm, the Defendants being criminally liable under

1 one or more of the following principles of criminal liability, to wit: (1) by directly committing
2 this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that
3 this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or
4 otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to
5 commit this crime, with the intent that this crime be committed, Defendant and/or DEMARIO
6 LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON
7 and/or unknown co-conspirators aiding or abetting and/or conspiring by Defendant and/or
8 DEMARIO LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON
9 ROBERTSON and/or unknown co-conspirators acting in concert throughout.

10 COUNT 7 - MURDER WITH USE OF A DEADLY WEAPON

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

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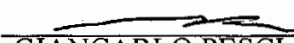
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1 commanding, inducing, and/or otherwise procuring the other to commit the crime; and/or (3)
2 pursuant to a conspiracy to commit murder and/or robbery; Defendants and/or unknown co-
3 conspirators aiding or abetting and/or conspiring by Defendants and/or unknown co-
4 conspirators acting in concert throughout.

5 DATED this 18th day of April, 2018.

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

9 BY


10 GIANCARLO PESCI
11 Chief Deputy District Attorney
12 Nevada Bar #007135

13 ENDORSEMENT: A True Bill

14
15 
16 Foreperson, Clark County Grand Jury

Names of Witnesses and testifying before the Grand Jury:

CODY, LORA – LVMPD #7294

DOSCH, MITCHELL – LVMPD #7907

FLETCHER, SHAWN – LVMPD #5221

JAEGER, RYAN – LVMPD #5587

LESTER, ANYA, LVMPD

MASON, ROBERT – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

NEWMAN, JAMES – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

RELATO, JOHN – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

SIMMS, DR. LARY – ME#0002

SPAHN, NICKOLAUS – SHORT LINE EXPRESS – 7325 S. JONES BLVD, LV NV

SPEAS, WILLIAM – LVMPD #5228

STEIN, AGNES – FIESTA DISCOUNT MARKET-7010 W. CHARLESTON BLVD, LV NV

TAPAY, GLEZZELLE, LVMPD #15709

Additional Witnesses known to the District Attorney at time of filing the Indictment:

CHARLTON, NOREEN – LVMPD #13572

CUSTODIAN OF RECORDS - CCDC

CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS - LVMPD RECORDS

CUSTODIAN OF RECORDS – SHORTLINE EXPRESS – 7325 S. JONES BLVD, LV NV

ROMATKO, MARIAH – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

17BGJ017A-C/17F14369A-C/mc - GJ
LVMPD EV#1708024571; 1708090029
(TK3)

CLARK COUNTY, NEVADA

DISTRICT COURT

Defendants.

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) GJ Case No. 17BGJ017A-C
) DC Case No. C328587

11:11 a.m.

SUPERSEDING INDICTMENT

Reported by: Donna J. McCord, C.C.R. No. 337

1 GRAND JURORS PRESENT ON APRIL 18, 2018:

2
3 WILLIAM DUMKE, Foreperson

4 CHARLES STANKOSKY, Deputy Foreperson

5 TOBIE SPERRY, Secretary

6 ANGELA MOORE, Assistant Secretary

7 RODNEY ALLISON

8 GEORGE CHEESMAN

9 FRANK COOMBS

10 LADYHAWK FREEMAN

11 VICTORIA GUY

12 MARGARET LAAS

13 ROJEAN LOGAN

14 NANCY SCHERER

15 EDWARD WAGNER

16 COURTNEY WILLIAMS

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21 Also present at the request of the Grand Jury:

22 Giancarlo Pesci

23 Chief Deputy District Attorney

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INDEX OF WITNESSES

EXAMINED

ANYA LESTER

7

MITCHELL DOSCH

15

INDEX OF EXHIBITSGRAND JURY EXHIBITSIDENTIFIED

EXHIBIT 2 - REPORT

7

1 LAS VEGAS, NEVADA, APRIL 18, 2018

2 * * * * *

3
4 DONNA J. McCORD,

5 having been first duly sworn to faithfully
6 and accurately transcribe the following
7 proceedings to the best of her ability.
8

9 MR. PESCI: Ladies and gentlemen of the
10 Grand Jury, my name is Giancarlo Pesci. I'm here on
11 Grand Jury number 17BGJ017A through C. I'm not sure if
12 you have transcripts from your prior proceedings,
13 specifically on November 29th, 2017, and then also
14 December 13th, 2017.

15 At the conclusion of those presentations
16 you found probable cause as to all of the defendants and
17 all of the charges. Subsequent to that presentation
18 some additional evidence was processed by the forensic
19 lab. I'm now going to present witnesses associated with
20 that subsequent information and then ask you to then
21 determine if there is probable cause for the defendants
22 and those charges.

23 State calls Anya Lester.

24 THE FOREPERSON: Please raise your right
25 hand.

1 You do solemnly swear that the testimony
2 that you're about to give upon the investigation now
3 pending before this Grand Jury shall be the truth, the
4 whole truth, and nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE FOREPERSON: Please be seated.

7 You're advised that you're here today to
8 give testimony in the investigation pertaining to the
9 offenses of burglary while in possession of a firearm,
10 conspiracy to commit robbery, robbery with use of a
11 deadly weapon, attempt robbery with the use of a deadly
12 weapon, murder with use of a deadly weapon involving
13 Demario Lofton-Robinson, Raekwon Robertson and Davontae
14 Wheeler.

15 Do you understand this advisement?

16 THE WITNESS: I do.

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

19 THE WITNESS: My name is Anya Lester,
20 A-N-Y-A, Lester, L-E-S-T-E-R.

21

22 **ANYA LESTER,**

23 having been first duly sworn by the Foreperson of the
24 Grand Jury to testify to the truth, the whole truth
25 and nothing but the truth, testified as follows:

EXAMINATION

BY MR. PESCI:

Q Ma'am, I want to show you Grand Jury Exhibit Number 2 and ask you if you recognize that?

A Yes, I do.

Q Would you mind if I sit over here?

A Not at all.

Q And how do you recognize that?

A This is a copy of a report that I wrote on this event.

Q Were you asked to examine some firearms and some firearms-related evidence in relation to the event number 170809-0029?

A Yes, I was.

Q And did you generate this report on January the 22nd of 2018?

A Yes, I did.

Q In this report did you give results of your examination?

A Yes, I did.

Q And what exactly do you do with Metro?

A I am a forensic scientist in the forensic laboratory in the firearms and toolmarks analysis unit.

Q And somewhat quickly, what's your training and experience that brings you to this position?

1 A I have a bachelor of science degree in
2 forensic science. I was hired with Metro in 2008 as a
3 forensic lab aid, and in 2009 I promoted into the
4 forensic scientist position. I performed a two-year
5 training program there when I got promoted into that
6 position, and when I successfully completed that program
7 I began my own independent case work and that was in the
8 spring of 2011.

9 Q Have you testified as a firearms expert or
10 in regards to firearms testimony here at the Grand Jury,
11 in Justice Court and in District Court?

12 A Yes, I have.

13 Q Okay. Now, directing your attention to
14 this particular report, in this particular investigation
15 did you review and look into three firearms?

16 A Yes, I did.

17 Q What were the three firearms?

18 A I was asked to examine a Taurus model PT-22
19 .22 long rifle caliber semiautomatic pistol, also one
20 Taurus model PT-145 Pro Millennium .45 auto caliber
21 semiautomatic pistol, and one Star .45 auto caliber
22 semiautomatic pistol and that one had an unknown model
23 number.

24 Q Those are the firearms; is that correct?

25 A That is correct.

1 Q Were you asked also to look at
2 firearm-related evidence being cartridge cases and
3 bullets?

4 A Yes, I was.

5 Q I'm going to retrieve State's 2. Do you
6 see over your left shoulder that particular document?
7 So now the Grand Jurors can see it.

8 A Yes.

9 Q Okay. When you reviewed those three
10 firearms, did you test fire them and see that they were
11 operable?

12 A Yes, I did.

13 Q And then did you take some cartridge cases
14 and some bullets and bullet fragments and see if they
15 came from any of these three firearms?

16 A Yes. I took the test fired cartridge cases
17 and test fired bullets that I fired from the submitted
18 firearms and performed a microscopic comparison to the
19 evidence bullets and cartridge cases to make a
20 determination as to which, if any, of those firearms
21 that those items were fired from.

22 Q When a firearm shoots a bullet, for lack of
23 a better term, are there unique characteristics or
24 markings that are left behind on the bullet and on the
25 cartridge case from a particular firearm?

1 A Yes.

2 Q And did you make those comparisons with
3 these three firearms to those cartridge cases and the
4 bullets in this case?

5 A Yes, I did.

6 Q What were your results, your
7 determinations?

8 A In my results I had one cartridge case that
9 was identified as having been fired from the Taurus
10 model PT-22 .22 long rifle caliber.

11 Q Let me stop you there for a second.

12 A Yes.

13 Q So on the actual report, for the benefit of
14 the Grand Jurors, does this correspond to what's
15 referred to as lab item number 11?

16 A Yes, that was the one I was just referring
17 to.

18 Q Okay. And then proceed, I'm sorry.

19 A Yes. So I did identify one cartridge case
20 as having been fired by that Taurus pistol, the one that
21 is lab item 11, the PT-22 .22 long rifle caliber pistol.

22 Q So it's a .22 caliber pistol?

23 A That is correct.

24 Q And that's item number 11?

25 A Yes, sir.

1 Q All right. So one of those cartridge cases
2 was fired by that particular firearm?

3 A I did identify it as so, yes.

4 Q Okay. Then moving to what's referred to as
5 number 14, tell us about that firearm and what your
6 results were.

7 A So number 14, which was the Taurus model
8 PT-145 Pro Millennium .45 auto caliber pistol, I test
9 fired that firearm as well, compared those test fired
10 bullets and cartridge cases to the bullets and cartridge
11 cases that I had received as evidence and I determined
12 that none of the evidence bullets and cartridge cases
13 were fired from that particular firearm.

14 Q Then moving to what's referred to as lab
15 item number 20, what firearm is that and what were the
16 results as far as your comparison?

17 A Yes, that was the Star .45 auto caliber
18 semiautomatic pistol. I was able to identify three
19 submitted evidence cartridge cases as having been fired
20 from that pistol as well as two submitted bullets that I
21 also identified as having been fired from that pistol.

22 Q Okay. And then did you also have some
23 metal fragments that you were looking at?

24 A I had some metal fragments, yes.

25 Q And what were your results?

1 A Those metal fragments, they were
2 inconclusive. I had the very small fragments that are
3 listed up there as lab item 22. They were just very
4 small pieces of metal and had no marks on them for me to
5 compare. I did also have the one additional bullet and
6 that bullet was item 23. And due to the damage on that
7 bullet I was able to say that it was similar to the test
8 fired bullets from the Taurus model PT-22 .22 long rifle
9 caliber pistol, but I was unable to identify it
10 conclusively due to the damage.

11 Q So the damage that the bullet receives from
12 hitting an item can make it such that you cannot make a
13 comparison?

14 A That I could not make a comparison, yes, or
15 not make a conclusion depending on the damage.

16 Q I apologize, you can make a comparison but
17 you might not necessarily be able to make a conclusion.

18 A That's correct. I would say its
19 inconclusive.

20 MR. PESCI: Are there any questions from
21 the ladies and gentlemen of the Grand Jury?

22 BY A JUROR:

23 Q You testified that you compared it to
24 bullets, shell casings and fragments which you had
25 received as evidence. You received these from where?

1 A I received the evidence from my evidence
2 technicians at our evidence vault directly in our
3 laboratory.

4 Q Thank you. The next question is the
5 firearms you were comparing them to, you received the
6 firearms from where?

7 A From that same place, our evidence
8 technicians at our evidence vault securely move those to
9 me.

10 Q Thank you.

11 A You're welcome.

12 THE FOREPERSON: Any other questions?

13 By law these proceedings are secret and you
14 are prohibited from disclosing to anyone anything that
15 transpired before us including any evidence presented to
16 the Grand Jury, any event occurring or a statement made
17 in the presence of the Grand Jury or any information
18 obtained by the Grand Jury.

19 Failure to comply with this admonition is a
20 gross misdemeanor punishable up to 364 days in the Clark
21 County Detention Center and a \$2,000 fine. In addition
22 you may be held in contempt of court punishable by an
23 additional \$500 fine and 25 days in the Clark County
24 Detention Center.

25 Do you understand this admonition?

1 THE WITNESS: Yes, I do.

2 THE FOREPERSON: Thank you. You're
3 excused.

4 THE WITNESS: Thank you.

5 MR. PESCI: State calls Detective Dosch.

6 THE FOREPERSON: Please raise your right
7 hand.

8 You do solemnly swear that the testimony
9 that you're about to give upon the investigation now
10 pending before this Grand Jury shall be the truth, the
11 whole truth, and nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THE FOREPERSON: Please be seated.

14 THE WITNESS: Thank you.

15 THE FOREPERSON: You're advised that you're
16 here today to give testimony in the investigation
17 pertaining to the offenses of burglary while in
18 possession of a firearm, conspiracy to commit robbery,
19 robbery with use of a deadly weapon, attempt robbery
20 with use of a deadly weapon and murder with the use of a
21 deadly weapon involving Demario Lofton-Robinson, Raekwon
22 Robertson and Davontae Amarri Wheeler.

23 Do you understand this advisement?

24 THE WITNESS: I do.

25 THE FOREPERSON: Please state your first

1 and last name and spell both for the record.

2 THE WITNESS: My name is Mitchell,
3 M-I-T-C-H-E-L-L, Dosch, D-O-S-C-H.

4

5 MITCHELL DOSCH,

6 having been first duly sworn by the Foreperson of the
7 Grand Jury to testify to the truth, the whole truth
8 and nothing but the truth, testified as follows:

9

10 EXAMINATION

11 BY MR. PESCI:

12 Q Sir, are you a detective with the homicide
13 detail of the Metropolitan Police Department?

14 A Yes, I am.

15 Q Were you involved in the investigation of a
16 homicide that occurred on August 9th of 2017?

17 A Yes, I was.

18 Q Are you familiar with the event number
19 170809-0029?

20 A Yes, I am.

21 Q Over your left shoulder is Grand Jury
22 Exhibit Number 2 being displayed for the Grand Jurors to
23 see as well as you. Do you recognize that particular
24 report?

25 A Yes, I do.

1 Q Did this particular report come in after a
2 presentation had previously been done to this Grand
3 Jury?

4 A That's correct.

5 Q And this reflects firearms evidence that
6 was impounded during the course of this investigation?

7 A Yes, it does.

8 Q Do you recognize the impounding P numbers
9 or personnel numbers of the individuals that were
10 involved in this investigation?

11 A I do.

12 Q And do those indicate that these are
13 associated with this particular incident?

14 A Yes, it was.

15 Q When a piece of evidence is impounded, does
16 it get put into the Metropolitan Police Department's
17 vault?

18 A It does.

19 Q And then for a forensic analyst like Anya
20 Lester who just left, can she call that evidence up
21 which means it gets transported from your Metro vault to
22 her laboratory to examine?

23 A Yes, she can.

24 Q Are you familiar with that process?

25 A I am.

1 Q And in speaking of this particular report,
2 are you familiar with the firearms that were examined?

3 A I am.

4 Q I want you to look and see what's referred
5 to as lab item number 11. If you need to you can
6 actually retrieve that and look at it up close. It that
7 a .22 firearm that was found during the course of this
8 investigation?

9 A Yes, a .22 caliber semiautomatic pistol.

10 Q Was that recovered during an investigation
11 in this case at 6647 West Tropicana?

12 A Yes, it was.

13 Q And what individuals were associated with
14 that particular address?

15 A As far as that particular address it's Mr.
16 Robertson.

17 Q And then moving to lab item number 14, is
18 that in relation to a Taurus model .45 caliber handgun?

19 A It is.

20 Q And was that obtained during the course of
21 your investigation pursuant to a search warrant at a
22 Civic Center address?

23 A Yes, it was.

24 Q And are you familiar, as far as the
25 previous firearm, was that also pursuant to a search

1 warrant?

2 A Yes.

3 Q I apologize for not saying that earlier.

4 Then moving on to number 20, lab item number 20, is that
5 another .45 caliber handgun?

6 A It is.

7 Q Was that discovered pursuant to a search at
8 Bagpipe address?

9 A Yes, it was.

10 Q I failed to mention this earlier, the Civic
11 Center address, which individual of these was associated
12 with that Civic Center address?

13 A Mr. Wheeler.

14 Q And then as far as the Bagpipe address,
15 which individual was associated with that address?

16 A The brothers. I believe one of their last
17 names is hyphenated where as the other name is not, but
18 the brothers, Deshawn (sic) and Demario.

19 Q Now, at the particular scene itself were
20 you aware that there was .22 caliber cartridge cases?

21 A Yes.

22 Q When I say the scene, I apologize, the
23 scene of the murder where the individual was killed.

24 A Yes.

25 Q Were there also .45 caliber cartridge

1 cases?

2 A Yes, there was.

3 Q And pursuant to your investigation were you
4 looking for firearms of those calibers?

5 A Absolutely.

6 Q And is that what you found by way of the
7 search warrant?

8 A And recovered, yes.

9 Q And in your investigation in this case, did
10 you also see some video surveillance at a convenience
11 store just a few, about 30 minutes before the actual
12 murder?

13 A Yes.

14 Q In that video have you personally reviewed
15 it?

16 A Many times.

17 Q And did you see that one of the individuals
18 was open carrying a firearm on his hip?

19 A Yes, he was.

20 Q And then in your investigation was there a
21 vehicle at that convenience store that was notated as
22 far as its license plate and then a vehicle that was
23 told to you by a jogger in the area of the murder that
24 matched?

25 A It did.

1 Q Okay. Thank you very.

2 Any questions from the ladies and gentlemen
3 of the Grand Jury?

4 THE FOREPERSON: No questions.

5 By law these proceedings are secret and you
6 are prohibited from disclosing to anyone anything that
7 transpired before us including any evidence presented to
8 the Grand Jury, any event occurring or a statement made
9 in the presence of the Grand Jury or any information
10 obtained by the Grand Jury.

11 Failure to comply with this admonition is a
12 gross misdemeanor punishable up to 364 days in the Clark
13 County Detention Center and a \$2,000 fine. In addition
14 you may be held in contempt of court punishable by an
15 additional \$500 fine and 25 days in the Clark County
16 Detention Center.

17 Do you understand this admonition?

18 THE WITNESS: I do.

19 THE FOREPERSON: Thank you. You are
20 excused.

21 THE WITNESS: Thank you.

22 MR. PESCI: So ladies and gentlemen of the
23 Grand Jury, I think we need to make a record that I
24 believe George and Rodney, have you been able to read
25 these transcripts?

1 A JUROR: Yes.

2 MR. PESCI: Okay. So I'm leaving with you
3 a copy of those transcripts for your review and ask you
4 to take into consideration what you previously had given
5 to you plus this additional information and ask you if
6 you determine probable cause. Thank you.

7 (At this time, all persons, except the
8 members of the Grand Jury, exited the room at 11:27 and
9 returned at 11:30.)

10 THE FOREPERSON: Mr. District Attorney, by
11 a vote of 12 or more Grand Jurors a true bill has been
12 returned against defendants Demario Lofton-Robinson,
13 Raekwon Robertson, Davontae Amarri Wheeler, charging the
14 crimes of burglary while in possession of a firearm,
15 conspiracy to commit robbery, robbery with use of a
16 deadly weapon, attempt robbery with use of a deadly
17 weapon and murder with use of a deadly weapon in Grand
18 Jury case number 17BGJ017A.

19 We instruct you to prepare an Indictment in
20 conformance with the proposed Indictment previously
21 submitted to us.

22 MR. PESCI: Thank you very much. I'll grab
23 the transcripts. I assume you don't need them anymore.

24 (Proceedings concluded.)

25 --oo0oo--

REPORTER'S CERTIFICATE

STATE OF NEVADA)
 : ss
COUNTY OF CLARK)

I, Donna J. McCord, C.C.R. 337, do hereby
certify that I took down in Shorthand (Stenotype) all of
the proceedings had in the before-entitled matter at the
time and place indicated and thereafter said shorthand
notes were transcribed at and under my direction and
supervision and that the foregoing transcript
constitutes a full, true, and accurate record of the
proceedings had.

Dated at Las Vegas, Nevada,
April 28, 2018.

/S/DONNA J. MCCORD
Donna J. McCord, CCR 337

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding
TRANSCRIPT filed in GRAND JURY CASE NUMBER 17BGJ017A-C:

X Does not contain the social security number of any
person,

-OR-

___ Contains the social security number of a person as
required by:

A. A specific state or federal law, to-wit:
NRS 656.250.

-OR-

B. For the administration of a public program
or for an application for a federal or
state grant.

/S/DONNA J. MCCORD
Signature

April 28, 2018
Date

Donna J. McCord
Print Name

Official Court Reporter
Title

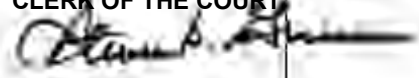
A JUROR: [1] 20/25 BY A JUROR: [1] 12/21 BY MR. PESCI: [2] 7/15/10 MR. PESCI: [6] 5/7 12/19 14/4 20/21 21/1 21/21 THE FOREPERSON: [12] 5/23 6/5 6/16 13/11 14/1 14/5 14/12 14/14 14/24 20/3 20/18 21/9 THE WITNESS: [11] 6/4 6/15 6/18 13/25 14/3 14/11 14/13 14/23 15/1 20/17 20/20 \$ \$2,000 [2] 13/21 20/13 \$500 [2] 13/23 20/15 - --oo0oo [1] 21/25 -OR [2] 23/10 23/14 . .22 [8] 8/19 10/10 10/21 10/22 12/8 17/7 17/9 18/20 .45 [7] 8/20 8/21 11/8 11/17 17/18 18/5 18/25 / /S/DONNA [2] 22/17 23/18 0 0029 [2] 7/13 15/19 1 11 [4] 10/15 10/21 10/24 17/5 11:11 [1] 1/17 11:27 [1] 21/8 11:30 [1] 21/9 12 [1] 21/11 13th [1] 5/14 14 [3] 11/5 11/7 17/17 145 [2] 8/20 11/8 15 [1] 3/4 170809-0029 [2] 7/13 15/19 17BGJ017A [2] 5/11 21/18 17BGJ017A-C [2] 1/9 23/5 18 [3] 1/16 2/1 5/1 2 20 [3] 11/15 18/4 18/4 2008 [1] 8/2 2009 [1] 8/3 2011 [1] 8/8 2017 [3] 5/13 5/14 15/16 2018 [6] 1/16 2/1 5/1	7/16 22/15 23/18 22 [5] 8/18 10/10 10/21 12/3 12/8 22nd [1] 7/16 23 [1] 12/6 239B.030 [1] 23/2 25 [2] 13/23 20/15 28 [2] 22/15 23/18 29th [1] 5/13 3 30 [1] 19/11 337 [3] 1/25 22/6 22/18 364 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1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-17-328587
DEPT. XX

10 vs.

11 DEMARIO LOFTON-ROBINSON, aka
12 DEMARIO LOFTONROBINSON;
13 RAEKWON SETREY ROBERTSON,
14 aka RAEKWON ROBERTSON;
15 DAVONTAE AMARRI WHEELER,
16 Defendants.

17
18 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE
19 THURSDAY, MAY 03, 2018

20
21 **RECORDER'S TRANSCRIPT OF HEARING:**
22 **INITIAL ARRAIGNMENT (SUPERSEDING INDICTMENT);**
23 **STATUS CHECK: HOMICIDE TRIAL**

24
25 SEE APPEARANCES ON PAGE 2

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

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APPEARANCES:

For the State:	GIANCARLO PESCI Deputy District Attorney
For Defendant Lofton-Robinson:	SCOTT L. BINDRUP Chief Deputy Special Public Defender
For Defendant Robertson & Wheeler:	JAMES J. RUGGEROLI, ESQ.

1 [Las Vegas, Nevada, Thursday, May 03, 2018, at 10:17 a.m.]

2

3 THE COURT: State of Nevada versus Demario Lofton-
4 Robinson, and Raekwon Robertson, and Davontae Wheeler, case
5 number C328587. Counsel, please note your appearances for the
6 record.

7 MR. PESCI: Giancarlo Pesci on behalf of the State.

8 MR. RUGGEROLI: Good morning, Your Honor. James
9 Ruggeroli on behalf of Mr. Wheeler who's present in custody. I believe I
10 can stand in for Mr. Sanft for Mr. Robertson.

11 THE COURT: All right.

12 MR. BINDRUP: Scott Bindrup on behalf of Mr. Lofton-
13 Robinson.

14 THE COURT: All right, so we needed to do initial arraignment
15 as to Mr. Sanft's client, is that correct?

16 MR. PESCI: It was somewhat a typical situation, Your Honor.
17 We had previously been here. There was a writ filed by Mr. Wheeler
18 indicating or alleging that the probable cause was unfounded because of
19 a subsequent report came in on the firearm's evidence. You ordered me
20 to go back to the grand jury --

21 THE COURT: I remember that.

22 MR. PESCI: -- to present that firearm's evidence; I did, and
23 they found probable cause again and we're back.

24 THE COURT: All right. Okay. All right, so who needs to be
25 arraigned today?

1 MR. RUGGEROLI: Mr. Wheeler.

2 THE COURT: Mr. Wheeler. What about Mr. Raekwon
3 Robertson?

4 MR. PESCI: Judge, I'm not really sure, it's a superseding
5 indictment. I would assume they all do, but -- I mean, nothing's
6 changed. There's no new charges. There's nothing. We just present to
7 which you ordered us to present.

8 THE COURT: Okay. All right. Well as to Mr. Robertson, are
9 you able to represent him for purposes of doing the arraignment?

10 MR. RUGGEROLI: Yes.

11 THE COURT: Okay. All right, then you're representing Mr.
12 Wheeler?

13 MR. RUGGEROLI: That's correct.

14 THE COURT: Okay. All right. Is everybody charged in every
15 count?

16 MR. PESCI: I don't know. No, because --

17 THE COURT: Okay, I've got --

18 MR. PESCI: Counts 1, 2 and 3 --

19 THE COURT: All right, I think my clerk has got it broken out.

20 MR. PESCI: Yeah, 1 through 4 only involves --

21 THE COURT: Okay, we'll do this one by one.

22 Mr. Bindrup, let's start with your client. All right,
23 Mr. Lofton-Robinson, have you been provided with a copy of the
24 Superseding Indictment against you?

25 MR. BINDRUP: Your Honor, I just received it this morning

1 from Mr. Pesci, just based on his representations that nothing is
2 different. I indicated to him that it's like the Indictment that he pled not
3 guilty to previously.

4 THE COURT: All right.

5 MR. BINDRUP: So he is prepared to proceed, Your Honor.

6 THE COURT: All right. So there's nothing different from what
7 he had read previously?

8 MR. PESCI: Nothing's changed at all.

9 THE COURT: Okay. All right, Mr. Lofton-Robinson, did you
10 previously read the Indictment that was brought against you?

11 THE DEFENDANT LOFTON-ROBINSON: Yes, sir.

12 THE COURT: Okay. And will you waive the reading of the
13 Superseding Indictment here in court today?

14 MR. BINDRUP: Yes, he would, Your Honor.

15 THE COURT: Okay. Now, state your name.

16 THE DEFENDANT LOFTON-ROBINSON: Demario Lofton-
17 Robinson.

18 THE COURT: And how old are you?

19 THE DEFENDANT LOFTON-ROBINSON: Nineteen.

20 THE COURT: How far did you go in school?

21 THE DEFENDANT LOFTON-ROBINSON: Graduated.

22 THE COURT: Do you read, write and understand the English
23 language?

24 THE DEFENDANT LOFTON-ROBINSON: Yes, sir.

25 THE COURT: All right, you've been provided with a true copy

1 of the Superseding Indictment, which has been represented to be
2 exactly the same as the original Indictment brought against you in which
3 you've been charged in Count 1 with burglary while in possession of a
4 deadly weapon --

5 MR. BINDRUP: No, Your Honor, his counts --

6 MR. PESCI: Five.

7 MR. BINDRUP: -- start from Count 5.

8 THE CLERK: Counts 5, 6 and 7.

9 THE COURT: All right. Okay, so he's only in 5, 6 and 7?

10 MR. PESCI: Correct.

11 MR. BINDRUP: Correct.

12 THE COURT: All right. Charged in Count 5 with conspiracy
13 to commit robbery, in violation of category B felony in violation of
14 Nevada Revised Statute 200.380 and 199.480; in Count 6 with attempt
15 robbery with use of a deadly weapon, a category B felony in violation of
16 Nevada Revised Statute 200.380, 193.330 and 193.165, and in Count 7
17 with murder with use of a deadly weapon, a category B felony in
18 violation of Nevada Revised Statute 200.380, 193.330 and 193.165.

19 Do you understand the nature of the charges against
20 you in the Indictment?

21 THE DEFENDANT LOFTON-ROBINSON: Yes, sir.

22 THE COURT: All right. Have you discussed these charges
23 with your attorney sufficient for you to plead here today?

24 THE DEFENDANT LOFTON-ROBINSON: Yes, sir.

25 THE COURT: How then do you plead to the charges in

1 Counts 5, 6 and 7, guilty or not guilty?

2 THE DEFENDANT LOFTON-ROBINSON: Not guilty.

3 THE COURT: All right, not guilty. Have you -- did he
4 previously waive the 60 days?

5 MR. BINDRUP: Yes, he did, Your Honor.

6 THE COURT: All right. I assume -- does he continue to waive
7 the 60-day rule?

8 MR. BINDRUP: Yes, he does.

9 THE COURT: All right. Let's go to Mr. Raekwon Robertson.
10 Mr. Robertson, have you been provided with a copy of the Superseding
11 Indictment, or a copy of the original Indictment?

12 THE DEFENDANT ROBERTSON: The original. He just
13 showed me the superseding one now. But previously, no.

14 THE COURT: All right. You were provided with a copy of the
15 original Indictment against you?

16 THE DEFENDANT ROBERTSON: Yeah, I got plenty of them.

17 THE COURT: All right. And did you have a chance to read
18 that original Indictment?

19 THE DEFENDANT ROBERTSON: Yes.

20 THE COURT: Okay. Will you waive the reading today of the
21 Superseding Indictment here in court?

22 THE DEFENDANT ROBERTSON: Yes.

23 THE COURT: Okay. Thank you. Now, state your true name.

24 THE DEFENDANT ROBERTSON: Raekwon Setrey
25 Robertson.

1 THE COURT: And how old are you?

2 THE DEFENDANT ROBERTSON: Twenty-one.

3 THE COURT: And how far did you go in school?

4 THE DEFENDANT ROBERTSON: The tenth grade.

5 THE COURT: Okay. Do you read, write and understand the
6 English language?

7 THE DEFENDANT ROBERTSON: Yes.

8 THE COURT: Okay. Now you've been provided with a
9 copy -- you previously read the original Indictment against you in this
10 case, which the State has represented is exactly the same as the
11 Superseding Indictment that's before the Court today.

12 And in the original Indictment and the Superseding
13 Indictment, you're charged in Count 1 with burglary while in possession
14 of a deadly weapon, a category B felony in violation Nevada Revised
15 State 205.060; in Count 2 with conspiracy to commit robbery, and in
16 Count 5 with conspiracy to commit robbery; Count 3 and Count 4 with
17 robbery with use of a deadly weapon, a category B felony in violation of
18 Nevada Revised Statute 200.380 and 193.165; Count 6 with attempt
19 robbery with use of a deadly weapon, and in Count 7 with murder with
20 use of a deadly weapon.

21 Do you understand the nature of the charges against
22 you in the Superseding Indictment?

23 THE DEFENDANT ROBERTSON: Yes.

24 THE COURT: Okay. Have you discussed with your attorney
25 the charges sufficient for you to plead here today?

1 THE DEFENDANT ROBERTSON: No. Honestly, my attorney
2 in almost -- since February the 13th, he hasn't come to visit me yet.

3 THE COURT: Okay.

4 MR. RUGGEROLI: Judge, I believe that his prior attorney
5 went over the original Indictment with him, and I'm standing in for Mr.
6 Sanft. But I believe since he has gone over the previous Indictment with
7 Mr. Yampolsky --

8 THE COURT: Did you go over the previous Indictment with
9 Mr. Yampolsky?

10 THE DEFENDANT ROBERTSON: He gave me the paper; I
11 went over it. I went over it, like, with myself. He didn't go over it with me
12 though.

13 THE COURT: Okay. Did you talk to him about it at all?

14 THE DEFENDANT ROBERTSON: No. We just talked about,
15 like, my case and when we're starting trial and stuff like that.

16 THE COURT: Okay, but you did talk about your case with
17 him?

18 THE DEFENDANT ROBERTSON: Yeah, I did.

19 THE COURT: All right. Do you think -- are you able to go
20 forward today and plead to the charges in the Superseding Indictment?

21 THE DEFENDANT ROBERTSON: Yes.

22 THE COURT: All right, how then do you plead to the charges
23 against you in Counts 1, 2, 3, 4, 5, 6 and 7 --

24 THE DEFENDANT ROBERTSON: Not guilty.

25 THE COURT: -- guilty or not guilty?

1 THE DEFENDANT ROBERTSON: Not guilty.

2 THE COURT: Okay. All right, not guilty. Now, do you --
3 where is Mr. Sanft?

4 MR. RUGGEROLI: Judge, I honestly don't know. I expected
5 he's in another court right now.

6 THE COURT: He's entitled to assert the right to a speedy
7 trial. And if he hasn't talked with an attorney, I'm not sure how he can
8 knowingly assert or not assert a speedy trial. I mean, can you reach out
9 to Mr. Sanft at all and see if we can get him in here?

10 MR. RUGGEROLI: Yes.

11 THE COURT: Okay. All right, I'm going to trail as to Mr.
12 Robertson for a while. We'll come back to you in a little bit, okay?

13 THE DEFENDANT ROBERTSON: Okay, thank you.

14 THE COURT: And then let's go to Mr. Wheeler. Is he just
15 charged in 5, 6, 7?

16 MR. RUGGEROLI: Yes. Yes, Judge.

17 THE COURT: Okay. All right. Okay, Mr. Wheeler, have you
18 been provided with a copy of the Superseding Indictment?

19 THE DEFENDANT WHEELER: Yes, I have.

20 THE COURT: Okay. It's my understanding that Indictment is
21 essentially the same -- or is exactly the same as the original Indictment.
22 Were you provided with a copy of the original Indictment?

23 THE DEFENDANT WHEELER: Yeah.

24 THE COURT: Did you read it?

25 THE DEFENDANT WHEELER: Yes, I did, sir.

1 THE COURT: Okay. And will you waive the reading out loud
2 here today in court of the Superseding Indictment?

3 THE DEFENDANT WHEELER: It's basically going over the
4 same charges, sir.

5 THE COURT: Yeah.

6 THE DEFENDANT WHEELER: I'll waive it.

7 THE COURT: Okay. All right. Thank you. State your true
8 name.

9 THE DEFENDANT WHEELER: My name is Davonte
10 Wheeler.

11 THE COURT: All right. And how old are you?

12 THE DEFENDANT WHEELER: I'm twenty-three.

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

14 THE DEFENDANT WHEELER: I graduated.

15 THE COURT: All right. Do you read, write and understand
16 the English language?

17 THE DEFENDANT WHEELER: Yes, I do.

18 THE COURT: All right, you've been charged in Count 5 of the
19 Superseding Indictment with conspiracy to commit robbery, and Count 6
20 with attempt robbery with use of a deadly weapon, and in Count 7 with
21 murder with use of a deadly weapon.

22 Do you understand the nature of the charges against
23 you in the Superseding Indictment?

24 THE DEFENDANT WHEELER: Yes, I do.

25 THE COURT: Okay. Have you discussed these charges with

1 your attorney sufficient for you to plead here today?

2 THE DEFENDANT WHEELER: Yes. Yes, I am.

3 THE COURT: All right, how then do you plead to the charges
4 in Counts 5, 6 and 7, guilty or not guilty?

5 THE DEFENDANT WHEELER: I plead not guilty.

6 THE COURT: All right. Now you're entitled to a speedy trial
7 within 60 days from the date of arraignment in this case. Do you wish to
8 invoke the 60-day rule?

9 THE DEFENDANT WHEELER: No, I don't.

10 THE COURT: All right. Let's go ahead and set --

11 THE DEFENDANT WHEELER: And can I talk to my lawyer
12 real quick?

13 THE COURT: Go ahead. Has Mr. Robertson previously
14 waived his 60 days?

15 MR. PESCI: Yes. We already had a July 30th date set, so we
16 already went through all those steps to get that date.

17 THE COURT: All right. Mr. Robertson, can I call you back up.
18 Did you talk with your attorney previously about --

19 THE DEFENDANT ROBERTSON: No. No, I didn't. I talk to
20 him about no 60 day nothing. I just spoken to my attorney just February
21 13th, and he wasn't even at my last court date. I called him; I called him,
22 but he don't answer his phone.

23 THE COURT: All right.

24 THE DEFENDANT ROBERTSON: So, like, I don't know
25 about a 60-day waive or -- I don't know.

1 THE COURT: We'll set the trial date as to the other two
2 defendants, and we'll put Mr. Robertson on calendar on the next date
3 and get Mr. Sanft in here. I want him in here.

4 MR. RUGGEROLI: I understand. And, Judge, can I make a
5 quick record on two additional issues?

6 THE COURT: Sure.

7 MR. RUGGEROLI: I'd like to make the State aware we intend
8 to file another writ. I'd like to request 21 days from today's arraignment
9 for the filing of that writ. We're going to be alleging similar arguments,
10 but they are different in light of the evidence that was presented.

11 Also, Judge, it's very important what Mr. Wheeler just
12 asked me; to make sure I made a record of. The last time we were in
13 court, I made the State aware that Mr. Wheeler had indicated that he
14 may want to testify before the grand jury. So when the State made a
15 record about that, I want to make it very, very clear that that would've
16 been solely for the purpose of testifying on his own behalf. And in no
17 way was there ever a discussion that he would be testifying for the
18 State. And just so that's very clear because I think that that was
19 potentially misunderstood through no fault of Mr. Pesci's.

20 But after our court date last time, I spoke with Mr.
21 Wheeler and clarified everything. He did not testify, and so I just wanted
22 to make sure that we were clear on the record about that.

23 MR. PESCI: For the record, I never understood his invocation
24 of the right to go to the grand jury and testify is something he would do
25 on behalf of the State, it was on his own behalf. And then as I

1 understood it, and discussed it with his Counsel and chose not to, we
2 were made aware of his potential. We told him when it would be, and
3 then he said that he would not be testifying.

4 THE COURT: Okay. All right, that's noted now for the record.
5 Now, you want 21 days from today's date?

6 MR. RUGGEROLI: Please.

7 THE COURT: What's the State's position on that?

8 MR. PESCI: We'll submit it.

9 MR. BINDRUP: Has a transcript been filed already?

10 MR. RUGGEROLI: It has. I think it was yesterday.

11 THE COURT: Okay. I sort of hesitate to say 21 days from
12 today's because usually it's based upon when the transcript was filed.
13 But if you're telling me it was filed yesterday --

14 MR. RUGGEROLI: Either yesterday or the day before.

15 THE COURT: Okay, I'll give you 21 days from today's date to
16 file any writ.

17 MR. RUGGEROLI: Thank you.

18 MR. BINDRUP: And the same would apply to co-defendants,
19 of course.

20 THE COURT: Yes, it applies to you too. All right. So let's set
21 the -- we'll set the trial date. We'll set it for all three, since we already
22 have a trial date. And then we'll set a -- hold on one second.

23 [The Court and Clerk confer]

24 THE COURT: We'll set Mr. Robertson on Tuesday to get a
25 waiver invocation of his 60 days' rights, and I want Mr. Sanft here.

1 THE CLERK: Okay, so that will be May 8th at 8:30.

2 THE COURT: All right, we're going to set your -- set you on
3 Tuesday, and we'll have your attorney here and you can chat with him.
4 All right. Thank you.

5 THE CLERK: We'll need a status check date?

6 THE COURT: Yeah, since we're sort of in a state of disarray
7 a little bit, it sounds like with attorneys and such. Let's set this end of --
8 June, first week.

9 THE CLERK: June 6th at nine a.m. As to all defendants?

10 THE COURT: Yes.

11 THE DEFENDANT WHEELER: It was on record that I did not
12 revoke my 60 days, right?

13 MR. RUGGEROLI: You waived.

14 THE DEFENDANT WHEELER: I don't want to waive it. I
15 wanted to have a chance to have a 60-day trial.

16 THE COURT: All right.

17 MR. RUGGEROLI: Judge --

18 MR. PESCI: He already waived it. He just waived it here in
19 court.

20 THE COURT: All right. Well, you know, this is -- we have a
21 superseding -- I don't know. I haven't ever looked into this issue. So, I
22 mean, let me hear what he wants to -- may be a clear issue, or it may
23 not be a clear issue.

24 [Colloquy between Mr. Ruggeroli and Defendant Wheeler]

25 MR. RUGGEROLI: Judge, especially in light of the fact that

1 we fully intend to file the writ, I believe Mr. Wheeler is unaware we can't
2 have both. And so --

3 THE COURT: Yeah.

4 MR. RUGGEROLI: He don't believe that we would be
5 prepared to go to trial in this case. And in explaining it to him, I think he
6 does want to waive his 60-day rule. So if he could just clarify --

7 THE COURT: If you file a writ, you waive the 60 days with the
8 filing of the writ. So if you're going to file a writ, then that waives the 60-
9 day rule. Do you understand that?

10 THE DEFENDANT WHEELER: Yeah.

11 THE COURT: All right, then knowing that, do you waive then
12 the 60-day rule today?

13 THE DEFENDANT WHEELER: Yes.

14 THE COURT: Okay. All right. We've got a trial date set for
15 July 30th. So we'll, you know, I'm good with trying to keep that there if
16 we can do it, so --

17 THE DEFENDANT WHEELER: All right.

18 THE COURT: All right. We'll have a status check as to Mr.
19 Robertson and as to his attorney on Tuesday, and then we'll have June
20 6th for the next status check.

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MR. RUGGEROLI: Thank you, Judge.

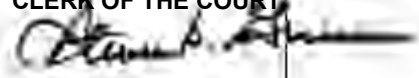
THE COURT: Thank you.

[Hearing concluded at 10:38 a.m.]

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



Angie Calvillo
Court Recorder/Transcriber



1 **RTRAN**

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5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

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

CASE#: C-17-328587
DEPT. XX

10 **vs.**

11 **DEMARIO LOFTON-ROBINSON,**
12 **AKA, DEMARIO LOFTONROBINSON,**
13 **RAEKWON SETREY ROBERTSON,**
14 **AKA, RAEKWON ROBERTSON,**
15 **DAVONTAE AMARRI WHEELER,**
16 **Defendants.**

17 **BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE**
18 **WEDNESDAY, JUNE 06, 2018**

19
20 ***RECORDER'S TRANSCRIPT OF HEARING:***
21 ***STATUS CHECK: HOMICIDE TRIAL***

22 **APPEARANCES:**

23 **For the State: GIANCARLO PESCI**
24 **Deputy District Attorney**

25 **For the Defendants: JAMES J. RUGGEROLI, ESQ.**

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 [Las Vegas, Nevada, Wednesday, June 06, 2018, at 9:12 a.m.]

2

3 THE COURT: State of Nevada versus Demario Lofton-
4 Robinson, Raekwon Robertson, and Davonte Wheeler, case number
5 C328587. Counsel, please note your appearances for the record.

6 MR. PESCI: Giancarlo Pesci on behalf of the State.

7 MR. RUGGEROLI: Good morning, Your Honor. James
8 Ruggeroni, Bar Number 7891. I represent Mr. Wheeler; I will be standing
9 in for all three defendants this morning.

10 THE COURT: Okay. This is a status check. We're set for --
11 and you represent Wheeler?

12 MR. RUGGEROLI: Correct, Your Honor.

13 THE COURT: Okay. We have your Petition for Writ set on
14 the 14th.

15 MR. RUGGEROLI: That's correct, Your Honor.

16 THE COURT: Okay. And then we have trial set on this matter
17 at the end of July. Are we on course for that? Or what's the status of
18 everything with this case?

19 MR. RUGGEROLI: What I can tell Your Honor right now is
20 this writ is pending. We have strong belief that there's a lot of merit to
21 what we're going to be arguing; this is not the time for that. I'll submit
22 my reply by Friday, end of day.

23 We'll have our hearing on the 14th. I believe it was the
24 parties request that we just take today's date off calendar; meet again on
25 the 14th especially having Mr. Sanft relatively new to the case. He can

1 more precisely bring the Court up to speed as far as how far along he's
2 gone with his investigation and discovery. So we were hoping to come
3 back with all three defendants for a status check as well as the argument
4 on the writ on the 14th.

5 THE COURT: Okay. All right, let me just -- when was this
6 indicted initially? I see the Superseding Indictment's April 18th. But, I
7 mean, when was this originally?

8 MR. PESCI: Originally, it was back -- I think, in December or
9 January of -- December of 2017 or January of 2018.

10 THE COURT: Okay, so this isn't super old yet?

11 MR. RUGGEROLI: No. And I believe all the defendants have
12 waived their speedy and --

13 MR. PESCI: They did.

14 MR. RUGGEROLI: They did previously have you grant a
15 portion of the writ, which required the State go back to the grand jury.

16 THE COURT: Yeah, I remember that. Okay. All right, so --
17 well let's just -- you know, you're here. I mean, let me find out from you
18 what -- how are we looking on discovery?

19 MR. RUGGEROLI: Right now our focus has mainly been on
20 the issues supporting the writ and developing our understanding of the
21 evidence is that, there was a fifth person present. We are still doing an
22 independent investigation. In light of the writ issue and the additional
23 investigation, I do not anticipate necessarily being ready. But in terms of
24 specific discovery that we don't have, I'm not aware of anything precisely
25 that we would need to request.

1 MR. PESCI: Right. I believe that they have been provided
2 everything as we've been getting them. In fact, that's what caused the
3 second run, so to speak, to the grand jury because discovery came in
4 after the first presentation so they've been receiving it and have had it
5 for a long time.

6 When more things come in, obviously, we'll hand them
7 over and we're happy to sit down; go over the file with them whenever
8 they want.

9 THE COURT: I mean, obviously, I know you'll hand over
10 anything that comes in. But do you anticipate anything else coming in?

11 MR. PESCI: Not offhand. But there's always -- there could be
12 other forensics --

13 THE COURT: I mean there's always stuff. But, I mean, are
14 you expecting anything, I guess?

15 MR. PESCI: Not at this moment, no.

16 THE COURT: Okay. What about forensics? Are we done
17 with that?

18 MR. PESCI: The firearm's portion, I believe is. I don't know
19 the status of fingerprints or DNA, that's why I'm saying I'm not exactly
20 sure. But it was the firearm's report coming in that precipitated that
21 second presentation.

22 THE COURT: Okay. All right. Do you know if you've gotten
23 any fingerprints or DNA?

24 MR. RUGGEROLI: We have not.

25 THE COURT: Okay. All right. You know, you say you don't

1 anticipate being ready, so let's just focus on the trial date separate from
2 the writ issue.

3 MR. RUGGEROLI: Yes.

4 THE COURT: Why don't you anticipate being ready?

5 MR. RUGGEROLI: As I mentioned, Your Honor, the
6 investigation that we're still looking into as far as potential alibi.

7 THE COURT: Okay.

8 MR. RUGGEROLI: Things of that nature.

9 THE COURT: All right, do you think you'll be able to discuss
10 this better then on the 14th?

11 MR. RUGGEROLI: Absolutely.

12 THE COURT: Okay. Can you check on the fingerprints and
13 the DNA issue by the 14th?

14 MR. PESCI: I can check. What is routine, though, is that if
15 the trial dates out some ways, the lab does not start it until it gets much
16 closer in time because they have so many out in the queue already.

17 THE COURT: Well right now the trial date is set for the end of
18 July. So --

19 MR. PESCI: Right. They usually get to about 30 days when
20 they start to let us know because so many backed up, but I'll look into it.

21 THE COURT: I know, and I understand. But let's just check
22 and see what the status is. All right, anything else at this point in time?

23 MR. RUGGEROLI: That's all, Judge.

24 THE COURT: Okay. All right.

25 MR. RUGGEROLI: Thank you.

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THE COURT: Thank you.

MR. PESCI: Thank you.

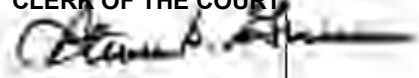
THE COURT: Thank you.

[Hearing concluded at 9:17 a.m.]

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



Angie Calvillo
Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-17-328587
DEPT. XX

10 vs.

11 DEMARIO LOFTON-ROBINSON,
12 AKA, DEMARIO LOFTONROBINSON,
13 RAEKWON SETREY ROBERTSON,
14 AKA, RAEKWON ROBERTSON,
15 DAVONTAE AMARRI WHEELER,
16 Defendants.

17 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE
18 THURSDAY, JUNE 14, 2018

19 **RECORDER'S TRANSCRIPT OF HEARING:**
20 **STATUS CHECK: HOMICIDE TRIAL; DEFENDANT'S PETITION FOR**
21 **WRIT OF HABEAS CORPUS**

22 SEE APPEARANCES ON PAGE 2

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25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

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APPEARANCES:

For the State:	MELANIE L. SCHEIBLE Deputy District Attorney
For Defendant Lofton-Robinson:	SCOTT L. BINDRUP Chief Deputy Special Public Defender
For Defendant Robertson:	MICHAEL W. SANFT, ESQ.
For Defendant Wheeler:	JAMES J. RUGGEROLI, ESQ.

1 [Las Vegas, Nevada, Thursday, January 14, 2018, at 9:25 a.m.]

2

3 THE COURT: State of Nevada versus Raekwon Robertson,
4 case number C328587. Counsel, please -- we're just doing Mr. Sanft
5 right now?

6 THE CLERK: I didn't realize -- no, we need Ms. O'Halloran.

7 MR. SANFT: We are missing some people, I think, Your
8 Honor.

9 THE CLERK: Yeah, I'm sorry.

10 MR. SANFT: That's all right. No, thank you. I appreciate the
11 thought.

12 MR. BINDRUP: Is there a DA that can stand in or?

13 MR. SANFT: I don't know. I think Rachel's got to come down
14 to argue it though.

15 THE CLERK: Yeah, because she's got to come down to
16 argue the writ.

17 MR. BINDRUP: All right. Thank you.

18 MR. SANFT: Thank you, Your Honor, for calling it though.

19 THE COURT: Okay.

20 [Recalled at 9:43 a.m.]

21 THE COURT: State of Nevada versus Demario Lofton-
22 Robinson, Raekwon Robertson --

23 MS. SCHEIBLE: Your Honor, I'm afraid that we are still
24 waiting on the DA on this case.

25 MR. SANFT: Your Honor, we had asked your clerk to call it

1 because on behalf of Mr. Robertson, I believe that we can just resolve
2 my issue and I can leave to another department.

3 THE COURT: I was going to say, I think -- the way I'm
4 reading your Petition for Writ is you're the only -- this is the one that's
5 been joined into.

6 MR. SANFT: Correct. That is correct, Your Honor.

7 THE COURT: Okay, so you're going in alone. All right, I don't
8 have a problem. Otherwise, it was a status check for homicide trial.
9 We're set for this trial at the end of July. Let me see if -- hold on a
10 second, let me -- have I called your client yet, Mr. Sanft?

11 MR. SANFT: I believe you have, that's Mr. Robertson, Your
12 Honor.

13 THE CLERK: No.

14 THE COURT: What page was --

15 MR. SANFT: Page 10.

16 THE CLERK: Ten.

17 THE COURT: Ten, okay. State of Nevada versus Raekwon
18 Robertson, and State of Nevada versus Davontae Wheeler, case
19 number C328587. Counsel, please note your appearances for the
20 record.

21 MR. SANFT: Michael Sanft on behalf of Mr. Robertson who's
22 present in custody, Your Honor. Bar Number 8245.

23 MR. RUGGEROLI: James Ruggeroli on behalf of Mr. Wheeler
24 who's present in custody.

25 THE COURT: Has anyone --

1 MR. BINDRUP: And Lofton-Robinson, Scott Bindrup on his
2 behalf.

3 THE COURT: Okay. All right, so let's focus on just the status
4 check relating to the homicide trial, which is set for the end of July.
5 Where do we -- where do we stand on that?

6 MR. SANFT: I reviewed all of the discovery in this matter. I
7 don't believe there is any discovery right now that's outstanding outside
8 of fingerprints and DNA that haven't come back yet in terms of the
9 testing. I don't anticipate there will be any problems before trial. And as
10 a result, we'll be prepared and ready to go in July.

11 THE COURT: Okay. Mr. Bindrup, what's your thoughts?

12 MR. BINDRUP: I'd agree. Although, I don't think -- I know I
13 won't be ready by the end of July. So at some point, I'm going to
14 request resetting of the trial date.

15 THE COURT: Well, you know, that's sort of one of the
16 reasons why we have these status checks. So, I mean, when are you
17 going to get around to doing that?

18 MR. BINDRUP: As it's an ongoing process. I'll try to be as
19 diligent as possible, trial ready.

20 THE COURT: I mean everybody is sort of prepping here. I
21 mean -- you know, July 30th isn't that far off. What are you not going to
22 be ready for?

23 MR. BINDRUP: Just other cases that are taking precedence
24 that definitely will go to trial before this one. I think one of them was
25 *Hernandez* in which you handled and was having client management

1 issues that have been resolved. And that, obviously, will take
2 precedence over this case, it's an older case. And Mr. Hernandez's
3 case needs to go, it's set for the same date.

4 THE COURT: Okay. So Mr. Fernandez [sic] is also set for
5 July 30th?

6 MR. BINDRUP: That's correct.

7 THE COURT: Okay.

8 MR. BINDRUP: So I'm just being honest.

9 THE COURT: All right. No, I want you to be honest, and
10 that's why --

11 MR. BINDRUP: If you want me to say I'll be ready, but --

12 THE COURT: -- that's why sitting here we're -- it's important I
13 know what is happening because that's what we're trying to do. I don't
14 know what Mr. Sanft's schedule is. But if he's sitting here thinking we're
15 going on July 30th and we aren't going on July 30th, it's not fair for him to
16 be burning that time, or Mr. Ruggeroli.

17 And what's your -- I know you got the petition, but
18 what's your perspective in terms of the July 30 trial date?

19 MR. RUGGEROLI: Judge, I do potentially have a conflict. I
20 have a not guilty by reason of insanity case that's in Department 9; that
21 has a firm setting that is scheduled for August 6th. I think that this case
22 would spill over into that date and it certainly would take up my
23 preparation time. We have experts that have been consulted regarding
24 their trial availability, and their schedule has been set up on that August
25 6th date.

1 Additionally, in terms of the evidence for this case, we
2 are still following up on potential surveillance regarding other places and
3 times that would have an impact. I don't know of anything else that's
4 outstanding that the State may have that we do not, though.

5 THE COURT: Okay. All right. Who is the not guilty by reason
6 of insanity case?

7 MR. RUGGEROLI: Judge Togliatti.

8 THE COURT: I mean, give me a case name.

9 MR. RUGGEROLI: *Walter Laak*.

10 THE COURT: What?

11 MR. RUGGEROLI: L-A-A-K.

12 THE COURT: L-A-A-K. All right. Okay.

13 All right, Mr. Sanft, what's your position in hearing that
14 your two colleagues may have some issues?

15 MR. SANFT: Whatever the Court's pleasure at this point,
16 Your Honor. We would be ready to go forward. But I do understand that
17 this would be a case that would need to be tried together and as a
18 result, whatever the Court's pleasure.

19 THE COURT: How long do you think you're going to need,
20 Mr. -- I know we'll deal with the petition, but I want to get Mr. Sanft and
21 Mr. Bindrup out of here. I mean, let's -- looking at it, how long do you
22 think you are going to need to get ready and finish whatever final
23 investigation you were going to do?

24 MR. RUGGEROLI: I think we have -- Mr. Wheeler may have
25 grounds for potential severance based on *Bruton* issues, so there is that

1 portion to deal with as well. In terms of preparation, actually I think I can
2 be ready in potentially September/October.

3 THE COURT: Okay. So what's with you, Mr. Bindrup?

4 MR. BINDRUP: January/February.

5 THE COURT: January/February?

6 MR. BINDRUP: Yes.

7 THE COURT: Is that because of your trial calendar?

8 MR. BINDRUP: Yes.

9 THE COURT: Okay. Mr. Sanft.

10 MR. SANFT: Whatever the Court's pleasure is, Your Honor.

11 THE COURT: How old is this? When was the homicide?
12 You should know this right away, Mr. Ruggeroli.

13 MR. RUGGEROLI: Sure, Judge. Judge, I believe it was
14 August of last year.

15 THE COURT: August, all right. So this isn't that old.

16 [The Court and Clerk confer]

17 THE CLERK: How about January 22nd for trial?

18 MR. SANFT: I have no objection to that.

19 MR. BINDRUP: That would work great for --

20 THE COURT: Will that work with you?

21 MR. BINDRUP: Yes, that would.

22 THE COURT: All right. Mr. Sanft.

23 MR. SANFT: Yes, Your Honor, that would work for me.

24 THE COURT: All right, not hearing any opposition from Mr.
25 Ruggeroli.

1 MR. RUGGEROLI: Judge, my client is opposed to the date
2 being that far off. On his behalf, I'll submit it. I mean, we do have the
3 writ issue; I think that we can address that.

4 THE COURT: I mean, yeah. I'm not -- but I'm -- like I said, I
5 want to get Mr. Sanft and Mr. Bindrup out of here. So, I mean -- all right,
6 I said it's not that old of a case. All right, we'll go ahead and set it for
7 January 22nd.

8 MR. RUGGEROLI: Judge, just one other thing. We may want
9 to have, Mr. Pesci or Ms. O'Halloran, to give the Court information about
10 their schedules.

11 THE COURT: The State is essentially malleable. So if you're
12 all ready to go in February, then theoretically the State's going to find
13 somebody to try that case so we'll work on that basis.

14 MR. SANFT: Thank you, Your Honor.

15 THE COURT: All right.

16 THE CLERK: So calendar call will be January 8th at 8:30; jury
17 trial, January 22nd, nine a.m.

18 THE COURT: Let's set a status check in a couple of months.

19 THE CLERK: August 1st, status check.

20 THE COURT: Let's go one more week in August.

21 THE CLERK: August 15th at nine a.m.

22 MR. SANFT: Thank you, Madam Clerk.

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MR. BINDRUP: Thank you.

MR. RUGGEROLI: Thank you, Judge.

THE COURT: Thank you.

[Hearing concluded at 9:51 a.m.]

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



Angie Calvillo
Court Recorder/Transcriber



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

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

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, SEPTEMBER 5, 2018

RECORDER'S TRANSCRIPT OF PROCEEDINGS
STATUS CHECK: HOMICIDE TRIAL

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: JESSICA KIRKPATRICK, SENIOR RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 5, 2018, 8:50 A.M.

2 * * * * *

3 THE COURT: Page 1, State versus Davontae Wheeler, case C328587. He's
4 present in custody. Do we have Mr. Ruggeroli here?

5 MR. PESCI: I haven't seen him, Your Honor.

6 THE COURT: Has he checked in?

7 MR. PESCI: I'm not sure.

8 THE COURT: Okay.

9 [Proceeding trailed until 9:29 a.m.]

10 THE COURT: State versus Davontae Wheeler, case C328587.

11 [Colloquy between the Court and the Clerk]

12 THE COURT: What page are you on, Mr. Sanft?

13 MR. SANFT: Page 25, Your Honor, that's Mr. Robertson.

14 THE COURT: And page 25, State versus Robertson, C328587, they're both
15 present. They're both in custody.

16 MR. RUGGEROLI: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. RUGGEROLI: James Ruggeroli on behalf of Mr. Wheeler. Judge, there
19 were a couple of issues. The first I'd like to bring up, and I did make Mr. Pesci
20 aware of this, bail had been set at 250,000. At some point when the case was
21 transferred, or prior to it being transferred, for some reason it looks like the computer
22 has it at no bail. We've never readdressed this and I think bail should just be at
23 250,000.

24 THE COURT: Well, when was it set and by whom?

25 MR. RUGGEROLI: Department 20 set it.

1 THE COURT: Is there an --

2 MR. RUGGEROLI: We had a motion and I don't know if it's because the
3 State went back to the grand jury at one point based on writ work that we did and
4 then brought Mr. Wheeler back. In any event, right now he's being held, I believe,
5 with no bail and we're just respectfully requesting that that 250,000 that was already
6 ordered be reissued.

7 MR. PESCI: Judge, on December the 14th of 2017, at the return of the true
8 bill, the District Court set bail at \$250,000. Defense counsel and the defendant on
9 March 22nd, 2018, made a motion for an O.R. or reduction of bail, that was denied.

10 THE COURT: Okay.

11 MR. PESCI: So it is accurate that it should be 250,000.

12 THE COURT: Okay.

13 MR. RUGGEROLI: Thank you, Judge.

14 Your Honor, as to potential evidentiary issues, I've raised this with
15 Mr. Pesci, I'm meaning to meet with my investigator but there's only a couple of
16 items right now that I'm -- I'm specifically looking into, in particular, a video recording
17 of my client's statements to the police, whether or not there was a second voluntary
18 statement by my client to the police. We don't believe there was, but I just want to
19 make sure, if there are any allegations that he spoke to police on more than one
20 occasion, I'm sure Mr. Pesci will make us aware of that. At this time we have no
21 information regarding any second statement.

22 And, finally, whether or not there was an application for a search
23 warrant on the Civic Center address, that may not have been done because of a --
24 police claiming that there was consent. So Mr. Pesci's aware of this. I think we're
25 going to arrange a file review in -- within, hopefully, a couple of weeks to go over

1 these issues specifically.

2 THE COURT: Okay. Mr. Sanft.

3 MR. SANFT: Your Honor, we'll be working with the State with regards to
4 discovery. I don't think -- believe there's any outstanding discovery that has not
5 been provided to my office. My client has talked to me about some motions that he
6 wants to have filed, so I'll be talking to him about the legalities of that, but outside of
7 that we're ready -

8 THE COURT: Okay.

9 MR. SANFT: -- to go forward.

10 THE COURT: But you'll do a file review before the next status check?

11 MR. RUGGEROLI: Yes.

12 THE COURT: Okay. 60 days.

13 THE CLERK: December 5, 8:30.

14 MR. SANFT: Thank you, Your Honor.

15 THE COURT: Thank you.


16 MR. RUGGEROLI: Thank you, Judge.

17 MR. PESCI: Thank you, Your Honor.

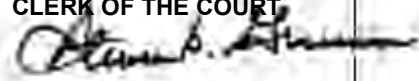
18 PROCEEDING CONCLUDED AT 9:32 A.M.

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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
23 video recording of this proceeding in the above-entitled case.

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25 SARA RICHARDSON
Court Recorder/Transcriber

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

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

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, DECEMBER 5, 2018

RECORDER'S TRANSCRIPT OF PROCEEDINGS
STATUS CHECK: TRIAL READINESS

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, DECEMBER 5, 2018, 8:44 A.M.

2 * * * * *

3 THE COURT: Page 12 and 13, State versus Robertson and Wheeler,
4 C328587.

5 MR. RUGGEROLI: Good morning, Your Honor, James Ruggeroli appearing
6 on behalf of Mr. Wheeler. He's present in custody.

7 THE COURT: Okay.

8 MR. PESCI: Giancarlo Pesci on behalf of the State.

9 THE COURT: Mr. Sanft?

10 MR. SANFT: Thank you, Your Honor. I'm present as well with my client.

11 THE COURT: Thank you.

12 MR. SANFT: He's here.

13 THE COURT: All right. This is on for trial readiness.

14 MR. RUGGEROLI: Judge, we had a bit of a delay in getting over and doing a
15 file review because there were three attorneys and all of our schedules, but we have
16 completed that and then there was a large amount of documents and discovery that
17 we needed to be copied for us. I just received that this week. We're asking for a
18 two-week status check for us to have a chance to review those new materials. I
19 think there's going to be at least one motion that I plan on filing as a result of some
20 of that. So I think if the Court can accommodate a December 19th status check
21 date.

22 THE COURT: Okay.

23 MR. PESCI: No objection from the State. We also have a third defendant
24 who is currently at Lake's Crossing.

25 MR. SANFT: And, Your Honor, just for the record, on behalf of

1 Mr. Robertson, he's indicated to me multiple times that he will be intending on going
2 forward with his trial on the trial date that's set. I have received the same discovery.
3 I'll be reviewing it. But I told Mr. Robertson that I'll make every effort to be ready for
4 that trial date.

5 THE COURT: Okay. So we'll put it on for two weeks.

6 MR. RUGGEROLI: Thank you, Judge.

7 THE CLERK: December 19, 8:30.

8 MR. PESCI: Thank you, Your Honor.

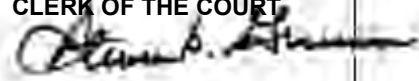
9 THE COURT: Thank you.

10 PROCEEDING CONCLUDED AT 8:46 A.M.

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
22 video recording of this proceeding in the above-entitled case.

23 
24 SARA RICHARDSON
25 Court Recorder/Transcriber



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

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

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, JANUARY 2, 2019

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
STATUS CHECK: TRIAL READINESS (ROBERTSON)
DEFENDANT'S MOTION TO SEVER CODEFENDANTS (WHEELER)
DEFENDANT'S MOTION TO CONTINUE TRIAL (WHEELER)**

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 200.010, 200.030, 193.165 - NOC 50001), committed at and within the County of Clark, State
2 of Nevada, on or between August 2, 2017 and August 9, 2017, as follows:

3 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

4 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
5 about August 2, 2017 willfully, unlawfully, and feloniously enter, with intent to commit a
6 felony, to wit: robbery, that certain business occupied by FIESTA DISCOUNT MARKET
7 AND SMOKE SHOP, located at 701 West Charleston Boulevard, Las Vegas, Clark County,
8 Nevada, while possessing and/or gaining possession of a handgun, a deadly weapon, during
9 the commission of the crime and/or before leaving the structure.

10 COUNT 2 - CONSPIRACY TO COMMIT ROBBERY

11 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
12 about August 2, 2017 willfully, unlawfully, and feloniously conspire with ANTONIO JONES
13 to commit a robbery, by the conspirators committing the acts as set forth in Counts 3 and 4,
14 said acts being incorporated by this reference as though fully set forth herein.

15 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

16 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
17 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
18 personal property, to wit: a wallet, cellular telephone, and makeup case, from the person of
19 MARIAH ROMATKO, or in her presence, by means of force or violence, or fear of injury to,
20 and without the consent and against the will of MARIAH ROMATKO, with use of a deadly
21 weapon, to wit: a handgun, the Defendant being criminally liable under one or more of the
22 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
23 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
24 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
25 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
26 crime, with the intent that this crime be committed.

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1 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
3 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
4 personal property, to wit: U.S. Currency, from the person of AGNES STEIN, or in her
5 presence, by means of force or violence, or fear of injury to, and without the consent and
6 against the will of AGNES STEIN, with use of a deadly weapon, to wit: a handgun, the
7 Defendant being criminally liable under one or more of the following principles of criminal
8 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the
9 commission of this crime, with the intent that this crime be committed, by counseling,
10 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
11 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
12 crime be committed.

13 COUNT 5 - CONSPIRACY TO COMMIT ROBBERY

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

20 COUNT 6 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

21 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
22 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI
23 WHEELER, did, on or about August 9, 2017, willfully, unlawfully, and feloniously attempt to
24 take personal property, to wit: U.S. Currency and/or property, from the person of GABRIEL
25 VALENZUELA, or in his presence, by means of force or violence, or fear of injury to, and
26 without the consent and against the will of GABRIEL VALENZUELA, by pointing a firearm
27 at the said GABRIEL VALENZUELA and demanding said U.S. Currency and/or property,
28 with use of a deadly weapon, to wit: a firearm, the Defendants being criminally liable under

one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendant and/or DEMARIO LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON and/or unknown co-conspirators aiding or abetting and/or conspiring by Defendant and/or DEMARIO LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON and/or unknown co-conspirators acting in concert throughout.

COUNT 7 - MURDER WITH USE OF A DEADLY WEAPON

Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson, RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI WHEELER, did, on or about August 9, 2017, willfully, unlawfully, feloniously and with malice aforethought, kill GABRIEL VALENZUELA, a human being, with use of a deadly weapon, to wit: a firearm, by shooting at and into the body of the said GABRIEL VALENZUELA, the said killing having been (1) willful, deliberate, and premeditated, and/or (2) committed during the perpetration or attempted perpetration of a robbery, the Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring,

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1 commanding, inducing, and/or otherwise procuring the other to commit the crime; and/or (3)
2 pursuant to a conspiracy to commit murder and/or robbery; Defendants and/or unknown co-
3 conspirators aiding or abetting and/or conspiring by Defendants and/or unknown co-
4 conspirators acting in concert throughout.

5 DATED this 18th day of April, 2018.

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

9 BY

10 GIANCARLO PESCI
11 Chief Deputy District Attorney
12 Nevada Bar #007135

13 ENDORSEMENT: A True Bill

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16 Foreperson, Clark County Grand Jury
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Names of Witnesses and testifying before the Grand Jury:

CODY, LORA – LVMPD #7294

DOSCH, MITCHELL – LVMPD #7907

FLETCHER, SHAWN – LVMPD #5221

JAEGER, RYAN – LVMPD #5587

LESTER, ANYA, LVMPD

MASON, ROBERT – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

NEWMAN, JAMES – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

RELATO, JOHN – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

SIMMS, DR. LARY – ME#0002

SPAHN, NICKOLAUS – SHORT LINE EXPRESS – 7325 S. JONES BLVD, LV NV

SPEAS, WILLIAM – LVMPD #5228

STEIN, AGNES – FIESTA DISCOUNT MARKET-7010 W. CHARLESTON BLVD, LV NV

TAPAY, GLEZZELLE, LVMPD #15709

Additional Witnesses known to the District Attorney at time of filing the Indictment:

CHARLTON, NOREEN – LVMPD #13572

CUSTODIAN OF RECORDS - CCDC

CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS - LVMPD RECORDS

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LVMPD EV#1708024571; 1708090029
(TK3)

1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 2, 2019, 8:45 A.M.

2 * * * * *

3 THE COURT: Page 4 and 5, State versus Robertson and Wheeler, C328587.
4 They're both present and in custody. I know we're on for trial readiness as well as
5 Mr. Wheeler has a motion to sever. Why don't we deal with that one first.

6 MR. RUGGEROLI: Good morning, Your Honor, James Ruggeroli appearing
7 on behalf of Mr. Wheeler who is present in custody. Judge, I did note that the State
8 had not filed an opposition. I filed, simultaneously, a motion to continue the trial as
9 well as the motion to sever and I do think that those two kind of work together. It's
10 my understanding Mr. Sanft's client wants to move forward with this trial date.

11 Within the last month, month and a half we were provided with a large
12 amount of discovery from the State. We are still going through that. In my motion,
13 and I did file it as essentially a supplemental affidavit in support of the motion to
14 continue, my investigator's indicated that his review of the materials put us in a
15 situation where we just simply don't have time to be adequately prepared to deal
16 with the new discovery that we've received in time for our defense at trial.

17 Additionally, Judge, I do have concerns about going to a joint trial with
18 the codefendants. The third codefendant, as you probably recall, is in Lake's
19 Crossing. So that -- that issue and those arguments are really not applicable right
20 now. But I do still think that the merits as far a different type of case in regards to
21 these two codefendants creates a situation where we have very valid arguments for
22 severance. But because the State didn't file an opposition, I think you would want to
23 hear from them.

24 MR. PESCI: So, Judge, I apologize. I was out of town on the last court date,
25 one of my teammates was here, and I didn't realize that it got switched. I thought

1 that we still had until later in the month to respond to that.

2 As far as the motion to continue, if I could respond orally?

3 THE COURT: Sure.

4 MR. PESCI: My response is that I have no opposition to a continuance as
5 long as it as to all three and would seem appropriate considering that one defendant
6 is still in Competency Court.

7 As far as the severance motion, I'd like to actually be able to respond to
8 that in writing, and I would ask for a week. I have a capital case in front of you
9 starting on Tuesday. And so I apologize, I've been kind of focused on that. I did not
10 realize that the dates had been changed on this one. So I'd ask for that one week's
11 continuance as far as the severance motion. But the continuance, as long as it is as
12 to all three, the State has no opposition.

13 THE COURT: Mr. Sanft?

14 MR. SANFT: And we're prepared and ready to go forward, Your Honor. My
15 client, I've spoken to this morning, he is not going to continue the trial.

16 THE COURT: So you object to the --

17 MR. SANFT: On behalf of my client, I mean, I guess we could do a *de facto*
18 severance, but I think at this particular point, my client -- we are ready to go forward.

19 MR. PESCI: And I would just note for the record that his client previously
20 waived his right to a speedy trial, and so there is -- for judicial economy, there
21 makes no sense in severing this case and having it tried, in essence, it would be
22 three times at that point because one codefendant's still in Competency Court. So
23 they should all be kept together.

24 THE COURT: Okay. At this time I'm going to grant the motion to continue the
25 trial. And I'm going to put the motion to sever on for one week.

1 MR. PESCI: Thank you, Your Honor.

2 THE COURT: Or I'll put it on as soon as I can. How quickly?

3 THE CLERK: The 16th.

4 THE COURT: That's fine.

5 THE CLERK: January 16th, 8:30, for the motion to sever.

6 MR. RUGGEROLI: Judge, there is one additional issue, if I may? I had
7 anticipated potentially supplementing one extra ground for the motion to sever. In
8 this case, the State has charged Mr. Sanft's client with an additional couple of
9 counts in something that is unrelated to the murder case here.

10 THE COURT: Okay.

11 MR. RUGGEROLI: If the State would like me to do a supplement, I can have
12 that done by the end of tomorrow just to add that as an additional ground that there
13 are these extra counts that create more reasons why they should not appear at a
14 joint trial together.

15 THE COURT: Sure. I don't have a problem if you want to supplement your
16 motion and then the State can respond.

17 MR. RUGGEROLI: And it's just as to that one ground, Judge.

18 THE COURT: That's fine.

19 MR. RUGGEROLI: Thank you.

20 THE COURT: And then we need a new -- we need a trial date.

21 THE CLERK: Okay. We have June.

22 THE COURT: Go ahead.

23 THE CLERK: Calendar call, June 18, 8:30; jury trial, June 25, 10:30.

24 MR. RUGGEROLI: Thank you, Your Honor.

25 MR. PESCI: Thank you, Your Honor.

1 THE CLERK: Do you want a status check?

2 THE COURT: I do.

3 And I'm going to give you a status check as well.

4 THE CLERK: 90 days?

5 THE COURT: That would be -- that would be good.

6 THE CLERK: April 17, 8:30.

7 THE COURT: Thank you.

8 MR. RUGGEROLI: Thank you, Judge.

9 MR. PESCI: Thank you.

10 PROCEEDING CONCLUDED AT 8:49 A.M.

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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
23 video recording of this proceeding in the above-entitled case.

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SARA RICHARDSON
Court Recorder/Transcriber

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

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

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, APRIL 17, 2019

RECORDER'S TRANSCRIPT OF PROCEEDINGS
STATUS CHECK: TRIAL READINESS

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney

For Defendant Robertson:

NO APPEARANCES

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

ALSO PRESENT: SCOTT BINDRUP, DEPUTY SPECIAL PUBLIC DEFENDER

RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, APRIL 17, 2019, 8:57 A.M.

2 * * * * *

3 THE COURT: Are you ready?

4 MR. BINDRUP: Yeah, I just need to make representations on why he's not
5 here because it was not on calendar. It's two defendant -- three defendant case, on
6 page 5, page 6. Mr. Sanft is not here for Mr. Robertson. My client, I believe, by
7 error, is not on calendar. It should have been on for a status check. He's the
8 individual that was at Lake's Crossing.

9 THE COURT: Right. Mr. Lofton.

10 MR. BINDRUP: And has been gone for, like, eight months. So if I can just
11 get on the next status check, if you're going to set it between now and the jury trial in
12 June.

13 THE COURT: Okay. It's Mr. Lofton, correct?

14 MR. BINDRUP: Pardon?

15 THE COURT: Your client is Mr. Lofton, correct?

16 MR. BINDRUP: Yes, Lofton-Robinson.

17 THE COURT: Okay. State versus Robertson and Wheeler, and,
18 Mr. Ruggeroli, the order has been prepared.

19 MR. RUGGEROLI: Yes.

20 THE COURT: Have you gotten a copy of it?

21 MR. RUGGEROLI: Yes, Your Honor.

22 THE COURT: Okay. I just wanted to make sure. Are the parties going to be
23 ready to go?

24 MR. RUGGEROLI: Judge, we are doing everything we can. There's a couple
25 of issues of discovery that I am looking into. I spoke with Mr. Pesci about that this

1 morning. We may have one of the items in particular. But other than that, we're
2 moving forward the best we can. That issue that you just mentioned --

3 THE COURT: Right.

4 MR. RUGGEROLI: -- with the order for my client's edification, has to do with
5 the denial of our motion to sever. That has been briefed and it is before the
6 appellate court now.

7 THE COURT: Oh, good.

8 MR. RUGGEROLI: But they haven't ordered a response from the State at this
9 time. So, other than that, we are just moving forward at this time. I think if we could
10 have another status check in 30 days.

11 THE COURT: Okay.

12 MR. BINDRUP: And just to let Your Honor know, my client, since he's been
13 gone so long, I am not ready for a trial within two months. So I am going to request
14 some sort of continuance of the matter. I don't suspect I'll be asking for a long one,
15 but I definitely need more time at this juncture.

16 THE COURT: Okay. So we'll put it on for 30 days.

17 THE CLERK: 30 days is going to be May 15th at 8:30.

18 MR. BINDRUP: Thank you.

19 THE COURT: Thank you.

20 MR. PESCI: Your Honor, is that as to all three of them?

21 THE COURT: Pardon?

22 MR. PESCI: Is that as to all three of them?

23 THE COURT: Yes. Yes.

24 MR. PESCI: Do you need me to stay for Mr. Sanft? Or no?

25 THE CLERK: I'll just e-mail him the date.

1 THE COURT: Right. We'll just let him know.

2 MR. PESCI: Okay. Perfect.

3 THE COURT: We'll let him know the date.

4 MR. PESCI: Thank you.

5 MR. RUGGEROLI: Thank you, Judge.

6 THE COURT: Thank you.

7 PROCEEDING CONCLUDED AT 8:59 A.M.

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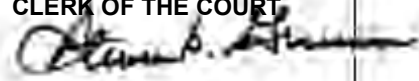
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
22 video recording of this proceeding in the above-entitled case.

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SARA RICHARDSON
Court Recorder/Transcriber



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DEMARIO LOFTON-ROBINSON,
RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

CASE NO. C-17-328587-1
C-17-328587-2
C-17-328587-3

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, MAY 15, 2019

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
STATUS CHECK: TRIAL READINESS**

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney

For Defendant Lofton-Robinson:

SCOTT BINDRUP
Deputy Special Public Defender

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 15, 2019, 9:37 A.M.

2 * * * * *

3 THE COURT: State of Nevada versus Lofton-Robinson, Robertson, Wheeler,
4 they're all present and in custody. Will the attorneys make their appearances?

5 MR. PESCI: Giancarlo Pesci on behalf of the State.

6 MR. RUGGEROLI: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. RUGGEROLI: James Ruggeroli on behalf of Mr. Wheeler who's present,
9 in custody. He's to your far left.

10 MR. BINDRUP: Scott Bindrup for Mr. Lofton-Robinson in the center.

11 MR. SANFT: And Michael Sanft on behalf of Mr. Robertson today.

12 THE COURT: Okay. You all are on for trial readiness. You have a trial date
13 pending of June 25th.

14 MR. BINDRUP: As I indicated to the Court last time that it was on calendar as
15 to the codefendants --

16 THE COURT: Right.

17 MR. BINDRUP: -- but I made an appearance anyway, I indicated to the Court
18 that since my client had been in Lake's Crossing for seven to eight months and he
19 just recently came back, I think this is the first time the three defendants have been
20 together at any court appearance, I definitely need more time so I'm requesting the
21 Court consider resetting this matter.

22 THE COURT: Mr. Ruggeroli.

23 MR. RUGGEROLI: Judge, I made my client aware of that. We also have
24 some issues, if you recall.

25 THE COURT: Sure.

1 MR. RUGGEROLI: I have an issue regarding the denial of our motion to
2 sever. It's still at the appellate court level. So we would submit it on that. I think a
3 30-day -- vacating the trial, 30 day to set the trial, we have no opposition.

4 THE COURT: Why can't we set it today? Mr. Sanft, do you have any
5 objection to the motion to continue?

6 MR. SANFT: Well, we would be ready to go. We've been announcing ready
7 the entire time, so we understand that the Court will continue this matter. I've
8 spoken with my client, he understands that as well. We're asking the Court though
9 for whatever the earliest setting would be that would be appropriate for
10 co-defendants' counsel on it. We just don't want it to drag out.

11 MR. PESCI: And, Judge, we submit it.

12 THE COURT: Okay. When do you want me -- when can you be ready?
13 What are you looking at?

14 MR. BINDRUP: I'd request a February setting next year.

15 DEFENDANT WHEELER: No, no.

16 DEFENDANT ROBERTSON: No, no, no, no.

17 THE COURT: You need that much time to get ready?

18 MR. BINDRUP: Well, if you want to set it earlier, if you can suggest a month.

19 THE COURT: What's my last setting this year?

20 MR. BINDRUP: Perhaps October?

21 [Colloquy between the Court and the Clerk]

22 THE CLERK: Status check trial readiness is going to be August 21st, 8:30;
23 calendar call, November 5th, 8:30; jury trial, November 19th, 10:30.

24 MR. RUGGEROLI: And, Judge, on behalf of Mr. Wheeler, if it was possible, I
25 know you're already set the date, but we were not anticipating that it would be quite

1 so long. Our request would be September, if available. I think that would be
2 enough time for co-counsel. But I --

3 THE COURT: It's only six months out in a murder case.

4 DEFENDANT LOFTON: We didn't -- our murder case been actually going on
5 two years. So even though it's five months for my murder case, it still would be
6 enough time to -- it shouldn't take more than five months. It shouldn't take more
7 than four months. Really.

8 THE COURT: Mr. Bindrup.

9 MR. BINDRUP: Anyway, unless --

10 THE COURT: Do you want to be heard?

11 MR. BINDRUP: -- co-counsel or the State have problems with that particular
12 date, I'd ask that you keep it for the November 19th setting.

13 THE COURT: Okay. I'm going to keep the November 19th trial date.

14 MR. PESCI: Judge, if I could make a record as well, Mr. Raekwon Robertson
15 wrote me a letter. He's represented by counsel, so I took that letter and immediately
16 forwarded it to his attorney and I had to provide copies to counsel for the
17 codefendant. So I wish that they would acknowledge that they've received that as
18 well.

19 MR. RUGGEROLI: Judge, I did receive it this morning.

20 MR. BINDRUP: The same, Your Honor.

21 THE COURT: Okay.

22 MR. SANFT: Yes, Your Honor.

23 THE COURT: I'm assuming you received a copy too, Mr. Sanft?

24 MR. SANFT: I did, Your Honor. Thank you.

25 THE COURT: Okay. All right.

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MR. PESCI: Thanks.

THE COURT: Thank you.

MR. BINDRUP: Thank you.

THE COURT: Thank you.

PROCEEDING CONCLUDED AT 9:41 A.M.

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.



SARA RICHARDSON
Court Recorder/Transcriber



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DEMARIO LOFTON-ROBINSON,
RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

CASE NO. C-17-328587-1
C-17-328587-2
C-17-328587-3

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, AUGUST 21, 2019

RECORDER'S TRANSCRIPT OF PROCEEDINGS
STATUS CHECK: TRIAL READINESS

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney

For Defendant Lofton-Robinson:

SCOTT BINDRUP
Deputy Special Public Defender

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, AUGUST 21, 2019, 9:16 A.M.

2 * * * * *

3 THE COURT: State versus Lofton-Robinson, Robertson, Davontae Wheeler.
4 Okay. You want to make your appearances?

5 Do we have Mr. -- okay, we do have Mr. Sanft. You can start making
6 your appearances, please.

7 MR. PESCI: Giancarlo Pesci on behalf of the State.

8 MR. RUGGEROLI: Good morning, Your Honor. James Ruggeroli on behalf
9 of Mr. Wheeler who is present in custody.

10 MR. SANFT: Michael Sanft on behalf of Mr. Robertson who is also present in
11 custody, Your Honor, good morning,

12 MR. BINDRUP: Scott Bindrup for Mr. Lofton-Robinson.

13 THE COURT: Okay. The parties are on for trial readiness.

14 Mr. Bindrup, how are you doing?

15 MR. BINDRUP: Doing good, thank you.

16 THE COURT: Okay.

17 MR. BINDRUP: So I think we're --

18 THE COURT: Are you ready?

19 MR. BINDRUP: I'm ready -- I'm going to make an unusual defense request.

20 THE COURT: Okay.

21 MR. BINDRUP: We usually don't ask this, but if there's any way that you can
22 move this trial up one week, I'd appreciate it. If not, I'll just have to try to make due.
23 Just, I have Martin set in this department on November 12th. I expect that to be
24 vacated when it's called and reset for next year. Do you -- how does your week
25 before the 18th look? And I only bring this up because I planned on being out of the

1 country November 25th for a few weeks. But --

2 THE COURT: Okay, can the other parties do it?

3 MR. RUGGEROLI: Judge, I can.

4 MR. SANFT: Yes, Your Honor, we can.

5 MR. PESCI: Sure.

6 MR. RUGGEROLI: That's sooner, so, yes.

7 THE COURT: So there's no objection to moving it up?

8 MR. RUGGEROLI: I just want to clarify for Mr. Wheeler, the request is to
9 actually have the trial date start the week before.

10 THE COURT: Earlier.

11 DEFENDANT WHEELER: All right.

12 MR. BINDRUP: See, they're happy. Remember last time we were in court --

13 THE COURT: Okay. I know.

14 MR. BINDRUP: -- these two were yelling at me for wanting so much
15 additional time, so.

16 THE COURT: I'm happy.

17 MR. SANFT: Who was yelling? Was it me?

18 MR. BINDRUP: No, the -- your clients.

19 MR. SANFT: Okay. I just wanted to make sure.

20 THE COURT: Okay. Since there's no objection, we'll just move the trial date
21 up one week.

22 THE CLERK: Okay. Calendar call is going to be November 5th, 8:30; jury
23 trial, November 12th, 10:30.

24 DEFENDANT WHEELER: I thought trial was going to be --

25 THE COURT: But everybody's ready to go?

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MR. SANFT: Yes, Your Honor.

THE COURT: Okay. Then your next appearance will just be your calendar call.

MR. RUGGEROLI: Thank you.

MR. BINDRUP: Thank you.


MR. PESCI: Thank you, Judge.

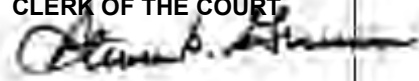
THE COURT: Thank you.

PROCEEDING CONCLUDED AT 9:19 A.M.

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.


SARA RICHARDSON
Court Recorder/Transcriber



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DEMARIO LOFTON-ROBINSON,
RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

CASE NO. C-17-328587-1
C-17-328587-2
C-17-328587-3

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

TUESDAY, NOVEMBER 5, 2019

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
CALENDAR CALL**

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney

For Defendant Lofton-Robinson:

SCOTT BINDRUP
Deputy Special Public Defender

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 5, 2019, 8:36 A.M.

2 * * * * *

3 THE COURT: Okay. State versus Demario Lofton-Robinson, State versus
4 Raekwon Robertson, Davontae Wheeler.

5 THE CLERK: Mr. Wheeler --

6 THE CORRECTIONS OFFICER: He's not here.

7 THE COURT: Right, that's what I --

8 You understand your client wasn't transported?

9 MR. RUGGEROLI: That's what I was informed, Your Honor.

10 MR. BINDRUP: May we approach, please?

11 THE COURT: Of course.

12 [Bench conference transcribed as follows:]

13 MR. RUGGEROLI: Good morning.

14 THE COURT: Good morning. All the attorneys are here though, right? Okay.
15 Okay.

16 MR. BINDRUP: Okay. My -- this is the competency request that I had
17 submitted last week.

18 THE COURT: Okay.

19 MR. BINDRUP: My staff, instead of submitting it to you like they should have,
20 submitted it to Judge Bell. I don't know how long she had it.

21 THE COURT: Okay.

22 MR. BINDRUP: But at some point it made it to your chambers and then we
23 were called yesterday to pick it up so that I could file it in open court and so I'm
24 doing that.

25 THE COURT: Okay.

1 MR. BINDRUP: Remember he's the one that was -- spent seven months in
2 Lake's Crossing last year and into nearly a part of this year, he still is out there
3 mentally. And, you know, so.

4 THE COURT: Okay. So you want me to refer him back to Competency
5 Court?

6 MR. BINDRUP: Yes. So I think you just need to review that, sign it, and send
7 it to Judge Bell for setting in her department whenever that's going to be.

8 And I know that Pesci, of course, wants to keep everything together, I
9 believe he's going to sent -- be sent back to Lake's Crossing, if he is, I don't how
10 much longer he can try to keep all three together. But in case he's found
11 competent, which I don't expect, then --

12 THE COURT: What happened -- well, I guess --

13 MR. BINDRUP: -- we're -- we're ready to go after that.

14 THE COURT: Well, he was found competent last time when he came back,
15 right?

16 MR. BINDRUP: Yeah. So if that happens, you know, then, of course, I think
17 it's easier to keep all three together. But if he's sent to Lake's Crossing, it might be
18 more of a difficult problem.

19 THE COURT: Okay.

20 MR. BINDRUP: And then the other thing, I heard -- I had requested the trial
21 be moved up a week because I had travel plans out of the country the week of
22 Thanksgiving into December and I heard that -- I don't know if you're dark just on
23 the part of that week or the whole week, but that was the other problem that came
24 up later.

25 THE COURT: Okay.

1 MR. BINDRUP: So, I --

2 THE COURT: So either way, it doesn't look like we're going to go forward?

3 MR. BINDRUP: Well, not for my client. So I don't know how the others want
4 to handle the rest.

5 MR. RUGGEROLI: I had previously filed a motion to sever.

6 THE COURT: Right.

7 MR. RUGGEROLI: That was for both defendants. You denied that.

8 THE COURT: And your guy, apparently --

9 MR. RUGGEROLI: He's not here.

10 THE COURT: I don't even know what happened.

11 MR. RUGGEROLI: Yeah, I don't either.

12 THE COURT: He had a problem with --

13 MR. RUGGEROLI: Right.

14 THE COURT: -- on the way up and that's why they didn't bring him.

15 MR. RUGGEROLI: Right.

16 THE COURT: So, sorry about that.

17 MR. RUGGEROLI: Yeah.

18 THE COURT: Mr. Sanft?

19 MR. SANFT: I'm ready to go.

20 THE COURT: Pardon

21 MR. SANFT: I'm ready.

22 THE COURT: Okay.

23 MR. PESCI: Judge, the State objects to a severance of the case because of
24 competency or defendant's unwillingness to come to court. We need to keep this
25 case --

1 THE COURT: Well, I don't think it was unwillingness. Well, heck, I don't
2 really know what it was to tell you the truth.

3 MR. PESCI: I'm not sure either. That's one thing that I heard, one potential
4 theory. Either way, these defendants have all waived their right to a speedy trial. I
5 do not want to try this case multiple times. For judicial economy, the State objects
6 to a *de facto* severance.

7 THE COURT: But you're ready?

8 MR. RUGGEROLI: I would be, yeah. We just had an issue about if he's
9 going to use my client's recording of the statements to the police. We wanted to go
10 through it. There's a number of things that we need to be redacted. But other than
11 that I think we're pretty good.

12 THE COURT: Okay. If we continued this, so he went to competency, I mean,
13 would you be ready? I mean, would you have been ready but for this issue?

14 MR. BINDRUP: But for, yeah.

15 THE COURT: Okay.

16 MR. BINDRUP: Other than my travel problem.

17 THE COURT: Okay. All right. So I'm going to continue it, but I'm going to
18 continue it for a short period. I mean, I'm going to try to continue it for a short
19 period. If he gets sent to Lake's Crossing, then --

20 MR. BINDRUP: It's a different --

21 THE COURT: -- we definitely have to go to Plan B.

22 MR. BINDRUP: Okay.

23 THE COURT: I don't -- it becomes a different issue.

24 MR. BINDRUP: Can we get --

25 THE COURT: Because you can't hold these guys hostage either. I mean, it

1 may end up having to sever if we continue to have this issue.

2 MR. BINDRUP: Can we either get a first of January or first of February
3 resetting?

4 THE COURT: Sure.

5 MR. RUGGEROLI: February? I have a sex assault in January, the first
6 couple of weeks.

7 THE COURT: So you wouldn't want January? You'd want February instead?
8 We'd have to probably accommodate either one.

9 MR. RUGGEROLI: Well, okay.

10 THE CLERK: We can do February, that's homicide, beginning of February.

11 MR. RUGGEROLI: I'll agree to either and I'll just put in a motion on the other
12 one.

13 THE COURT: Oh, on the other case?

14 MR. RUGGEROLI: Yeah.

15 THE COURT: So you'd rather have this one go first?

16 MR. RUGGEROLI: Yeah.

17 THE COURT: Okay.

18 MR. RUGGEROLI: Unless you want to do a status check on the competency
19 issue?

20 MR. PESCI: Maybe we should get a trial date --

21 THE COURT: Yeah. I'd like to get you a trial date so at least you have a trial
22 date.

23 MR. RUGGEROLI: Okay.

24 THE COURT: And if it -- if we have to move it, then we have to move it.

25 MR. RUGGEROLI: Yeah, thank you, Judge.

1 THE COURT: Okay.

2 [End of bench conference.]

3 THE COURT: Okay. So based on the representations, I'm going to vacate
4 the trial date. I'm going to reset it.

5 [Colloquy between the Court and the Clerk]

6 MR. SANFT: And, Your Honor, just for the record, on behalf of Raekwon
7 Robertson, I believe we were announcing ready for today as well.

8 THE COURT: And, Mr. Ruggeroli, you were ready as well, correct?

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

10 MR. SANFT: And I just want to make sure that I'm clear here, I think we've
11 been announcing ready since the very beginning on behalf of Mr. Robertson, so
12 we've been ready the entire time, and once again, we'll be delayed with regards to
13 his opportunity to go to trial in this matter. I just wanted to lay that out there that
14 we've been ready to go every single time.

15 THE COURT: Thank you.

16 Does the State want to say anything?

17 MR. PESCI: Judge, the State objects to a severance based on one
18 defendant's alleged incompetency and/or another defendant's nonappearance in
19 court today. Just for the record, Mr. Wheeler is not here.

20 THE COURT: Okay. So the trial date will be vacated. It will be reset.

21 THE CLERK: Calendar call is going to be January 21st, 2020 --

22 DEFENDANT ROBERTSON: Man, no, man, that's too far. That's too far.
23 Man, we've been going for two years already.

24 THE COURT: Okay. I'm setting, I mean, I am trying to accommodate what
25 the lawyers indicated and that's probably the soonest, I mean, it's already

1 November.

2 DEFENDANT ROBERTSON: Yeah, but he ready. Yeah, but he ready.

3 THE COURT: That's basically less than 60 days. I'm sorry?

4 DFEENDANT ROBERTSON: He's ready. He's ready. All the while he want
5 to take it to trial, so, man, let's go to trial.

6 THE COURT: Okay.

7 MR. BINDRUP: Your Honor, I'm out of country again the last two weeks of
8 January, so if you were going to set it that far in January, can we get a first week of
9 February?

10 THE CLERK: Calendar call, December 31st, 2019, 8:30; jury trial, January 6th,
11 2020, 10:30. You want me to do a status check?

12 MR. SANFT: Your Honor --

13 THE COURT: Yeah, we can do December. And we're going to do a status
14 check just to make sure.

15 MR. SANFT: Your Honor, I'm sorry to do this, I -- my entire January is
16 booked. I'll be in a federal trial, my guess would be at the end of January, but I
17 know that I have another trial scheduled for the beginning of January. I think it's
18 actually in this department. So, and I think that's on an invoked status. So if we
19 could set this for February, I -- my schedule works better for February than it is for
20 January.

21 THE COURT: I can --

22 MR. BINDRUP: Any time in February is fine with us.

23 MR. PESCI: Whatever you set, Judge, the State will be ready.

24 THE CLERK: Status check trial readiness is going to be February 18th.

25 THE COURT: Okay.

1 THE CLERK: Or, excuse me, sorry.

2 THE COURT: That's okay.

3 THE CLERK: Sorry, status check trial readiness is going to be
4 December 18th, 8:30. Calendar call is going to be February 4th, 2020, 8:30; jury trial,
5 February 10th, 2020, 10:30.

6 MR. PESCI: Thanks, Your Honor.

7 MR. RUGGEROLI: Thank you, Judge.

8 THE COURT: Thank you.

9 PROCEEDING CONCLUDED AT 8:44 A.M.

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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
23 video recording of this proceeding in the above-entitled case.

24

25


SARA RICHARDSON
Court Recorder/Transcriber



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

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

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, DECEMBER 18, 2019

RECORDER'S TRANSCRIPT OF PROCEEDINGS
STATUS CHECK: TRIAL READINESS

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney

For Defendant Robertson & Defendant Wheeler: MICHAEL W. SANFT, ESQ.

RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, DECEMBER 18, 2019, 8:47 A.M.

2 * * * * *

3 THE COURT: State of Nevada versus Robertson and Davontae Wheeler,
4 case C328587. And they're both present and in custody. And we --

5 MR. SANFT: Your Honor, I'm here on behalf of my client as well as
6 Mr. Wheeler.

7 THE COURT: So we don't have Mr. Ruggeroli here?

8 MR. SANFT: I'll be covering for Mr. Ruggeroli this morning.

9 THE COURT: Okay.

10 DEFENDANT WHEELER: Just like last time, you never know if, I mean, I'd
11 rather wait for my own lawyer to come. He never even spoke to me that he's going
12 to fill in for him. We never had a conversation about anything. So I'd rather wait for
13 my own attorney.

14 THE COURT: Okay. Is Mr. Ruggeroli planning on appearing?

15 DEFENDANT WHEELER: Thank you.

16 MR. SANFT: I don't know --

17 MR. PESCI: Mr. Ruggeroli just told me he was stuck in Justice Court 13,
18 asked if he could stand in. He says that they're on track for the trial setting and that
19 everything seems to be okay. The codefendant was just sent back to Lake's --

20 THE COURT: Right.

21 MR. PESCI: -- a week ago.

22 MR. SANFT: But we would anticipate, on behalf of Mr. Robertson, we would
23 also be ready to do. So I don't know how long the other codefendant will take at
24 Lake's Crossing, but we will be ready to go at this point. Again.

25 THE COURT: Okay. So I'm going to put it on for 30 days.

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MR. SANFT: Thank you, Your Honor.

THE CLERK: January 15th, 8:30 a.m.

MR. PESCI: Thank you, Your Honor.

MR. SANFT: Thank you, Your Honor.

THE COURT: And if Mr. Ruggeroli appears, I'll call your case again.

DEFENDANT WHEELER: Thank you.

THE COURT: But it appears as though he's -- he may not appear today.

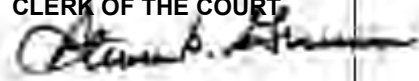
DEFENDANT WHEELER: I appreciate it. Thank you.

THE COURT: Thank you.

PROCEEDING CONCLUDED AT 8:48 A.M.

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.


SARA RICHARDSON
Court Recorder/Transcriber



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

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

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, JANUARY 15, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
STATUS CHECK: TRIAL READINESS (BOTH)
ALL PENDING MOTIONS (WHEELER)**

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 15, 2020, 9:23 A.M.

2 * * * * *

3 THE COURT: State versus Robertson and Wheeler, case C328587.

4 UNIDENTIFIED DEFENDANT: Good morning, Your Honor.

5 THE COURT: Good morning. They're both present and in custody.

6 MR. PESCI: Giancarlo Pesci on behalf of the State.

7 MR. RUGGEROLI: Good morning, Your Honor, James Ruggeroli on behalf of
8 Mr. Wheeler.

9 MR. SANFT: And, Your Honor, Michael Sanft as well.

10 THE COURT: Good morning. We have a February 10th trial date pending,
11 are the parties going to be ready to go?

12 MR. RUGGEROLI: Yes, Your Honor.

13 MR. SANFT: Yes, Your Honor.

14 MR. PESCI: We anticipate being ready.

15 THE COURT: Okay. I know you have a few motions.

16 MR. RUGGEROLI: Yes, Your Honor.

17 THE COURT: Do you want to start?

18 MR. RUGGEROLI: Please. Judge, starting with the motion to sever the
19 counts, the State filed a response indicating that they don't oppose. I think, to be
20 safe, the State would file an amended indictment and not have those counts
21 included, there's no real argument about that I don't believe.

22 MR. PESCI: And so -- correct.

23 THE COURT: Right. So the motion to sever counts, the State didn't have
24 any objection, so that will be granted. And I believe the State wanted to begin with
25 Counts 5 through 7 first.

1 MR. PESCI: Correct. We'll have an amended by the time of trial.

2 THE COURT: Okay.

3 MR. RUGGEROLI: Thank you, Judge.

4 THE COURT: All right.

5 MR. RUGGEROLI: Judge, as to the motion to suppress statements, Judge, I
6 believe that we've provided sufficient grounds for the Jackson v. Denno hearing. A
7 number of our contentions would require, and I think it would be more beneficial to
8 have the hearing, to have the full argument afterwards. We have some specific
9 contentions and so we would request the Jackson v. Denno hearing.

10 THE COURT: Okay. I'll grant the request for the Jackson v. Denno hearing.
11 Can we do it the first day of trial?

12 MR. PESCI: That's fine with the State.

13 MR. RUGGEROLI: Yes, Judge.

14 THE COURT: Okay. All right. Then the next one is your motion in limine to
15 preclude jail phone calls.

16 MR. RUGGEROLI: Yes, Judge. Your Honor --

17 THE COURT: Do you have any specific thing you're trying to exclude?

18 MR. RUGGEROLI: I'm not aware of anything that has been said by my client
19 that would be a problem. However, sometimes there are different views of what
20 statements actually mean. He's been in custody for quite a long time, so I would
21 suspect that the State has hours and hours and hours of statements that have been
22 made that include other parties. I, as a general motion, am asking that all of the jail
23 calls be suppressed. However, if the Court does not grant that, then I think that the
24 State should at least put us on notice to what specific calls they intend to use, if any.

25 THE COURT: Well, I believe if they're going to use it in their case-in-chief

1 they're required to.

2 MR. PESCI: Correct, Judge. But there's been no specificity as to a particular
3 item that they want to exclude. It's just a blanket request to make everything that
4 my client said not come into trial. There's no legal basis to prohibit a call that's
5 recorded and allowed by statute from the jail to be introduced and we're not going to
6 tell or do for them in advance their job and tell them, hey, maybe you should object
7 to this one.

8 So if there's a piece of evidence when we're seeking to introduce they
9 want to object to, we'll take it up at that point. But we're not going to point it out in
10 advance.

11 THE COURT: Okay. So I'm going to deny the request and any objection can
12 be made at the time of trial.

13 And the motion to disclose informants.

14 MR. RUGGEROLI: Judge, this one's mainly precautionary. We are aware of
15 one informant. I don't have reason to believe that there are others. But if there are,
16 we would like to be informed, we need to be.

17 MR. PESCI: And, Judge, we've already informed them of the individual, given
18 them the materials associated with that, don't know of any other person that would
19 fall into that category, thus we filed our opposition.

20 THE COURT: Okay. I mean, but, again, if the State has any of that
21 information, they're required to turn it over to the defense.

22 The motion to sever the counts was granted.

23 The motion to compel Brady material.

24 MR. RUGGEROLI: Thank you, Judge. Your Honor, I did point out in the
25 motion that to the extent it has not already been provided, we've already done an

1 extensive file review with the State. I believe Mr. Pesci has given us everything.
2 There are really just two issues specifically regarding the witness, D.R., the juvenile
3 and mental health records. And then the second issue was the production and
4 notification of all phone or Facebook records. And I think that the State has given us
5 everything. But we're being very cautious and want to make sure that this was
6 preserved in writing. So that's the basis for the motion.

7 THE COURT: Does the State have any juvenile and mental health records for
8 D.R.?

9 MR. PESCI: We do, and we've already given it to the defense. The defense
10 asked for it. We obtained it for them. And we gave it to them months ago.

11 THE COURT: Okay.

12 MR. RUGGEROLI: Yeah.

13 THE COURT: So is there anything in this motion that hasn't been provided to
14 you?

15 MR. RUGGEROLI: Not that I'm aware of, Judge.

16 THE COURT: Okay. All right. And then motion to compel production of
17 inducement index.

18 MR. RUGGEROLI: Thank you, Judge. I think the State has indicated, and
19 we'll just hold them to their word, that they've provided that it is everything that's
20 been required.

21 MR. PESCI: That's correct.

22 THE COURT: All right. Okay. Thank you very much, and can we just put it
23 on for your calendar call, February 4th?

24 MR. RUGGEROLI: Yes, Judge.

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


1 THE COURT: Okay. Thank you. And, Mr. Ruggeroli, you can -- you can
2 prepare your order on your motions.

3 MR. RUGGEROLI: Okay. Thank you, Judge.

4 PROCEEDING CONCLUDED AT 9:28 A.M.

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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
23 video recording of this proceeding in the above-entitled case.

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25 SARA RICHARDSON
Court Recorder/Transcriber

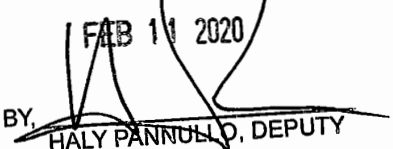
ORIGINAL

1 IND

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

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

FEB 11 2020

BY:  HALCY PANNULLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

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

11 -vs-

DEPT NO: XII

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

Defendant(s).

AMENDED

SUPERSEDING

INDICTMENT

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

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

27 ///

28 ///

C-17-328587-2
SIND
Superseding Indictment
4900316



1 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

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

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

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

26 ///

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28 ///


1 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

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

15 DATED this 12 day of February, 2020.

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

19 BY


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

23 ENDORSEMENT: A True Bill

24
25
26 Foreperson, Clark County Grand Jury

27
28 Names of Witnesses and testifying before the Grand Jury:

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

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	)	CASE NO. C-17-328587-2
	)	CASE NO. C-17-328587-3
Plaintiff,)	
	)	DEPT. NO. XII
v.)	
)	
RAEKWON SETREY ROBERTSON,)	
a/k/a RAEKWON ROBERTSON,)	
AND DAVONTAE AMARRI WHEELER,)	
)	
Defendants.)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 11, 2020

RECORDER'S PARTIAL TRANSCRIPT OF PROCEEDINGS:

JURY TRIAL - DAY 1
(EXCLUDES PROCEEDINGS FROM 10:43 A.M. TO 11:38 A.M.
JACKSON V. DENNO HEARING)

APPEARANCES:

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

RECORDED BY: SARA RICHARDSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 11, 2020, 1:22 P.M.

2 (Outside the presence of the prospective jurors)

3 (Pause in the proceedings)

4 THE COURT: Okay. State of Nevada vs. Robertson and
5 Wheeler. They're both present in the courtroom. Will the
6 parties make their appearances, please?

7 MR. PESCI: Sorry. Parker Brooks and Giancarlo
8 Pesci for the State.

9 MR. SANFT: Michael Sanft on behalf of Mr.
10 Robertson, who's present.

11 MR. RUGGEROLI: Good morning -- or good afternoon,
12 Your Honor. James Ruggeroli for Mr. Wheeler, who is present
13 in custody.

14 THE COURT: Okay. Have we made a determination as
15 to the penalty phase?

16 MR. SANFT: Yes. On behalf of Mr. Robertson, we
17 have signed the stipulated waiver.

18 THE COURT: Okay.

19 MR. RUGGEROLI: And as to Mr. Wheeler as well, Your
20 Honor.

21 THE COURT: Do you have them?

22 MR. PESCI: Judge, I'm just receiving it now, so I'm
23 going to sign it as well.

24 THE COURT: Okay.

25 MR. PESCI: May I approach?

1 THE COURT: You bet. Is it just one stipulation?

2 MR. PESCI: It's one that covers both defendants.

3 THE COURT: Okay. Okay, and there's no further
4 stipulation regarding the sentence; is that correct?

5 MR. PESCI: No, just within the legal parameters for
6 first degree murder.

7 THE COURT: Okay. Mr. Robertson, if you don't mind
8 standing. You understand, if the jury returned a verdict of
9 first degree murder in this action, that you would have the
10 right to have a penalty hearing and have the jury determine
11 the appropriate penalty?

12 DEFENDANT ROBERTSON: Yes.

13 THE COURT: And you have signed this waiver,
14 indicating that you're waiving your right to have the jury
15 make any determination on a first degree murder conviction,
16 and that the Court would make the determination?

17 DEFENDANT ROBERTSON: Yes, I am.

18 THE COURT: And you know what the three possible
19 penalties are: life without the possibility of parole, life
20 with the possibility of parole after a minimum of 20 years has
21 been served, or a definite term of 50 years with parole
22 eligibility beginning after a minimum of 20 years has been
23 served?

24 DEFENDANT ROBERTSON: Yes.

25 THE COURT: And you had an opportunity to discuss

1 this waiver with your lawyer?

2 DEFENDANT ROBERTSON: Yes.

3 THE COURT: And he answered all of your questions?

4 DEFENDANT ROBERTSON: Yeah, he answered everything.

5 THE COURT: Okay, and you believe that it's in your
6 best interest to waive any penalty hearing?

7 DEFENDANT ROBERTSON: Yeah.

8 THE COURT: And you understand it would only be
9 applicable if the jury returned a first degree murder
10 conviction, and only to that count? And this is your
11 signature on the stipulation?

12 DEFENDANT ROBERTSON: Yes.

13 THE COURT: And you read it before you signed it?

14 DEFENDANT ROBERTSON: Yeah, I read it.

15 THE COURT: And you understood it prior to signing
16 it?

17 DEFENDANT ROBERTSON: Yeah, I understood it.

18 THE COURT: Okay.

19 DEFENDANT ROBERTSON: I asked my attorney questions;
20 he explained it.

21 THE COURT: Okay. And do you have any questions of
22 the Court?

23 DEFENDANT ROBERTSON: No.

24 THE COURT: Okay. Thank you, Mr. Robertson.

25 And Mr. Wheeler, if you don't mind standing. It

1 appears as though you have entered into a stipulation with the
2 State to waive any penalty hearing if there was a conviction
3 for first degree murder in this action; is that correct?

4 DEFENDANT WHEELER: Yes, Your Honor.

5 THE COURT: And you understand that if there was a
6 conviction for first degree murder, you would have the right
7 to have the same jury that we impanel determine the
8 appropriate penalty? You understand that?

9 DEFENDANT WHEELER: Repeat that for me again.

10 THE COURT: Okay. You understand that if there was
11 a -- if the jury returns a verdict of first degree murder, you
12 have the right to have the same jury determine what the
13 appropriate penalty would be?

14 DEFENDANT WHEELER: I understand.

15 THE COURT: You understand that?

16 DEFENDANT WHEELER: Yes, Your Honor.

17 THE COURT: Okay, and that you have entered into an
18 agreement with the State of Nevada to waive any penalty
19 hearing and to have the Court determine the appropriate
20 sentence?

21 DEFENDANT WHEELER: Yes, Your Honor.

22 THE COURT: And that's what you want to do?

23 DEFENDANT WHEELER: Yes, Your Honor.

24 THE COURT: Okay, and you had a chance to discuss
25 this with your lawyer?

1 DEFENDANT WHEELER: Yes, Your Honor.

2 THE COURT: He answered all of your questions?

3 DEFENDANT WHEELER: Yes, Your Honor.

4 THE COURT: You're doing this freely and

5 voluntarily?

6 DEFENDANT WHEELER: Yes, Your Honor.

7 THE COURT: Okay, and you had a chance to read this

8 waiver?

9 DEFENDANT WHEELER: Yes, Your Honor.

10 THE COURT: Okay, and that is your signature on page

11 2?

12 DEFENDANT WHEELER: Yes, Your Honor.

13 THE COURT: And you read it before you signed it?

14 DEFENDANT WHEELER: Yes, Your Honor.

15 THE COURT: Okay. And any questions that you had,

16 your attorney has answered to your satisfaction; is that

17 correct?

18 DEFENDANT WHEELER: Yes, Your Honor.

19 THE COURT: Do you have any questions of the Court?

20 DEFENDANT WHEELER: Not -- not -- no. No, Your

21 Honor.

22 THE COURT: Okay. And you understand what the three

23 options would be if there was a first degree murder

24 conviction?

25 DEFENDANT WHEELER: Can you repeat them for me, Your

1 Honor?

2 THE COURT: Absolutely. Life without the
3 possibility of parole, life with the possibility of parole
4 after a minimum of 20 years has been served, or a definite
5 term of 50 years with parole eligibility beginning after a
6 minimum of 20 years has been served. And of course, if
7 there's a -- if the jury found a deadly weapon enhancement, it
8 would be a consecutive 1 to 20 for the deadly weapon
9 enhancement.

10 DEFENDANT WHEELER: Yes, Your Honor.

11 THE COURT: Okay. Do you have any questions?

12 DEFENDANT WHEELER: No, no, I'll speak with my
13 lawyer about it, but no questions. No.

14 THE COURT: Okay. Is it anything about waiving the
15 penalty hearing?

16 DEFENDANT WHEELER: No, no, Your Honor.

17 THE COURT: Okay, and so you're ready to proceed?

18 DEFENDANT WHEELER: Yes, ma'am. Yes, Your Honor.

19 THE COURT: Okay, all right. I will sign this, and
20 then -- so, obviously, neither side will ask this jury panel
21 any questions about the penalty.

22 MR. SANFT: Yes, Your Honor. That's correct.

23 MR. PESCI: Correct, Your Honor.

24 THE COURT: Okay. Thank you. Anything before we
25 bring this jury panel in?

1 MR. RUGGEROLI: Judge, I had asked the State if we
2 could make a record. I believe we may have done this
3 previously, but --

4 THE COURT: Okay.

5 MR. RUGGEROLI: -- out of an abundance of caution.
6 There was an offer that had been extended quite some time ago.

7 THE COURT: Oh, okay.

8 MR. RUGGEROLI: And I just want to make sure that we
9 preserve it for the record. This would be the most opportune
10 time.

11 THE COURT: Okay.

12 MR. RUGGEROLI: If Mr. Pesci -- there were two
13 alternatives, and I did explain to Mr. Wheeler, and we did
14 reject it, but I want to make sure that there's a record, if
15 we may.

16 THE COURT: Okay, I appreciate that. Thank you.

17 Will the State indicate for the record what the
18 offer was?

19 MR. PESCI: Yes. The offer was a choice between two
20 options, one being plead to first degree murder, or two, plead
21 to second degree murder with use of a deadly weapon and
22 attempt robbery. Both instances, the State and the defense
23 retains the full right to argue within the confines of those
24 particular charges.

25 I'm looking back at my -- I'm trying to go back over

1 things, and I think this was done probably early summer of
2 2019, as far as the offer being extended. And my recollection
3 is that, in court, the defendants rejected it.

4 THE COURT: Okay, and it was the same offer for both
5 Mr. Robertson and Mr. Wheeler?

6 MR. PESCI: Yes, and it's contingent they both would
7 have to take it.

8 THE COURT: Okay. And Mr. Robertson, was that your
9 understanding of the offer made by the State of Nevada?

10 MR. SANFT: I'm sorry, Your Honor, if I could just
11 have a quick second.

12 THE COURT: That's okay.

13 (Pause in the proceedings)

14 MR. SANFT: Yes, Your Honor.

15 THE COURT: Okay. And Mr. Robertson, that's your
16 understanding of what the offer was from the State of Nevada?

17 DEFENDANT ROBERTSON: Yes.

18 THE COURT: And you have decided to reject that
19 offer; is that correct?

20 DEFENDANT ROBERTSON: Yes.

21 THE COURT: Okay. And Mr. Wheeler, that is your
22 understanding of what the offer was from the State of Nevada?

23 DEFENDANT WHEELER: Yeah.

24 THE COURT: And it's my understanding you want to
25 reject that offer and proceed to trial?

1 DEFENDANT WHEELER: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. SANFT: Your Honor, I just want to make sure
4 we're clear. I don't know if the offer was still open. I
5 think we were just making a record of what was offered back
6 last summer, not necessarily that that offer is still open
7 today.

8 MR. PESCI: Yeah. I mean, from the State's
9 perspective, it was rejected when it was previously offered --

10 THE COURT: Okay.

11 MR. PESCI: -- and they rejected it. I'm not
12 hearing them saying they want to take it right now; I'm
13 hearing them saying they're rejecting it.

14 THE COURT: Right. And Mr. Ruggeroli asked me to
15 make that record, so --

16 MR. RUGGEROLI: Thank you.

17 THE COURT: If we did it before, great. But if we
18 didn't, it's clearly on the record now.

19 MR. RUGGEROLI: Yes. And just for clarification for
20 Mr. Wheeler, the State had retained the right to argue -- the
21 full right to argue, which would have meant that on the first
22 option, the State could have asked for life without, and I
23 believe that that's what they were intending to do.

24 THE COURT: That is correct.

25 MR. PESCI: Well, whether we intended or not is a

1 different issue. It's one of the possible forms of punishment
2 under that negotiation, whether we go to trial and get a first
3 degree murder or we do a negotiation.

4 THE COURT: Okay.

5 MR. PESCI: Judge, I apologize. Is it all right if
6 we take a little break? Because it seems like there's some
7 questions.

8 THE COURT: Well, yeah, I'm concerned.

9 MR. PESCI: I want to make sure that they've got --

10 THE COURT: Do you gentlemen want to speak to your
11 lawyers a little bit further?

12 DEFENDANT ROBERTSON: Yes, please.

13 DEFENDANT WHEELER: Yeah, I understand completely.

14 THE COURT: Okay. I mean, we'll give you a few
15 minutes.

16 DEFENDANT ROBERTSON: I'd like to speak with my
17 lawyer.

18 THE COURT: We can give you a few minutes. We'll
19 leave.

20 MR. SANFT: Thank you, Your Honor.

21 MR. PESCI: Your Honor, with your permission, so
22 they can talk, do you want us to go out?

23 THE COURT: Sure.

24 MR. PESCI: Can we go out the back?

25 THE COURT: You can let them talk, and we'll go in

1 the back.

2 MR. SANFT: I'll talk to him in the back.

3 THE COURT: Oh, you want to talk in the back?

4 (Court recessed at 1:34 P.M. until 1:45 P.M.)

5 (Outside the presence of the prospective jurors)

6 THE COURT: Mr. Sanft, Mr. Ruggeroli, are we ready

7 to bring the panel in?

8 MR. RUGGEROLI: We're going to proceed.

9 MR. SANFT: We are going to proceed, Your Honor.

10 THE COURT: Okay.

11 (Pause in the proceedings)

12 THE MARSHAL: All rise for the entering jury,

13 please. Jurors.

14 (Within the presence of the prospective jurors)

15 (Pause in the proceedings)

16 THE COURT: Do we have everybody?

17 THE MARSHAL: Give me one second, ma'am.

18 THE COURT: Okay.

19 (Pause in the proceedings)

20 THE COURT: Okay, does the State stipulate to the

21 presence of the panel?

22 MR. PESCI: Yes, Your Honor.

23 THE COURT: Mr. Sanft?

24 MR. SANFT: Yes, Your Honor.

25 THE COURT: Mr. Ruggeroli?

1 MR. RUGGEROLI: Yes, Your Honor.

2 THE COURT: Okay, thank you.

3 Good afternoon, ladies and gentlemen. Welcome to
4 Department 12 of the Eighth Judicial District Court. My name
5 is Michelle Leavitt. I'm the presiding Judge in this
6 Department.

7 You have been summonsed here today to serve as
8 jurors in a criminal case entitled State of Nevada vs.
9 Wheeler. Can you hear me, sir? Okay, I just want to make
10 sure that everyone can -- somebody over here?

11 UNIDENTIFIED SPEAKER: I can't. Can you speak up,
12 ma'am?

13 THE COURT: Okay. Well, we have earphones that will
14 amplify it, so I'll let the officer get that to you. But yes,
15 I will speak up.

16 THE MARSHAL: Who else? Anybody else need
17 headphones?

18 THE COURT: Okay, is that better, sir?

19 Okay, good.

20 You have been summonsed here today to serve as
21 jurors in a criminal case entitled State of Nevada vs.
22 Robertson and Wheeler. Before I do allow both sides to speak
23 to you and give you a brief statement of the facts, I'm going
24 to introduce the staff in Department 12 and tell you what they
25 all do.

1 You have met Officer Hawkes. He is the Marshal in
2 Department 12. He is the person that you will have the most
3 contact with.

4 Throughout this process of selecting a jury, and
5 after we do have a jury impaneled, myself, the attorneys, the
6 parties, the staff in Department 12, with the exception of
7 Officer Hawkes, are not permitted to have any communication
8 with you whatsoever outside of the courtroom. So if there's
9 anything that you need to communicate to the Court, I'd just
10 ask that you do so in the courtroom in the presence of both
11 sides. Otherwise, you can talk to Officer Hawkes.

12 To my right is Haly. Haly is the Court Clerk in
13 Department 12. She keeps the official record, she keeps the
14 official minutes. She's also the person that will take charge
15 of all of the evidence at the time of trial when it is
16 admitted.

17 To her right is David. David's a licensed attorney
18 in the State of Nevada. He is the Law Clerk in Department 12,
19 and he assists with legal issues.

20 To his right is Sara. Sara is the Court Recorder in
21 Department 12. It's her job to take down everything that's
22 being said during these proceedings. At some point, she'll be
23 called upon by myself to prepare a written transcript of
24 everything that is said during this trial.

25 So when you are called upon to address the Court or

1 the lawyers, before you respond, that you just state your
2 name, the badge number that's been provided to you by the Jury
3 Commissioner before responding so that we have a clear record
4 of who is speaking at all times.

5 At this time, I'm going to allow the attorneys to
6 introduce themselves. They will have an opportunity to give
7 you a brief statement of the facts. Each side will also give
8 you their witness list. I ask that you pay close attention to
9 the names on the witness list because at some point I will ask
10 you if you're familiar with any of the witnesses who will be
11 called to testify in this matter.

12 The State of Nevada?

13 MR. PESCI: Thank you, Your Honor.

14 Ladies and gentlemen, my name is Giancarlo Pesci.
15 This is Parker Brooks. We are the District Attorneys assigned
16 to this case.

17 This case involves three charges. There's a charge
18 of conspiracy to commit robbery, attempted robbery with use of
19 a deadly weapon, and murder with use of a deadly weapon.
20 That's alleged to have occurred here in Clark County, Nevada;
21 specifically, 5536 Dewey Avenue here in Las Vegas, on or about
22 August 9th of 2017.

23 In the process of presenting the case, we, the State
24 of Nevada, will present witnesses. I have a list here of
25 witnesses. As the Court has explained, please listen to see

1 if maybe you know some of them. We will not call all of these
2 names as witnesses, but you may hear of them, even if they are
3 not called as witnesses.

4 Sarath Bambarendago. A Sonny Bogatay. Tracey
5 Bushman. An Officer Calleja. An Officer Catricala.
6 Detective Lara Cody. Detective Darren Cook. Custodian of
7 records for the Nevada Department of Corrections. A custodian
8 of records for Sprint. Custodian of records for T-Mobile.
9 Custodian of records for Metro Dispatch. Custodian of records
10 for the Short Line Express convenience store.

11 A Detective Mitch Dosch. Witness Pelita Dizon. An
12 Officer Garcia. A detective named Ryan Jaeger. A witness
13 named Bob Jano. Mercedita Jano. Janessa Justice. Rae
14 Klassen. Detective Jason McCarthy. Robert Mason. Lucy
15 Mendoza. Officer Fred Merrick. James Newman. Officer
16 Parker. Officer Parra. A John Relato. Anthony Reeves.
17 DeShawn Robinson. Mariah Romatko. Officer Sandoval. Marcell
18 Solomon. Nikolaus Spahn. An Officer Tromboni. Officer
19 Truax, T-r-u-a-x. Officer -- or Detective Tod Williams.

20 Officer Barringer. Crime Scene Analyst Claire
21 Browning. Crime Scene Analyst Noreen Charlton. A doctor with
22 the coroner's office, Jennifer Corneal. A crime scene analyst
23 named Laura Brooke Cornell. A crime scene analyst named Shawn
24 Fletcher. A computer forensic analysis employee with Metro
25 named Jessica Flink. An Officer Guerrero -- or Crime Scene

1 Analyst Guerrero. A firearms expert, Anya Lester. A
2 fingerprint expert of Linda Manigault. A DNA expert, Allison
3 Rubino. A Crime Scene Analyst Schellberg. Crime Scene
4 Analyst Jeffrey Scott. And Crime Scene Analyst Shannon.

5 Additionally, Crime Scene Analyst William Speas. A
6 retired crime scene analyst, Ebony Stephens. A crime scene
7 analyst named Glezzelle Tapay. And an Officer Tomaino. Thank
8 you, Your Honor.

9 THE COURT: Mr. Sanft?

10 MR. SANFT: Yes, Your Honor. Good afternoon. My
11 name's Michael Sanft. I represent Raekwon Robertson.
12 Raekwon, can you stand up for a second? Raekwon's been
13 charged in the crimes that you've heard the State allege here
14 today. He's pled not guilty to those charges. We don't
15 anticipate calling any witnesses, but we anticipate using
16 cross-examination on the State's witnesses in this case.
17 Thank you.

18 THE COURT: Any other witnesses you want to advise
19 the panel of?

20 MR. SANFT: No, Your Honor.

21 THE COURT: Oh, sorry. Mr. Ruggeroli?

22 MR. RUGGEROLI: Thank you, Your Honor.

23 Good afternoon, ladies and gentlemen. My name is
24 James Ruggeroli. I represent Davontae Wheeler; he is
25 standing. He is not guilty of those charges. The State has

1 read a list of witnesses. We would not intend to potentially
2 call anybody other than what they've already called. Thank
3 you.

4 THE COURT: Thank you. At this time, ladies and
5 gentlemen, the clerk's going to call the roll of the panel of
6 prospective jurors. When your name is called, please indicate
7 "present" or "here."

8 (CLERK CALLS ROLL OF PROSPECTIVE JURY PANEL)

9 THE COURT: Okay. Is there anyone whose name was
10 not called by the clerk of the court? Okay, the record will
11 reflect no response from the panel.

12 The questioning of the jury panel is done under
13 oath, so if you'll all please stand and raise your right hand
14 so the Clerk can administer the oath.

15 PROSPECTIVE JURY PANEL SWORN

16 THE CLERK: You may be seated.

17 THE COURT: Thank you.

18 We're about to commence what is called voir dire
19 examination. The term "voir dire" means to tell the truth.
20 During this process, you will be asked questions bearing upon
21 your ability to sit as fair and impartial jurors. To
22 accomplish this result, various questions will be asked of you
23 by myself or counsel for the parties.

24 On occasion, some of these questions will seem
25 somewhat personal. While we do not wish to unnecessarily pry

1 into your personal lives, the questions are necessary so that
2 counsel and the Court can make an intelligent determination as
3 to your capabilities to serve fairly and impartially. I want
4 you to know that myself, and the attorneys, and all other
5 persons involved in this case are concerned with having this
6 matter tried by jurors who are completely open-minded,
7 neutral, objective, and unbiased in their thinking.

8 Wide discretion is vested in the trial judge as to
9 the method of examination of jurors. As I stated previously,
10 I will personally conduct the voir dire, but I will give the
11 attorneys the opportunity to participate in this questioning.

12 It is important that you know the significance of
13 full, complete, and honest answers to all the questions we're
14 about to ask you. I caution you not to try to hide or
15 withhold anything which might indicate bias or prejudice of
16 any sort by any of you. Should you fail to answer truthfully,
17 if you hide or withhold anything touching upon your
18 qualifications, that fact may tend to contaminate your verdict
19 and subject you to further inquiry, even after discharged as
20 jurors. Your decision should be based upon all of the
21 evidence presented during this trial, and not based upon any
22 preconceived prejudice or bias.

23 I will conduct a general voir dire examination of
24 you while you are all seated in the audience. After those
25 general questions, the Clerk will call the first 32 names to

1 fill the jury box.

2 At some point during the process of selecting a
3 jury, the attorneys for both sides will have the right to ask
4 that a particular person not serve as a juror. These requests
5 are called challenges. There are two types of challenges:
6 challenges for cause and peremptory challenges.

7 A challenge for cause means that a juror's been
8 excused because his or her answers to some of the voir dire
9 questions indicate that he or she would have a difficult time
10 in giving a fair and impartial hearing to this case. I will
11 ask the attorneys to pass or waive the prospective jurors for
12 a cause challenge when they are done questioning the jury
13 panel. A peremptory challenge means that a juror can be
14 excused from duty without counsel having to give a reason for
15 that excusal.

16 Please do not be offended should you be excused by
17 either of the challenge procedures. They are simply a part of
18 the procedures designed to protect the rights of the parties
19 under our system of government.

20 Is there anyone on the panel who's ever been
21 convicted of a felony?

22 THE MARSHAL: If you don't mind standing up.

23 THE COURT: Your name and badge number, please?

24 PROSPECTIVE JUROR NO. 600: Jeffrey Hall.

25 THE COURT: And your badge number?

1 PROSPECTIVE JUROR NO. 600: 07-0600.

2 THE COURT: So, 0600? Okay. Mr. Hall, you -- do

3 you currently have a felony conviction?

4 PROSPECTIVE JUROR NO. 600: I was convicted back in

5 '91.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR NO. 600: But when I answered

8 that, they told me I still have to appear.

9 THE COURT: Okay. Do you currently have a felony

10 conviction?

11 PROSPECTIVE JUROR NO. 600: No.

12 THE COURT: Okay. What happened to it? Was it

13 reduced?

14 PROSPECTIVE JUROR NO. 600: I was -- I finished my

15 parole and everything --

16 THE COURT: Okay.

17 PROSPECTIVE JUROR NO. 600: -- in 2009.

18 THE COURT: Okay. 1991 to 2009?

19 PROSPECTIVE JUROR NO. 600: Yes.

20 THE COURT: Okay. And do you believe you still have

21 that felony conviction?

22 PROSPECTIVE JUROR NO. 600: I don't think so.

23 THE COURT: Okay. Was it sealed, or dismissed, or

24 something like that?

25 PROSPECTIVE JUROR NO. 600: No, it wasn't.

1 THE COURT: Okay, here's what I'm going to ask you
2 to do. I'm going to ask you to write down your name, your
3 date of birth, and your social security number, and then hand
4 it to the court Marshal. And when he is done with that, we'll
5 make sure that that information gets shredded.

6 Anyone else that wants to respond to that question?
7 Okay, the record will reflect no further response from the
8 panel.

9 Is there anyone on this panel who is not a citizen
10 of the United States? You can have a seat, sir. Anyone that
11 is not a citizen of the United States? The record will
12 reflect no response from the panel.

13 Is there anyone on this panel who is not a resident
14 of Clark County, Nevada? The record will reflect no response
15 from the panel.

16 Is there anyone who has such a sympathy, prejudice,
17 or bias relating to age, religion, race, gender, or national
18 origin that they feel would affect their ability to be an
19 open-minded, fair, and impartial juror? The record will --
20 okay.

21 PROSPECTIVE JUROR NO. 586: Just hold it here?
22 Okay. My name's Valerie Musial. Juror ID 102114279.

23 THE MARSHAL: No, that's the wrong number.

24 THE COURT: Yeah, that's not the --

25 PROSPECTIVE JUROR NO. 586: 07-0586.

1 THE COURT: 0586? Okay. Go ahead, Ms. Musial.

2 PROSPECTIVE JUROR NO. 586: Both of my parents -- I
3 spent my whole life in foster care. Both of my parents were
4 sent to prison, which I believe they were wrongfully
5 convicted. I believe the black community right now is being
6 disgraced against, and no matter what, I'll plead not guilty
7 if the defendants are African-American.

8 THE COURT: I'm sorry, I don't know what that means,
9 because no one's going to ask you to enter a plea.

10 PROSPECTIVE JUROR NO. 586: Okay. I'm saying
11 though, as far as a decision, I'm not able to make a proper
12 decision because I don't feel like black people are being
13 fairly treated in the United States right now.

14 THE COURT: Okay. So you've made a determination as
15 to what the result would be in this matter --

16 PROSPECTIVE JUROR NO. 586: Correct, unfortunately.

17 THE COURT: Let me finish. Without hearing any
18 evidence?

19 PROSPECTIVE JUROR NO. 586: Yes.

20 THE COURT: So it doesn't matter what the evidence
21 is; you've reached a conclusion?

22 PROSPECTIVE JUROR NO. 586: Correct, as not guilty.

23 THE COURT: Okay, you can have a seat. Thank you.
24 Anyone else that wants to respond to that question?

25 PROSPECTIVE JUROR NO. 474: Dennis Rorabaugh, Juror

1 474.

2 THE COURT: Thank you.

3 PROSPECTIVE JUROR NO. 474: Although I do not
4 recognize the names of the prior -- the law enforcement that
5 will be called, I cannot say that I do not know them, due to
6 prior career and experience living in Las Vegas.

7 THE COURT: Okay. Who do you believe you know?

8 PROSPECTIVE JUROR NO. 474: I've ran across a lot of
9 different law enforcement in Clark County over the years for
10 the last 25 years, and cannot say that I don't know multiple.

11 THE COURT: Okay. Well, it's okay, you're allowed
12 to know a witness. I just need to know if there is anything
13 about that that would affect your ability to be fair and
14 impartial.

15 PROSPECTIVE JUROR NO. 474: I can't say that there's
16 not.

17 THE COURT: I'm sorry?

18 PROSPECTIVE JUROR NO. 474: I can't say that I will
19 not be impartial to a decision due to evidence presided with
20 me knowing or knowing friends of law enforcement.

21 THE COURT: Okay. I'm not sure I'm understanding,
22 okay? Because you're permitted to serve on a jury panel, even
23 if you know the witnesses that would come in and testify. You
24 just have to be able to make a commitment to be fair and
25 impartial to both sides, regardless of who the witnesses are.

1 Do you understand that?

2 PROSPECTIVE JUROR NO. 474: I do understand that,
3 and I'm stating that I'm not sure that I could do that
4 properly.

5 THE COURT: Why?

6 PROSPECTIVE JUROR NO. 474: I don't have an exact
7 answer for you. I'm just trying to state on the record where
8 I'm coming from.

9 THE COURT: Okay. I mean, and you understand that
10 we have to have jurors that will judge this case based solely
11 upon what they see and hear in the courtroom, and nothing
12 else? Do you understand that?

13 PROSPECTIVE JUROR NO. 474: Sure. Yes, I understand
14 that.

15 THE COURT: Okay. And it would be very unfair to
16 these parties if a witness came in and you decided, well, I
17 know that witness, I'm not going to be fair now, I'm going to
18 reach a different result. Do we have to worry about that with
19 you?

20 PROSPECTIVE JUROR NO. 474: That's up to the Court.

21 THE COURT: Well, I'm the Court, and I'm trying to
22 make that determination. Do I have to worry about that with
23 you?

24 PROSPECTIVE JUROR NO. 474: I'm stating that
25 possibly you might, yes.

1 THE COURT: Okay. So what, if you recognize a
2 police officer? I'm trying to figure out -- I mean, so if
3 there's a police officer that comes in --

4 PROSPECTIVE JUROR NO. 474: Due to the
5 circumstances, I'm not sure what would come of evidence or
6 circumstances that may or may not give a unbiased opinion of
7 those circumstances, is I guess what I'm exactly trying to
8 convey.

9 THE COURT: Okay. So we have to wait until you see
10 all the witnesses and hear all the evidence before you will
11 commit to being fair and impartial to both sides?

12 PROSPECTIVE JUROR NO. 474: I'm saying that I
13 possibly might not be able to be fair and impartial on both
14 sides, yes.

15 THE COURT: Okay, and what would cause you to not be
16 fair and impartial to either side?

17 PROSPECTIVE JUROR NO. 474: I wouldn't know exactly.

18 THE COURT: Okay, thank you. You can have a seat.

19 PROSPECTIVE JUROR NO. 474: Thank you, Your Honor.

20 THE COURT: Anyone else that wishes to respond to
21 that question? Okay, the record will reflect no further
22 response from the panel.

23 Are there any of you who are acquainted with the
24 defendants in this matter? The record will reflect no
25 response from the panel.

1 Any of you who are acquainted with their lawyers,
2 Mr. Ruggeroli or Mr. Sanft? The record will reflect no
3 response from the panel.

4 Are there any of you who are acquainted with the
5 deputy District Attorneys that have been assigned to prosecute
6 this matter? The record will reflect no response from the
7 panel.

8 The District Attorney's office employs many deputies
9 and other personnel. Is there anyone who has such a close
10 relationship with either the District Attorney, Mr. Steve
11 Wolfson, his deputies, or other members of his staff that you
12 feel might affect your ability to serve as a fair and
13 impartial juror in this particular case? The record will
14 reflect no response from the panel.

15 Are there any of you on the panel who are acquainted
16 with any of the witnesses whose names were previously
17 mentioned by the lawyers? Okay, the record will reflect no
18 response from the panel.

19 We do expect this case to go through the week, and
20 we do expect it to probably go into next week, and Monday is a
21 holiday. So I do anticipate that it will go into next week.
22 Is there anyone who serving for that period of time would
23 present such an undue burden or hardship such that it's
24 impossible for you to be here? Okay, we're just going to
25 start up on the top, and --

1 THE MARSHAL: Can you pass that down, please?
2 PROSPECTIVE JUROR NO. 410: Sean McGinty, 410.
3 THE COURT: Thank you.
4 PROSPECTIVE JUROR NO. 410: I'll be moving from --
5 we're finishing a move from Texas, beginning on the 23rd of
6 February, so.
7 THE COURT: You're moving to Texas February --
8 PROSPECTIVE JUROR NO. 410: Finishing a move. So we
9 were -- we live here now, but --
10 THE COURT: Okay.
11 PROSPECTIVE JUROR NO. 410: -- we'll be finishing a
12 move. So it's already scheduled, and finishing getting our
13 belongings out, so.
14 THE COURT: How long have you lived here in Clark
15 County?
16 PROSPECTIVE JUROR NO. 410: This will be a
17 year-and-a-half.
18 THE COURT: Okay, and you're still moving?
19 PROSPECTIVE JUROR NO. 410: Still have a business
20 there as well, so --
21 THE COURT: Okay.
22 PROSPECTIVE JUROR NO. 410: Yeah.
23 THE COURT: Okay. And February 23rd is your issue?
24 Is that a yes?
25 PROSPECTIVE JUROR NO. 410: Yes.

1 THE COURT: Okay. Thank you. Thank you, you can
2 have a seat. Anyone else that wishes to address the Court?

3 THE MARSHAL: We'll get back there.

4 PROSPECTIVE JUROR NO. 054: Ana Carias, 54. I'm
5 going out of the country on the 20th, so I'll be back on the
6 3rd, for vacation.

7 THE COURT: You're leaving on February 20th?

8 PROSPECTIVE JUROR NO. 054: Yes.

9 THE COURT: Okay. And is this a -- it's a vacation?

10 PROSPECTIVE JUROR NO. 054: Yes, ma'am.

11 THE COURT: Okay, thank you. Thank you for being
12 here.

13 THE MARSHAL: Can you pass it down, please?

14 THE COURT: Anyone else on this first row? I'm just
15 going to go around the courtroom. I promise, everyone, you'll
16 have an opportunity to speak if you want to.

17 PROSPECTIVE JUROR NO. 403: Samantha Levine, 403.
18 And I have a prior engagement on Friday the 20th, throughout
19 the weekend, that I have already paid for months in advance.
20 And I also --

21 THE COURT: What does that mean? What's a prior
22 engagement?

23 PROSPECTIVE JUROR NO. 403: I have a convention that
24 I'm going to that I had planned out.

25 THE COURT: Okay, in Las Vegas? Elsewhere?

1 PROSPECTIVE JUROR NO. 403: It's in Las Vegas.
2 THE COURT: Okay.
3 PROSPECTIVE JUROR NO. 403: But I had already spent
4 a lot of money planning to go to it.
5 THE COURT: All right. When did you plan this
6 convention?
7 PROSPECTIVE JUROR NO. 403: I've been planning it
8 since last year, since I would say maybe in September.
9 THE COURT: Okay. Is it work-related?
10 PROSPECTIVE JUROR NO. 403: It's not work-related.
11 THE COURT: Okay. All right, thank you.
12 THE MARSHAL: Pass it down, please.
13 THE COURT: Anyone else on that top row?
14 THE MARSHAL: Sir, we're going to get back to you
15 over there.
16 PROSPECTIVE JUROR NO. 432: Austin Pan, 0432. I
17 have to go to the victim sentencing notification. I --
18 THE COURT: Is there a document you want me to look
19 at?
20 PROSPECTIVE JUROR NO. 432: Yeah.
21 (Pause in the proceedings)
22 THE COURT: So this is your notice that you can make
23 a statement on that day --
24 PROSPECTIVE JUROR NO. 432: Uh-huh.
25 THE COURT: -- February 13th?

1 PROSPECTIVE JUROR NO. 432: Yes, I'm one of the
2 victim of the case.

3 THE COURT: Okay, so that's Thursday?

4 Okay. If you were selected to serve on the panel, I
5 would make accommodations for you to make sure you get to give
6 your statement. Okay?

7 Okay, all right. You can have your documents back.

8 THE MARSHAL: Anybody in the middle row? Can you
9 pass it down, please?

10 PROSPECTIVE JUROR NO. 450: Francis Gamboa, 450. So
11 my reason is, I work per diem, and ever since I had a baby, my
12 mom and dad live with me. So I wouldn't be paid if I served
13 during this case.

14 THE COURT: What do you do?

15 PROSPECTIVE JUROR NO. 450: I'm a nurse.

16 THE COURT: Okay. Do you work in a hospital?

17 PROSPECTIVE JUROR NO. 450: A surgery center.

18 THE COURT: Okay, and your employer will not pay you
19 while you're here?

20 PROSPECTIVE JUROR NO. 450: As far as I know,
21 because I'm per diem.

22 THE COURT: Okay. What does that mean, per diem?
23 You get paid by the day?

24 PROSPECTIVE JUROR NO. 450: The only -- no. They
25 only get you if they need you.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 450: And although it's not
3 considered a full-time job, I'm there for the week, because
4 usually they need me.

5 THE COURT: Okay. Are you scheduled every day this
6 week?

7 PROSPECTIVE JUROR NO. 450: So far this week, yes.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 450: The rest of this week.

10 THE COURT: And if you were asked to be here and you
11 weren't able to go to work, how would that affect you
12 financially?

13 PROSPECTIVE JUROR NO. 450: I have a house, paying a
14 mortgage on that, a car, the new baby. It would be pretty --
15 pretty hard.

16 THE COURT: Would you be able to pay your bills?

17 PROSPECTIVE JUROR NO. 450: It would be difficult.

18 THE COURT: Okay, thank you, sir. Thank you for
19 being here.

20 PROSPECTIVE JUROR NO. 450: Thank you.

21 THE MARSHAL: Anybody else in the middle row?

22 THE COURT: Second row?

23 THE MARSHAL: Front row? Can you pass it down this
24 way, please?

25 PROSPECTIVE JUROR NO. 495: Kristine Gallardo, 495.

1 I just wanted to say, I can serve any time, but this
2 week, with the Coronavirus going on -- I work at Prestige
3 Cruises, and I've got 300 clients that are going out in the
4 next two days to Asia, and I have to get them somewhere else.
5 So if I can be excused for this one, I wouldn't mind serving
6 for another one.

7 THE COURT: And what do you do?

8 PROSPECTIVE JUROR NO. 495: I'm a supervisor of
9 customer service.

10 THE COURT: For a travel agency?

11 PROSPECTIVE JUROR NO. 495: Yes, an online travel
12 agency. Yes.

13 THE COURT: Okay, thank you.

14 PROSPECTIVE JUROR NO. 495: And I'm the only
15 breadwinner for a family of five, so.

16 THE COURT: Okay, thank you.

17 PROSPECTIVE JUROR NO. 496: Hi. I'm Angela Segura,
18 496. I am a nurse, and I'm the only breadwinner, and this
19 would take out about five to six days of my paycheck, and --

20 THE COURT: Where do you work?

21 PROSPECTIVE JUROR NO. 496: Valley Hospital.

22 THE COURT: Okay. Did you check with Human
23 Resources to determine whether you would be paid or not?

24 PROSPECTIVE JUROR NO. 496: I have not, no.

25 THE COURT: Okay. When we take a break, why don't

1 you call your Human Resources.

2 PROSPECTIVE JUROR NO. 496: Okay.

3 THE COURT: Because it's my experience that a lot of
4 employers actually pay you.

5 PROSPECTIVE JUROR NO. 496: Oh, that would be
6 awesome.

7 THE COURT: Uh-huh.

8 PROSPECTIVE JUROR NO. 496: Okay.

9 THE COURT: So thank you.

10 PROSPECTIVE JUROR NO. 496: Cool.

11 THE COURT: Thank you for being here.

12 THE MARSHAL: Anybody else in the front here?

13 PROSPECTIVE JUROR NO. 506: Sophie Champion, Badge
14 number 506. I'm a tipped employee, a server. So if this were
15 to go into next week, I would be missing out on hundreds of
16 dollars that I do need to pay my bills.

17 THE COURT: Okay. And are you scheduled to work
18 this week and into next week?

19 PROSPECTIVE JUROR NO. 506: Yes. My days off are
20 consistent, they're always Wednesday, Thursdays, and I work
21 the other five days of the week consistently.

22 THE COURT: Okay. Would you be able to pay your
23 bills if you were asked to be here?

24 PROSPECTIVE JUROR NO. 506: I would have a very
25 difficult time, seeing as February is a shorter month, so less

1 days at work.

2 THE COURT: Okay, thank you.

3 PROSPECTIVE JUROR NO. 509: Luis Ovalles, Badge 509.
4 I'm not sure if this would affect, but I'm an Air Force
5 reservist, and I start my first drill weekend the 23rd and the
6 24th, with a schedule to report time actually of the 22nd. So
7 I'm not sure if that would cut into the time required for the
8 case.

9 THE COURT: So February 22nd, you have to report?

10 PROSPECTIVE JUROR NO. 509: Yes.

11 THE COURT: Where do you report to?

12 PROSPECTIVE JUROR NO. 509: To March Air Force Base,
13 which is in Riverside, California.

14 THE COURT: Okay. Okay, thank you.

15 PROSPECTIVE JUROR NO. 509: You're welcome, Your
16 Honor.

17 PROSPECTIVE JUROR NO. 490: Caesar Castro, 490. I
18 just have a question. Is there a chance this trial goes
19 beyond next week?

20 THE COURT: No, we'll be done next week.

21 PROSPECTIVE JUROR NO. 409: Okay.

22 THE COURT: Okay?

23 PROSPECTIVE JUROR NO. 485: Hi. Shannon Young, 485.
24 I am up for a promotion at my job, and right now, I'm in job
25 training. So if it goes into like next week and stuff like

1 that, like, I'm trying to make an impression so that I can get
2 this position. It's more money for me and my family.

3 THE COURT: Okay. Thank you, Ms. Young.

4 PROSPECTIVE JUROR NO. 485: Thank you.

5 THE COURT: Thank you for being here.

6 THE MARSHAL: Anybody else in this area?

7 THE COURT: Okay, first row over here on the left,
8 anyone? Anyone over here on the left that wishes to address
9 the Court?

10 PROSPECTIVE JUROR NO. 513: Michael Laurie, 513.

11 THE COURT: I'm sorry?

12 PROSPECTIVE JUROR NO. 513: Michael Laurie, 513.

13 THE COURT: 513?

14 PROSPECTIVE JUROR NO. 513: Um-hum.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 513: I'm from Mesquite,
17 Nevada, and it was very difficult for me to get here today. I
18 had to borrow a car from a friend. If I was to return, I
19 would most likely have to take the airport shuttle and figure
20 out a bus route from the airport over to this courthouse.

21 THE COURT: Okay. Would you be able to get here?
22 Would you have transportation to get here?

23 PROSPECTIVE JUROR NO. 513: I'd have to get up
24 probably at 4:00 o'clock in the morning every day. I think
25 the shuttle leaves about 5:30.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 513: Depending -- I don't

3 know when the court -- when court starts, or.

4 THE COURT: Yeah. We don't start that early, but

5 it's either --

6 PROSPECTIVE JUROR NO. 513: Not -- well --

7 THE COURT: -- 8:30 or 10:30 in the morning.

8 PROSPECTIVE JUROR NO. 513: Yeah, it takes an

9 hour-and-a-half to get to Las Vegas from there.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR NO. 513: They make several stops.

12 THE COURT: If you were asked to serve, would you be

13 able to make arrangements to be here?

14 PROSPECTIVE JUROR NO. 513: Would I be able -- I'd

15 be able to make arrangements, yes. It would be very difficult

16 though.

17 THE COURT: Okay. Thank you, sir.

18 PROSPECTIVE JUROR NO. 513: Uh-huh.

19 THE MARSHAL: Anybody else in the front row?

20 PROSPECTIVE JUROR NO. 541: Kevin Widdison, 541.

21 I'm slotted to be up in Salt Lake doing training Tuesday

22 through Friday of next week with people flying in from around

23 the country. So if I'm not there, they're flying in for

24 nothing.

25 THE COURT: Okay, so this is work-related?

1 PROSPECTIVE JUROR NO. 541: Yes, it is, ma'am.
2 Completely.

3 THE COURT: And you've had your jury summons for
4 quite some time, correct?

5 PROSPECTIVE JUROR NO. 541: Yes, we have. It's been
6 on the calendar since October for that, but I didn't know this
7 would go into next week.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 541: I just -- I hadn't
10 thought about that.

11 THE COURT: All right. If you're not there, I mean,
12 what would happen? I mean, they could not get on the plane if
13 they knew beforehand.

14 PROSPECTIVE JUROR NO. 541: We would have to try to
15 reschedule it, but yeah.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR NO. 541: It's just a work --
18 yeah.

19 THE COURT: Okay, thank you.

20 PROSPECTIVE JUROR NO. 541: Um-hum.

21 THE MARSHAL: Next row?

22 PROSPECTIVE JUROR NO. 554: Roberta Bell, Badge
23 number 554. I have airplane tickets next Friday to go to Salt
24 Lake to take my granddaughter to a gymnastics competition.

25 THE COURT: Okay. I believe we would be done --

1 PROSPECTIVE JUROR NO. 554: Think we would be done?
2 THE COURT: -- but thank you for letting me know
3 that.
4 PROSPECTIVE JUROR NO. 554: Okay.
5 THE COURT: Uh-huh.
6 THE MARSHAL: Anybody else in that middle row? In
7 the back row? Right behind you, please.
8 PROSPECTIVE JUROR NO. 564: Selene Moreno, Badge
9 number 0564. I work late nights at a casino. I'm off at 4:00
10 or 5:00 in the morning, so I'll probably be here with like one
11 hour of sleep.
12 THE COURT: Okay, say that again. I heard -- you
13 work on a casino?
14 PROSPECTIVE JUROR NO. 564: In a casino, yeah.
15 THE COURT: Okay.
16 PROSPECTIVE JUROR NO. 564: And I'm off at 4:00 or
17 5:00 in the morning, so --
18 THE COURT: What is your shift?
19 PROSPECTIVE JUROR NO. 564: It's swing shift, so it
20 will be 8:00 to 4:00 in the morning, or 9:00 to 5:00.
21 THE COURT: Okay, so 8:00 o'clock at night until
22 4:00 in the morning?
23 PROSPECTIVE JUROR NO. 564: Yeah, correct.
24 THE COURT: Okay. We do have a 24-hour town, and I
25 tell this to jurors if they are selected to serve: that I

1 would ask you obviously not to work that shift, because I
2 can't have jurors that work all night and then come in here;
3 you'd be too sleepy. Do you understand that?

4 PROSPECTIVE JUROR NO. 564: Right, so I would have
5 to take off the whole week?

6 THE COURT: Yes.

7 PROSPECTIVE JUROR NO. 564: And the next week?

8 THE COURT: Well, you would have to take off in
9 order for you to be here during the day.

10 PROSPECTIVE JUROR NO. 564: But I work on tips. I'm
11 not sure how I'm going to make any money.

12 THE COURT: I'm sorry, you what?

13 PROSPECTIVE JUROR NO. 564: I work on tips.

14 THE COURT: Okay. What do you do?

15 PROSPECTIVE JUROR NO. 564: Cocktail waitress.

16 THE COURT: Okay. Where do you work?

17 PROSPECTIVE JUROR NO. 564: The Cromwell Casino.

18 THE COURT: If you were asked to be here, how would
19 that affect you financially?

20 PROSPECTIVE JUROR NO. 564: That's the only money I
21 make, basically, off of tips.

22 THE COURT: Okay. Would you be able to pay your
23 bills?

24 PROSPECTIVE JUROR NO. 564: No.

25 THE COURT: Okay, thank you.

1 THE MARSHAL: Anybody else back there?

2 PROSPECTIVE JUROR NO. 583: Joseph Campling, Badge

3 number 0583. I have airline tickets already scheduled for

4 this Sunday the 16th and for the week to Florida to visit my

5 mom. I don't know if that's, you know --

6 THE COURT: Okay.

7 PROSPECTIVE JUROR NO. 583: -- a problem.

8 THE COURT: You have plane tickets for this Sunday?

9 PROSPECTIVE JUROR NO. 583: Yes.

10 THE COURT: And it's a vacation?

11 PROSPECTIVE JUROR NO. 583: To visit my mom. Kind

12 of. It depends on what you think --

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 583: -- a vacation is.

15 THE COURT: Thank you.

16 PROSPECTIVE JUROR NO. 583: Thanks.

17 THE MARSHAL: Anybody on this side? Can you pass it

18 down, please?

19 PROSPECTIVE JUROR NO. 596: Drew McCarthy, 596. I

20 work the rest of this week, and into the beginning of next

21 week, and I would not be able to pay my bills.

22 THE COURT: Okay. What do you do?

23 PROSPECTIVE JUROR NO. 596: A detailer at Fabulous

24 Freddy's, so tips pay.

25 THE COURT: Okay. And if you were requested to be

1 here through next week, that would make it obviously --

2 PROSPECTIVE JUROR NO. 596: Yeah, difficult to pay.

3 THE COURT: -- not very easy to pay your bills?

4 PROSPECTIVE JUROR NO. 596: Correct, yeah.

5 THE COURT: Okay, thank you, sir. Thank you for
6 being here.

7 THE MARSHAL: Next in that row?

8 PROSPECTIVE JUROR NO. 597: Thank you. 597. My
9 name is Priscilla Schonacher. I actually am -- homeschool my
10 daughter full-time, she's in second grade, and I have tickets
11 to leave to Houston on Thursday.

12 THE COURT: I'm sorry, what to Houston on Thursday?

13 PROSPECTIVE JUROR NO. 597: I have airplane tickets
14 to leave to Houston on Thursday.

15 THE COURT: For?

16 PROSPECTIVE JUROR NO. 597: Two things. I have work
17 there, and also, to have my daughter visit her grandma who has
18 pancreatic cancer that had surgery about four weeks ago.

19 THE COURT: Okay, thank you.

20 PROSPECTIVE JUROR NO. 597: Thank you.

21 THE COURT: Thank you for being here.

22 THE MARSHAL: Anybody else in this front row here?
23 Can you just hand it behind you, please?

24 PROSPECTIVE JUROR NO. 610: Hi. My name is Maria
25 Preciado. My badge number is 610. And the two reason is

1 that, I'm a citizen, but I'm born in Mexico, so my primary
2 language is Spanish. And I don't know if I will be able to
3 understand 100 percent English here --

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 610: -- to be able.

6 THE COURT: And how long have you been in the US?
7 How long have you been in the US?

8 PROSPECTIVE JUROR NO. 610: 28 years, something like
9 that.

10 THE COURT: 28 years?

11 PROSPECTIVE JUROR NO. 610: Yeah.

12 THE COURT: Do you work?

13 PROSPECTIVE JUROR NO. 610: So I understand pretty
14 good, but I don't know --

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 610: -- if any decision
17 here --

18 THE COURT: All right.

19 PROSPECTIVE JUROR NO. 610: And --

20 THE COURT: If at any time, if there's something
21 that you don't understand, I just ask that you raise your hand
22 so that you can let me know that, and we will clarify for you.

23 PROSPECTIVE JUROR NO. 610: Okay.

24 THE COURT: Okay?

25 PROSPECTIVE JUROR NO. 610: The other reason is, I

1 work in casino, and I don't know how it works there about
2 getting paid or getting points.

3 THE COURT: Okay, thank you.

4 PROSPECTIVE JUROR NO. 610: Uh-huh.

5 THE COURT: Thank you for being here. Anyone else
6 that wishes to address the Court?

7 PROSPECTIVE JUROR NO. 426: Badge number 426.

8 Talking this English is a little problem. Your talkings, not
9 understand.

10 THE COURT: Okay. You can't understand me?

11 PROSPECTIVE JUROR NO. 426: Yeah, your talkings, I
12 no understand.

13 THE COURT: Okay. Are you a US citizen?

14 PROSPECTIVE JUROR NO. 426: Yes.

15 THE COURT: How long have you lived in the United
16 States?

17 PROSPECTIVE JUROR NO. 426: Almost 20 years.

18 THE COURT: Do you work here?

19 PROSPECTIVE JUROR NO. 426: As an Uber driver.

20 THE COURT: I'm sorry?

21 PROSPECTIVE JUROR NO. 426: I'm a driver.

22 THE COURT: Okay, thank you. Anyone else that
23 wishes to address the Court? Okay, the record will reflect no
24 further response from the panel.

25 Are there any of you who believe that for any other

1 reason, you would be unable to serve as a juror in this
2 particular case? Okay, there's someone back there. If you
3 don't mind standing up, sir.

4 PROSPECTIVE JUROR NO. 580: Joe Price, 580.

5 THE COURT: Go ahead, Mr. Price.

6 PROSPECTIVE JUROR NO. 580: Back -- sometime back, I
7 ran a Home Depot in Houston, Texas. And when we went to open
8 the store in the morning, we were held by gunpoint and robbed.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 580: And I had to open a
11 safe.

12 THE COURT: All right. And so, I mean, I'm sorry
13 you have to tell us about that. How long ago was that?

14 PROSPECTIVE JUROR NO. 580: It's been maybe ten
15 years.

16 THE COURT: Okay, and I'm assuming you called the
17 police?

18 PROSPECTIVE JUROR NO. 580: Oh, yeah.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 580: Yeah.

21 THE COURT: Right, and they responded?

22 PROSPECTIVE JUROR NO. 580: Yep. Everything --
23 everything went all right, but --

24 THE COURT: Okay. And did they catch the person who
25 did it?

1 PROSPECTIVE JUROR NO. 580: No.

2 THE COURT: Okay, they never caught the person?

3 PROSPECTIVE JUROR NO. 580: No.

4 THE COURT: Okay. Anything about that that would
5 affect your ability to be fair and impartial in this case?

6 PROSPECTIVE JUROR NO. 580: Probably not.

7 THE COURT: Okay. Thank you, sir.

8 PROSPECTIVE JUROR NO. 580: Just -- just stating it.

9 THE COURT: Again, I'm sorry you had to tell us
10 that. Anyone else?

11 PROSPECTIVE JUROR NO. 432: Austin Pan, 432. I
12 think I might be biased, because I own a business, and my
13 restaurant -- my restaurant has been broken into a few times.
14 So I might not have a good impression of people breaking in or
15 robberies.

16 THE COURT: Okay, but do you believe what happened
17 to you has anything to do with the parties that are here
18 today?

19 PROSPECTIVE JUROR NO. 432: I think I might be
20 somewhat biased, because I'm kind of mad because of --

21 THE COURT: Okay.

22 PROSPECTIVE JUROR NO. 432: -- constantly, you know,
23 people breaking into my store.

24 THE COURT: Okay. So who are you going to be unfair
25 to?

1 PROSPECTIVE JUROR NO. 432: The -- these -- the
2 accused party.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 432: Yeah.

5 THE COURT: Because of what happened to you, you
6 can't give these gentlemen a fair trial?

7 PROSPECTIVE JUROR NO. 432: I believe so.

8 THE COURT: Okay, thank you. Anyone else? Okay,
9 the record will reflect no further response from the panel.
10 Is there anyone on this panel who's ever been

11 engaged in law enforcement work, or have a spouse or close
12 relative who has ever been engaged in law enforcement work?

13 PROSPECTIVE JUROR NO. 474: Dennis Rorabaugh, 474.

14 THE COURT: Go ahead.

15 PROSPECTIVE JUROR NO. 474: I've been a former law
16 enforcement officer in Las Vegas.

17 THE COURT: What does that mean? Who did you --
18 where did you work?

19 PROSPECTIVE JUROR NO. 474: I worked for Metro.

20 THE COURT: Okay, and when did you work for Metro?

21 PROSPECTIVE JUROR NO. 474: Around 2010.

22 THE COURT: Around 2010?

23 PROSPECTIVE JUROR NO. 474: Yes, ma'am. It was
24 about for a year.

25 THE COURT: Okay, and you were a police officer?

1 PROSPECTIVE JUROR NO. 474: Technically, yes. I was
2 a jail guard, ma'am.

3 THE COURT: Okay. Anything about your former
4 employment that would affect your ability to be fair and
5 impartial?

6 PROSPECTIVE JUROR NO. 474: In particular, no, but
7 possibly.

8 THE COURT: Okay. And what do you currently do for
9 a living?

10 PROSPECTIVE JUROR NO. 474: Currently, I run a
11 couple of internet businesses, sales businesses.

12 THE COURT: Okay, thank you, sir. Thank you for
13 being here. You can have a seat. Anyone else?

14 PROSPECTIVE JUROR NO. 464: 464, Jeff O'Brien.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 464: I have a former
17 father-in-law who's law enforcement, and have two other family
18 members that are police officers in a different state.

19 THE COURT: Okay. Anything about their employment
20 that would affect your ability to be fair and impartial in
21 this case?

22 PROSPECTIVE JUROR NO. 464: Not in particular.

23 THE COURT: Okay, thank you.

24 PROSPECTIVE JUROR NO. 464: All right.

25 THE COURT: Anyone else?

1 THE MARSHAL: Can you just pass it down to the top
2 row up here (indiscernible)?

3 PROSPECTIVE JUROR NO. 019: Barbara Bruer, 019. My
4 brother was a Federal Marshal and a policeman for Irving,
5 Texas for 20 years.

6 THE COURT: Okay. Any --

7 PROSPECTIVE JUROR NO. 019: But he passed away in
8 2007.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 019: And I don't think it
11 would affect anything.

12 THE COURT: So is there anything about his former
13 employment that would affect your ability to be fair and
14 impartial in this case?

15 PROSPECTIVE JUROR NO. 019: No.

16 THE COURT: Thank you. Thank you for letting us
17 know that.

18 THE MARSHAL: Anybody in the top row? Middle row?
19 In the front? Can you pass it forward, please?

20 THE COURT: We have a juror down here in front.

21 PROSPECTIVE JUROR NO. 485: Shannon Young, 485. I
22 have a brother-in-law in law enforcement, in a different state
23 though. And no, it wouldn't affect me.

24 THE COURT: Okay, thank you.

25 THE MARSHAL: Anybody in the back row right here?

1 On this side?

2 THE COURT: Anyone else that wishes to address the
3 Court?

4 PROSPECTIVE JUROR NO. 464: Yes.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 464: Yeah, I didn't get to
7 finish. I didn't divulge --

8 THE COURT: Your name and badge number?

9 PROSPECTIVE JUROR NO. 464: I apologize. I also
10 have --

11 THE COURT: Your name and badge number?

12 PROSPECTIVE JUROR NO. 464: I'm sorry. 464, Jeff
13 O'Brien.

14 THE COURT: Thank you.

15 PROSPECTIVE JUROR NO. 464: I also am a gunsmith by
16 trade, so --

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 464: -- I work on several of
19 the officers here in town's firearms. I know several of the
20 Metro officers here in town and some in North Las Vegas. I
21 just wanted to make sure --

22 THE COURT: Okay.

23 PROSPECTIVE JUROR NO. 464: -- I let you know.

24 THE COURT: I appreciate you letting me know that.
25 Is there anything about that that would affect your ability to

1 be fair and impartial?

2 PROSPECTIVE JUROR NO. 464: Not that I'm aware of,
3 no.

4 THE COURT: Okay. Thank you, sir. Anyone else?
5 Okay, the record will reflect no further response from the
6 panel.

7 Is there anyone who may not be able to follow all
8 the instructions of the Court on the law, even if the
9 instructions differed from your personal conceptions of what
10 the law ought to be? Anyone who can't follow the law as given
11 to you by the Court? The record will reflect no further
12 response from the panel.

13 As a follow up to the previous question, in any
14 criminal trial, the members of the jury sitting collectively
15 are the judges of the question of fact in this case. As the
16 judge in the case, I am the judge of the questions of law, and
17 it's my responsibility to give instructions on the law that
18 apply to this particular case. It would be a violation of a
19 juror's duty if he or she tried to render a judgment based
20 upon what he or she believed the law to be, if that differed
21 from my instructions.

22 With that in mind, is there anyone who feels that
23 they cannot be fact-finders and follow my instructions on the
24 applicable law in this case? Okay, the -- I'm sorry.

25 THE MARSHAL: Hang on, there's one on the top. Can

1 you pass that down, please?

2 PROSPECTIVE JUROR NO. 403: Samantha Levine, 403.
3 About seven months ago, I had a concussion, and I've had a
4 hard time concentrating and comprehending ever since. It's
5 gotten a lot better, but there are some times where I might
6 hear someone say something, and it might not fully sink in.
7 So I just wanted to make that, like, aware.

8 THE COURT: Okay, thank you. Okay. Anyone that
9 wants to respond to the question that's pending? Okay, the
10 record will reflect no response from the panel.

11 Under our system of government, there are certain
12 principles of law that apply in every criminal trial. They
13 are that the Information or Indictment filed in this case is a
14 mere accusation and is not evidence of guilt; that as the
15 defendants sit here today, they are presumed innocent, and the
16 State therefore must prove that each defendant is guilty by
17 proof beyond a reasonable doubt. Does anyone not understand
18 or believe in these basic precepts of American justice?

19 Will you just state your name and badge number?

20 PROSPECTIVE JUROR NO. 586: Valerie Musial, 586. I
21 mentioned earlier --

22 THE COURT: Okay, other than what you've --

23 PROSPECTIVE JUROR NO. 586: Yeah.

24 THE COURT: -- already told the Court?

25 PROSPECTIVE JUROR NO. 586: Yeah, I don't believe I

1 can come to a partial decision. I believe I would have bias
2 going into it.

3 THE COURT: Okay, thank you. Anyone else? The
4 record will reflect no further response from the panel.

5 Does anybody know anything about this case, other
6 than what has been stated in the courtroom here today? Okay,
7 the record will reflect no -- I'm sorry, sir, did you want to
8 address the Court?

9 PROSPECTIVE JUROR NO. 513: Other than the news?

10 THE COURT: Well, do you know anything about this
11 case, other than what's been stated in the courtroom today?

12 PROSPECTIVE JUROR NO. 513: I --

13 THE COURT: Your name and badge number?

14 PROSPECTIVE JUROR NO. 513: Michael, 513.

15 THE COURT: I'm sorry, say it again.

16 PROSPECTIVE JUROR NO. 513: Michael, 513.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 513: I've made an assumption
19 that I pretty much know what this case is about, yeah.

20 THE COURT: I'm sorry. Will you state your name and
21 badge number again?

22 PROSPECTIVE JUROR NO. 513: Michael, 513.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 513: Michael Laurie.

25 THE COURT: Okay, thank you.

1 PROSPECTIVE JUROR NO. 513: Uh-huh.

2 THE COURT: All right. So you believe that you saw
3 something on the news?

4 PROSPECTIVE JUROR NO. 513: Yes.

5 THE COURT: Okay. You understand that if you were
6 selected to be a juror, you would be required to judge this
7 case solely upon what you see and hear in the courtroom; do
8 you understand that?

9 PROSPECTIVE JUROR NO. 513: Correct.

10 THE COURT: Okay. It doesn't disqualify you because
11 you've seen something in the news. I just have to have your
12 commitment that you would set aside anything you see in the
13 news, and judge this case based on the evidence that you see
14 and hear in the courtroom and the instructions on the law as
15 given to you by the Court. Do you understand that?

16 PROSPECTIVE JUROR NO. 513: Yes.

17 THE COURT: Are you a person that can do that?

18 PROSPECTIVE JUROR NO. 513: Yes.

19 THE COURT: Okay, thank you, sir. Thank you for
20 being here. Anyone else that wishes to address the Court?

21 Okay. At this time, I'm going to ask the lawyers to
22 meet me out in the hallway because it will be easier if you
23 guys stay in here. We'll be a few minutes, and then we'll
24 come back in, and the Clerk will call the first 32 names.

25 (Off-record sidebar)

1 THE COURT: Does the State and the defense stipulate
2 to the presence of the panel?

3 MR. PESCI: Yes, Your Honor.

4 MR. SANFT: Yes, Your Honor.

5 MR. RUGGEROLI: Yes, Your Honor.

6 THE COURT: Okay. At this time, the Clerk's going
7 to call the first 32 names. When your name is called, if
8 you'll please take your seat in the jury box. Some of you
9 will just be sitting in the same seats you're in, or you may
10 need to move down a little bit.

11 THE CLERK: Juror 1, Barbara Bruer.

12 THE COURT: Ms. Bruer, you'll be Juror number 1.
13 And then, Ms. Ana Carias, and Ms. Samantha Levine, and Mr.
14 Lee, if you three don't mind stepping out of the box, and you
15 can take a seat. Hawkes, you're going to have to direct them
16 where they can sit until --

17 THE MARSHAL: Yes, ma'am, I got it.

18 THE COURT: -- we have more seats.

19 THE CLERK: Juror 2 is going to be Vito Casucci, so
20 you're going to scoot over to the second seat. Barbara Bruer,
21 you're still in Seat 1.

22 THE MARSHAL: You're Seat number 1, ma'am.

23 PROSPECTIVE JUROR NO. 019: So I go back over here?

24 THE COURT: Yeah.

25 THE MARSHAL: Yeah, stay in Seat number 1, ma'am.

1 THE COURT: Sorry. Sorry, let's just slow down a
2 little bit. Ms. Bruer, you'll be Juror number 1. Again, most
3 of you will just move down. If I ask you to step down out of
4 the box, you can just take a seat in the gallery wherever
5 there's an open seat.

6 THE CLERK: Juror 2, Vito Casucci. Juror 3, Sean
7 McGinty.

8 THE COURT: So you'll just scoot down.

9 THE CLERK: Juror 4, Mary Newcome. Juror 5, William
10 Bryan. Juror 6, Christopher Devargas. Juror 7, Celeste
11 Hernandez.

12 THE COURT: And Mr. Pan, I'll ask you to step down
13 out of the box.

14 THE CLERK: Juror 8, Sylvia Amoroso. You're going
15 to go up to the back row, next in line.

16 THE COURT: Okay. And then, Mr. Gamboa, if you
17 don't mind stepping out of the box.

18 THE CLERK: Juror 9, Shannon Graham. You're going
19 to also go up next in line. Juror 10, Suzanne Quinn. Juror
20 11, Camille Estrella. You're going to go up to the back row.
21 Juror 12, Jeffory O'Brien. You're going to scoot all the way
22 down. Juror 13, Alexis Newell.

23 THE COURT: Mr. Rorabaugh, if you don't mind
24 stepping down out of the box.

25 PROSPECTIVE JUROR NO. 474: Yes, ma'am.

1 THE CLERK: Juror 14, Danilo Rodriguez. Juror 15 is
2 going to be Cavan Bandics. Juror 16, Jonathan Salazar. Juror
3 17, Lisa Cook. Juror 18, Shannon Young. Juror 19, Markdelan
4 Deperio. Juror 20, Caesar Castro.

5 THE COURT: Ms. Gallardo, if you don't mind stepping
6 out of the box.

7 THE CLERK: Juror 21, Angela Segura. You're going
8 to scoot all the way down on the first row.

9 THE COURT: And Ms. Champion, if you don't mind
10 stepping out of the box, and Mr. Ovalles.

11 THE CLERK: Oh, I'm sorry. You're going to move all
12 the way -- Ms. Segura, you're -- yep, that side.

13 THE COURT: Okay, and Mr. Ovalles, you can step out
14 of the box.

15 THE CLERK: Juror 22, Michael Laurie. Juror 23 is
16 going to be Maria Moreno. Juror 24, Magdalena Perez-Haywood.
17 Juror 25 is Jennifer Mendoza. Juror 26, Dawn Nerdin. Juror
18 27, Staci McCarthy. Juror 28, Kevin Widdison. Juror 29, John
19 Kubota. Juror 30, Roberta Bell. Juror 31 is going to be in
20 this first row on the left, and that's going to be Andrew
21 Delgadillo. Juror 32, Colin Randall.

22 THE MARSHAL: No, all the way to the end, sir,
23 please.

24 THE COURT: Right. And then, now there's open
25 seats. You all can go ahead and have a seat.

1 Juror number 1, Ms. Bruer, can you tell me how long
2 you've lived in Clark County?

3 PROSPECTIVE JUROR NO. 019: Since 2010, so ten
4 years.

5 THE COURT: And what do you do for a living?

6 PROSPECTIVE JUROR NO. 019: I don't do anything.

7 THE COURT: I'm sorry?

8 PROSPECTIVE JUROR NO. 019: I don't do anything.
9 I'm retired.

10 THE COURT: Okay, and how long have you been
11 retired?

12 PROSPECTIVE JUROR NO. 019: Three years this time.

13 THE COURT: What did you do before you retired?

14 PROSPECTIVE JUROR NO. 019: A little bit of
15 everything. I owned a pharmaceutical mail order -- no. The
16 last job, I worked at a pharmaceutical mail order company.

17 THE COURT: Okay. And your education background?

18 PROSPECTIVE JUROR NO. 019: A bachelor's degree in
19 business.

20 THE COURT: Your marital status?

21 PROSPECTIVE JUROR NO. 019: Divorced.

22 THE COURT: Do you have any kids?

23 PROSPECTIVE JUROR NO. 019: One adult son, and he
24 lives in San Antonio. He's in the Air Force, married, with
25 one child.

1 THE COURT: He's in the Air Force?
2 PROSPECTIVE JUROR NO. 019: Yes.
3 THE COURT: Okay. Do you know of any reason why you
4 could not be a fair and impartial juror --
5 PROSPECTIVE JUROR NO. 019: No.
6 THE COURT: -- if you were selected to serve on this
7 panel?
8 PROSPECTIVE JUROR NO. 019: No.
9 THE COURT: Thank you. Thank you for being here.
10 Mr. Vito -- is it Casucci?
11 PROSPECTIVE JUROR NO. 409: Casucci.
12 THE COURT: Okay. How long have you lived in Clark
13 County?
14 PROSPECTIVE JUROR NO. 409: Approximately 15 years.
15 THE COURT: And your education background?
16 PROSPECTIVE JUROR NO. 409: High school graduate.
17 THE COURT: And what do you do for a living?
18 PROSPECTIVE JUROR NO. 409: I run the poker room at
19 the Golden Nugget Casino.
20 THE COURT: Your marital status?
21 PROSPECTIVE JUROR NO. 409: I'm married for 30
22 years.
23 THE COURT: Okay. Is your spouse employed?
24 PROSPECTIVE JUROR NO. 409: She is.
25 THE COURT: What does she do?

1 PROSPECTIVE JUROR NO. 409: She's a compliance
2 director at Barclays -- Barclay Bank.

3 THE COURT: Do you have any children?

4 PROSPECTIVE JUROR NO. 409: I have two children;
5 27-year-old daughter, 24-year-old son.

6 THE COURT: Okay. Are they employed?

7 PROSPECTIVE JUROR NO. 409: They are employed. They
8 don't live in this state anymore, but they -- yes.

9 THE COURT: All right. What does each do for a
10 living?

11 PROSPECTIVE JUROR NO. 409: My daughter works for
12 AT&T. My son manages a bar in Reno, Nevada.

13 THE COURT: Do you know of any reason why you could
14 not be a fair and impartial juror if you were selected to
15 serve on this panel?

16 PROSPECTIVE JUROR NO. 409: No, ma'am.

17 THE COURT: Thank you, sir. Thank you very much for
18 being here.

19 Sean McGinty, how long have you lived in Clark
20 County?

21 PROSPECTIVE JUROR NO. 410: Just over a year.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR NO. 410: Would you like me to
24 stand up?

25 THE COURT: You can sit down, that's fine. And you

1 moved from Texas?

2 PROSPECTIVE JUROR NO. 410: Correct.

3 THE COURT: Okay. And your education background?

4 PROSPECTIVE JUROR NO. 410: High school.

5 THE COURT: And what do you do for a living?

6 PROSPECTIVE JUROR NO. 410: I'm CEO and owner of

7 four different companies.

8 THE COURT: You're a CEO of four different

9 companies?

10 PROSPECTIVE JUROR NO. 410: I run four companies.

11 Yes, ma'am.

12 THE COURT: Okay. What kind of companies?

13 PROSPECTIVE JUROR NO. 410: I've got -- one's a

14 marketing and experiential production company, another one is

15 synthetic grass, another one is bus and shuttle services, and

16 another one is in the people moving business, so.

17 THE COURT: Is what, the last one?

18 PROSPECTIVE JUROR NO. 410: People. We move people

19 around, so.

20 THE COURT: People moving business?

21 PROSPECTIVE JUROR NO. 410: Ground transportation.

22 Correct, yeah.

23 THE COURT: Okay. Your marital status?

24 PROSPECTIVE JUROR NO. 410: Married.

25 THE COURT: Is your spouse employed?

1 PROSPECTIVE JUROR NO. 410: No.

2 THE COURT: Okay. Do you have kids?

3 PROSPECTIVE JUROR NO. 410: Two of my own, two boys,
4 and then four stepchildren.

5 THE COURT: Okay. Are any of them old enough to be
6 employed?

7 PROSPECTIVE JUROR NO. 410: All of them.

8 THE COURT: Can you just start at the top and tell
9 me what each does for a living?

10 PROSPECTIVE JUROR NO. 410: One runs a valet service
11 in Texas. Other is an engineer in the oil field. The other
12 is directional drilling in an oil field. One is a plumber.
13 And two -- I'm not sure what they do.

14 THE COURT: Okay. The last two, you're not sure?

15 PROSPECTIVE JUROR NO. 410: They -- you know,
16 they're doing -- they're just trying to find their way.
17 They're younger, so.

18 THE COURT: Okay, all right. Do you know of any
19 reason why you could not be a fair and impartial juror if you
20 were selected to serve on this panel?

21 PROSPECTIVE JUROR NO. 410: It's a tough question.
22 Fair? Yeah, I certainly would be fair, but the workload and
23 commitments on a daily basis, it would be distracting, to say
24 the least, so.

25 THE COURT: Okay, what would be distracting? Being

1 here?

2 PROSPECTIVE JUROR NO. 410: The obligations that I
3 have on a daily basis, so.

4 THE COURT: Okay. But if you were ordered to be
5 here, you would be here, correct?

6 PROSPECTIVE JUROR NO. 410: I would -- if you
7 ordered it, I'd be here.

8 THE COURT: And you would listen to the evidence?

9 PROSPECTIVE JUROR NO. 410: I would. I would be
10 frustrated, but I would be.

11 THE COURT: All right, thank you, sir. I do
12 appreciate your willingness to be here.

13 Ms. Newcome?

14 PROSPECTIVE JUROR NO. 417: Hello.

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

16 PROSPECTIVE JUROR NO. 417: Since 1961.

17 THE COURT: Your education background?

18 PROSPECTIVE JUROR NO. 417: High school.

19 THE COURT: Okay, and what do you do for a living?

20 PROSPECTIVE JUROR NO. 417: I'm a payroll manager
21 for Las Vegas Painting. Been there for -- since 1985.

22 THE COURT: Okay. Your marital status?

23 PROSPECTIVE JUROR NO. 417: I'm married.

24 THE COURT: Is your spouse employed?

25 PROSPECTIVE JUROR NO. 417: Yes.

1 THE COURT: What does your spouse do?
2 PROSPECTIVE JUROR NO. 417: He's an engineer.
3 THE COURT: Okay. Do you have children?
4 PROSPECTIVE JUROR NO. 417: I do, I have three.
5 THE COURT: Okay, are they old enough to be
6 employed?
7 PROSPECTIVE JUROR NO. 417: They certainly are.
8 THE COURT: Can you tell me what each does for a
9 living?
10 PROSPECTIVE JUROR NO. 417: My oldest daughter,
11 she's a real estate agent, does project management, and she
12 also -- they own -- her and her husband own kickboxing gyms.
13 THE COURT: Okay. I heard the first one, real
14 estate agent. And then, the next --
15 PROSPECTIVE JUROR NO. 417: They also own some
16 kickboxing gyms here in Las Vegas. Kickboxing.
17 THE COURT: Okay. And then --
18 PROSPECTIVE JUROR NO. 417: My son is the second one
19 down. He also works for the same company, and he is -- he
20 bugs the union for the company. He basically runs for the
21 underground division. And my younger daughter is a teacher.
22 THE COURT: Okay. Any reason why you could not be a
23 fair and impartial juror if you were selected to serve on this
24 panel?
25 PROSPECTIVE JUROR NO. 417: Absolutely not.

1 THE COURT: Thank you. Thank you very much for
2 being here.

3 William Bryan, Juror number 5?

4 PROSPECTIVE JUROR NO. 420: Yes.

5 THE COURT: Mr. Bryan, can you tell me how long
6 you've lived in Clark County?

7 PROSPECTIVE JUROR NO. 420: This next May will be
8 three years.

9 THE COURT: Okay. Your education background?

10 PROSPECTIVE JUROR NO. 420: I have a bachelor's
11 degree.

12 THE COURT: And what's your bachelor's degree in?

13 PROSPECTIVE JUROR NO. 420: Biology.

14 THE COURT: Okay. What do you do for a living?

15 PROSPECTIVE JUROR NO. 420: I'm an airline pilot.

16 THE COURT: Your marital status?

17 PROSPECTIVE JUROR NO. 420: Divorced.

18 THE COURT: Do you have kids?

19 PROSPECTIVE JUROR NO. 420: I do.

20 THE COURT: How many?

21 PROSPECTIVE JUROR NO. 420: Two.

22 THE COURT: Are either of them old enough to be
23 employed?

24 PROSPECTIVE JUROR NO. 420: Both.

25 THE COURT: Okay. Can you tell me what each does?

1 PROSPECTIVE JUROR NO. 420: My son works for a
2 currency trading firm in New York, and my daughter is
3 attending university in Tampa, Florida.

4 THE COURT: Do you know of any reason why you could
5 not be a fair and impartial juror if you were selected to
6 serve, Mr. Bryan?

7 PROSPECTIVE JUROR NO. 420: No, I don't.

8 THE COURT: Okay, thank you. Thank you very much
9 for being here. Mr. Devargas, good afternoon.

10 PROSPECTIVE JUROR NO. 429: Good afternoon.

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

12 PROSPECTIVE JUROR NO. 429: My entire life. Born
13 and raised, minus four years I spent in the Army.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 429: So, 33 years.

16 THE COURT: Your education background?

17 PROSPECTIVE JUROR NO. 429: College. College
18 graduate.

19 THE COURT: I'm sorry, you have a --

20 PROSPECTIVE JUROR NO. 429: College graduate.

21 THE COURT: Okay, and what's your degree in?

22 PROSPECTIVE JUROR NO. 429: A photo journalist. So
23 photo journalism and commercial photography.

24 THE COURT: And what do you do for a living?

25 PROSPECTIVE JUROR NO. 429: Photo journalist for the

1 Las Vegas Sun.

2 THE COURT: Okay. Your marital status?

3 PROSPECTIVE JUROR NO. 429: Married.

4 THE COURT: Is your spouse employed?

5 PROSPECTIVE JUROR NO. 429: Yes.

6 THE COURT: What does your spouse do?

7 PROSPECTIVE JUROR NO. 429: She's an assistant

8 manager at Victoria's Secret.

9 THE COURT: Okay. Do you have children?

10 PROSPECTIVE JUROR NO. 429: No.

11 THE COURT: Do you know of any reason why you could

12 not be a fair and impartial juror if you were selected to

13 serve on this panel, sir?

14 PROSPECTIVE JUROR NO. 429: No.

15 THE COURT: Thank you. Thank you very much for

16 being here.

17 Celeste Hernandez?

18 PROSPECTIVE JUROR NO. 430: Yes.

19 THE COURT: Okay. How long have you lived in Clark

20 County?

21 PROSPECTIVE JUROR NO. 430: For about 20 years.

22 THE COURT: Your education background?

23 PROSPECTIVE JUROR NO. 430: Associate's degree in

24 travel and tourism and event planning.

25 THE COURT: And what do you do for a living?

1 PROSPECTIVE JUROR NO. 430: I host at a high limit
2 lounge inside Cosmopolitan.

3 THE COURT: I'm sorry?

4 PROSPECTIVE JUROR NO. 430: Host at a high limit
5 lounge inside the Cosmopolitan.

6 THE COURT: Your marital status?

7 PROSPECTIVE JUROR NO. 430: Single.

8 THE COURT: Do you have kids?

9 PROSPECTIVE JUROR NO. 430: No.

10 THE COURT: Okay. Do you know of any reason why you
11 could not be a fair and impartial juror if you were selected
12 to serve on this panel?

13 PROSPECTIVE JUROR NO. 430: No.

14 THE COURT: Okay, thank you. Thank you very much
15 for your willingness to be here.

16 Ms. Sylvia Amoroso?

17 PROSPECTIVE JUROR NO. 437: Yes.

18 THE COURT: Okay. How long have you lived in Clark
19 County?

20 PROSPECTIVE JUROR NO. 437: Like, 20 years.

21 THE COURT: I'm sorry?

22 PROSPECTIVE JUROR NO. 437: 20 years.

23 THE COURT: Okay. Your education background?

24 PROSPECTIVE JUROR NO. 437: Like, first year in high
25 school only.

1 THE COURT: Okay. Are you employed?
2 PROSPECTIVE JUROR NO. 437: Yes.
3 THE COURT: What do you do?
4 PROSPECTIVE JUROR NO. 437: Busser. Bus person.
5 THE COURT: Okay. Your marital status?
6 PROSPECTIVE JUROR NO. 437: Widow.
7 THE COURT: Do you have kids?
8 PROSPECTIVE JUROR NO. 437: No.
9 THE COURT: Do you know of any reason why you could
10 not be a fair and impartial juror if you were selected to
11 serve?
12 PROSPECTIVE JUROR NO. 437: No.
13 THE COURT: Okay, thank you. Thank you very much
14 for being here.
15 Ms. Graham?
16 PROSPECTIVE JUROR NO. 451: Yes.
17 THE COURT: Okay, Juror number 9. How long have you
18 lived in Clark County?
19 PROSPECTIVE JUROR NO. 451: Since 2006.
20 THE COURT: And your education background?
21 PROSPECTIVE JUROR NO. 451: Master's in education.
22 THE COURT: Okay. And what do you do for a living?
23 PROSPECTIVE JUROR NO. 451: I'm an elementary school
24 teacher.
25 THE COURT: What grade do you teach?

1 PROSPECTIVE JUROR NO. 451: Fourth grade.
2 THE COURT: How long have you done that?
3 PROSPECTIVE JUROR NO. 451: 15 years, going on 16.
4 THE COURT: Okay. Your marital status?
5 PROSPECTIVE JUROR NO. 451: Married.
6 THE COURT: Is your spouse employed?
7 PROSPECTIVE JUROR NO. 451: Yes, he is.
8 THE COURT: What does he do?
9 PROSPECTIVE JUROR NO. 451: He is a warehouse
10 inventory manager for an HVAC company.
11 THE COURT: Do you have children?
12 PROSPECTIVE JUROR NO. 451: I do. I have a son in
13 college, studying biotech engineering.
14 THE COURT: Okay. Do you know of any reason why you
15 could not be a fair and impartial juror if you were selected
16 to serve?
17 PROSPECTIVE JUROR NO. 451: No, ma'am.
18 THE COURT: Thank you. Thank you very much for
19 being here.
20 Ms. Quinn?
21 PROSPECTIVE JUROR NO. 461: Yes.
22 THE COURT: How long have you lived in Clark County?
23 PROSPECTIVE JUROR NO. 461: Since 2001.
24 THE COURT: And what do you do for a living?
25 PROSPECTIVE JUROR NO. 461: I'm a corporate travel

1 agent.

2 THE COURT: And your education background?

3 PROSPECTIVE JUROR NO. 461: Just high school level.

4 THE COURT: Okay. And your marital status?

5 PROSPECTIVE JUROR NO. 461: Currently engaged.

6 THE COURT: Okay. Is your soon-to-be spouse

7 employed?

8 PROSPECTIVE JUROR NO. 461: Yes.

9 THE COURT: Can you tell us what your spouse does?

10 PROSPECTIVE JUROR NO. 461: Yes, he's a --

11 THE COURT: Soon-to-be spouse.

12 PROSPECTIVE JUROR NO. 461: He's an aircraft

13 mechanic.

14 THE COURT: Do you have children?

15 PROSPECTIVE JUROR NO. 461: No.

16 THE COURT: Do you know of any reason why you could

17 not be a fair and impartial juror if you were selected to

18 serve on this panel?

19 PROSPECTIVE JUROR NO. 461: No, ma'am.

20 THE COURT: Thank you, Ms. Quinn. Thank you for

21 being here.

22 Ms. Camille Estrella?

23 PROSPECTIVE JUROR NO. 462: Yes.

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

25 PROSPECTIVE JUROR NO. 462: Since 2002.

1 THE COURT: Your education background?
2 PROSPECTIVE JUROR NO. 462: I am a college
3 undergrad.
4 THE COURT: Okay. You're in school right now?
5 PROSPECTIVE JUROR NO. 462: Yes, I'm currently
6 studying in the university for bachelor's of medical lab
7 scientist.
8 THE COURT: Okay. Where are you in school?
9 PROSPECTIVE JUROR NO. 462: CSN.
10 THE COURT: Okay. Are you employed?
11 PROSPECTIVE JUROR NO. 462: No.
12 THE COURT: Okay. Are you in school full-time right
13 now?
14 PROSPECTIVE JUROR NO. 462: Right now, no.
15 THE COURT: Okay. Would you be able to serve as a
16 juror and also make sure you get to class and do your work?
17 PROSPECTIVE JUROR NO. 462: Yes.
18 THE COURT: Okay, so it won't interfere in your
19 school?
20 PROSPECTIVE JUROR NO. 462: Yes.
21 THE COURT: It won't interfere, correct?
22 PROSPECTIVE JUROR NO. 462: No, it won't.
23 THE COURT: Okay. And are you currently employed?
24 PROSPECTIVE JUROR NO. 462: No.
25 THE COURT: All right. And your marital status?

1 PROSPECTIVE JUROR NO. 462: Single.

2 THE COURT: Do you have any kids?

3 PROSPECTIVE JUROR NO. 462: No.

4 THE COURT: Okay. Any reason why you could not be a
5 fair and impartial juror if you were selected to serve on this
6 panel?

7 PROSPECTIVE JUROR NO. 462: No.

8 THE COURT: Okay, thank you. Thank you very much
9 for being here.

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

19 Just one moment. Jeffrey Hall? Okay. Other than
20 Jeffrey Hall, you're all excused for a 15-minute recess.
21 Thank you.

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

24 THE COURT: Mr. Hall, if you just don't mind
25 staying.

1 THE MARSHAL: Jurors.
2 (Outside the presence of the prospective jurors)
3 (Within the presence of Prospective Juror No. 600)
4 THE COURT: Okay, the record will reflect that the
5 panel is outside.
6 Mr. Hall, I want to thank you very much for being
7 here, and you are excused from your duty. You can take your
8 badge off. There's a -- is there a box out there for his
9 badge?
10 THE MARSHAL: Yes.
11 THE COURT: You can put your badge there. You don't
12 need to go back to Jury Services. You are excused.
13 PROSPECTIVE JUROR NO. 600: Thank you.
14 THE COURT: Thank you for your willingness to be
15 here.
16 THE MARSHAL: Thank you, Mr. Hall.
17 THE COURT: Thank you.
18 (Outside the presence of Prospective Juror No. 600)
19 (Court recessed at 3:06 P.M. until 3:20 P.M.)
20 (Outside the presence of the prospective jurors)
21 MR. PESCI: So we have to make one record.
22 THE COURT: We need to do something outside the
23 presence?
24 MR. PESCI: Yes.
25 MR. SANFT: Yes, Your Honor, if we could.

1 THE COURT: Okay.

2 THE MARSHAL: He's on the way, Your Honor.

3 THE COURT: Okay. Okay, the record will reflect
4 that the hearing is taking place outside the presence of the
5 jury panel.

6 MR. SANFT: Your Honor, while we were on break,
7 apparently, one of the prospective jurors, and this would be
8 Mr. Casucci, Juror number 2 --

9 MR. PESCI: Badge 409.

10 MR. SANFT: -- Badge 409, came to the door and I
11 think entered into the courtroom while myself, and Mr.
12 Ruggeroli, and -- you were here, right?

13 MR. PESCI: Yes, Judge. If I could jump in, Mike?

14 MR. SANFT: Yeah, of course.

15 MR. PESCI: So he didn't get inside the courtroom.
16 He got into the vestibule, the outer doors. Got into that
17 vestibule, did not get into the inner doors, had asked if he
18 could come in, and the Marshal had explained -- or the
19 corrections officer, I'm sorry, had explained he could not
20 come back in, to wait back outside, so he went back outside.
21 I saw it, so I just told defense counsel about it.

22 THE COURT: Okay.

23 MR. SANFT: I guess the concern is that the only
24 people that were in the courtroom at that particular point
25 were just the attorneys. My client was not present, Mr.

1 Ruggeroli's client was not present, and I know that we go to
2 great pains to make sure that we don't imply that these
3 individuals are in custody.

4 We just wanted to make a record with the Court, and
5 I don't know if there's anything we can do at this particular
6 point. I haven't spoken with Mr. Ruggeroli. I don't know if
7 it's something that we have to canvass the individual to see
8 what he saw. I just don't know at this particular point,
9 but --

10 THE COURT: But your clients were not in here,
11 correct?

12 MR. SANFT: They were not, no.

13 THE COURT: Okay. Anything, Mr. Ruggeroli?

14 MR. RUGGEROLI: I don't have any other observations
15 than that as well.

16 THE COURT: Okay. Anything else before we bring
17 them in?

18 MR. PESCI: Yes, please, Your Honor. Badge number
19 600, Jeffery Hall, we had a conversation in the hall --

20 THE COURT: Right.

21 MR. PESCI: -- outside.

22 THE COURT: Uh-huh.

23 MR. PESCI: His name's Hall. And as I understand
24 it, the Court had previously asked for his identification
25 information. I believe he was run as far as criminal history,

1 because he originally told us he had one felony from 1991 and
2 that he finished his parole in 2009, which is an
3 astronomically long --

4 THE COURT: Right.

5 MR. PESCI: -- amount of time to be -- I think your
6 Clerk told us that he has more felonies.

7 THE COURT: Right, right. And that's the gentleman
8 I excused right before the break.

9 MR. PESCI: Right.

10 THE COURT: But yeah, he had -- he -- he was not
11 eligible to serve.

12 MR. PESCI: Right. The statute changed, and so, for
13 certain people, restoration of rights happens. But I think,
14 based on what you're telling us, the additional felonies and
15 the fact that we don't know that he actually had his civil
16 rights restored, that he's not qualified.

17 THE COURT: Right.

18 MR. PESCI: Okay.

19 THE COURT: There were multiple, and so I don't even
20 know how I would do the analysis --

21 MR. PESCI: Right.

22 THE COURT: -- that you may have to go through in
23 the statute in order to determine whether someone could serve.

24 MR. PESCI: And the State has no objection. I would
25 ask for the defense to make a record.

1 THE COURT: And it -- and they were from another
2 state as well; Hawaii.

3 MR. SANFT: Yeah, Your Honor. And just on behalf of
4 Mr. Robertson, we did not have an objection to him being
5 excused at that particular point.

6 MR. RUGGEROLI: Submit it, Judge.

7 THE COURT: Okay, thank you.

8 MR. PESCI: Thank you, Your Honor.

9 (Pause in the proceedings)

10 MR. PESCI: So, Judge, you know, best-case scenario,
11 do we think we get to witnesses tomorrow afternoon?

12 THE COURT: Yeah, sure.

13 MR. PESCI: Okay.

14 (Pause in the proceedings)

15 THE MARSHAL: All rise for the entering jury,
16 please.

17 (Within the presence of the prospective jurors)

18 THE COURT: Does the State stipulate to the presence
19 of the panel?

20 MR. PESCI: Yes, Your Honor.

21 THE COURT: And the defense?

22 MR. SANFT: Yes, Your Honor.

23 MR. RUGGEROLI: Yes, Your Honor.

24 THE COURT: Thank you. Mr. O'Brien?

25 PROSPECTIVE JUROR NO. 464: Yes, Your Honor.

1 THE COURT: Good afternoon. How long have you lived
2 in Clark County?

3 PROSPECTIVE JUROR NO. 464: 21 years.

4 THE COURT: And your education background?

5 PROSPECTIVE JUROR NO. 464: I have a computer
6 science degree.

7 THE COURT: I think you told us earlier you're a
8 gunsmith, correct?

9 PROSPECTIVE JUROR NO. 464: Yes, by trade. At
10 present, I'm working a contract.

11 THE COURT: You're working --

12 PROSPECTIVE JUROR NO. 464: A contract, doing
13 electronics.

14 THE COURT: Okay. Your marital status?

15 PROSPECTIVE JUROR NO. 464: Married.

16 THE COURT: Is your spouse employed?

17 PROSPECTIVE JUROR NO. 464: She is a human resources
18 director.

19 THE COURT: Do you have any kids?

20 PROSPECTIVE JUROR NO. 464: Yes.

21 THE COURT: Okay, how many?

22 PROSPECTIVE JUROR NO. 464: One boy, one girl.

23 THE COURT: Are they old enough to be employed?

24 PROSPECTIVE JUROR NO. 464: Yes. My son is a sales
25 something for furniture.

1 THE COURT: Okay, and your other one?
2 PROSPECTIVE JUROR NO. 464: And my daughter, she
3 works at guest check-in.
4 THE COURT: At where?
5 PROSPECTIVE JUROR NO. 464: At the MGM.
6 THE COURT: I'm sorry.
7 PROSPECTIVE JUROR NO. 464: She's guest services at
8 MGM.
9 THE COURT: Thank you. Do you know of any reason
10 why you could not be a fair and impartial juror if you were
11 selected to serve on this panel?
12 PROSPECTIVE JUROR NO. 464: No.
13 THE COURT: Okay, thank you. Thank you very much
14 for your willingness to be here.
15 Alexis Newell?
16 PROSPECTIVE JUROR NO. 468: Yes.
17 THE COURT: Juror number 13. How long have you
18 lived in Clark County?
19 PROSPECTIVE JUROR NO. 468: 22 years.
20 THE COURT: Your education background?
21 PROSPECTIVE JUROR NO. 468: I'm undergrad at UNLV.
22 THE COURT: You're what at UNLV?
23 PROSPECTIVE JUROR NO. 468: An undergrad at UNLV.
24 THE COURT: Okay, and are you in school full-time?
25 PROSPECTIVE JUROR NO. 468: Yes.

1 THE COURT: What are you studying?
2 PROSPECTIVE JUROR NO. 468: Criminal justice.
3 THE COURT: Okay. And if you were asked to be here,
4 how would that affect your school schedule? Could you do
5 both?
6 PROSPECTIVE JUROR NO. 468: Yes, but I have an exam
7 tomorrow, so.
8 THE COURT: Okay. What time?
9 PROSPECTIVE JUROR NO. 468: 11:30 to 12:45.
10 THE COURT: Okay. We will be in session.
11 PROSPECTIVE JUROR NO. 468: Okay.
12 THE COURT: How will that affect you if you're not
13 able to take that exam tomorrow?
14 PROSPECTIVE JUROR NO. 468: I don't -- can I get it
15 excused if I have proof?
16 THE COURT: I could, yes.
17 PROSPECTIVE JUROR NO. 468: Okay, that would be fine
18 then.
19 THE COURT: Okay, and so you don't think that it
20 will affect your classes?
21 PROSPECTIVE JUROR NO. 468: No.
22 THE COURT: Okay. And are you employed?
23 PROSPECTIVE JUROR NO. 468: Yes.
24 THE COURT: What do you do?
25 PROSPECTIVE JUROR NO. 468: I'm cashier at Polo

1 Ralph Lauren.

2 THE COURT: Your marital status?

3 PROSPECTIVE JUROR NO. 468: Single.

4 THE COURT: Do you have any kids?

5 PROSPECTIVE JUROR NO. 468: No.

6 THE COURT: Do you know of any reason why you could
7 not be a fair and impartial juror if you were selected to
8 serve on this panel?

9 PROSPECTIVE JUROR NO. 468: No.

10 THE COURT: Thank you. Thank you very much for
11 being here.

12 Mr. Rodriguez?

13 PROSPECTIVE JUROR NO. 475: Yes, ma'am.

14 THE COURT: Good afternoon. How long have you lived
15 in Clark County?

16 PROSPECTIVE JUROR NO. 475: Since 2009.

17 THE COURT: And what do you do for a living?

18 PROSPECTIVE JUROR NO. 475: I'm retired.

19 THE COURT: What did you do before you retired?

20 PROSPECTIVE JUROR NO. 475: I retired from the Navy,
21 and then retired from Cox Communications.

22 THE COURT: Okay. Your education background?

23 PROSPECTIVE JUROR NO. 475: High school.

24 THE COURT: And your marital status?

25 PROSPECTIVE JUROR NO. 475: Married.

1 THE COURT: Is your spouse employed?
2 PROSPECTIVE JUROR NO. 475: She's on disability.
3 THE COURT: Okay.
4 PROSPECTIVE JUROR NO. 475: She has lupus and
5 cancer.
6 THE COURT: Do yo have any children?
7 PROSPECTIVE JUROR NO. 475: Grown-ups.
8 THE COURT: How many?
9 PROSPECTIVE JUROR NO. 475: Four.
10 THE COURT: Okay, and can you tell me what each
11 child does for a living?
12 PROSPECTIVE JUROR NO. 475: One is -- the oldest one
13 is a school counselor in Yakima, Washington. The second one
14 is customer care center in Wesley Financials. The third one
15 is a manager at a tech business office. And the last one is a
16 software engineer.
17 THE COURT: Okay. Do you know of any reason why you
18 could not be a fair and impartial juror if you were selected
19 to serve on this panel?
20 PROSPECTIVE JUROR NO. 475: I can be fair and
21 impartial, but my problem is I have a tendency to lose focus
22 and/or concentration on subject matters.
23 THE COURT: Okay.
24 PROSPECTIVE JUROR NO. 475: And so I might not be
25 able to connect the dots.

1 THE COURT: Okay. Well, if you were selected to
2 serve on the panel, I would need your commitment that
3 obviously you would be here and that you would listen to the
4 evidence.

5 PROSPECTIVE JUROR NO. 475: I will try.

6 THE COURT: Okay, and you could follow the -- what
7 do you mean, you could try? If you're not listening to the
8 evidence, what would you be doing?

9 PROSPECTIVE JUROR NO. 475: Well, I'll be -- I'll be
10 listening; I'll be trying to concentrate.

11 THE COURT: Okay. All right, that's all I could ask
12 for.

13 PROSPECTIVE JUROR NO. 475: Okay.

14 THE COURT: Okay? Thank you, sir. Thank you very
15 much for your willingness to be here.

16 Cavan Bandics? Good afternoon, sir.

17 PROSPECTIVE JUROR NO. 477: Yeah, that's right.

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

19 PROSPECTIVE JUROR NO. 477: All my life.

20 THE COURT: Okay. And your education background?

21 PROSPECTIVE JUROR NO. 477: High school diploma.

22 THE COURT: And are you employed?

23 PROSPECTIVE JUROR NO. 477: Yes.

24 THE COURT: What do you do?

25 PROSPECTIVE JUROR NO. 477: Service technician for

1 Automatic Door and Glass.

2 THE COURT: Your marital status?

3 PROSPECTIVE JUROR NO. 477: Single.

4 THE COURT: Do you have any kids?

5 PROSPECTIVE JUROR NO. 477: No.

6 THE COURT: Any reason why you could not be a fair
7 and impartial juror if we selected you to serve, Mr. Bandics?

8 PROSPECTIVE JUROR NO. 477: I'm not sure, but --

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 477: -- I feel like I may
11 have seen the accused before, maybe from school or from other
12 -- some other place; I'm just not exactly sure where.

13 THE COURT: Okay. You believe that you have seen
14 Mr. Robertson or Mr. Wheeler before?

15 PROSPECTIVE JUROR NO. 477: Yes, I believe so.

16 THE COURT: Okay. Anything about that that would
17 affect your ability to be fair and impartial?

18 PROSPECTIVE JUROR NO. 477: No, I don't believe so.

19 THE COURT: Okay, thank you. Thank you very much
20 for being here.

21 Jonathan Salazar?

22 PROSPECTIVE JUROR NO. 482: Correct.

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

24 PROSPECTIVE JUROR NO. 482: 16 years.

25 THE COURT: Your education background?

1 PROSPECTIVE JUROR NO. 482: High school.
2 THE COURT: And what do you do for a living?
3 PROSPECTIVE JUROR NO. 482: I'm an armed guard and
4 driver for Loomis.
5 THE COURT: Your marital status?
6 PROSPECTIVE JUROR NO. 482: Single.
7 THE COURT: Do you have any children?
8 PROSPECTIVE JUROR NO. 482: No.
9 THE COURT: Any reason why you could not be a fair
10 and impartial juror if we selected you to serve?
11 PROSPECTIVE JUROR NO. 482: No, ma'am.
12 THE COURT: Thank you. Thank you for being here.
13 Ms. Cook?
14 PROSPECTIVE JUROR NO. 483: Yes. Yes.
15 THE COURT: How long have you lived in Clark County?
16 PROSPECTIVE JUROR NO. 483: I was born and raised.
17 THE COURT: Okay. Are you employed?
18 PROSPECTIVE JUROR NO. 483: Yes.
19 THE COURT: What do you do?
20 PROSPECTIVE JUROR NO. 483: A teacher.
21 THE COURT: A school teacher?
22 PROSPECTIVE JUROR NO. 483: Yes.
23 THE COURT: Okay. What do you teach?
24 PROSPECTIVE JUROR NO. 483: Fifth grade.
25 THE COURT: And your education background?

1 PROSPECTIVE JUROR NO. 483: A bachelor's degree in
2 education.
3 THE COURT: Okay. Your marital status?
4 PROSPECTIVE JUROR NO. 483: Married.
5 THE COURT: Is your spouse employed?
6 PROSPECTIVE JUROR NO. 483: Yes.
7 THE COURT: What does your spouse do?
8 PROSPECTIVE JUROR NO. 483: He's a foreman for --
9 they build shooting ranges, modular shooting ranges.
10 THE COURT: Okay. Do you have any children?
11 PROSPECTIVE JUROR NO. 483: Yes.
12 THE COURT: How many?
13 PROSPECTIVE JUROR NO. 483: I have one son, and
14 three stepsons.
15 THE COURT: Are any of them old enough to be
16 employed?
17 PROSPECTIVE JUROR NO. 483: Yes.
18 THE COURT: Okay, all of them?
19 PROSPECTIVE JUROR NO. 483: Three. Three of them
20 are.
21 THE COURT: Three of them?
22 PROSPECTIVE JUROR NO. 483: Yeah.
23 THE COURT: Well, tell me what those three children
24 do.
25 PROSPECTIVE JUROR NO. 483: So one of them works at

1 the shooting range company with his dad.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR NO. 483: The other one works at
4 Ritchie Brothers Auction, and the last one is a welder.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 483: And then, my son is in
7 school.

8 THE COURT: Okay. Do you know of any reason why you
9 could not be a fair and impartial juror if you were selected
10 to serve?

11 PROSPECTIVE JUROR NO. 483: No.

12 THE COURT: Okay, thank you, Ms. Cook. Thank you
13 for being here.

14 PROSPECTIVE JUROR NO. 483: Thank you.

15 THE COURT: Ms. Young? Good afternoon.

16 PROSPECTIVE JUROR NO. 485: Good afternoon.

17 THE COURT: Can you tell me how long you've lived in
18 Clark County?

19 PROSPECTIVE JUROR NO. 485: Four years.

20 THE COURT: And what do you do for a living?

21 PROSPECTIVE JUROR NO. 485: I am a -- I'm in
22 training right now to be an assistant store manager.

23 THE COURT: Okay. What kind of store is it?

24 PROSPECTIVE JUROR NO. 485: It's Walmart.

25 THE COURT: Okay. Your education background?

1 PROSPECTIVE JUROR NO. 485: High school.
2 THE COURT: Okay. Are you married?
3 PROSPECTIVE JUROR NO. 485: Yes.
4 THE COURT: Is your spouse employed?
5 PROSPECTIVE JUROR NO. 485: Yes.
6 THE COURT: What does your spouse do?
7 PROSPECTIVE JUROR NO. 485: He's a driver and
8 installer for a graphic company.
9 THE COURT: Do you have kids?
10 PROSPECTIVE JUROR NO. 485: Yes, three.
11 THE COURT: Okay. Are any of your kids old enough
12 to be employed?
13 PROSPECTIVE JUROR NO. 485: Two.
14 THE COURT: Okay. Can you tell me what each does?
15 PROSPECTIVE JUROR NO. 485: My daughter, she is an
16 office manager back home on the island of Hawaii. And my son,
17 he's -- he can work, but he's not. He's 17, he's a senior.
18 THE COURT: Okay. Still in school?
19 PROSPECTIVE JUROR NO. 485: Yes, ma'am.
20 THE COURT: Okay. Do you know of any reason why you
21 could not be a fair and impartial juror if you were selected
22 to serve on this panel?
23 PROSPECTIVE JUROR NO. 485: I can be fair.
24 THE COURT: Okay.
25 PROSPECTIVE JUROR NO. 485: Like I previously

1 mentioned, I'm in training. I was picked out of five people
2 for this position. You know, I'm trying to show them that I
3 can do it. Just being here right now hurt me today, but.

4 THE COURT: Okay, but you understand your employer
5 can't make any adverse employment decisions against you --

6 PROSPECTIVE JUROR NO. 485: Right.

7 THE COURT: -- because you've responded to a lawful
8 summons, correct?

9 PROSPECTIVE JUROR NO. 485: No, I understand.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR NO. 485: It -- yeah.

12 THE COURT: All right, thank you.

13 PROSPECTIVE JUROR NO. 485: Thank you.

14 THE COURT: Mr. Deperio?

15 PROSPECTIVE JUROR NO. 488: Yes.

16 THE COURT: Okay. How long have you lived in Clark
17 County?

18 PROSPECTIVE JUROR NO. 488: 23 years.

19 THE COURT: Your education background?

20 PROSPECTIVE JUROR NO. 488: High school.

21 THE COURT: And what do you do for a living?

22 PROSPECTIVE JUROR NO. 488: I'm a machine operator.

23 THE COURT: What kind of machine do you operate?

24 PROSPECTIVE JUROR NO. 488: Binder equipment.

25 THE COURT: Okay. Your marital status?

1 PROSPECTIVE JUROR NO. 488: Married.
2 THE COURT: And is your spouse employed?
3 PROSPECTIVE JUROR NO. 488: Yes.
4 THE COURT: What does your spouse do?
5 PROSPECTIVE JUROR NO. 488: Light equipment
6 operator.
7 THE COURT: And do you have children?
8 PROSPECTIVE JUROR NO. 488: Yes, two.
9 THE COURT: Okay. Are either of your kids old
10 enough to be employed?
11 PROSPECTIVE JUROR NO. 488: No, they're both high
12 school.
13 THE COURT: Okay. Do you know of any reason why you
14 could not be a fair and impartial juror if you were selected
15 to serve?
16 PROSPECTIVE JUROR NO. 488: No, I don't.
17 THE COURT: Okay, thank you, sir. Thank you for
18 being here.
19 Mr. Castro?
20 PROSPECTIVE JUROR NO. 490: Yes.
21 THE COURT: How long have you lived --
22 PROSPECTIVE JUROR NO. 490: 23 years.
23 THE COURT: 23 years? And your education
24 background?
25 PROSPECTIVE JUROR NO. 490: Associate's in software

1 development.

2 THE COURT: And what do you do for a living?

3 PROSPECTIVE JUROR NO. 490: I'm a software engineer.

4 THE COURT: Software engineer? And are you married?

5 PROSPECTIVE JUROR NO. 490: Married, yes.

6 THE COURT: Okay. Is your spouse employed?

7 PROSPECTIVE JUROR NO. 490: Yes, she's a regional

8 manager.

9 THE COURT: Do you have children?

10 PROSPECTIVE JUROR NO. 490: Four kids.

11 THE COURT: Four?

12 PROSPECTIVE JUROR NO. 490: Yeah.

13 THE COURT: Okay. Are any of your kids old enough

14 to be employed?

15 PROSPECTIVE JUROR NO. 490: Yes, they are. One's a

16 nurse.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 490: One's a supervisor, one

19 is in the Army, and one is in high school.

20 THE COURT: Okay. Any reason why you could not be a

21 fair and impartial juror if selected to serve on this panel?

22 PROSPECTIVE JUROR NO. 490: There's no reason.

23 THE COURT: Okay, thank you, sir. Thank you very

24 much for being here.

25 Ms. Segura? Okay.

1 PROSPECTIVE JUROR NO. 496: Yes, ma'am.

2 THE COURT: Good afternoon. How long have you lived
3 in Clark County?

4 PROSPECTIVE JUROR NO. 496: 13 years.

5 THE COURT: And your education background?

6 PROSPECTIVE JUROR NO. 496: Bachelor's of Science in
7 Nursing.

8 THE COURT: And you told us you're a nurse?

9 PROSPECTIVE JUROR NO. 496: Yes, ma'am.

10 THE COURT: Right, and you're working in a hospital?

11 PROSPECTIVE JUROR NO. 496: Yes, ma'am.

12 THE COURT: And what kind -- what kind of -- I mean,
13 what level? Pediatrics, surgery?

14 PROSPECTIVE JUROR NO. 496: Oh, basic level.
15 Med-surg, RN1. It's my first year.

16 THE COURT: Your first year as a nurse?

17 PROSPECTIVE JUROR NO. 496: Yes.

18 THE COURT: Okay. And your marital status?

19 PROSPECTIVE JUROR NO. 496: Married.

20 THE COURT: Is your spouse employed?

21 PROSPECTIVE JUROR NO. 496: No.

22 THE COURT: Do you have kids?

23 PROSPECTIVE JUROR NO. 496: No.

24 THE COURT: Okay. And I know we talked earlier
25 about you contacting your Human Resources, correct?

1 PROSPECTIVE JUROR NO. 496: I did on the break.
2 THE COURT: Okay.
3 PROSPECTIVE JUROR NO. 496: They said that they
4 would -- I would be able to be paid, so --
5 THE COURT: Okay.
6 PROSPECTIVE JUROR NO. 496: -- it's all good.
7 THE COURT: So no issues with your employment?
8 PROSPECTIVE JUROR NO. 496: No issues.
9 THE COURT: Okay. Any reason why you could not be a
10 fair and impartial juror if selected to serve?
11 PROSPECTIVE JUROR NO. 496: No reason.
12 THE COURT: Thank you.
13 PROSPECTIVE JUROR NO. 496: Thank you.
14 THE COURT: Thank you very much for being here.
15 Michael Laurie?
16 PROSPECTIVE JUROR NO. 513: Correct.
17 THE COURT: Good afternoon.
18 PROSPECTIVE JUROR NO. 513: Good afternoon.
19 THE COURT: How long have you lived in Clark County?
20 PROSPECTIVE JUROR NO. 513: A little over five
21 years.
22 THE COURT: Okay, and what do you do for a living?
23 PROSPECTIVE JUROR NO. 513: I'm a retail cashier at
24 a dollar store.
25 THE COURT: Okay. And your education background?

1 PROSPECTIVE JUROR NO. 513: High school.
2 THE COURT: Okay. And your marital status?
3 PROSPECTIVE JUROR NO. 513: Single.
4 THE COURT: Okay. Do you have any kids?
5 PROSPECTIVE JUROR NO. 513: No.
6 THE COURT: Do you know of any reason why you could
7 not be a fair and impartial juror if selected to serve --
8 PROSPECTIVE JUROR NO. 513: No.
9 THE COURT: -- Mr. Laurie?
10 PROSPECTIVE JUROR NO. 513: No.
11 THE COURT: Okay, thank you.
12 PROSPECTIVE JUROR NO. 513: Um-hum.
13 THE COURT: Thank you very much for being here.
14 Maria Moreno, correct?
15 PROSPECTIVE JUROR NO. 520: Yes.
16 THE COURT: How long have you lived in Clark County?
17 PROSPECTIVE JUROR NO. 520: 15 years.
18 THE COURT: And your education background?
19 PROSPECTIVE JUROR NO. 520: High school.
20 THE COURT: What do you do for a living?
21 PROSPECTIVE JUROR NO. 520: I'm a payroll Clerk at
22 Broadacres Marketplace.
23 THE COURT: And are you married?
24 PROSPECTIVE JUROR NO. 520: Yes.
25 THE COURT: Okay. Is your spouse employed?

1 PROSPECTIVE JUROR NO. 520: Yes.

2 THE COURT: Okay, can you tell me what your spouse
3 does for a living?

4 PROSPECTIVE JUROR NO. 520: He's an electrician.

5 THE COURT: Do you have children?

6 PROSPECTIVE JUROR NO. 520: Yes, I have two.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 520: They're in -- one is in
9 high school, and one is in junior high.

10 THE COURT: Okay. Any reason why you could not be a
11 fair and impartial juror if selected to serve?

12 PROSPECTIVE JUROR NO. 520: No.

13 THE COURT: Thank you. Thank you for being here.
14 Ms. Perez-Haywood?

15 PROSPECTIVE JUROR NO. 521: Yes.

16 THE COURT: Good afternoon.

17 PROSPECTIVE JUROR NO. 521: Good afternoon.

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

19 PROSPECTIVE JUROR NO. 521: 16 years.

20 THE COURT: And what do you do for a living?

21 PROSPECTIVE JUROR NO. 521: Middle school teacher.

22 THE COURT: Okay. What subjects do you teach?

23 PROSPECTIVE JUROR NO. 521: Eighth grade math.

24 THE COURT: Okay. And your education background?

25 PROSPECTIVE JUROR NO. 521: Master's in education.

1 THE COURT: Okay. And your marital status?
2 PROSPECTIVE JUROR NO. 521: Married.
3 THE COURT: Is your spouse employed?
4 PROSPECTIVE JUROR NO. 521: Yes.
5 THE COURT: What does your spouse do?
6 PROSPECTIVE JUROR NO. 521: He teaches middle school
7 too, sixth grade.
8 THE COURT: Do you have any children?
9 PROSPECTIVE JUROR NO. 521: Two, a four-year-old and
10 a eight-year-old.
11 THE COURT: Okay. Any reason why you could not be a
12 fair and impartial juror if you were selected to serve?
13 PROSPECTIVE JUROR NO. 521: No, ma'am.
14 THE COURT: Okay, thank you. Thank you very much
15 for being here.
16 Ms. Mendoza?
17 PROSPECTIVE JUROR NO. 524: Yes.
18 THE COURT: Good afternoon.
19 PROSPECTIVE JUROR NO. 524: Good afternoon.
20 THE COURT: How long have you lived in Clark County?
21 PROSPECTIVE JUROR NO. 524: Ten years.
22 THE COURT: Okay. And your education background?
23 PROSPECTIVE JUROR NO. 524: I was going to Nevada
24 State, but I took the semester off.
25 THE COURT: Okay, but you were in school last

1 semester?

2 PROSPECTIVE JUROR NO. 524: Yes.

3 THE COURT: All right, and you're just taking a
4 semester off?

5 PROSPECTIVE JUROR NO. 524: Um-hum.

6 THE COURT: Is that a yes?

7 PROSPECTIVE JUROR NO. 524: Yes.

8 THE COURT: Have you finished a year?

9 PROSPECTIVE JUROR NO. 524: Yeah, I'm in my second
10 year.

11 THE COURT: Okay. And are you employed?

12 PROSPECTIVE JUROR NO. 524: Yes.

13 THE COURT: What do you do?

14 PROSPECTIVE JUROR NO. 524: I'm a sales associate at
15 Tory Burch.

16 THE COURT: Your marital status?

17 PROSPECTIVE JUROR NO. 524: Single.

18 THE COURT: Do you have kids?

19 PROSPECTIVE JUROR NO. 524: No.

20 THE COURT: Okay. Any reason why you could not be a
21 fair and impartial juror if you were selected to serve, Ms.
22 Mendoza?

23 PROSPECTIVE JUROR NO. 524: No.

24 THE COURT: Okay, thank you.

25 Dawn Nerdin?

1 PROSPECTIVE JUROR NO. 538: Yes, ma'am.

2 THE COURT: Good afternoon. Ms. Nerdin, how long
3 have you lived in Clark County?

4 PROSPECTIVE JUROR NO. 538: Probably about 43 years.

5 THE COURT: Okay. Your education background?

6 PROSPECTIVE JUROR NO. 538: High school diploma.

7 THE COURT: And your -- your employment background?

8 PROSPECTIVE JUROR NO. 538: Unemployed.

9 THE COURT: Okay, and what was your last job? What
10 did you do?

11 PROSPECTIVE JUROR NO. 538: Customer service for
12 convenience stores.

13 THE COURT: Okay. Your marital status?

14 PROSPECTIVE JUROR NO. 538: Single.

15 THE COURT: Do you --

16 PROSPECTIVE JUROR NO. 538: I'm a caregiver at this
17 point. My dad and --

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 538: -- sister have COPD, so
20 I help take care of them.

21 THE COURT: Okay. How will that -- do you take care
22 of them full-time, I assume?

23 PROSPECTIVE JUROR NO. 538: Yeah.

24 THE COURT: Okay. How will that affect the care if
25 you're required to be here?

1 PROSPECTIVE JUROR NO. 538: It would -- it would
2 affect it quite a bit. We have three dogs, then my sister's
3 on oxygen. My dad has to do his medicine four times a day,
4 and, you know, I'm there to help out around the house --

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 538: -- because they can't
7 get around too good.

8 THE COURT: All right. Would you be able to do
9 both?

10 PROSPECTIVE JUROR NO. 538: Not really, no.

11 THE COURT: Okay. Who is there now?

12 PROSPECTIVE JUROR NO. 538: Just them by themselves.

13 THE COURT: Okay. Do you live there?

14 PROSPECTIVE JUROR NO. 538: Yes, I do.

15 THE COURT: Okay. And I just want to ask, will
16 their health be compromised if you're required to be here?

17 PROSPECTIVE JUROR NO. 538: It could be. You know,
18 they have lapses to where they can't breathe and stuff, and
19 they need help. You know, they need help, you know, me to do
20 the running around, and you know, back and forth in the house,
21 you know, cooking, and you know, help them maintain their
22 level of life.

23 THE COURT: Okay, but there's no one with them right
24 now?

25 PROSPECTIVE JUROR NO. 538: No.

1 THE COURT: And not all day?
2 PROSPECTIVE JUROR NO. 538: Not -- no. I'm gone,
3 I'm here.
4 THE COURT: Okay. All right, Ms. Nerdin, I'm just
5 going to ask you to step out of the box.
6 PROSPECTIVE JUROR NO. 538: All right, thank you.
7 THE COURT: And I'm going to ask Alexander Keang, if
8 you can take a seat in the gallery. Alexander --
9 THE MARSHAL: Come up and fill the empty chair, sir.
10 THE COURT: -- Keang, I'm just going to --
11 PROSPECTIVE JUROR NO. 561: (Indiscernible)?
12 THE COURT: Uh-huh.
13 PROSPECTIVE JUROR NO. 561: Thank you.
14 THE COURT: Mr. Keang, how long have you lived in
15 Clark County?
16 PROSPECTIVE JUROR NO. 561: I live here since 1991.
17 THE COURT: Okay. And what do you do for a living?
18 PROSPECTIVE JUROR NO. 561: I'm a casino dealer.
19 THE COURT: Okay. And your education background?
20 PROSPECTIVE JUROR NO. 561: High school.
21 THE COURT: Okay. And are you married?
22 PROSPECTIVE JUROR NO. 561: Yes.
23 THE COURT: Okay. Is your spouse employed?
24 PROSPECTIVE JUROR NO. 561: Yes.
25 THE COURT: What does she do?

1 PROSPECTIVE JUROR NO. 561: She's a dealer, too.
2 THE COURT: Okay. Do you have any children?
3 PROSPECTIVE JUROR NO. 561: Two children.
4 THE COURT: Okay. Are they old enough to be
5 employed?
6 PROSPECTIVE JUROR NO. 561: No, they are just kid,
7 11-years-old and --
8 THE COURT: Okay, they're minors?
9 PROSPECTIVE JUROR NO. 561: -- eight-years-old.
10 Minors, yes.
11 THE COURT: Any reason why you could not be a fair
12 and impartial juror if you were selected to serve?
13 PROSPECTIVE JUROR NO. 561: No, no reason.
14 THE COURT: Okay, thank you, sir. Thank you very
15 much for being here.
16 Ms. McCarthy?
17 PROSPECTIVE JUROR NO. 540: Yes.
18 THE COURT: How long have you lived in Clark County?
19 PROSPECTIVE JUROR NO. 540: 28 years.
20 THE COURT: Your education background?
21 PROSPECTIVE JUROR NO. 540: Master's in education.
22 THE COURT: And what do you do?
23 PROSPECTIVE JUROR NO. 540: I'm a retired teacher.
24 THE COURT: What did you teach?
25 PROSPECTIVE JUROR NO. 540: I taught everything from

1 kindergarten up to middle school.

2 THE COURT: Okay. And your marital status?

3 PROSPECTIVE JUROR NO. 540: Married.

4 THE COURT: Okay. Is your spouse employed?

5 PROSPECTIVE JUROR NO. 540: Yes, he's a teacher.

6 THE COURT: Do you have kids?

7 PROSPECTIVE JUROR NO. 540: Yes, I have two, one of

8 which is here today.

9 THE COURT: One of your kids is here?

10 PROSPECTIVE JUROR NO. 540: Yes.

11 THE COURT: Okay. Oh, that's your son?

12 PROSPECTIVE JUROR NO. 540: That's my son, yes.

13 THE COURT: Okay. You both got a jury summons, and

14 you both got assigned up here?

15 PROSPECTIVE JUROR NO. 540: Well, we both were

16 summoned in November, and we couldn't do it then, and so we

17 both picked this day so that we can carpool together.

18 THE COURT: Okay, and you got put together on the --

19 PROSPECTIVE JUROR NO. 540: Have some quality mother

20 and son bonding time, yeah.

21 THE COURT: Yeah. Okay, so how many kids do you

22 have?

23 PROSPECTIVE JUROR NO. 540: I have two.

24 THE COURT: And are they old enough to be employed?

25 PROSPECTIVE JUROR NO. 540: Yes. Drew, he's 21, he

1 is a car detailer.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR NO. 540: And then my daughter's
4 24, but she has special needs, so she's not employed.

5 THE COURT: Okay. Do you know of any reason why you
6 could not be a fair and impartial juror if you were selected
7 to serve?

8 PROSPECTIVE JUROR NO. 540: No.

9 THE COURT: Thank you. Thank you very much for
10 being here.

11 And Mr. Widdison?

12 PROSPECTIVE JUROR NO. 541: Yes, ma'am.

13 THE COURT: Good afternoon. How long have you lived
14 in Clark County?

15 PROSPECTIVE JUROR NO. 541: 18 years.

16 THE COURT: Your education background?

17 PROSPECTIVE JUROR NO. 541: I have a bachelor degree
18 in accounting.

19 THE COURT: And what do you do for a living?

20 PROSPECTIVE JUROR NO. 541: I'm a certified manager
21 accountant.

22 THE COURT: Certified manager accountant?

23 PROSPECTIVE JUROR NO. 541: Yeah, CMA. Um-hum.

24 THE COURT: Okay. And your marital status?

25 PROSPECTIVE JUROR NO. 541: Married.

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON ROBERTSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 81400

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Michelle Leavitt, District Judge
District Court No. C-17-328587-2

APPELLANT'S APPENDIX
VOL. 2 OF 7

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Transcript-Status Check, Trial Readiness	1	AA000129	12/18/19
Transcript-Status Check, Trial Readiness	1	AA000132	1/15/20
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 21st of October, 2020, a copy of the foregoing Appendix was served by electronic filing as follows:

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Nevada Attorney General
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DATED this 21st of October, 2020.



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Attorney for Appellant Raekwon
Robertson

1 THE COURT: Is your spouse employed?
2 PROSPECTIVE JUROR NO. 541: No, she's not.
3 THE COURT: Do you have children?
4 PROSPECTIVE JUROR NO. 541: One minor girl at home.
5 THE COURT: Any reason why you could not be a fair
6 and impartial juror, Mr. Widdison?
7 PROSPECTIVE JUROR NO. 541: I can be fair,
8 impartial. No problem.
9 THE COURT: Okay. Thank you, sir. Thank you for
10 being here.
11 John Kubota?
12 PROSPECTIVE JUROR NO. 546: Hi.
13 THE COURT: Good afternoon. How long have you lived
14 in Clark County?
15 PROSPECTIVE JUROR NO. 546: 31 years.
16 THE COURT: And your education background?
17 PROSPECTIVE JUROR NO. 546: Bachelor's from Cornell
18 and master's from Berkeley. I'm --
19 THE COURT: Okay, so your bachelor's is in what?
20 PROSPECTIVE JUROR NO. 546: Structural engineering.
21 THE COURT: Okay, and your master's?
22 PROSPECTIVE JUROR NO. 546: Structural engineering.
23 THE COURT: Okay, and what do you do for a living?
24 PROSPECTIVE JUROR NO. 546: I run my own engineering
25 company, Kubota and Associates Engineers.

1 THE COURT: Okay. Your marital status?
2 PROSPECTIVE JUROR NO. 546: I'm married.
3 THE COURT: Is your spouse employed?
4 PROSPECTIVE JUROR NO. 546: Yes.
5 THE COURT: What does your spouse do?
6 PROSPECTIVE JUROR NO. 546: She's a RE for NDOT.
7 THE COURT: Do you have kids?
8 PROSPECTIVE JUROR NO. 546: Three.
9 THE COURT: Okay. Are they old enough to be
10 employed?
11 PROSPECTIVE JUROR NO. 546: Two in high school, one
12 in University of Washington.
13 THE COURT: Okay. Any reason why you could not be a
14 fair and impartial juror if you were selected to serve, Mr.
15 Kubota?
16 PROSPECTIVE JUROR NO. 546: I'm struggling with that
17 one because I've been sued 29 times.
18 THE COURT: Oh.
19 PROSPECTIVE JUROR NO. 546: And we got to know the
20 judges real well, and one -- they'd come up and say, okay,
21 John, yep, nobody said you did anything wrong, but you lose,
22 you got to pay. So the law and I have problems with each
23 other.
24 THE COURT: Okay, so it sounds like civil stuff?
25 PROSPECTIVE JUROR NO. 546: Civil.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 546: Construction defect.

3 THE COURT: I was just going to say. So you spent
4 most of your time in construction defect courtrooms?

5 PROSPECTIVE JUROR NO. 546: Well, yeah, up until --
6 we gave testimony in 2000 in the -- when they were going
7 through the construction defect litigation changes.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 546: But then we lost -- we
10 -- we lost -- we stopped carrying insurance, and all the
11 lawyers disappeared, so we haven't been sued since we dropped
12 our insurance. I haven't figured that one out yet, but.

13 THE COURT: Okay, all right. Well, I don't blame
14 you for not being happy about being sued, but --

15 PROSPECTIVE JUROR NO. 546: And not doing anything
16 wrong, but I still had to pay.

17 THE COURT: Yeah. I -- I probably wouldn't be happy
18 either, okay, but you understand this is a criminal case?

19 PROSPECTIVE JUROR NO. 546: Right.

20 THE COURT: And that it really has nothing to do
21 with what has happened to you; you understand that?

22 PROSPECTIVE JUROR NO. 546: Yeah.

23 THE COURT: Okay. Would you be able to set aside
24 your experiences with being part of the civil litigation
25 system, and judge this case based solely on the evidence as

1 you hear in the courtroom and the instructions on the law?

2 PROSPECTIVE JUROR NO. 546: Yeah.

3 THE COURT: Okay, because you agree with me that it
4 would be unfair to judge this case based on your experience,
5 correct?

6 PROSPECTIVE JUROR NO. 546: Right. As you say, mine
7 was all civil, and it was just lawsuits as opposed to breaking
8 the law.

9 THE COURT: Yeah, not to minimize it, not to
10 minimize it, but you would be able to set those experiences
11 aside?

12 PROSPECTIVE JUROR NO. 546: Yeah.

13 THE COURT: Okay, sir. Thank you very much, and
14 thank you for being here.

15 Roberta Bell?

16 PROSPECTIVE JUROR NO. 554: Yes.

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

18 PROSPECTIVE JUROR NO. 554: 40 years.

19 THE COURT: And your education background?

20 PROSPECTIVE JUROR NO. 554: High school.

21 THE COURT: What do you do for a living?

22 PROSPECTIVE JUROR NO. 554: I work part-time in a
23 warehouse packaging -- like for Kroger's or Smith's, packaging
24 up food.

25 THE COURT: Your marital status?

1 PROSPECTIVE JUROR NO. 554: Yes.

2 THE COURT: You're married?

3 PROSPECTIVE JUROR NO. 554: Married, married.

4 THE COURT: Okay. Is your spouse employed?

5 PROSPECTIVE JUROR NO. 554: Yes. He is a service

6 air manager for Air Canada for Vegas and Phoenix.

7 THE COURT: Do you have children?

8 PROSPECTIVE JUROR NO. 554: I have two.

9 THE COURT: Okay, are they old enough to be

10 employed?

11 PROSPECTIVE JUROR NO. 554: Yes. One is a dental

12 assistant, and one works for Wells Fargo.

13 THE COURT: Any reason why you could not be a fair

14 and impartial juror if you were selected to serve on this

15 panel?

16 PROSPECTIVE JUROR NO. 554: Yeah, no reason.

17 THE COURT: Okay, thank you.

18 PROSPECTIVE JUROR NO. 554: Um-hum.

19 THE COURT: Thank you very much. And then, Officer

20 Hawkes, if you don't mind --

21 THE MARSHAL: Yes, ma'am.

22 THE COURT: We're on number 31, Andrew Delgadillo.

23 Okay. And when the microphone gets to you, if you don't mind

24 standing up, and then it makes it easier for me to hear you

25 over there. Good afternoon, sir.

1 PROSPECTIVE JUROR NO. 556: Good afternoon.
2 THE COURT: How long have you lived in Clark County?
3 PROSPECTIVE JUROR NO. 556: 16 years.
4 THE COURT: Your education background?
5 PROSPECTIVE JUROR NO. 556: No high school.
6 THE COURT: And what do you do for a living?
7 PROSPECTIVE JUROR NO. 556: Roadside assistance.
8 THE COURT: Okay. And are you married?
9 PROSPECTIVE JUROR NO. 556: Yes.
10 THE COURT: Okay. Is your spouse employed?
11 PROSPECTIVE JUROR NO. 556: Yes.
12 THE COURT: What does your spouse do?
13 PROSPECTIVE JUROR NO. 556: Workforce for the
14 Mirage.
15 THE COURT: I'm sorry?
16 PROSPECTIVE JUROR NO. 556: Workforce.
17 THE COURT: Work horse?
18 PROSPECTIVE JUROR NO. 556: Force.
19 THE COURT: Okay.
20 PROSPECTIVE JUROR NO. 556: Workforce.
21 THE COURT: Okay. And do you have children?
22 PROSPECTIVE JUROR NO. 556: Yes, just one. He's
23 five.
24 THE COURT: Any reason why you could not be a fair
25 and impartial juror if selected to serve?

1 PROSPECTIVE JUROR NO. 556: No, ma'am.
2 THE COURT: Okay, thank you, sir.
3 PROSPECTIVE JUROR NO. 556: Thank you.
4 THE COURT: Thank you for being here.
5 Mr. Randall?
6 PROSPECTIVE JUROR NO. 557: Yes.
7 THE COURT: Good afternoon. How long have you lived
8 in Clark County?
9 PROSPECTIVE JUROR NO. 557: Lived here about
10 two-and-a-half years now.
11 THE COURT: Okay. And your education background?
12 PROSPECTIVE JUROR NO. 557: High school equivalent.
13 THE COURT: Okay. And what do you do for a living?
14 PROSPECTIVE JUROR NO. 557: I run a small company
15 that sells financial software.
16 THE COURT: Okay. And your marital status?
17 PROSPECTIVE JUROR NO. 557: Married.
18 THE COURT: Is your spouse employed?
19 PROSPECTIVE JUROR NO. 557: Currently unemployed.
20 THE COURT: Do you have kids?
21 PROSPECTIVE JUROR NO. 557: No, no kids.
22 THE COURT: Do you know of any reason why you could
23 not be a fair and impartial juror if you were selected to
24 serve on this panel?
25 PROSPECTIVE JUROR NO. 557: No.

1 THE COURT: Okay, thank you, sir. Thank you very
2 much for being here.

3 I do have a few more questions for the panel of 32
4 as a whole. So if you'd like to respond, just raise your
5 hand. We'll make sure the microphone gets to you, and if you
6 won't mind stating your name and badge number so we have a
7 record of who is speaking.

8 Is there anyone on the panel who has ever served as
9 a juror before? Go ahead. Your name and badge number?

10 PROSPECTIVE JUROR NO. 417: Joyce (phonetic)
11 Newcome, 417.

12 THE COURT: Okay, and you've served as a juror
13 before?

14 PROSPECTIVE JUROR NO. 417: Yes.

15 THE COURT: How many times?

16 PROSPECTIVE JUROR NO. 417: One -- one that I can
17 remember (indiscernible).

18 THE COURT: Okay, one time?

19 PROSPECTIVE JUROR NO. 417: Um-hum.

20 THE COURT: Was it civil or criminal?

21 PROSPECTIVE JUROR NO. 417: Criminal.

22 THE COURT: Okay. Were you selected to be the
23 foreperson?

24 PROSPECTIVE JUROR NO. 417: No.

25 THE COURT: Okay. Without telling me what your

1 verdict was, were you able to reach a verdict in that case?
2 PROSPECTIVE JUROR NO. 417: Yes.
3 THE COURT: Anything about that experience that
4 would affect your ability to be fair and impartial in this
5 case?
6 PROSPECTIVE JUROR NO. 417: There's -- there's no --
7 THE COURT: Okay.
8 PROSPECTIVE JUROR NO. 417: -- no reason.
9 THE COURT: Thank you. Anyone else in that row? If
10 you just don't mind passing it down.
11 PROSPECTIVE JUROR NO. 451: Shannon Graham, 451.
12 THE COURT: Okay. How many times have you served,
13 Ms. Graham?
14 PROSPECTIVE JUROR NO. 451: One time.
15 THE COURT: And was that civil or criminal?
16 PROSPECTIVE JUROR NO. 451: Civil.
17 THE COURT: Civil? Was that here in this
18 courthouse?
19 PROSPECTIVE JUROR NO. 451: Yes.
20 THE COURT: Okay. Were you selected to be the
21 foreperson?
22 PROSPECTIVE JUROR NO. 451: I was.
23 THE COURT: Without telling us what your verdict
24 was, were you able to reach a verdict?
25 PROSPECTIVE JUROR NO. 451: Yes.

1 THE COURT: Anything about that experience that
2 would affect your ability to be fair and impartial if selected
3 to serve on this panel?

4 PROSPECTIVE JUROR NO. 451: No, ma'am.

5 THE COURT: Okay, thank you, and thank you for your
6 willingness to serve.

7 Anyone else on the back row? Front row? You can
8 pass it to the juror in front.

9 PROSPECTIVE JUROR NO. 488: Badge number 488,
10 Markdelan Deperio.

11 THE COURT: Okay. How many times have you served?

12 PROSPECTIVE JUROR NO. 488: Once.

13 THE COURT: Civil or criminal?

14 PROSPECTIVE JUROR NO. 488: Criminal.

15 THE COURT: And were you selected to be the
16 foreperson?

17 PROSPECTIVE JUROR NO. 488: No.

18 THE COURT: Without telling me your verdict, were
19 you able to reach a verdict?

20 PROSPECTIVE JUROR NO. 488: Yes.

21 THE COURT: Anything about that experience that
22 would affect your ability to be fair and impartial in this
23 case?

24 PROSPECTIVE JUROR NO. 488: No.

25 THE COURT: Okay, thank you. Anyone else in the

1 second row? Go ahead.

2 PROSPECTIVE JUROR NO. 483: 483, Lisa Cook.

3 THE COURT: And you've served before?

4 PROSPECTIVE JUROR NO. 483: Yes.

5 THE COURT: How many times?

6 PROSPECTIVE JUROR NO. 483: Once.

7 THE COURT: Was that civil or criminal?

8 PROSPECTIVE JUROR NO. 483: Civil.

9 THE COURT: Were you selected to be the foreperson?

10 PROSPECTIVE JUROR NO. 483: No.

11 THE COURT: Without telling me your verdict, were

12 you able to reach a verdict?

13 PROSPECTIVE JUROR NO. 483: Well, it was settled

14 before. It -- it --

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 483: No.

17 THE COURT: So you weren't sent out to deliberate?

18 PROSPECTIVE JUROR NO. 483: No.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 483: Hmm-mm.

21 THE COURT: Anything about that experience that

22 would affect your ability to be fair and impartial in this

23 case?

24 PROSPECTIVE JUROR NO. 483: No.

25 THE COURT: Okay, thank you. Anyone else in the

1 second row? If you don't mind passing it forward.

2 PROSPECTIVE JUROR NO. 540: Staci McCarthy, 540.

3 THE COURT: Okay, and you've served before?

4 PROSPECTIVE JUROR NO. 540: I served for a year on

5 the federal grand jury.

6 THE COURT: Okay. When did you do that?

7 PROSPECTIVE JUROR NO. 540: About 15 years ago.

8 THE COURT: All right, and so you understand that's

9 a little bit different?

10 PROSPECTIVE JUROR NO. 540: Yeah.

11 THE COURT: So you went probably once a week for --

12 PROSPECTIVE JUROR NO. 540: Every Tuesday for a

13 year, yes.

14 THE COURT: For a year?

15 PROSPECTIVE JUROR NO. 540: Um-hum.

16 THE COURT: Okay. Was there anything about that

17 experience that would affect your ability to be fair and

18 impartial in this case?

19 PROSPECTIVE JUROR NO. 540: No.

20 THE COURT: Okay, thank you. Anyone else on the

21 panel of 32 that has ever served as a juror before? Okay, the

22 record will reflect no further response from the panel.

23 Have you or anyone close to you, such as a family

24 member or friend, ever been the victim of a crime, other than

25 what's already been disclosed? Go ahead, Ms. McCarthy. Your

1 name and badge number?

2 PROSPECTIVE JUROR NO. 540: Yes. Staci McCarthy,
3 540.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 540: My father was a victim
6 of violent crime.

7 THE COURT: Okay. What was it?

8 PROSPECTIVE JUROR NO. 540: He was shot in the head
9 at a traffic stop.

10 THE COURT: When was that?

11 PROSPECTIVE JUROR NO. 540: In 1989.

12 THE COURT: Okay. And I'm assuming the police were
13 called and got involved?

14 PROSPECTIVE JUROR NO. 540: Yes, but they never
15 caught the person.

16 THE COURT: They never --

17 PROSPECTIVE JUROR NO. 540: No.

18 THE COURT: -- were able to apprehend anybody?

19 PROSPECTIVE JUROR NO. 540: No.

20 THE COURT: Okay, and is your father okay?

21 PROSPECTIVE JUROR NO. 540: Yeah, he was okay. He's
22 passed now, but he survived that.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 540: Yeah.

25 THE COURT: Is there anything about that experience

1 that would affect your ability to be fair and impartial?

2 PROSPECTIVE JUROR NO. 540: No.

3 THE COURT: Okay, thank you. Anyone else? Go
4 ahead, sir.

5 PROSPECTIVE JUROR NO. 541: Kevin Widdison, 541. In
6 1990, I was held at gunpoint in Switzerland in our apartment,
7 and we got robbed. And then, about ten years ago here, our
8 house was broken into and burglarized while we were not home.

9 THE COURT: Okay, so you were in Switzerland in the
10 90s?

11 PROSPECTIVE JUROR NO. 541: Um-hum, yeah.

12 THE COURT: Is that a yes?

13 PROSPECTIVE JUROR NO. 541: Yes, ma'am.

14 THE COURT: What were you doing in Switzerland?

15 PROSPECTIVE JUROR NO. 541: LDS mission.

16 THE COURT: Okay, and you were the victim of a
17 crime?

18 PROSPECTIVE JUROR NO. 541: They broke in and --

19 THE COURT: Yes.

20 PROSPECTIVE JUROR NO. 541: -- held us down and
21 robbed us.

22 THE COURT: Okay, and did the police get involved?

23 PROSPECTIVE JUROR NO. 541: Police came, nobody was
24 caught. It was pretty perfunctory, to be honest with you.

25 THE COURT: Okay. And then you indicated there was

1 another issue?

2 PROSPECTIVE JUROR NO. 541: And then, here in Las
3 Vegas, our home was burglarized about ten years ago.

4 THE COURT: Okay, and you called the police?

5 PROSPECTIVE JUROR NO. 541: Yes, ma'am.

6 THE COURT: And they responded?

7 PROSPECTIVE JUROR NO. 541: They responded and came
8 out. No arrests, but they did come out.

9 THE COURT: Okay, and they took a report?

10 PROSPECTIVE JUROR NO. 541: Yes, ma'am.

11 THE COURT: Do you think you were treated fairly?

12 PROSPECTIVE JUROR NO. 541: Absolutely, yes.

13 THE COURT: Anything about those two experiences
14 that would affect your ability to be fair and impartial in
15 this case?

16 PROSPECTIVE JUROR NO. 541: No, ma'am.

17 THE COURT: Okay, thank you.

18 Anyone else that's ever been the victim of a crime?
19 Okay, the record will reflect no further response from the
20 panel.

21 Have you or anyone close to you, such as a family
22 member or friend, ever been accused of a crime? If you don't
23 mind passing the microphone back.

24 PROSPECTIVE JUROR NO. 485: Shannon Young, 485. My
25 brother-in-law is serving time.

1 THE COURT: Okay, where?
2 PROSPECTIVE JUROR NO. 485: In Colorado.
3 THE COURT: All right. Do you know what for?
4 PROSPECTIVE JUROR NO. 485: Yeah, he -- it was
5 robbery on three banks here in Las Vegas.
6 THE COURT: Okay, so what's he doing in Colorado?
7 Is that just where he's serving his time?
8 PROSPECTIVE JUROR NO. 485: Yes.
9 THE COURT: Okay, and how long ago was that?
10 PROSPECTIVE JUROR NO. 485: It was just last year.
11 THE COURT: Okay. It was just last year that he was
12 apprehended, or he was tried? What --
13 PROSPECTIVE JUROR NO. 485: Last year that he was
14 tried.
15 THE COURT: Okay, he was sentenced?
16 PROSPECTIVE JUROR NO. 485: Yes, sentence.
17 THE COURT: And did you follow his case?
18 PROSPECTIVE JUROR NO. 485: Yes, ma'am. I was with
19 my husband the whole time.
20 THE COURT: I'm sorry?
21 PROSPECTIVE JUROR NO. 485: I was with my husband
22 the whole time when we attended court.
23 THE COURT: Okay, so you actually went and viewed
24 the court proceedings?
25 PROSPECTIVE JUROR NO. 485: Yes, ma'am.

1 THE COURT: Okay. Were you over in federal court?
2 PROSPECTIVE JUROR NO. 485: Yes, ma'am.
3 THE COURT: Okay. Do you think he was treated
4 fairly? Your brother-in-law.
5 PROSPECTIVE JUROR NO. 485: Yeah.
6 THE COURT: Okay.
7 PROSPECTIVE JUROR NO. 485: Yes.
8 THE COURT: Well, it's your response.
9 PROSPECTIVE JUROR NO. 485: Yeah.
10 THE COURT: I mean, I just want to hear how you feel
11 because you hesitated.
12 PROSPECTIVE JUROR NO. 485: Well, sorry.
13 THE COURT: That's okay.
14 PROSPECTIVE JUROR NO. 485: I mean, it's -- he did
15 do it.
16 THE COURT: Okay, and it's --
17 PROSPECTIVE JUROR NO. 485: Yeah.
18 THE COURT: I'm sorry, because it looks like it's
19 making you emotional, so I apologize.
20 PROSPECTIVE JUROR NO. 485: It's fine.
21 THE COURT: Is there anything about what happened to
22 your brother-in-law that would affect your ability to be fair
23 and impartial in this case?
24 PROSPECTIVE JUROR NO. 485: I mean, to be honest
25 with you, I --

1 THE COURT: Well, you are under oath.

2 PROSPECTIVE JUROR NO. 485: I -- like, I understand
3 the whole process of this, I just -- like I explained, I don't
4 -- I honestly don't want to be here, only because of the fact
5 of, you know, my promotion. And I keep going back to that,
6 but I've worked really hard for it. And I know my job cannot
7 hold me on it, but -- but, you know, they put me in charge of
8 something, and I had big bosses come today to my job, and I
9 wasn't there, you know, to kind of shine. It's like an
10 interview, on-the-job training. So I just -- I don't want
11 that to affect me. You know, some jobs don't really
12 understand, but.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 485: Yeah.

15 THE COURT: Going back to the issue with your
16 brother-in-law, is there anything about his case that would
17 affect your ability to be fair and impartial in this case?

18 PROSPECTIVE JUROR NO. 485: I don't know. I mean --

19 THE COURT: Okay, well, let me ask you this. You
20 understand that you could not judge this case based on
21 anything you saw over in your brother-in-law's case? You
22 understand that, correct?

23 PROSPECTIVE JUROR NO. 485: Yes.

24 THE COURT: Do we have to worry about you doing
25 that?

1 PROSPECTIVE JUROR NO. 485: I just think sometimes
2 the law is unfair in certain ways, you know.

3 THE COURT: Okay, but will you follow the law, even
4 if you --

5 PROSPECTIVE JUROR NO. 485: Of course.

6 THE COURT: -- think it's not fair?

7 PROSPECTIVE JUROR NO. 485: Of course.

8 THE COURT: Okay, and you'll follow the law as given
9 to you by the Court?

10 PROSPECTIVE JUROR NO. 485: Yes.

11 THE COURT: Okay, thank you.

12 PROSPECTIVE JUROR NO. 485: Thank you.

13 THE COURT: Thank you very much.

14 Anyone else? Okay, the record will reflect no
15 further response from the panel.

16 Is there anyone on the panel who would have a
17 tendency to give more weight or credence or less weight or
18 credence to the testimony of a police officer simply because
19 that witness was a police officer?

20 THE MARSHAL: Can you pass the microphone down this
21 way, please?

22 PROSPECTIVE JUROR NO. 485: Sure.

23 PROSPECTIVE JUROR NO. 464: Jeff O'Brien, 464.

24 THE COURT: Okay, and you understand the question?

25 PROSPECTIVE JUROR NO. 464: Yes, ma'am.

1 THE COURT: Okay. So you would have a tendency to
2 give a witness more weight or credence or less weight or
3 credence simply because you knew the witness was a police
4 officer?

5 PROSPECTIVE JUROR NO. 464: I have a lot of police
6 officer friends and I trust their opinions.

7 THE COURT: Okay. Would it be more or less
8 credence?

9 PROSPECTIVE JUROR NO. 464: I would give them -- I
10 hate to say, but I would probably give them -- I would take
11 their word for it. I would give them more credence.

12 THE COURT: Okay. Would you judge a police
13 officer's testimony the way you would judge any other witness?

14 PROSPECTIVE JUROR NO. 464: Absolutely, I'd try to
15 be fair.

16 THE COURT: Okay, because you understand I'm not
17 going to tell you to -- I mean, you can consider the fact that
18 a witness is a police officer, but I'm never going to instruct
19 you, take a police officer's word for it. I would want you,
20 if you were a juror, to test that person's testimony and
21 credibility the same way you would any other witness.

22 PROSPECTIVE JUROR NO. 464: I would --

23 THE COURT: Do you understand that?

24 PROSPECTIVE JUROR NO. 464: Yes, I will do my best
25 to do that.

1 THE COURT: Okay. Well, can you give me a
2 commitment that you'll do that?

3 PROSPECTIVE JUROR NO. 464: 100 percent.

4 THE COURT: Okay, thank you, sir. Anyone else?
5 Okay, the record will reflect no further response from the
6 panel.

7 At this time, the State of Nevada may voir dire the
8 panel.

9 MR. PESCI: Thank you. Your Honor, would it be all
10 right if I move the --

11 THE MARSHAL: Hang on.

12 MR. PESCI: Okay.

13 THE COURT: Of course.

14 MR. PESCI: Okay. Ladies and gentlemen, you can see
15 from the fact that I have to put this on that getting a clear
16 record is extremely important for this whole process. So we
17 apologize. A couple of times, for some of you, we've kind of
18 gone back and said, what is your answer, or something of that
19 nature. That's because this woman over here on your far left
20 is recording everything, and then, later on, someone has to
21 listen and transcribe everything.

22 So we might in a kind of awkward fashion say to you,
23 what was that answer, or just kind of ask you to repeat again
24 so it's really clear for the record. It's kind of different
25 from normal conversation, but that's why we have to do that.

1 Going to ask questions to the entire panel, and then
2 we'll ask some individual questions. I want to start off just
3 by saying, this is nothing civil, right? This is all
4 criminal, okay? 27 or 29 times sued?

5 PROSPECTIVE JUROR NO. 546: 29.

6 MR. PESCI: 29? Okay. This is all criminal, and
7 nothing to do with civil, so hopefully that puts you a little
8 bit at ease.

9 There are some concepts that the Court went over at
10 the beginning or in the questioning. And one of the ones that
11 I wanted to ask all of you, and then hopefully you'll
12 individually answer if someone has an opinion, does anybody
13 have a reason why they could not sit in judgment of another
14 human being?

15 The Court has explained that you're going to be the
16 judges of the fact. The Judge is the judge of the law here,
17 but at the end of the day, 12, 14 of you are selected as
18 jurors, and you're going to be the judge of the facts, and
19 that is judging whether the State of Nevada proved the case,
20 which will affect the defendants based on your decision.

21 Does anybody have any religious, philosophical, or
22 reason why they cannot sit in judgment of another human being?
23 There was a hand --

24 THE COURT: You're not on the panel of 32. These
25 questions are just for the panel of 32.

1 MR. PESCI: So I apologize, ma'am. We're going with
2 this group. You could get in there eventually, so if you do,
3 we'll follow up, okay? Thank you.

4 Anybody else have a response to any of that? Okay.
5 So no one -- as you sit here today, no one has a reason that
6 they could not sit in judgment of another human being; is that
7 correct? Okay, all right.

8 In this case, the allegation is that there is a
9 deadly weapon used during the process of the crimes. The
10 attempt robbery is with the use of a deadly weapon, the murder
11 is with use of a deadly weapon, the victim was shot and
12 killed.

13 Some people have beliefs about weapons such that it
14 could affect their ability to be fair or impartial. One thing
15 to understand, and I think the Court's made it very clear,
16 whatever your opinion is is your opinion. So there's not a
17 right or a wrong one; there's just a problem if we're not
18 honest with each other, because then we don't know what's
19 really going on.

20 So does anybody have any strong feelings about
21 firearms such that it would affect your ability to be fair and
22 impartial?

23 Okay. I'm going to pick on you, sir, because you
24 have the microphone. Plus, you're a gunsmith, if I
25 understood, by trade.

1 PROSPECTIVE JUROR NO. 464: Correct.

2 MR. PESCI: All right. Now, this is the kind of
3 awkward portion. Your badge number?

4 PROSPECTIVE JUROR NO. 464: 464, Jeff O'Brien.

5 MR. PESCI: Thank you very much, Mr. O'Brien. So if
6 I'm understanding you correctly, you don't currently work as a
7 gunsmith?

8 PROSPECTIVE JUROR NO. 464: I am doing some
9 part-time, but right now, I'm running a contract, so it takes
10 me away from that work.

11 MR. PESCI: Okay. And then, the contract, what is
12 that contract?

13 PROSPECTIVE JUROR NO. 464: I can't discuss that.

14 MR. PESCI: Okay. Is it -- well, I'm going to ask a
15 question. If you can't discuss it, don't. Is it something
16 with the military?

17 PROSPECTIVE JUROR NO. 464: Affirmative.

18 MR. PESCI: Okay, all right. In your capacity as a
19 gunsmith, do you deal with individuals when they come into the
20 store to purchase a firearm, or are you just involved with
21 maybe repairs of firearms?

22 PROSPECTIVE JUROR NO. 464: Basically, doing
23 upgrades, repairs, that sort of thing.

24 MR. PESCI: Okay. So, as far as if someone comes in
25 to purchase a firearm, and their background is checked, are

1 you involved with running that person to --

2 PROSPECTIVE JUROR NO. 464: I know how to do that
3 process, but I try to stay away -- far away from that. I
4 don't --

5 MR. PESCI: Okay.

6 PROSPECTIVE JUROR NO. 464: -- go anywhere near
7 customers, if possible.

8 MR. PESCI: All right. So other individuals usually
9 handle that portion of it?

10 PROSPECTIVE JUROR NO. 464: Yes.

11 MR. PESCI: Okay, thank you very much. Anybody else
12 as far as questions or concerns about firearms? And this
13 includes you two gentlemen over there, too. You're still in
14 the 32, okay? All right.

15 Now, there was also a question and some comments
16 about following the law. And I'm going to ask if you could
17 pass the microphone to your right. And then, if we could move
18 it down just further, all the way down to Ms. Young. We'll go
19 individually with you, and then kind of collectively to the
20 group.

21 I apologize for asking specific questions, but you
22 have a personal experience with the criminal justice system,
23 so I got to follow up. If I understood correctly, you said
24 sometimes the law is unfair in certain ways. What do you feel
25 is unfair about the law?

1 PROSPECTIVE JUROR NO. 485: I guess -- I mean,
2 though, any experience I had was with my brother-in-law.

3 MR. PESCI: Okay. Maybe I'll ask some questions
4 about that, then we'll kind of get back to those specifics.
5 If I've understood correctly, it was in federal court?

6 PROSPECTIVE JUROR NO. 485: Yes.

7 MR. PESCI: Here in Las Vegas?

8 PROSPECTIVE JUROR NO. 485: Yes.

9 MR. PESCI: Okay. And then, do you know, was there
10 a trial like this, or was there a plea agreement?

11 PROSPECTIVE JUROR NO. 485: No. No, he didn't want
12 to do a trial.

13 MR. PESCI: Okay, so there was a plea entered?

14 PROSPECTIVE JUROR NO. 485: Yes.

15 MR. PESCI: Okay. And then, you're saying that he's
16 serving his time in Colorado?

17 PROSPECTIVE JUROR NO. 485: Yes.

18 MR. PESCI: Okay. Did you feel as if that plea was
19 unfair, or maybe him serving in Colorado was unfair? I'm just
20 trying to kind of follow up and figure out -- it's okay. All
21 right, I apologize.

22 PROSPECTIVE JUROR NO. 485: I -- like I said, he --
23 what drove him to do it, like, I don't -- he is a good person
24 and he just went down a bad road.

25 MR. PESCI: Okay.

1 PROSPECTIVE JUROR NO. 485: So I think they could
2 have -- I think they could have, you know, like, maybe let him
3 come out and put a device on him or something.

4 MR. PESCI: So is it --

5 PROSPECTIVE JUROR NO. 485: I just didn't agree with
6 the whole serving time.

7 MR. PESCI: Okay. So was it maybe the sentence that
8 he got that you are unhappy with?

9 PROSPECTIVE JUROR NO. 485: Yeah, because he was --
10 like I said, he was -- you know, it was -- he had a gambling
11 problem.

12 MR. PESCI: Okay.

13 PROSPECTIVE JUROR NO. 485: So that's what got him
14 --

15 MR. PESCI: All right, we'll shift away from that.
16 Sorry.

17 PROSPECTIVE JUROR NO. 485: Yes.

18 MR. PESCI: You talked about your work, right? And
19 I apologize, because I don't want to make this emotional, too.
20 But you're missing out on the opportunity as far as, as you
21 described it, being able to shine with a boss coming into
22 town?

23 PROSPECTIVE JUROR NO. 485: Yeah, we had -- we had a
24 big visit today.

25 MR. PESCI: Okay.

1 PROSPECTIVE JUROR NO. 485: And out of five people
2 -- out of five people, I was picked to run two areas, and that
3 is like my on-job training. I've worked hard for it. While I
4 know -- I understand I have to be here, I just -- you know, it
5 was a date, and I wanted to show them that I could do it.

6 MR. PESCI: Was that date -- and this is what I'm
7 trying to get to, I apologize.

8 PROSPECTIVE JUROR NO. 485: Um-hum.

9 MR. PESCI: Was that date today, or was it a date --

10 PROSPECTIVE JUROR NO. 485: It's today. It was
11 today.

12 MR. PESCI: Okay. Is it just today, or are there
13 more days where this is going to occur?

14 PROSPECTIVE JUROR NO. 485: No, it was just for
15 today, so I went in early this morning so I could get
16 everything done.

17 MR. PESCI: Okay. And only you can answer this,
18 ma'am. The fact that you missed out on this opportunity
19 today, will that remain in your mind throughout the trial,
20 assuming you're selected, such that it might make it difficult
21 for you to serve as a juror?

22 PROSPECTIVE JUROR NO. 485: Yes.

23 MR. PESCI: Okay. Would it be something that would
24 distract your attention, or how would it affect you?

25 PROSPECTIVE JUROR NO. 485: Because I'm going to be

1 worrying about my areas the whole time. You know, I really
2 don't have anybody to cover it, because, you know, like I
3 said, it was given to me. You know, I'm -- I have all these
4 people in line that I'm supposed to, you know, give direction
5 to.

6 MR. PESCI: Okay.

7 PROSPECTIVE JUROR NO. 485: I just would be worried
8 about it because, you know, like I said, I've worked hard for
9 it. I -- I wanted to be there today so that I could -- you
10 know.

11 MR. PESCI: I'm sorry, ma'am. I apologize.

12 PROSPECTIVE JUROR NO. 485: No.

13 MR. PESCI: Let me shift gears a little bit, and
14 then maybe we'll take the microphone out of your hand.

15 PROSPECTIVE JUROR NO. 485: Yeah. Sorry.

16 MR. PESCI: Okay, it's okay. So last thing, and
17 then we'll kind of segue to everybody else. I think you said
18 -- just kind of goes in and out sometimes -- that you could
19 follow the law, even if you didn't agree with it?

20 PROSPECTIVE JUROR NO. 485: Yeah, because you know,
21 I don't want to -- I don't want to be in jail. Like, I --

22 MR. PESCI: No one's going to jail, don't worry.

23 PROSPECTIVE JUROR NO. 485: No, I'm just saying,
24 that's why, you know, I follow the law. I don't want to --

25 MR. PESCI: Okay.

1 PROSPECTIVE JUROR NO. 485: You know, I've never
2 been in trouble, so.

3 MR. PESCI: Okay. So stepping back to kind of
4 everyone, this concept of following the law, right? The Court
5 asked, can you follow the law, even if you don't necessarily
6 agree with it? And I'll kind of try to put this in context,
7 and this will somewhat date me.

8 When I first started doing this for a living,
9 marijuana was illegal. Now, it is legal. And so people's
10 feelings about marijuana have changed, evolved, but there are
11 many people years ago who thought it should be legal. And if
12 it was a case about marijuana, the law was, you can't have it,
13 it's illegal. So the issue was, you know, can you follow the
14 law, even if you personally think, hey, marijuana should be
15 legalized, right? That's kind of the backdrop, an example.

16 So do any of you have feelings such that you feel
17 the law might be X, but I think it should be Y, and because I
18 think it should be Y, I'm not going to follow X? Does anybody
19 have trouble following the law, even if you don't agree with
20 it? Nobody's shaking their head yes. We'll take that as a
21 no. Anybody want to add anything to that? Okay.

22 PROSPECTIVE JUROR NO. 410: I do.

23 MR. PESCI: All right, thank you. So if we could
24 pass it back. This is Mr. McGinty, and then your badge
25 number?

1 PROSPECTIVE JUROR NO. 410: 410.
2 MR. PESCI: Did I say that right?
3 PROSPECTIVE JUROR NO. 410: Yes.
4 MR. PESCI: Okay, thank you. Sir?
5 PROSPECTIVE JUROR NO. 410: Yeah, Sean McGinty, 410.
6 Are you specifically referring to the crime and the laws that
7 were potentially broken in this specific case, or in general?
8 MR. PESCI: Well, you know, specifically in this
9 case. So the charges are conspiracy to commit robbery,
10 attempted robbery with use of a deadly weapon, and murder with
11 use of a deadly weapon. Now, I actually can't get into that
12 now. The Judge will give the law later on, right?
13 PROSPECTIVE JUROR NO. 410: I'm not asking you to.
14 I'm -- when -- you're generalizing, do we believe in the law
15 and recitation of such. So are you specifically asking us as
16 the panel related to these charges, or in general?
17 MR. PESCI: I would say specific to these charges,
18 but there are some generalities that kind of overarch all
19 cases, no matter what the charges are.
20 Here's kind of an example, and maybe this will help
21 you with your answer. There is a presumption of innocence
22 that, in our system, everyone is presumed innocent until and
23 unless we, the State of Nevada, can prove someone guilty. And
24 that kind of overarches all cases, even if it's not these
25 charges. Some people agree with that, some people don't.

1 So with that backdrop, is there something more that
2 you wanted to add as far as these specific charges and/or kind
3 of overall?

4 PROSPECTIVE JUROR NO. 410: No, as long as we're
5 talking specific charges, then that's fine.

6 MR. PESCI: Anything about these charges that you
7 think you'd have difficulty following the law?

8 PROSPECTIVE JUROR NO. 410: Not with these charges.

9 MR. PESCI: Okay. Are there other charges that you
10 would?

11 PROSPECTIVE JUROR NO. 410: Not that I would like to
12 discuss.

13 THE COURT: I'm sorry, what did you say?

14 PROSPECTIVE JUROR NO. 410: Not that I'd like to
15 discuss.

16 THE COURT: Okay, but --

17 PROSPECTIVE JUROR NO. 410: I mean, we're talking
18 Pandora's Box, right? I mean, we're talking generalities.
19 You're talking a million-and-something laws. So we all have
20 opinions on laws, and what is, and what we believe in, and
21 what should be, and where's gray, and where's right and left,
22 right?

23 THE COURT: Okay, that --

24 PROSPECTIVE JUROR NO. 410: Right?

25 THE COURT: That's right, and I --

1 PROSPECTIVE JUROR NO. 410: So.

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

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

9 THE COURT: Okay.

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

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

20 MR. PESCI: Okay.

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

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

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

5 PROSPECTIVE JUROR NO. 410: Right.

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

9 PROSPECTIVE JUROR NO. 410: No.

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

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

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

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

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

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

16 PROSPECTIVE JUROR NO. 409: 409.

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

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

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

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

1 MR. PESCI: Okay. Do you supervise -- how many
2 people do you supervise?

3 PROSPECTIVE JUROR NO. 409: 15 at a time.

4 MR. PESCI: Okay. And on any given night, or
5 overall?

6 PROSPECTIVE JUROR NO. 409: I work the day shift,
7 and there's usually 15 dealers scheduled, and I coordinate the
8 dealers.

9 MR. PESCI: Do you ever have to work through any
10 disputes among those 15?

11 PROSPECTIVE JUROR NO. 409: Yeah.

12 MR. PESCI: Okay.

13 PROSPECTIVE JUROR NO. 409: Absolutely.

14 MR. PESCI: How do you go about that? What's your
15 -- what's your approach?

16 PROSPECTIVE JUROR NO. 409: I try and put myself in
17 everyone else's position, and try and be as fair as possible.
18 And I was a dealer once myself, so I've worked up my way
19 through the casino world, and I've been on the other side, so
20 I understand how it is. So I try and put myself in the other
21 person's position.

22 MR. PESCI: So you try to see their perspective.
23 And then, sometimes, however, are there conflicts such that it
24 can't be resolved just on what they tell you? Do you have to
25 make a judgment call between two points?

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

4 MR. PESCI: Okay.

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

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

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

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

15 PROSPECTIVE JUROR NO. 409: Yeah.

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

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

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

24 PROSPECTIVE JUROR NO. 409: Absolutely.

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

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

3 PROSPECTIVE JUROR NO. 417: 417.

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

7 PROSPECTIVE JUROR NO. 417: Yes.

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

12 PROSPECTIVE JUROR NO. 417: Yes.

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

15 PROSPECTIVE JUROR NO. 417: I think so.

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

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

21 MR. PESCI: Right.

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

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

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

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

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

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

9 PROSPECTIVE JUROR NO. 417: Yes.

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

12 PROSPECTIVE JUROR NO. 417: Yes.

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

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

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

21 PROSPECTIVE JUROR NO. 417: For sure.

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

24 PROSPECTIVE JUROR NO. 417: I absolutely can.

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

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

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

4 PROSPECTIVE JUROR NO. 420: 420.

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

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

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

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

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

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

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

20 PROSPECTIVE JUROR NO. 420: No.

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

23 PROSPECTIVE JUROR NO. 420: No.

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

1 PROSPECTIVE JUROR NO. 420: Yes.

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

4 PROSPECTIVE JUROR NO. 429: 429.

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

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

10 MR. PESCI: Okay.

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

14 MR. PESCI: Okay.

15 PROSPECTIVE JUROR NO. 429: -- Valley.

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

18 PROSPECTIVE JUROR NO. 429: Yes.

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

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

22 MR. PESCI: Okay.

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

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

1 PROSPECTIVE JUROR NO. 429: Since 2010.

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

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

8 MR. PESCI: All right.

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

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

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

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

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

22 MR. PESCI: Okay.

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

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

1 PROSPECTIVE JUROR NO. 429: Yeah.

2 MR. PESCI: -- as far as if you ever went to a
3 scene. And can I interrupt you for just one second?

4 PROSPECTIVE JUROR NO. 429: Yes.

5 MR. PESCI: Judge, could we approach?

6 THE COURT: Sure.

7 (Bench conference)

8 MR. PESCI: Judge, I wanted to follow up, but I
9 didn't want to do it in front of everybody else. What I'm
10 concerned --

11 THE COURT: Yeah. Do you want me to excuse them --

12 MR. PESCI: Yeah.

13 THE COURT: -- and just do it outside the presence?

14 MR. RUGGEROLI: Thank you.

15 THE COURT: Okay.

16 (End of bench conference)

17 THE COURT: All right. At this time, Mr. Devargas,
18 I'm going to ask you to stay in the courtroom. I'm going to
19 excuse the panel for a short recess.

20 During this recess, you're admonished not to talk or
21 converse amongst yourselves or with anyone else on any subject
22 connected with this trial, or read, watch, or listen to any
23 report of or commentary on the trial, or any person connected
24 with this trial, by any medium of information, including,
25 without limitation, newspapers, television, the internet, or

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

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

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

7 (Outside the presence of the prospective jurors)

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

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

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

17 THE COURT RECORDER: If it will clip.

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

20 (Pause in the proceedings)

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

22 THE COURT: Thank you.

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

24 THE COURT: Yes, thank you.

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

1 PROSPECTIVE JUROR NO. 429: Yeah.

2 MR. PESCI: We wanted to ask some follow-ups, or I
3 did, and --

4 PROSPECTIVE JUROR NO. 429: Okay.

5 MR. PESCI: -- some specific answers, we don't
6 necessarily want everyone to hear.

7 PROSPECTIVE JUROR NO. 429: Yeah, I understand that.

8 MR. PESCI: So that's why. So there's --

9 PROSPECTIVE JUROR NO. 429: Okay.

10 MR. PESCI: -- nothing you said that was wrong.

11 PROSPECTIVE JUROR NO. 429: Yeah.

12 MR. PESCI: It was just to try to get that. So if I
13 heard you correctly, you saw some photographs associated with
14 this case that you recall?

15 PROSPECTIVE JUROR NO. 429: Yes.

16 MR. PESCI: But you don't think you had anything to
17 do with it?

18 PROSPECTIVE JUROR NO. 429: No. I know for a fact I
19 wasn't called to be at the scene to take any photos.

20 MR. PESCI: Okay.

21 PROSPECTIVE JUROR NO. 429: I know initially there
22 were photos that were -- they were provided. Usually, if we
23 don't have a photographer to be there on the scene or
24 whatever, Metro will usually send the provided photos to all
25 of the news outlets, and that's what happened. I wasn't there

1 on this particular incident.

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

4 PROSPECTIVE JUROR NO. 429: Yes.

5 MR. PESCI: -- some photographs?

6 PROSPECTIVE JUROR NO. 429: Yes.

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

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

13 MR. PESCI: Okay.

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

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

20 PROSPECTIVE JUROR NO. 429: Yeah.

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

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

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

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

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

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

14 MR. PESCI: Okay.

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

17 MR. PESCI: Given?

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

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

24 PROSPECTIVE JUROR NO. 429: Um-hum.

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

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

3 PROSPECTIVE JUROR NO. 429: Yeah.

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

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

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

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

15 MR. PESCI: Right.

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

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

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

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

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

5 MR. PESCI: Okay.

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

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

9 PROSPECTIVE JUROR NO. 429: No.

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

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

14 MR. PESCI: Okay, sorry.

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

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

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

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

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

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

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

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

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

13 PROSPECTIVE JUROR NO. 429: No.

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

16 MR. SANFT: Yes, Your Honor.

17 THE COURT: Go ahead.

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

19 PROSPECTIVE JUROR NO. 429: Yes.

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

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

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

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

6 PROSPECTIVE JUROR NO. 429: Yes.

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

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

14 MR. SANFT: Okay.

15 PROSPECTIVE JUROR NO. 429: Yeah.

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

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

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

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

1 MR. SANFT: Okay, I have no further questions.

2 PROSPECTIVE JUROR NO. 429: Okay.

3 MR. SANFT: Thank you, Your Honor.

4 THE COURT: Mr. Ruggeroli?

5 MR. RUGGEROLI: Thank you, Judge. Good afternoon,
6 Mr. Devargas. Right now, assuming that nobody else has the
7 experience and had the opportunity to view the materials that
8 you're talking about --

9 PROSPECTIVE JUROR NO. 429: Um-hum.

10 MR. RUGGEROLI: -- you would agree that you are very
11 much in a different position than every single other
12 prospective juror on this panel, correct?

13 PROSPECTIVE JUROR NO. 429: I would say a slight --
14 yeah, a slight difference.

15 MR. RUGGEROLI: Because you're familiar, at least
16 generally speaking, with specific information that was
17 provided from Metro to your news organization, correct?

18 PROSPECTIVE JUROR NO. 429: Yes, but only
19 information that was also published to the public. So what I
20 saw and what was reported on is the same thing that anybody
21 reading the newspaper would have seen --

22 MR. RUGGEROLI: Okay.

23 PROSPECTIVE JUROR NO. 429: -- or read.

24 MR. RUGGEROLI: And I'm glad you're going to clarify
25 that, if you wouldn't mind. Are there things that you might

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

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

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

8 PROSPECTIVE JUROR NO. 429: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

1 facts?

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

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

9 PROSPECTIVE JUROR NO. 429: Yeah.

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

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

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

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

21 MR. RUGGEROLI: About the facts?

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

24 MR. RUGGEROLI: Right.

25 PROSPECTIVE JUROR NO. 429: Yeah.

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

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

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

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

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

1 questions right now.

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

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

4 really fast before we do that?

5 THE COURT: Yeah, absolutely.

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

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

8 outside the presence of everybody else. So when this

9 gentleman steps out, can I --

10 THE COURT: Sure.

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

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

13 mind going outside --

14 PROSPECTIVE JUROR NO. 429: Sure.

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

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

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

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

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

20 contacting the Marshal immediately?

21 PROSPECTIVE JUROR NO. 429: Yes, absolutely.

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

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

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

25 ready. Who --

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

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

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

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

11 THE COURT: Go ahead.

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

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

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

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

1 MR. RUGGEROLI: Yeah.

2 THE COURT: -- recall anything.

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

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

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

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

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

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

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

6 THE COURT: Right.

7 MR. SANFT: I mean --

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

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

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

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

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

8 THE COURT: Okay.

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

11 THE COURT: Okay, Mr. Bandics.

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

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

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

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

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

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

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

1 the defendants?

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

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

4 recognize both?

5 PROSPECTIVE JUROR NO. 477: I think both.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR NO. 477: Yeah.

8 THE COURT: And where do you think you recognize

9 them from?

10 PROSPECTIVE JUROR NO. 477: I think school.

11 THE COURT: Okay.

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

13 School.

14 THE COURT: Okay. And you believe that they both

15 attended your high school?

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

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

18 PROSPECTIVE JUROR NO. 477: Yeah, because, I mean,

19 there's a lot of kids, so I don't remember everyone.

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

21 PROSPECTIVE JUROR NO. 477: Yeah.

22 THE COURT: -- right?

23 PROSPECTIVE JUROR NO. 477: Yeah.

24 THE COURT: Okay. When did you graduate?

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

1 graduated when I was 18, so.

2 THE COURT: Do you remember what year?

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

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

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

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

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

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

15 MR. PESCI: No, thank you.

16 THE COURT: Mr. Sanft?

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

18 THE COURT: You bet.

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

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

24 MR. SANFT: Okay.

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

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

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

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

10 THE COURT: Mr. Ruggeroli?

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

13 PROSPECTIVE JUROR NO. 477: Yeah.

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

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

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

24 PROSPECTIVE JUROR NO. 477: I mean --

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

1 what I think he's asking.

2 PROSPECTIVE JUROR NO. 477: I live in Henderson

3 right now.

4 MR. RUGGEROLI: Okay.

5 THE COURT: Okay.

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

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

8 PROSPECTIVE JUROR NO. 477: Yeah.

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

10 PROSPECTIVE JUROR NO. 477: Yes.

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

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

13 really negative memory specifically?

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

15 MR. RUGGEROLI: Okay.

16 PROSPECTIVE JUROR NO. 477: -- nervous.

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

18 might know them"?

19 PROSPECTIVE JUROR NO. 477: Yeah.

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

21 PROSPECTIVE JUROR NO. 477: Yeah.

22 MR. RUGGEROLI: Okay.

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

24 MR. RUGGEROLI: Okay.

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

1 MR. RUGGEROLI: Thank you, Judge. I have nothing
2 further.

3 THE COURT: Okay. Mr. Bandics, thank you very much.
4 If you don't mind stepping outside.

5 PROSPECTIVE JUROR NO. 477: Okay.

6 (Outside the presence of Prospective Juror No. 477)

7 THE COURT: Okay. The record will reflect that Mr.
8 Bandics has left the courtroom. Any objection to him
9 continuing with us?

10 MR. PESCI: Not from the State.

11 MR. SANFT: No, Your Honor.

12 MR. RUGGEROLI: No, Your Honor.

13 THE COURT: Okay. It's 5:00 o'clock, so what I
14 think I'll do is we'll bring the panel back in, and there's
15 some I'm going to excuse for the evening and -- so we can --
16 we can start at 8:30?

17 MR. SANFT: Yes, Your Honor.

18 MR. RUGGEROLI: Yes, Your Honor, I'm --

19 THE COURT: Really? Everybody will be okay?

20 MR. RUGGEROLI: My cases are being covered, so I
21 should be here at 8:30, Judge.

22 THE COURT: Okay.

23 MR. RUGGEROLI: Thank you.

24 THE COURT: No, that's awesome. Okay.

25 THE MARSHAL: Do you want me to read them the

1 admonishment in the hallway, or --

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

4 THE MARSHAL: Okay.

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

7 (Pause in the proceedings)

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

10 (Within the presence of the prospective jurors)

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

13 MR. PESCI: Yes, Your Honor.

14 THE COURT: And the defense?

15 MR. SANFT: Yes, Your Honor.

16 THE COURT: Mr. Ruggeroli?

17 MR. RUGGEROLI: Yes, Your Honor.

18 THE MARSHAL: Please be seated.

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

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

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

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

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

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

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

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

23 THE MARSHAL: Yes, ma'am.

24 THE COURT: Okay.

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

1 your name was called, what do you do?

2 THE COURT: Just hang out here --

3 PROSPECTIVE JUROR NO. 596: Okay.

4 THE COURT: -- just for a moment.

5 PROSPECTIVE JUROR NO. 596: If your name wasn't

6 called, you got to be here tomorrow?

7 THE COURT: That's correct; I called your name

8 though.

9 (Outside the presence of the prospective jurors)

10 THE COURT: All right. At this time, Ana Carias,

11 you're excused. Okay. Samantha Levine, you're excused. Mr.

12 Lee, Sang Lee, you're excused. Austin Pan, you're excused.

13 Francis Gamboa, you're excused. Dennis Rorabaugh, you're

14 excused. Kristine Gallardo? Kristine Gallardo, you're

15 excused. Sophie Champion, you're excused. Luis Ovalles?

16 Luis Ovalles, you're excused. Dawn Nerdin? Ms. Nerdin,

17 you're excused.

18 PROSPECTIVE JUROR NO. 538: Thank you.

19 THE COURT: Selene Moreno, you're excused. Joseph

20 Campling? Joseph Campling, you're excused. Valerie Musial,

21 you're excused. Mr. McCarthy, you're excused. And

22 Priscilla --

23 PROSPECTIVE JUROR NO. 597: Schonacher.

24 THE COURT: Schonacher. Sorry, I had a hard time --

25 PROSPECTIVE JUROR NO. 597: No, you're fine

1 (indiscernible).

2 THE COURT: -- reading my own handwriting. Thank
3 you.

4 (Pause in the proceedings)

5 MR. BROOKS: Your Honor?

6 THE COURT: See you tomorrow morning.

7 MR. BROOKS: Judge?

8 THE COURT: Yeah, yeah.

9 MR. BROOKS: Did you write the absent note for the
10 lady who has an exam tomorrow?

11 THE COURT: I mean, I'm -- she didn't stay. I'm
12 happy to do it. Will you go out and ask Hawkes? Hawkes?

13 THE MARSHAL: Yes, ma'am.

14 THE COURT: Remember there was that juror that had
15 an exam tomorrow and she wondered if I would give her an
16 excuse?

17 THE MARSHAL: Oh, she's long gone. She didn't even
18 say anything.

19 THE COURT: Okay. Well, we just have to remember
20 tomorrow if she --

21 THE MARSHAL: Yes, ma'am.

22 THE COURT: -- needs something so I can provide that
23 to her.

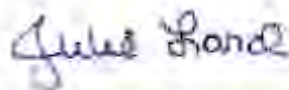
24 THE MARSHAL: I'll remind Pam in the morning.

25 THE COURT: Okay, thank you.

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

3 * * * * *

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



JULIE LORD, TRANSCRIBER
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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	CASE NO. C-17-328587-2
	)	CASE NO. C-17-328587-3
Plaintiff,)	
	)	DEPT. NO. XII
v.)	
)	
RAEKWON SETREY ROBERTSON,)	
a/k/a RAEKWON ROBERTSON,)	
AND DAVONTAE AMARRI WHEELER,)	
)	
Defendants.)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, FEBRUARY 12, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
JURY TRIAL - DAY 2**

APPEARANCES:

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

RECORDED BY: SARA RICHARDSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 12, 2020, 9:15 A.M.

2 (Outside the presence of the prospective jurors)

3 THE MARSHAL: Come to order. Court is now in
4 session.

5 THE COURT: Okay. The record will reflect that the
6 hearing is taking place outside --

7 THE MARSHAL: Thank you, everyone. Please be
8 seated.

9 THE COURT: -- the presence of the jury panel. We
10 do have a full panel here now, but I was told there's
11 something outside the presence.

12 MR. RUGGEROLI: Yes, Your Honor.

13 Judge, we're going to move to strike the venire
14 panel based on the underrepresentation of African-Americans.

15 THE COURT: After a full day of selection?

16 MR. RUGGEROLI: Well, Judge, at the end of
17 yesterday, I did speak to my client. I'm not aware of a
18 strict timeliness provision, but I am bringing this to the
19 Court's attention this morning --

20 THE COURT: Okay.

21 MR. RUGGEROLI: -- after doing some research. It is
22 accurate, of course, that we were provided with the jury list.
23 The list indicates that there are three African-Americans, but
24 I believe that there are only two present on the panel because
25 one did not appear.

1 So there are 60 prospective jurors as a part of the
2 panel as a whole. Had there been three African-Americans, it
3 would have been 5 percent. So we're down to two; it's below
4 that. And so, based on the Buchanan v. State, Judge, the
5 Court in Nevada though has already ruled that African-
6 Americans are a distinct group.

7 THE COURT: They're a distinct group.

8 MR. RUGGEROLI: Correct. And in this particular
9 instance, Judge, 2 out of 60 is a sufficient enough number
10 that we are arguing that it was under-representative.

11 THE COURT: Okay.

12 MR. RUGGEROLI: As far as the third prong --

13 THE COURT: And so have you -- and you understand,
14 in determining that, the test that our Supreme Court uses?

15 MR. RUGGEROLI: For the --

16 THE COURT: The comparative disparity and the
17 distinctive -- the distinct -- I think it's a comparative
18 analysis. Yes.

19 MR. RUGGEROLI: Yeah.

20 THE COURT: The comparative disparity.

21 MR. RUGGEROLI: To calculate the absolute and
22 comparative disparities, Judge.

23 THE COURT: There you go.

24 MR. RUGGEROLI: I don't have the exact numbers. I
25 would just point out, in the Morgan case -- and that's 416

1 P.3d 212; it's a 2018 Nevada Supreme Court opinion. In that
2 case, the panel was 45 members, there were three African-
3 Americans. The Court in that case calculated a comparative
4 disparity of 43.2 percent.

5 In this particular instance, because we've only got
6 2 of 60 -- and again, I didn't do the math -- I verified with
7 Mr. Wheeler this morning, and I made the State aware that we
8 were going to raise this issue. I believe that Mr. Sanft is
9 going to join as well.

10 But based on that analysis, Judge, I do think the
11 numbers would comport with the standard of being collectively
12 of 50 percent or more, and so we would have
13 underrepresentation based on those numbers, Judge.

14 MR. PESCI: Sure. Mr. Sanft, are you joining?

15 MR. SANFT: Yes, I'm joining, Your Honor.

16 THE COURT: Okay.

17 MR. PESCI: Okay. Your Honor, first and foremost,
18 what you pointed out at the very beginning is absolutely
19 essential. This is a day late and a dollar short, and here's
20 why: what are we going to do to address this now?

21 We have, by my count, released 17 people, none of
22 which have been objected to by the defense, including one
23 individual who didn't even step in the courtroom, which is I
24 think Miles Ealy, Badge number 533, who, when you look at it,
25 he lists race, "Other race"; ethnicity, "Non-Hispanic Latino."

1 We don't know what he is. He never even walked in the room
2 because, as I understand it, he had pink eye.

3 THE COURT: That's correct.

4 MR. PESCI: Right. So if you're going to make an
5 objection like this, you have to do it in a timely fashion so
6 we have everybody here to be able to do these calculations.
7 How do we do the calculations when 17 people out of the 60
8 have been taken out, and 17 that no one from the defense
9 objected to? So the numbers are all askew now because we
10 don't even know.

11 He talked about how, per the information we got from
12 the Jury Commissioner, there are three African-Americans. He
13 says that he saw two, so are we presupposing then the race of
14 an individual? We don't know for sure. Some people will
15 identify as one thing, and they won't as another. We don't
16 know.

17 That's the quandary of this. I'm just going to say
18 on the record -- it will haunt me later on in front of the
19 Supreme Court -- that's the craziness of this Batson challenge
20 analysis, is that we're supposed to look into the crowd and
21 assess ethnicity, which, by the way, we're not supposed to
22 consider when we're making these decisions, and then figure
23 out, okay, is this person African-American? Are they
24 Hispanic? Are they Polynesian? What are they?

25 And then we've been in court, Your Honor, where

1 we've had people from the defense asking Your Honor to ask the
2 jurors, right?

3 THE COURT: Yeah, and I won't do it.

4 MR. PESCI: Exactly, right. And then, guess what.
5 You remember in that case when you said that, but you provided
6 the opportunity for the defense? Not the ones here. They
7 wouldn't ask. They wouldn't ask, right? Because no one wants
8 to tick people off and say, what are you? Understandably,
9 people don't react well when these kinds of questions are
10 asked.

11 So going back to it, I don't know how we can do the
12 third prong that we've been told to do via the case law,
13 because 17 people are no longer in this. What were they? We
14 don't know for sure, right? And so this is late, it's
15 untimely. It needs to be done at the front end of this. And
16 the comparative analysis also, we're going to -- I'm going to
17 turn over to Mr. Brooks.

18 THE COURT: I mean, can we do that analysis based on
19 the paperwork that we got?

20 MR. PESCI: Well, I don't know, because like the
21 individual that I just said that had the pink eye, he put --

22 THE COURT: Right.

23 MR. PESCI: -- "Other" and "Unknown." So without
24 him being present to be able to ask those questions -- and
25 thankfully, I'm very grateful that we don't have pink eye in

1 the courtroom right now.

2 THE COURT: Right.

3 MR. PESCI: But we don't have him to be able to do
4 that. And I've argued in other cases when they argued
5 structural error that we should just bring jurors back, and
6 the Supreme Court told me, no, you can't do that. So I really
7 don't know how we're supposed to recreate it since they told
8 us you couldn't in other cases.

9 MR. BROOKS: So, Judge, I don't know how first you
10 go from three to two, even though the sheet says three. And
11 so you've randomly chosen -- Mr. Ruggeroli's randomly chosen
12 Mr. Ealy, who lists "Other," and then somehow --

13 MR. RUGGEROLI: Judge, I object. It's a female. We
14 have --

15 MR. BROOKS: Oh.

16 MR. RUGGEROLI: I'm not randomly, but the jury list
17 itself says that there are a total of three; two female, one
18 male. So that's not accurate --

19 MR. BROOKS: So --

20 MR. RUGGEROLI: -- that I'm randomly selecting a
21 male.

22 MR. BROOKS: Okay, sorry, I thought that was Mr.
23 Ealy. But moreover, you can't use 60 as the number that we're
24 doing this analysis on because 12 are listed as "Other." And
25 if you see on United States v. Hernandez-Estrada, other courts

1 have held that courts should avoid distorting the numbers, and
2 anyone whose racial identification is unknown should be
3 excluded from the calculation.

4 So right here, you have a motion that's brought in
5 front of you by someone who hasn't done the calculations and
6 just wants to use the 60, when really, 48 needs to be used.
7 You've been provided no numbers as far as the most recent
8 census. So let's assume that African-Americans in the most
9 recent census was approximately 12.8. Let's round that --

10 THE COURT: Well, was it? Is that the accurate
11 number?

12 MR. BROOKS: Well, the defense hasn't actually made
13 this argument, but I'm --

14 THE COURT: Right. I mean, I believe they have to
15 make a prima facie showing. That is correct.

16 MR. BROOKS: And so, let's say they were to actually
17 use 12.8, which would have been the number.

18 THE COURT: Okay.

19 MR. BROOKS: 12.8 then out of 48 should have come to
20 about 6.2, but you can't have 2.24 humans, so let's put that
21 at 7. There were three. 3 divided by 7, when doing the
22 absolute disparity analysis, would get us to approximately 42
23 percent, which is under 50. And just to clarify what I did
24 there, essentially, I took 7, subtracted 3, which is what we
25 had, got an absolute disparity of 3.24. And then, when I had

1 that, did the division by the number that we should have had.
2 So I mean, that's kind of what I've done here on a backhand
3 calculation.

4 THE COURT: Okay. So basically, you're contending
5 they haven't met the second prong; they haven't made a prima
6 facie showing?

7 MR. BROOKS: I mean, I think the biggest issue is
8 Mr. Pesci's comment, which is it's a day late, but I'm trying
9 to do this analysis just real quickly with the limited stuff
10 we have. I would have taken more time, had I known. So
11 that's all I wanted to add with regard to that.

12 THE COURT: Okay, because it's my concern that you
13 haven't made a prima facie showing.

14 MR. RUGGEROLI: Yeah. Just briefly --

15 THE COURT: I mean, we have Morgan; we have the
16 Valentine case.

17 MR. RUGGEROLI: Yeah. Just briefly, Judge. In the
18 Morgan case, I don't believe that stands for the proposition
19 that there is a timeliness requirement at all. I didn't hear
20 the State provide you with any authority. That's just an
21 argument. I think it makes sense, but it's --

22 THE COURT: Well, of course it makes sense --

23 MR. RUGGEROLI: But it's --

24 THE COURT: -- so we don't spend a day and waste
25 everybody's time picking a jury if the Court -- if it's a

1 righteous challenge, you know? So can you challenge the
2 cross-section after we have a jury impaneled --

3 MR. RUGGEROLI: Well --

4 THE COURT: -- and we've already gone to trial? I
5 mean, it doesn't make sense.

6 MR. RUGGEROLI: We don't have that though. What we
7 have is, in the Morgan case, it was 45 panel members, and at
8 that time, Clark County apparently had 11.8 percent African-
9 Americans. I do think it's higher, over 12 percent, at this
10 point. There were three people -- three African-Americans on
11 that panel, and that, the Court held, was not sufficient
12 enough. I don't have the exact number for the disparity, but
13 in this particular case, because it's 60 -- we use the 60
14 number for the panel that is present. That's the group that
15 we're selecting from. Out of this panel --

16 THE COURT: Even though there's 12 people that have
17 said, "Other"?

18 MR. RUGGEROLI: Okay, I'm looking specifically at
19 African-American because that's the distinctive group. And so
20 based on --

21 THE COURT: Right, but those 12 people that say
22 "Other," I mean, we don't know their race, correct?

23 MR. RUGGEROLI: I agree with that. I am specifying
24 this specifically to African-Americans because that is the
25 group that the court, especially in Morgan, has said, "We're

1 recognizing this as a distinct group." If there were three on
2 this panel -- and I don't think that there are. I think that
3 there's only two, because it's -- this Race Report that we've
4 been provided says that two were female, and one were male.
5 So I'm just looking at the numbers, and I don't believe that
6 there are two females out of the 60.

7 If there had been three, it was only 5 percent of
8 this panel. So our argument, Judge, is that this is an
9 important issue. Of course it causes frustrations, but this
10 particular portion of the law --

11 THE COURT: Listen, I don't have any problem. I get
12 these challenges all the time.

13 MR. RUGGEROLI: Yes.

14 THE COURT: But I've never had one after a day of
15 jury selection.

16 MR. RUGGEROLI: I understand. I do think in the
17 Morgan case -- and I was just trying to look back to make
18 sure. But I think that they went -- they may have raised the
19 issue the first day, but they didn't finalize their argument,
20 and I think it did go into the second day.

21 Nevertheless, I'm not aware of a specific timeliness
22 provision that requires us to make the motion the moment the
23 panel comes in. In a perfect world, I would have preferred to
24 raise this sooner, but Judge, here's where we're at today and
25 this is the record that we're making. So we are moving to

1 strike based on the under --

2 THE COURT: But you haven't done any of the
3 calculations for me to even make a determination. You haven't
4 done the comparative disparity, the absolute disparity,
5 because according to the State, you haven't made a prima facie
6 showing. So I'll give you an opportunity to do that.

7 MR. RUGGEROLI: Okay.

8 THE COURT: But I believe that you have to comply --

9 MR. RUGGEROLI: Even if the number were 3 out of
10 60, the percentage is 5 percent, and that's not enough to
11 represent the collective whole of our community, which should
12 be 12 or more percent.

13 THE COURT: So what's the absolute disparity?

14 MR. RUGGEROLI: I don't have that --

15 THE COURT: I mean, I'm just --

16 MR. RUGGEROLI: I know.

17 THE COURT: -- being honest, I'm not a math person.

18 MR. RUGGEROLI: Correct, and that's one of the --

19 THE COURT: I'm just not.

20 MR. RUGGEROLI: I agree, and neither am I, Judge. I
21 would just say that it's enough over the mark that 5 percent
22 would be greater than the 50 percent disparity.

23 THE COURT: Okay, and then how about the third step?

24 I mean, are you contending you're entitled to an evidentiary
25 hearing? I mean, what are your allegations as to the

1 underrepresentation is due to systematic exclusion of the
2 group in jury selection?

3 MR. RUGGEROLI: That this is a particular issue that
4 the Clerk -- I don't have something that I can say, this is
5 exactly what they did. I can tell you that, systematically
6 speaking, overall, there should be policies and procedures in
7 place that don't lead to where we're at, where there is
8 underrepresentation.

9 And when you add all of the cases together, I would
10 argue that this is a problem that is recurring enough to where
11 it is systematic. There should be something in place. It
12 wouldn't be the defense's burden to establish what that policy
13 is, what that procedure actually is --

14 THE COURT: Well, you have to make allegations to
15 entitle you to an evidentiary hearing.

16 MR. RUGGEROLI: Well, I'm saying that the notion of
17 systematic is based on this issue coming up repetitively in
18 jury pools in this county that are underrepresentative. It's
19 just -- I'm saying that it basically is something that Your
20 Honor can take notice of.

21 THE COURT: Okay, and are you familiar with the
22 Valentine case that came out in December?

23 MR. RUGGEROLI: Judge, I did not reference that.

24 THE COURT: Okay, because I'm just -- it doesn't
25 appear to me as though -- I mean, it sounds like you're making

1 general allegations and nothing specific.

2 MR. PESCI: The tough thing -- if I could, Your
3 Honor -- is that, as you pointed out, Valentine is the most
4 recent conversation about this, and it's really nebulous as to
5 what is a prima facie case. What they said was -- in that
6 case, I believe they said it was -- did they say it was not?
7 I can't remember. But like, the problem is, we don't know for
8 sure what is a prima facie case and what isn't.

9 So I appreciate what you just said, which is, what's
10 your remedy; what are you asking for? And so, I feel like
11 you're providing him that remedy, and I'm not sure if they're
12 taking it, because to me, the remedy per that case is we get
13 the Jury Commissioner in here and you have to ask questions,
14 assuming he actually made the prima facie case, which the
15 State's not conceding, right? So is that the remedy that's
16 requested?

17 THE COURT: That's what I'm asking.

18 MR. RUGGEROLI: Yes, Judge.

19 THE COURT: You're requesting an evidentiary
20 hearing?

21 MR. RUGGEROLI: Here's the thing.

22 THE COURT: I mean, this is why you should do it in
23 the beginning, because now I have a jury panel out there --

24 MR. RUGGEROLI: I understand.

25 THE COURT: -- that's now going to sit, and I have

1 to get the Jury Commissioner up here.

2 MR. RUGGEROLI: Correct.

3 THE COURT: So if that's what you're asking --

4 MR. RUGGEROLI: It is.

5 THE COURT: Get the Jury Commissioner up. Let me
6 know when she's here.

7 THE MARSHAL: Yes, ma'am.

8 THE CLERK: I'll e-mail her. Well, do you want me
9 to call? I'll call.

10 THE MARSHAL: Do you want me to call her?

11 THE CLERK: I'll call.

12 (Off the record at 9:30 A.M. until 9:49 A.M.)

13 (Outside the presence of the prospective jurors)

14 THE MARSHAL: Please come to order. Court is now
15 back in session.

16 THE COURT: Okay. The record will reflect that the
17 hearing is continuing to take place outside the presence of
18 the jury panel.

19 So I had a few minutes to do these calculations, and
20 I used the entire jury panel, 60. And in the Morgan case,
21 they used 11.8 percent. Since no one has told me what it is
22 in Clark County, I'm going to use 12 percent. So I come up
23 with an absolute disparity of 7 percent, and a comparative
24 disparity of 58.33 percent.

25 However, the third prong is that the

1 underrepresentation is due to systemic exclusion of the group
2 in jury selection process, and I haven't heard any allegations
3 as to that.

4 MR. RUGGEROLI: Thank you, Judge. Your Honor,
5 Valentine references Evans, which references Duren, D-u-r-e-n,
6 vs. Missouri. That's a United State Supreme Court case. The
7 Duren court explained that, quote, "Systematic exclusion means
8 underrepresentation inherent in the particular jury selection
9 process utilized."

10 Because -- and I greatly appreciate Your Honor doing
11 those numbers and an absolute disparity test. We are good
12 with that 58 percent disparity. The Court has found that
13 anything over 50 percent is a prima facie showing, and because
14 of that, we would argue that that shifts the burden to the
15 State at this point to show that the jury selection process --

16 THE COURT: Okay, but again, in Valentine, they said
17 you get an evidentiary hearing if you set forth specific facts
18 that are not belied by the record, which requires us to expand
19 the record.

20 MR. RUGGEROLI: Agreed. So I think that the burden
21 though has now shifted to the State to establish that the jury
22 selection process is not inherently --

23 THE COURT: Okay. You understand you have to meet
24 the three prongs?

25 MR. RUGGEROLI: Yes.

1 THE COURT: The third prong is that this
2 underrepresentation is due to systematic exclusion of the
3 group in the jury selection process, and I haven't heard any
4 allegations or theories of how that happens in Clark County.

5 MR. RUGGEROLI: But -- and I just want to make sure
6 that we're -- that I'm following the proper line of inquiry
7 based on Valentine.

8 THE COURT: I mean, because clearly, that's where
9 it's going to --

10 MR. RUGGEROLI: Right.

11 THE COURT: -- to lie.

12 MR. RUGGEROLI: I just believe that --

13 THE COURT: I mean, I believe the first two prongs,
14 you have met.

15 MR. RUGGEROLI: Right. And so what I would say is
16 that, in Valentine, it clarifies that, once we establish that
17 prima facie violation, which is Prong 2, then the burden
18 shifts to the government to show that the disparity is
19 justified. And --

20 THE COURT: Okay. Again, I think you have to make
21 allegations. I'm just going to let you call the Jury
22 Commissioner.

23 MR. RUGGEROLI: Okay.

24 THE COURT: And I don't know, Mr. Pesci, did you
25 want to --

1 MR. PESCI: I just want to make a record. I'm not
2 sure if he's done. I'll wait until he's done.

3 MR. RUGGEROLI: If you'd like me to call the Jury
4 Commissioner, then I will follow through with the questioning
5 now.

6 THE COURT: Okay. Mr. Pesci?

7 MR. PESCI: Judge, so thank you very much for doing
8 those numbers. Again, we're objecting, not to you or that
9 calculation, Your Honor; to the concept of doing it a day late
10 and a dollar short, right? Because you just said that you
11 utilized the number 60 --

12 THE COURT: Yeah.

13 MR. PESCI: -- which is where we get these numbers
14 of 7 percent absolute and 58 percent comparative, right? The
15 State's argument -- and I do concede that I don't know of a
16 case on point; but if there isn't, there should be, which is
17 this should be done at the front end. This should be done so
18 that we have a proper number to work with, because we've got a
19 number of 60, because that's the number that originally came
20 in, but actually not, and 17 have been kicked, and there are
21 12 in an "Other" category.

22 THE COURT: Well, actually, it was 59 because I let
23 that one juror go. So I probably -- I probably should have
24 used the number 59 instead of 60.

25 MR. PESCI: I don't think it will skew it below the

1 50 though.

2 THE COURT: Right.

3 MR. PESCI: I agree with you. But that's a perfect
4 example, and I wanted to highlight that, because that
5 individual didn't come into the courtroom, and that individual
6 checked "Other," and then didn't check anything else. We
7 don't know what that person is; African-American, Hispanic.
8 We just don't know. That's the inherent problem; it's got
9 nothing to do with the commissioner. Someone comes in, they
10 can just check nothing, they can check what they identify
11 with, they can check whatever.

12 And so we're making an objection for the record,
13 Your Honor, as far as this being late, because it skews the
14 numbers. There could be numbers that we could dig deeper into
15 when we had everybody here to change that 60, to change that
16 12 percent, to change -- not the 12 percent, but change who
17 actually identifies or who is African-American.

18 Shifting away from that, as you've pointed out, has
19 there been a prima facie showing? You know, when you look at
20 the actual case, which, you know, I understand why the Court
21 does it, but it's also a little maddening, because it says
22 here, "Although this Court has not articulated" -- this is
23 from Valentine.

24 THE COURT: Right.

25 MR. PESCI: "Has not articulated the circumstances

1 in which a district court should hold an evidentiary hearing
2 when presented with a fair cross-section challenge, it has
3 done so in other contexts." So then it talks about these
4 other contexts, and it says that -- and in this particular
5 case, there was a specific allegation in Valentine.

6 THE COURT: Right.

7 MR. PESCI: And the allegation was, as I understand
8 it, that, you know what, there's too many summonses going to
9 places that it shouldn't be.

10 THE COURT: That's correct.

11 MR. PESCI: Like, there should be more in some other
12 location. Now, for the record, I don't think they've met
13 that, not even close. They haven't even alleged that. I'm
14 giving them that from the case itself. There's been no
15 specificity; therefore, they haven't met that burden.

16 But Judge, I don't want to risk it. I don't want to
17 risk it. The Jury Commissioner is here, which is wonderful
18 that she can come so quickly. I'm extremely grateful. I'd
19 rather go forward. But by going forward, the State is not
20 conceding that they've met their burden, because they haven't.

21 THE COURT: Right. I mean, that's my concern. I
22 think there's been general allegations. And again, in the
23 Valentine case, where they said an evidentiary hearing was
24 appropriate, there were two distinctive theories about why we
25 got this underrepresentation of African-Americans in the jury

1 selection process.

2 But I'm going to allow you to call the Jury
3 Commissioner. I'm very, very grateful that she came up here
4 so quickly. So you can call her to the stand.

5 MR. RUGGEROLI: Please. Yes. Thank you, Your
6 Honor.

7 THE CLERK: Can you please raise your right hand?

8 MARIAH WITT, DEFENSE'S WITNESS, SWORN

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

11 THE WITNESS: Mariah Witt. M-a-r-i-a-h, W-i-t-t.

12 MR. RUGGEROLI: Thank you, Your Honor.

13 THE COURT: Go ahead.

14 (Testimony outside the presence of the jury panel.)

15 DIRECT EXAMINATION

16 BY MR. RUGGEROLI:

17 Q Good morning, Ms. Witt.

18 A Good morning.

19 Q Could you tell us how you're employed, please?

20 A I'm the Jury Commissioner for the Eighth Judicial
21 District Court.

22 Q Thank you. Is it within your purview to be very
23 familiar with the laws as it relates to jury selection; in
24 particular, regarding African-American individuals from the
25 community?

1 A I don't believe the law specifically addresses race
2 or ethnicity. It states a fair cross-section -- or, excuse
3 me, random selection. I'm sorry. That's what is addressed in
4 the law.

5 Q And so you're familiar with the procedures that the
6 -- your office uses to send out summons to bring people in to
7 serve as jurors?

8 A Yes.

9 Q And could you just briefly describe how that
10 operates, and whether or not -- just explain quickly how the
11 process generally works.

12 A Okay. Well, we summon jurors six weeks in advance,
13 so we don't really know what our schedule's going to look
14 like. So we have come up with kind of a determination, based
15 on our volume, what we -- the number of people we need to
16 summon.

17 So six weeks in advance, I summon jurors. I create
18 a pool for every day of the week, or one of my staff, and it's
19 6,300 jurors a week in advance. And you just simply put in
20 the date; the number required on that given date. And on
21 Mondays, it's 2,000; Tuesdays, 1,500; Wednesdays and Thursdays
22 are 1,000; Fridays are 800. So we do that six weeks in
23 advance every week, so by -- each of those pools are created
24 in advance. And I simply put in the date, and the number
25 required for that date, and create the pool that way.

1 Q How does the selection of where to send the summons
2 to -- how is that process dictated? What formula is used?

3 A Well, it's in the jury management system. The jury
4 management system randomly selects jurors from our master
5 list.

6 Q And is that master list based on population and zip
7 code, or just zip code, or how is the jury list --

8 A It's composed of the four sources that are required
9 under NRS.

10 Q Okay, and what are those?

11 A That would be Nevada DMV, Nevada Energy, voter
12 rolls, and the list from the Department of Employment,
13 Training, and Rehabilitation.

14 Q When you compile the prospective juror list for an
15 individual case like this one --

16 A Um-hum.

17 Q -- your office has started including a Race Report;
18 is that correct?

19 A The Race Report -- yes. We -- that's created after
20 the pool has been created, and on the day that they come in, I
21 create that report.

22 Q So the day for a particular trial?

23 A Yes. On the day that they appear, that's when I run
24 it, because there's nothing in it prior to that, because --

25 Q Do you know -- I apologize for interrupting.

1 A No, that's fine.

2 Q Do you know when your office began utilizing the
3 Race Reports and adding those as a portion of the jury
4 selection lists -- prospective jury lists?

5 A Do you mean the ones that we are now sending with
6 the paperwork --

7 Q Yes.

8 A -- or are you just talking about when we
9 systematically started running these reports?

10 Q First, when you started including the lists for each
11 trial and included that within the prospective panel.

12 A Well, we did it with our new jury management system.
13 In our old jury management system, it didn't really have that
14 capability. So in 2016, March of 2016, those -- we started
15 running those reports by case.

16 Q And it's fair to say that the emphasis -- this was a
17 change. It put an emphasis on race that hadn't previously
18 been there many years ago; is that correct?

19 A It was requested by management at the direction of
20 some of the various parties, so it became something that we
21 added.

22 Q And you're aware that there is an emphasis on having
23 a fair cross-section of the community for the jury pool
24 generally?

25 A I understand. Yes.

1 Q That's accurate though, correct?

2 A Yes.

3 Q What policies or procedures do you have to ensure,
4 for instance -- and let me -- let me step back a second. Is
5 it -- are you familiar with the -- and I'm paying attention,
6 in this particular instance, really to the African-American
7 community.

8 As far as the Eighth Judicial District Court and
9 this jurisdiction, are you familiar with how many African-
10 Americans comprise our general community?

11 A Based on the US Census, approximately 13 percent.

12 Q And that's of today?

13 A No, I think that's as of the last census --

14 Q Okay.

15 A -- which I think the most recent was 2018.

16 Q All right. Do you --

17 THE COURT: And you said 13 percent?

18 THE WITNESS: That was my understanding. I'd have
19 to look at my notes --

20 THE COURT: Okay.

21 THE WITNESS: -- to be sure, but --

22 THE COURT: Right. So you don't know?

23 THE WITNESS: I don't know for certain.

24 THE COURT: Okay.

25 BY MR. RUGGEROLI:

1 Q Do you have any reason to dispute it's at least 12
2 percent?

3 A At least -- I'm sorry?

4 Q Do you have any reason that you would not agree that
5 that percentage is at least 12 percent?

6 A The only thing I can say is that it's possible it
7 could be less, because I know the census includes everyone,
8 including non-citizens and people that are underage. So I
9 couldn't tell you for sure.

10 Q What policies and procedures does your office have
11 in place, if any, to make sure that an average jury pool is
12 comprised of approximately 12 to 13 percent African-Americans?

13 A I use a jury management system that randomly selects
14 jurors.

15 Q And are you familiar with any requirements that you
16 have to meet, other than the Race Report, to -- I mean, have
17 you actually testified in a hearing like this since 2018?

18 A Yes.

19 Q Okay. So you're familiar with the questions at
20 issue?

21 THE COURT: Didn't you see how quick she got up
22 here?

23 MR. RUGGEROLI: Yes.

24 BY MR. RUGGEROLI:

25 Q You're familiar with these questions, and so you've

1 answered a lot of these questions in the past. Do you believe
2 that you've done everything that needs to be done to ensure
3 that a fair cross-section and a representation of the African-
4 American community is present in your jury pool?

5 A Yes. We randomly select jurors, which is what the
6 law requires.

7 Q Okay, but if you're randomly selecting, then there
8 is no safeguard to make sure that at least a certain
9 percentage of African-Americans is present in a particular
10 pool; is that correct?

11 THE COURT: The law doesn't require that.

12 MR. RUGGEROLI: I'm just asking her though.

13 THE WITNESS: That's correct. I mean, if I were to
14 specifically select, that would not be random. If I were to
15 specifically call people in based on race or ethnicity, that
16 would not be random, and that's what the law requires of me.

17 MR. RUGGEROLI: Court's indulgence.

18 BY MR. RUGGEROLI:

19 Q If that standard of randomness is collectively
20 referenced though, isn't it also true that you will
21 potentially have a system as a whole that consistently results
22 in underrepresentation of the African-American community?

23 A No, I don't believe that to be the case.

24 Q And that's based on randomness, or is that based on
25 policy and procedures that you utilize that make sure that a

1 certain percentage are included?

2 A It's based on randomness. There are days that
3 numbers are higher, and days that it's lower, because it's
4 random.

5 MR. RUGGEROLI: Okay. Judge, thank you. I have no
6 other questions.

7 THE COURT: Mr. Sanft, do you have any questions?

8 MR. SANFT: No, Your Honor.

9 THE COURT: Mr. Pesci?

10 MR. PESCI: I apologize.

11 CROSS-EXAMINATION

12 BY MR. PESCI:

13 Q Ma'am, thank you for being here.

14 A You're welcome.

15 Q Few questions. Would you agree with me that the
16 four sources that you've just described is what statute has
17 mandated as far as the pools to grab from?

18 A Yes.

19 Q Okay. Would you agree with me -- and I apologize,
20 ma'am. How long ago did you start this job?

21 A November 2012.

22 Q All right. Do you have some knowledge about the
23 methodology prior to you getting there?

24 A Not -- what they did to --

25 Q Yes.

1 A Not really, not exactly.

2 Q All right. I'm going to ask some questions, and
3 maybe you don't know the answers, but --

4 A Okay.

5 Q -- do -- are you aware or have you ever heard about
6 in the past the jury pool would be pulled from just voter
7 registration?

8 A No.

9 Q Okay. Would you agree with me that it has been
10 expanded as far as where to grab the pool from?

11 A Yes.

12 Q So the DMV is one of those sources, correct?

13 A Correct.

14 Q That was utilized in this case?

15 A Yes.

16 Q And that includes, not just someone who has a
17 license, but someone who has an ID card?

18 A Yes.

19 Q You would agree with me that everyone in Clark
20 County, whether they're a driver or not, should at least have
21 an ID card?

22 A Most likely. I mean, not everybody, but the
23 majority should, yes.

24 Q Okay, but we can be comfortable with the fact that
25 we're getting more in this net -- we're trying to catch all

1 these people in this net -- when we have not just a driver,
2 not just a license-holder, but just an ID card?

3 A Yes.

4 Q And both of those sources are what you pull from?

5 A Yes.

6 Q And I should say, they come from the same thing,
7 DMV, but they --

8 A Right.

9 Q -- utilize those two categories?

10 A Yes.

11 Q Okay. And then, if we shift to NV Energy, you would
12 agree that that's a source where a power bill comes from?

13 A Yes.

14 Q So I don't have to be a homeowner in order to have
15 an NV Energy power bill?

16 A Correct.

17 Q So you would agree that, in this pool, we're
18 reaching out and we're getting people who are not even
19 homeowners; we're trying to get people who could just be
20 renting?

21 A Correct.

22 Q So we're not discriminating against people who have
23 less money, because, I mean, everyone's got power. If you
24 don't have power, you can't live somewhere. So we're getting
25 everybody, not just landowners?

1 A Correct.

2 Q And we're getting everybody from the DMV, not just
3 actual license-holders, but also the ID?

4 A Correct.

5 Q All right. And then, we do actually shift and also
6 include voters; is that correct?

7 A Yes.

8 Q So anybody -- you know, in this political age,
9 there's lots of people motivated to vote, the voter
10 registration's really high, so it's another area where lots
11 and lots of people are pulled from?

12 A Yes.

13 Q Okay. And then, the last section -- and the last
14 time we talked about this, the State of Nevada, as I
15 understood it, hadn't yet provided you -- and I'm going to use
16 the wrong term, but I mean, I would say unemployment data.
17 What's the right term that you said?

18 A The list from the Department of Employment,
19 Training, and Rehabilitation.

20 Q Okay, the Department of Employment, Training, and
21 Rehabilitation. Okay. Does that include people that are
22 seeking unemployment?

23 A Yes.

24 Q Okay. And now -- because before, you were prevented
25 from doing that because the state wasn't giving you the data?

1 A Correct.

2 Q Now, you have the data?

3 A Yes.

4 Q So the pool that we have in this courtroom also
5 includes everybody in Clark County who has sought unemployment
6 benefits?

7 A Correct.

8 Q All right. So would you agree with me that there
9 was nothing systemic in your efforts to exclude anybody?

10 A Yes.

11 Q You're trying to include everyone?

12 A Yes.

13 Q Okay. And then, there's kind of a shift in kind of
14 the logic here, but it will tie back in. Ma'am, how many
15 summons do you send out -- I think you told me you do it six
16 weeks out. Like, a batch of how many do you send out?

17 A Well, we do them weekly, so 6,300 every week.

18 Q Okay.

19 A Yes.

20 Q I'm betting you don't have a number, but I'm still
21 going to ask. I apologize.

22 A Okay.

23 Q If you send out 6,300 for the week, that means 6,300
24 people should show up on Monday?

25 A No.

1 Q Okay, that's what I'm trying to get to. I'm trying
2 to figure out, do you have a number -- do you have an idea,
3 like, for Monday of this week -- was that the 10th? February
4 10th?

5 A Um-hum.

6 Q Okay. February 10th, all the prior summonses that
7 went out, how many people actually showed up on their summons?

8 A For Monday? I don't have the numbers for Monday in
9 front of me.

10 Q Okay.

11 A So I couldn't tell you for sure, but I'd say 2- or
12 300, I think.

13 Q Let's talk in generalities, right?

14 A Okay.

15 Q Do you have a percentage, whatever number that is,
16 where people, they just don't show up?

17 A Yes.

18 Q Okay. And do you have any idea, just generally,
19 kind of systemically, about what a percentage is of
20 non-showers; people who you sent it out and they just don't
21 come?

22 A About 20 percent.

23 Q So about 20 percent of the people just choose not to
24 fulfill their civic duty?

25 A Correct.

1 Q Okay, and there's really nothing you can do about
2 that, is there?

3 A Well, we do re-summon jurors 60 days out.

4 Q All right.

5 A That is the method that the National Center for
6 State Courts recommends is the most effective means of getting
7 jurors in here.

8 Q You beat me to --

9 THE COURT: So when they -- so when they don't show
10 up, then you -- 60 days later, you send them a new one?

11 THE WITNESS: Automatic process. Yes, ma'am.

12 THE COURT: Oh, okay.

13 BY MR. PESCI:

14 Q You beat me to it, right? You're so consistent in
15 trying to get to everybody, when they choose not to come, you
16 send them another summons to say, no, no, no, come on in,
17 you're supposed to do this?

18 A Yes.

19 Q And yet, still, some people don't show?

20 A Correct.

21 Q Okay. Now, not in this case, but in another case,
22 some defendant argued, well, you're really systematically
23 excluding people because you're not going out there and
24 arresting them and bringing them to court. Do you have the
25 capacity to arrest somebody for not showing for their summons?

1 A I do not.

2 Q Right. Does a court, potentially?

3 A Yes.

4 Q All right. Do you have a system or a methodology in
5 place where you try to get the people that no-show to come to
6 court, other than what you just said as far as sending another
7 summons?

8 A No.

9 Q Okay. So by not having that -- and you would agree
10 with me, one of the options would be to bring someone in for a
11 show cause hearing, correct?

12 A Correct.

13 Q And if someone comes in for a show cause hearing, in
14 front of this judge, they have to explain why they didn't
15 come?

16 A Yes.

17 Q Or any judge. And would you agree with me that,
18 potentially, contempt is a sanction that could be imposed?

19 A Yes.

20 Q All right. I don't know, I'm just kind of guessing
21 here. I'm assuming you really don't want to be in the
22 business of holding people in contempt in that process?

23 A Well, it's not my decision. I take my direction
24 from the Court.

25 Q Right, right, and I apologize. What I'm saying is,

1 you don't have a system currently to set up Orders to Show
2 Cause?

3 A Well, we actually do --

4 Q Oh, you do? Okay.

5 A -- if it's requested by the judge in a specific
6 instance.

7 Q Right.

8 A Like, so if somebody doesn't show up from a panel,
9 we'll ask if the judge wishes to do --

10 Q Okay.

11 A -- an Order to Show Cause.

12 Q All right. So do you then give data to the judges
13 on each pool that comes up, saying, hey, look, these ten
14 people didn't show?

15 A No, not the entire pool. We only request it at the
16 panel level. So if the judge has a panel of people that we've
17 been -- that's been assigned to that case, and those people
18 don't show, then we ask if she would like to -- in this case,
19 she -- would like to issue an Order to Show Cause.

20 Q So then a judge could, in theory, order these jurors
21 to come to court after they've previously, at least once, and
22 probably twice, not come to court on a summons?

23 A When I'm saying that, Order to Show Cause for your
24 case, that doesn't necessarily mean they failed to appear
25 before.

1 Q Okay.

2 A That would just mean somebody that was on this case,
3 assigned to this case --

4 Q Right.

5 A -- did not return. Those are the instances in which
6 we deal with Orders to Show Cause.

7 Q Okay, all right. So I mean, you're not -- by not
8 bringing people in after they've refused to come, you're not
9 purposely trying to exclude anybody, are you?

10 A No.

11 Q And do you think, from your position, would it be
12 less inducive to the average citizen to come to jury duty if
13 they thought they could be arrested if they don't?

14 A I don't know.

15 Q Right, yeah. So that's not really a focal point of
16 yours as far as trying to catch the net of people who don't
17 show?

18 A No.

19 Q All right. And by not catching them, you're not
20 trying to exclude certain people?

21 A No.

22 Q Those people have been invited once, twice, and
23 maybe even more than that?

24 A Yes.

25 Q Okay. Now, shifting gears, right? Then if we go

1 back to the system, as I understood it, the system sends out
2 this randomly based on these four sources, right? Do you have
3 any idea how many people of a specific ethnicity live in a
4 specific zip code?

5 A No.

6 Q Is there a source that you know of that could
7 possibly give you that information?

8 A Not specifically that I know of.

9 Q Right. So how on earth could you be held to a
10 standard of having to figure that out when you don't even know
11 of a system that exists to give you that information?

12 A I couldn't.

13 Q Right. And if there were one, right, would you
14 utilize it?

15 A I would follow the direction of the court, whatever
16 they ask me to do.

17 Q You wouldn't be trying to specifically and
18 systematically exclude people?

19 A No.

20 Q Would you agree with me that members of the
21 community -- in this particular case, the allegation is
22 African-Americans -- live everywhere in the Valley?

23 A Yes.

24 Q In fact, one of these defendants lives in Spring
25 Valley. Were summonses sent to Spring Valley?

1 A I couldn't tell you without -- I mean, I don't know.

2 Q Okay.

3 A Without looking at the pool, and looking at the

4 individual records, I don't know --

5 Q But --

6 A -- if that particular pool had people from that zip

7 code.

8 Q Some have argued -- nobody here. Some have argued

9 that, you know, there should be even more summonses sent to,

10 let's say the northeast or North Las Vegas, right? You would

11 agree with me, however, that there are members of every

12 different ethnicity all over this Valley?

13 A Yes.

14 Q And so, by sending the summons to every zip code,

15 you're not trying to systematically exclude anyone?

16 A Well, it doesn't necessarily go to every zip code

17 every time.

18 Q Okay.

19 A But we do -- but all zip codes are included in the

20 master list.

21 Q And there's nothing you programmed into the system

22 saying, hey, system, make sure you don't send it to North Las

23 Vegas or the northeast part of town?

24 A No.

25 Q And there's nothing that you're doing to try to

1 exclude, in this particular case, African-Americans from
2 serving on this jury?

3 A No.

4 MR. PESCI: I'll pass the witness. Thank you.

5 THE COURT: Any redirect?

6 MR. RUGGEROLI: I just want to clarify very quickly.

7 REDIRECT EXAMINATION

8 BY MR. RUGGEROLI:

9 Q Your requirements and the four sources are contained
10 -- are you familiar -- I just want to make sure. It's NRS
11 6.045; does that sound right?

12 A Yes, um-hum.

13 Q Okay. Also, pursuant to Section 5, part of the
14 requirement is that you do keep a record of the name,
15 occupation, address, and race of the trial juror selected. So
16 race is a specific aspect that you are to note and have a
17 record of; is that correct?

18 A Yes.

19 MR. RUGGEROLI: Judge, I have nothing further.
20 Thank you.

21 THE COURT: Okay, but I just want to make sure I'm
22 clear. But that record is made from the juror themselves?
23 You don't -- you don't determine what someone's race is,
24 correct?

25 THE WITNESS: That's correct, ma'am, it's

1 self-reported.

2 THE COURT: Right. And they're asked -- I think
3 when they first call in to do jury duty --

4 THE WITNESS: Yes, or online.

5 THE COURT: -- they're asked that? Okay.

6 THE WITNESS: Yeah, on the phone or online. It's
7 self-reported.

8 THE COURT: Anything else?

9 MR. RUGGEROLI: No, Judge, thank you.

10 THE COURT: Anything else?

11 MR. PESCI: Yes, I apologize. In that regard -- may
12 I approach the witness?

13 THE COURT: You may.

14 MR. PESCI: Okay.

15 RECROSS-EXAMINATION

16 BY MR. PESCI:

17 Q So in the data that we received from you, ma'am --

18 A Yes.

19 Q -- would you agree -- let's see. Badge number 533,
20 Miles Ealy, under "Race" -- because you have two categories.
21 You have "Race" and "Ethnicity," right?

22 A Yes, yes.

23 Q "Race," wrote, "Other race," correct?

24 A Um-hum.

25 Q "Ethnicity: Not Hispanic or Latino"?

1 A Yes.

2 Q So we know nothing about this person, do we, as far
3 as race or ethnicity?

4 A We just know they're not Hispanic.

5 Q Yeah, well-said.

6 A Right.

7 Q And this is self-reporting? There's nothing you can
8 do about this; this is just if someone chooses to fill it in?

9 A Correct.

10 Q And people can choose just literally not to fill it
11 in?

12 A Correct, but the system's designed -- excuse me --
13 to force them to answer it.

14 Q Can they finish if they don't answer it?

15 A It is possible, but we do have it set up so that
16 they have to answer that information in order to complete the
17 process of confirming that they'll be coming in.

18 Q Okay. And ostensibly, that's so that you could
19 probably be able to say, hey, we've got a good representation
20 of everybody because we're figuring out exactly who's coming
21 in?

22 A Yes, to assist in the selection process.

23 Q Not to systematically exclude, but to actually try
24 to bring even more people in of all races and all ethnicities?

25 A Yes.

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

2 THE COURT: I just want to make --

3 MR. RUGGEROLI: Okay, just one follow up.

4 THE COURT: You bet, you bet.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. RUGGEROLI:

7 Q The Race Report that is included that has those
8 percentage that Mr. Pesci just had you review, why are those
9 even included?

10 A I'm -- I'm not sure I'm following you.

11 Q You were just shown the Race Report for this
12 particular case.

13 A I was shown the Bio Form, sir.

14 Q Okay. You're familiar with the Race Report as well?

15 A Yes.

16 Q And why are those even included?

17 A Because management asked me to start including them
18 with the paperwork when I -- when I run them, because we've --
19 we have had these challenges before, so we're just providing
20 them --

21 Q And you would --

22 A -- now in criminal cases.

23 Q You would agree that, in this particular case, that
24 -- you mentioned that Clark County percentage of African-
25 Americans is approximately 12 to 13 percent; you would agree

1 with that?

2 A Yes.

3 Q And in this particular case, if it's 7 percent, then
4 the African-American community in this case is
5 underrepresented, generally speaking?

6 A Yes.

7 MR. RUGGEROLI: Thank you. Nothing further.

8 THE COURT: Okay. Anything else?

9 MR. PESCI: No, thank you, Your Honor.

10 THE COURT: Okay. Thank you very much --

11 THE WITNESS: You're welcome.

12 THE COURT: -- for your testimony, and thank you for
13 always coming up so quickly.

14 THE WITNESS: You're welcome.

15 THE COURT: I really do appreciate it. Have a good
16 day.

17 THE WITNESS: You, too.

18 THE COURT: Okay. Mr. Ruggeroli, I'll hear from
19 you.

20 MR. RUGGEROLI: Judge, I'll address the timeliness
21 issue first. Judge, I --

22 THE COURT: Well, clearly, I gave you a hearing.

23 MR. RUGGEROLI: Oh, yes, absolutely, but I of course
24 have to answer this. So number one, I think the State
25 concedes that they don't have authority on a timeliness

1 requirement. It obviously makes sense; however, a lot of
2 these issues get brought up on post-conviction, and so what
3 we're not doing is having this, you know, remanded in that
4 context and coming back.

5 I did not delay this for any undue purposes. This
6 was brought to my attention yesterday. We're given the lists
7 as the prospective venire is brought in, and as Your Honor
8 knows, there's an awful lot going on in those moments, and
9 race and the racial component of the venire is a factor, but
10 it's not the only thing that a defense attorney is thinking
11 about at the time.

12 Given the totality of everything that developed
13 yesterday, at the end of the day -- and it's really one
14 half-a-day. We started at 1:00 o'clock yesterday, broke at
15 approximately 5:00, and this is the first issue I'm raising
16 the next morning. I brought it to the Court's attention
17 without any purpose for undue delay, and I am making a record
18 because this is an important right. Our society is evolving,
19 we're becoming more sensitive to racial issues.

20 When our foundational documents indicate that an
21 individual -- every individual has a right to a jury trial by
22 their peers, and a client is African-American, and they're
23 looking at a panel that has 2 out of 60, it needs to be
24 addressed. And I greatly appreciate Your Honor giving us this
25 opportunity, because it is important, and you gave us the

1 evidentiary hearing --

2 THE COURT: Three.

3 MR. RUGGEROLI: -- to do that.

4 THE COURT: I mean, you know, the Race Report says
5 three. I know --

6 MR. RUGGEROLI: I -- I --

7 THE COURT: -- you keep saying two.

8 MR. RUGGEROLI: Right. I believe that one of the
9 females did not appear, but I'll just say that, going based on
10 the Race Report, it is -- it does say 3 out of 60. That is
11 still significant enough that I think that we needed to make
12 this record in good faith to challenge the panel as --

13 THE COURT: Well, I do -- I think you met the first
14 two prongs.

15 MR. RUGGEROLI: Thank you.

16 THE COURT: My issue is with the third prong, that
17 this underrepresentation is due to systematic exclusion of the
18 group in the jury selection process.

19 MR. RUGGEROLI: And a lot of these issues that have
20 come up in Morgan and Valentine, there was an awful lot of
21 research that was capable of being done, so I can't piggyback
22 on those actual issues. I would just say that more needs to
23 be done in order to eliminate this issue systematically. The
24 State brought up an alternative. Maybe it is something that
25 should be considered, because we need to have people that are

1 present.

2 If somebody is trying to avoid being on a jury
3 panel, I know that courts are generally not impressed when
4 they raise issues that are obviously designed to just try and
5 get them out of their service. Now, those are for people that
6 just show up. So people that don't even show up, I'd say that
7 the State, and the Jury Commissioner's office in particular,
8 the courts, they need to have a better policy in place.

9 Right now, I would just argue that the systematic
10 nature is that, collectively, African-Americans are
11 underrepresented. And relying on randomness, which is what I
12 gather is her policy, we follow the statute --

13 THE COURT: No, it is the law.

14 MR. RUGGEROLI: We follow the statute; we rely on
15 randomness to come up with these numbers. I would just argue
16 that it's not enough. And for this Court's ruling, I think I
17 know how you would likely rule. But for the future, perhaps
18 higher courts or the legislature will decide that something
19 drastically more needs to be done to make sure that we don't
20 have systematic underrepresentation of this community.

21 THE COURT: Okay. Mr. Pesci?

22 MR. PESCI: Thank you.

23 THE COURT: I don't know if you want to respond.

24 MR. PESCI: The State did not propose an
25 alternative. It was one of the two arguments in Valentine.

1 THE COURT: Right.

2 MR. PESCI: The State was trying to, with the Jury
3 Commissioner, from the State's perspective, point out how
4 ridiculous that is. It's not to this defense attorney; it was
5 done in the other one, right?

6 So if I'm to understand this correctly, we should be
7 bringing people in with contempt charges, potentially a fine,
8 and/or jail time. In the day and age of criminal justice
9 reform, when we're saying that certain crimes, actual crimes
10 shouldn't be pursued, or we should give them to some sort of a
11 diversionary court, or we should definitely go with probation,
12 we're going to now hook people up and potentially arrest them?
13 We should systemically do that?

14 What do you think would be the reaction of
15 individuals in different groups when they see people that may
16 fit into this particular group, African-Americans, being
17 arrested or potentially held in contempt because they didn't
18 show up, right? That's just how foolish that argument is,
19 again, not by this defense counsel, but which was alleged in
20 this other case. But I just want to point that out, the
21 underlying foolishness of that concept, right?

22 But it would be interesting. And I want to say
23 this, because it needs to be, and we'll probably have to deal
24 with this later. What do we know as far as those people who
25 no-show, how that would change the numbers? How interesting

1 would that be, right? If the people who no-show actually
2 showed, would the numbers be different? Automatically, they
3 would be, one way or the other, but we don't know if they're
4 African-American, if they're Hispanic, if they're Caucasian,
5 which is my point, to say these numbers are so problematic,
6 because it's a moving target, and it's a target that's not
7 even definite.

8 You've pointed out to defense counsel that he keeps
9 referring to it as two African-Americans, but the data we
10 received from the Jury Commissioner who just testified is
11 three. Why are we just defaulting to two? Because -- and
12 respectfully, I'm saying this. I think he looked at the pool
13 and said, I think I see two African-Americans, right? So
14 we've got some Caucasian people saying, I think this person's
15 African-American or I think this person's not.

16 See the foolishness in this? This is why this has
17 become so crazy, right? And people can identify as one thing
18 or another thing. And if they choose not to identify, the
19 Jury Commissioner herself said they can still get through the
20 questionnaire, her questionnaire, without doing that.

21 So we're making suppositions on people, one, that
22 don't even come; and two, when they come, we're not exactly
23 sure, because a third person identified as African-American.
24 Defense counsel's opinion is he only sees two. Right? That's
25 why this is so dangerous. That's why there's such a flaw to

1 the whole Batson analysis, because of this concept of being
2 able to say who is or isn't, and I think that's extremely
3 problematic.

4 Shifting away from that, we have evidence, and it's
5 updated evidence. We don't have to rely on a transcript,
6 which the Valentine court said don't do.

7 THE COURT: Right.

8 MR. PESCI: She testified all four forms: the DMV,
9 the Energy, voter registration, and unemployment. What other
10 source is there? I mean, honestly, where on earth are we
11 supposed to get some other source?

12 And specifically, the allegation that was at least
13 made prima facie per Valentine, which was not here, was this
14 concept of using a system that would send summons to certain
15 zip codes that have certain percentages of certain
16 ethnicities.

17 THE COURT: Well, I think the allegations were that
18 our Jury Commissioner was sending the same amount to every zip
19 code without considering the ethnic makeup of the zip codes.

20 MR. PESCI: Right.

21 THE COURT: I mean, that --

22 MR. PESCI: And how --

23 THE COURT: -- appeared to be what the allegation
24 was.

25 MR. PESCI: In the case, yes.

1 THE COURT: Right.

2 MR. PESCI: And my question to her, and to you, and
3 to -- you know, really, to the Supreme Court, is, how are we
4 going to do that? What database exists to do that?

5 THE COURT: Well, we know it's not true based on her
6 testimony today.

7 MR. PESCI: Right. That just shows how this is
8 craziness. There is no effort by this woman or by the jury
9 commission system to systematically exclude individuals, which
10 is why this motion should be denied.

11 THE COURT: Anything else? Mr. Sanft, do you want
12 to add anything?

13 MR. SANFT: No, Your Honor.

14 THE COURT: Mr. Ruggeroli, anything else?

15 MR. RUGGEROLI: No, Your Honor. Thank you.

16 THE COURT: Okay. All right. At this time, the
17 Court's going to deny the Motion to Strike the jury venire. I
18 do believe that there was a showing as to the first two
19 prongs; however, as to the third prong, there's been no
20 evidence that this underrepresentation is due to systematic
21 exclusion of the group in the jury selection process.

22 So anything else before we bring them in?

23 MR. PESCI: Not from the State.

24 MR. SANFT: No, Your Honor.

25 MR. RUGGEROLI: No, Your Honor.

1 THE COURT: Okay, we can bring them in. Hopefully,
2 we didn't lose them.

3 (Pause in the proceedings)

4 MR. RUGGEROLI: Judge, there is something that's
5 very quick.

6 THE COURT: Yeah, go ahead.

7 MR. RUGGEROLI: Can we have the jurors to the left
8 side of the panel stand? I know it's a little inconvenient,
9 but we can't see who's talking when there are questions to the
10 left side because the lectern's in the way. Is that something
11 that can be accommodated with the questioning?

12 THE COURT: Okay, I'm sorry. The lectern's getting
13 in your way of seeing?

14 MR. RUGGEROLI: I can't see any of the jurors from a
15 certain portion on, so I'm not -- Mr. Pesci is very good about
16 having them read their --

17 THE COURT: Well, you want to get up, and, I mean --

18 MR. RUGGEROLI: Okay.

19 THE COURT: Position yourself where you can see. I
20 mean, you're entitled to see them.

21 MR. RUGGEROLI: Thank you, Judge.

22 THE COURT: But I mean, do you want me to have them
23 move the lectern? Is that --

24 MR. RUGGEROLI: No, no, I was just going to see if
25 perhaps they could stand when they're answering questions.

1 THE COURT: Oh, you want me to --
2 MR. PESCI: Is it this one?
3 THE COURT: I can have them stand.
4 MR. RUGGEROLI: It's both.
5 THE COURT: Yeah, I can have the jurors stand.
6 MR. RUGGEROLI: Would that be all right?
7 MR. PESCI: I'd submit it to the Court.
8 THE COURT: No problem. I can have them stand.
9 MR. RUGGEROLI: Thank you very much, Judge.
10 THE COURT: Um-hum.
11 THE MARSHAL: All rise for the entering jury,
12 please. Jurors.
13 (Within the presence of the prospective jurors)
14 THE MARSHAL: Thank you, everyone. Please be
15 seated.
16 THE COURT: Does the State stipulate to the presence
17 of the panel?
18 MR. PESCI: Yes, Your Honor.
19 THE COURT: Mr. Sanft?
20 MR. SANFT: Yes, Your Honor. Thank you.
21 THE COURT: Mr. Ruggeroli?
22 MR. RUGGEROLI: Yes, Your Honor.
23 THE COURT: Okay. Good morning, ladies and
24 gentlemen. Welcome back. Thank you very much for coming
25 back. I do apologize for the delay, and I do appreciate your

1 courtesy in waiting for us. Mr. Pesci?

2 MR. PESCI: Thank you, Your Honor.

3 THE COURT: You may address the panel.

4 MR. PESCI: Yes. Microphone. So can we hand it
5 down to Ms. Hernandez in Seat 7, who I believe would be Badge
6 430?

7 PROSPECTIVE JUROR NO. 430: Yes.

8 MR. PESCI: Okay. Are you picking me up?

9 THE COURT RECORDER: I am.

10 MR. PESCI: Okay. Thank you, everybody, for coming
11 back today. Appreciate you being here. Just want to kind of
12 follow up on some specific questions, and then some group
13 questions again.

14 Ma'am, I wanted to ask you, you said that you worked
15 as a host. What -- was that The Cosmo?

16 PROSPECTIVE JUROR NO. 430: Yes.

17 MR. PESCI: Okay, and what specifically do you do
18 there?

19 PROSPECTIVE JUROR NO. 430: I work front desk. I
20 sell tables for guests and bottle service.

21 MR. PESCI: Okay, and how long have you been doing
22 that?

23 PROSPECTIVE JUROR NO. 430: I've been doing that for
24 a year.

25 MR. PESCI: For a year? Okay.

1 PROSPECTIVE JUROR NO. 430: Um-hum.

2 MR. PESCI: Did you have a different line of work
3 before that?

4 PROSPECTIVE JUROR NO. 430: I worked events inside
5 the Springs Preserve with the Water District.

6 MR. PESCI: Okay. I want to ask you a question, and
7 then we'll kind of push it out to everybody else. Do you have
8 any difficulty or problem if -- when we present this testimony
9 in this case, if it comes a little bit out of order in the
10 sense that, you know, the crime -- the alleged crime starts
11 here, and the information kind of proceeds? Sometimes,
12 because of witnesses' schedules, we have to take people out of
13 order. Do you have any problem with kind of tracking the
14 information, even if it's somewhat out of order?

15 PROSPECTIVE JUROR NO. 430: No, I think I'm really
16 good at following up.

17 MR. PESCI: All right, awesome. Kind of pushing
18 that out to everybody else. Would anybody have any difficulty
19 kind of tracking the evidence if we have to call people out of
20 order because of their schedules and different things in their
21 schedules? No answer from anyone, for the record. All right.

22 A specific question to you, and then we'll kind of
23 push it out to the whole group. In this particular case,
24 there's an individual who was charged who's entered into a
25 negotiation and is going to testify. That's what we expect to

1 happen. So one defendant's going to testify against other
2 defendants. What are your thoughts or feelings about that
3 kind of a situation?

4 PROSPECTIVE JUROR NO. 430: This is new for me, this
5 is my first time being here, so I really don't -- I've never
6 been in a situation like this. And I -- since I don't have
7 any details, I can't really give my opinion yet.

8 MR. PESCI: Okay, and that's fine. And we can't get
9 into too many details, but I believe, from both sides, this is
10 a question of interest for the panel -- for the parties, is
11 this concept. Some people feel really strongly one way or the
12 other.

13 And the real big question is, would it affect your
14 ability to be fair and impartial -- this is to everybody now
15 -- if you hear from a defendant who's testifying against other
16 defendants?

17 We've got a hand. Going to pass it forward. Thank
18 you very much. So, Laurie? Is that how --

19 PROSPECTIVE JUROR NO. 513: Yeah, Laurie.

20 MR. PESCI: And your badge number?

21 PROSPECTIVE JUROR NO. 513: 513.

22 MR. PESCI: 513. All right.

23 PROSPECTIVE JUROR NO. 513: I suppose if there is
24 some type of deal involved, that I would have problems
25 listening to that person, yeah.

1 MR. PESCI: Okay. And when you say problems, the
2 deal, as you mentioned, would be something that you would know
3 about, right? You would get specific information about what
4 the deal is, based on the negotiation that was struck.

5 The problems that you would have, would that make it
6 such that you could not be fair and impartial?

7 PROSPECTIVE JUROR NO. 513: Yes.

8 MR. PESCI: All right. And how would it make you
9 that you could not be fair and impartial?

10 PROSPECTIVE JUROR NO. 513: I feel that the witness
11 would be saying certain things because of the deal that was
12 involved.

13 MR. PESCI: Gotcha. In fact, you'll get information
14 about that. In fact, the Court's going to instruct about how
15 to consider a co-defendant's testimony, and how you consider
16 it differently from other individuals.

17 So considering that, that the Court would give you
18 some instructions on that, do you think that you could
19 consider it, or is it something you'd just say, I just won't
20 listen to it; it won't be a part of my process?

21 PROSPECTIVE JUROR NO. 513: I would have to listen
22 to the full information of the deal that was offered.

23 MR. PESCI: Perfect. And you know, to have some
24 degree of suspicion is totally fine, right?

25 PROSPECTIVE JUROR NO. 513: Um-hum, yeah.

1 MR. PESCI: It's understandable.

2 PROSPECTIVE JUROR NO. 513: Of course.

3 MR. PESCI: And what we're trying to figure out is

4 will you disregard everything else just because of that? Or

5 are you willing to, with that suspicion, look at all the other

6 evidence, and say, well, let's see how it fits into the whole

7 story?

8 PROSPECTIVE JUROR NO. 513: The second one, yeah.

9 I'm willing to listen to the evidence.

10 MR. PESCI: Okay.

11 PROSPECTIVE JUROR NO. 513: Yeah.

12 MR. PESCI: But it's appropriate, as you're saying,

13 is that it gives you pause?

14 PROSPECTIVE JUROR NO. 513: I am very highly

15 suspicious, yeah.

16 MR. PESCI: Understood, understood. Anybody else

17 feel that way? Is there any more that you wanted to say? I

18 apologize. All right.

19 There's a gentleman in the -- so, Judge, I think

20 we're turning to Mr. Randall. And Mr. Randall, I apologize,

21 your badge number?

22 PROSPECTIVE JUROR NO. 557: It's 557.

23 MR. PESCI: 557?

24 THE COURT: Do you mind -- if you don't mind

25 standing up.

1 PROSPECTIVE JUROR NO. 557: Sure.

2 THE COURT: In fact, if all of you will stand up
3 when you're responding, that may be helpful so everyone can
4 see you and hear you.

5 MR. PESCI: Sorry.

6 PROSPECTIVE JUROR NO. 557: No problem. Yeah, I
7 mean, it was just similar. It just gives me pause a little
8 bit to hear that there's, you know, somebody that's being a
9 witness that's being offered a deal. But I mean, I think what
10 you said to the other gentleman makes sense to me, that once
11 we understand what the deal is and kind of see the whole
12 picture, I think that's fine with me.

13 MR. PESCI: Okay, so you're willing to listen?

14 PROSPECTIVE JUROR NO. 557: Yeah.

15 MR. PESCI: Okay. Do you think you can be fair to
16 both sides?

17 PROSPECTIVE JUROR NO. 557: I do.

18 MR. PESCI: Wonderful. Thank you very much.
19 Anybody else wanted to answer anything about that? Judge, I
20 think we're going to Mr. McGinty, Badge number --

21 PROSPECTIVE JUROR NO. 410: 410.

22 MR. PESCI: -- 410.

23 PROSPECTIVE JUROR NO. 410: McGinty. Yes, thank
24 you. With my experience with both expert witnesses and a
25 co-defendant that may be testifying against, I have some

1 problems with the validity of it. And so it gives pause to --
2 from my perspective. And what -- when I've worked with other
3 attorneys and expert witnesses, kind of knowing the
4 backgrounds, yeah, I've got a certain amount of problem with
5 the validity.

6 MR. PESCI: Okay. So when you say "problem," are
7 you saying that you are closed completely from ascertaining
8 and assessing that information, or are you willing to look at
9 -- even with a suspect eye, look at it and assess it?

10 PROSPECTIVE JUROR NO. 410: I'll look at it, but
11 I'll always know that there's an ends to the means of why
12 they're in that seat.

13 MR. PESCI: Okay, appreciate that. Anybody else
14 have any comments on that, that particular issue? Okay.
15 Could you pass it down to your right?

16 Ms. Hernandez, are you okay if we move on? All
17 right.

18 Ms. Amoroso, what is your badge number, ma'am?

19 PROSPECTIVE JUROR NO. 437: It's 03 -- 0437.

20 MR. PESCI: Okay, and I apologize. Unfortunately --
21 could you stand?

22 PROSPECTIVE JUROR NO. 437: Okay.

23 MR. PESCI: I think the Court's asking us -- okay.

24 PROSPECTIVE JUROR NO. 437: 0437.

25 MR. PESCI: Okay. And then, you're working as a

1 busser, correct, ma'am?

2 PROSPECTIVE JUROR NO. 437: Yes.

3 MR. PESCI: Where is that?

4 PROSPECTIVE JUROR NO. 437: In Golden Nugget.

5 MR. PESCI: Okay. And then, in the Golden Nugget,

6 do you have any interactions with police officers often in

7 your job?

8 PROSPECTIVE JUROR NO. 437: No.

9 MR. PESCI: Okay. So you don't have any kind of

10 feelings one way or the other for the police based on your job

11 experience?

12 PROSPECTIVE JUROR NO. 437: No.

13 MR. PESCI: Okay. All right, thank you very much,

14 ma'am. If you could pass the mic just one over.

15 Ms. Graham?

16 PROSPECTIVE JUROR NO. 451: Yes.

17 MR. PESCI: Badge number --

18 PROSPECTIVE JUROR NO. 451: 45 --

19 MR. PESCI: -- 451?

20 PROSPECTIVE JUROR NO. 451: Yes, 451.

21 MR. PESCI: Thank you for standing. So, ma'am,

22 you're a fourth grade school teacher; is that correct?

23 PROSPECTIVE JUROR NO. 451: Yes.

24 MR. PESCI: All right. And then, how long have you

25 done that?

1 PROSPECTIVE JUROR NO. 451: A long time. 16 years
2 or more.

3 MR. PESCI: Fourth grade the whole time, or?

4 PROSPECTIVE JUROR NO. 451: No, I've done first,
5 second, third, special education. Just most recently, been in
6 fourth grade about six years.

7 MR. PESCI: Okay. And kind of a similar question
8 that I asked Mr. Casucci. Do you have situations with kids
9 where sometimes they're each alleging something different?

10 PROSPECTIVE JUROR NO. 451: All the time.

11 MR. PESCI: Right. I would assume that that would
12 happen on a daily basis?

13 PROSPECTIVE JUROR NO. 451: Daily basis.

14 MR. PESCI: Do you have to sometimes kind of make a
15 decision, even though you have conflicting information?

16 PROSPECTIVE JUROR NO. 451: Yes.

17 MR. PESCI: Are you comfortable with making a
18 decision that way?

19 PROSPECTIVE JUROR NO. 451: Yes.

20 MR. PESCI: What is it that makes you feel
21 comfortable? How do you approach it?

22 PROSPECTIVE JUROR NO. 451: Well, experience, having
23 done it so many times. It's different because it's kids, you
24 know? I kind of know the psychology of children, and I can
25 kind of, just from my experience, tell. Each side has got an

1 element of truth, and we kind of meet in the middle. And
2 then, as the adult in the room, I have to make the decision
3 which way we're going to go, just so that conflict doesn't
4 keep happening, and we can put an end to it, and everybody
5 moves on.

6 MR. PESCI: And are you comfortable doing that, even
7 though you might not have every bit of information out there
8 in the universe?

9 PROSPECTIVE JUROR NO. 451: I think so. Does it
10 make me right? I don't know, but I'm comfortable doing it.

11 MR. PESCI: As far as making that decision?

12 PROSPECTIVE JUROR NO. 451: Yeah.

13 MR. PESCI: Okay. Real quick, before you sit down.

14 PROSPECTIVE JUROR NO. 451: Sure.

15 MR. PESCI: You served as a foreperson on a jury?

16 PROSPECTIVE JUROR NO. 451: Yes, civil.

17 MR. PESCI: Civil?

18 PROSPECTIVE JUROR NO. 451: Um-hum.

19 MR. PESCI: Do you recall if it was here in this
20 building?

21 PROSPECTIVE JUROR NO. 451: It was, just a couple
22 doors down.

23 MR. PESCI: How long ago?

24 PROSPECTIVE JUROR NO. 451: Over two years ago.

25 MR. PESCI: Okay.

1 PROSPECTIVE JUROR NO. 451: Maybe two-and-a-half.
2 MR. PESCI: And since it went to a verdict, you were
3 given instructions about the standard of proof for that civil
4 case, right?
5 PROSPECTIVE JUROR NO. 451: Yes.
6 MR. PESCI: All right. So in a criminal case, it's
7 a different standard.
8 PROSPECTIVE JUROR NO. 451: Right.
9 MR. PESCI: So it's proof beyond a reasonable doubt.
10 And the Judge is going to instruct us exactly what that is,
11 but would you be able to follow that standard as opposed to
12 what you did in the civil case?
13 PROSPECTIVE JUROR NO. 451: Oh, yeah, because I
14 don't even remember what that was.
15 MR. PESCI: That's perfect. All right.
16 PROSPECTIVE JUROR NO. 451: Yes.
17 MR. PESCI: Thank you very much, ma'am. Could you
18 hand the microphone over just one?
19 Ma'am, how are you?
20 PROSPECTIVE JUROR NO. 461: I'm great, thanks.
21 MR. PESCI: Ms. Quinn, 461?
22 PROSPECTIVE JUROR NO. 461: 461.
23 MR. PESCI: All right, thank you. Now, I was trying
24 to remember, was it you were the travel agent, or was it your
25 spouse?

1 PROSPECTIVE JUROR NO. 461: Me.

2 MR. PESCI: Okay, you?

3 PROSPECTIVE JUROR NO. 461: Corporate travel agent,
4 yes.

5 MR. PESCI: All right. And how much are you being
6 affected by being here as far as the travel and the work?

7 PROSPECTIVE JUROR NO. 461: Oh, I'm covered. I'm
8 good.

9 MR. PESCI: Okay. All right, so someone else was
10 able to cover that?

11 PROSPECTIVE JUROR NO. 461: Yes, absolutely.

12 MR. PESCI: Okay.

13 PROSPECTIVE JUROR NO. 461: Um-hum.

14 MR. PESCI: A question kind of to you, and then
15 we'll push it out to everybody else, as I've done earlier.

16 You know, there are rules, very specific rules in
17 the courtroom of what we can and can't do. Right now is one
18 of the rare times we can speak to you. When we're not in this
19 phase, we -- we, all the attorneys -- we literally can't speak
20 to you, right? It's a rule. We might seem like total jerks
21 because we don't open the door for you. You ask us what
22 time's court starting, and we're not talking to you because
23 the Court has said we cannot do that. Are you okay with that
24 concept?

25 PROSPECTIVE JUROR NO. 461: Um-hum. Yes,

1 absolutely.

2 MR. PESCI: How about everybody else?

3 MEMBERS OF THE PROSPECTIVE JURY PANEL: Yes.

4 MR. PESCI: All right. So please, if you want the
5 door open and you're expecting it, or you're just like, "What
6 time," we can't talk to you at all. And if you do, we kind of
7 have to report it, and then all that goes from there. But
8 some people are uncomfortable with that, right? Because it's
9 kind of antisocial, but it's just we're trying to follow the
10 rules that we have to do. Is that okay with everybody?

11 PROSPECTIVE JUROR NO. 461: Yes.

12 MR. PESCI: All right. Thank you very much, ma'am.
13 If you could pass the microphone over one.

14 Ms. Estrella, how are you?

15 PROSPECTIVE JUROR NO. 462: Good, how are you?

16 MR. PESCI: Good, thank you. 462 is your badge
17 number?

18 PROSPECTIVE JUROR NO. 462: Yes.

19 MR. PESCI: All right, thank you. Can you see with
20 everybody standing?

21 MR. RUGGEROLI: Yes, thank you.

22 MR. PESCI: Okay. So, ma'am, you are a student with
23 CSN, but you're not currently enrolled?

24 PROSPECTIVE JUROR NO. 462: I am currently enrolled.

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

1 thought you were not in -- you're not full-time right now?
2 PROSPECTIVE JUROR NO. 462: Yes.
3 MR. PESCI: Okay.
4 PROSPECTIVE JUROR NO. 462: I'm not full-time, but I
5 am enrolled (indiscernible).
6 MR. PESCI: Are you missing class this week?
7 PROSPECTIVE JUROR NO. 462: I have school today.
8 MR. PESCI: Right.
9 PROSPECTIVE JUROR NO. 462: Yeah, but --
10 MR. PESCI: Okay, that's what I was trying to get
11 to. I think we've got another student here as well. You had
12 an exam today, right, ma'am? All right, we're going to get to
13 you in just a second. So is your schoolwork being affected by
14 this?
15 PROSPECTIVE JUROR NO. 462: No, I can balance my
16 schoolwork and between here, too.
17 MR. PESCI: All right. What days are class?
18 PROSPECTIVE JUROR NO. 462: It's Monday and
19 Wednesday.
20 MR. PESCI: Monday and Wednesday. What hours?
21 PROSPECTIVE JUROR NO. 462: 6:00 to 10:30.
22 MR. PESCI: So 6:00 P.M. --
23 PROSPECTIVE JUROR NO. 462: Yes.
24 MR. PESCI: -- to 10:30? Okay, all right.
25 PROSPECTIVE JUROR NO. 462: Yeah.

1 MR. PESCI: So if you come here during the day,
2 you're not going to miss any classes?

3 PROSPECTIVE JUROR NO. 462: Yes.

4 MR. PESCI: All right, but you're missing a class
5 today, you said?

6 PROSPECTIVE JUROR NO. 462: No, I -- I can go right
7 after the court and --

8 MR. PESCI: Are you good time-wise if we end at 5:00
9 -- because normally, the Court will have us end at 5:00 -- to
10 make it to school on time?

11 PROSPECTIVE JUROR NO. 462: Yes, I can make it to
12 school by 6:00.

13 MR. PESCI: Okay, perfect. What are you studying?

14 PROSPECTIVE JUROR NO. 462: I am studying bachelor's
15 of medical lab scientist.

16 MR. PESCI: What do you want to do with that?

17 PROSPECTIVE JUROR NO. 462: I want to, like, be in
18 the lab and examine the blood, because I also took phlebotomy,
19 so I already have like a little bit experience in that, too.

20 MR. PESCI: All right, wonderful. Thank you so
21 much. Could you pass the microphone up? And then we're going
22 to send it down the row, all the way over.

23 And actually, Mr. -- hold on. Mr. O'Brien, we
24 pretty much spoke to you yesterday. Do you have anything you
25 wanted to add? Kind of, you're the gunsmith, and all those

1 things?

2 PROSPECTIVE JUROR NO. 464: Not if you don't.

3 MR. PESCI: Okay. All right, perfect. Could you

4 hand it over one?

5 All right. Ms. Newell, Badge number 468?

6 PROSPECTIVE JUROR NO. 468: 468.

7 MR. PESCI: Okay, thank you, ma'am. So if I heard

8 correctly, you have a test today?

9 PROSPECTIVE JUROR NO. 468: Yes.

10 MR. PESCI: Okay. What's going on with that?

11 PROSPECTIVE JUROR NO. 468: I don't know. My

12 professor didn't e-mail me back, but I'm pretty sure she'll

13 excuse it, and I'll just make it up in office hours.

14 MR. PESCI: Okay. Do you think you will be able to

15 do that?

16 PROSPECTIVE JUROR NO. 468: Um-hum.

17 MR. PESCI: Okay. Is that a yes?

18 PROSPECTIVE JUROR NO. 468: That's a yes.

19 MR. PESCI: Yeah, I apologize. That's that silly

20 thing we have to do on the record. It's not really silly, but

21 it's uncomfortable sometimes. So the test is today?

22 PROSPECTIVE JUROR NO. 468: The test is today.

23 MR. PESCI: Okay. And you haven't heard back yet

24 from the professor if she or he will let you make it up?

25 PROSPECTIVE JUROR NO. 468: No.

1 MR. PESCI: Okay. What days of the week are you in
2 class?
3 PROSPECTIVE JUROR NO. 468: Monday and Wednesday.
4 MR. PESCI: And are you full-time right now?
5 PROSPECTIVE JUROR NO. 468: Um-hum.
6 MR. PESCI: And that's a yes?
7 PROSPECTIVE JUROR NO. 468: Yes.
8 MR. PESCI: Sorry.
9 PROSPECTIVE JUROR NO. 468: Sorry, yes.
10 MR. PESCI: No, no, sorry. So Monday and Wednesday,
11 what are your hours?
12 PROSPECTIVE JUROR NO. 468: 11:30 to 12:45.
13 MR. PESCI: Okay.
14 PROSPECTIVE JUROR NO. 468: And then the rest of my
15 classes are online.
16 MR. PESCI: Are online?
17 PROSPECTIVE JUROR NO. 468: Um-hum.
18 MR. PESCI: All right. But as far as Mondays and
19 Wednesdays, when we're in trial, you're going to be missing
20 class?
21 PROSPECTIVE JUROR NO. 468: Yeah.
22 MR. PESCI: Okay. Do you have any other tests on
23 the short horizon?
24 PROSPECTIVE JUROR NO. 468: No, not until February
25 23rd.

1 MR. PESCI: Okay. Is it going to affect your
2 schooling, in essence, by missing potentially the next two
3 weeks of school?

4 PROSPECTIVE JUROR NO. 468: No.

5 MR. PESCI: Okay. And then, if I heard correctly,
6 you said you're doing criminal justice?

7 PROSPECTIVE JUROR NO. 468: Yeah.

8 MR. PESCI: All right. Tell us, what is it you're
9 studying, and what do you want to do?

10 PROSPECTIVE JUROR NO. 468: I want to be a criminal
11 justice attorney.

12 MR. PESCI: Okay. And is there a specific type of
13 attorney, like the prosecution or the defense?

14 PROSPECTIVE JUROR NO. 468: Defense.

15 MR. PESCI: The defense? Okay. And then, so do you
16 want to, from here, go on to law school?

17 PROSPECTIVE JUROR NO. 468: Yeah.

18 MR. PESCI: Okay. Have you looked at different law
19 schools?

20 PROSPECTIVE JUROR NO. 468: Yeah, I'm looking at
21 William Boyd, or if -- I want to move to Atlanta, but I'm not
22 sure.

23 MR. PESCI: Okay. Have you spoken to any attorneys
24 about it?

25 PROSPECTIVE JUROR NO. 468: No, not yet.

1 MR. PESCI: Most of us say, don't go.
2 PROSPECTIVE JUROR NO. 468: Okay.
3 MR. PESCI: Just kidding. So you would like to
4 maybe go here or in Atlanta?
5 PROSPECTIVE JUROR NO. 468: Um-hum, yes.
6 MR. PESCI: All right, and how far off are you from
7 applying to law school?
8 PROSPECTIVE JUROR NO. 468: This is my third year at
9 UNLV, so a year-and-a-half, about.
10 MR. PESCI: All right. Have you looked into the
11 LSAT yet, the test to take it?
12 PROSPECTIVE JUROR NO. 468: No, not yet.
13 MR. PESCI: (Indiscernible). Not really.
14 Okay. Ma'am, anything that we discussed about
15 witnesses coming out of order, or a co-defendant testifying,
16 or anything like that would affect your ability to be fair and
17 impartial?
18 PROSPECTIVE JUROR NO. 468: No.
19 MR. PESCI: All right, thank you very much, ma'am.
20 If you could pass it over.
21 Mr. Rodriguez?
22 PROSPECTIVE JUROR NO. 475: 475.
23 MR. PESCI: Thank you. Sir, you served in the Navy,
24 correct?
25 PROSPECTIVE JUROR NO. 475: Yes, sir.

1 MR. PESCI: Did you ever have to do anything with a
2 court-martial?

3 PROSPECTIVE JUROR NO. 475: No.

4 MR. PESCI: Okay. And then, you talked about how
5 sometimes it might be hard to kind of follow and connect the
6 dots; is that correct?

7 PROSPECTIVE JUROR NO. 475: Yes.

8 MR. PESCI: All right. How's it been going so far;
9 yesterday, today?

10 PROSPECTIVE JUROR NO. 475: I'm okay.

11 MR. PESCI: Okay.

12 PROSPECTIVE JUROR NO. 475: It's pretty simple
13 stuff.

14 MR. PESCI: All right. You've been able to kind of
15 track what we're asking and following us?

16 PROSPECTIVE JUROR NO. 475: Yeah.

17 MR. PESCI: All right. It will be a little bit more
18 entertaining once we get started, right? There will be
19 witnesses; it won't be just us talking. If you have any
20 difficulty in following along, will you let us know?

21 PROSPECTIVE JUROR NO. 475: Sure.

22 MR. PESCI: Will you alert the court or the Marshal
23 and let us know so that we can try to address it?

24 PROSPECTIVE JUROR NO. 475: Um-hum.

25 MR. PESCI: And is that a yes?

1 PROSPECTIVE JUROR NO. 475: Yes.

2 MR. PESCI: All right. Any problem with that?

3 PROSPECTIVE JUROR NO. 475: No.

4 MR. PESCI: Okay, thank you very much, sir. If you

5 could pass it over.

6 Mr. -- I pronounce it Bandics?

7 PROSPECTIVE JUROR NO. 477: Yeah, that's right.

8 MR. PESCI: Okay.

9 PROSPECTIVE JUROR NO. 477: 477.

10 MR. PESCI: Thank you very much. Now, you talked

11 about how you're a service technician with Door and Glass?

12 PROSPECTIVE JUROR NO. 477: Yes, that's right.

13 MR. PESCI: Okay. So do you respond to people's

14 homes?

15 PROSPECTIVE JUROR NO. 477: No, it's all -- it's

16 mostly stores.

17 MR. PESCI: Stores?

18 PROSPECTIVE JUROR NO. 477: Yeah.

19 MR. PESCI: Are you involved in like the installing?

20 PROSPECTIVE JUROR NO. 477: Installing and repairs.

21 MR. PESCI: Okay, and how long have you been doing

22 that?

23 PROSPECTIVE JUROR NO. 477: For about four or five

24 months, but I've been with this company for about -- almost a

25 year, so a year in April.

1 MR. PESCI: What did you do before this portion of
2 the work of installing?

3 PROSPECTIVE JUROR NO. 477: Glazing, which is
4 installing glass in storefronts for stores.

5 MR. PESCI: Are you on a team of people, or are you
6 by yourself when you're doing these jobs?

7 PROSPECTIVE JUROR NO. 477: It depends. For the
8 glazing, you're usually with two to three other guys. Just
9 depends on the job. And then, for the door side, usually have
10 a partner with you. But I'm pretty new, so once I get up
11 there, they'll start sending me out by myself.

12 MR. PESCI: Okay. And so, working with others,
13 you're able to do that? If you're on a jury, you'll be
14 working with others in your deliberation process. Any
15 problems --

16 PROSPECTIVE JUROR NO. 477: Yeah.

17 MR. PESCI: -- with that?

18 PROSPECTIVE JUROR NO. 477: No, no problems.

19 MR. PESCI: All right, thank you very much, sir.
20 If you could pass the microphone over one to Mr.
21 Salazar.

22 PROSPECTIVE JUROR NO. 482: 482.

23 MR. PESCI: Thank you, Mr. Salazar. Okay, so you
24 are an armed guard driver with Loomis; is that correct?

25 PROSPECTIVE JUROR NO. 482: Correct.

1 MR. PESCI: And how long have you been doing that?
2 PROSPECTIVE JUROR NO. 482: A few months.
3 MR. PESCI: Did you have to go to any special
4 training for that?
5 PROSPECTIVE JUROR NO. 482: Just the -- like the
6 armed guard class. That was it.
7 MR. PESCI: Okay. Is it training about firearms?
8 PROSPECTIVE JUROR NO. 482: Yeah.
9 MR. PESCI: Okay. Did you have a firearm before
10 that job?
11 PROSPECTIVE JUROR NO. 482: Yes.
12 MR. PESCI: Okay. And in that training, did you
13 deal or interact with the police at all?
14 PROSPECTIVE JUROR NO. 482: No.
15 MR. PESCI: And then, setting aside training, but
16 the actual job, do you have much interaction with the police?
17 PROSPECTIVE JUROR NO. 482: I wave "hi" sometimes.
18 That's it.
19 MR. PESCI: All right. So you haven't had any
20 situations where the police have responded to a scene --
21 PROSPECTIVE JUROR NO. 482: No.
22 MR. PESCI: -- that you were on, or something of
23 that nature?
24 PROSPECTIVE JUROR NO. 482: No, not at all.
25 MR. PESCI: All right. So there wouldn't be

1 anything about police officers that you're going to treat them
2 better or worse based on any life experience?

3 PROSPECTIVE JUROR NO. 482: No.

4 MR. PESCI: Okay, thank you very much. If you could
5 pass the microphone.

6 Okay, Ms. Cook?

7 PROSPECTIVE JUROR NO. 483: Yes, 483.

8 MR. PESCI: Yes, thank you very much. So, ma'am,
9 teacher in the fifth grade?

10 PROSPECTIVE JUROR NO. 483: Yes.

11 MR. PESCI: How long have you been doing that?

12 PROSPECTIVE JUROR NO. 483: Just for a little over a
13 year.

14 MR. PESCI: A little over a year?

15 PROSPECTIVE JUROR NO. 483: Yeah.

16 MR. PESCI: Did you do -- or did you teach before
17 that, or were you doing a different profession?

18 PROSPECTIVE JUROR NO. 483: I was just a substitute
19 teacher prior to that.

20 MR. PESCI: Okay.

21 PROSPECTIVE JUROR NO. 483: And then, yeah, I
22 finished my student teaching last year, so.

23 MR. PESCI: All right, wonderful.

24 Similar to the questions to the other teachers, do
25 you ever have to resolve conflict between students?

1 PROSPECTIVE JUROR NO. 483: Yes. Like she said,
2 daily.

3 MR. PESCI: And sometimes, do they have just
4 completely different versions of the events?

5 PROSPECTIVE JUROR NO. 483: Correct.

6 MR. PESCI: And are you able to kind of assess that
7 and make a determination what you think occurred based on all
8 the information?

9 PROSPECTIVE JUROR NO. 483: Yes.

10 MR. PESCI: Any problems doing that?

11 PROSPECTIVE JUROR NO. 483: No.

12 MR. PESCI: Okay. And you served on a jury before,
13 correct?

14 PROSPECTIVE JUROR NO. 483: Yeah. Like I said, it
15 was civil, and it was settled --

16 MR. PESCI: Civil, and it settled?

17 PROSPECTIVE JUROR NO. 483: -- almost immediately.

18 MR. PESCI: So the question I wanted to get to is
19 did -- did you say almost immediately?

20 PROSPECTIVE JUROR NO. 483: Yeah, like by the time
21 we returned the next day.

22 MR. PESCI: Okay. So did any witnesses get on the
23 stand?

24 PROSPECTIVE JUROR NO. 483: No.

25 MR. PESCI: All right, that's where I was trying to

1 go, to figure out if you actually heard or assessed people's
2 testimony.

3 PROSPECTIVE JUROR NO. 483: No.

4 MR. PESCI: Okay. Do you have any problems doing
5 that, having witnesses come in and making assessments based on
6 their testimony, their evidence?

7 PROSPECTIVE JUROR NO. 483: No.

8 MR. PESCI: Do you think you could be fair to both
9 sides?

10 PROSPECTIVE JUROR NO. 483: I can.

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

12 PROSPECTIVE JUROR NO. 483: Thank you.

13 MR. PESCI: If you could pass the microphone over.
14 Ms. Young, you got grilled yesterday, right? Anything you
15 want to add?

16 PROSPECTIVE JUROR NO. 485: No.

17 MR. PESCI: Okay, if you want to pass the mic. All
18 right. I mean, if you want to talk, we can.

19 PROSPECTIVE JUROR NO. 485: No.

20 MR. PESCI: All right. Mr. -- do I pronounce it
21 Deperio?

22 PROSPECTIVE JUROR NO. 488: Yes, 488.

23 MR. PESCI: Thank you very much. We're asking this
24 of all the people on juries before. Yours was a criminal
25 case?

1 PROSPECTIVE JUROR NO. 488: Yes.

2 MR. PESCI: And when was it?

3 PROSPECTIVE JUROR NO. 488: I don't exactly remember

4 the --

5 MR. PESCI: It's okay.

6 PROSPECTIVE JUROR NO. 488: -- the year. It's been

7 a while.

8 MR. PESCI: Was it here?

9 PROSPECTIVE JUROR NO. 488: Yes.

10 MR. PESCI: All right. Do you remember if it was

11 the District Attorney's Office, or the City Attorney's Office?

12 PROSPECTIVE JUROR NO. 488: I don't remember.

13 MR. PESCI: Okay, that's all right. Don't tell us

14 what the verdict was, but you came to a verdict?

15 PROSPECTIVE JUROR NO. 488: Yes.

16 MR. PESCI: So you want back in the deliberation

17 room and talked it out with your fellow jurors?

18 PROSPECTIVE JUROR NO. 488: Yes.

19 MR. PESCI: How did you like that experience?

20 PROSPECTIVE JUROR NO. 488: I didn't really like it

21 because -- this is just me. You know, I'm a very quiet

22 person, so I didn't really get to engage with the other jurors

23 as far as like conversing, or talking about what just

24 happened, or the testimony, or whatnot.

25 MR. PESCI: Okay. So did you feel you didn't get to

1 say what you wanted to say?

2 PROSPECTIVE JUROR NO. 488: I mean, I did come up
3 with, you know, my own opinion, like, my conclusion.

4 MR. PESCI: Uh-huh.

5 PROSPECTIVE JUROR NO. 488: But -- and everybody
6 else basically did, you know, have the same conclusion on the
7 case.

8 MR. PESCI: Okay. Do you feel that you would have
9 like the personality such, if you were to be chosen, to be
10 able to make your opinion known to your other jurors?

11 PROSPECTIVE JUROR NO. 488: I can try.

12 MR. PESCI: Okay.

13 PROSPECTIVE JUROR NO. 488: It will be difficult
14 though. I just --

15 MR. PESCI: You're saying because of just your
16 nature?

17 PROSPECTIVE JUROR NO. 488: I'm just a quiet person,
18 yeah.

19 MR. PESCI: Okay. It wasn't that the jurors told
20 you, we don't want to hear from you?

21 PROSPECTIVE JUROR NO. 488: No, no, no, it's not
22 that.

23 MR. PESCI: Okay. So you're saying that you're not
24 as talkative maybe as some other people?

25 PROSPECTIVE JUROR NO. 488: Right, yeah.

1 MR. PESCI: Okay. But anything about that
2 experience that would affect your ability to be fair and
3 impartial?
4 PROSPECTIVE JUROR NO. 488: No.
5 MR. PESCI: All right, thank you very much.
6 Mr. Castro, how are you?
7 PROSPECTIVE JUROR NO. 490: I'm good, how are you?
8 MR. PESCI: Good, thank you. 490?
9 PROSPECTIVE JUROR NO. 490: 490.
10 MR. PESCI: 490. And I'm going to see if I'm
11 blocking anybody.
12 MR. RUGGEROLI: I can see. Thank you.
13 MR. PESCI: Okay. We just all want to be able to
14 see.
15 So when you said you're a software engineer, what
16 exactly do you do?
17 PROSPECTIVE JUROR NO. 490: I troubleshoot -- we
18 troubleshoot applications and fix when you find --
19 MR. PESCI: For a particular product, or for a
20 certain company?
21 PROSPECTIVE JUROR NO. 490: For the company.
22 MR. PESCI: Okay, so the company that you work for?
23 PROSPECTIVE JUROR NO. 490: Yes.
24 MR. PESCI: All right, kind of like IT for the
25 company?

1 PROSPECTIVE JUROR NO. 490: Yes.

2 MR. PESCI: All right, all right. I understand that
3 a little bit better now. I apologize. Any reason that you
4 could not sit in judgment of another human being?

5 PROSPECTIVE JUROR NO. 490: No reason.

6 MR. PESCI: Could you follow the law, even if you
7 don't necessarily agree with it?

8 PROSPECTIVE JUROR NO. 490: Yes.

9 MR. PESCI: Thank you very much, sir. If we could
10 pass it forward, and then we'll go all the way down.
11 I think we're going to Ms. Segura?

12 PROSPECTIVE JUROR NO. 496: Yes.

13 MR. PESCI: Correct? And she's Badge, I believe,
14 496.

15 PROSPECTIVE JUROR NO. 496: That's correct.

16 MR. PESCI: All right, thank you, ma'am. You work
17 at Valley Hospital?

18 PROSPECTIVE JUROR NO. 496: I do.

19 MR. PESCI: And then, the Court talked to you.
20 You've been able to find out that you're okay to be here as
21 far as work goes?

22 PROSPECTIVE JUROR NO. 496: Yes, I am.

23 MR. PESCI: Okay. And in Valley Hospital, are you
24 in like the emergency room area, or where is it that you are?

25 PROSPECTIVE JUROR NO. 496: I'm on a med-surg floor,

1 so it's 3 Tower, but people who get admitted into the hospital
2 from the emergency room come to us first unless they're
3 critical.

4 MR. PESCI: Okay, and that's what I was trying to
5 figure out, because if you're like in the emergency room, you
6 might deal with police officers bringing somebody in or the
7 paramedics bringing somebody in.

8 PROSPECTIVE JUROR NO. 496: No, we don't deal with
9 that.

10 MR. PESCI: So you get -- your part in the process
11 is after they've come up, and they've been sent to a surgery?

12 PROSPECTIVE JUROR NO. 496: That's correct.

13 MR. PESCI: Okay. You may hear some medical
14 testimony in this case from a coroner. You're able to bring
15 your common sense and your own experience to the courtroom,
16 but the evidence has to be from the actual witness stand. Are
17 you okay with that concept?

18 PROSPECTIVE JUROR NO. 496: Yes.

19 MR. PESCI: You can use your common sense, your own
20 training and experience, but it's based off of what you'll
21 hear from the witness stand. Is that okay with you?

22 PROSPECTIVE JUROR NO. 496: Yes.

23 MR. PESCI: Any problems with that?

24 PROSPECTIVE JUROR NO. 496: No.

25 MR. PESCI: All right. Any of the other questions

1 that we spoke of that you wanted to share some thoughts or
2 feelings?

3 PROSPECTIVE JUROR NO. 496: No.

4 MR. PESCI: Are you happy to pass the mic?

5 PROSPECTIVE JUROR NO. 496: Yep.

6 MR. PESCI: All right, pass it on. Mr. Laurie?

7 PROSPECTIVE JUROR NO. 513: Yeah.

8 MR. PESCI: We talked yesterday and today. So how's
9 the travel from Mesquite? How's that --

10 PROSPECTIVE JUROR NO. 513: Long.

11 MR. PESCI: Laughlin or Mesquite? I --

12 PROSPECTIVE JUROR NO. 513: Mesquite.

13 MR. PESCI: Mesquite?

14 PROSPECTIVE JUROR NO. 513: Yeah.

15 MR. PESCI: Have you been able to work that out?

16 PROSPECTIVE JUROR NO. 513: I think so. I'll be
17 able to handle it.

18 MR. PESCI: Okay. One thing I wanted to ask you,
19 there's a statement that you made yesterday. You said you
20 made an assumption about the case. Is that based on our
21 conversations here, or from something outside of the
22 courtroom?

23 PROSPECTIVE JUROR NO. 513: Something outside of the
24 courtroom.

25 MR. PESCI: Okay. Hold on one second.

1 PROSPECTIVE JUROR NO. 513: Sure, I understand.
2 MR. PESCI: Can we approach, Your Honor?
3 THE COURT: Sure.
4 (Bench conference)
5 MR. PESCI: I don't know what that's based on, and I
6 don't want to ask in front of everybody. Should we bring him
7 up here?
8 THE COURT: We can bring him up here.
9 MR. PESCI: How do you want to do that?
10 THE COURT: We can --
11 MR. SANFT: Yeah.
12 MR. PESCI: Okay.
13 THE COURT: -- just tell him to come up here.
14 (End of bench conference)
15 THE COURT: Okay. Do you mind just coming up here?
16 If you can leave the microphone on the chair.
17 (Bench conference)
18 (Prospective Juror No. 513 is present at Bench Conference.)
19 THE COURT: Okay. The record will reflect that Mr.
20 Laurie is present at the bench with all four lawyers. What
21 was that assumption based on?
22 PROSPECTIVE JUROR NO. 513: I have -- I have some
23 females at my work that are very into social media.
24 THE COURT: Okay.
25 PROSPECTIVE JUROR NO. 513: And the only reason I

1 remember it is because I have a doctor that's named Mr.
2 Wheeler --

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 513: -- and I remember them
5 bringing this up, and I made a connection.

6 THE COURT: So you made an assumption, or a
7 connection between --

8 PROSPECTIVE JUROR NO. 513: A connection.

9 THE COURT: Okay, between something the women at
10 your work talked about?

11 PROSPECTIVE JUROR NO. 513: Correct.

12 THE COURT: That they got off of social media?

13 PROSPECTIVE JUROR NO. 513: Correct.

14 THE COURT: Okay. And you know what I'm going to
15 ask you, right? Will you be able to set that aside and judge
16 this case based solely on the evidence that you see and hear
17 in the courtroom, and not what the ladies at work talked
18 about?

19 PROSPECTIVE JUROR NO. 513: Solely on the evidence
20 here in this courtroom? I think it would -- I think it would
21 be difficult to -- to separate from what I've heard and read.

22 THE COURT: And what have you heard?

23 PROSPECTIVE JUROR NO. 513: They -- am I allowed to
24 talk freely?

25 MR. PESCI: Yeah, you're doing great.

1 PROSPECTIVE JUROR NO. 513: Am I allowed to talk --
2 okay.
3 THE COURT: Yeah, of course.
4 PROSPECTIVE JUROR NO. 513: It was --
5 MR. PESCI: You did nothing wrong.
6 PROSPECTIVE JUROR NO. 513: It was -- sure.
7 MR. PESCI: We're just -- we just wanted you to tell
8 us --
9 THE COURT: Yeah, you're fine.
10 PROSPECTIVE JUROR NO. 513: I know about the
11 Facebook posts that were made from -- they know about the
12 newspaper and the connection between that and Facebook.
13 They're on social media a lot, and they brought it up to me.
14 THE COURT: Okay, the women at work?
15 PROSPECTIVE JUROR NO. 513: Yes.
16 THE COURT: Okay. What did they say?
17 PROSPECTIVE JUROR NO. 513: About these kids that
18 have committed the crime. And I'm trying not to -- they
19 committed a crime in Las Vegas, they talked about, because we
20 work at a Dollar General --
21 THE COURT: Uh-huh.
22 PROSPECTIVE JUROR NO. 513: -- and I guess it was
23 linked. We're always concerned.
24 THE COURT: I'm sorry, guess it was what?
25 PROSPECTIVE JUROR NO. 513: It was linked to a

1 convenience store robbery, I guess, so we're always concerned
2 about robberies in the area. I'm always looking on
3 newspapers. So they -- we know about that -- she knew about
4 it.

5 THE COURT: Okay. And when did you have this
6 conversation with the people at work?

7 PROSPECTIVE JUROR NO. 513: I -- just a little while
8 back, maybe a couple weeks ago.

9 THE COURT: Oh, just a couple weeks ago?

10 PROSPECTIVE JUROR NO. 513: Yeah.

11 THE COURT: All right. Have you told us everything
12 that you learned?

13 PROSPECTIVE JUROR NO. 513: Pretty much. No, I've
14 read the newspaper and the Las Vegas Times after they brought
15 that to my attention.

16 THE COURT: Las Vegas Times? What's that?

17 PROSPECTIVE JUROR NO. 513: Yes, it's in Las --
18 what's -- I don't know, it's the --

19 THE COURT: Is that a newspaper?

20 PROSPECTIVE JUROR NO. 513: -- local newspaper here
21 in town.

22 THE COURT: Well, called Las Vegas Times?

23 PROSPECTIVE JUROR NO. 513: I don't know, it's just
24 Las Vegas Something, right?

25 THE COURT: Okay, well, Review Journal?

1 PROSPECTIVE JUROR NO. 513: Sure.

2 THE COURT: Is that what you meant?

3 PROSPECTIVE JUROR NO. 513: Yeah.

4 THE COURT: Okay, all right. And again, I'm going
5 to ask you, will you be able to set aside anything that you've
6 heard at work or read in the newspaper, and judge this case
7 based solely on the evidence that you hear in the courtroom?

8 PROSPECTIVE JUROR NO. 513: Yes, I could do that,
9 sure.

10 THE COURT: Okay, because you understand how it
11 would be unfair --

12 PROSPECTIVE JUROR NO. 513: Yeah, immediately, yeah.

13 THE COURT: -- to have jurors relying on what --
14 first of all, you can't rely on what you hear in the media.

15 PROSPECTIVE JUROR NO. 513: Sure. Oh, no, I
16 understand.

17 THE COURT: I mean, can we agree on that?

18 PROSPECTIVE JUROR NO. 513: Yeah.

19 THE COURT: I mean, it's not always correct.

20 PROSPECTIVE JUROR NO. 513: Sure, yeah.

21 THE COURT: Okay. We want you to rely on the
22 evidence as it comes out in the courtroom. Do you --

23 PROSPECTIVE JUROR NO. 513: Of course.

24 THE COURT: -- understand that? And you also
25 understand that you can't talk about this case with anyone,

1 including --

2 PROSPECTIVE JUROR NO. 513: Of course, I haven't.

3 THE COURT: -- the women at your work, unless and

4 until you are discharged as a juror?

5 PROSPECTIVE JUROR NO. 513: Sure, yeah.

6 THE COURT: Then you can talk about it.

7 PROSPECTIVE JUROR NO. 513: I understand.

8 THE COURT: You can tell them you're a juror in a

9 criminal case; I don't even want you to tell them what

10 criminal case it is.

11 PROSPECTIVE JUROR NO. 513: No, yeah --

12 THE COURT: Do you understand that?

13 PROSPECTIVE JUROR NO. 513: Yeah, I even told my

14 mother, and --

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 513: So, yeah.

17 THE COURT: And you'll comply with that?

18 PROSPECTIVE JUROR NO. 513: Sure.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 513: Yes.

21 THE COURT: At some point, you can talk about the

22 case if you want to, but not until you are discharged as a

23 juror. Do you understand that?

24 PROSPECTIVE JUROR NO. 513: Like I said, the only

25 reason I made the assumption is because my doctor was named

1 Wheeler --

2 THE COURT: Okay.

3 PROSPECTIVE JUROR NO. 513: -- and I remember

4 reading in the newspaper article about the Wheeler.

5 THE COURT: Okay, so you just made a connection --

6 PROSPECTIVE JUROR NO. 513: I did immediately, yes.

7 THE COURT: -- that this is the case the women at --

8 PROSPECTIVE JUROR NO. 513: Correct.

9 THE COURT: -- work must have been talking about?

10 PROSPECTIVE JUROR NO. 513: Yes.

11 THE COURT: Okay, and just a couple weeks ago?

12 PROSPECTIVE JUROR NO. 513: I'm not sure.

13 THE COURT: Why were they talking about it a couple

14 weeks ago?

15 PROSPECTIVE JUROR NO. 513: I don't know. It was

16 something on Facebook that she read.

17 THE COURT: Okay. All right, anything else from the

18 State?

19 MR. PESCI: No from the State.

20 MR. RUGGEROLI: Did you --

21 THE COURT: Mr. Ruggeroli? Mr. Sanft?

22 MR. RUGGEROLI: Did you happen to speak with any of

23 the other prospective jurors about any of that at all?

24 PROSPECTIVE JUROR NO. 513: No, not at all, no.

25 Because I knew immediately what was -- it was -- yeah.

1 THE COURT: Mr. Sanft?
2 MR. SANFT: No questions, Your Honor.
3 THE COURT: Okay. Thank you for coming up here --
4 PROSPECTIVE JUROR NO. 513: Sure.
5 THE COURT: -- and answering our questions. Thank
6 you.
7 MR. PESCI: Thank you, Your Honor.
8 THE COURT: Thank you.
9 (End of bench conference)
10 THE COURT: Okay, you may proceed.
11 MR. PESCI: All right. Thank you very much, sir.
12 Appreciate it. Would you mind handing the microphone over
13 one? Ms. Moreno?
14 PROSPECTIVE JUROR NO. 520: Yes, 520.
15 MR. PESCI: Thank you. How are you?
16 PROSPECTIVE JUROR NO. 520: I'm good.
17 MR. PESCI: And you work in payroll?
18 PROSPECTIVE JUROR NO. 520: Yes, I've been working
19 in payroll since 2013.
20 MR. PESCI: Okay. Any problems with your work as
21 far as you being here to serve on the jury?
22 PROSPECTIVE JUROR NO. 520: No.
23 MR. PESCI: So you won't have any issues with work
24 that way?
25 PROSPECTIVE JUROR NO. 520: No.

1 MR. PESCI: Okay. Some of the questions that we've
2 asked as far as taking witnesses out of order, or maybe,
3 somebody that's not here, but a co-defendant testifying, would
4 that affect your ability to be fair or impartial in this case?

5 PROSPECTIVE JUROR NO. 520: No.

6 MR. PESCI: Okay. And could you apply the law, even
7 if you don't necessarily agree with all of it?

8 PROSPECTIVE JUROR NO. 520: Yes.

9 MR. PESCI: All right, thank you very much, ma'am.
10 Pass the microphone.

11 Ms. Perez-Haywood?

12 PROSPECTIVE JUROR NO. 521: Yes.

13 MR. PESCI: Okay, and Badge 521?

14 PROSPECTIVE JUROR NO. 521: 521.

15 MR. PESCI: All right, thank you. Middle school
16 teacher. I've got to ask all the teachers, right? How long
17 have you been doing that?

18 PROSPECTIVE JUROR NO. 521: About eight years.

19 MR. PESCI: Okay. And middle school -- I mean,
20 maybe I'm wrong. At least my kids have been going through
21 middle school; that's like the hardest.

22 PROSPECTIVE JUROR NO. 521: Yes, it's challenging.

23 MR. PESCI: There's a lot of butting heads among
24 students.

25 PROSPECTIVE JUROR NO. 521: Yeah, it's challenging.

1 Yeah.

2 MR. PESCI: Okay. How do you deal with that

3 challenge?

4 PROSPECTIVE JUROR NO. 521: I love my job.

5 MR. PESCI: Okay.

6 PROSPECTIVE JUROR NO. 521: Yeah. I like working

7 with people and the students, passing the knowledge. I like

8 it.

9 MR. PESCI: Well, good. Are you able to kind of

10 resolve conflicts when they sometimes have them?

11 PROSPECTIVE JUROR NO. 521: Yes, sometimes. Yes.

12 MR. PESCI: And do you think that you could do that

13 in this kind of a case? So listen to the evidence; if there

14 maybe is a conflict, then kind of assess what you think

15 occurred?

16 PROSPECTIVE JUROR NO. 521: Yes.

17 MR. PESCI: All right. Do you think you can be fair

18 to both sides?

19 PROSPECTIVE JUROR NO. 521: Definitely.

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

21 All right. Ms. Mendoza, you are Badge number --

22 PROSPECTIVE JUROR NO. 524: 524.

23 MR. PESCI: 524. All right, thank you very much.

24 You've been in Vegas, you said, for ten years, correct?

25 PROSPECTIVE JUROR NO. 524: Yes.

1 MR. PESCI: Where were you before that?

2 PROSPECTIVE JUROR NO. 524: Kind of back and forth

3 between California and New Mexico for a couple years, and

4 then, 2009, we settled here.

5 MR. PESCI: Okay. And then, if I've understood

6 correctly, you're going to school, but not right now?

7 PROSPECTIVE JUROR NO. 524: Yeah.

8 MR. PESCI: Okay. What were you studying?

9 PROSPECTIVE JUROR NO. 524: Education.

10 MR. PESCI: What would you like to do with that?

11 PROSPECTIVE JUROR NO. 524: I'd like to teach

12 history.

13 MR. PESCI: Okay, even with what you're hearing from

14 the other teachers?

15 PROSPECTIVE JUROR NO. 524: Yes.

16 MR. PESCI: All right. Any reason why you couldn't

17 be fair and impartial --

18 PROSPECTIVE JUROR NO. 524: No.

19 MR. PESCI: -- to both sides?

20 PROSPECTIVE JUROR NO. 524: No.

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

22 could pass the mic. Mr. -- how do I pronounce it?

23 PROSPECTIVE JUROR NO. 561: Alex. Alex -- Alex

24 Keang.

25 MR. PESCI: Keang? Okay, thank you. And then,

1 you're Badge number 5 --

2 PROSPECTIVE JUROR NO. 561: 561.

3 MR. PESCI: 561, okay. And then, you came here from

4 Vegas quite some time ago. You moved here, what, in '91?

5 PROSPECTIVE JUROR NO. 561: Yeah, I came here in

6 1991. Yeah.

7 MR. PESCI: Where did you come from?

8 PROSPECTIVE JUROR NO. 561: I come from California.

9 MR. PESCI: Okay. And then, you're working as a

10 dealer where? Which casino?

11 PROSPECTIVE JUROR NO. 561: I work as a dealer at

12 New York-New York.

13 MR. PESCI: The New York-New York?

14 PROSPECTIVE JUROR NO. 561: Yeah.

15 MR. PESCI: How long have you been there?

16 PROSPECTIVE JUROR NO. 561: I've been there since

17 2005.

18 MR. PESCI: 2005? Okay. Have you ever had an

19 occasion while you were at work to have to interact with the

20 police? Have they been called out to an issue while you were

21 working?

22 PROSPECTIVE JUROR NO. 561: I saw -- we have a lot

23 of security at -- in the casino. So when something problem,

24 you know, the casino -- the security just take care of that,

25 or the floorman, you know, they take care of that, but not a

1 dealer. We have to stay on the table; we cannot move
2 anywhere.

3 MR. PESCI: So there are kind of rules about how
4 you're supposed to handle it based on New York-New York's
5 policies?

6 PROSPECTIVE JUROR NO. 561: Yes.

7 MR. PESCI: Okay, and then the hotel security
8 normally deals with it?

9 PROSPECTIVE JUROR NO. 561: Yeah, the hotel
10 security, they would (indiscernible) that problem, yeah.

11 MR. PESCI: Okay. Any interactions with Metro, the
12 police department?

13 PROSPECTIVE JUROR NO. 561: They have Metro, they
14 have security, and they have police, too. Everything, yeah.

15 MR. PESCI: Okay. Any reason that experience with
16 Metro would affect your ability to be fair and impartial to
17 either side?

18 PROSPECTIVE JUROR NO. 561: No.

19 MR. PESCI: Thank you very much, sir.

20 If you could pass the microphone over.

21 Widdison, correct?

22 PROSPECTIVE JUROR NO. 540: It's Staci McCarthy.

23 MR. PESCI: Oh, gosh. I just moved over one. I
24 apologize. Ms. McCarthy, I apologize. And your badge number?

25 PROSPECTIVE JUROR NO. 540: 540.

1 MR. PESCI: All right, and your son, he's cut loose,
2 right?
3 PROSPECTIVE JUROR NO. 540: He's not here today, no.
4 MR. PESCI: So there's no more mom and dad time?
5 PROSPECTIVE JUROR NO. 540: Right.
6 MR. PESCI: I mean, I'm sorry, son and mom?
7 PROSPECTIVE JUROR NO. 540: No.
8 MR. PESCI: Okay. Is he back to work?
9 PROSPECTIVE JUROR NO. 540: Yes.
10 MR. PESCI: Okay. You have a master's in education,
11 but you retired from teaching, correct?
12 PROSPECTIVE JUROR NO. 540: Yes.
13 MR. PESCI: All right, and how long did you teach?
14 PROSPECTIVE JUROR NO. 540: 27 years.
15 MR. PESCI: 27 years. And then, what ages or what
16 levels?
17 PROSPECTIVE JUROR NO. 540: Mostly middle school,
18 but I taught elementary for 12 years, and then middle school
19 for 15.
20 MR. PESCI: All right. Resolving conflicts with
21 students, how did you go about that?
22 PROSPECTIVE JUROR NO. 540: Same thing. Listen to
23 both sides, hear their side to the story, talk to them, talk
24 it out.
25 MR. PESCI: Okay. Do you feel you're skilled at

1 that?

2 PROSPECTIVE JUROR NO. 540: Yes.

3 MR. PESCI: Could you apply those skills here?

4 PROSPECTIVE JUROR NO. 540: Yes.

5 MR. PESCI: All right. Kind of want to shift to
6 your grand jury time. I apologize, I'm going to stand in the
7 middle here. That was a full year?

8 PROSPECTIVE JUROR NO. 540: Yes.

9 MR. PESCI: Okay, and was that the federal grand
10 jury here in Las Vegas?

11 PROSPECTIVE JUROR NO. 540: Right.

12 MR. PESCI: Okay. There's a different standard of
13 proof that needs to be put forth for a grand jury versus a
14 trial. Are you okay with that concept?

15 PROSPECTIVE JUROR NO. 540: Yes.

16 MR. PESCI: You would agree with me that the
17 standard for a grand jury is a lower standard?

18 PROSPECTIVE JUROR NO. 540: Right.

19 MR. PESCI: All right. And the Court's going to
20 give you a very specific explanation of proof beyond a
21 reasonable doubt, but are you okay to hold the State of Nevada
22 to that burden --

23 PROSPECTIVE JUROR NO. 540: Yes.

24 MR. PESCI: -- which is different than what you did
25 for that year? Okay. Anything about that experience that

1 would make you partial for one side or the other?

2 PROSPECTIVE JUROR NO. 540: No.

3 MR. PESCI: Some people might say, hey, you were
4 finding probable cause for a year for the government; are you
5 really someone that should be determining whether someone
6 committed a crime?

7 PROSPECTIVE JUROR NO. 540: I don't think that would
8 affect me.

9 MR. PESCI: Okay. You can still assess the evidence
10 and determine whether or not we make our case?

11 PROSPECTIVE JUROR NO. 540: Right.

12 MR. PESCI: Okay. Anything else on the other
13 questions that you wanted to answer?

14 PROSPECTIVE JUROR NO. 540: No.

15 MR. PESCI: All right, thank you very much, ma'am.
16 Okay, this is Mr. Widdison. I apologize.

17 PROSPECTIVE JUROR NO. 541: Yes, sir. 541.

18 MR. PESCI: 541. Thank you very much. All right,
19 so I am just perplexed by this. You got robbed at gunpoint in
20 Switzerland?

21 PROSPECTIVE JUROR NO. 541: In Switzerland.
22 Lausanne, Switzerland.

23 MR. PESCI: How did they not know you didn't have
24 any money?

25 PROSPECTIVE JUROR NO. 541: That's a really good

1 question.

2 MR. PESCI: Right?

3 PROSPECTIVE JUROR NO. 541: They must not have been
4 casing us very long.

5 MR. PESCI: I was just going to say, if they spent
6 just five minutes casing you, they'd know you didn't have any
7 money.

8 PROSPECTIVE JUROR NO. 541: They didn't get much, I
9 can tell you that.

10 MR. PESCI: All right. Joking aside, did you have
11 to make a police report?

12 PROSPECTIVE JUROR NO. 541: We did. They came over,
13 they sent over three officers, and they didn't do much.

14 MR. PESCI: Yeah.

15 PROSPECTIVE JUROR NO. 541: When I wrote home, I
16 remember I said, they sent over Huey, Dewey, and Louie,
17 because they had no -- they just came in and said, well,
18 you're still alive.

19 MR. PESCI: Okay.

20 PROSPECTIVE JUROR NO. 541: And that was really the
21 goal of what they just -- well, you're okay, it's all right.

22 MR. PESCI: So that's kind of where I wanted to go,
23 is I was trying to figure out if you ever had to go to court
24 based on that case.

25 PROSPECTIVE JUROR NO. 541: No, not at all. There

1 was no contact or anything after that at all.

2 MR. PESCI: All right, so you didn't have to take a
3 witness stand?

4 PROSPECTIVE JUROR NO. 541: Never.

5 MR. PESCI: All right. But unfortunately, that was
6 not the only time you were victimized, correct?

7 PROSPECTIVE JUROR NO. 541: Correct.

8 MR. PESCI: There was a burglary of your home?

9 PROSPECTIVE JUROR NO. 541: Yep, in North Las Vegas.

10 MR. PESCI: In North Las Vegas? Okay. Was anybody
11 caught?

12 PROSPECTIVE JUROR NO. 541: No.

13 MR. PESCI: All right. Did the police even respond?

14 PROSPECTIVE JUROR NO. 541: Yes, they did. They
15 were there when I got home.

16 MR. PESCI: They police got there before you?

17 PROSPECTIVE JUROR NO. 541: Yes.

18 MR. PESCI: Okay. Did they dust for prints?

19 PROSPECTIVE JUROR NO. 541: They did.

20 MR. PESCI: And then, just nothing ever came from
21 it?

22 PROSPECTIVE JUROR NO. 541: Nothing. Nothing came
23 up.

24 MR. PESCI: You know, the criminal justice system,
25 did it fail you? Do you feel like something more should have

1 been done?

2 PROSPECTIVE JUROR NO. 541: No, I think they did

3 what they could.

4 MR. PESCI: Okay. You wouldn't hold that against

5 the police or the prosecution?

6 PROSPECTIVE JUROR NO. 541: Not at all.

7 MR. PESCI: All right. The fact, however, that

8 you've been the victim of a crime before, and specifically a

9 robbery, an armed robbery, can you still be fair and impartial

10 in this case?

11 PROSPECTIVE JUROR NO. 541: Yes, I can.

12 MR. PESCI: All right. Would you agree that that

13 situation in Switzerland, or even the burglaries here in North

14 Las Vegas have nothing to do with these specific facts?

15 PROSPECTIVE JUROR NO. 541: I agree.

16 MR. PESCI: Okay. You can be fair and impartial to

17 both sides?

18 PROSPECTIVE JUROR NO. 541: Yes, I can.

19 MR. PESCI: All right. And then, you have an

20 accounting degree, the certified --

21 PROSPECTIVE JUROR NO. 541: I do. Certified manager

22 accountant.

23 MR. PESCI: All right, for the non-accountants --

24 PROSPECTIVE JUROR NO. 541: Explain what that means.

25 MR. PESCI: Yeah, thank you.

1 PROSPECTIVE JUROR NO. 541: So the best way to
2 explain it is a CPA does the public accounting part of it,
3 like on your taxes, and the reporting for SEC, that kind of
4 stuff. A CMA does it for inside the business to benefit the
5 bosses and the managers.

6 MR. PESCI: Gotcha. Okay. Do you ever have an
7 account not add up?

8 PROSPECTIVE JUROR NO. 541: It happens.

9 MR. PESCI: All right. As much as this sounds
10 weird, are you okay with that, that sometimes --

11 PROSPECTIVE JUROR NO. 541: No, it drives me crazy.

12 MR. PESCI: That's where I was trying to go, right?

13 PROSPECTIVE JUROR NO. 541: Yeah.

14 MR. PESCI: So if every little piece doesn't add up,
15 is it going to drive you crazy?

16 PROSPECTIVE JUROR NO. 541: I -- well, if it's a
17 number, then it drives me crazy; but this wouldn't bother me,
18 no.

19 MR. PESCI: All right, so --

20 PROSPECTIVE JUROR NO. 541: And I know what you
21 mean.

22 MR. PESCI: Outside of a number count, like, you
23 might get this piece of evidence, but just -- you just don't
24 have this piece over here, but we have this piece over there.
25 Are you okay with that, or do you want every single piece?

1 PROSPECTIVE JUROR NO. 541: Well, you want every
2 single piece, but sometimes you're not going to get it.

3 MR. PESCI: That's a really good point. Are you
4 able or do you think you can make a decision without every
5 single piece?

6 PROSPECTIVE JUROR NO. 541: I think so, yes.

7 MR. PESCI: All right, thank you very much, sir.
8 If you could pass the microphone over to Mr. Kubota?

9 PROSPECTIVE JUROR NO. 546: Kubota.

10 MR. PESCI: Okay.

11 PROSPECTIVE JUROR NO. 546: John Kubota, 546.

12 MR. PESCI: Thank you very much. All right.
13 Unfortunately, you've been in a courtroom before?

14 PROSPECTIVE JUROR NO. 546: A few times.

15 MR. PESCI: If I've heard you correctly, were you
16 actually on the witness stand?

17 PROSPECTIVE JUROR NO. 546: No.

18 MR. PESCI: Oh, never called as a witness?

19 PROSPECTIVE JUROR NO. 546: We never went to court.
20 It was always through the -- we gave depositions, and never
21 got past depositions and such.

22 MR. PESCI: All right. Were you present when some
23 of the depositions were held? I'm going to try to make it
24 simple.

25 PROSPECTIVE JUROR NO. 546: Yes. I -- well, I could

1 be, but I wasn't always there, because too many other --

2 MR. PESCI: Too many times?

3 PROSPECTIVE JUROR NO. 546: Right.

4 MR. PESCI: Okay. In that -- and this is where I

5 wanted to go with this. Did you assess the witnesses based on

6 what they said?

7 PROSPECTIVE JUROR NO. 546: Well, yes, but they were

8 just saying, we've reviewed these calculations, and we've

9 reviewed this. And that's why I say, the judge always said,

10 well, nobody ever said you did anything wrong, but you're

11 still guilty.

12 MR. PESCI: Okay. And that concept, I assume,

13 doesn't sit well with you?

14 PROSPECTIVE JUROR NO. 546: Doesn't sit well.

15 MR. PESCI: Okay. Are you okay then with the

16 concept of somebody being held responsible, even though they

17 didn't do every act in the process?

18 PROSPECTIVE JUROR NO. 546: Every -- they --

19 MR. PESCI: So if Mr. -- Parker Brooks and I, we're

20 the DAs in this case.

21 PROSPECTIVE JUROR NO. 546: Right.

22 MR. PESCI: We're both involved in this. Right now,

23 he's just sitting there, right?

24 PROSPECTIVE JUROR NO. 546: Right.

25 MR. PESCI: He hasn't really added a lot to this

1 process, has he?

2 PROSPECTIVE JUROR NO. 546: He's looked pretty.

3 Look at that smile.

4 THE COURT: He will.

5 MR. PESCI: Joking. I'm joking, but on purpose,

6 right?

7 PROSPECTIVE JUROR NO. 546: Right.

8 MR. PESCI: He's here with me; he is attached to me.

9 PROSPECTIVE JUROR NO. 546: Right.

10 MR. PESCI: We're the prosecutors, so he's on the

11 hook for what's going on in here, even though, right now, he's

12 not talking.

13 PROSPECTIVE JUROR NO. 546: Right. He's supposed to

14 be, if nothing else, learning as to how you approach it, and

15 how you ask questions, and where you go with --

16 MR. PESCI: He's got witnesses, believe me.

17 PROSPECTIVE JUROR NO. 546: Right.

18 MR. PESCI: He's going to take some witnesses. So

19 are we okay with the concept of, like, we might be both held

20 to a standard, even though we didn't do the exact same thing?

21 PROSPECTIVE JUROR NO. 546: Oh, yeah.

22 MR. PESCI: Okay. Because, like, differentiating

23 that versus what you've experienced, which was like, look, I

24 didn't do this, but I'm being held responsible; you don't like

25 that concept?

1 PROSPECTIVE JUROR NO. 546: Right.

2 MR. PESCI: But you're open to the idea, assuming we
3 prove it, like, hey, if Person A did this, and Person B did
4 this, they're both responsible?

5 PROSPECTIVE JUROR NO. 546: Yeah.

6 MR. PESCI: Okay, all right. That was the main
7 focus. Now, are you retired now?

8 PROSPECTIVE JUROR NO. 546: No.

9 MR. PESCI: Okay, you're still working?

10 PROSPECTIVE JUROR NO. 546: Still have two kids in
11 high school. I got five, six years to go.

12 MR. PESCI: Understood. Totally get that. All
13 right, anything as far as the other things that we talked
14 about that you wanted to share?

15 PROSPECTIVE JUROR NO. 546: Oh. As I'm watching how
16 much -- how long this takes, and you brought up the subject
17 takes until next week, the end of next week, I am supposed to
18 make a presentation, I believe it's in Ely; and Monday the
19 24th, I'm due in court in Fort Collins, Colorado.

20 MR. PESCI: Okay. The presentation in Ely, what day
21 is that?

22 PROSPECTIVE JUROR NO. 546: It's the 20th.

23 MR. PESCI: So let's see. So is that Thursday?

24 PROSPECTIVE JUROR NO. 546: It's next Thursday.

25 MR. PESCI: Thursday? Okay.

1 PROSPECTIVE JUROR NO. 546: My birthday's the 21st,
2 so.
3 MR. PESCI: Oh, don't want to be in court that day?
4 PROSPECTIVE JUROR NO. 546: No.
5 MR. PESCI: All right. So the 21st, you have a
6 potential conflict?
7 PROSPECTIVE JUROR NO. 546: 20th.
8 MR. PESCI: 20th?
9 PROSPECTIVE JUROR NO. 546: And the 24th for sure.
10 MR. PESCI: Okay, all right. Thank you.
11 PROSPECTIVE JUROR NO. 546: I just got my lawyer's
12 notice that we are scheduled for the 24th, Fort Collins.
13 MR. PESCI: Okay. All right, thank you very much,
14 sir. If you could pass the microphone over.
15 Okay. Trying to find your badge number, Ms. Bell.
16 554?
17 PROSPECTIVE JUROR NO. 554: Yeah, 554.
18 MR. PESCI: Thank you so much for being here.
19 You've got two kids, correct?
20 PROSPECTIVE JUROR NO. 554: Correct.
21 MR. PESCI: All right. And if I remember correctly,
22 they're of age where they can work, correct?
23 PROSPECTIVE JUROR NO. 554: Correct.
24 MR. PESCI: And what do they do again? I apologize.
25 PROSPECTIVE JUROR NO. 554: One's a dental

1 assistant, and one works for Wells Fargo.

2 MR. PESCI: Is that here in Las Vegas?

3 PROSPECTIVE JUROR NO. 554: Yes, here in Las Vegas.

4 MR. PESCI: Okay. When they were younger, did they

5 ever have any disputes?

6 PROSPECTIVE JUROR NO. 554: My oldest did, yes.

7 MR. PESCI: All right. With each other?

8 PROSPECTIVE JUROR NO. 554: Yes.

9 MR. PESCI: Right.

10 PROSPECTIVE JUROR NO. 554: They didn't even talk

11 until after high school.

12 MR. PESCI: Did you have to kind of work with them

13 on that?

14 PROSPECTIVE JUROR NO. 554: Yes, yes.

15 MR. PESCI: Did you sometimes have to resolve

16 conflicts or allegations that they both made?

17 PROSPECTIVE JUROR NO. 554: Yes.

18 MR. PESCI: Do you feel you're in a position, based

19 on your experience, to do that kind of thing?

20 PROSPECTIVE JUROR NO. 554: Yes.

21 MR. PESCI: Could you do that in this case?

22 PROSPECTIVE JUROR NO. 554: Yes.

23 MR. PESCI: Anything about sitting in judgment of

24 another human being that would prevent you from serving?

25 PROSPECTIVE JUROR NO. 554: No.

1 MR. PESCI: Okay, kind of paused for a second there.
2 PROSPECTIVE JUROR NO. 554: I just don't like it.
3 MR. PESCI: Okay. That's understandable, right?
4 PROSPECTIVE JUROR NO. 554: Yeah.
5 MR. PESCI: The question is though, if you're
6 selected, there's a responsibility to assess the facts, right?
7 Is that something you think you could do?
8 PROSPECTIVE JUROR NO. 554: Yes.
9 MR. PESCI: All right, thank you so much, ma'am.
10 PROSPECTIVE JUROR NO. 554: I do have a conflict.
11 MR. PESCI: Okay.
12 PROSPECTIVE JUROR NO. 554: On the 21st, I have
13 airplane tickets to Salt Lake to take my grand baby to a
14 gymnastics tournament.
15 MR. PESCI: Yes. Yeah, I remember.
16 PROSPECTIVE JUROR NO. 554: So will we -- I'm just
17 hoping we'll be done by then.
18 MR. PESCI: So we've got some conflicts at the end
19 of the week next week?
20 PROSPECTIVE JUROR NO. 554: Right, right.
21 MR. PESCI: All right, thank you so much, ma'am. Is
22 it all right if I grab the mic, Your Honor?
23 THE COURT: Absolutely.
24 MR. PESCI: Okay. See, Parker's going to do
25 something.

1 PROSPECTIVE JUROR NO. 556: 556.

2 MR. PESCI: Look at that, right to it. Thank you

3 very much. And last name?

4 PROSPECTIVE JUROR NO. 556: Delgadillo.

5 MR. PESCI: For the record. Thank you. All right,

6 sir. You've been in Las Vegas for the past 16 years?

7 PROSPECTIVE JUROR NO. 556: Yes, sir.

8 MR. PESCI: Okay, and I apologize. I was trying to

9 figure out -- you said your wife worked at the Mirage, did you

10 say Workforce?

11 PROSPECTIVE JUROR NO. 556: Workforce, yes.

12 MR. PESCI: What does that mean?

13 PROSPECTIVE JUROR NO. 556: So like, that's who you

14 call when you want to call in. She gives you the point,

15 because they go by points, and she gets somebody to cover the

16 shift that's an on-call person.

17 MR. PESCI: Okay, all right. Makes sense now, okay.

18 And then, what you're doing now is roadside assistance,

19 correct?

20 PROSPECTIVE JUROR NO. 556: Yes, sir.

21 MR. PESCI: And in that capacity, have you ever

22 dealt with either Highway Patrol or Metro in maybe some car --

23 PROSPECTIVE JUROR NO. 556: Not at all, no.

24 MR. PESCI: No interactions with them in their job?

25 PROSPECTIVE JUROR NO. 556: No.

1 MR. PESCI: Okay. All right. Any reason why you
2 couldn't be fair and impartial to either side?

3 PROSPECTIVE JUROR NO. 556: Not at all.

4 MR. PESCI: Any reason why you couldn't make a
5 judgment about another person, about whether they did or
6 didn't do something?

7 PROSPECTIVE JUROR NO. 556: No.

8 MR. PESCI: Okay. Thank you very much, sir.

9 PROSPECTIVE JUROR NO. 556: Thank you.

10 MR. PESCI: Pass it on to Mr. Randall.

11 PROSPECTIVE JUROR NO. 557: Yeah. 557.

12 MR. PESCI: Thank you. You said it's a small --
13 your -- could you tell me your business again? Small computer
14 software?

15 PROSPECTIVE JUROR NO. 557: Sure. It's -- it's a
16 small company. It's just me, in effect. It's an LLC. I
17 actually work with a company that's based in Geneva that sell
18 corporate treasury solutions to major corporations, and I'm
19 their representative in the US, selling to US corporations.

20 MR. PESCI: Okay.

21 PROSPECTIVE JUROR NO. 557: So they have about 15
22 people, and I'm the only person that works for them in the US.

23 MR. PESCI: How long have you been doing that?

24 PROSPECTIVE JUROR NO. 557: I've been doing that for
25 four years now.

1 MR. PESCI: Here in Vegas?

2 PROSPECTIVE JUROR NO. 557: No. Before here -- I've

3 been in Vegas two-and-a-half years. Before that, I was in

4 Washington State for two years.

5 MR. PESCI: Okay. How are you enjoying that

6 contrast between Washington State and Las Vegas?

7 PROSPECTIVE JUROR NO. 557: Well, before Washington

8 State, I was in California. And so Washington State was just

9 -- I'm sorry if anyone lives there, but -- or lived here. But

10 it was very rainy, very gray, and very depressing, so it's

11 nice to be back south again.

12 MR. PESCI: So you enjoy the sun more?

13 PROSPECTIVE JUROR NO. 557: Absolutely.

14 MR. PESCI: All right. You mentioned earlier about

15 concerns or feelings based on potentially a co-defendant

16 testifying. If I've understood correctly, you said you might

17 have some suspicion, but you're willing to listen?

18 PROSPECTIVE JUROR NO. 557: Absolutely, yeah.

19 MR. PESCI: You're not closed off to it?

20 PROSPECTIVE JUROR NO. 557: Not closed off. You

21 know, always a little bit suspicious of that kind of thing,

22 but --

23 MR. PESCI: Sure.

24 PROSPECTIVE JUROR NO. 557: -- you know, willing to

25 see. I have an open mind to all the evidence.

1 MR. PESCI: Gotcha. All right. Anything else as
2 far as concerns with serving?
3 PROSPECTIVE JUROR NO. 557: No, not at all.
4 MR. PESCI: Do you think you can be fair to both
5 sides?
6 PROSPECTIVE JUROR NO. 557: I do, sir.
7 MR. PESCI: Thank you very much.
8 PROSPECTIVE JUROR NO. 557: Thank you.
9 MR. PESCI: Your Honor, may we approach?
10 THE COURT: Yes.
11 (Bench conference)
12 MR. PESCI: So, Judge, I wanted to -- Giancarlo
13 Pesci for the State. I wanted to make a challenge for cause
14 for Ms. Young.
15 THE COURT: Which one is she?
16 MR. SANFT: Which one is that?
17 MR. PESCI: She's in Seat 18, and --
18 THE COURT: Seat 18?
19 MR. PESCI: -- she's Badge number 485. She's the
20 individual who, on multiple occasions, became very emotional
21 during the process of explaining her brother-in-law's case and
22 the situation. And she indicated that it would give her pause
23 to, in essence, do her job.
24 She said that she didn't necessarily disagree with
25 the law, but she disagreed with the punishment, and she even

1 made the comment about how maybe he should just be put on
2 probation. I'm concerned, the State's concerned, that her
3 emotions will substantially -- or potentially substantially
4 impair her ability to fulfill her duty as a juror, and based
5 on that, we're making a challenge for cause.

6 THE COURT: Any objection?

7 MR. SANFT: Do you have an objection to it?

8 MR. RUGGEROLI: Yeah.

9 MR. SANFT: Well, I think I should have an
10 opportunity to traverse a little bit more about that issue as
11 to why she was emotional. I think she was more emotional
12 because of the fact that it's a family member who obviously
13 needed help and exhibited this type of behavior. I think that
14 she was asked yesterday whether or not she could be fair and
15 impartial, and I think she said yes.

16 MR. PESCI: Mr. Sanft, I apologize, and also Mr.
17 Ruggeroli. Obviously, they have the right to that. I just
18 didn't want to pass the panel, and tell you I was passing it
19 for cause, when in fact --

20 THE COURT: Okay.

21 MR. PESCI: -- I do have a cause challenge.

22 THE COURT: Okay.

23 MR. PESCI: And so --

24 MR. SANFT: You want to --

25 THE COURT: I mean, I will allow you to --

1 MR. PESCI: I'm not trying to short-circuit it at
2 all.
3 THE COURT: I will allow you to --
4 MR. SANFT: We could just reserve that until the
5 end.
6 THE COURT: -- traverse Ms. Young --
7 MR. SANFT: Okay.
8 MR. PESCI: Right.
9 THE COURT: -- if you'd like to, and then I can just
10 hold him off on the challenge for cause.
11 MR. SANFT: Yes, ma'am.
12 MR. PESCI: And then, I'm just a little concerned
13 Ms. Newell is missing a test.
14 THE COURT: With who?
15 MR. PESCI: Ms. Newell is missing a test, but --
16 THE COURT: I know, but she told me yesterday --
17 MR. PESCI: Yeah.
18 THE COURT: I mean, and I'll give her whatever she
19 wants me to. It's undergrad.
20 MR. PESCI: I was actually going to ask if you could
21 mention that.
22 THE COURT: Yeah, I will.
23 MR. PESCI: So it doesn't appear that we were trying
24 to suck up, but like --
25 MR. SANFT: Yeah.

1 THE COURT: Yeah, of course.
2 MR. PESCI: Okay, thank you.
3 THE COURT: Okay, all right.
4 MR. SANFT: Oh, by the way, just one more. What
5 about the grandma that's going to Salt Lake for her daughter's
6 thing?
7 MR. PESCI: It's the 21st.
8 MR. SANFT: I mean, can we --
9 THE COURT: Yeah.
10 MR. SANFT: -- just do that now, and just --
11 THE COURT: Well, do you think we'll be done?
12 MR. PESCI: I hope so. Depends on --
13 THE COURT: Yeah, kind of hoping we'll just be done.
14 MR. SANFT: Well, what if they're still in
15 deliberation by the end of Thursday? I mean, that's the
16 problem.
17 THE COURT: Then we'll keep them --
18 MR. SANFT: But grandma --
19 THE COURT: -- until they reach a verdict.
20 MR. SANFT: But she's got to go to Salt Lake for her
21 granddaughter.
22 THE COURT: I know, I'm just --
23 MR. PESCI: Maybe you could ask her when she comes
24 back --
25 THE COURT: I'm just hoping that we'll be --

1 MR. PESCI: -- how long the trip is.
2 MR. SANFT: Okay.
3 THE COURT: I'm just hoping that we'll be done.
4 MR. SANFT: Okay.
5 THE COURT: Okay?
6 MR. PESCI: 21st is Thursday, right?
7 THE COURT: Pardon?
8 MR. PESCI: The 21st is Thursday?
9 THE COURT: The 21st is --
10 MR. RUGGEROLI: Isn't it Friday?
11 THE COURT: -- a Friday.
12 MR. PESCI: It's Friday? Okay.
13 THE COURT: Okay, here's the thing I'm concerned
14 about. That gentleman said he wanted to be in Ely on
15 Thursday. Like, if we're not done, he's not going.
16 MR. SANFT: I know.
17 THE COURT: So I don't know if you want to --
18 MR. SANFT: Can we just --
19 THE COURT: -- follow up with that.
20 MR. SANFT: I mean, is it all right if we just agree
21 right now to strike, and just put people in there now, so we
22 don't have to deal with that later and waste time? I mean, I
23 don't --
24 THE COURT: Well, who do you want to strike?
25 MR. SANFT: What if we just did -- like, the

1 gentleman that needs to go to Fort Collins, and then the
2 grandma. I feel bad for grandma.

3 THE COURT: Number 19?

4 MR. PESCI: I know, Judge. I think --

5 THE COURT: Which one is he?

6 MR. PESCI: He's Mr. Kubota, he's Seat 29.

7 THE COURT: Yeah.

8 MR. PESCI: He's Badge --

9 THE COURT: I really like him.

10 MR. SANFT: I like him, too.

11 MR. PESCI: He's Badge number 546.

12 MR. SANFT: I think he'd be really good.

13 THE COURT: I think he'd be a great juror.

14 MR. SANFT: Yeah.

15 THE COURT: I mean, here's the deal --

16 MR. SANFT: He'd be smart.

17 THE COURT: -- he won't be going on Thursday if
18 we're not done.

19 MR. PESCI: I'm more concerned with him because
20 that's Thursday. If I understand, Ms. Bell, I think, is
21 Friday.

22 THE COURT: Uh-huh.

23 MR. PESCI: So maybe you could follow up with when
24 she's flying, but I think that's Friday, and I really expect
25 this to be done by next Friday.

1 THE COURT: Okay. Well, I can talk to Mr. Kubota.
2 MR. SANFT: And I think he'd be one of the
3 alternates anyhow, so necessarily, he won't even be on --
4 THE COURT: Well, it just depends on how you guys
5 exercise your challenges.
6 MR. PESCI: Right. Well, I agree with you. He's
7 probably not going to make it to the 12.
8 MR. SANFT: Yeah, (indiscernible).
9 MR. PESCI: And on that note, are we going to do two
10 alternates?
11 THE COURT: Um-hum.
12 MR. PESCI: And then --
13 THE COURT: Yeah, so 14.
14 MR. SANFT: Okay.
15 MR. PESCI: Okay, perfect.
16 THE COURT: 14 jurors. All right, I'll follow up --
17 MR. PESCI: Thank you.
18 THE COURT: -- with Kubota.
19 (End of bench conference)
20 THE COURT: All right. Ms. Newell, I just want to
21 make sure you know that I'm happy to give you a letter. I
22 remembered, and you were -- we went looking for you yesterday,
23 and you were already gone. So if you want that letter today,
24 I'm happy to provide it so you can give it to your professor,
25 because I don't want you to have any issues because you didn't

1 take that test today.

2 PROSPECTIVE JUROR NO. 468: Okay, thank you.

3 THE COURT: Do you want it today?

4 PROSPECTIVE JUROR NO. 468: Yes, please.

5 THE COURT: Okay, then I'll make sure it's done, and
6 Officer Hawkes will provide it to you.

7 And then, Mr. Kubota, I have a concern -- where's
8 that microphone at? Okay. I just have a concern, because you
9 indicated on voir dire from the District Attorney that you had
10 plans to be in Ely on next Thursday --

11 PROSPECTIVE JUROR NO. 546: Yes.

12 THE COURT: -- February 20th?

13 PROSPECTIVE JUROR NO. 546: Yes.

14 THE COURT: Okay. And you understand that if you're
15 selected to serve on this jury panel and we're not done by
16 then, that would be a problem? I would tell you, you can't go
17 to Ely, you got to stay here because we're still in trial.

18 PROSPECTIVE JUROR NO. 546: Right.

19 THE COURT: How would that affect you?

20 PROSPECTIVE JUROR NO. 546: I believe it's just
21 meeting with a city council, so it's --

22 THE COURT: Okay.

23 PROSPECTIVE JUROR NO. 546: We'd just have to make
24 it later in the --

25 THE COURT: Okay, so it wouldn't be --

1 PROSPECTIVE JUROR NO. 546: -- schedule, but.
2 THE COURT: -- like the end of the world if you
3 weren't there next Thursday?
4 PROSPECTIVE JUROR NO. 546: Right.
5 THE COURT: Okay.
6 PROSPECTIVE JUROR NO. 546: Now, the one in Fort
7 Collins, that one is. It's a million dollar lawsuit and such.
8 THE COURT: Right, the -- you have to be in court,
9 and that's --
10 PROSPECTIVE JUROR NO. 546: Right.
11 THE COURT: -- the following Monday, correct?
12 PROSPECTIVE JUROR NO. 546: Right, correct.
13 THE COURT: I think you said the 24th?
14 PROSPECTIVE JUROR NO. 546: 24th.
15 THE COURT: Okay, yeah. I believe that we'll have
16 no issues, but if we did and you were on the panel, I would
17 allow you to leave.
18 PROSPECTIVE JUROR NO. 546: Thank you.
19 THE COURT: Okay? But thank you. Thank you very
20 much. And is the State going to pass the panel?
21 MR. PESCI: Based on the representations at the
22 bench, yes, Your Honor.
23 THE COURT: Okay. All right, Mr. Sanft, do you want
24 to -- I don't know -- I don't care who goes first. Mr. Sanft,
25 you can go first.

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

2 THE COURT: You can have a seat though. Mr. Sanft
3 will grab the microphone, and he'll hand it to whichever juror
4 he wants to start off.

5 MR. SANFT: All right.

6 Good morning. My name's Michael Sanft, again. I
7 represent Raekwon Robertson, who's seated here to my right,
8 wearing the red shirt.

9 Let me just ask questions here of all of you as a
10 whole first. This is a case involving accusations that have
11 been made, charges that have been made against my client, Mr.
12 Robertson, and the other co-defendants on this case.

13 Does anyone here have an issue with the idea that
14 you have to evaluate each person separately with regards to
15 the charges? Meaning that, just because the two of them are
16 sitting there at defense counsel table doesn't mean that
17 they're both equally responsible or criminally responsible for
18 any of the charges that have been charged against them. Does
19 anyone have a problem with that? Uniform no response. Okay.

20 Let me put it this way. Has anyone ever heard of
21 the term, where there's smoke, there's fire?

22 MEMBERS OF THE PROSPECTIVE JURY PANEL: Yes.

23 MR. SANFT: Okay. Now, believe it or not, I've been
24 doing this for a minute, and there's been times when I've had
25 entire panels say no, which is strange. Okay.

1 Well, let me ask you this. When I say that there's
2 smoke, there's fire, does anyone here not understand how that
3 could be applicable with the idea of Mr. Robertson sitting
4 over there at defense counsel table? Did I not ask the right
5 question?

6 All right, let me try this again. All right. I'm
7 just going to pick on somebody, how's that? And I will pick
8 on the first juror that I see looking directly at me, which
9 means everyone's going to look away.

10 But Ms. Bruer?

11 PROSPECTIVE JUROR NO. 019: Yes.

12 MR. SANFT: And this is Juror number --

13 PROSPECTIVE JUROR NO. 019: 019.

14 MR. SANFT: Thank you, and I'll just get the
15 microphone over to you. Thank you. Question?

16 PROSPECTIVE JUROR NO. 019: Well, I understand the
17 concept, where there's smoke, there's fire, but just because
18 one of them did it does not necessarily mean that the other
19 one was involved or did it. I'd have to have more evidence.

20 MR. SANFT: Okay, thank you. I appreciate that.
21 Let me ask you -- I'm going to follow up with this
22 (indiscernible).

23 PROSPECTIVE JUROR NO. 019: Okay.

24 MR. SANFT: Now, the mere fact that Mr. Robertson's
25 sitting over here, does anyone besides -- including yourself,

1 Ms. Bruer, feel that, well, he must have done something;
2 otherwise, why would he be sitting over here at this table?
3 Does anyone have that kind of feeling?
4 PROSPECTIVE JUROR NO. 409: Yes.
5 MR. SANFT: Okay. And I'm going to ask you --
6 PROSPECTIVE JUROR NO. 019: No, I don't.
7 MR. SANFT: Oh, okay. Thank you, Ms. Bruer.
8 PROSPECTIVE JUROR NO. 019: I think I'd have to see
9 real evidence.
10 MR. SANFT: Okay, thank you, and I appreciate that.
11 Mr. Casucci?
12 PROSPECTIVE JUROR NO. 409: Hi. Vito Casucci, 409.
13 MR. SANFT: Were you the one that said "Yes"
14 emphatically? I heard somebody say yes. Oh. All right, and
15 that's Mr. --
16 PROSPECTIVE JUROR NO. 410: McGinty, 410.
17 MR. SANFT: McGinty, yes. It was very emphatic.
18 Why -- can you --
19 PROSPECTIVE JUROR NO. 410: Well, to be to this
20 point, let's face it, to be sitting in that chair, then
21 there's got to be some considerable evidence that provokes the
22 defendants to be sitting here, so.
23 MR. SANFT: Okay. And I think the State had asked
24 this question earlier, I believe of Ms. -- Ms. McCarthy, about
25 the different standards of proof, right? I'm going to ask Ms.

1 McCarthy some questions about being on a grand jury, which is
2 what's called probable cause. Now, just to let you know,
3 probable just means you can charge someone with a crime; it
4 doesn't mean they're guilty beyond a reasonable doubt. Do you
5 understand the difference?

6 PROSPECTIVE JUROR NO. 410: Yes.

7 MR. SANFT: Okay. And if you were selected as a
8 juror in this case, you understand that you would have to hold
9 the State of Nevada to its burden of proving to you each
10 element of each crime beyond a reasonable doubt? Do you
11 understand that?

12 PROSPECTIVE JUROR NO. 410: I understand it. I do
13 not believe that that is always the case, and with that, it is
14 circumstantial to what is presented in each case. But I think
15 that proving beyond a reasonable doubt is lost sometimes in
16 the system, and people go with either the pressure of the --
17 the jurors, or somebody makes a speech, or a pitch, or you've
18 got a slick attorney. And so, you know, people are persuasive
19 and are persuaded, people are gullible by human nature, and
20 so, no, I don't really believe that that's always the case.

21 MR. SANFT: Okay. So, and are you saying that,
22 because of the fact it's -- as a matter of human nature, we
23 are all susceptible to subjective things -- subjective issues
24 as much as objective issues like facts, right?

25 PROSPECTIVE JUROR NO. 410: Yeah. Most of society's

1 not capable of processing really the facts. They go with
2 their instincts and consider that a fact.

3 MR. SANFT: Well, and just tell me if you agree with
4 me on this position. It would be fair, of course, that if the
5 criminal justice system was a computer, and you just put in
6 certain facts into a computer, and it would spit out a result,
7 that that's really, on one level, a computer, right? That's
8 not human beings?

9 PROSPECTIVE JUROR NO. 410: Who put it in, and what
10 data was put, where'd the data come from, who did the coding.

11 MR. SANFT: Okay, you're being way too smart for me
12 right now. I'm just saying as a basic premise, right?

13 PROSPECTIVE JUROR NO. 410: Sure.

14 MR. SANFT: All right. But once again, you're going
15 to be expected to bring your everyday experience. That's one
16 of the reasons why we have juries is, you as an individual,
17 your background, your history, those things are important in
18 weighing evidence to make a determination whether the State of
19 Nevada has proven its case beyond a reasonable doubt. Are you
20 okay with that idea?

21 PROSPECTIVE JUROR NO. 410: Yes.

22 MR. SANFT: Okay. So, and I guess in the one level,
23 with jury verdicts and so forth, if you're selected as one of
24 the 12, and you're back into the deliberation process, and
25 you're arguing with your juror -- fellow jurors on what the

1 facts are and whether or not the State has proven its case
2 beyond a reasonable doubt, that it is messy, are you okay with
3 this idea that when you go back there, there may be two other,
4 three other people that disagree with what you believe you
5 heard during the course of the a trial? Are you going to be
6 okay with that idea?

7 PROSPECTIVE JUROR NO. 410: No.

8 MR. SANFT: Okay, and why is that?

9 PROSPECTIVE JUROR NO. 410: Once I have my opinion,
10 I'll stick to it.

11 MR. SANFT: Okay, and that's fair. And I appreciate
12 that, because it sounds that you would be the type of person
13 that, if you believe something, you would stick by what you
14 believe, right?

15 PROSPECTIVE JUROR NO. 410: Always.

16 MR. SANFT: Now, as you sit here right now though,
17 do you -- have you already formulated an opinion as to this
18 case?

19 PROSPECTIVE JUROR NO. 410: An opinion, or -- no.

20 MR. SANFT: You have not? Okay. And when do you
21 believe you're going to form an opinion on this case?

22 PROSPECTIVE JUROR NO. 410: I think that's a vague
23 question. It would depend on the process and what happens
24 through the process of the trial; what's presented, who's up
25 there, who's got the best lines, so.

1 THE COURT: Who's got the best what?
2 PROSPECTIVE JUROR NO. 410: Lines.
3 THE COURT: What does that mean?
4 PROSPECTIVE JUROR NO. 410: Who's been trained the
5 best on the stand, and who's got the best --
6 MR. SANFT: I would say --
7 PROSPECTIVE JUROR NO. 410: -- vocabulary.
8 MR. SANFT: -- just persuaded, but just whoever
9 persuades you one way or the other, right?
10 PROSPECTIVE JUROR NO. 410: Yeah. Who's most
11 believable, and do I really believe them.
12 MR. SANFT: Okay. Now, during the time that you --
13 if you're selected as a juror in this case, would you be the
14 type of juror -- because the process will go as follows. If
15 you're picked, then you're going to hear what's called opening
16 statements between -- well, the State of Nevada will tell you
17 what they believe the evidence is going to show, and then the
18 defense might get up, and they might say -- they don't have
19 to, but they can get up and say what they believe the evidence
20 will show.
21 Are you the type of person that, once you hear the
22 opening from the State, say, okay, I'm done here, and then
23 spend --
24 PROSPECTIVE JUROR NO. 410: No.
25 MR. SANFT: -- the rest of the time sitting around,

1 just waiting for the end of this thing to be over? Would you
2 be that type of juror?

3 PROSPECTIVE JUROR NO. 410: No to your first
4 question, but waiting for it to get over, yes.

5 MR. SANFT: Okay. And with regards to waiting for
6 it to get over -- and once again, I just want to make sure
7 that we are picking good jurors for this panel. Waiting to
8 get over. Would you be the type of person that would sit
9 there and just completely zone out the rest of the time you're
10 here because of the fact that you're just waiting for this
11 thing to be over?

12 PROSPECTIVE JUROR NO. 410: Full transparency. It's
13 very distracting with everything that goes on with my daily
14 routine and daily life, but yeah, it would be extremely
15 distracting, so.

16 MR. SANFT: Okay.

17 PROSPECTIVE JUROR NO. 410: Knowing that, as soon as
18 I turn on my phone, I've got to get outside, and catch up, and
19 respond, and make decisions. And so, yeah, it's -- this is
20 problematic for me.

21 MR. SANFT: All right. And with that being said,
22 would you consider yourself to be the type of juror that would
23 be appropriate for this kind of case here today?

24 PROSPECTIVE JUROR NO. 410: In another day, another
25 time, yes.

1 MR. SANFT: But for this particular --

2 PROSPECTIVE JUROR NO. 410: Today, this week, no.

3 MR. SANFT: All right. And so, the last question
4 then is that would you be the type of juror that could be
5 considered to be fair and impartial if you were selected to be
6 a juror on this case?

7 PROSPECTIVE JUROR NO. 410: Of course.

8 MR. SANFT: But it's just a matter of your other
9 obligations that would cause you to not devote 100 percent
10 attention and focus on this case?

11 PROSPECTIVE JUROR NO. 410: Yeah. If -- you know,
12 if I find something that rubs me wrong, then I could begrudge
13 that.

14 MR. SANFT: Okay, I appreciate that. Thank you for
15 sharing with us. Anyone else felt during the time that I've
16 spoken here with Mr. McGinty that there's something that
17 triggers in their mind that they would like to raise their
18 hand over? I'm not scaring anyone, am I? Okay. Thank you, I
19 appreciate that. That's a uniform no response, by the way, on
20 that, for the record.

21 Let me ask you this. Now, we're talking -- the
22 charges that we're talking about in this case are very serious
23 charges. In fact, they're probably the most serious charges
24 that anyone could ever face, the idea of they're accused of
25 killing someone else. Does anyone not believe that? Okay.

1 Now, during the time that we're spending together,
2 there's been times when we're able to chuckle, and smile, and
3 there is a certain levity when we are sitting here as a group.
4 Does anyone have a problem with that; that, as human beings,
5 we can have some levity, even amongst something as serious as
6 a murder trial? Does anyone have any issue with that? All
7 right, Mr. -- I apologize here.

8 PROSPECTIVE JUROR NO. 513: 513, Michael Laurie.

9 MR. SANFT: You already know the process. Thank
10 you, Mr. Laurie.

11 PROSPECTIVE JUROR NO. 513: No, yeah, I -- yesterday
12 when I was here, I had a moment where there was some laughter
13 and smiling, and I felt it was a little unnecessary.

14 MR. SANFT: Okay. Now, during the time that you
15 spend here with us, if you're selected as a juror, there may
16 be times where, if you're in the hallway, and I'm walking down
17 the hallway, and I may be smiling or laughing. Would that be
18 something that would tell you that somehow I'm not taking this
19 seriously?

20 PROSPECTIVE JUROR NO. 513: No, only in the
21 courtroom.

22 MR. SANFT: Okay, because I do have a sense of
23 humor.

24 PROSPECTIVE JUROR NO. 513: Um-hum, I hope so.

25 MR. SANFT: And I -- yeah. Getting into this job,

1 sometimes you have to have a sense of humor --

2 PROSPECTIVE JUROR NO. 513: Sure.

3 MR. SANFT: -- right? But just to let you know,
4 would you have any issue if any of us here in the courtroom
5 during the time period that we spend together, if there's a
6 chuckle on something that isn't a serious portion to the case,
7 but say something that happens, would you be the type of
8 person that would hold that against anybody?

9 PROSPECTIVE JUROR NO. 513: Not relating to the
10 case, no, I wouldn't hold it against you.

11 MR. SANFT: Thank you, I appreciate it. Let me ask
12 you a few questions, since you're holding the mic --

13 PROSPECTIVE JUROR NO. 513: Sure.

14 MR. SANFT: -- and standing up there. You live in
15 Mesquite?

16 PROSPECTIVE JUROR NO. 513: Correct.

17 MR. SANFT: Right? And you're making efforts to
18 come down every day from Mesquite to here?

19 PROSPECTIVE JUROR NO. 513: Yeah.

20 MR. SANFT: You're not driving?

21 PROSPECTIVE JUROR NO. 513: I am today, yes.

22 MR. SANFT: Okay.

23 PROSPECTIVE JUROR NO. 513: Today, yes, sir.

24 MR. SANFT: Okay. So during the time, if you're
25 selected as a juror in this case, would you be able to

1 continue to do that in order for you to be here?

2 PROSPECTIVE JUROR NO. 513: For next week, three or
3 four days, correct, I could do that.

4 MR. SANFT: Okay. And if you were to be taking the
5 shuttle and so forth, are you -- would you be paying that?

6 PROSPECTIVE JUROR NO. 513: I would, yeah. If I
7 have to take the shuttle, yeah, it would be coming out of my
8 pocket and it would be expensive.

9 MR. SANFT: Okay. Well, I appreciate you making the
10 effort to be here.

11 PROSPECTIVE JUROR NO. 513: Sure, I understand.

12 MR. SANFT: Thank you. Let me see if I had any
13 other questions for you. Nope, that's it. Thank you so much.
14 I appreciate it.

15 PROSPECTIVE JUROR NO. 513: Sure.

16 MR. SANFT: All right. Ms. Young? I know, you're
17 sitting there so quiet, too. For those of you who are
18 teachers, and those of you who give lectures, you can look out
19 at an audience and kind of know who does not want to be
20 picked. And just to let you know, I do not get that sense at
21 all from you.

22 PROSPECTIVE JUROR NO. 485: Oh, okay.

23 MR. SANFT: All right. But Ms. Young, this is --

24 PROSPECTIVE JUROR NO. 485: Yes.

25 MR. SANFT: -- badge number --

1 PROSPECTIVE JUROR NO. 485: 485.
2 MR. SANFT: 485. We had some very sensitive
3 discussion with you yesterday --
4 PROSPECTIVE JUROR NO. 485: Yes.
5 MR. SANFT: -- about your family member?
6 PROSPECTIVE JUROR NO. 485: Yes.
7 MR. SANFT: And I think there was some discussion as
8 to your emotional reaction to what had happened with your
9 brother-in-law?
10 PROSPECTIVE JUROR NO. 485: Yes. Sorry, I'm just
11 sensitive.
12 MR. SANFT: That's fine. And just to let you know,
13 in all honesty, not to be humorous about this, this is a safe
14 place.
15 PROSPECTIVE JUROR NO. 485: Okay.
16 MR. SANFT: And the reason why I say that is because
17 you're not being held in judgment for anything.
18 PROSPECTIVE JUROR NO. 485: Okay.
19 MR. SANFT: We're just trying to find people that
20 can be the best jurors on this case.
21 With regards to your brother-in-law, how close were
22 you to him?
23 PROSPECTIVE JUROR NO. 485: Very close. I've been
24 with my husband for 21 years, since we were 90 -- excuse me,
25 19. So I've known him since he was in the eighth grade, my

1 brother-in-law.

2 MR. SANFT: All right. And I'm assuming that you
3 were aware of any potential problems that he had in his life
4 personally that --

5 PROSPECTIVE JUROR NO. 485: Yes.

6 MR. SANFT: -- probably led him to the point where
7 he was there in federal court?

8 PROSPECTIVE JUROR NO. 485: Yes.

9 MR. SANFT: Okay. Now, because that happened, and
10 because he was sentenced, my guess is that you probably were
11 feeling like he should have gotten something other than what
12 he received in --

13 PROSPECTIVE JUROR NO. 485: Yes.

14 MR. SANFT: All right. Now, you do understand that
15 he pled and took responsibility --

16 PROSPECTIVE JUROR NO. 485: Yes.

17 MR. SANFT: -- for what had happened with his case?

18 PROSPECTIVE JUROR NO. 485: Yes.

19 MR. SANFT: All right, and that this -- that was
20 federal court; this is state court?

21 PROSPECTIVE JUROR NO. 485: Yes.

22 MR. SANFT: All right. Is there anything at all
23 that would preclude you from being a fair and impartial juror
24 in this case, knowing that -- what happened with your
25 brother-in-law and what he was sentenced to in the federal

1 case?

2 PROSPECTIVE JUROR NO. 485: No.

3 MR. SANFT: Okay. Now, once again, we would love
4 for you to serve as a juror, but we want to make sure that
5 you'd be fair and impartial, meaning that you wouldn't do
6 something because you're thinking that these people over here
7 are not good people, or both people over here are not good
8 people. Is there anything at all that would tell us that you
9 wouldn't be an appropriate juror for this case?

10 PROSPECTIVE JUROR NO. 485: Well, my thing is I was
11 born and raised in Hawaii, so I was -- I was taught that we
12 always look at people and look at the good in them. That's,
13 like, my opinion on it. I would look at it that way. I just
14 think everybody has a good side to them, you know? They might
15 have did something that brought them to where they are today,
16 but I still look at, you know, the good points of them.

17 MR. SANFT: Okay.

18 PROSPECTIVE JUROR NO. 485: Yeah. I want to believe
19 that everybody is good, you know?

20 MR. SANFT: And would it be fair to say that what
21 you're talking about is like the spirit of Aloha, right?

22 PROSPECTIVE JUROR NO. 485: Yeah.

23 MR. SANFT: The idea that we all are friends, we're
24 all --

25 PROSPECTIVE JUROR NO. 485: Yes.

1 MR. SANFT: -- brothers and sisters on some level,
2 right?

3 PROSPECTIVE JUROR NO. 485: Yes.

4 MR. SANFT: Now, with that being said though, would
5 it be fair to say though that if someone does something that's
6 not correct or right, that even though you might have a spirit
7 of Aloha towards that person, they still have to be held
8 accountable and responsible for whatever it is they chose to
9 do on their own?

10 PROSPECTIVE JUROR NO. 485: Yes.

11 MR. SANFT: Okay. And that would include -- like,
12 say for instance, in this case, if you're selected as a juror,
13 even though you might feel something towards the people that
14 would be participating in this case --

15 PROSPECTIVE JUROR NO. 485: Um-hum.

16 MR. SANFT: -- that you would still hold the people
17 accountable for what they did or did not do, right?

18 PROSPECTIVE JUROR NO. 485: Yes.

19 MR. SANFT: Okay. And as a result, if the State of
20 Nevada is presenting evidence in this case, you wouldn't
21 necessarily just hold it against the State of Nevada and say,
22 well, it's the State of Nevada, and I'm just going to
23 disregard everything they say --

24 PROSPECTIVE JUROR NO. 485: No.

25 MR. SANFT: -- would you? Okay.

1 PROSPECTIVE JUROR NO. 485: No.

2 MR. SANFT: Thank you, I appreciate that.

3 PROSPECTIVE JUROR NO. 485: Thank you.

4 MR. SANFT: Now, let me ask the group here as a

5 whole, does anyone else know anyone else in the panel? I know

6 we had Ms. McCarthy, right? And her son. Anyone else here

7 know anyone from church, from work, from racket ball club,

8 something, golf?

9 PROSPECTIVE JUROR NO. 554: There was a guy

10 yesterday I worked with.

11 MR. SANFT: Okay.

12 THE COURT: Need you to state your name and badge

13 number.

14 PROSPECTIVE JUROR NO. 554: Oh, I'm sorry.

15 MR. SANFT: Yes.

16 PROSPECTIVE JUROR NO. 554: Roberta Bell, 554. But

17 he's not here today.

18 MR. SANFT: Okay.

19 PROSPECTIVE JUROR NO. 554: So.

20 MR. SANFT: Anybody else?

21 PROSPECTIVE JUROR NO. 554: No.

22 MR. SANFT: All right. Thank you, I appreciate

23 that.

24 PROSPECTIVE JUROR NO. 554: Um-hum.

25 MR. SANFT: In addition to that, when -- if you're

1 selected as a juror in this case, you will have an opportunity
2 to listen to the testimony of professionals, people that will
3 come forward and testify who do this on a regular basis;
4 police officers, crime scene analysts, that kind of thing.

5 Does anyone here have a problem with holding police
6 officers, crime scene analysts to their specific standard of
7 performance? Does anyone know what I mean?

8 PROSPECTIVE JUROR NO. 546: No.

9 PROSPECTIVE JUROR NO. 541: No.

10 MR. SANFT: Okay, let me ask you this. You are
11 Mr. --

12 PROSPECTIVE JUROR NO. 541: Widdison.

13 MR. SANFT: Widdison. And if you could just pass
14 the microphone over. And just for your --

15 PROSPECTIVE JUROR NO. 541: 541.

16 MR. SANFT: Thank you, I appreciate it.

17 Now, as a person who does internal accounting --
18 let's put it that way.

19 PROSPECTIVE JUROR NO. 541: That works.

20 MR. SANFT: Internal accounting for Deseret
21 Industries?

22 PROSPECTIVE JUROR NO. 541: That's correct.

23 MR. SANFT: You have certain expectations in your
24 job?

25 PROSPECTIVE JUROR NO. 541: Absolutely.

1 MR. SANFT: That you're held accountable to?

2 PROSPECTIVE JUROR NO. 541: Yes, sir.

3 MR. SANFT: So if you don't do your -- or the
4 expectations or the standard of performance in your case,
5 potentially you can get fired, you can demoted, you can get
6 all kinds of stuff, right?

7 PROSPECTIVE JUROR NO. 541: Absolutely, yes.

8 MR. SANFT: Okay. Now, would it be fair to say
9 that, as someone who does internal accounting, your standard
10 performance would be different from someone who's a pilot or
11 teacher?

12 PROSPECTIVE JUROR NO. 541: Of course, yes.

13 MR. SANFT: Okay. But if a pilot or a teacher were
14 to get up on the stand and testify, and it was established
15 that they had a certain standard performance they had to meet,
16 and they didn't meet that standard performance, would you be
17 able to hold them accountable for that?

18 PROSPECTIVE JUROR NO. 541: You're talking at their
19 -- at their job?

20 MR. SANFT: At their job.

21 PROSPECTIVE JUROR NO. 541: I'd have to understand
22 the whole 360 about it before I could form an opinion on it.
23 That would be hard just to say. I guess I'm not quite
24 understanding what you mean. I'm sorry.

25 MR. SANFT: You are such an accountant.

1 PROSPECTIVE JUROR NO. 541: I just -- I'm
2 analytical, I'm sorry. I'm hyper-analytical; it's just what I
3 do.

4 MR. SANFT: Well, let me ask you this, and that's
5 exactly what it is. If you understand -- it's all right,
6 there's no wrong answer. But if you understand what the
7 standard performance is --

8 PROSPECTIVE JUROR NO. 541: Uh-huh.

9 MR. SANFT: -- could you hold someone accountable to
10 that specific standard performance?

11 PROSPECTIVE JUROR NO. 541: If we're told to, yes.

12 MR. SANFT: Okay.

13 PROSPECTIVE JUROR NO. 541: Yes, I can.

14 MR. SANFT: Thank you. That's it.

15 PROSPECTIVE JUROR NO. 541: Okay.

16 MR. SANFT: I appreciate it. Since you've got the
17 microphone, let me ask you a couple more questions here.

18 PROSPECTIVE JUROR NO. 541: Okey-doke.

19 MR. SANFT: Sorry about that.

20 PROSPECTIVE JUROR NO. 541: That's okay.

21 MR. SANFT: Now, in Switzerland --

22 PROSPECTIVE JUROR NO. 541: Yes.

23 MR. SANFT: -- you said you were there on a church
24 mission?

25 PROSPECTIVE JUROR NO. 541: Yes.

1 MR. SANFT: What languages did you speak there?
2 PROSPECTIVE JUROR NO. 541: Just French.
3 MR. SANFT: No German or --
4 PROSPECTIVE JUROR NO. 541: No.
5 MR. SANFT: -- anything else?
6 PROSPECTIVE JUROR NO. 541: No.
7 MR. SANFT: All right. And when the situation
8 happened where you were robbed --
9 PROSPECTIVE JUROR NO. 541: Um-hum.
10 MR. SANFT: Do you -- is that a yes?
11 PROSPECTIVE JUROR NO. 541: Yes, yes, sorry.
12 MR. SANFT: Do you remember -- do you still remember
13 that situation?
14 PROSPECTIVE JUROR NO. 541: I do.
15 MR. SANFT: Okay. Was it during the day, or at
16 night?
17 PROSPECTIVE JUROR NO. 541: It was at night.
18 MR. SANFT: Okay. And was it outside proselytizing,
19 or was it inside your --
20 PROSPECTIVE JUROR NO. 541: No, we were inside
21 asleep. It was middle of the night.
22 MR. SANFT: Okay, so someone broke in and --
23 PROSPECTIVE JUROR NO. 541: They broke in the patio
24 door, um-hum.
25 MR. SANFT: Okay. Now, when the State had asked you

1 if the police report was filed, there was a police report that
2 was filed?

3 PROSPECTIVE JUROR NO. 541: Well, they -- I have to
4 assume so, because the police came. I never saw anything in
5 writing.

6 MR. SANFT: I see.

7 PROSPECTIVE JUROR NO. 541: But they came and wrote
8 stuff up.

9 MR. SANFT: Were you able to describe the individual
10 that was responsible?

11 PROSPECTIVE JUROR NO. 541: No, didn't see any of
12 them.

13 MR. SANFT: There was more than one person?

14 PROSPECTIVE JUROR NO. 541: Oh, yeah. We were both
15 held down; plus, one person was going through the apartment.

16 MR. SANFT: I see. Okay. And -- but you gave as
17 much information as you could to --

18 PROSPECTIVE JUROR NO. 541: Yes, sir.

19 MR. SANFT: -- the police officer that arrived?

20 PROSPECTIVE JUROR NO. 541: Yes.

21 MR. SANFT: But nothing ever happened as a result of
22 that?

23 PROSPECTIVE JUROR NO. 541: Not at all.

24 MR. SANFT: Okay, thank you.

25 PROSPECTIVE JUROR NO. 541: Um-hum.

1 MR. SANFT: Now, to the panel as a whole, has anyone
2 here ever read the Choose Your Own Adventure books? That's
3 how I got myself through law school, by the way, is Choose
4 Your Own Adventure. Anyone ever done that same thing?

5 PROSPECTIVE JUROR NO. 513: Yes.

6 MR. SANFT: Okay. And I just want to make sure
7 we're clear because -- for those of us who may be a little bit
8 younger that they don't understand what those books are.

9 The idea is that you had a book that wasn't
10 necessarily, you agree, from page 1 to page 100.

11 It would be, you'd read one portion, and then there
12 would be a choice at the bottom as to what you should choose
13 because of what happened on that page. And you would choose,
14 you know, go left, it would be on page 40; and then go right
15 would be on page 68. That's the kind of books I'm talking
16 about, okay?

17 Does anyone here believe that they're the type of
18 person that wants to just get to the end of the book already?
19 Has anyone ever done that, besides myself? No? All right,
20 that's -- okay.

21 Once again, here we go. This is Mr. McGinty on
22 number 410. I'm sorry, I apologize.

23 PROSPECTIVE JUROR NO. 410: McGinty, 410.

24 MR. SANFT: Yeah. You just want to get to the end
25 of the book?

1 PROSPECTIVE JUROR NO. 410: Today, yes. Yeah.
2 Typically, yeah.
3 MR. SANFT: Okay.
4 PROSPECTIVE JUROR NO. 410: You know, there's --
5 there's times where, yes, I feel like it's a waste of my time,
6 and it may not interest me, it may not be relevant to what's
7 going on. So yeah, I have those moments, but.
8 MR. SANFT: Okay, I appreciate that. Anybody else?
9 How come Mr. McGinty feels like he's the only person standing
10 on the line right now?
11 PROSPECTIVE JUROR NO. 513: Choose Your Own
12 Adventure book?
13 MR. SANFT: Yeah, and --
14 PROSPECTIVE JUROR NO. 513: You ruin it by
15 (indiscernible).
16 MR. SANFT: And I apologize. Mr. Laurie is badge
17 number --
18 PROSPECTIVE JUROR NO. 513: 410 (sic).
19 MR. SANFT: Okay. Anyone else besides Mr. McGinty
20 and Mr. Laurie? I think -- yeah, we'll just -- well, you can
21 just hold onto that for a second.
22 Mr. Devargas, if I could just pass the microphone
23 back over to you. Juror number 429. Photographer for the
24 Sun?
25 PROSPECTIVE JUROR NO. 429: Yes, correct.

1 MR. SANFT: All right. Did you go to school for
2 that?

3 PROSPECTIVE JUROR NO. 429: Yes.

4 MR. SANFT: Where did you go for that?

5 PROSPECTIVE JUROR NO. 429: CSN.

6 MR. SANFT: All right. And the -- did you ever do
7 any photography in high school?

8 PROSPECTIVE JUROR NO. 429: No.

9 MR. SANFT: So how did you become a photo
10 journalist?

11 PROSPECTIVE JUROR NO. 429: Initially, when I got
12 out of the Army, I went to school for graphic design. Halfway
13 through, I got bored with just sitting at a computer,
14 designing logos and brochures. Took a Photo 101 class just to
15 kind of spice it up; fell in love with photography.

16 MR. SANFT: I see.

17 PROSPECTIVE JUROR NO. 429: Um-hum.

18 MR. SANFT: And would it be fair to say that photo
19 journalism is a different type of photography versus say
20 fashion shoots or landscape photography, that kind of thing?

21 PROSPECTIVE JUROR NO. 429: Yes, that's correct.

22 MR. SANFT: All right. What would be the main
23 difference between say photo journalism versus some of those
24 other photography that we know to talk of?

25 PROSPECTIVE JUROR NO. 429: So, for commercial, it's

1 more you're creating an image. You're setting everything up;
2 the lighting, the model. You're creating a final image.

3 For photo journalism, you're capturing an image off
4 of real life that's happening then and there. There's no
5 stepping back and recreating a moment; you have to capture it
6 then and there. If you miss it, it's gone and over with.

7 MR. SANFT: Now --

8 PROSPECTIVE JUROR NO. 429: No interference as well,
9 either.

10 MR. SANFT: Okay. So you are aware of what's called
11 post-production?

12 PROSPECTIVE JUROR NO. 429: Yes.

13 MR. SANFT: Meaning that once you take an image,
14 photographers will sometimes download it into a computer, and
15 then they'll run Photoshop to clean up the image, or change
16 the image, or do something like that?

17 PROSPECTIVE JUROR NO. 429: Yes, that's correct.

18 MR. SANFT: What you're describing to us would tell
19 me that you don't use Photoshop?

20 PROSPECTIVE JUROR NO. 429: In photo journalism,
21 there is a small amount of Photoshop you could do; adjustments
22 to lighting. Maybe like, for example, in this courtroom, it's
23 very dark. I might brighten the image just because there's
24 not a lot of light in here. That's acceptable under the
25 standards of journalism.

1 MR. SANFT: I see.

2 PROSPECTIVE JUROR NO. 429: But I cannot manipulate
3 anything in the image. I can't retouch something out, bring a
4 person out of a photo, or change the background. All those
5 are completely off-limits in photo journalism.

6 MR. SANFT: Okay. If you're selected as a juror in
7 this case, would you be the type of person that would consider
8 this case based upon -- do you want the facts; do you want
9 color? I mean, how would that work for you if you were
10 selected as a juror in this case?

11 PROSPECTIVE JUROR NO. 429: It's based upon facts.
12 I want to know exactly what's going on and base my decision
13 off of that. I'm not trying to create a story in my head, or
14 think of what I assume is going to happen or has happened.

15 MR. SANFT: Okay, thank you. I appreciate that.
16 Thank you for sharing with us.

17 To the group as a whole, has everyone here -- has
18 everyone here been to school of some sort, whether it's
19 elementary school, high school, college, post-grad? Is that a
20 uniform yes? Anyone that would say no to that question?

21 MEMBERS OF THE PROSPECTIVE JURY PANEL: Yes.

22 MR. SANFT: Okay. Let me ask you this. If you're
23 selected as a juror in this case, does anyone here just absorb
24 information just by listening? Meaning, if you're selected as
25 a juror in this case, if I were to look over and see you, and

1 you're just with your arms folded and not taking a single
2 note, would that be a fair way of us describing how you
3 process information in this case? Would anyone be that type
4 of juror? All right, and this is Mr. --

5 PROSPECTIVE JUROR NO. 513: Laurie, 410 (sic).

6 MR. SANFT: Thank you. If I can just get the
7 microphone down to you. How do you do that?

8 PROSPECTIVE JUROR NO. 513: How do I do it? Just
9 like you said, just with my arms crossed and listen.

10 MR. SANFT: Okay. So if you're here with us, and
11 you're here until next Wednesday, for instance, and there's
12 been, you know, testimony from different witnesses, would you
13 be able to go back into the deliberation room and discuss
14 specifically details of the testimony of one person, another
15 person, with --

16 PROSPECTIVE JUROR NO. 513: Sure, yeah. I've never
17 been on a jury before, so I would probably take notes, but I'm
18 known for just listening a lot, yes.

19 MR. SANFT: Okay, and I appreciate that. Thank you.

20 PROSPECTIVE JUROR NO. 513: Sure.

21 MR. SANFT: Does anyone else have that same ability
22 as Mr. Laurie? Uniform no response.

23 Let me say this, and I want to make sure we're
24 clear. During the time that we spend together, if you are
25 selected as a juror on this case, you could take notes any

1 which way you want. I'm just -- I just want to know how
2 people do it.

3 And the reason why that's important is because of
4 this. You understand that the State of Nevada has to prove
5 its case to you beyond a reasonable doubt, we've talked a
6 little bit about that, but they have to prove each element of
7 each crime beyond a reasonable doubt. Does anyone understand
8 that idea? Meaning that if they prove to you one or two of
9 the elements of a crime, they have to prove all of them beyond
10 a reasonable doubt, not just one or two. Does anyone have any
11 issue with that? Uniform no response.

12 And let me ask it this way. Well, actually, yes.
13 Mr. --

14 PROSPECTIVE JUROR NO. 546: Kubota. Well, I came
15 prepared. I got my notebook right here.

16 MR. SANFT: Thank you, I appreciate it.

17 PROSPECTIVE JUROR NO. 546: But as I understand it,
18 there's three charges against each person. Do we have to
19 divide the decision? Can we say "Yes" on one, and "No" on two
20 and three, or do we have to be "Yes" on all three of them,
21 or --

22 MR. SANFT: Well, here's the thing. I'm going to
23 just shortchange this right now. There are going to be jury
24 instructions that are going to be read to you by the Court.
25 The Judge will advise you and tell you what the law in the

1 State of Nevada specifically on that issue. So in terms of --
2 what we're doing here today is each individual is charged
3 specifically with the crimes that they're charged with, but
4 they're charged individually.

5 PROSPECTIVE JUROR NO. 546: Okay.

6 MR. SANFT: So you have to hold each one of them
7 individually to that standard of beyond a reasonable doubt.

8 PROSPECTIVE JUROR NO. 546: So if there are three
9 charges on each of the two people, then we're doing first
10 person, 1, 2, and 3 --

11 MR. SANFT: Correct.

12 PROSPECTIVE JUROR NO. 546: -- second person, 1, 2,
13 and 3?

14 MR. SANFT: Yes, exactly. Whatever charges they're
15 charged with, you're going to hold each one individually
16 accountable.

17 UNKNOWN MALE SPEAKER: So there's six different
18 charges, right?

19 PROSPECTIVE JUROR NO. 546: Right, that's what I'm
20 saying.

21 MR. SANFT: Yeah.

22 THE COURT: No, there's only three charges.

23 UNKNOWN MALE SPEAKER: Well, but --

24 THE COURT: But I will --

25 PROSPECTIVE JUROR NO. 546: On two people.

1 MR. SANFT: Two different people.

2 THE COURT: Right, but -- and I will instruct you,
3 and yes, I will instruct you that you are to consider each
4 count and each defendant separately.

5 PROSPECTIVE JUROR NO. 546: Yeah, so that's the six.
6 Each individual --

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 546: -- has three charges.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 546: Okay.

11 MR. SANFT: That's it. Anything else?

12 PROSPECTIVE JUROR NO. 546: No.

13 MR. SANFT: Okay, thank you. Going back to the
14 group as a whole. Now, you do understand that the burden
15 relies -- is strictly on the State of Nevada. Does anyone
16 have a problem with the idea that I could sit down, take the
17 hair out of my bun, and sit there and play on the computer the
18 rest of the time that we spend together, but the State of
19 Nevada would still have to prove its case to you beyond a
20 reasonable doubt? Does anyone have a problem with that
21 concept?

22 And I -- once again, I don't want to be frivolous
23 about this, but the idea is that -- does anyone here believe
24 that they would be expecting something from me during the
25 course of the trial?

1 PROSPECTIVE JUROR NO. 557: Sure.

2 MR. SANFT: Thank you. Let's see here. This is --

3 PROSPECTIVE JUROR NO. 557: 557, Randall.

4 MR. SANFT: Thank you. I appreciate it, Mr.

5 Randall.

6 PROSPECTIVE JUROR NO. 557: Yeah. I guess I was
7 wholly expecting to -- I would expect to see some kind of
8 defense, whether you're just cross-examining the witnesses
9 that are coming to the court, or something, but you would be
10 just not sitting there.

11 MR. SANFT: But why would that be -- why is it that
12 you would expect that?

13 PROSPECTIVE JUROR NO. 557: Well, I mean, if people
14 are here being tried for something, it would seem like you're
15 not doing your job, for example, if you weren't doing
16 something. I would expect you to at least question, argue,
17 discuss charges.

18 MR. SANFT: Well, let me -- and that's fair. I
19 appreciate that, because I'm sure that people feel that way,
20 but let me ask you this. You do understand that the State of
21 Nevada is the one here that's responsible of proving to you
22 that they've satisfied their burden beyond a reasonable doubt,
23 right?

24 PROSPECTIVE JUROR NO. 557: Yes.

25 MR. SANFT: Say for instance they put up a witness

1 up on the stand and it just doesn't feel like they did. Would
2 you still expect the defense attorney to get up and say
3 something if the person or the evidence that they provided to
4 you just didn't rise to that level?

5 PROSPECTIVE JUROR NO. 557: Not necessarily for any
6 one witness, but over the course of the trial, it would
7 intrigue me a little bit if you weren't to do something.

8 MR. SANFT: Okay, thank you.

9 PROSPECTIVE JUROR NO. 557: So I mean, I could see
10 you not necessarily questioning every witness that comes up
11 here, but if you were to not -- clearly, something.

12 MR. SANFT: Okay, I appreciate that. Thank you.
13 Anyone else that would share that same opinion? And --

14 PROSPECTIVE JUROR NO. 451: Sort of.

15 MR. SANFT: Were you stretching, or were --

16 PROSPECTIVE JUROR NO. 451: No, no, I was --

17 MR. SANFT: Okay. And I'm sorry, this is --

18 PROSPECTIVE JUROR NO. 451: Graham.

19 MR. SANFT: Ms. Graham, Badge number 451.

20 PROSPECTIVE JUROR NO. 451: 451, correct. I kind of
21 understand what he's saying in the standpoint that we're all
22 human, and we have expectations of lawyers, defense and
23 District Attorneys. So you would expect that, if you've been
24 hired, you're going to at least make some effort to do a job.

25 On the other hand, I understand what you're saying,

1 that it is up to the District Attorney to prove their case.
2 They are the ones that have initiated this case. You're kind
3 of here de facto because a case has been brought against
4 clients.

5 So would it bother me per se if you just sat back
6 and did nothing? Not necessarily, you know, if they're
7 presenting their case. However, if they've presented their
8 case and met their burden of proof, I would expect that you
9 would, you know, fight for your clients, or stand up at that
10 point, and, you know, interact, so.

11 MR. SANFT: Thank you. Let me ask -- oh, before you
12 turn it over --

13 PROSPECTIVE JUROR NO. 451: Okay.

14 MR. SANFT: -- Ms. Graham, just hold onto it. Now
15 you're in the hot seat. Now, make sure we're clear though.
16 You -- have you ever watched a lawyer movie before?

17 PROSPECTIVE JUROR NO. 451: Yes, I have. Many.

18 MR. SANFT: Oh, you were shaking your head like you
19 were going to say no.

20 PROSPECTIVE JUROR NO. 451: Many, many, many.

21 MR. SANFT: Okay. And would it be fair to say that
22 what we see on TV in terms of movies and so forth depicting
23 what happens in courtrooms is not real life?

24 PROSPECTIVE JUROR NO. 451: Probably not even close.

25 MR. SANFT: Okay. Are you going to be the type of

1 juror that says that, hey, it seems like these guys all got
2 along, like, you know, we got along during the course of a
3 trial, and expect the fireworks, the yelling, the screaming --

4 PROSPECTIVE JUROR NO. 451: No.

5 MR. SANFT: -- the throwing of the pens, like
6 getting up and tearing off, something, right?

7 PROSPECTIVE JUROR NO. 451: No, no, no. And
8 honestly, that might turn me off a little bit more if there
9 was. You know, we're all civil. And just because you're
10 having a trial, and there's this side against that side, it
11 doesn't mean that it's, you know, WWF in the courtroom.

12 MR. SANFT: Right, and I appreciate that. Thank
13 you. Does anyone else have any opinion with regards to that
14 question? Mr. Kubota?

15 PROSPECTIVE JUROR NO. 546: I have given expert
16 witness in cases, too, and I know I sometimes leave out some
17 information because my client wants me to make it seem like
18 it's the other guy's fault. I would expect you to know enough
19 to say, well, he gave a good testimony, and he gave a lot of
20 the right information, but did you leave this out? Did you --
21 did you give the spin to it this way and not that way to get
22 the persuasion that they want? I would expect you to show up
23 and bring out the rest of the story.

24 MR. SANFT: So I actually have to do something on
25 this case is what you're saying?

1 PROSPECTIVE JUROR NO. 546: He's paying you, or
2 we're paying you, the State's paying you, so one or the other.
3 If someone's paying you, they should watch it.

4 MR. SANFT: I appreciate that. Thank you. One
5 other question, since Mr. Kubota was saying, has anyone ever
6 testified under oath in either a deposition or during the
7 course of some type of court proceeding before? Outside of
8 Mr. Kubota, uniform no response. Thank you, appreciate that.

9 In addition to that, does anyone here have any
10 problem with lawyers? No? I know you were going to raise
11 your hand. But just like, say, just overall, the idea that we
12 have lawyers. You know, there's always that lawyer joke. I
13 don't know which one I'm talking about, but you know, there's
14 a ton of them about lawyers. But does anyone have a problem
15 with the fact that there are lawyers involved in this kind of
16 thing, this case that we're doing, this courtroom, this whole
17 thing, the system? Anyone have any issues with that? No?
18 Uniform no response.

19 PROSPECTIVE JUROR NO. 546: Am I allowed?

20 MR. SANFT: Yeah, sure. And just, Mr. Kubota, if
21 you'd just say your name again and number.

22 PROSPECTIVE JUROR NO. 546: My name's John Kubota,
23 and I'm 546.

24 MR. SANFT: Thank you.

25 PROSPECTIVE JUROR NO. 546: Well, my sister's a very

1 good lawyer too in LA, and she gives me lots of grief that I
2 can't dump on lawyers all the time. But you're supposed to
3 know the subject of what you're dealing with. I mean, I deal
4 with lawyers in construction defect who have no understanding
5 of what construction is, and they're getting paid how much a
6 day?

7 You're a criminal lawyer, so you may have a better
8 -- it may be easier to be understood and have a feel for the
9 kind of information that they deal with, but lawyers are
10 overpaid for, usually, what they know. They're doing more
11 presentation. My sister's a very good lawyer because she's a
12 very good actress, and she talks to the jury better than she
13 talks to anyone else, and that's why she lost her first case
14 at the age of 63 or something like that.

15 So the idea is, you have to know your material, you
16 have to know -- talk to the people. Her husband is a lawyer
17 too, and my mother listened to him make a presentation on an
18 accounting case, and she said he just talked right over the
19 jury the whole time, and they presented all this information,
20 and the jury looked at him and says, not guilty.

21 You got to talk to the people, too. Yours is -- you
22 have to know what you're doing, you have to talk -- know the
23 people you're talking to, all sorts of stuff, and I don't
24 always see it that way.

25 MR. SANFT: Well, let me ask you this. If you're

1 selected as a juror on this case, you're going to be
2 instructed that the words that I say, the words that the State
3 says is not evidence in the case; that the evidence comes
4 from --

5 PROSPECTIVE JUROR NO. 546: Right.

6 MR. SANFT: -- the exhibits we present and the
7 testimony of these witnesses.

8 PROSPECTIVE JUROR NO. 546: Right.

9 MR. SANFT: So I could be the most eloquent person
10 in the world, but that doesn't necessarily take away from the
11 fact that the evidence will be what the evidence is, right?

12 PROSPECTIVE JUROR NO. 546: But you have to make
13 sure that the evidence is presented in a way people can
14 understand it, and you make sure that all of the evidence is
15 presented, not just the certain spin, and not a certain
16 portion of it that seems to be good for what somebody wants.

17 MR. SANFT: Sure. Now, would that be something that
18 you could hold that sort of expectation of performance with
19 both myself as well as the State of Nevada? Could you hold us
20 both to the standard of --

21 PROSPECTIVE JUROR NO. 546: Oh, yeah, you're both
22 lawyers.

23 MR. SANFT: -- making sure we do our case? Okay,
24 thank you. I appreciate that. Anyone else have any opinions
25 with regards to that question? Okay.

1 One other question here real quick. With regards to
2 this case, it's a murder case, and there will be pictures that
3 will be shown to you of the person who passed, who died in
4 this case. Does anyone here have any problems with looking at
5 that kind of photography if you're selected as a juror in this
6 case?

7 All right, Ms. Young, and this is Badge number --
8 PROSPECTIVE JUROR NO. 485: 485.

9 MR. SANFT: Okay. Let me just cut to the chase,
10 because I'm sure everyone here would probably agree with you,
11 but could that prevent you from being a fair and impartial
12 juror in this case if you saw pictures of the crime scene or
13 whatever it is that we're going to see in this case?

14 PROSPECTIVE JUROR NO. 485: Yes.

15 MR. SANFT: Why?

16 PROSPECTIVE JUROR NO. 485: It would probably scare
17 me, just, you know, having to see that kind of stuff.

18 MR. SANFT: Okay. But if you were to see a picture
19 like that that would scare you or make you feel uncomfortable,
20 would that automatically tell you, okay, I can no longer be
21 fair and impartial --

22 PROSPECTIVE JUROR NO. 485: No.

23 MR. SANFT: -- and be done with it? Okay. Could
24 you still hold the State of Nevada to its burden upon seeing
25 the photographs in this case that may be uncomfortable for

1 you?

2 PROSPECTIVE JUROR NO. 485: Yes.

3 MR. SANFT: Okay. Is there anyone else that would
4 have a difference of opinion with Ms. Young with regard to
5 this question? Thank you, Ms. Young.

6 PROSPECTIVE JUROR NO. 485: Thank you.

7 MR. SANFT: Someone else raised their hand, I
8 thought. And just --

9 PROSPECTIVE JUROR NO. 554: Roberta, 554.

10 MR. SANFT: Okay.

11 PROSPECTIVE JUROR NO. 554: Yeah, I would just feel
12 uncomfortable looking at the pictures. I've seen somebody
13 come out of a -- from a drowning, you know, like eight hours
14 later, and it's still in my mind.

15 MR. SANFT: Now, once again, the question -- the
16 more important question that we have with regard to this is
17 could you still be fair and impartial if you did see a
18 photograph like that in the middle of a trial?

19 PROSPECTIVE JUROR NO. 554: Yeah.

20 MR. SANFT: Okay.

21 PROSPECTIVE JUROR NO. 554: But I just feel
22 uncomfortable.

23 MR. SANFT: Right. And I -- and just to let you
24 know -- anyone here would not feel uncomfortable; be okay with
25 the idea of seeing photographs like this during the course of

1 a trial? All right, and if you could just -- thank you very
2 much, ma'am. Appreciate it.

3 PROSPECTIVE JUROR NO. 482: Salazar, 482.

4 MR. SANFT: Thank you.

5 PROSPECTIVE JUROR NO. 482: And so what was the
6 question again, so I can make sure I --

7 MR. SANFT: Well, I just want to make sure, would
8 you be the type of person who would be just completely okay
9 with the idea of --

10 PROSPECTIVE JUROR NO. 482: Yeah.

11 MR. SANFT: -- seeing these photographs?

12 PROSPECTIVE JUROR NO. 482: Yeah, because, you know,
13 if we're not here analyzing the pictures closely, we can't
14 really be good jurors and, like, that. You know, the legal
15 system wouldn't work if we're not here to do our job.

16 MR. SANFT: Okay, and I appreciate that. Now, let
17 me ask you this though. Obviously, someone passed, someone
18 died. Would it be fair to say that most people would feel
19 something about that; that that shouldn't happen, right?

20 PROSPECTIVE JUROR NO. 482: Yeah.

21 MR. SANFT: Okay. Would you be the type of person
22 that would be colored by that? Meaning that you would look at
23 it and you would think, okay, well, someone passed, and as a
24 result, someone needs to be held responsible; and Mr.
25 Robertson is over here, and he's been charged with a crime, so

1 he should just be responsible for that? Would you be that
2 type of juror or have that type of reaction?

3 PROSPECTIVE JUROR NO. 482: No, not at all.

4 MR. SANFT: Okay, even though we know that this is a
5 horrible thing that happened, right?

6 PROSPECTIVE JUROR NO. 482: Yeah.

7 MR. SANFT: Okay.

8 PROSPECTIVE JUROR NO. 482: Yeah. Unless the
9 evidence pointed to him, I'm not going to just blame him just
10 on getting emotional.

11 MR. SANFT: Thank you, appreciate that. A couple
12 more questions here. Mr. O'Brien? This is Badge number 464?

13 PROSPECTIVE JUROR NO. 464: Correct, 464.

14 MR. SANFT: All right. We've had some discussion
15 about your inclinations about, say, you believe in law
16 enforcement?

17 PROSPECTIVE JUROR NO. 464: Sure.

18 MR. SANFT: Okay. Would you be the type of person
19 that we would want on this jury if I was -- if I was a defense
20 attorney?

21 PROSPECTIVE JUROR NO. 464: I believe I can be fair
22 and impartial.

23 MR. SANFT: Okay, meaning that even though you know
24 other police officers and you work with people like that in
25 the law enforcement area, that you could still be fair and

1 impartial in this case?

2 PROSPECTIVE JUROR NO. 464: Sure.

3 MR. SANFT: Okay. Now, during the time that we
4 spend here together, you may hear police officers testify
5 during the course of this case that may not have done things
6 according to their standard performance. Could you hold
7 police officers to their specific standard performance in this
8 case?

9 PROSPECTIVE JUROR NO. 464: 100 percent.

10 MR. SANFT: Okay, thank you. I appreciate that.

11 And then, finally, if I could turn the microphone
12 over to Rodriguez, 475. Sir, you were in the Navy?

13 PROSPECTIVE JUROR NO. 475: Yes, that's correct.

14 MR. SANFT: What was your MOS?

15 PROSPECTIVE JUROR NO. 475: AD.

16 MR. SANFT: What is that?

17 PROSPECTIVE JUROR NO. 475: Aviation Machinist's
18 Mate.

19 MR. SANFT: And you were doing that for --

20 PROSPECTIVE JUROR NO. 475: Work on aircraft.

21 MR. SANFT: I see. Was that on a ship, or was that
22 -- okay.

23 PROSPECTIVE JUROR NO. 475: I belonged to squadrons,
24 and we do it on carriers.

25 MR. SANFT: Okay.

1 PROSPECTIVE JUROR NO. 475: Part of an air wing.
2 MR. SANFT: And is that what you did the entire time
3 you were in the Navy?
4 PROSPECTIVE JUROR NO. 475: Um-hum.
5 MR. SANFT: Is that a yes?
6 PROSPECTIVE JUROR NO. 475: Yes.
7 MR. SANFT: And the -- how long were you in the Navy
8 for? Because I --
9 PROSPECTIVE JUROR NO. 475: 22 years.
10 MR. SANFT: And then, when you retired, then you
11 went and worked --
12 PROSPECTIVE JUROR NO. 475: For Cox Communications.
13 MR. SANFT: Okay, and doing -- what did you do for
14 them specifically?
15 PROSPECTIVE JUROR NO. 475: Internet and video
16 services, things like that.
17 MR. SANFT: Okay. Let me ask you just one question
18 here. Is -- I think you had answered this before, but can you
19 be fair to both sides --
20 PROSPECTIVE JUROR NO. 475: Yes.
21 MR. SANFT: -- if you're picked as a juror in this
22 case?
23 PROSPECTIVE JUROR NO. 475: Um-hum.
24 MR. SANFT: Is that a yes?
25 PROSPECTIVE JUROR NO. 475: Yes.

1 MR. SANFT: And I'm sorry we keep saying that, but
2 this is -- a record has to be made, and so "um-hum" doesn't
3 translate good for the record.

4 PROSPECTIVE JUROR NO. 475: H-m-m.

5 MR. SANFT: Right, exactly. It doesn't -- it's
6 like, what is this? But let me ask you this. When you say --
7 when we ask the question "Can you be fair to both sides," what
8 does that mean to you?

9 PROSPECTIVE JUROR NO. 475: Fair to both sides?
10 I'll have to evaluate all the information that's presented and
11 see where the facts are facts, and things like that, and I
12 don't know. I've never been in that position before, so.

13 MR. SANFT: All right, and I appreciate that,
14 because I think a lot of us here have never been in this
15 position before, mostly.

16 But let me ask you this one last question. You were
17 in the military. The question was asked earlier about whether
18 or not you had ever been on a court-martial or been part of
19 that type of proceeding.

20 PROSPECTIVE JUROR NO. 475: I haven't.

21 MR. SANFT: Okay. Had you at any point during your
22 career ever been in a position where you had to report
23 something; something that happened, you know, that you saw
24 other people doing or anything like that while you were in the
25 military?

1 PROSPECTIVE JUROR NO. 475: No.
2 MR. SANFT: Thank you, I appreciate that.
3 PROSPECTIVE JUROR NO. 475: Okay.
4 MR. SANFT: Your Honor, I have no further questions.
5 THE COURT: Okay. Mr. Ruggeroli?
6 MR. RUGGEROLI: Judge, logistically, what time will
7 we be going to? I don't know if --
8 THE COURT: How much time do you need?
9 MR. RUGGEROLI: It will be a little while.
10 THE COURT: Okay, well, you can start. You can
11 start.
12 MR. SANFT: And Your Honor, do I -- do I pass for
13 cause now, or should I wait?
14 THE COURT: Did you pass -- did you pass for cause?
15 MR. SANFT: I'll pass for cause, Your Honor.
16 THE COURT: Okay, thank you.
17 MR. SANFT: Thank you.
18 MR. RUGGEROLI: Judge, could I just inquire? We may
19 need a bathroom break, and I --
20 THE COURT: Okay.
21 MR. RUGGEROLI: Just in case.
22 THE COURT: Okay. All right. At this time, ladies
23 and gentlemen, we're going to recess.
24 During this recess, you're admonished not to talk or
25 converse amongst yourselves or with anyone else on any subject

1 connected with this trial, or read, watch, or listen to any
2 report of or commentary on the trial, or any person connected
3 with this trial, by any medium of information, including,
4 without limitation, newspapers, television, the internet, or
5 radio, or form or express any opinion on any subject connected
6 with this trial until the case is finally submitted to you.

7 We'll be in recess until 1:30. Thank you.

8 THE MARSHAL: Thank you. All rise for the exiting
9 jury. Jurors, please.

10 (Court recessed at 12:13 P.M. until 1:33 P.M.)

11 (Outside the presence of the prospective jurors)

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

14 (Within the presence of the prospective jurors)

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

17 MR. PESCI: Yes, Your Honor.

18 THE COURT: Mr. Sanft?

19 MR. SANFT: Yes, Your Honor.

20 THE COURT: Mr. Ruggeroli?

21 MR. RUGGEROLI: Yes, Your Honor.

22 THE COURT: Okay, you may begin your voir dire.

23 MR. RUGGEROLI: Thank you, Your Honor.

24 Good afternoon, ladies and gentlemen. My name is
25 James Ruggeroli. I represent only Mr. Wheeler. He is present

1 at the far end of that table in the blue shirt.

2 I appreciate your patience. I know you've been
3 asked a lot of questions. There are some things that I need
4 to follow up on though, because Mr. Sanft talked a little bit
5 about this, but we do not represent the individuals together;
6 we represent them separately. So I'd like to start with Mr.
7 Kubota. Your badge number, sir?

8 THE MARSHAL: Hang on a second, the microphone's not
9 on yet.

10 PROSPECTIVE JUROR NO. 546: Okay. I'm 546.

11 MR. RUGGEROLI: Thank you, Mr. Kubota. You had some
12 questions earlier about the differences in terms of verdicts
13 for each individual and each count.

14 PROSPECTIVE JUROR NO. 546: Right.

15 MR. RUGGEROLI: This is a little different, and I
16 wanted to touch on a couple of things, and I thought you'd be
17 a good person to start with. When I say that I only represent
18 Mr. Wheeler, do you understand that I don't have any
19 obligation to prove that a crime occurred or that anyone in
20 particular committed that crime? Does that make sense to you?

21 PROSPECTIVE JUROR NO. 546: Well, only partly,
22 because we're because a crime was committed.

23 THE COURT: Okay, it's because that is the State of
24 Nevada's burden.

25 PROSPECTIVE JUROR NO. 546: Right.

1 THE COURT: The State of Nevada is the only party
2 that has a burden in this action. The State of Nevada has the
3 burden to prove that what they've alleged happened by proof
4 beyond a reasonable doubt.

5 PROSPECTIVE JUROR NO. 546: Right.

6 THE COURT: And the defense does not have -- in our
7 constitutional system, they do not have a burden during a
8 criminal trial. Do you understand that?

9 PROSPECTIVE JUROR NO. 546: Yeah.

10 THE COURT: Okay, and you're okay with that?

11 PROSPECTIVE JUROR NO. 546: Yeah.

12 MR. RUGGEROLI: So when I say that my job -- and
13 you've got a lot of experience, because you've been a
14 litigant --

15 PROSPECTIVE JUROR NO. 546: Yeah.

16 MR. RUGGEROLI: -- many times, correct?

17 PROSPECTIVE JUROR NO. 546: Yeah.

18 MR. RUGGEROLI: You've also been an expert witness?

19 PROSPECTIVE JUROR NO. 546: Right.

20 MR. RUGGEROLI: What capacity would that have been
21 in?

22 PROSPECTIVE JUROR NO. 546: Like, maybe the first
23 one I did was somebody's house was remodeled, and part of it
24 collapsed. And I went in and said, okay, this is what
25 happened, this is how it was built, this is how it should have

1 been built, they missed this part, they missed that part, and
2 I said, that's why it had problems.

3 MR. RUGGEROLI: Okay. You've never served as a
4 juror though?

5 PROSPECTIVE JUROR NO. 546: No.

6 MR. RUGGEROLI: Okay. Do you think your experience,
7 having been an expert, and also having been a litigant many
8 times, will have any impact on your service as a juror?

9 PROSPECTIVE JUROR NO. 546: I'll have a lot more
10 questions; a lot more wanting to know than people who haven't
11 been through this process a couple of times, I think.

12 MR. RUGGEROLI: Right. And that's one of the
13 reasons why I wanted to start with this question, just to
14 clarify it. And so, the Judge will instruct you on the law.
15 She gets to tell you, here's what the law says, and then it
16 would be your obligation to follow it. But as a starting
17 point, I wanted to see if you're comfortable with the idea of
18 separating me in terms of your mind from the parties that are
19 at the table that I'm actually sitting at. You understand?
20 And that's what I'm getting at --

21 PROSPECTIVE JUROR NO. 546: Right.

22 MR. RUGGEROLI: -- in terms of my question.

23 PROSPECTIVE JUROR NO. 546: Right. You've got two
24 defendants sitting at one table. You're representing one, and
25 the other lawyer's defending the other. And what the

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON ROBERTSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 81400

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Michelle Leavitt, District Judge
District Court No. C-17-328587-2

APPELLANT'S APPENDIX
VOL. 3 OF 7

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 21st of October, 2020, a copy of the foregoing Appendix was served by electronic filing as follows:

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DATED this 21st of October, 2020.



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Robertson

1 prosecutor's going to try to say is they were both there, they
2 both did this. And you'll try to say, well, you know, it
3 wasn't my guy, he wasn't in that area, something like that, so
4 he couldn't have been involved in the act. His fingerprints
5 or his footprints may show up here and there, but I mean, he
6 was there middle of the day too, so, yeah.

7 MR. RUGGEROLI: Right. And then also though, I
8 don't have any responsibility to try and do the prosecutor's
9 job --

10 PROSPECTIVE JUROR NO. 546: Right.

11 MR. RUGGEROLI: -- of saying, here's who did this.

12 PROSPECTIVE JUROR NO. 546: Right.

13 MR. RUGGEROLI: And --

14 PROSPECTIVE JUROR NO. 546: And you're not trying to
15 say, well, it's his fault, not my guy's fault.

16 MR. RUGGEROLI: Right. Okay. You have a sister
17 that's actually a lawyer?

18 PROSPECTIVE JUROR NO. 546: Yes.

19 MR. RUGGEROLI: And I wanted to follow up, because
20 you made an interesting explanation of some of what she does.
21 You referred to her as an actress?

22 PROSPECTIVE JUROR NO. 546: Yes.

23 MR. RUGGEROLI: Okay. And so, because you've never
24 served on a jury, you may have some preconceptions about what
25 lawyers and what their roles are? I think that's fair to say.

1 PROSPECTIVE JUROR NO. 546: Yes.

2 MR. RUGGEROLI: As a juror, are you okay sitting in
3 the ultimate position though and trying to put those
4 preconceptions aside to look at -- the focus not on the
5 lawyers, but the focus on the individual witnesses that
6 actually get up and testify?

7 PROSPECTIVE JUROR NO. 546: What I'm worried about
8 is I'm going to sit there and say, why didn't he ask this, why
9 didn't he do this? I mean, if he'd have just taken one more
10 question or two, and gone just another step or two, I mean --

11 THE COURT: Okay, and you understand jurors are
12 permitted to ask questions of witnesses?

13 PROSPECTIVE JUROR NO. 546: Really?

14 THE COURT: Really.

15 PROSPECTIVE JUROR NO. 546: In the middle of the
16 court, we raise our hands and --

17 THE COURT: Yeah. Well, I'll tell you what the
18 procedure is.

19 PROSPECTIVE JUROR NO. 546: Okay.

20 THE COURT: I usually allow you to do it after both
21 sides has had an opportunity to question that witness. And at
22 that time, if you have a question, yes, I will take the
23 question, I'll review it, and determine if it's appropriate;
24 and if I think it's appropriate, I'll ask the question.

25 PROSPECTIVE JUROR NO. 546: I wasn't aware.

1 MR. RUGGEROLI: Okay. Just in terms of those
2 aspects, do you have anything else that you wanted to add as
3 far as preconceptions based on your experience?

4 PROSPECTIVE JUROR NO. 546: Well, I've been debating
5 this one between me and myself here. We just had a number of
6 Republican senators stand up in front of the TV and say, yeah,
7 Trump did this, and it was wrong, but it wasn't bad. And gee,
8 I don't think I'm going to convict him, even though he said he
9 did it; even though they said, yeah, well, it was bad, but it
10 wasn't that bad. And the wording of the law that defines what
11 he was supposed to and not supposed to do is kind of fuzzy, so
12 we're going to not convict him. I mean, this is from the
13 Senate on down --

14 THE COURT: Okay, and you know what, I don't want to
15 delve all out into that, but you understand that was a
16 constitutional --

17 PROSPECTIVE JUROR NO. 546: Right, well, this --

18 THE COURT: -- trial. It was not a criminal trial.
19 They don't have to follow the rules of criminal procedure or
20 criminal laws. I mean, it was a constitutional act.

21 PROSPECTIVE JUROR NO. 546: But all of the laws are
22 supposed to be followed in the Constitution.

23 THE COURT: I agree.

24 PROSPECTIVE JUROR NO. 546: And they just said, well
25 -- rule of law kind of went out the window, and I said, what?

1 THE COURT: Okay. I just don't think that's --
2 PROSPECTIVE JUROR NO. 546: Yeah.
3 THE COURT: -- a good example.
4 PROSPECTIVE JUROR NO. 546: Okay.
5 THE COURT: You understand, that's not a good
6 example of what we should do, and what a -- and it wasn't
7 really a trial either.
8 PROSPECTIVE JUROR NO. 546: Right.
9 THE COURT: Right?
10 PROSPECTIVE JUROR NO. 546: Well, in theory, it was
11 sort of. I mean, they had a judge, they had -- they all had
12 to do an oath that they will do -- just like when we came in
13 here and I --
14 THE COURT: Yeah.
15 PROSPECTIVE JUROR NO. 546: -- promised to listen.
16 Yeah, yeah, yeah.
17 THE COURT: Impartial justice.
18 PROSPECTIVE JUROR NO. 546: Everything is similar.
19 It may not have been exactly the same, but the idea of rule of
20 law was put to test.
21 MR. RUGGEROLI: So in this trial, if you get
22 selected as a juror, you've been given some very minimal
23 allegations about what this case is about, right?
24 PROSPECTIVE JUROR NO. 546: Murder.
25 MR. RUGGEROLI: You haven't heard any actual

1 evidence yet?

2 PROSPECTIVE JUROR NO. 546: Correct.

3 MR. RUGGEROLI: You have a vast wealth of experience
4 and opinions about a number of things based on your career,
5 your experiences as an expert, and things like that. As a
6 juror though, will you listen to the evidence in this case to
7 see if the State has done their job?

8 PROSPECTIVE JUROR NO. 546: Yes.

9 MR. RUGGEROLI: And then, am I going to be held to a
10 unreachable standard? Because you probably had a lot of very
11 expensive lawyers on your teams over the years, and you've got
12 a lot of questions that you hope will be followed up on, but
13 will you do your job as a juror --

14 PROSPECTIVE JUROR NO. 546: Yes.

15 MR. RUGGEROLI: -- and pay attention, and evaluate
16 the credibility of these witnesses in this particular case?

17 PROSPECTIVE JUROR NO. 546: And I will ask my extra
18 questions if I think that you missed a few questions --

19 MR. RUGGEROLI: Right.

20 PROSPECTIVE JUROR NO. 546: -- you could have asked
21 a little further in-depth into this questioning.

22 MR. RUGGEROLI: Thank you, sir. I'm going to ask to
23 pass the microphone, if you wouldn't mind. I'll take it,
24 thank you.

25 Mr. Randall, going to come to you, if that's okay.

1 Could you state your badge number, please?

2 PROSPECTIVE JUROR NO. 557: Sure. 557, Colin
3 Randall.

4 MR. RUGGEROLI: Thank you, sir. Mr. Randall, I
5 wanted to go to you because you made a statement -- and I
6 think you were, like everybody, really just trying to give us
7 information so that we can know a little bit more about you --
8 regarding the idea of a co-defendant or a former co-defendant
9 testifying. Do you remember that?

10 PROSPECTIVE JUROR NO. 557: I do, yes.

11 MR. RUGGEROLI: And you had, I think it's fair to
12 say, some potential reservations that caused you to volunteer?

13 PROSPECTIVE JUROR NO. 557: Sure. I mean, I think
14 the example you mentioned is the fact that there's a third
15 person who's potentially going to be a witness or whatever,
16 and even your client is possibly going to be a witness, and --
17 but maybe get a deal out of it, too.

18 MR. RUGGEROLI: Right. But the notion that somebody
19 may have been charged and now has reached some type of an
20 agreement, you did have some concern?

21 PROSPECTIVE JUROR NO. 557: Well, it certainly gives
22 me pause, because you just wonder what motivations there are,
23 and you know, without having a picture of what the whole crime
24 was and what -- you know, what went on, it's really difficult
25 to say. But it just gives me pause. It's kind of -- it's

1 just not --

2 MR. RUGGEROLI: Right.

3 PROSPECTIVE JUROR NO. 557: You know.

4 MR. RUGGEROLI: At this point, because you haven't
5 heard anything, it is difficult to say. Will you listen to
6 the evidence that's presented if you're selected as a juror,
7 and do your job as a jury member?

8 PROSPECTIVE JUROR NO. 557: Yes, absolutely. I
9 mean --

10 MR. RUGGEROLI: In that context? And I apologize
11 for interrupting.

12 PROSPECTIVE JUROR NO. 557: Yeah, I'm sorry. I was
13 just saying it gave me pause. It kind of -- it's not
14 something I've, you know, come across too often, other than
15 seeing it on TV once in a while. But being a jury member,
16 yes, I'd, you know, be willing to hear all the discussions and
17 make a judgment based on what we see.

18 MR. RUGGEROLI: So as a potential juror, what do you
19 think a good juror would do when a witness gets on the stand?
20 And even in a situation where a former co-defendant is
21 testifying, what would a good juror do in sitting in judgment
22 on that witness?

23 PROSPECTIVE JUROR NO. 557: Well, I mean, I think
24 you'd want to keep an open mind and really be prepared to
25 listen to what they're saying and what's being discussed in

1 the court. And you know --

2 MR. RUGGEROLI: Do you think you can do that?

3 PROSPECTIVE JUROR NO. 557: I do, yes.

4 MR. RUGGEROLI: Okay. I do want to pass the
5 microphone, if we could, to Mr. O'Brien, please.

6 PROSPECTIVE JUROR NO. 464: Thank you. 464, Jeff
7 O'Brien.

8 MR. RUGGEROLI: Thank you, sir. I wanted to segue
9 from asking the last question about a co-defendant testifying,
10 and being a good juror, and doing the things that a good juror
11 would do. I wanted to follow up because you had made some
12 statements early on about you have a lot of experience with
13 police officers; you've got contracts and things like that. I
14 do want to go over it a little bit again though.

15 If an officer testifies, the idea of your experience
16 -- and there's not a right or wrong answer. It's just, how do
17 you view things? Because of your particular friendship with
18 people and things of that nature that are officers, are you
19 going to listen to a police officer and just take it at pure
20 face value? And I'm asking for an honest answer, not one that
21 you think we may want.

22 You mentioned this on your own, and we greatly
23 appreciate that. But if an officer gets up, are you going to
24 tip the scales because he's an officer, and give him more of
25 the benefit of the doubt than an average witness?

1 PROSPECTIVE JUROR NO. 464: I just want to say, I
2 think the context of the question was that, would you give
3 more or less credence to the honesty of their answer.

4 MR. RUGGEROLI: Okay.

5 PROSPECTIVE JUROR NO. 464: And I stated that I
6 probably would, because I know a lot of them, and I have no
7 reason to think that they would lie to me.

8 MR. RUGGEROLI: Right. Now, these are going to be
9 individuals that you don't know. You didn't --

10 PROSPECTIVE JUROR NO. 464: Probably, yeah.

11 MR. RUGGEROLI: Well, did you recognize any of the
12 names that were --

13 PROSPECTIVE JUROR NO. 464: Negative, no.

14 MR. RUGGEROLI: Okay. So these are officers, and
15 you would agree with me that there's a lot of really good
16 officers, and then there are some that might not have been
17 able to observe certain things. Part of your job as a juror
18 and being a good juror is to take each one individually.
19 Would you agree with that?

20 PROSPECTIVE JUROR NO. 464: And be impartial about
21 it, correct.

22 MR. RUGGEROLI: Okay. And so, just because you're
23 an officer, would you agree that doesn't automatically make
24 you super perceptive?

25 PROSPECTIVE JUROR NO. 464: No, of course not.

1 MR. RUGGEROLI: Or super honest?

2 PROSPECTIVE JUROR NO. 464: No, and they're not
3 great shots either.

4 MR. RUGGEROLI: Okay. So based on what you said,
5 you'd be willing to listen to the officers' testimony and
6 serve as a good juror; not just take it at face value, but
7 analyze it independently?

8 PROSPECTIVE JUROR NO. 464: Certainly.

9 MR. RUGGEROLI: Okay. I did want to follow up with
10 you, since you have the microphone, and you do have the
11 experience with the firearms. Are you familiar with the open
12 carry law?

13 PROSPECTIVE JUROR NO. 464: I am.

14 MR. RUGGEROLI: Do you have any particular feelings
15 or views about open carry?

16 PROSPECTIVE JUROR NO. 464: I'm all for it.

17 MR. RUGGEROLI: Okay. When I say open carry, not
18 everybody on the panel may understand what we're talking
19 about. So what would that mean to you in a firearms context?

20 PROSPECTIVE JUROR NO. 464: It means that you can be
21 out in public with a firearm in full display without suffering
22 any penalties.

23 MR. RUGGEROLI: Okay. And is it your understanding
24 that, for the most part, that is legal?

25 PROSPECTIVE JUROR NO. 464: Yes.

1 MR. RUGGEROLI: All right, and do you have any views
2 about that being a positive or negative right?

3 PROSPECTIVE JUROR NO. 464: I think that it's
4 awesome.

5 MR. RUGGEROLI: Okay. Does anybody -- and now I'm
6 going to open it up. I haven't done that yet. But does
7 anybody else have any views about open carry law in particular
8 that is the same, but really different than what he just
9 expressed? Nobody? Okay, sir, please. If I could start with
10 right behind you --

11 PROSPECTIVE JUROR NO. 410: McGinty, 410.

12 MR. RUGGEROLI: Yes, thank you.

13 PROSPECTIVE JUROR NO. 410: So I find it a rather
14 antiquated law and something that has not really changed with
15 the environment and what's gone on through society, and as
16 we've evolved, the law has not evolved, right?

17 Prime example, in a pizza shop a few weeks ago, an
18 individual comes in with a 9 on the outside of his clothing,
19 and just shirt tucked in. He was just a -- he wasn't a
20 model-looking citizen, so yeah, there's a perception. It was
21 like he was inviting something, and that's the problem I have
22 with it today, is it's probably not appropriate to have an
23 open carry to -- in most situations.

24 MR. RUGGEROLI: Okay, and just to follow up on that.
25 Were you actually present?

1 PROSPECTIVE JUROR NO. 410: Yeah.

2 MR. RUGGEROLI: Okay, so this is something that you
3 observed and saw, and you had --

4 PROSPECTIVE JUROR NO. 410: Correct, yes.

5 MR. RUGGEROLI: And you had a feeling about that?

6 PROSPECTIVE JUROR NO. 410: Yes.

7 MR. RUGGEROLI: All right.

8 PROSPECTIVE JUROR NO. 410: Very much so.

9 MR. RUGGEROLI: And I appreciate you sharing that
10 with us. There was another hand, I think it was right in
11 front of you. Could you give us your badge number?

12 PROSPECTIVE JUROR NO. 475: 475.

13 MR. RUGGEROLI: Yes, sir.

14 PROSPECTIVE JUROR NO. 475: I disagree with open
15 carrying because not everybody has a stable mind, and it's
16 easy for somebody to like get in an argument, and be angry,
17 and pull out their guns.

18 MR. RUGGEROLI: Okay. Have you been in a situation
19 where you saw somebody open carry?

20 PROSPECTIVE JUROR NO. 475: No.

21 MR. RUGGEROLI: No? Okay, I appreciate that. Thank
22 you. Could we hand the microphone down to Ms. O'Brien?

23 PROSPECTIVE JUROR NO. 483: Ms. O'Brien?

24 MR. RUGGEROLI: Oh, I'm sorry, it's Ms. Cook.

25 PROSPECTIVE JUROR NO. 483: Yeah.

1 MR. RUGGEROLI: Correct. I apologize. Your badge
2 number, please? Thank you, Ms. Cook.

3 PROSPECTIVE JUROR NO. 483: Lisa Cook, 483.

4 MR. RUGGEROLI: I ask that you would answer some
5 questions, because you've mentioned that your husband is
6 involved in the shooting range, and I think that one of your
7 stepsons is also involved?

8 PROSPECTIVE JUROR NO. 483: Correct.

9 MR. RUGGEROLI: Can you tell me a little bit about
10 the shooting range and what that is?

11 PROSPECTIVE JUROR NO. 483: They -- they build
12 shooting ranges.

13 MR. RUGGEROLI: Oh.

14 PROSPECTIVE JUROR NO. 483: It's modular shooting
15 ranges in North Las Vegas --

16 MR. RUGGEROLI: Okay.

17 PROSPECTIVE JUROR NO. 483: -- for all over, across
18 the world, and for the military and law enforcement and such.

19 MR. RUGGEROLI: All right. Are you familiar with
20 open carry?

21 PROSPECTIVE JUROR NO. 483: I am.

22 MR. RUGGEROLI: And do you have a view about that?

23 PROSPECTIVE JUROR NO. 483: I'm for it.

24 MR. RUGGEROLI: Okay. Have you ever been in public
25 when somebody was open carry that you observed?

1 PROSPECTIVE JUROR NO. 483: Yes.

2 MR. RUGGEROLI: Besides family members?

3 PROSPECTIVE JUROR NO. 483: Yes.

4 MR. RUGGEROLI: Okay. What was your reaction?

5 PROSPECTIVE JUROR NO. 483: Neither. I mean, you

6 know, it didn't affect me either way, because -- yeah.

7 MR. RUGGEROLI: All right, thank you.

8 PROSPECTIVE JUROR NO. 483: Um-hum.

9 MR. RUGGEROLI: Was there anybody else that I may

10 have missed that had feelings about open carry or firearms?

11 And I'm seeing no responses. Thank you.

12 If we could go back to Mr. McGinty, please. Thank

13 you. Badge number again?

14 PROSPECTIVE JUROR NO. 410: McGinty, 410.

15 MR. RUGGEROLI: Mr. McGinty, I know you -- we've

16 talked a lot, but that's one of the reasons why I wanted to go

17 to you again, because I know that you're sharing with us, and

18 if that leads to some participation, that would be greatly

19 appreciated.

20 I would like to ask about your view because of some

21 of the answers that you gave previously about the concept of

22 somebody electing not to testify at trial. Do you have any

23 particular view about that?

24 PROSPECTIVE JUROR NO. 410: Somebody electing not to

25 testify?

1 MR. RUGGEROLI: Right.

2 PROSPECTIVE JUROR NO. 410: As a -- a defendant, or?

3 MR. RUGGEROLI: Right.

4 PROSPECTIVE JUROR NO. 410: Okay. No, I see the

5 rationale behind that. Not everyone's going to be perceived

6 and come across in a positive light or the right light that

7 they want to, so I have no problem with that.

8 MR. RUGGEROLI: So that right that we all share, and

9 that's an individual right that each individual has, you

10 believe in that right to not testify if you choose not to do

11 so if you were accused?

12 PROSPECTIVE JUROR NO. 410: Absolutely.

13 MR. RUGGEROLI: Now, you did make some other

14 statements that -- and that's one of the reasons why I was

15 asking you is because I think you mentioned you've served as

16 an expert witness as well?

17 PROSPECTIVE JUROR NO. 410: No, I --

18 MR. RUGGEROLI: No?

19 PROSPECTIVE JUROR NO. 410: I know expert witnesses.

20 MR. RUGGEROLI: Okay. You would agree that there

21 may be a number of potential reasons why an attorney may

22 advise a particular individual not to testify, even apart from

23 the concept of whether or not they committed the alleged

24 crime?

25 PROSPECTIVE JUROR NO. 410: Absolutely.

1 MR. RUGGEROLI: Okay, and you personally have no
2 problem with that?

3 PROSPECTIVE JUROR NO. 410: I do not.

4 MR. RUGGEROLI: Okay. Now, I do want to open it up
5 to the panel as well, if there are any volunteers, this right
6 that we have. Does anybody have a different feeling about
7 that right, where, hey, somebody should get on the stand, and
8 I'm not going to be okay with it if they don't? Does anybody
9 have that feeling? I see no responses. Okay, thank you.

10 If we could hand it to Mr. Deperio, and I believe
11 he's down here.

12 PROSPECTIVE JUROR NO. 488: 488.

13 MR. RUGGEROLI: Mr. Deperio, I wanted to follow up
14 because you mentioned that you have served as a juror in the
15 past?

16 PROSPECTIVE JUROR NO. 488: Yes.

17 MR. RUGGEROLI: And you mentioned that, in that
18 case, you might not have felt like you had the opportunity to
19 fully express yourself; is that accurate?

20 PROSPECTIVE JUROR NO. 488: Yeah.

21 MR. RUGGEROLI: If you're -- now, you've had that
22 experience, and so you know more than the average potential
23 juror that doesn't, obviously.

24 PROSPECTIVE JUROR NO. 488: Yes.

25 MR. RUGGEROLI: Do you think that you'd be more

1 inclined, if you're selected for this jury, to go in the back
2 and be more assertive?

3 PROSPECTIVE JUROR NO. 488: I mean, that's just the
4 nature of my personality to be quiet all the time, so --

5 MR. RUGGEROLI: Right.

6 PROSPECTIVE JUROR NO. 488: -- probably not.

7 MR. RUGGEROLI: Right. Now, you were able
8 internally to listen to all the evidence in that case?

9 PROSPECTIVE JUROR NO. 488: Yes.

10 MR. RUGGEROLI: Do you think you -- you'd do that in
11 this case as well?

12 PROSPECTIVE JUROR NO. 488: Yes.

13 MR. RUGGEROLI: Some people, as you're mentioning,
14 are just naturally more quiet and reserved?

15 PROSPECTIVE JUROR NO. 488: Yes.

16 MR. RUGGEROLI: And you're one of those individuals?

17 PROSPECTIVE JUROR NO. 488: Yes.

18 MR. RUGGEROLI: Nothing wrong with that. Do you
19 think though that you -- now, in that case, I don't know if
20 they did anything in particular. But in this case, even if
21 you don't have the kind of fortitude to maybe be real
22 assertive if you have an opinion that goes against the
23 majority, but if you see it differently than the majority of
24 the other jurors, does your quietness mean that you might not
25 be assertive and go with the majority simply because, or?

1 PROSPECTIVE JUROR NO. 488: Yes, I think so.

2 MR. RUGGEROLI: That you would be likely to follow
3 with the majority?

4 PROSPECTIVE JUROR NO. 488: No, I'm not saying that,
5 but maybe -- like I said, I think it's a disadvantage because
6 I'm not able to converse, and engage, and you know,
7 participate in the --

8 MR. RUGGEROLI: Debate?

9 PROSPECTIVE JUROR NO. 488: -- what's going on.
10 Yeah.

11 MR. RUGGEROLI: Yeah.

12 PROSPECTIVE JUROR NO. 488: And prove, you know, if
13 I want the opposite, you know.

14 MR. RUGGEROLI: Right.

15 PROSPECTIVE JUROR NO. 488: So.

16 MR. RUGGEROLI: And that's why I wanted to ask you
17 about that, because again, I do want to open this up to
18 others. There's nothing wrong with that. People are
19 different, and sometimes you might have seen something
20 different than everybody else because you're paying attention
21 in a different way.

22 But what I'd like to know is if anybody actually
23 feels the same way, and again, there's nothing wrong with
24 that. But is there anybody that is a bit more reserved, a bit
25 more quiet that would have a tendency to kind of go with the

1 flow of the majority if they're selected on a jury? Anybody?
2 Yes, sir. Could we pass it down to Mr. Rodriguez?
3 Thank you, sir. Badge --
4 PROSPECTIVE JUROR NO. 475: 475.
5 MR. RUGGEROLI: Yes, sir. So could you elaborate on
6 that, please?
7 PROSPECTIVE JUROR NO. 475: Pretty much what he
8 said. There's nothing else (indiscernible), probably because
9 I kind of -- my thinking, my brain is kind of slower than
10 everybody else.
11 MR. RUGGEROLI: Okay.
12 PROSPECTIVE JUROR NO. 475: So when there's a
13 discussion, I kind of can't follow up, can't follow -- I can't
14 keep up with the conversation, so I just step back.
15 MR. RUGGEROLI: All right. We've had a lot going on
16 over the last two days in here. How about the things that
17 have been discussed, the questions and answers? Have you --
18 have you been able to --
19 PROSPECTIVE JUROR NO. 475: Yes, yeah.
20 MR. RUGGEROLI: Okay. Well, you're just trying to
21 give us information right now, and I appreciate that. Thank
22 you. Does anybody else feel similar?
23 All right, could we go back to Ms. -- the microphone
24 to Ms. Graham, please?
25 PROSPECTIVE JUROR NO. 451: 451.

1 THE MARSHAL: Hang on, ma'am.
2 THE COURT: Yeah, I mean --
3 THE MARSHAL: Can we get that phone turned off?
4 THE COURT: Is there --
5 PROSPECTIVE JUROR NO. 546: Yeah, I'm turning it
6 off.
7 THE COURT: Okay.
8 PROSPECTIVE JUROR NO. 546: I'm trying.
9 THE COURT: All right, doesn't seem to be working.
10 PROSPECTIVE JUROR NO. 546: There.
11 THE COURT: Thank you.
12 MR. RUGGEROLI: Okay.
13 PROSPECTIVE JUROR NO. 546: Sorry.
14 MR. RUGGEROLI: Ms. Graham?
15 PROSPECTIVE JUROR NO. 451: Yeah.
16 MR. RUGGEROLI: I wanted to ask you, because you
17 made an interesting statement about kind of the demeanor of
18 some of the attorneys, and I think your statement was, we're
19 all civil. Do you recall that?
20 PROSPECTIVE JUROR NO. 451: Yes.
21 MR. RUGGEROLI: Something to that effect.
22 PROSPECTIVE JUROR NO. 451: Okay.
23 MR. RUGGEROLI: You know that during this trial,
24 there might be times where an attorney needs to make an
25 objection?

1 PROSPECTIVE JUROR NO. 451: Um-hum.

2 MR. RUGGEROLI: And there may be a sympathetic
3 witness on the stand, it may be an officer. But if a lawyer
4 needs to object and do things that may not seem polite in
5 everyday society, are you okay with that, that the lawyers
6 need to do their job?

7 PROSPECTIVE JUROR NO. 451: Yes, of course, because
8 I see it as that is the job of the lawyers, so it is part of
9 society. It might not be -- that's what they're supposed to
10 do. Does that make sense? So, whereas if you're outside, not
11 doing your lawyer job, it might be seen as rude; but in a
12 courtroom, that's what happens, so it's not rude.

13 MR. RUGGEROLI: Right. And you had made that
14 statement. I think that's a perfect fulfillment of the
15 context of the nature of the conduct.

16 PROSPECTIVE JUROR NO. 451: Um-hum.

17 MR. RUGGEROLI: And so, I am appreciative of you
18 filling in on that.

19 Does anybody else not agree with that though? Is it
20 -- does anybody have any feelings that if one of us is overly
21 loud or potentially rude, what would be rude in a different
22 context, is anybody going to potentially hold it against my
23 client if I do that? And there's no response. Thank you.

24 If we could hand it to Mr. Salazar. Thank you. Mr.
25 Salazar?

1 PROSPECTIVE JUROR NO. 482: 482.

2 MR. RUGGEROLI: Thank you, sir. So, Mr. Salazar,

3 what makes a good juror?

4 PROSPECTIVE JUROR NO. 482: They have to look at the

5 facts without bias. Like, earlier, when I was asked, if you

6 see a graphic image, are you going to like shy away or be

7 emotional? Like, no, you have to put all that aside and just

8 look at the facts, don't let anything else intervene.

9 MR. RUGGEROLI: Okay. What other traits do you

10 think a good juror has?

11 PROSPECTIVE JUROR NO. 482: You have to, you know,

12 pay attention. Like, like you said, if you have a question,

13 like, you feel like something's left out, speak up. And then,

14 at the very end, like, participate in the debates.

15 MR. RUGGEROLI: And you've never served as a juror

16 before?

17 PROSPECTIVE JUROR NO. 482: No, sir.

18 MR. RUGGEROLI: Do you believe you'd be a good

19 juror?

20 PROSPECTIVE JUROR NO. 482: Yes, sir.

21 MR. RUGGEROLI: Because of those traits?

22 PROSPECTIVE JUROR NO. 482: Yes, sir.

23 MR. RUGGEROLI: Is there anything else about you,

24 your background or your experience that you think I should

25 know to decide if you're going to be a good juror?

1 PROSPECTIVE JUROR NO. 482: No, sir.

2 MR. RUGGEROLI: Okay, thank you. If we could hand
3 it up to Ms. Bruer. She's up top.

4 PROSPECTIVE JUROR NO. 019: Barbara Bruer, 019.

5 MR. RUGGEROLI: Bruer, I apologize.

6 Good afternoon. So I'm going to follow up on that,
7 and it's going to be with pretty much the rest of the panel.
8 Everyone is very important. If I don't ask any particular one
9 of you a question, it's not because you're not; it's just
10 you've been here quite a long time. There are going to be
11 some things I'd like to follow up on. Generally speaking
12 though, you've been paying attention of the questions that
13 have been asked and answered?

14 PROSPECTIVE JUROR NO. 019: Yes.

15 MR. RUGGEROLI: This notion of what it would be --
16 what it would take to be a good juror, do you think you would
17 be a good juror?

18 PROSPECTIVE JUROR NO. 019: Yes.

19 MR. RUGGEROLI: Why is that?

20 PROSPECTIVE JUROR NO. 019: I have strong attention
21 skills, like I pay attention to detail. And pretty good
22 intuition, like reading body language and small words and
23 hints that can indicate if somebody's being truthful.

24 MR. RUGGEROLI: Excellent. Do you have anything in
25 your background that causes you hesitation about being a good

1 juror on this particular jury --

2 PROSPECTIVE JUROR NO. 019: No.

3 MR. RUGGEROLI: -- in this particular case?

4 PROSPECTIVE JUROR NO. 019: No.

5 MR. RUGGEROLI: Okay, thank you. If you could hand

6 the microphone right next to you.

7 PROSPECTIVE JUROR NO. 409: Vito Casucci, 409.

8 MR. RUGGEROLI: Good afternoon, Mr. Casucci.

9 PROSPECTIVE JUROR NO. 409: Good afternoon.

10 MR. RUGGEROLI: There was -- there was some

11 questions that I believe you asked about this notion of

12 burden. Do you recall being asked, or was that a different --

13 I'm going to come back to another panel member on that one.

14 You were asked though about making decisions in the

15 poker room, and sometimes there are disputes?

16 PROSPECTIVE JUROR NO. 409: Right.

17 MR. RUGGEROLI: Sometimes you've got to decide which

18 player may have played the hand properly, or a lot of

19 different circumstances?

20 PROSPECTIVE JUROR NO. 409: In the casino world that

21 I live in, someone has to win, someone has to lose, and I have

22 to make the decision on the spot.

23 MR. RUGGEROLI: Right.

24 PROSPECTIVE JUROR NO. 409: That's not the forum

25 that we're in today. I think the forum that we're in today is

1 they are presumed innocent until proven guilty, and it's their
2 job to prove that they are guilty; and if they can't do that,
3 then they would be considered to be innocent in the eyes of
4 the law.

5 MR. RUGGEROLI: Right.

6 PROSPECTIVE JUROR NO. 409: That's the way I feel.

7 MR. RUGGEROLI: When you say, "their job," you mean
8 the prosecutors?

9 PROSPECTIVE JUROR NO. 409: The prosecutors' job,
10 yes.

11 MR. RUGGEROLI: Excellent. So that's something that
12 I think you agree makes a good juror; that you would do that?

13 PROSPECTIVE JUROR NO. 409: Yes.

14 MR. RUGGEROLI: Is there anything else about you
15 that I should know in making a determination of whether or not
16 you would be a good juror?

17 PROSPECTIVE JUROR NO. 409: I consider myself to be
18 a good listener. And also, once we get into the deliberation
19 part of it, I don't think I would be overwhelming with other
20 people, I don't think I would be influenced by other people, I
21 think we would just reason together on what we've all heard,
22 and come to an agreement.

23 MR. RUGGEROLI: Very good. Thank you, sir. If you
24 could pass it right next to you, please. I'll be quick this
25 time.

1 PROSPECTIVE JUROR NO. 410: McGinty, 410.

2 MR. RUGGEROLI: Thank you, sir. Mr. McGinty, are
3 you able to look at Mr. Wheeler and --

4 PROSPECTIVE JUROR NO. 410: Yes.

5 MR. RUGGEROLI: -- tell me right now that you are
6 able to view him as being presumed innocent? And you're
7 hesitating, which is fine, and this is why I'm asking.
8 Because we can't skip to the back of the book in this process.

9 PROSPECTIVE JUROR NO. 410: Yeah. You're asking do
10 I have maybe a preconceived notion? Do I -- do I read him in
11 a certain way?

12 MR. RUGGEROLI: Well --

13 PROSPECTIVE JUROR NO. 410: And yeah, I read both of
14 them differently.

15 MR. RUGGEROLI: Okay.

16 PROSPECTIVE JUROR NO. 410: And --

17 MR. RUGGEROLI: Let me ask you this so that I can
18 clarify the question to help you. The notion of when anybody
19 walks in, they're presumed innocent at this point --

20 PROSPECTIVE JUROR NO. 410: Correct.

21 MR. RUGGEROLI: -- you agree with that?

22 PROSPECTIVE JUROR NO. 410: Absolutely.

23 MR. RUGGEROLI: But I did ask it specifically to the
24 individual that this is about from my point of view.

25 PROSPECTIVE JUROR NO. 410: How about this? Do I

1 understand that both individuals are presumed innocent until
2 otherwise? Yes, absolutely.

3 MR. RUGGEROLI: Okay. Have you ever got a speeding
4 ticket that you thought the officer made a mistake about?

5 PROSPECTIVE JUROR NO. 410: No. I think he
6 shouldn't have wrote it, but yeah.

7 MR. RUGGEROLI: Okay. But the reason why I ask you
8 that is because if officers always gave tickets the right way,
9 and nobody was ever innocent, and everybody was always guilty,
10 there wouldn't be that presumption of innocence, and everybody
11 would just have to pay their tickets, take their points, get
12 no reductions. You would agree with that, right?

13 PROSPECTIVE JUROR NO. 410: Correct.

14 MR. RUGGEROLI: So we have a formalized procedure in
15 place, and I don't want you to just give me what sounds like
16 the political answer about that individual right there in the
17 blue shirt with the dark tie. If you can't say that, right
18 now, you can look at him and presume that he's innocent, then
19 I think that there might be other juries that you're better
20 on, and there's no -- there's nothing wrong with that.

21 So when I ask you, is there anything that would
22 cause you to hesitate, I would just like you to be honest, and
23 that's all we can ask from any of you.

24 PROSPECTIVE JUROR NO. 410: With all due respect, I
25 don't know that me stating this out loud is fair to the other

1 members of the panel.

2 MR. RUGGEROLI: Okay.

3 PROSPECTIVE JUROR NO. 410: I don't want to cloud a
4 good pool of jurors for you.

5 MR. RUGGEROLI: Okay. Without getting into those
6 specifics, do you really think that you can listen to all the
7 evidence and be fair to Mr. Wheeler?

8 PROSPECTIVE JUROR NO. 410: Well, sure. Absolutely.

9 MR. RUGGEROLI: Okay. Should I want you on this
10 jury though? If you were me, you're Mr. Defense Lawyer for
11 Mr. Wheeler, I have a suspicion you would probably not want
12 somebody like that on your jury if you were me.

13 PROSPECTIVE JUROR NO. 410: Looking at the current
14 situation and -- yeah, no, I wouldn't.

15 MR. RUGGEROLI: Thank you, sir. That's all I ask.
16 Okay, if you could just hand the microphone down. Hello.

17 PROSPECTIVE JUROR NO. 417: Hello.

18 MR. RUGGEROLI: Could you state your name and badge
19 number, please?

20 PROSPECTIVE JUROR NO. 417: Mary Newcome, 417. Yes.

21 MR. RUGGEROLI: Would you mind standing?

22 THE COURT: I would prefer if the attorneys, when
23 they're -- if you have a current challenge, you would approach
24 the bench and make it.

25 MR. RUGGEROLI: Okay, thank you, Judge.

1 THE COURT: Okay.

2 MR. RUGGEROLI: I would like to do that then.

3 THE COURT: Okay.

4 MR. RUGGEROLI: Thank you.

5 (Bench conference)

6 THE COURT: I mean, I don't know what in the world
7 he was going to say that he didn't want to --

8 MR. RUGGEROLI: Sure.

9 THE COURT: I don't know.

10 MR. RUGGEROLI: I didn't want to go into it either.

11 THE COURT: I know, I got that. But I mean, if you
12 want me to excuse the panel and you can question him.

13 MR. RUGGEROLI: I think it's -- do you feel the
14 same? It's -- because he didn't want to discuss it, he might
15 have a --

16 THE COURT: Well, yeah, of course.

17 MR. RUGGEROLI: Okay.

18 THE COURT: But I'm just saying, if you want --

19 MR. RUGGEROLI: If that's okay.

20 THE COURT: Yeah.

21 MR. PESCI: Do you want to bring him up here instead
22 of kicking everybody out, or what do you prefer?

23 THE COURT: I mean, we can try that.

24 MR. RUGGEROLI: I'm happy with whatever the Court
25 wants.

1 MR. PESCI: Yeah, whatever you want, Judge.

2 THE COURT: Maybe we should take a break, because I

3 worry about --

4 MR. RUGGEROLI: Okay.

5 MR. PESCI: Sounds good.

6 MR. RUGGEROLI: Thank you, Judge.

7 THE COURT: -- what he might say.

8 MR. RUGGEROLI: I appreciate it.

9 THE COURT: Okay.

10 (End of bench conference)

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

12 gentlemen, we're going to take a recess.

13 During this recess, you're admonished not to talk or

14 converse amongst yourselves or with anyone else on any subject

15 connected with this trial, or read, watch, or listen to any

16 report of or commentary on the trial, or any person connected

17 with this trial, by any medium of information, including,

18 without limitation, newspapers, television, the internet, or

19 radio, or form or express any opinion on any subject connected

20 with this trial until the case is finally submitted to you.

21 Mr. McGinty, if you would stay in. The rest of the

22 jurors, you are excused.

23 THE MARSHAL: Thank you. All rise for the exiting

24 jury, please. Jurors.

25 THE COURT: Mr. McGinty -- okay, I just wanted to

1 make sure you -- thank you, sir.

2 (Outside the presence of the prospective jurors)

3 (Within the presence of Prospective Juror No. 410)

4 THE COURT: You can come up to the podium, Mr.
5 McGinty.

6 Okay. The record will reflect that this hearing is
7 taking place outside the presence of the jury panel, with the
8 exception -- I have Juror number 3, Mr. McGinty present in the
9 courtroom.

10 PROSPECTIVE JUROR NO. 410: Correct.

11 THE COURT: Okay. You indicated -- defense counsel
12 was asking you some questions, and you made a statement that
13 you didn't think it was fair to say what you were going to say
14 in front of the whole panel. So --

15 PROSPECTIVE JUROR NO. 410: Right.

16 THE COURT: -- go ahead.

17 PROSPECTIVE JUROR NO. 410: Again, relevance, I'm
18 not sure, but I'll state it. So if I was -- and I don't
19 remember your name, sorry -- but in his seat, the defense
20 lawyer's seat and position, I would probably have coached my
21 defendant a little differently in posture and expression.
22 That's it. Just how you would -- how you're coming across to
23 the room.

24 THE COURT: Okay. So have you made opinions or
25 formed any opinions based on the defendant's posture and

1 expressions?

2 PROSPECTIVE JUROR NO. 410: Of course, same as you
3 have for me. I mean, that's --

4 THE COURT: Pardon?

5 PROSPECTIVE JUROR NO. 410: I said, same as
6 everybody has for me. Same thing, right? It's -- well all
7 have. It's human nature to make some first impression.

8 THE COURT: Okay, so what are those conclusions that
9 you've reached?

10 PROSPECTIVE JUROR NO. 410: Conclusions? I didn't
11 say conclusion.

12 THE COURT: Well, you --

13 PROSPECTIVE JUROR NO. 410: What opinions.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 410: Yeah, opinions, right?
16 First impressions are somewhat off-putting for Mr. Wheeler,
17 and I don't know the other defendant's name, but he's
18 certainly more relaxed. And so, could be personality
19 differences, but who knows?

20 THE COURT: Okay, relaxed and off-putting?

21 PROSPECTIVE JUROR NO. 410: Off-putting, yeah.

22 THE COURT: Okay. The fact that you have formed
23 these opinions already, would they interfere with your ability
24 to sit as a fair and impartial juror?

25 PROSPECTIVE JUROR NO. 410: I don't -- as long as

1 the evidence was presented correctly or -- I mean, yeah. Do I
2 -- do one of the defendants, in my mind initially, first
3 impression, lean on the side -- maybe not the most favorable
4 side? Probably so, but it can be brought back, just like any
5 negotiations or --

6 THE COURT: Okay, but that's --

7 PROSPECTIVE JUROR NO. 410: -- any situation.

8 THE COURT: I mean, that's not what we do in here.

9 PROSPECTIVE JUROR NO. 410: I understand.

10 THE COURT: Okay?

11 PROSPECTIVE JUROR NO. 410: Well, you're asking me;
12 I'm telling you the truth, so.

13 THE COURT: And I appreciate that, but you
14 understand, you know, we judge cases and reach verdicts and
15 conclusions based on the evidence, and not based upon any
16 opinion that we form that somebody --

17 PROSPECTIVE JUROR NO. 410: Absolutely.

18 THE COURT: -- is off-putting, or we don't like
19 their expression or do --

20 PROSPECTIVE JUROR NO. 410: Understand.

21 THE COURT: -- like their expression.

22 PROSPECTIVE JUROR NO. 410: Understand.

23 THE COURT: Do you understand that?

24 PROSPECTIVE JUROR NO. 410: Absolutely.

25 THE COURT: Okay, so do we have to worry about that

1 with you?

2 PROSPECTIVE JUROR NO. 410: Do you have to worry
3 about me formulating a fair and honest conclusion, opinion, or
4 -- no. It would ultimately be based on the evidence and
5 what's presented by the DA, so.

6 THE COURT: Okay. So can you set aside any opinions
7 that you've developed and base this case solely on the
8 evidence that you hear in the courtroom?

9 PROSPECTIVE JUROR NO. 410: Why, certainly.

10 THE COURT: Okay. I don't know. Mr. Ruggeroli, do
11 you have any follow up?

12 MR. RUGGEROLI: If I could.

13 PROSPECTIVE JUROR NO. 410: Sure.

14 MR. RUGGEROLI: Thank you, sir. And you're not in
15 trouble, anything like that. I greatly appreciate your
16 candor. I think you're being fair in explaining this, but it
17 sounds like there is a starting point that we've already
18 reached. And would it be fair to say that I am probably going
19 to have to do something to overcome somewhat of a
20 preconception that you've already formed about Mr. Wheeler?

21 PROSPECTIVE JUROR NO. 410: That is a great way to
22 present that question, and the answer is yes.

23 MR. RUGGEROLI: Okay. And because of that, you
24 might be inclined to hold me to a burden of establishing
25 innocence rather than exclusively holding the State to prove

1 beyond a reasonable doubt his guilt?

2 PROSPECTIVE JUROR NO. 410: It would be a -- it
3 would be a 10th of a 100th of a percentage, yeah, sure. But
4 there is, yeah.

5 MR. RUGGEROLI: Thank you.

6 PROSPECTIVE JUROR NO. 410: I don't know what that
7 is. Yeah.

8 MR. RUGGEROLI: Okay. Thank you, Judge. I have
9 nothing further.

10 THE COURT: Anything else?

11 MR. RUGGEROLI: No, Your Honor.

12 THE COURT: All right.

13 MR. PESCI: Could I?

14 THE COURT: Sure.

15 MR. PESCI: So, sir, if, as the prosecution, we
16 present our case, and you feel that we have fallen short,
17 separate and distinct from any impression that you got from
18 Mr. Wheeler, from me, from the Judge, from anybody, could you
19 return a verdict of not guilty if we don't prove the case to
20 you?

21 PROSPECTIVE JUROR NO. 410: If I think that your --
22 the presentation of the case, the evidence before us was weak
23 and poorly presented, or just weak in general -- let's say
24 it's just weak, right?

25 MR. PESCI: Okay.

1 PROSPECTIVE JUROR NO. 410: Yeah, absolutely.

2 MR. PESCI: All right, and that's really kind of
3 what this boils down to.

4 PROSPECTIVE JUROR NO. 410: Yeah.

5 MR. PESCI: And we appreciate your honesty, because
6 if I'm understanding you correctly, you're saying you got an
7 impression from one defendant, and a different impression from
8 the other. Would it be safe to say you've got an impression
9 from me?

10 PROSPECTIVE JUROR NO. 410: As we all do, right?

11 MR. PESCI: Yes, of course. And my co-counsel?

12 PROSPECTIVE JUROR NO. 410: Absolutely.

13 MR. PESCI: All right. Let's assume -- hopefully
14 it's not this way -- it's a negative impression for one of us
15 or both of us, right? Notwithstanding that impression, if we
16 bring the evidence in and we prove to you, hey, he did it,
17 could you come back with a guilty verdict?

18 PROSPECTIVE JUROR NO. 410: Yeah, of course. Sure.

19 MR. PESCI: So I guess what I'm trying to say is the
20 impression isn't the basis of your decision, is it?

21 PROSPECTIVE JUROR NO. 410: No, no. Absolutely not.

22 MR. PESCI: Will it be the evidence?

23 PROSPECTIVE JUROR NO. 410: The evidence, correct.

24 MR. PESCI: Thank you very much, sir.

25 THE COURT: Okay. Anything else?

1 MR. RUGGEROLI: Just one follow up.
2 THE COURT: Okay.
3 PROSPECTIVE JUROR NO. 410: Sure.
4 MR. RUGGEROLI: Would it be fair to say though that,
5 based on your observations, you've already established a sense
6 of presumption of guilt of something connected to this case?
7 PROSPECTIVE JUROR NO. 410: Well, that --
8 MR. PESCI: Well, Judge, I apologize.
9 PROSPECTIVE JUROR NO. 410: That may be --
10 MR. PESCI: I'm going to interrupt. I apologize.
11 THE COURT: Right.
12 MR. PESCI: One second.
13 PROSPECTIVE JUROR NO. 410: Yeah.
14 MR. PESCI: There's a difference between the
15 original question he was asked, which --
16 THE COURT: Right.
17 MR. PESCI: -- was an impression, which was not
18 about guilt.
19 THE COURT: You're correct.
20 MR. PESCI: It was an impression, so --
21 THE COURT: So I would just ask you to rephrase it.
22 MR. RUGGEROLI: It is a different question. Okay.
23 We'll stick with that then, because the original question was
24 that are you able to look at him and presume that he's
25 innocent right now. So I won't -- I won't ask you the

1 inverse. I'll ask it again. Have you already formed an
2 opinion that you're not presuming that he's innocent right
3 now?

4 PROSPECTIVE JUROR NO. 410: I have not. Maybe to
5 help, if I may, with the question, have I -- or could I have
6 come to a conclusion that Mr. Wheeler at some point in his
7 life is probably guilty of something based on his demeanor?
8 Yeah, I could.

9 MR. RUGGEROLI: Okay. And I just --

10 PROSPECTIVE JUROR NO. 410: Completely different
11 than this gentleman here.

12 MR. RUGGEROLI: One last --

13 THE COURT: I'm sorry, and what was that?

14 PROSPECTIVE JUROR NO. 410: Completely different
15 than this gentleman here, the other defendant. But go ahead.

16 MR. RUGGEROLI: Judge, if I may, just one last
17 question.

18 THE COURT: Um-hum.

19 MR. RUGGEROLI: You've not heard any evidence, and
20 Mr. Pesci asked you, if they do not prove their case, that you
21 could acquit. If the case was concluded now though with no
22 evidence, would you be able to acquit?

23 MR. PESCI: Judge, I'm going to --

24 PROSPECTIVE JUROR NO. 410: I wouldn't --

25 MR. PESCI: I apologize, just one second.

1 PROSPECTIVE JUROR NO. 410: I wouldn't make a
2 decision, there's no way --

3 MR. PESCI: I'm sorry, one second. I object to
4 that, Your Honor, because it's asking to form an opinion on a
5 case that hasn't been presented. That's why I can't --

6 THE COURT: Right, you're asking him about a
7 hypothetical, so.

8 MR. RUGGEROLI: Thank you, Judge. I have nothing
9 further.

10 THE COURT: Okay. Sir, if you don't mind going
11 outside with the rest of the panel. Don't discuss with the
12 rest of the panel members anything that we've discussed in
13 here, please.

14 THE MARSHAL: Sh, sh, sh, sh, sh.

15 (Outside the presence of Prospective Juror No. 410)

16 THE COURT: What was that?

17 THE MARSHAL: She started to say something to him.

18 MR. RUGGEROLI: Thank you, Your Honor.

19 THE COURT: Mr. Ruggeroli?

20 MR. RUGGEROLI: I appreciate that. Judge, I am
21 going to move to strike. I know that he has wavered on a
22 couple of different things. When it comes down to it though,
23 I think that he admitted that he's formed an opinion based on
24 my client's posture, demeanor in court, things that are not
25 part of evidence at all.

1 He's gone to the lengths of distinguishing between
2 the two defendants, and so he's done a fair amount of thought
3 about this. And these are not general notions of
4 constitutional principles or anything like that; these are
5 impressions that he's formed from observing things that are in
6 court that are not considered to be evidence in the case. And
7 so, I just fall back on his initial hesitation and inability
8 to talk about the starting point being presumption of
9 innocence.

10 I just don't believe that he can be fair to my
11 client. And I do think that it goes over the line in terms of
12 whether or not he can be a fair and impartial juror, because
13 my starting point in representing Mr. Wheeler is -- and I
14 think he conceded this -- that I'm going to have to kind of
15 earn my way out of where we're starting, rather than where we
16 should start, which is total presumption of innocence.
17 There's been nothing to dispute that because there's been no
18 evidence. And because of that, Judge, we're going to move to
19 strike.

20 THE COURT: Mr. Pesci?

21 MR. PESCI: I didn't know Mr. Sanft's position.

22 THE COURT: Are you joining in?

23 MR. SANFT: We'll submit --

24 THE COURT: I guess you can take no position.

25 MR. SANFT: We would submit, Your Honor.

1 THE COURT: Okay.

2 MR. PESCI: So, Judge, I object, because I admire
3 his honesty, and he's been forthright about talking how he got
4 an impression, and he distinguishes between the two defendants
5 as far as that impression, but I think he's much like Ms.
6 Young, 485. I get a negative impression from Ms. Young
7 because she says, I don't think that the law is fair in
8 certain situations when she talks about how her brother-in-law
9 shouldn't have gone to prison even though he pled guilty. It
10 wasn't even a jury finding, he pled guilty.

11 And so there are people that we won't necessarily
12 like, but we're stuck with the answers when they say, for
13 example, with this gentleman, "I'm going to make the decision
14 based on the evidence." He clearly said to me that if we
15 don't prove the case, he can come back with a not guilty, and
16 that's with the impression in mind that he shared with
17 everybody. And so I don't think he qualifies for a cause
18 challenge.

19 THE COURT: Okay. At this time, I'm going to grant
20 the challenge for cause. So I'm going to put -- when we come
21 back in, Sharon Morrison will be in Seat number 3. I'll
22 question Ms. Morrison, then I'll let the State question her,
23 and then the defense. So, Officer Hawkes?

24 THE MARSHAL: Yes, ma'am.

25 THE COURT: When we come in, if you'd just have Mr.

1 McGinty sit in the gallery.

2 THE MARSHAL: Yes, ma'am.

3 THE COURT: Can we bring them back in?

4 THE MARSHAL: Okay.

5 THE COURT: Everybody good?

6 MR. PESCI: Can I just ask a question before we do
7 that?

8 THE COURT: I'm sorry.

9 MR. PESCI: Mr. Ruggeroli, did you have more besides
10 Ms. Morrison? Are there others you're going to go to?

11 MR. RUGGEROLI: There are no challenges for cause
12 for any of the other panel members that I would have right
13 now.

14 MR. PESCI: Because I was waiting to reassert my
15 challenge for cause --

16 THE COURT: Oh, okay, go ahead.

17 MR. PESCI: -- on Ms. Young. And so, I can wait,
18 Judge.

19 THE COURT: Go ahead.

20 MR. PESCI: It's just that we've got everybody out.

21 THE COURT: Yeah, you might as well.

22 MR. PESCI: All right, and I didn't know if he was
23 going to go back to her and try to do anything else with her.

24 THE COURT: Oh, okay. So are you done with Ms.
25 Young?

1 MR. RUGGEROLI: I didn't -- I don't plan on -- well,
2 no, I think we can make the argument for cause now. I would
3 have maybe one or two questions, but she's already said what I
4 would argue in opposition to the State's position.

5 THE COURT: Okay. Go ahead.

6 MR. PESCI: So, Judge, she's talked about how she's
7 born in Hawaii and that she wants to see the good in
8 everybody. She wants to believe everyone can do good. She
9 thinks the law is unfair in certain ways. She did not like
10 the way her brother-in-law was treated. She paused numerous
11 times. She started crying and became emotional on several
12 different occasions, and it wasn't even just in the context of
13 her brother-in-law. I believe that that behavior, just that
14 right there, could potentially impair her ability to be a fair
15 and impartial juror.

16 She said specifically that her brother-in-law is
17 serving for a robbery. It was three banks, and it was here in
18 Las Vegas. It's a very similar charge. I'm afraid she's
19 going to look at these defendants and see her brother-in-law,
20 and I don't think that's a fair -- I think I'm not starting at
21 an even playing field, I think I'm behind in that kind of a
22 situation, and so I reissue my challenge for cause.

23 MR. SANFT: I think the concern on behalf of Mr.
24 Robertson is that the inverse happens all the time. Someone
25 says, hey, I was robbed, I was a victim -- like in this case,

1 we have an individual that's in the front row over here, and I
2 don't remember his name off the top of my head, but was robbed
3 at some point.

4 THE COURT: Switzerland.

5 MR. SANFT: Yeah. And as a result, we can't just
6 automatically say that, hey, the inverse is -- somehow it
7 doesn't -- it changes the dynamic if it's the other way
8 around.

9 The issue that I have though with Ms. Young is she's
10 already admitted in court that she comes from a place in
11 Hawaii where there's a presumption that everyone is good, and
12 as a result of that, now you've added -- or compounded the
13 issue with the fact that it's a family member. I don't think
14 she's necessarily disappointed in the fact that -- or somehow
15 would think that the State is always wrong because it's a
16 family member. I think she's just sad because of the fact
17 that it's her family member who went to prison.

18 Now, I don't know if necessarily that would be
19 enough to say that she would be fair -- not fair and impartial
20 to the State. I think she's articulated over again she could
21 be fair and impartial to the State. The reason why she was
22 crying and emotional was because it was a family member that
23 was going to prison, which I think is a normal reaction in any
24 situation with anyone who loves somebody who is now going to
25 prison.

1 I don't think necessarily that any of her answers
2 would indicate to me that she could not be fair and impartial
3 to the State of Nevada as much as she could be fair and
4 impartial to my client, Mr. Robertson.

5 MR. RUGGEROLI: Judge, I had written in my notes
6 that she responded, "I will follow the law," though. So even
7 though she had reservations about what the law was,
8 specifically to her brother, I wrote down specifically, "Will
9 follow the law." And I think that because she said that, she
10 will follow the law, and do her job, and will be fair and
11 impartial.

12 MR. PESCI: Judge, if I could just perfect the
13 record to make an argument based on what Mr. Sanft said, which
14 I understand as far as him saying, look at the inverse when
15 you have someone who's been robbed.

16 The difference is that Mr. Widdison, Badge 541, he
17 hasn't cried once. He hasn't had a pregnant pause when he's
18 going to answer about when he got robbed at gunpoint in
19 Switzerland, right? He wasn't affected that way. If he was
20 in the inverse situation, they'd have a more compelling
21 argument to get rid of him, right?

22 And then, also to perfect the record, she didn't cry
23 or give pause just for the brother-in-law. It was also her
24 job. You'll recall, she said --

25 THE COURT: Yeah.

1 MR. PESCI: -- "I missed this day to shine. This
2 was my day to shine. The big boss" -- that was the term she
3 used. "The big boss was there." And then I said, "Is that
4 going to affect you?" And she paused on that answer; she
5 became emotional on that answer.

6 And so that's where I agree with defense counsel,
7 that, you know, there are people that are victims of crime who
8 say they can set it apart, but she's not that person. She's
9 not Mr. Widdison who said, "Yeah, police showed up, they took
10 a report, and then I was on my way, that was it."

11 THE COURT: Okay. At this time, I'm going to deny
12 the challenge for cause. Anything else before we bring them
13 in?

14 MR. PESCI: Not from the State.

15 MR. RUGGEROLI: No, Your Honor.

16 MR. SANFT: No, Your Honor. Thank you.

17 THE COURT: Okay. We're just going to take a few
18 minutes because we need to do something with the printer. So
19 we can take about five minutes.

20 THE CLERK: Okay, thanks, Judge.

21 (Off the record at 2:28 P.M. until 2:35 P.M.)

22 (Outside the presence of the prospective jurors)

23 MR. PESCI: Are we on the record?

24 THE COURT RECORDER: We are.

25 MR. PESCI: Okay. Judge, could we ask, with the way

1 this is going, I just don't know that we're going to get to
2 witnesses today. We had five lined up, we've narrowed it down
3 to two. Could we cut those last two loose? Because I just
4 don't think we're going to --

5 THE COURT: Yeah. How many do you have -- you want
6 to just cut your last two witnesses?

7 MR. PESCI: We had scheduled five.

8 THE COURT: Okay.

9 MR. PESCI: And then we've narrowed it down to two,
10 and we're trying to maybe call those two off, with your
11 permission.

12 THE COURT: Oh, you want to call off all your
13 witnesses?

14 MR. PESCI: Well, I just don't see how we --

15 THE COURT: It's only 2:30.

16 MR. PESCI: Right. He's got to finish, we've got to
17 do preempts, then we've got to do openings.

18 MR. BROOKS: I got him on the phone, so I can tell
19 him to keep coming. It's up -- it's whatever.

20 MR. PESCI: We'll do it either way, Judge. I guess
21 what I'm saying is if we do bring them, can we go late if they
22 get here instead of having them come and then leave?

23 THE COURT: Yeah, see, that's the problem. I'll say
24 yes, you can go late, because I'm okay with it, and then I'll
25 have a juror that has childcare.

1 MR. PESCI: Yeah, yeah.

2 THE COURT: So I try not to go past 5:00 o'clock

3 just because a lot of people have childcare issues. So you

4 can turn them loose. Let's see. We can start 10:30 tomorrow,

5 right?

6 THE CLERK: Tomorrow's 10:30.

7 THE COURT: Yeah, we can start at 10:30 tomorrow.

8 (Pause in the proceedings)

9 MR. PESCI: Why don't we just keep going? He can

10 step out, we can keep going.

11 THE COURT: Okay.

12 MR. PESCI: Is that all right?

13 THE COURT: All right, we can keep going.

14 MR. PESCI: I'm sorry for the delay. Thank you.

15 (Pause in the proceedings)

16 MR. PESCI: You said we can tell them tomorrow?

17 THE COURT: Yeah, yeah.

18 MR. PESCI: Okay, thank you very much.

19 THE COURT: Tomorrow at 10:30.

20 MR. PESCI: Thank you.

21 THE MARSHAL: Your Honor, are you ready?

22 THE COURT: Yes, yes.

23 THE MARSHAL: All rise for the entering jury,

24 please. Jurors.

25 (Within the presence of the prospective jurors)

1 THE COURT: Does the State stipulate to the presence
2 of the panel?
3 THE MARSHAL: Thank you, everyone. Please be
4 seated.
5 MR. PESCI: Yes, Your Honor.
6 THE COURT: Mr. Sanft?
7 MR. SANFT: Yes, Your Honor.
8 THE COURT: Mr. Ruggeroli?
9 MR. RUGGEROLI: Yes, Your Honor.
10 THE COURT: Okay. At this time --
11 THE MARSHAL: Where's the microphone? Did I have
12 it?
13 THE COURT: At this time, I'm going to ask Sharon
14 Morrison to take Seat number 3. Sharon Morrison. Oh, okay.
15 Well, you're up there already.
16 PROSPECTIVE JUROR NO. 562: I'm up here already.
17 THE COURT: Okay. Thank you very much for being
18 here. Can you tell us how long you've lived in Clark County?
19 PROSPECTIVE JUROR NO. 562: Since '64.
20 THE COURT: Okay. And your education background?
21 PROSPECTIVE JUROR NO. 562: High school.
22 THE COURT: Okay. And your employment background?
23 PROSPECTIVE JUROR NO. 562: Well, I'm retired now.
24 THE COURT: Okay.
25 PROSPECTIVE JUROR NO. 562: I've been retired for

1 ten years. I was a buyer at the Venetian.

2 THE COURT: What kind of buyer?

3 PROSPECTIVE JUROR NO. 562: Gifts, souvenirs for the
4 hotel.

5 THE COURT: Okay. Your marital status?

6 PROSPECTIVE JUROR NO. 562: I am single, but --

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 562: -- I have a partner of
9 31 years.

10 THE COURT: Okay, and is your partner employed?

11 PROSPECTIVE JUROR NO. 562: No, he's retired also.

12 THE COURT: Okay, and what did he retire from?

13 PROSPECTIVE JUROR NO. 562: He was president of the
14 Luxor for ten years.

15 THE COURT: President?

16 PROSPECTIVE JUROR NO. 562: The Luxor.

17 THE COURT: Of the Luxor Hotel?

18 PROSPECTIVE JUROR NO. 562: Um-hum.

19 THE COURT: Is that a yes?

20 PROSPECTIVE JUROR NO. 562: I'm sorry?

21 THE COURT: President of the Luxor Hotel?

22 PROSPECTIVE JUROR NO. 562: Yeah, he was -- that's
23 when he retired. He was there about ten years.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR NO. 562: He was in the, you know,

1 casino business.

2 THE COURT: All right. And do you have any
3 children?

4 PROSPECTIVE JUROR NO. 562: I do, I have one.

5 THE COURT: And is that child old enough to be
6 employed?

7 PROSPECTIVE JUROR NO. 562: Yes, yes. She works for
8 Citibank.

9 THE COURT: Okay. Have you ever served as a juror
10 before?

11 PROSPECTIVE JUROR NO. 562: Yes. It was probably 30
12 years ago, and I was picked --

13 THE COURT: Was it here in Clark County?

14 PROSPECTIVE JUROR NO. 562: Yes, it was.

15 THE COURT: And so it was at the old building?

16 PROSPECTIVE JUROR NO. 562: It was.

17 THE COURT: Okay. Was it civil or criminal?

18 PROSPECTIVE JUROR NO. 562: It was civil.

19 THE COURT: Okay. Were you selected to be the
20 foreperson?

21 PROSPECTIVE JUROR NO. 562: I was an alternate, but
22 they pleaded out that same day, so.

23 THE COURT: Okay. And that was your only prior
24 experience?

25 PROSPECTIVE JUROR NO. 562: Yes.

1 THE COURT: Anything about that that would affect
2 your ability to be fair and impartial if we select you to
3 serve in this case?

4 PROSPECTIVE JUROR NO. 562: No.

5 THE COURT: Have you or anyone close to you, such as
6 a family member or friend, ever been the victim of a crime?

7 PROSPECTIVE JUROR NO. 562: No.

8 THE COURT: Have you or anyone close to you, such as
9 a family member or friend, ever been accused of a crime?

10 PROSPECTIVE JUROR NO. 562: No.

11 THE COURT: Okay. Would you have a tendency to give
12 more weight or credence or less weight or credence to the
13 testimony of a witness simply because that witness is a police
14 officer?

15 PROSPECTIVE JUROR NO. 562: No.

16 THE COURT: Okay. Ms. Morrison, do you know of any
17 reason why you could not be a fair and impartial juror if you
18 were selected to serve?

19 PROSPECTIVE JUROR NO. 562: No.

20 THE COURT: Okay, thank you. Mr. Pesci, you may
21 voir dire Ms. Morrison.

22 MR. PESCI: Thank you. If I stand here, can you --

23 THE COURT RECORDER: I can hear you.

24 MR. PESCI: Okay. Ma'am, how are you doing?

25 PROSPECTIVE JUROR NO. 562: Great.

1 MR. PESCI: You've heard the questions the last
2 couple of days. Anything that stood out to you?

3 PROSPECTIVE JUROR NO. 562: No, not really.

4 MR. PESCI: All right.

5 PROSPECTIVE JUROR NO. 562: I've listened and taken
6 it all in.

7 MR. PESCI: Anything you said, yeah, I want to
8 answer that question?

9 PROSPECTIVE JUROR NO. 562: I guess the most recent
10 was the open carry law.

11 MR. PESCI: Okay. Speaking about that, what are
12 your thoughts about that?

13 PROSPECTIVE JUROR NO. 562: Well, I'm for the Second
14 Amendment, so yes.

15 MR. PESCI: Okay. And then, with that feeling about
16 the Second Amendment, would that affect your ability to be
17 fair to either side?

18 PROSPECTIVE JUROR NO. 562: No.

19 MR. PESCI: All right. Do you feel that there's any
20 reason, religiously, morally, philosophically, that you could
21 not sit in judgment of another human being?

22 PROSPECTIVE JUROR NO. 562: No.

23 MR. PESCI: Okay. Do you think you could be fair
24 and impartial to both sides?

25 PROSPECTIVE JUROR NO. 562: Absolutely.

1 MR. PESCI: Thank you very much, ma'am. Pass for
2 cause.

3 THE COURT: Mr. Sanft?

4 MR. SANFT: Hi, Ms. Morrison. Is there any question
5 I should be asking you right now?

6 PROSPECTIVE JUROR NO. 562: Gees. No.

7 MR. SANFT: All right.

8 PROSPECTIVE JUROR NO. 562: I don't think so.

9 MR. SANFT: That's fine, that's fine. Well, let me
10 ask you this. When I was asking questions earlier, was there
11 anything about any of my questions you thought, oh, that's an
12 interesting question, I kind of wish he would ask me that
13 question, something like that?

14 PROSPECTIVE JUROR NO. 562: No, I guess just the
15 Second Amendment one was -- I was paying attention. Maybe
16 that was yours. I don't remember whose it was, but --

17 MR. SANFT: Mr. Ruggeroli over here to my left?

18 PROSPECTIVE JUROR NO. 562: Yes.

19 MR. SANFT: Okay.

20 PROSPECTIVE JUROR NO. 562: No, not really.

21 MR. SANFT: All right, thank you. I have no further
22 questions, Your Honor.

23 THE COURT: And you'll pass Ms. Morrison for cause?

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

25 THE COURT: Okay. Mr. Ruggeroli?

1 MR. RUGGEROLI: Thank you, Judge. And Judge, I'll
2 just pick up with the rest of the panel.
3 THE COURT: That's fine.
4 MR. RUGGEROLI: Thank you.
5 THE COURT: Yep, you're right.
6 MR. RUGGEROLI: Thank you. Good afternoon. You
7 might not remember the open-ended questions that I gave to the
8 panel, so for your benefit, I'd like to just quickly go back
9 over them, okay?
10 PROSPECTIVE JUROR NO. 562: Okay.
11 MR. RUGGEROLI: I had asked if you understood and
12 have any objection to the notion that I only represent Mr.
13 Wheeler.
14 PROSPECTIVE JUROR NO. 562: I understand that.
15 MR. RUGGEROLI: And I also asked about any feelings
16 regarding a former co-defendant that may testify. Some of the
17 other prospective jurors did have some feelings. Do you
18 remember that question?
19 PROSPECTIVE JUROR NO. 562: I do.
20 MR. RUGGEROLI: Did you have any --
21 PROSPECTIVE JUROR NO. 562: I think it's -- I think
22 it's totally up to the defendant if he should testify or not.
23 MR. RUGGEROLI: Okay. I'm going to skip to -- I'm
24 going to get to the idea of a defendant testifying in one
25 second.

1 PROSPECTIVE JUROR NO. 562: Okay.

2 MR. RUGGEROLI: Let me clarify some terms so that I
3 am clear.

4 PROSPECTIVE JUROR NO. 562: Okay.

5 MR. RUGGEROLI: The State had originally asked the
6 panel about somebody that may have been charged in this case
7 that might testify as a witness. Do you recall that?

8 PROSPECTIVE JUROR NO. 562: I do.

9 MR. RUGGEROLI: Okay, so somebody that might have
10 been a defendant, but now would be a witness. Is there
11 anything that would cause you concern, like some of the other
12 prospective jurors, about -- any reason about alerting your
13 suspicions to that, generally speaking?

14 PROSPECTIVE JUROR NO. 562: No.

15 MR. RUGGEROLI: Okay. The other question I asked
16 was about the right not to testify. You have strong feelings
17 about Second Amendment rights?

18 PROSPECTIVE JUROR NO. 562: Yes.

19 MR. RUGGEROLI: Okay. How about right not to
20 testify? Is that something that doesn't sit well with you,
21 where you would want to hear from somebody, regardless of what
22 the law might say?

23 PROSPECTIVE JUROR NO. 562: I would leave that up to
24 my attorney.

25 MR. RUGGEROLI: Okay, thank you. I had asked --

1 also asked if you're somebody that's more reserved and might
2 not be as vocal if you're selected to serve on the jury when
3 you go back to deliberate. The idea would be -- I would just
4 like to know, do you think you just kind of go with the
5 majority, or are you somebody that would be more assertive and
6 make the rest of the members aware of your opinions,
7 perspectives, things like that?

8 PROSPECTIVE JUROR NO. 562: Yeah, do I look
9 reserved? No, I would give my opinion.

10 MR. RUGGEROLI: Okay, thank you. Would you also
11 listen to the other jurors to hear --

12 PROSPECTIVE JUROR NO. 562: Of course.

13 MR. RUGGEROLI: -- how they observe the evidence --

14 PROSPECTIVE JUROR NO. 562: Of course.

15 MR. RUGGEROLI: -- as well?

16 PROSPECTIVE JUROR NO. 562: Of course I would.

17 MR. RUGGEROLI: Okay. And I asked if things that
18 lawyers have to do about objecting, things like that, is that
19 something that you would not hold against my client if I have
20 to object and may seem rude to a witness or something like
21 that?

22 PROSPECTIVE JUROR NO. 562: No, not at all.

23 MR. RUGGEROLI: Okay.

24 PROSPECTIVE JUROR NO. 562: That's --

25 MR. RUGGEROLI: Thank you.

1 PROSPECTIVE JUROR NO. 562: That's your job.

2 MR. RUGGEROLI: And then, this notion of whether or
3 not you'd be a good juror.

4 PROSPECTIVE JUROR NO. 562: Um-hum.

5 MR. RUGGEROLI: It sounds like you would say that
6 you are.

7 PROSPECTIVE JUROR NO. 562: I think I would be.

8 MR. RUGGEROLI: Okay. Is there anything in
9 particular about your background or experience that you think
10 would make you a good juror?

11 PROSPECTIVE JUROR NO. 562: Just that I know I would
12 listen to both sides equally, and pay attention to both.

13 MR. RUGGEROLI: Okay.

14 PROSPECTIVE JUROR NO. 562: I can't say it's
15 anything in my background.

16 MR. RUGGEROLI: Right. Some people have specialized
17 experiences or unique things. You have --

18 PROSPECTIVE JUROR NO. 562: Well, I had a staff, you
19 know --

20 MR. RUGGEROLI: Huh?

21 PROSPECTIVE JUROR NO. 562: -- of about 30 people,
22 and I had a -- you know, listened to them back and forth, and
23 -- but you know, I would make a judgment call.

24 MR. RUGGEROLI: Okay.

25 PROSPECTIVE JUROR NO. 562: But most the time, it

1 would go to HR.

2 MR. RUGGEROLI: Right. Okay, thank you, Ms.
3 Morrison. If we could just hand the microphone to your right,
4 please. Thank you.

5 Could you state your name and give us your badge
6 number again, please?

7 PROSPECTIVE JUROR NO. 417: 417, Mary Newcome.

8 MR. RUGGEROLI: Thank you, Ms. Newcome. You were
9 pretty emphatic about -- when asked if there were any reason
10 why you can't be fair, I think your statement was, "Absolutely
11 not."

12 PROSPECTIVE JUROR NO. 417: I am very fair.

13 MR. RUGGEROLI: Right.

14 PROSPECTIVE JUROR NO. 417: I -- I make my own
15 opinion, but I do listen and pay attention.

16 MR. RUGGEROLI: You were a juror on a criminal panel
17 before, but they -- they did reach a verdict; is that correct?
18 Without --

19 PROSPECTIVE JUROR NO. 417: That's correct.

20 MR. RUGGEROLI: Okay. How long ago was that?

21 PROSPECTIVE JUROR NO. 417: After I went home and
22 thought about it, it's been more than ten years ago.

23 MR. RUGGEROLI: And is there anything from that
24 experience that you think might have some overlap, or it might
25 have some impact, or affect you serving as a juror in this

1 case at all?

2 PROSPECTIVE JUROR NO. 417: You know, to me, it was
3 an eye-opener. I never had any conception that this is really
4 what took place in a real life courtroom. It was a learning
5 experience for me. I'm glad I got a chance to be on a juror
6 (sic) because I never thought I would. It's been difficult
7 being here because you miss work, but, you know what, it's --
8 it's an opportunity I think for all of us. And I think I'm a
9 very honest and open-minded person, and I think I would be a
10 good juror.

11 MR. RUGGEROLI: Okay, very good. Thank you.

12 PROSPECTIVE JUROR NO. 417: You bet.

13 MR. RUGGEROLI: If you could hand the microphone.
14 Mr. Bryan?

15 PROSPECTIVE JUROR NO. 420: William Bryan, 420.

16 MR. RUGGEROLI: Good afternoon, sir.

17 PROSPECTIVE JUROR NO. 420: Good afternoon.

18 MR. RUGGEROLI: Good juror, yes or no?

19 PROSPECTIVE JUROR NO. 420: I think so. I think I'm
20 a very rational, logical person. And, well, I would like to
21 say that --

22 MR. RUGGEROLI: Yes, please.

23 PROSPECTIVE JUROR NO. 420: -- every -- every juror
24 brings something different. I don't think there's one ideal
25 juror. For example, Ms. Bruer down here on the end spoke

1 about what her qualities and characteristics are that would
2 make her a good juror. I have a different set of
3 characteristics from what she does, and the two I think would
4 be complimentary, and there are other people that might bring
5 other characteristics.

6 MR. RUGGEROLI: Could you give me an idea
7 specifically? Because this is exactly why I'm asking this.

8 PROSPECTIVE JUROR NO. 420: Well, I think I'm a
9 very, very rational, logical person. I can follow the
10 instructions from the Court precisely, I understand that the
11 prosecution has to prove each element of the law, and
12 regardless of how I may feel or whatever, things have to be
13 done the way they have to be done, according to the
14 instructions of the Court.

15 MR. RUGGEROLI: Right. You've never served on a
16 jury?

17 PROSPECTIVE JUROR NO. 420: No.

18 MR. RUGGEROLI: Have you ever wanted to?

19 PROSPECTIVE JUROR NO. 420: Yes, I'm very interested
20 in how our government works and how the -- you know, the
21 civics lessons involved and that sort of thing.

22 MR. RUGGEROLI: Okay. In terms of listening to
23 statements that are made by witnesses on the stand, being
24 rational, paying attention, those are very important. How
25 about being critical in terms of not just saying, well, they

1 said it, so it must be true? Is that something that you think
2 you can do?

3 PROSPECTIVE JUROR NO. 420: Well, of course. For
4 example, if you had two expert witnesses from opposing sides
5 and conflicting information, a person might have to use their
6 -- where there's no clear-cut answer as to which expert
7 witness is correct, you would have to use your own faculties,
8 your own judgment, your own decision to come to that
9 conclusion. I'm not going to automatically believe that a
10 person's right because of their credentials, or the letters
11 behind their name, or anything like that.

12 MR. RUGGEROLI: Is there anything else in your
13 background or experience that you think that I would want to
14 know?

15 PROSPECTIVE JUROR NO. 420: You know, I'm military,
16 so, you know, we tend to be more or less cut from the same
17 cloth. I would say that I'm a little bit different than most
18 people like that. Most of them tend to be very conservative,
19 and I tend to be very, very rational, and not -- I don't let
20 emotion get in the way of my judgment.

21 MR. RUGGEROLI: Okay, thank you, sir. If you could
22 pass the microphone. Good afternoon.

23 PROSPECTIVE JUROR NO. 429: Christopher Devargas,
24 429.

25 MR. RUGGEROLI: You've had a number of questions. I

1 just wanted to follow up, generally speaking.

2 PROSPECTIVE JUROR NO. 429: Yes.

3 MR. RUGGEROLI: I know that you've probably been
4 paying attention to everything. Is there anything though
5 specific to your work and what you've done that you think
6 would be a specific benefit to being a juror in this case?

7 PROSPECTIVE JUROR NO. 429: Well, like I had
8 mentioned before as far as not having a controlling hand in
9 the things that I photograph and report on, I have to stay
10 neutral even within my own organization. I mean, the Las
11 Vegas Sun is very -- more of a Liberal newspaper, and I'm -- I
12 try to stay out of any kind of left or right, you know, as far
13 as viewpoints and things like that.

14 MR. RUGGEROLI: Um-hum.

15 PROSPECTIVE JUROR NO. 429: Aside from all that, my
16 ethics in journalism, I mean, I was in the military as well.
17 I spent four years in the Army. So following directions,
18 following instruction, doing what's right, regardless of maybe
19 a decision that somebody might make, and not letting their
20 rank influence right or wrong. I just -- that's pretty much
21 what I bring.

22 MR. RUGGEROLI: Thank you. Was there any of the
23 questions that I had asked that were open-ended to the panel
24 that you may have wanted to volunteer for that you didn't, and
25 thought about later?

1 PROSPECTIVE JUROR NO. 429: No, not really. Nothing
2 that would change whether or not I believe that I'm a good
3 person for this, or I wouldn't give a, you know, fair -- fair,
4 you know, viewpoint, so.

5 MR. RUGGEROLI: Right. And just to be clear, when I
6 say good potential juror, I'm not getting to like character
7 and things. It's just, you would agree with me that there are
8 certain aspects that are unique to serving as a juror as
9 opposed to many, many other types of things that we do in the
10 community?

11 PROSPECTIVE JUROR NO. 429: Yeah, absolutely.

12 MR. RUGGEROLI: Okay, thank you sir. If you could
13 pass the microphone. Hi.

14 PROSPECTIVE JUROR NO. 430: Hi.

15 MR. RUGGEROLI: And it's Ms. Hernandez?

16 PROSPECTIVE JUROR NO. 430: Yes, 430.

17 MR. RUGGEROLI: Thank you. You haven't had an
18 opportunity to say a whole lot. You work as a host though,
19 right?

20 PROSPECTIVE JUROR NO. 430: Yes.

21 MR. RUGGEROLI: And so, at the Cosmo?

22 PROSPECTIVE JUROR NO. 430: Yes, Cosmopolitan.

23 MR. RUGGEROLI: Very nice casino. You're dealing
24 with high-rollers, I'm guessing, and so --

25 PROSPECTIVE JUROR NO. 430: Yes.

1 MR. RUGGEROLI: -- you're a professional?

2 PROSPECTIVE JUROR NO. 430: Yes.

3 MR. RUGGEROLI: And sometimes, I'd guess that those

4 -- that clientele can be demanding?

5 PROSPECTIVE JUROR NO. 430: Yes, very, sometimes.

6 MR. RUGGEROLI: Do you have the kind of temperament

7 that matches that, where people may come to you and air their

8 grievances, things like that?

9 PROSPECTIVE JUROR NO. 430: Yes. I do think I'm a

10 very patient person.

11 MR. RUGGEROLI: Okay.

12 PROSPECTIVE JUROR NO. 430: So that's the reason why

13 I'm still there and I'm able to keep up with my job. I have

14 had some challenges, but usually, it just goes to -- straight

15 to management, so I don't really deal with a lot. I just deal

16 with at the front. So I get to, you know, talk to guests,

17 welcome guests, and just walk them to a table, or talk to them

18 about instructions of the table, so that's all I get to do.

19 MR. RUGGEROLI: Okay.

20 PROSPECTIVE JUROR NO. 430: I get to spend about

21 five minutes with a guest.

22 MR. RUGGEROLI: Uh-huh. As a juror, you wouldn't be

23 able to delegate to a supervisor. Would you be comfortable

24 doing that? You would be one of the 12, if you're selected,

25 to decide what the facts are. Is that something that you

1 would be comfortable with?

2 PROSPECTIVE JUROR NO. 430: I'm not sure. I am a
3 very emotional person, so I feel like this is like a first
4 time being in this atmosphere.

5 MR. RUGGEROLI: Yeah.

6 PROSPECTIVE JUROR NO. 430: So I wouldn't know what
7 to expect or how I would react. However, I am a very
8 open-mind (sic) person, so I do believe that I can collect a
9 lot of information, and be open-mind, like I said, and
10 communicate with who I'm working with as to the rest of the
11 people here.

12 MR. RUGGEROLI: Yeah. So let's say you are on the
13 jury and a witness gets called. Do you believe that you'll be
14 comfortable listening to them, and not just assuming that it's
15 accurate, or not just assuming that it's true? Are you able
16 to be critical, and listen to them, and decide for yourself,
17 regardless of what they may claim?

18 PROSPECTIVE JUROR NO. 430: Not without evidence,
19 no.

20 MR. RUGGEROLI: Okay. Do you think that -- one of
21 the aspects about being a good juror though, if there's not
22 some type of test, then you would agree there's really no
23 reason for a trial, right?

24 PROSPECTIVE JUROR NO. 430: Right.

25 MR. RUGGEROLI: Okay. Do you think that you'd be a

1 good juror in that sense of being -- I know you'll listen, you
2 said that, and that's very clear. You'd pay attention,
3 obviously, correct?

4 PROSPECTIVE JUROR NO. 430: Yes.

5 MR. RUGGEROLI: And then you'd work with the other
6 jurors when you deliberate, right?

7 PROSPECTIVE JUROR NO. 430: Correct.

8 MR. RUGGEROLI: But in terms of testing or
9 evaluating the witness and the evidence to decide, are they
10 credible, are they truthful, do they maybe have a motive to
11 say what they're saying, how do you feel about doing that?

12 PROSPECTIVE JUROR NO. 430: That would be
13 challenging, but I think I would do a very good job as well.

14 MR. RUGGEROLI: Okay, thank you.

15 PROSPECTIVE JUROR NO. 430: No prob.

16 MR. RUGGEROLI: If you could just hand it -- hello.

17 PROSPECTIVE JUROR NO. 437: Hi. It's 437.

18 MR. RUGGEROLI: Yes, Ms. Amorosa?

19 PROSPECTIVE JUROR NO. 437: Yes.

20 MR. RUGGEROLI: Amoroso?

21 PROSPECTIVE JUROR NO. 437: Amoroso.

22 MR. RUGGEROLI: Thank you. I know you've been
23 hearing a lot of the questions and answers. Has there been
24 anything that I have asked in particular about certain
25 questions that grabbed your attention that you'd like to

1 follow up on?

2 PROSPECTIVE JUROR NO. 437: There are sometimes, I

3 -- I'm not good in English.

4 MR. RUGGEROLI: Um-hum.

5 PROSPECTIVE JUROR NO. 437: So sometimes, I can't

6 understand what you guys saying, so.

7 MR. RUGGEROLI: Since I've been talking, has there

8 been anything that I may have talked to fastly that made you

9 miss some of the things that I said?

10 PROSPECTIVE JUROR NO. 437: Yeah, a lot of -- a lot

11 of the phrases I can't understand, so.

12 MR. RUGGEROLI: Okay. That is --

13 PROSPECTIVE JUROR NO. 437: And my English is

14 broken, so, sorry.

15 MR. RUGGEROLI: That's okay. I appreciate you

16 telling us.

17 THE COURT: Okay, just a minute, just a minute.

18 You're indicating that you haven't been able to understand

19 everything; is that correct?

20 PROSPECTIVE JUROR NO. 437: Yeah, some -- because my

21 English is broken, and sometimes I can't understand.

22 THE COURT: Okay. About how much do you --

23 PROSPECTIVE JUROR NO. 437: I'm from Phillippines,

24 so.

25 THE COURT: Okay. About how much do you think that

1 you've understood?

2 PROSPECTIVE JUROR NO. 437: A lot -- a lot, I can --

3 I'm just listening, but sometimes I can't understand.

4 THE COURT: Okay. Is there a lot of things you

5 can't understand? Like, you know --

6 PROSPECTIVE JUROR NO. 437: Because I'm not good in

7 English.

8 THE COURT: Okay. You think your language is not

9 good enough in order to sit on this panel?

10 PROSPECTIVE JUROR NO. 437: Yeah, it's not good

11 enough.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 437: Because I can't

14 understand --

15 THE COURT: All right.

16 PROSPECTIVE JUROR NO. 437: -- a lot.

17 THE COURT: And you indicated you do work, correct?

18 PROSPECTIVE JUROR NO. 437: Say it again.

19 THE COURT: You do work, correct?

20 PROSPECTIVE JUROR NO. 437: Yeah, I'm just -- bus

21 the table.

22 THE COURT: Okay. What language do you speak at

23 work?

24 PROSPECTIVE JUROR NO. 437: Tagalog -- some -- a

25 little bit English.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 437: Like, I just speak

3 Tagalog.

4 THE COURT: All right. I mean, do you think it's --

5 can you give me a percentage of how much you've understood?

6 Have you understood 5 percent, 80 percent?

7 PROSPECTIVE JUROR NO. 437: Like 5 percent.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 437: Sorry.

10 THE COURT: All right. Okay, I'm just going to ask

11 you to step down out of the box. And I'm going to ask Aria

12 Flores-Virgen to take Seat number 8.

13 MR. PESCI: Judge, can we approach for a minute?

14 Can we approach for a minute?

15 THE COURT: Oh, you want to approach? Okay.

16 (Bench conference)

17 MR. PESCI: Judge, I just want to make a record. I

18 didn't know if defense counsel was asking to have her removed.

19 I don't think there's been a position stated --

20 THE COURT: No.

21 MR. PESCI: -- on the record.

22 THE COURT: Yeah.

23 MR. PESCI: And so --

24 THE COURT: I -- I removed her for cause.

25 MR. PESCI: Right, and I just wanted to see if they

1 had a position one way or the other, so.

2 MR. RUGGEROLI: I agree with the position. I had
3 not intended -- I wasn't sure how much she knew, and it kind
4 of came up as an aside. And if you recall, I started out by
5 saying, am I talking too fast?

6 MR. PESCI: I'm not arguing --

7 MR. RUGGEROLI: Yeah.

8 MR. PESCI: -- against it.

9 THE COURT: Right.

10 MR. RUGGEROLI: Yeah.

11 MR. PESCI: I just wanted the record. Are you --

12 MR. SANFT: Oh, I see.

13 MR. RUGGEROLI: Yeah.

14 MR. SANFT: Yeah, I have no objection to --

15 MR. PESCI: There we go.

16 MR. SANFT: -- the exclusion of --

17 MR. PESCI: Thank you very much.

18 MR. SANFT: -- that --

19 THE COURT: Okay.

20 MR. RUGGEROLI: Thanks.

21 THE COURT: Thank you.

22 (End of bench conference)

23 THE COURT: Okay, thank you very much for being here
24 this afternoon. I'm just going to ask you a few questions.
25 Can you tell me how long you've lived in Clark County?

1 PROSPECTIVE JUROR NO. 563: 24 years.
2 THE COURT: Okay. Your education background?
3 PROSPECTIVE JUROR NO. 563: High school.
4 THE COURT: And what do you do for a living?
5 PROSPECTIVE JUROR NO. 563: I work at Amazon.
6 THE COURT: I'm sorry?
7 PROSPECTIVE JUROR NO. 563: I work at Amazon
8 Fulfilment.
9 THE COURT: And your marital status?
10 PROSPECTIVE JUROR NO. 563: Married.
11 THE COURT: Okay. Is your spouse employed?
12 PROSPECTIVE JUROR NO. 563: Yes.
13 THE COURT: What does your spouse do?
14 PROSPECTIVE JUROR NO. 563: He also works at Amazon.
15 THE COURT: Okay. Do you have any children?
16 PROSPECTIVE JUROR NO. 563: Yes.
17 THE COURT: How many?
18 PROSPECTIVE JUROR NO. 563: Just one.
19 THE COURT: Okay. I'm assuming that's a minor
20 child?
21 PROSPECTIVE JUROR NO. 563: Yes.
22 THE COURT: Okay. Have you ever served as a juror
23 before?
24 PROSPECTIVE JUROR NO. 563: No.
25 THE COURT: Have you or anyone close to you, such as

1 a family member or friend, ever been the victim of a crime?

2 PROSPECTIVE JUROR NO. 563: No.

3 THE COURT: Have you or anyone close to you, such as
4 a family member or friend, ever been accused of a crime?

5 PROSPECTIVE JUROR NO. 563: No.

6 THE COURT: Would you have a tendency to give more
7 weight or credence or less weight or credence to the testimony
8 of a witness simply because that witness is a police officer?

9 PROSPECTIVE JUROR NO. 563: No.

10 THE COURT: Do you know of any reason why you could
11 not be a fair and impartial juror in this particular case?

12 PROSPECTIVE JUROR NO. 563: No.

13 THE COURT: Okay. Mr. Pesci?

14 MR. PESCI: Thank you. Ma'am, do you have any
15 strong opinions about firearms that would affect your ability
16 to be fair in this case?

17 PROSPECTIVE JUROR NO. 563: I mean, not strong
18 opinions. I'm all for the Second Amendment. I open carry as
19 well, so.

20 MR. PESCI: Okay. So that wouldn't make you convict
21 or acquit for that matter?

22 PROSPECTIVE JUROR NO. 563: No.

23 MR. PESCI: Okay. Any reason why you cannot sit in
24 judgment of another human being?

25 PROSPECTIVE JUROR NO. 563: No.

1 MR. PESCI: Okay. And then, can you follow the law
2 as the Court gives you it, even if you don't agree with it?
3 PROSPECTIVE JUROR NO. 563: Yeah, I could follow.
4 MR. PESCI: Do you think you can be fair to both
5 sides?
6 PROSPECTIVE JUROR NO. 563: Yeah.
7 MR. PESCI: Thank you very much, ma'am. Pass for
8 cause, Your Honor.
9 THE COURT: Mr. Sanft?
10 PROSPECTIVE JUROR NO. 563: No.
11 MR. SANFT: You answered my question; I don't even
12 know what it was. Let me ask you this, ma'am. You work for
13 Amazon, and I forget. Do you work in the warehouse that's up
14 in North Las Vegas?
15 PROSPECTIVE JUROR NO. 563: I work at the new
16 fulfilment center that just opened up.
17 MR. SANFT: What do you do for them?
18 PROSPECTIVE JUROR NO. 563: I'm an ambassador; I'm a
19 team lead. I train the new hires.
20 MR. SANFT: I see. Now, the -- and they work in
21 like fulfilling orders and stuff like that?
22 PROSPECTIVE JUROR NO. 563: Yeah, it depends on
23 which department we're in. I'm in the pack department, so if
24 my new hires are assigned to pack, then I will train them, and
25 I will show them around the warehouse of what their job is.

1 MR. SANFT: I see. And so how long have you been
2 working for Amazon?

3 PROSPECTIVE JUROR NO. 563: I've been working there
4 for about three years.

5 MR. SANFT: And your husband also does the same sort
6 of thing for Amazon as you do?

7 PROSPECTIVE JUROR NO. 563: He just recently started
8 working at Amazon.

9 MR. SANFT: I see. Now, I think I asked this
10 question before with Ms. Morrison. Is there anything that I
11 should be asking you that you're thinking in your mind I --
12 Mr. Sanft should be asking me the question?

13 PROSPECTIVE JUROR NO. 563: No.

14 MR. SANFT: Please ask me this question, something
15 like that?

16 PROSPECTIVE JUROR NO. 563: No.

17 MR. SANFT: How about a question that I shouldn't be
18 asking you? Is there anything, like, I hope they don't ask me
19 this question?

20 PROSPECTIVE JUROR NO. 563: Not that I can think of,
21 no.

22 MR. SANFT: Okay, I have no further questions.
23 Thank you, Your Honor. We'll pass for cause.

24 THE COURT: Thank you. Mr. Ruggeroli?

25 MR. RUGGEROLI: I don't want to make you think that

1 I'm being short with you compared to any of the others.

2 Anything that you have to say is very important though; in
3 particular, background experience, anything like that, that
4 you think that would impact your serving as a juror in this
5 particular case?

6 PROSPECTIVE JUROR NO. 563: No. I mean, I'm very --
7 I will listen to both sides. You know, I'm fair.

8 MR. RUGGEROLI: Okay. I did ask a number of
9 open-ended questions. I don't want to be too repetitive, but
10 were there any of those that stuck out to you?

11 PROSPECTIVE JUROR NO. 563: No, only just the
12 firearm.

13 MR. RUGGEROLI: Okay.

14 PROSPECTIVE JUROR NO. 563: That was the only thing.

15 MR. RUGGEROLI: Yeah, I appreciate you letting us
16 know about that. Thank you. If you could just hand the
17 microphone to your right.

18 Could you give us your badge number again?

19 PROSPECTIVE JUROR NO. 451: Sure. Graham, 451.

20 MR. RUGGEROLI: You have experience teaching special
21 education, correct?

22 PROSPECTIVE JUROR NO. 451: Correct.

23 MR. RUGGEROLI: And you emphasized "psychology."
24 Could you elaborate on that?

25 PROSPECTIVE JUROR NO. 451: Well, as part of my

1 undergrad study towards becoming a teacher, I minored in child
2 psychology.

3 MR. RUGGEROLI: Okay. Is there anything from that
4 experience that you think would enhance your ability to serve
5 as a juror?

6 PROSPECTIVE JUROR NO. 451: I don't know necessarily
7 enhance it. I mean, we're talking about children versus
8 adults, which sometimes you can't tell the difference. But I
9 mean, it was specific to children between the ages of two and
10 nine, so I don't know if it would enhance anything.

11 MR. RUGGEROLI: Okay. You were on the civil jury
12 previously; is that right?

13 PROSPECTIVE JUROR NO. 451: Yes, um-hum.

14 MR. RUGGEROLI: And you were the foreperson?

15 PROSPECTIVE JUROR NO. 451: Correct.

16 MR. RUGGEROLI: Okay. All right, thank you.

17 Ms. Quinn?

18 PROSPECTIVE JUROR NO. 461: 461.

19 MR. RUGGEROLI: I did want to follow up on the
20 notion of whether or not you think you'd be a good juror.

21 PROSPECTIVE JUROR NO. 461: I think I would be good.
22 I'd listen, listen to both sides, and be fair.

23 MR. RUGGEROLI: Okay.

24 PROSPECTIVE JUROR NO. 461: Um-hum.

25 MR. RUGGEROLI: How about this idea of evaluating

1 credibility and motive, things like that? That's a little bit
2 different; you would agree?

3 PROSPECTIVE JUROR NO. 461: Yes. Again, listening
4 to all the information given.

5 MR. RUGGEROLI: Okay. You say, "be fair." We
6 talked a little bit about this. I don't think you mean
7 "fair," meaning we're on an even playing field, right?

8 PROSPECTIVE JUROR NO. 461: Right.

9 MR. RUGGEROLI: Because we're not.

10 PROSPECTIVE JUROR NO. 461: Right.

11 MR. RUGGEROLI: Do you agree with that, that --

12 PROSPECTIVE JUROR NO. 461: Correct.

13 MR. RUGGEROLI: -- I don't have a burden as a
14 defense attorney to prove anything? And you would follow the
15 law that the Judge gives you?

16 PROSPECTIVE JUROR NO. 461: Absolutely.

17 MR. RUGGEROLI: But other than that, evaluating the
18 witnesses or the evidence, that in particular, is that
19 something that you think you'd be good at doing?

20 PROSPECTIVE JUROR NO. 461: Yes, I do. Um-hum.

21 MR. RUGGEROLI: Okay, thank you. If you could hand
22 the microphone.

23 PROSPECTIVE JUROR NO. 462: 462, Camille.

24 MR. RUGGEROLI: Ms. Estrella?

25 PROSPECTIVE JUROR NO. 462: Yeah.

1 MR. RUGGEROLI: Okay. You're going to school, and I
2 wanted to ask you, anything that I've asked about specific
3 characteristics, traits, experiences that you have in your
4 background that you think would come into play during this
5 trial?

6 PROSPECTIVE JUROR NO. 462: Well, I believe that you
7 should be open-minded, because if you aren't open-minded, your
8 intuition could lead you to form -- to making a conclusion or
9 an opinion based on what you want to believe, rather than
10 forming an unbiased opinion based on the actual evidence or
11 statements that you've listened to.

12 MR. RUGGEROLI: Okay. I asked some of the other
13 prospective jurors about open carry. Do you recall that?

14 PROSPECTIVE JUROR NO. 462: Yes.

15 MR. RUGGEROLI: So do you have any opinions about
16 people's right to carry firearms if they're open and
17 displayed?

18 PROSPECTIVE JUROR NO. 462: I think it's fine, but
19 there -- like, there are limitations. So it's -- it's the
20 person who carries the firearm, whether or not they choose to,
21 like, do anything wrong with it.

22 MR. RUGGEROLI: Very good. Thank you. If we could
23 hand it down to the front, Mr. -- yeah, down here, please. I
24 apologize. To Mr. O'Brien.

25 I'm going to be short, Mr. O'Brien. Your badge

1 number is 464?

2 PROSPECTIVE JUROR NO. 464: 464.

3 MR. RUGGEROLI: You've been asked a lot of
4 questions. I just wanted to give you the opportunity if you
5 had anything additional that you wanted to add.

6 PROSPECTIVE JUROR NO. 464: No.

7 MR. RUGGEROLI: Okay. If you could hand it to Ms.
8 Newell.

9 PROSPECTIVE JUROR NO. 468: 468.

10 MR. RUGGEROLI: Okay. Everything's worked out with
11 school now; you would be able to pay attention, correct?

12 PROSPECTIVE JUROR NO. 468: Yeah.

13 MR. RUGGEROLI: And you're not worried about the
14 test?

15 PROSPECTIVE JUROR NO. 468: No.

16 MR. RUGGEROLI: And so you're going to be able to
17 pay attention and serve on this jury really unimpeded?

18 PROSPECTIVE JUROR NO. 468: Yeah.

19 MR. RUGGEROLI: Fair to say?

20 PROSPECTIVE JUROR NO. 468: Um-hum.

21 MR. RUGGEROLI: Okay, is that a yes?

22 PROSPECTIVE JUROR NO. 468: Yes, that's a yes.

23 MR. RUGGEROLI: Okay. You're studying criminal
24 justice. I've asked a number of open-ended questions. Do you
25 have anything that you would like to follow up on that you

1 didn't happen to volunteer for?

2 PROSPECTIVE JUROR NO. 468: No.

3 MR. RUGGEROLI: Okay, thank you. If you could --
4 Mr. --

5 PROSPECTIVE JUROR NO. 475: Mr. 475?

6 MR. RUGGEROLI: Yes, thank you. And I know that you
7 have answered a number of questions as well. I'm just giving
8 you another opportunity if anything has jumped out that you
9 would like to add or clarify.

10 PROSPECTIVE JUROR NO. 475: No, sir.

11 MR. RUGGEROLI: Okay, thank you. If you could hand
12 it to Mr. Bandics.

13 PROSPECTIVE JUROR NO. 477: 477.

14 MR. RUGGEROLI: We did have a chance to ask you some
15 questions. One of the things that you mentioned -- I wrote a
16 question mark about whether or not you could be fair. You
17 elaborated on some things about why you might have some
18 uncertainties. Is there anything apart from that that would
19 cause you any uncertainty about being fair in this trial as a
20 juror?

21 PROSPECTIVE JUROR NO. 477: Yeah, I think there
22 could be. I believe in the Second Amendment, so I'm all for
23 that. Also, sometimes it's hard for me to keep focus on
24 things at times, so I feel like that may -- could be a problem
25 at times.

1 MR. RUGGEROLI: But you were paying attention
2 throughout what we've been discussing, right?

3 PROSPECTIVE JUROR NO. 477: Yes, just some of the
4 questions, just so many for me, and it's hard for me to keep
5 up with.

6 MR. RUGGEROLI: Right. I appreciate you answering a
7 number of the things that you have. So, unless you wanted to
8 clarify or go back over anything else, that would -- that
9 would be my final question for you.

10 PROSPECTIVE JUROR NO. 477: No, not that I can think
11 of.

12 MR. RUGGEROLI: Okay, thank you. Mr. Salazar?

13 PROSPECTIVE JUROR NO. 482: 482.

14 MR. RUGGEROLI: And I started this off by asking you
15 because you made that statement about being a good juror, and
16 so I've already asked you a number of questions about that.
17 Did you have anything that you wanted to follow up on
18 specifically?

19 PROSPECTIVE JUROR NO. 482: No, sir.

20 MR. RUGGEROLI: Okay. Thank you. If you could hand
21 it to Ms. Cook.

22 PROSPECTIVE JUROR NO. 483: It's Ms. O'Brien.

23 MR. RUGGEROLI: I'm sorry, I did it again.

24 PROSPECTIVE JUROR NO. 483: I'm just -- I'm just
25 messing. It really is Ms. Cook.

1 MR. RUGGEROLI: I did it again.

2 PROSPECTIVE JUROR NO. 483: No, no, no. It is Ms.

3 Cook. I'm just --

4 MR. RUGGEROLI: Now you're just messing with me?

5 PROSPECTIVE JUROR NO. 483: He's not my husband.

6 MR. RUGGEROLI: Okay.

7 PROSPECTIVE JUROR NO. 483: It's Cook, 483. I was

8 falling asleep. I had to, like, mess around (indiscernible).

9 MR. RUGGEROLI: Well, I appreciate that.

10 PROSPECTIVE JUROR NO. 483: Okay.

11 MR. RUGGEROLI: Now, we've got to put you under

12 oath. You are Ms. Cook?

13 PROSPECTIVE JUROR NO. 483: I am Ms. Cook.

14 MR. RUGGEROLI: All right, Ms. Cook.

15 PROSPECTIVE JUROR NO. 483: 483.

16 MR. RUGGEROLI: Thank you. This notion of being a

17 good juror, you're not actually going to have to ask a lot of

18 questions necessarily; but judging credibility, those kind of

19 things, is that something that you feel comfortable doing?

20 PROSPECTIVE JUROR NO. 483: Yes.

21 MR. RUGGEROLI: You have an opinion about the Second

22 Amendment. We went through that, correct?

23 PROSPECTIVE JUROR NO. 483: Correct, yeah, we

24 already did.

25 MR. RUGGEROLI: How do you feel about serving on the

1 jury and going in the back, and then maybe half the jury or 11
2 against you has the different opinion? Are you somebody
3 that's going to assert yourself?

4 PROSPECTIVE JUROR NO. 483: Yes.

5 MR. RUGGEROLI: And express your opinion?

6 PROSPECTIVE JUROR NO. 483: Yes.

7 MR. RUGGEROLI: So you would not just be inclined to
8 go with the majority?

9 PROSPECTIVE JUROR NO. 483: No, definitely not.

10 MR. RUGGEROLI: Okay, and you will use comic relief
11 potentially as well?

12 PROSPECTIVE JUROR NO. 483: Absolutely.

13 MR. RUGGEROLI: All right, thank you. If you could
14 just hand the microphone.

15 PROSPECTIVE JUROR NO. 485: Shannon Young, 485.

16 MR. RUGGEROLI: I'm going to be brief because you've
17 really answered a lot of questions. And so if you had
18 anything additional, it's open to you, but I think you've
19 answered all of my questions.

20 PROSPECTIVE JUROR NO. 485: Yes.

21 MR. RUGGEROLI: Thank you.

22 PROSPECTIVE JUROR NO. 485: Thank you.

23 MR. RUGGEROLI: I have nothing further. Mr. --
24 pronounce it, please.

25 PROSPECTIVE JUROR NO. 488: Deperio.

1 MR. RUGGEROLI: Yes, sir.
2 PROSPECTIVE JUROR NO. 488: 488.
3 MR. RUGGEROLI: Thank you, sir.
4 Because you're more reserved, and you explained a
5 lot of that, I didn't have a lot of follow up either. And so,
6 unless there's something that grabbed your attention, I don't
7 have anything further.
8 PROSPECTIVE JUROR NO. 488: No.
9 MR. RUGGEROLI: Okay, thank you, sir.
10 Mr. Castro?
11 PROSPECTIVE JUROR NO. 490: 490.
12 MR. RUGGEROLI: Thank you, sir. I haven't had a
13 chance to ask you a lot of questions. You had some concerns
14 if the case were to go beyond a certain date. Did you clarify
15 that?
16 PROSPECTIVE JUROR NO. 490: Yes, because my company
17 only pays for like certain number of days.
18 MR. RUGGEROLI: Okay.
19 PROSPECTIVE JUROR NO. 490: So I know I'm good until
20 next week.
21 MR. RUGGEROLI: Okay. And you'll be able to pay
22 attention without that being a distraction for you?
23 PROSPECTIVE JUROR NO. 490: Yes.
24 MR. RUGGEROLI: In terms of evaluating the
25 witnesses, how do you feel about serving as a juror in that

1 (indiscernible)?

2 PROSPECTIVE JUROR NO. 490: I don't feel like I'm a
3 good judge of character.

4 MR. RUGGEROLI: Okay. Could you follow up on that,
5 if you don't mind?

6 PROSPECTIVE JUROR NO. 490: Just by looking at the
7 person, not knowing the person, and forming an opinion on are
8 they credible or not.

9 THE COURT: Just a minute.

10 THE MARSHAL: Hang on a second.

11 THE COURT: You got to make sure when you come back
12 in that your phones are turned off, please. Okay, go ahead.

13 MR. RUGGEROLI: Okay, so --

14 PROSPECTIVE JUROR NO. 490: Just judging the
15 credibility of a witness or a person, without knowing that
16 person, I'm not very good at that.

17 MR. RUGGEROLI: Okay, and I appreciate you sharing
18 that. You might have other skills in terms of paying
19 attention, and --

20 PROSPECTIVE JUROR NO. 490: Paying attention, I can
21 do that. I know I'm going to do my best to do what's asked,
22 but that part --

23 MR. RUGGEROLI: Yes.

24 PROSPECTIVE JUROR NO. 490: -- that you were --

25 MR. RUGGEROLI: Very good.

1 PROSPECTIVE JUROR NO. 490: -- asking --

2 MR. RUGGEROLI: Thank you. I am glad, because
3 that's one of my important questions about being in a position
4 of judging what a witness says, so thank you for sharing that.
5 If you could hand it down to the front, please, in the third
6 row.

7 PROSPECTIVE JUROR NO. 496: Angela Segura, 496.

8 MR. RUGGEROLI: How about that notion of being a
9 good juror in terms of evaluating whether or not somebody
10 might have a motive to lie or might be not credible? How do
11 you feel about that, serving as a juror?

12 PROSPECTIVE JUROR NO. 496: I believe I have
13 critical thinking skills. Assessing people on a daily basis
14 is what I do for a living.

15 MR. RUGGEROLI: Yeah, can you tell us about that as
16 well?

17 PROSPECTIVE JUROR NO. 496: I'm a nurse.

18 MR. RUGGEROLI: Right.

19 PROSPECTIVE JUROR NO. 496: Yeah, so I see lots and
20 lots of different people with lots of different symptoms,
21 and --

22 MR. RUGGEROLI: Has anybody ever come in and tried
23 to get medication? Are you trained if somebody is trying to
24 get maybe painkillers or something?

25 PROSPECTIVE JUROR NO. 496: Yes, but that's not my

1 responsibility.

2 MR. RUGGEROLI: Okay.

3 PROSPECTIVE JUROR NO. 496: That's the doctor's.

4 MR. RUGGEROLI: Okay. But you feel comfortable,
5 because of your background and experience, evaluating the
6 witnesses?

7 PROSPECTIVE JUROR NO. 496: Yes.

8 MR. RUGGEROLI: Is there anything about the other
9 questions that I've asked to the panel members that you --
10 that grabbed your attention that you would like to follow up
11 on?

12 PROSPECTIVE JUROR NO. 496: Oh, just I strongly
13 believe in the Fifth Amendment.

14 MR. RUGGEROLI: Okay, which portion?

15 PROSPECTIVE JUROR NO. 496: The right to remain
16 silent.

17 MR. RUGGEROLI: Okay.

18 PROSPECTIVE JUROR NO. 496: Yeah.

19 MR. RUGGEROLI: Thank you, I appreciate that.

20 PROSPECTIVE JUROR NO. 513: Michael Laurie, 513.

21 MR. RUGGEROLI: Mr. Laurie, you've had a lot of
22 questions and answers as well. Let me see if there was
23 anything in particular. You mentioned -- I think you said, I
24 might be highly suspicious given a possibility of somebody
25 that would have been accused making a deal and potentially

1 testifying. Could you just elaborate on that a little bit?

2 PROSPECTIVE JUROR NO. 513: Why isn't he here right
3 now with these two gentlemen?

4 MR. RUGGEROLI: Okay. And so, let's say, this might
5 not be the time. Let's say you're chosen to serve on the jury
6 and he gets on the stand -- he or she. Will you listen to the
7 evidence to decide? We're talking about being critical or
8 evaluating somebody's --

9 PROSPECTIVE JUROR NO. 513: Oh, of course.

10 MR. RUGGEROLI: -- potential motive.

11 PROSPECTIVE JUROR NO. 513: Yeah.

12 MR. RUGGEROLI: How about the other side of that?
13 Maybe the suspicion that you have is not founded for a
14 particular individual. Do you think that you'll be fair to
15 the State, and listen to the witness, and decide for yourself?

16 PROSPECTIVE JUROR NO. 513: Yes.

17 MR. RUGGEROLI: Okay.

18 PROSPECTIVE JUROR NO. 513: Yeah. I mean, they're
19 under oath, and, you know.

20 MR. RUGGEROLI: Right.

21 PROSPECTIVE JUROR NO. 513: Yes.

22 MR. RUGGEROLI: Okay. Anything about the other
23 questions that you might have wanted to add?

24 PROSPECTIVE JUROR NO. 513: The open carry question.

25 MR. RUGGEROLI: Uh-huh.

1 PROSPECTIVE JUROR NO. 513: I work in retail.

2 MR. RUGGEROLI: Yes, sir.

3 PROSPECTIVE JUROR NO. 513: Any time I see someone
4 enter my store with a firearm on the side of their hip, it
5 does make me suspicious, only because I'm concerned about the
6 employees and people that are in the store. I don't know who
7 that person is.

8 MR. RUGGEROLI: Right. How many times would you say
9 that that's happened, that an open carry came in, somebody
10 that you don't know?

11 PROSPECTIVE JUROR NO. 513: Oh, two or three times
12 probably in my five years.

13 MR. RUGGEROLI: Right.

14 PROSPECTIVE JUROR NO. 513: Yeah.

15 MR. RUGGEROLI: And Mesquite is a smaller town.

16 PROSPECTIVE JUROR NO. 513: It is.

17 MR. RUGGEROLI: So you have regulars?

18 PROSPECTIVE JUROR NO. 513: We do, yes, all the
19 time.

20 MR. RUGGEROLI: And those occasions where somebody
21 came in open carry, did any of those result in a crime?

22 PROSPECTIVE JUROR NO. 513: No, no.

23 MR. RUGGEROLI: Okay. All right, thank you, sir.

24 PROSPECTIVE JUROR NO. 513: Sure.

25 MR. RUGGEROLI: If you could hand the microphone up.

1 PROSPECTIVE JUROR NO. 520: Maria Moreno, 520.

2 MR. RUGGEROLI: Ms. Moreno, let me take a look. You

3 haven't had a chance to be asked a whole lot of questions. I

4 know that you've been in town about 15 years, right?

5 PROSPECTIVE JUROR NO. 520: Um-hum.

6 MR. RUGGEROLI: Is that a yes?

7 PROSPECTIVE JUROR NO. 520: Yes.

8 MR. RUGGEROLI: And your -- are you a Clerk? Or I

9 might have written that down wrong.

10 PROSPECTIVE JUROR NO. 520: Payroll Clerk.

11 MR. RUGGEROLI: Yes, okay. And you have two

12 children; one in high school, one in junior high?

13 PROSPECTIVE JUROR NO. 520: Yes.

14 MR. RUGGEROLI: And your spouse is an electrician?

15 PROSPECTIVE JUROR NO. 520: Electrician, yes.

16 MR. RUGGEROLI: Okay. As far as being a juror, do

17 you think you would be a good juror?

18 PROSPECTIVE JUROR NO. 520: Yes.

19 MR. RUGGEROLI: And why is that?

20 PROSPECTIVE JUROR NO. 520: Because I -- because I'm

21 really good at listening, and I have to pay attention to

22 details, and then so I can come to a conclusion.

23 MR. RUGGEROLI: Okay. How about evaluating

24 credibility, things like that? How do you -- how do you feel

25 about listening to witnesses?

1 PROSPECTIVE JUROR NO. 520: Good.

2 MR. RUGGEROLI: You would do that well?

3 PROSPECTIVE JUROR NO. 520: Yes.

4 MR. RUGGEROLI: Okay, thank you. Was there any

5 other questions that were asked that you wanted to follow up

6 on that may have grabbed your attention?

7 PROSPECTIVE JUROR NO. 520: No.

8 MR. RUGGEROLI: Okay, thank you.

9 PROSPECTIVE JUROR NO. 521: Magdalena Perez-Haywood,

10 Badge number 521.

11 MR. RUGGEROLI: Hello, Ms. Haywood.

12 PROSPECTIVE JUROR NO. 521: Hello.

13 MR. RUGGEROLI: And I had asked you -- you have a

14 little bit of a soft-spoken nature right now.

15 PROSPECTIVE JUROR NO. 521: Yes.

16 MR. RUGGEROLI: Do you think that you would be

17 somebody that has, a bit more like one of the other

18 prospective jurors, a temperament that maybe is not as

19 assertive if you were --

20 PROSPECTIVE JUROR NO. 521: I am quiet, but if I

21 have feelings or something that I need to, I let them know. I

22 am a teacher and I have classroom management, so when I need

23 to, I have to. I will do it.

24 MR. RUGGEROLI: Exactly.

25 PROSPECTIVE JUROR NO. 521: Um-hum.

1 MR. RUGGEROLI: And that's why I'm following up --
2 PROSPECTIVE JUROR NO. 521: Um-hum.
3 MR. RUGGEROLI: -- because you're able to share
4 that, and I appreciate that. You also mentioned that you love
5 your job?
6 PROSPECTIVE JUROR NO. 521: Yes.
7 MR. RUGGEROLI: Do you think that you would love
8 being a juror?
9 PROSPECTIVE JUROR NO. 521: Definitely. I was
10 raised and born in Mexico. I came here when I was 21, and
11 then I began taking classes and I got my degree here in the
12 U.S. And then, it is learning different rules, and that
13 whatever I learned is in the past; now I am in a new system,
14 new rules, and everything.
15 MR. RUGGEROLI: Very good.
16 PROSPECTIVE JUROR NO. 521: Yes, and again,
17 learning.
18 MR. RUGGEROLI: Right.
19 PROSPECTIVE JUROR NO. 521: Learning. I love
20 learning.
21 MR. RUGGEROLI: Okay. And were there any of the
22 questions that I asked to the panel as a whole that you might
23 have wanted to express your opinion about?
24 PROSPECTIVE JUROR NO. 521: The one that you said
25 the open carry, I don't feel very comfortable with it.

1 MR. RUGGEROLI: Okay. That's a little different
2 than some, so if you don't mind, if you could follow up about
3 that a little bit.

4 PROSPECTIVE JUROR NO. 521: I haven't had any
5 experiences, but I think that human nature, you don't know
6 what people can do when they get very upset, and what they can
7 do. So I think that they should be limited to certain people.

8 MR. RUGGEROLI: Okay. Thank you for providing us
9 with that information.

10 Good afternoon.

11 PROSPECTIVE JUROR NO. 524: 524, Jennifer Mendoza.

12 MR. RUGGEROLI: Good afternoon, Ms. Mendoza.

13 PROSPECTIVE JUROR NO. 524: Afternoon.

14 MR. RUGGEROLI: I also just had a couple of follow
15 ups, generally speaking, rather than specific. I know that
16 you're going to school, but you took some time off?

17 PROSPECTIVE JUROR NO. 524: Yes.

18 MR. RUGGEROLI: Were there any subjects that grabbed
19 your attention that you want to make sure that you take in the
20 future?

21 PROSPECTIVE JUROR NO. 524: Just maybe like my
22 history courses, because I do want to teach history later on.

23 MR. RUGGEROLI: Right. What -- I was going to
24 follow up on that. What time period is most interesting for
25 you in history?

1 PROSPECTIVE JUROR NO. 524: I mean, I can't like
2 decide really.

3 MR. RUGGEROLI: Okay.

4 PROSPECTIVE JUROR NO. 524: Yeah.

5 MR. RUGGEROLI: Okay, you just like history
6 generally?

7 PROSPECTIVE JUROR NO. 524: Yeah.

8 MR. RUGGEROLI: Is there anything of the questions I
9 asked -- some people are talking about Second Amendment.
10 That's kind of the one that's most prevalent right now, I
11 think. Were there any other questions that I asked that you
12 might have had a strong opinion on?

13 PROSPECTIVE JUROR NO. 524: Just the open carry
14 really.

15 MR. RUGGEROLI: What was yours?

16 PROSPECTIVE JUROR NO. 524: Just like Magdalena
17 said, like, I don't feel comfortable. Like, if I'm in public
18 and I see somebody like with a firearm, I don't know, like it
19 just -- I'm not comfortable with it.

20 MR. RUGGEROLI: Okay.

21 PROSPECTIVE JUROR NO. 524: Like, I don't see a
22 reason why people want to have it in public.

23 MR. RUGGEROLI: Okay.

24 PROSPECTIVE JUROR NO. 524: Um-hum.

25 MR. RUGGEROLI: Thank you. Badge number, please?

1 PROSPECTIVE JUROR NO. 561: 561.

2 MR. RUGGEROLI: Yes, sir. Mr. Keang?

3 PROSPECTIVE JUROR NO. 561: Yes.

4 MR. RUGGEROLI: Okay. You have two younger
5 children; they're not of working age, correct?

6 PROSPECTIVE JUROR NO. 561: No, they're minor.

7 MR. RUGGEROLI: Okay. We're getting near the end,
8 and you've heard an awful lot, and I greatly appreciate your
9 patience. So I don't mean to be short, but --

10 PROSPECTIVE JUROR NO. 561: Um-hum.

11 MR. RUGGEROLI: -- was there anything in particular,
12 your background or experience, that would make you let's say a
13 bad juror?

14 PROSPECTIVE JUROR NO. 561: Um-hum. Yeah, I cannot
15 -- I'm a bad juror. Yeah.

16 MR. RUGGEROLI: Okay, why is that?

17 PROSPECTIVE JUROR NO. 561: Because I'm -- I'm a
18 Christian.

19 MR. RUGGEROLI: Okay.

20 PROSPECTIVE JUROR NO. 561: Yeah. I'm a born-again
21 Christian, and I forgive the sin because everybody make
22 mistake. And God forgave my sin, too, and I forgive all the
23 people of their sin, too.

24 MR. RUGGEROLI: Okay.

25 PROSPECTIVE JUROR NO. 561: Because in the Bible, it

1 said that -- God said that you have to forgive somebody of
2 sin, doesn't matter what they do. You know, like in Isaiah 1,
3 Chapter 1, Verse 18, even their -- even their -- their crimes
4 are like scarlet like blood, you know, God made them like
5 Snow, so.

6 MR. RUGGEROLI: Okay.

7 PROSPECTIVE JUROR NO. 561: That's why we have to
8 forgive their sin, you know?

9 MR. RUGGEROLI: Yes, sir.

10 PROSPECTIVE JUROR NO. 561: Forgive their --

11 MR. RUGGEROLI: What if you were asked to maybe
12 limit your view of things, and agree to put the idea of
13 punishment or forgiveness on hold, and look at the facts of
14 the case; not to decide some other areas? What if you were
15 simply asked to decide whether or not something was true, or
16 in this particular case, with a trial, whether or not the
17 State can prove beyond a reasonable doubt that a crime
18 happened and that a specific individual committed that crime?
19 Perhaps that would not really implicate the things that are
20 very important to you. Do you think you could follow the
21 instructions from the Judge to do that as a juror?

22 PROSPECTIVE JUROR NO. 561: I can.

23 MR. RUGGEROLI: You don't think so?

24 PROSPECTIVE JUROR NO. 561: No.

25 MR. RUGGEROLI: And so your inclination would be

1 that you don't believe that you can be fair to the State, the
2 prosecution? You're saying that somebody that's accused, you
3 would have a very hard time convicting, or that your religious
4 views are such that you don't want to sit in judgment?

5 PROSPECTIVE JUROR NO. 561: I cannot sit in
6 judgment.

7 MR. RUGGEROLI: Okay.

8 THE COURT: If you're asked to serve on this panel,
9 what will you do then? Will you listen to the evidence?

10 PROSPECTIVE JUROR NO. 561: I listen -- yeah, I
11 listen to the evidence, but --

12 THE COURT: Okay, and will you follow the law?

13 PROSPECTIVE JUROR NO. 561: I cannot -- I cannot
14 judge them.

15 THE COURT: Okay. You understand that a jury panel
16 just judges the facts? You understand that?

17 PROSPECTIVE JUROR NO. 561: Yes, but I think it's
18 two different law between God law and state law. It's
19 different, you know?

20 THE COURT: Okay, but if you were selected to serve,
21 would you listen to the evidence?

22 PROSPECTIVE JUROR NO. 561: I'll listen, yeah.

23 THE COURT: Would you follow the law?

24 PROSPECTIVE JUROR NO. 561: I think if I followed --
25 if I followed the law, and if God law is different -- you

1 know, it's --

2 THE COURT: Okay.

3 PROSPECTIVE JUROR NO. 561: -- two different things.

4 Yeah.

5 THE COURT: Do you have a religious belief that

6 prevents you from serving as a juror?

7 PROSPECTIVE JUROR NO. 561: Yes.

8 THE COURT: What is that?

9 PROSPECTIVE JUROR NO. 561: I'm a born-again

10 Christian.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 561: Yeah.

13 THE COURT: And you believe that your religious

14 beliefs will be compromised if you sit as a juror?

15 PROSPECTIVE JUROR NO. 561: I think so, yeah.

16 THE COURT: Okay. If you were asked to serve, would

17 you deliberate with your other jurors, or will you just say,

18 I'm not going to do it?

19 PROSPECTIVE JUROR NO. 561: I cannot -- I cannot do

20 it.

21 THE COURT: Okay. So if you were asked to serve,

22 you would refuse to serve?

23 PROSPECTIVE JUROR NO. 561: I cannot serve, you

24 know.

25 THE COURT: Okay, all right. I'm going to -- you

1 can leave the microphone there. I'm going to ask you to step
2 out of the box.

3 Nicholas Campo, I'm going to ask you to take Seat
4 number 26.

5 PROSPECTIVE JUROR NO. 571: 571, Nicholas Campo.

6 THE COURT: Thank you for being here. How long have
7 you lived in Clark County?

8 PROSPECTIVE JUROR NO. 571: 20 years.

9 THE COURT: And your education background?

10 PROSPECTIVE JUROR NO. 571: Some college.

11 THE COURT: What did you study?

12 PROSPECTIVE JUROR NO. 571: I studied business and
13 marketing.

14 THE COURT: Okay. And what do you do for a living?

15 PROSPECTIVE JUROR NO. 571: I do design and sales
16 for a swimming pool contractor, and I coach high school
17 lacrosse.

18 THE COURT: Your marital status?

19 PROSPECTIVE JUROR NO. 571: Single.

20 THE COURT: Do you have kids?

21 PROSPECTIVE JUROR NO. 571: Nope.

22 THE COURT: Have you ever served as a juror before?

23 PROSPECTIVE JUROR NO. 571: Nope, first time.

24 THE COURT: Okay. Have you or anyone close to you,
25 such as a family member or friend, ever been accused of a

1 crime?

2 PROSPECTIVE JUROR NO. 571: Nope.

3 THE COURT: Have you or anyone close to you, such as
4 a family member or friend, ever been accused of a crime?

5 PROSPECTIVE JUROR NO. 571: No.

6 THE COURT: Okay. Would you have a tendency to give
7 more weight or credence or less weight or credence to the
8 testimony of a witness simply because that witness is a police
9 officer?

10 PROSPECTIVE JUROR NO. 571: No.

11 THE COURT: Do you know of any reason why you could
12 not be a fair and impartial juror if selected to serve?

13 PROSPECTIVE JUROR NO. 571: No.

14 THE COURT: Okay, thank you, sir. Thank you for
15 being here.

16 Mr. Pesci?

17 MR. PESCI: Thank you. Sir, the questions about
18 firearms, do you have any strong feelings about firearms one
19 way or the other?

20 PROSPECTIVE JUROR NO. 571: I haven't seen too much
21 of the open carry myself in person, so, no.

22 MR. PESCI: Okay. That wouldn't affect your ability
23 to be fair and impartial to either side?

24 PROSPECTIVE JUROR NO. 571: No.

25 MR. PESCI: Okay. Kind of building on where we

1 ended with the last gentleman as far as maybe a religious, or
2 a moral, or philosophical reason, would that impede you or
3 prevent you from standing in judgment on another human being?

4 PROSPECTIVE JUROR NO. 571: No.

5 MR. PESCI: Okay. Could you follow the law, even if
6 you don't necessarily agree with all of it?

7 PROSPECTIVE JUROR NO. 571: Yes.

8 MR. PESCI: Think you could be fair to both sides?

9 PROSPECTIVE JUROR NO. 571: Yes.

10 MR. PESCI: Thank you very much.

11 Pass for cause, Your Honor.

12 THE COURT: Thank you. Mr. Sanft, any questions?

13 MR. SANFT: Yes, Your Honor. Sir, you teach
14 lacrosse at a high school?

15 PROSPECTIVE JUROR NO. 571: I coach high school
16 lacrosse.

17 MR. SANFT: Okay. Is that a full-time job?

18 PROSPECTIVE JUROR NO. 571: It's part-time.

19 MR. SANFT: All right. Did you play lacrosse in
20 high school?

21 PROSPECTIVE JUROR NO. 571: I did.

22 MR. SANFT: College?

23 PROSPECTIVE JUROR NO. 571: Yes.

24 MR. SANFT: There's not a pro team, right?

25 PROSPECTIVE JUROR NO. 571: It wasn't a pro team,

1 no.

2 MR. SANFT: No, but there's no pro teams as far as
3 -- you know, for lacrosse?

4 PROSPECTIVE JUROR NO. 571: There are.

5 MR. SANFT: Oh, there are?

6 PROSPECTIVE JUROR NO. 571: Yeah, there's a few, but
7 there's none locally.

8 MR. SANFT: I see.

9 PROSPECTIVE JUROR NO. 571: Yeah.

10 MR. SANFT: And are you from Las Vegas?

11 PROSPECTIVE JUROR NO. 571: I was born in New York,
12 lived in Florida until I was ten, and I moved out here when I
13 was ten. So went to college in California for two years, but
14 other than that, I've been in Las Vegas since I was
15 ten-years-old.

16 MR. SANFT: So you played on a high school lacrosse
17 team here in Las Vegas?

18 PROSPECTIVE JUROR NO. 571: Yes.

19 MR. SANFT: Okay. Just a couple other quick
20 questions. Your other job -- what do you do for a living
21 besides coaching lacrosse?

22 PROSPECTIVE JUROR NO. 571: Sales and design for a
23 swimming pool contractor.

24 MR. SANFT: Okay. And does that mean, for instance,
25 you go into somebody's back yard and you listen to what the

1 homeowner wants in terms of a pool, and then you advise them
2 as to what you think it ought to be, and then you put together
3 like some type of CAD presentation as to what it --

4 PROSPECTIVE JUROR NO. 571: Yeah, we use something
5 called Pool Studios, not CAD, but some guys in our company do
6 CAD. But yeah, that's essentially what it is. And then we
7 try to sell the design, and then they either go with us -- and
8 then I am not part of the construction aspect; my higher-ups
9 are, so.

10 MR. SANFT: I see. So you just do the sale portion
11 of it, and maybe like customer relations sort of thing, but --

12 PROSPECTIVE JUROR NO. 571: Yeah, some
13 communications the whole time. So say they have a problem
14 with their bill, they contact me, and then I talk to my boss,
15 and he takes care of it. So I make his life easy.

16 MR. SANFT: Okay. Do you want to be on this jury?

17 PROSPECTIVE JUROR NO. 571: Yes.

18 MR. SANFT: Why would you want to be on this jury?

19 PROSPECTIVE JUROR NO. 571: It's an interesting
20 opportunity, very unique, and this is the first time I've ever
21 been called in for jury duty, so I definitely feel like
22 there's the upmost integrity involved with doing something
23 like this, and I have that.

24 MR. SANFT: Okay. Now, if you're selected as a
25 juror in this case, would you be fair and impartial with both

1 sides?

2 PROSPECTIVE JUROR NO. 571: Yes.

3 MR. SANFT: I had asked earlier about this idea of
4 where there's smoke, there's fire. Do you understand what
5 that concept is?

6 PROSPECTIVE JUROR NO. 571: Somewhat.

7 MR. SANFT: Okay. Just to give you a rundown, if
8 you see smoke, there's an implication that what's creating the
9 smoke is a fire. My client's sitting here next to me to the
10 left. He's been charged with a very serious crime. Because
11 he's sitting here to the left of me, are -- do you feel or
12 believe that, obviously, he must have done something for him
13 to be sitting here next to an attorney?

14 PROSPECTIVE JUROR NO. 571: I don't have a -- it's
15 exactly like you guys said, it's innocent until proven guilty,
16 so I would need facts put in front of me before I can make an
17 honest assessment of what it is.

18 MR. SANFT: Okay. Now, do you also understand --
19 well, let me ask you this. Are you okay with the idea that if
20 I sat back down, didn't say anything at all during the time
21 that we spend together if you're a juror, at all, that you'd
22 still have to hold the State of Nevada to its burden, beyond a
23 reasonable doubt?

24 PROSPECTIVE JUROR NO. 571: From being here, that's
25 what I understand, yes.

1 MR. SANFT: Okay. And you do understand that we're
2 not here to determine whether my client is guilty or innocent;
3 it's guilty or not guilty? Do you understand that?

4 PROSPECTIVE JUROR NO. 571: Yes.

5 MR. SANFT: Meaning that I'm not here to prove his
6 innocence; we're just here to say, can the State prove its
7 case beyond a reasonable doubt.

8 PROSPECTIVE JUROR NO. 571: I understand that.

9 MR. SANFT: Are you okay with that?

10 PROSPECTIVE JUROR NO. 571: Yes.

11 MR. SANFT: Okay. And then, just lastly, going back
12 to lacrosse, with regards to lacrosse, do you teach anything
13 besides just coach lacrosse?

14 PROSPECTIVE JUROR NO. 571: I just coach.

15 MR. SANFT: Okay.

16 PROSPECTIVE JUROR NO. 571: Yeah.

17 MR. SANFT: And just between you and me -- and
18 everyone else here in the room -- but between you and me, with
19 regard to lacrosse, have you thought at all while you're here
20 about maybe teaching opportunities for the people on lacrosse
21 based upon your experience here today if you were chosen as a
22 juror?

23 PROSPECTIVE JUROR NO. 571: I would use what's been
24 given to me, yes, as far as opportunities.

25 MR. SANFT: Well, in terms of your experience here,

1 have you thought at all about, hey, it would be great if I was
2 a juror on this case; I can share that experience with my
3 lacrosse team at some point in the future?

4 PROSPECTIVE JUROR NO. 571: Sure. Not -- not now,
5 but later on, absolutely.

6 MR. SANFT: All right. And just to be clear, once
7 again, you understand you've been instructed by the Court you
8 can't talk about this case at all until such time as she
9 discharges you from your duty?

10 PROSPECTIVE JUROR NO. 571: I understand.

11 MR. SANFT: Okay. I have no further questions, Your
12 Honor. We'll pass for cause.

13 THE COURT: Mr. Ruggeroli?

14 MR. RUGGEROLI: Thank you, Your Honor. Mr. Campo,
15 you just answered rapid-fire questions, so I only want to ask
16 you, anything about you, your background or experience, that
17 would have an impact with you, positive or negative, as
18 serving as a juror in this case?

19 PROSPECTIVE JUROR NO. 571: I -- no, nothing that
20 I'm hiding.

21 MR. RUGGEROLI: No, I know, but anything that you
22 think I would want to know about you that might be a
23 particularly important asset?

24 PROSPECTIVE JUROR NO. 571: Just that I am unbiased,
25 I'm very fair, and I'd be open to listening to the evidence

1 and everything that is put in front of me, and making the
2 right decision. Again, like it's the upmost integrity
3 involved with something like this.

4 MR. RUGGEROLI: Okay.

5 PROSPECTIVE JUROR NO. 571: So you want to make sure
6 you're doing the right thing.

7 MR. RUGGEROLI: Thank you. If you could just hand
8 the microphone.

9 PROSPECTIVE JUROR NO. 571: Sure.

10 MR. RUGGEROLI: Afternoon.

11 PROSPECTIVE JUROR NO. 540: Staci McCarthy, 540.

12 MR. RUGGEROLI: Okay, Ms. McCarthy, thank you. I
13 wanted to follow up and start with this terrible situation
14 with your father, right?

15 PROSPECTIVE JUROR NO. 540: Right.

16 MR. RUGGEROLI: 1989?

17 PROSPECTIVE JUROR NO. 540: Yes.

18 MR. RUGGEROLI: And he was actually shot?

19 PROSPECTIVE JUROR NO. 540: Yes.

20 MR. RUGGEROLI: In the head?

21 PROSPECTIVE JUROR NO. 540: Yeah.

22 MR. RUGGEROLI: And he lived, thankfully?

23 PROSPECTIVE JUROR NO. 540: Um-hum. Yes.

24 MR. RUGGEROLI: Is that a yes?

25 PROSPECTIVE JUROR NO. 540: Yes.

1 MR. RUGGEROLI: Okay. That's a very difficult
2 experience, and thankfully, it had a happy ending. The
3 allegations here involve something that, on the one hand, may
4 not have any significance or commonality with; and on the
5 other hand, it might have. Is there anything from that
6 experience that you went through that you think would cause
7 you hesitation to sitting in judgment on this case?

8 PROSPECTIVE JUROR NO. 540: No.

9 MR. RUGGEROLI: Your father, did he wind up speaking
10 to the police, and giving statements and things like that?

11 PROSPECTIVE JUROR NO. 540: Yes. There was a whole
12 investigation, but the person was never caught, so.

13 MR. RUGGEROLI: Okay. There's nothing about that --
14 and you understand why I would want to be cautious?

15 PROSPECTIVE JUROR NO. 540: Yeah.

16 MR. RUGGEROLI: There's nothing about that, because
17 somebody got away with that horrible crime, that would cause
18 you to tilt the balance in this case because of the nature of
19 the allegations?

20 PROSPECTIVE JUROR NO. 540: Not at all. I treat
21 each person individually. Everyone's equal in my mind, so.

22 MR. RUGGEROLI: Okay. Got a lot of experience in
23 teaching, and so you've probably had a lot of experiences.
24 You've heard me talk about being critical or evaluating?

25 PROSPECTIVE JUROR NO. 540: Right.

1 MR. RUGGEROLI: How do you think you would be -- I
2 mean you were already on the grand jury, obviously. This is a
3 different context, right?

4 PROSPECTIVE JUROR NO. 540: Right.

5 MR. RUGGEROLI: How about in terms of the different
6 standard, and evaluating motive, credibility, things of that
7 nature?

8 PROSPECTIVE JUROR NO. 540: I mean, I think I would
9 be good. I'm a good listener, patient. I learn to kind of
10 collect all the information before I make any decisions. I've
11 learned to do that with teaching and with resolving conflicts
12 with students, parents, and so on.

13 MR. RUGGEROLI: Okay. So, as my role as a defense
14 attorney, should I have any concerns though about you?

15 PROSPECTIVE JUROR NO. 540: I don't think so.

16 MR. RUGGEROLI: Okay, thank you. If you could pass
17 the microphone.

18 Mr. Widdison?

19 PROSPECTIVE JUROR NO. 541: 541, Kevin Widdison.

20 MR. RUGGEROLI: Good afternoon.

21 PROSPECTIVE JUROR NO. 541: Hi.

22 MR. RUGGEROLI: You were asked a number of follow up
23 questions, but --

24 PROSPECTIVE JUROR NO. 541: Yes, sir.

25 MR. RUGGEROLI: -- there is some similarities. You

1 understand why I would want to make sure?

2 PROSPECTIVE JUROR NO. 541: Yes, sir.

3 MR. RUGGEROLI: So I give you that same opportunity.

4 Me, serving as the representative of a client that's accused

5 of a crime --

6 PROSPECTIVE JUROR NO. 541: Um-hum.

7 MR. RUGGEROLI: -- is there anything about your

8 unique experiences that should cause me some second thoughts

9 about whether or not I would have you serve on this jury?

10 PROSPECTIVE JUROR NO. 541: Not at all.

11 MR. RUGGEROLI: Not at all? And why is that?

12 PROSPECTIVE JUROR NO. 541: It's completely

13 different.

14 MR. RUGGEROLI: Okay.

15 PROSPECTIVE JUROR NO. 541: Not associated at all.

16 MR. RUGGEROLI: Okay. The questions that I've

17 asked, there were a number of open-ended questions.

18 PROSPECTIVE JUROR NO. 541: Yes, sir.

19 MR. RUGGEROLI: The open carry is the one that most

20 people seem to have a particular opinion, compared to some of

21 my other questions.

22 PROSPECTIVE JUROR NO. 541: Um-hum.

23 MR. RUGGEROLI: Is that question or any of the

24 others something that you -- that grabbed your attention?

25 PROSPECTIVE JUROR NO. 541: Yeah, I'm pro-Second

1 Amendment. I have a CCW myself, but I don't open carry. I
2 think that's stupid, for me. It would be stupid for me to do
3 it.

4 MR. RUGGEROLI: Okay, and could you elaborate on
5 that and why?

6 PROSPECTIVE JUROR NO. 541: Well, I think it kind of
7 makes you kind of a target. "Oh, look," you know? I just
8 don't want that attention.

9 MR. RUGGEROLI: Okay. All right, thank you.
10 Anything else that you would want to add in terms of any of
11 the questions that have been asked or answered?

12 PROSPECTIVE JUROR NO. 541: No, sir.

13 MR. RUGGEROLI: Okay, thank you.

14 Mr. Kubota, you've also -- and your badge number,
15 please?

16 PROSPECTIVE JUROR NO. 546: Yes. My badge number is
17 546.

18 MR. RUGGEROLI: I'm just giving you the opportunity,
19 because you've answered an awful lot of questions as well, if
20 anything stirred up new that you would like to add.

21 PROSPECTIVE JUROR NO. 546: Yeah, all sorts of --

22 MR. RUGGEROLI: Okay. Well, maybe I can --

23 PROSPECTIVE JUROR NO. 546: You want to start with
24 the Second Amendment? You know, like --

25 MR. RUGGEROLI: Yeah, why don't we do that.

1 PROSPECTIVE JUROR NO. 546: I hunt.

2 MR. RUGGEROLI: Okay.

3 PROSPECTIVE JUROR NO. 546: I've killed lots of elk.

4 Deer elk, bull elk, cow elk. At the same time, I agree with

5 the idea that guns don't kill people; people kill people.

6 MR. RUGGEROLI: Okay.

7 PROSPECTIVE JUROR NO. 546: You should have the

8 ability to carry a gun if you're sane enough. And the laws

9 haven't gone, I don't think, in the right direction. They're

10 worried about just taking everybody's gun away, and they only

11 should have to take certain people's guns away.

12 MR. RUGGEROLI: I don't mean to cut you off, but I

13 had a follow up --

14 PROSPECTIVE JUROR NO. 546: Okay.

15 MR. RUGGEROLI: -- about a different right though.

16 PROSPECTIVE JUROR NO. 546: Okay.

17 MR. RUGGEROLI: That right, the Fifth Amendment, to

18 not testify. You had made some answers previously that I did

19 want to follow up about that.

20 PROSPECTIVE JUROR NO. 546: Okay. That's another

21 one I was going to bring up, because I know that some people,

22 like me, aren't always good with words. And I can be twisted

23 around by lawyers who are better talkers than me and twist

24 what I said into what I didn't want to say. So I understand

25 he shouldn't have to talk --

1 MR. RUGGEROLI: Okay.

2 PROSPECTIVE JUROR NO. 546: -- because some of us

3 aren't good talkers.

4 MR. RUGGEROLI: Okay. Thank you, sir. That really

5 is what I had for you, and I appreciate it.

6 PROSPECTIVE JUROR NO. 546: Okay.

7 MR. RUGGEROLI: I'm sure you have more. If you're a

8 juror, perhaps you will ask some questions, but I'm going to

9 ask you if you could pass the microphone off. Thank you, sir.

10 Ms. Bell?

11 PROSPECTIVE JUROR NO. 554: 554.

12 MR. RUGGEROLI: Good afternoon. I want to just

13 follow up, because I know you brought up a couple times, and I

14 may have missed it. You did have some concerns about the --

15 is it the 21st?

16 PROSPECTIVE JUROR NO. 554: Yes.

17 MR. RUGGEROLI: And your --

18 PROSPECTIVE JUROR NO. 554: Friday.

19 MR. RUGGEROLI: Okay. If we get down there,

20 Wednesday, Thursday, do you think that that's going to be a

21 distraction that you stop paying attention? I would guess

22 your grand -- is it your granddaughter or grandson?

23 PROSPECTIVE JUROR NO. 554: Yes, my granddaughter.

24 MR. RUGGEROLI: Okay. This is important, I can

25 tell. You agree that this case is very, very important as

1 well?

2 PROSPECTIVE JUROR NO. 554: Right.

3 MR. RUGGEROLI: Is this something that would be a
4 distraction to where you might not be fulfilling your job as a
5 good juror though?

6 PROSPECTIVE JUROR NO. 554: Right, it would.

7 MR. RUGGEROLI: It would?

8 THE COURT: Okay, but you indicated it wasn't until
9 February 21st, correct?

10 PROSPECTIVE JUROR NO. 554: Yeah, next Friday.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 554: Next Friday.

13 THE COURT: I really believe that we will be done.

14 PROSPECTIVE JUROR NO. 554: And if you're done --

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 554: -- then it would be
17 okay.

18 THE COURT: And I'm going to give you my word that
19 you won't have to miss your granddaughter's event.

20 PROSPECTIVE JUROR NO. 554: Okay.

21 THE COURT: Okay? Does that help you?

22 PROSPECTIVE JUROR NO. 554: Yes.

23 THE COURT: Okay.

24 MR. RUGGEROLI: And I appreciate that, Judge,
25 because I forgot. That's a caveat that I remember now. So

1 unless you had anything else to add, that was the one thing I
2 was going to follow up on.

3 PROSPECTIVE JUROR NO. 554: That's it.

4 MR. RUGGEROLI: Okay, thank you. If we could --
5 I'll take that.

6 PROSPECTIVE JUROR NO. 556: 556.

7 MR. RUGGEROLI: Yes, sir.

8 PROSPECTIVE JUROR NO. 556: Andrew Delgadillo.

9 MR. RUGGEROLI: Yes, sir.

10 PROSPECTIVE JUROR NO. 556: Okay.

11 MR. RUGGEROLI: A lot has been asked and answered,
12 sir. I'm going to just open it to you. Anything, background,
13 about you, your experience, that you think would have an
14 impact on your ability to serve as a juror?

15 PROSPECTIVE JUROR NO. 556: Not at all.

16 MR. RUGGEROLI: Any particular opinion about any of
17 the subjects that we discussed? Second Amendment rights,
18 Fifth Amendment?

19 PROSPECTIVE JUROR NO. 556: No.

20 MR. RUGGEROLI: No, sir?

21 PROSPECTIVE JUROR NO. 556: No, no.

22 MR. RUGGEROLI: Okay. And because, Mr. Randall, I
23 had already asked you a number of questions, I don't have any
24 follow up for you either. So, thank you.

25 Judge, I'll pass for cause.

1 THE COURT: You'll pass this panel for cause? And
2 the State passes the panel for cause?
3 MR. PESCI: Yes, Your Honor.
4 THE COURT: Okay. And Mr. Sanft, just so we're
5 clear, you're passing for cause?
6 MR. SANFT: Yes, Your Honor. Thank you.
7 THE COURT: Okay. The Clerk has prepared what will
8 be marked Court's Exhibit --
9 THE CLERK: Number 1.
10 THE COURT: -- Number 1.
11 MR. PESCI: Judge, while that's being marked, can we
12 approach?
13 THE COURT: Yeah, yeah.
14 (Bench conference)
15 MR. PESCI: So just by way of review, the State will
16 have eight, and defense has to share eight?
17 THE COURT: Right.
18 MR. PESCI: And then, whenever we get to 12 --
19 THE COURT: Right.
20 MR. PESCI: -- the next seats in order, we exercise
21 that one alternate for those remaining?
22 THE COURT: Right. Uh-huh. So as soon as -- I
23 mean, when both sides are done exercising their challenges,
24 I'll count down. That will be our 12. And so you will only
25 have those jurors at the bottom or wherever they fall to

1 exercise that final challenge.

2 MR. SANFT: So --

3 MR. PESCI: Unless --

4 THE COURT: So there should be four.

5 MR. SANFT: Right.

6 THE COURT: There would be four jurors left, and

7 each side will have one.

8 MR. SANFT: So if one of us were to waive a

9 challenge, then that would just push up the four to whoever is

10 next in line, right?

11 THE COURT: It would just --

12 MR. SANFT: Because it wouldn't just be the last

13 one?

14 THE COURT: If you waive, then it would probably be

15 five people.

16 MR. SANFT: Okay.

17 MR. PESCI: But there would be two alternate seats?

18 THE COURT: Two alternates.

19 MR. RUGGEROLI: Just one clarification. Let's say

20 number 2 gets stricken.

21 THE COURT: Um-hum.

22 MR. PESCI: Sh.

23 MR. RUGGEROLI: Who would fall into that second

24 slot?

25 MR. SANFT: The next in line.

1 THE COURT: Yeah, I don't know --
2 MR. RUGGEROLI: Is it 3 goes over?
3 THE COURT: There's -- I don't count 1 through 12 --
4 MR. RUGGEROLI: Oh, okay.
5 THE COURT: -- until both sides have exercised their
6 challenges.
7 MR. RUGGEROLI: Okay.
8 THE COURT: So you'll be able to tell. Just go down
9 the list --
10 MR. RUGGEROLI: And then, they fill in?
11 THE COURT: -- and you'll be able to tell who's on
12 the panel.
13 MR. RUGGEROLI: Okay.
14 MR. SANFT: Right.
15 MR. PESCI: Thank you, Your Honor.
16 (End of bench conference)
17 THE COURT: The defense can exercise their first.
18 (Pause in the proceedings)
19 THE COURT: State may exercise their second.
20 MR. PESCI: Thank you, Your Honor.
21 (Pause in the proceedings)
22 THE COURT: Defense may exercise their second.
23 MR. SANFT: Your Honor, may we approach?
24 THE COURT: You may.
25 (Bench conference)

1 MR. SANFT: Do you want to entertain a Batson
2 challenge now, or do we do that at some other time?

3 THE COURT: Well, if you're going to make a Batson
4 challenge, I'll excuse the jurors and you can make it.

5 MR. SANFT: Okay.

6 THE COURT: Okay.

7 (End of bench conference)

8 THE COURT: Okay. At this time, ladies and
9 gentlemen, we're going to take a recess.

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

18 We'll be in recess. Officer Hawkes will let you
19 know when we're ready. Thank you.

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

22 (Outside the presence of the prospective jurors)

23 THE COURT: Okay. The record will reflect that the
24 hearing is taking place outside the presence of the panel.
25 Mr. Sanft, go ahead.

1 MR. SANFT: Your Honor, we had asked the Court to
2 consider the possibility at this particular point of a
3 challenge under Batson, specifically as to the State's number
4 2, their second peremptory challenge, which I believe
5 identified and struck Juror number -- Badge number 468, Alexis
6 Newell.

7 Just for the record, Ms. Newell is an African-
8 American female who is on the panel, among the individuals
9 that we would be considering with regards to potentially being
10 on this jury. The State struck this particular person. I
11 don't recall during the time that she was canvassed, either by
12 the State, by the Court, or by defense, as to her being not
13 fit to be on a jury. There was nothing that would indicate to
14 me that she would be an individual that would not be
15 appropriate to be on this jury.

16 The problem, I think, with regards to the Batson in
17 this case is that I don't know if we necessarily have a --
18 what you would call a pattern, but what we do have in this
19 case is one individual black juror on this jury that's being
20 struck for a reason, at this particular point, is -- I don't
21 know. I don't know what the State would offer at this point.
22 I just don't see a glaring reason.

23 She never said she would not be fair and impartial;
24 there is no issues with regards to her school. Outside of the
25 fact that she's black, I don't know why she was being struck

1 at this particular point, and that's the reason why we raised
2 the Batson challenge.

3 THE COURT: Okay, because my concern is, it can't
4 just be, "The State used a challenge to strike a minority
5 group." It has to be more than that.

6 MR. SANFT: Well, but that's what I'm saying. I
7 don't --

8 THE COURT: I have to be able to make an inference
9 that the only reason they struck that juror was for a
10 discriminatory purpose.

11 MR. SANFT: Well, the discriminatory purpose for us
12 would be -- is the fact that she's black, and she's the only
13 black juror on this jury panel. I mean, I don't know what
14 else to say besides that. That's why --

15 THE COURT: Well, that's the problem with exercising
16 it when the State's -- I mean, I don't know what to say, but I
17 can just tell you, you know, the three-part test; the first
18 part, there's no pattern. Doesn't necessarily have to be a
19 pattern.

20 MR. SANFT: Right.

21 THE COURT: However, it can't just be, "Batson, the
22 State challenged an African-American." It has to be more than
23 that. There has to be sufficient facts for me to make an
24 inference that they don't have a good purpose; that they
25 struck that juror for a discriminatory purpose.

1 So I don't know if the State wants to be heard as to
2 the first step.

3 MR. PESCI: Well, I do, in the sense that there is
4 no pattern, right? As defense counsel pointed out, this is,
5 as far as in the 32, the only ostensibly African-American
6 person that we have in this group, right? So there hasn't
7 been a pattern, right? And their argument is that there's
8 some sort of a pretext, right? Because I'm going to go to the
9 next step, Judge, and I know I shouldn't --

10 THE COURT: Okay, but if you go to the next step --

11 MR. PESCI: Right, but --

12 THE COURT: -- you waive the first step.

13 MR. PESCI: But the problem is -- I don't disagree
14 with you.

15 THE COURT: Okay.

16 MR. PESCI: I agree with you 100 percent, Judge.
17 But I've been in front of the Supreme Court when I've stood on
18 the, "they didn't even make the pattern, they didn't even show
19 this," and they don't -- well, I won't say it. They want to
20 go to the next step. They just want to go to the next step.

21 So I'm not conceding the first step, but I'm going
22 to put on the record the fact that this is the only human
23 being in this room who's a potential juror who says -- Mr.
24 Sanft talked about school. She wants to go be a criminal
25 defense attorney. I'm never picking a criminal defense

1 attorney, no matter what color, no matter what ethnicity, no
2 matter what sex, no matter what gender, on my jury. Never,
3 ever having someone who aspires to be a criminal defense
4 attorney.

5 And I dare say, if my son who wanted to go to law
6 school -- which he doesn't -- and wanted to be a DA -- which
7 he doesn't -- was seated in this panel, there's no way on
8 God's green earth a defense attorney would sit him when he
9 says he wants to go to law school; not just go to law school,
10 but be a District Attorney. That's my race-neutral. There is
11 no pretext in any way, shape, or form.

12 THE COURT: Okay. I don't know if you want to
13 respond. I know, although the State did state their
14 race-neutral reason, I don't believe that the defense has met
15 the first prong --

16 MR. SANFT: I think the issue though --

17 THE COURT: -- that there's an inference that they
18 utilized that challenge for a discriminatory purpose.

19 MR. SANFT: Well, I mean, just to be fair to the
20 State, there's been multiple times in my career picking juries
21 where there's an individual that's up there who's a police
22 officer, or an FBI agent I had once. I mean, it's -- just
23 because an individual says, "I want to become a criminal
24 defense attorney" doesn't necessarily make it to the point
25 where you can say that she would not be fair and impartial to

1 the State. My question would have been --

2 THE COURT: But that's not the standard.

3 MR. SANFT: Well, but here's the issue though. I
4 mean, I think if the State wanted to delve more into that
5 situation and flesh it out, and say, "Why do you want to
6 become a criminal defense attorney?" "Well, because I believe
7 that, you know, people get unfairly treated, people in my
8 community get fairly" -- whatever it is, then I think at this
9 point I would have more of a reason to not say anything and
10 sit back down.

11 But the problem I'm having is, just because she
12 articulates that she's a criminal justice major and she wants
13 to become a criminal defense attorney in and of itself is not
14 necessarily saying she cannot be a fair and impartial juror.
15 Now, once again, my problem is --

16 THE COURT: But they don't have to -- they just have
17 to state a race-neutral basis. I mean, we're done with
18 challenges for cause. We're on peremptory challenges.

19 MR. SANFT: Well, yes, I understand that, Your
20 Honor. I just think that -- going back again to the pattern,
21 the reason why the pattern and -- you know, let's get back to
22 that issue for a second.

23 We had a long hearing this morning on the issue of
24 whether or not we had a -- you know, a representative, you
25 know, representation of the community up on this jury with

1 regards to potential black jurors. Now we have the only
2 person that was a black juror on this jury, and that person's
3 being struck because of the fact that the State says, well,
4 she wants to become a criminal defense attorney, but there was
5 no effort to regards to fleshing out that issue.

6 If they really believed that that would have been an
7 issue that made her not impartial, not fair to both sides in
8 this case, I think that should have been fleshed out, but we
9 didn't do that. And as a result, what happens now is that we
10 presume that she would be, you know, not fair to the State of
11 Nevada.

12 That's the reason why we had objected. That's the
13 reason why we had made this challenge. And we understand the
14 Court's position with regards to the fact that, you know,
15 yeah, I mean, the State can articulate that as a reason and
16 strike that person.

17 I just look at it and I think in my mind, like, I
18 don't know if that's enough. I don't know if that's enough to
19 say, hey, you know what, we're going to just excuse the image
20 of this whole thing by striking the only black juror off of
21 this jury, when you have two individuals here who are black,
22 and this is the whole reason why we even did this hearing in
23 the beginning of today's proceedings with regards to
24 representation. I just -- I just find that unfair. And as a
25 result of that, that's the reason why I had raised a Batson

1 challenge, so.

2 THE COURT: Okay. Anything else?

3 MR. PESCI: Judge, it doesn't matter if she were a
4 Caucasian female who said she wanted to go to law school to be
5 a criminal defense attorney, I'm never keeping her. And I
6 don't need to ask her the reasons why she wants to be the
7 person who would be in opposition to me in a courtroom.
8 That's it. She wants to take the job that's in opposition to
9 me in the courtroom. I'm not comfortable with someone, no
10 matter what race they're from, in that position, and that's
11 why she's been kicked by the State.

12 THE COURT: Okay. I'm --

13 MR. BROOKS: Judge, can I add just one thing that
14 wouldn't have been on the record?

15 THE COURT: Of course.

16 MR. BROOKS: Do you remember yesterday when we
17 ended? We ended session, and at this point, we didn't know
18 yet that she wanted to be a defense attorney. And remember, I
19 ran up to you as you were getting off the bench and said, can
20 we go get Ms. Newell so you can write her a letter to excuse
21 her from her test?

22 So those are two different -- I mean, I was the one
23 who was trying to get her so she could come back today. Do
24 you remember that? At around --

25 THE COURT: Yeah, I do.

1 MR. BROOKS: So, I mean, it's a little -- it's
2 completely different when yesterday I'm trying to make sure
3 she's allowed to come back, and then today we learned
4 something that's a completely different new fact.

5 MR. RUGGEROLI: Thank you, Judge.

6 THE COURT: I should have given you an --

7 MR. RUGGEROLI: Oh, no.

8 THE COURT: -- opportunity to join in.

9 MR. RUGGEROLI: Mr. Sanft expressed all of my
10 arguments. I just wanted to note that we did join in that
11 motion.

12 THE COURT: Okay. At this time, I'm going to deny
13 the challenge and make a determination that there wasn't a
14 showing made as to the first step of the analysis.

15 You know what? Do you mind doing your challenges
16 with them out there?

17 MR. SANFT: No.

18 THE COURT: Okay.

19 MR. SANFT: We could do that.

20 MR. RUGGEROLI: We don't object.

21 THE COURT: Sometimes lawyers want to look at the
22 people, but, I mean --

23 MR. SANFT: No.

24 THE COURT: -- I guess you've been looking at them
25 for two days. Oh, wait, I don't know if I -- let's see.

1 THE MARSHAL: Well, defense hadn't gone yet.
2 THE COURT: Okay, defense hasn't done their second?
3 THE MARSHAL: No, ma'am.
4 (Pause in the proceedings)
5 THE COURT: You know what, if it would be easier so
6 you can see the jurors -- is that a problem?
7 MR. RUGGEROLI: It's not.
8 THE COURT: Okay.
9 (Pause in the proceedings)
10 THE COURT: State may exercise their third.
11 MR. PESCI: Thank you, Your Honor.
12 (Pause in the proceedings)
13 THE COURT: State may exercise their fourth.
14 MR. PESCI: Thank you, Your Honor.
15 (Pause in the proceedings)
16 THE COURT: Defense may exercise their fourth.
17 (Pause in the proceedings)
18 THE COURT: Okay, the State may exercise their
19 fifth.
20 MR. PESCI: Thank you, Your Honor.
21 (Pause in the proceedings)
22 THE COURT: The State may exercise their sixth
23 peremptory challenge.
24 MR. PESCI: Thank you.
25 (Pause in the proceedings)

1 THE COURT: Defense may exercise their fifth -- I'm
2 sorry, sixth.

3 (Pause in the proceedings)

4 THE COURT: Thank you. Okay. Okay, the State may
5 exercise their seventh.

6 MR. PESCI: Thank you, Your Honor.

7 (Pause in the proceedings)

8 THE COURT: Defense may exercise their seventh.

9 (Pause in the proceedings)

10 THE COURT: The State may exercise their eighth
11 peremptory challenge.

12 MR. PESCI: Thank you, Your Honor.

13 (Pause in the proceedings)

14 THE COURT: All right. At this time, the State and
15 the defense can exercise your final peremptory challenge as to
16 29 through 32 only.

17 (Pause in the proceedings)

18 THE COURT: Thank you. Just a minute, let me just
19 go through the jury list with the attorneys.

20 THE MARSHAL: Yes, ma'am.

21 THE COURT: Okay. Juror number 1 will be Vito
22 Casucci. Number 2, Sharon Morrison. Number 3, Flores-Virgen.
23 Number 4, Suzanne Quinn. 5, Camille Estrella. 6, Rodriguez.
24 7, Salazar. 8, Cook. Deperio, 9. Castro, 10. Segura, 11.
25 Moreno, 12. And our number 13, our first alternate, Roberta

1 Bell. And number 14, our second alternate, Colin Randall.
2 Any objection by the State?
3 MR. PESCI: No, Your Honor.
4 THE COURT: Mr. Sanft, any objection?
5 MR. SANFT: No, Your Honor. Thank you.
6 THE COURT: Mr. Ruggeroli, any objection?
7 MR. RUGGEROLI: No, Judge.
8 THE COURT: Okay. If you want to bring them in,
9 Haly can start calling them, so they can just sit out in the
10 gallery.
11 THE MARSHAL: All rise for the entering jury,
12 please.
13 (Within the presence of the prospective jurors)
14 THE MARSHAL: And we'll just fill in both sides like
15 I told you, and listen for your name to be called.
16 THE COURT: Vito Casucci, you're Juror number --
17 you're Juror number 1.
18 THE CLERK: Juror number 2, Sharon Morrison.
19 THE COURT: Sharon Morrison? I don't think she's
20 here yet. Sharon Morrison? Sharon Morrison?
21 MR. SANFT: She's coming in, Your Honor.
22 THE COURT: Okay.
23 THE MARSHAL: Fill in both sides, folks.
24 THE COURT: Sharon Morrison, you are Juror number 2.
25 THE CLERK: Juror number 3 is Aria Flores-Virgen.

1 Juror number 4, Suzanne Quinn. Juror number 5, Camille
2 Estrella. Juror 6, Danilo Rodriguez. Juror 7, Jonathan
3 Salazar. Juror number 8, Lisa Cook.

4 THE COURT: Ms. Cook?

5 THE CLERK: Juror number 9, Markdelan Deperio.
6 Juror number 10, Caesar Castro. Juror number 11, Angela
7 Segura. Juror number 12, Maria Moreno. Juror number 13,
8 Roberta Bell. Juror number 14, Colin Randall.

9 THE COURT: Okay. At this time ladies and
10 gentlemen, we do have our impaneled jury. I want to thank you
11 very much for your willingness to be here, especially over
12 these last two days. Thank you very much, and you are
13 discharged as jurors.

14 THE MARSHAL: Thank you. On your way out the door,
15 folks, there's a cardboard box right there. You can deposit
16 those clear plastic badges in that box. Thank you.

17 THE COURT: Okay. Does the State stipulate to the
18 presence of the jury panel as now impaneled?

19 MR. PESCI: Yes, Your Honor.

20 THE COURT: Mr. Sanft?

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

22 THE COURT: Okay. Mr. Ruggeroli?

23 MR. RUGGEROLI: Yes, Your Honor.

24 THE COURT: Okay. Thank you very much, ladies and
25 gentlemen, for your willingness to be here and your

1 willingness to serve. I know it has been a long day, so I'm
2 just going to give you a few instructions, and then we will
3 come back tomorrow morning at 10:30.

4 Now that you are jurors -- Officer, did you give
5 them their badges yet?

6 THE MARSHAL: Yes, ma'am.

7 THE COURT: Okay. Officer Hawkes is giving you blue
8 -- oh, I didn't see the blue badges. You can take those white
9 badges off and just put the blue badges on. I just ask that
10 you wear those badges at all times when you are in the
11 courthouse so that everyone knows that you are jurors and they
12 know not to speak to you about this case. That just
13 identifies you as a juror, and I think it's helpful when you
14 go out. You can take it off when you're walking in and out,
15 but as long as you're in the courthouse, please make sure you
16 have those badges on.

17 When you come back tomorrow, you can come straight
18 up to the 14th floor. 10:30 is our start time. If you'll
19 wait outside, Officer Hawkes will greet you, and he'll bring
20 you in when we're ready.

21 I want to remind you that you're not permitted to
22 discuss the case with anyone, even your fellow jurors, until
23 you are excused to go deliberate upon your verdict. So when
24 you go home tonight, you can tell your family member, your
25 friends, your coworkers that you are a juror in a criminal

1 case, but you cannot tell them anything else about this case.

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

11 You're further admonished you may not communicate
12 with anyone, including your fellow jurors, on your cell phone,
13 through e-mail, Blackberry, iPhone, text messaging, through
14 Twitter, or any blog or website, through any internet chat
15 room, or by way of any other social networking website,
16 including Facebook, Myspace, Linked In, and YouTube.

17 Again, thank you very much for your willingness to
18 serve, and we will see you tomorrow morning at 10:30.

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

21 (Outside the presence of the jurors)

22 THE COURT: Anything outside the presence?

23 MR. PESCI: Yes, Judge.

24 THE COURT: Okay.

25 MR. PESCI: Tomorrow, with the openings -- sorry,

1 the door wasn't all the way closed. Tomorrow, with the
2 openings, the State's going to be introducing some evidence.
3 We have marked all of the evidence. It's been provided -- or
4 the defense has been able to see it.

5 There's one piece of evidence in particular that
6 hasn't been marked yet, but we're going to bring it in
7 tomorrow to have it marked. But we showed it to the defense,
8 and we wanted to make a record before we started.

9 THE COURT: Okay.

10 MR. PESCI: And I'm trying to log on, and for
11 whatever reason, I can't. But there is -- in one of the
12 phones, a forensic analysis of the phone produces a Facebook
13 posting via Messenger on Facebook, and it's coming from
14 Raekwon Robertson's account, going to DeMario -- I'm sorry,
15 DeShawn Robinson's account.

16 And there is a commentary in there about hitting a
17 house, and we want to show it to you, which is why I'm trying
18 to get on here. I apologize. We intend to use that in our
19 case-in-chief, and we wanted to bring that to the attention of
20 defense now, before we're in the midst of doing the opening.

21 THE COURT: And it's from Mr. Robertson to?

22 MR. PESCI: Raekwon Robertson's Facebook account,
23 going to DeShawn Robinson, who will be the testifying
24 co-defendant.

25 THE COURT: And it says?

1 MR. PESCI: Yeah.

2 THE COURT: Did you give us the -- okay, it looks
3 like you're looking for it.

4 MR. PESCI: Well, I'm just trying to connect so
5 you'll be able to see it, Your Honor.

6 THE COURT: Okay.

7 MR. PESCI: So I apologize that I haven't gotten
8 that done. I was on the wrong -- okay, I think I'm attached
9 now. So you can see here, Your Honor --

10 THE COURT: Okay.

11 MR. PESCI: -- Ray Logan, which is a screen name
12 associated with Raekwon Robertson.

13 THE COURT: Okay.

14 MR. PESCI: It's --

15 THE COURT: Okay.

16 MR. PESCI: -- Tuesday at 11:40 A.M. Our event
17 happens Wednesday at 12:10 A.M., so it's just within a 12-hour
18 time period. It's saying, "Ask DJ" -- DJ, as an offer of
19 proof, is the nickname for DeMario Lofton-Robinson, who is
20 currently in competency court -- "if he trying hit a house
21 tonight. Me, you," this is DeShawn. Sace -- there will be,
22 as an offer of proof, information from the detectives that
23 Sace is a nickname or a street name for the co-defendant, Mr.
24 Wheeler -- "and him." So, "Me, you, Sace, and him. Sace
25 already said yeah."

1 So our intent is to introduce this information
2 because it's talking about "trying to hit a house tonight."
3 The co-defendant's going to testify that "hit a house" means
4 that they were going to go into the house and steal. And so
5 that's, from our perspective, information first and foremost
6 that would be kind of a res gestae, because it's what they're
7 doing, what they're out there doing, and that the victim was
8 caught, in essence, in the middle of the efforts to hit his
9 house.

10 And it would go to intent as far as why they were
11 there. So, separate and distinct from res gestae, we think
12 it's evidence also of their intent. And so we don't feel that
13 this falls under other bad acts, and even if somehow it was
14 perceived that way, we believe that it would be an exception
15 for what their intent and motive was when they were there,
16 when they ran into the victim.

17 MR. SANFT: Your Honor, we have received that item
18 through the discovery. In speaking with my client though, at
19 this particular point, we're going to object to it being
20 admitted.

21 Two things. First of all, I think that the basis as
22 to how it's going to come in would be potentially through the
23 testimony of the cooperating witness in this case. I'm not
24 quite clear if they would be able to get it in through a
25 detective. I think at this particular point, if we were to

1 allow this to come in at opening, and then, all the sudden,
2 during the course of trial, it doesn't come in, it doesn't get
3 admitted into evidence for some reason, I think we would have
4 a problem at that particular point of it being published to
5 the jury in opening.

6 And as a result, just out of an abundance of
7 caution, until such time as they've laid a proper foundation
8 and with regards to the admissibility of this particular
9 document through, once again, the proper witness or the
10 detective, we would object to it being admitted at this point.
11 I think they can talk about it, but I think showing the actual
12 picture of it up on the screen I think would be highly
13 prejudicial.

14 THE COURT: Okay. Does the State have a good faith
15 belief that you will be able to get this piece of evidence in
16 through your witnesses?

17 MR. PESCI: Yes. And the basis would be this,
18 Judge. There was a search warrant --

19 THE COURT: Okay.

20 MR. PESCI: -- executed on all these phones.
21 Pursuant to a legally authorized search warrant, the -- at
22 that time, the CFL detectives downloaded the information from
23 this phone, and the phone came back to information, the
24 detectives could testify, separate and distinct from DeShawn,
25 of being associated with these particular defendants, and this

1 defendant in particular. You'll hear about contacts in the
2 different phones associated with this. This particular
3 version, you can't see very well, but there's a photo -- where
4 is the other photo?

5 MR. BROOKS: It's --

6 MR. PESCI: The photo of the facial picture
7 associated with the person who's texting you'll see is
8 actually a picture of the defendant, Raekwon Robertson.

9 Additionally, Judge, we have a burden to provide
10 independent corroboration of what it is that the co-defendant
11 testifies to. So it's one thing for us to bring DeShawn in
12 and say, this is what the plan was. It's a whole other thing
13 when we bring in physical evidence to corroborate that
14 witness. And that's why we're bringing it in, so that the
15 witness himself, as well as the detectives, as well as the
16 detective who did the forensic analysis of the phones.

17 THE COURT: Okay. Mr. Ruggeroli?

18 MR. RUGGEROLI: Thank you, Judge. And I just needed
19 to clarify. I'm familiar with this; we were provided it. My
20 understanding is that the particular message is from Raekwon
21 Robertson; is that correct?

22 MR. PESCI: Yes.

23 MR. RUGGEROLI: And it's to DJ?

24 THE COURT: Mr. Wheeler.

25 MR. PESCI: No, it's to DeShawn Robinson --

1 MR. RUGGEROLI: Okay.

2 MR. PESCI: -- referencing DJ, the other
3 co-defendant. So it's -- sorry, go ahead.

4 MR. RUGGEROLI: Okay, thank you. And these are
5 important, and I wanted to clarify that, because you'll recall
6 that I filed a Motion to Sever co-defendants. One of the
7 reasons for that was this particular statement.

8 And so my first objection is that it's hearsay, and
9 it's hearsay within hearsay. The damage to Mr. Wheeler is
10 that Ray is making a statement that's attributing something to
11 Mr. Wheeler, who's claimed to be Sace, that I have no ability
12 to cross-examine because it's coming from Mr. Robertson. I
13 don't expect him to testify. And so, one, I believe it is
14 hearsay. I also object on the Confrontation Clause grounds.

15 I would also point out that, at this point of the
16 conversation, I think there's an argument that DJ is not
17 actually a co-conspirator at that point.

18 Additionally, I don't think that this establishes
19 that Mr. Wheeler is part of a conspiracy at the point that
20 that statement is sent. So these statements were not made in
21 the course of an alleged conspiracy, they predate the
22 formation of that, and they are also not made in furtherance
23 of the conspiracy.

24 And so I took a look at this. I believe that one of
25 the cases on point -- and I don't know if we need to cite

1 this, but I will, because I had a couple. But it's -- Court's
2 indulgence.

3 MR. PESCI: While he's looking for that, Judge --

4 MR. RUGGEROLI: Thank you.

5 MR. PESCI: -- I'm going to point out to you State's
6 149, proposed exhibit, which is in fact a blow up of that very
7 circle that you see in the Facebook page where you can clearly
8 see the defendant, Raekwon Robertson. While he's looking for
9 that -- and James, I'm sorry if I'm interrupting you.

10 MR. RUGGEROLI: Yeah, go -- please.

11 MR. PESCI: Okay. So there is not a Confrontation
12 Clause for a statement among co-conspirators. This is in
13 course and furtherance of the conspiracy. It's the very act
14 of the roll call for the conspiracy. Who's in, what's the
15 plan. It tells the parties, it tells the plan. We tell
16 jurors all the time that it's not necessary for a written
17 agreement. We've got one in print. That's the evidence.

18 There is an ability to cross-examine the actual
19 witness who's going to be here. DeShawn is going to be here
20 to be cross-examined, and you don't have a right to
21 cross-examine a statement that's made in the course and
22 furtherance of the conspiracy.

23 Bruton is when you're talking about a defendant in
24 custody talking to a cop and says X, and it's introduced
25 against the co-defendant. That's not what we have here. This

1 is before they've been arrested. This is the conspiracy
2 hatching, formulating, progressing, and explaining what the
3 conspiracy is.

4 THE COURT: Are you done?

5 MR. PESCI: Yeah, sorry.

6 THE COURT: Okay.

7 MR. PESCI: Sorry.

8 MR. RUGGEROLI: Thank you, Judge.

9 Judge, that's why I distinguished the timing of
10 this, because one of our arguments is that this would be a
11 precursor to the conspiracy. I know the State disagrees.
12 They're saying that that statement binds everybody in the
13 conspiracy, and I would say it does not. At best, it's a
14 statement from one individual that's seeking a conspiracy,
15 that's making representations to DeShawn, that binds a person
16 that there's no other evidence of, and it's -- it doesn't
17 establish the conspiracy at that moment.

18 I can't cross-examine because he's making a
19 statement that says "Sace is in." Well, that presumes that
20 that's true. But it's -- this would predate the actual
21 formation of the conspiracy. And so I would object that it
22 does not -- that statement does not establish the conspiracy.
23 It predates it; it hasn't formed yet. I don't think that
24 anything is stated immediately thereafter where it's -- is
25 there a statement from DeShawn in response to that?

1 MR. PESCI: There is. It's in blue.
2 THE COURT: It's still up on the screen.
3 MR. PESCI: Oh, I -- our screen is not on, Judge.
4 THE COURT: Oh.
5 MR. PESCI: It's in blue.
6 THE MARSHAL: Oh, I'm sorry. Let me turn it on for
7 you real quick.
8 THE COURT: Sorry about that.
9 THE MARSHAL: I thought we were done and I shut them
10 off.
11 MR. RUGGEROLI: Okay. You could see that there's a
12 time lapse, and that the statement at issue -- that's not the
13 statement.
14 MR. PESCI: Well, you asked if there was a response.
15 That's the response --
16 MR. RUGGEROLI: Okay.
17 MR. PESCI: -- in blue.
18 MR. RUGGEROLI: So if -- yeah, all right.
19 THE COURT: 11:40, and then 11:53 on Tuesday.
20 MR. RUGGEROLI: I would say that, like I said,
21 Judge, at that particular moment, the conspiracy has not been
22 established. It's an invitation to join a conspiracy, and
23 there's a difference. I would say that the conspiracy that
24 happens later, it binds Mr. Robertson and DeShawn. And if
25 there was a conspiracy that somehow linked Mr. Wheeler, it

1 would only come after that statement.

2 So this, "Me, you, Sace, and him. Sace already said
3 yeah," I can't cross-examine that. It presumes it to be true.
4 It creates a situation where there's no way to challenge it,
5 so we're denied the Confrontation Clause of the ability to
6 challenge that. We won't even be able to do it.

7 And I would suggest and argue that that statement is
8 not made in the course of a conspiracy because it predates the
9 formation. It's an invitation to join the conspiracy. If --
10 and when I say, "join a conspiracy," I mean a conspiracy
11 between Ray, Mr. Robertson, and DeShawn; not a conspiracy that
12 has been formed and established by Mr. Wheeler and Mr.
13 Robertson, and it's not made in the course of that conspiracy.
14 And so my two grounds are hearsay and Confrontation Clause.

15 MR. PESCI: Part of the basis was that this hadn't
16 been formed. We've charged conspiracy to commit robbery.
17 It's one of the charges. And the instruction you're going to
18 give is, "Anyone who conspires to commit robbery is guilty of
19 conspiracy to commit robbery." This is the very act of
20 conspiring to commit robbery. It is the evidence of the crime
21 itself.

22 THE COURT: Okay. I'm going to allow the State to
23 publish it during opening statements.

24 MR. PESCI: Thank you, Your Honor.

25 THE COURT: Can I give this back to the Clerk, 149?

1 MR. BROOKS: I'll put it in order.

2 THE COURT: Okay, thank you. Did you give the
3 defense your witness lineup?

4 MR. PESCI: No, because we --

5 THE COURT: Just so they can be ready.

6 MR. PESCI: We did for the ones that we had today.

7 THE COURT: Okay.

8 MR. PESCI: But honestly, I don't know what we're
9 going to get to --

10 THE COURT: Oh.

11 MR. PESCI: -- because we had to change everything.
12 So our intent was --

13 THE COURT: Okay.

14 MR. PESCI: In a perfect world, we would start
15 tomorrow with what we did -- were planning on today, which
16 would be Robert Mason, the jogger; Lucy Mendoza, his wife who
17 calls 911. I hope to get Mr. Relato, the cousin. He's got
18 some scheduling issues. Then, the first responding officer,
19 Calleja.

20 And then, from there, we also had a CSA or we did
21 have a CSA Speas who documents that scene, who's also involved
22 in another scene. Beyond that, I got to see what we still
23 have --

24 THE COURT: Okay.

25 MR. PESCI: -- because we had to change everything

1 and push everything back. And on that note, Judge, I think
2 you've seen we have an appointment for the blue jeans on
3 Friday in the afternoon. Did that come across to either of
4 you?

5 THE COURT: No.

6 MR. PESCI: Okay, all right.

7 THE COURT: Oh. Sara? Okay.

8 MR. PESCI: Did anybody see it?

9 THE COURT RECORDER: I saw it.

10 MR. PESCI: Okay. So the witness is in West
11 Virginia. It's a three-hour time frame. This is Noreen
12 Charlton.

13 THE COURT: Oh.

14 MR. PESCI: It was the subject of the motion for the
15 videotape. She told me -- she was asking if we can do it
16 after 3:00 P.M. our time because then she'll be out of
17 whatever she's doing back there.

18 THE COURT: Okay, so we're doing a witness's
19 testimony by video?

20 MR. PESCI: Video. Yes, we had a motion.

21 THE COURT: Okay.

22 MR. PESCI: It was unopposed by the defense.

23 THE COURT: Okay.

24 MR. PESCI: Because she's moved on; she's not
25 working here anymore. She was a crime scene analyst, one of

1 the many, and she's back in --

2 THE COURT: That's right.

3 MR. PESCI: -- West Virginia and New Jersey,

4 working.

5 THE COURT: And she wants to do it after 3:00

6 o'clock our time?

7 MR. PESCI: She said that would be easier, because

8 her work responsibilities there will be over because it will

9 be 6:00 o'clock her time.

10 THE COURT: I don't have a problem with that.

11 MR. SANFT: No problem, Your Honor.

12 MR. RUGGEROLI: No, Your Honor.

13 THE COURT: Okay.

14 MR. PESCI: So we'll just be juggling based on that,

15 in part.

16 THE COURT: Okay, that's fine.

17 MR. PESCI: Okay, thank you.

18 THE COURT: Anything else?

19 MR. PESCI: Not from the State.

20 THE COURT: Okay, have a good evening.

21 MR. SANFT: Thank you.

22 THE COURT: See you in the morning.

23 THE MARSHAL: Thank you, everyone.

24 * * * * *

25 (Court recessed at 5:00 P.M., until Thursday,

26 February 13, 2020, at 10:31 A.M.)

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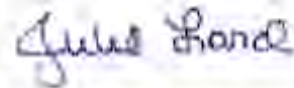
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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.

A handwritten signature in blue ink that reads "Julie Lord".

JULIE LORD, COURT TRANSCRIBER
VERBATIM DIGITAL REPORTING, LLC

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	)	CASE NO. C-17-328587-2
	)	CASE NO. C-17-328587-3
Plaintiff,)	
	)	DEPT. NO. XII
v.)	
)	
RAEKWON SETREY ROBERTSON,)	
a/k/a RAEKWON ROBERTSON,)	
and DAVONTAE AMARRI WHEELER,)	
)	
Defendants.)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 13, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
JURY TRIAL - DAY 3**

APPEARANCES:

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

RECORDED BY: SARA RICHARDSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 13, 2020

2 (Case called at 10:31 A.M.)

3 (Outside the presence of the jurors)

4 THE COURT: Good morning.

5 MR. RUGGEROLI: Good morning.

6 MR. SANFT: Good morning, Your Honor.

7 THE COURT: This hearing is taking place outside the
8 presence of the jury panel. Mr. Wheeler and Mr. Robertson are
9 both present.

10 So, Mr. Ruggeroli, it's my understanding you have
11 something outside the presence?

12 MR. RUGGEROLI: Yes, Your Honor.

13 THE COURT: Does it have to be now?

14 MR. RUGGEROLI: Because of the State's opening.

15 THE COURT: Okay.

16 MR. RUGGEROLI: It's a carryover from the argument
17 from yesterday --

18 THE COURT: Sure.

19 MR. RUGGEROLI: -- if I may.

20 THE COURT: Uh-huh.

21 MR. RUGGEROLI: Judge, you'll recall that the State
22 has asked to be able to publish a copy of an email from Mr.
23 Robertson to DeShawn Robinson-Lofton, who's the juvenile
24 former co-defendant who will testify in this case. There was
25 -- and this was the subject of a big portion of my Motion to

1 Sever the defendants.

2 And so I did want to clarify something as to how
3 this may put the evidence regarding my client, who the State
4 claims is Sace. If you recall, the specifics of the portion
5 of the text at issue that is most important to the defense for
6 Mr. Wheeler is that it indicates that Mr. Robertson texted
7 DeShawn and said to the effect, "Are you in? Sace is in."

8 And so what we've got is the co-defendant in this
9 case specifically identifying Mr. Wheeler, who other evidence
10 I believe the State will use to establish that Sace is Mr.
11 Wheeler. And so he's making a direct identification I wanted
12 to bring to the Court's attention, and also ask to clarify.

13 When we had the State present their Opposition to
14 our Motion to Sever, they specifically addressed the Bruton
15 issue and said -- and I'm quoting from page 21 of their
16 Opposition: "If the State were to introduce the statement in
17 question," and that's the one we're specifically talking
18 about, "defendant is not implicated without further evidence
19 of who Sace is. The State is aware of the evidentiary
20 implications of Bruton and it's progeny. The State is aware
21 of the need to redact any statement admitted so that
22 assertions which facially incriminate co-defendants are
23 removed, and will do so at trial if necessary, thus
24 eliminating the need for a severance."

25 So what we have right now is, if they are going to

1 use it, then I think we need a ruling to prohibit them from
2 using other evidence to establish that Mr. Wheeler is Sace,
3 because they recognize that if Mr. Robertson is establishing
4 this, then we do have a Bruton issue.

5 MR. PESCI: I don't understand that, because if Mr.
6 Robinson is under --

7 THE COURT: I'm not sure I'm following the argument.

8 MR. PESCI: -- under oath and being cross-examined,
9 that's the very person. You actually have a live witness
10 who's going to say who Versace is. That's just one. There's
11 other ways of establishing that.

12 And so State's response is, in the context of a
13 Bruton allegation, which is when you have a defendant's
14 statement given to the police --

15 THE COURT: Right.

16 MR. PESCI: -- we were responding to that
17 allegation. I can tell you now, we're not introducing either
18 defendants' statement in our case-in-chief, so counsel
19 shouldn't rely on that in their opening statements if they
20 have the anticipation of that coming in from the State,
21 because we're not going to.

22 So there's no Bruton concerns there, right? We had
23 the hearing to preserve the right to use it if we change our
24 mind, but that's not our intent in our case-in-chief, so no
25 one can rely on that, and that's the Bruton situation. What

1 we have here is not Co-Defendant A telling to the police what
2 Co-Defendant B said.

3 THE COURT: Right.

4 MR. PESCI: We have, prior to anybody being
5 arrested, the actual solicitation to the crime, the
6 conspiracy. So I'm not sure, I think he has more to argue. I
7 apologize, I jumped in there.

8 MR. RUGGEROLI: No, it's not DeShawn's statement,
9 it's Ray; Mr. Robertson's statement. Mr. Robertson's
10 statement is the one that identifies Mr. Wheeler, and so --

11 THE COURT: But it's still a statement not given to
12 police. It's before -- I mean, the State's contending it's
13 before anything even happens, correct?

14 MR. RUGGEROLI: Yes, and -- but the --

15 THE COURT: Okay.

16 MR. RUGGEROLI: The Bruton issue and the concern for
17 us is -- based on the Confrontation Clause, is that, although
18 DeShawn is going to testify, the State, even in using that
19 text from Ray, the co-defendant in this case, is --

20 THE COURT: Uh-huh. You mean DeShawn?

21 MR. RUGGEROLI: No, Ray.

22 THE COURT: Oh, okay. You're talking about this --
23 okay, I'm sorry.

24 MR. RUGGEROLI: Yeah, and it does get confusing.
25 That's why --

1 THE COURT: Mr. Robertson sitting here? Okay.

2 MR. RUGGEROLI: Correct. It's Mr. Robertson's text,
3 so it's Mr. Robertson's evidence against Mr. Wheeler. It's
4 not -- it's not DeShawn that's going to come about at trial,
5 and that's why we have a situation where we have no
6 Confrontation Clause right to challenge Mr. Robertson's
7 identification and claim that there is this conspiracy. It's
8 just going to be assumed that that must be true because we've
9 got no way to challenge that because we have no Confrontation
10 Clause right.

11 We can challenge DeShawn; DeShawn didn't send the
12 text. And based on the way I'm reading their Opposition, even
13 apart from the idea that a statement was made to the police,
14 which this was not, the State --

15 THE COURT: Right.

16 MR. RUGGEROLI: -- was going to redact any
17 identification of Ray, Mr. Robertson, of Sace. So I think if
18 they want the text, they need to remove the name "Sace,"
19 because otherwise, I think they're specifically utilizing the
20 co-defendant, who cannot be cross-examined, who we have no
21 confrontation rights for, to essentially convict Mr. Wheeler
22 by establishing that there was a conspiracy before this
23 shooting even happened.

24 THE COURT: Are you done?

25 MR. RUGGEROLI: Yes.

1 THE COURT: Okay, thank you. Thank you, Mr.
2 Ruggeroli.

3 MR. PESCI: Thank you, Your Honor. So, Judge, we're
4 not having the portion of a co-defendant's statement when he
5 looks at the surveillance and says, yeah, that's my
6 co-defendant, that's my co-defendant, that's my co-defendant.
7 That's the kind of situation that we were referring to in our
8 Motion that we are not going to do. That's the kind of
9 situation that Bruton applies to.

10 The Confrontation Clause does not apply to
11 statements made in the course and the furtherance of the
12 conspiracy. And if you -- you look at Burnside v. State, 352
13 P.3d 627, it states, "A statement may be in furtherance of a
14 conspiracy even though it is susceptible of alternative
15 interpretations and it was not exclusively or even primarily
16 made to further the conspiracy, so long as there is some
17 reasonable basis for concluding that it was designed to
18 further the conspiracy."

19 There is an extremely reasonable basis to understand
20 the design, because it says verbatim, "Let's go hit a house,"
21 okay? It's -- you don't even have to debate it. It's very
22 clear on its face, and this is actions by co-defendants before
23 police become involved.

24 Additionally, separate and distinct from the actual
25 text message, there is going to be evidence that comes in from

1 cell phone data; there's going to be information that comes in
2 from a co-defendant who will be in the courtroom, subject to
3 cross-examination; there's going to be evidence of things from
4 the scene to corroborate what was happening there, independent
5 of the co-defendant, and in conjunction with that text via
6 Facebook Messenger.

7 THE COURT: I just want to make --

8 MR. RUGGEROLI: Just to put on the record, because
9 it --

10 THE COURT: Absolutely.

11 MR. RUGGEROLI: -- incorporates our argument from
12 yesterday, I'm objecting on the dual basis of not only
13 hearsay, but it really would be double-hearsay. And also,
14 that the statement, we would argue, is not made in furtherance
15 of the conspiracy, nor is it made in the course of the
16 conspiracy, because Mr. Robertson's text message predates the
17 establishment of a conspiracy. We don't -- I need to make
18 these arguments based on my --

19 THE COURT: Sure.

20 MR. RUGGEROLI: -- reading of the law, but it's --

21 THE COURT: Sure.

22 MR. RUGGEROLI: It's that we're arguing that DeShawn
23 at that time was not a co-conspirator, Mr. Wheeler at that
24 time was not a co-conspirator, the statement was not made in
25 the course of the conspiracy, and the statement was not made

1 in further of the conspiracy.

2 And also, because of the Bruton issue that I raised,
3 because they are going to be using Mr. Robertson's statement
4 to identify Sace, which will be established through other
5 evidence as being Mr. Wheeler, and that that conspiracy from
6 that written statement essentially is the State's heart of the
7 case against Mr. Wheeler.

8 We cannot cross-examine Mr. Robertson, and because
9 of that, that shouldn't have been allowed, or we should have
10 been able to sever. Or the State -- I think -- I thought that
11 they were saying that they would redact that, but I guess
12 either I didn't understand it or they have a position that is
13 different. So that's my record, Judge.

14 THE COURT: Okay. Anybody else want to say
15 anything?

16 MR. PESCI: Yes. It's on or about August 9th.
17 That's the charge -- charging document. Conspiracy to commit
18 robbery is one of the actual charges. The furtherance of that
19 conspiracy will go into Counts 2 and 3. So we're covering the
20 very act of this text, and then the actions in conjunction
21 with the text. So it's covering the very crime, because that
22 is the inception of the crime.

23 THE COURT: Okay. The objection's been noted, and
24 the ruling from yesterday will stand. Can we bring the jury
25 panel in?

1 MR. RUGGEROLI: Just one last quick issue.

2 THE COURT: Of course.

3 MR. RUGGEROLI: There's been some statements about
4 referring to street names.

5 THE COURT: Okay.

6 MR. RUGGEROLI: My request, that we use "Nicknames."
7 I think that there's a prejudicial connotation. There's no
8 allegations of any gang involvement or anything like that, but
9 I think that there is a potential prejudice if we start using
10 notions of street names. And there are a number of what I
11 would call nicknames.

12 THE COURT: Okay, what do -- oh, you mean like
13 monikers?

14 MR. RUGGEROLI: Yeah. Well, you can use "Sace," you
15 can use --

16 THE COURT: Okay.

17 MR. RUGGEROLI: -- other names that are going to be
18 used, but I just have some concern about the State or the
19 witnesses saying, "Is his street name." I think that that's
20 potentially prejudicial, because a juror could conclude that,
21 well, maybe that's a gang name and that's what we're really
22 talking about, when we're not.

23 THE COURT: Okay, so what exactly are you trying to
24 object to?

25 MR. RUGGEROLI: If -- and --

1 THE COURT: That they shouldn't -- witnesses
2 shouldn't call your client "Sace"?
3 MR. RUGGEROLI: No, that they --
4 THE COURT: Okay.
5 MR. RUGGEROLI: -- shouldn't use the term "Street
6 name." They should say, "His nickname is."
7 THE COURT: Oh, okay. You just don't want them to
8 say "Street name"?
9 MR. RUGGEROLI: Yes.
10 THE COURT: Okay, a "Nickname"? Okay.
11 MR. PESCI: Okay.
12 THE COURT: Is there any --
13 MR. PESCI: Some people don't use the language
14 "Nickname."
15 THE COURT: I know. They use the term "Moniker" or
16 "Street" --
17 MR. PESCI: No, some people say, "His name on the
18 street," "His street name."
19 THE COURT: Right.
20 MR. PESCI: I mean, we're not eliciting that, we're
21 not looking for that, but there are some people who are going
22 to say, nickname, what? So we're not intending to do that,
23 nor are we ever making an inference that there's anything
24 about gangs, nor is it a logical leap to just say, if
25 someone's saying, "Street name," that we've got into gangs, so

1 we object to that characterization.

2 We have no intent to make an argument about gangs or
3 make any sort of veiled reference to it, but I cannot promise
4 you that someone who knows somebody from their life on the
5 street is not going to say, "His street name is." We'll try
6 really hard, we'll tell people not to say that. We'll use and
7 couch the term of "Nickname."

8 THE COURT: Okay.

9 MR. RUGGEROLI: Thank you.

10 THE COURT: Let's bring them in.

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

13 (Within the presence of the jurors at 10:45 a.m.)

14 THE COURT: And ladies and gentlemen, if you will
15 please remain standing when you come in, because the Clerk is
16 going to administer the oath of service. If you'll all please
17 raise your right hand. Thank you.

18 JURY PANEL SWORN

19 THE CLERK: You may be seated.

20 THE COURT: Thank you.

21 THE MARSHAL: Thank you, everyone. Please be
22 seated.

23 THE COURT: Before I do allow the attorneys to speak
24 to you in their opening statements, I am going to give you a
25 few instructions.

1 Ladies and gentlemen, you are admonished that no
2 juror may declare to a fellow juror any fact relating to this
3 case of his or her own knowledge, and if any juror discovers
4 during this trial or after the jury has retired that he, or
5 she, or any other juror has personal knowledge of any fact in
6 controversy in this case, he or she shall disclose such
7 situation to myself in the absence of the other jurors.

8 This means that if you learn during the course of
9 this trial that you are acquainted with the facts of this case
10 or the witnesses, and you've not previously told me this
11 relationship, you must then declare that fact to me.

12 I want to remind you that you communicate through --
13 you communicate with the Court while we're in the courtroom in
14 the presence of both sides or through Officer Hawkes.

15 What I will now say is intended to serve as an
16 introduction to the trial of this case. It is not a
17 substitute for the detailed instructions on the law which I
18 will give you at the close of the case and before you retire
19 to consider your verdict.

20 This is a criminal case commenced by the State of
21 Nevada, which I may sometimes refer to as the State, and this
22 is a criminal complaint against Mr. Wheeler and Mr. Robertson.
23 At this time, the Clerk will now read the charging document
24 and state the plea of the defendants to that document.

25 (Amended Superseding Indictment read by the Clerk)

1 THE COURT: Thank you. This case is based upon the
2 Amended Superseding Indictment which has been read to you by
3 the Clerk. You should distinctly understand that the
4 Indictment is simply a charge, and that it is not in any sense
5 evidence of the allegations it contains.

6 The defendants have entered pleas of not guilty to
7 the Indictment. The State therefore has the burden of proving
8 each of the elements as alleged in their charging document by
9 proof beyond a reasonable doubt. As the defendants sit here
10 today, they are presumed innocent. The purpose of this trial
11 is to determine whether the State of Nevada will meet their
12 burden of proof.

13 It is your primary responsibility as jurors to find
14 and determine the facts. Under our system of criminal
15 procedure, you are the sole judge of the facts. You are to
16 determine the facts from the testimony you hear and the other
17 evidence, including exhibits introduced in court. It is up to
18 you to determine the inferences which you feel may be properly
19 drawn from the evidence.

20 The parties may sometimes present objections to some
21 of the testimony or other evidence. It is the duty of a
22 lawyer to object to evidence which he or she believes may not
23 properly be offered, and you should not be prejudiced in any
24 way against a lawyer who makes objections on behalf of the
25 party he or she represents.

1 At times, I may sustain objections or direct that
2 you disregard certain testimony or exhibits. You must not
3 consider any evidence to which an objection has been sustained
4 or which I have instructed you to disregard.

5 Anything you may have seen or heard outside the
6 courtroom is not evidence and must also be disregarded.
7 Remember, statements, arguments, and opinions of counsel are
8 not evidence in the case. However, if the attorneys stipulate
9 as to the existence of a fact, you must accept the stipulation
10 as evidence and regard that fact as proved.

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

15 You must not be influenced in any degree by any
16 personal feeling of sympathy for or prejudice against the
17 State or the defendants. Both sides are entitled to the same
18 fair and impartial consideration.

19 In considering the weight and value of the testimony
20 of any witness, you may take into consideration the
21 appearance, attitude, and behavior of the witness, the
22 interest of the witness in the outcome of the case, if any,
23 the relation of the witness to the defendant or to the State,
24 the inclination of the witness to speak truthfully or not, and
25 the probability or improbability of the witness's statements,

1 and all of the facts and circumstances in evidence. Thus, you
2 may give the testimony of any witness just such weight and
3 value as you believe the testimony of that witness is entitled
4 to receive.

5 There are two kinds of evidence: direct and
6 circumstantial. Direct evidence is testimony by a witness
7 about what that witness personally saw, or heard, or did.
8 Circumstantial evidence is testimony or exhibits which are
9 proof of a particular fact, from which, if proven, you may
10 infer the existence of a second fact. You may consider both
11 direct and circumstantial evidence in deciding this matter.
12 The law permits you to give equal weight to both, but it is
13 for you to decide how much weight to give to any evidence.

14 Opening statements and closing arguments of the
15 attorneys are intended to help you in understanding the
16 evidence and applying the law, but they are not evidence. No
17 statement, ruling, remark, or comment which I make during the
18 course of this trial is intended to indicate my opinion as to
19 how you should decide the case or to influence you in any way
20 in your determination of the facts.

21 At times, I may even ask questions of witnesses. If
22 I do so, it is for the purpose of bringing out matters which I
23 feel should be brought out, and not in any way to indicate my
24 opinion about the facts, or to indicate the weight I feel you
25 should give to the testimony of any witness. I may also find

1 it necessary to admonish the attorneys, and if I do, you
2 should not show prejudice against a lawyer or his or her
3 client because I have found it necessary to admonish him or
4 her.

5 Until the case is submitted to you, you must not
6 discuss it with anyone, even with your fellow jurors. After
7 it is submitted to you, you must discuss it only in the jury
8 room with your fellow jurors. It is important that you keep
9 an open mind and not decide any issue in the case until the
10 entire case has been submitted to you under instructions from
11 the Court.

12 The trial will proceed in the following manner. The
13 deputy district attorney will make an opening statement, which
14 is an outline to help you in understanding what the State
15 expects to prove. Next, the defendant's attorneys may, but do
16 not have to make an opening statement. Opening statements
17 serve as an introduction to the evidence which the party
18 making the statement intends to prove.

19 The State will then present its evidence and counsel
20 for the defendants may cross-examine the witnesses. Following
21 the State's case, the defendants may present evidence and the
22 deputy district attorney may cross-exam the witnesses.
23 However, as I have said, the defendants are not obligated to
24 present any evidence.

25 After all of the evidence has been presented, I will

1 instruct you on the law. After the instructions on the law
2 have been read to you, each side will have the opportunity to
3 present oral argument. What is said in closing argument is
4 not evidence. The arguments are designed to summarize and
5 interpret the evidence. Since the State has the burden of
6 proving the defendants guilty by proof beyond a reasonable
7 doubt, the State has the right to open and close the
8 arguments. After the arguments have been completed, you will
9 then retire to deliberate upon your verdict.

10 Again, let me remind you that until this case is
11 submitted to you, do not talk to each other about it or about
12 anyone who has anything to do with it until the end of the
13 case when you go to the jury room to deliberate upon your
14 verdict. Do not talk with anyone else about this case or
15 about anyone who has anything to do with it until the trial
16 has ended and you've been discharged as jurors.

17 Anyone else includes members of your family and your
18 friends. You may tell them that you are a juror in a criminal
19 case, but don't tell them anything else about it until after
20 you've been discharged by the Court.

21 Do not let anyone talk to you about the case or
22 about anyone who has anything to do with it. If someone
23 should try to talk to you, please report it to me immediately
24 by contacting Officer Hawkes.

25 Do not read any news stories, or articles, or listen

1 to any radio or television reports about the case or about
2 anyone who has anything to do with it.

3 As jurors, you will be given the opportunity to ask
4 written questions of any of the witnesses called to testify in
5 this case. You are not encouraged to ask large numbers of
6 questions because that is the primary responsibility of the
7 attorneys. Questions may be asked, but only in the following
8 manner: after both lawyers have finished questioning the
9 witness, and only at this time, if there are additional
10 questions you would like to ask that witness, you may then
11 seek permission to ask that witness a written question.

12 Should you desire to ask a question, write your
13 question down with your juror number on a full sheet of clean
14 paper; raise your hand. All questions from jurors must be
15 factual in nature and designed to clarify information already
16 presented.

17 In addition, jurors must not place undue weight on
18 the responses to their questions. The Marshal will pick your
19 question up and he will present it to the Court. All
20 questions must be directed to the witness and not to the
21 lawyers or to the Judge. After consulting with counsel, I
22 will then determine if your question is legally proper. If I
23 determine that your question may properly be asked, I will ask
24 it. No adverse inference should be drawn if the Court does
25 not allow a particular question.

1 Both sides have the right to question a witness. So
2 the State will call their witness, they'll do direct. The
3 defendants will have an opportunity to do cross, then the
4 State has the right to do redirect. And if there's redirect,
5 the defense has the right to do recross. So both sides have a
6 couple opportunities to question each witness. When we're
7 done with the witness, I'm going to turn to the witness, I'm
8 going to thank them for being here, and I'm going to excuse
9 them from their subpoena.

10 Get my attention before I do excuse a witness. I'll
11 have the witness sit here and wait until you write your
12 question down. What I won't do is, next week, have a witness
13 come back that testified today. Once I excuse them from their
14 subpoena, I will not require them to come back to answer a
15 question of the jurors. So it's just really important you get
16 my attention or Officer Hawkes's attention before I excuse
17 that witness from their subpoena.

18 You also have juror notebooks. Those will be placed
19 on your chair every morning when you come in. In the back,
20 there are blank pages for you to take notes. When you do go
21 back to deliberate upon your verdict, you will not have a
22 transcript to consult. So, during your deliberations, it will
23 be your memory and your notes collectively that will prevail
24 during your deliberations.

25 Those notebooks are required to be in the court --

1 in the courtroom at all times until you go back to deliberate
2 upon your verdict. When you go back, I'll allow you to take
3 those notebooks back there with you, but you can't take them
4 out of the courtroom until we go back to deliberation.

5 The instructions that I gave you this morning are in
6 that notebook, as well as the procedure for asking a written
7 question, and at the end, you will be given a copy of the jury
8 instructions. I will be required to read them to you by law;
9 however, each of you will have a copy of those instructions,
10 you'll be able to follow along, and you'll be able to take
11 those written jury instructions with you when you go back to
12 deliberate upon your verdict.

13 On the inside of that folder, there's -- in the
14 pocket, there's one sheet of paper. That just gives you
15 information about the courtroom that you're in, in case, when
16 we're out of session, anyone has a need to contact my office,
17 all the information is on that sheet of paper. You can take
18 that sheet of paper out; you can take that with you when you
19 leave the courtroom.

20 At this time, I'm going to allow the State of Nevada
21 to address the panel in their opening statement.

22 STATE'S OPENING STATEMENT

23 MR. BROOKS: August 8th, 2017 was a Tuesday. August
24 9th, 2017 was a Wednesday. Right around midnight, when it
25 shifted from Tuesday to Wednesday, Robert Mason decided to go

1 for a jog. Now, this wasn't really all that unusual for him.
2 He worked the swing shift, roughly 3:00 to 11:00 P.M., so when
3 he got home at night, typically, he would go on a jog. This
4 was August, so it's not like it was really cold around
5 midnight, and he got dressed in his athletic clothes, he left
6 his house.

7 He'd lived in the neighborhood at that point in time
8 for quite a while, and so he went on his typical route. He
9 started heading south down Zachary Street, and then made a
10 left -- made a left and started heading east on Dewey. And as
11 he started heading east on Dewey and made that corner,
12 something struck his eye, something a little unusual.

13 So you see where that circle is on the -- on the
14 picture right there? Right around there, he saw four men; a
15 group of two, and a group of two. And these four guys were
16 all dressed in black clothing, and they were wearing hoodies,
17 and their hoods were up. So he was like, that's a little
18 suspicious, that's odd. And as he makes eye contact with them
19 and they make eye contact with him, they kind of huddle up
20 together, and all four of them get together, and kind of go
21 closer to the wall.

22 And he at that point in time was driving down the
23 side -- running down the sidewalk, and as he's running down
24 the sidewalk, he just veers off into the street. He's in the
25 street, keeps going, and passes them. Makes note of it,

1 thinks it's a little unusual, and then makes a left.

2 Now, as he makes a left, he starts heading north on
3 Lindell. And see where that white arrow is? Right around
4 about there, there's a car. That's unusual for him, because
5 he'll tell you, I've lived in this area for a long time, and
6 no one parks there. No one parks on Lindell; it's just
7 there's too much traffic, you wouldn't do that. And it's a
8 white, older model car, and he's going to refer to it as
9 something similar to like a Crown Victoria.

10 And he's like, I've never seen this in the area
11 before. That's unusual. I've lived in the neighborhood for a
12 while and never seen this car. So he looks at the front, sees
13 the license plate. Kind of looks inside, sees a lot of trash
14 and clutter. And just kind of looks at the back, sees the
15 license plate on the back, makes a mental note, and keeps
16 jogging.

17 So he gets about 20, 30 seconds down on the jog and
18 says, you know what, I'm going to enter that license plate
19 into my phone. And I realize I just left my wife at home, and
20 I think I left the doors unlocked. Feeling a little uneasy,
21 so I'm going to call her.

22 So he calls his wife and he says, hey, honey, can
23 you lock the doors? And I -- I just saw something a little
24 odd; you might want to call 311. I saw four guys, black male
25 adults. They're kind of young, in their 20s, and they're all

1 just wearing dark clothing. She's like, what? And they're in
2 hooded sweatshirts with their hoodies up, and it's August,
3 almost 100 degrees. And she -- oh, okay, I will call 311.
4 I'll just -- I'll let them know. So she does.

5 Now, this arrow right here, right around about there
6 is where the mailbox is located for these two homes, one of
7 which is that 5536 West Dewey. That will come into play
8 later. That's why that arrow's there.

9 But Robert Mason continues on his jog. Now, what he
10 didn't realize is who those four men were. Around 12:10 A.M.,
11 so that's Tuesday night into -- that's Wednesday morning at
12 that point, the four men that he saw were DeMario
13 Lofton-Robinson; sometimes during the trial, you may hear him
14 referred to as DJ. DeShawn Robinson, who's DJ's younger
15 brother. At that point in time, he was 14-years-old. Raekwon
16 Robertson, one of the defendants. And Davontae Wheeler, one
17 of the defendants. You may hear Raekwon Robertson sometimes
18 referred to as Ray or Ray Logan, and you may hear Davontae
19 Wheeler sometimes referred to as Sace.

20 So why were they there? Earlier that day, at around
21 11:00 A.M. on that Tuesday, defendant Raekwon Robertson's cell
22 phone sends a message to DeShawn Robinson's phone. So
23 DeShawn's the younger brother of DJ. And it's a text message
24 via Facebook Messenger, and he says, "Ask DJ if he trying to
25 hit a house tonight. Me, you, Sace, and him. Sace -- Sace

1 already said yeah."

2 Now, Robert Mason continued on his jog. What he
3 didn't realize is what happened after he passed those young
4 men. So after he finishes his three-mile loop, he kind of
5 loops back around, headed back home, and sees a perimeter set
6 up. He sees cops around, and the cops are kind of walking
7 around, trying to get the scene, and he's yell -- kind of
8 flagging one down.

9 So one of the officers walks over; who is this guy?
10 And he says, hey, my wife's the one who called 311; I was the
11 one who saw something here. And the officer's like, wait,
12 what did you say? And Robert Mason says, I got the license
13 plate.

14 (Video is played)

15 (Stopped playing of video)

16 MR. BROOKS: So at that point in time, that's kind
17 of the first investigative lead. He gives it to the officer;
18 the officer gives it to the detective. Robert Mason at this
19 point in time still has no idea why -- what that license plate
20 means; why it's relevant.

21 What he doesn't know is that when he passed those
22 four men, someone else had come home. Someone else lived at
23 5536 West Dewey. That's 24-year-old Gabriel Valenzuela. You
24 may sometimes hear his family refer to him as Kevin, but
25 Gabriel Valenzuela was a nursing student at CSN.

1 He came home, and it was his job to get the family's
2 mail. You're going to learn that there was one mail key to
3 that mailbox that I told you, that -- that arrow earlier. So
4 at night, he would get the mail, bring it home, start looking
5 at it, sift through it, decide what's junk mail, what needs to
6 go in the house. And on that night, that's what he did.

7 He was heading into his home, but he didn't make it
8 into his home, because right there on the corner of this RV
9 ramp where he went to park -- that's his car -- where those
10 four men were huddled, right there, with those papers on the
11 ground, which is mail you'll see photos of, he was asked for
12 his stuff. Those four guys wanted his stuff, wanted his
13 property, and that didn't go well for Gabriel Valenzuela.

14 A smaller-caliber bullet was shot into his abdomen
15 on the left side. Now, that doesn't exit, so there's no exit
16 wound to show you. As you can see from that x-ray that I've
17 circled right there, that is the bullet recovered during the
18 autopsy.

19 Now, additionally, see this stitching right here?
20 That's just medical intervention by the hospital trying to
21 save his life. That's not anything that happened during this
22 incident. I just want to point that out. The circle over the
23 smaller-caliber bullet entering the abdomen is the focus of
24 this.

25 Additionally, Gabriel Valenzuela was shot with a

1 larger-caliber bullet in the back of the head. That's the
2 entry wound. It's on the right side near his ear. There's an
3 exit wound on the front portion of his head right above his
4 eye.

5 Additionally, a larger-caliber bullet, which you'll
6 learn is a .45 caliber bullet, is found in his left leg. So
7 you'll see photos. This circle right here on the right leg,
8 that's an entry wound. There is an exit wound on the other
9 side of that right leg, and then there's an entry wound in
10 that left leg, and the bullet is found in the upper portion by
11 the calf of that left leg. His tibia and fibula is broken
12 through on -- by the bullet in the right leg, and his tibia
13 and fibula is broken through on the left leg by that bullet.

14 People were at the scene. So, at the scene, while
15 Gabriel Valenzuela was rushed to the hospital, but he dies in
16 transit to the hospital, detectives are there, CSA, which are
17 crime scene analysts, are there, patrol officers are setting
18 up the perimeter, and they've started the investigation. And
19 one of the places that most investigations start, especially
20 in a homicide shooting like this, is collecting the cartridges
21 at the scene.

22 At the scene, four cartridges remained. This middle
23 one that you'll see identified as 1, that's the
24 smaller-caliber .22 cartridge. The other ones, 2, 3, and 4,
25 are .45 -- .45 caliber cartridge cases. And if you'll notice,

1 there's different headstamps on each one.

2 When this was initially set up, it's kind of a
3 dynamic scene. There was a call; hey, we have a shooting, get
4 here, because although Robert Mason's wife calls, other people
5 call when they actually hear shots, and then Gabriel
6 Valenzuela's family calls. So people rush there, patrol
7 officers rush there, and some even come from other command
8 posts.

9 So, south of Sunset is one command post, and they
10 were kind of close to the incident. So if you see here,
11 here's Sunset. Officers that were below Sunset rushed up to
12 that 5536 West Dewey and were part of the people who initially
13 set up the perimeter. One of those is Sergeant Tromboni.
14 You're going to hear from him. At that point in time, he was
15 just Officer Tromboni.

16 So once everybody gets there, and some of the -- it
17 goes late into the night, some of the patrol officers are sent
18 home, others come, and they kind of shift in and out. Well,
19 Sergeant Tromboni was sent -- you can go back to your command
20 post. So he starts driving south past Sunset, back to his
21 command post.

22 He has to go to the bathroom, so he decides to stop
23 at that 7325 South Jones Boulevard address. It's a
24 convenience store. There's a photo of the convenience store
25 in daylight hours. At that point in time, it wasn't daylight.

1 This is a photo in daylight hours. The Short Line Express
2 Market. He has to go to the bathroom, and he's with a partner
3 who's driving another patrol vehicle, Lopez, and he pulls in
4 there, too. So Officer Lopez and Officer Tromboni, they go
5 into the Short Line Express.

6 (Video is played)

7 (Stopped playing of video)

8 MR. BROOKS: So that's Officer Lopez's body cam, and
9 that's Sergeant Tromboni there. They go in there, they use
10 the bathroom, and then when they're done, they're kind of just
11 talking to the Clerk. They said, hey, how's it going tonight?
12 Anything unusual? Everything okay?

13 The store Clerk of that market is named Nikolaus
14 Spahn. And Nikolaus Spahn says, you know, there was something
15 odd. About a half-hour ago, about 11:30, which was earlier in
16 the night, four guys came in. It was just a little odd. One
17 of them was open carrying and he had a gun right on his hip.
18 It just kind of was a little odd. It was four young black
19 males, and he went in the bathroom -- the guy that was open
20 carrying went in the bathroom for a while, a little longer
21 than normal. Nothing happened, I mean, it was just odd, and
22 then they kind of sat outside the store for a while and
23 lingered.

24 So Sergeant Tromboni says, any chance you saw what
25 kind of car they had? And Nikolaus Spahn says, yeah,

1 actually, I walked outside to kind of check to see what was
2 up, and it was an older white car, like a Crown Vic type car.
3 At that point in time, Sergeant Tromboni says, hey, I need
4 someone to pull this video surveillance. Can we get the video
5 surveillance of them in the store and that car? So the
6 manager comes, starts pulling the video surveillance.

7 And this is the video surveillance from earlier that
8 night, around 11:27 P.M. Now, in this short video clip,
9 you're only going to see three people walk in, then you'll see
10 other photos with the four.

11 (Video is played)

12 MR. BROOKS: DeMario Lofton-Robinson walks in,
13 Davontae Wheeler with the gun on his right hip, and Raekwon
14 Robertson.

15 (Stopped playing of video)

16 MR. BROOKS: That's the four of them standing right
17 there, and that's Nikolaus Spahn helping the customer ahead of
18 them. Now, at no point in time did they use the gun, or flash
19 the gun, or anything towards the store Clerk. As you can see,
20 there's the open carry, and there's another portion of that
21 shiny handgun that's right there, holstered at Davontae
22 Wheeler's hip.

23 Then, they pull the video surveillance from outside.
24 So Lora Cody, one of the detectives you'll hear from, starts
25 looking at this video surveillance, zooming in, back, forth,

1 and can see a "47" -- a "473" at that starting license plate.
2 And so at this point in time, she's like -- hey, this vehicle
3 that was in -- you know, a vehicle of interest initially, it
4 really is a vehicle of interest; let's go ahead and try to
5 track that down. So she's trying to track it down all night.
6 Other detectives who you'll hear from, Detective Mitch Dosch
7 and Detective Ryan Jaeger, they're also at the scene and
8 trying to begin the investigation.

9 Eventually, Lora Cody tracks that vehicle down. And
10 when she does, she takes the vehicle into custody and the
11 driver at that point in time. That's DeMario Lofton-Robinson.
12 He was the owner of the vehicle at the time, and the driver
13 when the vehicle was pulled over. The vehicle was stopped and
14 taken into custody. That's the person you may hear referred
15 to as DJ.

16 Now, DJ is going to be a part of these proceedings.
17 You're going to hear a lot about him because this is a
18 conspiracy case. And so you'll hear different evidence about
19 DeMario Lofton-Robinson, but he's not on trial in this
20 proceeding, so you guys won't be charged of determining guilt
21 or not guilty with regard to DeMario Lofton-Robinson; just
22 Raekwon Robertson And Davontae Wheeler.

23 That's DeShawn Robinson. He was 14 at the time, and
24 that's DJ's younger brother. You're going to hear from
25 DeShawn Robinson, and he's going to provide additional details

1 and other things that occurred that night.

2 That's Raekwon Robertson dressed in the black
3 hoodie, and that's Davontae Wheeler going into the bathroom.
4 As you can see, firearm on the hip, firearm on the hip, and
5 Raekwon Robertson right behind him.

6 When the vehicle is located by Detective Cody and
7 the other officers, the vehicle's impounded and brought to the
8 CSA lab. Inside that vehicle, they find a few things, one of
9 which is .45 caliber cartridge cases, bullets, and the
10 headstamp on these found in the car matches one of those
11 cartridges found back at the scene. Additionally, you're
12 going to see those Jordan 5 sneakers, those Jordan 5 red
13 sneakers being worn in the video by DeMario, DJ, and DeShawn.

14 Then they process the car, so you're going to hear
15 from crime scene analysts who talk about fingerprint
16 processing. They processed that entire vehicle. And over the
17 course of that vehicle, you're going to find out that DeMario
18 Lofton-Robinson's fingerprints, which is expected because it's
19 his car, are all over it, DeShawn Robinson's fingerprints are
20 all over it, Raekwon Robertson's fingerprints are on it, and
21 Davontae Wheeler's fingerprints and palm prints are on it.

22 So then officers execute a search warrant on DJ and
23 DeShawn's residence, so they go to 919 Bagpipe here in North
24 Las Vegas. And when they initially execute the search
25 warrant, they bring in a dog because they're looking for a

1 firearm. So Trigger, this little K9, is sent through the
2 house. So Trigger's going through the house, going through
3 the house, and he hits on that pink backpack up in one of the
4 bedrooms. He hits on it, and then officers go to the
5 backpack.

6 Officers then open the backpack, and low and behold,
7 inside that pink backpack is an Interarms Star handgun. It's
8 a ten-round magazine with six rounds left in it. They take
9 that gun into possession, impound it into evidence, and begin
10 testing. You'll learn that that Interarms Star firearm was
11 tested, and the .45 caliber cartridge here, here, and here
12 left on the scene, all three of them, were identified as
13 having been fired from that Star firearm.

14 Additionally, the bullet down in this screen -- if
15 you're wondering, you're going to learn that that W5228S,
16 that's the name of the CSA who actually impounds that, and
17 that's why that photograph's there. That bullet found at the
18 scene, that's identified as having been fired through that
19 Star firearm. And then, the bullet taken out of Gabriel
20 Valenzuela's left leg during the autopsy was tested and
21 identified as having been fired out of that Star firearm.

22 The sweater that DJ's wearing with the Jordan symbol
23 up there was found in the back of that car. And as you can
24 see from the video surveillance, the emblem on the chest, and
25 then you can see the bulge in DeMario Lofton-Robinson's pants.

1 A few days later, 6647 West Tropicana, the apartment
2 right there, was then -- a search warrant was executed on it.
3 That's the residence of Raekwon Robertson. Inside there, they
4 go to a bedroom, and in the bedroom, there's a dresser. They
5 pull out the drawer, the bottom left drawer, and hidden below
6 that bottom left drawer is a Taurus .22.

7 Additionally, they find .22 caliber bullets. When
8 you look at the headstamp, you'll see the headstamp on that
9 .22 caliber bullet right there matches the headstamp on the
10 cartridge case found back at the scene. In the closet, the
11 shoes that Raekwon Robertson was wearing in the video
12 surveillance footage is found.

13 And testing occurs on the gun. You're going to
14 learn Raekwon Robertson's DNA is found on that Taurus .22.
15 You're going to learn that cartridge case left at the scene
16 was tested and can be identified as having been fired from
17 that Taurus .22.

18 Now, the bullet that's taken out of Gabriel
19 Valenzuela's stomach, that went through his stomach and his
20 rear back, that was tested, and you're going to learn that it
21 has similar riffling characteristics as having been fired
22 through that Taurus .22. However, they can't -- the scientist
23 isn't going to be able to tell you identification, because, as
24 you can expect, when a bullet goes through somebody's insides,
25 ricochets off their organs, the bullet kind of gets mangled,

1 and so that's as much as they can tell about that bullet.

2 Then, 3300 Civic Center, a search warrant is
3 executed on. And in the bed -- bedroom right there, with the
4 bed wedged right up against that kind of like -- that -- it's
5 not a desk, but that piece of furniture, you're going to see a
6 Millennium Taurus .45. Officers are going to take that
7 Millennium Taurus .45 and impound it. Additionally, there's a
8 holster right near it, and that holster is very similar to the
9 holster being worn by Davontae Wheeler in that video
10 surveillance footage.

11 The gun is processed, and the magazine located
12 inside that gun has Davontae Wheeler's fingerprint on it.
13 Additionally, if you look at the headstamp on those bullets,
14 that headstamp matches one of the bullets that was left at the
15 scene. Now, that gun's tested, and none of the cartridge
16 cases that are left at the scene are going to come back as
17 being identified as having been fired through that gun. All
18 three of the .45 cartridges that were left at the scene are
19 from the Star, and then the .22 is obviously from the Taurus.

20 The Huaraches that Davontae Wheeler is depicted
21 wearing right there in that video surveillance are found in
22 that apartment. And additionally, that Chicago Blackhawks hat
23 that can be seen being worn in the video surveillance footage
24 is found at that apartment.

25 All four of the suspects are eventually taken into

1 custody. Why were they there? They went to hit a house that
2 night, but instead, something else happened. They saw an
3 opportunity to hit Gabriel Valenzuela, and the only reason
4 that Gabriel Valenzuela didn't make it inside his house with
5 his mail is because those four guys wanted his stuff.

6 And so at the end of this trial, Mr. Pesci is going
7 to stand up and he's going to ask you to return a verdict of
8 guilty to all three counts: conspiracy to commit robbery,
9 attempt robbery with use of a deadly weapon, and first degree
10 murder with use of a deadly weapon. Thank you.

11 THE COURT: Thank you. Mr. Sanft?

12 DEFENDANT ROBERTSON'S OPENING STATEMENT

13 MR. SANFT: Ladies and gentlemen, we spent the last
14 two days together, determining who could be a good juror for
15 this case. If you've sat here now and listened to what the
16 State has told you what they believe the evidence would show
17 beyond a reasonable doubt, and now think in your mind, well,
18 why are we even here, then you haven't done your job, and we
19 haven't done our job in picking good jurors.

20 But my guess is, my assumption is that as you're
21 sitting here right now, what you're determining in your mind
22 is exactly what we are going to do during the course of this
23 trial: prove this to me beyond a reasonable doubt. That's it.

24 Now, one of the things that we were cautioning you
25 on when we first met with you as a panel was whether or not --

1 if you could look at photographs -- the crime scene
2 photographs, autopsy photographs -- and not be swayed
3 emotionally, but look at it dispassionately.

4 We're asking you to look at everything
5 dispassionately, whether it's the photographs in this case,
6 whether it's the testimony of the witnesses that will testify
7 in this case, and ask yourself over, and over, and over again,
8 has the State proven to me beyond a reasonable doubt that that
9 person right there, Raekwon Robertson, is a person that's
10 responsible for a murder of a 24-year-old young man in the
11 middle of the night?

12 That's the question you should be asking yourself
13 over, and over, and over again. Is that really Robertson
14 that's up in the video, is that really Robertson that had the
15 gun, and is that really Robertson who shot those bullets that
16 went into this person and killed him in the middle of the
17 night? That's the question.

18 And as you, and me, and the State of Nevada journey
19 through this and get to the end of our case, what you're going
20 to determine at that particular point is the State of Nevada
21 has not proven to you beyond a reasonable doubt that Raekwon
22 Robertson was responsible for the murder of this particular
23 individual. Thank you.

24 THE COURT: Thank you. Mr. Ruggeroli?

25 //

1 DEFENDANT WHEELER'S OPENING STATEMENT

2 MR. RUGGEROLI: Your Honor, counsel, ladies and
3 gentlemen of the jury. Davontae Wheeler is not guilty. He
4 starts this trial, just like we questioned you during the jury
5 selection process, with a presumption of innocence. The
6 State, I'm sure, would say that they welcome their burden of
7 proving that he's guilty beyond a reasonable doubt; but in
8 this case, the State will not prove that case against Davontae
9 Wheeler, and they will not prove this case beyond a reasonable
10 doubt.

11 As you listen to the evidence in this case, as a
12 juror, you would want to have confidence of guilt to
13 comfortably convict someone. And to have belief beyond a
14 reasonable doubt, you deserve to have evidence that's based on
15 reliable and trustworthy testimony from the witnesses or the
16 witness; a situation that's not so suspicious and convoluted.
17 And I'm going to point this out because the State's
18 presentation of this case is very matter of fact, it's very
19 succinct, but it's interesting that they left some very
20 important information out.

21 And you should not make a rush to judgment like the
22 police in this case did, and at a minimum, you should have an
23 adequate investigation. In this particular case, you don't
24 have that. You have an unreliable and an untrustworthy star
25 witness on behalf of the State. Now, I'm not talking about

1 every witness. There's going to be a number of them. In
2 particular, for instance, the jogger, I'm not saying that he's
3 a liar or anything like that. But you're going to hear from
4 DeShawn, and it's going to be your job to test his
5 trustworthiness. I think when you listen to the evidence, you
6 will see that there are very, very serious concerns about his
7 reliability and trustworthiness.

8 Here, you're going to have a situation that's
9 actually suspicious and convoluted with insufficient evidence
10 that lacks corroboration as to what happened particularly at
11 the scene of the shooting at Dewey. And you're going to see
12 that there was a rush to judgment, and in particular, that
13 rush to judgment was because the police got notice that one
14 person was open carrying on that video at the Short Line
15 Express a half-an-hour or 45 minutes before the shooting.

16 And that's very important, because that fact colored
17 the investigation moving forward. They believe that Mr.
18 Wheeler had that .45 open carry, they knew that they had a
19 high-caliber injury, and that fact led them to believe in the
20 beginning that they've got their man, this is almost an
21 open-and-shut case, and Mr. Wheeler's got the .45, so he must
22 be the gunman. Because of that, they didn't fully investigate
23 everything that they should have in this case.

24 Now, the State left this out. The evidence in this
25 case will actually show that at the Short Line Express, there

1 were five people, not four. There's an independent witness.
2 He was contacted by the police. And when the police showed up
3 to talk to him, because the police had seen the video at Short
4 Line Express -- you saw the photos -- the police are thinking,
5 well, we've got four people. So when they approach this
6 individual, they say, were you there? Did you buy one of them
7 a Black and Mild cigarillo? He says, yes.

8 They say, we have these four individuals. The first
9 thing that that individual says is, yeah, I saw five. There
10 are some more questions and answers, and he does waver,
11 because the police are questioning him, and they think that
12 there's four at the Short Line Express. But that independent
13 witness, his first statement was, there are five. And that's
14 very important, because when we get to the jogger a
15 half-an-hour or 45 minutes later, he is absolutely consistent
16 there were only four. So what happened with number 5?

17 I also want to point out, before we get to that --
18 and this was mentioned by the State just now during their
19 opening, but I think it needs to be highlighted a bit more.
20 There was one .22 caliber bullet that they recovered, and one
21 .22 caliber cartridge case, and there were three .45 caliber
22 bullets, and three .45 caliber cartridge cases that they
23 recovered.

24 Mr. Wheeler's .45 caliber, which was obtained during
25 a search warrant at the Civic Center address, was excluded

1 because it wasn't one of the .45 caliber cartridge cases that
2 were recovered, it did not fire them, and it did not fire any
3 of the three bullets that were recovered either. That is
4 because Mr. Wheeler was not a part of this, because he is the
5 fifth person. He was present at Short Line Express, but he
6 wasn't present at the Dewey address. Mr. Wheeler was not
7 present at the shooting.

8 We asked you to be a good juror; you were selected
9 because we believe you will. And after hearing the evidence
10 in this case, if you do your job, we believe that you're going
11 to have some more questions than answers in terms of the
12 State's theory of the case. You'll have more doubts because
13 of the evidence than certainty.

14 Everybody will agree that you must hold the State to
15 that burden. They're going to welcome you to do it, but
16 they're not going to meet that high burden here. They will
17 not be able to prove that Mr. Wheeler is guilty beyond a
18 reasonable doubt.

19 We respectfully request that you do your job as good
20 jurors. Evaluate the trustworthiness of the witness -- the
21 witnesses. Don't rush to judgment. Don't just assume because
22 there's four on a video, and one of them's open carry,
23 automatically, we've got our guy. Fulfill your duty as
24 jurors. And very simply, if you do so, you will have too many
25 reasonable doubts at the conclusion of the evidence, and you

1 will find Mr. Wheeler not guilty. Thank you.

2 THE COURT: Thank you. Thank you very much. The
3 State of Nevada may call their first witness.

4 MR. BROOKS: Your Honor, State calls Robert Mason.

5 THE MARSHAL: Just straight ahead.

6 THE WITNESS: Okay.

7 THE MARSHAL: If you'll please step up into the
8 witness stand. Remain standing, raise your right hand, and
9 face the Clerk.

10 ROBERT MASON, STATE'S WITNESS, SWORN

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

13 THE WITNESS: Robert Mason.

14 THE CLERK: Go ahead and spell your first and last
15 name, please.

16 THE WITNESS: Oh. R-o-b-e-r-t. Mason, M-a-s-o-n.

17 THE CLERK: Thank you.

18 THE WITNESS: Um-hum.

19 DIRECT EXAMINATION

20 BY MR. BROOKS:

21 Q Mr. Mason?

22 A Yes, sir.

23 Q Back in 2017, where did you live?

24 A 5524 Zachary Street, Las Vegas, Nevada, 89118.

25 Q Is that here in Clark County?

1 A Yes.

2 Q And what area of town? Just kind of -- if you could

3 orient us to where that would be.

4 A Southwest. Yeah.

5 Q Southwest? Okay, so were you married?

6 A Yes.

7 Q Are you still married?

8 A Yes, sir.

9 Q What's your wife's name?

10 A Lucinda Mendoza.

11 Q So back in 2017, around August, specifically, how

12 long had you lived in that area? How long had you lived in

13 that home?

14 A Oh, 2017, I would say probably about four or five

15 years then at that point.

16 Q Were you familiar with the area?

17 A Oh, very. Yeah.

18 Q I want to turn your attention to around midnight

19 between August 8th and August 9th of 2017. Do you recall an

20 incident that brings us here to court today?

21 A Yes, sir.

22 Q So tell me a little bit about what you initially

23 remember when -- why you left your house that night.

24 A Just to start off, my jog, since it was warm at

25 night -- or during the day, I would jog in the evenings rather

1 than during the day. I jog twice a week, if not more, and so
2 I jog at night. And just happened to get off work, and decide
3 to just go for a random jog, and left my house.

4 Q So back then, what time, do you remember, did you
5 get off work? What were your typical hours back then?

6 A Oh, I would get off around 11:00, 11:30, just
7 depending.

8 Q So if I think it's unusual to go on a jog at
9 midnight, that was a normal thing for you?

10 A Oh, yeah, yeah.

11 Q So when you leave your house, what was your typical
12 route?

13 A Typically, I would do the same route in that general
14 area. Leave my house going southbound on my street that I
15 lived off of, Zachary, and then I would make a left and go
16 down -- what's that? Lindell, I -- no, not Lindell. Dewey,
17 Dewey. I would make a left on Dewey and head east. And then,
18 from there, I would head to Lindell, and make a north turn on
19 Lindell.

20 Q Okay. And is that the path you started out on on
21 that August 9th, 2017 night?

22 A Yeah.

23 MR. BROOKS: Your Honor, permission to approach the
24 witness?

25 THE COURT: Sure.

1 BY MR. BROOKS:

2 Q Mr. Mason, showing you State's Exhibits 4, 3, and 1,
3 do you recognize the maps and the area depicted in these
4 photographs?

5 A Oh, yeah.

6 Q And specifically, in State's Exhibit 1, is that that
7 Dewey and Lindell address that you just referred to?

8 A That is Dewey and Lindell.

9 Q And State's Exhibit 4, do you recognize a yellow pin
10 where your address is, and then --

11 A Um-hum.

12 Q -- a pin where an address in question --

13 A Yes.

14 Q -- later that night?

15 MR. BROOKS: Your Honor, State moves for admission
16 of Exhibits 3, 1, and 4.

17 THE COURT: Any objection?

18 MR. SANFT: No objection, Your Honor.

19 MR. RUGGEROLI: No, Your Honor.

20 THE COURT: Okay, they're admitted.

21 (State's Exhibits 1, 3, and 4 are admitted)

22 MR. BROOKS: So permission to publish, Your Honor?

23 THE COURT: You may.

24 BY MR. BROOKS:

25 Q Mr. Mason, see that screen next to you?

1 A Yeah.

2 Q So is there a mouse there?

3 A Sure is.

4 Q So take us through -- and I'm sorry I made you do
5 this without a map earlier. Take us through that route that
6 night.

7 A All right. How does this work? Let's see. Do I
8 have to press anything, or?

9 Q I don't think so.

10 THE MARSHAL: Well, hang on a second.

11 THE WITNESS: Oh.

12 THE MARSHAL: He's got the wrong -- give me one
13 second, sir.

14 THE WITNESS: Okay.

15 THE MARSHAL: Now you should --

16 THE WITNESS: Now I can --

17 THE MARSHAL: -- be able to mark.

18 THE WITNESS: -- mark the area? So I would leave my
19 house, and usually kind of stretch a little bit, maybe five
20 minutes or less, and then just start bolting down -- what is
21 this? Zachary. Eesh, I'm terrible. So I would take my jog
22 down here, usually starting out with a really high-intensity
23 pace. I always try to start out quick. So I go really fast
24 down Zachary, and then I hit this corner here. And you just
25 want me to show you my route?

1 BY MR. BROOKS:

2 Q No, that night. So --

3 A That night?

4 Q -- that night, you hit that corner, and then what
5 happens?

6 A Okay. As I -- when I made it to this corner, I just
7 -- I saw what, at my vantage point, looked like a group of
8 people. I didn't know how many at that time, but I saw a
9 group of people standing -- where's the wall? So there was a
10 group of people right in this general area of the wall. Can I
11 erase?

12 Q Let me -- I'll take care of that. And then, let me
13 show you a zoomed-in one, maybe that will help. State's
14 Exhibit 3. Does -- does that help? Is that a better angle?

15 A Yeah, yeah, yeah.

16 Q Okay.

17 A That works. So there's this wall here. And as I
18 rounded this corner, I could see just a group of people
19 standing here, which didn't really bother me at first, so I
20 just continued down this route -- oh, let me see here. I
21 continued down here, jogging, jogging, jogging, jogging. And
22 as I got closer, I just, you know, got a little more power in
23 my run, so I started running pretty -- pretty fast.

24 As I got closer, I decided, rather than run through
25 them, which -- because they were standing here and in this

1 general area. And as I got closer, they proceeded to kind of
2 step away from the wall, and were in a general area of like in
3 that vicinity.

4 Q And at that point --

5 A So I -- excuse me.

6 Q Sorry. At that point in time, when you're right
7 about there, have you identified how many people yet?

8 A Yes. By this -- by this point, I determined there
9 was four individuals standing in a --

10 Q And so what do you do?

11 A So at that point, I just got a bad feeling in a
12 sense of just never really running into people while I was
13 jogging. They were all wearing dark clothing. They were all
14 wearing sweatshirts or some sort of jacket-type material, and
15 it was hot out. So at that point, my mind just said, this
16 just doesn't feel right. So I decided to run even harder,
17 kind of just pushing it, and kind of jogged to the outer --
18 does this thing work? Jogged out to this part of the street,
19 and around them, and then this way.

20 Q And as you pass them, are you able to identify what
21 race they are?

22 A Yeah, pretty -- pretty distinct.

23 Q And what were they?

24 A Four black male individuals. Yeah.

25 Q Okay. Were you able to identify if they were young,

1 old?

2 A Fairly young. I didn't see any distinct older
3 features in any of them that I could -- you know.

4 Q Fair to say, you don't get a good enough look to do
5 any identification or anything?

6 A Not -- not face-to-face, no.

7 Q Okay.

8 A I wouldn't say.

9 Q So my question is, right here --

10 A Yes.

11 Q -- when you're running past them, what do they do?
12 What do they -- what do they do?

13 A Well, at this point, as I run past them, I look at
14 one of them at a glance, and he looked at me. And I just kind
15 of just gave my -- just kind of just jogged past them like
16 they weren't even there in a sense.

17 Q Do they recognize you, and do you -- and by
18 recognize, I mean do you see them, and do they --

19 A Oh, for sure, yes.

20 Q -- see you?

21 MR. RUGGEROLI: Judge, I'm going to object to
22 speculation.

23 THE COURT: Okay, based on your own observation.

24 THE WITNESS: If -- my observation was that they
25 knew I was running past them.

1 BY MR. BROOKS:

2 Q Did you make eye contact with at least one or two of
3 them?

4 A I made eye contact with at least one.

5 Q Okay.

6 A Yes.

7 Q So I guess that's what I meant by recognizing.

8 A Yeah.

9 Q Don't mean identify.

10 A It was a quick -- like a quick, and that was it.

11 Q So like, I see you, you see me?

12 A Yeah. If I were to look at you, I'd just look away
13 and keep jogging.

14 Q So you mentioned jackets or sweatshirts. Was there
15 something in particular that was odd about those sweatshirts?

16 A Dark. Just not really anything in particular that
17 was odd, except for it was hot, and it was -- I just -- I
18 never see people wearing black sweatshirts at night -- or not
19 at night, but during the summer, during the heat.

20 Q So as you turn the corner on Lindell here and start
21 heading north, what do you notice next?

22 A So as I -- as I make the corner here -- do I --

23 Q Oh, you don't need to --

24 A Okay.

25 Q Yeah, just --

1 A So --

2 Q -- tell us.

3 A When I made this corner here, I just saw a car

4 parked in the street, and I put two and two together, assuming

5 that it was their car in the street. And I observed the

6 license plate on the front as I jogged by, and just out of --

7 just -- I don't know, just an instinct, I guess, to look back

8 at the reverse plate on the back, memorized the license plate

9 and started to put it in my phone.

10 Q So before we get to that, what color car was that?

11 A It was white.

12 Q Now, back then, what did you describe it as being?

13 What kind of car?

14 A I believe I described it as a Crown Vic, or a Crown

15 Vic style.

16 Q And was it new; was it old?

17 A It was older.

18 Q Do you remember whether you said anything about

19 whether the windows were tinted? Did you look inside the car?

20 A As I jogged by, I glanced in at the insides of the

21 car. But as far as windows, I could see inside the car, so I

22 believe I said the windows were not tinted. But as I glanced,

23 I could see into the car.

24 Q Was anyone in -- was there a human inside the car?

25 A Unless they were under the seats or hidden

1 underneath something, no, empty.

2 Q Were you previously even asked whether -- inside of
3 the car, whether the seats were torn, or if it was dirty, or
4 trashed inside?

5 A Yeah, yeah.

6 Q And do you remember?

7 A Yeah. I remember saying, I believe, that it was
8 kind of messy, or cluttered, or whatnot. It was just dirty,
9 and then the seats were kind of torn.

10 Q So you got a good enough look inside the car to
11 notice that it was trashy and the seats were torn?

12 A Yeah.

13 Q And there was no human inside?

14 A Yeah, as far as I could tell.

15 Q So as you jog past it, you said you tried to
16 remember the license plate. When you're about 20 or 30 feet
17 past the car, do you do something with that license plate?

18 A I wouldn't say 20 or 30 feet; I would say a lot
19 sooner than that. Probably within the first ten feet of me
20 passing that car, I put the license plate into my phone. And
21 then decided to call my wife at that point, because I just
22 realized I had left the front door unlocked, and I just felt a
23 little eerie about these guys in our neighborhood and wanted
24 to make sure that she locked the door.

25 Q And do you tell her to do something other than lock

1 the door?

2 A Yeah. And then, I was probably at that point 40, 50
3 feet down the road, and I just said, you know what, just, if
4 you would, call 311 and report suspicious individuals in the
5 neighborhood.

6 Q And subsequently -- subsequent to then, have you
7 since learned that she did call 311?

8 A Yeah, yeah.

9 Q And when you initially tell your wife there's
10 something suspicious, do you guys have a conversation about
11 what the people are wearing and the temperature?

12 A Yes.

13 Q And what was that?

14 A Oh, that they were just there -- I felt a little
15 uncomfortable that there was four people in dark clothing and
16 hoodies in the neighborhood, sweatshirt -- well, not
17 sweatshirt, but just hoodies in the neighborhood, and just
18 felt uncomfortable about it.

19 Q And now, I think you were asked this previously.
20 When say hoodies, the hoods were up, but they weren't like
21 cinched?

22 A No, no, no, no. They're just up -- yeah, the hoods
23 were up, and -- but not -- not cinched down or nothing like
24 that, as far as I could tell.

25 Q Was this an unusually cold night in Las Vegas in

1 August?

2 A No, no.

3 Q Was there any reason for someone's hood to be up
4 that night?

5 A No. Well --

6 Q That you --

7 A Unless you're concealing your identity, I mean, in
8 my opinion.

9 Q Well, I don't --

10 MR. SANFT: Objection, Your Honor, speculation.

11 THE COURT: Sustained.

12 MR. BROOKS: Yeah.

13 THE COURT: The objection's sustained.

14 BY MR. BROOKS:

15 Q And so, as you finish your jog, do you make contact
16 with your wife and find out that she's called 311?

17 A Yes.

18 Q Okay. And see this area right here?

19 A Yeah.

20 Q Do you return back to that area that night before
21 you go home?

22 A Yeah. I made my -- my jog around, which is a
23 three-mile jog, and it usually takes me eight minutes,
24 eight-and-a-half per mile. So at that point, I get back to
25 that general area right around 25 or 20 so minutes. Between

1 20 and 25 minutes, I'm back in that general area every --
2 every time I come back.

3 Q Which direction, by the way, was the car facing?

4 A The car was facing southbound, this way.

5 Q And how busy is Lindell? Do cars ever park on that
6 street?

7 A The street can be fairly busy at night. Not so
8 much, but cars never -- never park on the street there, ever.

9 Q So was that why it was kind of unusual to you?

10 A Yes.

11 Q And --

12 A The only time I've seen people parked there is when
13 they're picking up their kids from the school, you know, and
14 they're just kind of getting in the way on that street, and
15 there's a lot of traffic in the day.

16 Q In general, you don't usually see cars?

17 A No, never.

18 Q Have you had the opportunity to come meet me and Mr.
19 Pesci and view some video from that night?

20 A Yes.

21 Q Video from an officer's body cam that you --

22 A Yeah.

23 MR. BROOKS: Your Honor, at this point in time, I
24 want to play a portion of State's Proposed Exhibit 329 to see
25 if he can identify himself before moving it into evidence.

1 THE COURT: Okay.

2 MR. BROOKS: Unless --

3 THE COURT: Is there going to be any -- is there an
4 objection?

5 MR. SANFT: No objection, Your Honor.

6 MR. RUGGEROLI: No, Your Honor.

7 MR. BROOKS: Then --

8 THE COURT: Okay, so if you want to offer it.

9 MR. BROOKS: State moves Proposed Exhibit 329 into
10 evidence.

11 THE COURT: Okay, it's admitted.

12 (State's Exhibit 329 is admitted)

13 THE COURT: And you may publish.

14 (Video is played)

15 (Stopped playing of video)

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

17 THE COURT: You may.

18 BY MR. BROOKS:

19 Q Mr. Mason, do you recognize the house and the wall
20 depicted in this photograph?

21 A Yeah.

22 Q Does it fairly and accurately depict the area that
23 you were just referring to --

24 A Yeah.

25 Q -- to the officer?

1 A Yeah.

2 MR. BROOKS: Your Honor, State moves for admission
3 of Exhibit 10.

4 THE COURT: Any objection?

5 MR. SANFT: No objection, Your Honor.

6 MR. RUGGEROLI: No, Your Honor.

7 THE COURT: Exhibit 10 is admitted.

8 (State's Exhibit 10 is admitted)

9 BY MR. BROOKS:

10 Q Mr. Mason, if you could, just kind of -- and you
11 don't need to mark it, but if you could take the mouse and use
12 it to show us what you were telling the officer; where you
13 were pointing where you saw the four men.

14 A So the -- I saw the four individuals right in this
15 general area here.

16 Q Okay, so that's what you were kind of describing to
17 him?

18 A Yeah.

19 Q Sort of on the property, sort of on the side of it?

20 A Yeah. When I ran by, it looked to me the two --
21 there was two individuals here that stepped away from the
22 wall, and then were mingling amongst each other when I -- as
23 if they noticed me coming, so it kind of threw them off.

24 Q So let me see if I understand you right. So right
25 here where this mouse is, are you telling me there were two

1 here initially, and then two here, and as you come past, they
2 all four gather together? Or am I --

3 A In my recollection, it was as if -- I honestly say
4 they were here, and then moved out, but it looked as if they
5 were huddled up against the wall just in this general area.

6 Q Okay.

7 A So, I mean, I don't honestly know if they were all
8 the way over here or on this side of the wall, but in this
9 general location. And then they moved out to this -- this way
10 when I came -- when I approached them.

11 Q All four of them?

12 A Yeah.

13 Q And then, showing you State's Proposed Exhibit 155.
14 It was kind of -- it wasn't very loud right there.

15 A Yeah.

16 Q But does this photo fairly and accurately depict
17 the --

18 A Yes.

19 Q -- license plate that you just said on the body cam,
20 473YZB?

21 A Yeah.

22 Q And does this photo fairly and accurately depict the
23 front of the car that you saw that night?

24 A Yeah.

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

1 of Exhibit 155.

2 MR. SANFT: No objection, Your Honor.

3 MR. RUGGEROLI: No objection.

4 THE COURT: Thank you. It's admitted.

5 (State's Exhibit 155 is admitted)

6 BY MR. BROOKS:

7 Q Mr. Mason, is that what you referred to that night
8 as a Crown Vic, older-style car?

9 A Yeah.

10 Q And is that the license plate that you put down in
11 your phone and then showed the officer?

12 A Yes.

13 MR. BROOKS: Pass the witness, Your Honor.

14 THE COURT: Cross-examination, Mr. Sanft?

15 MR. SANFT: Yes, Your Honor. May we approach for a
16 sec?

17 THE COURT: Of course.

18 (Bench conference)

19 MR. SANFT: How long can we go for before lunch?

20 Can we just keep going all the way through?

21 THE COURT: Yeah.

22 MR. SANFT: Okay.

23 THE COURT: Hopefully, you can finish this witness.

24 MR. PESCI: Well, if we could, his wife is here, and
25 then we also have an Officer Calleja who's been on like a

1 swing shift, I think. So if we can maybe get through those
2 three --

3 THE COURT: I have no problem with that.

4 MR. PESCI: -- before we break for lunch.

5 THE COURT: Okay.

6 MR. PESCI: Just because they've missed yesterday in
7 their schedule for work.

8 THE COURT: Okay. All right.

9 MR. SANFT: Oh, and just one other housekeeping
10 matter. I don't have any objection to the exhibits, so
11 (indiscernible).

12 MR. RUGGEROLI: For the most part. If you want to
13 run them by us, like photos --

14 THE COURT: Right. Maybe we could stipulate.

15 MR. SANFT: We would stipulate to the --

16 MR. RUGGEROLI: Streamline some of it.

17 MR. PESCI: Okay, sure.

18 MR. BROOKS: Okay.

19 MR. PESCI: Thank you.

20 THE COURT: Thank you.

21 (End of bench conference)

22 THE COURT: Okay, Mr. Sanft. You may begin with
23 your cross.

24 MR. SANFT: Yes, Your Honor.

25 //

1 CROSS-EXAMINATION

2 BY MR. SANFT:

3 Q Mr. Mason, the -- your video of yourself a couple
4 years ago, it looks like you have been doing pretty good on
5 your runs.

6 A Oh, yeah.

7 Q Congratulations on that, by the way.

8 A Yeah, thank you.

9 Q Now, your testimony is that you had been in this
10 area -- thank you. You had been in this area and had lived in
11 this area for quite some time prior to this incident occurring
12 in August of 2017?

13 A Yes.

14 Q Okay. Just a couple quick questions.

15 A Sure.

16 Q The -- showing you once again what's been marked and
17 admitted as State's Exhibit number 3.

18 A Okay.

19 Q This photograph right here. Your testimony was that
20 as you were running from your house, you turned the corner,
21 and you started heading in this direction towards Dewey, which
22 is this particular road that's right here? I'm pointing with
23 my pen. Correct?

24 A That is Lindell, actually.

25 Q Oh, that's Lindell?

1 A Yes.

2 Q I'm sorry. And as you were running down Lindell --

3 or running towards Lindell, that you were basically at a

4 high-intensity pace?

5 A Pretty -- pretty fairly, yeah.

6 Q And is that basically a reference to like

7 high-intensity interval training? Is that what we're talking

8 about here?

9 A No, basic running. Just -- no, I'm not super fast,

10 you know. Just basic running, I mean, but at a high -- I

11 mean, just going a good pace.

12 Q Fair. And --

13 A Yeah, not -- not jogging slow, but jogging with

14 intensity, so.

15 Q Right. And as a result of that, as you're heading

16 in this direction, you're keeping that pace as you're

17 approaching what you believe you see; four individuals

18 sitting --

19 A Yes.

20 Q -- somewhere around this particular area here? I'm

21 pointing for the jury once again. Is that correct?

22 A Yes.

23 Q Okay. Now, your testimony was that as you were

24 approaching these four individuals, you felt uncomfortable,

25 and at some point decided, I'm not going to run -- stay on

1 that sidewalk or in that area; I'm going --

2 A Yes.

3 Q -- to go around them, fair?

4 A Yes.

5 Q All right. Now, as you did so, and you went around

6 the area, you said that you saw a group of people, but you

7 could identify kind of roughly maybe general descriptions of

8 them, but nothing specific?

9 A No, nothing specific.

10 Q Okay. Now, at some point after you had spoken with

11 the police officers that we see in the video, at some point in

12 the future, I'm guessing you spoke with detectives? Did

13 anyone come over to your house --

14 A Yes.

15 Q -- and interview you?

16 A Yeah.

17 Q Okay.

18 A No. Actually, I stayed on the scene up until about

19 4:00 A.M., and it was right around I would say 3:00 A.M. or

20 so, in that general -- 2:30, 3:00 o'clock in the morning that

21 one of the detectives approached me and pulled me aside into

22 their vehicle.

23 Q All right. And at that point, you had an interview

24 with that detective?

25 A Yes.

1 Q And during the course of that interview, my guess is
2 the detective was asking you for more specifics; if you could
3 remember shoes, or color of clothing, or maybe specific
4 physical attributes of any of the individuals you saw?

5 A Yes.

6 Q And you couldn't give him anything like that?

7 A No. I actually -- at that point, I remembered that
8 one of the individuals had a -- a curly hairstyle with a crop
9 top, like a -- I don't know how it would be called. A -- it
10 was a certain hairstyle at that time that was pretty popular,
11 but yeah, I can't -- I don't know what it's called, but they
12 had like a crop top fade.

13 Q So there was some type of hairstyle?

14 A Yeah, outside the hoodie. It was like a crop top
15 type hairstyle.

16 Q Okay, and that would be my next question. You've
17 testified and you've told this jury --

18 A Yes.

19 Q -- that every person had their hoodie or a hoodie
20 up?

21 A Yes.

22 Q So this person had a hoodie that maybe went to the
23 middle of the head, and then the hair was just sticking out
24 like that?

25 A It was sticking out the front of the hoodie, yes.

1 Q Okay. Now, your testimony was that you identified
2 or you saw these four individuals, you turned the corner, ran
3 down the street, then took a license plate, right? Did you
4 ever see -- did you ever see any of those four individuals by
5 that vehicle?

6 A No, no one near the vehicle at all.

7 Q Okay. And you're still running down that street,
8 right?

9 A Yeah.

10 Q And I'm pointing once again to the street right
11 here.

12 A Yes.

13 Q And that's Lindell, right?

14 A Yes.

15 Q Okay. And as you're running down, did you at any
16 point ever look back to see anybody walking towards that
17 vehicle?

18 A No.

19 Q Did you hear --

20 A Well, as I ran past the vehicle, I looked at the
21 front plate. And then, as I ran past, I turned back and
22 looked at the rear-view plate, and that's when I turned back
23 and kept running northbound.

24 Q Now, in the video --

25 A But I did turn back.

1 Q Okay.

2 A Sorry.

3 Q I didn't want to cut you off. But in the video,
4 it's obvious you're surprised as to what happened, right? You
5 arrive on the scene --

6 A Yeah.

7 Q -- and you see the police officers there, and you
8 don't know what happened, fair?

9 A Yeah. Yes.

10 Q Okay. Did you hear gunshots when you were running
11 in the --

12 A No.

13 Q -- that direction down Lindell?

14 A No.

15 Q Okay. At any point during your run?

16 A No.

17 Q Were you wearing earphones that night?

18 A Yes.

19 Q Okay. Now, as you were getting ready to begin your
20 run, you had said you had stretched a little bit, and then the
21 pace of your jog was relatively fast, fair?

22 A Fair to say, yes. Fast.

23 Q From your -- okay. Is there -- can you describe for
24 me a little bit about the lighting in the area? We're looking
25 at this photograph here, and my understanding was, according

1 to what we saw in the video, is you were probably over here in
2 this area when police officers approached you and asked you
3 what happened?

4 A Yeah.

5 Q Okay. And once again, just for the record, pointing
6 to -- looked like the corner of Dewey and Lindell on the
7 southwest side. But in this area here, we see in the video a
8 light pole?

9 A Yes.

10 Q Are there any other light poles in this particular
11 area that you could point out for the jury? That you -- that
12 you know since you've been there?

13 A That I recall of?

14 Q Yeah.

15 A I believe there's one over here. There's none here.
16 I don't believe there are any in this general area also. I
17 think -- yeah, I honestly couldn't tell you exactly where all
18 the light poles are. Maybe --

19 Q I don't need for you to guess.

20 A Yeah.

21 Q If you know, and if you don't know, that's fine.

22 A Yeah, no. I know there's one here for sure.

23 Q Okay.

24 A Because that night -- when I've jogged through there
25 in the past, there's -- there's always adequate lighting over

1 here.

2 Q Right.

3 A But I would say there's not too much adequate
4 lighting on this side of the street, but more so on this side
5 of the street, so.

6 Q Okay. And when you say on this side of the street,
7 I just want to make sure we're clear for the record. What
8 you're looking at is you're pointing to the north side of
9 Dewey here, versus the south side of Dewey, which is --

10 A Yes, yes.

11 Q -- right here? And you're testifying -- you're
12 telling the jury that on the south side, you don't believe
13 that there's --

14 A No, no, no.

15 Q -- there's no lighting here?

16 A There's adequate lighting on this side. On the --
17 on this side, it's more so these houses that have the lights
18 on, and -- and -- and they have pretty adequate lighting on
19 their house, so this whole house is lit up that night. It's
20 pretty -- pretty bright over there.

21 Q Okay, and let me show you this as well. This is
22 State's Exhibit number 10. You were shown this earlier by the
23 State.

24 A Yeah.

25 Q Is that how the house is typically?

1 A Yeah.

2 Q Now, and just in terms of this particular night in
3 August of 2017, were the lights like this on that night?

4 A At that point, no. I could say probably not.

5 Q Okay.

6 A I mean, I'd be guessing in a way, but --

7 Q Right, and I don't want you to guess.

8 A Yeah.

9 Q So just tell me what you recall and don't recall.
10 That's fine.

11 A I don't recall lights being on in the -- like, that
12 bright --

13 Q Okay.

14 A -- at all.

15 Q Now, in addition to that, did you ever know the
16 people that lived in that house prior to this incident
17 occurring?

18 A No.

19 Q And are you -- did you ever know the person that was
20 shot in front of this house on that night --

21 A No.

22 Q -- prior to him being shot?

23 A No.

24 Q Okay. So you're not familiar, for instance, with
25 his friends or --

1 A No.

2 Q -- acquaintance, or anything like that?

3 A No, I don't know him.

4 Q Okay.

5 MR. SANFT: Your Honor, I have no further questions.

6 THE COURT: Mr. Ruggeroli?

7 CROSS-EXAMINATION

8 BY MR. RUGGEROLI:

9 Q Mr. Mason?

10 A Yes, sir.

11 Q You spoke to the police that night in the early

12 hours of August 9th, 2017, correct?

13 A That morning. Yes, sir.

14 Q You gave a Voluntary Statement; you verbally told

15 them what you observed?

16 A Yes.

17 Q And we saw that on the body cam footage that was

18 played for you a moment ago, correct?

19 A Yeah.

20 Q And then, you wrote out a Voluntary Statement,

21 correct?

22 A Yeah.

23 Q You also testified before the grand jury on November

24 29th, 2017, correct?

25 A What was that again?

1 Q The grand jury? Do you recall testifying before the
2 grand jury?

3 A Yeah. I don't know the exact date, but yeah.

4 Q Approximately November of 2017?

5 A Okay, yeah.

6 Q You've been very consistent that there were -- on
7 the video, you said, "Four black dudes"?

8 A Um-hum.

9 Q Is that a yes?

10 A It was four black individuals, yes.

11 Q Yes, in all black hoodies, correct?

12 A In all black hoodies, yes.

13 Q And do you recall that when you testified before the
14 -- before the grand jury, you also said that all of them were
15 dark-skinned, black individuals?

16 A Yeah. Or, I didn't -- I don't know if I said
17 dark-skinned, but yeah.

18 Q Do you recall?

19 A No, I don't recall.

20 Q Okay.

21 A I --

22 MR. RUGGEROLI: Judge, may I approach to refresh --

23 THE COURT: You may.

24 THE WITNESS: It's been so long.

25 MR. RUGGEROLI: -- his recollection?

1 THE COURT: You may.

2 MR. RUGGEROLI: This is page 47.

3 THE COURT: Of grand jury?

4 MR. RUGGEROLI: Yes, Your Honor.

5 THE COURT: Okay.

6 THE WITNESS: This is the grand jury testimony?

7 MR. RUGGEROLI: Yeah.

8 THE WITNESS: Okay.

9 BY MR. RUGGEROLI:

10 Q Would you just read this line to yourself, please?

11 A Okay. Yes.

12 Q Thank you. You were -- and today, all of the times

13 that you've given information, you're just trying to do your

14 best, correct?

15 A Yeah.

16 Q And --

17 A I mean, it's been well over a year now, so.

18 Q Right. And so, at the grand jury, you testified

19 they were dark-skinned, black individuals, correct?

20 A That's -- if that's on that paper, then that's what

21 I testified as.

22 Q Thank you.

23 A Yeah, I'm guessing.

24 MR. RUGGEROLI: I have nothing further. Thank you,

25 Your Honor.

1 THE COURT: Any redirect?

2 MR. BROOKS: No, Your Honor.

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

5 THE WITNESS: Okay.

6 THE COURT: And you are excused from your subpoena.
7 Thank you for being here.

8 THE WITNESS: Okay, thank you.

9 THE COURT: You may call your next witness.

10 MR. PESCI: Can we approach real fast, Your Honor?

11 THE COURT: Sure.

12 (Bench conference)

13 MR. PESCI: We're going to ask if we can take the
14 next officer a little bit out of order. We had told him in
15 order previously. When I was out in the hall checking with
16 the witnesses, this officer's son just fell at the school, so
17 he's at the --

18 THE COURT: Just what?

19 MR. PESCI: Just fell --

20 THE COURT: Fell down?

21 MR. PESCI: -- at the school and hit his head. He's
22 at the --

23 THE COURT: Okay.

24 MR. PESCI: -- nurse's office, so we're trying to
25 get this officer on now. So we're out of order, but that's --

1 that's why we're doing it, so he can get to the school.
2 THE COURT: Okay, that's fine.
3 MR. PESCI: His wife's there, but --
4 THE COURT: So do we have to do four witnesses now?
5 MR. PESCI: No, no, no. We're just --
6 THE COURT: Okay.
7 MR. PESCI: We're taking him out of the order that
8 we told them we're calling people.
9 MR. RUGGEROLI: Who is it?
10 THE COURT: Perfect. And then you're going to
11 call --
12 MR. PESCI: Anthony Calleja.
13 MR. RUGGEROLI: Oh.
14 THE COURT: And then Mr. Mason's wife?
15 MR. PESCI: Yes, but we're doing this guy first so
16 he can get to his kid.
17 THE COURT: Perfect.
18 MR. PESCI: Okay, thank you.
19 THE COURT: Okay.
20 (End of bench conference)
21 MR. PESCI: Your Honor, the State calls Anthony
22 Calleja.
23 THE MARSHAL: And if you'll please remain standing,
24 Officer, raise your right hand, and face the Clerk.
25 OFFICER ANTHONY CALLEJA, STATE'S WITNESS, SWORN

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

3 THE WITNESS: Anthony Calleja. A-n-t-h-o-n-y,
4 C-a-l-l-e-j-a.

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

6 THE COURT: You may.

7 MR. PESCI: Thank you.

8 DIRECT EXAMINATION

9 BY MR. PESCI:

10 Q Sir, based on your uniform, are you a Metro officer?

11 A Yes, I am.

12 Q How long have you been doing that?

13 A Coming up on 14 years.

14 Q Back in August of 2017, specifically focusing on the
15 late hours of August 8th, going into the early hours of August
16 9th of 2017, were you working?

17 A Yes, I was.

18 Q What shift was that?

19 A Graveyard shift.

20 Q Okay. What are the hours of graveyard?

21 A We start at 10:00 P.M. and work through 8:00 A.M. in
22 the morning.

23 Q What shift do you work now?

24 A I work the same shift.

25 Q Okay. Are you a little tired?

1 A Little tired.

2 Q Okay, all right. I want to show you what's been
3 marked as State's Proposed Exhibit 327.

4 MR. PESCI: And it's been shown to defense counsel.
5 I believe there's a stipulation.

6 MR. SANFT: Yes, Your Honor.

7 MR. RUGGEROLI: Yes, Your Honor.

8 THE COURT: Okay, it's admitted.

9 (State's Exhibit 327 is admitted)

10 BY MR. PESCI:

11 Q Are you familiar with -- and in anticipation of your
12 testimony, did you review some body-worn camera from you?

13 A Yes, I did.

14 Q Okay.

15 MR. PESCI: Your Honor, I'm sorry, did you say it
16 was admitted?

17 THE COURT: It's admitted.

18 MR. PESCI: Thank you very much.

19 BY MR. PESCI:

20 Q Sir, you know, the ladies and gentlemen of the jury
21 maybe have heard about body-worn camera, but can you tell us
22 about it? How does it work?

23 A We have a camera -- because I'm not working the
24 shift currently, my camera is plugged in to download the film
25 from last night. So I'm not wearing it, but normally, it's --

1 we keep it either on our lapel, our collar, or some even have
2 it on glasses if they wear. The camera is kept with us the
3 entire shift, and there's an activation switch that we keep
4 various places on our body. I keep mine on my hip.

5 Q Is yours on your hip right now?

6 A Right now, what I have is -- if I can stand up here.

7 THE COURT: Sure.

8 MR. PESCI: Please.

9 THE WITNESS: This is where I keep my activation for
10 my camera. As soon as we're assigned to a call, we get
11 assigned to a call, or we initiate a call on our own, I start
12 the camera. The camera has a constantly running feed -- video
13 feed. And when you activate it, it takes 30 seconds back,
14 just in case you get involved in something, it gives you 30
15 seconds to turn on the camera. But at that point, when you
16 turn on the camera, it records everything that you see.

17 My camera is on my left collar. I do have that, and
18 I've always kept it at the same position. It has a fairly
19 good field of view that you can see pretty much what I'm
20 looking at. And generally, we keep the camera on the entire
21 shift or in the entire call until let's say you need to confer
22 with another officer, detective, use the restroom, anything
23 that you would not like on camera because it's a little
24 personal in nature. So generally, we keep the camera on. And
25 in this event, I had it on for approximately 20 -- 21 or so

1 minutes.

2 BY MR. PESCI:

3 Q Okay, and so that camera you spoke of that's yours
4 right now is back at your area command?

5 A That's correct.

6 Q And it's set for downloading?

7 A Yes.

8 Q And does that mean that there's, in the Cloud, in
9 essence, the video from your shift that you finished?

10 A That's correct. We plug it in. They're contracted
11 with Evidence.com. Then, as soon as I plug it in, it
12 downloads, and the battery pack, the activation switch, is
13 recharged, because it's only active for approximately eight or
14 nine hours.

15 Q And so, your shift from yesterday, someone could
16 download it and review it?

17 A That is correct.

18 Q All right. And so, from back on August 8th, going
19 into August 9th, was your body-worn camera activated?

20 A Yes, it was.

21 Q And was that later downloaded?

22 A Yes, it was.

23 Q And does it show what you did in this particular
24 case?

25 A Yes, it does.

1 Q All right. Now, you talked about how it backs up a
2 certain amount of time. Is that, you push the button, and
3 then it picks up some video from before that time?

4 A That is correct. The moment you activate it, it
5 keeps the prior 30 seconds, attaches it to the entire video,
6 but those 30 seconds do not have sound.

7 Q All right, you just went to the next point that I
8 wanted to point out. Sometimes when we play these, at the
9 very beginning, there's just no audio?

10 A That's --

11 Q Is that accurate?

12 A That is correct.

13 Q All right. But you can see, there's the video, it's
14 picking up the video, but the audio just doesn't come in yet?

15 A That is correct.

16 Q Is that a function of that company that runs this
17 system?

18 A Yes, it is.

19 Q Okay. So that portion there, the first 30 seconds,
20 you can see, you can't hear, and then the audio kicks in?

21 A That's true.

22 Q Okay. Now, on this particular case, were you called
23 out to a scene on Dewey Avenue?

24 A Yes, I was.

25 Q Do you remember the address, 5536 Dewey Avenue?

1 A Yes, in the area of Dewey and Torrey Pines.

2 Q All right. Do you have an area that you work in

3 specifically; a certain section of your area command that

4 you're assigned to?

5 A Yes. They're assigned sectors, and my area at that

6 particular time is -- is Sam 5. Sam 5 area is from Tropicana

7 south down to Sunset; from Jones down to Durango. So that

8 area on Torrey Pines and Dewey is within my sector.

9 Q Showing you State's Exhibit 4, which has previously

10 been admitted, do you recognize the streets in this area?

11 A Yes, I do.

12 Q And then, could you show us where Lindell runs?

13 A Lindell is --

14 Q Here, I'm going to help you out.

15 A Yeah. I'm like, looking at the screen.

16 Q State's 1, that's more close-up.

17 A Okay.

18 Q Can you orient us as far as where Lindell is and

19 where Dewey is?

20 A Okay. Lindell is the one running north and south.

21 Q So, I apologize. There's a little mouse in front of

22 you.

23 A Oh, I'm sorry.

24 Q If you'd grab that mouse.

25 A This is Lindell right here.

1 Q There we go, thank you. And then Dewey?

2 A And Dewey is right here.

3 Q All right. And did you respond, looking at State's

4 Exhibit 3, to a particular location?

5 A Yes, I did. I did respond to this location right

6 here. My patrol car came to this location.

7 Q All right. I'm going to show you State's Exhibit

8 10. What time was it when you got there approximately?

9 A Approximately 12:20 in the morning.

10 Q 12:20? So this is August 9th of --

11 A That is correct.

12 Q -- 2017?

13 A Yes.

14 Q All right. Do you -- when you're working a shift on

15 that particular night, do you have a partner with you?

16 A No, I am by myself.

17 Q Okay, is that common? Is that the system that's

18 utilized?

19 A Yes, unless you're a training officer, or every

20 other training night, so every two weeks, we can double-up

21 because there's a lot of officers working that night. But as

22 a regular patrolman, I am by myself.

23 Q Do you remember what the call was; what it came out

24 as?

25 A It came out -- the code that they use for 15A is

1 assault battery with a firearm. A gunshot is the way the call
2 came out.

3 Q All right. So your information as you're responding
4 to this scene is that some shots have been fired?

5 A That is correct.

6 Q And you're riding to the scene by yourself?

7 A Yes.

8 Q Where did you come from, and how did you get there?

9 A I came from a distance. I do know I came further
10 northeast of the location. When the call came out, as soon as
11 it was activated, just roughly based on the 100 blocks, I knew
12 the location, where it was within my sector beat. She does
13 call out -- the dispatcher does call out over the air it's in
14 Sam 5 area, so I know the general location to go to. I
15 activate my camera as soon as I receive the call. And because
16 of the type of call and the nature of the call, I activated my
17 lights and sirens, so that way, at least I can get there a
18 little faster.

19 Q All right, and what's that referred to sometimes
20 when you're responding that way?

21 A Code 3 driving.

22 Q Okay, and is that because you're trying to get there
23 as fast as you can?

24 A That is correct.

25 Q Okay. And then, eventually, do you -- are you kind

1 of flagged down as to what direction to go to?

2 A Yes.

3 Q What happens?

4 A As I approach the scene, the area, I went to one
5 street to the north of, looking for a victim. The call that
6 came out -- may I give a little bit of background --

7 Q Sure, sure.

8 A -- as far as the call that came out? The call that
9 came out said an individual heard what sounded -- sounded like
10 gunshots, went outside, and found his cousin, who appeared to
11 be hit by bullets, so he called 911. Because he was outside,
12 what I did was, when I arrived in the area of the
13 neighborhood, I was looking for someone outside, lying --
14 looking for help.

15 I drove through the cul-de-sac one street to the
16 north of. There was a person standing outside. As I was
17 asking did they call for help, someone came down, flagged me
18 down, waved; we're over here, over here on the next street.
19 Drove south down to Dewey to the street right here, and as I
20 pulled around the corner, I could see the individual on the
21 driveway.

22 Q Okay.

23 MR. PESCI: Your Honor, at this point, I'd move to
24 publish State's Exhibit -- and I apologize. Before we turn
25 that on, last time, our volume was a little bit lower. I'm

1 not sure. I don't think I can control the volume. Is it
2 something that's controlled here? Oh, all right. Well --

3 THE COURT: And is it 327?

4 MR. PESCI: It's 327. Yes, Your Honor.

5 THE COURT: Okay.

6 MR. PESCI: May I publish?

7 THE COURT: You may.

8 (Video is played)

9 BY MR. PESCI:

10 Q You spoke of someone flagging you down, sir. Is
11 that who we see in the video right now?

12 A Yes, that is.

13 Q Okay, and we talked earlier about how there's not
14 audio at first?

15 A Yes.

16 Q Do you know who is who when you first arrive on a
17 scene like this?

18 A Absolutely not.

19 Q In this specific scene, did you know who was who?

20 A No, I did not.

21 Q Sir, when you -- so, as we're watching, are you
22 putting gloves on?

23 A I am.

24 Q Why?

25 A There's a lot of blood at the scene.

1 Q Was he still breathing when you first got there?
2 A He appeared to be breathing, yes.
3 Q Did paramedics arrive?
4 A I'm sorry?
5 Q Did paramedics arrive?
6 A Yes, they did.
7 (Stopped playing of video)
8 BY MR. PESCI:
9 Q So, sir, I want to kind of ask you some questions
10 based on what we just were watching, and ask them based on
11 this Exhibit number 10.
12 A Okay.
13 Q So when you first arrived on that scene, were you
14 the first and only officer at the scene?
15 A Yes, I was.
16 Q We watched in the video, there seems to be a lot of
17 commotion near the body of the victim, correct?
18 A Correct.
19 Q How many people did you have coming and going
20 through that area at first?
21 A At first, initially, about four individuals.
22 Q Family-related?
23 A Yes.
24 Q Okay.
25 A That I found out later.

1 Q All right. Was -- were paramedics called to the
2 scene?
3 A Yes.
4 Q Did they arrive to the scene?
5 A Yes.
6 Q Did they get to the body?
7 A Yes, they did.
8 Q All right. Is the most important thing at that
9 particular time the efforts to try to preserve life?
10 A Yes.
11 Q Okay. Was that done by these paramedics?
12 A Yes.
13 Q All right. In that -- in the melee or the confusion
14 of the family coming out and the paramedics coming to the
15 scene, were there people, in essence, all over where the
16 shooting occurred?
17 A Yes, they were.
18 Q Was that something that you hoped for? Would you
19 have liked to have it been different?
20 A No.
21 Q What would you prefer?
22 A I'd prefer, of course, keeping everything as --
23 exactly as they were, but because he was in the state he was,
24 obviously, he needed medical attention, that took priority, so
25 allowing everyone to come in and do what they needed to. I

1 kept anyone that was nonessential -- tried to keep them off
2 the scene.

3 Q That was my next question. I heard you say to the
4 family, "Please move away," correct?

5 A Yes.

6 Q As hard as that is for family members to see the
7 victim, you tried to get them out of the scene?

8 A That's correct.

9 Q But then the paramedics still came in, because, as
10 we were watching, he was still breathing, wasn't he?

11 A Yes.

12 Q That's the reason why the paramedics got into the
13 scene and took him away?

14 A Yes.

15 Q Okay. After that, you talked about trying to set up
16 a perimeter; is that correct?

17 A That is correct.

18 Q All right. And you talked about how it was maybe a
19 possible drive-by?

20 A That's correct. The call came out where he -- the
21 cousin, Mr. Relato, did call stating that he believes it was a
22 drive-by, so we had to take that into account.

23 Q All right. So you didn't know for sure, but that
24 was a piece of information that you had?

25 A That's true.

1 Q Based on that, did you expand the perimeter?

2 A Yes, we did.

3 Q When we say perimeter, what do we mean?

4 A We set up an area that we don't want anyone to come

5 into, just in case there's evidence. There's a crime scene;

6 we want to make sure everything's preserved. So we set up an

7 inner-perimeter, which is where the immediate crime scene is,

8 the immediate location of whatever we have. In this case, we

9 had the victim in his driveway, that immediate crime scene.

10 The end of the street on one end, east and west, to

11 make sure if there's anything else there; shell casings,

12 cigarette butts, anything that we have to make sure no one

13 tramples on it after that point. Then we have an exterior

14 crime scene where people can walk around, but we keep only

15 personnel in there, whether it be other officers, or

16 detectives, or anyone else.

17 Q Okay. You spoke a moment ago about shell casings.

18 Is that when a firearm is shot, and a cartridge case is

19 expelled out of the firearm?

20 A Yes.

21 Q Assuming it's a semiautomatic?

22 A Yes.

23 Q Okay. Now, you talked about how, after you got this

24 perimeter up, you're trying to preserve that scene?

25 A Yes.

1 Q Okay. It seems as if, from the video, there were
2 some other officers got there as well?

3 A Yes.

4 Q Did they assist you with that?

5 A Yes, they did.

6 Q Okay. So at that point, were you trying to keep
7 that scene, as best as you could, as it was?

8 A Yes.

9 Q All right, after the family's been moved over and
10 the paramedics have left the area?

11 A Yes.

12 Q All right. You're trying to freeze that for further
13 investigation from others?

14 A Yes.

15 Q Did you touch anything?

16 A No.

17 Q Okay. So you weren't picking up cartridge casings,
18 or opening up doors, or doing anything?

19 A No, I do not do that. No.

20 Q Okay. You were a patrol officer at the time?

21 A Yes.

22 Q Did you have a sergeant?

23 A Yes.

24 Q Did you relay the information that you had to your
25 sergeant?

1 A Yes, I did.

2 Q Is there kind of a chain of command within
3 Metropolitan Police Department?

4 A Yes.

5 Q Does that information then get relayed to further
6 investigators down the road?

7 A Yes, it does.

8 Q Did you stay around to kind of relay some of that
9 information?

10 A Yes.

11 Q Okay. And did you assist with getting information
12 as far as who was at the scene, names, and things of that
13 nature?

14 A Yes, I did.

15 Q Okay.

16 MR. PESCI: Court's indulgence.

17 BY MR. PESCI:

18 Q Sir, I apologize. At the beginning, or towards the
19 beginning, when you first approached, you were asking the
20 individual who was helping the victim about firearms. Why was
21 that?

22 A At this point, we didn't know who had shot him,
23 where there were firearms, if there were any firearms present.
24 Because we had a scene that we considered to be dynamic, we
25 still don't know everyone that's involved. What I didn't want

1 is I didn't want there to be someone come out of the house
2 with a firearm, or if there was a firearm that he may have
3 owned himself, I wanted to be aware at least what was in the
4 immediate area at that house as far as safety for the other
5 officers anywhere else.

6 MR. PESCI: All right, thank you very much. Pass
7 the witness, Your Honor.

8 THE COURT: Cross-examination, Mr. Sanft?

9 MR. SANFT: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. SANFT:

12 Q Officer Calleja?

13 A Yes, sir.

14 Q Okay. During the course of your career as a
15 Metropolitan Police Department police officer, have you ever
16 been on this kind of scene before?

17 A Yes, I have.

18 Q And since then?

19 A Yes.

20 Q Very dynamic scene, right?

21 A Yes.

22 Q And as what the State has asked you, a lot of moving
23 parts, right?

24 A Yes.

25 Q Now, you arrived on the scene. Would it be fair to

1 say you were the primary officer, first on the scene?

2 A Yes.

3 Q And as a result, based upon your policy and
4 training, as the first officer on the scene, you arrive, and
5 then at that point, you're kind of taking point when other
6 officers arrive on the scene following that same call, fair?

7 A Yes.

8 Q Okay. And as the person that's on the scene as the
9 primary officer, you're in charge at that point on protecting
10 the safety of the individuals that are there?

11 A Yes.

12 Q So you're determining whether maybe the threat is
13 still there or not, fair?

14 A That's correct.

15 Q And then, once that's determined, or once that's
16 resolved, then the next part of the process is preserving the
17 scene for evidentiary value?

18 A Yes.

19 Q Now, what the State had asked you earlier was you
20 didn't pick up any what you believed to be of evidentiary
21 value during the time that you were spending there, fair?

22 A That -- that's correct.

23 Q Okay, but it is a team effort, right?

24 A Yes.

25 Q So if you saw something on the ground that you

1 believed was of evidentiary value, like, say, for instance, a
2 spent cartridge casing --

3 A Um-hum.

4 Q -- you would have at some point identified it, maybe
5 put a cone by it, tell somebody else, hey, we've got something
6 here, don't step over here, something like that, fair?

7 A Not put a cone, but definitely let people know where
8 there are shell casings, yes.

9 Q Right. Now, at some point in the future when you
10 handed it off to your sergeant, he would then, in turn, hand
11 it off to maybe detectives that are responsible for this kind
12 of case, right?

13 A Yes. I won't hand off the scene to my sergeant. My
14 sergeant will arrive and then make sure that I'm within
15 policies and guidelines. And then, when detectives arrive,
16 I'll brief them on the scene, and then it becomes their
17 investigation.

18 Q Okay. So even though your sergeant was present,
19 you're still the primary officer on the scene?

20 A That's correct.

21 Q And then, he's there in an advisory capacity sort of
22 thing?

23 A Yes.

24 Q And at some point, you hand over your
25 responsibilities as primary officer to detectives to continue

1 with the investigation?

2 A Yes.

3 Q Okay. Now, in this case, and what I'm trying to
4 explain to the jury here through you is that it's -- it's a
5 team effort, right? Meaning, every officer that arrives on
6 the scene is doing one of those things; protecting the people
7 that are there, or in the alternative, protecting the scene
8 for evidentiary value, or conducting investigation?

9 A Yes.

10 Q And it's -- you all talk to one another --

11 A Yes.

12 Q -- to make sure that, hey, if you see something
13 that's of value, you let other people know, right?

14 A Yes.

15 Q Okay. Now, in this case, as you were going through
16 this process, we saw the video of what you saw, and you saw
17 these individuals that were crying that were there, right?

18 A Yes.

19 Q You've been on scenes like that before, right?

20 A Yes.

21 Q Where you arrive, and then the people that are there
22 are potentially trampling over things that are of evidentiary
23 value, fair?

24 A Yes.

25 Q But once again, your number one priority at that

1 point is not evidentiary value; it's to protect the safety of
2 the people that are there?

3 A Yes.

4 Q Right? Now, in this case, as you are conducting
5 this investigation or at some point in the future, did you
6 ever interview anybody in furtherance of what happened; any of
7 the individuals that were there that we saw in the video, or
8 people in the area? Did you do any of that type of
9 investigation?

10 A I did talk to some of the individuals that were
11 there, but after other officers had already conducted an
12 investigation. Gathered names, details as to what they saw,
13 put it down in notes, and then I would then confer -- confirm,
14 "Hey, you ended up seeing this; this is what you were doing?"
15 "Yes," and then I would put it down in my notes for -- for the
16 detectives.

17 Q Okay, and that's just -- just to make sure, that
18 everything kind of went through you at that point as to who
19 was talking to who --

20 A Yes.

21 Q -- and what was said by who?

22 A Yes.

23 Q A general description, fair?

24 A Yes.

25 Q Did you ever write a report with regards to what you

1 did in this case?

2 A Yes.

3 Q And is that a report that was then submitted to the
4 detectives to help them in furtherance of their investigation
5 of this case?

6 A Yes.

7 Q Okay. Now, there was some discussion about this
8 idea that, when you arrived on the scene, potentially, it was
9 a drive-by?

10 A Yes.

11 Q Do you recall, from the time that you received the
12 call to the time that you arrived on the scene, how long that
13 was? What period of time?

14 A Approximately three, four minutes. The body camera
15 does capture the entire drive time, but I'm just -- I'm just
16 guessing, because I do know it was a little distance. I was
17 driving Code 3, going faster than authorized by just general
18 public, so there were intersections I had to clear. So I'm
19 guessing approximately three, four minutes.

20 Q Okay. Did you at any point ever speak with the
21 cousin or the family member that said that they believe there
22 was a drive-by shooting?

23 A Mr. Relato?

24 Q Yes.

25 A Yes.

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON ROBERTSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 81400

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Michelle Leavitt, District Judge
District Court No. C-17-328587-2

APPELLANT'S APPENDIX
VOL. 4 OF 7

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 21st of October, 2020, a copy of the foregoing Appendix was served by electronic filing as follows:

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DATED this 21st of October, 2020.



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Attorney for Appellant Raekwon
Robertson

1 Q Did you ever at any point capture that interview or
2 that discussion with him in a report, or with your notes, or
3 anything like that?

4 A The notes -- the basic notes that I ended up taking
5 that I submitted to detectives, yes.

6 Q Now, you had videotaped that portion with your body
7 cam. Did you videotape your interview with this particular
8 family member when you were speaking to them?

9 A I really don't recall. I don't recall if I did or
10 not.

11 Q Okay. Now, and once again, for this jury, make sure
12 we understand, the body cam that you have isn't automatically
13 turning on and off; you have to make the choice to turn it on
14 or off, fair?

15 A Yes.

16 Q Okay. And based upon your training and experience
17 in this sort of technology, in this case, you received the
18 call, you immediately turned it on, turned your car, and
19 started driving in the direction in which you were taking the
20 call?

21 A Yes.

22 Q Okay. And at some point, you chose to turn off your
23 camera, and that was after this incident occurred, sometime a
24 little bit later, fair?

25 A Yes.

1 Q But you didn't turn it back on when you were
2 interviewing potential people that could have had something to
3 say on this case?

4 A I don't recall if I did or did not.

5 Q Okay.

6 A Probably not. If I do turn off, one of the policies
7 that we have when we turn off a body camera, we have to
8 dictate so you can hear through the camera why you're turning
9 it off. Generally, if I turn off a camera when let's say a
10 supervisor or a detective arrives on scene because they're
11 taking over the investigation, I'll usually say, "Turning off
12 camera to confer with sergeant or detective." I shut off the
13 camera, and at that point, it only comes back on if there's
14 something that I think, hey, I need to turn it back on for, if
15 I recall.

16 Q And once again, I just need to know, I -- and you
17 can understand this. If you are interviewing somebody that
18 may be somebody who saw something, like in this case, that's
19 not a reason for you to turn it back on at that point?

20 A Depends on why I'm interviewing. If I could,
21 detectives were coming to the scene. Not just our local PD
22 detectives; we knew that homicide was going to be coming to
23 the scene as well. When homicide comes to the scene, I do not
24 do in-depth interviews because I don't interfere with their
25 investigation.

1 So the basic information I usually ask someone is,
2 "What did you see until you gave us a call," to gather the
3 basic information to give to detectives so they can go ahead
4 and ask the further questions during the interviews. I don't
5 do in-depth interviews as a preliminary -- as the primary
6 officer, just because I'm more of triage; get everything set
7 up so that when detectives arrive, they can go ahead and
8 conduct the investigation.

9 Q All right. But you are aware, of course, just as a
10 matter of human nature, that when you ask someone a question
11 like, "What did you see," it's not like they're giving you a
12 concise version of what they saw; they're telling you what
13 they saw, fair?

14 A Yes, absolutely.

15 Q And you're the first person that's probably going to
16 be asking them that question in a long line of people asking
17 them that same question, fair?

18 A Yes.

19 Q Okay. All right. Now, in addition to that, you --
20 when you arrived on the scene, there was an individual that
21 was running from the corner back over to that area. Do you
22 know who that was by any chance?

23 A No.

24 Q Okay. Did you ever, during the time that you spent
25 on this scene, ever ask anyone with regards to video footage,

1 phone footage, anything like that of any of the individuals in
2 the area?

3 A Did I ask if -- you mean --

4 Q Did you conduct that type of investigation? I just
5 want to know if you asked --

6 A Yeah, we identify who has cameras outside. We try
7 to identify the houses, so that way, people can start asking,
8 doing a knock on the residents. Is that what you're asking?

9 Q Yes, yeah.

10 A Yes, we do that.

11 Q Okay, but did you do -- did you personally do that
12 in this case, as far as you recall?

13 A I pointed out to houses where officers could go make
14 knocks. I said, across the street, there's a camera there,
15 there may be a camera there. But we start that, and then
16 there are officers that are assigned specifically --

17 Q To knock on the --

18 A -- to start knocking on houses.

19 Q Okay.

20 MR. SANFT: All right, I have no further questions,
21 Your Honor. Thank you.

22 THE WITNESS: You're welcome.

23 THE COURT: Thank you. Mr. Ruggeroli?

24 CROSS-EXAMINATION

25 BY MR. RUGGEROLI:

1 Q Officer, you were asked about priority. I think one
2 of the things you said was policies and guidelines; do you
3 remember that?

4 A Yes.

5 Q And so your priority is to follow the policy and
6 guidelines that you've been taught -- trained to follow,
7 correct?

8 A Yes.

9 Q One of those -- does that include things like
10 putting on the gloves?

11 A It's not specified in a policy, but it's safe
12 practice.

13 Q And when you show up on a scene like that, you have
14 a general procedure that you would go through though, correct?

15 A Yes.

16 Q In this particular case, you mentioned that part of
17 the protocol was to preserve the crime scene, but you're
18 obviously focused on the individual that's injured and trying
19 to get them assistance, correct?

20 A Yes.

21 Q A number of things are going on at once?

22 A Yes.

23 Q At the end of it though, there's going to be a crime
24 scene that's there, correct?

25 A Yes.

1 Q And in this situation, you have to deal with it as
2 you come into it. But it would be fair to say, to a certain
3 extent, this crime scene was compromised because of what the
4 activity was going on around it in an attempt to save the
5 individual's life?

6 A To some extent, yes.

7 Q And so, you mentioned shell casings. Did you
8 specifically look for any evidence like shell casings?

9 A When I first arrived, if you look at the body -- the
10 footage, the first thing I did, went to the victim, and then I
11 did a scan with my flashlight because I knew people were going
12 to be trampling over that particular area. And what I tried
13 to do was preserve at least the immediate area, and I see -- I
14 did a scan. I would look down, I moved around, I backed up so
15 the camera would catch at least most of what we have there
16 initially, because there were things that were moved, and I
17 did see shell casings.

18 Q What about -- did you say cigarette butts, or was
19 that a question that was asked of you?

20 A No, I mentioned that that's one of the things that
21 we're taught in evidence preservation, that if there's
22 anything there, just leave everything as-is because we don't
23 know if it could be evidence or not.

24 Q And something like a cigarette butt could be a very
25 important piece of evidence?

1 A It could be, yes.

2 Q Were you there when the crime scene analysts
3 arrived?

4 A Yes.

5 Q And did you assist them?

6 A As a primary officer, it is my responsibility to
7 point out the crime scene the best that we know. What I ended
8 up doing -- usually, when an analyst arrives, male or female,
9 when they arrive, I have to tell them if I did touch anything,
10 because when they process and lift prints, they're going to
11 check to see if I touched anything. Since I had gloves on,
12 usually I'll say, I put gloves on, I did this, I touched that,
13 but they keep that in their notes when they go ahead and start
14 photographing, and then collect evidence.

15 Q And you had some information about this potentially
16 being a drive-by?

17 A Yes.

18 Q But you didn't have any specific information
19 regarding a suspect, correct?

20 A That's correct.

21 Q Or -- at this time, or any descriptions of a
22 potential suspect?

23 A Well, suspects, as in people of interest, yes, we
24 did have a description, because there was a call that came out
25 a minute prior to me --

1 Q Okay.

2 A -- going to that call.

3 Q I'm specifically referring to the individuals on the
4 scene that you were talking to, and the information that you
5 had at that time.

6 A Okay.

7 Q Okay.

8 A That's --

9 Q Thank you.

10 A That's correct.

11 MR. RUGGEROLI: I have nothing further.

12 THE COURT: Any redirect?

13 MR. PESCI: Yeah.

14 REDIRECT EXAMINATION

15 BY MR. PESCI:

16 Q Well, aside from the people on the scene, you were
17 just about to tell us that you had more information about
18 this, didn't you?

19 A That is correct.

20 Q And what was the information?

21 A That a minute prior to the call coming out -- I say
22 a minute; it could be a couple minutes before -- there were
23 individuals that live on the south side of the street, almost
24 directly across the street from the crime scene, that called
25 in a suspicious circumstance. It was a different call that

1 was generated almost the same time. A gentleman, I believe
2 his name was Mr. Mason, was jogging, he goes for a jog in the
3 morning, saw four individuals --

4 MR. RUGGEROLI: Judge, I'll object to the hearsay.

5 THE COURT: All right, just --

6 MR. PESCI: Okay.

7 THE COURT: I mean, I'm assuming you want him to
8 stop now, or?

9 MR. PESCI: Okay.

10 BY MR. PESCI:

11 Q So you had some information from someone that called
12 in a suspicious situation going on?

13 A That is correct.

14 Q Okay. So you had that through dispatch, correct?

15 A That is correct.

16 Q So it wasn't just the people at the scene?

17 A That is correct.

18 Q Okay. So you're working with the information from
19 dispatch; you're working from the information at the scene;
20 you're working there to try to take down information, correct?

21 A Yes.

22 Q Defense counsel just asked you a few questions
23 about, all right, the body cam's on during interviews, the
24 body cam's not on during the interviews; do you remember those
25 questions?

1 A Yes.

2 Q I think you said you weren't sure; you couldn't

3 remember?

4 A Right.

5 Q Okay. Well, let's see if we can help you remember.

6 The earlier video we watched, it stopped after the individual

7 was put inside of the ambulance, correct?

8 A Yes.

9 Q All right. You stayed on the scene?

10 A Yes.

11 Q And you talked with some of the individuals there?

12 A Yes.

13 Q Okay, and this is still your body cam, correct?

14 (Video is played)

15 THE WITNESS: Yes.

16 (Stopped playing of video)

17 BY MR. PESCI:

18 Q Is there another officer working this with you?

19 A Yes, there were several.

20 Q Is he -- is -- I believe it's a he; is that correct?

21 A Yes.

22 Q Is he gathering information from these witnesses?

23 A Yes, he is.

24 Q You still have the body cam on?

25 A Yes.

1 Q Okay.

2 (Video is played)

3 (Stopped playing of video)

4 BY MR. PESCI:

5 Q So now we have the individual who was the first

6 person. Looks like he's got a shirt on, correct?

7 A Yes.

8 Q And you're interviewing him, getting some basic

9 information?

10 A Yes.

11 Q Body cam's still on, correct?

12 A Yes.

13 (Video is played)

14 (Stopped playing of video)

15 BY MR. PESCI:

16 Q You told us earlier that you're trying to gather

17 information from who's who, what -- the basics, and then hand

18 off to other detectives, correct?

19 A Yes.

20 Q All right. And for the purposes of this jury not

21 having to sit so long, I'm going to move it forward a little

22 bit. As we're moving forward, can you see -- are you still

23 there talking with this witness?

24 A Yes.

25 (Video is played)

1 BY MR. PESCI:
2 Q (Indiscernible) mention he's a student?
3 (Stopped playing of video)
4 BY MR. PESCI:
5 Q So, all this has been preserved?
6 A Yes.
7 Q All of this is available for review?
8 A Yes.
9 MR. PESCI: Okay, thank you very much.
10 THE COURT: Any recross?
11 RECROSS-EXAMINATION
12 BY MR. SANFT:
13 Q Officer, just -- I want to make sure that you and I
14 are clear. I asked you a question earlier about whether or
15 not you had interviewed and saved that body cam footage. Now,
16 we've seen some body cam footage, right?
17 A Yes.
18 Q Okay. That's part of your job is to make sure that
19 you capture whatever you can in terms of evidence, potentially
20 to show a jury, right?
21 A Yes.
22 Q And I want to make sure I'm clear. I -- when I
23 asked you earlier about the body cam footage, you said no.
24 Did you say no?
25 A I said I don't recall.

1 Q You don't recall? Okay, but here it is.

2 A Okay.

3 Q Right? Right? Is that a yes?

4 A Yes.

5 Q Okay. Which means, typically, that these types of

6 things help you recall, because I'm sure you answer hundreds

7 of calls since August of 2017. This is the type of technology

8 that can help you recall specifically things that can turn --

9 that you could then turn to a jury and say, yeah, I do

10 remember now that this did happen?

11 A Okay, yes.

12 Q Would that be fair?

13 A Yes.

14 Q Okay, and that's the reason why we have those

15 things, right?

16 A Yes.

17 Q Okay.

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

19 THE COURT: Thank you.

20 MR. RUGGEROLI: Thank you, Your Honor. I have no

21 questions.

22 THE COURT: All right. Officer, thank you very much

23 for your testimony here today. You may step down, and you are

24 excused from your subpoena.

25 THE WITNESS: Okay, thank you.

1 THE COURT: Thank you. And you may call your next
2 witness.

3 MR. BROOKS: State calls Lucinda Mendoza.

4 THE MARSHAL: If you'll please watch your step.
5 Step up into the witness stand.

6 THE WITNESS: Sure.

7 THE MARSHAL: Remain standing, raise your right
8 hand, and face the Clerk, please.

9 LUCINDA MENDOZA, STATE'S WITNESS, SWORN

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

12 THE WITNESS: Lucinda Mendoza. L-u-c-i-n-d-a.
13 Mendoza, M-e-n-d-o-z-a.

14 DIRECT EXAMINATION

15 BY MR. BROOKS:

16 Q Ms. Mendoza, do you recall an incident that occurred
17 back on August 9th, 2017 that brings us here in court today?

18 A Yes.

19 Q Do you recall your husband leaving the house around
20 midnight?

21 A Yes.

22 Q I want to show you State's Exhibit 4. Can you -- do
23 you recognize what's depicted in this map?

24 A Yes.

25 Q And back in 2017, did you live at that 5524 Zachary

1 Street address?

2 A Yes.

3 Q So when your husband went on his jog, as he started
4 off his jog, at some point, do you receive a phone call from
5 him?

6 A Yes.

7 Q And based on that phone call, does he ask you to do
8 something?

9 A Yes.

10 Q Do you end up doing that?

11 A Yes.

12 Q What do you do?

13 A I called the non-emergent 311 number.

14 Q And do you relay some information that your husband
15 had just given to you?

16 A Yes.

17 Q And have you had the opportunity to come and listen
18 to that 911 call previously?

19 A Yes.

20 MR. BROOKS: Your Honor, I don't think there's
21 any --

22 MR. SANFT: No objection, Your Honor.

23 MR. BROOKS: -- objection to State's Proposed
24 Exhibit 330.

25 MR. RUGGEROLI: No objection.

1 THE COURT: Okay, 330 is admitted.
2 (State's Exhibit 330 is admitted)
3 THE COURT: And you may publish.
4 (911 call is played)
5 (Stopped playing of 911 call)
6 BY MR. BROOKS:
7 Q Ms. Mendoza, what's your husband's name?
8 A Robert.
9 Q And is it Robert Mason?
10 A Yes.
11 Q Now, we heard you just relay some facts to a 311
12 operator.
13 A Um-hum.
14 Q At that point in time, had you seen any of those
15 things, or were you just relaying what you --
16 A No, strictly just relaying what I was told to relay.
17 Q So you have no idea whether they were black males or
18 Asian males?
19 A No.
20 Q No? And you have no idea if it was a Ferrari or a
21 white Crown Victoria?
22 A No.
23 Q So you just said white Crown Victoria type car
24 because that's --
25 A Right.

1 Q -- what he said?

2 A That was the description I was given.

3 Q Okay. However, was it hot that night?

4 A Yes.

5 Q And did you think it was odd that people were

6 wearing hoodies?

7 A Very.

8 Q And is that why --

9 A That was the first red flag of suspicion was,

10 midnight, 90 -- it was hot, 90 degrees, unfamiliar people in

11 the neighborhood. So, yeah.

12 Q And so, at that point in time, did you know whether

13 your husband had gotten the license plate or not?

14 A No, I had not known yet.

15 Q Subsequently, did you learn whether he had or not?

16 A After, yeah.

17 Q After. But when he called you, he wasn't trying to

18 report a license plate?

19 A Correct, just the suspicion.

20 MR. BROOKS: Thank you. Nothing further. Pass the

21 witness.

22 THE COURT: Mr. Sanft?

23 MR. SANFT: No cross, Your Honor.

24 THE COURT: Mr. Ruggeroli?

25 MR. RUGGEROLI: Just briefly.

1 CROSS-EXAMINATION

2 BY MR. RUGGEROLI:

3 Q Mr. Mason is your husband?

4 A Correct.

5 Q He contacted you that night?

6 A Correct.

7 Q He gave you some information, correct?

8 A Yes, correct.

9 Q And you called it in, correct?

10 A Correct.

11 Q Four individuals?

12 A Correct.

13 Q All wearing dark clothing?

14 A Correct.

15 MR. RUGGEROLI: Nothing further.

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

17 testimony here today. You may step down, and you're excused

18 from your subpoena.

19 THE WITNESS: Thank you.

20 THE COURT: Thank you very much for being here. At

21 this time, we're going to recess for lunch. During this

22 recess -- we're good, right?

23 MR. PESCI: Yes, Your Honor.

24 THE COURT: We got through all the witnesses?

25 MR. PESCI: Yes, thank you.

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

10 We'll be in recess until 2:00 o'clock. Thank you.

11 THE MARSHAL: Thank you. All rise for the exiting
12 jurors. Jurors, please leave your notebooks on the chairs.

13 (Outside the presence of the jurors at 12:52 p.m.)

14 THE COURT: Anything outside the presence?

15 MR. SANFT: No.

16 MR. PESCI: No.

17 THE COURT: We're good?

18 MR. RUGGEROLI: No, Your Honor.

19 THE COURT: Okay.

20 MR. SANFT: Thank you, Your Honor.

21 (Court recessed at 12:52 P.M. until 2:08 P.M.)

22 (Outside the presence of the jurors)

23 THE COURT: Is this -- are these exhibits?

24 MR. PESCI: Yes, ma'am.

25 THE COURT: Okay. Have they been given to the Clerk

1 yet, or are you getting ready to give them to her?

2 MR. PESCI: No.

3 THE COURT RECORDER: She has them. She's marking
4 them, I believe.

5 THE COURT: Oh, okay. All right, okay. I'm just
6 trying to figure -- it's okay. I got to wait for my Clerk
7 though. No, you're fine.

8 Okay. The record will reflect that the hearing is
9 taking place outside the presence of the jury panel. Both
10 defendants are present. Anything outside the presence?

11 MR. PESCI: No, Judge.

12 MR. RUGGEROLI: I don't have anything.

13 THE COURT: Okay.

14 MR. SANFT: No, Your Honor.

15 THE COURT: Bring them in.

16 (Pause in the proceedings)

17 THE MARSHAL: All rise for entering jury, please.

18 (Within the presence of the jurors)

19 THE MARSHAL: Thank you, everyone. Please be
20 seated.

21 THE COURT: Does the State stipulate to the presence
22 of the panel?

23 MR. PESCI: Yes, Your Honor.

24 THE COURT: Mr. Sanft?

25 MR. SANFT: Yes, Your Honor.

1 THE COURT: Mr. Ruggeroli?
2 MR. RUGGEROLI: Yes, Your Honor.
3 THE COURT: Thank you. State may call their next
4 witness.
5 MR. PESCI: State calls Allison Rubino.
6 THE MARSHAL: Please remain standing, raise your
7 right hand, and face the Clerk.
8 ALLISON RUBINO, STATE'S WITNESS, SWORN
9 THE CLERK: You may be seated. Please state and
10 spell your first and last name for the record.
11 THE WITNESS: My name is Allison Rubino.
12 A-l-l-i-s-o-n, R-u-b-i-n-o.
13 MR. PESCI: May I proceed, Your Honor?
14 THE COURT: You may.
15 MR. PESCI: Thank you.
16 DIRECT EXAMINATION
17 BY MR. PESCI:
18 Q Ma'am, what do you do for a living?
19 A I am a forensic scientist in the Biology/DNA Detail
20 at the Las Vegas Metropolitan Police Department Forensic
21 Laboratory.
22 Q How long have you been doing that?
23 A I've been with Metro since January of 2014, so just
24 over six years now.
25 Q What training and experience do you have that brings

1 you to this job?

2 A So I have a Bachelor's of Science Degree in
3 biochemistry from the University of Scranton in Pennsylvania.
4 I also have a Master's of Science in forensic science from the
5 University of New Haven in Connecticut. Prior to working here
6 in Las Vegas, I was a forensic scientist at the Armed Forces
7 DNA Identification Laboratory in Dover, Delaware. I was there
8 for about a year-and-a-half. And before that, I was a
9 research associate in forensic sciences at the Suffolk County
10 Crime Laboratory in Hauppauge, New York.

11 When I arrived here in Las Vegas, we don't just go
12 right into casework. We go through a well-documented training
13 program. That includes following all of the procedures and
14 protocols that we have in place that we need to fulfill our
15 everyday duties. We go through oral exams, practical exams,
16 written exams, as well as, at the end, kind of a big mock
17 case, moot court type of situation, where it kind of puts us
18 right into what we would be doing on a regular basis before
19 being released into independent casework.

20 Q Ma'am, considering all that you just said, have you
21 had a focus in the area of DNA?

22 A Yes.

23 Q What is DNA?

24 A DNA, it stands for deoxyribonucleic acid. It's
25 found in nearly every cell within our body, and it contains

1 all of the information that make us into the individuals that
2 we are, from our hair color, our eye color, numbers of fingers
3 and toes we have, the size of our organs, things like that.

4 Our DNA is inherited. That means we get half of our
5 DNA from our mother, and half of our DNA from our father. And
6 known -- no known people are known to have the same DNA, with
7 the exception of identical siblings, like identical twins,
8 identical triplets, et cetera.

9 Q And have you testified in the area of DNA analysis
10 here in Nevada and other courts?

11 A Yes.

12 Q Okay. You talked a minute ago about the unique
13 nature of DNA. What is DNA though? How do you break it down
14 to analyze it; to look at it?

15 A So the steps of the process that we utilize in the
16 lab is first -- the first step is called an extraction. So
17 the extraction, we take a sample, whether it be a swab that
18 may have DNA on it, another item of evidence where we're
19 trying to recover DNA on it. We want to remove all of the DNA
20 from all of the other stuff that's present.

21 So if we think about a swab -- a swab of a
22 doorhandle, for example, there could be -- we want to first
23 remove the DNA from the swab itself, and we also want to
24 remove the DNA from all of that other cellular material, or
25 maybe dirt on the swab, all of those things we don't need for

1 our downstream processing.

2 Once we've isolated the DNA, we quantify it, just
3 find out how much DNA is present in that sample. We'll then
4 take a small portion of that DNA and put it in a copy machine,
5 where we're going to make millions and millions of copies of
6 different parts of the DNA that we're going to analyze. All
7 of those copies go through an instrument, and that instrument
8 separates the different parts of DNA, and they go past a
9 camera.

10 And this camera will take all of these snapshots of
11 all the different parts of DNA as they travel through the
12 instrument. And all of those pictures kind of get --
13 accumulate into a software program, and it generates a DNA
14 profile that we use as analysts for interpretation, reporting,
15 and further investigation as to comparisons between samples.

16 Q And when you're doing that, is there something about
17 alleles that are part of that entire process of analysis?

18 A Yes. So we look at different locations on the DNA,
19 as I said. And when I get my picture of this DNA profile,
20 there -- what I'm going to see are a series of peaks, so I'm
21 going to see peaks that have numbers attributable to them.
22 And what we call those peaks, they're known as alleles.

23 Q And then, those alleles, do you have markers or
24 things at those alleles that will tell you, this is from one
25 person versus another person?

1 A So if we're looking at, let's say, a DNA profile
2 from a known individual, we encounter that a lot, and we call
3 them reference standards. So when we have a reference
4 standard, this known DNA from a known source, we look at the
5 certain number of locations, and we assess these alleles or
6 peaks at each location. So at all of these locations, I'm
7 expecting to see one or two numbers, or one or two alleles
8 that will be indicative of an -- indicative of an individual.

9 Q Speaking of that analysis, you brought with you a
10 water bottle today; is that correct?

11 A Yes.

12 Q All right. Have you held that in your hand?

13 A Yes.

14 Q Okay. Is it possible for DNA from you to be
15 transferred onto that water bottle?

16 A Yes, both on the surface from me holding it, it's
17 possible, but also from drinking the water bottle around kind
18 of the mouth or inside the cap.

19 Q So let's start off with the surface as far as
20 holding it. What would you call that type of DNA?

21 A We call that type of DNA maybe a transfer DNA or
22 touch DNA, and it simply refers to the DNA that gets
23 transferred when a person comes into contact with someone or
24 something else.

25 Q Now, instead, if you had looked at the area -- at

1 the opening of the water bottle where you have drank, would
2 you find a different type of DNA, or would it be a different
3 source, potentially?

4 A It potentially could be a different source. The
5 DNA, if it's -- if it's from me, it would be the same DNA,
6 because the DNA that would maybe come from me drinking from
7 the water bottle would be the same DNA as my DNA if I was
8 holding it. So, regardless of the type of DNA, whether it be
9 blood, saliva, my skin cells, that -- the DNA would be the
10 same from all of those regions.

11 Q So, if I understand correctly, the DNA, meaning that
12 photograph, that microscopic photograph, is the same, correct?

13 A If I were to -- if I were to have DNA picture
14 profiles, and they were to be single-source profiles, and you
15 compared it to my reference standard, it's definitely possible
16 that it could be the same from the handling it, if I'm the
17 only one handling it, and if I'm the only one drinking it.

18 Q A moment ago, you talked about some different
19 sources of DNA, which included -- I think you said blood,
20 saliva, things of that nature, correct?

21 A Yes.

22 Q So let's change the scenario, and let's say you
23 unfortunately cut your finger, and you grab that bottle, and
24 there was blood on the bottle. Is that a source of DNA?

25 A Yes.

1 Q When you compare, let's say blood versus touch DNA,
2 are you more likely -- or in your experience, have you seen
3 that some samples are better sources of DNA?

4 A Definitely body fluids are better sources of DNA
5 than say maybe what we're talking about, touch DNA. Touch DNA
6 is generally from your skin cells, and that can be a very
7 variable situation, because when you think about the type of
8 environment we live in, it's dry out here. So when you're
9 holding something, you may not be inclined to remove skin
10 cells maybe during the winter than you are maybe during the
11 summer when you're sweating a lot, and that sweat is going to
12 be a good vehicle from your skin cells.

13 Another thing to take into consideration is the
14 surface that you're touching in general. If you think of
15 something like sandpaper, if you were to think of rubbing
16 maybe your hand against a piece of sandpaper, because of all
17 those grooves and rough textures, it's more likely to take off
18 skin cells onto that sandpaper as opposed to a smooth surface
19 which doesn't have all those little grooves or any textures to
20 really adhere to the DNA.

21 Other things to think about are maybe duration of
22 handling. If you're holding something or touch something
23 once, you may leave behind less DNA than the pen that you're
24 using all day long. So there are so many factors that do come
25 into play when we talk about touch DNA, so it's a very --

1 sometimes we'll get a profile, sometimes we won't.

2 Q Speaking of DNA and getting a profile, if you don't
3 get a profile, what does that mean?

4 A It's just that there was -- whether there be no
5 detectable DNA using our procedures, or there -- if there's
6 very little, it may not be enough for -- or suitable for
7 interpretation because there just isn't enough DNA present.

8 Q So the example that you gave, being in this dry
9 environment, if I touch that water bottle and I don't really
10 have much sweat, it could be that I just don't leave any DNA
11 molecules on the water bottle?

12 A It's possible.

13 Q Okay. You spoke of a reference sample earlier,
14 correct?

15 A Yes.

16 Q When you're doing analysis of certain pieces of
17 evidence, do you try to compare it against known reference
18 samples?

19 A Yes.

20 Q Okay. And in this particular case, were you asked
21 to analyze some pieces of evidence against some known samples?

22 A Yes.

23 Q Okay. And I want to backtrack for one thing that
24 you said earlier. You talked about, originally, when you
25 extract the DNA, you talked about you could get it from a

1 swab. What's a swab?

2 A So a swab is really just a -- we see them in the
3 form of like a long, thin, wooden stick with kind of the end
4 of a Q-tip on it. So it's a little piece of cotton that
5 somebody will use to wipe down an item of evidence, and submit
6 that swab as being from a particular item.

7 Q So if we had a crime scene analyst come in here
8 today and take a swab from your water bottle, would you expect
9 that to look like you're saying; almost like a piece of wood
10 with a little Q-tip end?

11 A Yes.

12 Q That would be rubbed along the areas on that
13 particular item, and then that swab is impounded into
14 evidence?

15 A Yes.

16 Q All right. Then, are you able to call up that
17 evidence, which means bring it to you to analyze?

18 A Yes.

19 Q If I understand, you don't go to the scene when
20 there's a shooting, a murder?

21 A No.

22 Q You're --

23 A No, I do not.

24 Q You're working in a laboratory?

25 A Yes.

1 Q Okay. Now, to call up a piece of evidence, is there
2 a unique number that's associated with this specific
3 investigation?

4 A Yes. It's called -- it's called an event number.

5 Q And is an event number associated with -- whenever a
6 call is generated by 911, a specific, unique number is given
7 to that, and then all of the research associated with it is
8 tied to that number?

9 A Yes.

10 Q Okay. In this particular case, were you asked to
11 analyze some evidence assigned to Event Number 170809-0029?

12 A Yes.

13 Q Okay. So you knew that's the evidence that you
14 needed to retrieve to be able to look at, and then compare it
15 to some known samples?

16 A Yes.

17 Q Speaking of known samples, did you have known
18 reference samples in this particular case for a DeShawn
19 Robinson, a DeMario Lofton-Robinson, a Davontae Wheeler, and a
20 Raekwon Robertson?

21 A Yes.

22 Q Okay. You didn't get those, but they were
23 eventually at a position where you could analyze them?

24 A Yes.

25 Q Okay. So someone else in the chain of this whole

1 process took a sample from these individuals, which was then
2 able to be -- created an extraction, and then a profile to be
3 able to compare it to?

4 A Yes.

5 Q All right. So you had those known reference samples
6 of those individuals to compare to the evidence from this
7 incident?

8 A Yes.

9 Q Okay. I want to kind of go over a few reports. Did
10 you generate two reports in this case?

11 A Yes.

12 Q Okay. I want to first look at the one that you
13 generated that says November of 2017. Do you have that
14 report?

15 A Yes.

16 Q And will it help you refresh your recollection to
17 review the report as you testify?

18 A Yes.

19 MR. PESCI: Any objections from the defense?

20 MR. SANFT: No, Your Honor.

21 MR. RUGGEROLI: Can I -- can I just take a look at
22 it?

23 MR. PESCI: Sure. This has got notes all over it,
24 but --

25 MR. RUGGEROLI: Yeah, thanks.

1 MR. PESCI: Okay.

2 MR. RUGGEROLI: Yeah.

3 MR. PESCI: Thank you. Your Honor, with your
4 permission then, is it okay if she refers to her report?

5 THE COURT: Absolutely.

6 MR. PESCI: Thank you very much.

7 BY MR. PESCI:

8 Q Ma'am, so, focusing on that first report, there are
9 a lot of different people that are involved in this process
10 before you get the case to work; is that correct?

11 A Yes.

12 Q All right. And then, are you familiar with what's
13 referred to as a personnel number?

14 A Yes.

15 Q Do you have a personnel number?

16 A Yes, I do.

17 Q And what number is that?

18 A My personnel number is 14784.

19 Q Is that a unique number for every employee at the
20 Metropolitan Police Department?

21 A Yes.

22 Q Okay. Now, are you accustomed and have you seen on
23 many situations where you refer to or look at items of
24 evidence that are impounded by someone else with a different P
25 number?

1 A Yes.

2 Q I'm sorry, I said P number. Is that what it's often
3 referred to?

4 A Yes, a personnel number. We just shorten it for P
5 number.

6 Q Okay. And in this particular case, did you have
7 evidence brought to you that was impounded by a P number 5158?

8 A Yes.

9 Q Okay. And then, when that person impounds the piece
10 of evidence, does that particular CSA impound it in a package
11 that has a unique package number, and then the items inside
12 the package have unique item numbers?

13 A Yes.

14 Q Okay. When you work that information and that
15 evidence, do you assign a different number for your report?

16 A Yes, I do.

17 Q All right. So we're going through this just to make
18 connections of the dots as far as the CSA's number versus your
19 number; is that okay?

20 A Yep.

21 Q All right. So, staying with 5158, did you receive a
22 package which was an Impound Package number 5 from 5158, and
23 Impound number 11 and 12?

24 A Yes.

25 Q Okay.

1 MR. PESCI: Court's indulgence. All right, so
2 there's not an objection.

3 BY MR. PESCI:

4 Q I'm going to put a name to a number; is that okay?

5 A Sure.

6 Q All right. So, for 5158, it's Ebony Stephens. She
7 had two pieces of evidence. What were those?

8 A They were two cigarettes -- cigarette butts.

9 Q Okay. And what did you do with those cigarette
10 butts?

11 A So after examining the cigarette butts, what I'm
12 trying to do is look for the best place to obtain where DNA
13 may be coming from. So when you think about a cigarette butt,
14 it's going to be from someone's mouth. So I take a
15 cross-section, including that filter and paper at the
16 non-burnt end, and I process that for DNA.

17 Q Okay. And then, we'll go through those individual
18 items after we go over what items you have, okay? In addition
19 to items impounded by Ebony Stephens, did you have items
20 impounded by 5228, a William Speas?

21 A Yes.

22 Q And specifically, did it have his Package number 5,
23 and two items, being his Item 6 and 7?

24 A Yes.

25 Q And what were those items?

1 A They were a swab from an Interarms handgun, and a
2 magazine.

3 Q When you say a magazine, meaning a firearm magazine?

4 A Yes.

5 Q Okay. And then, additionally, did you have items of
6 evidence impounded by a P number 15291, being Crime Scene
7 Analyst Browning?

8 A Yes.

9 Q And were there three items impounded by her; her
10 Package 3, and Items number 15, 16, and 17?

11 A Yes.

12 Q And what were those items?

13 A They were three swabs from inside a vehicle. One --
14 I believe one was from the right seat back headrest, the other
15 was from the right rear door interior arm rest, and one was
16 from the right rear door just above the handle.

17 Q Okay. And lastly, did you have another reference
18 standard -- I apologize -- sample, under 9618, that same
19 individual of Jeffrey Scott?

20 A Yes.

21 Q Okay, and I apologize. It looks like he has a
22 Package 3, Items 5 and 6, and then a Package 2, which is an
23 Item 2; is that correct?

24 A Yes.

25 Q And then, his numbers 5 and 6, what were they from?

1 A They were swabs from the finger -- the right and
2 lefthand fingernails of a Gabriel Valenzuela.

3 Q Okay. And so, in addition to swabs from his
4 fingernails, did you have the reference standard from Gabriel
5 Valenzuela?

6 A Yes.

7 Q And was that impounded by the same P number 9618,
8 Jeffrey Scott; his Package 2, Item 2?

9 A Yes.

10 Q All right. So now we got all the pieces of evidence
11 from this report. Let's go into specific results. What did
12 you do to compare the items to the known samples?

13 A So once I obtain the DNA profile, I have to
14 interpret it. I kind of have to make the decision as to, one,
15 how many people are present in a particular sample. I then
16 have to determine maybe if there's male present in that
17 profile. And then the next thing I have to do is determine
18 whether it is suitable; whether there's enough information
19 there that's suitable for comparison.

20 Q Okay. And if it's not suitable for comparison, what
21 do you do?

22 A We call it inconclusive, and we don't make any
23 comparisons. So once we deem a profile as not having enough
24 information, or maybe having too much information, that it's
25 too complex, we just won't make any comparisons further.

1 Q Is it strange for you to sometimes have samples
2 where you cannot make a comparison?

3 A No, it happens. Like we had talked about, how touch
4 DNA could be variable, sometimes we won't get a profile
5 suitable for comparison, and sometimes we will.

6 Q All right. And when you're making comparisons and
7 you're looking at those photographs, as you referred to them,
8 are there things that are unique to males versus females
9 within DNA?

10 A Yes. So two of the locations that we do our testing
11 on give us an indication of gender. One is a gender-specific
12 location, and there are only two options. We have females
13 that are XX, and males that are XY. So if I have a DNA
14 profile and I see that Y present, I can say that that male is
15 present in the sample. We also have another location that is
16 male-specific, so when we see a peak in that position, we can
17 then say also a male is present.

18 Q Okay. Looking at your Lab Item 18.1, which
19 corresponds to the cigarette butt, which I believe is 5158's
20 Item 11, what were your conclusions?

21 A I obtained a DNA profile from a single-source DNA
22 profile that was male.

23 Q Okay. And then did you compare that male profile to
24 all the known samples we just spoke of?

25 A Yes.

1 Q Was there a match on any of them?

2 A Every one that was compared to was excluded.

3 Q All right, so what does it mean to be excluded?

4 A Excluded is that there were -- they didn't match
5 that DNA profile.

6 Q So those alleles that we talked about, there were
7 nothing that matched up or lined up around there?

8 A It -- it's not necessarily that one or -- it's not
9 necessarily every single one didn't line up. We have to look
10 at the combination of numbers. And if all of those
11 combinations of numbers at all locations don't match a known
12 sample, the person is excluded.

13 Q All right. So were DeShawn Robinson, DeMario
14 Lofton-Robinson, and Davontae Wheeler, and Raekwon Robertson,
15 and even Gabriel Valenzuela excluded?

16 A Yes.

17 Q All right. And did you actually have some known
18 sample -- reference samples for a couple other individuals; an
19 Anthony (phonetic) Robinson and a Johnquiel Brown?

20 A Yes.

21 Q Okay. All of those people were excluded?

22 A Correct.

23 Q Okay. Now, you had a second cigarette butt,
24 correct?

25 A Correct.

1 Q So your Lab Item 19 corresponded to Ebony Stephens's
2 number 12, correct?

3 A Correct.

4 Q And what did you find from that?

5 A I also got a single-source male profile. That
6 profile was the same as in the other cigarette butt, so every
7 -- all of the reference standards that I had were excluded.

8 Q Okay. So we know the two cigarette butts were
9 touched or used by a male, and it's Unknown Male number 1?

10 A Correct.

11 Q And that Unknown Male number 1 is not any of the
12 reference samples that we have?

13 A Correct.

14 Q Okay. So moving then to the swabs from the
15 Interarms Star handgun, what did you find out about that?

16 A So from the swab of the handgun, I obtained a
17 mixture DNA profile where I determined at least one of those
18 contributors was male. Unfortunately, there was just not
19 enough information to make any further conclusions.

20 Q Okay.

21 A So this profile was deemed inconclusive.

22 Q And when you talk about a mixture, what does that
23 mean?

24 A A mixture is -- so we talked about single-source
25 being from one person. A mixture DNA profile originates from

1 more than one individual.

2 Q Okay. And that particular swab, which is your
3 number 28, is that coming from the Interarms Star handgun; the
4 grips, the hammer, the slide, and the trigger, and the trigger
5 guard area?

6 A Yes.

7 Q Okay. And then, your second swab from the Interarms
8 Star, corresponding to your number 29, is that coming from the
9 base and the ramp of the magazine of that firearm?

10 A Yes.

11 Q What were your results on that?

12 A I did not obtain a DNA profile from that sample.

13 Q All right, so no profile at all?

14 A None at all.

15 Q Okay. Moving onto number 30 and 31, those
16 correspond back to the samples from the victim's fingernails,
17 correct?

18 A Correct.

19 Q And what did you find?

20 A For both of those items, the DNA profiles that were
21 obtained were consistent with Gabriel Valenzuela.

22 Q Okay. And then, moving to your Item 33, which
23 corresponds to Claire Browning's Item 15, is this from
24 different locations inside the car; from the front seat of --
25 the right side of the right front seat of the car?

1 A Yes.

2 Q And what was your result?

3 A So for this sample, I obtained a mixture DNA profile
4 that had two contributors in them, one of which was male.

5 Q Okay. And then, you said it was a mixture, correct?

6 A Correct.

7 Q And then, were you able to include anybody?

8 A Yes, I was.

9 Q And who was that?

10 A DeShawn Robinson was individually included.

11 Q All right. So we've been speaking about exclusion.
12 This is the first time we're talking about inclusion. What
13 does that mean?

14 A When the -- when an inclusion is made, that -- that
15 means, when comparing that reference standard to that mixture
16 DNA profile, a certain statistic is given to show that this
17 person has as high probability of being included in this
18 mixture DNA profile.

19 Q Okay. Now, that number that you come up with, is
20 that based on looking at the DNA and all of those points of
21 reference that match?

22 A It's based on -- so we use the software for a lot of
23 our mixture interpretation and comparisons. So it's based on
24 the numbers that are present, those alleles that are present
25 in that sample, and how well a particular reference standard

1 matches the breakdown of the different contributors.

2 Q Okay. And then, you said that you came up with a
3 number associated with that?

4 A Correct.

5 Q And what was that?

6 A So the number that we calculate, the statistic we
7 use, is a likelihood ratio. And a likelihood ratio compares
8 two different conclusions.

9 So for example, if we're thinking of something like
10 the weather, when you're watching the weather in the morning
11 and they're talking about, you know, the percentage of --
12 percentage of sun, so they say it's based on all of their
13 Doppler, their radar, that there's a 90 percent chance it's
14 going to be sunny today. So, out of 100, that means there's a
15 ten percent chance that it's going to be something other than
16 sunny for the weather. When you make the comparison between
17 the two, the resulting likelihood ratio would essentially be
18 it's nine times more likely to observe all of this information
19 we have about the weather if it was going to be sunny than it
20 was going to be something other than sunny.

21 So when I'm -- so when this likelihood ratio is
22 calculated for this particular item, we say it in the form of:
23 the probability of observing this mixture DNA profile from the
24 swab from the seat back is at least 1.76 octillion times more
25 likely if this profile originated from DeShawn Robinson and

1 one unknown random contributor than if this profile originated
2 from two unknown random contributors.

3 Q Because you have the known of DeShawn Robinson to be
4 able to factor into the equation?

5 A Yes.

6 Q Okay. And so, you said it's 1.76 octillion?

7 A Yes.

8 Q What is octillion?

9 A So we could start -- we'll start at a million that
10 has six zeros to it, a billion has nine, a trillion has 12, a
11 quadrillion has 15, a quintillion has 18, a sextillion has 21,
12 a septillion has 24, and then an octillion has 27.

13 Q And when you say 27, do you mean zeros?

14 A Yes. So when you think about 1.76 octillion, if you
15 move that decimal place over two spots, you have 176 followed
16 by 25 zeros.

17 Q All right. And that's that likelihood ratio as far
18 as finding somebody else who's going to have that?

19 A It's comparing that it's that -- that many more
20 times more likely to see this profile if it originated from
21 DeShawn Robinson and one unknown random contributor rather
22 than two other unknown random contributors.

23 Q So that's how you come to the labeling of
24 "individually included"?

25 A Yes.

1 Q All right. So DeShawn Robinson is included based on
2 the DNA analysis that you did, but we have exclusions in this
3 as well?

4 A Yes.

5 Q All right. So all of the other individuals we've
6 mentioned before, they were all excluded from this particular
7 source?

8 A Correct.

9 Q All right. Moving to you Lab Item 34, a swab from
10 the interior right rear door armrest, was this a mixture
11 profile?

12 A Yes, it was.

13 Q And then did you include DeShawn Robinson in this
14 one?

15 A Yes, I did.

16 Q Individually included? I apologize.

17 A Yes.

18 Q And then, what was the likelihood ratio on this?

19 A So the -- this was also a mixture of two
20 individuals, at least one of which was male. And the
21 probability of observing this mixture DNA profile was at least
22 2.56 octillion times more likely if it originated from DeShawn
23 Robinson and one unknown random contributor than if it
24 originated from two unknown random contributors.

25 Q Still 27 zeros?

1 A Yes.

2 Q Okay, and then the number's higher. It's gone from
3 1.76 to 2.56?

4 A Yes.

5 Q Okay. Now, he is individually included from that
6 sample, and then are all the rest, again, excluded?

7 A Yes, they were.

8 Q Okay. Now, moving to Lab Item 35 -- your Lab Item
9 35, does that come from the interior right rear door above the
10 handle?

11 A Yes.

12 Q Okay. And then, was this a mixture, or just one?

13 A This was actually deemed to be -- only have one
14 contributor present in this sample.

15 Q Okay. And then, were you able to include anybody?

16 A Yes, DeShawn Robinson was individually included.

17 Q And then, what was the likelihood ratio for this
18 one?

19 A So the probability of observing this DNA profile is
20 at least one septillion times more likely if it originated
21 from DeShawn Robinson than if it originated from an unknown
22 random contributor.

23 Q I think you told us earlier a septillion is with 24
24 zeros?

25 A Yes.

1 Q So it's less than the octillion?

2 A Correct.

3 Q But it still has 24 zeros after the number?

4 A Correct.

5 Q Okay. And then, as far as exclusion, were all of

6 the known reference samples, all the others that we've

7 mentioned, excluded?

8 A Yes, they were.

9 Q Okay. And that's the information that you have for

10 this particular report, correct?

11 A Yes.

12 Q All right. Before we move onto the next report --

13 you have a second report, correct?

14 A Correct.

15 Q All right. Before we move onto that, when we're

16 talking about these numbers and we're talking about DNA, is

17 there a way to date DNA, meaning a time frame?

18 A No.

19 Q Okay. I could touch this lectern a year ago, and I

20 could touch it now; you could potentially get my DNA from a

21 year ago?

22 A Yeah, we don't determine time -- time, space. We

23 just answer what DNA is -- is there. We don't answer how it

24 got there, when it got there, why it got there. We just are

25 there to say what's actually there.

1 Q Even though you can't necessarily date it, is it
2 true that there are environmental variables that can affect
3 DNA?
4 A Yes.
5 Q What are those?
6 A So if you leave something out in the sun for too
7 long, the sun has the potential to break down DNA. Let --
8 let's say after -- after a day, janitors come in and clean all
9 of the different spaces, that's potential to wipe up the DNA,
10 depending on the cleaner they use, like bleach or something
11 like that. So those can have an effect on the remaining DNA
12 present in a particular location. All of those things can
13 have an effect on the presence of DNA.
14 Q Can rain, wind, things of that -- that nature?
15 A Yes.
16 Q Okay. All right. Looking at your -- your other
17 report, did you also have a report of an item that was
18 impounded or swabbed by -- impounded and swabbed by a P number
19 13771?
20 A Yes.
21 Q Okay. Those items were your numbers 38 and 39,
22 correct?
23 A Yes.
24 Q And do they correspond to that individual P number's
25 Package 1, Items 1 and 2?

1 A Yes.

2 Q And then, did number 1 come from a swab from a
3 Taurus handgun?

4 A Yes, it did.

5 Q And number 2 come from a swab from a magazine?

6 A Yes.

7 Q Okay. And then, did you do the same analysis that
8 you've spoken of earlier from your first report?

9 A Yes, I did.

10 Q All right. What did you find out from your Lab Item
11 38, which is a swab from a Taurus handgun?

12 A So from the handgun, I obtained another mixture DNA
13 profile of two contributors; at least one of those
14 contributors was a male.

15 Q Okay. And then, did you have the same known
16 profiles you were comparing with?

17 A Yes, I did.

18 Q And what did you find out from those comparisons?

19 A So in this particular item, Raekwon Robertson was
20 individually included as being a part of this mixture DNA
21 profile.

22 Q What was the likelihood ratio?

23 A So the probability of observing this mixture DNA
24 profile is at least 33.3 million times more likely if it
25 originated from Raekwon Robertson and one unknown random

1 contributor than if it originated from two unknown random
2 contributors.

3 Q All right, so he was individually included based on
4 those numbers?

5 A Correct.

6 Q And then were you able to exclude anybody of the
7 remainder of individuals?

8 A Davontae Wheeler was excluded as being a part of the
9 mixture.

10 Q All right, but were you able to exclude everybody
11 else?

12 A No. The remaining individuals, so that would be
13 Anthony Robinson, DeShawn Robinson, DeMario Lofton-Robinson,
14 Johnquiel Brown, Gabriel Valenzuela -- think I got them all.

15 Q Yeah.

16 A They were all deemed as inconclusive.

17 Q What does that mean?

18 A So for each individual, that likelihood ratio is
19 calculated. There is this window where there isn't a lot of
20 support that a person can be included or excluded, and that's
21 based on the work that we do during validation of our
22 procedures, and all of those individuals had likelihood ratios
23 that were calculated within that range. And so, when they're
24 within that range, we call them inconclusive because we can't
25 definitively say either way.

1 Q Okay. So you can't say they're included, and you
2 can't say they're excluded?

3 A Correct.

4 Q All right, so it's just inconclusive as to those
5 individuals?

6 A Yes.

7 Q All right. And then, Lab Item 39, the swab from the
8 magazine, was it one contributor?

9 A Yes.

10 Q Because earlier, the Taurus handgun was two
11 contributors, correct?

12 A Correct.

13 Q All right. So, on the magazine, was it one male
14 contributor?

15 A Yes.

16 Q All right. And then, did that match to any of the
17 other known samples?

18 A Everybody was excluded.

19 Q Okay. So all the list of people that you spoke of
20 earlier were excluded from that particular item?

21 A Correct.

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

23 THE COURT: Mr. Sanft, cross?

24 MR. SANFT: Yes, Your Honor.

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CROSS-EXAMINATION

BY MR. SANFT:

Q Good afternoon, Ms. Rubino.

A Good afternoon.

Q I just want to get to the point. I represent Mr. Robertson that's over here, Raekwon. The testing that you did in this case, and what you've testified to this jury on, out of all the tests that you've done, is the last portion of your testimony specific to Mr. Robertson with regards to the Taurus handgun?

A The testimony is just based on what was then requested for processing, and then all of the reference standards that were present in that case that were compared to every other samples from that first report are automatically compared to all of any additional items in the case.

Q So with regards to the other items that we talked about; the car, for instance, and so forth, was there any DNA that you found with regards to my client being in that car?

A From the -- he was excluded from those items.

Q Okay. And specifically, going back again to the Taurus handgun, your testimony was that he was included on the Taurus handgun, but you can't tell the jury how that DNA was found -- or how it was placed on that handgun, correct?

A Correct.

Q Okay. Now, you had said that there were two

1 contributors; one of them was at least male?

2 A Correct.

3 Q Meaning that, potentially, out of the two
4 contributors that had DNA on that handgun, the other person
5 could have been male as well?

6 A Correct.

7 Q Okay. Now, and we've gone through this octillion
8 thing, and I want to make sure we're clear here. The State
9 says -- or says that it's a number followed by -- I don't know
10 how many zeros. 27 zeros for an octillion? Really?

11 A Yeah, one octillion.

12 Q That's a lot.

13 A That is a lot.

14 Q Is there a presumption that, the higher that number,
15 the more accurate, or the more -- less probability that it
16 could have come from somebody else? Is that how that works?

17 A Well, it also is based on essentially kind of the
18 quality of the DNA profile. We see a lot of different
19 profiles in the lab. Some -- when -- if we just talk about
20 maybe a single-source profile, we can get -- if we get data at
21 every single location that we test at, we're going to get a
22 high number because we have all of this information for
23 comparison and we have all this information to calculate
24 statistics with.

25 When we have -- when we start to lose some of that

1 information, and maybe some of that information is missing
2 where we only have maybe a partial profile and we don't have
3 as many locations, that statistic will naturally be less
4 because there are less areas of comparison. So, a lot of the
5 time, some of the statistics is based on just how much
6 information is there for comparison.

7 Q I'm -- because I'm not -- obviously, you are very
8 smart with this, because these numbers are -- I don't know how
9 to begin to even describe them. But in terms of -- just
10 breaking it down to it's bare tacks for this jury, the bigger
11 the number, the more sure; the lesser the number, the less
12 sure, right?

13 A Personally, it doesn't have anything to do with
14 being sure or not sure. It's based on the profile that we
15 have and how -- how that can be compared to the reference.
16 It's sometimes -- I guess it's not -- for me, not a personal
17 "this is more sure than this." It's just, for certain items,
18 I have more data to work with and compare to, so that will
19 give me a higher number than maybe some of the other items
20 that may not have as much information, or some of the other
21 people that may not have as much information present.

22 So, for me, it's not, I'm more sure of this DNA
23 profile than I am of this DNA profile; it's the numbers are
24 what they are based on the quality and quantity of data I have
25 for comparison.

1 Q Okay. So, I guess, then what's the point? What's
2 the point of talking about 27 zeros after a number, versus,
3 like, for instance, in this case, with my client, Mr.
4 Robertson, the DNA sample that was located was 33.3 million,
5 which is six zeros? I mean, do we say here, well, his DNA,
6 because it was six zeros -- I mean, what's the point? What's
7 the point of putting a number behind something and talk about
8 the number of zeros that are behind the number?

9 A The point for us is when we make our comparisons, we
10 want to attribute a weight to that comparison. And that
11 weight is not for me to make any further conclusions; it's to
12 inform any -- the reader, the jurors, anybody that is taking
13 those -- that information into account, it's to give them the
14 weight of that particular item.

15 Q Okay. And the other item that you swabbed with
16 regards to the Taurus handgun, you had one contributor that
17 was male, and none of the people, including Raekwon Robertson,
18 was identified as that male?

19 A Everyone was excluded. Correct.

20 Q Okay. Now, going back again to the Taurus handgun,
21 you had said as well that everyone that was inconclusive, that
22 also included Gabriel Valenzuela?

23 A Yes.

24 Q As a possible contributor to whatever the DNA was on
25 the actual Taurus handgun?

1 A They're compared, but that person -- Gabriel
2 Valenzuela was inconclusive.

3 MR. SANFT: Okay. I have no further questions, Your
4 Honor. Thank you.

5 THE COURT: Mr. Ruggeroli?

6 CROSS-EXAMINATION

7 BY MR. RUGGEROLI:

8 Q Good afternoon, Ms. Rubino.

9 A Good afternoon.

10 Q I represent Davontae Wheeler; he's present on your
11 right. You had a number of known reference samples, correct?

12 A Correct.

13 Q And a couple of names were mentioned, and I just
14 want to touch on this. You did have a reference sample from
15 Anthony Robinson?

16 A Yes.

17 Q And a reference sample from Johnquiel Brown?

18 A Yes.

19 Q But you did not have a reference sample from Adrian
20 (phonetic) Robinson?

21 A No, I did not.

22 Q And you went through a number of items, but just
23 briefly, there were two cigarette butts?

24 A Correct.

25 Q You were able to get a source without a linking

1 identity?

2 A Essentially, yes.

3 Q And then, you had the swab from the handgun and the
4 magazine, correct?

5 A Correct.

6 Q From inside the vehicle, correct?

7 A Yes, correct.

8 Q Yeah, a couple other items?

9 A Yes.

10 Q And as far as Mr. Wheeler, the wind-up is that Mr.
11 Wheeler has been excluded from all of the items?

12 A All of those items -- all of the items, yes.

13 Q And then, the second package, Report number 2, was
14 the Taurus handgun, and he was excluded from that as well?

15 A Correct.

16 Q And from the magazine?

17 A Correct.

18 Q So, in total, no DNA evidence from these items
19 regarding Mr. Wheeler?

20 A He was excluded from all items where conclusions
21 could be made.

22 MR. RUGGEROLI: Thank you. Nothing further.

23 THE COURT: Any redirect?

24 MR. PESCI: You know, sometimes --

25 THE COURT: Just a minute. It's when both sides are

1 done --

2 UNKNOWN SPEAKER: Okay.

3 THE COURT: -- questioning the witness. Go ahead.

4 MR. PESCI: Sorry. Thank you.

5 REDIRECT EXAMINATION

6 BY MR. PESCI:

7 Q Sometimes with lawyers, words can be semantics, so
8 I'm going to try not to go that route, but I'll probably get
9 there anyway. We just heard from defense counsel that his
10 client was excluded from all of the evidence, correct?

11 A Where conclusions were made, yes.

12 Q Okay. So some people might put a weight to that,
13 because you were just asked, what's the purpose; why are we
14 going into numbers? That information -- those numbers told
15 you that person was excluded from touching that item?

16 A Correct.

17 Q All right. We could attribute a weight to that in
18 the sense that there's nothing to connect him via DNA to that
19 item?

20 A So when someone's excluded, a number is also
21 calculated for them, and we don't generally report them;
22 they're just excluded. But when we're talking about a
23 likelihood ratio in those two different conclusions, it would
24 essentially be saying that the probability, it's a certain
25 amount times more likely that the profile originated from two

1 unknown random contributors than if it originated from a
2 particular person and one unknown random contributor. So it's
3 just not likely that that DNA is there.

4 Q And it's not likely because that number, because
5 there's actually a number associated, is so low?

6 A It -- it's deemed -- it's in our excluded.

7 Q So there's a point to these numbers, right?

8 A Sure, yes.

9 Q Because when it gets so low, somebody's excluded?

10 A Correct.

11 Q Would you agree then, when it gets higher, it points
12 to your conclusions of individual inclusion?

13 A Yes.

14 Q And then, if I heard you correctly, I thought maybe
15 you were being asked, or you thought you were being asked your
16 personal belief about this. You're talking about numbers; not
17 your personal belief?

18 A Correct.

19 Q Okay. So setting aside any personal belief, the
20 numbers that you have, when we've got 27 zeros, is that based
21 on you having more information to deal with?

22 A Yes.

23 Q More DNA data?

24 A Correct.

25 Q And that number makes your ratio go higher?

1 A Correct.

2 Q In the inverse of the person who's absolutely
3 excluded?

4 A Correct.

5 Q So there is a weight to those numbers?

6 A Yes.

7 MR. PESCI: Thank you.

8 THE COURT: Mr. Sanft, any recross?

9 MR. SANFT: Yes, Your Honor, just one question.

10 RE CROSS-EXAMINATION

11 BY MR. SANFT:

12 Q So I -- going back again to these numbers, the idea
13 of information, the more information you have, the bigger the
14 number; the less information you have, the lesser the number?

15 A That will also depend on the comparison of that
16 individual to that profile. So if we're talking about a
17 single -- if we're talking about the single-source profile,
18 the more information we have from that single-source evidence
19 profile if we have someone that's included, that weight, that
20 likelihood ratio, is going to go higher and higher with the
21 more information we have, if they're actually included. If
22 somebody is excluded, more often than not, we're going to get
23 actually a number of zero because that person has no chance of
24 being part of that DNA profile.

25 So when we -- it gets a little more complicated when

1 we're dealing with mixtures. Generally, when you have more
2 information and good quality information to work with, you'll
3 see higher likelihood ratios. When you start to get
4 lower-quality DNA profiles and have less DNA, you're generally
5 going to see sometimes lower DNA -- lower likelihood ratios.

6 Q Okay. So if someone's on the inclusive, what's the
7 threshold for that?

8 A So our threshold, it has to be ten to the fourth, so
9 10,000, in order for someone to be determined as individually
10 included.

11 Q Right. So anything below ten to the fourth would be
12 inconclusive?

13 A So anything between ten to the third, so 1,000, down
14 to ten to the minus-three, so that's 1,000th, so it's .001,
15 that's our -- that's what we call our inconclusive zone. And
16 it's based on our validation where certain people may have
17 been, during the course of a validation, falsely included and
18 excluded. By increasing our inclusion section to ten to the
19 four, it's giving us this cushion where, as a laboratory, we
20 are confident that anybody reported as included is actually
21 included.

22 Q Is that the national standard, or is that a standard
23 that you've set here in Nevada?

24 A It's based on the validation that we've done at the
25 laboratory.

1 Q Okay. But once again, my question is, is that the
2 national standard? Is there a national standard across the
3 board with regards to that validation?

4 A Every laboratory does their own internal validation
5 and develops their own way of interpreting and reporting
6 samples.

7 MR. SANFT: No further questions. Thank you.

8 THE COURT: Mr. Ruggeroli?

9 MR. RUGGEROLI: No further questions. Thank you.

10 THE COURT: Okay, we have a question.

11 (Bench conference)

12 THE COURT: You can approach. If the attorneys will
13 approach.

14 MR. PESCI: She doesn't know. Well, I'll ask her,
15 but I don't think she knows.

16 THE COURT: Okay. I usually will allow both sides
17 to follow up if you have any questions after this.

18 MR. RUGGEROLI: Sure, okay.

19 THE COURT: So do you want me to ask her, or do you
20 just want to follow up?

21 MR. PESCI: Whichever way. Do you mind asking,
22 because (indiscernible)?

23 THE COURT: No, I don't.

24 MR. PESCI: Okay.

25 (End of bench conference)

1 THE COURT: Okay. The question has been marked as
2 Court's Exhibit number 3. Which Taurus handgun, the .45 or
3 the PT22?

4 THE WITNESS: That I actually -- I don't know. I go
5 based on what's on the package, and the package referred to a
6 Taurus -- Taurus handgun. That's something that would be
7 found on maybe other information from the individual who
8 swabbed it, or in the Evidence Impound Report that would be
9 generated.

10 THE COURT: Any follow up from the State?

11 MR. PESCI: Yes, please.

12 FOLLOW-UP EXAMINATION

13 BY MR. PESCI:

14 Q Ma'am, that information, as you're indicating, comes
15 from the crime scene analyst that impounded that particular
16 item, correct?

17 A I believe that -- those particular swabs were taken
18 by one of the firearms analysts.

19 Q Okay. And are we taking you somewhat out of order
20 because you're flying out of town?

21 A Correct.

22 Q All right. So, eventually, we're going to get that
23 information; we're just trying to get to yours so -- so you
24 can get out of town?

25 A Correct.

1 MR. PESCI: Okay, thank you.

2 THE COURT: Any follow up from Mr. Sanft?

3 MR. SANFT: No, Your Honor. Thank you.

4 THE COURT: Mr. Ruggeroli?

5 MR. RUGGEROLI: No, Your Honor.

6 THE COURT: Okay. Thank you very much for your
7 testimony here today. You may step down, and you are excused
8 from your subpoena. You may call your next witness.

9 MR. PESCI: John Relato. May I approach your Clerk?

10 THE COURT: Yes.

11 THE MARSHAL: I'm sorry, what was the last name?

12 MR. PESCI: Relato. Can I approach?

13 THE COURT: Uh-huh.

14 THE MARSHAL: Straight ahead. Please step up into
15 the witness stand. Remain standing, raise your right hand,
16 and face the Clerk, please.

17 JOHN RELATO, STATE'S WITNESS, SWORN

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

20 THE WITNESS: First name, John, J-o-h-n. Last name,
21 Relato, R-e-l-a-t-o.

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

23 THE COURT: You may.

24 MR. PESCI: Thank you.

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DIRECT EXAMINATION

BY MR. PESCI:

Q Sir, I want to direct your attention to August 8th,
and then to August 9th of 2017. Where did you live back then?

A I lived at 5536 West Dewey Drive.

Q Is that here in Las Vegas?

A Yes, sir.

Q All right. Now, when -- back on August 8th into
August 9th of 2017, who lived there with you?

A My mother, father, sister, and my cousin.

Q What was your cousin's name?

A Legal name is Gabriel Valenzuela, but his friends
and I call him Kevin.

Q Okay. And so, Kevin, what did he do back then?
What was his -- was he going to school? Was he working?

A Yes, he was a nursing student.

Q Okay. Do you know where he was going to nursing
school?

A College of Southern Nevada.

Q Okay. And then, how many people total was that? It
was you; did you say your sister?

A My sister, mother, step-father, and my cousin.

Q So five of you total?

A Yes, sir.

Q How many cars were associated with the house?

1 A About four.

2 Q Okay. Was there a lot of movement amongst all of
3 you as far as driving in and out?

4 A Yes, sir.

5 Q All right. And did you have -- did you have a
6 garage that covered, and part that's not covered?

7 A I have a garage that's covered, and we also park the
8 cars on, like, driveways. Like sloped, ramped, like,
9 driveways.

10 MR. PESCI: May I approach the witness?

11 THE COURT: You may.

12 MR. PESCI: Your Honor, I'm showing to the witness
13 Exhibits 11, 12, and 14, previously shown to defense counsel.
14 I believe there's no objection to their admission.

15 MR. SANFT: No, Your Honor.

16 MR. RUGGEROLI: That's correct.

17 THE COURT: Okay, they're admitted.

18 (State's Exhibits 11, 12, and 14 are admitted)

19 THE WITNESS: That's correct.

20 MR. PESCI: May I --

21 THE WITNESS: I'm sorry.

22 MR. PESCI: -- move for their admission and ask to
23 publish?

24 THE COURT: They're admitted, and you may publish.

25 MR. PESCI: Okay.

1 BY MR. PESCI:

2 Q So, I apologize. I was asking about the parking at
3 that location. To your right, there's a computer. So are we
4 looking at the garage that's, you said, covered, correct?

5 A Yes, sir.

6 Q Would that be as you're facing the house on the
7 lefthand side?

8 A What do you mean by that?

9 Q So if you were standing here where the picture was
10 taken, is the garage furthest to the left the one that's
11 covered?

12 A Yes, this is the one that's covered.

13 Q Okay, and is there one to the right of that one that
14 is uncovered?

15 A Yeah, this is uncovered.

16 Q Okay. And then, you just talked about another
17 location where cars are parked. Where is that?

18 A This one here, usually.

19 Q Okay. And you said -- was -- is there a slant?

20 A This is -- I mean, it's like a slope, you know?

21 Q Okay. So that --

22 A The driveway.

23 Q That driveway area -- let's show you Exhibit 14. Is
24 that reflective of that slant? Is it higher where the car is,
25 and gets lower down to the street?

1 A Yes, sir.

2 Q Okay. So, on that night, were you home?

3 A Yes, sir.

4 Q Did something happen that brings you here to court?

5 A There was the murder of my cousin --

6 Q Okay.

7 A -- that night.

8 Q Do you remember or do you know when your cousin came

9 home?

10 A I don't know the exact time, but I know it was

11 around midnight; around 12:00 o'clock.

12 Q Okay. So in the late hours of the 8th, going into

13 the early hours of the 9th?

14 A Yes, sir.

15 Q Okay. Was it normal for him to usually come home

16 this late?

17 A Usually, he comes home a little later. But yeah,

18 usually, he doesn't -- like, no earlier than this.

19 Q Okay. And then, speaking of normal -- what's done

20 normally, was there something that your cousin would do with

21 the mail? Is he the one that would pick up the mail?

22 A Yes, sir.

23 Q Okay. And then, where is the mail in relation to

24 your house?

25 A It's -- it's a little more towards this way. It's

1 like in my neighbor's side of the -- I mean, like, going --
2 you know, if you keep going down this sidewalk.

3 Q Okay.

4 A Just keep going, and there's like --

5 Q So the direction that you're pointing now is kind of
6 going to the left of that photograph, correct?

7 A Yes, sir.

8 Q All right. We're going to get you an aerial in just
9 a second that you can kind of point that out. And so, if I'm
10 understanding correctly, your cousin would be the one who
11 would go pick up the mail?

12 A Yes, sir.

13 Q All right. And then, is this something he did
14 routinely?

15 A Yes.

16 Q And what would happen when he did it? Would he go
17 through that mail?

18 A Yeah. He usually picks it up, make -- like, he
19 drives over there, like in front of the mailbox, picks it up.

20 Q Let me stop you.

21 A Oh, yeah, sorry.

22 Q Looking at 3.

23 A Yeah. Usually, he comes in from here, drives to the
24 mailbox right around this area here.

25 Q I'm going to move this up so that it can be seen a

1 little better.

2 A Sure. It's not showing on the picture, but there's

3 a mailbox for the -- the neighborhood.

4 Q I'll show you Exhibit 4. Let's see if you can get

5 to the mailbox.

6 A Yes, okay. So, usually, he comes in over here. The

7 mailbox is around this area here. He usually drives over

8 there, picks up the mail, makes a U-turn, and parks the car at

9 the parking over here.

10 Q Okay. And speaking of that, we'll go back to

11 State's Exhibit 14. Is the car that's depicted in State's 14

12 your cousin's car?

13 A Yes, sir.

14 Q The car that he would drive?

15 A Yes.

16 Q Okay. And so, was there a routine as far as what he

17 would do as far as going through the mail?

18 A Usually, he just grabs the whole stack, sits around

19 this area over here --

20 Q When you say this area over there, is there kind of

21 a little --

22 A The retaining wall.

23 Q A retaining wall? Okay.

24 A Yes, sir.

25 Q Sits there, and then goes through the mail?

1 A Yes, because that's where the lighting is. He can
2 do it in the car while it's -- it's well-lit in this area.

3 Q Okay. And so, on that particular night, did you
4 hear something that got your attention?

5 A Gunshots.

6 Q Okay. Do you recall how many gunshots?

7 A I recall two.

8 Q Okay. And then what did you do based on hearing
9 gunshots?

10 A First, I went to -- I went to check -- I went
11 upstairs.

12 Q All right, let me show you State's Exhibit 12.
13 Maybe that could help us orient to where you're saying
14 upstairs.

15 A I went upstairs to kind of check out the
16 neighborhood. So I went to --

17 Q When you say -- let me interrupt.

18 A Sorry.

19 Q I apologize. When you say upstairs, were you
20 already inside the house?

21 A Yes, sir.

22 Q Okay. So you went from the inside downstairs to the
23 upstairs?

24 A Yes.

25 Q So you could try to have a better vantage point?

1 A Um-hum.

2 Q Is that a yes?

3 A Yes.

4 Q Okay, and then what happened?

5 A I tried to check out the window over here, but it

6 was -- there was like no view. Like, it's very, like,

7 obstructed by this here. There's like nothing around, so I

8 tried to go to another window.

9 Q Let me stop you for a second.

10 A Go.

11 Q I'm going to show you State's Exhibit 1. You talked

12 about it being obstructed. Are there some trees in your yard

13 in that area?

14 A Yes, sir. Those are the trees that obstructed my

15 view.

16 Q Okay. So did you move based on that?

17 A Yes. I moved -- I moved over here by this window,

18 like in the -- this room over here.

19 Q Okay.

20 A I did see the car, but -- and I did see something --

21 something shiny, which turned out to be the blood.

22 Q Okay. What did you do based on seeing the car and

23 seeing what was shiny on the ground?

24 A What was, I guess, out of character for him was that

25 the door was open. Usually, he doesn't leave the door open.

1 Q To his car?

2 A To his car. Whenever he leaves, you know, to like
3 pick up the mail, usually, he just leaves -- he just closes
4 it.

5 Q Okay, let me stop you for a second. Speaking of
6 doors, where is -- as we look at State's Exhibit 12, where is
7 the front door?

8 A The front door is behind this car over here.

9 Q Okay. So what's the normal way of entry into the
10 home?

11 A Usually, through the garage.

12 Q Okay. So now, you were speaking about how the door
13 being opened seemed strange to you, and what did you do?

14 A Could you repeat the question?

15 Q You said that the door being open seemed strange to
16 you, so what did you do?

17 A Oh, sorry. The car door. I did see the car. I saw
18 the car door was open --

19 Q Yes.

20 A -- his car door.

21 Q Yeah, I apologize, you're right. The car door. So
22 what did you do?

23 A I immediately started calling my cousin --

24 Q Okay.

25 A -- like through his cell phone.

1 Q And do you know when you called your cousin?
2 A I believe it was like 12:09, somewhere around that
3 time.
4 Q When this happened back in August of 2017, did you
5 relay the information to the police when they eventually got
6 there as far as when you had actually called?
7 A Yes, sir. I called 911, and they started coming in.
8 Q Okay. So, first, you called your cousin?
9 A Yes, sir.
10 Q What happened?
11 A Oh. After I started calling him, I wanted to check
12 out what's going on, because I mean, the car is there; that
13 means he's there. So I went out the front door, and I just
14 saw him lying there.
15 Q Okay. Did you see anybody else in the area?
16 A I did not.
17 Q Okay. Anytime that you had been looking outside to
18 see what's going on after hearing the shots, did you see
19 anybody?
20 A I did not.
21 Q Okay. When you saw your cousin, where were you when
22 you first saw him?
23 A I was over here. I came out of the front door.
24 Q Okay.
25 A I walked a little further, because he was lying in

1 the ground over here.

2 Q Okay.

3 A And this retaining wall is obstructing my view, so
4 as I kept walking, I just saw his -- I just saw him there.

5 Q And what did you do?

6 A I immediately called 911.

7 Q And then did 911 tell you to do anything?

8 A Yes. They told me to -- I informed them of where
9 the gunshot, like, is; where the wound is. And they told me
10 to -- the first thing I should do is stop the bleeding. And
11 in order to do that, I needed -- they preferred I use a clean,
12 like, cloth. However, I was unable to get back inside because
13 of a jammed door, which is why I had to use my own t-shirt to
14 try to stop the bleeding.

15 Q All right. Did you take your t-shirt off?

16 A Yes, sir.

17 Q All right. And then did you try to stop the
18 bleeding of your cousin with that t-shirt?

19 A Yes.

20 Q Okay. When you ran outside, what were you wearing?

21 A I was wearing a -- I was wearing like basketball
22 shorts and a white t-shirt.

23 Q Okay, and did you have anything on your feet?

24 A I did not, because I usually -- like, we -- we
25 usually entered mostly through the garage, so we don't leave

1 anything like in the front, like, steps.

2 Q Okay.

3 A Like, we don't leave slippers, shoes there.

4 Q So you took your shirt off when you were trying to
5 stop the bleeding, and then what happened?

6 A I was mostly speaking with the 911 operator. Oh,
7 well, first, when -- I'm sorry, I have to go back a little
8 bit.

9 Q Okay.

10 A After I spotted him, I decide to call 911. They --
11 they told me to find a clean, like, cloth, right? I attempted
12 to go back inside. I couldn't get back inside because the
13 door was like jammed, as -- it was just jammed. So I was
14 ringing the doorbell, trying to call more of my family members
15 outside for help. And I went back down here, and then used my
16 shirt to stop the bleeding.

17 Q Okay.

18 A In the meanwhile, I was speaking to the 911
19 operators. Some of my neighbors did come out, and I
20 instructed them to try to -- try to go to like the opposite --
21 like, I told one of them to go over here, another one to go
22 somewhere over here, and instructed them to try to pin down
23 the officers, just to -- just so they can easily spot the
24 streets.

25 Q Try to flag the officers?

1 A Exactly.

2 Q Okay, all right. And then, based on you ringing the
3 doorbell, did anybody from your family come out?

4 A Yes, sir. My -- the rest of my family did.

5 Q Okay. What did they do when they got out?

6 A My mother was crying. So was my -- my sister and my
7 step-dad were in distress.

8 Q Okay. And did you stay with your cousin?

9 A Yes, I did.

10 Q And did you continue to try to put pressure?

11 A Yeah, I continually held the -- the t-shirt there.

12 Q All right. And then, your family members, did they
13 come nearby --

14 A Yes, sir.

15 Q -- to where you were?

16 A Yes.

17 Q You described them as distressed?

18 A Yes.

19 Q Okay. And then did the police make it to the scene?

20 A Yeah, I believe the police officer was there first,
21 then the ambulance.

22 Q Okay. What did the police officer do when he got
23 there?

24 A He instructed me to continue, like, holding the --
25 holding the t-shirt, like, onto my cousin's head, again, to

1 try to stop the bleeding.

2 Q And then did the paramedics arrive?

3 A Yes.

4 Q Okay. Did they come and take over for you?

5 A Yes.

6 Q What did they do?

7 A I -- the guy -- one of the paramedics just -- one of

8 the paramedics took hold of the T -- like, the pressure for

9 me, and I'm not really sure exactly what the details were

10 after that.

11 Q Okay.

12 A I kind of just backed away.

13 Q And when you backed away, did the paramedics take

14 over?

15 A Yes, pretty much.

16 Q Okay. Did you eventually get yourself a t-shirt?

17 A Yes, I did. I instructed my sister to get me a

18 t-shirt and a slipper. At the same time, I kind of didn't

19 want her to see anything; the scene, I guess.

20 Q And what was your concern about your sister? Why

21 were you concerned about your sister?

22 A She's autistic --

23 MR. SANFT: Your Honor --

24 THE WITNESS: Sorry.

25 MR. SANFT: I'm going to object to this line of

1 questioning as being irrelevant and highly prejudicial.

2 THE COURT: Do you want to approach?

3 MR. SANFT: Yes.

4 (Bench conference)

5 MR. SANFT: I don't understand the relevance of what
6 we're getting in here about -- I mean, it's nothing to do
7 about whodunit; it's not about preserving evidence. I'm not
8 quite clear why we hear about an autistic --

9 MR. PESCI: Well, I don't know where the defense is
10 going. And in the body-worn camera, there's evidence of
11 people acting understandably very emotionally, and I think
12 that that's an added layer to the emotional reaction that's
13 based on her condition, and, you know, that's why I'm trying
14 to get that out, so.

15 MR. SANFT: But I think that's more prejudicial than
16 probative in terms of what exactly you're trying to do with
17 that. I don't understand what the purpose of that is. How
18 does that go back to the issue of who did what in terms of
19 this person dying?

20 MR. PESCI: Because he's trying to get her out of
21 the scene, and so we've got tons of people in the scene that
22 are not responding right away. If you remember the video, the
23 officer's telling them repeatedly to move back, and some don't
24 move back right away. And so that can be some explanation as
25 to -- but I'm not going to stand up and say, convict him

1 because his sister's autistic.

2 THE COURT: Right. Okay, I'm going to allow it.

3 Does anybody else want to say anything?

4 MR. RUGGEROLI: No, Your Honor.

5 THE COURT: Okay.

6 (End of bench conference)

7 THE COURT: Okay, you may proceed.

8 MR. PESCI: I'm sorry, Your Honor?

9 THE COURT: You may proceed.

10 MR. PESCI: Okay, thank you.

11 BY MR. PESCI:

12 Q Did you -- if I heard it correctly, did you say your

13 sister brought out to you a shirt?

14 A Yes, sir.

15 Q And did you say sandals?

16 A Yes, slippers.

17 Q Kind of like slippers for --

18 A Flip-flops, yes.

19 Q Okay, all right. And then were there other officers

20 that arrived?

21 A I believe so.

22 Q Okay. Did officers speak with you and with your

23 family members outside in the area in front of the parked

24 cars?

25 A Mostly around this area here. I believe their main

1 concern was to preserve the evidence, as I recall them telling
2 me.

3 Q That was my point. Did they move you away from the
4 area where your cousin was to a different location to the
5 side?

6 A Yes.

7 Q In fact, eventually, didn't they ask you to even --
8 to go -- did they ask permission to go into your house --

9 A Yes, they did.

10 Q -- to speak with you?

11 A Yes.

12 Q And did they speak with you inside?

13 A Yes, sir.

14 Q All right. And in speaking with you, did you
15 recount to them some of the things that you've just told us?
16 Did you tell them about the things that you just told the
17 jury?

18 A Oh, yes, yes.

19 Q Okay. And did they ask to see some things based on
20 what you had told them?

21 A Yes, sir.

22 Q Okay. So I'm going to show you what's been
23 previously shown to defense counsel as exhibits -- try and get
24 them in order. Okay, so 30, 31, 32, 35, 36, 72, 76, 77, and
25 78.

1 MR. PESCI: I don't believe that there are any
2 objections.

3 MR. SANFT: No, Your Honor.

4 MR. RUGGEROLI: No, Your Honor.

5 MR. PESCI: Move for the --

6 THE COURT: They're admitted.

7 (State's Exhibits 30, 31, 32, 35, 36, 72, 76, 77, and 78 are
8 admitted)

9 MR. PESCI: Thank you.

10 BY MR. PESCI:

11 Q I'm going to show you these in the same way we did
12 that, okay? So earlier, you talked about your cousin going
13 through the mail in the car. Showing you State's Exhibit 30,
14 do you recognize that car?

15 A Yeah, this is the CRV --

16 Q Okay, is that --

17 A -- we still have.

18 Q Is that the car your cousin drove?

19 A Yes, sir.

20 Q Looking at State's 31, is that the back seat area of
21 your cousin's car?

22 A Yes, sir.

23 Q And then, kind of focusing in on State's 32, is that
24 a close-up of some of the items on the ground or the
25 floorboard in the backseat area?

1 A Yes.

2 Q All right. And then, showing you Exhibit 35, do you
3 recognize that?

4 A Yes, that's his ID.

5 Q Okay. And that's your cousin, Gabriel?

6 A Yes, sir.

7 Q That you refer to as Kevin?

8 A Yes.

9 Q All right. And then, showing you State's Exhibit
10 36, do you recognize that item?

11 A Yes, I saw this a couple days after.

12 Q Okay. What is -- is it Fukumimi Ramen?

13 A It's a ramen shop -- restaurant --

14 Q Okay.

15 A -- by Eastern.

16 Q And was your cousin someone who would go there
17 often?

18 A Yes, yes.

19 Q All right. And then, this receipt's dated on August
20 the 8th of 2017 at about 8:59 P.M.?

21 A Yes.

22 Q Is that correct? Okay. Showing you Exhibit 78.
23 When you were out there working on your cousin, did you see
24 items of mail that had been ripped?

25 A Yes. He often does that with -- with junk mail.

1 Q Okay. And then, showing you State's 77, next to the
2 items that are ripped, whose glasses are those?

3 A Those are his glasses.

4 Q Okay. And then, showing you State's 76, whose phone
5 is that?

6 A That's his iPhone.

7 Q All right. Now, earlier, you spoke of a retaining
8 wall. Is that where this iPhone is located?

9 A Yes, sir.

10 Q All right, so is that down the slope of that third
11 parking area where the CRV was parked?

12 A Yes.

13 Q Okay. And that's your cousin's?

14 A Yeah, it's his phone.

15 Q Did you see how it got there?

16 A I remember it was -- I was still calling -- no.
17 After I rang the doorbell, I believe my mother or someone in
18 the family started calling his phone. It was still in his
19 hand. It was -- it was ringing --

20 Q Okay.

21 A -- while I was holding the -- his wound.

22 Q So when you were working on your cousin, you saw
23 this phone in your cousin's hand?

24 A Yes, sir.

25 Q And so, when people inside were calling, your

1 cousin's phone was ringing?

2 A Yes.

3 Q All right. Do you know how it got from your

4 cousin's hand to that retaining wall?

5 A I remember it got -- like, the paramedics picked him

6 up on the stretcher, and I recognized it, like, just drop, and

7 someone bent over to pick it up and place it on the retaining

8 wall.

9 Q Okay. Showing you -- speaking of phone -- phones,

10 State's 72, do you recognize that phone?

11 A That's -- yes. That's my aunt -- his aunt, my

12 mother, calling him. That's -- this is me calling him.

13 Q Okay. So that's a screenshot of your cousin's

14 phone?

15 A Yes.

16 Q Okay. And so you -- you said that -- JP, is that a

17 nickname that you have?

18 A Yes, that's my initials for --

19 Q Okay.

20 A It's my first and middle.

21 Q And you were calling your cousin at 12:10 A.M.?

22 A Yes, sir.

23 Q All right. And then, this is pictures being taken

24 on Wednesday, August 9th at 4:51 A.M.?

25 A Yes.

1 Q So the police are talking to you, and they're
2 getting this information from your phone -- or from your
3 cousin's phone?

4 A Yeah, from my cousin's phone.

5 Q Right. But that's based on the information that you
6 gave to them that you had called him and that your aunt had
7 called him?

8 A Yes. My mother, his aunt.

9 Q I'm sorry. Your mother, his aunt. I apologize.
10 And then did you speak to the police and tell them all these
11 various things that you've been telling us here today?

12 A Yes, sir.

13 Q Okay.

14 MR. PESCI: Court's indulgence.

15 BY MR. PESCI:

16 Q I want to go back to Exhibit 31. Do you recognize
17 what any of those items are in the back seat?

18 A He usually plays the -- those tabletop games, like,
19 you know, Dungeons and Dragons, Warhammer 40K, all that.

20 Q Okay.

21 A And those are just figurines. There's like a lot of
22 them. That's -- what do you call it? That's like -- that's
23 like foam to like keep -- it usually cuts as a shape just to
24 keep like those things secure.

25 Q Okay.

1 A Like -- yeah.

2 Q So those items in the car, this foam, and this is

3 the -- the tabletop games that you referred to?

4 A Yeah, the figurines.

5 Q Okay, and that's what you knew that he enjoyed

6 playing?

7 A Yes, sir.

8 Q Okay.

9 MR. PESCI: Pass the witness. Thank you.

10 THE COURT: Cross-examination?

11 MR. SANFT: No cross, Your Honor.

12 MR. RUGGEROLI: I have no questions, Your Honor.

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

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

15 from your subpoena. Thank you for being here.

16 THE WITNESS: Thank you, ma'am.

17 THE COURT: And you may call your next witness.

18 MR. BROOKS: Your Honor, the State calls William

19 Speas.

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

21 raise your right hand, and face the Clerk.

22 WILLIAM SPEAS, STATE'S WITNESS, SWORN

23 THE CLERK: You may be seated. Please state and

24 spell your first and last name for the record.

25 THE WITNESS: My name is William Speas.

1 W-i-l-l-i-a-m, and then Speas, S-p-e-a-s.

2 MR. BROOKS: May I, Your Honor?

3 THE COURT: You may.

4 DIRECT EXAMINATION

5 BY MR. BROOKS:

6 Q Mr. Speas, how are you currently employed?

7 A Currently, I'm -- I'm retired.

8 Q And when did you retire?

9 A Two years ago.

10 Q And prior to that, how were you employed?

11 A I was Las Vegas Metro Police Department CSI.

12 Q And what -- what is that? What were your duties?

13 A Crime scene investigator. My jobs were to go out to
14 scenes, assist officers or detectives on the scene, document,
15 photographs, taking notes. Also, collect and protect evidence
16 to process for fingerprints.

17 Q And tell me -- tell me about the progression. So,
18 essentially, did you start as a CSA 1, or was that term not
19 even around when you started?

20 A Yes, it was.

21 Q Okay.

22 A I started out -- I went to a crime scene
23 investigation academy and graduated from that. I was a crime
24 scene analyst or CSA 1. Then, progressed to CSA 2, and then
25 to senior CSA, which is what I was when I retired.

1 Q And senior CSAs, would senior CSA typically do
2 different type of investigations than you would have done as a
3 CSA 1?

4 A We can do more complex crime scenes. Actually, as a
5 2, I did some pretty complex ones, too. It all depends on
6 manning.

7 Q Now, I want to turn your attention to August 9th,
8 2017. Do you remember an incident that brings us here to
9 court today?

10 A Yes, I do.

11 Q And were you part on an investigation that started
12 on that day and proceeded for a few days?

13 A Yes.

14 Q So tell me a little bit about when you were
15 initially dispatched, where you were sent.

16 A Okay. At -- we were sent to a resident on Dewey a
17 little after midnight.

18 Q And is that 5536 West Dewey Drive?

19 A That should be it.

20 Q And is that here in Las Vegas, Clark County, Nevada?

21 A Yes, it is.

22 Q Okay. So when you get there, tell me, as a crime
23 scene analyst, you show up; what do you do first?

24 A First, we meet with the detectives and we kind of go
25 hash out a little plan of what we want to do. I was the lead

1 CSI on this one, which meant I was the one that did reports
2 and photographs. So I started out, I would photograph the
3 entire scene as we saw it when we arrived. And then, later,
4 as we did search, we found pieces of evidence or evidence that
5 was right out there. They were marked, they would be
6 photographed again, showing where evidence was, and then we
7 photograph what the evidence was.

8 Q Okay. So when a CSI is eventually dispatched and
9 sent to a scene, is the victim typically still present?

10 A It -- it will vary. In this scene, the victim had
11 been transported.

12 Q So the victim had already been transported to UMC?

13 A Yes, prior to -- well, I'm not sure where, but prior
14 to our arrival, the victim had been transported.

15 Q Okay. And so, when you arrive, do you arrive with
16 another CSA? Not necessarily at the same time, but are you
17 kind of paired with someone?

18 A We arrive pretty much the same time. It was Ebony
19 Stephens.

20 Q Oh, sorry, that's a poor question. Yeah, did you
21 have like a partner this day?

22 A Yes, I did.

23 Q And who was that?

24 A That was Senior Crime Scene Analyst Ebony -- Ebony
25 Stephens.

1 Q And has she since retired?

2 A She -- yes, she has also retired.

3 Q Okay. So you kind of mentioned earlier -- forgive
4 me, I don't remember the word. Did you say you were primary,
5 and she was secondary, or what? How does that work?

6 A It -- it varies. We work as a team. Basically, I
7 was the one that, like I said, did photographs and report.
8 And in this place, she did evidence and diagram.

9 Q Oh, okay. So is that typically how it's broken up?

10 A It will break it up, yes.

11 Q And what does diagram mean?

12 A Diagram is just as it sounds. Diagram is just a --
13 she'll go out and she'll make a sketch of the area. She'll
14 measure out like landmarks, driveways, walls where a house is
15 located, and then just the whole -- basically, the scene.
16 Then she will go around where all the evidence is.
17 She'll find a point of reference, like the end of -- in this
18 case, I believe it was the end of a wall. And they'll say,
19 okay, this piece of evidence is so many feet west, so many
20 feet north of -- of this corner of the wall or whatever. And
21 she'll measure in all the pieces of evidence that we find
22 there so that we would supposedly be able to go back and place
23 them.

24 Q And so, you said diagram. Does that happen on every
25 case, or just on some?

1 A It happens on major cases, most -- we do those on
2 homicides and officer-involved shootings.

3 Q And when you said reference point, does she pick
4 like a chair, or does she pick something --

5 A No, she picks something that's permanent, stationed
6 in there. Nothing that can be moved.

7 MR. BROOKS: And Your Honor, I've shown all these
8 photos to defense. So at this point in time, may I approach
9 occasionally with different packets of the photos to work with
10 Mr. Speas?

11 THE COURT: Sure.

12 MR. SANFT: And Your Honor, just for the record, on
13 behalf of Mr. Robertson, we have no objection to their
14 admission at this particular time.

15 MR. RUGGEROLI: Same for Mr. Wheeler.

16 THE COURT: Okay. Do you just want to cite for the
17 record what you have?

18 MR. BROOKS: Yes. Exhibits 37 through 56.

19 THE COURT: Okay, they're admitted.

20 (State's Exhibits 37 through 56 are admitted)

21 MR. BROOKS: Exhibits 9 through 36. Some have -- a
22 couple have already been admitted with the last witness.

23 THE COURT: Okay, they're admitted.

24 (State's Exhibits 9 through 36 are admitted)*

25 MR. BROOKS: Exhibits 57 through 71.

1 THE COURT: They're admitted.
2 (State's Exhibits 57 through 71 are admitted)
3 THE COURT: They're admitted.
4 MR. BROOKS: Exhibits 72 to 80.
5 THE COURT: They are admitted.
6 (State's Exhibits 72 through 80 are admitted)
7 MR. BROOKS: And Exhibits 81 to 92.
8 THE COURT: And they are admitted.
9 (State's Exhibits 81 through 92 are admitted)
10 MR. BROOKS: And then, those -- that's with the West
11 Dewey address. The second one that I'll work with him later
12 on is 2 -- is the Bagpipe address, 215 to 229.
13 THE COURT: They're admitted.
14 (State's Exhibits 215 through 229 are admitted)
15 MR. BROOKS: And 230 to 234.
16 THE COURT: And they are admitted.
17 (State's Exhibits 230 through 234 are admitted)
18 MR. BROOKS: May I publish, Your Honor?
19 THE COURT: You may.
20 BY MR. BROOKS:
21 Q So, Mr. Speas, you were kind of talking about a --
22 that diagram. Do you recognize what's depicted here?
23 A Yes, this is a diagram that Ebony made.
24 Q Okay.
25 THE COURT: What exhibit is that?

1 MR. BROOKS: Oh, I'm so sorry. Exhibit 37.

2 BY MR. BROOKS:

3 Q And now, I kind of want to -- I want you to walk us
4 through, because you took the photos. So walk us through,
5 essentially, as I go through these photos, what you're doing
6 and why you're taking certain photos. Exhibit 10?

7 A Okay, this is a location photograph. I'll do some
8 that pan around the area. As you can see, the sky is kind of
9 a cobalt color. This was late at night; it was dark. What I
10 had done for this, I had taken a timed exposure, putting my
11 camera on a tripod, and then having my exposure for an
12 extended period of time, which you do for that color and
13 stuff. It wasn't quite that light; it was a lot darker.

14 Q Okay, I want to move to a different sort area and a
15 different zoom. On State's Exhibit 13, what are you doing
16 here?

17 A Okay. That moved in, this is like an RV driveway
18 that they have, and that is right there on the -- in front of
19 the house.

20 Q Do you recall that driveway being slanted?

21 A Yes, it's slanted from the west going up to the
22 east.

23 Q And you note that in your report. Why would you
24 note something like that?

25 A Just to -- well, as things could roll down. In this

1 case, we have apparent blood that's there; we had cartridge
2 cases. Anything that just could -- gravity would just take it
3 down that hill --

4 Q Okay, so when Ms. --

5 A -- incline.

6 Q When Ms. Stephens on the crime scene diagram is
7 noting where cartridge cases are found, that is where they
8 were static. But your -- when you're going to report and
9 noting the slant, is that why you're doing that, so that those
10 two could be used in conjunction?

11 A It could be. I just did it because that's what I
12 saw.

13 Q Okay. Exhibit 15?

14 A Okay. This -- if I can mark on here?

15 Q Yes, sir.

16 A All right.

17 Q With -- oh, with the mouse now.

18 A Okay. Right -- this area here, this is the
19 sidewalk, this is the cinder block wall, this is the opening
20 or the beginning of that little driveway.

21 Q Let me get you a different photo. Why were you
22 documenting here, 17?

23 A I was just documenting this apparent blood and these
24 -- also, we have some torn mail, and some apparent footwear,
25 and apparent blood that's also on the pavement.

1 Q And State's Exhibit 23, what is that?

2 A That's a vehicle that was parked at the end of the
3 driveway, at the east end.

4 Q Exhibit 24?

5 A That's just another view of it, showing that the
6 passenger door is slightly open -- or is open.

7 Q Now, tell us about the -- in the diagram, Ms.
8 Stephens notes cartridges. I want you to explain to us what
9 we're seeing in 38. What are those yellow markings there?

10 A Okay. That you can see, right back here is one --
11 these are little -- called tent markers. They're numbered
12 tent markers. This is just a view going back to kind of show
13 where they're at. I'll do a series of these photos as they
14 come in, so you'll be able to read -- read the tent markers,
15 read the numbers on them. What they do is they mark the
16 location of pieces of evidence, and they -- the numbers
17 corresponds to the numbers that are given to -- to each piece
18 of evidence. Like, Tent Marker number 1, Evidence Item number
19 1.

20 Q All right. Showing you a different angle, do you
21 see in State's Exhibit 41 those same tent markers?

22 A Yes, I see -- yes.

23 Q All right. I want to zoom-in on just some of the
24 tent markers, and then what essentially they were. So here's
25 State's Exhibit 45. What is that?

1 A That is a .22 caliber cartridge case.

2 Q And in State's Exhibit 44, is that what it looked
3 like prior to you putting the tent marker there?

4 A Yes, it is.

5 Q Now, after you've taken those photos without
6 disturbing it, what do you do here in State's Exhibit 46?

7 A What I did, after I had photographed it in place and
8 showed where it was, I placed it on top so you were able to --
9 I was able to photograph the headstamp. As you can see -- can
10 we enlarge that?

11 Q Let me see if I can.

12 A Yeah. It's -- there is a letter C on there. It's a
13 small cartridge case. .22s don't normally say .22 caliber,
14 but the "C" shows who the manufacturer is.

15 Q Now, I want to show you Exhibit 50. What is that?

16 A That's the headstamp of the .45 caliber cartridge
17 case.

18 Q And was that Item 2?

19 A Yes.

20 Q Showing you Exhibit 53, what is that?

21 A That's another .45 caliber cartridge case.
22 Different headstamp, but the same caliber.

23 Q And lastly, Exhibit 56?

24 A Again, a .45 caliber cartridge case. Also a
25 different headstamp, but same caliber.

1 Q Okay. See if you can then, with that mouse -- and
2 then we'll put back up Exhibit 37. And here, Ms. Stephens has
3 labeled 1, and then 2 through 4.

4 A Yes.

5 Q So could you use that mouse and tell us where each
6 thing would have been?

7 A Okay. Number 1, which was the .22 caliber case, is
8 right here. That is like right at the bottom of the -- looks
9 like the bottom of the incline, going up into the -- want to
10 make sure exactly where the incline comes in right here. But
11 it's right at the opening of the -- of the driveway here,
12 because here's the wall. It's right here near a retainer
13 wall.

14 Our Item number 2 is out here in the street;
15 cartridge case. Item number 3, another cartridge case, is
16 right here. And Item number 4 is right here, kind of on the
17 walkway.

18 Q Perfect. Now that we've looked at that, I'm going
19 to show you Exhibit 39. And I'll try to zoom-in a bit.

20 A Yeah, I can -- I can --

21 Q Can you --

22 A I can make these out.

23 Q Can you see what you just described to us?

24 A Okay. Like, here's Item number 1 again, the .22
25 cartridge case right -- here it is, right there at the start

1 of the incline. Number 22 out in the street -- number --
2 number 2, which is a .45 out in the street. Number 3 is right
3 at the entrance. And number 4 right here on the walkway or
4 the little sidewalk where it curves up.

5 Q And now, you weren't in charge of impounding; that
6 was Ms. Stephens?

7 A Yes.

8 Q Okay. So how long were you guys still at the -- at
9 the scene? Do you know? Were you guys in and out in 15
10 minutes?

11 A I -- no, no, no. This is an all night thing, pretty
12 much.

13 Q Okay. So were you there even when the sun rose?

14 A I believe so.

15 Q When the sun rose, did you take additional photos?

16 A Yes.

17 Q Showing you State's Exhibit 57. Oh, let me zoom
18 back out.

19 A Okay.

20 Q Is that -- is that you who took that?

21 A Yes.

22 Q All right. I want to show you, when the sun was up,
23 did you guys have a little more light, and were you able to
24 find something that you didn't see the night before?

25 A Yeah. This is not unusual on a crime scene, is

1 we're working in the dark and searching for things as small as
2 cartridge cases, or bullet, or bullet fragments in the dark,
3 and then when the sun comes up and we have a lot of light,
4 we'll find additional stuff. That's one of the reasons we
5 would stick around and we would search. And we were
6 constantly searching as we were going around photographing and
7 -- and looking at the scene.

8 Q So I want to show you State's Exhibit 63. Do you
9 see a cone there?

10 A Yes, it's a cone. It's right -- right here next to
11 this palm tree.

12 Q Now -- and is that the car in the left side of that
13 photo --

14 A Yes.

15 Q -- to help us orient us where we are?

16 A So that would be towards the east end of the
17 driveway, and then over into the planter area.

18 Q All right. Now, I want to zoom-in on that cone in
19 State's Exhibit 64. Why did you put that cone there?

20 A That would be to -- trying to see if that's it. The
21 cone was placed to mark, I believe, a bullet or bullet
22 fragment.

23 Q Okay. Now, it's not really clear because of that.
24 So now the cone's moved away. I'm going to zoom-in a bit in
25 State's Exhibit 62. Do you see now why you placed the cone

1 there?

2 A Yes, it was a bullet there.

3 Q Okay. I'm going to zoom-out, show you State's
4 Exhibit 65. What are we looking at?

5 A We're looking at a bullet. It's a spent -- it's
6 called a spent bullet. This bullet has impacted something.
7 That's not what it looks like coming out of the -- when it's
8 fired out of the cartridge. And I took this photo because --
9 I can tell because it's my personnel number right here with my
10 initials.

11 Q And who's holding it? Do you know?

12 A It's probably Ebony.

13 Q Okay, and you're taking it. Who would have
14 impounded that?

15 A Ebony.

16 Q Ebony would have impounded it?

17 A Yes.

18 Q So if that bullet needed to be tested, it was in her
19 sole care and custody until being impounded, even though
20 that's your P number right in front of it?

21 A Yeah, just my P number, just to show I photographed
22 it. Yes.

23 Q After you leave the scene -- or I guess, while
24 you're at the scene, do detectives gain some sort of
25 information about a possible other place of interest?

1 A I was -- yes. I was -- well, in fact, I went to one
2 the next night. I'm not sure exactly when they got that, but
3 I know that I was dispatched for a search warrant the
4 following evening.

5 Q Okay. So -- oh, no, sorry. That morning, roughly
6 6:00 -- 5:00, 6:00 A.M. when you leave the West Dewey
7 location, do you go to a convenience store?

8 A Oh, yes.

9 Q And was that based on something that detectives
10 learned while --

11 A Yes. There was -- there was some conversation about
12 there may have been some suspects that were seen at this
13 scene.

14 Q But you at least were told to go document just the
15 front?

16 A Yeah. It was right next to our lab, and I went and
17 photographed just the scene in case this came up.

18 Q Showing you State's Exhibit 71. Do you recognize
19 that?

20 A Yes.

21 Q Is that the convenience store you went to?

22 A Yes, it is.

23 Q Now, I want to ask you, back at the scene -- and
24 I'll represent that on Ms. Stephens's diagram, this says
25 "Cigarette butts" here in State's 73.

1 A Okay.

2 Q How do you -- how do you know? What is it there?

3 A Those -- we have them marked also with cones there.

4 Q Okay. And that's -- why would that be of interest

5 to you?

6 A Well, we will look on a scene like that, and we'll

7 look -- if we find cigarette butts, they are a good source of

8 DNA, especially through the filters on those, in case a person

9 of interest were to be smoking a cigarette and throw it down.

10 Q So that's why that would have been documented?

11 A Documented and collected.

12 Q And Ms. Stephens would have impounded that?

13 A Yes.

14 Q Okay. And then did you learn that there was a lot

15 of foot traffic around the victim?

16 A Yes. There was foot traffic around the victim

17 because, as he was there after he had been shot, first

18 responders showed up; paramedics, police -- or not --

19 paramedics, fire department.

20 Q And did you have the opportunity to take some

21 photographs of the people who were around the body?

22 A Yes. Because we found footwear prints there, we

23 took photographs of -- took photographs of the individuals and

24 the soles of their feet to -- so they could be compared to

25 footwear impressions that were -- or footwear prints that were

1 found on the pavement.

2 Q And is there a word for that that you would use?

3 A Just footwear comparison, or?

4 Q I guess, if it's the first responder and it's the
5 firefighter or the paramedic who picked the victim up and put
6 him on the gurney, if you're taking a photo of his shoe, why
7 are you doing that?

8 A We call them -- for elimination, just in case --
9 just to show that it -- it's not him.

10 Q Okay. So in State's Exhibit 81, we see some
11 firefighter there. And then, in State's Exhibit 83, what is
12 that?

13 A That's the sole of his shoe.

14 Q Okay. State's Exhibit 84, is that a paramedic?

15 A Yes.

16 Q And then, would you have also taken, in State's
17 Exhibit 86, the bottom of his shoe?

18 A Yes.

19 Q Additionally, in 87, so Exhibit 87, is that a
20 flip-flop sandal thing?

21 A Yes, a family member that had gone out to the scene,
22 too, and we took photos of the shoe that they were wearing.

23 Q And then, if you could just describe, I guess, for
24 the ladies and gentlemen of the jury, in 90, is that what you
25 were working on trying to eliminate?

1 A Yes.

2 Q All right. A few days later, does another location
3 become of interest in this investigation?

4 A I believe it was the following night.

5 Q It was the following night, August 9th, 2017,
6 around, what, 11:00 P.M.?

7 A Yes. It was not too long after I arrived to work.

8 Q Okay. And where were you dispatched?

9 A I was dispatched to a house on Bagpipe.

10 Q Is that 919 Bagpipe Court?

11 A Yes.

12 Q Here in Las -- North Las Vegas area?

13 A Yes.

14 Q All right. And I guess, forgive me, I didn't ask
15 this on the last one. When you initially arrived on the
16 scene, do you get some direction from detectives as far as
17 what's of interest; what you guys are looking to document?

18 A Yes. We'll -- we'll have a conference with the
19 detective or the police officers, whoseever the lead in there
20 when we arrive.

21 Q Do you remember who kind of the detectives were at
22 that initial Dewey scene that we talked about?

23 A I know there was -- I believe an Officer Jaeger, and
24 there was a different one. One of the other officers came to
25 us -- came with us on the night of the search warrant was the

1 lead. I don't remember exactly. It's two-and-a-half years
2 ago. I don't remember exactly which officers are there.

3 Q No problem. And at the 919 Bagpipe location, do you
4 recall which detective would have been at that location?

5 A I don't recall the name right now. It's in my
6 report.

7 Q If Detective Cook is in your report, is that --

8 A Yes.

9 Q Okay. So you get to that location. And tell us,
10 when a search warrant has been executed on an apartment or a
11 residence, do you go in while it's being executed? What --
12 what -- at what point do you go in and start taking photos?

13 A What I will do there is, normally, I'll go in, and I
14 will take photos of the scene. I'll take photos of what it
15 looks like. Officers will -- the location of evidence, I'll
16 take pictures of the search warrant, the returns, and anything
17 that's recovered there. Basically, I'm documenting the search
18 warrant and what's being done.

19 Q In State's Exhibit 215, although it says "19" up in
20 that corner, what was the residence?

21 A It would be in my report.

22 Q So if it's 919 in your report --

23 A Yeah.

24 Q -- is that just missing a number?

25 A That would be --

1 Q Okay. And then, showing you State's Exhibit 216,
2 are we just moving closer to the door here?

3 A Yes.

4 Q Okay. And then, 217, it appears you've gone
5 upstairs into the residence; is that correct?

6 A Yes.

7 Q All right. Tell us what we're looking at in 218.

8 A I'm not sure with this print and everything exactly
9 what we're --

10 Q Sure.

11 A -- you're referring to.

12 Q So let me show you three photos in succession, and
13 then you tell me what you were doing as the CSA. So that was
14 218, now 219, and then 220.

15 A Okay. This is -- I'm going -- this is just going
16 into the bedroom. And then, on the bed, we have a pink
17 backpack.

18 Q Okay. So that was kind of a progression of how you
19 would have walked once you got up the stairs --

20 A Oh, yes.

21 Q -- into a certain bedroom?

22 A Yes.

23 Q All right, and then you mentioned the pink backpack.
24 Let's go to State's Exhibit 222. Is that just a close-up?

25 A That's just a close-up of it.

1 Q Was there something of interest inside this
2 backpack?
3 A Yes.
4 Q What was it?
5 A It's a handgun.
6 Q And is this -- Exhibit 223?
7 A Well, that's a little dark, but yeah, there's a
8 handgun in there.
9 Q Yeah. I'm color-blind and that doesn't look
10 correct. Let me show you a different one in 224.
11 A Okay. That's the handgun that was recovered from
12 the bag.
13 Q So it was taken out of the bag, and that's --
14 A Yes.
15 Q -- that's why the previous photo had it in there?
16 A The reason it's all black in this area, it's in a
17 holster. It's in a black canvass holster.
18 Q And that's how you document it initially?
19 A Yes.
20 Q Would you then take it out in like State's Exhibit
21 226?
22 A Yeah, I did it in stages, and that's the handgun as
23 it's pulled out.
24 Q I want to show you 228. What are you doing here?
25 Why that photo?

1 A Okay. This -- I did a download just to show the
2 cartridges. These are the unfired cartridges that went into
3 it. This is the magazine. It came out of the bottom here in
4 the handle, the magazine well. As you can see, there's six
5 cartridges right here. Those came out of the magazine.
6 Sometimes, if there's one in the chamber, which is up here, I
7 will place that bullet in my photograph up here. This case, I
8 didn't, which means there was just six in the magazine; there
9 was none in the chamber.

10 Q And how many rounds did that magazine hold?

11 A 40 -- I'm not -- possibly seven or eight. Usually,
12 this is around seven. I'm not sure exactly. I didn't load it
13 all the way, and I didn't see any markings on this.

14 Q Now, would it have been in your report, or would
15 that be something that the firearms expert would have done?

16 A Firearms experts would have more information on
17 that.

18 Q Okay. And then, 229, what is that?

19 A Okay. That is showing the headstamps of the unfired
20 cartridges that came out of that magazine, and in this case,
21 they're all the same. They're all RP45 Auto; they're .45
22 caliber cartridges.

23 Q So that Interarms Star .45 caliber handgun, do you
24 impound it into evidence?

25 A Yes.

1 Q Would it stay in your sole care and custody until
2 being impounded into evidence?

3 A It would be either in my care and custody, or it
4 would either be under lock and key in a locker and in a locked
5 room until it was ready to be impounded. Once it was
6 processed and it was packaged up, it would be put into a room
7 that I couldn't even get into. That's where it would be
8 picked up by the evidence vault and taken away.

9 Q So did you do something forensically to this firearm
10 prior to impounding it?

11 A Yes. I swabbed the firearm for possible DNA
12 evidence, and then I also chemically processed the handgun and
13 the magazine for possible latent prints.

14 Q Okay, so explain that to us. You swabbed it for
15 DNA. How would that process --

16 A Okay. It's like a big Q-tip. It's slightly
17 dampened. On the handle where it has like a textured grip or
18 checkered grip on the handles, which can actually kind of peel
19 off our small epithelial cells from the palm, which is good
20 for DNA evidence.

21 Also, on the trigger, and on the hammer, and on the
22 slide, they all have little sharp edges or have -- so you can
23 grip them, but they also peel off little cells from the palm
24 of the hand. And that's why I was swabbing those areas, in
25 hope to collect possible epithelial cells or for DNA evidence.

1 Q And would that have been impounded under your P
2 number?

3 A Yes.

4 Q Additionally, did you swab the magazine?

5 A Yes. The magazine, I take it, and I swab it at the
6 base where it gets -- if you've ever seen in the movies where
7 the guy puts a gun in and he kind of punches it on the bottom,
8 that's the base. Also, at the top is where you push down the
9 cartridges to load -- load them into the magazine. There's
10 kind of like some sharp edges or -- that will also take off
11 epithelial cells.

12 Q When you said you processed these for prints, were
13 there any results?

14 A There was negative results.

15 Q Okay, and how would you have processed it?

16 A What I did is called a -- well, it's super glue,
17 cyanoacrylate fuming, but super glue fuming. They're put into
18 a tank which has got a humidity set into it, and then there is
19 a little pan of super glue that is heated in there. Once the
20 super glue fumes heat up, they adhere to fingerprints that --
21 they can adhere to fingerprints that are on there and make
22 them visible.

23 Then, I used a stain called Rhodamine 6G, which, if
24 they found fingerprints and everything, it would make them
25 more visible. And I did that to those two items and found

1 nothing on it. It's not unusual for handguns to be very bad
2 for fingerprints.

3 Q And did you impound any other items from this 919
4 Bagpipe house?

5 A I would have to look at my thing. I know I -- I did
6 the -- I had the swabs, I had the handguns, I had the
7 cartridge cases, I had the --

8 Q Holster?

9 A The holster, yes.

10 Q The bullets?

11 A Or -- yeah, cartridges.

12 Q Did you also do some Air Jordan shoes?

13 A Yes, yes. Excuse me. There was a pair of red Air
14 Jordan athletic -- high-top athletic shoes. And those were --
15 I got from under the -- under a desk, in I believe the same
16 room.

17 Q And so, kind of how you just said that those things
18 were impounded under your P number at that 919 Bagpipe house,
19 you know how we went through all the cartridges at the West
20 Dewey address; we went through --

21 A Yes.

22 Q -- the cigarette butts? Would those have been
23 impounded under Ebony Stephens's P number, which is 5158?

24 A Yes.

25 Q And that would include the four cartridges; the

1 bullet that you found in the morning?

2 A And the bullet fragment.

3 Q And the bullet fragment. Oh, okay. So the bullet
4 that we saw in the grass there --

5 A Yes.

6 Q -- was there also something else that you just
7 referred to?

8 A Yes, there was a bullet fragment. Bullets, when
9 they're fired, if they hit something hard, they hit -- hit the
10 -- if they come down, they ricochet, or if they hit the
11 cement, or actually, if they hit a body, hit bone or
12 something, they can fragment, and they a lot of times will not
13 stay intact.

14 Q Okay. So that will be impounded, but oftentimes not
15 tested because it's so small?

16 A Well, it can be test -- tested in which way? Are
17 you talking for identification? For --

18 Q Yes.

19 A It would all depend on the size of the fragment, on
20 what they have. A lot of times, they'll have copper that --
21 they'll have a lead core with copper wrapped around it for the
22 bullet, and the copper will have all the markings, but it will
23 peel off of it. That will be considered a fragment because it
24 doesn't have the whole bullet, but the striations will be on
25 the copper that I know that firearms identification can

1 sometimes get some info off of.

2 THE COURT: Okay. We're going to break right now
3 and take a recess.

4 During this recess, you're admonished not to talk or
5 converse amongst yourselves or with anyone else on any subject
6 connected with this trial, or read, watch, or listen to any
7 report of or commentary on the trial, or any person connected
8 with this trial, by any medium of information, including,
9 without limitation, newspapers, television, the internet, or
10 radio, or form or express any opinion on any subject connected
11 with this trial until the case is finally submitted to you.
12 We'll be in recess for 15 minutes.

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

15 (Court recessed at 4:01 P.M. until 4:14 P.M.)

16 (Outside the presence of the jurors)

17 THE MARSHAL: All rise for the entering jury,
18 please.

19 (Within the presence of the jurors)

20 THE MARSHAL: Thank you, everyone. Please be
21 seated.

22 THE COURT: Does the State stipulate to the presence
23 of our panel?

24 MR. PESCI: Yes, Your Honor.

25 THE COURT: Mr. Sanft?

1 MR. SANFT: Yes, Your Honor.
2 THE COURT: Mr. Ruggeroli?
3 MR. RUGGEROLI: Yes, Your Honor.
4 THE COURT: Thank you. You may proceed with your
5 direct.
6 BY MR. BROOKS:
7 Q Mr. Speas, just a couple last questions. Back to
8 that Dewey -- the primary scene, the Dewey Drive address, did
9 Ms. Stephens also impound a pair of eyeglasses with apparent
10 blood and a black fidget spinner?
11 A Yes.
12 Q And was one of the two cigarettes a Marlboro Red?
13 A Yes, it was.
14 MR. BROOKS: Thank you. Pass the witness, Your
15 Honor.
16 THE COURT: Cross-examination?
17 MR. SANFT: No cross, Your Honor.
18 MR. RUGGEROLI: Thank you, Judge. Need to get one
19 of the exhibits. If I could just --
20 THE COURT: Of course.
21 MR. RUGGEROLI: -- have Court's indulgence. 37.
22 (Pause in the proceedings)
23 CROSS-EXAMINATION
24 BY MR. RUGGEROLI:
25 Q Good afternoon. Is it Officer Speas?

1 A No, it's just Mr. Speas, if you want.

2 Q Mr. Speas. I'm going to show you State's 37. This
3 is that diagram. You're familiar with that, correct?

4 A Yes, I am.

5 Q Okay. Before we get into that, I want to back up
6 just a tad. When you're called out -- you said CSI, and I
7 think you were drawing a little bit of a distinction, just
8 maybe on time, between a CSA. Can you just clarify that
9 briefly?

10 A Okay. CSI -- and it's kind of become -- because of
11 the television program, everybody thinks of all of us as crime
12 scene investigators. We're actually called crime scene
13 analysts. The section is CSI; the actual individuals that
14 work in it are CSAs.

15 Q Okay, thank you. So when you come out, you have
16 certain tasks that you follow up on, and a lot of that is to
17 document, correct?

18 A Yes.

19 Q And then, do you do some independent investigation
20 of your own in looking for things, or do you just wait for
21 other officers, detectives, whoever to tell you where to do
22 your documentation?

23 A No, we search -- everybody searches.

24 Q Okay. Do you have like a special flashlight or any
25 other equipment that --

1 A I have a very bright flashlight, and then we would
2 do certain search patterns that -- you know, up, down, up,
3 down, and we're pretty thorough.

4 Q Okay. So looking at this State's 37, these numbers
5 correspond to the items that you found at -- at the scene and
6 documented, correct? So number 1, that's that .22 caliber
7 cartridge case?

8 A That's correct.

9 Q Okay. I don't think the State went through it, but
10 I did want to have you talk about it. This number 10, that
11 was a fidget spinner; is that right?

12 A Yes.

13 Q Okay. And then that would have been documented;
14 it's put on this diagram, correct?

15 A That's correct.

16 Q And then, you or -- is she your partner?

17 A She was a coworker.

18 Q Okay, and she's another CSA?

19 A Yes, she is.

20 Q And --

21 A Another senior CSA, yes.

22 Q Senior CSA, Ms. Stephens. One of the two of you
23 would have got the fidget spinner, and then impounded it, and
24 kept it under seal, and then --

25 A All of the -- all items of -- all items of evidence

1 were collected and secured, yes.

2 Q Okay. The car had the driver's side door open?

3 A Yes.

4 Q And it was like that when you arrived?

5 A Yes.

6 Q It's your understanding that it was like that at the
7 time? Nobody that responded that you're aware of would have
8 opened that door?

9 A No. When we arrived, that's the way it was.

10 Q Did you do anything to process the car for any
11 swabbing of DNA or processing for prints?

12 A Know we did a search. I do not recall.

13 Q Okay, so -- okay, break that down. You recall doing
14 a search?

15 A I recall we did a search in there.

16 Q And you did take some photos; we saw some of those?

17 A Yes.

18 Q But in terms of specifically swabbing the car for
19 DNA or for processing for prints, you're not sure?

20 A No, I don't believe we did.

21 Q And then, you did document the -- and I wanted to
22 have you clarify this, if you don't mind. The -- there was a
23 pool of blood located near number 13, correct, because that's
24 where that t-shirt was?

25 A Yes, it was right down at the bottom of the incline.

1 Q Could you use the mouse and just show the jury where
2 13 is, please?

3 A Right -- here's number 13.

4 Q Thank you. And so there was -- there was a pool of
5 blood that led down the slope of that embankment, correct?

6 A I believe it actually -- instead of going down the
7 embankment --

8 Q Right.

9 A -- it kind of came kind of south here.

10 Q And for the record, you're going from kind of top to
11 bottom?

12 A Yeah, top to bottom.

13 Q Thank you. You had noticed that there was a number
14 of footprints in the blood?

15 A We all noticed that, yes.

16 Q And so what you did was you tried to eliminate
17 certain prints of known contributors, including the firemen,
18 correct?

19 A First responders, yes.

20 Q AMR, correct? But you're not a footprint expert?

21 A No.

22 Q And so all you did was document it?

23 A We documented, and we looked, yes.

24 Q And you are aware that there are experts that would
25 testify potentially that would do an actual expert analysis of

1 footwear or impressions; you're not that guy though?

2 A I am not that guy.

3 Q Okay, thank you. How far was your perimeter, for
4 lack of a better word, in this exact location to look for
5 evidence?

6 A Hmm.

7 Q And before you answer that, I'll clarify. If you
8 could put the mouse on 11 and 12. Okay. Those were where the
9 cigarette butts were found?

10 A Yes.

11 Q And then, down back to 10 again, if you don't mind.
12 Correct?

13 A Yes.

14 Q Okay, but there are no other numbers on the street.
15 If you go to the east on the -- yes. That's Lindell, right?

16 A Yes.

17 Q Did you have information that there was a vehicle
18 located over there?

19 A I'm not sure when I heard, but I did know that there
20 was apparently a vehicle parked out in that area.

21 Q And I don't know if we saw any photos; I don't
22 recall any. Did you take any photos of that street at that
23 location?

24 A I took a photo of the street sign showing at the
25 corner, and that's for the location.

1 Q In terms of those numbers there, those are
2 documented pieces of evidence, correct?

3 A Yes.

4 Q And I don't see any numbers for anything located on
5 that east side over on Lindell Street?

6 A No.

7 Q Okay. Do you know how thoroughly that was searched?

8 A Been two years. I -- I know that we -- but this is
9 all conjecture. What's standard procedure, we would have
10 walked up and down, and we would have looked around the area.

11 MR. RUGGEROLI: I have nothing further. Thank you,
12 Your Honor.

13 THE COURT: Thank you. Any redirect?

14 MR. BROOKS: No, Your Honor.

15 THE COURT: Okay. Thank you very much for your
16 testimony here today. You may step down. You are excused.
17 Thank you for being here.

18 THE WITNESS: Okay.

19 THE COURT: You may call your next witness.

20 MR. PESCI: State calls Sergeant John Tromboni. May
21 I approach your Clerk?

22 THE COURT: Uh-huh.

23 THE MARSHAL: If you'll please remain standing,
24 raise your right hand, and face the Clerk.

25 JOHN TROMBONI, STATE'S WITNESS, SWORN

1 THE CLERK: You may be seated.

2 THE WITNESS: Thanks.

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

5 THE WITNESS: It's John Tromboni. J-o-h-n,
6 T-r-o-m-b-o-n-i.

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

8 THE COURT: You may.

9 MR. PESCI: Thank you.

10 DIRECT EXAMINATION

11 BY MR. PESCI:

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

13 A I'm a sergeant with the Las Vegas Metropolitan
14 Police Department.

15 Q How long have you been with Metro?

16 A Almost 14 years now.

17 Q Back in August, specifically August 8th and 9th of
18 2017, were you a sergeant at that time, or were you patrol?

19 A I was a patrol officer.

20 Q Okay. And what area did you patrol?

21 A Enterprise Area Command.

22 Q All right. What are the -- kind of the boundaries
23 of Enterprise?

24 A There's two sections. There's Ocean area, which is
25 Sunset south all the way to the M. And then, there's Sam

1 area, which is north of that all the way to Flamingo.

2 Q All right. The names Ocean and Sam, is that
3 something that, internally, you as police officers designate
4 for an area?

5 A Yes, they're sector beats.

6 Q All right, a sector beat?

7 A Yes.

8 Q What was your sector beat back in August of 2017?

9 A It was Ocean area.

10 Q I want to show you State's Exhibit 5, which has been
11 previously shown to defense counsel. Do you recognize that?

12 A Yes.

13 Q Is that a fair and accurate depiction of an aerial
14 of this area that you were describing?

15 A Yes.

16 Q Is Enterprise Area Command, a part of it, in this
17 photograph?

18 A Yes.

19 MR. PESCI: Move for the admission of State's
20 Exhibit 5.

21 THE COURT: Any --

22 MR. SANFT: No objection.

23 MR. RUGGEROLI: No objection.

24 THE COURT: It's admitted.

25 (State's Exhibit 5 is admitted)

1 MR. PESCI: And ask to approach?

2 THE COURT: You may.

3 BY MR. PESCI:

4 Q Looking at State's 5, tell us if you can in this
5 area where Ocean is.

6 A Ocean starts Sunset --

7 Q There's a mouse -- there's a mouse there. If you'd
8 grab the mouse.

9 A Oh, I can grab it? Okay, cool.

10 Q There you go.

11 A Pretty much Sunset all the way to the 15 and then
12 south is Ocean area.

13 Q Okay. And then, on August the 8th of 2017, were you
14 assigned to a call regarding a suspicious vehicle and/or
15 individuals in a certain area?

16 A Yes.

17 Q Okay, how does that work? How do you get assigned
18 to a call? What -- what happens?

19 A Oh, it all depends. If you're one of the units that
20 are clear, then dispatch automatically assigns you.

21 Q Okay. When you say clear, meaning you're not
22 currently working on a particular call, so you're open to take
23 a call?

24 A Correct.

25 Q All right. And on that particular night -- or the

1 early morning hours of the 9th, did you get sent to that
2 particular call about suspicious individuals and a vehicle?

3 A I believe I did eventually through -- through the
4 night when I was assigned to another call.

5 Q Okay. The other call that you were assigned to,
6 what was that?

7 A That was a 415A, which is a shooting.

8 Q Okay. So, the 415A came in after you got the
9 earlier call about a suspicious area -- or vehicle?

10 A Yeah, I'm not sure the timing. I'd have to look at
11 the CAD.

12 Q Okay. What is a CAD?

13 A The CAD is the details of the calls. It has times,
14 who's assigned, where you're assigned.

15 Q Okay, but you do recall going to a 415A?

16 A Correct.

17 Q And that is what?

18 A It's a shooting.

19 Q Okay. And do you remember where it was that you
20 responded to for that shooting?

21 A I do.

22 Q Okay, where was that?

23 A It was in the area of Dewey and Jones --

24 Q Okay.

25 A -- I believe, or Lindell, to be specific.

1 Q And when you responded to that area, what did you
2 do?

3 A I believe at that time, I took a perimeter spot,
4 just to block off traffic.

5 Q What does that mean, a perimeter spot?

6 A It's -- throughout a specific area, units take a
7 perimeter spot. It's pretty much a location of where you're
8 going to be if you have to direct traffic, stop traffic.

9 Q Showing you what's been admitted as State's 13.
10 When we look off on the right hand side of that exhibit, is
11 there some yellow tape?

12 A Yes, it looks like it.

13 Q Is that tape that will be set up to set up a
14 perimeter?

15 A That will --

16 THE COURT: Are you publishing 13?

17 MR. PESCI: Yes. Is it not in yet?

18 THE COURT: Okay, that has not been admitted --

19 MR. PESCI: Oh, I apologize.

20 THE COURT: -- so I just want to make sure.

21 MR. SANFT: No objection, Your Honor.

22 MR. RUGGEROLI: No objection.

23 THE COURT: Okay, it's admitted.

24 (State's Exhibit 13 is admitted)

25 MR. PESCI: Thank you. I apologize.

1 BY MR. PESCI:

2 Q State's 13. Do you see that yellow crime scene tape
3 off to the right hand side?

4 A Yes.

5 Q Okay. Now, is that an example of kind of the
6 perimeter that you were speaking of earlier -- a perimeter?

7 A That could be a perimeter location, yes. It just
8 designates -- sometimes the air unit tells us where to go
9 because they can see better from the aerial view.

10 Q Okay. And so you were assigned to a perimeter,
11 correct?

12 A Yes.

13 Q All right. And then, at some point, did you leave
14 that area or clear that call?

15 A Yes, I -- there was that other call that you were
16 talking about, that suspicious person or vehicle call.

17 Q Uh-huh.

18 A And I realized it was in our same area.

19 Q Okay.

20 A So I had them assign me to it so I can close it out.

21 Q All right. To close it out -- what happens to close
22 something out?

23 A Because it's something that we were already on
24 another call, so we know that vehicle or person that is on --
25 that was called in, they're not in that area, because we are.

1 So it was just for us to close that out.

2 Q All right, so that one was closed out at that point?

3 A Yes.

4 Q Okay. Now, did you leave this 5536 Dewey area that

5 we see depicted in State's Exhibit 5 and head back to your

6 area?

7 A Yes.

8 Q All right. So what's the dividing line between

9 Ocean -- and what was the other area?

10 A Sam area.

11 Q Sam area? And was the shooting in Sam or Ocean?

12 A It was in Sam.

13 Q All right. So you were in Sam; your normal area is

14 Ocean. Did you head south towards your area, Ocean?

15 A Yes.

16 Q Okay. Had you been at that location for some time,

17 that is, the 5536 Dewey area?

18 A Yes.

19 Q All right. Did you need to use the bathroom?

20 A I did.

21 Q Okay. Where did you stop to do that?

22 A Well, I was going to go to the nearest convenience

23 store, and from taking Jones south, the nearest one was right

24 there at Jones and Warm Springs.

25 Q All right. Would you mind, with the --

1 A Oh, sorry.

2 Q -- mouse, showing us Jones?

3 A Yeah. Coming down -- this is Russell here. Coming
4 down Jones, that would have been the first -- there's one
5 here, but instead of making a U-turn, I had to go, so that was
6 the first one I was going to go to.

7 Q Okay. And is that a Short Line Express convenience
8 store?

9 A Yes.

10 Q All right. Now, the town has expanded somewhat
11 since August of 2017; is that correct?

12 A It has, yes.

13 Q All right. So but at that time, was that the
14 closest bathroom for you?

15 A Correct.

16 Q All right. Are you familiar with an Officer Jose
17 Lopez?

18 A I am.

19 Q Was he also working that night?

20 A Yes.

21 Q And was he a part of the Ocean area?

22 A Yes.

23 Q Okay. Did the two of you actually both need to go
24 to the bathroom?

25 A I believe he did also, yeah.

1 Q Okay. All right. Now, we've heard some information
2 about body-worn cameras. Are you familiar with those?

3 A Yes.

4 Q All right. In anticipation of testifying, did you
5 review some body-worn camera?

6 A Yes.

7 Q Specifically, that of Officer Lopez?

8 A Correct.

9 Q And then, are you seen or depicted in Officer
10 Lopez's body-worn camera?

11 A I am.

12 Q Okay.

13 MR. PESCI: Your Honor, we have marked as State's
14 Exhibit 331 that video that's been shown to defense counsel.
15 I believe there's no objection.

16 MR. SANFT: That's correct, Your Honor.

17 MR. RUGGEROLI: He's testifying, right? You're
18 definitely bringing in the Clerk?

19 MR. PESCI: Yeah.

20 MR. RUGGEROLI: Yeah, no objection.

21 THE COURT: Okay. 331 is admitted.

22 (State's Exhibit 331 is admitted)

23 MR. PESCI: I would ask to publish 331.

24 THE COURT: You may.

25 (Video is played)

1 BY MR. PESCI:

2 Q Sergeant, is that you?

3 A Yes.

4 (Stopped playing of video)

5 MR. PESCI: Okay.

6 BY MR. PESCI:

7 Q At the very end, you're seen going inside of the
8 store; is that correct?

9 A Correct.

10 Q And is that a store inside of your area?

11 A Yes.

12 Q Okay. Do you often -- or, not often. Do you
13 sometimes speak with individuals inside of businesses inside
14 your area?

15 A Pretty much every night, yes.

16 Q Okay. So when you went in there, in addition to
17 using the bathroom, did you speak with the Clerk?

18 A Yes.

19 Q Did you ask him any questions?

20 A We usually just -- that night, yes. We -- I asked
21 if -- we must have struck up a conversation as far as his
22 evening, and then, that's pretty much it.

23 Q Okay. But from what he said -- without saying what
24 he said specifically, but from what he said, did it spark some
25 interest in you based on the shooting scene you had left?

1 A Yes.

2 Q Okay. Did he give you information that made you
3 want to see more from inside the store?

4 A Yes.

5 Q Okay. Did you ask him questions based on what he
6 had said to you?

7 A Yes.

8 Q What did you ask him?

9 A I had asked him about a description of people that
10 were in there, and a car that they were driving, if he knew
11 about it.

12 Q All right. Without saying what he said, did he give
13 you information in that regard?

14 A Yes.

15 Q And then, did you ask about video surveillance based
16 on what he told you?

17 A Yes.

18 Q Were you able to see that video surveillance?

19 A No.

20 Q All right. But did you ask him, that Clerk, to
21 obtain that video surveillance?

22 A If he could, yes.

23 Q All right. Did you remain there while that
24 surveillance was obtained?

25 A No.

1 Q Okay. Did he have to call for someone to get that
2 surveillance?

3 A Yes.

4 Q All right. The information that you received from
5 that store Clerk, did you pass that information along to other
6 officers?

7 A I did, yes.

8 Q All right. And the information that you had
9 received from him, did you think it could be connected from
10 the shooting scene you had already gone to?

11 A Yes.

12 Q And based on that, you passed that information
13 along?

14 A I did, yes.

15 Q Okay.

16 MR. PESCI: Pass the witness.

17 THE COURT: Cross-examination?

18 MR. SANFT: No cross, Your Honor.

19 THE COURT: Mr. Ruggeroli?

20 MR. RUGGEROLI: Judge, I have no questions. Thank
21 you.

22 THE COURT: Okay. Thank you very much --

23 THE WITNESS: Okay.

24 THE COURT: -- for your testimony here today. You
25 may step down, and you are excused. And you may call your

1 next witness.

2 MR. BROOKS: Your Honor, the State calls Nikolaus
3 Spahn.

4 THE MARSHAL: Please step up into the witness stand.
5 Remain standing, raise your right hand, and face the Clerk,
6 please.

7 NIKOLAUS SPAHN, STATE'S WITNESS, SWORN

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

10 THE WITNESS: Nikolaus Spahn. N-i-k-o-l-a-u-s.
11 Last name is Spahn, S-p-a-h-n.

12 DIRECT EXAMINATION

13 BY MR. BROOKS:

14 Q Mr. Spahn, I want to turn your attention back to
15 August 9th of 2017. Do you recall an incident that brings us
16 here to court today?

17 A Yes.

18 Q Back then, where were you working?

19 A Yes, I was.

20 Q Where?

21 A Short Line Express.

22 Q And where's that located?

23 A That's located on Jones and Warm Springs.

24 Q Tell me a little bit about -- I want to turn your
25 attention around roughly 11:30 P.M. that night.

1 A Um-hum.

2 Q Did something unusual happen?

3 A No, just a regular night. I work by myself, I work
4 graveyard, and I had four suspects come in my store that was
5 just out of the ordinary.

6 Q Well, sorry. You used the word "suspect." Just --

7 A I mean, like -- like, they just looked suspicious to
8 me because I was working by -- I'm working by myself. So as
9 soon as they came into my store, it raised a concern.

10 Q Was there just one thing in particular that raised
11 your concern?

12 A Yeah, they were just -- they were just -- a bad
13 vibe, more or less. They went in, looking around, not asking
14 any questions.

15 Q But was there something on one of the four
16 individuals that caused you concern?

17 A Yes, there was a holster on one of his sides.

18 Q And was it just a holster?

19 A As far as I know, it looked like a holster. I
20 couldn't really see a split -- clear image of a gun, but it
21 was a gun holster, and he used the restroom for about 15 to 20
22 minutes.

23 Q The person who had the --

24 A Correct.

25 Q And so did that cause you some concern, that the

1 person who had the gun --

2 A Yes.

3 Q -- was using a bathroom --

4 A Yes.

5 Q -- for an extended period of time?

6 A Yes.

7 Q You work graveyard?

8 A Correct.

9 Q And at this point in time, was that store -- did it

10 have a lot of regulars?

11 A I had my normal -- normal crowd of regulars that

12 came in on grave.

13 Q Okay.

14 A So when I seen a group of someone that wasn't out of

15 the regular, it raises concern, you know?

16 Q Were -- so these guys weren't regulars?

17 A No.

18 Q Okay. How often would you say during your time did

19 you work there?

20 A What do you mean?

21 Q How many years?

22 A I worked there for three years.

23 Q And during that time, how often would someone walk

24 in open carrying?

25 A Not very often. I mean, not -- here -- here and

1 there. I mean, not all the time.

2 Q Under ten? Under five?

3 A About ten, I'd say.

4 Q Ten? Each time, did it cause you a little concern?

5 A Yeah, of course.

6 Q Okay. So that's kind of what mainly sparks --

7 A Correct.

8 Q Okay. Do you do something while one of the regulars

9 is in the store?

10 A Yes, I drop all my money.

11 Q What does that mean?

12 A I drop all my money, meaning I take all my money out

13 of the register because I'm only supposed to have X amount of

14 money in my drawer per company. So when they came inside the

15 store, I had a regular in front of me. I dropped all my money

16 inside an envelope, and I put it in a safe drop, and I dropped

17 it.

18 Q Now, was that just out of precaution?

19 A Yes, out of precaution.

20 Q Get it out of your hands?

21 A Correct.

22 Q It turned out that no one ever used the gun, or

23 flashed the gun, or anything?

24 A No. I didn't feel threatened, there was no -- there

25 was no incident like that. It was just a gut instinct. I

1 just felt -- I just felt uncomfortable.

2 Q You never felt threatened; just gut instinct, and
3 you just --

4 A Just gut instinct.

5 Q Okay. At some point, do these four gentlemen leave
6 the store?

7 A Yes.

8 Q And then, do they stay around outside, or do they
9 just leave?

10 A When I seen them leave, and after I get done helping
11 the rest of my customers that were inside the store, I go
12 outside and I smoke a cigarette, and they're just sitting
13 there at the table, just hanging out at the table.

14 Q Did you get a chance to see what car they were in,
15 or what car they left in, or --

16 A They arrived in a white Mercury, I believe.

17 Q At that point in time, did you think it resembled
18 some other type of car?

19 A Yes, I thought a Crown Vic.

20 Q New or old?

21 A An older one.

22 Q Now, that was at around 11:30. I want to
23 fast-forward later into the night. At some point, do a couple
24 officers come in?

25 A Correct. About 12:15, 12:20.

1 Q Just to use the store?

2 A They just came in, stopped in, and said, hey, how's
3 your night going? And I was like, good, and I expressed what
4 happened. And then they're like, oh, okay. It raised a
5 little concern, and they started asking questions.

6 Q And do they ask specifically if you saw a vehicle?

7 A Yes.

8 Q What vehicle they were in?

9 A Yes.

10 Q At that point in time, does the officer's demeanor
11 kind of change?

12 A Yes. He told me to call my manager to get
13 surveillance tape, and I had to fill out a police officer
14 report.

15 Q Now, those two officers that you initially dealt
16 with, do they stay all night, or does some other detective
17 come later?

18 A Some other detective comes in the morning.

19 Q And is that who gets the video surveillance?

20 A Correct.

21 Q Have you had an opportunity to view these video
22 surveillance clips about this time frame that we're
23 discussing?

24 A No.

25 Q Did you have the opportunity to come in and meet

1 with me and Mr. Pesci?

2 A Yes.

3 Q And we showed you some video clips?

4 A Yes, yes.

5 Q And is -- was that video --

6 A Yes.

7 Q -- surveillance clips --

8 A Sorry.

9 Q -- of this time period?

10 A Yes.

11 Q Did you mean at that night, you didn't?

12 A At that night, no, I didn't.

13 Q Okay.

14 A Because I had no access to it.

15 Q Do these video clips fairly and accurately depict

16 the interaction that you were referring to during that time

17 period?

18 A Yes, it does.

19 Q Okay.

20 MR. BROOKS: Your Honor, having shown defense

21 State's Proposed Exhibit 328, we'd move for admission.

22 MR. SANFT: We have no objection.

23 MR. RUGGEROLI: No objection.

24 THE COURT: Okay, it's admitted.

25 (State's Exhibit 328 is admitted)

1 BY MR. BROOKS:

2 Q Now, Mr. Spahn, we're going to just play a couple
3 different clips; we won't go through all of it. Fair to say
4 I'm not going to hear any sound here?

5 A No.

6 (Video is played)

7 BY MR. BROOKS:

8 Q Is this a camera posted on the outside of your
9 store?

10 A Yes, it is.

11 Q Is that the gas station across the street from your
12 store?

13 A Yes.

14 Q You saw a white vehicle just pull into a parking
15 spot there?

16 A Correct.

17 Q Is that the white vehicle you later tell detectives
18 and officers about?

19 A Yes.

20 Q Now, initially, does one individual come in, and
21 then later on, all three come in?

22 A Yes.

23 Q And by later on, just a few seconds, minutes later,
24 right?

25 A A few seconds later, yeah.

1 Q Okay. I'm going to switch to another angle. Where
2 is this camera placed? Like, what are we looking at?

3 A This camera is faced right in front of the store.
4 As soon as you walk in, there's a monitor right in the --
5 right in the view.

6 Q So you saw one individual just walk in, and now two
7 more are behind him. Do you recognize something in this video
8 picture that caused you concern that night?

9 A Not in that -- that particular direction -- view of
10 that picture, but yes. In person, yes, he was the person
11 behind him.

12 Q Oh, okay. So you're saying that you didn't have
13 this view that night?

14 A That's from the camera view. I was sitting -- I was
15 sitting live, direct, so I seen that -- I seen a better view.

16 Q Let's get one that's a better depiction of your
17 view. Do you see yourself there?

18 A Yes.

19 Q See the person that's right in front of you at the
20 register, kind of like you should be helping him?

21 A Um-hum.

22 Q Do you recognize that person?

23 A Yeah, that's my regular. That's when I was making
24 the money drop; doing the safe drop.

25 Q Oh, okay. So you were supposed to be helping him,

1 but instead, you wanted to do the money drop?

2 A Yeah, I let him know. I gave him -- I warned him.
3 I was like, I got to make a drop, give me a second.

4 Q Okay.

5 A He said, okay, no problem, because I'm by myself.

6 Q And I'm sorry, I worded that poorly. I wasn't
7 trying to say you weren't doing your job when I said "supposed
8 to." I'm sorry. Behind your regular, what have we seen here?

9 A Three more customers.

10 Q Specifically, the three people behind him?

11 A Three people behind him.

12 Q Are these the four men that entered the store?

13 A Yes.

14 Q And is that man right there with that thing on his
15 hip, is that the open carry that you were discussing?

16 A Yes.

17 Q What are you doing?

18 A I'm making a safe drop.

19 (Stopped playing of video)

20 BY MR. BROOKS:

21 Q Now, Mr. Spahn, when you do that money drop, at no
22 point does someone pull a gun or say, hey, give me that?

23 A No.

24 Q No? Okay. And then, eventually, do those four
25 guys, including the one who has the gun on his hip, attempt to

1 buy stuff or do buy stuff?

2 A They bought a water.

3 Q Does one of them try to buy something, and you say
4 no?

5 A Yes. They tried to buy a tobacco product, and they
6 didn't have an ID, so I said no. I refused to sell.

7 Q Eventually though, does someone else come in, and
8 you sell --

9 A Someone comes else in and buys the exact same
10 particular Black and Mild, with a Swisher and a box of
11 condoms, and it was paid on a debit card. So I can't really
12 recall if that was for them outside, but -- if they sent
13 somebody in, you know, fishing for them, but I can't totally
14 recall that.

15 Q Okay.

16 MR. BROOKS: Nothing further. Pass the witness,
17 Your Honor.

18 THE COURT: Cross-examination?

19 MR. SANFT: Yes, Your Honor. All right.

20 CROSS-EXAMINATION

21 BY MR. SANFT:

22 Q Mr. Spahn, you -- you're a Clerk, you're at the
23 store. You can't sell tobacco products to somebody that you
24 believe is under a certain age, right?

25 A Correct. As long as they don't have ID, then I

1 can't sell it to them.

2 Q So if I were to walk in to buy a pack of cigarettes,
3 would you ID me as well?

4 A Yes, I would.

5 Q Okay. Is that just because you have to ID
6 everybody, or because I look young enough to be under the age
7 of 18?

8 A I have to ID everybody.

9 Q Okay. I just want to make sure, because, you know.

10 A No, just doing my job. It's protocol; state law,
11 too. I got to ID everybody.

12 Q All right. Now, with regards to the video that we
13 saw here today, you're telling me that, outside of your
14 conversation with the district attorney prior to today's
15 hearing, that's the only time you've ever seen these videos?

16 A Yes.

17 Q Now, they're stuttery. Is that -- do know any
18 reason why that is?

19 A That's because that was an old camera system.

20 Q I --

21 A That was an old system we had, and now I guess they
22 upgraded it since I've been gone. So I guess they upgraded
23 their camera system, and they're probably better now.

24 Q Okay.

25 A But I mean, they're kind of poor quality a little

1 bit.

2 Q Yeah. And with regard to the location of these
3 cameras, you had one camera that's obviously in front of the
4 store looking at the gas pumps and so forth, then you've got
5 another camera that's on the inside facing towards the
6 entrance of the store?

7 A Um-hum.

8 Q And then you've got one camera that's behind you and
9 the cash register?

10 A Yeah. I have 32 cameras in that store.

11 Q Okay. What other locations are those other cameras
12 in?

13 A Down every single aisle. There's one right -- right
14 before the bathroom. There's one right on the -- to -- if you
15 walk out the door exiting the store, you have one right there
16 to the left, underneath the little awning. Then you have one
17 to the right by the chair -- by the tables and the water jug.
18 Then you have one in the car wash. You have one in the back.
19 You have one facing the garbage cans. You have one in the
20 cooler. We have cameras everywhere.

21 Q That's not an exaggeration.

22 A No.

23 Q Well, let me ask you this. Were all those cameras
24 working on this particular night?

25 A Yes.

1 Q Okay. And as far as you know, once again, you're
2 not responsible for those cameras operating, fair?

3 A Fair.

4 Q That's somebody else who does that?

5 A Yeah, someone else.

6 Q Now --

7 A I mean, if our system goes out, if our camera goes
8 out, it goes out. I mean, sometimes there's a night where we
9 have no footage.

10 Q Okay. But in terms of those -- the location of the
11 recording device that records all that video footage --

12 A Um-hum.

13 Q -- do you have access to that?

14 A No, I do not.

15 Q That's in a separate office that's locked?

16 A No, that's in the office that's located in the
17 store, but I'm not a manager --

18 Q I see.

19 A -- just an employee, so I don't have access to that.

20 Q Got it. Okay. So on this particular night, you
21 told this jury that when you saw these four individuals come
22 into the store -- and I want to make sure I'm not putting
23 words in your mouth. They looked suspicious, they gave you a
24 bad vibe when they walked in, and they were looking around?

25 A Yes, because they looked lost. They were looking in

1 one direction of the store that had just ice, and they were
2 just looking just to see what was going on in the store.

3 Q Okay.

4 A And I was working by myself. I just seen, you know,
5 something on the hip, so I felt -- I was just doing safety. I
6 just feel -- you know?

7 Q Okay. So them walking in and looking around the
8 store, by looking at the ice, you -- made you feel
9 uncomfortable about it?

10 A Yeah. I was just taking protocol, I was just being
11 safe, so I just dropped all my money just in case, you know,
12 if something were to happen, they're not going to get a lot of
13 money, I mean, if -- I mean, take my life, whatever they want
14 to do, you know?

15 Q But I want to make sure you and I are clear though,
16 sir. So your testimony to this jury is these people walk in;
17 you see somebody with what you believe is an open carry?

18 A Correct.

19 Q But you just see what you believe is a holster; not
20 a firearm?

21 A Firearm holster.

22 Q You just see the holster; not the firearm?

23 A I seen the holster.

24 Q Okay. And you -- because of the fact that they're
25 wandering through the store, you felt uncomfortable enough

1 that you decided, I'm going to protect my money, I'm going to
2 make a drop right now --

3 A Correct.

4 Q -- because of that?

5 A Correct.

6 Q Was there any type of interaction between yourself
7 and any of these four individuals outside of just attempting
8 to purchase tobacco?

9 A No, everything was --

10 Q They didn't say anything to you?

11 A No. Hello, sir, how are you doing? That's it.
12 Just regular customers.

13 Q Okay. And with regards to that conversation between
14 -- or your interaction with whoever it was, do you recall who
15 that person was you had the actual conversation about the
16 tobacco?

17 A I -- I don't recall. That was three --
18 two-and-a-half years ago, three years ago.

19 Q Fair, fair enough. Well, let me ask you this
20 though. The -- so your -- you had told this jury as well, at
21 some point, they were sitting outside at the table?

22 A Yes. When they exited out the store, they were
23 sitting outside the table.

24 Q So there's a table that's provided for --

25 A Customers.

1 Q -- patrons to sit outside --
2 A Um-hum.
3 Q -- for a minute?
4 A Yeah.
5 Q And that's what they were doing outside?
6 A Correct.
7 Q Okay. Did you ever inform police of the fact that
8 they were sitting outside at these tables?
9 A No, I just informed -- they asked me the question, I
10 answered their question, and they just -- the information that
11 I gave them, it just fit -- fit the description. And they
12 said instantly, call my manager --
13 Q Okay.
14 A -- we need to pull surveillance film.
15 Q Did you at any point ever see any of the individuals
16 sitting at the table smoking a cigarette?
17 A I don't recall.
18 Q Okay, but would it be fair to say that that would be
19 a normal place for somebody who --
20 A Correct, yeah.
21 Q -- who's a patron --
22 A I sit there at the table and smoke cigarettes, and
23 I'm an employee, so.
24 Q Okay. And you said that the people that were there,
25 the four individuals that walked in there, they're somebody

1 that were not regulars, and that was another reason why it
2 caused you concern?

3 A Yes.

4 Q How does that work? I mean, you are --

5 A Because you work graveyard, and you have regular
6 customers that come in on a regular basis.

7 Q Okay, but --

8 A Like, on the weekends, you have your -- your little
9 crowds.

10 Q All right.

11 A But for the most part, you get your same regular
12 customers throughout, or you get the bar crowd, because
13 there's a bar right across from my store.

14 Q But you're technically right in the middle of Las
15 Vegas. It's not we're talking like Pahrump or Tonopah; you're
16 in the middle of Las Vegas. Are you telling me --

17 A I have a housing complex that's to the left side of
18 that store.

19 Q Okay.

20 A I have another Ampm that's to the caddy-corner, and
21 then I have this big Switch building that's a big data center
22 right across the street --

23 THE COURT: Okay.

24 THE WITNESS: -- and then I have a bar.

25 THE COURT: Sir, if you could wait until the

1 attorney is done --

2 THE WITNESS: Oh, okay, I'm sorry.

3 THE COURT: -- asking his question --

4 THE WITNESS: I'm sorry.

5 THE COURT: -- that would be helpful for us.

6 THE WITNESS: I apologize.

7 BY MR. SANFT:

8 Q I understand that you're nervous.

9 A Oh, no, it's just so long --

10 THE COURT: You're doing fine.

11 THE WITNESS: It's been so long.

12 THE COURT: You're doing fine.

13 THE WITNESS: I mean, I --

14 BY MR. SANFT:

15 Q And once again, I just want to make sure that you

16 and I are clear. You tell this jury that because they -- they

17 were not your regulars, you felt like you -- there was a

18 heightened level of suspicion already, fair?

19 A Fair.

20 Q Okay. Now, you've also told this jury now there is

21 an Ampm that's caddy-corner to where your location is, right?

22 A Correct.

23 Q Meaning it's diagonal from where you're at?

24 A Correct.

25 Q And then, there's a -- I think there's a bar that's

1 actually in the same vicinity as your --

2 A As my store.

3 Q -- gas station, right?

4 A Yes.

5 Q And then, you've also told this jury that there's a

6 housing development that's behind your location, right?

7 A Yes.

8 Q Those houses that are right there, and then there's

9 -- there's residences all over the place?

10 A Yes.

11 Q But because of the fact you -- once again, these

12 four people walk in, you don't recognize them, it's in the

13 middle of the night, and that caused you concern?

14 A Yes.

15 Q Okay. Do you recall how long they were in the

16 store?

17 A I can't recall.

18 Q Okay. Would that be something that would be

19 probably on the video cameras in terms of the length of time?

20 A Correct.

21 Q Okay.

22 MR. SANFT: Your Honor, I have no further questions.

23 Thank you.

24 THE COURT: Mr. Ruggeroli?

25 MR. RUGGEROLI: Judge, could I have Court's

1 indulgence?

2 THE COURT: Um-hum.

3 MR. RUGGEROLI: Judge, State had not moved to admit
4 a number of photos, and there's no objection. If we could
5 just have them admitted at this time.

6 THE COURT: Okay. Do you want to read them off?

7 MR. RUGGEROLI: Yes, please.

8 THE COURT: Thank you.

9 MR. RUGGEROLI: This is going to be State's 320,
10 321, 322, 323, 324, and 325.

11 THE COURT: And there's no objection?

12 MR. RUGGEROLI: No, Your Honor.

13 THE COURT: Mr. Sanft? Mr. Sanft, I just want to
14 make sure there was no objection.

15 MR. SANFT: Yes, Your Honor, there was no objection.

16 THE COURT: Okay.

17 MR. SANFT: Thank you.

18 THE COURT: They're admitted.

19 (State's Exhibits 320 through 325 are admitted)

20 MR. RUGGEROLI: Thank you, Judge.

21 THE COURT: Um-hum.

22 MR. RUGGEROLI: And in a minute, can I publish them?

23 THE COURT: You may.

24 MR. RUGGEROLI: Thank you.

25 CROSS-EXAMINATION

1 BY MR. RUGGEROLI:

2 Q Good afternoon, Mr. Spahn.

3 A Good morning. Good afternoon.

4 Q Are you positively working graveyard, or --

5 A Yes.

6 Q Yeah.

7 A Actually, I'm a handyman, so I worked -- I mean, I'm

8 just trying to wrap up these few last little jobs I got going

9 on, so.

10 Q Okay. I'm showing you State's admitted 324. And

11 you were asked about this photo. Do you see the individual in

12 the white hat and the lighter-colored pullover, and he's got

13 his hand on his -- on his waist?

14 A Yes.

15 Q You were asked about that. Are you aware of whether

16 or not that individual was taking a magazine out of that

17 firearm?

18 A I don't recall.

19 Q Okay. And now I'm showing you State's admitted 323.

20 That's just another angle. We watched a video of that,

21 correct?

22 A Correct.

23 Q Now, you indicated that you had worked there about

24 three years, correct?

25 A Correct.

1 Q One of the individuals was in the restroom, the one
2 with the holster that you say, for an extended period of time,
3 correct?

4 A Yes.

5 Q One of them asked to buy a Black and Mild. That's
6 like a cigarillo or something?

7 A Correct.

8 Q And you wouldn't sell it. Did they protest and get
9 out of line or anything when you said --

10 A No, no.

11 Q Okay, so that's a no?

12 A That's a no.

13 Q They left the store, and your store was empty?

14 A Correct.

15 Q And you had initially indicated that you had some
16 feelings of concern about those individuals specifically?

17 A Yes, because after everyone left the store, they
18 were just hanging out at the tables, and I was by myself. So
19 -- and it was just them four individuals, so it raised a --

20 Q Right. You didn't call 911?

21 A No.

22 Q You didn't call 311?

23 A No.

24 Q You didn't lock the door?

25 A No.

1 Q You actually exited the door and went outside?

2 A Yes.

3 Q Okay. And then, there was another individual that

4 came in and bought the same type of cigarillo that they had

5 wanted to buy that you didn't sell them?

6 A They wanted a Black and Mild, and the gentleman that

7 came in bought a Black and Mild Jazz with a cigarillo, and a

8 box of condoms as well.

9 Q And that was in very close proximity --

10 A Correct.

11 Q -- of time?

12 A Correct.

13 Q And so that individual was an African American,

14 correct?

15 A I don't recall.

16 Q And is he a regular?

17 A I don't recall.

18 Q You had written a Voluntary Statement --

19 A Um-hum, yes.

20 Q -- regarding this event?

21 A Yes.

22 Q To the best of your recollection, this happened

23 approximately 11:20 on August 8th, 2017?

24 A About 11:20 -- between 11:20 and 11:30.

25 Q Was your understanding at the time that the video

1 surveillance did not have a timestamp, an internal timestamp?

2 A I do not recall that.

3 Q Okay.

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

5 THE COURT: Any redirect?

6 MR. BROOKS: Briefly, Your Honor.

7 THE COURT: You bet.

8 REDIRECT EXAMINATION

9 BY MR. BROOKS:

10 Q Mr. Spahn, do you remember the question that you had
11 a heightened concern based on the fact that you just didn't
12 recognize them?

13 A Yes.

14 Q Do you remember that question?

15 A Is it because you didn't recognize them, or is it
16 because you didn't recognize them and one of them was open
17 carrying in your store around midnight?

18 MR. SANFT: Objection, Your Honor, leading.

19 THE COURT: You are leading.

20 BY MR. BROOKS:

21 Q Which -- why were you -- why did you have a
22 heightened concern?

23 A Because I was working by myself and working
24 graveyard.

25 Q Okay. And at night, do people typically come in

1 that you don't know?

2 A Of course, every single customer. I mean, I don't
3 know everybody.

4 Q Do you always have a heightened concern?

5 A Always.

6 Q Okay. And in this situation, which one went into
7 the bathroom, and was it a normal time to be in the bathroom?

8 A I don't recall if they just went to -- they didn't
9 even ask for the bathroom key, they just went to the bathroom,
10 and the bathroom was unlocked.

11 Q Want to show you -- is that you coming out?

12 A Yes.

13 Q And this video motion sensor?

14 A No.

15 Q Which one was it that went in the bathroom?

16 A The one with the white hat and the maroon sweater.

17 Q Did he have the holster on his hip?

18 A I recall. I believe so.

19 MR. BROOKS: Nothing further, Your Honor.

20 THE COURT: Any recross?

21 MR. SANFT: Yeah. Actually, can I just watch that
22 video again? I don't know who walked into the bathroom. If
23 we could.

24 MR. PESCI: Sorry, it's going to --

25 MR. SANFT: Counsel, can we --

1 MR. PESCI: It's going to take a second for me to --

2 MR. SANFT: Okay.

3 MR. PESCI: -- get logged on. Sorry.

4 RECROSS-EXAMINATION

5 BY MR. SANFT:

6 Q Now, the State had asked you a question specifically
7 about motion sensors?

8 A Yes.

9 Q Meaning that if there is some type of motion, then
10 automatically turns on the video?

11 A Yes.

12 Q That's not what you had?

13 A No.

14 Q So your camera is running the entire time?

15 A Entire time.

16 Q Okay. So right here, this angle that we're showing
17 you is an angle from the hallway that's inside of the store,
18 facing towards the entrance of the store, actually, right?

19 A Yeah, because there's a women's bathroom right here
20 by -- on the back wall, and then there's a men's bathroom, and
21 then there's the cooler door --

22 Q Okay.

23 A -- that I just walked out of.

24 Q Okay. So just for the record, if we can -- well,
25 here. To the bottom lefthand corner of the screen, it looks

1 like there's a little sign right there. That's the female
2 bathroom?

3 A Yes.

4 Q And then, the other door that's on that same wall --

5 A Is the men's bathroom.

6 Q -- is the men's bathroom? Okay. Thank you. And
7 then, this door that's over here to the right, what is that,
8 the one that's open?

9 A That's the cooler door.

10 Q That's a cooler door? Okay.

11 A That's the cooler door.

12 Q And you've told this jury there's a camera in there,
13 too?

14 A Yes.

15 Q Okay.

16 A That -- that one is on motion sensor --

17 Q I see.

18 A -- in the cooler.

19 Q I see.

20 A Because no one can go in the cooler. I mean, unless
21 someone goes in the cooler, then it detects motion, then it
22 records.

23 Q Okay. So what we're going to see next is we're
24 going to see an individual wearing some type of athletic gear
25 that's going to walk here up in the front. That would have

1 been just a customer in the area, right?

2 A Correct.

3 Q Wearing the jersey? All right. And there's another

4 individual who's going to walk past him as well in that area,

5 fair?

6 A Fair.

7 Q Okay. Now, the next person that's going to walk

8 down, is that the individual you're saying was the individual

9 that had the open carry?

10 A Yes.

11 Q Okay. And that's the individual that's there that's

12 walking --

13 A Yes, because you can see it right here.

14 Q All right. Now, when that individual walks in, once

15 again, you're telling us that it's a holster, but no gun, as

16 far as you can tell?

17 A I can just tell, but I don't -- I don't really

18 recall, to be honest. I don't recall.

19 Q Okay.

20 A All I know is it was a holster.

21 Q All right.

22 A Whether the firearm was in there -- you see, the

23 sweater was kind of, you know, bulky, so -- but I don't recall

24 though.

25 Q All right. So this individual then walks into this

1 bathroom. Describe for us -- to the jury, is this a
2 single-person bathroom where you lock the door? Or is that
3 like you could walk in, and I could walk in after --
4 A No, actually, you're supposed to ask for the key.
5 Q I see. Did he ask for the key, this person?
6 A No.
7 Q And -- but the door was open?
8 A Correct.
9 Q Now, once again, is this a bathroom that has
10 multiple stalls in it, or is it just the one --
11 A Just one.
12 Q Okay.
13 A Just one toilet.
14 Q So what we're going to see here, though, I'm
15 assuming, is once this person walks into the bathroom, you've
16 testified to this jury at some point that you believe that he
17 was in there for a very long period of time?
18 A 15 minutes, yeah. And I didn't know he was using
19 the bathroom. He just went into the bathroom --
20 Q Okay.
21 A -- without asking for the key. You know, normally,
22 you ask for the key -- restroom key; where's the restroom at?
23 Q All right.
24 A He just walked right to it.
25 Q But once again, let's say, for instance, that's

1 accurate, and it was 15 or 20 minutes. Does that in and of
2 itself tell you anything at all but the fact that he was in
3 the bathroom for 15 or 20 minutes?

4 A Correct, yeah. He was using the restroom.

5 Q Okay. Anything at all, when he came out of the
6 bathroom and passed you on the way out the door, that --

7 A No.

8 Q -- indicated to you that he was there for any
9 malicious purpose outside of just visiting your store?

10 A No, sir.

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

12 MR. RUGGEROLI: Just --

13 THE COURT: Mr. Ruggeroli?

14 MR. RUGGEROLI: May I approach the Clerk?

15 THE COURT: You bet.

16 (Pause in the proceedings)

17 RECROSS-EXAMINATION

18 BY MR. RUGGEROLI:

19 Q Just briefly, Mr. Spahn. The individual that's in
20 front of the -- the four -- this is State's 322. Is this a
21 regular?

22 A At -- at the register?

23 Q Yeah.

24 A Yes.

25 Q And this is a knife that you see --

1 A No.

2 Q -- protruding from his shirt?

3 A No, that's his belt.

4 Q Okay. But you're familiar with him?

5 A Yes.

6 Q And there are some uncertainties that you have about

7 a number of details? This has been two-and-a-half years,

8 correct?

9 A Correct.

10 Q It's possible that the individual may have asked for

11 a key and you forgot?

12 A Well, he didn't have the key; he just opened the

13 door.

14 Q Okay. 15 minutes is an estimation?

15 A Correct.

16 Q And despite your feelings of uncertainty and

17 potential concern, after those individuals left, you went

18 outside as well?

19 A Correct.

20 MR. RUGGEROLI: I have nothing further.

21 THE COURT: Anything else?

22 MR. BROOKS: No.

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

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

25 from your subpoena.

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

10 You're further admonished you may not communicate
11 with anyone, including your fellow jurors about this case, on
12 your cell phone, through email, Blackberry, iPhone, text
13 messaging, or on Twitter, through any blog or website, through
14 any internet chat room, or by way of any other social
15 networking website, including, but not limited to Facebook,
16 Myspace, Linked In, and YouTube.

17 We are in recess until tomorrow morning at 8:30.
18 Thank you very much, and have a good night.

19 THE MARSHAL: Thank you. All rise for the exiting
20 jury. Jurors, please leave your notebooks on your chair.

21 (Court recessed at 5:06 P.M.)

22 (Court recessed at 5:06 P.M., until Friday,
23 February 14, 2020, at 8:46 A.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.

A handwritten signature in blue ink that reads "Julie Lord". The signature is written in a cursive style.

JULIE LORD, COURT TRANSCRIBER
VERBATIM DIGITAL REPORTING, LLC

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	)	CASE NO. C-17-328587-2
	)	CASE NO. C-17-328587-3
Plaintiff,)	
	)	DEPT. NO. XII
v.)	
)	
RAEKWON SETREY ROBERTSON,)	
a/k/a RAEKWON ROBERTSON,)	
and DAVONTAE AMARRI WHEELER,)	
)	
Defendants.)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

FRIDAY, FEBRUARY 14, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
JURY TRIAL - DAY 4**

APPEARANCES:

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

RECORDED BY: SARA RICHARDSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 14, 2020

2 (Case called at 8:46 A.M.)

3 (Outside the presence of the jurors)

4 THE COURT: Where's Mr. Wheeler?

5 THE CLERK: I think in the back. So, Mr. Ruggeroli,
6 there's your proposed exhibit you needed.

7 THE COURT: Okay. The record will reflect that the
8 hearing is take -- okay, are we getting Mr. Wheeler in here?

9 MR. RUGGEROLI: He's just finishing up.

10 THE COURT: Okay.

11 (Pause in the proceedings)

12 THE COURT: Okay. Both defendants are present, and
13 the hearing is taking place outside the presence of the jury
14 panel.

15 Officer Hawkes let me know that Juror number 10
16 approached him this morning and has some concerns about his
17 ability to remain fair and impartial. So I'm going to bring
18 Juror number 10 in and canvass Juror number 10. It is Caesar
19 Castro.

20 (Within the presence of Juror No. 10)

21 THE MARSHAL: Just straight ahead of you.

22 THE COURT: Okay. The record will reflect that Mr.
23 Castro, Juror number 10, is present in the courtroom -- you
24 can go right there at the podium -- and that this hearing is
25 taking place outside the presence of the other jurors.

1 Mr. Castro, it's my understanding that after some
2 evidence came in yesterday, that you now have some concerns
3 about --

4 JUROR NO. 10: Yes.

5 THE COURT: -- whether you can serve. Go ahead.

6 JUROR NO. 10: So during the jury selection, I
7 believe Mr. --

8 THE COURT: One of the DAs? Okay.

9 JUROR NO. 10: Yeah, asked if -- if we would get so
10 mad if we see footage of the victim. And at that time, I -- I
11 thought I would be fine, but after watching the footage
12 yesterday of the victim, that's exactly what happened to me,
13 and I don't think I can be fair and impartial anymore.

14 THE COURT: Okay. Who is it you think you're not
15 going to be able to be fair to?

16 JUROR NO. 10: Both.

17 THE COURT: Both sides?

18 JUROR NO. 10: Yes. Well --

19 THE COURT: Okay, based on the evidence --

20 JUROR NO. 10: The defendant --

21 THE COURT: -- that you saw?

22 JUROR NO. 10: The defendants' side.

23 THE COURT: Okay, based on the evidence that you
24 saw?

25 JUROR NO. 10: Just --

1 THE COURT: Okay, because you understand they're
2 entitled to the presumption of innocence unless and until the
3 State of Nevada can prove --

4 JUROR NO. 10: Yes, I --

5 THE COURT: -- these allegations by proof beyond a
6 reasonable doubt? Do you understand that?

7 JUROR NO. 10: I understand that.

8 THE COURT: Do you agree with that?

9 JUROR NO. 10: I agree with that.

10 THE COURT: Okay.

11 JUROR NO. 10: But after watching the footage, I
12 already formed an opinion.

13 THE COURT: What is that opinion?

14 JUROR NO. 10: Or judgment.

15 THE COURT: What is that judgment?

16 JUROR NO. 10: Guilty.

17 THE COURT: Okay. Just after seeing footage, you've
18 determined that these defendants are guilty?

19 JUROR NO. 10: Yes. I got so -- while watching the
20 footage, I was actually seething.

21 THE COURT: Well, it's okay to get mad.

22 JUROR NO. 10: I know.

23 THE COURT: It's just not okay to, you know, form an
24 opinion already.

25 JUROR NO. 10: But I did.

1 THE COURT: Okay, all right.

2 JUROR NO. 10: I'm sorry. This is the first time
3 I'm doing this, and --

4 THE COURT: Okay. Well, you know what, I appreciate
5 your -- I appreciate you approaching Officer Hawkes. I
6 appreciate you letting me know that. I don't know if either
7 side has any further follow up.

8 MR. PESCI: Not from the State.

9 MR. SANFT: No, Your Honor.

10 THE COURT: Okay.

11 MR. RUGGEROLI: Based on what he said, no.

12 THE COURT: Okay. All right, Mr. Castro, if you
13 just don't mind going outside. Before you do, I'm going to
14 instruct you not to discuss with your fellow jurors anything
15 that we have discussed in here. And if anyone insists on
16 speaking to you about what we discussed in here, I ask that
17 you make that fact known to Officer Hawkes. Have you
18 discussed any of your opinions with any of the other jurors?

19 JUROR NO. 10: No, I have not.

20 THE COURT: Okay. And I would just ask you
21 obviously not to discuss any of those opinions with any of the
22 other jurors, and you will agree to not do that?

23 JUROR NO. 10: I agree.

24 THE COURT: Okay. If you just don't mind waiting
25 outside, Mr. Castro. And again, I appreciate your --

1 JUROR NO. 10: I'm sorry.

2 THE COURT: -- honesty. No, I appreciate it.

3 (Outside the presence of Juror No. 10)

4 THE COURT: Okay, the record will reflect that Mr.
5 Castro has left the courtroom. Based on his representations
6 to the Court, I'm going to excuse Mr. Castro. I'm assuming
7 nobody has any objection?

8 MR. PESCI: Not from the State.

9 MR. RUGGEROLI: No, Your Honor.

10 MR. SANFT: No, Your Honor.

11 THE COURT: Okay. So, Officer Hawkes, you can go
12 out and let Mr. Castro know that he is excused, he can leave
13 the courthouse, and then Roberta Bell will become Juror number
14 10.

15 THE MARSHAL: Yes, Your Honor.

16 THE COURT: It's my understanding you may have some
17 other stuff outside the presence?

18 MR. PESCI: Yes, Judge. In speaking with defense
19 counsel this morning, specifically Mr. Ruggeroli was asking
20 about the Guilty Plea Agreement and the Agreement to Testify.
21 We marked that this morning.

22 We have done numerous efforts to doctor this thing
23 -- and I'm going to say this on the record -- to lie to the
24 jury about what's actually in this thing, and we have cut it
25 out pursuant to the case law. It's my understanding now that

1 defense counsel wants it in, which would have been nice to
2 know, because we spent a lot of time cutting that out, and
3 it's really not easy to do.

4 That being said, if he wants it in -- because the
5 case law says that, pursuant to Sessions, it has to come out;
6 but if during cross-examination there is the allegation of
7 lying, then it can come back in.

8 The problem with that, and since I didn't know this
9 was what was wanted, a completely clean, unredacted version of
10 the Agreement implicates Mr. Robertson in the other three
11 counts that we have severed because -- by implication,
12 arguably, right? Because those counts are not in front of
13 this jury. But when we originally did the deal, it
14 encompassed the case as it was originally charged.

15 THE COURT: Right.

16 MR. PESCI: And so, bringing it back completely
17 unredacted is a problem for Mr. Robertson. So I wanted to
18 bring that to Mr. Robertson's attention, to the Court's
19 attention, and figure out how we want to deal with this,
20 because you can't really just go with the whole unredacted
21 version.

22 THE COURT: Mr. Ruggeroli?

23 MR. RUGGEROLI: Thank you, Judge. Your Honor, the
24 -- the issue is -- and I believe the case law supports that,
25 essentially, if we open the door, if we get into notions of

1 having to testify to a certain version based on the
2 Agreement --

3 THE COURT: Right.

4 MR. RUGGEROLI: -- that we're getting into the
5 language that implicates the notion of what is truth --
6 truthfulness. And the Plea itself has that language, but my
7 understanding is the case law says that that's not originally
8 included. And I think that's to kind of protect defendants --

9 THE COURT: Uh-huh.

10 MR. RUGGEROLI: -- because it gives an overall
11 general idea of, well, this is true, and the State would then
12 have their kind of credibility of their witness bolstered
13 because there's a general notion of truthfulness, and that's
14 all that's being applied.

15 We do intend to attack that, and because of that, I
16 just -- I don't see any way that the State would not be
17 reinvested with the ability to have the actual language saying
18 -- because I think what they're going to argue once we do that
19 is, oh, no, wait a minute, here's what the Plea says, and this
20 is what you're only to do: you're only to testify to what is
21 true; it's not the State's version, it's just what is true.

22 So I -- I just don't see any other way to do it.
23 The problem is that there is that unredacted portion. I know
24 that it's, you know, the day after I found out that they were
25 going to provide a redacted version of that section that is

1 initially required to be taken out.

2 THE COURT: So you don't want it taken out?

3 MR. RUGGEROLI: Well, because I -- I don't want to
4 be limited in our ability to cross-examine Mr. Robinson about
5 --

6 THE COURT: You won't be.

7 MR. RUGGEROLI: Well --

8 THE COURT: I mean, I'm not going to limit your
9 ability to cross-examine a witness that has agreed to testify.

10 MR. RUGGEROLI: Well, so let's say we say, Mr.
11 Robinson, you took this deal because you have to testify
12 against the defendants; you have to say that Mr. Wheeler was
13 one of the people with you at the shooting, or you don't get
14 the benefit of this agreement. I suspect that the State's
15 going to want to say, oh, wait a minute, all you have to
16 testify is to the truthfulness. We don't require --

17 THE COURT: Right. I mean, he's under oath like
18 every other witness.

19 MR. RUGGEROLI: Okay. Well, as long as -- as long
20 as the State then doesn't need it, then we can just use the
21 redacted one.

22 MR. PESCI: No, no, no, no, no, no.

23 THE COURT: Yeah, I mean --

24 MR. PESCI: No.

25 THE COURT: -- I don't understand that.

1 MR. PESCI: You want to attack it --
2 THE COURT: Yeah.
3 MR. PESCI: -- that triggers our chance to go back.
4 We're not going to, in advance, take it away from us to be
5 able to do that because he wants it.
6 THE COURT: Right.
7 MR. PESCI: This is his choice. Like you're saying,
8 you're not impeding him at all.
9 THE COURT: No.
10 MR. PESCI: All I'm saying is, if you do that, we
11 have the added wrinkle and complication that the unredacted
12 version implicates Mr. Robertson on the three or four charges
13 that are not currently before this jury. So I assume --
14 MR. SANFT: I -- we -- and we -- I'm sorry.
15 MR. PESCI: Yeah, let's turn it to you.
16 MR. SANFT: On behalf of Mr. Robertson, with regards
17 to that issue, those factual issues, that would be an issue
18 that we would want to have redacted. Everything else I think
19 is unrelated and should be, you know, fair comment, according
20 to what Mr. Ruggeroli wants. But with regards to the other
21 parts that have been taken out and we're not trying him on
22 these -- on those issues, I think we've got a big issue there
23 with regards to prior bad acts and everything else that's
24 going to come in on this particular --
25 THE COURT: Right. I mean --

1 MR. SANFT: Okay.

2 THE COURT: And they relate to the counts that have
3 been severed, correct?

4 MR. PESCI: Correct, yes.

5 MR. SANFT: We've taken the pains to make sure that
6 that happens. I understand Mr. Ruggeroli's point though. I
7 mean, he wants to be able to have fair comment on anything to
8 do with this event on August 8th, 2017 --

9 THE COURT: Okay.

10 MR. SANFT: -- not about anything --

11 THE COURT: So you don't want that language taken
12 out that Sessions says we should take out?

13 MR. RUGGEROLI: Correct, because I know what the
14 second step will be, is either the State's going to object and
15 say the defense can't ask this line of questions because we
16 can't comment on it --

17 MR. PESCI: No, no, we're not going to say you
18 can't. Not at all. You absolutely can. We're just --

19 THE COURT: Right. I think --

20 MR. PESCI: -- given opportunities and options after
21 you do it.

22 MR. RUGGEROLI: Which would --

23 THE COURT: Exactly.

24 MR. RUGGEROLI: Which would --

25 THE COURT: I mean, the language has to be redacted,

1 okay?

2 MR. RUGGEROLI: Right.

3 THE COURT: I guess if you're waiving that right to
4 have the language redacted --

5 MR. RUGGEROLI: Yes.

6 THE COURT: However, if you during cross-examination
7 suggest to this jury that this witness has to testify to a
8 certain set of facts in order to get the deal, instead of the
9 truth --

10 MR. RUGGEROLI: Right.

11 THE COURT: -- which sounds like that's what you are
12 going to do --

13 MR. RUGGEROLI: We want that ability, yes.

14 THE COURT: Right. Then the State has the right to
15 bring that back in --

16 MR. RUGGEROLI: Exactly.

17 THE COURT: -- that, no, he has to testify as to the
18 truth.

19 MR. RUGGEROLI: And that's why it would need to not
20 be redacted. So I'm getting -- I'm getting ahead because I
21 know where this would ultimately lead. Were it not for the
22 inadmissible information about Mr. Robertson, then I think we
23 wouldn't have a problem.

24 THE COURT: Okay.

25 MR. RUGGEROLI: I -- I --

1 THE COURT: So you don't want the information
2 redacted that he has -- he's under the obligation to tell the
3 truth?

4 MR. RUGGEROLI: Correct.

5 THE COURT: Okay. Mr. Sanft, do you agree with
6 that?

7 MR. SANFT: We will have no objection to that
8 language being included.

9 THE COURT: Included?

10 MR. SANFT: Included. Yes, Your Honor.

11 THE COURT: Okay. Now, how do we get rid of --

12 MR. PESCI: Okay.

13 THE COURT: So we could bring it back in, but we
14 can't --

15 MR. PESCI: Can I interrupt just one second? I
16 apologize.

17 THE COURT: Sure.

18 MR. PESCI: Can you canvass the defendants on that?
19 Because that, sure as anything, is going to be argued by
20 different attorneys that this was a mistake.

21 THE COURT: I'm assuming -- have -- Mr. Ruggeroli,
22 have you spoken to Mr. Wheeler about that?

23 MR. RUGGEROLI: Yeah, I just spoke to him in the
24 back, Judge.

25 THE COURT: And Mr. Sanft, you've spoken to your

1 client about that?

2 MR. SANFT: I have not spoken to my client about it,
3 but I have spoken with Mr. Ruggeroli about this issue. I
4 agree with the strategy as to why it should happen that way.
5 So if I need to canvass my client, then I'll canvass my
6 client, but this was a strategic reason as to why we would
7 allow that language to come in with regards to our ability to
8 cross-examine the --

9 MR. PESCI: Perfect, that's exactly what I was
10 looking for. Thank you.

11 THE COURT: Okay. And Mr. Wheeler, you understand
12 that your attorney is making this decision?

13 DEFENDANT WHEELER: We about to --

14 MR. RUGGEROLI: Stand up, stand up.

15 DEFENDANT WHEELER: We about to --

16 THE COURT: He's asking that this language that
17 you're entitled to have redacted from the Agreement to
18 Testify, he's asking that it be put back in.

19 DEFENDANT WHEELER: Are we going to talk about -- if
20 we can talk a little bit more about the situation.

21 THE COURT: All right.

22 MR. RUGGEROLI: If you could just give me one
23 second, Judge.

24 THE COURT: I'll let you talk to him about it.

25 DEFENDANT WHEELER: All right, thank you.

1 (Pause in the proceedings)

2 THE COURT: So we'd still have to redact some of

3 this?

4 MR. PESCI: Yes, that's --

5 THE COURT: And you've got it highlighted.

6 MR. PESCI: That's the concern. That's why I

7 brought this up --

8 THE COURT: Um-hum.

9 MR. PESCI: -- when I found this out this morning.

10 It's that portion. Now, there are some different options. I

11 can tell you this: I cannot magically have -- make this happen

12 --

13 THE COURT: I understand.

14 MR. PESCI: -- because I've had someone working on

15 this for days. Because it's like really trickery, right? We

16 take a portion --

17 THE COURT: Right.

18 MR. PESCI: -- we cut it out, and we have push

19 pieces together using some sort of --

20 THE COURT: To make it look like we didn't do that.

21 MR. PESCI: Right, exactly. So now our only option

22 really is to Wite-Out and copy another page so no one can see,

23 but there's going to be big holes.

24 MR. RUGGEROLI: And just so that we're clear,

25 because I need to reference this for Mr. Wheeler, the Guilty

1 Plea Agreement itself, if you could direct me to the portion
2 that -- because I thought it was for the actual Agreement to
3 Testify portion.

4 THE COURT: It's in the Agreement to Testify.

5 MR. PESCI: It's in the Agreement to Testify.

6 MR. RUGGEROLI: Okay, and so --

7 THE COURT: I only have the first few pages.

8 MR. RUGGEROLI: So --

9 THE COURT: Or the first couple of pages.

10 MR. PESCI: So the original Agreement to Testify,
11 because --

12 MR. RUGGEROLI: Right.

13 MR. PESCI: -- at the time, they were facing all of
14 the charges, Mr. Robinson's other charges, it references that
15 because he's making an Agreement to Testify about all of the
16 information. So this highlights his charges that are severed
17 and not before this jury, which is why I brought it to Your
18 Honor, so you could see --

19 THE COURT: Right.

20 MR. PESCI: -- which portion.

21 THE COURT: So that part would have to be redacted.

22 MR. RUGGEROLI: Of course. Right.

23 (Pause in the proceedings)

24 (Off the record at 9:04 A.M. until 9:17 A.M.)

25 (Outside the presence of the jurors)

1 THE MARSHAL: Please come to order.

2 MR. SANFT: Your Honor, we're missing Mr. Ruggeroli.

3 THE COURT: Right.

4 MR. SANFT: Okay.

5 THE COURT: I'm assuming he's done though; we're
6 ready?

7 THE CLERK: Yeah.

8 MR. PESCI: We have some more things outside the
9 presence --

10 THE COURT: Okay.

11 MR. PESCI: -- based on this, and so --

12 THE MARSHAL: Have a seat.

13 THE COURT: Okay, go ahead.

14 MR. PESCI: Thank you, Your Honor. So I'm not sure
15 how the defense is intending on doing this. I want to state
16 the State's position on the record.

17 THE COURT: Okay.

18 MR. PESCI: I am going to comply with 175.282 and
19 Sessions v. State. I have marked a redacted version based on
20 the law that exists. If the defense chooses to do something,
21 they can, and then there are different things that are
22 triggered based on that.

23 The last thing I would ask, Your Honor, is if the
24 defendants personally are in agreement with their clients' --
25 their attorneys' strategic decision to do this.

1 THE COURT: Okay. And so you're just going to leave
2 it the way it is?

3 MR. PESCI: I'm not doing anything because I can't
4 until they cross.

5 THE COURT: Well, you're right. You can't, you
6 can't.

7 MR. PESCI: Right. Per the -- per the case law, I'm
8 -- as I read the case law, I'm handcuffed until they attack
9 it.

10 THE COURT: Okay, but it sounds like --

11 MR. PESCI: And I would be happy to be wrong some
12 day down the road if the Supreme Court tells me.

13 MR. RUGGEROLI: Judge, I --

14 THE COURT: And it sounds like you're going to
15 attack it?

16 MR. RUGGEROLI: I am, and I'm --

17 THE COURT: Okay.

18 MR. RUGGEROLI: -- dealing with this because of
19 Sessions and my prior experience in front of Judge Herndon,
20 which we have a lot of respect for Mr. Pesci, because Judge
21 Herndon referenced Mr. Pesci regarding this exact issue. So I
22 have looked at this. That's my reading. And I'm getting in
23 advance in the sense that -- would have preferred yesterday,
24 but today, we're not doing it during cross-examination.

25 I would like the ability to fully cross-examine --

1 one other aspect which is particularly important is that this
2 wound up being an Alford plea. So what we have is, during the
3 canvass, no actual admission; no actual affirmative statement
4 of, "Yes, I did this." So we're relying on the State's
5 recitation of facts to the Court. We're relying on other
6 things that did not actually come from Mr. Robinson.

7 THE COURT: Mr. Robinson's plea was Alford?

8 MR. RUGGEROLI: Yes.

9 MR. PESCI: Yes. That's the second portion,
10 whenever he's done, that I wanted to address.

11 THE COURT: Okay.

12 MR. RUGGEROLI: So the notion of truth is very
13 important. Now, I believe that I have fully explained this,
14 that in the initial instance, the defendant is protected; the
15 State is required to have that portion of the Agreement
16 removed. But in getting ahead, in order for the defense to
17 really kind of have more access to challenge motive, things
18 like that, we will necessarily be implicating the provision
19 that provides for the truthfulness. So I agree with Mr.
20 Pesci.

21 The only other issue is what to do with the language
22 that was unfortunately included, and then redacted, regarding
23 Mr. Robertson's other case. Everybody's in agreement that
24 that shouldn't come in. I mean, honestly, the State -- you
25 put this in Adobe, you take out a couple lines, and print. I

1 don't think this is difficult to redact those lines. I
2 don't --

3 MR. PESCI: Then we invite you to do it.

4 MR. RUGGEROLI: I could download it. I don't have
5 my printer, but --

6 MR. PESCI: A caveat -- I apologize, I'm jumping in.
7 That was flippant, I apologize.

8 The other thing we can do, Your Honor, is before we
9 get to the jury, have that done. It doesn't actually have to
10 be done today if you're not going to literally put it down on
11 the door to show it to him, because we can work on it between
12 now -- I'm not going to work on it, but someone can work on it
13 between now and when it actually goes back as an exhibit for
14 the jury.

15 THE COURT: Okay.

16 MR. SANFT: I guess --

17 THE COURT: So it sounds like the parties -- you
18 have the right to have this language out, okay? The defense
19 is saying, we don't want it out; we want that language in
20 because we're going to fully cross-examine this witness, and
21 we're going to be implicating that clause in the Agreement
22 anyways. Is that --

23 MR. RUGGEROLI: And Mr. Wheeler --

24 THE COURT: Is -- you're shaking your head yes, but
25 I just want you to say yes.

1 MR. RUGGEROLI: Yes, Your Honor, and he's prepared
2 to --

3 THE COURT: Okay.

4 MR. RUGGEROLI: -- put the waiver on the record.

5 THE COURT: And Mr. Sanft, yes?

6 MR. SANFT: Yes, Your Honor. And since the time
7 that we last spoke, I have spoken with Mr. Robertson about it.
8 He also agrees with that strategy.

9 THE COURT: Okay. And Mr. Wheeler, I gave you an
10 opportunity to speak to Mr. Ruggeroli about that strategy as
11 well; is that correct?

12 DEFENDANT WHEELER: Yes, ma'am.

13 THE COURT: And you're in agreement with that?

14 DEFENDANT WHEELER: Yes, ma'am.

15 THE COURT: Okay, thank you. And Mr. Robinson
16 (sic), you're in agreement with that as well, correct?

17 DEFENDANT ROBERTSON: Yes.

18 THE COURT: And you had a chance to speak to Mr.
19 Sanft about it, correct?

20 DEFENDANT ROBERTSON: Yeah, I've spoken to him.

21 THE COURT: Okay.

22 MR. PESCI: Thank you very much, Your Honor. And I
23 totally understand defense counsel's position. It makes all
24 the sense in the world to me. I think this is the unintended
25 consequences of that decision that we've been stuck with, so

1 we're just living with those consequences.

2 However, defense counsel made a comment about Alford
3 and penalties, and that's what I want to talk to you before we
4 brought this jury in.

5 THE COURT: Okay.

6 MR. PESCI: So in the canvass itself, because it's
7 an Alford plea, there's a rendition of facts put forth by the
8 State. So in some senses, I'm asking for an offer of proof of
9 what they want to get into, which is why we were not
10 introducing this in our case-in-chief, because I'm afraid of
11 the argument of witness vouching, being me, because I'm the
12 one making a rendition of facts.

13 Additionally, there is not time at an Alford plea to
14 put everything in. So I don't put everything in that is in
15 evidence because Your Honor and every other judge can't sit
16 there for the State to create a trial record for a plea
17 canvass. So I don't want to be accused of an argument's being
18 made that, look at this, this is the real facts that the State
19 believed, because that was just a bare bones or a somewhat
20 fleshed out rendition of facts as opposed to an entire trial's
21 worth of evidence. And so I'm cautious and concerned about
22 that, so I would ask for an offer of proof.

23 Additionally, Mr. Sanft brought up a good point,
24 right? We all signed a waiver. The waiver says, we don't
25 talk about penalties for murder. It is completely appropriate

1 for this witness to be canvassed about the penalties
2 associated with the specific charges that he entered a plea
3 to, and it's completely appropriate for the defense to say,
4 you had a murder charge and it's not here anymore.

5 It is absolutely inappropriate, pursuant to the
6 Agreement we all signed, to say, because you were facing life
7 without -- which he wasn't because he was a juvenile -- but
8 you were facing life, 20, or 50 to 20. Like, can't go into
9 specifics. I think it's appropriate to say, you were facing
10 more time, and maybe even like much more time for a murder
11 charge, but not the specifics.

12 THE COURT: Right. Since, I mean, everybody's
13 waived penalty, I would agree with that.

14 MR. RUGGEROLI: Well, okay. So the penalty --

15 THE COURT: I mean, I think you could say, you were
16 facing a lot more time --

17 MR. RUGGEROLI: Yeah.

18 THE COURT: -- because you were facing a murder
19 charge as well.

20 MR. RUGGEROLI: Yes. I --

21 THE COURT: But even what he was facing wouldn't be
22 the same as these gentlemen because --

23 MR. RUGGEROLI: Right.

24 THE COURT: -- he's a minor.

25 MR. RUGGEROLI: So this is a good time to bring up

1 Defense Proposed Exhibit A. I've had it marked. There is not
2 an agreement. That is the canvass of the entry of this plea.
3 Here's why that's important and I think that it should be
4 admissible. The context -- and you've got to remember what --

5 THE COURT: What is marked as Defense A?

6 THE CLERK: It's A1, just to clarify for the record.

7 MR. RUGGEROLI: Okay. It's right up top there.

8 THE COURT: Okay.

9 MR. RUGGEROLI: The State didn't have this, so I've
10 had it marked.

11 THE COURT: Uh-huh.

12 MR. RUGGEROLI: The likely cross-examination is
13 going to be that DeShawn made statements the next day from the
14 shooting to the officers when he was arrested. Time went on,
15 he entered an agreement, and now it's an Alford plea. The
16 only way he got the benefit of that plea was to agree to
17 testify, which is a huge portion of our argument that he has a
18 motive to say what he's saying.

19 THE COURT: Uh-huh.

20 MR. RUGGEROLI: Because I fully expect that he's
21 going to say, "I was with three other individuals, and we
22 drove to Dewey, and my -- Mr. Wheeler was one of those people,
23 and so-and-so shot so-and-so." That's what I expect the
24 evidence is going to show.

25 So in getting to -- this is not a normal situation

1 where it would be very clean, "You pled guilty on this date
2 and time, and at that time, you admitted that this was your
3 conspiracy; you admitted that you were a part of this
4 attempted robbery."

5 THE COURT: Well, he admitted the State could prove
6 it.

7 MR. RUGGEROLI: That's what he admitted, but he
8 never admitted that -- well, it's an Alford plea. So what we
9 have is, I agree with Mr. Pesci to the extent that I would not
10 need to go into specifically, "You were looking at a life
11 penalty," because there is overlap.

12 THE COURT: Right.

13 MR. RUGGEROLI: That would educate the jury about
14 what the defendants had waived, and it might not even apply to
15 a juvenile. But I do think -- and this is my argument for the
16 admission of 1A -- Defense Proposed 1A -- or is it A1?

17 THE CLERK: A1.

18 MR. RUGGEROLI: Yeah. The context of this plea is
19 very important, and what he said is absolutely relevant; what
20 he did not admit to. It's part of his -- now he's going to
21 stand up, and we're going to object --

22 THE COURT: Let me just say -- did he proffer to
23 you?

24 MR. PESCI: Yes.

25 THE COURT: Okay. That, to me, is more important

1 than what he said during an Alford plea.

2 MR. RUGGEROLI: Okay.

3 THE COURT: I mean, because in a proffer, they
4 proffer to the district attorney --

5 MR. RUGGEROLI: Yes.

6 THE COURT: -- basically everything they know and
7 everything that they will testify to.

8 MR. RUGGEROLI: We don't have any -- anything about
9 -- I know it happened, but I did request, and there's nothing
10 in writing.

11 MR. PESCI: Right. It wasn't recorded.

12 MR. RUGGEROLI: Right.

13 MR. PESCI: It wasn't written down, it wasn't
14 reduced --

15 THE COURT: Okay.

16 MR. RUGGEROLI: So that's why it's even more
17 important that -- he's going to be asked, and he can't be led
18 through this testimony, "Well, what happened?"

19 THE COURT: Right.

20 MR. RUGGEROLI: I went -- okay, and then on cross,
21 "Okay, but you were -- you pled Alford; you did not
22 specifically -- did not admit that you did that."

23 MR. PESCI: I agree with the ability of defense
24 counsel to do that. I'm just saying, admitting the transcript
25 is dangerous, and it has information that is superfluous to

1 the actual proceedings. It has language where I am saying
2 what the case evidence would be.

3 And so I think it's completely appropriate for them
4 to cross-examine him, and talking about Alford, and you didn't
5 admit this or you didn't admit that. But I think admitting
6 the transcript is a time bomb, because, one, it says what I
7 think the case is at a bare minimum's version. And you know,
8 someone could argue that that's witness vouching, because you
9 then accepted -- I'm sorry, you, Your Honor, accepted that
10 proffer, right?

11 And so I think it's appropriate to just go into it.
12 And you can even utilize this, right? Just not admit it as a
13 piece of evidence. That's why we didn't do this, because
14 there are all these issues inside of it. It's --

15 THE COURT: Anything else, Mr. Ruggeroli?

16 MR. RUGGEROLI: Yes. If it's relevant, it's
17 generally admissible -- and it is relevant -- unless there's
18 some portion specifically that would make it inadmissible.
19 These are general principals being applied to, but there's
20 nothing specific. There's no authority to support, well,
21 here's why it's inadmissible. This -- the document speaks for
22 itself, so I don't think it's inadmissible. The question of a
23 time bomb, that remains to be seen. And I would not --

24 THE COURT: Why is it relevant? Why is it relevant
25 what the State said in an Alford plea? Why is that relevant?

1 MR. RUGGEROLI: Well, the most -- the most -- it
2 makes --

3 THE COURT: Why is the transcript relevant if you're
4 going to be able to cross-examine him, like, "You didn't admit
5 that in front of the Court, you didn't" -- I mean, yeah, you
6 can cross-examine him about that, but I mean, this is a
7 formality and it's an Alford plea. I don't understand why a
8 transcript would be relevant.

9 MR. RUGGEROLI: The relevance is that it makes the
10 truthfulness of his statement about there is a conspiracy
11 today less likely because he did not admit to it at the time
12 of the canvass. That provides the actual question and answer.
13 So it is relevant; it's just the State is saying it's not
14 admissible, but -- but why? It doesn't sound good, we think
15 it might --

16 THE COURT: No, because I think it would be very
17 confusing to a jury.

18 MR. PESCI: What I'm saying is I'm not --

19 THE COURT: I mean, it would be very confusing.

20 MR. PESCI: I'm not saying it's a per se
21 inadmissible thing, which is why I asked for the offer of
22 proof, is I'm like, what is this going to be used for?
23 Because if there are going to be arguments -- right? Because
24 that's really what we do. We put a piece of evidence in --

25 THE COURT: Um-hum.

1 MR. PESCI: -- then we argue later on. If there's
2 going to be arguments that somehow this was the four corners
3 of the facts --

4 THE COURT: That's my concern.

5 MR. RUGGEROLI: And I would agree to an instruction
6 that clears -- it just simply explains that the State did not
7 put on the entire trial evidence at the entry of this plea.
8 I'm not going to argue, hey, that's all they -- because my --
9 the importance of what I want to argue is not what the State
10 said at the plea. That's what they're concerned about.

11 I have no intent to say, "Well, they should be
12 limited, ladies and gentlemen of the jury, to what they said
13 at the time." I'm not going to argue that at all. And I
14 would have no problem explaining to the jury in an
15 instruction, or you could admonish the jury, "The State was
16 not required to put their trial on at the time of the entry of
17 plea."

18 The importance for us is not what the State said,
19 other than they had to say it because he wouldn't admit it.
20 That's why it's important, and that's why it's relevant, is
21 because when it came to the time of entering this agreement,
22 he did not admit that he was part of a conspiracy, and that's
23 hugely important.

24 I actually very respectfully disagree with Your
25 Honor. I don't think it will confuse the jury; I think it

1 will help them understand it more, because it lays out line by
2 line, question, answer, this is an Alford plea, you understand
3 you're not admitting guilt, and because of that, there has to
4 be a factual basis. And that's why I think it's admissible,
5 and we would agree to either an admonishment and/or an
6 instruction that says of course the State was not required to
7 put on the whole trial evidence at that time.

8 THE COURT: Okay. So then, again, I'm going to ask
9 you, why is it relevant here?

10 MR. RUGGEROLI: Because --

11 THE COURT: Because this isn't the four corners of
12 his agreement. He proffered to the State of Nevada.

13 MR. RUGGEROLI: Because even in its most simplistic
14 form, he did not agree that he was a part of the conspiracy.
15 He did not admit that. He did not admit that there was an
16 attempt robbery that he was a part of; he did not admit that
17 he was a part of the murder. The fact that he didn't admit
18 it, that's why it's so important.

19 MR. PESCI: And I think it's --

20 THE COURT: Okay.

21 MR. PESCI: -- completely appropriate to be asking
22 him about how he never admitted it, right? If he wants to
23 introduce it, I just think there are a lot of land mines in
24 there, a lot of things that could go sideways, and there are
25 concerns.

1 And it seems as if he's saying he's not going to
2 argue one thing or another, but we're going to have to do an
3 instruction about what an Alford plea is, right? Because I
4 say here that the defendant could have been convicted of the
5 murder, because the concept of an Alford is, you're saying --
6 you're acknowledging the jury could convict you --

7 THE COURT: Right.

8 MR. PESCI: -- so I'm taking this lesser without
9 necessarily admitting to this. We've done this before, Your
10 Honor. We've had a co-defendant testify via an Alford plea,
11 right? And everyone got to cross-examine that witness, and
12 got to flesh out that she didn't say she actually admitted to
13 it, right? That's a completely appropriate line of
14 questioning. I'm just saying I'm a little concerned about
15 that.

16 At least he's told me right now that he's not going
17 to argue some sort of quantitative analysis of what the offer
18 of proof was being the entire amount of the case that the
19 State had. And so, with that, we'll deal with it. I'm just
20 saying that there could be issues that come up later, and
21 especially in closing arguments, depending on how it's argued.

22 THE COURT: Okay. I want to be able to read the
23 transcript in its entirety. When is this witness coming to
24 testify?

25 MR. PESCI: Well, he's supposed to be at 10:00, but

1 we've got other ones in front of him.

2 THE COURT: Pardon?

3 MR. PESCI: We have other ones that are in the hall

4 waiting in front of him.

5 THE COURT: Okay. Can we bring the panel in now?

6 Where is he? I mean, is --

7 MR. PESCI: He's in --

8 THE COURT: He's still in custody, right?

9 MR. PESCI: He's in custody, and so he's going to be

10 transported here. My investigator has spoken with your

11 Marshal to talk about that process of getting him here.

12 THE COURT: Okay. And he's in custody, correct?

13 MR. PESCI: Yes, he's in custody. He's in a

14 juvenile detention facility.

15 THE COURT: All right. Are you going to have him

16 appear in custody?

17 MR. PESCI: We have to.

18 THE COURT: Well, you have the right to have him

19 dressed in normal clothes.

20 MR. PESCI: No, we don't, because that's me making

21 him appear that he's out of custody. I wish you were right.

22 I'm sorry. I apologize. I believe that the case law says

23 that I don't get to dress out my witnesses that are in

24 custody; I have show them as they are.

25 THE MARSHAL: I spoke to his investigator this

1 morning. A juvenile P and P officer, his caseworker, his
2 attorney, and his investigator will be sitting in the jury
3 room, waiting for him to be brought to the stand.

4 THE COURT: Okay.

5 THE MARSHAL: So --

6 THE COURT: So his -- I think his attorney -- Mr.
7 Evans, he's going to be --

8 THE MARSHAL: Yes.

9 MR. PESCI: Yes.

10 THE COURT: He's been notified?

11 MR. PESCI: We've spoken to him; we've notified him
12 of the time. He told me he was going to be here, he asked the
13 specific room, so our expectation is he's going to be here.

14 THE COURT: Okay. All right, we can bring them in.

15 THE MARSHAL: All rise for the entering jurors,
16 please.

17 (Within the presence of the jurors at 9:35 a.m.)

18 THE MARSHAL: Go ahead and have a seat when you get
19 to your chairs. Everybody's standing for you guys, so. Thank
20 you, everyone. Please be seated.

21 THE COURT: Okay. Does the State stipulate to the
22 presence of the panel as now impaneled?

23 MR. PESCI: Yes, Your Honor.

24 THE COURT: Mr. Sanft?

25 MR. SANFT: Yes, Your Honor.

1 THE COURT: Mr. Ruggeroli?
2 MR. RUGGEROLI: Yes, Your Honor.
3 THE COURT: Okay. Ms. Bell, I have excused Juror
4 number 10, so you will now become Juror number 10. You can
5 sit where you are, or you can sit in that seat; it's wherever
6 you're comfortable. I'm okay with wherever you want to sit.
7 I just wanted to make sure you understand you're now Juror
8 number 10.
9 JUROR NO. 10: Okay.
10 THE COURT: Okay?
11 JUROR NO. 10: Will I still be able to not come in
12 on next Friday?
13 THE COURT: I got you covered for next Friday.
14 JUROR NO. 10: Okay, just wanted to make sure that
15 was covered.
16 THE COURT: Okay. Okay, State can call their next
17 witness.
18 MR. PESCI: State calls Detective Lora Cody. May I
19 approach?
20 THE COURT: Uh-huh.
21 THE MARSHAL: If you'll please remain standing,
22 raise your right hand, and face the Clerk.
23 DETECTIVE LORA CODY, STATE'S WITNESS, SWORN
24 THE CLERK: You may be seated. Please state and
25 spell your first and last name for the record.

1 THE WITNESS: It's Lora Cody. L-o-r-a, C-o-d-y.

2 THE COURT: You may --

3 MR. PESCI: Thank you.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 BY MR. PESCI:

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

8 A I'm a homicide detective with the Las Vegas
9 Metropolitan Police Department.

10 Q How long have you been with Homicide?

11 A About four years.

12 Q Before Homicide, where were you within Metro?

13 A I worked what's called Internet Crimes Against
14 Children, sexual assault, sexual abuse, as a detective.

15 Q And then prior to that?

16 A I was a patrol officer with Metro.

17 Q How long -- I cut you off, I'm sorry. How long have
18 you been with Metro in total?

19 A 18 years.

20 Q Okay. You said, I think it was four years you've
21 been with Homicide?

22 A That's correct.

23 Q Okay. So back in August of 2017, were you assigned
24 with a squad of other detectives to investigate a homicide
25 that had occurred on Dewey Avenue here in Las Vegas?

1 A Yes, I was.

2 Q When you get to a murder scene, as a homicide
3 detective, how does that work? Just so the ladies and
4 gentlemen can understand, are you there right away when the
5 first patrol officers get there, or how does that work?

6 A No. Usually, the patrol officers will get the
7 initial call. They'll respond to the scene and kind of make
8 an assessment as to what resources they need, then they'll
9 usually call in patrol detectives. Patrol detectives then,
10 upon realizing that whatever crime it is requires kind of like
11 a higher level response -- in this case, a homicide had
12 occurred -- they then call Homicide out. So we usually may
13 respond to the scene, it could be anywhere from 15 minutes, 20
14 minutes, to several hours later.

15 Q Can that be sometimes too based on the fact that, if
16 a victim is still alive originally at the scene, then
17 Homicide's not called out?

18 A That is correct.

19 Q So if a victim who's wounded is transported to the
20 hospital, is it until after the hospital notifies of someone
21 actually being deceased that the mechanism then triggers
22 Homicide being involved?

23 A Yes.

24 Q Okay. When you were in fact called on this specific
25 situation, where did you go first?

1 A We went to the Dewey scene.

2 Q All right. I want to show you what's been
3 previously marked as State's Exhibit 11. Do you recognize
4 that?

5 A Yes, I do.

6 Q Okay. Now, I mentioned earlier a squad. Is that a
7 team of detectives?

8 A Yes.

9 Q Who was the group or the team of detectives that you
10 responded with?

11 A I responded there with Detective Mitch Dosch,
12 Detective Ryan Jaeger, myself, eventually Detective Maureen
13 Bogatay, and Detective Fred Merrick.

14 Q And does she sometimes, Detective Bogatay, go by the
15 name Sonny?

16 A Yes, Sonny.

17 Q Okay. Now, when you get to a scene, is there a
18 determination as far as who's going to be doing what pieces of
19 the investigation?

20 A Yes, we respond as a squad. It could be as large as
21 from four to six people, just depending upon the amount of
22 resources that we need. Usually, there's a primary detective.
23 In this case, the primary detective is Detective Mitch Dosch.
24 His partner, Detective Ryan Jaeger, is considered the second.
25 And then we have what's called the third wheel, and that third

1 wheel was myself, and then it goes third, fourth, fifth, six
2 kind of a wheel.

3 The primary detective usually will take the scene.
4 The secondary detective will take kind of like the -- what we
5 call, like, maybe like the more important witnesses or
6 subjects to be interviewed. The third detective kind of picks
7 up the pieces, if you will.

8 Q All right. So if I'm understanding correctly, this
9 is kind of the partnership of Jaeger and Dosch, correct?

10 A Correct.

11 Q All right. And now, was Jaeger assigned to the
12 scene?

13 A I believe he was, yes.

14 Q Okay, so what does that mean?

15 A That means that he will respond out. He will
16 document the scene, along with the crime scene analysts.

17 Q Okay. And then were you, and Detective Dosch, and
18 the others you mentioned assigned to witnesses?

19 A Yes, we were.

20 Q How does that work?

21 A Again, it's kind of up to -- how the primary
22 detective wants to dole out the assignments, if you will.
23 Detective Dosch was assigned some witnesses. I was also
24 assigned a witness, and I was also assigned extra duties as
25 well.

1 Q Okay. So when you're out at this scene, are you
2 getting information from patrol or other officers that were
3 there before you?

4 A Yes. Depending upon who's there, depending upon
5 kind of the level of the response, we all get together, and
6 we'll receive a brief from either patrol or patrol detectives;
7 and in this case, it was patrol detectives.

8 Q So the ladies and gentlemen of the jury saw some
9 body-worn camera of the first responders. Are those the
10 sources of some of that information in that first briefing?

11 A Yes.

12 Q Okay. And while you're at this scene and Detective
13 Jaeger's working the scene, did information come in about a
14 convenience store of interest?

15 A Yes. Prior to the shooting, and I forget if it was
16 an hour or two hours prior to the shooting, there was an
17 incident that had occurred at the Short Line Express, and I
18 believe it was 7325 South Jones.

19 The convenience Clerk was obviously inside the
20 convenience store when four black male adults entered the
21 store and were acting kind of suspicious. One of those black
22 male adults had a gun on his hip in like an open carry
23 fashion, and so that convenience Clerk had called our dispatch
24 to say that he kind of felt maybe he might have -- might be
25 robbed, and he was just kind of, you know, just unsecured. So

1 police officers responded and talked with the convenience
2 store.

3 Q Okay. And then, based on that information that the
4 police officers obtained from talking to that Clerk in the
5 convenience store, did you respond to the convenience store?

6 A Yes, I did.

7 Q I want to show you State's Exhibit 71. Do you
8 recognize that?

9 A Yes, that's the Short Line Express market.

10 Q Okay. And then, based on the information that had
11 been sent from the convenience store, to the other patrol
12 officers, to you, what were you trying to find or locate
13 there?

14 A Some of the information that initial patrol officers
15 received when they respond to the convenience store, that the
16 four black male adults had entered the store, and they were --
17 had actually driven into the -- or driven into the parking lot
18 in the store in like a white Grand Marquis, or like a white
19 kind of a vehicle, and this had matched some information that
20 we had received at the briefing at the homicide scene.

21 Q Speaking of that briefing and the matching of the
22 information, did you have information that there was a white
23 Crown Vic-type car with a specific license plate?

24 A Yes, I did.

25 Q All right. So when you went to this location, were

1 you trying to see if you could see from the surveillance a car
2 that would fit that description?

3 A Yes.

4 Q Okay.

5 MR. PESCI: Your Honor, with your permission, can I
6 publish what's been previously admitted as 328?

7 THE COURT: You may.

8 BY MR. PESCI:

9 Q Detective, were you there when this video
10 surveillance was obtained?

11 A Yes, I was.

12 Q Okay. And was your responsibility, in essence, to
13 try to look at that and retrieve that video surveillance?

14 A Yes.

15 Q Okay. I want to show you a clip, and ask you if you
16 recognize this clip.

17 A Yes, I do.

18 Q Okay. And then, with this clip -- or did you see
19 this clip when you went to that location?

20 A Yes, I did.

21 Q And what did you do -- what was there that piqued
22 your interest?

23 A I noticed, as the vehicle pulled in, you can make
24 out on the bottom lefthand side, the front license plate, the
25 numbers 473.

1 Q Okay, and there's actually a mouse right there. And
2 if you move that mouse, it will correspond to the screen, or
3 at least it should. Let me do this. There we go. Thank you.
4 And did you view that to try to find out about that particular
5 license plate?

6 A Yes, I did.

7 Q Did that match the information that you had received
8 from the briefing?

9 A Yes.

10 Q Okay. And then, also, as far as there being four
11 individuals, was that information that you had?

12 A Yes.

13 Q Did you watch this video surveillance, among other
14 camera angles?

15 A Yes, I did.

16 Q And were you able to see four individuals?

17 A That's correct.

18 Q You mentioned you had some information about the
19 possibility of someone open carrying?

20 A Yes.

21 Q All right. And then, in reviewing that
22 surveillance, did you see things of interest to you?

23 A Yes, there's an individual that is open carrying of
24 a firearm.

25 Q Now, based on that license plate, what did you do,

1 getting that information?

2 A I provided that information, as well as the video
3 surveillance, back to Detective Dosch and Detective Jaeger.

4 Q Okay. And then, was there an effort to, in essence,
5 look up that particular license plate?

6 A Yes.

7 Q Okay. I want to show you what's been marked as
8 State's 332.

9 MR. PESCI: May I approach, Your Honor?

10 THE COURT: You may.

11 MR. PESCI: Which has been previously shown to
12 defense counsel, and I believe there's no objection.

13 MR. SANFT: No objection, Your Honor.

14 MR. RUGGEROLI: No, Your Honor.

15 MR. PESCI: Move for the admission of 332, Your
16 Honor.

17 THE COURT: It's admitted.

18 (State's Exhibit 332 is admitted)

19 BY MR. PESCI:

20 Q Do you recognize what that is?

21 A Yes.

22 Q What is that?

23 A This is the vehicle registration data for that
24 specific license plate.

25 Q Okay. What does that information tell you?

1 A It tells me that this plate was surrendered and
2 actually had belonged to a James Newman (phonetic) at 1327 H
3 Street, Apartment 431.

4 Q Okay, so showing you State's Proposed Exhibit 150.

5 MR. PESCI: Any objection to that one?

6 MR. SANFT: No objection.

7 MR. RUGGEROLI: No objection, Your Honor.

8 THE COURT: 150 is admitted.

9 (State's 150 is admitted)

10 BY MR. PESCI:

11 Q Do you recognize State's 150?

12 THE CLERK: You got to hit the button.

13 MR. PESCI: Oh, goodness. Thanks.

14 BY MR. PESCI:

15 Q Do you recognize State's 150? We got to zoom-out.

16 A Yes, I do.

17 Q Okay. Now, before we get to where you actually saw
18 that, you just talked to us about H Street, the letter H?

19 A Yes.

20 Q Okay. So who is the listed individual as the
21 registered owner of this particular vehicle?

22 A James Newman.

23 Q Okay. And then, James Newman had an address of the
24 H Street?

25 A Yes.

1 Q Okay. And what did you, as a squad or a group, do
2 with that information? Did you go to that location?
3 A Yes, we did.
4 Q Okay. And then, did you make contact with a Mr.
5 Newman?
6 A I did not, but I believe Detective Jaeger and Dosch
7 did.
8 Q Okay.
9 MR. PESCI: Court's indulgence.
10 BY MR. PESCI:
11 Q So did you get information in the course of your
12 investigation that Mr. Newman had sold that vehicle?
13 A Yes.
14 Q Okay. So that car had actually been sold to a
15 DeMario Lofton-Robinson; that's the information that you had
16 received?
17 A There was a -- yes. Eventually, it had been sold to
18 DeMario Lofton-Robinson.
19 Q Right. The information you received is there was
20 kind of a middle person in between that?
21 A Yes.
22 Q Okay. But eventually, that car was sold and
23 purchased by DeMario Lofton-Robinson?
24 A Yes.
25 Q Okay. And then, with that information, did you try

1 to go to an address associated with DeMario Lofton-Robinson?

2 A Yes, we did.

3 Q All right. Showing you State's Exhibit 215, do you
4 recognize that?

5 A Yes, I do.

6 Q Okay. What is that?

7 A That is a residence at 919 Bagpipe in North Las
8 Vegas.

9 Q And did you in your investigation have information
10 associating DeMario Lofton-Robinson with this particular
11 address?

12 A Yes, we did.

13 Q All right. Now, when you respond to a homicide
14 scene, when you start working it, do you remember roughly
15 about what time you got to the scene?

16 A I believe it was about midnight --

17 Q All right.

18 A -- on the 9th.

19 Q Okay, so the early morning hours of the 9th?

20 A Yes.

21 Q You're not exactly sure exactly what time?

22 A Correct.

23 Q Okay. And here's the point I was trying to get to.
24 Do you -- do you go home at that point?

25 A No, we work the scene until all leads are exhausted.

1 Q Okay. Do you stay at a scene or stay talking to
2 witnesses for many hours?

3 A Yes, we do.

4 Q You, as we've heard from your testimony today, went
5 to the Short Line Express?

6 A Yes.

7 Q You actually search for and get information about
8 this car, and then go to that H Street location?

9 A Yes, we did.

10 Q Interviews are done with different individuals to
11 find out about this sale?

12 A Yes.

13 Q Okay. And then, after that, there's still more work
14 to be done?

15 A Yes. Sometimes, there's more follow up to be done.

16 Q All right. Was there a decision at some point to
17 say, okay, we've been at this for a while, let's go home?

18 A Yes, in the evening hours of the 9th.

19 Q About -- do you know -- do you remember about how
20 many hours you'd been working at that point?

21 A Well, almost 24, 30 hours.

22 Q Okay. So was there a decision to go home and get
23 some sleep?

24 A Yes.

25 Q But instead, what did you do?

1 A Instead, on my way home, I drove by the Bagpipe
2 address.

3 Q All right. So when you went by that address, was
4 there anything of interest that you saw?

5 A Yes. I saw the Grand Marquis parked in the -- in
6 front of the Bagpipe address, with the license plate 473YZ
7 Baker.

8 Q And so, at that point, you didn't actually have that
9 car at that address, did you?

10 A No, we did not.

11 Q All right. You had information, but you hadn't
12 physically put eyes on it?

13 A No.

14 Q Was that something important in the process of your
15 investigation?

16 A Yes.

17 Q What did you do?

18 A I basically started to survey the -- surveil the
19 call -- or the car, and I made phone calls into my squad to
20 say that I have located the suspect vehicle.

21 Q So you called them all back out?

22 A Yes.

23 Q Okay. So did you do anything in reference to that
24 vehicle? Did anybody get in; did anybody move? What
25 happened?

1 A Yes. While I was conducting surveillance of the
2 vehicle, two black males adults entered the vehicle, and they
3 resembled the same black male adults that I had seen in the
4 video from the Short Line Express.

5 Q And I wanted to point that out. Like, you had
6 visually watched the video surveillance?

7 A Many times, yes.

8 Q Okay. And so, when you were outside of State's 215,
9 is that where the two individuals that fit the description
10 from the surveillance video that you watched exited from?

11 A Yes.

12 Q Okay. And now, when we look at State's 150, is that
13 at the house?

14 A No, it's not.

15 Q Okay. Walk us through what happened.

16 Q So, as I'm surveilling the vehicle, the two black
17 male adults get in the vehicle, and the vehicle becomes
18 mobile. I then made the decision to follow the vehicle. At
19 this time, I'm also calling out to my squadmates and to other
20 patrol officers that I was following the vehicle at some
21 distance, because we wanted to see where the vehicle was
22 heading to, in hopes of eventually stopping the vehicle.

23 Q Okay. And then, was it stopped?

24 A Yes, it was stopped at -- I believe it was 1366 West
25 Cheyenne. It's the Reef Dispensaries.

1 Q Okay. Is there a Dotty's nearby as well?

2 A There is.

3 Q Okay. So when the car is stopped there, the two
4 people that are in the vehicle, what happens with them?

5 A The two people exit the vehicle, and they were
6 stopped and taken into custody.

7 Q Okay. And then, what was done with the car?

8 A The car was then -- we had actually called out crime
9 scene analysts, and we sealed the car, and the car was
10 eventually towed to our crime lab.

11 Q All right. When you say you called out crime scene
12 analysts, does that mean they responded to this particular
13 location?

14 A Yes, they do.

15 Q Okay, which we see in the photograph right now?

16 A Yes.

17 Q Okay. Now, as you're working this car, it's away
18 from the Bagpipe address, correct?

19 A Correct.

20 Q What is done in relation to the Bagpipe address as
21 you and the crime scene analysts are here working this car?

22 A When the vehicle became mobile, some of our criminal
23 intel detectives were actually en route to the Bagpipe address
24 to continue surveillance. They continued surveillance, and at
25 that point, Detective Jaeger obtained a search warrant for

1 that residence.

2 Q Okay. And so, when you peeled off to follow the
3 car, others went back to the house to watch it?

4 A Yes.

5 Q Okay. And then, did someone come out of that house
6 later on that fit the description of someone from the video
7 surveillance?

8 A Yes, eventually.

9 Q And do you remember who that was?

10 A I do not.

11 Q Okay, but was that person also taken into custody?

12 A Yes.

13 Q All right. And then, did you go with the car to the
14 crime lab?

15 A No, I did not.

16 Q Okay.

17 MR. PESCI: Pass the witness.

18 THE COURT: Cross-examination?

19 MR. SANFT: No cross, Your Honor.

20 MR. RUGGEROLI: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. RUGGEROLI:

23 Q Morning, Detective.

24 A Good morning.

25 Q You met with the Clerk at the Speedy -- or the Short

1 Line Express?

2 A Yes.

3 Q And that's the early morning hours of August 9th,
4 2017?

5 A That's correct, yes.

6 Q You indicated -- and I think your statement was
7 robbery -- might be a robbery?

8 A Yes.

9 Q Now, you're just remembering this; you didn't put
10 that information in a report or anything like that, correct?

11 A No, I didn't.

12 Q You may be in error about what his actual statements
13 were? I want to be clear. When you spoke to him, that phrase
14 was not used?

15 A I did not speak to the Clerk about the robbery, no.

16 Q Okay, thank you. And there wasn't an actual
17 criminal incident; it was that you had information about the
18 four suspects that may have been at the Short Line Express?

19 A No, the Clerk was unsure. The Clerk felt that he
20 was going to be robbed, so he notified patrol officers.

21 Q But you didn't receive that information?

22 A No, I did not.

23 Q And so what you're saying -- and this is why I'm
24 asking you. That word, "robbed," that was never spoken to
25 you?

1 A To -- to me directly by --
2 Q From the Clerk.
3 A From the Clerk? No.
4 Q And also, the Clerk did not call 911? You went out
5 to the Short Line Express because Sergeant Tromboni had
6 actually gone there, correct?
7 A Yes.
8 Q Thank you.
9 MR. RUGGEROLI: Court's indulgence.
10 (Pause in the proceedings)
11 BY MR. RUGGEROLI:
12 Q Detective, I'm going to show you a portion of
13 State's 328, which you were shown a portion of on direct
14 examination.
15 MR. PESCI: Sorry, it's going to take a second to
16 load.
17 MR. RUGGEROLI: No problem.
18 BY MR. RUGGEROLI:
19 Q While they're loading that up, you had indicated
20 that you watched the surveillance video several times?
21 A Yes.
22 Q You've been trained in firearms?
23 A Yes.
24 Q And I just want to see if you're able to notice
25 something from the video.

1 MR. PESCI: Which one do you want?

2 MR. RUGGEROLI: The fourth one down. Thank you.

3 Just while they walk in.

4 BY MR. RUGGEROLI:

5 Q Do you see the individual that you said had the

6 firearm, and he's adjusting?

7 A Yes.

8 Q Okay. Are you able to tell from that video -- thank

9 you -- if that individual took the magazine out of the

10 firearm?

11 A No, I can't tell.

12 Q Okay. But that is what you were shown on direct

13 examination, that portion of them walking in?

14 A Yes.

15 Q Thank you.

16 MR. RUGGEROLI: That's all I had for that. Thank

17 you.

18 MR. PESCI: Okay.

19 BY MR. RUGGEROLI:

20 Q You had actually also interviewed Mr. Relato, the

21 decedent's cousin; is that correct?

22 A Yes.

23 Q Do you recall that he had given you some information

24 about an iPhone?

25 A I do not recall that, no.

1 Q What about the mail that Mr. Valenzuela had? Do you
2 recall him giving you any information about that?

3 A No, I do not.

4 Q Do you recall him giving you any information or did
5 you learn any information about Mr. Valenzuela's vehicle prior
6 to August 8th, August 9th of 2017 being broke into?

7 A No.

8 Q And did you personally write a report regarding this
9 incident?

10 A Did I personally write a report?

11 Q Yes.

12 A Not that I recall, no.

13 MR. RUGGEROLI: Thank you, Detective. I have
14 nothing further.

15 THE COURT: Any redirect?

16 MR. PESCI: No.

17 THE COURT: Thank you very much for your testimony
18 here today. You may step down --

19 THE WITNESS: Thank you.

20 THE COURT: -- and you are excused from your
21 subpoena. You may call your next witness.

22 MR. BROOKS: Your Honor, the State calls Shawn
23 Fletcher.

24 THE MARSHAL: And if you'll please remain standing,
25 raise your right hand, and face the Clerk.

1 SHAWN FLETCHER, STATE'S WITNESS, SWORN

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

4 THE WITNESS: Shawn Fletcher. It's S-h-a-w-n,
5 F-l-e-t-c-h-e-r.

6 DIRECT EXAMINATION

7 BY MR. BROOKS:

8 Q Ms. Fletcher, how are you employed?

9 A I work for Las Vegas Metropolitan Police Department
10 as a senior crime scene analyst.

11 Q And how long have you been so employed?

12 A 23-and-a-half years.

13 Q Do you recall an incident that brings us here to
14 court today?

15 A Yes.

16 Q So I want to turn your attention to that August 9th,
17 2017 incident. How did you first become involved in it?

18 A I got requested by detectives to go out to the scene
19 and seal a vehicle.

20 Q And when you say "scene," do you recall which scene
21 this was?

22 A We were on East Cheyenne at a Dotty -- in a Dotty's
23 parking lot.

24 Q And was this nighttime or morning?

25 A It was nighttime, about 8:30.

1 Q Now, was this the primary scene of the
2 investigation, or was this like a secondary scene?

3 A This was a secondary follow up scene.

4 Q Okay. So when you got there, what did you see?

5 A When I got there, there was a vehicle there, and it
6 was a white four-door Grand Marquis, I believe, and it was in
7 the parking lot in the westbound direction.

8 MR. BROOKS: And Your Honor, I've shown defense some
9 of these exhibits, so going to admit the car photos by
10 stipulation.

11 THE COURT: Okay. Do you want to just state for the
12 record?

13 MR. BROOKS: Yes. Exhibits 150 through 154.

14 THE COURT: Any objection?

15 MR. SANFT: No, Your Honor.

16 MR. RUGGEROLI: No, Your Honor.

17 THE COURT: They're admitted.

18 (State's Exhibits 150 through 154 are admitted)

19 MR. BROOKS: Exhibits 155 through 159.

20 MR. SANFT: No objection, Your Honor.

21 MR. RUGGEROLI: No objection.

22 THE COURT: They're admitted.

23 (State's Exhibits 155 through 159 are admitted)

24 MR. BROOKS: Exhibits 160 through 175.

25 MR. SANFT: No objection.

1 MR. RUGGEROLI: No objection.
2 THE COURT: They're admitted.
3 (State's Exhibits 160 through 175 are admitted)
4 MR. BROOKS: Exhibits 176 through 180.
5 MR. SANFT: No objection, Your Honor.
6 MR. RUGGEROLI: No objection.
7 THE COURT: They're admitted.
8 (State's Exhibits 176 through 180 are admitted)
9 MR. BROOKS: And then, 181 through 214.
10 MR. SANFT: No objection, Your Honor.
11 MR. RUGGEROLI: No objection.
12 THE COURT: They're admitted.
13 (State's Exhibits 181 through 214 are admitted)
14 MR. BROOKS: And Your Honor, may I publish?
15 THE COURT: You may.
16 BY MR. BROOKS:
17 Q So, Ms. Fletcher, is this the vehicle?
18 A Yes, it is.
19 Q Was there something unusual about the vehicle when
20 you arrived that caused you to have to do something?
21 A Yes, the driver's window was down.
22 Q And so what did you do?
23 A Sometimes when -- in this particular case, the
24 battery was dead, so we tried to jump the car so we could get
25 the window up, and that didn't work. So I placed plastic wrap

1 over it after I fingerprint processed it to seal up the window
2 so that we could tow the vehicle without losing anything.

3 Q I'm showing you -- that last one, for the record,
4 was Exhibit 151. Showing you Exhibit 152.

5 A This is -- is this a touch screen, or am I using the
6 mouse?

7 Q The mouse in front of you.

8 A The mouse? Okay.

9 Q Yes.

10 A This -- the black stuff that you see around this
11 window here is my fingerprint powder, and then this is a
12 picture of my actual fingerprint lifts. It's kind of hard to
13 see, but you can see like a number 3 here. These are my
14 fingerprint tape. This is before I put that Saran Wrap, so to
15 speak, over the window.

16 Q So you print it before you put the Saran Wrap?

17 A Yes.

18 Q And how would -- you mentioned the battery had died
19 on this. How would you have transported it after you were
20 done?

21 A We call the tow company that's on-call, and they
22 towed it to our lab.

23 Q And did that happen?

24 A It did.

25 Q Did it happen that night?

1 A It did.

2 Q I want to show you specifically Exhibit 154, and I
3 want to turn your attention to the 4 and 5 pieces of tape.
4 What are those?

5 A These are pieces of my fingerprint tape. You can
6 see the numbers that I gave each one; a 3, a 6, a 7. I'm not
7 sure what that one says, maybe 1. And that's my fingerprint
8 tape that's in place over a developed fingerprint.

9 Q So what are you doing? What does the tape do?

10 A The tape -- basically, when you leave your
11 fingerprint behind, you leave behind residue on something.
12 Our powder will adhere to that residue. And then, this is
13 basically -- it's forensic tape, but it's really just Scotch
14 tape. You put that over the print, and then you can pull it
15 off of there, and that black residue that's adhering to the
16 print is on the tape, and it's placed on a white fingerprint
17 card. So this is just a photo to show the location of those
18 latent prints that I recovered.

19 Q And what's the word "Q card" mean?

20 A I'm sorry?

21 Q What does "Q card" mean?

22 A I don't know.

23 Q Okay. So when you put this tape on something, what
24 do you do with it then?

25 A When it gets put on the latent print card, it gets

1 -- there's a label that's already printed on the card, and
2 it's got the case number, my name and P number, the location,
3 and the area that the fingerprint was pulled off. So these
4 would all say, "Exterior driver's door," and it's got the
5 vehicle information. And then that gets placed into a latent
6 print packet, so basically, it's an evidence envelope that
7 gets sealed, and then that gets sent over to our Latent
8 Fingerprint Detail.

9 Q So, Latent Prints 4 and 5, would they have been
10 impounded into evidence with -- by you and had your P number
11 put on it?

12 A Yes.

13 Q And then that could have been sent to the lab if
14 someone ever wanted to test it?

15 A Yes. I would secure them and send them over to the
16 Latent Print Detail, and then they hold them from then on.

17 Q Do you test it?

18 A I do not.

19 Q Okay. So after you're done at this Dotty's parking
20 lot, do you go with the car back to the CSI lab?

21 A Yes, I followed the car back there.

22 Q Now, I want to show you Exhibit 159. Do you
23 recognize what we're looking at?

24 A I do.

25 Q And I want to turn your attention to that window.

1 What -- what are we seeing there?

2 A The driver's window?

3 Q Yes.

4 A This is just the plastic seal that I put over the
5 window after I processed it, just so that it would secure it
6 up for towing.

7 Q So, now that it's back at the lab, what happens
8 next?

9 A Now that it's back at the lab, you can see the --
10 the seals that we placed on the vehicle, where I talked
11 earlier about sealing the vehicle. And now we're ready to
12 completely process the vehicle and do everything else that we
13 need to do with the vehicle through documenting it with
14 photography and latent print processing.

15 Q Do you do that that night?

16 A No, we did that on the 11th, so two days later.

17 Q Do you wait for a search warrant?

18 A Yes.

19 Q Until you're able to break those seals?

20 A Correct.

21 Q Were those seals intact at the time you broke them?

22 A They were.

23 Q So once you guys execute the search warrant and
24 start documenting what's inside the car, take me through what
25 happens. How does that process work?

1 A It starts out with a photograph like this. So I
2 would have photographed the vehicle, showing it in this state
3 with the seals in place and everything. And then we would
4 photograph -- break the seals, and photograph the entire
5 inside of it.

6 Generally, the order that we work in is we'll do
7 that -- we'll do all the photography first. We'll pull out
8 any evidence, or in this case, I believe we pulled everything
9 out of the car and laid it down on paper on the floor, and
10 photo the contents of the vehicle. And then we'll collect any
11 evidence, or anything that we're going to collect as evidence
12 gets pulled out, and then we usually do the fingerprint
13 processing last.

14 Q You said "we." Who's we?

15 A I worked with another crime scene analyst, Claire
16 Browning.

17 Q And you said you did the fingerprint processing
18 last. Would your fingerprints have been on it? How would you
19 keep your fingerprints from being on it?

20 A No, we are of course wearing gloves and protective
21 gear so that we don't leave any evidence behind.

22 Q So now I want to turn your attention to kind of like
23 inside the car at this point in time; specifically, the glove
24 box. Was there something in the glove box of evidentiary
25 interest to you?

1 A Yes. We had a box of ammunition -- firearms
2 ammunition in the glove box.

3 Q Showing you Exhibit 180. Do you recognize that?

4 A I do. This is the contents of the ammunition box.

5 Q And what kind of ammunition is that?

6 A It's .45 Auto. It's FC, which is Federal, .45 Auto.

7 Q And was there something else related to firearms in
8 the glove box?

9 A I believe there was a firearms box.

10 Q Okay, and is that -- showing you State's Exhibit
11 177, do you recognize that?

12 A Yes, that is the box.

13 Q Okay, and what kind of -- what kind of box is that?

14 A It's an Interarms .45 semiautomatic gun box.

15 Q Now, inside the vehicle, what was -- what was inside
16 the vehicle?

17 A Well, evidentiary-wise, we had a lot of receipts.
18 We recovered a lot of receipts. We did what we call trace
19 acetate lifts or trace evidence lifts on the seats.

20 Q What's that?

21 A A trace evidence lift, sorry, is -- it's a large
22 adhesive -- it's a big piece of Scotch tape that's like
23 eight-and-a-half by 11, and we just use them to -- we tap it.
24 It's kind of like a lint roller effect. We tap it over all of
25 the seats to recover any trace evidence; any hairs or fibers

1 that might be on the seats. So we had that.

2 We did -- also did DNA swabs on all of the door
3 handles, interior and exterior, and then also the steering
4 wheel, the rear-view mirror, and the gear shift, and those are
5 just for any transfer DNA that might be on those items. And
6 then Claire actually did the evidence impound. So it was
7 mostly receipts, the ammunition that you just showed, and
8 clothing; we had shoes that were in the trunk of the vehicle.

9 Q Now, the DNA swabs, where would you do that to and
10 why?

11 A The DNA swabs on a vehicle, we typically will do,
12 like I said, the steering wheel, the rear-view mirror where
13 you would grab the rear-view mirror to adjust the mirror,
14 we'll do the gearshift, and then we do all of the door
15 handles, so every interior door handle and every exterior door
16 handle.

17 Q I want to show you State's Exhibit 191. What is
18 this a photo of and why did you take it?

19 A This is a photo of the right rear of the vehicle,
20 and it's basically just showing the vehicle as -- with the
21 contents as we opened -- as it was when we opened the door.

22 Q And then you guys start taking things out and
23 documenting it?

24 A Correct.

25 Q So, do you see that sweatshirt there --

1 A Yes.

2 Q -- above the trash bag?

3 A Yes.

4 Q So tell me, if I see -- show you Exhibit 187, what
5 happens in between when you see it on the seat to this? What
6 is that?

7 A Normally, the way that we'll -- we'll do evidence is
8 we photo it in place, and then we will pull it out. This is
9 butcher paper that's lying down on the floor of our garage.
10 So we get fresh butcher paper out, we'll lay the item out, and
11 re-photo it for identification purposes.

12 Q Okay. I want to show you some photos in the trunk.
13 193.

14 A We have several -- obviously, several Nike boxes.
15 We've got a red Air Jordan shoe, and then there's a -- there's
16 a lot of other things in there.

17 Q And Exhibit 194, is that just kind of another type
18 view?

19 A Yes, that's a little bit over to the left of the
20 center.

21 Q All right. Did you have some information that those
22 shoes might be of interest?

23 A Yes.

24 Q And so, showing you Exhibit 181.

25 A That's going to be a close-up of one of the pairs of

1 shoes, and it's on the butcher paper now, as you can see in
2 the background.

3 Q And then, why this in 183? What are you doing here?

4 A This is just showing the size. So that's the -- a
5 sticker that's on the -- the insole, showing the size of the
6 shoe.

7 Q And was there more than one type of this shoe?

8 A We had a size 11, and we also had a pair that were
9 size 9.

10 Q So, in Exhibit 184, is that kind of the same shoe,
11 but with --

12 A Yes.

13 Q -- a different size?

14 A Correct.

15 Q And how do you know it's a different size?

16 A The 9 and the -- right in here.

17 Q I want to show you Exhibit 189. At the point in
18 time when you were taking this, did you know why you were
19 taking this, or why was this of interest?

20 A I don't know.

21 Q Okay. And then, showing you Exhibit 195, what are
22 we looking at?

23 A This little spot that is back here, we thought might
24 be a spot of blood, and it -- and it did turn out to be a spot
25 of blood once we did a presumptive test on it.

1 Q What's a presumptive test?

2 A We use a presumptive test called phenolphthalein,
3 and it basically will tell you -- we'll do a small little
4 sample -- take a small little sample with a dampened swab, and
5 then we'll test the swab, and the phenolphthalein will
6 indicate whether it's blood or not.

7 Q Okay. And so then, showing you Exhibit 196, is that
8 a zoomed-in version?

9 A It is.

10 Q Is that your P number?

11 A It is, yes, 5221.

12 Q Okay. So your P number in the photo, does that mean
13 that, when you swabbed that, it would have been impounded
14 under your number, or was it impounded under someone else's?

15 A It was impounded under Claire's -- Claire Browning's
16 P number. She did all the evidence.

17 Q And were there any other areas that you tried to do
18 presumptive blood tests on?

19 A We did. We had some stains on the shoes, both of
20 the pairs of the red shoes that we tested. Those did not come
21 back positive; they were negative. And then we had -- this is
22 on the back of the -- it's on the top of the right front seat.
23 On the interior right rear door, we had a couple of stains,
24 but they were very small, so we just collected those; we did
25 not test them.

1 Q Okay. Would they have been preserved though if
2 someone wanted to test them later?

3 A Yes. And I'm sorry, we also had a red shirt that we
4 tested that was negative as well.

5 Q And Exhibit 201. So now, at this step of the
6 process, what are you doing?

7 A This is kind of the same process I described
8 earlier. We've taken the things out of the trunk and laid
9 them on the butcher paper, and now I'm just kind of
10 photographing them more spread out so that you can see
11 everything.

12 Q All right, I'm going to walk you through kind of a
13 progression of that. 202?

14 A This is another picture kind of going down the line.

15 Q So you just end up going down the line, in like 203,
16 and documenting the various things you took out?

17 A Correct.

18 Q Exhibit 204?

19 A Again, same thing.

20 Q Exhibit 205?

21 A And more of the same.

22 Q And Exhibit 206?

23 A And that's probably the end of it.

24 Q So, after documenting all this, are you present when
25 Ms. Browning begins to process the car for fingerprints, or

1 what are you doing while she's doing that?

2 A Yes, I was present.

3 Q Okay. And does she use a similar type style that
4 you would have used?

5 A She did, yes.

6 Q Once you guys are done documenting everything inside
7 of this, what happens with the car, and then what happens with
8 the evidence that you guys gathered?

9 A The evidence that was gathered, Claire would have
10 processed some of the items. I think -- I can't remember
11 everything that she processed, but she would have processed
12 some of the items for fingerprints, the things that could have
13 been processed. She would have swabbed some of the drink
14 containers for DNA, just like we swabbed the door handles.

15 And then, when we -- when we impound or we recover
16 evidence, it's kind of similar to the fingerprints. We will
17 put it in an interior package that we seal up or staple up
18 with the event number. Claire will put her initials, and P
19 number, and the item number on it.

20 And then, the exterior bag is going to have a label
21 on it that's got a detailed description of exactly what's
22 inside of the bag. That's also going to have the case number,
23 the location. It's going to have Claire's initials and P
24 number; she's going to sign the label. So it's going to have
25 all of the identifiers of the case on that label.

1 And then she's going to seal -- we do what we call
2 seal the evidence, and that's a red piece of tape that's got
3 the Metro stuff on it, and she'll seal it around the -- where
4 she folded over the bag, and then she also initials and writes
5 the date on that, and that shows that the evidence hasn't been
6 tampered with.

7 If the package is opened by somebody after, like a
8 forensics or a latent print examiner, they don't break that
9 seal. They cut the package open, and then they will reseal
10 where they cut the package open so it maintains the integrity
11 of the evidence. And then it will go to the evidence vault at
12 that point.

13 MR. BROOKS: Thank you. Nothing further. Pass the
14 witness.

15 THE COURT: Mr. Sanft?

16 MR. SANFT: No cross, Your Honor.

17 THE COURT: Mr. Ruggeroli?

18 MR. RUGGEROLI: Just one brief question.

19 CROSS-EXAMINATION

20 BY MR. RUGGEROLI:

21 Q I wanted you to just clarify. You did find some
22 evidence of what looked to be potential bloodstains on shoes,
23 but that turned out to be negative; is that correct?

24 A It did.

25 MR. RUGGEROLI: Okay, nothing further. Thank you.

1 THE COURT: Anything else?

2 MR. BROOKS: No, Your Honor.

3 THE COURT: Okay. Thank you very much for your
4 testimony here today. You may step down, and you are excused
5 from your subpoena. You may call your next witness.

6 MR. BROOKS: Your Honor, the State calls Claire
7 Browning.

8 THE MARSHAL: If you'll please step up into the
9 witness stand. Remain standing, raise your right hand, and
10 face the Clerk.

11 CLAIRE BROWNING, STATE'S WITNESS, SWORN

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

14 THE WITNESS: My name is Claire Browning. First
15 name is C-l-a-i-r-e. Last name, B-r-o-w-n-i-n-g.

16 DIRECT EXAMINATION

17 BY MR. BROOKS:

18 Q Ms. Browning, how are you employed?

19 A I'm employed as a crime scene analyst with Las Vegas
20 Metropolitan Police Department.

21 Q How long have you been so employed?

22 A A little over four-and-a-half years.

23 Q Did you know the lady who just walked out of the
24 courtroom?

25 A Yes, I do.

1 Q Do you recall an incident that brings us here to
2 court today that you worked with that lady?

3 A Yes.

4 Q So I want to turn your attention to that August 2017
5 time period. How did you first become involved in this
6 investigation?

7 A I was requested to assist on a vehicle that was in
8 the CSI garage that was related to a homicide event.

9 Q So, by the time you get brought on, the vehicle's
10 already in -- at your CSI lab?

11 A That's correct.

12 Q All right. And so, what do you -- what's your first
13 step? How do you guys divide up the labor?

14 A So it was decided that Shawn Fletcher, the last
15 person that testified, she was going to do the photos and the
16 report for this particular incident, and then I was going to
17 collect any latent prints and evidence.

18 Q So what's the first step that you would do then?

19 A So Shawn originally took some photos of the vehicle
20 to show it in the original condition, to include the seals
21 that were affixed on the exterior of the vehicle. We then cut
22 the seals open, and she can photograph all of the interior of
23 the vehicle to show where all of the items of evidence and all
24 the contents, where they were for their original location.

25 Q And then, what is kind of the first step that you

1 would be involved in?

2 A So the first step that I would be involved in, I
3 believe that we latent print processed the exterior of the
4 vehicle, and we pulled all of the items out of the vehicle to
5 see what was pertinent to the case that we were working.

6 Q What's an acetate trace lift?

7 A So an acetate trace lift, it's actually -- think of
8 it as like a really big, sticky sheet of paper. It's clear
9 plastic. We can use it to pick up any trace evidence that
10 might be on the surface. So in this case, we used trace lifts
11 on the seats of the vehicle. We then adhere it to just a
12 piece of clear vinyl -- or, sorry, not clear vinyl -- white
13 vinyl, and submit it for evidence.

14 Q And when you guys swabbed the car for DNA, would
15 that have been impounded under your event number?

16 A It would have been --

17 Q Or, sorry, P number?

18 A Yes. It would have been impounded under my P
19 number.

20 Q And were there three specific things that appeared
21 to be, like, blood?

22 A There were some areas that did appear to be blood,
23 and one area actually tested positive for blood.

24 Q And when you say tested positive, what -- what test?

25 A We did a phenolphthalein presumptive test. It's

1 just a test that could point towards the stain that we found
2 being blood. It's not 100 percent clear-cut, but more than
3 likely, it would be blood.

4 Q And do you recall where that was?

5 A The area that we tested was on the right side of the
6 right front seat back.

7 Q Showing you Exhibit 195, do you recognize that?

8 A Yes, this is the stain that I was talking about.

9 Q And would that have -- what's your P number?

10 A My P number is 15291.

11 Q Would you have impounded that with your P number?

12 A Yes.

13 Q Was that in Package 3, Item 15?

14 A I believe so, yes.

15 Q Were there two other areas of interest that looked
16 similar to that?

17 A Yes. The areas were too small to actually
18 presumptively test, but we did collect them, and they did
19 appear to be blood. They were located on the interior side of
20 the right rear door. I believe it was on the armrest, and
21 then on the interior panel near the handle.

22 Q So showing you Exhibit 199, do you kind of see that
23 from here, or do you want me to give you a closer view?

24 A Yes, I can see it.

25 Q Okay. And so would those have been impounded under

1 your P number in that Package 3, Item 16 and 17?

2 A I believe so, yes.

3 Q Now, let's move to the print processing. Were you
4 the person who did the print processing?

5 A Yeah, I did the majority of the processing on the
6 vehicle. The only area that I personally did not process
7 myself was the, sorry, exterior side of the left front door.
8 I believe that CSA Fletcher had already done that when she had
9 towed the vehicle. But we processed -- or, sorry. I
10 processed the interior and exterior sides of all doors,
11 windows, the hood, the trunk, and several items that were
12 located inside the vehicle.

13 Q All right, I want to walk you through some of those.
14 Forgive me, you guys took a lot of photos here. So I'm going
15 to turn your attention to Latent Print 6 first, so Exhibit
16 164. Where is Latent Print 6, and how would that have been
17 impounded?

18 A So Latent Print 6 looks like it's on the exterior
19 right rear quarter panel, or what's kind of the, I guess, C
20 frame of the vehicle. When we impound a latent print lift, we
21 actually -- if you see the tape here, we peel that piece of
22 tape off of the surface and apply it to a piece of white
23 cardstock so that we can visualize the print.

24 We then label it with the event number, it would be
25 my name and P number, the date that we collected it, what

1 surface we collected it from, and then that designator, so
2 LP6, or Latent Print 6. We then -- for all of the prints that
3 we end up getting, we submit them in a latent print envelope,
4 which details the same information that the card has, and seal
5 it, impound it, and give it to the Latent Print Detail.

6 Q And just so we don't have to go through that step on
7 each one, all the prints that I'm about to talk about, do you
8 do the same thing individually with those prints?

9 A Yes, we do.

10 Q Are some of these fingerprints and some of these
11 palm prints?

12 A I believe so, yeah.

13 Q How do you decide, you know, what to pull?

14 A So there are certain specifications to what we take.
15 Typically, there's got to be a certain number of points in
16 ridge detail that we can identify. There can be a delta --
17 I'm not a latent print examiner, and I'm not an expert by any
18 means, but we look for certain details that are within the
19 print.

20 Q So, Latent Print 13 in Exhibit 165, let me see if I
21 can zoom-in to help you with the number. Do you see it?
22 Wait.

23 A Sorry, repeat the -- the number.

24 Q Latent Print 13, do you see it there?

25 A Oh, 13. Yes, it's on the exterior side of that

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON ROBERTSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 81400

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Michelle Leavitt, District Judge
District Court No. C-17-328587-2

APPELLANT'S APPENDIX
VOL. 5 OF 7

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CHRONOLOGICAL INDEX

Description	Vol.	Pages	Date
Original Indictment	1	AA000001	12/14/17
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Transcript- Status Check, Homicide Trial	1	AA000015	4/5/18
Transcript- Superseding Indictment	1	AA000028	4/18/18
Superseding Indictment	1	AA000022	4/19/18
Transcript- Initial Arraignment	1	AA000055	5/3/18
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Transcript- Status Check, Homicide Trial	1	AA000072	6/6/18
Transcript- Status Check, Homicide Trial	1	AA000088	9/5/18
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Transcript-Status Check, Trial Readiness	1	AA000116	8/21/19
Transcript-Status Check, Trial Readiness	1	AA000129	12/18/19
Transcript-Status Check, Trial Readiness	1	AA000132	1/15/20
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 21st of October, 2020, a copy of the foregoing Appendix was served by electronic filing as follows:

District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

Nevada Attorney General
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Carson City NV 89701

DATED this 21st of October, 2020.



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Attorney for Appellant Raekwon
Robertson

1 window.

2 Q And is that the back passenger?

3 A Yes, it is.

4 Q Showing you Exhibit 166, Latent Print 16. Do you
5 see it there?

6 A 16 appears to be at the top edge of the right front
7 window.

8 Q Now, is there also a Latent Print 19? Do you want
9 me to back out of there?

10 A It looks like it's actually on that -- that bottom
11 edge of the window.

12 Q So that's the one on the bottom edge here?

13 A Yes, that's correct.

14 Q Latent Print 20 on Exhibit 167. Do you see it
15 there?

16 A Yes. It looks like it's going to be on the frame of
17 the right front door.

18 Q And where is Latent Print 23 now in Exhibit 169?

19 A It looks like this is the front hood of the vehicle.

20 Q So we've kind of been going up in numbers, and
21 working our way how on the car? How did you do it?

22 A It's hard to say, but based off of the direction
23 that the prints appear to be going, we would have numbered it
24 from the right rear side of the vehicle, around towards the
25 front, towards the left side of the vehicle.

1 Q I'm going to show you kind of a group of different
2 photos -- or I'm going to ask on a group of different prints
3 now. Showing you Exhibit 170. Can you use that mouse in
4 front of you and help identify for us Latent Print 27?

5 A This appears to be Latent Print 27.

6 Q Let me see. Okay, and Latent Print 28?

7 A Is right next to it.

8 Q Latent Print 29?

9 A I believe it's this one.

10 Q And 30?

11 A Latent Print 30 is this one.

12 Q 31?

13 A If I can read it correctly, I believe it's this one
14 right here.

15 Q Okay, and let me show you Exhibit 171. Can you kind
16 of see some of the areas that we were just looking at when we
17 were talking about 31, 29, and 30?

18 A Yes.

19 Q Now, I want to ask you where 32, 33, and 34 are.

20 A These are these three prints right here.

21 Q Right. And showing you Exhibit 172. Do you see
22 where 34 and 35 are?

23 A I believe this is 35, and then -- I feel like my
24 eyesight is failing me. I can't see where 34 is. Oh, 34 is
25 this one right here.

1 Q 37? Do you want me to back -- back out?
2 A You're good. 37 is right here. I just --
3 Q All right.
4 A I think this is still the front hood.
5 Q And were we all -- we're still on the hood for all
6 those, right?
7 A Yes.
8 Q And was the car this dirty, or did you make it that
9 dirty?
10 A I made it that dirty. That is the latent print
11 powder that we were using.
12 Q And I promise, just a last couple. Latent Print 43?
13 A 43 appears to be on the top frame of -- this looks
14 to be the left rear door.
15 Q And do we see 44 in this photo?
16 A I believe this one is 44 on the door -- or, sorry,
17 not the door; on the window.
18 Q Now, were there things that you processed for prints
19 that didn't involve this type of processing that returned
20 negative results?
21 A We actually did powder processing on all the items
22 that we did process. Several of those items were located
23 inside the vehicle, so we processed water bottles, there was a
24 gun box, cigarillo wrappers, things of that nature.
25 MR. BROOKS: Thank you, Your Honor. Pass the

1 witness.

2 THE COURT: Cross-examination?

3 MR. SANFT: No cross, Your Honor.

4 MR. RUGGEROLI: I have no questions. Thank you.

5 THE COURT: Okay. Thank you very much for your
6 testimony here today. You may step down. You are excused
7 from your subpoena.

8 MR. PESCI: Can I approach?

9 THE COURT: Yeah.

10 MR. PESCI: Can we approach?

11 (Bench conference)

12 THE COURT: Is this where you want to call DeShawn?

13 MR. PESCI: Yeah. Yeah, so I don't know if you
14 wanted to take a break.

15 THE COURT: Okay, yeah, we'll take a break.

16 (End of bench conference)

17 THE COURT: Okay. At this time, ladies and
18 gentlemen, we're going to take a short recess.

19 During this recess, you're admonished not to talk or
20 converse amongst yourselves or with anyone else on any subject
21 connected with this trial, or read, watch, or listen to any
22 report of or commentary on the trial, or any person connected
23 with this trial, by any medium of information, including,
24 without limitation, newspapers, television, the internet, or
25 radio, or form or express any opinion on any subject connected

1 with this trial until the case is finally submitted to you.
2 We'll be in recess for at least the next 15 minutes.
3 Thank you.
4 THE MARSHAL: Thank you. All rise for the exiting
5 jury, please. Jurors.
6 (Outside the presence of the jurors at 10:29 a.m.)
7 THE COURT: Okay, the record will reflect that the
8 hearing is taking place outside the presence of the jury
9 panel.
10 MR. PESCI: If I can just make a quick record, Your
11 Honor.
12 THE COURT: Sure.
13 MR. PESCI: During the testimony of Detective Lora
14 Cody, there was evidence admitted regarding the registration
15 of the vehicle, and specifically, it's under the name of James
16 Newman. I was concerned and didn't want there to be the
17 appearance that somehow this was a stolen vehicle because it
18 comes back as the registered owner being James Newman.
19 So I briefly conferred with defense counsel. They
20 agreed with the concept of me utilizing some hearsay evidence
21 to establish that it actually had been sold to DeMario
22 Lofton-Robinson so there was no appearance of some sort of
23 other bad act because of the car being in someone else's name.
24 MR. SANFT: That is correct, Your Honor.
25 MR. RUGGEROLI: Correct.

1 THE COURT: Okay. And we're bringing in DeShawn
2 Robinson, correct? He's here?

3 MR. PESCI: Correct. Yes.

4 THE COURT: Okay.

5 MR. PESCI: That's what I'm told.

6 MR. SANFT: Yeah.

7 THE COURT: Do we have to settle these issues, or
8 did we agree that these exhibits, we would be able to resolve
9 that later? The actual exhibits. That's my concern, because
10 I don't know, Mr. Ruggeroli, if you're going to want to
11 actually use the exhibit.

12 MR. RUGGEROLI: We have multiple exhibits. The only
13 one that I -- I don't know if I would use any right now.

14 THE COURT: The Agreement to Testify.

15 MR. RUGGEROLI: Yeah, I'm not going to use that
16 right now because I know --

17 THE COURT: Okay.

18 MR. RUGGEROLI: -- that it needs to be worked on.

19 THE COURT: Okay.

20 MR. RUGGEROLI: I think you were going to let us
21 know after you had a chance to read the canvass of the entry
22 of plea. And so, at this time, I can't display it, obviously,
23 until you make a ruling on that.

24 THE COURT: And you want to actually admit this?

25 MR. RUGGEROLI: I do. So, it's Defense Proposed A1.

1 THE COURT: Okay. And you've read it in its
2 entirety? Okay, because I'm concerned about page 12, some of
3 the things that I say.

4 MR. SANFT: Yeah.

5 THE COURT: I just want to make sure that -- I mean,
6 page 12 when I say, "And you understand that you'll be
7 testifying in front of this Court, and this Court would also
8 be the one that would probably most likely sentence you, and
9 that I'll have an opportunity to hear how you testify?"

10 MR. RUGGEROLI: Yes.

11 THE COURT: I mean --

12 MR. RUGGEROLI: I know. I did read it, and there's
13 also some other portions on page 12. I --

14 THE COURT: Yeah.

15 MR. RUGGEROLI: I've made my argument.

16 THE COURT: "And you understand the importance of
17 agreeing to testify truthfully, and if the State believes you
18 didn't testify truthfully, it could be used against you and
19 they could argue for a more harsh penalty?" I mean, those are
20 all coming from me.

21 MR. RUGGEROLI: That's true, Judge. I just think
22 that it helps -- it's all true, and because of that, I think
23 that it did play a role in his decision-making, which then
24 should be subject to cross-examination so that we can do our
25 job and attack his credibility and motive.

1 The motive that we're going to be suggesting is that
2 he has received a tremendous benefit, despite the fact that
3 he's denied and did not admit to being involved in any
4 conspiracy; but that he is obligated, in order to receive the
5 benefits of that agreement, to testify. And so, I've asked
6 that that exhibit be admitted.

7 THE COURT: Okay. And on page 8, line 20, it says
8 that on -- that the State would prove that on August 19th -- I
9 think Mr. Pesci meant August 9th.

10 MR. PESCI: Yes.

11 THE COURT: So, again, I just want to make sure you
12 want this in, I mean, because they would be able to read the
13 things that I said to Mr. Robinson as well.

14 MR. RUGGEROLI: Yes, I don't have the desire to
15 redact it. I think it would pretty much be impossible, and it
16 would destroy the context of his answers.

17 MR. PESCI: And Judge, the State's only request is,
18 as you pointed out, I'm not sure if it's misspeaking or the
19 transcription, but obviously, it's 9th.

20 THE COURT: Right.

21 MR. PESCI: So I would ask just that the "1" be
22 redacted.

23 THE COURT: Oh, yeah, we could just do that, right?

24 MR. PESCI: We could do Wite-Out.

25 THE COURT: It's -- do I have the actual exhibit?

1 THE CLERK: Um-hum.

2 THE COURT: Oh, I have the actual one? Oh, I'm so
3 glad I didn't write on it. Oh. Okay, so you just want me to
4 White-Out the "1"?

5 MR. PESCI: Yes, please.

6 THE COURT: Okay.

7 MR. RUGGEROLI: And Judge, just another matter of
8 clarification, if I may.

9 THE COURT: It's line 20 on page 8. It says,
10 "19th." It's supposed to be the 9th.

11 MR. RUGGEROLI: As to Mr. Pesci's point about they
12 did not present all the evidence that they even had at their
13 disposal --

14 THE COURT: Uh-huh.

15 MR. RUGGEROLI: -- at the time, I expressed my -- I
16 do not intend in any way to say, oh, hey, this is all the
17 State had. But also, on page 8, Mr. Pesci did reference the
18 fact that they were incorporating the grand jury transcripts.

19 THE COURT: Grand jury. Um-hum.

20 MR. RUGGEROLI: I don't want the grand jury
21 transcripts to come in, but I think that that would -- and I'm
22 not going to do it, but even if I unintentionally said
23 something, the State could then point out, hey, look, we
24 incorporated this voluminous document, which is the grand jury
25 transcripts, by reference to this plea, and that contained,

1 you know, a lot more specificity and information.

2 But I don't want the grand jury transcripts
3 introduced at all. Just in order to address the State's
4 concern that I would somehow suggest that the only evidence
5 that they had was what Mr. Pesci relayed, they also had the
6 grand jury, even based on the information that was presented
7 in the canvass.

8 THE COURT: And he actually incorporated it --

9 MR. RUGGEROLI: Yes.

10 THE COURT: -- into the transcript.

11 MR. RUGGEROLI: Yes. And I did want to clarify that
12 I don't want to incorporate it into the proposed exhibit.

13 THE COURT: Of course you don't. Mr. Sanft, I just
14 want to make sure you don't have any objection.

15 MR. SANFT: No, Your Honor. Thank you.

16 THE COURT: Okay, and the State has stated all of
17 theirs?

18 MR. PESCI: Yes, Judge. I mean, it depends on what
19 he argues that I might do something from that. So I don't
20 know how he's eventually going to argue that, but my intent is
21 not to say, "I now move to admit the entire grand jury
22 transcript," because it has the other crimes that had been
23 excised out.

24 THE COURT: Okay. So I'm going to allow it, so I
25 can admit it right now. Al.

1 (Defense Exhibit A1 is admitted)

2 THE COURT: Is there anything else before -- because

3 Officer Hawkes is going to have to get that witness in here

4 and get him ready.

5 MR. PESCI: I don't think so.

6 MR. SANFT: Yes, Your Honor.

7 THE COURT: And I saw his attorney, so Mr. Evans is

8 here, right?

9 THE MARSHAL: He's back in the back with him.

10 THE COURT: Okay.

11 MR. PESCI: Yes.

12 THE MARSHAL: Yeah.

13 THE COURT: So we'll just take about ten minutes --

14 MR. RUGGEROLI: Thank you, Judge.

15 THE COURT: -- and then we can get the witness

16 ready.

17 MR. PESCI: Thank you, Your Honor.

18 (Court recessed at 10:36 A.M. until 10:51 A.M.)

19 (Outside the presence of the jurors)

20 THE MARSHAL: Please come to order. Court is now in

21 session.

22 THE COURT: Okay, can we bring the panel in? Bring

23 them in.

24 THE MARSHAL: All rise for the entering jury,

25 please. Oh.

1 (Pause in the proceedings)

2 MR. RUGGEROLI: Your Honor, as we're waiting, I

3 would like to invoke the exclusionary rule. I don't expect

4 anybody's a witness, but in case --

5 THE COURT: Okay, just a minute.

6 THE MARSHAL: All rise for entering jury.

7 THE COURT: Just will you hold Hawkes just for a

8 moment? Okay. You're invoking the exclusionary rule?

9 MR. RUGGEROLI: Yes.

10 THE COURT: Are there any witnesses in here?

11 MR. RUGGEROLI: I don't think so; I'm just being

12 cautious.

13 THE COURT: Okay.

14 MR. PESCI: No. The State's invoking the same

15 thing, and we have been since the beginning.

16 THE COURT: Okay.

17 MR. PESCI: So I don't know -- everybody that's over

18 here, they are not going to testify because they've been in

19 here the whole trial.

20 MR. RUGGEROLI: Correct.

21 THE COURT: And -- because I don't know everybody in

22 the courtroom, so I just -- I'll rely on the attorneys, okay?

23 Sorry about that.

24 THE MARSHAL: No problem.

25 THE COURT: And I also want the record to reflect

1 that Mr. Robinson's attorney, Mr. Evans, is present in the
2 courtroom.

3 MR. PESCI: Thank you, Your Honor. That's what I
4 was just going to say, and we also have some other individuals
5 from the juvenile detention facility. So I'm not sure maybe
6 if that was the concern, but they are associated with the --
7 they have to have someone here with him --

8 THE COURT: Yeah.

9 MR. PESCI: -- because he's in custody.

10 THE COURT: That's fine. Okay, anything else before
11 we bring them in?

12 MR. RUGGEROLI: No, Judge.

13 THE COURT: Okay, thank you. Mr. Evans, you're okay
14 with where you're sitting?

15 MR. EVANS: Yeah, I'm fine. I'm fine here, Judge.
16 If you'd prefer, I'll move somewhere else, but --

17 THE COURT: No, it's your pleasure.

18 MR. EVANS: -- I'm comfortable here and it's a
19 little crowded up there.

20 THE COURT: Okay.

21 MR. EVANS: All right.

22 THE COURT: You can bring them in.

23 THE MARSHAL: Okay, we're ready to roll. All rise
24 for the entering jury.

25 (Within the presence of the jurors at 10:55 a.m.)

1 THE COURT: Does the State stipulate to the presence
2 of the panel?

3 THE MARSHAL: Thank you, everyone. Please be
4 seated.

5 THE COURT: Mr. Pesci, do you stipulate to the
6 presence?

7 MR. PESCI: Yes, Your Honor. Thank you.

8 THE COURT: Mr. Sanft?

9 MR. SANFT: Yes, Your Honor.

10 THE COURT: Mr. Ruggeroli?

11 MR. RUGGEROLI: Yes, Your Honor.

12 THE COURT: Okay. The State of Nevada may call
13 their next witness.

14 MR. BROOKS: Your Honor, the State calls DeShawn
15 Robinson.

16 THE COURT: Mr. Robinson, if you don't mind
17 standing, facing the Clerk, raising your right hand so you can
18 be sworn in. She's over here, Mr. Robinson.

19 DESHAWN ROBINSON, STATE'S WITNESS, SWORN

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

22 THE WITNESS: DeShawn Robinson. D-e-s-h-a-w-n.
23 Robinson, R-o-b-i-n-s-o-n.

24 DIRECT EXAMINATION

25 BY MR. BROOKS:

1 Q Mr. Robinson, can I call you DeShawn?

2 A Yes, sir.

3 Q DeShawn, how old are you?

4 A 17.

5 Q And I see you have a handcuff on. Where did you
6 come from today?

7 A Summit View Center.

8 Q Where is that?

9 A I don't know where it's located.

10 Q Is it here in Las Vegas though?

11 A Yes, sir.

12 Q Okay. And I want to turn your attention back to
13 like that 2017 time frame. Can we talk about that time frame?

14 A Yes, sir.

15 Q How old were you then?

16 A 14.

17 Q And were you in high school or were you going into
18 high school?

19 A Going into high school.

20 Q Which high school?

21 A I was out when summertime was -- so I didn't get to
22 sign up for school or anything.

23 Q Oh, I guess I should have worded it better. Which
24 one were you zoned for? Where would you have gone?

25 A I would have gone to Desert Pines High School.

1 Q Desert Pines? And where were you living back then?
2 A I was living with my brother and his girlfriend.
3 Q And what's your brother's name?
4 A DeMario Lofton-Robinson.
5 Q And do you sometimes refer to him by something else?
6 A Yes, sir.
7 Q What do you call him?
8 A DJ.
9 Q DJ? What's DJ short for?
10 A DeMario Lofton -- it's short for DeMario, Jr.
11 because --
12 Q Oh, he's a Junior?
13 A Yes, sir.
14 Q Okay. And where was your -- did you guys have the
15 same mom or same dad? Which one?
16 A Same mom.
17 Q Same mom? And where did she live?
18 A She lived in Texas.
19 Q Did you ever get the chance to kind of go visit her?
20 A Yeah.
21 Q Back before this time frame that we're talking
22 about, had you recently visited her?
23 A Yeah.
24 Q What part of Texas; do you know?
25 A Arlington, Texas.

1 Q And in this 2017 time frame, who were you living
2 with then? Whose house?
3 A I was living with my brother's girlfriend.
4 Q Brother's girlfriend?
5 A Yes, sir.
6 Q Who -- where was your dad living?
7 A I don't know.
8 Q Okay. Do you know if he's in Nevada?
9 A Yeah.
10 Q He's in Nevada. And did you have any other family
11 here in Las Vegas?
12 A My grandma.
13 Q What was her name?
14 A Barbara Barnett (phonetic).
15 Q Where was she -- what was her address?
16 A 919 Bagpipe Court.
17 Q Is that North Las Vegas area?
18 A Yes, sir.
19 Q Did you sometimes stay there?
20 A Yeah.
21 Q Did DJ sometimes stay there?
22 A Yeah.
23 Q Who else lived there?
24 A My grandma, my other brother Adrian, and my sister
25 Nicky (phonetic).

1 Q Does Nicky have another name?
2 A Her first name, DeAndra (phonetic).
3 Q DeAndra? And is she -- is there something special
4 between her and DeMario?
5 A Twins.
6 Q Identical or fraternal?
7 A Identical.
8 Q And so who's the oldest in the family?
9 A My brother, Anthony.
10 Q Anthony? And then who?
11 A Then, Adrian.
12 Q And then who?
13 A My brother, DeMario.
14 Q And then you?
15 A Yes, I'm the youngest.
16 Q You're the youngest? Okay. And what was DeMario or
17 DJ -- I might switch back and forth, sorry. What was
18 DeMario's girlfriend's name?
19 A Katara (phonetic)
20 Q Katara?
21 A Um-hum.
22 Q And did you have a girlfriend at the time?
23 A Yes, sir.
24 Q What was her name?
25 A Aja (phonetic).

1 Q Aja. Primarily, did you guys keep your clothing and
2 sleep at your grandmother's house?

3 A No, she actually kicked us out, so we were living
4 out of his car.

5 Q So if you didn't come out -- come home at night, or
6 if you were, you know, mouthing off, would she tell you --

7 A Yeah.

8 Q Now, I want to kind of specifically turn your
9 attention to like August 9th, 2017. Do you recall an incident
10 that brings us here to court today?

11 A Yes, sir.

12 Q About a week before that, did your brother buy
13 something new?

14 A Yes, sir.

15 Q What did he -- what did he get?

16 A Clothes, shoes.

17 Q Oh, sorry. Did he get a vehicle, I meant?

18 A Yes, sir.

19 Q What kind?

20 A A Grand Marquis.

21 Q What color?

22 A White.

23 Q Would you recognize it if I showed you a photo?

24 A Yes, sir.

25 MR. BROOKS: Your Honor, permission to publish

1 exhibits that have been admitted?

2 THE COURT: You may.

3 BY MR. BROOKS:

4 Q Exhibit 150. Do you recognize that, DeShawn?

5 A Yes, sir.

6 Q And is that the car that your brother had just
7 bought a week before?

8 A Yes, sir.

9 Q And when I say week before, I mean that August 9th
10 time frame.

11 A Yes, sir.

12 Q Had you been inside it?

13 A Yeah.

14 Q Did your brother take you places?

15 A Yeah.

16 Q I want to show you kind of like a view in the back.
17 Exhibit 191. Do you recognize the back seat there?

18 A Yes, sir.

19 Q What is -- what kind of stuff's back there? Do you
20 know?

21 A A black bag, a sweater.

22 Q Had you seen that sweater before?

23 A Yeah.

24 Q Do you know what kind of brand it is?

25 A No, sir.

1 Q I want to show you Exhibit 215. DeShawn, do you
2 recognize what's in this photo?

3 A Yes, sir.

4 Q What is it?

5 A My grandmother's house.

6 Q So this is that 919 Bagpipe?

7 A Yes, sir.

8 Q All right, I'm going to take you through a couple
9 photos. Tell me what we're looking at with regard to this
10 house. 216. What do we see?

11 A The front door.

12 Q 217?

13 A The upstairs.

14 Q And then, tell me what's down this hallway in 218.

15 A It's a room -- it's two rooms and a bathroom.

16 Q Okay. DeShawn, with your right hand, you see that
17 mouse right there?

18 A Yes, sir.

19 Q If you could just -- I'll give you a zoomed-in
20 version of that photo, so 219. Tell me whose room's who.

21 A This is my brother Anthony's room right here.

22 Q Okay.

23 A And this is my sister's room.

24 Q Did you sometimes -- did you get along with Anthony?

25 A Yes, sir.

1 Q And did you get along with your sister?

2 A Yes, sir.

3 Q Who were you closest with though?

4 A My sister.

5 Q And between Anthony and DeMario, who were you

6 closest with?

7 A DeMario.

8 Q I want to show you a photo.

9 MR. BROOKS: Permission to approach, Your Honor?

10 THE COURT: You may.

11 BY MR. BROOKS:

12 Q DeShawn, I want you to look at State's Proposed

13 Exhibits 144, 145, 146, 147, and 148.

14 A Yes, sir.

15 Q Do you recognize who's pictured in these photos?

16 A Yes, sir.

17 Q Who is it?

18 A My brother.

19 Q And would these have been taken a couple years back

20 around August 2017?

21 A Yes, sir.

22 Q And when you say your brother, who -- what -- who

23 specifically?

24 A My brother, DeMario.

25 Q DeMario Lofton-Robinson?

1 A Yes, sir.

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

3 of these particular exhibits.

4 MR. SANFT: No objection, Your Honor.

5 MR. RUGGEROLI: No objection.

6 THE COURT: They're admitted.

7 (State's Exhibits 144 through 148 are admitted)

8 BY MR. BROOKS:

9 Q DeShawn, I want to show you Exhibit 144. Is that

10 DJ?

11 A Yes, sir.

12 Q And in 145, is that also DJ?

13 A Yes, sir.

14 Q How tall was he?

15 A At least 5'9.

16 Q Okay. And do you recall back then whether he was

17 taller than you, or?

18 A About the same height.

19 Q About the same height? And now who's taller?

20 A I do not know. I don't know.

21 Q I want to show you --

22 MR. BROOKS: Permission to approach, Your Honor?

23 THE COURT: You may.

24 BY MR. BROOKS:

25 Q DeShawn, I want to show you State's Proposed

1 Exhibits 130 through 134. Do you recognize who's pictured in
2 these photographs?

3 A Yes, sir.

4 Q Who is it?

5 A Me.

6 MR. BROOKS: Your Honor, State moves for admission
7 of those particular exhibits.

8 MR. SANFT: No objection.

9 MR. RUGGEROLI: No objection.

10 THE COURT: They're admitted.

11 (State's Exhibits 130 through 134 are admitted)

12 MR. BROOKS: DeShawn -- permission to publish, Your
13 Honor?

14 THE COURT: You may.

15 BY MR. BROOKS:

16 Q DeShawn, showing you Exhibit 130, do you recognize
17 yourself there?

18 A Yes, sir.

19 Q How old were you?

20 A 14.

21 Q And was this taken August 2017?

22 A Yes, sir.

23 Q Was it taken at a police station?

24 A Yes, sir.

25 Q Have you since grown?

1 A Yes, sir.

2 Q DeShawn, when this was taken, did officers also take
3 your cell phone from you?

4 A Yes, sir.

5 Q Now, I want to go back to kind of when we were
6 talking about the car. Do you remember when we were talking
7 about the vehicle?

8 A Yes, sir.

9 Q And I showed you a photo?

10 A Yes, sir.

11 Q I want to show you State's Exhibit 325. Do you see
12 the vehicle that you pointed out in this photograph?

13 A Yes, sir.

14 Q Could you take that mouse for us and point which
15 one? Do you remember which night this was?

16 A Yes, sir.

17 Q And do you remember where you were seated inside
18 that car?

19 A Yes, sir.

20 Q Where?

21 A Right behind the passenger side.

22 Q Behind the passenger side?

23 A Yes, sir.

24 Q So, I want to show you Exhibit 195. Do you see kind
25 of a marking on that seat?

1 A Yes, sir.

2 Q Do you remember that?

3 A No, sir.

4 Q No? Okay. Would you have been sitting behind that

5 seat though?

6 A Yes, sir.

7 Q Now, DeShawn, I want to show you a couple photos

8 from the trunk of that car, okay?

9 A Yes, sir.

10 Q Exhibit 194. Do you recognize that?

11 A Yes, sir.

12 Q And were some of those items in the back of the car

13 yours?

14 A Yes, sir.

15 Q So remember how, earlier, I asked that bad question?

16 I said, you know, did your brother buy some stuff a week

17 earlier, and you said, yes, some clothes?

18 A Yes.

19 Q Okay, and I meant the vehicle, but did he buy some

20 shoes?

21 A Yes, sir.

22 Q Did you get some shoes?

23 A Yes, sir.

24 Q Did you guys get the same shoes?

25 A Um-hum.

1 Q Do you recall what kind?
2 THE COURT: Is that a yes?
3 THE WITNESS: Yes, sir.
4 THE COURT: Thank you.
5 THE WITNESS: Yes, ma'am.
6 BY MR. BROOKS:
7 Q Do you recall what kind?
8 A I can't remember the name.
9 Q Were they Reeboks, Adidas, Nikes?
10 A No, they were Jordans.
11 Q Jordans? Okay. So, showing you Exhibit 181, do you
12 recognize those?
13 A Yes, sir.
14 Q And I'm going to show you Exhibit 182. Is that just
15 kind of like a side shot?
16 A Yes, sir.
17 Q So I'm going to show you two different ones, because
18 there are two different pairs in that trunk, and I want you to
19 explain something to me.
20 MR. BROOKS: So showing you two different photos,
21 Your Honor, at the same time, 186 and 183.
22 BY MR. BROOKS:
23 Q DeShawn, there's a size 9 and a size 11. Whose was
24 whose?
25 A The size 9 was my brother's, and the size 11 was

1 mine.

2 Q So you were the bigger one?

3 A Yes, sir.

4 Q Okay. And do you remember wearing those shoes on

5 the night that we're talking about?

6 A Yes, sir.

7 Q DeShawn, I want to ask about a convenience store.

8 Do you remember a convenience store?

9 A Yes, sir.

10 Q All right. Do you recall going into it?

11 A Yes, sir.

12 Q Do you remember what you were wearing?

13 A A black shirt, believe black Levis, and the shoes in

14 the picture.

15 Q Who were you with?

16 A My brother.

17 Q And do you remember what your brother was wearing?

18 A No, sir.

19 Q Okay. Would you be able to recognize him if I

20 showed you a photo?

21 A Yes, sir.

22 Q I want to show you Exhibit 320. Do you recognize

23 that?

24 A Yes, sir.

25 Q Do you see anyone in there that we just talked

1 about?

2 A Yes, sir.

3 Q Who?

4 A My brother.

5 Q Where?

6 A Right there.

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

8 see them in the photo?

9 A Yes, sir.

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

11 A Yes, sir.

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

13 A Yes, sir.

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

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

16 A Yes, sir.

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

18 room?

19 A Yes, sir.

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

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

22 A Yes, sir.

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

24 you recognize it?

25 A Yes, sir.

1 Q And so, the bag -- what color is that bag that I'm
2 referring to?

3 A Pink.

4 Q And who used that bag?

5 A Me and my brother.

6 Q Would you both put stuff in there?

7 A Yes, sir.

8 Q Remember how I showed you that surveillance footage
9 just a second ago of your brother?

10 A Yes, sir.

11 Q I want to show you Exhibit 187. Do you -- do you
12 recognize that?

13 A Yes, sir.

14 Q Was he wearing that sweater in that surveillance
15 photo?

16 A Yes, sir.

17 Q And what brand is that?

18 A I don't know.

19 Q Okay. Now, DeShawn, I kind of want to talk about
20 the night in question, okay? Were you with some people other
21 than your brother?

22 A Yes, sir.

23 Q How many?

24 A Two.

25 Q Were you guys in the same car or driving separately?

1 How was that?

2 A We were in the same car.

3 Q Whose car?

4 A My brother's car.

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

6 surveillance -- or at the convenience store?

7 A Yes, sir.

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

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

10 A Yes, sir.

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

12 A Yeah.

13 Q Where do you go?

14 A Just driving around.

15 Q Do you eventually stop at a house?

16 A Yeah.

17 Q Why do you stop at the house?

18 A Really don't have any clue.

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

20 house? Why did you stop?

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

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

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

24 A Yes, sir.

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

1 photo of it?

2 A Yes, sir.

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

4 recognize that house?

5 A Yes.

6 Q Do you recognize that wall?

7 A Yes.

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

9 recognize that?

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

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

12 A Yes, I was there.

13 Q Was your brother there?

14 A Yes, sir.

15 Q Were the two other individuals there?

16 A Yes, sir.

17 Q Are they the same or different individuals from the

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

19 A The same.

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

21 house?

22 A Yes, sir.

23 Q Do you all get out of the car?

24 A Yes, sir.

25 Q Where did you guys park?

1 A We parked at the edge of this wall, right over here.

2 Q Let me see, DeShawn, if I can get you a map to kind

3 of show us. Showing you Exhibit 3. So if this is that house

4 that we were just looking at, where did you park?

5 A Right over here.

6 Q Behind --

7 A On the main street.

8 Q Say what?

9 A On the main street.

10 Q On the main street?

11 A Yes, sir.

12 Q And you guys all get out; where do you go?

13 A Walked to the corner.

14 Q To the corner?

15 A Yes, sir.

16 Q DeShawn, do you guys have something with you that

17 night?

18 A Yes.

19 Q What did you guys have?

20 A Guns.

21 Q And who had guns?

22 A My brother, and then the other two.

23 Q Your brother and the other two?

24 A Yes, sir.

25 Q How was your brother carrying his gun?

1 A On his hip in a holster.

2 Q In a holster?

3 A Yes, sir.

4 Q And how was -- let's talk about one of the other

5 ones. How was one of the other ones holding it, or --

6 A The same way.

7 Q -- carrying it? Same way?

8 A Yes, sir.

9 Q Like, out in the open, or?

10 A Yes, out in the open.

11 Q Out in the open. And then the other person?

12 A His pocket.

13 Q In his pocket?

14 A Yes, sir.

15 Q Do you know if it was in a jacket pocket or in a

16 pants pocket?

17 A Pants pocket.

18 Q Pants pocket? During the course of that night, had

19 you personally seen the guns that each had?

20 A Yes, sir.

21 Q Had you seen some of the bullets that some of them

22 had?

23 A Yes, sir.

24 Q So -- and had you previously seen your brother's

25 gun?

1 A Yes, sir.

2 Q Had you maybe even held it before?

3 A I don't remember.

4 Q DeShawn, do you think you'd recognize your brother's

5 gun if I showed it to you?

6 A Yes, sir.

7 Q Would you recognize the holster?

8 A Yes, sir.

9 Q Want to show you Exhibit 225. Do you recognize

10 that?

11 A Yes, sir.

12 Q Is that your brother's gun?

13 A Yes.

14 Q And is that his holster?

15 A Yes.

16 Q DeShawn, I want to go back and show you, again, 320,

17 and I'm going to zoom-in. Do you see something in your

18 brother's pocket area?

19 A Yes.

20 Q What was in his pocket?

21 A His gun.

22 Q So was sometimes during the night, it out, and then

23 sometimes in?

24 A I thought it was out the whole night.

25 Q It was out the whole night? And I want to show you

1 -- do you see the person behind him?

2 A Yes.

3 Q And do you see how he's kind of reaching to the

4 right --

5 A Yes.

6 Q -- of his hip? Was he one of the people who was

7 with you?

8 A Yes, sir.

9 Q In Exhibit 324, what was on his right hip?

10 A His gun.

11 Q And had you seen it?

12 A Yes, sir.

13 Q Showing you 321, it's kind of like a zoomed-in

14 version.

15 A Yes, sir.

16 Q Do you recognize the hat he was wearing?

17 A Yes, sir.

18 Q Was he wearing it all night?

19 A Yes.

20 Q Would you recognize a photo if I showed it to you?

21 MR. BROOKS: Permission to approach, Your Honor?

22 THE COURT: You may.

23 MR. SANFT: No objection, Your Honor.

24 MR. RUGGEROLI: No objection.

25 THE COURT: Do you want to offer it?

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

1 THE COURT: Mr. Sanft?

2 MR. SANFT: No objection, Your Honor.

3 THE COURT: It's admitted, and you may publish.

4 (State's 312 is admitted)

5 BY MR. BROOKS:

6 Q So, DeShawn, before I publish 312, that guy we were

7 just referring to in Exhibit 322, use the mouse to show me the

8 one with the hat that we just talked about. Where is he?

9 A Right here.

10 Q Okay, and where are you?

11 A Right there.

12 Q And where is DJ?

13 A Right there.

14 Q Okay, and where's the other one that we haven't yet

15 discussed?

16 A Right here.

17 Q Okay. Remember how I just asked you about some

18 Huaraches?

19 A Yes.

20 Q All right, I want to show you Exhibit 312. Do you

21 recognize those?

22 A Yes, sir.

23 Q What are they?

24 A Huaraches.

25 Q And what color?

1 A Burgundy.

2 Q Was someone wearing those shoes this night?

3 A Yes, sir.

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

6 A Yes, sir.

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

10 A Yes, sir.

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

13 A Yes, sir.

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

16 A Yes, sir.

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

19 A I don't know, sir.

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

22 A No, sir.

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

25 A Yes, sir.

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

1 you?

2 A Yes, sir.

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

4 THE COURT: You may.

5 BY MR. BROOKS:

6 Q DeShawn, I want to first show you State's Proposed

7 Exhibit 333. Do you recognize that?

8 A Yes.

9 Q Whose phone was that?

10 A Mine.

11 Q Did the police take that from you?

12 A Yes, sir.

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

14 of Exhibit 333.

15 MR. SANFT: No objection.

16 MR. RUGGEROLI: No objection as to that.

17 THE COURT: Okay, it's admitted.

18 (State's Exhibit 333 is admitted)

19 MR. BROOKS: Permission to publish that one, Your

20 Honor?

21 THE COURT: You may.

22 BY MR. BROOKS:

23 Q DeShawn, I'm showing you State's Proposed Exhibit

24 334. Do you recognize that?

25 A Yes, sir.

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

1 BY MR. BROOKS:

2 Q DeShawn, do you see that?

3 A Yes.

4 Q Now, you didn't turn this on, correct? You didn't
5 turn this on and take this photo, right?

6 A No, sir.

7 Q Officers did when they took your phone?

8 A Yes, sir.

9 Q So -- and have you subsequently been told that
10 they've downloaded information?

11 MR. RUGGEROLI: Judge, I'm going to object to
12 hearsay.

13 MR. BROOKS: I'll rephrase it.

14 THE COURT: Okay.

15 BY MR. BROOKS:

16 Q DeShawn, did you learn that officers got into the
17 phone?

18 A Yes, sir.

19 MR. RUGGEROLI: Judge, I'm going to object to
20 speculation and lack of personal knowledge.

21 THE COURT: Overruled. You can answer.

22 THE WITNESS: Yes, sir.

23 BY MR. BROOKS:

24 Q And you've been told certain things that were found?

25 A Yes.

1 Q And have you been shown certain things that were
2 found in the phone?

3 A Yes.

4 Q So I want to specifically go to this right here. Do
5 you see this app?

6 A Yes, sir.

7 Q What app is that?

8 A Messenger.

9 Q Is it Facebook Messenger?

10 A Yes.

11 Q Is that kind of a common thing that people use to
12 communicate?

13 A Yes.

14 Q Would you use it to communicate, similar to text?

15 A Yes.

16 Q Okay, so you and I could text on that, or text just
17 via our normal messaging?

18 A Yes.

19 Q And which would you use?

20 A What would I use?

21 Q Yeah.

22 A Can you please repeat --

23 Q Did you use both? Did you sometimes use Facebook
24 Messenger?

25 A I used both.

1 Q Did you sometimes text on Facebook Messenger someone
2 named Ray Logan?

3 A Yes.

4 Q And was Ray Logan one of those people in the videos
5 that we just showed, and the photos we just showed?

6 A Yes.

7 Q And was he the one in black that we were discussing?

8 A Yes.

9 Q The one that the -- the gun was in a pocket, not
10 out?

11 MR. SANFT: Your Honor --

12 THE WITNESS: Yes, sir.

13 MR. SANFT: -- I'm going to object to this line of
14 questioning as being leading at this point.

15 THE COURT: Yeah.

16 MR. BROOKS: Okay.

17 THE COURT: The objection's sustained.

18 BY MR. BROOKS:

19 Q Did you receive a message from Ray Logan that day?

20 A Yes.

21 Q I want to show you Exhibit 336. Do you recognize
22 that?

23 A Yes.

24 Q Is that a fair and accurate depiction of the
25 screenshot -- text conversation between you and Ray Logan --

1 A Yes.

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

3 A Yes.

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

5 State moves for admission of Exhibit 336 and the contents

6 depicted on it.

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

8 any further?

9 MR. RUGGEROLI: Judge, may we approach?

10 THE COURT: Sure.

11 (Bench conference)

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

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

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

15 for the big overhead in opening.

16 THE COURT: Um-hum.

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

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

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

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

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

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

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

24 previously.

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

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

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

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

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

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

11 MR. RUGGEROLI: But --

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

13 THE COURT: Right.

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

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

16 MR. RUGGEROLI: He --

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

18 MR. RUGGEROLI: Right.

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

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

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

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

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

1 (End of bench conference)

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

3 (State's Exhibit 336 is admitted)

4 BY MR. BROOKS:

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

6 messages?

7 A Yes.

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

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

10 this?

11 A Gray.

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

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

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

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

16 A Yes.

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

18 A It's a Facebook photo.

19 Q Like a profile picture?

20 A Yes.

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

22 A In the profile picture?

23 Q Yes.

24 A Yes.

25 Q And had you talked to that person before?

1 A Yes.

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

3 A Yes.

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

6 A Yes.

7 Q And do you recognize the person depicted there?

8 A Yes.

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

11 THE COURT: Any objection?

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

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

16 MR. BROOKS: Sure.

17 BY MR. BROOKS:

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

19 A Just one of them.

20 Q Which one?

21 A The one in the back.

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

23 A White shirt.

24 Q The white shirt?

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

1 MR. RUGGEROLI: I'd like to see it. Thank you.

2 MR. SANFT: No further objection, Your Honor.

3 MR. RUGGEROLI: No objection.

4 THE COURT: Okay, it's admitted.

5 (State's Exhibit 149 is admitted)

6 BY MR. BROOKS:

7 Q So when you say you knew the person in the white

8 shirt, is that the person who you're messaging with; is that

9 his profile picture?

10 A Yes.

11 Q Okay. I want to show you Exhibit 336. DeShawn, the

12 gray part, the text that you received, will you read it to me?

13 A "Ask DJ if he is trying to hit a house tonight; me,

14 and Sace, and him. Him, Sace already said yeah."

15 Q All right, so who's DJ?

16 A My brother.

17 Q And who's "you"?

18 A Ask -- what?

19 Q So when it says, "Me, you, Sace, and him," is "you"

20 you, DeShawn?

21 A Yes.

22 Q Okay. Who's Sace?

23 A Don't know his first name.

24 Q But did you know who Sace was?

25 A Yes.

1 Q Have we seen him in some of the photos today?

2 A Yes, sir.

3 Q Which one was he of the four in the photos?

4 A The one in the red.

5 Q Could you use a different descriptor for me?

6 A The one in the Huaraches.

7 Q The Huaraches?

8 A The red, yes.

9 Q Oh, and the hat? Okay.

10 A Yes. Red Huaraches, yes.

11 Q And then, you respond?

12 A Yes.

13 Q Does this person send you another text?

14 A Yes, sir.

15 Q What does it say?

16 A "Tell him -- tell him, call me."

17 Q And there's a phone number?

18 A Yes.

19 Q Who's "him"? Who's he -- who's this person

20 referring to?

21 A He's referring to my brother.

22 Q So Ray Logan is telling you to have DJ call him?

23 A Yes.

24 Q All right. What's -- what's "HML"?

25 A Hit my line.

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

1 A No, sir.

2 Q Did the other three?

3 A Yes, sir.

4 Q Did you guys make it inside the house that night?

5 A No, sir.

6 Q So while you guys are standing near that wall, does
7 somebody pass by?

8 A Yes, sir.

9 Q Who was it, or -- well, tell me about it.

10 A He was jogging. He was just jogging around and --

11 Q And does he just run past you?

12 A Yes, sir.

13 Q Do you recall what he was wearing?

14 A A red shirt, black shorts.

15 Q So after he jogs by, do you guys come into contact
16 with someone else?

17 A Yes.

18 Q Did you -- did any of you guys know that person?

19 A No, sir.

20 Q What did you want from that person?

21 A What did who want?

22 Q The group of you.

23 A I don't know, sir.

24 Q Was he asked for something?

25 A Yes.

1 Q What was said to him?

2 A As I walk up, I hear, "Give me everything you got."

3 Q Do you remember which one of the three said it?

4 A One in the black sweater.

5 Q And is -- he's saying it to this other person?

6 A Yes.

7 Q Do you know -- can you describe the other person for
8 me at all?

9 A He had glasses, white shirt, and black shorts.

10 Q Was he a white kid, a black kid, a Hispanic kid? Do
11 you know?

12 A I don't know the race.

13 Q Okay. After you hear that phrase -- what was that
14 phrase?

15 A "Give me everything you got."

16 Q After you hear that, what happens?

17 A After I hear that, I hear, "Oh, yeah," then that's
18 when -- that's when the man got shot.

19 Q Do you know who shot first?

20 A Yes.

21 Q And who was that?

22 A One in black sweater.

23 Q The one in the black sweater. Do you know where he
24 shot that first shot?

25 A I can't recall where, but shot near the body.

1 Q And then, were there other shots fired?

2 A Yes.

3 Q Do you recall how many?

4 A Several more, but I don't recall the number of them.

5 Q Did some of those other shots hit that person?

6 A Yes.

7 Q Did the person stay standing or did he fall?

8 A He fell.

9 Q So when he falls, what happens next?

10 A Two of them ran off. I stood there in shock. My

11 brother tugged on me, said, "Let's go."

12 Q And where do you guys go?

13 A To the car.

14 Q Is it just you and your brother run to the car, or

15 do all four?

16 A It was two ran to the car, then after that, me and

17 my brother did.

18 Q And do you all get in the car?

19 A Yes.

20 Q Do you drive away? Where do you go?

21 A We drove away.

22 Q Where?

23 A To a convenience store.

24 Q And then where?

25 A Back to the apartments.

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

1 recognize that?

2 A Yes, sir.

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

4 discussing right now?

5 A Yes, sir.

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

7 of 235.

8 MR. SANFT: No objection, Your Honor.

9 MR. RUGGEROLI: No objection.

10 THE COURT: It's admitted.

11 (State's Exhibit 235 is admitted)

12 BY MR. BROOKS:

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

14 dropped off at this apartment complex?

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

16 Q Need you to say the name.

17 A Ray Logan.

18 Q And he gets out of the car?

19 A Yes, sir.

20 Q And this is 6647?

21 A Yes, sir.

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

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

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

25 than his name?

1 A Yes.

2 Q What do you call him?

3 A Sace.

4 Q Why do you call him that?

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

6 Q It was his nickname? You know how we kind of talked
7 about Ray Logan? Is Ray Logan a nickname, or is that his
8 name?

9 A It's a nickname.

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

12 A Everyone that I knew that knew him, and that was my
13 brother, called him Sace.

14 Q As far as you know, did any of those four people
15 know that kid or anyone who lived at the house?

16 A The kid that was shot?

17 Q Yeah.

18 A No, not to my knowledge.

19 Q After he was shot, did anyone attempt to go inside
20 his house and take anything?

21 A No, sir.

22 Q Why not?

23 A I have no clue.

24 Q Do you guys just immediately run, or do you stay and
25 talk for a while?

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

1 MR. SANFT: No objection, Your Honor.

2 MR. RUGGEROLI: Judge, could I just review it,

3 please? Can we approach, Judge?

4 THE COURT: Sure.

5 (Bench conference)

6 MR. RUGGEROLI: I just want to make sure before I

7 stipulate that this doesn't change anything, and that nothing

8 needed to be redacted. I know you would have done it, but

9 this one --

10 THE COURT: No, it's in the Agreement to Testify.

11 MR. RUGGEROLI: -- everything is just fine; it's in

12 the Agreement to Testify. I just --

13 MR. PESCI: Which is -- which is attached.

14 MR. RUGGEROLI: Okay.

15 MR. PESCI: So there's the Guilty Plea Agreement.

16 MR. RUGGEROLI: Right.

17 MR. PESCI: At the end of that is the information

18 showing what it is he's pleading to.

19 MR. RUGGEROLI: Okay.

20 MR. PESCI: And here's the Agreement to Testify.

21 MR. RUGGEROLI: So does that have the portion

22 included --

23 MR. PESCI: No, it takes out -- pursuant to the case

24 law, I must take out the --

25 MR. RUGGEROLI: So we're going to file it

1 separately?

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

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

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

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

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

13 MR. RUGGEROLI: Um-hum.

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

16 MR. RUGGEROLI: Okay.

17 THE COURT: So --

18 MR. RUGGEROLI: I expect that --

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

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

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

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

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

1 THE COURT: -- bring it in.

2 MR. RUGGEROLI: I can't do that. I mean, I can --

3 MR. PESCI: Why can't you?

4 MR. RUGGEROLI: -- white it out. What?

5 MR. PESCI: Okay.

6 MR. RUGGEROLI: You're okay with me whitening it out,
7 but not you?

8 MR. PESCI: That's up to you guys.

9 MR. RUGGEROLI: See, I just had a different
10 understanding. I thought the State was working on it.

11 MR. PESCI: No, I said very clearly, I'm not going
12 to do that.

13 THE COURT: He said repeatedly he's not going to do
14 it.

15 MR. RUGGEROLI: Okay, well, then I object to this
16 because it's a mis -- I mean, I wanted --

17 THE COURT: Oh my gosh. Okay, here's the deal.

18 MR. RUGGEROLI: Yeah.

19 THE COURT: Let's do this. I mean, this is what the
20 statute and the case law says, that it absolutely has to be
21 like this.

22 MR. RUGGEROLI: Yeah, but we --

23 THE COURT: Okay?

24 MR. RUGGEROLI: -- went through a waiver on it.

25 THE COURT: I understand that.

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

1 MR. RUGGEROLI: I'm not.

2 THE COURT: Okay.

3 MR. RUGGEROLI: I just am responding to -- you're
4 not going to do that in the future either though?

5 MR. PESCI: No, I'm not.

6 MR. RUGGEROLI: So --

7 THE COURT: Okay.

8 MR. RUGGEROLI: I mean, I just -- I didn't --

9 MR. PESCI: You can do it between now and --

10 MR. RUGGEROLI: I know.

11 MR. PESCI: -- when we give it to the jury.

12 MR. RUGGEROLI: I didn't think they were admitting
13 this, so -- because it doesn't include the complete portion.
14 Nobody's going to reference this anyway, correct? Like,
15 publish it?

16 THE COURT: I don't know.

17 MR. PESCI: State's not publishing it. It's an
18 exhibit that's going to go back to the jury.

19 THE COURT: This is going to go back to the jury.

20 MR. RUGGEROLI: Right.

21 THE COURT: Okay.

22 MR. RUGGEROLI: And that's why I -- that's why I'll
23 object, is I'm objecting because it does not contain the
24 portion that will be triggered after the cross-examination.

25 MR. PESCI: And you can cross him --

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

1 exhibit gets admitted.

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

4 MR. PESCI: Yes.

5 MR. RUGGEROLI: Okay.

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

9 MR. RUGGEROLI: Okay.

10 THE COURT: Okay? All right.

11 MR. RUGGEROLI: Thank you.

12 (End of bench conference)

13 THE COURT: Okay, it's admitted.

14 (State's Exhibit 337 is admitted)

15 MR. BROOKS: May I proceed?

16 THE COURT: Go ahead.

17 BY MR. BROOKS:

18 Q So this was your Guilty Plea Agreement?

19 A Yes, sir.

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

22 A Yes, sir.

23 Q And that's your name?

24 A Yes.

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

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

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

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

4 A Yes.

5 Q Did anyone exchange bullets?

6 A Yes.

7 Q And was that what the discussion was?

8 A Yes.

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

11 A Yes.

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

14 A Yes.

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

17 A No, I wasn't.

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

20 A Yes, sir.

21 Q From this night?

22 A Yes, sir.

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

25 A He was standing right here.

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

5 A I believe --

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

8 A In front of me.

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

11 A Yes, sir.

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

14 A Was he between?

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

17 A The guy --

18 Q With words. Sorry, with words.

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

20 Q In the middle?

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

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

1 A The middle of the group.

2 Q Okay. DeShawn, do you see Sace in court today?

3 A Yes.

4 Q Could you tell me an article of clothing he's

5 wearing?

6 A Can I -- he's wearing a blue shirt.

7 Q Which side of the room?

8 A Light blue shirt.

9 Q A what?

10 A A light blue shirt.

11 Q Which side of the room is he on.

12 A Right.

13 Q On your right?

14 A Yes, sir.

15 Q Could you use your hand and kind of point to that

16 area?

17 MR. BROOKS: Your Honor, let record -- let the

18 record reflect identification of the defendant, Davontae

19 Wheeler.

20 THE COURT: So reflected.

21 BY MR. BROOKS:

22 Q DeShawn, do you see Ray Logan here in court today?

23 A Yes.

24 Q What's he wearing?

25 A A dark blue shirt.

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

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

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

3 A Yes.

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

5 A Yes.

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

8 A No.

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

12 A Yes, we're clear.

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

15 A Yes.

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

17 A Yes, sir.

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

20 A Yes, Summit View. Summit View.

21 Q Where's that?

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

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

25 A Yes.

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

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

5 A No, sir.

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

8 A Yes, sir.

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

12 A Yeah, I did.

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

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

20 Q That's fine.

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

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

25 A Um-hum.

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

1 were your family, right, that were in the same building?

2 A Yes.

3 Q Your brother?

4 A Yes.

5 Q Okay. And that's not the brother that we're talking
6 about involved in this situation, right?

7 A No.

8 Q Another brother?

9 A Yes.

10 Q Okay. Now, during the time that you were talking to
11 the detectives, do you recall that you had a -- that you had
12 informed them that you went to the store?

13 A Yes.

14 Q And the store that we're talking about is the one
15 you saw the picture of earlier, right?

16 A Um-hum.

17 Q Is that a yes?

18 A I apologize. Yes.

19 Q That's okay, and I'll keep making sure that we're
20 clear.

21 A Yes, sir.

22 Q But you told the detectives that you -- when you
23 were there, that you had gone to the store, and then at some
24 point as you're in the store, you decide to leave, but you
25 travel to your girlfriend's house?

1 A Yes, it was a lie.

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

5 A Yes.

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

9 A Yes, that was a lie.

10 Q Okay, that was a lie, too?

11 A Yes.

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

15 A Yes, I was scared.

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

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

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

22 A No.

23 Q Okay, so that was your first time?

24 A Yes.

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

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

3 A Can you describe intimidated to me?

4 Q Meaning that you're scared --

5 A Yeah.

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

7 A Yeah.

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

10 A Yes.

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

15 A Yes.

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

19 A Yes.

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

23 A No, sir.

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

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

3 A Yes, sir.

4 Q Okay.

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

6 THE COURT: You may.

7 BY MR. SANFT:

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

11 A Yes, sir.

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

15 A Yes.

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

20 A Yeah.

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

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

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

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

3 A Yes.

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

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

8 Q I'm sorry, in --

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

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

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

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

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

24 Q You intentionally lied?

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

1 Q Okay. Now, in addition to that, your -- your
2 statements, when you were talking to these detectives, you had
3 said that there was some discussion about -- and it's in this
4 particular page again -- about "Robbing some Mexican dude or
5 whatever." Do you recall telling detectives that?

6 A Yes.

7 Q Okay. And so then there was some discussion about
8 you pulling into the apartments on Tropicana and Jones to pick
9 up this dude. Is that the fifth dude that you lied about?

10 A Yes.

11 Q So you lied about the fact that you were trying to
12 rob a Mexican dude, and then you lied about the fact that
13 there was five people that were present, not four?

14 A Yes.

15 Q Okay. Now, at some point, as you're describing what
16 happened to the detectives, you said at some point that you
17 were there, you're present when it's happening, and then you
18 turn around, and you don't see anything else. Do you recall
19 telling detectives that?

20 A Yes.

21 Q And you told detectives, "I just heard, boom, boom,
22 boom, boom, boom," right?

23 A Yes.

24 Q Okay. Was that a lie?

25 A Yes.

1 Q Okay. In addition to that, you had said -- and I
2 want to make sure we're clear. Your brother is DeMario,
3 right?

4 A Yes.

5 Q Okay, and he was present when all this was
6 happening?

7 A Yes.

8 Q And throughout the time that you were spending with
9 the detectives, you don't ever really say he shoots a gun,
10 right?

11 A No, sir.

12 Q Okay.

13 A (Indiscernible).

14 Q In fact, today, you even tell the jury, you know, I
15 don't know. You said -- and I want to make sure that we're
16 clear about what you wrote down. You said something along the
17 lines of, well -- when the question was asked of you, "Did
18 your brother fire shots?" And you said something like,
19 "That's what I was told."

20 A Yes.

21 Q So you're telling this jury that, even now, even
22 though you said you watched everything, you don't know if your
23 brother fired shots; you were told he fired shots, correct?

24 A Yes.

25 Q Okay. And in addition to that, when you were going

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

5 A Tell them what was going to happen?

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

9 A No.

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

13 A Yes.

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

16 A Tell them what?

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

19 A Yes.

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

23 A Yes.

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

1 A Yes.

2 Q Attempt robbery with use of deadly weapon?

3 A Yes.

4 Q And conspiracy to commit robbery, right?

5 A Yes.

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

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

8 A Yes.

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

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

11 A Yes.

12 Q And you do understand that murder would have a

13 bigger penalty than conspiracy to commit robbery and robbery

14 with use or attempt robbery with use?

15 A Yes.

16 Q Okay, you were told that?

17 A Yes.

18 Q And you understand the difference?

19 A Yes.

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

21 going to take a negotiation, right?

22 A Yes.

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

24 negotiation in this case?

25 A Yes.

1 Q So you had another conversation with detectives
2 after this first conversation?

3 A Yes.

4 Q But before you entered into a plea?

5 A Yes.

6 Q Okay. And do you recall who the detectives were
7 that you spoke to?

8 A No, sir.

9 Q And where did that conversation take place?

10 A Where did that conversation take place?

11 Q Um-hum, yes.

12 A It was down here, down -- down in the jail.

13 Q Okay, so you're in custody in the jail?

14 A Yes.

15 Q In Clark County Detention?

16 A Yes, sir.

17 Q The adult jail?

18 A Yes, sir.

19 Q And you're having a conversation with a couple
20 detectives?

21 A Yes.

22 Q Or were they the same detectives as were in the
23 first time that you interviewed with detectives?

24 A They were the detectives that talked to my brother.

25 Q They were the same detectives that talked to your

1 brother?

2 A Yes.

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

4 A Yes.

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

6 conversation?

7 A Yes.

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

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

10 it?

11 A No.

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

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

14 detectives without any type of agreement?

15 A I wanted to tell the truth.

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

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

18 detectives took notes?

19 A Yes.

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

21 audiotaped that conversation?

22 A When I first got arrested?

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

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

25 conversation.

1 A No.

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

4 A I believe so.

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

8 A Yes.

9 Q You read it?

10 A Yes.

11 Q You understood it?

12 A A little bit, yes.

13 Q A little bit, meaning what?

14 A Like, I understand most of it.

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

17 A Yes.

18 Q -- document was?

19 A Um-hum.

20 THE COURT: Is that a yes?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 BY MR. SANFT:

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

1 A Yes.

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

4 A Yes.

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

6 A Yes.

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

10 A Yes.

11 Q And what you are pleading guilty to?

12 A Yes.

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

16 A Yes.

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

19 A Yes.

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

21 A Yes.

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

1 the jury?

2 A Yes.

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

6 A Yes.

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

10 A Did I? No.

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

14 A Can you please repeat?

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

18 A Yes.

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

21 A No.

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

24 A Yes.

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

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

2 A No, sir.

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

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

5 against you, right?

6 A Yes.

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

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

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

10 A No.

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

12 in this case?

13 A Yes.

14 Q Okay. When was that?

15 A Say about a week before today.

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

17 A Yes.

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

19 A Yes.

20 Q I wasn't present?

21 A No.

22 Q Mr. Ruggeroli wasn't present?

23 A No.

24 Q Just you, your attorney?

25 A Yes.

1 Q I'm just guessing. Was that -- your attorney
2 present as well?

3 A Yes.

4 Q And then the State of Nevada, right?

5 A Yes.

6 Q They were able to ask you questions and talk to you
7 about this case, right?

8 A Yes.

9 Q Did they show you these photographs that we see here
10 today?

11 A Yes.

12 Q So you had an opportunity to review these
13 photographs before you testified before these people here
14 today, right?

15 A Yes.

16 Q Okay. Now, in addition to that, you -- when you
17 entered in your plea, were you sentenced at the time you
18 entered in your plea?

19 A Was I?

20 Q Yeah.

21 A No.

22 Q You entered in your plea -- and I want to make sure
23 we're clear here -- October 22nd, 2018?

24 A Yes.

25 Q That was a year and some months ago?

1 A Yes.

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

4 A No.

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

7 A Yes.

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

11 A Yeah.

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

14 A Yes.

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

17 A Yes.

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

20 A Yes.

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

23 A Yes.

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

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

2 A Yes.

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

5 A Yes.

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

8 A No, sir.

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

11 A True. Yes, sir.

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

14 A No.

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

16 A Yes.

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

18 THE COURT: Thank you. Mr. Ruggeroli?

19 MR. RUGGEROLI: Approach?

20 THE COURT: Yeah, okay.

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

22 THE COURT: Oh, okay.

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

25 THE COURT: Of course.

1 CROSS-EXAMINATION

2 BY MR. RUGGEROLI:

3 Q Mr. Robinson?

4 A Yes.

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

7 A Yes.

8 Q And that was August 9th, 2017?

9 A Yes.

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

12 A Yes.

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

16 A Yes.

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

18 A My older brother.

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

21 A Yes.

22 Q Who's that?

23 A My older brother.

24 Q You told them about -- is it DeAndra?

25 A Yes.

1 Q Who's that?

2 A My sister.

3 Q And you told them about John?

4 A Yes.

5 Q And who's John?

6 A My sister's boyfriend.

7 Q And his full name, is it Johnquiel Brown?

8 A Yes.

9 Q Those are the individuals during that interview on

10 August 9th, 2017 that you told them about, correct?

11 A Yes.

12 Q Now, you've had a number of years in school,

13 correct?

14 A Yes.

15 Q You have needed tutors; is that right?

16 A Yes.

17 Q You've had some difficulty with concentration and

18 attention?

19 A Yes.

20 Q You've been medicated. Are you on any medications

21 today?

22 A Yes.

23 Q Do those medications impair your ability to

24 understand, or do they enhance it?

25 A Both.

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

3 A Yes.

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

7 A Yes.

8 Q You were charged as an adult, correct?

9 A Yes.

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

13 A Yes.

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

16 A Yes.

17 Q Your lawyer?

18 A Yes.

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

21 A Yes.

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

24 A Yes.

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

1 A Yeah.

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

5 A Okay.

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

8 A Yes.

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

11 A Yes.

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

14 A Can you please tell me again?

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

17 A Yes.

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

20 A Yes.

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

23 A Yeah.

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

1 A Yes.

2 Q And that's prior to the plea, correct?

3 A Yes.

4 Q After you spoke to them, then you got an offer to
5 plead?

6 A Yes.

7 Q And when you took that plea, and you stood in court
8 to accept it, correct?

9 A Yes.

10 Q You did not admit that you were a part of any
11 conspiracy?

12 A True.

13 Q You did not admit that you were a part of any
14 robbery or attempt robbery?

15 A True.

16 Q So was that a lie?

17 A Was it a lie?

18 Q Yes.

19 A Yes.

20 Q Okay, so you also lied in court when you took your
21 plea?

22 A In -- back in 2018?

23 THE COURT: You know what, can I have the lawyers
24 approach a minute?

25 (Bench conference)

1 THE COURT: That is absolutely not true. I never
2 asked him, so you're -- he's -- you're telling him that he
3 lied to me --

4 MR. RUGGEROLI: Well --

5 THE COURT: -- but he didn't, because I never asked
6 him.

7 MR. RUGGEROLI: I'm talking about him saying he
8 wanted to tell the truth. So he didn't tell the truth when he
9 took the plea, because he didn't --

10 THE COURT: That's not -- that's -- that's not true.

11 MR. RUGGEROLI: But he didn't admit to --

12 THE COURT: Because I didn't ask him. You can ask
13 him --

14 MR. RUGGEROLI: Okay.

15 THE COURT: -- did you -- you know, "Did you admit
16 to it," but you can't say, "You lied to the Court," because --

17 MR. RUGGEROLI: No, no.

18 THE COURT: -- I never asked him.

19 MR. RUGGEROLI: I'm not saying he lied to the Court.
20 I'm saying he lied about wanting to tell the truth because he
21 didn't admit that he was part of a conspiracy.

22 MR. PESCI: Judge, the last question was, "Did you
23 lie in court?" His answer --

24 THE COURT: Yeah.

25 MR. PESCI: -- was yes. We're asking it to be

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

3 THE COURT: That's just not true.

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

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

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

8 THE COURT: Because he entered an Alford plea.

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

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

15 THE COURT: That's not a lie.

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

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

19 MR. RUGGEROLI: Yes.

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

21 MR. RUGGEROLI: Okay.

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

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

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

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

3 MR. RUGGEROLI: I agree, but --

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

5 MR. RUGGEROLI: Okay.

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

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

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

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

12 THE COURT: Okay.

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

15 THE COURT: Nor was he required to.

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

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

23 MR. RUGGEROLI: Okay.

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

1 MR. RUGGEROLI: Okay.

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

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

4 time, who has obviously some learning issues.

5 MR. RUGGEROLI: Yes.

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

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

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

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

10 now --

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

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

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

14 MR. EVANS: I apologize --

15 MR. PESCI: There was misrepresentations put in the

16 record.

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

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

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

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

21 record --

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

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

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

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

1 Recorder --

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

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

6 MR. RUGGEROLI: Okay.

7 MR. EVANS: Okay.

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

9 MR. RUGGEROLI: Okay.

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

12 MR. RUGGEROLI: Um-hum. Okay.

13 THE COURT: Okay? But --

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

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

25 MR. EVANS: Okay.

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

4 THE COURT: Of course.

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

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

9 MR. EVANS: Correct.

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

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

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

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

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

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

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

23 THE COURT: You can say --

24 MR. RUGGEROLI: Yeah.

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

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

2 MR. RUGGEROLI: Okay.

3 (End of bench conference)

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

8 MR. RUGGEROLI: Thank you, Your Honor.

9 BY MR. RUGGEROLI:

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

13 A Yes.

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

20 THE COURT: Okay.

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

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

1 MR. RUGGEROLI: It was.

2 THE CLERK: She did admit it earlier.

3 MR. PESCI: Thank you.

4 BY MR. RUGGEROLI:

5 Q Today, you're saying to this jury that you were a
6 part of a conspiracy; is that right, or am I not understanding
7 that?

8 A I'm not understanding. I'm -- I'm confused.

9 Q Okay. Are you telling the jury that you showed up
10 at the Dewey address and didn't do anything wrong; you didn't
11 know why you were there?

12 A Yes.

13 Q All right. So you say that you want to tell the
14 truth, correct?

15 A Yeah.

16 Q And by giving certain information, you were able to
17 obtain an agreement where your charges were reduced? You were
18 asked that by Mr. Sanft; remember that?

19 A Yes.

20 Q You are obligated to testify in order to get the
21 benefit of that agreement, correct?

22 A Yes.

23 Q And you haven't been sentenced yet?

24 A True.

25 Q And so what you say today could have an impact on

1 what happens in the future with your sentencing?

2 A True.

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

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

5 A Yes.

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

7 handled that firearm?

8 A Yes.

9 Q You have admitted today that you were actually

10 present at the scene of a murder?

11 A Yes, sir.

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

13 trigger?

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

15 Q Yes.

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

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

18 hands?

19 A Was I arrested when I -- yes.

20 Q They put bags over your hands?

21 A No, not actual bags.

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

23 they put actual bags over your hands?

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

25 Q It's okay.

1 A I'm confused.

2 Q Let's go back to August 9th, early morning hours.

3 A Yes.

4 Q You and some other individuals --

5 A Yes.

6 Q -- go to a location in a neighborhood, correct?

7 A Yes, sir.

8 Q You say that you parked the car, yes?

9 A Yes.

10 Q Get out of the car, yes?

11 A Yes.

12 Q You come up on an individual, correct?

13 A Yes.

14 Q You're admitting that you're right there?

15 A Yes.

16 Q And that individual gets shot and killed, correct?

17 A Yes.

18 Q What I asked you was, how do we know that you didn't

19 shoot that individual?

20 A Because I'm telling you I didn't do it.

21 Q Okay. You've admitted to lying a number of times,

22 including --

23 A Yes.

24 Q -- including to the detectives the very next day?

25 A Yes.

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

6 A Yes.

7 Q But your brother DJ had a .45?

8 A Yes.

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

11 A Yes.

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

14 A No.

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

16 A I believe so, yes.

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

18 A They took my fingerprints.

19 Q Fingerprints? Okay, other than that though?

20 A No.

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

23 A Yes.

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

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

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

4 A True.

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

8 A True.

9 Q No photographs, correct?

10 A Yes.

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

12 A No.

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

14 A I'm confused, sir.

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

17 A Yes.

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

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

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

23 A Yes.

24 Q And that actually happened?

25 A Yes.

1 Q He's an African American?

2 A Yes.

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

6 A Yes.

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

10 A Yes.

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

14 MR. PESCI: Judge, I apologize.

15 THE WITNESS: Yes.

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

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

19 MR. PESCI: Okay, thank you.

20 MR. RUGGEROLI: All right.

21 BY MR. RUGGEROLI:

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

24 A Yes.

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

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

1 somebody.

2 A Protect who?

3 Q Who's Adrian?

4 A That's my older brother.

5 Q You didn't tell these detectives that you had an
6 older brother named Adrian when they questioned you.

7 A Because they didn't ask about him; they asked for
8 the people who was there in that -- in the investigation.

9 Q That's what you thought?

10 A That's -- yeah.

11 Q You don't remember them specifically asking you,
12 "Tell me about your brothers"?

13 A Yeah, I did. I thought he was talking about the
14 ones that was there.

15 Q Let me slow you down.

16 MR. PESCI: Judge, I apologize for the interruption.
17 I'd ask that the witness be able to finish before the next
18 question comes.

19 THE COURT: Right. And if at any time you don't
20 understand the question, just let me know, and I'll have the
21 attorney rephrase it, okay?

22 THE WITNESS: Yes, ma'am.

23 MR. RUGGEROLI: Okay.

24 BY MR. RUGGEROLI:

25 Q The next day, the detectives questioned you,

1 remember?

2 A Yes.

3 Q I'm sorry, I don't want to interrupt you. They
4 asked you specifically, "Tell me about your brothers,"
5 correct?

6 A Yes.

7 Q Now, today you talked about Adrian?

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

9 Q I wrote down Adrian.

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

12 BY MR. RUGGEROLI:

13 Q You were asked on direct examination of being in
14 handcuffs; do you remember that?

15 A Yes.

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

17 A Yes.

18 Q You have a brother named DeMario Lofton-Robinson;
19 remember that?

20 A Yes.

21 Q You were asked about your family, and DeMario goes
22 by DJ; do you remember that?

23 A Yes.

24 Q You indicated that you lived with grandma?

25 A Yes.

1 Q Then you brought up Adrian?

2 A Brought up Anthony.

3 Q Okay. Well, we'll leave it to the jury, but my
4 notes were Adrian. So you did not say Adrian today?

5 A I apologize, I must have got mixed up. My brother
6 Adrian does not live with my grandma.

7 Q Okay, but you have a brother named Adrian?

8 A Yes, sir.

9 Q And August 9th, 2017, detectives asked you about
10 your brothers --

11 A Yes.

12 Q -- brothers, plural, correct? Yes?

13 A Yes.

14 Q And you didn't tell them about Adrian?

15 A No, sir.

16 Q If you have four people in the car, and you pick up
17 one more, that's five, correct?

18 A Yes.

19 MR. RUGGEROLI: I have nothing further.

20 THE COURT: Any redirect?

21 MR. BROOKS: No, Your Honor.

22 THE COURT: Okay, so we're done with this witness?

23 MR. BROOKS: Yes, Your Honor.

24 THE COURT: Okay. We're going to take a recess.

25 During this recess, you're admonished not to talk or

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

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

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

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

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

13 THE WITNESS: You're welcome.

14 MR. EVANS: Thank you, Judge.

15 THE COURT: Thank you.

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

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

20 MR. BROOKS: 337, if I remember.

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

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

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

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

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

9 THE COURT: I agree.

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

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

1 have the authentic signatures.

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

7 THE COURT: Sure.

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

10 THE COURT: Of course.

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

14 THE COURT: Um-hum.

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

19 THE COURT: Vouching.

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

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

4 THE COURT: Okay, so --

5 MR. RUGGEROLI: I would ask --

6 THE COURT: So you want another exhibit --

7 MR. RUGGEROLI: I do.

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

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

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

21 THE COURT: Uh-huh.

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

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

7 MR. RUGGEROLI: Well --

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

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

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

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

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

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

21 MR. RUGGEROLI: The --

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

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

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

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

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

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

23 MR. PESCI: Agreed.

24 THE COURT: His proffer was not evidence.

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

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

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

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

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

19 THE CLERK: (Indiscernible).

20 THE COURT: What's 336?

21 MR. RUGGEROLI: Oh, is it --

22 MR. SANFT: 337.

23 MR. RUGGEROLI: 337 is the --

24 THE COURT: Okay, the Guilty Plea.

25 MR. SANFT: The Plea.

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

1 MR. RUGGEROLI: Yes.

2 THE COURT: And then it will be admitted.

3 MR. RUGGEROLI: Okay.

4 THE COURT: With those things redacted.

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

6 THE COURT: Okay. All right, 2:00 o'clock.

7 MR. PESCI: All right.

8 MR. SANFT: Thank you, Your Honor.

9 MR. PESCI: Thank you.

10 (Court recessed at 12:49 P.M. until 2:13 P.M.)

11 (Outside the presence of the jurors)

12 THE MARSHAL: Please come to order.

13 THE COURT: Okay. The record will reflect that the

14 hearing is continuing to take place outside the presence of

15 the jury panel, and both defendants are present.

16 Apparently, there is an objection to some of these

17 autopsy photos.

18 MR. RUGGEROLI: Yes, Your Honor.

19 THE COURT: So what's the objection to 96 and 97?

20 MR. RUGGEROLI: Judge, those, if I recall, are the

21 head shots --

22 THE COURT: Yeah.

23 MR. RUGGEROLI: -- and it shows a duplicative photo

24 of the injury that is quite graphic in nature. And so my

25 argument is that it's not necessary; there's no dispute about

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

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

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

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

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

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

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

21 THE COURT: Okay.

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

25 THE COURT: Okay.

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

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

9 MR. PESCI: She has.

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

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

14 THE COURT: There is.

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

16 THE COURT: No.

17 MR. PESCI: So --

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

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

22 THE COURT: So what would be the objection?

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

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

3 THE COURT: It appears to depict an injury.

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

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

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

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

14 THE COURT: Okay.

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

17 THE COURT: Okay.

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

21 THE COURT: Okay.

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

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

1 98, the objection is overruled.

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

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

6 THE COURT: Oh, okay.

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

9 THE COURT: His ankles.

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

15 THE COURT: What's --

16 MR. RUGGEROLI: Same argument.

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

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

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

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

24 THE COURT: Uh-huh.

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

1 We're trying to tell --

2 THE COURT: Oh.

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

7 MR. RUGGEROLI: Same argument.

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

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

17 THE COURT: Okay.

18 MR. PESCI: When you look at 122, you can't tell for
19 sure where the --

20 THE COURT: Oh, (indiscernible).

21 MR. PESCI: -- where the defect is in the head. And
22 so, with the two of them combined, we can show it. And I've
23 never had an objection to an x-ray before.

24 MR. RUGGEROLI: Well, it's going to the extent of
25 that injury, which it shows a completely crumbled skull, and I

1 think that it's not necessary. It's relevant, but its
2 relevance is overwhelmed by the potential prejudice. And like
3 I said, I'm reiterating it, but we already had one juror say,
4 because of viewing those types of photos, injuries, which are
5 not even that graphic, it just had that prejudicial impact.

6 MR. PESCI: So, Judge, in response, there are two
7 different caliber firearms utilized in the murder of this
8 victim; a .45 caliber and a .22. And so what you're holding
9 in your hand, State's 122 and 123, is evidence that we can
10 utilize to argue that the shot to the head is a .45 because it
11 does massive injury, as opposed to a .22, which makes a small
12 hole in his stomach. And so it's for us to be able to prove
13 our case.

14 THE COURT: Okay, so the objection as to 122 and 123
15 is overruled. And then, I think that's it.

16 MR. PESCI: I think so.

17 THE COURT: Is that it as to the objections on the
18 autopsy?

19 MR. RUGGEROLI: Yes, Your Honor. Thank you.

20 THE COURT: I'll give these all back.

21 (Pause in the proceedings)

22 THE COURT: Okay. Now, our next witness is going to
23 be?

24 MR. PESCI: The coroner. That's why we're going
25 over this.

1 THE COURT: Oh, okay. When are we going to do the
2 one on the video?

3 MR. PESCI: Not until after 3:00.

4 THE COURT: Okay.

5 MR. PESCI: She's not available until, at the
6 earliest, 3:00.

7 THE COURT: Okay. Can we bring them in?

8 MR. PESCI: Yes.

9 THE COURT: Okay.

10 MR. PESCI: Wait, I -- sorry, really fast.

11 THE CLERK: Judge, are they going to be stipulating
12 to the rest of these?

13 THE COURT: Yeah, you know, are you going to be
14 stipulating to them, other than the objections that have
15 already been noted?

16 MR. SANFT: Yes, Your Honor.

17 MR. RUGGEROLI: Yes, Your Honor.

18 THE COURT: Okay.

19 THE CLERK: So, 97 is the only one that's not coming
20 in? That's what I have. Everything else, you overruled?

21 THE COURT: Right.

22 THE CLERK: Okay.

23 THE COURT: 96, the objection is sustained, so it
24 doesn't come in. 97 is coming in. You said the opposite.
25 You said 97 instead of 96.

1 THE CLERK: I have it written that way. Okay.

2 THE COURT: Well, let me just make sure. Hand me 96

3 and 97 so I just -- because I told the State you could have --

4 THE CLERK: I have you saying 96 is in; 97 is not.

5 MR. PESCI: That's -- that's my fault. I was asking

6 for 97, because that's 97, correct?

7 THE CLERK: Okay.

8 THE COURT: Okay.

9 THE CLERK: So, 97 is in?

10 THE COURT: You want 97?

11 MR. PESCI: Yes, please.

12 THE COURT: Okay, so --

13 MR. PESCI: That's my fault.

14 THE CLERK: Everything is in except for 96?

15 THE COURT: Right.

16 MR. PESCI: That's my understanding.

17 THE CLERK: Correct?

18 THE COURT: That's correct.

19 THE CLERK: Okay.

20 THE COURT: And there's a stipulation to everything

21 else?

22 MR. SANFT: Yes, Your Honor.

23 MR. RUGGEROLI: Other than the objections, yes.

24 THE CLERK: Yes, I'll note the objections on the

25 sheet.

1 THE COURT: Okay. All right. Oh, you want the
2 noise on?
3
4 (Off-record bench conference)
5 THE COURT: Okay, we can bring them in.
6 THE CLERK: Judge, you don't have 96 up there with
7 you, do you?
8 THE COURT: No. Did you take 96?
9 MR. PESCI: No, Your Honor, but I'll look.
10 THE COURT: I didn't think you did.
11 THE MARSHAL: All rise for the entering jury,
12 please. Jurors.
13 (Within the presence of the jurors at 2:24 p.m.)
14 THE COURT: Does the State stipulate to the presence
15 of the jury panel?
16 THE MARSHAL: Thank you, everyone.
17 MR. PESCI: Yes, Your Honor.
18 THE MARSHAL: Please be seated.
19 THE COURT: And the defense?
20 MR. SANFT: Yes, Your Honor.
21 MR. RUGGEROLI: Yes, Your Honor.
22 THE COURT: Okay. The State of Nevada may call
23 their next witness.
24 MR. PESCI: State calls Dr. Jennifer Corneal.
25 THE MARSHAL: If you'll please remain standing,

1 raise your right hand, and face the Clerk.

2 DR. JENNIFER CORNEAL, STATE'S WITNESS, SWORN

3 THE CLERK: You may be seated. Please state and
4 spell your first and last name for the record.

5 THE WITNESS: Jennifer Corneal. J-e-n-n-i-f-e-r,
6 C-o-r-n-e-a-l.

7 MR. PESCI: May I proceed, Your Honor?

8 THE COURT: You may.

9 MR. PESCI: Thank you.

10 DIRECT EXAMINATION

11 BY MR. PESCI:

12 Q Ma'am, what do you do for a living?

13 A I'm a medical examiner.

14 Q Where do you work?

15 A I work at the Clark County Office of the
16 Coroner/Medical Examiner.

17 Q And how long have you been working there?

18 A Since July 2015.

19 Q And what is your training and experience that brings
20 you to that job?

21 A I am a doctor; I completed medical school. I then
22 completed four years of pathology residency training, and I'm
23 a board-certified anatomic pathologist. I subsequently
24 completed a year of forensic pathology sub-specialty training,
25 and I'm a board-certified forensic pathologist as well.

1 Q What is a forensic pathologist?

2 A A forensic pathologist is a doctor who performs
3 autopsies and external examinations on deceased individuals,
4 and interprets toxicology, and sometimes histology, which are
5 slides, in order to determine cause and manner of death.

6 Q Okay. And now, you're speaking of an autopsy. What
7 is an autopsy?

8 A An autopsy is just the name of a procedure where you
9 look at a deceased individual, document hair color, eye color,
10 scars, anything externally, any injuries. And then you open
11 the body and you look internally at the organs for natural
12 disease processes, and again, for injuries, looking for cause
13 and manner of death.

14 Q So after looking externally and internally, do you
15 form an opinion as to a cause and manner of death?

16 A Yes.

17 Q Let's break that down. What is a cause of death,
18 and then we'll move onto what a manner is.

19 A A cause of death is just the reason somebody died,
20 the underlying reason, be it a heart attack, a gunshot wound,
21 blunt force trauma from a car accident.

22 Q Okay, and then what does manner of death mean?

23 A A manner of death is just the classification system.
24 There are five manners: natural, accident, homicide, suicide,
25 and undetermined when they don't fit into any of the other

1 four.

2 Q Okay. Now, in a situation where it's homicide, is
3 that a legal conclusion or a medical conclusion?

4 A That is a medical conclusion. It just means the
5 death at the hands of another person.

6 Q Now, do you work with other doctors at the coroner's
7 office?

8 A I do.

9 Q How many doctors?

10 A Right now, there are three full-time doctors besides
11 myself.

12 Q Are you understaffed right now?

13 A We are.

14 Q Okay. Did you have to -- were you on-call this
15 morning?

16 A I was.

17 Q Okay.

18 A On-call until midnight, actually.

19 Q All right, so what does that mean if you're on-call?
20 What happens?

21 A Being on-call, we take any phone calls from midnight
22 to midnight, answer any questions from our investigators,
23 determine anything for the NDN, Nevada Donor Network,
24 procurement issues, determine which cases are ours sometimes.
25 And then, when we come in that morning, we are the one who

1 assigns the cases, and we take the more complicated cases; the
2 homicides, child death cases. Anything that's going to take
3 more time, the on-call doctor usually assigns that to
4 themselves, and then gives the other doctors the other cases.

5 Q Okay. And now, based on the fact that you're
6 understaffed, have there been doctors who've worked there
7 before that have retired or otherwise moved on?

8 A Yes.

9 Q Are you familiar with an individual by the name of
10 Dr. Lary Simms?

11 A I am.

12 Q Did he work there previously?

13 A He did.

14 Q And is he the individual that performed the autopsy
15 under your Coroner's Office Number 17-08259?

16 A He did.

17 Q All right. Are you, in essence, filling in for him
18 as he's retired?

19 A I am.

20 Q Okay. Now, speaking about that unique case number,
21 what is that?

22 A Every person who comes into our office is designated
23 a unique identifying number. The first two digits are the
24 year, so 17 would refer to 2017. And then, they come in
25 sequentially, so his case was 8259 for the year.

1 Q Now, did he perform this specific autopsy?
2 A Dr. Simms?
3 Q Yes.
4 A Yes.
5 Q All right. So when you were describing autopsies
6 previously, the methodology of doing it, in this particular
7 case, you didn't perform it on this body?
8 A Correct.
9 Q All right. However, when you are performing your
10 own autopsy, do you dictate or take notes as you're doing it?
11 A I do.
12 Q And is that for the purposes of generating a report?
13 A It is.
14 Q In fact, is your office tasked with generating
15 reports in contexts with deaths like this?
16 A Yes.
17 Q Okay. And then, after, is a report generated, and
18 does it have that unique number associated with it?
19 A It does.
20 Q Based on that unique number, were you able to get a
21 copy of the Autopsy Report authored by Dr. Lary Simms?
22 A I was.
23 Q And have you been able to review it in anticipation
24 of your testimony?
25 A I did.

1 Q Okay. Does it notate what his findings were inside
2 the body and outside the body?

3 A It does.

4 Q All right. Now, in addition to this report, while
5 you're performing your own autopsy, are there technicians that
6 work in the coroner's office in the autopsy room with you
7 while you're performing it?

8 A There are.

9 Q What do they do?

10 A The technicians help with the actual autopsy;
11 cutting organs out of the body. They also take photographs.
12 They help us collect the samples for toxicology.

13 Q Now, if there is a thought that it could potentially
14 be a homicide, are there also sometimes individuals from the
15 Metropolitan Police Department present during parts of the
16 autopsy?

17 A Yes.

18 Q You've spoken of people that work for the coroner's
19 office taking photographs. Are there individuals that work
20 for Metro that also take photographs?

21 A Yes.

22 Q Does that happen concurrently or at the same time at
23 times?

24 A Usually.

25 Q Okay. So photographs taken by crime scene analysts,

1 and there's photographs taken by a technician from the
2 coroner's office?

3 A Yes.

4 Q Now, do you in your office maintain the photographs
5 that are unique to each individual autopsy?

6 A We do.

7 Q So in addition to reviewing Dr. Simms's report, did
8 you also review the photographs from his autopsy?

9 A I did.

10 Q All right. Based on the fact that you weren't there
11 when this was done, were you able to see what was going on
12 with the body based on those photographs?

13 A I was.

14 Q Okay. Now, based on the review of the report, and
15 based on the photographs, were you able to come to your own
16 independent conclusions?

17 A Yes.

18 Q Okay. Let's talk first about what you noted as far
19 as injuries on this body. Did you note any gunshot wounds?

20 A Yes.

21 Q Where were they?

22 A There was a gunshot wound of the head, a gunshot
23 wound of the left lower chest, a gunshot wound of the right
24 ankle, and a gunshot wound of the left ankle.

25 Q And then, in the course of this autopsy, were there

1 any pieces of firearms-related evidence that was recovered?

2 A There were.

3 Q And were you able to see that in photographs?

4 A Yes.

5 Q In the process of the photographing of the body, are

6 there also x-rays that are done?

7 A There are.

8 Q Do you do that so you can try to see inside the body

9 before you actually cut inside the body?

10 A Yes.

11 Q Okay. Were you able to review some x-rays in this

12 particular case?

13 A I did.

14 MR. PESCI: May I approach the witness?

15 THE COURT: You may. And will you, just for the

16 record, identify all the exhibits?

17 MR. PESCI: I will, Your Honor.

18 THE COURT: Yeah. Well, can you do it now?

19 MR. PESCI: I will.

20 THE COURT: Because the Clerk didn't -- we didn't

21 get it down before you --

22 MR. PESCI: Okay.

23 THE COURT: -- took the exhibits. Does that make

24 sense?

25 MR. PESCI: Sure.

1 THE CLERK: Just --
2 MR. PESCI: 93 to 129 --
3 THE CLERK: With the --
4 MR. PESCI: -- with the exception of 96.
5 THE CLERK: Yes.
6 THE COURT: Any objection?
7 MR. SANFT: No objection, Your Honor.
8 MR. RUGGEROLI: Subject to my previous objection,
9 nothing further.
10 THE COURT: Absolutely. They're admitted.
11 (State's Exhibits 93, 94, 95, and 97 through 129 are admitted)
12 MR. PESCI: Thank you very much. All right.
13 They're admitted, so I'm going to publish them, and it will
14 show up on your screen to the right. Is that okay, Your
15 Honor?
16 THE COURT: Yes.
17 BY MR. PESCI:
18 Q Showing you State's 93. A moment ago, we talked
19 about a unique number that's associated with this autopsy.
20 What is that -- or do you see that number here?
21 A Yes.
22 Q Where is that?
23 A The number is on this gray placard, as well as on
24 the identification tag that's attached to the body bag.
25 Q Now, the body bag seems to still be sealed at this

1 point, correct?

2 A Correct.

3 Q And now, that identification number on the body bag
4 and on that placard lets you know it's the body associated
5 with this particular autopsy?

6 A Correct.

7 Q And there's even the name of the decedent, correct?

8 A Yes.

9 Q Okay. Now, you talked about some different gunshot
10 wounds. There was a gunshot wound of -- to the head, you
11 said, correct?

12 A Yes.

13 Q Showing you State's 94, what is that?

14 A This is the entrance gunshot wound on the right side
15 of the head.

16 Q I want to focus in -- looking at State's 95, how is
17 it that looking at this can let you know it's an entrance
18 wound versus an exit wound?

19 A Entrance wounds typically are more of a punched out
20 injury where you cannot re-approximate or put the skin back
21 together. Other things you note on entrance wounds that are
22 -- show you that they are entrance wounds is an abrasion rim.
23 This one's slightly eccentric, or off-center, but it is there.
24 On skull -- in gunshot wounds of the skull, you can also see
25 beveling internally. Other things you look for are stippling,

1 which are not present here, but --

2 Q What is stippling?

3 A Stippling is punctate abrasions caused by unburnt
4 gunpowder striking the skin. It usually makes it so we can
5 say that a gunshot wound is intermediate range, inches to feet
6 away from the body.

7 Q Okay. So if you were to shoot me right now, would
8 you expect to have that evidence on a wound on my body?

9 A Possibly.

10 Q Okay, and the distance from the person would dictate
11 that?

12 A The distance, and then, also, the ammunition used.

13 Q Okay. You described this as eccentric; did I hear
14 that correctly?

15 A Yes.

16 Q What does that mean?

17 A Just off-center. So the abrasion ring, instead of
18 being all the way around the wound, is only on -- only on this
19 side here.

20 Q Is that indicative of the bullet coming in at an
21 angle?

22 A Yes.

23 Q Okay. And then, the trajectory, do you in autopsies
24 try to track the travel of the bullet through the head and
25 give a trajectory?

1 A Yes, we do trajectory through the body only.

2 Q Okay, but you spoke earlier about how entrance
3 wounds are normally more like something punched out, correct?

4 A Correct.

5 Q Now, exit wounds -- looking at State's 97, what kind
6 of a wound is that?

7 A This is an exit wound. This wound can actually be
8 -- the skin can be re-approximated. There are very large
9 lacerations from the exit, but it is an exit wound on the left
10 side of the forehead.

11 Q Okay, and is that in line with the entrance on the
12 right side?

13 A Yes.

14 Q Okay. So that's the exit to the entrance we saw
15 earlier?

16 A Correct.

17 Q Okay. Now, you talked about how there was another
18 gunshot wound. I want to show you State's 98. Do you
19 recognize that?

20 A Yes, this is a photograph of Mr. Valenzuela's left
21 side.

22 Q Is that wound -- showing you, up-close, State's 99.
23 How is this one different from the earlier entrance wound we
24 saw on the right back side of the head of the victim?

25 A This one, you can see that it has the abrasion ring

1 circumferentially or all around the wound.

2 Q And is that more indicative of the bullet entering
3 straight on as opposed to an angle?

4 A Yes.

5 Q And is this wound, as far as the entrance, a smaller
6 wound than the other one? As far as the entrance; the size of
7 it?

8 A Slightly, yes.

9 Q Okay. And then you talked about, in addition to the
10 head and the stomach area, there were also injuries to the
11 ankles?

12 A Yes.

13 Q Looking at State's 100, do you notate any injuries
14 there?

15 A Yes, the entrance wound on the outer right ankle is
16 here.

17 Q You know, and you just said the outer right ankle.
18 So everyone knows, when you are speaking of right and left on
19 the individual that's having the autopsy, is it unique to that
20 person, so their right hand or their right leg?

21 A Yes.

22 Q Okay. And that's -- on the right outside ankle,
23 that's an entrance wound?

24 A Yes.

25 Q Showing you State's 101, is that a close-up of that?

1 A Yes.

2 Q Okay. And again, does that have more of that
3 collar, or how would you describe that?

4 A Yes, it has the abrasion collar that we were
5 discussing earlier.

6 Q Okay. And then, showing you 102, is that still the
7 right leg?

8 A It is.

9 Q Okay, and then what are we looking at there?

10 A The exit wound on the inner right ankle.

11 Q Okay. And then, are there also sometimes DNA
12 samples or swabbing that would be done on victims' hands or
13 other parts of their bodies?

14 A Yes.

15 Q Okay. In State's 103, is there -- is this a picture
16 of the fingernails or the hand of the decedent?

17 A Yes.

18 Q And that is his left side?

19 A Yes.

20 MR. PESCI: Court's indulgence.

21 BY MR. PESCI:

22 Q Now, we spoke of x-rays a moment ago; is that
23 correct?

24 A Yes.

25 Q And then, we were looking at the left and right

1 legs, correct?

2 A We just looked at the right leg; we haven't looked
3 at the left yet.

4 Q All right. I'm going to show you State's --

5 MR. PESCI: Well, move for the admission of State's
6 122, 123, 126, and 127, if they're not in that --

7 THE COURT: Yeah.

8 MR. PESCI: -- list I already asked for.

9 THE COURT: They've already been admitted.

10 MR. PESCI: Okay, thank you, Your Honor.

11 BY MR. PESCI:

12 Q Looking at State's 126. You said we were talking
13 about the right leg, correct?

14 A Yes.

15 Q All right. Is there evidence of injury to the bones
16 of the decedent manifested in this x-ray?

17 A Yes.

18 Q Could you show the ladies and gentlemen of the jury?

19 A There are fractures of the tibia and fibula in the
20 area of the ankles, so the two bones in your lower leg near
21 your ankle.

22 Q Okay. So is that caused by the bullet passing
23 through those bones?

24 A Yes.

25 Q Are those important bones for your legs?

1 A Yes.

2 Q Is it -- are you really able to move around if you
3 have that -- a break like that?

4 A It would be painful.

5 Q Okay, let's say this. If we also add in State's
6 127, which is the left leg, are there -- is there evidence of
7 injuries also to the bones in that?

8 A Yes.

9 Q Okay. If both -- well, what are the injuries there?

10 A The same two bones, but in the left ankle, are
11 fractured here.

12 Q Okay. So, in both legs, you said the tibia and
13 the --

14 A Fibula.

15 Q -- fibula -- fibula are broken?

16 A Yes.

17 Q All right. Would that impede someone from moving?

18 A Yes.

19 Q Okay. Now, we also seem to see something almost
20 floating in air in that exhibit. What is that?

21 A This is a bullet that was recovered from the left
22 leg on the outer side of the calf area.

23 Q Okay. Showing you State's 104, was there evidence
24 that the bullet was recovered during the autopsy?

25 A Yes.

1 Q And in fact, State's 105, is that a photograph with
2 that unique placard, showing the bullet's condition after
3 coming out of the body?

4 A Yes.

5 Q And then, in State's 106, is there also a photo
6 showing a different angle?

7 A Yes.

8 Q Okay. Now, sometimes during an autopsy, can pieces
9 of a bullet be recovered?

10 A Yes.

11 Q What we've just looked at is the entirety of a
12 projectile, correct?

13 A Yes.

14 Q Looking at State's Exhibit 122, do you recognize
15 that?

16 A Yes.

17 Q What is this?

18 A This is an x-ray, what we call a lateral head. It's
19 from the side of the head.

20 Q And what does it show?

21 A It shows multiple skull fractures here, and then
22 small pieces of metal that, when recovered, were pieces of
23 projectile and jacket.

24 Q Okay. And transitioning to State's 123, what is
25 that in contrast to the prior photo?

1 A This is an x-ray of the head from the front. So
2 it's just another angle looking at the head, showing the same
3 thing.

4 Q Okay. And in 123, do you see some pieces of the
5 fragments?

6 A Yes.

7 Q However, in 122, can you see more of them because
8 it's the -- what was the angle you said?

9 A Lateral.

10 Q The lateral? Can you see more in that x-ray?

11 A Yes.

12 Q Okay. Now, in State's 109, were those pieces that
13 are seen in the x-ray recovered during the autopsy?

14 A Three of them, yes.

15 Q Okay. And then, does -- is the head opened normally
16 during an autopsy?

17 A Yes.

18 Q And especially if there's an injury to the head?

19 A Yes.

20 Q All right. Is that how you all can get to where
21 those pieces of a bullet could be?

22 A Correct.

23 Q All right. Speaking of a bullet, was there a bullet
24 recovered from the stomach area?

25 A Yes, the left lower back.

1 MR. PESCI: Court's indulgence.

2 BY MR. PESCI:

3 Q Showing you State's 118, what is -- oops, spin it
4 around. What is that?

5 A This is the abdominal x-ray of Mr. Valenzuela,
6 showing the small projectile that was recovered from the left
7 lower back.

8 Q Okay. And earlier, looking at State's 98, we had an
9 entry wound. Where would you describe that on the body?

10 A The left lower chest.

11 Q Okay. And then, when we line that up with 118, is
12 that bullet beyond the hole inside of the body?

13 A Yes.

14 Q Okay. And then, in State's 117, is that -- is
15 "lateral" the right term?

16 A Yes.

17 Q All right. Is that a lateral view?

18 A It is.

19 Q And then, can we see where it ended up?

20 A Yes. So it's in the back -- I believe -- yeah.
21 Just looking. Right behind the first lumbar vertebra.

22 Q Okay. Even though you weren't there, having
23 reviewed the photos and knowing anatomy from your experience
24 and training from actually opening up bodies, what's in the
25 body between where the hole was and where the bullet ended?

1 A The diaphragm, the spleen, the left kidney, possibly
2 left adrenal gland, possibly the stomach.

3 Q Okay. So this injury to the body, is that also
4 something that could cause death?

5 A Yes.

6 Q I should have asked this earlier, but the shot to
7 the head, is that something that can cause death?

8 A Yes.

9 Q Okay. Now, this bullet that we're looking at in
10 State's 117, that was recovered, correct?

11 A It was.

12 Q State's 107, does that have that unique placard
13 number associated with this autopsy?

14 A It does.

15 Q Now, when bullets go through bodies -- and you just
16 described a bunch of different objects between where that hole
17 started in the stomach and where it ended -- can they be
18 deformed from hitting things inside the body?

19 A They can.

20 Q Showing you State's 108, is that the same bullet in
21 State's 107, just rotated?

22 A It is.

23 Q Does it have evidence of deformation to it?

24 A It does.

25 Q Okay. In your experience in autopsies you've done

1 on your own, have you seen that happen before?

2 A Yes.

3 Q Okay. So, reviewing all of those photographs and
4 the report, did you come to your own independent conclusion as
5 far as what the cause of death was?

6 A Yes.

7 Q What was that?

8 A Multiple gunshot wounds.

9 Q And then, as far as the manner of death, what was
10 that?

11 A Homicide.

12 Q Okay. Now, during the course of an autopsy, are
13 there different pieces -- I don't know if I should say pieces.
14 Are there things taken from the body to try to assess the
15 toxicology of the individual?

16 A Yes.

17 Q What is a toxicology?

18 A A toxicology is where we take samples of blood,
19 sometimes tissue, and sometimes fluid from the eyes, and send
20 it to a lab to look for medications, drugs of abuse, alcohol
21 levels to see what was in their body at the time of death, and
22 sometimes whether or not that contributes to death.

23 Q And in this particular case, was there a toxicology
24 done on the decedent?

25 A It -- there was.

1 Q And you -- you have reviewed those results?
2 A I have.
3 Q And what were the results of the toxicology?
4 A There were no drugs, or alcohol, or medications in
5 his system that were tested for.
6 MR. PESCI: Thank you very much. I'll pass the
7 witness.
8 THE COURT: Cross-examination?
9 MR. SANFT: No cross, Your Honor.
10 THE COURT: Mr. Ruggeroli?
11 MR. RUGGEROLI: No questions. Thank you.
12 THE COURT: Okay. Thank you very much for your
13 testimony here today. You may step down, and you are excused
14 from your subpoena.
15 THE WITNESS: Thank you.
16 THE COURT: You may call your next witness.
17 MR. PESCI: State calls Jeff Scott.
18 THE WITNESS: If you'll please remain standing,
19 raise your right hand, and face the Clerk.
20 JEFFREY SCOTT, STATE'S WITNESS, SWORN
21 THE CLERK: You may be seated. Please state and
22 spell your first and last name for the record.
23 THE WITNESS: Jeffrey Scott. J-e-f-f-r-e-y,
24 S-c-o-t-t.
25 MR. PESCI: May I proceed, Your Honor?

1 THE COURT: You may.

2 DIRECT EXAMINATION

3 BY MR. PESCI:

4 Q Sir, what do you do for a living?

5 A I'm a crime scene analyst with the Las Vegas
6 Metropolitan Police Department.

7 Q How long have you been doing that?

8 A Over 13 years.

9 Q Back in August of 2017, specifically on August 9th
10 of 2017, did you attend the autopsy of Gabriel Valenzuela?

11 A Yes, I did.

12 Q Were you there with some detectives from the
13 Homicide Detail?

14 A I believe so.

15 Q Okay. And then, were you there when the autopsy was
16 performed by Dr. Lary Simms?

17 A I was in the building; I wasn't in the room with
18 him.

19 Q Okay.

20 A I was in the adjacent room.

21 Q I apologize. Are you aware that he was the doctor
22 that performed the autopsy?

23 A Yes.

24 Q And then, were you in the room at a point with the
25 body so that you could photograph it?

1 A Yes.

2 Q Okay. Showing you what's marked as State's 110 to
3 129, do you recognize those? They've already been admitted.

4 A Yes.

5 Q When you were at this autopsy, were you present when
6 the body first came in and was still in the body bag?

7 A Yes, I was.

8 Q Showing you State's 110, did you take this
9 photograph?

10 A Yes, I did.

11 Q Does it show that the seal was still intact when it
12 arrived at the autopsy, having been brought from the hospital?

13 A Yes.

14 Q Okay. And then, did you notate the body with
15 certain photographs?

16 A Yes, I did.

17 Q When the body first comes to the autopsy, do you
18 take some photographs as-is when it first gets there?

19 A Yes. I take photographs of the body while it's
20 still in the bag before we open it, and then after we open the
21 bag, and then as we remove the sheets and clothing, and as we
22 -- after we clean the body. We take photos at every stage.

23 Q Okay, you just mentioned after you clean the body.
24 So I want to show you State's 111. Do you photograph the body
25 before it's cleaned?

1 A Yes.

2 Q And then, also, after it's cleaned?

3 A That's correct.

4 Q Okay. So looking at State's 113, do you have some

5 photographs also after it's been cleaned to show kind of the

6 margins and the edges of those wounds?

7 A That's correct.

8 Q Okay. Now, in the course of this autopsy, did you

9 take a picture of the decedent's back?

10 A Yes, I did.

11 Q Is that the normal course to try to show photographs

12 of the entire body?

13 A Yes.

14 Q All right. And were there any injuries or exits, I

15 should say, that you saw on the back?

16 A Not that I'm aware of.

17 Q All right. And then, when the body comes to you,

18 sometimes does it have its clothes on it still?

19 A Yes, sometimes.

20 Q Sometimes, is -- are the clothes in a -- in a bag

21 that you receive?

22 A Yes.

23 Q Are you tasked with taking photographs of those

24 pieces of clothing?

25 A Yes, I am.

1 Q Showing you State's 116, did you take a photograph
2 of this particular item?

3 A Yes, I did.

4 Q And is that a shirt?

5 A Yes, it is.

6 Q Okay. And then, also, did you have a picture of the
7 decedent's shorts in State's 121?

8 A Yes.

9 Q Okay. During the course of an autopsy, if there are
10 projectiles recovered, are they then given to you as the crime
11 scene analyst?

12 A Yes, they are.

13 Q Do you impound that item?

14 A Yes, I do.

15 Q What does it mean to impound something? How does
16 that work?

17 A I take the items, and in the case of bullets or
18 bullet fragments, we place them usually in a vial, and label
19 each vial with the item number and information such as the
20 event number, the date, and my initials and P number. Then,
21 the vials are placed inside packaging, which is sealed with
22 evidence tape. The tape is marked with the date that it's
23 sealed, along with my P number and initials. And then a label
24 is affixed to the front of the package that has a list of the
25 contents of the package, along with all the identifying

1 information.

2 Q And speaking of that labeling and the identifying
3 information, will you also notate where it is that the item
4 came from from the body?

5 A Yes.

6 Q Looking at State's 125, you spoke a moment ago about
7 your P number. Are we seeing that here on the left of that
8 item?

9 A Yes, it is. That's my initials and my P number.

10 Q So those items that are impounded under 9618 have
11 been impounded by you?

12 A Yes.

13 Q Okay, and we're looking at some items that you in
14 fact did impound?

15 A That's correct.

16 Q All right, and did you notate which part of the body
17 these things came from?

18 A Yes, I did.

19 Q And specifically, Items 12, did you take pictures
20 rotating those fragments around to see both sides?

21 A That's correct.

22 Q And did Items 12 come from the hand of the doctor to
23 you, or to someone else that got it to you?

24 A Yes. The doctor removes them from the body, then
25 turns them over to me.

1 Q All right. And the doctor took Items 12 from the
2 head of the victim?

3 A Yes.

4 Q All right. Showing you State's 119, were there
5 other -- another fragment or bullet that was recovered?

6 A Yes. There was also a fragment, which you're
7 showing there, and also a bullet.

8 Q All right. Showing you State's 13 -- oh, no, that's
9 not 13, sorry. 120. Is that the bullet rotated?

10 A That's a fragment, yes.

11 Q Okay, and was that the one recovered from the left
12 back?

13 A Yes, it was.

14 Q All right. Showing you State's 128, did you also
15 recover and impound that item?

16 A Yes, I did.

17 Q And did that come from the left leg?

18 A Yes, it did.

19 Q In your experience as a crime scene analyst, do you
20 have some experience recovering different caliber -- calibers
21 of bullets?

22 A Yes, I do.

23 Q Do you have experience firing firearms?

24 A Yes, I do.

25 Q Are you familiar with different calibers?

1 A Yes, I am.

2 Q All right. Looking at State's 128, is that a larger
3 caliber than State's 120?

4 A Yes, it is.

5 Q Okay. And then, in State's 129, did you rotate that
6 same bullet that you notated as coming from the left leg of
7 the decedent?

8 A Yes, I did.

9 Q Okay. In addition to items of physical evidence
10 that are recovered, do you often take what's referred to maybe
11 as a buccal swab or a DNA sample?

12 A Yes, I do.

13 Q In this particular case, did you take a buccal swab
14 -- buccal swab from the victim?

15 A Yes, I did.

16 Q How do you do that, and where is it from?

17 A The buccal swab kit consists of a package containing
18 items for the buccal swab. The items include two swabs,
19 similar to a Q tip, but with just a swab on one end. And each
20 one of those swabs is rubbed on the inside of each cheek in
21 order to collect DNA cells. The swabs are then placed in a
22 small cardboard package, and that comes with the kit. And the
23 information is filled out on the package, and then it's placed
24 inside an envelope, and impounded.

25 Q So when you impounded that particular package, did

1 you label it as Package number 2?

2 A Yes.

3 Q And then, the item inside the buccal swab kit, was
4 that Item number 2?

5 A Yes, it was.

6 Q All right, so that when DNA analysts are referring
7 later on to a package numbered with P number 9618, and Package
8 2, Item 2, that's this item?

9 A That's correct.

10 Q Okay. In addition to the buccal swab, did you take
11 some swabs of possible DNA from the fingernails of the
12 decedent's right hand?

13 A Yes, I --

14 Q Sorry.

15 A Yes, I did.

16 Q And then the left hand?

17 A Yes.

18 Q Okay. Same procedure?

19 A There's not a kit for it, but we have sterile swabs
20 that we use. We add a little bit of distilled water to the
21 tip of the swab, and then we use that to rub any possible DNA
22 off of the tips of the fingers and the fingernails.

23 Q And did you impound that as a Package number 3 and
24 Items 5 and 6?

25 A Yes.

1 Q Okay.

2 MR. PESCI: Court's indulgence. Pass the witness.

3 THE COURT: Cross-examination?

4 MR. SANFT: No cross, Your Honor.

5 MR. RUGGEROLI: No questions. Thank you.

6 THE COURT: Okay. Thank you very much for your
7 testimony here today. You may step down. You are excused
8 from your subpoena.

9 MR. PESCI: Judge, can we approach?

10 THE COURT: Sure.

11 (Bench conference)

12 MR. PESCI: So we're almost at 3:00.

13 THE COURT: Okay.

14 MR. PESCI: So I don't know if we want to take a
15 break to try to get it set up as far as this internet witness.

16 THE COURT: Okay. All right, okay.

17 MR. PESCI: And then, I don't know if you want to
18 say anything as far as -- Parker's going to probably leave now
19 so he can get there on time.

20 THE COURT: Okay. Yeah, that's a good idea that I
21 let them know. Okay.

22 (End of bench conference)

23 THE COURT: All right. At this time, ladies and
24 gentlemen, we're going to take a short recess because we need
25 to get ready for the next witness.

1 During this recess, you're admonished not to talk or
2 converse amongst yourselves or with anyone else on any subject
3 connected with this trial, or read, watch, or listen to any
4 report of or commentary on the trial, or any person connected
5 with this trial, by any medium of information, including,
6 without limitation, newspapers, television, the internet, or
7 radio, or form or express any opinion on any subject connected
8 with this trial until the case is finally submitted to you.

9 It will probably be a short recess. Officer Hawkes
10 will let you know when we're ready.

11 Also, Mr. Brooks is going to leave. He is being
12 excused with the permission of the Court. Thank you very
13 much.

14 THE MARSHAL: Thank you. All rise for the exiting
15 jury, please.

16 (Outside the presence of the jurors)

17 THE MARSHAL: Thank you, everyone. Be seated.
18 Thank you.

19 (Court recessed at 2:59 P.M. until 3:09 P.M.)

20 (Outside the presence of the jurors)

21 MR. PESCI: Are you seeing us?

22 THE CLERK: She might have her mute on.

23 THE COURT: Can she see us?

24 THE CLERK: She should be able to see us.

25 THE COURT: Can you see us and hear us? Yes? Well,

1 we can't hear --

2 THE WITNESS: I can see and hear you, yes.

3 MR. PESCI: Awesome.

4 THE COURT: Perfect. Yeah.

5 THE WITNESS: Yes.

6 THE COURT: Let's bring them in.

7 (Pause in the proceedings)

8 THE CLERK: Mr. Pesci, do you have 300 over there?

9 MR. PESCI: I have 277 through 319 in consecutive

10 order.

11 THE CLERK: I'm just making sure I'm not withholding

12 anything. I've got some of your exhibits that you'll need to

13 come up and grab them. These two I think belong in there.

14 MR. PESCI: Yeah, thank you.

15 THE CLERK: You're welcome.

16 MR. PESCI: Not that I'm going to be able to show

17 her, but we're going to wing it.

18 THE MARSHAL: All rise for the entering jury,

19 please.

20 (Within the presence of the jurors at 3:12 p.m.)

21 THE MARSHAL: Thank you, everyone. Please be

22 seated.

23 THE COURT: Does the State stipulate to the presence

24 of the panel?

25 MR. PESCI: Yes, Your Honor.

1 THE COURT: Mr. Sanft?
2 MR. SANFT: Yes, Your Honor.
3 MR. RUGGEROLI: Yes, Your Honor.
4 THE COURT: Mr. Ruggeroli? Thank you very much.
5 The State may call their next witness.
6 MR. PESCI: State calls Noreen Charlton.
7 THE CLERK: Can you please raise your right hand?
8 NOREEN CHARLTON, STATE'S WITNESS, SWORN
9 THE CLERK: Can you please state and spell your
10 first and last name for the record?
11 THE WITNESS: Noreen Charlton. N-o-r-e-e-n,
12 C-h-a-r-l-t-o-n.
13 THE COURT: Are you okay, Mr. Sanft?
14 MR. SANFT: Your Honor, if we could just move the
15 mouse off of her eyes.
16 THE COURT: Apparently, we can't.
17 MR. SANFT: Oh, we cannot? Okay.
18 THE COURT: Right. So, sorry.
19 MR. SANFT: No, it's okay.
20 THE COURT: Now -- yes, it would be easier.
21 MR. PESCI: Yeah. If you move a little to the left
22 or the right, that works. You can move your chair if you
23 want.
24 THE WITNESS: All right, we good?
25 THE COURT: Yeah.

1 MR. SANFT: I'm sorry. Yes, thank you. Appreciate
2 it.

3 MR. PESCI: May I proceed, Your Honor?

4 THE COURT: You may.

5 DIRECT EXAMINATION

6 BY MR. PESCI:

7 Q Ma'am, where are you now?

8 A I am currently in Cleveland, Ohio.

9 Q And are you meeting with us via some sort of a
10 Skype-type system?

11 A Yes, I am.

12 Q Okay, and do you live now outside of Nevada?

13 A Yes, I do.

14 Q Back in 2017, specifically in August, did you work
15 for the Metropolitan Police Department?

16 A Yes, I did.

17 Q What did you do?

18 A I was a senior crime scene analyst.

19 Q And on August the 15th of 2017, did you respond to
20 3300 Civic Center Drive?

21 A Yes, I did.

22 Q Specifically, Unit 2F as in Frank?

23 A That's correct.

24 Q And when you went there, were there other crime
25 scene analysts with you?

1 A No, I was the only one there.

2 Q Even though you were the only crime scene analyst,
3 were there other members of the Metropolitan Police
4 Department?

5 A Yes, there were.

6 Q Specifically, were there other detectives; a Darren
7 Cook, A Detective Merrick, and Detective Cody, and a Detective
8 Sonny Bogatay?

9 A Yes, that's correct.

10 Q Typically, will you work in conjunction with the
11 detectives when you are documenting a particular scene?

12 A Yes.

13 Q And in this particular case, one of those forms of
14 documentation was photography; was it not?

15 A That's correct.

16 Q Okay.

17 MR. PESCI: We have marked here in court Exhibits
18 277 through 319. I believe there's a stipulation to their
19 admissibility.

20 MR. SANFT: That is correct, Your Honor.

21 MR. RUGGEROLI: Yes, Your Honor.

22 THE COURT: Okay, they're admitted.

23 (State's Exhibits 277 through 319 are admitted)

24 BY MR. PESCI:

25 Q So, unfortunately, we can't really show it to you.

1 If I hold it up like this, can you see much?

2 A I -- I can sort of see it.

3 Q Okay. Does it look familiar?

4 A Yes, it does.

5 Q Okay. So we know these are the photographs that you

6 took of that particular location?

7 A Correct.

8 Q Okay. And you took photographs from throughout the

9 apartment; is that correct?

10 A Yes, I did.

11 Q Do you take kind of overall photographs at first,

12 where everything's still in the position as you first came

13 upon it?

14 A Yeah. So, upon entry, I did all of my overall

15 photography before any searching was conducted.

16 Q All right. Now, when the searching was done, the

17 detectives had a search warrant, and they were telling you

18 things of interest to them?

19 A That's correct.

20 Q And were those items pointed out to you so that you

21 could document them via photography or potentially impounding

22 some items?

23 A Yes, they were.

24 Q Okay. And then, do you make a report or do you

25 generate a report listing out what you did there and the items

1 that you impounded?

2 A Yes, I did.

3 Q In anticipation of your testimony, did we email you

4 those reports for your review?

5 A Yes, you did.

6 Q And were you able to review those?

7 A I was.

8 Q And are you familiar with the items that you

9 impounded and the scene based on reviewing these documents?

10 A Yes.

11 Q Okay. To kind of shortchange the photography, we'll

12 go to kind of some of the items specifically that you

13 impounded. Did you impound items here?

14 A Yes, I did; impounded several items.

15 Q Okay. Was there a semiautomatic Taurus handgun?

16 A Yes, there was.

17 Q And there was -- specifically, was it a Millennium

18 PT145 Pro .45 caliber ACP?

19 A Yes, it was.

20 Q And was the serial number NCY05584?

21 A That's correct.

22 Q Do you recall where you found that?

23 A Yes. So as soon as you walked in the front door,

24 there was a red chair, and it was wedged between the armrest

25 and the couch -- the chair cushion.

1 Q And in your report, do you notate that?

2 A Yes, I did.

3 Q Okay. And then, did you do anything to that firearm

4 to try to preserve any evidence?

5 A Yes. So the firearm was swabbed for possible DNA,

6 and then it was chemically processed for possible latent

7 prints.

8 Q Did you swab first?

9 A Yes, I did.

10 Q And then, you said you processed for latent prints.

11 Were -- what were the results of your processing the prints?

12 A There were negative results on the firearm.

13 Q What does that mean?

14 A That means that I did not find any latent prints of

15 value.

16 Q Okay. "Of value," does that mean that there wasn't

17 sufficient individual ridge detail or specifics that you could

18 make a comparison with?

19 A Correct.

20 Q Okay. Now, the firearm itself, did it contain a

21 magazine?

22 A Yes, it did.

23 Q What did you do with that?

24 A The magazine was removed from the firearm, and it

25 was also swabbed for possible DNA, and then chemically

1 processed as well for latent prints.

2 Q Was the -- what was the result of that?

3 A The -- the results on the magazine were positive.

4 Q Okay, so was there a print on the magazine?

5 A There was sufficient ridge detail for it to be
6 photographed and submitted to the Latent Print Detail.

7 Q Did you take a photograph of that fingerprint?

8 A Yes, I did.

9 Q All right. Is there something that you do with the
10 camera to try to expose that or make that come out?

11 A Yes. So in this case, I used a chemical, which
12 required the laser for viewing the print, so it was
13 photographed with the use of the laser.

14 Q All right. Does that enhance the ability to see the
15 print?

16 A Yes, it does.

17 Q Okay. Now, speaking of this magazine, was there any
18 ammunition in the magazine?

19 A Yes, there were.

20 Q Do you recall how much and what it was?

21 A There were ten cartridges, and they were RP45 Auto.

22 Q So when we say a cartridge, what does that mean to
23 you?

24 A A cartridge is a unit of ammunition, so that's all
25 one piece together that contains the cartridge case, the gun

1 powder, and the bullet.

2 Q So is that -- sometimes, people might refer to it as
3 an unfired bullet?

4 A Correct.

5 Q Okay. And then, you said there were ten of them?

6 A Yes.

7 Q And you said they were RP45 Auto. What does that
8 mean?

9 A So that's just the brand and the caliber of the
10 cartridge.

11 Q Okay. So are there different manufacturers or
12 brands of .45 caliber ammunition?

13 A Yes -- yes, several.

14 Q And where is that on the cartridge so you know which
15 type it is?

16 A It is on the headstamp.

17 Q Is that where the firing pin would strike?

18 A That's correct, yeah.

19 Q Okay. Separate from this firearm, were there shoes
20 that you took into evidence or you noted?

21 A Yes.

22 Q What did you find?

23 A They were red and white Nike shoes, and they were at
24 the south wall of the kitchen.

25 Q And did you notate their size?

1 A Yes, they were size 11.

2 Q Okay. So that's -- speaking of some shoes, were
3 there other pieces of clothing that were pointed out by the
4 detectives of interest?

5 A Yes, there were.

6 Q Was there a hat?

7 A Yes.

8 Q Can you describe that?

9 A It was gray and black, and it had a Chicago
10 Blackhawks logo on the front of it.

11 Q Do you recall, did it have a sticker still on the
12 brim?

13 A I don't recall specifically.

14 Q Okay, but you photographed it?

15 A Yes, I did.

16 Q Okay. Was there also a hooded sweatshirt that you
17 found there?

18 A Yes.

19 Q What color was it?

20 A It was black.

21 Q And did you impound that item?

22 A Yes, I did.

23 Q Okay. Were there other articles of clothing that
24 you came across there?

25 A Correct.

1 Q Okay. Did you in fact also find some other item of
2 firearms-related nature?

3 A Yes, I did.

4 Q What was that?

5 A There were a total of three other RP45 Auto
6 cartridges, and they were on the floor in a bedroom -- or, I'm
7 sorry, on the floor in a bedroom on the second floor, and then
8 there was another cartridge in the pocket of a pair of jeans.

9 Q Okay.

10 A Or, I'm sorry, jean shorts, I believe they were.
11 Jean shorts.

12 Q All right. So in your packaging, did you have that
13 as your Package 6?

14 A Yes, I did.

15 Q And Items 11 and 12?

16 A That's correct.

17 Q Specifically, as to Item 11, even though you refer
18 to it as one item, was that corresponding to two pieces of
19 evidence?

20 A Yes, it was.

21 Q And were those the two cartridges found on the
22 floor?

23 A Correct.

24 Q What was the headstamp on those?

25 A RP45 Auto.

1 Q All right. So, separate from those two on the
2 floor, you found one, if I understood correctly, from a pocket
3 on some shorts?

4 A That's correct.

5 Q All right. And then, the firearm, you spoke of
6 earlier how you swabbed it. Did you impound those swabs?

7 A Yes, I did.

8 Q And did you take one swab from the trigger, slide,
9 and grips of that particular firearm?

10 A Yes, I did.

11 Q And did you take a second swab from the bottom and
12 the feeding area of that item?

13 A That was from the bottom and the feeding area of the
14 magazine.

15 Q The magazine, I'm sorry. Thank you. And now, you
16 impounded all of these items under your unique personnel
17 number?

18 A Yes, I did.

19 Q And do you recall what that was when you still
20 worked with Metro?

21 A 13572.

22 Q Okay. And all that evidence was impounded in the
23 vault so that later on, DNA analysts or fingerprint analysts
24 could review it?

25 A That's correct.

1 Q And all the photographs that we've spoken of,
2 they're uploaded to where they can be analyzed by others
3 later?

4 A Yes.

5 Q Okay. And have you moved out-of-state for work?

6 A For family and work, yes.

7 Q Okay, so that's why you're not here now?

8 A That's correct.

9 MR. PESCI: All right, thank you very much. Pass
10 the witness.

11 THE COURT: Cross-examination?

12 MR. SANFT: No cross, Your Honor.

13 MR. RUGGEROLI: Court's indulgence.

14 THE COURT: You bet.

15 MR. RUGGEROLI: Can I see the photos? Thank you,
16 Your Honor. I have no questions.

17 THE COURT: Okay. Thank you very much for your
18 testimony here today, and thank you for doing it this way, and
19 you're excused.

20 THE WITNESS: Okay, thank you very much.

21 THE COURT: State may call their next witness.

22 MR. PESCI: Judge, that's all the witnesses that we
23 have for today. I apologize.

24 THE COURT: You're not kidding, are you?

25 MR. PESCI: I'm not, because we were trying to gauge

1 how long thing were going to go, so I'm sorry.

2 THE COURT: Okay. Well, looks like we're done for
3 the day.

4 So during this recess, you're admonished not to talk
5 or converse amongst yourselves or with anyone else on any
6 subject connected with this trial, or read, watch, or listen
7 to any report of or commentary on the trial, or any person
8 connected with this trial, by any medium of information,
9 including, without limitation, newspapers, television, the
10 internet, or radio, or form or express any opinion on any
11 subject connected with this trial until the case is finally
12 submitted to you.

13 Before you go, can I just have the attorneys
14 approach so we can make sure everyone's okay?

15 (Bench conference)

16 THE COURT: Okay. I have a hearing on Monday, so we
17 can't start until 1:00 o'clock.

18 MR. RUGGEROLI: Tuesday?

19 THE COURT: Oh my gosh, it's a --

20 THE CLERK: Oh, yes, Tuesday. I'm sorry, yes.

21 THE COURT: Oh my gosh, that's right. It's a
22 three-day weekend.

23 MR. RUGGEROLI: I tried to have witnesses here on
24 Monday, and that's not going to work either, so.

25 THE COURT: Okay, so 1:00 o'clock. I just want to

1 make sure.

2 MR. RUGGEROLI: On Tuesday?

3 THE COURT: Yes.

4 MR. RUGGEROLI: Thank you.

5 THE COURT: On Tuesday. Okay.

6 (End of bench conference)

7 THE COURT: Ladies and gentlemen, I do want to

8 remind you that Monday is a holiday, so the courthouse will be

9 closed, so we will resume again on Tuesday afternoon at 1:00

10 o'clock. Thank you very much, and have a good weekend.

11 THE MARSHAL: Thank you. All rise for the exiting

12 jury, please. Jurors.

13 (Outside the presence of the jurors at 3:25 p.m.)

14 THE MARSHAL: Thank you, everyone. Please be

15 seated.

16 THE COURT: Okay, have a good weekend, everyone.

17 MR. RUGGEROLI: Thank you, Your Honor.

18 MR. SANFT: Thank you, Your Honor.

19 MR. PESCI: Okay, thank you.

20 DEFENDANT WHEELER: Thank you.

21 (Court recessed at 3:26 P.M., until Tuesday,

22 February 18, 2020, at 1:04 P.M.)

23 * * * * *

24

25

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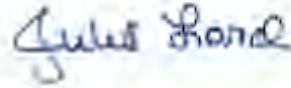
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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.

A handwritten signature in blue ink that reads "Julie Lord". The signature is written in a cursive style.

JULIE LORD, COURT TRANSCRIBER
VERBATIM DIGITAL REPORTING, LLC

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	)	CASE NO. C-17-328587-2
	)	CASE NO. C-17-328587-3
Plaintiff,)	
	)	DEPT. NO. XII
v.)	
)	
RAEKWON SETREY ROBERTSON,)	
a/k/a RAEKWON ROBERTSON,)	
and DAVONTAE AMARRI WHEELER,)	
)	
Defendants.)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 18, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
JURY TRIAL - DAY 5**

APPEARANCES:

FOR THE STATE:	GIANCARLO PESCI, ESQ. Chief Deputy District Attorney
	PARKER P. BROOKS, ESQ. Deputy District Attorney
FOR DEFENDANT ROBERTSON:	MICHAEL W. SANFT, ESQ.
FOR DEFENDANT WHEELER:	JAMES J. RUGGEROLI, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 18, 2020

2 (Case called at 1:03 P.M.)

3 THE COURT: Anything before we bring the panel in?

4 MR. SANFT: Not from the State.

5 MR. RUGGEROLI: No, Your Honor.

6 THE COURT: Okay, let's bring them in.

7 MR. PESCI: We've got eight witnesses lined up for
8 today, Judge.

9 THE COURT: Okay.

10 MR. PESCI: I'm not sure that we'll get through all
11 that, but.

12 (Pause in the proceedings)

13 THE MARSHAL: All rise for the entering jury,
14 please. Jurors.

15 (Within the presence of the jurors)

16 THE MARSHAL: Thank you, everyone. Please be
17 seated.

18 THE COURT: Does the State stipulate to the presence
19 of the panel?

20 MR. PESCI: Yes, Your Honor.

21 THE COURT: Mr. Sanft?

22 MR. SANFT: Yes, Your Honor. Thank you.

23 THE COURT: Mr. Ruggeroli?

24 MR. RUGGEROLI: Yes, Your Honor.

25 THE COURT: Thank you. The State may call their

1 next witness.

2 MR. PESCI: State calls Detective Sonny Bogatay.
3 May I approach your Clerk?

4 THE COURT: You may.

5 MR. PESCI: Thanks.

6 THE MARSHAL: Please step up into the witness stand.
7 Remain standing, raise your right hand, and face the Clerk,
8 please.

9 OFFICER MAUREEN SONNY BOGATAY, STATE'S WITNESS, SWORN

10 THE CLERK: You may be seated.

11 THE WITNESS: Thank you.

12 THE CLERK: Please state and spell your first and
13 last name for the record.

14 THE WITNESS: My name is Maureen, M-a-u-r-e-e-n. I
15 do go by my middle name, Sonny, S-o-n-n-y. Last name,
16 Bogatay, B-o-g-a-t-a-y.

17 DIRECT EXAMINATION

18 BY MR. PESCI:

19 Q Ma'am, what do you do for a living?

20 A Presently, I work for the Las Vegas Metropolitan
21 Police Department.

22 Q In what division?

23 A In the Homicide Section.

24 Q How long have you been with homicide?

25 A It will be three years this June.

1 Q Prior to homicide, where did you work within Metro?
2 A In Metro, I worked in Sexual Assault Section for
3 about six-and-a-half years.
4 Q And then, prior to that?
5 A Prior to that, I was a field training officer, where
6 I trained other officers about how to be a good officer.
7 Q So, all told, how long have you been with Metro?
8 A It will be 17 years this August.
9 Q Okay. And so, if I heard you correctly, it's about
10 three years with Homicide?
11 A Yes, almost three years.
12 Q I want to focus your attention to August of 2017.
13 Did you assist in a homicide investigation that was out on
14 West Dewey Avenue?
15 A I did assist in an investigation, yes.
16 Q And did you work with some other detectives in that
17 investigation?
18 A That is correct.
19 Q And do you recall some of their names?
20 A Yes. I worked with Detective Mitch Dosch, Detective
21 Ryan Jaeger, Detective Lara Cody, and others.
22 Q All right. And then, in the course of this
23 investigation, did it take you as a detective to different
24 locations other than just the West Dewey address where the
25 murder actually occurred?

1 A That is correct. We were at multiple locations
2 during that time.

3 Q All right. And specifically, on August the 15th of
4 2017, did you respond with other Metro personnel to 3300 Civic
5 Center Drive, Unit 2F?

6 A Correct.

7 Q Okay, and do you remember a crime scene analyst by
8 the name of Noreen Charlton?

9 A I do.

10 Q Did she work the scene with you?

11 A Yes, she did.

12 Q Now, when you work a scene with crime scene
13 analysts, how do you do that? What's the way that you
14 approach it, meaning you and the crime scene analysts?

15 A Typically, the crime scene analysts will enter first
16 and take photographs, overall photographs of the scene before
17 anybody touches it so that everything is in place and how it
18 is. After they let us know that they are finished, then we
19 will go in, we put on our gloves, and we will systematically
20 start to search pretty much every area in the place that is
21 within the scope of our search.

22 Q Now, as that search is occurring, and during this
23 process, do the crime scene analysts take photographs?

24 A That is correct.

25 Q And are some items of evidence that are found

1 actually impounded or retrieved and taken into evidence?

2 A Yes.

3 Q In this particular case, Ms. Charlton was the
4 individual that took the photographs and impounded the
5 evidence?

6 A That is correct. She did.

7 Q All right. And are you aware of the fact that she's
8 moved out of Las Vegas and is currently working on the east
9 coast?

10 A Yes, she did.

11 Q All right. So, unfortunately, she couldn't see the
12 photographs from her testimony over the computer. We're going
13 to show some photographs to you. Is that okay?

14 A That's fine.

15 Q Showing you State's exhibits which have been
16 admitted 277 to 280, I'm going to ask you if you recognize
17 277.

18 A I do recognize 277.

19 Q And what do you recognize this to be?

20 A That is the -- I'll call it the outer entryway into
21 -- before you enter the apartments. There's two apartment
22 doors there, 2F and 2G.

23 Q And you spoke of kind of overall photographs as
24 kind of showing the scene as it first was when you arrived?

25 A Correct.

1 Q Now, when you get inside that little kind of alcove
2 or entryway, when you look at State's 278, does it show the
3 two different apartments inside that little entryway?
4 A It does.
5 Q And then, on the right, or at least on the left on
6 State's 278, is that Apartment 2G?
7 A It is.
8 Q And then, to the right, which one is it?
9 A That is 2F.
10 Q Okay. Looking at State's 279, was the door open to
11 2F?
12 A Yes, the door is open in that photograph.
13 Q All right. Above the door, do we have some
14 indication as to which particular apartment this is?
15 A Yes. It has a "2F" right at the top of it, which is
16 different than the other door where it said "2G" on the door.
17 Q All right. In 280, is that a close-up of the door
18 so we know which particular apartment we're about to go in?
19 A Correct.
20 Q Okay. And again, this was being done by Noreen
21 Charlton while you're there, correct?
22 A That is true.
23 Q Now, inside of the apartment where the search was
24 occurring -- this was pursuant to a search warrant, correct?
25 A That is correct.

1 Q All right, so a Court had authorized you, and the
2 other detectives, and the crime scene analysts to go in and to
3 look around this area?

4 A Yes, a judge authorized.

5 Q All right. 281, inside of that apartment, or is
6 that actually the door to the outside that we can see here?

7 A Yes. You can see right there the door is standing
8 open, as the last photograph where you saw the door as
9 standing open. Now we're inside. She's taking a picture from
10 the inside.

11 Q All right. So it appears that there's something
12 kind of red along here. Is it a bed or a couch?

13 A I think it's a -- you know, a small couch, small
14 chair. I mean, it's -- or a big chair. It's -- it looks like
15 both. You could sleep on it, but you certainly could sit on
16 it as well.

17 Q So 282, does that help us to orient to know we're
18 looking at that same location, and we still have the door to
19 the outside common area?

20 A Correct.

21 Q Okay. Was a phone located there?

22 A Yes, the phone was right on the armrest --

23 Q Showing you --

24 A -- you see in the photograph.

25 Q -- 283. Is that a close-up of that phone?

1 A Yes, it is.

2 Q Often, will there be photographs taken of the phone,
3 looking at 284, from the opposite side?

4 A Correct.

5 Q Okay. Now, in this particular case, based on the
6 investigation that had already occurred, was there an effort
7 to try to locate some hooded sweatshirts, dark sweatshirts?

8 A There were some efforts. We open drawers, we look
9 for things in bags. We don't just search right -- the
10 surface-level stuff; we do go into things to look for
11 clothing.

12 Q And that was a focus, however, as to what you were
13 looking for?

14 A Yes.

15 Q One of the things?

16 A Yes, there was a focus.

17 Q Showing you State's 285. Was there a hooded black
18 sweatshirt there?

19 A There was.

20 Q All right. And then, State's 286, was there a
21 photograph of a sweatshirt in that location?

22 A Correct, nearby on the blue couch.

23 Q All right. And then, over here on the left, do you
24 see what that is?

25 A That's a tag.

1 Q Okay. Let me just move it in.

2 A I believe.

3 Q See if we can get the -- does that help you a little

4 bit?

5 A I mean, it's called Dutch.

6 Q Okay.

7 A But I don't know if they're those little cigarette

8 wrapper.

9 Q Right. And that's only showing part of the wrapper,

10 correct?

11 A Correct, it's kind of tucked in there. Hard to

12 see --

13 Q All right.

14 A -- from just looking at it like that.

15 Q Staying inside that area of that kind of

16 couch/chair, we talked about the phone. Was there another

17 piece of evidence that was found, State's 287? Was there a

18 holster, or did you see a holster in the area?

19 A There is a holster, which you -- it's hard to see

20 from this angle, but it is on that armrest, the red armrest.

21 Q Showing you State's 288, is it a better view of that

22 holster?

23 A Correct. You can now see that holster on the other

24 side of the water bottle.

25 Q And then, in tight on 289, using that water bottle

1 as a reference point, is that -- is that the same holster?

2 A Yes, it is.

3 Q Okay. Nearby, kind of stuck in between that red
4 edge and the couch, did you find something -- or was something
5 found in State's 290?

6 A Yes. It's very hard to see in that photograph, but
7 under that picture frame, you can see something very small,
8 but it, to us, appeared to be a butt of a gun.

9 Q So, 291, is that a better close-up of that item?

10 A Better --

11 Q All right.

12 A -- close-up.

13 Q So that wasn't in the holster, and it wasn't on top
14 of that little ledge?

15 A Correct, it was not. It was tucked in like that.

16 Q It was wedged down in there?

17 A Correct.

18 Q And then, was that item retrieved, pulled out, and
19 photographed?

20 A It was.

21 Q Showing you State's 292, do you recognize that as
22 being that particular firearm?

23 A That is. That particular firearm was a Taurus
24 Millennium.

25 Q Okay. Showing you State's 293, is it common to show

1 both sides of the firearm when photographs are taken?

2 A Correct, because there's multiple engravings on each
3 side, so you want to make sure it's accurate and you have all
4 the details.

5 Q And speaking of details, in State's 294, are there
6 photographs that show the details of the manufacturer, the
7 serial number, and things of that nature?

8 A Yes, correct.

9 Q Okay. And then, was this -- do you recall the
10 firearm had a magazine in it? Showing you State's --

11 A It had a magazine in it, correct.

12 Q State's 295. Was the magazine then pulled out of
13 the firearm?

14 A It was.

15 Q Okay. As we see it right now with the slide back,
16 what's going on?

17 A With the slide back, it just shows that there's --
18 it's safe, and nothing is chambered, and there's not a bullet
19 in the chamber.

20 Q All right. Can we see, however, a bullet in the top
21 of the magazine?

22 A Correct, you can.

23 Q All right. Was the magazine itself photographed?
24 Showing you State's 296.

25 A Yes, it was.

1 Q And both sides of that, 297?

2 A Correct.

3 Q And then, the projectiles taken from it, 298, were

4 they unloaded from the magazine?

5 A Yes.

6 Q Okay. And then, 299, does that show the headstamp

7 of those particular bullets?

8 A It does.

9 Q Okay. And if we zoom-in, are these R-P .45 Autos?

10 A It is. You can see the stamp, .45 R-P.

11 Q Okay. And again, these are what are retrieved from

12 inside the magazine, which was inside the firearm that was

13 stuffed down in the corner?

14 A Correct.

15 Q Okay. The rest of the apartment, looking at State's

16 300, was that searched as well?

17 A Yes.

18 Q Okay. Were there some bullets that were found

19 outside of the gun itself?

20 A Correct. On the second floor of the apartment, we

21 did find some bullets.

22 Q State's 301. Is that a photograph of one of those

23 bullets?

24 A It is.

25 Q State's 302. Was there another one on the floor,

1 just loose on the floor?

2 A Yes, there was one loose on the floor.

3 Q Okay. And then, was there one -- well, those two

4 that were loose on the floor, looking at State's 303, was a

5 photograph taken of the headstamp of those two projectiles?

6 A Yes, that is a photograph of them.

7 Q Same manufacturer of the R-P .45 Auto?

8 A Yes.

9 Q Okay. And this is at 3300 Civic Center; this is not

10 the Bagpipe address, correct?

11 A Correct, 3300 Civic Center.

12 Q All right. In State's 304, was there another

13 projectile found, not those two on the floor, and not those

14 that were in the firearm, but inside the pockets of some

15 jeans?

16 A Yes, there was. We did find some in a pocket of a

17 jean.

18 Q And then --

19 A Jean shorts.

20 Q State's 305. Was the headstamp again photographed

21 to be able to show manufacturer?

22 A Correct.

23 Q Was it the same manufacturer?

24 A It was.

25 Q All right. Now, Crime Scene Analyst Noreen Charlton

1 also, in addition to photography and impounding the items, she
2 tried to process this item, particularly the firearm; is that
3 correct?

4 A Yes, she did.

5 Q And when we say process, meaning to try to develop
6 any fingerprints, things of that nature?

7 A Yes.

8 Q Showing you State's Exhibit 306, did she work on
9 that magazine to try to develop any latent fingerprints?

10 A Yes.

11 Q State's 307. Do you see that photograph?

12 A I do.

13 Q All right. And is this a part of that process of
14 trying to develop the fingerprints?

15 A That is part of the process to see if you can lift a
16 fingerprint. Correct.

17 Q All right. And then, Noreen Charlton has a unique P
18 or personnel number; is that correct?

19 A Yes, that is hers.

20 Q Many times when you're doing a report, do you put
21 your first initial, your P number, and your last initial?

22 A Yes, we do.

23 Q And does that help show that this is you that's
24 doing this particular action?

25 A Yes.

1 Q In addition to the firearms-related evidence, were
2 there other articles of clothing that were being looked for in
3 this case?

4 A Yes, there were.

5 Q Pursuant to that search warrant?

6 A Yes, we were looking for other articles of clothing
7 and shoes.

8 Q State's 308. Was there a hat of interest?

9 A Yes. There was a hat on -- I didn't know whether to
10 call it a dresser or a stand -- that we were looking at.

11 Q State's 309. Is that a close-up of that hat?

12 A That is the close-up.

13 Q Okay. Now, this is occurring -- again, for the
14 ladies and gentlemen of the jury, this is August the 15th of
15 2017?

16 A Correct, August 15th.

17 Q You said you were working with Detectives Jaeger and
18 Dosch, correct?

19 A Correct.

20 Q Were you aware of the fact that video surveillance
21 from a convenience store had been obtained prior to your
22 search?

23 A Yes.

24 Q And was that surveillance reviewed prior to the
25 search?

1 A It was reviewed, and I had seen it also.

2 Q Okay. And based on that, was that why some of these
3 items were looked at?

4 A Correct.

5 Q State's 310. Is that the same hat we were just
6 looking at in 309, but just turned upside-down?

7 A Yes.

8 Q Okay. And then, in State's 311, were there some
9 shoes that were found and were searched for?

10 A Yes, especially a pair of the red shoes.

11 Q All right, let's focus in on those then. In State's
12 313, are those the red shoes you just referred to?

13 A Correct, they are.

14 Q And then, often, are there different angles of the
15 same set of sneakers to be able to show all sides?

16 A Yes.

17 Q 312, is that the same pair of sneakers?

18 A Yes, it is.

19 Q Okay. And then, specifically, in State's 316, is a
20 photograph taken to be able to show the size of the shoes?

21 A Yes.

22 Q Now, the other apartment -- we were just speaking of
23 2F, correct?

24 A Correct.

25 Q All right. And was there some photography done of

1 2G?

2 A There was.

3 Q Showing you 317, is that the outside portion of that
4 apartment?

5 A It is.

6 Q And then, in State's 318, does this show entering
7 into that apartment?

8 A It does.

9 Q And lastly, State's 319, does that show inside of
10 2G?

11 A That is inside of 2G.

12 MR. PESCI: Okay, thank you very much. Pass the
13 witness, Your Honor.

14 THE COURT: Mr. Sanft, any cross?

15 MR. SANFT: Just a couple questions.

16 CROSS-EXAMINATION

17 BY MR. SANFT:

18 Q Detective, you explained to the jury a little bit
19 earlier that CSAs go into a house first, and then you follow
20 after, or you're with them during that time period?

21 A We do not go in when they're taking the photographs.
22 Sometimes, for -- the reason is that we would accidentally be
23 in a photograph or maybe bump into something. So typically,
24 they go in first, take the photographs of how the area is
25 prior to our entry.

1 Q Now, would it be fair to say, of course, that even
2 prior to crime scene analysts going into some type of place,
3 like in this case, these apartments, that it has to be cleared
4 first to make sure that there's nobody in there that could be
5 of any danger to either crime scene analysts or other people?

6 A There are times when it is cleared before that.

7 Q In this case, were the apartments that you went into
8 cleared prior to you entering into them with CSA?

9 A They were cleared.

10 Q Okay, meaning that police officers went in, they
11 looked through doors or in closets to make sure no one was in
12 there before they --

13 A I can't tell you if they may have went through the
14 closets because I wasn't in there with them. But typically,
15 people go in to make sure that there are not children or other
16 people in there while we're going to conduct the service of
17 our search.

18 Q All right. And during the time that you're in
19 there, fair to say that you wear gloves as kind of standard
20 operating procedure when you're doing that kind of search or
21 that kind of thing?

22 A Correct. We wear gloves.

23 Q And as you're doing and conducting those types of
24 searches, crime scene analysts are the ones rummaging through
25 things, or are you helping them rummage through those things

1 to get things of interest?

2 A Crime scene analysts are not the ones who conduct
3 the service; as he put it, the rummaging. I -- we are
4 searching, so we have our gloves on. They are usually waiting
5 for an announcement that we have located something, or, "Could
6 you photograph this for us?" So typically, it is just us
7 detectives who have the gloves on, and we are the ones going
8 through the property.

9 Q I see. And just, finally, with regards to the
10 gloves, the reason why you wear them is for what reason?

11 A So that we don't leave our own prints, our own DNA,
12 items like that, into a scene.

13 MR. SANFT: No further questions. Thank you.

14 THE COURT: Mr. Ruggeroli?

15 CROSS-EXAMINATION

16 BY MR. RUGGEROLI:

17 Q Good afternoon.

18 A Good afternoon.

19 Q Who did you interview in this case?

20 A In this case, DeShawn Robinson.

21 Q Okay, anybody else?

22 A There were people that were related to Raekwon, but
23 that was at a different address.

24 Q And that would have been prior to the August 15th
25 date, 2017, for the photos we were just looking at, correct?

1 A Yes, especially the DeShawn Robinson interview was
2 prior to that search.

3 Q You were shown a number of photos. One of them --
4 or a couple of them had a sweater; is that right?

5 A Sweater, then hoodie. I mean, I called them black.

6 Q Okay.

7 A Like, black sweater, black hoodies, black --

8 Q You had seen the video from the Short Line Express,
9 correct?

10 A I had.

11 Q And was it your understanding that the Civic Center
12 address was located with the individual that was wearing that
13 white hat on the video?

14 A I understood that some of the information that --
15 during our interview, we discovered that those were one of the
16 addresses involved with one of the people. Exactly who or
17 what, I wasn't sure until we got to the scene.

18 Q And so, the video, you recall because you actually
19 watched the surveillance?

20 A Correct.

21 Q One of the four that were in the store had that hat?

22 A Had a hat on that -- yes, that we thought was
23 similar to that hat.

24 Q And the shoes that were kind of maroon?

25 A Correct. We also saw the person with red shoes on,

1 so we saw red shoes, and we assumed that those could be
2 related.

3 Q Now, in the video, that individual had a maroon top
4 on, correct?

5 A Correct.

6 Q The photo you were shown was black sweater though,
7 right? Just now.

8 A Well, the pictures that we took that were on the
9 ground --

10 Q Right.

11 A -- was of a black sweater. Correct.

12 Q Okay. The Taurus firearm, were you aware that there
13 were two .45 caliber Taurus firearms; one located at this
14 address, and one supposedly located at a different address?

15 A I was not at the other address where search warrants
16 were served and guns were retrieved. I was only at this one
17 where a gun was retrieved.

18 Q Okay. Were you aware that this firearm was excluded
19 as having been the firearm that shot Mr. Valenzuela?

20 A Eventually, I was aware of that.

21 Q And you did testify just now about the magazine that
22 you observed in this firearm located at the Civic Center,
23 correct?

24 A Correct.

25 Q That magazine held ten bullets?

1 A It did.

2 Q And when you retrieved them and laid them out for
3 the photos, there were ten in the magazine itself that you
4 pulled out of it?

5 A Correct, there were ten.

6 Q Did you write any reports for this event?

7 A What we write is part of something called an
8 Officer's Report. So we write our summary; we include it in
9 an Office's Report.

10 Q And that would have probably been reviewed by
11 Detective Jaeger?

12 A Detective Jaeger, Detective Dosch, and ultimately a
13 sergeant, a supervisor.

14 Q Okay.

15 MR. RUGGEROLI: Thank you. I have nothing further.

16 THE COURT: Any redirect?

17 MR. PESCI: Yes, thank you.

18 REDIRECT EXAMINATION

19 BY MR. PESCI:

20 Q Detective, you were just asked questions about
21 gloves. He talked about how you as a detective and the other
22 detectives are the ones doing the actual searching, correct?

23 A Correct.

24 Q All right. Then you said you will sometimes say,
25 hey, we've got something here; could you take a photograph of

1 it or impound it, correct?

2 A Correct.

3 Q All right, and that's the crime scene analyst that
4 does that?

5 A Yes, it's the crime scene analyst.

6 Q And would you agree the crime scene analyst is also
7 wearing gloves when they impound these items?

8 A That is correct. They not only wear gloves; a lot
9 of times, we wear those medical masks so that they don't
10 breathe on anything or get any of their DNA or spit.

11 Q All right. You were asked questions about the video
12 surveillance that you reviewed from the Short Line Express.
13 Do you remember those questions?

14 A I do.

15 Q And do you recall that's from August the 8th of
16 2017?

17 A I do recall.

18 Q And your search is August the 15th of 2017?

19 A Yes, about a week later.

20 MR. PESCI: Thank you very much.

21 THE COURT: Mr. Sanft, any recross?

22 MR. SANFT: No, Your Honor. Thank you.

23 THE COURT: Mr. Ruggeroli?

24 MR. RUGGEROLI: No, Your Honor. Thank you.

25 THE COURT: Detective, thank you very much for your

1 testimony here today. You may step down, and you are --

2 THE WITNESS: Thank you.

3 THE COURT: -- excused from your subpoena.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you very much for being here. And
6 you may call your next witness.

7 MR. PESCI: State calls Brooke Cornell.

8 THE MARSHAL: Straight ahead to the witness stand,
9 please. If you'll please step up into the witness stand,
10 remain standing, raise your right hand, and face the Clerk.

11 LAURA BROOKE CORNELL, STATE'S WITNESS, SWORN

12 THE CLERK: You may be seated. Please state and
13 spell your first and last name for the record.

14 THE WITNESS: My first name is Laura, L-a-u-r-a. My
15 last name is Cornell, C-o-r-n-e-l-l, but I go by and sign my
16 reports by my middle name of Brooke, B-r-o-o-k-e.

17 MR. PESCI: Thank you.

18 THE COURT: You may proceed.

19 DIRECT EXAMINATION

20 BY MR. PESCI:

21 Q Ma'am, what do you do for a living?

22 A I'm a crime scene analyst with the Las Vegas
23 Metropolitan Police Department.

24 Q How long have you been doing that?

25 A 11-and-a-half years.

1 Q All right. Were you asked to assist in an
2 investigation that was tied to an Event Number 170809-0029?

3 A Yes, I was.

4 Q Specifically, did you respond to 6647 West Tropicana
5 Avenue, Apartment 104 on the 15th of August 2017?

6 A Yes, I did.

7 Q And was that at about 4:00 P.M.?

8 A Yes, it was.

9 Q Okay. Did you respond there with another crime
10 scene analyst?

11 A Yes, I did.

12 Q Who was that?

13 A Glezzelle Tapay.

14 Q Okay. And then, what did the two of you do at the
15 scene?

16 A We were with detectives and conducting a search
17 warrant on the apartment.

18 Q Okay. And when you say you were conducting a search
19 warrant -- is that what you said?

20 A Yes.

21 Q Okay. What does that entail?

22 A The crime scene analyst goes through, takes overall
23 photos of the entire residence. Then the detectives conduct
24 the search, and then we photograph whatever items that they
25 deem interesting and collect the evidence.

1 Q Okay. And then, this was done pursuant to a search
2 warrant?

3 A Yes.

4 Q Meaning that a court had authorized this search?

5 A Yes.

6 Q Okay. I'm going to show you what's been marked as
7 State's Exhibits 235 through 266.

8 MR. PESCI: Any objections to them?

9 MR. SANFT: No objection, Your Honor.

10 MR. RUGGEROLI: No objection, Your Honor.

11 MR. PESCI: Move for their admission.

12 THE COURT: They're admitted.

13 (State's Exhibits 235 through 266 are admitted)

14 MR. PESCI: May I approach?

15 THE COURT: You may.

16 BY MR. PESCI:

17 Q Ma'am, in anticipation of your testimony, did you
18 review the photographs from this particular incident?

19 A Yes, I did.

20 Q And do you recognize these photographs as being the
21 ones that you took?

22 A Yes.

23 Q And I should more specifically say -- do you want it
24 back? Did you -- as far as your responsibilities and duties
25 at that scene between you and Ms. Tapay, what did you do

1 versus Ms. Tapay?

2 A My job was to take photographs, and then write the
3 Crime Scene Report.

4 Q Okay.

5 A And her job was to collect the evidence and impound
6 them.

7 Q So I want to show you those photographs. We'll go
8 through that, and then ask you some follow up questions.
9 Showing you first -- I don't know how to stop that feedback
10 from happening. So do you take some overall photographs of
11 the location before you go inside to search?

12 A Yes, I do.

13 Q Showing you State's 235. What do you recognize that
14 to be?

15 A That's the outside of the apartment with the -- the
16 outside of the building with the building number and street
17 address.

18 Q Do you do that in order to orient within an
19 apartment complex which particular building it is?

20 A We do that just to get the address and building
21 number to match the address that we have in our report.

22 Q All right. State's 236. Did you take a photograph
23 which included the stairs?

24 A Yes.

25 Q And then, was it upstairs, this particular

1 apartment?

2 A It was a downstairs apartment.

3 Q Okay. State's 237. Was that the front door to the
4 apartment?

5 A Yes, it is.

6 Q Now, when you make your way into the apartment,
7 showing you State's 238, do you do an overall kind of upon
8 entry?

9 A Yes.

10 Q And then, do you work your way through the
11 apartment?

12 A Yes.

13 Q Including different bedrooms?

14 A Yes.

15 Q Showing you State's 239, do you recognize this as
16 being an apartment within that particular -- or a bedroom
17 within that apartment?

18 A Yes.

19 Q This particular photograph, State's 239, is inside
20 the apartment, looking to the door to exit the apartment -- I
21 mean, the bedroom?

22 A Yes. That's looking out the bedroom door, and that
23 would be the living room back behind.

24 Q In State's 240, are you photographing the bed, and
25 also a closet area?

1 A Yes.

2 Q In State's 241, inside the closet, was there a
3 bureau or a chest of drawers?

4 A Yes, there was.

5 Q Now, this chest of drawers, in the process of
6 searching this area, was a firearm found?

7 A Yes.

8 Q Showing you State's 242, is this now taken from
9 inside of that closet inside that bedroom?

10 A Yes.

11 Q And the chest of drawers has all of the drawers in
12 it, correct?

13 A Yes, it does.

14 Q However, did you search inside those drawers or pull
15 those drawers out to look underneath?

16 A The detectives did.

17 Q Okay. State's 243. Do you recognize what this is?

18 A Yes, that's the bottom left drawer of that same
19 dresser that's -- the drawer's been pulled out, and then
20 there's a weapon and ammunition underneath.

21 Q State's 244. Is that a closer-up picture to show
22 the weapon?

23 A Yes.

24 Q And then, 245, does that show the ammunition?

25 A Yes.

1 Q Okay. Now, were those items retrieved from that
2 location inside of the chest of drawers and taken outside?

3 A Yes, they were.

4 Q Showing you State's 246, were those items put out so
5 that you could see all of them?

6 A Yes.

7 Q Specifically, State's 247, are those the two boxes
8 of ammunition?

9 A Yes, they are.

10 Q And then -- well, I should say the two Federal boxes
11 of ammunition, correct?

12 A Yes.

13 Q And then, 248, was there another item of note?

14 A Yes. We had another box of .22 caliber ammunition,
15 we had what appeared to be a laser sight possibly, and then
16 there was another box that had a tool and just some
17 miscellaneous cartridges in it.

18 Q Okay. So we're looking at this box with the tool
19 and the miscellaneous cartridges, and then also the laser-type
20 item?

21 A Yes.

22 Q Okay. You mentioned some .22 caliber ammunition,
23 correct?

24 A Yes.

25 Q State's 249. Is that this?

1 A Yes.

2 Q Okay. And then, the firearm itself, State's 250,
3 was that photographed?

4 A Yes.

5 Q And 251, is there a close-up on the manufacturer and
6 the serial number?

7 A Yes, there is.

8 Q And then, is the firearm photographed kind of from
9 all different angles? 252, does it show the other side of
10 that firearm?

11 A Yes.

12 Q And 253, kind of a close-up on that same side?

13 A Yes.

14 Q You talked about some loose ammunition; is that
15 correct?

16 A Yes.

17 Q State's 254. Were those those pieces of loose
18 ammunition that were in that red box earlier?

19 A Yes.

20 Q All right. When I say red box, we're talking about,
21 in State's 249, this red box here?

22 A Yes.

23 Q In fact, you can see some of those bullets?

24 A Yes.

25 Q Okay. And then, was this photograph taken so that

1 you could see the different calibers?

2 A Yes.

3 Q Now, the gun itself, was it disassembled to some
4 degree to take photographs?

5 A Yes.

6 Q Showing you 255, what's gone on here?

7 A We removed the magazine from the gun, and we've
8 opened the barrel, just -- it was just to clear it to make
9 sure it wasn't loaded.

10 Q Speaking of clearing it, State's 256, is that a
11 photograph looking into the barrel to verify that it's in fact
12 cleared?

13 A Yes.

14 Q What does it mean to be cleared?

15 A That there's no ammunition in there.

16 Q Okay. Speaking of ammunition, we saw some red boxes
17 earlier. Looking at State's 257, was that a photograph of
18 some of that ammunition?

19 A Yes, it is.

20 Q All right. Now, this particular box, what kind of
21 ammunition was it?

22 A .45 caliber.

23 Q Okay. And then, can you tell --

24 A And the headstamp says Federal .45 Auto.

25 Q Federal .45 Auto? Okay. I'm going to keep it kind

1 of zoomed-in, show 258. The other box, what type was it?

2 A It's Federal .357 Magnum.

3 Q Okay. And then, 259, we had the .22. Is that what

4 we're looking at as far as the box of ammunition for the .22?

5 A Yes, it is.

6 Q Okay. Put that into perspective. Is that that

7 plastic container opened up?

8 A Yes.

9 Q All right. And those pieces of evidence, were they

10 impounded by Ms. Tapay?

11 A Yes, they were.

12 Q Were there items of clothing that were looked at and

13 photographed inside of this apartment?

14 A Yes, there were.

15 Q Showing you State's 260. Was there a hooded black

16 sweatshirt that was found and photographed?

17 A Yes.

18 Q State's 261. Did you take a photograph of the label

19 of that item?

20 A Yes.

21 Q And then, 262, did you kind of work your way around

22 the closet and different pieces of clothing there?

23 A Yes, we did.

24 Q 263. Were there some hats and other items?

25 A Yes.

1 Q And then, going to 264, is that a black hooded
2 sweatshirt?

3 A Yes.

4 Q All right. Now, there seems to be some hands in
5 this photograph. Do you know whose hands those are?

6 A I can't say. It was probably a detective's.

7 Q All right. Are they gloved?

8 A Or maybe Glezzelle's. Yes, they are gloved.

9 Q Okay. When you were doing all this, were your hands
10 gloved?

11 A Absolutely.

12 Q Okay. Were there some shoes that were found and
13 notated in this investigation?

14 A Yes, there were.

15 Q 265. Did you find some shoes that were of interest?

16 A The detective did, yeah. It was on a shelf in the
17 closet.

18 Q All right. And then, 266. If the detectives ask
19 you to retrieve something, will you take it from that
20 location, and then display it somewhere else where you can
21 take further photographs?

22 A Yes, we do.

23 Q 266. Is that that same pair of shoes that were
24 found in the closet?

25 A Yes, they are.

1 Q Okay. Now, in the course of your time at that
2 particular location, you took the photographs, and Glezzelle
3 Tapay was the one that impounded the evidence?

4 A That is correct.

5 Q All right, and you said that was about 6:00 P.M. on
6 the 15th?

7 A I believe we arrived around 4:00 P.M.

8 Q 4:00 P.M. I apologize. Military time would be
9 16:00?

10 A Yes, it would.

11 Q All right, I apologize. All right. Later that same
12 day, on August the 15th at about 8:00 P.M., did you respond to
13 Metro headquarters?

14 A Yes, I did.

15 Q All right. And when you went to Metro's
16 headquarters, what was your job or your responsibilities?

17 A The detectives had me photograph two males, collect
18 buccal swabs, and they had me collect a pair of shoes from one
19 of the males.

20 Q Okay. When you take the photographs of an
21 individual, do you have them move into different directions,
22 different angles?

23 A Yes, we take all four sides; front, back, and both
24 sides.

25 Q And then, you talked about some buccal swabs; is

1 that correct?

2 A Yes.

3 Q What is a buccal swab?

4 A Buccal swab is a -- it's a cheek swab. You swab the
5 inside of the cheek, and it's a known sample of DNA from a
6 particular person.

7 Q Okay. In this particular case, the two individuals
8 that you took photographs of and buccal swabs from, was that a
9 Raekwon Robertson and a Davontae Wheeler?

10 A Yes.

11 MR. PESCI: Objections?

12 MR. SANFT: No objection.

13 MR. RUGGEROLI: Could you clarify the time? Were
14 they taken on different days?

15 MR. PESCI: Okay.

16 BY MR. PESCI:

17 Q So trying to follow back up, we're still on August
18 the 15th of 2017 at about 8:00, or later in the evening, P.M.;
19 is that correct?

20 A Yes.

21 Q All right. So it's the same day as the search on
22 West Tropicana, but a few hours later?

23 A Yes.

24 Q Is that accurate?

25 A That's accurate.

1 Q All right.

2 MR. PESCI: I'd move for the admission, Your Honor,
3 of State's 135 through 143.

4 MR. SANFT: No objection, Your Honor.

5 MR. RUGGEROLI: No objection.

6 THE COURT: They're admitted.

7 (State's Exhibits 135 through 143 are admitted)

8 BY MR. PESCI:

9 Q The photographs that you said you took of these
10 individuals a moment ago, State's 135, is that the individual
11 Davontae Wheeler that you took photographs of?

12 A I don't remember who was who, but that's one of the
13 males, yes.

14 Q Do you recall taking these photographs?

15 A Yes.

16 Q Okay. State's 2 -- or 136, is that the same
17 individual we just saw a moment ago?

18 A Yes.

19 Q More of a close-up of the face?

20 A Yes.

21 Q State's 137. Are you now taking photographs of the
22 individual from different angles?

23 A Yes, I am.

24 Q State's 138. Does it show the opposite side of that
25 individual?

1 A Yes.

2 Q Sometimes when people have tattoos, will you often
3 take photographs of the tattoos?

4 A Yes, we do.

5 Q Showing you State's 139, was that the chest of the
6 individual we've been seeing other photographs --

7 A Yes, it is.

8 Q All right. Now, you said you took a buccal swab
9 from this individual?

10 A Yes.

11 Q All right. And then, also, you photographed someone
12 by the name of Raekwon Robertson. Looking at State's 140, do
13 you recognize taking a photograph of this person?

14 A Yes.

15 Q Again, did you follow the same procedure as far as
16 in State's 141; different angles of the same person?

17 A Yes, we do.

18 Q State's 142. Is that the same individual?

19 A Yes, it is.

20 Q And then, State's 143?

21 A Yes.

22 Q Okay. And did you take a buccal swab from this
23 particular individual?

24 A Yes, I did.

25 Q All right. Now, when you take a buccal swab from

1 somebody, did you impound it under this particular event
2 number?

3 A Yes, we do.

4 Q All right. And you have a unique personnel number;
5 is that correct?

6 A Yes, I do.

7 Q What is yours?

8 A 13576.

9 Q Okay. And when you impounded these buccal swabs,
10 did you impound them as a Package 1, Item 1 and a Package 2,
11 Item 2?

12 A Yes, I did.

13 Q All right. So that way, when the DNA individual
14 pulls up the evidence and they have those samples, they know
15 it's unique to your personnel number in the way you packaged
16 it?

17 A Yes, it is.

18 Q Okay.

19 A Or yes, they do. Sorry.

20 MR. PESCI: Pass the witness, Your Honor.

21 THE COURT: Mr. Sanft?

22 CROSS-EXAMINATION

23 BY MR. SANFT:

24 Q Ms. Cornell?

25 A Yes.

1 Q We've asked a lot of questions, specifically about
2 the -- or there was one question asked by the State
3 specifically about the use of gloves?

4 A Yes.

5 Q Fair to say that that's to prevent yourself
6 inadvertently contaminating a scene with either DNA or
7 fingerprints?

8 A Yes, it is.

9 Q Okay. And so, when you are handling potential items
10 of evidence, you do not want to put your DNA, because
11 potentially that could happen in a case, right?

12 A It potentially could, yes.

13 Q All right. So fair to say, of course, that that
14 could happen inadvertently as well, meaning that just by being
15 in the area, you know, somebody could spit and it could fall
16 on something, and that could be DNA that was transferred onto
17 something, fair?

18 A Yes, it could.

19 Q Okay. Now, at some point in the future, the items
20 that you see and document, those items are then taken from
21 that location and they're put into an evidence vault, right?

22 A Yes.

23 Q And at some point from that, somebody else comes
24 along and says, okay, I'm going to now do a further
25 investigation of these particular items, looking for things

1 like fingerprints or DNA, fair?

2 A Fair. Yes.

3 Q Are you hesitating about the fingerprints?

4 A Well, I don't know exactly what all the forensic lab
5 does. That's past our -- once we've impounded it, I'm not
6 sure.

7 Q And it's out of your responsibility?

8 A Yes, yes.

9 Q Okay, then I won't ask you any questions about that.
10 But let me ask you this though. In this particular case,
11 there's a firearm that you locate underneath a drawer?

12 A Correct.

13 Q Did you locate that firearm?

14 A No. Either the detectives or Glezzelle did.

15 Q Okay.

16 A The detectives usually do all the searching and say,
17 hey, we found something, and we come in and photograph it.

18 Q Right. So, and I want to make sure the jury
19 understands, when you arrive on the scene, typically, it's a
20 team effort, right? There's detectives and other crime scene
21 analysts that help you do your job in locating and identifying
22 information that may be helpful evidence?

23 A Yes.

24 Q Okay. And in this particular case, you're in charge
25 of photography. Did you ever take pictures of everything

1 prior to the search being conducted?

2 A Yes.

3 Q Okay. So some of the photographs we saw was the
4 ones of the bedroom, and it showed that the bed was made, and
5 everything else was looking normal, right?

6 A Yes.

7 Q But would it be fair to say that once detectives
8 have an opportunity to go through and look for something as
9 small as a bullet or a gun that they're going to be moving
10 things around, right?

11 A Correct.

12 Q They're going to move that mattress; they're going
13 to move all kinds of stuff to try to find potentially where
14 these items may be located?

15 A Yes.

16 Q Okay. Now, with regards to the firearm that you
17 found in there, you laid it out at some point, and you took
18 everything out of the firearm, right?

19 A Correct.

20 Q You were careful not to transfer any of your DNA
21 onto that firearm, meaning you wore gloves, and you weren't
22 spitting, or sneezing, or anything like that, right?

23 A Right.

24 Q Okay. And so, when you laid it out, there was a
25 photograph of the firearms, and it looks like it was laid on

1 some type of paper, like a brown paper bag. Do you recall
2 that?

3 A Could be.

4 Q Here, I'll try to find it for you. Let's see if I
5 can just pull it up here. So, showing you what's been marked
6 and admitted as -- let's see here. State's Exhibit number
7 255, right?

8 A Okay.

9 Q Right. And so that --

10 A Yes.

11 Q -- particular item, my guess is -- and you tell me
12 if I'm wrong -- that would be the evidence bag that it would
13 eventually go into after photographing it, correct?

14 A Yes, correct.

15 Q So evidence bag is a device that you use to document
16 an item, maybe the location where the item's located; it would
17 have somebody's P number on it, either yourself or whoever it
18 is that's capturing this evidence; and then that's given to
19 somebody else in an evidence locker for further discussion,
20 further analysis?

21 A Yes.

22 Q Okay. So in this case, this particular item that we
23 have in here is the firearm that you located in 6647 West
24 Tropicana?

25 A Yes.

1 Q Okay. Now, the items are photographed, and they're
2 photographed every which way, right?

3 A Yes.

4 Q At the scene?

5 A Yes.

6 Q They're not photographed anywhere else besides that?

7 A It depends. In this case, it was photographed at
8 the scene. Sometimes -- depending on what the evidence is,
9 sometimes we'll have to photograph it back at the lab.

10 Q Okay. And once again, the idea is you want to
11 preserve the evidentiary integrity of whatever it is that you
12 find, so you make sure that everything's done in a way where
13 you don't believe there will be any cross-contamination?

14 A Correct.

15 Q Okay. And so this particular item here, when you
16 remove a clip from a firearm like that, how does that work? I
17 mean, do you just grab it; eject the clip out of it? I mean,
18 I'm envisioning what it would look like, maybe a little bit
19 more daintily than that, where you'd just kind of trigger
20 the --

21 A Yes. You hit the release button, and then you hold
22 onto it at the bottom, pull it out, set it down --

23 Q Okay.

24 A -- and take photos.

25 Q And once again, you're doing this in a way that

1 you're trying to preserve the evidentiary integrity of this
2 particular item, right?

3 A Yes.

4 Q Okay. So it's not like you're smearing your gloves
5 all over this thing because you want to make sure that if
6 there's fingerprints or if there's DNA, that you are capturing
7 that --

8 A Yes.

9 Q -- on this particular firearm? Okay. And that
10 would go the same with the boxes of ammunition and so forth
11 that's shown here in State's Exhibit 259?

12 A Yes.

13 Q As well as 258?

14 A Yes.

15 Q So, once again, you're looking for things like DNA,
16 fingerprints, to help you with your investigation?

17 A I don't know if any of that was done on the boxes of
18 ammunition or not, but yes, in general, we try to handle the
19 evidence as little as possible to preserve any evidence.

20 Q Okay. So for instance -- and that's a good point.
21 With these particular boxes, how do you determine what to
22 fingerprint and what not to fingerprint?

23 A Depends on the evidence. On that, if we were to
24 process it, it would probably just be -- the box would
25 probably just be prints. There'd be a better chance of

1 getting prints on that.

2 Q Right. Versus, say, DNA?

3 A Yes.

4 Q Okay. So in this case, as far as you know, was that
5 box dusted for fingerprints?

6 A I do not believe so.

7 Q Okay. And then, there's another box that's on here,
8 this box I'm showing you. Again, this is State's Exhibit 259.
9 Was that dusted for fingerprints as far as you know?

10 A I don't think so.

11 Q So would it be fair to say -- I'm just going to cut
12 to the chase -- that out of all the items that was located in
13 that drawer area, it was the gun and the magazine inside the
14 gun that was at least considered dusting for prints, or was
15 there anything else besides that?

16 A I -- I don't even know if the gun -- you'd have to
17 ask Glezzelle. She was the one in charge of processing any
18 evidence, since she collected it.

19 Q Okay.

20 A But I don't believe she processed the gun either. I
21 don't know.

22 Q All right. And showing you once again, just for
23 clarification for the jury, State's Exhibit number 246, the
24 items that were located inside -- underneath that drawer.

25 A Yes.

1 Q What you're telling the jury now is you don't know
2 for sure if any of these items were dusted for actual
3 fingerprints themselves?
4 A That is correct.
5 Q Okay. But you know for sure -- well, you don't know
6 for sure, but you did capture each item with the understanding
7 that if there was any DNA, that could be tested at some point
8 later down the line, but you don't have anything to do with
9 that?
10 A Correct.
11 Q Okay. Just one moment, please. Okay, one final
12 thing. The buccal swab.
13 A Yes.
14 Q You conducted that?
15 A Yes, I did.
16 Q And just for the jury's edification, this is where
17 you are collecting DNA from an individual that could be used
18 later in comparison for other DNA samples that are found
19 wherever, right?
20 A Correct.
21 Q Okay. Buccal swab is done where you take a -- is it
22 a cotton --
23 A Cotton swab.
24 Q -- swab, and you swab the inside of their mouth?
25 A Yes.

1 Q And then you carefully put that inside a vial of
2 some sort?

3 A Yeah, we have a little box that comes in the kit --

4 Q Okay.

5 A -- and we put the two swabs in the box.

6 Q All right. And the person that's in front of you,
7 you make sure that you document, this is the person that I'm
8 taking the buccal swab from, and it goes into a vial, and that
9 vial is very carefully labeled to make sure that there's no
10 confusion as to whose buccal -- or swab that you've just done
11 or whose DNA is on that buccal swab?

12 A Correct.

13 Q All right. You don't do the DNA analysis of that;
14 that's done by somebody else in the lab?

15 A Yes. That's done by the DNA Section.

16 Q Okay.

17 MR. SANFT: I have no further questions, Your Honor.
18 Thank you.

19 THE COURT: Mr. Ruggeroli?

20 CROSS-EXAMINATION

21 BY MR. RUGGEROLI:

22 Q Afternoon.

23 A Good afternoon.

24 Q Who directed you to take the buccal swabs?

25 A The detectives.

1 Q Which one?

2 A I don't remember.

3 Q You would not do that normally on your own volition;

4 somebody would tell you, this is somebody that I want you to

5 collect a sample from, correct?

6 A Correct.

7 Q And you just don't know which one it was?

8 A I don't remember which detective, no. But yeah, the

9 detectives request us to headquarters, they say they have a

10 search warrant for buccals, and then we go and collect them.

11 Q And the photographs of the individuals that you were

12 shown, there were two, correct?

13 A Correct.

14 Q You don't know who was who just based on name or

15 anything like that?

16 A Correct.

17 Q And you were not present when they were first

18 contacted that day prior to you taking the photographs?

19 A No, I was not.

20 Q You don't know if they were together --

21 A No, I have no idea.

22 Q -- correct?

23 MR. RUGGEROLI: Thank you. Nothing further.

24 THE COURT: Any redirect?

25 MR. PESCI: Thank you.

1 REDIRECT EXAMINATION

2 BY MR. PESCI:

3 Q Ma'am, as you sit here today, you look at these two
4 individuals, and you're telling us you don't know who one is
5 versus the other; is that correct?

6 A Correct.

7 Q But your testimony is, is you know these are the two
8 individuals that you responded to headquarters and took
9 photographs and buccal swabs?

10 A That is correct.

11 Q And then, you said you generated a report; is that
12 correct?

13 A Yes, I did.

14 Q And then, in your report, you designate the
15 particular items from one individual, and particular items
16 from another?

17 A Yes, I did.

18 Q Specifically, your Package 1, Item 1 is a buccal
19 swab from Davontae Wheeler? And would your -- looking at your
20 report refresh your recollection?

21 A Yes, it would.

22 MR. PESCI: May I approach, Your Honor?

23 THE COURT: You may.

24 BY MR. PESCI:

25 Q Ma'am, do you write the report close in time to when

1 these events occur?

2 A Yes, we do.

3 Q Is it the standard operating practice for you to
4 create a report and notate what you impounded?

5 A Yes, we do.

6 Q Is that so that, later on, you could review it to
7 refresh your recollection?

8 A Yes.

9 Q All right. And as far as Package 1, Item 1, who is
10 that coming back to as far as the buccal swab?

11 A Davontae Wheeler.

12 Q And Package 2, Item 2, who is that coming back from?

13 A Raekwon Robertson.

14 Q All right.

15 MR. PESCI: Nothing further.

16 THE COURT: Any recross?

17 MR. SANFT: No, Your Honor. Thank you.

18 MR. RUGGEROLI: No further questions. Thank you.

19 THE COURT: Okay. Thank you very much for your --

20 THE WITNESS: Thank you.

21 THE COURT: -- testimony here today. You may step
22 down, and you are excused from your subpoena.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Thank you for being here. And you may
25 call your next witness.

1 MR. PESCI: State calls Glezzelle Tapay.

2 THE MARSHAL: If you'll please step up into the

3 witness stand. Remain standing, raise your right hand, and

4 face the Clerk.

5 GLEZZELLE TAPAY, STATE'S WITNESS, SWORN

6 THE CLERK: You may be seated. Please state and

7 spell your first and last name for the record.

8 THE WITNESS: My first name is Glezzelle,

9 G-l-e-z-z-e-l-l-e. Last name, Tapay, T-a-p-a-y.

10 MR. PESCI: Thank you.

11 DIRECT EXAMINATION

12 BY MR. PESCI:

13 Q Ma'am, are you a crime scene analyst with the

14 Metropolitan Police Department?

15 A Yes, I am.

16 Q And have you been working with them -- well, how

17 long have you been working for them?

18 A Approximately four years now.

19 Q And focusing your attention to August the 15th of

20 2017, did you respond to 6647 West Tropicana, specifically

21 Apartment 104?

22 A Yes, I did.

23 Q And was that pursuant to a search warrant that

24 detectives had to search that area?

25 A Yes, it was.

1 Q Did you work that scene with another crime scene
2 analyst?

3 A I did work it with another crime scene analyst.

4 Q Who was that?

5 A Brooke Cornell, or Laura Cornell.

6 Q And is Brooke her nickname?

7 A Correct, yes.

8 Q Okay. Is she the woman that just stepped out?

9 A She is.

10 Q Okay. At that particular scene, was Brooke
11 responsible with taking the photographs?

12 A Yes, she was.

13 Q And then, were you responsible for impounding the
14 evidence?

15 A I did impound the evidence, yes.

16 Q Showing you State's Exhibit 250, do you recognize
17 this as the firearm that you impounded at that particular
18 scene?

19 A Yes, that is the firearm.

20 Q All right. Was this particular firearm found in a
21 chest of drawers under the bottom left drawer?

22 A Correct.

23 Q Okay. When you impounded this particular item, did
24 you have your gloves on?

25 A I do wear gloves, yes.

1 Q Okay. And then, this particular firearm, when you
2 impound it, what physically do you do?

3 A First, when we collect the firearm, we take a photo
4 of where it is to show its location. After that, we take a
5 closer photo of the item so that we can show exactly what the
6 item is. After that, we take it, and then we go ahead and put
7 it in a bag where we impound it later.

8 Q Okay. And when you put it in a bag, in this
9 particular case, did you package it under your P number, your
10 personnel number?

11 A Yes.

12 Q And is your personnel number 15709?

13 A Yes, it is.

14 Q All right. So your Package 1, Item 1, was it in
15 fact that semiautomatic Taurus P22 handgun?

16 A Correct.

17 Q All right, and it has serial number ANC29177?

18 A Correct.

19 Q Okay. Did you have a second package, which was
20 where you had the cartridges from that item?

21 A Yes.

22 Q Okay. So in one package, it was the firearm; in a
23 second package, it was the cartridges you had taken out?

24 A Correct.

25 Q All right. Now, did you at this particular scene

1 process this firearm for fingerprints?

2 A I did not.

3 Q Did you process it for DNA?

4 A I did not.

5 Q Okay. By putting it in the package, was it
6 preserved so that that could be done later?

7 A Yes.

8 Q In fact, it could be done back at the lab?

9 A Yes, it can be.

10 Q All right. So, by not doing it at the scene, that
11 doesn't stop anybody down the road from processing for
12 fingerprints and/or DNA?

13 A Correct.

14 Q Okay.

15 MR. PESCI: I'll pass the witness, Your Honor.

16 THE COURT: Cross-examination?

17 CROSS-EXAMINATION

18 BY MR. SANFT:

19 Q Detective, how does that work in terms of processing
20 for, say, fingerprints? Because fair to say, of course, that
21 when you're processing for fingerprints, you're taking some
22 type of dust and you're -- I'm being very, very simplistic
23 about it -- but you're coating it over a surface to determine
24 whether you see ridges, something that would tell you there's
25 fingerprints in them, and you lift those fingerprints using

1 some type of adhesive; is that a fair way of putting it?

2 A There are different ways to -- to process for latent
3 prints. In that case, you can use powder and lift it that
4 way, or you can use chemicals as well.

5 Q Okay. Now, when you are at the scene, like in this
6 case, you're at a scene where there's items that potentially
7 could be items where you could lift fingerprints, right? The
8 firearm you've been shown a picture of, showing you what's
9 been admitted as State's Exhibit 246, there were other items
10 besides that firearm that was located in that same vicinity as
11 the firearm, fair?

12 A Those items? Yes.

13 Q Yeah. Okay.

14 A Yes.

15 Q You have items here that potentially could be items
16 that could render fingerprints, right? You have flat
17 surfaces; you've got boxes; you've got plastic box; looks like
18 cardboard box; flat surfaces on this plastic over here that
19 I'm pointing to; even potentially surfaces on the firearm
20 itself. You could have done those things, right?

21 A Correct.

22 Q But was it a decision on your part not to test on
23 that point, leaving it for somebody else to do? Or, I mean,
24 what was the reason for not, you know, at least lifting prints
25 at that particular point?

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON ROBERTSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 81400

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Michelle Leavitt, District Judge
District Court No. C-17-328587-2

APPELLANT'S APPENDIX
VOL. 6 OF 7

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 21st of October, 2020, a copy of the foregoing Appendix was served by electronic filing as follows:

District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

Nevada Attorney General
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DATED this 21st of October, 2020.



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Robertson

1 A At that point, we can go ahead and, by impounding
2 it, the items can be processed later at the lab, or they could
3 have been processed there, but we can still preserve the
4 evidence just by impounding it.

5 Q So there was just a conscious decision at that point
6 to not do anything other than to capture the evidence in its
7 current state, put it into bags so that it could not be
8 contaminated, and then give it to somebody else to handle
9 that, fair?

10 A Correct.

11 MR. SANFT: Okay, all right. I have no further
12 questions. Thank you.

13 THE COURT: Mr. Ruggeroli?

14 MR. RUGGEROLI: No questions. Thank you.

15 THE COURT: Okay. Any redirect?

16 MR. PESCI: No. Thank you, Your Honor.

17 THE COURT: Okay, thank you very much for your
18 testimony here today. You may step down, and you are excused.
19 Thank you for being here.

20 THE WITNESS: Thank you.

21 THE COURT: You may call your next witness.

22 MR. PESCI: State calls Jamelle Shannon.

23 THE MARSHAL: And if you will please remain
24 standing, raise your right hand, and face the Clerk.

25 //

1 JAMELLE SHANNON, STATE'S WITNESS, SWORN

2 THE CLERK: You may be seated. Please state and
3 spell your first and last name for the record.

4 THE WITNESS: My name is Jamelle Shannon.
5 J-a-m-e-l-l-e, S-h-a-n-n-o-n.

6 DIRECT EXAMINATION

7 BY MR. PESCI:

8 Q Ma'am, how are you?

9 A I'm good. How are you?

10 Q Good, thank you. I want to direct your attention
11 back to August, specifically the 9th, of 2017. Were you
12 working back then for the Metropolitan Police Department?

13 A Yes, I was.

14 Q In what capacity?

15 A I was a crime scene analyst.

16 Q How long have you been with Metro?

17 A At that particular moment, I had been with Metro for
18 nine years, working as a crime scene analyst for almost two.

19 Q Okay. Your first involvement in this particular
20 case -- and your involvement was under Event Number -- correct
21 me if I'm wrong -- 170809-0029?

22 A Yes, that's correct.

23 Q Is that a unique, specific number to this case?

24 A Yes, it is.

25 Q Okay. Were you first called out to UMC?

1 A Yes, I was.

2 Q I'm sorry, University Medical Center, the hospital?

3 A Yes.

4 Q Okay. And where in the hospital did you go to?

5 A I went to the quiet room that's located at the

6 Trauma section of UMC.

7 Q And was that at about 1:08 A.M. on -- the early

8 morning hours of August the 9th, 2017?

9 A Yes, it was.

10 Q And what were you asked or tasked with doing there?

11 A I was tasked with taking photographs of the victim.

12 Q Okay. I want to show you a photograph.

13 MR. PESCI: May I approach the witness?

14 THE COURT: You may.

15 BY MR. PESCI:

16 Q It's been previously admitted into evidence, and ask

17 you -- (indiscernible) whole body. Showing you State's

18 Exhibit 94, do you recognize that?

19 A I do not.

20 Q Okay, because you didn't go to the autopsy itself?

21 A I did not.

22 Q All right. Showing you State's 96, does that -- do

23 you recognize that?

24 A That's another autopsy photo. I do not.

25 Q Okay. The person involved, do you recognize?

1 A I do, yes.

2 Q Okay. I was just trying not to show these
3 particular photos.

4 A Gotcha.

5 Q All right. So the person in those photographs from
6 the autopsy photographs, you recognize that?

7 A Yes.

8 Q All right. You didn't go to autopsy, but you went
9 to the hospital?

10 A Yes, that's correct.

11 Q So, in the timeline, your dealing with the body at
12 UMC is prior to it getting to the autopsy?

13 A Yes, that's correct.

14 Q All right, just so we know we're dealing with the
15 same person. When you were there, did you take some
16 photographs of the decedent in the quiet room?

17 A Yes, I did.

18 Q And I just said decedent. Was he in fact deceased
19 when you arrived?

20 A Yes, he was.

21 Q Okay. And were you asked to take photographs of how
22 he appeared at that time?

23 A Yes, I was.

24 Q Okay. Were you also tasked with recovering anything
25 from him?

1 A No, I was not.

2 Q Okay. So, as far as buccal swab, was that taken at
3 the coroner's office later?

4 A Yes, that's correct.

5 Q And that being from the decedent?

6 A Yes.

7 Q Okay. So you take photographs, and then you're done
8 with this particular portion of the investigation?

9 A Yes.

10 Q All right. And then, that same day, August the 9th,
11 2017 at about 11:27 P.M., did you respond to Metropolitan
12 Police Department headquarters?

13 A Yes, I did.

14 Q And where is that located?

15 A It's on 400 Martin Luther King Boulevard.

16 Q Okay. Were you asked to take some photographs
17 there?

18 A Yes, I was.

19 Q Do you recall who you took photographs of?

20 A I took photographs of four individuals: DeMario
21 Lofton-Robinson, DeShawn Robinson, Anthony Robinson, and
22 Johnquiel Brown, I believe.

23 Q Okay. And those photographs have already been
24 admitted. Do you take photographs of the individual kind of
25 showing all the different angles of the person?

1 A Yes, I do.

2 Q Okay. And were you also tasked with obtaining
3 what's referred to as buccal swabs?

4 A Yes, I was.

5 Q They've heard a lot about buccal swabs already. So
6 who did you take buccal swabs from?

7 A I took buccal swabs of all four of those
8 individuals.

9 Q Including DeShawn Robinson?

10 A Yes.

11 Q And DeMario Lofton-Robinson?

12 A Yes, that's correct.

13 Q Okay.

14 MR. PESCI: Pass the witness, Your Honor.

15 THE COURT: Cross?

16 MR. SANFT: No cross, Your Honor. Thank you.

17 MR. RUGGEROLI: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. RUGGEROLI:

20 Q Ms. Shannon?

21 A Hello.

22 Q Who directed you to take the buccal swabs of those
23 four individuals?

24 A I believe the homicide detectives that were there.

25 Q Do you recall which?

1 A I think it might have been Lora Cody, but I don't
2 recall.

3 Q Okay. And there were four individuals, you said?

4 A Yes.

5 Q DeMario?

6 A Yes.

7 Q DeShawn?

8 A Yes.

9 Q Anthony Robinson?

10 A Yes.

11 Q And Johnquiel Brown?

12 A Yes.

13 Q Not an Adrian Robinson?

14 A No, I believe it was Anthony.

15 Q Okay.

16 MR. RUGGEROLI: Thank you. I have nothing further.

17 THE COURT: Any redirect?

18 MR. PESCI: No, Your Honor.

19 THE COURT: Okay. Thank you very much for your
20 testimony here today. You may step down, and you are excused.
21 You may call your next witness.

22 MR. BROOKS: Your Honor, the State calls Jessica
23 Flink.

24 THE MARSHAL: If you'll please remain standing,
25 raise your right hand, and face the Clerk.

1 DETECTIVE JESSICA FLINK, STATE'S WITNESS, SWORN

2 THE CLERK: You may be seated. Please state and
3 spell your first and last name for the record.

4 THE WITNESS: Jessica Flink. J-e-s-s-i-c-a,
5 F-l-i-n-k.

6 DIRECT EXAMINATION

7 BY MR. BROOKS:

8 Q Ms. Flink, how are you employed?

9 A I'm a detective with the Las Vegas Metropolitan
10 Police Department.

11 Q And how long have you been so employed?

12 A Just started my 22nd year.

13 Q And what capacity are you a detective in?

14 A I'm currently assigned to a Digital Investigations
15 Unit.

16 Q And give us a little bit about what your day-to-day
17 duties would be and what that unit does.

18 A We do the analysis of digital media, so computers,
19 phones, video, infotainment centers, any type of digital
20 recording.

21 Q And what education, training, and experience do you
22 have that allows you to have this position?

23 A Well, once I went to the unit, I was sent to several
24 different schools, to include the Secret Service's Computer
25 Forensic Institute. I've been there on six -- six, maybe

1 seven times, as well as we are trained in each of the tools we
2 use. We have to hold tested certifications, and we have to
3 maintain those certifications.

4 Q What certifications do you hold?

5 A I hold 11. I'd have to look at my phone to give you
6 all the names, but particular to this exam, I'm a Cellebrite
7 certified mobile examiner.

8 Q And when you say particularly this exam, do you
9 recall a Las Vegas Metropolitan Police Department event number
10 that brings us here to court today?

11 A Yes.

12 Q And is that Event Number 170809-0029?

13 A Yes.

14 Q Tell me a little bit about how you would get
15 involved in a case like this.

16 A Well, on this particular occasion, Detective --
17 Homicide Detective Dosch brought it to our lab for analysis.

18 Q And when you say brought it to your lab, what is --
19 what is he --

20 A Brought phones. He brought phones to our lab for
21 analysis.

22 Q In this case, did you do one report or two?

23 A Two.

24 Q So let's start with just that first report then.

25 A Okay.

1 Q The first report, do you recall when Detective Dosch
2 brings you the phones?

3 A I believe it was August 12th.

4 Q And when he brings you the phones, is it pursuant to
5 a search warrant?

6 A Yes.

7 Q On that search warrant, does it give you kind of
8 like the scope of what you're allowed to look in and what
9 they --

10 A What they're looking for, yes.

11 Q What was the scope of the examination for this first
12 report?

13 A It would have been a -- I don't remember everything,
14 there's quite a few things, but it would have been call logs,
15 SMS's, GPS locations, pictures, videos.

16 Q So when he brings you the phone, how does he -- how
17 does it come?

18 A On this particular occasion, he brought them in our
19 evidence envelopes with a label on the front, but they weren't
20 sealed.

21 Q So it's in an evidence impound thing?

22 A Correct. Envelope, yes.

23 Q Envelope? Does it have his name and P number on it?

24 A The front is filled out. Yes, it does.

25 Q So when he brings it to you, tell me about what you

1 do to start your process.

2 A Well, I'll photograph the package, and I'll
3 photograph -- then take the phone out and photograph the
4 pieces and parts of the phone.

5 Q And with regard to this first report, did you do
6 that for two different phones?

7 A Yes.

8 Q Would it have been Package 1, Item 1; Package 2,
9 Item 1?

10 A Yes.

11 Q Or is it Package 2, Item 2? How do you do it?

12 A I thought it -- I think they came in two separate
13 packages. Is that -- am I correct on that? I don't remember
14 specifically if they were in one. But it would have been --
15 if they were in one package, it would have been Package 1,
16 Item 1; Package 1, Item 2. If it was in two, Package 1, Item
17 1; Package 2, Item 2.

18 Q Okay. And you took photos of these two phones?

19 A Yes.

20 Q Initially, in the envelopes, and then with them out
21 of the envelopes?

22 A Yes.

23 MR. BROOKS: Your Honor, permission to approach the
24 witness?

25 THE COURT: You may.

1 BY MR. BROOKS:

2 Q I want to start specifically with Package 1, Item 1.
3 Would you recognize some photos if I showed you --

4 A Yes.

5 Q -- State's Proposed Exhibit 338 through 344?

6 A These were pictures that I took of a ZTE phone that
7 was brought to the lab.

8 Q And do they fairly and accurately depict the phone
9 as you got it that day?

10 A Yes.

11 MR. BROOKS: Your Honor, State moves for admission
12 of those particular exhibits.

13 MR. SANFT: No objection, Your Honor.

14 MR. RUGGEROLI: No objection.

15 THE COURT: Okay, they're admitted, 338 through 344.

16 (State's Exhibits 338 through 344 are admitted)

17 BY MR. BROOKS:

18 Q Showing you State's Proposed Exhibit 348, 349, 350,
19 351, and 352, do you recognize these?

20 A Yes. Photos I took of a Samsung phone brought to
21 the lab.

22 Q And is that the second package --

23 A Yes.

24 Q -- that we referred to?

25 A Yes.

1 Q Even though it's the first report?

2 A Yes.

3 Q Okay.

4 MR. BROOKS: Your Honor, move for admission of those
5 particular exhibits.

6 MR. SANFT: No objection.

7 MR. RUGGEROLI: No objection.

8 THE COURT: They're admitted.

9 (State's Exhibits 348 through 352 are admitted)

10 BY MR. BROOKS:

11 Q So take us through the process. I want to start
12 initially --

13 MR. BROOKS: Permission to publish, Your Honor?

14 THE COURT: You may.

15 BY MR. BROOKS:

16 Q Exhibit 338. Is that kind of the package that you
17 were discussing?

18 A Yes.

19 Q Eventually, do you open it up?

20 A Yes.

21 Q State's Exhibit 340, and then State's Exhibit 341.
22 Why do you take that -- that one?

23 A I just take a picture of the front and the back.

24 Q Now, now that you have the phone out of the package,
25 what's the first step in your process?

1 A Would be to remove it from the network. So I'm
2 going to either remove the SIM or I'm going to put it into a
3 Ramsey box and power on to see if it's even got power at this
4 point.

5 Q So explain that to us though. I don't know what a
6 SIM or a Ramsey box is.

7 A A SIM is the -- it's the subscriber identity module.
8 It's the little card that's in -- that is your account for
9 that particular phone that's going to be inside the phone.

10 Q So where's the data stored that you're trying to get
11 to?

12 A It's on the chip -- on the hardware of the phone;
13 not the SIM.

14 Q Oh, it's on the hardware? Okay.

15 A Yeah.

16 Q So what are you doing when you take the SIM out?

17 A The SIM is -- will be the phone number.

18 Q Okay. And in this particular case, the Package 1,
19 Item 1, do you recall the phone number for that?

20 A No, I would have to review my report. I don't
21 remember the phone numbers for any of the phones.

22 Q Would it refresh your recollection to look at your
23 report?

24 A Yes.

25 MR. BROOKS: Your Honor, may I approach?

1 THE COURT: You may.

2 THE WITNESS: So the phone number attached to this
3 is 702-619-7426.

4 BY MR. BROOKS:

5 Q So after you get that from the SIM card, what's the
6 next step in the process?

7 A To make sure the battery's charged up, and that it
8 is in some way disconnected from the network, the phone.

9 Q And what do you mean by disconnected from the
10 network?

11 A Well, taking the SIM out will take it away from the
12 data network, which means it doesn't have the capability of
13 potentially being remote-wiped, for somebody to be able to
14 send signals to it, which is why we put it into the Ramsey box
15 before we power it on. It's an aluminum box that I stick my
16 hands through some aluminum-lined gloves and power it on in
17 the box with the intention of determining, is it already in
18 airplane mode? Is it -- or to put it in airplane mode.

19 Q Why would you put it in airplane mode?

20 A To prevent the ability for any type of -- well, one,
21 so new data doesn't come in, so we're not getting calls and
22 we're not getting texts, for one. And then, two, again, to
23 prevent the possibility of a remote wipe command.

24 Q And so how are you charging the battery? Are you
25 charging the --

1 A If it's -- the battery will come out, I will take
2 the battery out and put it into a universal charger, separate
3 from the phone.

4 Q Once it's charged, what do you do with it?

5 A Then I'll put it back into the phone, and then make
6 -- again, make sure it's powered on in the box, put it in
7 airplane mode, and then take the phone out of the box.

8 Q Okay. So now that we have that, what's your next
9 step?

10 A Then take it and connect it to a device called
11 Cellebrite 4PC, which will extract the data in a digital form,
12 a file form. And then I take that file and I will process it
13 in another program called Cellebrite Physical Analyzer, which
14 will then give me the data in a readable form.

15 Q Do you get all the data; do you get some of it? How
16 does it work?

17 A No. What is extracted is dependent on what the tool
18 supports; in other words, what Cellebrite supports. So at
19 this time, this particular model phone would only give me
20 what's called a partial logical extraction; logical being the
21 data that, if you turn on the phone, anybody can see. It's
22 not deleted data.

23 But this didn't even pull out all of that. It just
24 supported a partial, which I think it was just like the
25 default stuff; call history, SMS, and I believe some pictures.

1 Q Okay. Sorry, I don't really know phones. So back
2 up --

3 A Okay.

4 Q -- and take me through partial and logical
5 extraction.

6 A So a logical -- when you say, I have a logical
7 extraction of a phone, it means that I have, if you turn on a
8 phone, what anybody can see drilling through the phone. I can
9 see the call history on the phone, you can see the SMS's or
10 the texts that are on the phone, the pictures that are on the
11 phone. It's nothing that's deleted, it's no databases. It's
12 just the information that people are used to dealing with on
13 their phones is a logical, as opposed to a physical
14 extraction, which would get you some deleted data, some apps,
15 databases, and some system stuff that's on the phone.

16 This particular model phone was only supported for a
17 partial logical, which means not even -- not even everything
18 that you would see if you turned it on, just certain -- it
19 looked to me like just the default stuff.

20 Q And that's what you could, I guess, extract?

21 A Correct.

22 Q And put into a report?

23 A Correct.

24 Q And who would get that report once you do that?

25 A Detective Dosch.

1 Q The detective? So if something had been deleted on
2 this phone prior to you being -- prior to it being impounded
3 and then you getting it, you would not get to --

4 A No.

5 Q -- get that information?

6 A I -- no, I don't have access to deleted data at that
7 time.

8 Q Exhibit 342. What are we looking at?

9 A That's just the screen. It was unlocked, so I just
10 took a picture of the opening screen.

11 Q Now, would the process be different if the phone had
12 like a passcode or if it was locked?

13 A Well, it would -- again, that's just another
14 obstacle you have to hurdle to determine if the -- we do have
15 some password bypassing and breaking abilities. Fortunately,
16 this was not, so I didn't have to encounter any of that. This
17 was not passcoded.

18 Q So when Detective Dosch brings you this phone on
19 August 12th, if it had been -- just ballpark it for me. If it
20 had been passcode or locked, would you have been able to do
21 this extraction on the same day?

22 A Again, that -- being able to get into a locked phone
23 is going to be dependent on the profile that's supported and
24 the tool. Being that I was only able to get a logical -- a
25 partial logical with it even open tells me that, no, there

1 would not -- this particular phone would not have been
2 supported had it been locked, and I wouldn't have gotten any
3 data.

4 Q And Exhibit 344, what is that?

5 A That's the SIM card.

6 Q All right. And then, Exhibit 343, what are you
7 doing there?

8 A Looks like I just took a picture of the screen
9 again.

10 Q Just the clean screen?

11 A Yeah, the clean screen.

12 Q Okay. So once you start taking photos of the
13 screens, in this case, did Detective Dosch request something
14 specific, or what kind of information do you have when you're
15 looking at a phone?

16 A Well, personally, he had asked me if I would check
17 for a -- something like a "Sace" or an "Ace" person, a
18 contact, and then a phone number that began like 702-934.

19 Q And so did you start your search there?

20 A Yes. I can do word searches and phone number
21 searches just over the whole phone without having to drill
22 through everything, and so that's -- I started there.

23 Q So that -- that phrase, "Sace," do you recall how
24 it's spelled?

25 A S-a-c-e.

1 Q So did you find any related information in this
2 phone, which is the ZTE 981 Max Pro?

3 A It was a saved contact.

4 Q It was?

5 A Yes.

6 Q Were there any text messages?

7 A There was text messages and call history.

8 Q So it was a saved contact in this phone of the Sace?

9 A Yes.

10 Q And the call history, do you recall what the call
11 history was like?

12 A I believe it was in the -- like 20-plus calls.

13 Q 20-plus calls --

14 A Back and forth.

15 Q But for all of history, or was it a truncated time
16 period?

17 A I believe I put in the report the time frame. I
18 don't remember it off the top of my head.

19 Q Would it refresh your recollection to look at that
20 report?

21 A Yes.

22 MR. BROOKS: Permission to approach, Your Honor?

23 THE COURT: You may.

24 THE WITNESS: So there were 29 calls between this
25 phone and Sace from 8/2/17 at 1:43 to 8/9/17 at 1:41.

1 BY MR. BROOKS:

2 Q So, 29 calls during that kind of week of August that
3 you looked at?

4 A Yes.

5 Q Do the 29 calls, do they include the text message,
6 or is the text message that you talked about --

7 A They would be separate.

8 Q Separate?

9 A They would be listed separately, yeah.

10 Q And the Sace that was the saved contact, does the
11 phone number 702-801-0516 sound correct?

12 A Yes.

13 Q Was that the number that you were -- you were told
14 to look for some names and a number. Was that the number?

15 A No, that wasn't the number.

16 Q So that wasn't the number? Okay.

17 A No.

18 Q Do you do any web history extraction on this phone?

19 A This particular phone did not extract with the tool
20 the web history, so I did look at it manually.

21 Q I want to direct your attention to August 4th or 5th
22 of a time period on the web search. Do you recall something
23 of evidentiary value that was being searched for?

24 A I believe it was extensive searches for guns and
25 gun-type accessories.

1 Q Now, I want to move forward to around that August
2 9th, 2017 date.

3 A Um-hum.

4 Q Do you recall something of evidentiary value of the
5 web history on this phone?

6 A It was searches for shootings.

7 Q And when you said you couldn't get it to extract,
8 did you do something different then?

9 A I took pictures.

10 MR. BROOKS: Your Honor, may I approach?

11 THE COURT: You may.

12 BY MR. BROOKS:

13 Q Detective Flink, showing you State's Proposed
14 Exhibits 345, 346, and 347, do you recognize these?

15 A Yes, these are pictures I took.

16 Q And the 345, what was that, and why were you taking
17 it?

18 A That's a text picture -- a picture of a text with
19 Sace.

20 Q And then, 346 and 347, why were you taking those?

21 A This is some of the web history of the -- the
22 shooting.

23 Q The news searches?

24 A News. Yeah, news searches of shootings.

25 MR. BROOKS: Your Honor, State moves for admission

1 of 345, 346, and 347.

2 MR. SANFT: No objection, Your Honor.

3 MR. RUGGEROLI: Judge, could I see those, please?

4 THE COURT: Of course.

5 MR. RUGGEROLI: No objection.

6 THE COURT: They're admitted.

7 (State's Exhibits 345, 346, and 347 are admitted)

8 BY MR. BROOKS:

9 Q Detective, 345. So this telephone that you were

10 examining, is this text messages to Sace and from Sace?

11 A Yes.

12 Q And then tell us, on 346, what are you doing?

13 A That is the Chrome history for this phone.

14 Q So is this what this phone was searching?

15 A Yes.

16 Q And you said, "Chrome." Is --

17 A Yeah.

18 Q Do we use another word?

19 A Google.

20 Q Google?

21 A Yeah.

22 Q So these are Google searches?

23 A Yes.

24 Q On this phone?

25 A Yes.

1 Q So see this Saturday, August 12th?

2 A Yes.

3 Q Is that you doing that, or --

4 A No.

5 Q Okay. So that -- is that you going into Google to

6 start the search, is what I mean?

7 A No, I'm not accessing Google because the phone is in

8 airplane mode; it's not connected to the network. So I don't

9 have -- this is -- I just hit the little three little buttons

10 up there and went to the history that's already cached onto

11 the phone. I'm not accessing websites.

12 Q So this Wednesday, August 9th, what are you seeing

13 here?

14 A Google searches for news.

15 Q And then, do you kind of scroll down and take more

16 photos?

17 A Yes.

18 Q Exhibit 347?

19 A Just more news searches.

20 Q Okay. And were these -- some of these what caused

21 you, I guess, to -- to take photographs of this and --

22 A Yes.

23 Q -- capture it?

24 A Yes.

25 Q Would you have relayed this information then to

1 Detective Dosch?

2 A Yes, it was put in my report.

3 Q So I want to stay with that first phone -- or sorry,
4 that first report, but move to the second phone. Do you
5 recall the Samsung Galaxy that you examined?

6 A Yeah, J7.

7 Q And was the phone number associated with that J7
8 702-338-4380?

9 A Yes.

10 Q Showing you State's Exhibit 41. Is that kind of a
11 blurry picture?

12 A Yeah, it's my bad picture-taking.

13 Q And then, is the process with this phone kind of
14 similar to the last one?

15 A Yes.

16 Q So, showing you State's Exhibit 352, what are you
17 about to do to the phone in there?

18 A I'm -- this is a picture of the battery taken out,
19 and the picture of the model sticker that's underneath the
20 battery.

21 Q I'm sorry, I missed that.

22 A The battery is taken out of this phone, and that's
23 the picture of the model and just identifying information on
24 the phone itself underneath the battery, and the SIM card is
25 still in.

1 Q Showing you State's Exhibit 333. Is that the phone?
2 A Yes.
3 Q So, after you kind of document this, do you turn it
4 off?
5 A Do I -- I'm sorry?
6 Q Do you turn the phone off?
7 A Well, it goes into the box.
8 Q Same process with the --
9 A Same process, yeah.
10 Q -- Ramsey box?
11 A Correct.
12 Q And same Cellebrite situation?
13 A Correct.
14 Q So, once using Cellebrite, do you recognize 3 --
15 335?
16 A That would be the screen; it was also unlocked.
17 Q It was also unlocked?
18 A Yes.
19 Q I want to turn your attention to the app here on the
20 top left. Do you go into Facebook Messenger?
21 A Correct.
22 Q While in there, did you find some communication of
23 interest?
24 A Yes.
25 Q Showing you State's Exhibit 336, did you take that

1 photo?

2 A I did.

3 Q And was that with this phone --

4 A With the Samsung, yes.

5 Q -- talking to another Facebook account?

6 A Correct.

7 Q All right. And what Facebook account was that?

8 A Ray Logan.

9 Q Do you at that point document all that in your

10 report?

11 A Yes.

12 Q Do you recall the phone number that Detective Dosch

13 told you to look for initially?

14 A It began 702-934.

15 Q When reviewing these Facebook messages, did you find

16 something that you alerted Detective Dosch to?

17 A The note of the number of 934-4851 provided.

18 Q Now, did -- was this phone able to extract all the

19 web data and all the texting data?

20 A No, I believe this was just a partial as well, so I

21 took pictures. A partial logical.

22 Q Partial logical?

23 A Yeah.

24 Q And so is that why you took the photos?

25 A Correct.

1 Q Do you search -- do you go through the web history
2 search of this phone?

3 A I believe I did, yes.

4 Q And when you do, do you, I guess, screenshot it the
5 same way as last time?

6 A With a camera, yeah.

7 Q Okay.

8 MR. BROOKS: Your Honor, permission to approach?

9 THE COURT: You may.

10 BY MR. BROOKS:

11 Q When you do that, do you document some of the
12 searches in your report?

13 A Yes.

14 Q Do you recognize State's Proposed Exhibit 353?

15 A Yes, and it looks like this actually extracted
16 because this is me screenshotting; my tool, my software. So
17 this -- it looks like the history came out on this one.

18 Q So that history did come out?

19 A Yeah, this would have been from the Cellebrite
20 program, Physical Analyzer.

21 Q And does it fairly and accurately depict the web
22 history that you pulled off this phone?

23 A Yes.

24 MR. BROOKS: Your Honor, State moves for admission
25 of Exhibit 353.

1 MR. SANFT: No objection, Your Honor.

2 MR. RUGGEROLI: No objection.

3 THE COURT: It's admitted.

4 (State's Exhibit 353 is admitted)

5 BY MR. BROOKS:

6 Q So this web history search on August 9th, what time
7 would that have been?

8 A At 7:22 P.M.

9 Q And how did you do that? So take us through the
10 UTC.

11 A Well, we are -- here in Pacific, we are negative 7
12 or negative 8, depending on daylight savings. So the fact
13 that it says here "UTC negative 7" tells you that it's
14 displaying it in Pacific Time, as opposed to, if it was in
15 UTC, it would say, "UTC 00."

16 Q Oh, okay, so --

17 A So the math is already done.

18 Q So one more time. Sorry. In real people time, what
19 is that 19:22?

20 A 7:22 P.M.

21 Q 7:22 P.M. And what is being searched for?

22 A It's news again, and it's, "Young Man Shot in
23 Driveway by Four People in Hoodies." "Man Shot, Killed in
24 Driveway by Four People in Hoodies," just a longer version of
25 that at a different -- I think that might be the same because

1 that's the same time. And then you have a different time
2 here, again, the same, "Young Man Shot in Driveway by Four
3 People With Hoodies." News.

4 Q I want to move now to your second report. Do you
5 recall, around August 18th, Detective Dosch brought you
6 something else?

7 A I thought it was September. What does my report
8 say? It was later. I don't think it was --

9 Q Would you have conducted the actual examination in
10 possibly September?

11 A Yeah.

12 Q Could Detective Dosch have drafted a search warrant
13 earlier?

14 A Yes, he could have.

15 Q So if Detective Dosch drafts a search warrant in
16 August, sometimes you won't get it?

17 A We won't get it for a little bit, yes.

18 Q So that September 2017 time period, I want to
19 discuss the Samsung Emerge telephone, Package 1, Item 1.

20 A Okay.

21 Q Do you recall that?

22 A Yes.

23 Q And the phone number for that one, does it sound
24 correct, 702-801-0516?

25 A Yes.

1 Q Do you recall what you went through to get into this
2 phone?

3 A It would have been the same process of removing the
4 SIM, putting it into the Ramsey box, charging the battery,
5 connecting it to the 4PC, analyzing it in the Cellebrite.

6 Q No password or passcode on this one?

7 A I don't think so, no.

8 MR. BROOKS: Your Honor, may I approach?

9 THE COURT: You may.

10 BY MR. BROOKS:

11 Q Detective, I'm going to show you State's Proposed
12 Exhibits 354 through 361. Did you take photographs of this
13 phone in the entire process similar to the last two?

14 A Yes.

15 Q Will you flip through those and see if they fairly
16 and accurately depict the process you went through and what
17 you uncovered when you went into the phone?

18 A Yes.

19 MR. BROOKS: Your Honor, State moves for admission
20 of these particular exhibits.

21 MR. SANFT: No objection, Your Honor.

22 MR. RUGGEROLI: No objection.

23 THE COURT: Okay, they're admitted.

24 (State's Exhibits 354 through 361 are admitted)

25 BY MR. BROOKS:

1 Q Showing you 354. Do you recognize that?

2 A Yes.

3 Q Is that just the same case?

4 A Yes. Same event, yes.

5 Q Eventually, did you take the phone out?

6 A Yes.

7 Q Exhibit 356. In Exhibit 359, what are you

8 depicting?

9 A That's the -- the identifying label underneath the

10 battery and the SIM card.

11 Q What was the Gmail account associated with this

12 particular phone?

13 A I remember it was "Davontae.Wheeler," and I think

14 there were some numbers, "@Gmail.com."

15 Q Would "62" sound correct?

16 A Yes.

17 Q And what were you searching for when you started

18 looking through the phone?

19 A More or less, the same data. Ties to the other two

20 phones, and --

21 Q At this point in time, did you have full names and

22 the similar, I guess, Facebook handles that you had earlier?

23 A Yeah -- well, yes. I looked in the Facebook to see

24 if anything matched from the other phones, yes.

25 Q And because we're in September, you've already at

1 least done two phones --

2 A Correct.

3 Q -- and had other feedback?

4 A Correct.

5 Q And I guess, feedback, I meant interaction with the

6 detective?

7 A Correct.

8 Q Showing you Exhibit 360, do you find some Facebook

9 messages in this phone with an account you had seen earlier?

10 A Yes.

11 Q And what account was that?

12 A Ray Logan.

13 Q Additionally, did you have a chance to look at the

14 Facebook Messenger in this phone and kind of see whose it was?

15 A You mean the logged in account?

16 Q Yes.

17 A Yes.

18 Q Do you recall the name?

19 A Young Sace Versace.

20 Q And so, in 361, would that kind of fairly and

21 accurately depict the Facebook Messenger account --

22 A Yes.

23 Q -- associated with this phone, which is the --

24 A Samsung.

25 Q -- Samsung Emerge?

1 A Yes.

2 Q Detective, you remember the first -- very first
3 phone we talked about?

4 A Yes.

5 Q When you analyzed that phone number, and you
6 analyzed the name that you were given for that particular
7 phone --

8 A Yes.

9 Q -- did you search the last phone we just talked
10 about for contacts or interaction saved from that first phone?

11 A I would have, yes.

12 Q Do you recall if you found any?

13 A I believe I did, and I thought it was extensive, so
14 I would need to look at my report to be able to -- because we
15 got a lot of names and a lot of numbers rolling at this point.

16 Q Would it refresh your recollection to look at your
17 report?

18 A Yes. So in the Emerge, I found call history with
19 Ray Logan, DeShawn Robinson, and DeMario Lofton. Logan is
20 saved as "Ray Login." DeMario Lofton is saved as "Lil Homey
21 DeMario." And Robinson is not saved as a -- as a contact, but
22 there was -- it was -- his number was identified, but not a
23 saved contact.

24 MR. BROOKS: Nothing further. Pass the witness,
25 Your Honor.

1 THE COURT: Cross-examination?
2 MR. SANFT: No cross, Your Honor.
3 THE COURT: Mr. Ruggeroli?
4 CROSS-EXAMINATION
5 BY MR. RUGGEROLI:
6 Q Detective, I'm going to go back over a couple of
7 things --
8 A Okay.
9 Q -- so you can clarify them. You had two reports,
10 correct?
11 A Correct.
12 Q The first report you did, I believe you testified to
13 longer than the second one. Your first report involved two
14 phones; is that right?
15 A Correct, uh-huh.
16 Q Are you familiar with the individuals who those
17 phones are alleged to be from or through?
18 A What do you mean? Do I know them personally, or do
19 you mean --
20 Q No, just the names.
21 A I would have to look at the labels. I don't
22 remember off the -- they were -- they were each labeled. Each
23 of the envelopes that were given to me were labeled with
24 names.
25 MR. RUGGEROLI: Judge, if I could have the Court's

1 indulgence for a moment?

2 THE COURT: Sure.

3 MR. RUGGEROLI: Thank you.

4 BY MR. RUGGEROLI:

5 Q I'm going to jump ahead --

6 A Okay.

7 Q -- to the second report, the third phone. That was
8 the one that you were talking about --

9 A The Emerge?

10 Q That's the one, yes --

11 A Yes.

12 Q -- that you were talking about most recently?

13 A Yes.

14 Q That one is -- it goes back to Mr. Wheeler?

15 A Correct.

16 Q Okay. Now, on that phone, you don't have any
17 specific messages other than the photos that you provided us
18 with, and they were rather limited. And showing you State's
19 360.

20 A This is the Facebook.

21 Q Okay.

22 A Yeah.

23 Q That's one of the things. If you found something
24 important or noteworthy for this event and case, you would
25 have documented that by taking a photo?

1 A Yes.

2 Q Okay, so that was 360. State's 360 was one, and it
3 had Ray Logan?

4 A Correct.

5 Q No content to that?

6 A I don't -- there's more pictures than this in my
7 final report, so what's being shown to me, I -- it's being
8 shown to me.

9 Q And I'm showing you 361. And that's the individual
10 name that this Facebook account was --

11 A Is logged into.

12 Q Yes, okay. Other than those photos, do you have
13 anything specific with that phone connecting or making any
14 messages, text messages to the other two phones?

15 A Yeah, I thought we discovered that.

16 Q Okay.

17 A Yeah.

18 Q And what was that though?

19 A I thought it was they were saved contacts, and I
20 believe -- and I'm sorry, I don't recall specifically. Other
21 than what's in my report, I don't recall as I sit here.

22 Q Saved contacts, but no specific texts or messages
23 from Facebook for that phone?

24 A Not that I can recall without looking at my -- the
25 pictures. This is not them in their entirety.

1 Q Okay, now I'm going to go back to the first report
2 that had the other two phones. You indicated that there were
3 29 calls between August 2nd, 2017 and August 9th, 2017?

4 A Correct.

5 Q But you don't have any indication of how long those
6 were?

7 A Well, those would be in the digital report. I did
8 note that in my report, but two reports are provided; the
9 report from Cellebrite, which I generate, and then my written
10 report. So the durations would be in those.

11 Q Going back to the phone with Mr. Wheeler. You had
12 looked specifically for texts between that phone and a Ray
13 Logan, correct?

14 A Correct.

15 Q And you did find a couple of texts hours before the
16 crime, and hours after, but there was no mention of any crime
17 in those texts?

18 A Correct.

19 Q And also, the Facebook Messenger, the phone was not
20 connected to the network, correct?

21 A Correct.

22 Q And so that particular phone, you did not have the
23 dates and times, only the days of the week; is that correct?

24 A Correct.

25 Q For the phone with Mr. Wheeler, you were asked a

1 question about an article -- a news article. That was sent to
2 him from somebody else, correct?

3 A I don't recall. I just have it -- it shows up in
4 the web history.

5 Q So just dealing with that third phone that we were
6 talking about, Mr. Wheeler's, most recent that you had
7 testified about, I just want to hit on this one last time.
8 Although there was some communication with Ray Logan, there's
9 nothing about a crime --

10 A Correct.

11 Q -- that crime? And there's a limited amount of
12 information that you had as far as dates and times? You were
13 really looking at days of the week, not specific times?

14 A Right. Well, when it's disconnected from the
15 network and you're looking at Facebook Messenger, I don't get
16 a date if it's within a day or two of when it's removed from
17 the network. So say I'm looking at it on a Wednesday, and I
18 look at the Messengers and it says Tuesday, it's going to be
19 the Tuesday previous to that Wednesday, or the Monday, or the
20 Sunday. And I believe after about a week, then it will start
21 putting in dates.

22 Q And that third phone, you did that analysis in
23 September --

24 A Correct.

25 Q -- 2017?

1 A Well, but it would have been disconnected whenever
2 it was -- yeah.

3 Q Okay, thank you.

4 MR. RUGGEROLI: Court's indulgence, Judge.

5 (Pause in the proceedings)

6 MR. RUGGEROLI: Thank you, Judge. I have nothing
7 further.

8 THE COURT: Thank you. Any redirect?

9 MR. BROOKS: Judge, can we take a brief break?

10 THE COURT: Sure, sure. During this recess, you're
11 admonished not to talk or converse amongst yourselves or with
12 anyone else on any subject connected with this trial, or read,
13 watch, or listen to any report of or commentary on the trial,
14 or any person connected with this trial, by any medium of
15 information, including, without limitation, newspapers,
16 television, the internet, or radio, or form or express any
17 opinion on any subject connected with this trial until the
18 case is finally submitted to you.

19 We'll be in recess for 15 minutes. Thank you.

20 THE MARSHAL: Thank you. All rise for the exiting
21 jury, please. Jurors.

22 (Outside the presence of the jurors at 2:46 p.m.)

23 THE MARSHAL: Thank you. Please be seated.

24 THE CLERK: Did you need Judge?

25 MR. BROOKS: Yeah.

1 THE CLERK: Oh, you got to say that.
2 THE MARSHAL: I'll grab her.
3 (Pause in the proceedings)
4 THE COURT: Sorry about that.
5 MR. BROOKS: I'm sorry, I should have been more
6 clear. I just didn't want to have this up while the jury was
7 still in the room.
8 THE COURT: Okay, so the record will reflect that
9 the hearing is taking place outside the presence of the jury
10 panel. And do you want the witness in here still?
11 MR. BROOKS: Probably not.
12 THE COURT: Okay. Okay, and the witness has left
13 the courtroom.
14 MR. BROOKS: Judge, here's my problem. Mr.
15 Ruggeroli just got up during cross and put up Exhibit 360, and
16 showed Mr. Ray Logan's -- just, it's kind of the screen name
17 on Facebook Messenger -- and said, "Other than this, you
18 didn't find any contacts between the two?" And then kind of
19 tried to correct himself, and then said, "Limited contacts,"
20 and then went so far as to say, "Do you have anything
21 connecting these two? There's nothing about a crime?" And
22 then he catches himself and said --
23 THE COURT: Yeah, the text messages.
24 MR. BROOKS: And then he said, "Nothing about this
25 crime." Here's the problem. So I intentionally only did

1 Exhibit 360 just to show that Mr. Wheeler and Ray Logan were
2 in each other's phone, and you know, they talked over Facebook
3 Messenger.

4 THE COURT: Um-hum.

5 MR. BROOKS: I didn't include any of the texts on
6 purpose, and it was in her report because when she's making
7 the report she doesn't know what is and isn't evidentiary
8 value here or what can be admitted. The problem is that there
9 are texts between Ray Logan and Davontae Wheeler.

10 THE COURT: Okay.

11 MR. BROOKS: Ray Logan is sending Davontae Wheeler a
12 link to the "Two Suspects in a West Valley Armed Robbery,"
13 then they're sending each other a photo of a new gun that's --
14 a picture of the gun, and then, "Do you think they make
15 extendos? It only holds eight." Send the barrel to see the
16 size. "Oh, nigga, my hope you not doubting if the .45 bigger.
17 LOL, I'll show you tonight, bros. I got my shells so we can
18 go shooting if y'all want, but don't tell nobody what I got.
19 Low key. I want to stop showing my heats. That I see if that
20 got extendo" (sic). Should I -- can I -- should I put them up
21 here so you can kind of --

22 THE COURT: Sure. And what are the dates of these?

23 MR. BROOKS: This would have been the week before
24 our incident. So --

25 THE COURT: Okay.

1 MR. BROOKS: This is essentially them communicating
2 -- Mr. Ray Logan, or Raekwon Robertson, and Young Sace
3 Versace, who's Davontae Wheeler, sending each other those
4 messages. And see this -- see that Monday?

5 THE COURT: Uh-huh.

6 MR. BROOKS: That Monday is the Monday right before
7 our Tuesday and Wednesday of this incident. So, like, this
8 Monday is screenshots of them talking to another guy. They're
9 going to meet up at that guy's apartment later on; I can't
10 remember if it's Nellis or something like that. Then they
11 meet together on Monday night, even before they meet together
12 on Tuesday night and commit this.

13 So the jury is left with this impression that
14 there's no -- real little contact between the two, no evidence
15 of a crime, or I should say this crime, and it's just not
16 actually what the phones show.

17 THE COURT: What do you want to do? I mean, do you
18 want to follow up questioning? What is it you want to do?

19 MR. PESCI: So, Judge, we need to cure the
20 impression that's been put in front of this jury.

21 THE COURT: Um-hum.

22 MR. PESCI: And we purposely avoided this because
23 the reference to that other incident is the earlier charges
24 that were severed out.

25 THE COURT: Right.

1 MR. PESCI: And so this jury's been painted with the
2 impression that there is nothing going on between these two
3 when they're referencing a prior criminal act. And the
4 specific question was, "There's nothing about a crime," and
5 then followed up, "This crime," and that there's no
6 interaction between these two when there are, and they're
7 talking about guns and ammunition.

8 And so we just -- we can't allow that falsity to be
9 put in front of the jury. So we need to cure that, and I'm
10 open or we're open to ways of doing it in a somewhat sanitized
11 fashion, but it can't be so sanitized that it seems completely
12 innocuous.

13 MR. RUGGEROLI: Thank you, Judge. Your Honor, I did
14 correct myself because I wasn't thinking of the other crime; I
15 was thinking of this crime, because specifically contained
16 within her report, it says there are texts between this phone
17 and Ray Logan. She answered my question about that, and I
18 said that there were texts, but here was the point of it:
19 there are texts a couple hours before the crime, and several
20 hours after, but no mention of the crime. And that, after
21 clarifying it, is exactly what I asked her and exactly what
22 she answered.

23 So I think what the State is suggesting is that I
24 somehow opened the door to uncharged crimes or to other
25 discussions that had to do with things that are not relevant

1 to this event at all. They can clean this up without going
2 into any of those details. I never misled the jury with a
3 question saying, "There are no other contacts." My point was
4 about this particular event. And I even used that phrase,
5 "This event," and then I did clarify, "This crime."

6 And so this is taken directly from her report, and
7 that was the gist of it. This should not in any way open the
8 door to the State, and they can cure any inference, and that's
9 all it would be. They can cure any inference that there was
10 limited contact by either focusing on this particular 24 to
11 36-hour period of time that is specifically noted in the
12 report, or they can do it by much less extensive means than to
13 go into unrelated prejudicial information that I didn't in any
14 way open the door to and suggest there's no communication. I
15 was talking about this event.

16 THE COURT: Okay. What is your suggestion?

17 MR. BROOKS: My suggestion would be to let me ask
18 three leading questions to the effect of, "Isn't it true that
19 when looking at Facebook Messenger between Ray Logan and
20 Davontae Wheeler, within three days prior to this incident,
21 they are communicating about various things, some of which are
22 guns, the caliber of guns, and possibly going out shooting
23 together?" So it doesn't -- you know, there's no crime to go
24 shoot together. They are talking about guns, they are talking
25 about different caliber of guns, and it is --

1 THE COURT: But why do you have to get in what they
2 were talking about?

3 MR. BROOKS: Well, because the jury was left with
4 this impression that, oh, and there's -- they're not talking
5 about any criminal activity and it's such minimal. I mean,
6 that's not what actually was going on in this text thread.

7 THE COURT: Yeah.

8 MR. RUGGEROLI: Judge, I --

9 THE COURT: I'm not sure it opens up the door for
10 you to talk about other criminal activity.

11 MR. RUGGEROLI: And that's the thing, Judge, is I
12 heard it without thinking I'm referencing it at all, and I
13 caught it within a second of, "This crime," because that is
14 the exact language of this report. So if I unintentionally
15 opened a door, I immediately shut it. And I limited my
16 question to this particular event, which is exactly what the
17 report referenced.

18 So if there were any suggestion, number one, I think
19 I closed my own door to the extent that that might be an idea
20 that the jury would gather from this. But I think that if
21 they wanted to follow up, it should be limited to this period
22 of time because I didn't even go down the path of anything
23 beyond this event. I'm talking about -- she used the exact
24 words, "There are also texts with Lofton, but nothing
25 logically around the time of this crime."

1 And then, before that, there are texts a couple of
2 hours before the crime, and several hours after, but no
3 mention of the crime. And that's why we're here. I don't
4 think there's been any taint to the jury that they would think
5 -- because those things are not relevant, and they're
6 certainly prejudicial.

7 Going out shooting, that's going to have a big
8 impact in this kind of case, and I didn't reference that at
9 all. It was catching my word "crime" and linking it
10 specifically to this crime, and I did that intentionally. And
11 so they've been limited, and their attention was directed to
12 this particular event and the report that she made these
13 findings regarding.

14 MR. PESCI: So, Judge, to follow up, specifically,
15 the language that I wrote as I was trying to write this down
16 was, the question by Mr. Ruggeroli, "There was limited contact
17 between Wheeler's phone and the other phones, other than these
18 photos?" So he's saying that these photos is the limited
19 contact. So there clearly is contact.

20 THE COURT: Right.

21 MR. PESCI: And we sanitized it because it
22 referenced these other situations. So we need to be able to
23 go back and say, "Detective, isn't it true that there is
24 actual contact other than this photo? There are these other
25 instances where there's contact between these individuals,

1 right?"

2 And then, the question was, "Do you have anything
3 connecting this phone, Wheeler's phone, to the other phones?"
4 Again, there are these text messages back and forth. He said
5 specifically, "There's nothing about a crime," then did, I
6 agree, quickly went up and said, "This crime," right?

7 THE COURT: Uh-huh.

8 MR. PESCI: So it's in front of this jury that
9 there's really little to connect these guys, and there's
10 nothing about crimes. Now, I understand he's not trying to
11 open the door to any other crimes, we're not trying to do
12 propensity, but if there's some sort of an argument made later
13 on, like, there's nothing about this crime, I get that, right?
14 But if he says, there's nothing about any crimes, that's a big
15 problem.

16 So at a minimum, we have the ability and the right
17 to say there is actual connection between these two. And I
18 think what we should do is get the detective back in here
19 after you make your ruling and lead her as to what she can and
20 cannot say, because we've been very careful to exclude these
21 things, and that's exactly what these texts and communications
22 are about; that earlier crime that's been severed. So we need
23 to be able to show they are.

24 And why is it not relevant that they're talking
25 about firearms with each other? They're trying to say that

1 there isn't a connection between these two individuals and a
2 firearm. This is specifically talking about firearms.
3 They're trying to say he's got nothing to do with this, Mr.
4 Wheeler's got nothing to do with this, it's not his ammunition
5 that was fired, but you have connections between these two
6 defendants talking about firearms in anticipation -- prior to
7 the actual connection. If you want to exclude the --

8 THE COURT: And this is three -- three days before?

9 MR. BROOKS: 18 hours, actually. It's -- Your
10 Honor, these texts begin Monday around 11:00 A.M. The
11 incident happens as Tuesday turns into Wednesday, so --

12 THE COURT: Oh, okay, so it's just the day before?

13 MR. BROOKS: Yes.

14 MR. PESCI: Correct.

15 MR. BROOKS: And when I say texts, it's extensive,
16 Your Honor. I only read a few, but it goes -- you know,
17 there's seven pages in that Monday/Tuesday time frame.

18 THE COURT: Between those two phones?

19 MR. BROOKS: Between Ray Logan and Davontae
20 Wheeler's phone, yes.

21 THE COURT: Okay. I don't think there's any problem
22 with asking her that, but my concern is if you're going to ask
23 her the content of those text messages. That's my concern.

24 MR. BROOKS: Yeah, no. No.

25 THE COURT: But you want to redirect her that there

1 actually was contact between these two on Monday and that it
2 was extensive?

3 MR. BROOKS: Yes.

4 THE COURT: Okay.

5 MR. RUGGEROLI: And if they wanted to --

6 THE COURT: I don't see any problem with that.

7 MR. RUGGEROLI: -- prep her up beforehand, I would
8 only follow up by just clarifying -- and I'll read it from the
9 report rather than paraphrase it. I just want it acknowledged
10 again, quote, "There are also texts between this phone and Ray
11 Logan. There are texts a couple of hours before the crime,
12 and several hours after, but no mention of the crime. There
13 are also texts with Lofton, but nothing logically around the
14 time of the crime."

15 And honestly, I mean, I think that kind of says
16 everything, but if you're going to limit it without content,
17 that would be certainly the defense's preference, and that
18 will probably be the gist of my recross.

19 MR. BROOKS: Am I allowed to ask if they were
20 discussing firearms?

21 MR. RUGGEROLI: Judge, I just think that --

22 THE COURT: Well, what would be the objection?

23 MR. RUGGEROLI: That -- well, the time frame. Is he
24 talking about the day --

25 THE COURT: The day -- well, they said these text

1 messages were the day before, because it happened Tuesday
2 night going into Wednesday morning, correct?

3 MR. BROOKS: Yes.

4 MR. PESCI: Judge, you can see it, maybe that's a
5 little better, because the actual firearm is right there in
6 the text. So you've got the time frame, and you've got a gun,
7 so you got these two talking about guns. We can keep out the
8 shooting part, but they keep trying to distance,
9 understandably, Mr. Wheeler from guns, and here you've got a
10 conversation between these two defendants about guns in the
11 hours preceding this crime.

12 MR. RUGGEROLI: Judge --

13 THE COURT: I mean, I understand that this, I guess,
14 news story wouldn't be relevant, but I'm not sure why the -- a
15 day before, there's communication and actually photos of
16 firearms.

17 MR. RUGGEROLI: It's because --

18 THE COURT: How is that not relevant?

19 MR. RUGGEROLI: The prejudicial impact outweighs any
20 relevance because that discussion I don't think has anything
21 to do with what happened later. The fact -- I didn't open the
22 door to this, and the State did not go into this
23 intentionally.

24 So what they're doing is they're suggesting that
25 because I said, "a crime," and within a fraction of a second

1 corrected it to, "the crime," because that's what's written in
2 the report, that somehow that now gives them the ability to go
3 back through things that they very wisely, I think, originally
4 did not go into. That is because of the prejudicial impact
5 that this would have. There's no reason to do that. It's --
6 I quoted in a paraphrase rather than directly from the report,
7 but I didn't allow or open the door to go into anything that
8 would be that prejudicial that doesn't have anything to do
9 with this event.

10 The things that are important for this event are
11 exactly what's contained in the report, because it references
12 the time frame of the murder and it references the time frame
13 of any conversations. That was the whole point of what I
14 said. And so there's no reason to give them the ability to go
15 any further than that because all it does is it makes it look
16 prejudicial. Here's gun talk, here's shooting talk, or -- you
17 know, I don't have those in front of me right now.

18 But anything connected to firearms in that time
19 frame doesn't correspond with her report, because what I read
20 to you earlier that I want to clarify with her and limit it
21 to, it was limited specific to this time frame. That's all
22 I'm trying to get out on that questioning, and now what we're
23 doing is we're opening it up to the State because it will be
24 prejudicial.

25 MR. BROOKS: Your Honor, one more thing. And I

1 don't know if you heard this, and I don't know if I heard this
2 correctly, but the part that struck me was when Mr. Ruggeroli
3 put Exhibit 360 on the screen and said -- I believe he said
4 even something to the effect of, "And you don't have any
5 screenshots of texts or communication between these two?" He
6 said something to that effect, and, "There's very limited
7 contact between these two?" And that's when I looked at Mr.
8 Pesci and was like --

9 THE COURT: Well, clearly, there was contact between
10 the two of them, and I think it's totally appropriate for you
11 to now go into that --

12 MR. BROOKS: Right.

13 THE COURT: -- so the jury's not left with the
14 impression that there wasn't contact. My only concern is the
15 substance of the contact.

16 MR. BROOKS: It would just be: extensive, the time
17 frame, and about firearms.

18 THE COURT: Why do you have to -- why do you have to
19 say it's about firearms?

20 MR. BROOKS: Because that is really relevant to why
21 we're here. We're here because they used a firearm to rob
22 people and it turned into a murder.

23 MR. PESCI: And the question was, "Do you have
24 anything connecting Wheeler's phone to the other phone?" You
25 have a photograph of a firearm. That's the connection. It's

1 not the one question; there's three questions that bring --

2 MR. RUGGEROLI: Were you done?

3 THE COURT: Okay, so you want to be able to ask,
4 "There was extensive contact between the two, and the contact
5 included discussions regarding firearms?"

6 MR. BROOKS: Yes.

7 MR. RUGGEROLI: Judge, this is why we're here.

8 THE COURT: And this was the day before?

9 MR. BROOKS: Yes.

10 THE COURT: Correct?

11 MR. RUGGEROLI: Okay, but this again -- I'm going to
12 quote it because this is why we're here, and this is what she
13 testified to. "There are texts a couple of hours before the
14 crime, and several hours after, but no mention of the crime.
15 There are also texts with Lofton, but nothing logically around
16 the time of the crime." That was my time frame. And I
17 understand that if the State says, well, you know, now we're
18 going to broaden the time frame, then allow them the
19 opportunity to say there were --

20 THE COURT: Well, I think the inference here is that
21 there was no contact between these two when that's just not
22 true.

23 MR. RUGGEROLI: I don't have a problem with them
24 saying that there were contacts. The content of what they
25 want to open this up to is what I very strenuously would

1 object to, because they can clean it up without going into
2 talking about things that are really unrelated, because it's
3 the time of this crime, and that's why she wrote the report
4 the way she did. That's where my focus was.

5 So, if you allow them to cure this, it doesn't need
6 to go beyond establishing there were extensive contacts, but
7 we don't need to go into the details of that. And then I
8 would clean it up by going and reiterating word-for-word what
9 the report says, and I'm going to limit it to that, and it's
10 going to be her own language, and that's all I want to get.

11 But I really think the damage, if you open this up
12 to firearms -- if that was important, then she should have put
13 it in her report as well, and she didn't. What she put in the
14 report was limited to this period of time, and that's why I
15 quoted, and I -- I didn't read it word-for-word, but I did
16 catch myself very quickly. Again, this is only coming up
17 because of the change almost instantaneously from "a crime" to
18 "the crime," and that is because that's what's in her report.

19 So I would object. I don't think they need to go
20 into content. It's too prejudicial. They can clarify, the
21 point is, there were contacts, there were other contacts, but
22 there's no need to go into prejudicial information.

23 THE COURT: Okay. Mr. Brooks, I am going to allow
24 you to redirect her, and you can ask her, and she can discuss
25 that there was extensive contact. I'm not going to allow you

1 to go into the substance of the contact --

2 MR. BROOKS: Okay.

3 THE COURT: -- and that it was the day before. I

4 think these are yours.

5 MR. BROOKS: Thank you.

6 MR. PESCI: And can we talk with her before --

7 MR. BROOKS: And can we --

8 MR. PESCI: -- so we can make it clear to her --

9 THE COURT: Sure.

10 MR. PESCI: -- to not do that?

11 THE COURT: Sure.

12 MR. PESCI: May I approach to retrieve that?

13 THE COURT: Absolutely.

14 MR. PESCI: Thank you.

15 THE COURT: Right. Why don't we take about five

16 minutes --

17 MR. RUGGEROLI: Thank you, Judge.

18 THE COURT: -- and then we'll come back in.

19 MR. PESCI: Thank you, Your Honor.

20 (Court recessed at 3:06 P.M. until 3:18 P.M.)

21 (Outside the presence of the jurors)

22 MR. PESCI: Your Honor, may the witness return to

23 the stand?

24 THE COURT: Absolutely, yes. Thank you.

25 MR. PESCI: Thank you. And Judge, while we're here,

1 as far as scheduling, so we have the detective to finish with
2 cross, we have the fingerprint expert outside, I believe the
3 firearms expert is outside.

4 THE COURT: Okay.

5 MR. PESCI: We have a detective that was involved in
6 the search trying to get daycare resolved to get here, but
7 then the last witness would be Detective Dosch, but he's not
8 really available until tomorrow because he was in California
9 until 2:00 A.M. on another case.

10 THE COURT: Okay.

11 MR. PESCI: So we've got, in essence, two, maybe
12 three left for today.

13 THE COURT: Okay.

14 MR. RUGGEROLI: Judge --

15 THE COURT: It's almost 3:30.

16 MR. RUGGEROLI: For tomorrow morning, I do have a
17 number of things at around 9:00 to 9:30, 9:45.

18 THE COURT: I have a homicide calendar, so --

19 MR. RUGGEROLI: Thank you.

20 THE COURT: -- we're not going to be able to start
21 until about 10:30 anyways.

22 MR. SANFT: Okay.

23 THE COURT: Is that going to be enough time?

24 MR. RUGGEROLI: It should be, yes. Thank you.

25 THE COURT: Okay.

1 THE MARSHAL: All rise for the entering jury,
2 please. Jurors.

3 (Within the presence of the jurors at 3:20 p.m.)

4 THE MARSHAL: Thank you. Please be seated.

5 THE COURT: Does the State stipulate to the presence
6 of the panel?

7 MR. PESCI: Yes, Your Honor.

8 THE COURT: Mr. Sanft?

9 MR. SANFT: Yes, Your Honor. Thank you.

10 THE COURT: Mr. Ruggeroli?

11 MR. RUGGEROLI: Yes, Your Honor.

12 THE COURT: Thank you. You may continue with your
13 redirect.

14 REDIRECT EXAMINATION

15 BY MR. BROOKS:

16 Q Detective Flink, do you remember the questions about
17 the limited nature of the contacts between Davontae Wheeler's
18 phone and Ray Logan via Facebook Messenger?

19 A Yes.

20 Q Isn't it true that Davontae Wheeler's phone and Ray
21 Logan via Facebook Messenger actually had quite extensive
22 communication?

23 A Yes.

24 Q Back and forth?

25 A Yes.

1 Q And although there are no texts a couple hours
2 before the time period of this crime, and no texts several
3 hours after -- and although there are texts several hours
4 after, there's no mention of the crime?

5 A Correct.

6 Q What about with regard to DeMario Lofton-Robinson?
7 Was there any texts relating to this crime around that time
8 period?

9 A No.

10 Q And what was DeMario Lofton-Robinson saved as in
11 Davontae Wheeler's phone?

12 A "Little Homey DeMario."

13 MR. BROOKS: Thank you. Nothing further.

14 THE COURT: Mr. Sanft, do you have any recross?

15 MR. SANFT: No, Your Honor. Thank you.

16 THE COURT: Mr. Ruggeroli, go ahead.

17 MR. RUGGEROLI: Just briefly.

18 RECROSS-EXAMINATION

19 BY MR. RUGGEROLI:

20 Q Detective, from your report, you indicated that
21 there are also texts between this phone and Ray Logan
22 regarding Mr. Wheeler's phone, correct?

23 A Correct.

24 Q Correct?

25 A Correct.

1 Q And there are texts a couple hours before the crime
2 and several hours after, but no mention of the crime?

3 A Correct.

4 Q And there are also texts with Lofton, but nothing
5 logically around the time of the crime?

6 A Correct.

7 MR. RUGGEROLI: Thank you. I have nothing further.

8 THE COURT: Thank you. Anything else for this
9 witness?

10 MR. BROOKS: No, Your Honor.

11 THE COURT: Okay. Thank you very much --

12 THE WITNESS: Thank you.

13 THE COURT: -- for your testimony here today. You
14 may step down, and you are excused from your subpoena. You
15 may call your next witness.

16 MR. BROOKS: Your Honor, the State calls Linda
17 Manigault.

18 THE MARSHAL: If you'll please step up into the
19 witness stand. Remain standing, raise your right hand, and
20 face the Clerk.

21 LINDA MANIGAULT, STATE'S WITNESS, SWORN

22 THE CLERK: You may be seated. Please state and
23 spell your first and last name for the record.

24 THE WITNESS: My first name is Linda, L-i-n-d-a. My
25 last name is Manigault, -a-n-i-g-a-u-l-t.

1 THE COURT: Thank you.

2 DIRECT EXAMINATION

3 BY MR. BROOKS:

4 Q Ms. Manigault, how are you employed?

5 A I'm employed by the Las Vegas Metropolitan Police
6 Department in their forensic laboratory, specifically in the
7 Latent Print Detail.

8 Q And how long have you been there?

9 A I've been working there for approximately four years
10 now.

11 Q What are your primary duties and responsibilities?

12 A I analyze and I compare latent print evidence.

13 Q And what training, education, experience do you have
14 that enables you to be able to do that?

15 A I've been doing it for approximately nine years now.
16 I was trained initially when I used to live in New York for
17 the Suffolk County Police Department. I also graduated
18 college with a Bachelor in Science in forensic science.

19 Q And do you have to keep up-to-date on certain
20 certifications and continuing legal -- or continuing
21 education?

22 A Yes, I do. In order for me to even start casework,
23 particularly with the Las Vegas Metropolitan Police
24 Department, I have to pass a competency test, as well as
25 finish their training program successfully. And then, each

1 year, I have to complete a proficiency test which allows me to
2 continue doing casework for the following year.

3 Q Now, we previously had a DNA person from your lab
4 come in and testify during this trial. Do you do DNA-type
5 stuff, or do you only do what you refer to as fingerprints?

6 A I only do what I refer to as fingerprints.

7 Q Okay. So take us through, what is a fingerprint?

8 A Well, if you notice the skin on your hand, it's very
9 different from the skin on the rest of your body. So that
10 palmar surface of your hand, that specialized skin is called
11 friction ridge skin. And it has raised portions and lowered
12 portions, and so when we come into contact with an object, an
13 impression that we leave behind would leave a fingerprint. So
14 that's what a fingerprint is.

15 Q What is it that leaves that impression?

16 A It's usually the residues that -- from either your
17 body or from sweating that leave that impression.

18 Q And tell us a little bit about -- every time I touch
19 something, am I going to leave a print? Or what causes prints
20 to be left, and sometimes, what causes them not to be left?

21 A Generally, when somebody comes into contact with an
22 object, there's a chance that they can leave that residue
23 behind, but there's also a chance that they may not leave that
24 residue behind. And some of the reasons for that is because a
25 person just could have very dry hands in general, so they

1 don't have a lot of residue on their hands. Maybe they just
2 washed their hands.

3 Also, the environment can have an impact. So a
4 person can touch something, a residue could be there, but the
5 environment, if it's a hot environment or if it's a cold
6 environment, it could make it very fragile.

7 Another reason is some objects are textured. So if
8 it has a rough texture, or a lot of the newer appliances these
9 days have anti-fingerprint coatings. So there are several
10 reasons why an object might not be left behind even though
11 it's been touched by a person.

12 Q So right now, if I'm nervous questioning you, and I
13 touch this table, is that kind of a good way to leave prints,
14 or no?

15 A Usually, the best surfaces to leave prints are
16 really flat, smooth surfaces. Whether a person leaves some
17 residue behind or not, it could depend on if they're sweating
18 a lot. That can also make a print not suitable as well
19 because it's too much sweat. So it depends. There are some
20 good situations, and there are of course some bad ones.

21 Q When we talk about suitability, like, I've been
22 obviously using my iPhone all day and touching it. Is this a
23 good surface, and if so, are there some reasons it would also
24 be a bad surface?

25 A Yeah. There are some reasons that, like, something

1 like a smooth cell phone surface would be a good surface,
2 because it's smooth. One of the reasons why it might be a bad
3 surface is because it's constantly touched, so you can
4 inadvertently wipe away that fragile fingerprint residue.

5 Q Does the environment that the object or the print
6 would be on have anything to do with whether you could process
7 it or find it and compare it?

8 A Yes, the environment also plays a role. For
9 instance, fingerprint residues are very fragile. They're made
10 up of mostly water and some other constituents, so you can
11 imagine, if it's in a very hot environment, it would evaporate
12 away. If it's in a cold environment, that would make it
13 brittle. Depending on the types of residues and the type of
14 process that's going to be used, it might be that there's not
15 enough residue to make a print visible to the naked eye.

16 Q Okay, so what is an exemplar or a known print?

17 A An exemplar or a known print is a situation where
18 the fingerprint of a specific individual is taken, usually
19 using ink or an electronic means, and also, the rest of their
20 -- excuse me -- identifying information is also placed along
21 with that record. So, for instance, I've had my fingerprints
22 taken for job employment. So they would roll all ten of my
23 fingers onto a fingerprint card, possibly my palms, but they
24 would also put my name, possibly my date of birth.

25 Q And so, what we sometimes refer to then as latent

1 prints, is that what you've been discussing previously?

2 A So a latent print would be a print that's not
3 readily seen by the naked eye, so some other form of -- some
4 further form of processing has to be done to make it visible
5 to the naked eye. Some of those forms could be either
6 physical or chemical. A physical process might be something
7 simple like fingerprint powder, and then there are chemical
8 processes as well that make that visible to the naked eye.

9 Q So how would you -- how do you go about comparing
10 then a known or an exemplar with a latent print after it's
11 been processed?

12 A Well, generally speaking, when I start my analysis,
13 I'm looking for that detail in that print that is suitable;
14 but first, I would be looking at the overall aspects of, are
15 there any suitable prints? And so some of the things I'm
16 looking for are, is there an overall pattern? There are three
17 general pattern types to fingerprints, and it's how they're
18 categorized.

19 So that first type of pattern is what we call an
20 arching pattern, and it's a pattern where the friction ridge
21 flow comes in one side, rises slightly, and goes out the
22 opposite side, sort of like a wave. The second type of
23 pattern is a circular pattern; it's sort of like maybe a
24 bull's eye. And then the third type of pattern we call a
25 looping pattern, and it's where the ridge flow rises up, and

1 then actually recurves, and exits out the same side that it
2 came in.

3 So some of those -- that's some of the general
4 features. There are some other type of features like deltas,
5 which are features that are triangular in shape, so the ridge
6 flows are converging, making that triangle-type shape, and
7 then I would be looking for the center of the pattern.

8 In order to have enough information to make an
9 identification, what I would be looking for is actually some
10 smaller-type details. We call them minutia, sometimes you may
11 hear me say points, and those are what happens along an actual
12 ridge path.

13 So an actual ridge path can do one of two things.
14 It could stop abruptly or it can split into two, and we call
15 those points -- you might hear me say ridge ending also, or
16 bifurcations, which is when it splits into two. So I would be
17 looking at all that information, and I would be looking to see
18 if I had enough of that information that I could say this is
19 suitable for me to possibly make a comparison or possibly put
20 it into a latent fingerprint database.

21 Q And what is it about the nature of fingerprints that
22 makes them suitable or good for identification purposes?

23 A The reason why we're able to take fingerprints and
24 use them for identification purposes, one is that, when you're
25 born, that arrangement of the friction ridges on the fingers

1 and the palms of the hands, and also the soles of the feet as
2 well, that arrangement stays with you throughout your
3 lifetime, barring any permanent scarring to that skin.

4 The other thing is that they -- they're easily
5 accessible, which means we constantly come into contact with
6 objects, so therefore, it's something useful that we can use.
7 And that -- so that arrangement, you're born with it, it stays
8 in place, and it lasts throughout your lifetime. So as you
9 get older and older, that arrangement is not going to change.

10 Q Are they unique to an individual?

11 A They're also distinguishable to each individual.
12 They're actually even distinguishable from finger to finger;
13 each arrangement of friction ridge detail is different. And
14 even identical twins do not have the same friction ridge
15 detail.

16 Q So did you conduct some print -- latent print
17 comparisons in this case --

18 A Yes, I did.

19 Q -- that brings us here to court today? Was that
20 under Las Vegas Metropolitan Police Department Event Number
21 170809-0029?

22 A Yes, it was.

23 Q And do you guys have like a different lab number
24 that corresponds with --

25 A Yes, we do.

1 Q Okay, and is that 17-07217?

2 A Yes.

3 Q Why? What's the difference?

4 A Well, the difference is, when a case starts, and

5 police officers, possibly, or CSA respond to a scene, an event

6 number, which was that first number, it is uniquely tied to

7 that case. But when it comes to my specific lab, we tie -- we

8 tie a unique lab case number to it, and then we might put a

9 record identifier on the end, and that helps us distinguish

10 that that work is being done on it in our specific lab.

11 Q And fair to say your report's quite lengthy?

12 A Yes.

13 Q Nine pages?

14 A Yes.

15 Q Have you memorized all of it?

16 A No, I have not.

17 Q Would it refresh your recollection to be able to

18 look at your report while I ask you these questions?

19 A Yes.

20 MR. BROOKS: Your Honor, with defense permission,

21 could she look at her report while I --

22 MR. SANFT: No objection, Your Honor.

23 MR. RUGGEROLI: No objection.

24 THE COURT: Go ahead. You can approach and hand her

25 her -- or does she already have her report?

1 MR. BROOKS: I believe --

2 THE WITNESS: Yes, I do.

3 THE COURT: Okay, all right.

4 BY MR. BROOKS:

5 Q So, Ms. Manigault, fair to say that different things
6 were impounded by different CSAs in this case?

7 A That's correct.

8 Q So I want to start by asking you about the items
9 impounded by P number 5221.

10 A Okay.

11 Q How do you know it was impounded by that P number?

12 A That P number would be listed on the latent print
13 packet which that CSA signed into or impounded into our
14 evidence -- secure evidence location.

15 Q And what's a Q card?

16 A A Q card is an actual lift card, and so the letter Q
17 designates that that lift card was generated from a crime
18 scene analyst.

19 Q Is that a term that the lab uses, or is that a term
20 that crime scene analysts use?

21 A It's actually a term that the lab uses.

22 Q Oh, okay, so they don't use that term?

23 A No.

24 Q Then I want to specifically ask you about -- did you
25 make some comparisons on Q Card 4 and Q Card 5, numbers 4 and

1 5 that were impounded by P number 5221?

2 A Yes, I did.

3 Q And were you able to come to any results?

4 A With Q Card 4, yes, I did; and also Q Card 5. Do
5 you want me to list them one at a time?

6 Q Could you -- yeah. Could you tell me what those Q
7 cards -- where they were from and what the results were?

8 A Sure. So, Q Card 4, it came from the exterior
9 driver's door of a 2003 Mercury Grand Marquis with a Nevada
10 license plate of 473, Y as in yellow, Z as in Zebra, and B as
11 in boy, and it was also marked number 4. And there were two
12 suitable latent prints that I marked on that card. I marked
13 each one A and B. So the one that I marked A was identified
14 to the right index finger of DeMario Lofton-Robinson, and then
15 the latent print that I marked B was identified to the right
16 middle finger of DeMario Lofton-Robinson.

17 Q And so, in this situation, you've identified it as
18 DeMario Lofton-Robinson. How did you identify it to him? Did
19 you have any exemplars with him?

20 A Yes, I did.

21 Q Okay. And so, when you make identifications that we
22 talk about from your report, are they all from known exemplars
23 that you had?

24 A Yes, generally, it will be.

25 Q And Q Card 5, is it fair to say from the same

1 vehicle?

2 A Yes.

3 Q And what were the results?

4 A I had one suitable latent print marked A, and that

5 was identified to the right ring finger of DeMario

6 Lofton-Robinson.

7 Q And where was the location on that vehicle?

8 A The exterior driver's door.

9 Q Now, did you receive some items impounded by P

10 number 15291?

11 A Yes.

12 Q So I want to turn your attention to Q Card 13,

13 Latent Print 6.

14 A Okay.

15 Q Did you come to any conclusions as to that latent

16 print?

17 A I'm sorry, hold on a second. I don't see Lift Card

18 6.

19 Q Oh, sorry. Q Card 13, Latent Print 6. So, Q Card

20 13.

21 A Yes, okay. That Q Card 13 came from the exterior

22 right rear quarter panel of the vehicle.

23 Q And can we just use "vehicle"?

24 A Yes.

25 Q And what was your results?

1 A It was identified to the left palm of DeShawn
2 Robinson.

3 Q Could you go to Q Card 20 for me?

4 A Yes.

5 Q What were -- what did you examine, and what were the
6 results?

7 A Q Card 20 came from the exterior right rear window,
8 and there were two suitable prints marked A and B on that
9 card. A was identified to the left middle finger of DeShawn
10 Robinson, and B was identified to the left ring finger of
11 DeShawn Robinson.

12 Q Did you do some comparisons with Q Card 23?

13 A Yes, I did.

14 Q What were your results, and what did you compare?

15 A Q Card 23 came from the exterior right front window
16 of the vehicle. There were three suitable latent prints
17 marked A, B, and C. A was identified to the left ring finger
18 of DeShawn Robinson, B was identified to the left middle
19 finger of DeShawn Robinson, and C was identified to the left
20 index finger of DeShawn Robinson.

21 Q So I want to talk about that one just briefly. See
22 how you've identified a left ring finger, a middle finger, and
23 index finger? Are you able to tell whether that was a
24 simultaneous touch or not, or is that something that you
25 wouldn't even put in the report?

1 A It is something that I'm able to discern sometimes,
2 depending on how much connectivity there is. So it did appear
3 to be a simultaneous. It's not something we generally state
4 in the report, but it would be something that I would state in
5 my notes, possibly.

6 Q Could you go to Q Card 26 for me? Did you make some
7 comparisons, and what were the results?

8 A Yes. Q Card 26 came from the exterior right front
9 window of the vehicle. It was one suitable print that I
10 marked and labeled A, and it was identified to the right index
11 finger of Davontae Wheeler.

12 Q Q Card 27?

13 A Q Card 27 also came from the exterior right front
14 door -- I'm sorry, right door frame, not window. It was
15 marked A, and it was identified to the right palm of DeShawn
16 Robinson.

17 Q So we've talked about fingerprints. Are palm prints
18 similar?

19 A Yes. So the friction ridge skin that's on your
20 fingers also extends throughout the rest of your hand, which
21 would be the rest of the palm of the hand.

22 Q Would you need a more extensive known or exemplar in
23 order to make some comparisons with palm prints?

24 A To make comparisons with palm prints, I would
25 generally need a palm print known exemplar record to do that.

1 Q So you couldn't just have fingerprints of someone
2 and identify a palm print?

3 A That would be correct.

4 Q Okay. Q Card 30, please?

5 A Q Card 30 came from the exterior front hood of the
6 vehicle. There were two suitable prints that I marked and
7 labeled A and B. A was identified to the right palm of
8 Davontae Wheeler, and B was also identified to the right palm
9 of Davontae Wheeler.

10 Q So could you look at Q Cards 34 through 38, and tell
11 me about those, please?

12 A Yes. So Q Card 34, I'll start with. It came from
13 the exterior front hood of the vehicle. There were three
14 suitable prints that I labeled A, B, and C. A was identified
15 to the left palm of Davontae Wheeler, B was also identified to
16 the left palm of Davontae Wheeler, and C was also identified
17 to the left palm of Davontae Wheeler.

18 Q Card 35 came from the exterior front hood of
19 Vehicle 1 as well. There was one suitable print that I marked
20 and labeled A, and that was identified to the left palm of
21 Davontae Wheeler.

22 Q 36 as well came from the exterior front hood of
23 Vehicle 1. There was one suitable print that I marked and
24 labeled A, and that was also identified to the left palm of
25 Davontae Wheeler.

1 Q And Ms. Manigault, I apologize.

2 A Um-hum.

3 Q I realize we've been using "Q card" references.

4 A Um-hum. Oh, yes. But you would also like the

5 latent print references?

6 Q Because if you had been looking at, let's say

7 photographs of this car, Q Card wouldn't be on that, correct?

8 A That's correct.

9 Q It would be -- when a CSA pulls a print, they would

10 have a --

11 A Yes.

12 Q -- latent print --

13 A They would have a -- in this case, an LP number.

14 Q Okay. So could you give me the LP numbers that

15 correspond with those Q cards you just read out, 34 to 38?

16 A Sure, I can. So, Q 34 is LP 27. Q 35 is LP 28. Q

17 36 is LP 29. Q 37 is LP 30. And then, Q 38 is LP 31, and I

18 don't think I got a chance to read off that one yet.

19 Q Okay, so what was the results on that one?

20 A So that was -- Q 38 was also from the exterior front

21 hood of Vehicle 1. There were two suitable prints that I

22 marked A and B, and the A was identified to the left ring

23 finger of Davontae Wheeler, and B was identified to the left

24 middle finger of Davontae Wheeler.

25 Q Now, if you could tell us your results on Q Card 39,

1 Latent Print 32.

2 A That also came from the exterior front hood of the
3 vehicle. Two suitable latent prints were marked and labeled A
4 and B. A was identified to the right ring finger of DeMario
5 Lofton-Robinson, and B was identified to the right little
6 finger of DeMario Lofton-Robinson.

7 Q Q 40, Latent Print 33, please?

8 A That came from the exterior front hood of the
9 vehicle. Two suitable latent prints were marked and labeled A
10 and B. A was identified to the right ring finger of DeMario
11 Lofton-Robinson, and B was identified to the right index
12 finger of DeMario Lofton-Robinson.

13 Q Q Card 41, Latent Print 34, please?

14 A This came from the exterior front hood of the
15 vehicle. There was one suitable latent print labeled and
16 marked -- excuse me, and labeled A, and it was identified to
17 the right palm of DeMario Lofton-Robinson.

18 Q Could you tell us what your results were for Q Card
19 42, Latent Print 35, please?

20 A It came from the exterior front hood of the vehicle.
21 There was one suitable latent print labeled A, and that was
22 identified to the left palm of Davontae Wheeler.

23 Q If you could tell us what your results were for Q
24 Card 44, Latent Print 37, please.

25 A There was one lift card from the exterior front hood

1 of the vehicle again, one suitable latent print marked and
2 labeled A, and that was identified to the left palm of Raekwon
3 Robertson.

4 Q Q Card 50, Latent Print 43, please?

5 A That lift card came from the exterior top edge of
6 the left rear door of the vehicle. It was one suitable latent
7 print marked and labeled A, and that was identified to the
8 left palm of Raekwon Robertson.

9 Q And Q Card 51, Latent Print 44, please?

10 A That came from the exterior left rear window of
11 Vehicle 1. There was one suitable latent print marked and
12 labeled A.

13 Q And so, just -- did you get results for that?

14 A Yes. That was identified to the left index finger
15 of Raekwon Robertson.

16 Q And lastly, did you examine something that was
17 impounded by P number 13572?

18 A Yes.

19 Q And was there something different about the way this
20 was processed as opposed to what you just discussed?

21 A Yes. So this was not actually a lift card; it was a
22 photograph. It was processed by the CSA that collected this
23 piece of evidence. And the photograph was of the -- from the
24 side of a Taurus weapon magazine, and it was labeled number 1.

25 Q And is -- are photographs, if done correctly, any

1 worse or any better than doing processing any other way?

2 A No, they're actually totally appropriate pieces of
3 evidence. They are done a specific way. For instance, a
4 label would be placed in the photograph so that I could -- if
5 I needed to print out or look at this piece of evidence, which
6 was a latent print on the magazine, on the screen, I could
7 make it a one-to-one or life size, and it would just have to
8 be in focus, basically.

9 Q And what were the results of the photograph of that
10 Taurus weapon magazine?

11 A There was one suitable latent print in the
12 photograph. It was marked and labeled A, and it was
13 identified to the left thumb of Davontae Wheeler.

14 Q And you said that's from the magazine?

15 A Yes.

16 Q So is there something -- what is the policy for
17 let's just say a handgun as far as swabbing for DNA versus
18 doing fingerprint processing? Can you do both? Can you do
19 both at the same time? Tell me a little bit about that.

20 A Well, our policy is that we would swab for DNA. I'm
21 sorry, excuse me. I would not swab for DNA, but it would be
22 swabbed for DNA. They would generally try and swab it in
23 areas where it's generally -- they know the hands would have
24 touched it, but they would try to also be careful, if there is
25 latent print evidence there, not to destroy that evidence by

1 rubbing a cotton swab through it.

2 So in this case, that -- you know, it was swabbed
3 for DNA prior to when I got it. This photograph was taken
4 from the CSA, and I only handled the photograph part of it.

5 Q Is there something about the way handguns are made
6 that makes certain parts more suitable for DNA, and certain
7 parts more suitable for fingerprint processing?

8 A Yes, there is. There are parts of the gun that are
9 textured, and those are excellent areas for DNA because you
10 can imagine skin cells might be getting rubbed off in those
11 areas; whereas there are parts of the gun that are smooth, and
12 those are good for latent prints because a smooth surface is
13 normally the best surface that you can leave a latent print
14 behind. And also, it's not textured in that area, so it makes
15 it kind of nice sometimes.

16 Q So where does a magazine fit in?

17 A Well, a magazine has at least two smooth sides of
18 it, and it's generally handled by the hands, so it tends to be
19 a good place to find latent print evidence if there is some.

20 MR. BROOKS: Thank you. Pass the witness, Your
21 Honor.

22 THE COURT: Mr. Sanft, any cross?

23 CROSS-EXAMINATION

24 BY MR. SANFT:

25 Q Ma'am, your testimony with regard to fingerprints

1 and how they're found, do you know how they're -- like, can
2 you date a fingerprint?

3 A No, you cannot.

4 Q All right. So -- and once again, I think you had
5 told the jury earlier that it does depend on certain things,
6 like environment, for instance, right? If you're in an
7 environment that's, say, rainy or snow, that could have an
8 effect on how long a fingerprint remains on a surface, fair?

9 A That's fair to say, yes.

10 Q Okay. I'm sure you're aware that this is a
11 fingerprint that took place -- or fingerprints that you
12 analyzed in this case were all fingerprints that were found in
13 the State of Nevada, roughly around August of 2017?

14 A Okay.

15 Q Not necessarily the worst time, but not necessarily
16 the best time with regards to fingerprints because it's dry or
17 hot? How does that -- how would that work?

18 A Well, it depends. Like you said, August can be kind
19 of hot. It would depend on when -- on several factors; when
20 it was placed, the type of surface. It depends on many of
21 those things. But fingerprints can also survive those things
22 too, so, you know, it really depends.

23 Q Okay. Now, when you receive a case and an
24 assignment to do fingerprint analysis, it's a package of
25 information that you receive? Like, these Q cards that we've

1 been talking about, you just receive those Q cards, you then
2 receive an exemplar, and then you compare those items to each
3 other? Is that how it works?

4 A Yeah. So, generally speaking, I would receive a
5 packet, like you said, that contains these lift cards or --
6 which I then label as Q cards, and I might receive some names
7 that I am to compare.

8 Q Okay. But you don't do any additional work outside
9 of analyzing the fingerprints, right? Meaning, you don't look
10 at that and say, you know what, I need more fingerprint
11 analysis; can someone go back to the evidence and pull
12 additional fingerprints from this or that? That's not your
13 job, fair?

14 A No, I'm not at the crime scene, so I'm just
15 receiving that packet.

16 Q Okay. And that's -- that's somebody else's decision
17 to make, not yours? You're just there specifically to compare
18 apples and apples, and oranges to oranges?

19 A Yeah, to compare what was collected and submitted.

20 MR. SANFT: All right. I have no further questions,
21 Your Honor.

22 THE COURT: Mr. Ruggeroli?

23 MR. RUGGEROLI: Just one.

24 CROSS-EXAMINATION

25 BY MR. RUGGEROLI:

1 Q The Taurus that you examined that was 56, that was
2 the .45 caliber Taurus?

3 A Um-hum.

4 Q Yes?

5 A I'm sorry, let me look and make sure. I'm not that
6 familiar with guns. It doesn't say that it's a .45. It just
7 says, "A Taurus weapon magazine."

8 Q Okay, and --

9 A So I'm not sure about the rest.

10 Q The CSA that -- or that collected this would
11 probably be the better witness --

12 A Yeah.

13 Q -- for that item?

14 MR. RUGGEROLI: Thank you. I have nothing further.

15 THE COURT: Thank you. Any redirect?

16 MR. BROOKS: Briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. BROOKS:

19 Q Ms. Manigault, do you recall the CSA P number that
20 impounded that fingerprint that we were just discussing, the
21 magazine?

22 A That P number -- excuse me -- was 13572.

23 Q And showing you State's Exhibit 307, do you see that
24 P number here?

25 A Yes.

1 Q And is this the photograph you used to make a
2 comparison?
3 A It is.
4 Q And what was the result?
5 A The result was it was identified to the left thumb
6 of Davontae Wheeler.
7 MR. BROOKS: Thank you. Sorry, nothing further.
8 THE COURT: You're done?
9 MR. BROOKS: Yes, sorry.
10 THE COURT: Okay. Mr. Sanft?
11 MR. SANFT: No cross, Your Honor.
12 THE COURT: Mr. Ruggeroli?
13 MR. RUGGEROLI: No cross.
14 THE COURT: Okay. Thank you very much for your
15 testimony here today. You may step down, and you are excused
16 from your subpoena. You may call your next witness.
17 MR. PESCI: State calls Anya Lester. May I approach
18 your Clerk?
19 THE COURT: Yes.
20 THE MARSHAL: Straight ahead, please. And if you'll
21 please step up into the witness stand, remain standing, raise
22 your right hand, and face the Clerk.
23 ANYA LESTER, STATE'S WITNESS, SWORN
24 THE CLERK: You may be seated. Please state and
25 spell your first and last name for the record.

1 THE WITNESS: My name -- my name is Anya, A-n-y-a.
2 Lester, L-e-s-t-e-r.

3 MR. PESCI: May I proceed?

4 THE COURT: Um-hum.

5 MR. PESCI: Thank you.

6 DIRECT EXAMINATION

7 BY MR. PESCI:

8 Q Ma'am, what do you do for a living?

9 A I am the manager of the Firearms Detail at the Las
10 Vegas Metropolitan Police Department Forensic Laboratory.

11 Q And what do you do in that capacity?

12 A In that capacity, I am in charge of 14 people, their
13 annual reviews, their training. I do administrative reviews
14 of their casework, and a lot of quality control and technical
15 manual writing --

16 Q Prior --

17 A -- procedure writing.

18 Q Sorry to interrupt you. Prior to being the manager,
19 what did you do?

20 A I was a forensic scientist in the Firearms Detail.

21 Q And what brings you to this job? What training and
22 experience do you have?

23 A I have a Bachelor of Science Degree in forensic
24 science from Michigan State University, and I was hired by the
25 LVMPD actually in December of 2008 as a forensic lab aid. I

1 did that position for about ten months. I learned a lot about
2 the lab as a whole. I did a lot of quality control work, a
3 lot of support staff work, things like washing dishes, doing
4 laundry, doing ordering.

5 And from there, I promoted into the forensic
6 scientist position. Once I did that, I underwent an extensive
7 training program; lasted 18 to 24 months. I got my first
8 competency at 18 months, my last one at 24. It entailed about
9 2,500 hours of training. I did both in-house training and
10 external training. I trained on firearms, ammunition,
11 ammunition components, microscopic comparisons. I went to
12 various manufacturing facilities for both firearms and
13 ammunition. Did a series of mock cases, supervised cases.

14 And then, at the end of that extensive training, I
15 took a series of competency exams, which allowed me to begin
16 my own supervised casework, and then proceed into independent
17 casework, and that was in the spring of 2011 when I started
18 doing that.

19 Q So if I heard you correctly, you said that you have
20 training and experience when it deals with firearms and
21 ammunition?

22 A Yes.

23 Q And have you testified in this capacity in courts of
24 law?

25 A Yes.

1 Q Now, kind of the anatomy of a firearm and
2 ammunition. Let's start with ammunition, for those that are
3 not as familiar with firearms. I want to show you State's
4 Exhibit 228. Do you recognize what's depicted there?

5 A I recognize it's a firearm.

6 Q Okay.

7 A Semiautomatic pistol.

8 Q And there's a mouse to the right, and I think if you
9 click at the bottom, you might get -- and see if that mouse
10 will move up above.

11 A Not getting anything on the screen though.

12 Q Well, let's do this. As we start --

13 THE MARSHAL: Oh, I'm sorry. You know what? That
14 mouse might not be on.

15 MR. PESCI: I apologize.

16 THE WITNESS: Oh, it's probably on at the bottom.
17 Ah. Thank you. Oh, there we go.

18 MR. PESCI: Thank you very much.

19 THE WITNESS: Okay.

20 BY MR. PESCI:

21 Q So let's start with ammunition on the lefthand side.
22 Tell us, in essence, the anatomy of what sometimes people
23 refer to as a bullet, and what do you refer to it as?

24 A So all of these here, we refer to these as
25 cartridges. Some people do refer to it as a bullet; however,

1 the correct term is cartridge. It's a single unit of
2 ammunition. Cartridge contains a case that holds everything
3 together; also contains powder. That's what burns and creates
4 gas that pushes the bullet, which is the projectile, this part
5 right here, down the barrel and out of the muzzle of the gun.

6 Here in this rear area, there's also contained a
7 chemical compound called a primer. It's a chemical --
8 chemically sensitive compound that when you pull the trigger
9 on a gun, and the firing pin hits it, that's what creates a
10 spark that ignites that powder inside that cartridge case,
11 causing it to burn, which liberates the gas, and that's what
12 pushes the bullet down the barrel and out of the muzzle.

13 Q All right. Now, as we're looking at this firearm,
14 do we have a magazine depicted in the photograph?

15 A Yes.

16 Q Could you show that, please?

17 A Um-hum. So this here would be the magazine.

18 Q And also, the firearm itself, could you point to
19 that?

20 A Um-hum. So you have your firearm over here.

21 Q Okay. And in particular, is this a Star .45 caliber
22 and firearm?

23 A Unfortunately, I can't see the manufacturer in this
24 view. I do see it says, "Caliber .45 ACP here."

25 Q Okay.

1 A But I -- I don't see the -- it's I think on the
2 other side.

3 Q All right. But as we look at this, can you tell us
4 what will happen to a cartridge when it's fired in a firearm;
5 in particular, this firearm?

6 A Um-hum. So these cartridges here, they get loaded
7 into this magazine. This here is your source of ammunition.
8 It's got the spring inside here; it has a follower up here at
9 the top. It acts kind of like a Pez Dispenser. It actually
10 pushes these cartridges up by the spring and this follower
11 here to cycle them into a firearm in order to fire the
12 firearm.

13 Q And --

14 A This -- oh, sorry.

15 Q Oh, I cut you off.

16 A This magazine here, once you've loaded it with
17 cartridges, you insert it here. This is a magazine well;
18 inserts into this firearm. This firearm here, this part is
19 called a slide. In order to load one of these cartridges out
20 of the top of the slide here into the chamber, which is the
21 rear part of the barrel -- you see the barrel right here --
22 you would have to close this slide.

23 So the slide has a lever -- I think it's on the
24 other side, you can't see it -- that if you release that, this
25 slide will spring forward. There's a spring inside here right

1 now; it's compressed. When you spring that slide forward,
2 what it does is it strips the top cartridge off this magazine
3 here, loading it into the gun, and readying for it to fire.

4 Q Showing you State's 227, is that that same firearm
5 with the slide moved forward?

6 A Appears to be so, yes.

7 Q Okay. So what are we looking at, that silver part
8 at the top?

9 A Um-hum, so this right here?

10 Q Yes.

11 A This piece? So this is the barrel here. You see
12 this cut-out in the slide. This part that I formally referred
13 to here was the slide. This is a cut-out. This is called the
14 ejection port. So this is after the firearm has fired that
15 the expended cartridge case can be ejected out of the firearm
16 through this port.

17 Q So is this a semiautomatic firearm?

18 A Yes.

19 Q Okay. Is that based on the fact that it will expel
20 the cartridge case after it's been fired out of the firearm?

21 A The definition of semiautomatic is just like what it
22 sounds. "Semi" means partial, and "automatic" is like the gun
23 does something for you. So this gun does part of the cycle of
24 operation for you. Normally, on a semiautomatic pistol, what
25 it does is the extracting, ejecting, and loading process.

1 So what happens is, here, we have this magazine
2 inserted; the slide is closed. If you have a cartridge here
3 in the chamber, you pull this trigger -- this -- this hammer
4 would need to be cocked. You pull this hammer -- this
5 trigger, excuse me. The hammer would fall forward, hitting
6 the firing pin, which hits the primer, which is on the rear of
7 that cartridge like I explained before, detonating that
8 chemical compound, lighting that powder, creating the gas
9 which pushes the bullet down the barrel and out of the muzzle.

10 For every action, you have an equal and opposite
11 reaction, so that bullet's going forward. What happens is
12 that cartridge case that's left in here is pushed backwards,
13 back against the rear part of that slide, and that drives this
14 slide backwards like we saw in the previous photo where the
15 slide was in the rearward position. When that slide goes
16 backwards, there's a little hook here, which is the extractor,
17 this piece here. It's a little hook that hooks on the rim of
18 that cartridge case, pulls it backwards out of the chamber.

19 There's a piece called the ejector here in the back
20 breechface of the slide, which actually kicks that cartridge
21 case out. When the slide goes forward, it will strip the next
22 cartridge off the top of that magazine, and loading it into
23 the chamber. So that's the semiautomatic part. You as the
24 operator, you have to pull the trigger for each shot, but the
25 firearm does that unloading and loading process for you.

1 Q Now, if we compare this to a revolver, how would
2 that be different for a revolver?

3 A So this firearm here, it just has one chamber here
4 at the rear of the barrel. A revolver, like you've seen in
5 old westerns, it has a cylinder that actually rotates, so
6 there's multiple chambers inside there. So instead of having
7 a magazine, you load your cartridges into those chambers in
8 that cylinder. And then when you pull the trigger, the same
9 type of action happens. You have a firing pin, you have a
10 detonation of a cartridge, but then, to get to the next
11 cartridge to fire, when you pull the trigger, that cylinder
12 rotates to the next one that's in the cylinder as opposed to
13 that extraction and ejection motion like what happens in a
14 pistol such as this.

15 Q So if you fire a revolver, it will not automatically
16 extract and expel the cartridge case?

17 A That's correct.

18 Q All right. Now, looking at this same exhibit,
19 State's 227, you talked about how a bullet will be projected
20 out of the firearm, down the barrel, correct?

21 A Yes.

22 Q What happens to the bullet as it travels through the
23 barrel?

24 A So, inside the barrel, there's these grooves that
25 are cut spiral into the barrel, and they're like -- what they

1 look like is like stripes on a candy cane. So that's called
2 riffling. So they're cut with a tool; spiral grooves inside.
3 The area in between those grooves is called the lands.

4 When the bullet goes from the end of -- excuse me --
5 the end of that chamber here and it starts to travel down the
6 barrel, it engages with those grooves and lands, and those
7 impart a spin upon the bullet, and that's to give it stability
8 when it comes out of the muzzle and it flies through the air.
9 So the bullet's actually spinning when it comes out of the
10 muzzle of the gun.

11 Q Does that imprint something unique on the bullet
12 based on that barrel?

13 A Yes.

14 Q Explain that to us.

15 A Yes. So those grooves that I talked about, they're
16 made by a cutting tool. So a cutting tool, what it's doing is
17 -- what you have is a harder object is always going to leave a
18 mark or act on a softer object. So the harder object is the
19 cutting tool, and it has to be in order to cut those spirals
20 into the barrel.

21 So what happens when you're cutting, every time that
22 tool goes either down or forward in the barrel, depending on
23 what their process is, it's microscopically changed a little
24 bit. So that tool is constantly changing every single time
25 it's cutting those grooves in there.

1 Also, every time it cuts, that's a unique event. So
2 when you're cutting, you're removing pieces of material, like
3 small little chips. You know how like if you grate cheese,
4 you get those small little chips, it's like sawdust? So those
5 chips that are cut out are different every single time and
6 random. And when those are cut out, they actually even build
7 up along the edge of the tool and they're scraped along as
8 that tool moves either forward or backwards in the barrel.

9 And all of those things contribute to those marks
10 that are inside the barrel that are unique to that barrel, and
11 that's what we use as firearms examiners when we're comparing
12 a bullet to a particular firearm.

13 Q Now, that's dealing with a bullet. How about a
14 cartridge case? Is there something unique that happens or is
15 imprinted on the cartridge case?

16 A So a cartridge case -- any surface here on this gun
17 that the cartridge case interacts with can leave an
18 impression. And I've talked about some different things; how
19 when you have the bullet going forward, the cartridge case
20 goes backwards.

21 The cartridge case here, when it slams up against
22 the rear of the slide here -- this is called the breechface --
23 you can get impressed marks there. We call those breechface
24 marks. When the firing pin hits the primer and it makes a
25 little divot in there, we call that that firing pin

1 impression. You can get marks in there.

2 That extractor, that hook that I talked about to
3 remove the cartridge case from the chamber, that can leave a
4 mark. The ejector that actually kicks the cartridge case out
5 of the firearm can leave a mark. And when it's here inside
6 this chamber, when the cartridge is detonated, when that
7 firing pin hits that primer and you have that gas burning, the
8 edges of the walls of the cartridge case actually swell
9 against the inside of the chamber, and any marks from inside
10 of the chamber, those get imparted on the cartridge case.

11 So all of those different types of marks are marks
12 that we can use as a firearms examiner to compare an expended
13 cartridge case to a firearm.

14 Q And do you compare that microscopically?

15 A Yes.

16 Q Okay. So if you have a firearm, let's say the one
17 that's in this picture, and you test fire it, can you then
18 make determinations as far as what the barrel will imprint and
19 what -- as you've talked about, what could happen to a
20 cartridge case; how that will be imprinted with this unique
21 particular firearm?

22 A Yes. So when I'm asked to examine a firearm and to
23 perform a comparison, I have to test fire the firearm, and I
24 use the actual firearm that's provided to me. I use the
25 magazine, if it is provided to me. Normally, we use

1 ammunition from our reference collection.

2 We test fire the firearm. We can do that a couple
3 of different ways. Normally, it's done into a water tank.
4 It's a large, stainless steel tank; it has about 600 gallons
5 of water. It has a port that we can shoot into, and when we
6 shoot into it, the bullet goes into the water, travels through
7 the water, falls down to the bottom. There's a net around
8 that port that catches the extracted and ejected cartridge
9 cases.

10 Once I'm done test firing it, I can open that tank
11 up, retrieve the bullets out, and then I have pristine
12 samples. I have samples of bullets and of cartridge cases
13 that are from that gun, and I know they're from that gun
14 because I fired them myself.

15 So then I compare those to each other to look for
16 the types of marks that that gun is leaving. I'm looking for
17 the quality of marks, quantity of marks. I'm looking for the
18 reputability between the marks on those test items before I
19 ever take one of those to compare it to an evidence item.

20 Q Okay. So you will generate, in essence, examples
21 from test firing the particular firearm?

22 A Yes, that's correct.

23 Q And then you can compare that to question evidence
24 or evidence from a particular case?

25 A Yes.

1 Q All right. So in this case, let's kind of focus on
2 the particular evidence that you had in question. Did you
3 generate a report in this case under Event Number 170809-0029?
4 A Yes.
5 Q Do you have that report with you for reference
6 purposes?
7 A Yes.
8 Q Okay.
9 A May I refer to it?
10 MR. PESCI: Any objection?
11 MR. SANFT: No.
12 MR. RUGGEROLI: No, Your Honor.
13 THE COURT: Okay, you may.
14 MR. PESCI: Thank you, Your Honor.
15 BY MR. PESCI:
16 Q So I want to kind of go over, first, the items of
17 evidence that you utilized, and then we'll talk about your
18 results. Is that okay?
19 A Yes.
20 Q Okay. Starting off with what you referred to as a
21 lab item number, is that a number that you assigned to this
22 particular report that you did?
23 A Yes. We have a computer system; it's called the
24 LIMS. It's our Laboratory Information Management System, and
25 it automatically generates a lab item number for every item of

1 evidence that we analyze in a case, so that way, even if a
2 latent print analyst, firearms analyst, DNA analyst examines
3 the same piece of evidence, it has one unique number that's
4 assigned by the computer.

5 Q And that's the unique number for your lab report?

6 A Yes, correct.

7 Q But that corresponds to a unique number from, let's
8 say, the crime scene analyst that impounded it?

9 A Yes, correct.

10 Q And in this particular situation, we have four
11 pieces of evidence -- well, let me see. 1, 2, 3, 4. Yes,
12 four pieces of evidence impounded by P number 5158; is that
13 correct?

14 A Yes.

15 Q And that would be Ebony Stephens, her Impound
16 numbers 1 through 4?

17 A Yes.

18 Q Okay. Now, your Lab Item 1, Ebony Stephens's number
19 1, was that a .22 Long Rifle cartridge case?

20 A It was a .22 Long/Long Rifle cartridge case.

21 Q Was there a headstamp on it?

22 A Yes.

23 Q What is a headstamp?

24 A Headstamp is -- either it can be letters or numbers
25 that are stamped into the head or the base area of the

1 cartridge by the manufacturer. It's usually an identifying
2 mark. It can either have the -- say, the manufacturer's
3 initials or name might be there, or often, the caliber is also
4 stamped in there.

5 Q In this particular situation, this item, was it
6 headstamped with the letter C?

7 A Yes.

8 Q Now, you talked about how it was .22 caliber
9 Long/Long Rifle cartridge case. Does this mean it goes into a
10 rifle, or can it be fired by a handgun?

11 A So a couple-part question there.

12 Q Sorry.

13 A It can be fired by a handgun, pistol, revolver, or a
14 rifle. The term .22 Long or .22 Long Rifle just refers to the
15 name of the cartridge. For this particular cartridge case,
16 the same cartridge case is used by manufacturers when they
17 manufacture .22 Long and when they manufacture .22 Long Rifle.

18 So when I just got the cartridge case, all I can say
19 is this is a cartridge case from a cartridge that was either a
20 .22 Long or a .22 Long Rifle. The Long Rifle does not refer
21 to the fact that it could only be fired in a rifle; it's just
22 the name of the cartridge.

23 Q Okay, so one cartridge case was to a .22?

24 A That's correct.

25 Q Were there three .45 cartridge cases?

1 A Yes.

2 Q Corresponding to Ebony Stephens, P number 5158, her
3 Impound Items 2, 3, and 4?

4 A Yes.

5 Q And did they have different headstamps on them?

6 A Different from each other?

7 Q Yes.

8 A Yes.

9 Q Okay. Now, is that different manufacturers?

10 A Yes.

11 Q Okay. So number 2, your Lab Item 2, Ebony
12 Stephens's Impound Item number 2, was that an R-P .45 Auto
13 cartridge?

14 A Yes.

15 Q And then your Lab Item 3, Ebony Stephens's Item 3,
16 was that a FCNR .45 Auto cartridge?

17 A Cartridge case, yes.

18 Q I'm sorry, I keep saying that. And then the last
19 one, your number 4, Ebony's number 4, was that a Winchester
20 .45 Auto cartridge case?

21 A Yes.

22 Q All right. So three .45 cartridges, all from
23 different manufacturers?

24 A Cartridge cases, yes.

25 Q Someday, I won't say that. All right. So moving

1 onto your Lab Item 11, was impounded under P number 15709,
2 Item 1. What was that item?

3 A So that was a Taurus Model PT22. It was a .22 Long
4 Rifle caliber, semiautomatic pistol.

5 Q Okay. And that particular item, did you test fire
6 that?

7 A Yes.

8 Q All right. What did you do with that particular
9 item before you test fired it?

10 A So for that particular item, that firearm and the
11 magazine, I swabbed those both for DNA prior to my test firing
12 them.

13 Q Okay. How did you go about that?

14 A Um-hum. So to swab for DNA, we have to make sure
15 that our surfaces are completely decontaminated, so we
16 actually have a separate room that we swab for DNA in. I --
17 first, I'll put on a lab coat, gloves, a mask, and I use a
18 disinfectant spray; it's like a commercial bleach-type spray.
19 Spray on the surface, wipe it off, and then I'll put down a
20 clean white paper, like butcher block paper.

21 Then I'll take that evidence, I'll set it on the
22 paper. I'll make sure that I have everything I need to
23 perform my swabbing all set and ready to go. I'll have my
24 swabs ready. I have molecular grade water; that's water that
25 is tested by our DNA Section to make sure there's no

1 contaminants in it. I have my booking materials, like the
2 envelope, the sticker, everything I need to book the swabs
3 after I've done the swabbing, get that all ready to go. Then
4 I'll take some of that bleach, put it on my gloves, make sure
5 my gloves are all clean.

6 Then I go ahead and open the package, and I'll
7 remove the firearm. I do each one separately; I'll do the
8 firearm likely first. Firearm from the package. I'll take
9 one of those swabs, put a drop or two of that water on it, and
10 then I just swab the entire surface of the firearm. So I
11 usually concentrate on the ridged areas, so that would be the
12 grip areas, the trigger, maybe the slide serrations, but our
13 policy is that we do a swab of the entire surface area of the
14 firearm.

15 Q Okay.

16 A Then I'll take that swab, go ahead and put it in the
17 envelope, seal it up so that it gets booked. And then I'll
18 change out my gloves, make sure everything's clean, maybe put
19 on a new mask if I think it got contaminated. Then I'll go
20 ahead and make sure my gloves are clean before I take the next
21 item, which is the magazine, then I'll repeat the same
22 process. I'll take a different swab, different clean swab,
23 put some of that water on it, swab the entire surface of that
24 magazine, and then go ahead and book that swab.

25 Q Showing you State's 250. You followed this

1 procedure that you just said for the Taurus Model PT22 .22
2 Long Rifle caliber semiautomatic pistol with serial number
3 ANC29177?

4 A Yes.

5 Q All right. So that was done before you test fired?

6 A Yes.

7 Q All right. So after you got those swabs, did you
8 impound those swabs?

9 A Yes.

10 Q Okay, so now DNA could work on that down the road?

11 A Yes.

12 Q All right. Now, turning to this particular firearm
13 and test firing it, did you do the procedure that you told us
14 earlier about firing into the thing of water?

15 A Water tank?

16 Q Yes.

17 A Yes. Let me just -- if I may refer to my notes
18 really quick.

19 Q Please.

20 A So I did -- I did test fire this gun three times,
21 and I did fire those three test fires into our water tank like
22 I described.

23 Q Okay. And so you had that particular item that was
24 your number 11, and you also had your number 12, which was the
25 magazine associated with this firearm?

1 A Yes.

2 Q All right. In addition to that firearm, looking at
3 State's Exhibit 295, did you also examine a Taurus Model PT145
4 Pro Millennium .45 caliber semiautomatic pistol, serial number
5 NCY05584?

6 A Yes.

7 Q Was that your Lab Item 14?

8 A Yes.

9 Q Impounded by P number 13572, Impound Item 1?

10 A Yes.

11 Q All right. Did you follow that same procedure there
12 as far as getting some test fires to use for comparison
13 purposes?

14 A Yes. I also test fired that firearm three times
15 into our water tank.

16 Q And did it have a magazine associated with it?

17 A Yes, it did.

18 Q Which is your Item 15?

19 A Yes.

20 Q Earlier, I said that there were four items from P
21 number 5158. Was there in fact another item, your Lab Item
22 17, P number impounder was 5158, and that was her Item 5,
23 which is one bullet?

24 A Yeah, and that was in a separate package. So her
25 Package 2, and that was one bullet.

1 Q All right. So we had cartridge cases and in fact
2 one bullet from that same CSA?

3 A Yes.

4 Q All right. And then, did you also have items given
5 to you that were impounded by P number 9618, which were metal
6 fragments and bullets?

7 A Yes.

8 Q Corresponding to your Items 22, 23, and 24?

9 A Yes.

10 Q Which correspond to P number 9618, Items 12, 13, and
11 14?

12 A Yes.

13 Q All right. So tell us about the -- the three
14 different firearms. And specifically, starting with the Ruger
15 .22, what did you learn about the functionality of that item?

16 A The Taurus .22?

17 Q Yeah, sorry.

18 A Okay. So the Taurus pistol, Lab Item 11, I did
19 examine it, test fire it. I did test fire it into the water
20 tank as I had described. I did find that gun was operational,
21 and I did not note that there were any malfunctions.

22 Q Okay. And then, as far as the Taurus pistol, which
23 was the .45 depicted in State's 295, what did you find out
24 about that?

25 A So that pistol, I did the same procedure; examined

1 it, test fired it, and I did find it to be operational, and I
2 did not note any malfunctions.

3 Q And then circling back to State's Exhibit 227, did
4 you examine and test fire the one Star, unknown model, .45
5 caliber semiautomatic pistol?

6 A Yes.

7 Q All right. Now, there is a serial number associated
8 with this particular item, correct?

9 A Yes.

10 Q And in your report, what did you notate that number
11 was?

12 A In the report, I notated that the number was
13 1949428.

14 Q All right. But then, when you looked at it
15 up-close, did you figure out that there was a number that was
16 transposed?

17 A Yeah, so -- whoops. If you see this last digit
18 right here, this digit is actually a 9, it's not an 8, but you
19 can almost see how it sort of looks like an 8 because the tail
20 of the 9 came up really high right here.

21 Q All right.

22 A So I do believe this is actually a 9. It was typed
23 on my report as an 8.

24 Q Okay, but we know we're dealing with a -- that's the
25 same firearm?

1 A Yes.

2 Q It's just that last number was just transposed as
3 far as an 8 versus a 9?

4 A Correct.

5 Q All right. And you said that this one was
6 functional?

7 A Yes. This firearm, I did test fire it, and I did
8 find it to be operational, and I did not note any
9 malfunctions.

10 Q All right. So after test firing all three of those
11 and getting some known samples, did you compare it to the
12 various pieces of evidence that had been impounded,
13 specifically cartridge cases, and bullets, and bullet
14 fragments?

15 A Yes.

16 Q And did you come to some conclusions?

17 A Yes, I did.

18 Q So specifically, looking at your first conclusion
19 referring to Lab Item 1, which would be the headstamped C .22
20 Long/Long Rifle cartridge case, correct?

21 A Yes.

22 Q And what did you find out about that?

23 A For that cartridge case, I identified it as having
24 been fired by the Taurus pistol, which was my Lab Item 11.
25 That was the PT22 pistol.

1 Q All right. So the cartridge case that had headstamp
2 C impounded by Ebony Stephens was fired by the .22 Taurus?

3 A I identified it as so, yes.

4 Q Okay. And is that based on those unique imprints
5 that are done going -- or when it's fired?

6 A Yeah, it's based on my microscopic comparison, my
7 observation of those -- those individual microscopic marks,
8 and I'm looking for sufficient agreement in the number, in the
9 quantity, the quality of those marks for me to make that
10 determination that it is an identification.

11 Q Okay. Then, shifting away from the .22 caliber
12 cartridge case, the three .45 caliber cartridge cases all
13 impounded by Ebony Stephens, did you come to a conclusion on
14 those?

15 A Yes.

16 Q What did you conclude?

17 A I identified the three cartridge cases, my Lab Items
18 2 through 4, as having been fired by the submitted Star
19 pistol, which was my Lab Item 20.

20 Q Okay. So the -- all three of those .45 caliber
21 cartridge cases impounded by Ebony Stephens all came back to
22 having been fired by that particular Star .45 firearm?

23 A I identified them as so, yes.

24 Q Okay. And then, as far as Lab Items 17, which
25 corresponds to one bullet impounded by Ebony Stephens, and

1 your Lab Item 24, which corresponds to one bullet impounded by
2 Crime Scene Analyst Jeffrey Scott with P number 9618, what did
3 you conclude?

4 A The two bullets, those two Lab Items 17 and 24, I
5 identified those as having been fired also by the submitted
6 Star pistol.

7 Q Okay, so that same firearm we just spoke of a moment
8 ago?

9 A Yes.

10 Q Then your Lab Item 23, which would correspond to a
11 bullet recovered by P number 9618, Jeffrey Scoot, what could
12 you determine based on that bullet?

13 A So that particular bullet, it did share similar
14 general riffling characteristics with the Taurus pistol, my
15 Lab Item 11, the PT22. However, there was some damage to this
16 bullet, and that caused -- there was a lack of microscopic
17 marks due to that damage. And because of that, I could not
18 make an identification to or an elimination from that
19 particular pistol.

20 Q Okay. However, sometimes, are you able to make an
21 elimination?

22 A Yes.

23 Q In this case, you were not able to eliminate or
24 identify?

25 A That's correct.

1 Q Okay. And then, the last items, the metal
2 fragments, were you able to do anything with those?

3 A No. The metal fragments had no riffling
4 impressions, and were therefore of no value for microscopic
5 comparisons.

6 Q All right. Now, when you test fire a firearm into
7 the tank of water, is there damage to that bullet?

8 A There's usually not. Some bullets, if we have a
9 real high-speed -- like a high-speed rifle, like a .223 rifle,
10 some of those bullets might break apart when they hit that
11 water in the tank.

12 But normally for a handgun, if we use a full metal
13 jacket type bullet or a jacketed hollow point, when it goes
14 into the water, water is denser than air, so it goes into that
15 water, and it just flows down, and then just falls down onto
16 the bottom of the water tank when it loses its velocity. So,
17 like I said earlier, it's basically a pristine sample that
18 came from that gun.

19 Q Okay. In your experience, have you seen bullets
20 that have passed through objects like bodies?

21 A Yes.

22 Q Have you reviewed pieces of bullets or fragments of
23 bullets that have come from autopsies?

24 A Yes.

25 Q And in your experience, can the bullet traveling

1 through let's say a skull damage the bullet itself?

2 A It's possible, yes.

3 Q Okay. If the bullet is damaged to such a point, is
4 it impossible to make a comparison?

5 A Completely depends on what the condition of the
6 bullet is, and that would depend on the caliber, the type of
7 firearm it was fired from, how far away the shot was fired
8 from, you know, what velocity it was going when it impacted.
9 I've -- I've seen bullets in all kinds of different conditions
10 when I've been asked to examine them.

11 MR. PESCI: Okay, thank you very much. Pass the
12 witness.

13 THE WITNESS: Thank you.

14 THE COURT: Cross-examination?

15 MR. SANFT: Yes, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. SANFT:

18 Q Ms. Lester, can you determine who fires a gun or --

19 A I cannot, no.

20 Q Okay, and that's really not the scope of what you
21 do. You just want to determine whether or not a certain
22 firearm at some point causes a bullet to be fired, right?

23 A Whether or not a certain bullet was fired from a
24 particular firearm --

25 Q Yes.

1 A -- or a certain cartridge case, yes.

2 Q Yes, both of those things, right?

3 A Yes.

4 Q Okay. And with regards to your work that you do,

5 it's -- I'm guessing that's probably going to be under a

6 microscope, because you said it's microscopic in terms of what

7 you're looking for --

8 A Yes.

9 Q -- with regard to a known sample versus whatever it

10 is that you're examining comparatively, correct?

11 A Yes, that's done under a microscope.

12 Q Okay. And is that something that you take pictures

13 of to at some point show a jury what you're looking for in

14 terms of the grooves, or the microscopic details that you are

15 examining with your own eye through this microscope?

16 A Yes.

17 Q Okay. With regards to the examination of the

18 firearms that you've been asked to in this case, were

19 photographs of those things taken in terms of your

20 observations of each of those things?

21 A Yes.

22 Q Okay. In addition to that, are you aware of any

23 studies in the last ten years or so with regards to the

24 concern of false positives?

25 A Yes.

1 Q Okay. With regards to the -- let me ask you this.
2 The National Institute of Standards and Technology, are you
3 aware of what that is?

4 A The NIST?

5 Q Yes.

6 A Yes.

7 Q Are you certified at all through NIST?

8 A I am not.

9 Q Okay. And are you aware that NIST can perform the
10 study with regard to that specific issue of false positives in
11 terms of firearms and so forth?

12 A I am not aware of what specific study you're
13 referring to. I try to keep up and read the studies that are
14 out there. I know there are studies that have been done about
15 false positives, false negatives, et cetera, in firearms.

16 Q Okay. And would it be fair to say though that that
17 would be one of the things of concern that you would always
18 have as someone who potentially could come across a false
19 positive in your line of work?

20 A So I know in most of the studies that are done, the
21 errors where there's false positives on known samples are
22 usually just limited to a particular scientist or a particular
23 laboratory. In our laboratory, we have layers of precautions
24 that we use to prevent things like false positives, false
25 identifications, false eliminations, and that is all of our

1 identifications are independently verified by a second trained
2 examiner, and all of our case files go through a technical
3 review process and an administrative review process.

4 Q Okay, so --

5 A And that's -- oh, sorry.

6 Q I'm sorry, go ahead. I didn't mean to interrupt
7 you.

8 A No, I was going to -- that's -- since we're an
9 accredited lab, those are standards that we have to adhere to.

10 Q All right. And when you say you're accredited, my
11 guess is, at some point, you have to renew that accreditation
12 with whatever the institute is that you've been accredited by?

13 A Yeah, the accrediting body. We do an internal
14 re-accreditation audit every year, and I think the body comes
15 in -- I think it's every three years and renews our
16 accreditation.

17 Q All right. And with regards to that accreditation,
18 do you know who it's through?

19 A It's through ANAB.

20 Q What is that? We don't know.

21 A Yeah, so I believe it's the ANSI National
22 Accrediting body. I don't want to say the wrong thing, so.

23 Q That's --

24 A It's quite a long acronym.

25 Q That's all right. But as far as you know, are there

1 multiple accreditation type of organizations out there besides
2 that one ANSI, or is ANSI the national standard?

3 A For forensic labs, I'm not sure if there is another
4 one other than that one. I don't actually know.

5 Q Okay. So for instance, if I'm quoting to and
6 referring you to the National Institute of Standards and
7 Technology, that's not an accreditation?

8 A I don't believe that NIST accredits forensic
9 laboratories.

10 Q Okay. So, and once again, you're not an expert with
11 that, you don't know for sure, you're just saying that's what
12 you believe, right?

13 A I -- that's correct, yeah.

14 Q Okay. Finally, in terms of the item that you
15 observed in this case, which was the spent bullet, the one
16 that you said that you saw had some markings on it but you
17 couldn't determine at this particular point where that bullet
18 was fired from -- the particular gun that I'm concerned with,
19 which is the Taurus P2 -- or PT22, the markings that are on
20 there --

21 A Yeah. Sorry, was there a question?

22 Q Yeah, well, I'm getting to it.

23 A Oh, sorry.

24 Q I'm just winding it up here.

25 A Okay.

1 Q In terms of that particular bullet, you took
2 pictures of it, right?

3 A Yes.

4 Q All right. And once again, that would have been
5 part of your report that you used that you've talked about
6 here today in court?

7 A So it's not part of my report; it's actually part of
8 my notes --

9 Q I see.

10 A -- in my case file.

11 Q I see. So the notes that you have in front -- or
12 the report you have in front of you is just a written report,
13 but with regards to what you actually observed, that would
14 have been part of your case file and your notes during the
15 course of your work?

16 A Yes, and I have that all in front of me as well.

17 Q Okay.

18 MR. SANFT: And Your Honor, may I approach?

19 THE COURT: You may.

20 BY MR. SANFT:

21 Q Can I see that?

22 A The picture of that particular bullet?

23 Q Yeah.

24 A Sure. Getting there. Okay, that's this one right
25 here.

1 Q Okay.

2 MR. SANFT: And I don't know how to do this.

3 (Pause in the proceedings)

4 BY MR. SANFT:

5 Q Is this a copy?

6 A Yes, you may have that one.

7 Q Okay.

8 A Yeah.

9 Q Well, thank you.

10 A You're welcome.

11 MR. SANFT: Your Honor, I do have a document here.

12 I'm going to show defense counsel as well.

13 THE COURT: Sure.

14 MR. SANFT: I'm probably going to propose this as a

15 defense exhibit to be admitted at this point.

16 MR. PESCI: No objection from the State.

17 THE COURT: Sure. Go ahead and show Mr. Ruggeroli.

18 So it will be marked as B1.

19 MR. SANFT: B1?

20 THE COURT: Any objection?

21 MR. RUGGEROLI: No, Your Honor.

22 THE COURT: Okay, and there's no objection from the

23 State. It's admitted.

24 (Defendant Robertson's Exhibit B1 is admitted)

25 MR. SANFT: Thank you, Your Honor. May I publish?

1 THE CLERK: Can I please mark it so it doesn't get
2 lost? Thanks.

3 BY MR. SANFT:

4 Q Showing you what's been marked and admitted as
5 Defense Exhibit B1. Ma'am, the item that we are talking about
6 is specifically this item number 23; is that correct?

7 A Just let me make sure 100 percent. I do believe so.
8 Yes. So, Item 23, it's this one here. So this is the one
9 that I testified to that I could not identify or eliminate it
10 as having been fired from the submitted Taurus pistol.

11 Q Okay.

12 MR. RUGGEROLI: Judge, could we just clarify the
13 Taurus .22, please?

14 THE WITNESS: Oh, yeah. The Taurus .22. The PT22.

15 MR. SANFT: All right, thank you.

16 BY MR. SANFT:

17 Q And in terms -- did you have any other photographs
18 that helped you with that determination outside of this
19 photograph that we're showing the jury identifying Item 23?

20 A I don't believe so.

21 MR. SANFT: Okay. I have no further questions, Your
22 Honor.

23 THE COURT: Thank you. Mr. Ruggeroli?

24 MR. RUGGEROLI: Thank you, Your Honor.

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CROSS-EXAMINATION

BY MR. RUGGEROLI:

Q Good afternoon, Ms. Lester.

A Good afternoon.

Q I'm going to try and simplify my portion.

A All right.

Q You were shown a number of pictures. The -- this is State's 250. That's that Taurus .22, correct?

A The one that I've been referring to, yes.

Q Yes. Okay, and the .22 is a small caliber firearm, correct?

A Yes.

Q The size of the bullet is quite small in comparison to other types of -- other calibers of firearms, correct?

A So what a .22 is, it refers to the diameter of the base of that bullet. So it's actually .22 inches, so it's less than one quarter inch in diameter. I'm -- yeah, one quarter inch. Less than .25.

Q Thank you.

A Yeah.

Q I'm also showing you State's 227. That's the Star?

A Yes.

Q .45?

A Yes.

Q Similar-type designation. Can you give the jury a

1 little information --

2 A Um-hum.

3 Q -- about how that's designated as .45?

4 A Um-hum. Same thing that I just said. The .45

5 refers to .45, which is the diameter of the base of that

6 bullet. So that bullet is .45 inches across the base, so it's

7 more than double what the .22 is.

8 Q Okay. Now I'm going to show you the State's 295.

9 Now, that's also a .45 caliber, correct?

10 A Yes.

11 Q But I only represent Mr. Wheeler, okay? And so I'm

12 concerned with this one. This is the Taurus PT145 Pro

13 Millennium .45 caliber pistol, correct?

14 A Yes.

15 Q You determined, after going through all the things

16 that you were questioned about previously, that in comparison

17 and reviewing all the evidence that you had, none of the

18 bullets or cartridge cases were fired from this particular

19 firearm?

20 A None of the bullets or cartridge cases that I

21 examined under this particular case did I identify as having

22 been fired from that firearm. That is correct.

23 Q Thank you.

24 A You're welcome.

25 MR. RUGGEROLI: I have nothing further.

1 THE COURT: Thank you. Any redirect?

2 MR. PESCI: Yes.

3 REDIRECT EXAMINATION

4 BY MR. PESCI:

5 Q For purposes of the swab that you took on the .22,
6 State's 250, the .22 caliber Taurus, is your P number 13771?

7 A Yes, it is.

8 Q Okay. So for reference purposes, for a DNA report
9 down the road, if it's referencing your P number, that's the
10 number there?

11 A Yes. It would be my P number, my package number,
12 whatever that was -- it was probably 1 -- and then my item
13 numbers of the swab from the gun and from the magazine.

14 Q All right. So the item that you swabbed, State's
15 250, is the Taurus .22, correct?

16 A And the magazine.

17 Q I'm sorry, and the magazine.

18 A Yes.

19 Q You did not swab the .45 Star or the .45 Taurus
20 Millennium?

21 A I did not.

22 Q Okay. And then, defense counsel asked you some
23 questions about what's now B1, and specifically, focusing in
24 on this bullet here. Do you remember those questions?

25 A I do.

1 Q All right. Now, if I've understood your testimony
2 earlier, you said that that bullet actually did share similar
3 general riffling characteristics with --

4 A With -- yes.

5 Q -- the Taurus pistol, Item 11. The Taurus pistol,
6 Item 11 is the Taurus .22, correct?

7 A Yes.

8 Q All right. So there are some similarities; you just
9 cannot identify it as coming from there?

10 A Yes. Remember when I talked about the riffling? So
11 when the manufacturer cuts that riffling into the barrel, it
12 puts a certain number of grooves in there, so the manufacturer
13 might put five of them or six of them in there. Those grooves
14 might be spiraled to the right or spiraled to the left. Those
15 things are called general riffling characteristics. Also, the
16 width of those grooves that are cut into there, those are
17 general riffling characteristics.

18 Those are class characteristics, things that can
19 like restrict something down to a certain group, but not
20 individualize it. In order to individualize it, I need those
21 small microscopic individual characteristics. So for this
22 particular bullet, it did share those general riffling
23 characteristics. The number of land impressions, direction of
24 twist, and width of those impressions shared that with that
25 Taurus pistol -- the Taurus .22 pistol.

1 Q What do you mean, the number of land impressions?
2 What is that?

3 A Um-hum. So, like I talked about earlier with the
4 manufacturer cutting those spiral grooves into that barrel, as
5 I just said, the manufacturer chooses how many of those to put
6 in there, so it might be -- there might only be three. You
7 know, I said it's like stripes on a candy cane. So there
8 might only be three, or there might be four, or five, or six.
9 Just -- it's just based upon the manufacturer's choice.

10 So here, the number of grooves -- and then,
11 correspondingly, in between those grooves, like I said before,
12 is what's called a land. So the number of grooves, the number
13 of lands on this particular bullet was the same number of land
14 and grooves that is in the Taurus .22 caliber pistol.

15 Q And then you talked something about directionality
16 of those lands and grooves?

17 A Um-hum.

18 Q What's that?

19 A So remember how I said when the bullet goes down the
20 barrel, it has as spin imparted upon it; that's to give it
21 that stability? It's kind of like when a football player
22 throws a football through the air. You know, if I throw it,
23 it's going to go like -- go, you know, off-center; but if a
24 football player puts a spin on it, it gives it stability as it
25 flies through the air.

1 So the manufacturer, as it's imparting those grooves
2 in there, it can twist to the right or twist to the left.
3 It's just based on manufacturer's preference. It doesn't
4 matter if it's twisting to the -- you know, clockwise or
5 counter-clockwise; that's just based on a manufacturer's
6 preference. So here in this particular case, that twist that
7 was imparted upon that bullet also was the same as the twist
8 that was exhibited in the barrel of the Taurus .22 pistol.

9 Q So those are all similar?

10 A Yes, that's correct.

11 Q But you did not make an identification?

12 A I did not.

13 Q But you also said that you could not eliminate it?

14 A Yes, that's correct.

15 Q All right. So, being as you were asked questions
16 about false positives, you didn't make a positive on that
17 particular item?

18 A I did not.

19 Q All right. And you talked about layers of
20 precaution, and explain that to me again. You have --

21 A Um-hum.

22 Q What are those layers of precaution that you have in
23 your lab?

24 A So anytime that an analyst does a microscopic
25 comparison, like I said, an individual qualified analyst, a

1 second analyst, does have to verify that. So if I have my
2 microscope and I'm doing a comparison, I have a test fired
3 bullet on one side, I have an evidence bullet on the other
4 side, I do my comparison, take my photographs, make my
5 decision as to whether or not it's an identification, an
6 elimination, or an inconclusive, then I have to take that
7 evidence and give it to another qualified analyst.

8 They do that same microscopic examination. They do
9 it independently and they make their own independent
10 conclusion, and that is to help prevent what was alluded to
11 earlier with false positives or false negatives. It's a
12 second independent examination and independent conclusion.

13 Q That's Layer 1?

14 A That's Layer 1, yes.

15 Q What's the next layer?

16 A So the next layer is what I alluded to earlier,
17 which is a technical review. So a technical review is where
18 your entire case file is reviewed by a second qualified
19 analyst. They are looking at everything that the first
20 analyst did, making sure that you follow all the technical
21 procedures correctly from our technical manual, that you're
22 following the accreditation procedures, and that you
23 basically, you know, did your case following our correct
24 procedures.

25 They look and see what was requested in the case,

1 make sure you've performed all of the examinations, and they
2 give you suggestions; if you've missed anything, look out for
3 anything, and just double-check what you did.

4 Q That's Layer number 2?

5 A That's correct.

6 Q You had a Layer number 3?

7 A Yeah, Layer number 3 is an administrative review.

8 So administrative review is, after all that's done, that
9 review is for accuracy for things such as typos, numbers,
10 letters, page numbers, things like that. However, that's also
11 done by someone who is a qualified analyst, so it's kind of
12 impossible to do that review without looking at everything
13 technically as well.

14 Q And then, the lab's accredited?

15 A Yes, that's correct.

16 Q That's another layer of protection, correct?

17 A Yes.

18 MR. PESCI: Thank you.

19 THE COURT: Any recross?

20 MR. SANFT: Yes, Your Honor.

21 RECROSS-EXAMINATION

22 BY MR. SANFT:

23 Q So I want to make sure we're clear. Could you take
24 a look at the -- when we talk about riffling, we're talking
25 about the inside of the barrel, right?

1 A Yes.

2 Q Is riffling specific or unique to a manufacturer?

3 Meaning, would a Glock manufacturer have certain riffling

4 that's different from, say, in this case, the Taurus versus a

5 Smith and Wesson, for instance?

6 A So a Glock does have different riffling than a

7 Taurus, yes.

8 Q Okay. So you could take a look inside, say, just --

9 if you were tested and shown the inside of a barrel, you could

10 say, oh, that's a Glock riffling versus this is a Smith and

11 Wesson or some other manufacturer?

12 A So --

13 Q Is that what you're telling us?

14 A I usually don't observe that from looking down the

15 barrel. I would do a test fire, and then I would observe it

16 on the test fired bullet.

17 Q Okay. So -- okay, let's make it that way then.

18 Just by looking at a bullet that's been fired in the water,

19 and you pick it up, that's a pristine sample --

20 A Um-hum.

21 Q -- you would be able to determine the manufacturer

22 of the riffling of the barrel that it came shooting out of?

23 A So it's a little bit of a long answer.

24 Q Yeah.

25 A So what we actually do is we look under the

1 microscope, look at those number of lands and grooves that I
2 talked about, the direction of twist, and we also measure the
3 width of those land impressions and those groove impressions
4 on that bullet.

5 Then we can put that information into a database,
6 it's an FBI database, and that can give you a list of possible
7 manufacturers that make firearms with those similar riffling
8 characteristics so that we can provide a list of possible
9 manufacturers that make guns that could have fired that
10 bullet.

11 Q So there's not a unique fingerprint for this
12 riffling; it could be a number of different manufacturers that
13 produce that same sort of riffling distance or whatever the
14 case is, right?

15 A Right. So that's why I said it's the general
16 riffling characteristics, and I said those are class
17 characteristics, not those individual characteristics. So if
18 this was six land and grooves, and a right-handed twist, and
19 you know, whatever the width measurement was, there may be
20 multiple manufacturers that make guns that are six land and
21 grooves, right-handed twist, with those similar measurements,
22 yes.

23 Q Okay. So going back again to Defense Exhibit B1,
24 Item number 23 that we're showing the jury at this particular
25 point, fair to say that it could have come from a whole group

1 of potential manufacturers out there; you just don't know?

2 A Ones that share those same general riffling
3 characteristics, yes.

4 Q Right.

5 A Um-hum.

6 MR. SANFT: Okay, no further questions.

7 THE COURT: Thank you. Any recross?

8 MR. RUGGEROLI: Just one point of clarification for
9 that same exhibit number and that item number.

10 THE COURT: Are you talking about B1?

11 MR. RUGGEROLI: Yes.

12 THE COURT: Okay.

13 RECCROSS-EXAMINATION

14 BY MR. RUGGEROLI:

15 Q This Item 23, your testimony is that's fired from a
16 .22 caliber?

17 A It's consistent with .22 caliber, yes.

18 Q All right. Silly question, but a .45 caliber
19 firearm could not fire a .22 caliber cartridge case?

20 A Not without an adapter or some other type of
21 modification, no.

22 MR. RUGGEROLI: Thank you. Nothing further.

23 THE COURT: Okay. Anything else for this witness?

24 MR. PESCI: No, thank you.

25 THE COURT: Okay. Thank you very much for your

1 testimony here today. You may step down --

2 THE WITNESS: Thank you.

3 THE COURT: -- and you are excused. Are -- did we
4 get through?

5 MR. PESCI: We do have another one.

6 THE COURT: Sure, call your next witness.

7 MR. PESCI: State calls Adrian Sandoval.

8 THE MARSHAL: If you'll please remain standing,
9 raise your right hand, and face the Clerk.

10 HECTOR ADRIAN SANDOVAL, STATE'S WITNESS, SWORN

11 THE CLERK: You may be seated. Please state and
12 spell your first and last name for the record.

13 THE WITNESS: Yes. First name is Hector,
14 H-e-c-t-o-r. Last name is Sandoval, S-a-n-d-o-v-a-l.

15 DIRECT EXAMINATION

16 BY MR. PESCI:

17 Q Sir, do you go by something other than Hector?

18 A Adrian.

19 Q Okay. Sir, I want to direct your attention back to
20 August of 2017. Where did you work by then?

21 A I was assigned to the Major Violators Section in --
22 for LVMPD.

23 Q And then, did you work with dogs?

24 A Yes, I did. I was a K-9 handler and a trainer.

25 Q Okay, and tell us a little bit about that, what you

1 would do with a K-9.

2 A For about nine years, I was actually a narcotics
3 detective dog handler. About three years before the end of my
4 career, I became the trainer for the Narcotics Section. And
5 the last two years, we began a pilot program where we put a
6 firearms detection dog into service, so I put together the
7 protocol and the training program for that.

8 Q And do you know a dog named Trigger?

9 A Yes.

10 Q Did you work with Trigger back in August of 2017?

11 A Yes.

12 Q What type of dog was Trigger?

13 A Trigger was a Springador, and she was a firearms
14 detection dog.

15 Q Okay, so what does that mean? How could she be a
16 firearms detection dog?

17 A Well, what Trigger was trained to find is the odor
18 of the burnt nitrates that occurs when a firearm is
19 discharged, so nitroglycerin, nitrocellulose, the burnt
20 residue left over after a firearm is fired.

21 Q Were you a part of Trigger's training?

22 A Yes.

23 Q Okay. And were you asked by other detectives to
24 respond to a 919 Bagpipe address back on August the 15th of
25 2017?

1 A Yes, I was.

2 Q Showing you State's Exhibit 215, do you have a
3 recollection of responding out to this scene?

4 A Yes.

5 Q Okay. Now, this was pursuant to a search warrant?

6 A Correct.

7 Q Okay. Now, was it the policy or was it -- I should
8 say -- not policy. Often, would SWAT be the first individuals
9 from the Metropolitan Police Department to go inside of a
10 house?

11 A That's correct.

12 Q And did SWAT go in first?

13 A Yes.

14 Q And then, after SWAT, did you go in with Trigger?

15 A Typically, I would -- I would walk through to make
16 sure there was nothing -- without Trigger, make sure there was
17 nothing out in the open that she could get into and injure
18 herself, and at that point, then I would bring Trigger in.

19 Q Okay. And then, looking at State's 216, did you
20 make your way towards the front door of this particular
21 residence?

22 A Yes.

23 Q And State's 217, did you walk around and go
24 throughout the residence with Trigger?

25 A Yes.

1 Q Specifically, 218, did you eventually make your way
2 to some bedrooms?

3 A Correct. If I remember correctly, I actually
4 started my deployment of Trigger at the second floor of the
5 house.

6 Q Okay. And then, looking at State's 219, were there
7 two different bedrooms that you entered?

8 A That's correct.

9 Q And State's 220. Did you see anything that Trigger
10 -- or did Trigger alert on anything?

11 A Yes, sir. There's -- in this picture, on the
12 mattress, there's a pink backpack, a smaller one.

13 Q 221, is that a better picture?

14 A Yes.

15 Q Okay. And how does Trigger alert or point that out
16 to you?

17 A Trigger puts her nose to source. So basically,
18 she'll -- you know, she'll sniff the area. Once she locates
19 the odor she was looking for, she'll place her nose as close
20 to the item as she can get it to, and she stands stationary.

21 Q And showing you State's 22, is that a close-up of
22 the backpack that Trigger alerted on?

23 A That appears to be to me, yes.

24 Q Okay, and then did you open that backpack?

25 A No.

1 Q All right. Did you then inform other officers and
2 detectives, hey, Trigger alerted on this particular backpack?

3 A Yes. I normally would complete my sniff of the
4 house, and when I leave, I'd contacted whatever detective was
5 in charge. In this particular one, I believe I spoke to
6 Sergeant Luzignot (phonetic) from Homicide to let him know the
7 results of my deployment.

8 Q Okay, and then those detectives then continue on
9 with their search?

10 A That's correct.

11 MR. PESCI: Pass the witness.

12 THE COURT: Cross-examination?

13 MR. SANFT: Yes, Your Honor, one question.

14 CROSS-EXAMINATION

15 BY MR. SANFT:

16 Q Trigger's not here today to be subject to his
17 cross-examination?

18 A Unfortunately, no.

19 Q All right. Just real quick, with regard to how
20 Trigger is able to detect --

21 A Yes.

22 Q -- you said something about the nitrates. How does
23 that work?

24 A So typically, most modern gun powders have one or
25 two components, nitrocellulose and nitroglycerin, whether

1 they're single-base or double-base. Rifle rounds as opposed
2 to handgun rounds -- handgun rounds would be double-base;
3 usually, rifle rounds are single-base. So obviously, when a
4 firearm's discharged, the powder burns, and what's left over
5 is the burnt odor of those two components. So that's what she
6 was trained to find as opposed to let's say the metal that's
7 in the gun itself.

8 Q I see. So if a gun has never been fired, for
9 instance, would that be something that would hamper her
10 ability to locate it?

11 A It would depend on the time frame. Typically, every
12 gun is fired at the manufacturer. Usually, if you buy a gun,
13 you get some -- there's usually some spent casings with the
14 gun that shows that the gun was fired and it worked. I have
15 had guns that were only fired by the manufacturer, maybe I
16 obtained them two or three months later, that she could still
17 alert on, depending on how well they were hidden. If we're
18 talking in terms of years, probably not.

19 MR. SANFT: Okay. I have no further questions.
20 Thank you.

21 MR. RUGGEROLI: No questions, Your Honor. Thank
22 you.

23 THE COURT: Okay, anything else?

24 MR. PESCI: No.

25 THE COURT: Okay. Thank you very much --

1 THE WITNESS: Thank you.

2 THE COURT: -- for your testimony here today. You
3 may step down, and you are excused from your subpoena.

4 THE WITNESS: Thank you.

5 THE COURT: You got through them all?

6 MR. PESCI: We don't have any more for today, Your
7 Honor.

8 THE COURT: Okay.

9 MR. PESCI: Sorry.

10 THE COURT: Can I just have the attorneys approach
11 for a moment?

12 (Bench conference)

13 THE COURT: I think it's just Detective Dosch. So
14 you just have the detective left?

15 MR. PESCI: Yes.

16 THE COURT: So he's going to be a long witness?

17 MR. PESCI: He'll be long, not outrageously long
18 because we're not introducing statements, so that's not going
19 to be coming in.

20 THE COURT: Okay. Well, if we start tomorrow at
21 10:30, we'll probably have the detective done by lunch. So
22 you guys have to, if you're going to call witnesses, be ready
23 to call witnesses.

24 MR. RUGGEROLI: And it's just --

25 THE COURT: Okay?

1 MR. RUGGEROLI: -- one, Detective Dosch?

2 MR. PESCI: That's who we're planning on, yeah,

3 Detective Dosch.

4 THE COURT: And that's your final witness?

5 MR. PESCI: Unless something changes over the night,

6 but we expect that Dosch will be able to do the things that we

7 want to go over.

8 THE COURT: Okay.

9 MR. SANFT: Can we advise our clients tonight about

10 the right to testify so they can think about it over the night

11 before tomorrow?

12 THE COURT: Sure, I'm happy to do that.

13 MR. SANFT: Thank you.

14 MR. PESCI: What time are we starting tomorrow?

15 THE COURT: 10:30.

16 MR. PESCI: Okay.

17 THE COURT: Okay, thank you.

18 (End of bench conference)

19 THE COURT: Okay. At this time, ladies and

20 gentlemen, we are going to conclude for the evening. We're

21 going to start tomorrow morning at 10:30.

22 During this recess, you're admonished not to talk or

23 converse amongst yourselves or with anyone else on any subject

24 connected with this trial, or read, watch, or listen to any

25 report of or commentary on the trial, or any person connected

1 with this trial, by any medium of information, including,
2 without limitation, newspapers, television, the internet, or
3 radio, or form or express any opinion on any subject connected
4 with this trial until the case is finally submitted to you.

5 Have a good night. We'll see you tomorrow morning.

6 THE MARSHAL: Thank you. All rise for the exiting
7 jury, please. Jurors.

8 (Outside the presence of the jurors at 4:55 p.m.)

9 THE COURT: Okay. The record will reflect that the
10 hearing is taking place outside the presence of the jury
11 panel.

12 Mr. Robertson and Mr. Wheeler -- Mr. Robertson and
13 Mr. Wheeler, your attorneys have asked me to advise you of
14 your right to testify. I will advise you, you can have
15 overnight, but you don't have to tell me whether you're going
16 to testify or not until tomorrow.

17 So, Mr. Robertson and Mr. Wheeler, you understand,
18 under the Constitution of the United States and the
19 Constitution of the State of Nevada, you cannot be compelled
20 to testify in this case? Do you understand that, Mr.
21 Robertson?

22 DEFENDANT ROBERTSON: Yes, I understand.

23 THE COURT: Mr. Wheeler?

24 DEFENDANT WHEELER: Yes, ma'am, I do.

25 THE COURT: Okay. You may at your own request give

1 up this right and take the witness stand and testify. If you
2 do, you'll be subject to cross-examination by the deputy
3 district attorney, and anything that you may say, be it on
4 direct or cross-examination, will be the subject of fair
5 comment when the deputy district attorney speaks to the jury
6 in his final argument. Do you understand that, Mr. Robertson?

7 DEFENDANT ROBERTSON: Yes, I do.

8 THE COURT: And Mr. Wheeler?

9 DEFENDANT WHEELER: Yes, ma'am, I do.

10 THE COURT: Okay. If you choose not to testify, I
11 will not permit the deputy district attorney to make any
12 comments to the jury because you have chosen not to testify.
13 Do you understand that, Mr. Robertson?

14 DEFENDANT ROBERTSON: Yes.

15 THE COURT: And Mr. Wheeler?

16 DEFENDANT WHEELER: Yes, I do.

17 THE COURT: Okay. And if you elect not to testify,
18 I will instruct the jury, but only if your attorneys
19 specifically request, as follows: "The law does not compel a
20 defendant in a criminal case to take the stand and testify,
21 and no presumption may be raised and no inference of any kind
22 may be drawn from the failure of a defendant to testify." Do
23 you understand these rights so far, Mr. Robertson?

24 DEFENDANT ROBERTSON: Yes, I understand.

25 THE COURT: And Mr. Wheeler?

1 DEFENDANT WHEELER: Yes, ma'am, I do.

2 THE COURT: Okay. And you are further advised that
3 if you have a felony conviction, and more than ten years has
4 not elapsed from the date that you've been convicted or
5 discharged from prison, parole, or probation, whichever is
6 later, and the defense has not sought to preclude that from
7 coming before the jury, and you elect to take the stand and
8 testify, the deputy district attorney, in the presence of the
9 jury, will be permitted to ask you the following: have you
10 been convicted of a felony, what was the felony, when did it
11 happen; however, no details may be gone into. Do you
12 understand that, Mr. Robertson?

13 DEFENDANT ROBERTSON: Yes.

14 THE COURT: And Mr. Wheeler?

15 DEFENDANT WHEELER: Yes.

16 THE COURT: Okay. And if you have any questions
17 about that, Mr. Ruggeroli can answer those, or I'm happy to
18 answer any of your questions.

19 Okay. Now, the decision as to whether you should
20 testify or not obviously should be made after consultation and
21 discussion with your lawyers, but whatever your lawyers say
22 and any advice you get, I just want to make sure you
23 understand, Mr. Robertson, that it is your decision and your
24 decision alone as to whether to testify. Do you understand
25 that?

1 DEFENDANT ROBERTSON: Yes, I understand.

2 THE COURT: And Mr. Wheeler, you understand that?

3 DEFENDANT WHEELER: Yes, I do.

4 THE COURT: Okay. And tomorrow, it's my

5 understanding the State has one more witness, and then you

6 will have heard all of the evidence that's coming in against

7 you. And so, at that time, Mr. Robertson and Mr. Wheeler, I

8 will ask you if you're going to testify or not.

9 DEFENDANT ROBERTSON: Okay.

10 THE COURT: And if you have any questions, I'm happy

11 to ask them either today or tomorrow -- answer them.

12 DEFENDANT ROBERTSON: Okay.

13 DEFENDANT WHEELER: Yes, ma'am.

14 THE COURT: Do you have any questions?

15 DEFENDANT ROBERTSON: No, I don't.

16 THE COURT: Mr. Wheeler?

17 DEFENDANT WHEELER: No, I don't.

18 THE COURT: Okay.

19 MR. SANFT: And Your Honor, just for the record as

20 well with regard to my client's criminal history, what the

21 State could comment on if --

22 THE COURT: Okay.

23 MR. SANFT: -- he was thinking about testifying, in

24 speaking with the State, I don't recall there being a criminal

25 history.

1 DEFENDANT ROBERTSON: No, I've never been arrested.
2 MR. SANFT: Okay.
3 MR. PESCI: I don't recall any --
4 THE COURT: Okay.
5 MR. PESCI: -- prior felony convictions.
6 THE COURT: For either?
7 MR. PESCI: I don't believe for either.
8 THE COURT: Okay, so --
9 MR. PESCI: But I'll double-check and --
10 MR. SANFT: Yeah.
11 THE COURT: The district attorney has indicated that
12 you would not be subject to cross-examination about any prior
13 felonies. You understand that, Mr. Robertson?
14 DEFENDANT ROBERTSON: Yes, yes, I understand.
15 THE COURT: And Mr. Wheeler?
16 DEFENDANT WHEELER: Yes, ma'am, I do.
17 THE COURT: Okay, thank you very much.
18 MR. PESCI: So, Judge, as far as scheduling
19 tomorrow, if I've understood correctly, we will come in at
20 10:30, we'll rest, and then defense is instructed if they have
21 any witnesses, to have them prepared for tomorrow, correct?
22 THE COURT: Yes.
23 MR. PESCI: And in the spirit of what we've been
24 doing so far, will the defense tell us who they're going to
25 call? Because we've been telling them who we're calling.

1 THE COURT: Absolutely. I like --

2 MR. RUGGEROLI: Judge, I've subpoenaed one witness.

3 That did not include Mr. Mason, the jogger. So, Marcell

4 Solomon is the one that I intend to call, and we would have

5 him here. I'm not sure if you'd like him here before lunch or

6 after, but --

7 THE COURT: How long do you think the detective will

8 last?

9 MR. PESCI: I don't know if he'll go all the way

10 until noon.

11 THE COURT: Okay.

12 MR. PESCI: So I would say probably have someone

13 here by 11:00.

14 THE COURT: By 11:00?

15 MR. PESCI: Just to be safe.

16 THE COURT: Okay.

17 MR. PESCI: What do you think? How long?

18 THE COURT: Well, it doesn't hurt --

19 MR. BROOKS: Yeah, sure.

20 THE COURT: -- if you have a witness here early,

21 right?

22 MR. PESCI: Yeah, right. And then, as far as

23 instructions, Your Honor, I've never received from the defense

24 any proposed instructions. So, you know, what we've sent over

25 the weekend was kind of a rudimentary beginning of it.

1 THE COURT: Okay.

2 MR. PESCI: And I still don't know. Like, I asked
3 them if they wanted voluntary; if they want self-defense.
4 I've been given nothing and I know nothing. All I've been --
5 all I've given is what we have put forth, which is first and
6 second.

7 THE COURT: Okay.

8 MR. SANFT: That's strategic, Your Honor.

9 THE COURT: What is strategic?

10 MR. PESCI: Not giving it. Sorry.

11 THE COURT: Not -- oh, okay. A little joke? Okay.

12 MR. SANFT: It's a little joke. I thought it was a
13 big joke, but it was a little joke. I will speak with Mr.
14 Ruggeroli. Because there's -- we have potentially separate
15 conflicting interests with regard to what my client should
16 have versus what Mr. Ruggeroli, I'll speak with Mr. Ruggeroli,
17 and whatever we propose, we'll give to Giancarlo.

18 MR. PESCI: So, Judge, we would ask though if we'd
19 get that tomorrow because we need to settle them tomorrow.

20 THE COURT: Sure. We'll need to settle instructions
21 tomorrow, so if you have any instructions you want to propose,
22 you need to --

23 MR. SANFT: We'll do it tonight.

24 THE COURT: -- submit them tomorrow.

25 MR. SANFT: Yeah. Okay.

1 THE COURT: Okay?

2 MR. SANFT: Yes, Your Honor.

3 THE COURT: All right.

4 MR. PESCI: We'll have some tweaks on ours, because

5 I was just going through it. There's not -- all of our

6 experts are females, so I need to switch that expert

7 instruction to "female."

8 THE COURT: Okay. All right, thank you.

9 MR. PESCI: Thank you.

10 MR. SANFT: Thank you, Your Honor.

11 (Court recessed at 5:01 P.M., until Wednesday,

12 February 19, 2020, at 10:43 A.M.)

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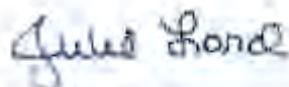
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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.

A handwritten signature in blue ink that reads "Julie Lord".

JULIE LORD, COURT TRANSCRIBER
VERBATIM DIGITAL REPORTING, LLC

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	)	CASE NO. C-17-328587-2
	)	CASE NO. C-17-328587-3
Plaintiff,)	
	)	DEPT. NO. XII
v.)	
)	
RAEKWON SETREY ROBERTSON,)	
a/k/a RAEKWON ROBERTSON,)	
and DAVONTAE AMARRI WHEELER,)	
)	
Defendants.)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, FEBRUARY 19, 2020

RECORDER'S TRANSCRIPT OF PROCEEDINGS:
JURY TRIAL - DAY 6

APPEARANCES:

FOR THE STATE:	GIANCARLO PESCI, ESQ. Chief Deputy District Attorney
	PARKER P. BROOKS, ESQ. Deputy District Attorney
FOR DEFENDANT ROBERTSON:	MICHAEL W. SANFT, ESQ.
FOR DEFENDANT WHEELER:	JAMES J. RUGGEROLI, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 19, 2020

2 (Case called at 10:43 A.M.)

3 (Outside the presence of the jurors)

4 THE MARSHAL: Please come to order. Court is now in
5 session.

6 THE COURT: Okay. The record will reflect that the
7 hearing is taking place outside the presence of the panel.
8 Mr. Ruggeroli?

9 MR. RUGGEROLI: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. RUGGEROLI: Judge, my client informed me this
12 morning that he has a migraine. I've provided him with a
13 glass of water, but I know that the jail has protocols that
14 they have to follow, and --

15 THE COURT: Okay, yeah. The transport officers -- I
16 was told for him to tell the transport officers, and that the
17 transport officers would call for relief.

18 MR. RUGGEROLI: Thank you, Judge.

19 THE COURT: I mean, I don't know -- I just talked to
20 Sandy Molina. She said that's what your policy was, so I
21 assume the transport officers will follow their policy. Okay?

22 MR. RUGGEROLI: Very good.

23 THE COURT: Anything else?

24 MR. SANFT: No, Your Honor.

25 THE COURT: Did you -- did everybody hear me?

1 THE CORRECTIONS OFFICER: Yeah, we weren't aware.
2 He didn't mention anything to us.

3 THE COURT: Okay. I mean, you got to tell the
4 transport officers.

5 THE CORRECTIONS OFFICER: And he's been sitting down
6 there, like, all morning.

7 DEFENDANT WHEELER: Yeah, I basically thought it
8 would be more of an issue, I would bring up to my lawyer and
9 to you more than the COs, because at the same time, I felt
10 like they seem -- it seemed like, in county, if you -- if it's
11 not a real medical reason, then they ain't going to call the
12 medical nurse, which I felt like we in trial, so that's a
13 medical reason. But I felt like it would just be blown over
14 if I just --

15 THE COURT: Okay.

16 DEFENDANT WHEELER: -- if I just --

17 THE COURT: Well, the only thing I can do is tell
18 the transport officers to do what they're supposed to do.

19 DEFENDANT WHEELER: All right.

20 THE COURT: Okay?

21 MR. RUGGEROLI: Thank you, Judge.

22 THE COURT: Anything else? We can bring in the jury
23 panel. I think we have them all here now.

24 THE MARSHAL: All rise for the entering jury,
25 please.

1 (Within the presence of the jurors at 10:47 a.m.)

2 THE COURT: Does the State stipulate to the presence

3 of the panel?

4 MR. PESCI: Yes, Your Honor.

5 THE COURT: Mr. Sanft?

6 MR. SANFT: Yes, Your Honor, we do.

7 THE COURT: Mr. Ruggeroli?

8 MR. RUGGEROLI: Yes, Your Honor.

9 THE COURT: Thank you. State may call their next

10 witness.

11 MR. BROOKS: Your Honor, the State calls Detective

12 Mitch Dosch.

13 THE MARSHAL: And Detective, if you'll please remain

14 standing, raise your right hand, and face the Clerk.

15 DETECTIVE MITCHELL DOSCH, STATE'S WITNESS, SWORN

16 THE CLERK: You may be seated.

17 THE WITNESS: Thank you.

18 THE CLERK: Please state and spell your first and

19 last name for the record.

20 THE WITNESS: My name is Mitchell, M-i-t-c-h-e-l-l.

21 Dosch, D-o-s-c-h.

22 DIRECT EXAMINATION

23 BY MR. BROOKS:

24 Q Detective, how are you employed?

25 A As a detective with the Las Vegas Metropolitan

1 Police Department, currently assigned to the Homicide Section.

2 Q And how long have you been so employed?

3 A With Las Vegas Metro, this March, it will be 17
4 years.

5 Q And how long with Homicide?

6 A Seven years.

7 Q So tell us a little bit about how Homicide's set up;
8 how the detectives on Homicide are set up as opposed to some
9 of the other units in Metro.

10 A The Homicide Section of the Las Vegas Metropolitan
11 Police Department is -- has 24 detectives broken into four
12 different squads, and then there's a sergeant for each one of
13 those squads. Within the squad of six, there are teams of
14 partnerships, and in which case, we work off of -- probably
15 the best way to describe it would be to use some baseball
16 parlance, where we work off of a rotation; basically, a
17 batting order.

18 So if Squad A is the next squad up for the next
19 homicide, then the team designated within that squad will take
20 that next murder or homicide investigation. After that team
21 takes the investigation, it would then drop to the bottom of
22 the order, and then the second team from Squad B, and that
23 repeats the process.

24 Q So were you working on August 8th, August 9th of
25 2017?

1 A Yes, I was.

2 Q And who was your partner at that time?

3 A Ryan Jaeger, J-a-e-g-e-r.

4 Q So at that point in time, were you guys up, for lack
5 of a better word?

6 A Yes. Following the baseball parlance, that we were
7 the up team, then there would be a team that's on-deck, and
8 in-the-hole.

9 Q Do you recall an incident that brings us here to
10 court today?

11 A I do.

12 Q Tell me a little bit about how you initially got
13 involved in this incident.

14 A It was the early morning hours of the 9th of August,
15 2017. We received a call-out from our then-supervisor asking
16 us to respond to 5536 West Dewey Drive to investigate the
17 shooting death of Gabriel Valenzuela.

18 Q And this shooting death, at that point in time, did
19 it have a Las Vegas Metropolitan Police Department event
20 number associated with it?

21 A It did.

22 Q And was that Event Number 170809-0029?

23 A Yes.

24 Q So did Metro used to have a good way of doing event
25 numbers that's since changed?

1 A I would agree with that statement.

2 Q Okay, tell me what the old way of doing -- when this
3 event number was generated.

4 A If you think of the anatomy of the event number that
5 we're dealing with in this case, these first six digits
6 represent the date. 17 would be the year, 08 would be the
7 month, August, and the 9th would be the day of that particular
8 month.

9 The last four digits constitute the amount of
10 activity generated in that 24-hour period of time by Las Vegas
11 Metropolitan Police Department officers, whether it's a
12 proactive or reactive response. But every time the officers
13 are doing something, that is the -- that generates a number:
14 1, 2, 3, 4, and then it concludes at whatever number for the
15 day.

16 Q So if it's the first call after midnight into 911,
17 what would the number be, the last four digits?

18 A 0029 in this particular case.

19 Q I -- okay. I was saying, like, in theory, if it was
20 the very first event that day, would it be 0001?

21 A Yes, it would.

22 Q So this event, you said it was 0029?

23 A Correct.

24 Q Approximately what time does the 911 call come out?

25 A 00:12 hours, which is 12 minutes after midnight.

1 Q Now, was there also initially another event number
2 for a brief period of time that had some association with this
3 case?

4 A There was.

5 Q And what was that, and why did that happen?

6 A So that call was 0027, and it occurred approximately
7 one minute before the 0029 event. So, in essence, there's a
8 0028 being conducted somewhere in Las Vegas Metropolitan
9 Police Department's jurisdiction.

10 Q Did you subsequently merge those two events?

11 A Yes, we became very aware of that first event.

12 Q Now, that first event that caused the 27 call, what
13 was that?

14 A That was a call to Las Vegas Metro regarding a
15 suspicious circumstance in that same general area.

16 Q And for lack of, I guess, a better term, do you
17 subsequently learn that was the jogger's wife?

18 A Yes.

19 Q And when you kind of were putting things together,
20 does everything get merged under that 29 event number?

21 A Yes. Typically, what we would do is we would revert
22 back to the first event; in this case, 0027. But because the
23 officers at the scene had generated so much activity on the
24 0029 event, it just made sense to keep that the event number
25 that we will use for purposes of this investigation.

1 MR. BROOKS: Your Honor, permission to publish
2 exhibits that have previously been admitted freely?

3 THE COURT: Sure, you may.

4 MR. BROOKS: Thank you.

5 BY MR. BROOKS:

6 Q So you mentioned this West Dewey address?

7 A Correct.

8 Q Do you eventually arrive there?

9 A I did.

10 Q I want to show you State's Exhibit 10. Could you
11 set the scene for us as what it looked like when you initially
12 arrived?

13 A So, 5536 West Dewey Drive is a two-story,
14 single-family residence. This particular photo is showing the
15 residence. And normally, what you have -- in this case, this
16 is an east-west street, Dewey is, so you'll have opposing
17 residences. You'll have houses on the south side that
18 typically face north, and conversely, you have houses on the
19 north side that face south.

20 In this particular setting, this residence is
21 rotated 90 degrees, so it's west-facing on -- I don't know
22 what the traffic engineers would refer to that little area
23 that's just off the street, but in my mind, it's similar to
24 like a cul-de-sac, a very small cul-de-sac.

25 Q Let me show you Exhibit 3 and see if that kind of

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON ROBERTSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 81400

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Michelle Leavitt, District Judge
District Court No. C-17-328587-2

APPELLANT'S APPENDIX
VOL. 7 OF 7

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 21st of October, 2020, a copy of the foregoing Appendix was served by electronic filing as follows:

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DATED this 21st of October, 2020.



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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 RE CROSS-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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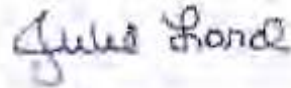
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* * * * *

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.

A handwritten signature in blue ink that reads "Julie Lord". The signature is written in a cursive style with a large initial "J".

JULIE LORD, TRANSCRIBER
VERBATIM DIGITAL REPORTING, LLC

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ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

FEB 19 2020

BY, HALY PANNULLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RAEKWON SETREY ROBERTSON,
DAVONTAE WHEELER,

Defendant.

CASE NO: C-17-328587-2
C-17-328587-3

DEPT NO: XII

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

C-17-328587-2
INST
Instructions to the Jury
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INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

1
2 An Indictment is but a formal method of accusing a person of a crime and is not of
3 itself any evidence of his guilt.

4 In this case, it is charged in an amended Indictment that on or about August 9, 2017,
5 the Defendants committed the offenses of Conspiracy to Commit Robbery, Attempt Robbery
6 with Use of a Deadly Weapon, Murder with Use of a Deadly Weapon. It is the duty of the
7 jury to apply the rules of law contained in these instructions to the facts of the case and
8 determine whether or not each Defendant is guilty of the offenses charged.

9 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

10 Defendants DEMARIO LOFTON-ROBINSON, RAEKWON SETREY
11 ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI WHEELER, did, on
12 or about August 9, 2017, willfully, unlawfully, and feloniously conspire with each other
13 and/or unknown co-conspirators to commit a robbery, by the Defendants and/or unknown
14 co-conspirators committing the acts as set forth in Count 2, said acts being incorporated by
15 this reference as though fully set forth herein.

16 COUNT 2 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

17 Defendants DEMARIO LOFTON-ROBINSON, RAEKWON SETREY
18 ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI WHEELER, did, on
19 or about August 9, 2017, willfully, unlawfully, and feloniously attempt to take personal
20 property, to wit: U.S. Currency and/or property, from the person of GABRIEL
21 VALENZUELA, or in his presence, by means of force or violence, or fear of injury to, and
22 without the consent and against the will of GABRIEL VALENZUELA, by pointing a
23 firearm at the said GABRIEL VALENZUELA and demanding said U.S. Currency and/or
24 property, with use of a deadly weapon, to wit: a firearm, the Defendants being criminally
25 liable under one or more of the following principles of criminal liability, to wit: (1) by
26 directly committing this crime; and/or (2) by aiding or abetting in the commission of this
27 crime, with the intent that this crime be committed, by counseling, encouraging, hiring,
28 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)

1 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,
2 DAVONTAE AMARRI WHEELER, and/or DEMARIO LOFTON-ROBINSON and/or
3 DESHAWN ROBINSON and/or RAEKWON ROBERTSON and/or unknown co-
4 conspirators aiding or abetting and/or conspiring by Defendant and/or DEMARIO
5 LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON
6 and/or unknown co-conspirators acting in concert throughout.

7 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

8 Defendants DEMARIO LOFTON-ROBINSON, RAEKWON SETREY
9 ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI WHEELER, did, on
10 or about August 9, 2017, willfully, unlawfully, feloniously and with malice aforethought, kill
11 GABRIEL VALENZUELA, a human being, with use of a deadly weapon, to wit: a firearm,
12 by shooting at and into the body of the said GABRIEL VALENZUELA, the said killing
13 having been (1) willful, deliberate, and premeditated, and/or (2) committed during the
14 perpetration or attempted perpetration of a robbery, the Defendants being criminally liable
15 under one or more of the following principles of criminal liability, to wit: (1) by directly
16 committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with
17 the intent that this crime be committed, by counseling, encouraging, hiring, commanding,
18 inducing, and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a
19 conspiracy to commit murder and/or robbery; Defendants and/or unknown co-conspirators
20 aiding or abetting and/or conspiring by Defendants and/or unknown co-conspirators acting in
21 concert throughout.

22 It is the duty of the jury to apply the rules of law contained in these instructions to the
23 facts of the case and determine whether or not each Defendant is guilty of one or more of the
24 offenses charged.

25 Each charge and the evidence pertaining to it should be considered separately. The
26 fact you may find a defendant guilty or not guilty as to one of the offenses charged should
27 not control your verdict as to any other offense charged.

28

INSTRUCTION NO. 4

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

INSTRUCTION NO. 5

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State of Nevada the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 6

You are here to determine whether the State of Nevada has met its burden of proof from the evidence in the case. You are not called upon to return a verdict as to any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of either or both of the Defendants, you should so find, even though you may believe one or more persons are also guilty.

INSTRUCTION NO. 7

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 8

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

INSTRUCTION NO. 9

You have heard testimony from DeShawn Robinson who was previously charged with Conspiracy to Commit Robbery, Attempt Robbery with Use of a Deadly Weapon, and Murder with Use of a Deadly Weapon. The testimony was given in exchange for his charges being reduced to Conspiracy to Commit Robbery and Attempt Robbery with Use of a Deadly Weapon. This is a benefit to a person sentenced. Because DeShawn Robinson will not be sentenced until after the trial of Raekwon Robertson, Davontae Wheeler, and Demario Lofton-Robinson there are possible related pressures upon him when he testified. You may consider these factors and the possible related pressures in determining his credibility and the extent to which they influenced his testimony. You should view his testimony with greater caution than that of other witnesses.

INSTRUCTION NO. 10

The fact that a witness has entered a plea to a felony, if such be a fact, may be considered by you only for the purpose of determining the credibility of that witness. The fact of such a conviction does not necessarily destroy or impair the witness' credibility. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.

A conviction shall not be had on the testimony of an accomplice unless the accomplice is corroborated by other evidence which in itself and without the aid of the testimony of the accomplice tends to connect the defendant with the commission of the offense and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof. An accomplice is hereby defined as one who is liable for prosecution for the identical offenses charged against the defendants on trial in the cause in which the testimony of the accomplice is given.

You are instructed that DeShawn Robinson is an accomplice. However, it is not necessary that the corroborating evidence be sufficient in itself to establish every element of the offense charged or that it corroborate every fact to which the accomplice testifies. Evidence to corroborate accomplice testimony does not suffice if it merely casts grave suspicion on the defendant. Further, where the connecting evidence shows no more than an opportunity to commit a crime, simply proves suspicion, or it equally supports a reasonable explanation pointing toward innocent conduct on the part of the defendant, the evidence is to be deemed insufficient.

In determining whether an accomplice has been corroborated, you must first assume the testimony of the accomplice has been removed from the case. You must then determine whether there is sufficient evidence which tends to connect the defendant with the commission of the offense. If there is not sufficient independent evidence which tends to connect the defendant with the commission of the offense the testimony of the accomplice is not corroborated. If there is such sufficient independent evidence, which you believe, then the testimony of the accomplice is corroborated.

The law never imposes upon a defendant in a criminal case the burden of calling any witnesses or introducing any evidence. It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify.

Thus, the decision as to whether he should testify is left to the Defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 13

Any person who conspires to commit robbery is guilty of Conspiracy to Commit
Robbery.

An act done with intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime.

The elements of an attempt to commit a crime are:

1. The intent to commit the crime;
2. The performance of some act towards its commission; and
3. The failure to consummate its commission.

In determining whether or not such an act was done, it is necessary to distinguish between mere preparation, on the one hand, and the actual commencement of the doing of the criminal deed, on the other. Mere preparation, which may consist of planning the offense or of devising, obtaining or arranging the means for its commission, is not sufficient to constitute an attempt; but acts of a person who intends to commit a crime will constitute an attempt where they themselves clearly indicate a certain, unambiguous intent to commit that specific crime, and, in themselves, are an immediate step in the present execution of the criminal design, the progress of which would be completed unless interrupted by some circumstance not intended in the original design.

When a person has once done things which constitute an attempt to commit a crime, he cannot avoid responsibility by failing to proceed further to commit that crime, either by reason of voluntarily abandoning his purpose or because he was prevented or interfered with in completing the crime.

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to:

1. Obtain or retain possession of the property;
2. To prevent or overcome resistance to the taking of the property; or
3. To facilitate escape with the property.

In any case the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

Personal property is "in the presence" of a person, in respect to robbery, when it is within the person's reach, inspection, observation or control, and the person could, if not prevented by intimidation or threat of violence, retain possession of the property.

INSTRUCTION NO. 16

Murder is the unlawful killing of a human being with malice aforethought, either express or implied. The unlawful killing may be affected by any of the various means by which death may be occasioned.

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

INSTRUCTION NO. 18

Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

INSTRUCTION NO. 19

Murder of the First Degree is murder which is (1) perpetrated by any kind of willful, deliberate and premeditated killing; or (2) committed in the perpetration or attempted perpetration of any robbery.

INSTRUCTION NO. 20

The State is not required to present direct evidence of a Defendant's state of mind as it existed during the commission of a crime. The jury may infer the existence of a particular state of mind of a party or a witness from the circumstances disclosed by the evidence.

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements -- willfulness, deliberation, and premeditation -- must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the actions.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

There is a kind of murder which carries with it conclusive evidence of premeditation and malice aforethought. This class of first degree murder is a killing committed in the perpetration or attempted perpetration of a robbery. Therefore, a killing which is committed in the perpetration or attempted perpetration of a robbery is deemed to be Murder of the First Degree, whether the killing was intentional or unintentional or accidental. This is called the Felony-Murder Rule.

The intent to perpetrate or attempt to perpetrate robbery must be proven beyond a reasonable doubt.

For the purposes of the Felony-Murder Rule, the intent to commit the robbery must have arisen before or during the conduct resulting in death. However, in determining whether the Defendant had the requisite intent to commit robbery before or during the killing, you may infer that intent from the Defendant's actions during and immediately after the killing. There is no Felony-Murder where the robbery occurs as an afterthought following the killing.

INSTRUCTION NO. 24

All murder which is not Murder of the First Degree is Murder of the Second Degree.
Murder of the Second Degree is Murder with malice aforethought, but without the admixture
of premeditation and deliberation.

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You are instructed that if you find that the State has established that the defendant has committed First Degree Murder you shall select First Degree Murder as your verdict. The crime of First Degree Murder includes the crime of Second Degree Murder. You may find the defendant guilty of Second Degree Murder if:

1. You have not found, beyond a reasonable doubt, that the defendant is guilty of murder of the first degree, and
2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty of the crime of second degree murder.

If you are convinced beyond a reasonable doubt that the crime of murder has been committed by the defendant, but you have a reasonable doubt whether such murder was of the first or of the second degree, you must give the defendant the benefit of that doubt and return a verdict of murder of the second degree.

1
2 You are instructed that if you find a Defendant guilty of Attempt Robbery, or 1st or
3 2nd Degree Murder, you must also determine whether or not a deadly weapon was used in the
4 commission of this crime.

5 If you find beyond a reasonable doubt that a deadly weapon was used in the
6 commission of such an offense, then you shall return the appropriate guilty verdict reflecting
7 "With Use of a Deadly Weapon".

8 If, however, you find that a deadly weapon was not used in the commission of such an
9 offense, but you find that it was committed, then you shall return the appropriate guilty
10 verdict reflecting that a deadly weapon was not used.

"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

You are instructed that a firearm is a "deadly weapon."

In order to "use" a deadly weapon, there need not be conduct which actually produces harm but only conduct which produces a fear of harm or force by means or display of the deadly weapon in aiding the commission of the crime.

An unarmed offender "uses" a deadly weapon when the unarmed offender is liable as a principal for the offense that is sought to be enhanced, another principal to the offense is armed with and uses a deadly weapon in the commission of the offense, and the unarmed offender had knowledge of the use of the deadly weapon.

The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

Conspiracy is an agreement or mutual understanding between two or more persons to commit a crime. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not. It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence.

A conspiracy to commit a crime does not end upon the completion of the crime. The conspiracy continues until the co-conspirators have successfully gotten away and concealed the crime. In order to find the defendant criminally liable for acts of another conspirator, pursuant to a conspiracy to the crimes of Attempt Robbery with Use of a Deadly Weapon and First Degree Murder with Use of a Deadly Weapon, you must find that the defendant possessed the specific intent to commit those specific crimes.

Murder in the second degree may be a general intent crime. As such, Defendants may be liable under conspiracy theory and/or aiding and abetting for murder of the second degree for acts committed by a co-conspirator if the killing is one of the reasonably foreseeable consequences of the object of the conspiracy.

INSTRUCTION NO. 30

Whenever a conspiracy exists, and a defendant was one of the members of the conspiracy, then the statements and the acts by any person likewise a member of the conspiracy may be considered by the jury as evidence in the case as to that defendant found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of that defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy. The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators.

In order to find a defendant criminally liable for acts of another conspirator pursuant to a conspiracy to the crimes of Attempt Robbery with Use of a Deadly Weapon and First Degree Murder with Use of a Deadly Weapon you must find that the defendant possessed the specific intent to commit those specific crimes.

Murder in the Second Degree is a general intent crime, therefore defendants may be held liable under a conspiracy theory of liability if the killing is one of the reasonably foreseeable consequences of the object of the conspiracy.

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offence charged.

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

For the defendant to be held accountable under the "aiding and abetting" principle of criminal liability in this case he must have specifically intended that the crimes of Attempt Robbery with use of a Deadly Weapon and First Degree Murder with Use of a Deadly Weapon be committed.

For the Defendants to be held accountable under an aiding and abetting principle of criminal liability as to Second Degree Murder, the killing must be a reasonably foreseeable consequence.

Mere presence at or near the scene of the crime or knowledge that a crime is being committed is not sufficient to establish that a defendant is guilty of an offense as an aider and abettor unless you find beyond a reasonable doubt that a defendant was a participant and not merely a knowing spectator.

INSTRUCTION NO. 33

Your verdict must be unanimous. You do not have to be unanimous on the principle of criminal liability. It is sufficient that each of you find beyond a reasonable doubt that the defendant committed the charged crime.

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give her opinion as to any matter in which she is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 36

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the State of Nevada has met its burden of proof as to each Defendant.

During your deliberations you are not to communicate with anyone, in any manner regarding the facts and circumstances of this case or its merits, either by phone, email, text messaging, internet, or other means.

You are admonished not to read, watch, or listen to any news or media accounts or commentary about the case. You are not permitted to do any independent research, such as consulting dictionaries, using the internet, or any other reference materials.

You are further admonished not to conduct any investigation, test a theory of the case, re-create any aspect of the case, or in any other manner investigate or learn about the case on your own.

INSTRUCTION NO. 38

When you retire to consider your verdict, you must first select one of your member to act as foreperson who will preside over your deliberation, and will be your spokesperson in court.

During your deliberation, you will have all the exhibits admitted into evidence, these written instructions, and forms of verdict prepared for your convenience.

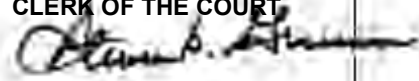
Your verdict must be unanimous. As soon as you agree upon a verdict, the foreperson shall sign and date the verdict form and return with it to this room.

INSTRUCTION NO. 39

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between each Defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

CASE NO. C-17-328587-2
C-17-328587-3

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 20, 2020

RECORDER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 7

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney
PARKER BROOKS
Deputy District Attorney

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

LIST OF EXHIBITS

Court's Exhibit 9

Page 3

1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 20, 2020, 2:07 P.M.

2 * * * * *

3 [Outside the Presence of the Jury]

4 THE COURT: Okay. The record will reflect that the hearing is taking place
5 outside the presence of the jury panel. Both defendants are present. Will the
6 attorneys state their appearances?

7 MR. PESCI: Giancarlo Pesci.

8 MR. BROOKS: Parker Brooks.

9 MR. SANFT: Michael Sanft on behalf of Mr. Robertson.

10 MR. RUGGEROLI: James Ruggeroli on behalf of Mr. Wheeler.

11 THE COURT: Okay. I did receive a communication from the jury foreperson.
12 It's been marked as Court's Exhibit Number 9.

13 **[COURT'S EXHIBIT 9 ADMITTED]**

14 THE COURT: It says, "If a person is aware of a crime being planned, but
15 does nothing and wasn't there, is he guilty of conspiracy?"

16 I've marked it and made it part of the record. I don't plan on answering
17 that question and the jury has been instructed to continue to deliberate. Any
18 objection to that?

19 MR. PESCI: Not from the State.

20 MR. SANFT: No, Your Honor.

21 MR. RUGGEROLI: No, Your Honor.

22 THE COURT: Okay. And the Clerk has the note if anyone wants to approach
23 and look at it, you're welcome to.

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MR. SANFT: Yes, Your Honor, thank you.

THE COURT: Okay? And we'll keep you posted.

PROCEEDING CONCLUDED AT 2:08 P.M.

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.



SARA RICHARDSON
Court Recorder/Transcriber

@ 2:11pm

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

FEB 24 2020

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

RAEKWON SETREY ROBERTSON,
Defendant.

BY, MARY PANNULLO, DEPUTY

CASE NO: C-17-328587-2

DEPT NO: XII

VERDICT

We, the jury in the above entitled case, find the Defendant RAEKWON SETREY ROBERTSON, as follows:

COUNT 1 – CONSPIRACY TO COMMIT ROBBERY, *(please check the appropriate box, select only one)*

☒ Guilty of Conspiracy to Commit Robbery

☐ Not Guilty

COUNT 2 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON, *(please check the appropriate box, select only one)*

☒ Guilty of Attempt Robbery with Use of a Deadly Weapon

☐ Guilty of Attempt Robbery

☐ Not Guilty

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C-17-328587-2

VER

Verdict

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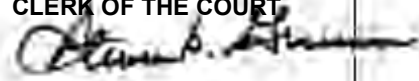
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COUNT 3 – MURDER WITH USE OF A DEADLY WEAPON, *(please check the appropriate box, select only one)*

- ☒ Guilty of First Degree Murder with Use of a Deadly Weapon
- ☐ Guilty of First Degree Murder
- ☐ Guilty of Second Degree Murder with Use of a Deadly Weapon
- ☐ Guilty of Second Degree Murder
- ☐ Not Guilty

DATED this 24 day of February, 2020


FOREPERSON



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

CASE NO. C-17-328587-2
C-17-328587-3

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

MONDAY, FEBRUARY 24, 2020

RECORDER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 8

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney
PARKER BROOKS
Deputy District Attorney

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

LIST OF EXHIBITS

Court's Exhibit 10

Page 3

1 LAS VEGAS, NEVADA, MONDAY, FEBRUARY 24, 2020, 2:05 P.M.

2 * * * * *

3 [Outside the Presence of the Jury]

4 THE COURT: Mr. Sanft, can you approach?

5 MR. SANFT: Yeah.

6 THE COURT: I showed the other attorneys. I got that from the foreperson.,
7 so I've marked it and made it part of the record. Juror Number 5 wants me to call
8 her teacher, so it's just marked as Court's Exhibit Number 10.

9 **[COURT'S EXHIBIT NUMBER 10 MARKED]**

10 THE COURT: Okay. State of Nevada versus Robertson and Wheeler,
11 they're both present with their attorneys. Will the State -- well, why don't you all
12 make your appearances.

13 MR. SANFT: Good morning -- or good afternoon, Your Honor, Michael Sanft
14 on behalf of Mr. Raekwon Robertson who's present in custody.

15 MR. RUGGEROLI: Good afternoon, Your Honor, James Ruggeroli on behalf
16 of Mr. Wheeler who's present in custody.

17 MR. PESCI: Parker Brooks and Giancarlo Pesci on behalf of the State.

18 THE COURT: Okay. We can bring them in. The jury has reached a verdict.

19 [In the presence of the jury panel]

20 THE COURT: You can have a seat when you come in. Does the State
21 stipulate to the presence of the jury panel?

22 MR. PESCI: Yes, Your Honor.

23 THE COURT: Mr. Sanft?

24 MR. SANFT: Yes, Your Honor.

25 THE COURT: Mr. Ruggeroli?

1 MR. RUGGEROLI: Yes, Your Honor.

2 THE COURT: Okay. Thank you.

3 Ms. Segura, have you been selected to be the foreperson?

4 JUROR NO. 11: Yes, ma'am.

5 THE COURT: Thank you. Has the jury reached a verdict?

6 JUROR NO. 11: Yes, ma'am.

7 THE COURT: Okay. You can hand the verdict forms to Officer Hawkes.

8 The Clerk will now read the verdict forms out loud.

9 Will the defendants and their attorney please stand for the reading of
10 the verdict. Sorry.

11 THE CLERK: District Court, Clark County, Nevada; the State of Nevada,
12 plaintiff, versus Raekwon Setrey Robertson, defendant; Case Number C328587;
13 Department Number 12; Verdict: We the jury in the above entitled case find the
14 Defendant, Raekwon Setrey Robertson, as follows:

15 Count 1, conspiracy to commit robbery, guilty of conspiracy to commit
16 robbery;

17 Count 2, attempt robbery with use of a deadly weapon, guilty of attempt
18 robbery with use of a deadly weapon;

19 Count 3, murder with use of a deadly weapon, guilty of first degree
20 murder with use of a deadly weapon; dated this 24th day of February, 2020; signed
21 by Foreperson Angela Segura.

22 District Court, Clark County, Nevada; the State of Nevada, plaintiff,
23 versus Davontae Wheeler, defendant; Case Number C328587; Department Number
24 12; Verdict: We the jury in the above entitled case find the Defendant, Davontae
25 Wheeler, as follows:

1 Count 1, conspiracy to commit robbery, guilty of conspiracy to commit
2 robbery;

3 Count 2, attempt robbery with use of a deadly weapon, not guilty;

4 Count 3, murder with use of a deadly weapon, guilty of second degree
5 murder; dated this 24th day of February, 2020; signed by Foreperson Angela
6 Segura.

7 Ladies and gentlemen of the jury, are these your verdicts as read so
8 say you one so say you all?

9 THE JURY PANEL IN UNISON: Yes.

10 THE COURT: Does either side wish to have the jury panel polled?
11 Mr. Pesci?

12 MR. PESCI: Not from the State, no, thank you, Your Honor.

13 THE COURT: Mr. Sanft?

14 MR. SANFT: No, Your Honor.

15 THE COURT: Mr. Ruggeroli?

16 MR. RUGGEROLI: Yes, Your Honor.

17 THE COURT: Okay, at this time, ladies and gentlemen, the Clerk is going to
18 ask a question. I just ask that you respond "yes" or "no."

19 THE CLERK: Juror Number 1, Vito Casucci, are these your verdicts as read?

20 JUROR NO. 1: Yes.

21 THE CLERK: Juror Number 2, Sharon Morrison, are these your verdicts as
22 read?

23 JUROR NO. 2: Yes.

24 THE CLERK: Juror Number 3, Aria Flores-Virgen, are these your verdicts as
25 read?

1 JUROR NO. 3: Yes.

2 THE CLERK: Juror Number 4, Suzanne Quinn, are these your verdicts as
3 read?

4 JUROR NO. 4: Yes.

5 THE CLERK: Juror Number 5, Camille Estrella, are these your verdicts as
6 read?

7 JUROR NO. 5: Yes.

8 THE CLERK: Juror Number 6, Danilo Rodriguez, are these your verdicts as
9 read?

10 JUROR NO. 6: Yes.

11 THE CLERK: Juror Number 7, Jonathan Salazar, are these your verdicts as
12 read?

13 JUROR NO. 7: Yes.

14 THE CLERK: Juror Number 8, Lisa Cook, are these your verdicts as read?

15 JUROR NO. 8: Yes.

16 THE CLERK: Juror Number 9, Markdelan Deperio, are these your verdicts as
17 read?

18 JUROR NO. 9: Yes.

19 THE CLERK: Juror Number 10, Roberta Bell, are these your verdicts as
20 read?

21 JUROR NO. 10: Yes.

22 THE CLERK: Juror Number 11, Angela Segura, are these your verdicts as
23 read?

24 JUROR NO. 11: Yes.

25 THE CLERK: Juror Number 12, Maria Moreno, are these your verdicts as

1 read?

2 JUROR NO. 12: Yes.

3 THE COURT: Okay. At this time the Clerk will record the verdicts in the
4 official record of the court. At this time, ladies and gentlemen, I am going to
5 discharge you from your service. You are no longer under the admonition not to
6 discuss the case with anyone. But you're under no obligation to discuss the case
7 with anyone.

8 You are going to go back to the jury deliberation room at which time
9 you'll be given further instructions but you are going to be discharged. I do allow
10 both sides, the attorneys, an opportunity to speak to the jury panel. But again, I just
11 want to make sure you understand, it's up to you whether you discuss this case with
12 anyone. I do want to thank you very much for your willingness to be here and your
13 service to this court. Thank you very much and you are discharged as jurors.

14 THE MARSHAL: Thank you. All rise for the exiting jury please.

15 Jurors, please go with Ms. Rocha.

16 [Outside the presence of the jury]

17 THE MARSHAL: Thank you, everyone, please be seated.

18 THE COURT: Okay. The record will reflect that the hearing is taking place
19 outside the presence of the panel. Does the State wish to be heard on their
20 custodial status?

21 MR. PESCI: Judge, we would ask that they be remanded without bail.

22 THE COURT: Mr. Sanft? Mr. Ruggeroli?

23 MR. SANFT: We'll submit, Your Honor.

24 MR. RUGGEROLI: Submit it.

25 THE COURT: Okay. They'll both be remanded without bail pending

1 sentencing and the matter is referred to Parole and Probation and it's set for
2 sentencing.

3 THE CLERK: April 15th, 8:30.

4 MR. RUGGEROLI: Could I have that date again please?

5 THE CLERK: April 15th, 8:30 a.m.

6 THE COURT: And I'm assuming the attorneys for both sides do want that
7 opportunity if the jury wants to speak to you? Yes?

8 MR. SANFT: Sure.

9 THE COURT: Okay. We'll let you know.

10 MR. PESCI: Yeah, we'll see.

11 MR. RUGGEROLI: Judge -- Judge, I apologize.

12 THE COURT: I'm sorry.

13 MR. RUGGEROLI: No, Mr. Wheeler is asking to request that he have some
14 form of bail.

15 THE COURT: Have some what?

16 MR. RUGGEROLI: Form of bail. I submitted it and I would just like to point
17 out the jury did come back with a lesser verdict. He's asking that you just have a
18 bail set for him pending sentencing.

19 THE COURT: Okay.

20 MR. PESCI: Judge, the State opposes it. The defendant's been convicted of
21 a non-probationable offense where he must go to prison for at least 10 years and a
22 potential life sentence. So there is a flight risk and concern from the State, and we
23 ask that it remain no bail.

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1 THE COURT: Okay. He'll be remanded without bail pending sentencing.
2 Thank you.

3 PROCEEDING CONCLUDED AT 2:13 P.M.

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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
21 video recording of this proceeding in the above-entitled case.

22 
23 _____
24 SARA RICHARDSON
25 Court Recorder/Transcriber

ORIGINAL

1 IND

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GIANCARLO PESCI
6 Chief Deputy District Attorney
7 Nevada Bar #007135
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAR 12 2020

BY, 
HALY PANNULLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

CASE NO: C-17-328587-2

11 -vs-

DEPT NO: XII

13 RAEKWON SETREY ROBERTSON, aka,
14 Raekwon Robertson, #8252804

15 Defendant.

SECOND AMENDED
SUPERSEDING
INDICTMENT

C-17-328587-2
SIND
Superseding Indictment
4903315



16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss.

18 The Defendant above named, RAEKWON SETREY ROBERTSON, aka, Raekwon
19 Robertson, accused by the Clark County Grand Jury of the crime(s) of CONSPIRACY TO
20 COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147) and
21 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380,
22 193.165 - NOC 50138), committed at and within the County of Clark, State of Nevada, on or
23 about August 2, 2017, as follows:

24 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

25 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
26 about August 2, 2017 willfully, unlawfully, and feloniously conspire with an unknown co-
27 conspirator to commit a robbery, by the conspirators committing the acts as set forth in Count
28 2, said acts being incorporated by this reference as though fully set forth herein.

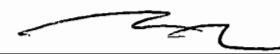
5 mg.
1 COUNT 2- ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did with
3 an unknown co-conspirator, willfully, unlawfully, and feloniously take personal property, to
4 wit: a wallet, cellular telephone, and makeup case, from the person of MARIAH ROMATKO
5 and/or U.S. Currency, from the person of AGNES STEIN, or in their presence, by means of
6 force or violence, or fear of injury to, and without the consent and against the will of MARIAH
7 ROMATKO and/or AGNES STEIN, with use of a deadly weapon, to wit: a handgun, the
8 Defendant and/or an unnamed co-conspirator being criminally liable under one or more of the
9 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
10 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
11 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
12 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
13 crime, with the intent that this crime be committed.

14 DATED this ____ day of March, 2020.

15 STEVEN B. WOLFSON
16 Clark County District Attorney
Nevada Bar #001565

17
18 BY


19 GIANCARLO PESCI
20 Chief Deputy District Attorney
21 Nevada Bar #007135
22
23
24
25
26

27 17BGJ017B/17F14369B/dd-MVU
28 LVMPD EV#1708024571; 1708090029
(TK3)

ORIGINAL

1 **GPA**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GIANCARLO PESCI
6 Chief Deputy District Attorney
7 Nevada Bar #7135
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAR 12 2020
BY, HALY PANNULLO, DEPUTY

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

C-17-328587-2
GPA
Guilty Plea Agreement
4903325



9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

CASE NO: C-17-328587-2

12 RAEKWON SETREY ROBERTSON, aka
13 Raekwon Robertson, #8252804

DEPT NO: XII

14 Defendant.

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: **COUNT 1⁴ - CONSPIRACY TO COMMIT**
17 **ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147) and COUNT 2⁵**
18 **ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380,**
19 **193.165 - NOC 50138),** as more fully alleged in the charging document attached hereto as
20 Exhibit "1".

21 My decision to plead guilty is based upon the plea agreement in this case which is as
22 follows:

23 The State retains the right to argue. Both parties stipulate to concurrent time to the
24 charges the Defendant was previously found guilty of, at trial, in the instant case.

25 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
26 and/or impounded in connection with the instant case and/or any other case negotiated in
27 whole or in part in conjunction with this plea agreement.

28 I understand and agree that, if I fail to interview with the Department of Parole and

1 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,
2 by affidavit review, confirms probable cause against me for new criminal charges including
3 reckless driving or DUI, but excluding minor traffic violations, the State will have the
4 unqualified right to argue for any legal sentence and term of confinement allowable for the
5 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have
6 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without
7 the possibility of parole, life with the possibility of parole after ten (10) years, or a definite
8 twenty-five (25) year term with the possibility of parole after ten (10) years.

9 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
10 plea agreement.

11 CONSEQUENCES OF THE PLEA

12 I understand that by pleading guilty I admit the facts which support all the elements of
13 the offense(s) to which I now plead as set forth in Exhibit "1".

14 I understand that as a consequence of my plea of guilty, the Court must sentence me to
15 imprisonment in the Nevada Department of Corrections, as follows:

16 **COUNT 1** - for a minimum term of not less than ONE (1) year and a maximum term of not
17 more than SIX (6) years. The minimum term of imprisonment may not exceed forty percent
18 (40%) of the maximum term of imprisonment. I understand that I may also be fined up to
19 \$5,000.00.

20 I understand that I am eligible for probation for the offense to which I am pleading
21 guilty. I understand that, except as otherwise provided by statute, the question of whether I
22 receive probation is in the discretion of the sentencing judge.

23 **COUNT 2** - for a minimum term of not less than TWO (2) years and a maximum term of not
24 more than FIFTEEN (15) years, plus a consecutive term of ONE (1) year to FIFTEEN (15)
25 years for the deadly weapon enhancement. The minimum term of imprisonment may not
26 exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may
27 also be required to pay a fine.

28 I understand that I am not eligible for probation for the offense to which I am pleading

1 guilty.

2 I understand that the law requires me to pay an Administrative Assessment Fee.

3 I understand that, if appropriate, I will be ordered to make restitution to the victim of
4 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
5 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
6 reimburse the State of Nevada for any expenses related to my extradition, if any.

7 I understand that I must submit to blood and/or saliva tests under the Direction of the
8 Division of Parole and Probation to determine genetic markers and/or secretor status.

9 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,
10 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or
11 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation
12 and may receive a higher sentencing range.

13 I understand that if more than one sentence of imprisonment is imposed and I am
14 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
15 the sentences served concurrently or consecutively.

16 I understand that information regarding charges not filed, dismissed charges, or charges
17 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

18 I have not been promised or guaranteed any particular sentence by anyone. I know that
19 my sentence is to be determined by the Court within the limits prescribed by statute.

20 I understand that if my attorney or the State of Nevada or both recommend any specific
21 punishment to the Court, the Court is not obligated to accept the recommendation.

22 I understand that if the offense(s) to which I am pleading guilty was committed while I
23 was incarcerated on another charge or while I was on probation or parole that I am not eligible
24 for credit for time served toward the instant offense(s).

25 I understand that if I am not a United States citizen, any criminal conviction will likely
26 result in serious negative immigration consequences including but not limited to:

- 27 1. The removal from the United States through deportation;
- 28 2. An inability to reenter the United States;

3. The inability to gain United States citizenship or legal residency;
4. An inability to renew and/or retain any legal residency status; and/or
5. An indeterminate term of confinement, with the United States Federal Government based on my conviction and immigration status.

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a legal resident.

I understand that the Division of Parole and Probation will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing. Unless the District Attorney has specifically agreed otherwise, the District Attorney may also comment on this report.

WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I am waiving and forever giving up the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.
2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense.
6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction,

1 including any challenge based upon reasonable constitutional,
2 jurisdictional or other grounds that challenge the legality of the
3 proceedings as stated in NRS 177.015(4). However, I remain free to
4 challenge my conviction through other post-conviction remedies
5 including a habeas corpus petition pursuant to NRS Chapter 34.

6 VOLUNTARINESS OF PLEA

7 I have discussed the elements of all of the original charge(s) against me with my
8 attorney and I understand the nature of the charge(s) against me.

9 I understand that the State would have to prove each element of the charge(s) against
10 me at trial.

11 I have discussed with my attorney any possible defenses, defense strategies and
12 circumstances which might be in my favor.

13 All of the foregoing elements, consequences, rights, and waiver of rights have been
14 thoroughly explained to me by my attorney.

15 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
16 that a trial would be contrary to my best interest.

17 I am signing this agreement voluntarily, after consultation with my attorney, and I am
18 not acting under duress or coercion or by virtue of any promises of leniency, except for those
19 set forth in this agreement.

20 I am not now under the influence of any intoxicating liquor, a controlled substance or
21 other drug which would in any manner impair my ability to comprehend or understand this
22 agreement or the proceedings surrounding my entry of this plea.

23 ///

24 ///

25 ///

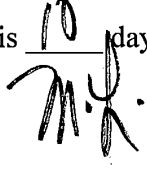
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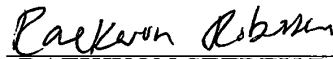
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1 My attorney has answered all my questions regarding this guilty plea agreement and its
2 consequences to my satisfaction and I am satisfied with the services provided by my attorney.


3 DATED this 10 day of March, 2020.

4 

5 

6 RAEKWON SETREY ROBERTSON, aka
7 Raekwon Robertson
8 Defendant

9 AGREED TO BY:

10 
11 GIANCARLO PESCI
12 Chief Deputy District Attorney
13 Nevada Bar #7135
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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court
3 hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which guilty pleas are being entered.
6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.
8 3. I have inquired of Defendant facts concerning Defendant's immigration status
9 and explained to Defendant that if Defendant is not a United States citizen any
10 criminal conviction will most likely result in serious negative immigration
11 consequences including but not limited to:

- 12 a. The removal from the United States through deportation;
13 b. An inability to reenter the United States;
14 c. The inability to gain United States citizenship or legal residency;
15 d. An inability to renew and/or retain any legal residency status; and/or
16 e. An indeterminate term of confinement, by with United States Federal
17 Government based on the conviction and immigration status.

18 Moreover, I have explained that regardless of what Defendant may have been
19 told by any attorney, no one can promise Defendant that this conviction will not
20 result in negative immigration consequences and/or impact Defendant's ability
21 to become a United States citizen and/or legal resident.

- 22 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
23 consistent with the facts known to me and are made with my advice to the
24 Defendant.
25 5. To the best of my knowledge and belief, the Defendant:
26 a. Is competent and understands the charges and the consequences of
27 pleading guilty as provided in this agreement,
28 b. Executed this agreement and will enter all guilty pleas pursuant hereto
voluntarily, and
c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

Dated: This 10 day of March, 2020.


MICHAEL SANFT, ESQ.

17F14369B/dd/MVU

1 **IND**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **GIANCARLO PESCI**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #007135**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO: C-17-328587-2

DEPT NO: XII

RAEKWON SETREY ROBERTSON, aka,
Raekwon Robertson, #8252804

Defendant.

SECOND AMENDED
SUPERSEDING
INDICTMENT

STATE OF NEVADA }
COUNTY OF CLARK } ss.

The Defendant above named, RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, accused by the Clark County Grand Jury of the crime(s) of CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147) and ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138), committed at and within the County of Clark, State of Nevada, on or about August 2, 2017, as follows:

COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or about August 2, 2017 willfully, unlawfully, and feloniously conspire with an unknown co-conspirator to commit a robbery, by the conspirators committing the acts as set forth in Count 2, said acts being incorporated by this reference as though fully set forth herein.

EXHIBIT 1

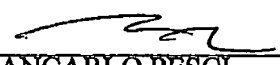
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5
1 COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON


2 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did with
3 an unknown co-conspirator, willfully, unlawfully, and feloniously take personal property, to
4 wit: a wallet, cellular telephone, and makeup case, from the person of MARIAH ROMATKO
5 and/or U.S. Currency, from the person of AGNES STEIN, or in their presence, by means of
6 force or violence, or fear of injury to, and without the consent and against the will of MARIAH
7 ROMATKO and/or AGNES STEIN, with use of a deadly weapon, to wit: a handgun, the
8 Defendant and/or an unnamed co-conspirator being criminally liable under one or more of the
9 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
10 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
11 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
12 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
13 crime, with the intent that this crime be committed.

14 DATED this ____ day of March, 2020.

15 STEVEN B. WOLFSON
16 Clark County District Attorney
Nevada Bar #001565

17
18 BY 
19 GIANCARLO PESCI
Chief Deputy District Attorney
20 Nevada Bar #007135
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27 17BGJ017B/17F14369B/dd-MVU
28 LVMPD EV#1708024571; 1708090029
(TK3)



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

CASE NO. G-17-328587-2
C-17-328587-3

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

THURSDAY, JUNE 11, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
SENTENCING**

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney
PARKER BROOKS
Deputy District Attorney

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 11, 2020, 12:48 P.M.

2 * * * * *

3 THE COURT: State of Nevada versus Raekwon Robertson and Davontae
4 Wheeler, case C328587.

5 THE CLERK: All of the parties are on Bluejeans, Judge.

6 THE COURT: Okay. So Mr. Robertson and Mr. Wheeler are both present
7 and in custody.

8 Mr. Robertson, is there any legal cause or reason why judgment should
9 not be pronounced against you at this time?

10 DEFENDANT ROBERTSON: No.

11 THE COURT: Mr. Robertson, any reason why we shouldn't proceed with
12 sentencing?

13 DEFENDANT ROBERTSON: No, there is not.

14 THE COURT: Okay. By virtue of the jury verdict and guilty plea agreement in
15 this matter, I hereby adjudicate you guilty of Counts 1 and 4, conspiracy to commit
16 robbery; Count 2, attempt robbery with use of a deadly weapon; Count 3, first
17 degree murder with use of a deadly weapon; and Count 5, robbery with use of a
18 deadly weapon.

19 Does the State wish to be heard on this?

20 MR. PESCI: Yes, Your Honor. I would note that I believe we have online a
21 victim speaker.

22 THE COURT: Okay.

23 MR. PESCI: Which is John Relato, and so I would ask that pursuant to
24 statute he would be able to go last.

25 THE COURT: Okay. And is the victim appearing by Bluejeans?

1 MR. PESCI: I saw -- I thought I saw his name listed, but, yes.

2 THE COURT: Okay.

3 MR. RELATO: Yes, sir. I'm in Bluejeans right now.

4 THE COURT: Okay. Thank you.

5 Go ahead, Mr. Pesci.

6 MR. PESCI: Thank you very much, Your Honor. You know the case, so I
7 won't go over the facts again with you. In looking at the Department of Parole and
8 Probation's recommendation, and here's the thing I want to underscore, the State
9 stands by its recommendation and negotiation as far as Counts 4 and 5. Those
10 counts are to run concurrent to what you give for Counts 1, 2, and 3. I think the
11 sentencing put forth by Parole and Probation as far as Counts 4 and 5 are
12 appropriate as far as that length of sentence and as far as 4 and 5 running
13 consecutive to each other. But they should, altogether, run concurrent.

14 When you look at what your decision is as far as the sentence on the
15 murder, P and P is recommending a life sentence and that's appropriate as a life
16 has been taken. As far as the deadly weapon enhancement, they're looking at a
17 36-to-240 months. And so when you take into consideration this particular
18 defendant, you know, he really does not have much of a criminal history before.
19 Obviously, that inures to his benefit in this particular situation when you're looking at
20 that deadly weapon enhancement. The problem is, however, is the other case,
21 Counts 4 and 5, I mean, it's a part of this case, but Counts 4 and 5 where he did use
22 a weapon in another case.

23 And then I think what's really, really telling and why you should deviate
24 from the Division's recommendation and go higher on the deadly weapon
25 enhancement is in fact his conviction under C347711 where, as I read it, it was an

1 attempt possession of a dangerous weapon or facsimile by incarcerated person. So
2 that's a charge he picked up in the Detention Center after his arrest on this homicide
3 prior to our sentencing. From Odyssey, it appears he was on calendar today on
4 that, so I'm not sure if he was adjudicated, that was also to run concurrent. So, but I
5 think that kind of speaks to the risks associated with him and the underlying facts as
6 far as, you know, that first shot is the shot that comes from his weapon that
7 incapacitates the victim and puts him in the position where he gets that head shot.

8 And so I think it would be appropriate to go higher on the deadly
9 weapon enhancement and otherwise, those -- those Counts 1, 2, and 3, they should
10 run consecutive and we'll submit it to your discretion.

11 And right now do you want me to just speak about Raekwon
12 Robertson's?

13 THE COURT: Sure, yeah, just Raekwon.

14 MR. PESCI: The other thing, for Mr. Robertson's benefit, I -- I don't know how
15 to answer his letters. He's written me a letter. He was looking for the P.S.I. I just
16 wanted to let him know, I cannot communicate with him because he's represented
17 by counsel. But as soon as I got the letter, I sent a copy of the P.S.I. to Mr. Sanft
18 who I believe already had it. But it's just I'm not allowed to talk to him and so that's
19 why I couldn't bring him his P.S.I., but I sent it to his counsel.

20 THE COURT: Thank you. Thank you.

21 Mr. Robertson, do you want to say anything?

22 DEFENDANT ROBERTSON: Yeah, I received my P.S.I. yesterday, I sent the
23 letter on Friday. I basically sent him the letter because I couldn't get in contact with
24 my attorney and I didn't want my sentencing day to get pushed back because I
25 didn't have my P.S.I.

1 THE COURT: Okay. Do you want --

2 MR. PESCI: Which he said, and I just -- I just didn't -- I couldn't respond or
3 communicate with him so I wanted to explain that to him here today.

4 THE COURT: Okay.

5 DEFENDANT ROBERTSON: That's fine.

6 THE COURT: Mr. Robertson, are you okay to go forward or do you need
7 additional time?

8 DEFENDANT ROBERTSON: No, I got it. I got it. I received it yesterday.

9 THE COURT: Okay. Do you want to say anything?

10 DEFENDANT ROBERTSON: No. I'm -- no.

11 THE COURT: Okay. Mr. Sanft?

12 MR. SANFT: Do you mind if I --

13 THE COURT: No, go ahead.

14 MR. SANFT: Your Honor, I think in this matter with regards to Mr. Robertson
15 the Court has -- had heard the facts in this case during the course of the trial. I've
16 spoken with Mr. Robertson and explained to him what his options are at this
17 particular point and based upon the recommendation of P and P, you know, the
18 bigger issue that we have is that he was convicted of a first degree kid -- first degree
19 murder with use of a deadly weapon, so obviously the suggestion at this particular
20 point is a life-tail or a life sentence. The question then becomes whether or not it's
21 20-to-life plus a consecutive whatever that looked like on the other end.

22 We're going to submit everything to the Court. And the reason for that
23 is this, Mr. Robertson is intent on filing an appeal, is intent on going forward with that
24 aspect of it. I believe that ultimately what we have here is a situation where
25 Mr. Robertson's in a position where the reason why he's not talking to the Court or

1 saying anything to the Court is because he wants to reserve that -- that right.

2 With that being said, the suggestion that I think -- at this particular point
3 is that we don't run the sentences consecutive to one another in terms of the
4 charges, we instead focus on I believe it's Count 3, which is the --

5 THE COURT: The murder.

6 MR. SANFT: -- the murder with use and we run all the other sentences
7 concurrent to that -- to that charge. That would be my only request at this particular
8 point.

9 THE COURT: Okay.

10 MR. SANFT: And we'll submit it.

11 THE COURT: Thank you.

12 MR. PESCI: And, Judge, if I could really fast, I apologize, he also has eight
13 additional days credit for time served based on the timing of our sentencing. So it
14 looks like the P.S.I. says 1,024 as of June 3rd, but now we're at the 11th, and so he
15 should -- I think that adds up to 1,032. Is that right, Mr. Sanft?

16 MR. SANFT: We have no objection to 1,032, Your Honor.

17 THE COURT: Okay. And do you want to call your first speaker?

18 MR. PESCI: Or do you want him at the end, Your Honor? Because we still
19 have to do Mr. Wheeler and pursuant to statute, the speaker gets to go last.

20 THE COURT: Okay. All right. I'm assuming you have no objection to that?

21 MR. SANFT: No, Your Honor.

22 THE COURT: Okay. Mr. Robertson, in accordance with the laws of the State
23 of Nevada, this Court does now sentence you as follows, in addition to the
24 administrative assessment, the D.N.A. fee, and the collection fee, you'll be required
25 to submit to genetic marker testing if you've not already done so. As to Count 1, the

1 Court's going to sentence you to 24 to 72 months in the Nevada Department of
2 Corrections. As to Count 2, the Court's going to sentence you to 48 to 120 months,
3 plus a consecutive 48 to 120 months for the deadly weapon enhancement. As to
4 Count 3, the Court's going to sentence you to life in the Nevada Department of
5 Corrections with parole eligibility beginning after a minimum of 20 years has been
6 served, and an 8-to-20 years for the deadly weapon enhancement to run
7 consecutive. As to Count 4, the Court's going to sentence you to 24 to 72 months;
8 as to Count 5, 48 to 180 months, plus a consecutive 48 to 180 months for the deadly
9 weapon enhancement.

10 They're all to run concurrent for an aggregate of 28 to life in the Nevada
11 Department of Corrections, impose restitution as to Count 5 of \$200.00 and then
12 restitution of 8,729.53 joint and several with your codefendant as to the other
13 charges. And he has 1,032 days credit for time served.

14 MR. SANFT: Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. PESCI: Thank you, Your Honor.

17 THE COURT: Mr. Wheeler.

18 DEFENDANT WHEELER: Yes. Yes, Your Honor.

19 THE COURT: You're ready to go forward?

20 DEFENDANT WHEELER: Yes, ma'am. I am.

21 THE COURT: Okay. By virtue of the jury verdict returned in this matter, I
22 hereby adjudicate you guilty of Count 1, conspiracy to commit robbery; and Count 3,
23 second degree murder; and pursuant to the verdict, Count 2 will be dismissed.

24 Does the State wish to be heard?

25 MR. PESCI: Yes, Your Honor. Your Honor, what I would ask you to do is

1 follow the Department's recommendation as far as Count 1 being 24 to 72 months. I
2 think that's appropriate. However, I would ask you to part company with the
3 Department's recommendation on Count 3, as they do not recommend a life-tail. I
4 think it would inappropriate for the codefendant to get the life-tail and this one to not.
5 I understand that he has been convicted of second degree murder, but nonetheless,
6 a life was taken and it's appropriate that there should be at least a life-tail. So -- and
7 it's also appropriate from P and P to run it consecutive. So I think Count 3 should be
8 a 10-to-life and that should run consecutive to the 24-to-72 on Count 1.

9 As far as the restitution, I'd ask for the same joint and several. And
10 then I'm sure Mr. Ruggeroli, I hope he's got it figured out, the credit for time served
11 because the P.S.I. had it factored out to an April 15th date and obviously we're a little
12 bit further along, so whatever that number is I'll defer it to Mr. Ruggeroli and ask that
13 the victim's cousin, who testified at trial, who's on Bluejeans, gets to speak last.

14 THE COURT: Okay. Mr. Wheeler, do you want to say anything?

15 DEFENDANT WHEELER: No. No, ma'am.

16 THE COURT: Okay. Thank you.

17 Mr. Ruggeroli.

18 MR. RUGGEROLI: Thank you, Your Honor. Judge, I would like to point out a
19 number of factors in mitigation for Mr. Wheeler. Judge, you know this, but he was
20 not alleged to have participated in the other counts that were referenced regarding
21 the codefendant. So his allegations were limited to this case, Judge.

22 The jury has spoke and I'm going to ask you to take a look at what they
23 actually said in their verdict. I don't want to go through a lot of the facts, but some of
24 the things are appropriate for Your Honor to consider. I would like to point out some
25 background on Mr. Wheeler's behalf, Judge. He has no significant criminal history

1 whatsoever. He has no prior felonies, no prior gross misdemeanors, and no other
2 cases, as I mentioned that he was alleged to have been involved in regarding this
3 period of time.

4 Judge, he has asserted his innocence. But we do want to point some
5 things out in terms of expressing our condolences to the victim and the victim's
6 family. Judge, the jury found kind of interesting conclusion for Mr. Wheeler's counts
7 because they did find that he was part of a conspiracy, however, they found him
8 guilty of second degree murder but not having a weapon involved and what's
9 interesting about that, Judge, is that the State had presented their case that
10 Mr. Wheeler was armed. They believed and presented it to the jury that he was also
11 present at the time of the shooting, Judge. It very much appears that the jury did not
12 agree with their version of events in a number of ways, and most importantly, they
13 have acquitted him of the deadly weapon and I do think that that is very significant.

14 Judge, again, we want to express our condolences to the family, but
15 also mention, the jury did not find that Mr. Wheeler was a direct participant with the
16 murder in this case. We are going to take those issues up on appeal. In looking at
17 some additional factors for mitigation, Judge, I would like to point out that
18 Mr. Wheeler was only 22 years old at the time of this offense. He has strong family
19 and friend support. I did provide Your Honor with some letters from friends and
20 family.

21 Additionally, I believe his mother and another family member are
22 present in court today. They've been present on almost every appearance
23 throughout his litigation in this case, Judge. He has that family support, friend
24 support, church support in place for when he is eventually released from custody
25 and I'm going to ask Your Honor to give him a sentence that allows him the

1 opportunity to have a future and to get out and to utilize those resources and to
2 continue being a part of that family and his community the way he was before these
3 allegations came about.

4 Mr. Wheeler is a father to two very young children. Judge, those letters
5 show that he is -- he was a good father and wants to be available for those children.
6 He has a disabled 75-year-old grandmother. His mother, who, again, I believe is
7 present in court, has poor health. Mr. Wheeler previously provided her with
8 caretaking and was a tremendous asset to her in her life. Additionally, Your Honor,
9 Mr. Wheeler helped out his family and the community. He helped out the church.
10 He has a history of employment prior to being arrested in this case.

11 He has also served full time as a personal care assistant for the Addus,
12 and that's A-D-D-U-S, Home Healthcare. Judge, he provided to the church and the
13 community. We have provided letters. During his time in custody, family has noted
14 that he has exhibited a clear display of change and maturity. He has plans for the
15 future including being a part of helping African-Americans stay out of trouble, stay
16 out of jail, contributing to the church and the community, taking care of his children,
17 and loving his family the best way that he knows how, Your Honor.

18 Parole and Probation is recommending 24 to 72 and then they are very
19 importantly recommending a 10-to-25-year definite term on the second degree
20 murder, Judge. Now, they are asking for that to be run consecutive. It is our
21 request that you would follow P and P's recommendation but run the counts
22 concurrent. Again, Judge, we do want to express our condolences to the family. I
23 calculated 1,034 days and I do believe that that is the correct number.

24 Finally, Judge, I do need to respectfully move to withdraw. Ms. Sandra
25 Stewart will be taking over as appellate counsel. And I believe she's already

1 submitted an order to proceed really immediately after the sentencing this afternoon.

2 THE COURT: Okay. Thank you very much.

3 The State may call their witness, their first witness.

4 MR. PESCI: Judge, I believe Mr. Relato is online. I would also just, really
5 fast, as far as the credit for time served, I think it's the same amount of time as the
6 codefendant because I think they were arrested at the same time, same day.

7 THE COURT: Okay. So 1,032?

8 MR. PESCI: That's what I believe but we'll submit it to the Court.

9 THE COURT: Okay. What's his name again?

10 THE RECORDER: Relato, John Relato.

11 THE COURT: John Relato.

12 MR. RELATO: Yes, ma'am.

13 THE COURT: Mr. Relato, are you appearing by video and audio?

14 MR. RELATO: What did -- what -- can I -- do I need to attend on video?

15 THE COURT: Well, I don't know how I'm going to swear you in.

16 MR. RELATO: Oh, I'm sorry. Okay. I'll --

17 THE COURT: Oh, there you go. Okay. All right. Will you please raise your
18 right hand so you can be sworn?

19 **JOHN RELATO,**

20 [having been called as a speaker and first duly sworn, testify as follows:]

21 THE CLERK: Can you please state and spell your first and last name for the
22 record.

23 THE SPEAKER: John Relato.

24 THE CLERK: Go ahead and spell, please.

25 THE SPEAKER: First name John, J-O-H-N, last name Relato, R-E-L-A-T-O.

1 THE CLERK: Thank you.

2 THE COURT: Go ahead, Mr. Relato.

3 THE SPEAKER: So I was told that I was -- I was to be given time to say a
4 few words --

5 THE COURT: Sure.

6 THE SPEAKER: -- regarding my cousin. My -- I'm -- the victim, Gabriel
7 Valenzuela, is my cousin, but practically he was my brother. I grew up with him. I
8 celebrated birthdays, graduations with him and my own mother has practically
9 raised him as her own. It really broke our hearts to lose him that night. I recall
10 nights when my own mom and his mom, who is standing right besides me actually,
11 would cry themselves to sleep every night due to the traumatic event of him losing
12 his life protecting my family.

13 I'm sorry, this is really hard for me.

14 THE COURT: That's okay.

15 THE SPEAKER: My own sister who is autistic would need assistance for
16 performing certain tasks and Gabriel was -- was actually, practically his -- her
17 caretaker. He'd take her to groceries, Opportunity Village events, and to her friends
18 for social gatherings.

19 On top of that, he was also a nursing student at the College of Southern
20 Nevada. I may not be there with him as a nursing student, but I thought a few words
21 from -- a few letters from his friends and cohorts describing him.

22 He is a great friend with so much to offer for his community. He is
23 funny, kind, and a warm person, a member of the student nursing -- student nurse
24 association and willing to step in when -- when needed. Gabe sets an example of
25 what life could have been when it's full of happiness, love, and positivity. And he -- I

1 guess this is my favorite one, He was an angel among us.

2 He grew up wanting to be a nurse. His mom worked so hard as a
3 caretaker to pay for his tuition and fulfill his dreams. That traumatic event that night
4 delayed her scheduled surgery to the point that it worsened her condition. It pains
5 me to attend these court events, but I'm just -- I am here to see that justice is carried
6 out for my cousin's murder. Thank you, Judge.

7 THE COURT: Thank you, very much.

8 THE SPEAKER: Thank you, Your Honor.

9 THE COURT: Anything else? Okay. In accordance with the laws of the
10 State of Nevada, this Court does now sentence you as follows, in addition to the
11 administrative assessment, the D.N.A. fee, and the collection fee, you'll be required
12 to submit to genetic marker testing. As to Count 1, the Court's going to sentence
13 you to 24 to 72 months in the Nevada Department of Corrections. As to Count 3,
14 the Court's going to sentence you to life in the Nevada Department of Corrections
15 with parole eligibility beginning after a minimum of 10 years has been served.
16 Count 3 to run consecutive to Count 1. He has 1,032 days credit for time served.
17 And restitution in the amount of \$8,729.53 will be imposed and it's joint and several
18 with your codefendant, for an aggregate term of 144 months to life.

19 Thank you.

20 MR. PESCI: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. RUGGEROLI: Judge, may I be allowed to withdraw, please?

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THE COURT: Yes. Yes, your motion to withdraw is granted. Thank you.
MR. RUGGEROLI: Thank you, Your Honor.

PROCEEDING CONCLUDED AT 1:08 P.M.

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.



SARA RICHARDSON
Court Recorder/Transcriber

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

RAEKWON SETREY ROBERTSON
aka Raekwon Robertson
#8252804

Defendant.

CASE NO. C-17-328587-2

DEPT. NO. XII

JUDGMENT OF CONVICTION
(JURY TRIAL / PLEA OF GUILTY)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 - CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 2 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.330 193.165; COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 - CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 2 - ATTEMPT ROBBERY WITH USE OF A DEADLY

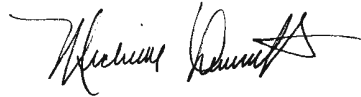
WEAPON (Category B Felony) in violation of NRS 200.380, 193.330 193.165;
COUNT 3 – FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON
(Category A Felony) in violation of NRS 200.010, 200.030, 193.165; Defendant PLED
GUILTY to COUNT 4 - CONSPIRACY TO COMMIT ROBBERY (Category B Felony)
in violation of NRS 200.380, 199.480; and COUNT 5 - ROBBERY WITH USE OF A
DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165;
thereafter, on the 11th day of June, 2020, the Defendant was present in court for
sentencing with counsel MICHAEL W. SANFT, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
addition to the \$25.00 Administrative Assessment Fee, \$200.00 Restitution as to
COUNT 5, \$8,729.53 Restitution to be paid Jointly and Severally with Co-Defendant,
and \$150.00 DNA Analysis Fee including testing to determine genetic markers plus
\$3.00 DNA Collection Fee, the Defendant is sentenced to the Nevada Department of
Corrections (NDC) as follows: **COUNT 1** - a MAXIMUM of SEVENTY-TWO (72)
MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS;
COUNT 2 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a
MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE
term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility
of FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon; **COUNT 3** - LIFE
with a MINIMUM parole eligibility of TWENTY (20) YEARS, plus a CONSECUTIVE
term of TWENTY (20) YEARS with a MINIMUM parole eligibility of EIGHT (8) YEARS
for the Use of a Deadly Weapon; **COUNT 4** - a MAXIMUM of SEVENTY-TWO (72)
MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS; and

1 **COUNT 5** - a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a
2 MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE
3 term of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of
4 FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon; ALL COUNTS to run
5 CONCURRENT; with ONE THOUSAND THIRTY-TWO (1,032) DAYS credit for time
6 served. The AGGREGATE TOTAL sentence is LIFE with a MINIMUM of TWENTY-
7 EIGHT (28) YEARS.
8

9 DATED this _____ day of June, 2020.

Dated this 17th day of June, 2020



C8B F6F 4C9B ED CD
Michelle Leavitt

MICHELLE LEAVITT
DISTRICT COURT JUDGE

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada

CASE NO: C-17-328587-2

vs

DEPT. NO. Department 12

Raekwon Robertson

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Judgment of Conviction was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Envelope ID: 6195325

Service Date: 6/17/2020

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**IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBINSON,

Defendant.

Case No.

C-17-328587-2

Dep't No.

XII

NOTICE OF APPEAL

Notice is hereby given that Raekwon Robertson, defendant in the above-entitled action, appeals to the Supreme Court of Nevada from the Judgment of Conviction filed June 17, 2020.

DATED this 24 June, 2020.

/s/ Michael Sanft

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CERTIFICATE OF SERVICE

I hereby certify that I am a person competent to serve papers, that I am not a party to the above-entitled action, and that on June 24, 2020, I served the foregoing document on:

Steven B. Wolfson, Esq.
Steven S. Owens, Esq.
Clark County District Attorney's Office

200 Lewis Avenue
Las Vegas, NV 89155
Via e-mail: motions@clarkcountynvda.com

DATED this June 24, 2020.

/s/ Michael Sanft

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