

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY BROWN

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 81962

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Valerie Adair, District Judge
District Court No. C-17-326247-1

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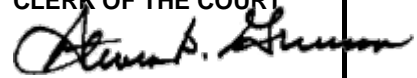
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-17-326247-1
)	DEPT NO. XXI
vs.)	
)	
LARRY DECORLEON BROWN,)	TRANSCRIPT OF
)	PROCEEDINGS
Defendant.)	

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

WEDNESDAY, DECEMBER 11, 2019

JURY TRIAL - DAY 3

APPEARANCES:

FOR THE STATE:	JOHN L. GIORDANI III, ESQ. Chief Deputy District Attorney MICHAEL DICKERSON, ESQ. Deputy District Attorney
FOR THE DEFENDANT:	MONICA R. TRUJILLO, ESQ. W. JEREMY STORMS, ESQ. Chief Deputy Special Public Defenders

RECORDED BY: ROBIN PAGE, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

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1 LAS VEGAS, CLARK COUNTY, NEVADA, DECEMBER 11, 2019, 9:06 A.M.

2 * * * * *

3 (Outside the presence of the prospective jury panel.)

4 THE COURT: I don't know if you want to put anything
5 on the record regarding the last juror. It was late in the
6 day, and I think we were all tired and so we just left. The
7 engineer from, was it Verizon?

8 MR. GIORDANI: Yes.

9 MS. TRUJILLO: Yes.

10 THE COURT: Okay. First, are there any Verizon
11 records being offered in this case?

12 MR. GIORDANI: Yes.

13 THE COURT: Okay. Does the defendant have a Verizon
14 account?

15 MR. GIORDANI: No.

16 THE COURT: Okay. And what kind of a phone account
17 does the defendant have?

18 MR. GIORDANI: Sprint.

19 THE COURT: Okay. And so the Verizon records are
20 what the phone records of people he's supposedly contacting or
21 what?

22 MR. GIORDANI: No. It's just the victim's phone, and
23 I don't think there's any disagreement that Mr. Brown did not
24 have any contact with the victim.

25 MS. TRUJILLO: No disagreement.

1 MR. GIORDANI: And the victim's location isn't going
2 to be an issue. He's dead at the scene and the two phones
3 are --

4 THE COURT: Okay.

5 MR. GIORDANI: I was going to say that last night,
6 but I agree we were all tired and ready to get out of here.

7 THE COURT: Right. So there's really nothing
8 contested involving Verizon?

9 MR. GIORDANI: I don't believe so.

10 MR. STORMS: There's just, you know, talking about
11 the panels and the towers, Judge, he had such really
12 specialized knowledge about those things. He could interject
13 that into the jury, and, you know, because there is going to be
14 an issue about what the tower can say about where someone's
15 phone is and their proximity to this location. This location
16 is along a major freeway, and neighborhoods. I don't know if
17 that gives him something that's special and unique to say about
18 that tower because he was talking about certain towers --

19 THE COURT: Right.

20 MR. STORMS: -- having certain types of ranges and so
21 on.

22 THE COURT: What's contested in the phone; that would
23 be mainly the detective's testimony regarding what the towers
24 all mean. So what's contested in the tower, I guess,
25 information?

1 MR. STORMS: What -- what inferences they're going to
2 ask the jury to draw about where that one might say Mr. Brown
3 is for instance.

4 MS. TRUJILLO: Via mapping and, you know, the radius.

5 THE COURT: Right.

6 MR. STORMS: The tower is where his phone was
7 connecting to the network which means that he's broadly or in
8 this area then it could be large or smaller depending on some
9 information that he has not even detectives know about the type
10 of tower it is. We just don't know until we get to that point,
11 and, I mean, he could have designed the darn thing, I mean,
12 because I'm not sure which particular company owns this tower.
13 I just don't know.

14 MR. DICKERSON: Well, then they each have their own
15 different panels.

16 MR. GIORDANI: Yeah.

17 THE COURT: Right.

18 MR. GIORDANI: The Sprint phone is not even on this
19 network that this gentleman has some knowledge about. In
20 addition, just bringing this back to the ultimate issue, he
21 didn't say anything that would support a for-cause challenge.
22 That -- challenging him for having individualized knowledge of
23 the Verizon network is like challenging any ER surgeon in any
24 case where there's medical records. I mean, that's not a
25 for-cause challenge. I understand that we'll probably perempt

1 him if they don't want him on the jury, but he hasn't said
2 anything.

3 THE COURT: Well, the only issue would be, I think,
4 if he had some kind of unique knowledge about Verizon or
5 something like that. It's not the Verizon tower that's at
6 issue, and he said that he's not familiar with the other cell
7 towers and how the other cell -- he said that how the other
8 cell companies do their towers, and I think he said he worked
9 for one other carrier a long time ago.

10 MR. STORMS: He worked for AT&T and --

11 MS. TRUJILLO: And a third party.

12 MR. STORMS: The one that was the Betamax of --

13 THE COURT: Right. Right. So he's never worked for
14 Sprint.

15 MS. TRUJILLO: Right. But he did say that the
16 companies share towers which they often do; right?

17 THE COURT: But those are the towers, like, you know,
18 that are dressed up to look like a pine tree.

19 MS. TRUJILLO: Right. And that's how -- that's a
20 cell site. That's the tower information; right. So if we get
21 to the point in testimony and it happens to be Verizon sharing
22 that tower with Sprint, then it's -- then he's going to have
23 information about the tower because he built the towers, as he
24 said.

25 MR. DICKERSON: Well, the way they share towers is

1 that, you know, Sprint might own the actual tower itself, but
2 then they'll lease out a spot on the tower --

3 THE COURT: Right.

4 MR. DICKERSON: -- for AT&T to put their particular
5 product.

6 MS. TRUJILLO: Right. But it's still the same
7 longitude and latitude. That's the problem.

8 MR. DICKERSON: And they can -- and those might be --

9 THE COURT: Yeah, but he doesn't know the size of
10 their, I don't even remember the term, their --

11 MR. STORMS: Panels.

12 MS. TRUJILLO: Panel.

13 THE COURT: Panel, thank you. He doesn't know what
14 the technology or the --

15 MR. GIORDANI: The range.

16 THE COURT: -- of their particular panel, the range.
17 He, I think he explicitly said that he would only know because
18 the tower itself is just basically a pole.

19 MR. STORMS: Sure.

20 MS. TRUJILLO: Right.

21 THE COURT: So I'm sure he doesn't design the pole.
22 That would be some other kind of more like a civil engineer
23 that would make sure the structure of the pole, right, the
24 depth and everything like that isn't going to topple over.
25 This guy is more on the technical engineering side.

1 MR. STORMS: And I would say he -- he might just, I
2 mean, it might be that the -- there might be information in the
3 reports or whatnot what's introduced to the jury that does say
4 something about the panel. He might know the equipment. I
5 mean, he designs towers, right, but this equipment, these
6 panels and so on I'm not sure. Those could be something that
7 as a third party they all -- they all buy; he might be familiar
8 with something specific about them that otherwise isn't
9 testified to. That's just our concern that he might interject
10 some level of expertise above and beyond what is testified to.

11 MR. GIORDANI: Well, again, this is why we have
12 perempts. That's like saying if there's UMC medical records
13 introduced, that anybody who is a surgeon or a doctor at UMC
14 can't be on the jury because they might glean something
15 different from a medical record that someone else wouldn't.
16 This is why we have perempts. He didn't say anything that
17 would support a for-cause challenge. He said he could be fair.
18 He could set aside any personal knowledge he had and not infect
19 the rest of the jurors when the Court asked him that.

20 THE COURT: I think he's okay. I'd be more concerned
21 if it were the issue -- the issue were the defendant's phone
22 was a Verizon phone, but it's not a Verizon phone. The
23 victim's phone is a Verizon phone, but none of that's
24 contested, and, in fact, I think the defense is going to
25 affirmatively concur, right, with the information on the

1 victim's phone meaning that the defendant was not in contact
2 with the victim. Wouldn't that support the defense's theory of
3 the case?

4 MS. TRUJILLO: Correct.

5 THE COURT: So I don't see a problem with this juror.
6 Like I said, I'd be more concerned if this defendant was on
7 Verizon and that was a critical issue in the case, then
8 probably I might say out of an abundance of caution. But in
9 this case everything that this witness may be familiar with,
10 maybe, is not going to be contested, and, in fact, I think both
11 of you are going to be advancing that narrative, meaning that
12 he didn't have contact with the victim's phone.

13 MR. GIORDANI: With that --

14 THE COURT: Is that -- is that a fair synopsis of
15 what the State's position is going to be?

16 MR. GIORDANI: Yes, Your Honor.

17 THE COURT: Is that a fair synopsis of what the
18 defense's position is going to be regarding contact with the
19 victim?

20 MS. TRUJILLO: Yes.

21 THE COURT: Okay. Kenny, are they here?

22 THE MARSHAL: No, Judge, we're missing quite a few.

23 MS. TRUJILLO: The line was really long.

24 MR. STORMS: Lousy line.

25 MS. TRUJILLO: And the elevator line.

1 THE COURT: Was there?
2 MR. STORMS: Yeah.
3 THE MARSHAL: We're missing upwards of 10 to 15.
4 THE COURT: Okay.
5 MR. STORMS: Yeah, we got in a line at about, what
6 was it --
7 MS. TRUJILLO: 8:40.
8 MR. STORMS: Yeah, and it took me -- you know, we got
9 up around 50 so it was a --
10 THE COURT: So is there -- is he the last one then,
11 did we fill Chair 1?
12 MR. GIORDANI: Yes, and we are going to pass for
13 cause.
14 THE COURT: You were going to pass. You're done
15 questioning him?
16 MR. GIORDANI: Yes.
17 THE COURT: So then Ms. Trujillo you or Mr. Storms --
18 MS. TRUJILLO: We are actually going to switch off.
19 THE COURT: Okay.
20 MS. TRUJILLO: But I'm going to start.
21 THE COURT: As long as you do it in a fashion that
22 makes sense, I'm fine with that.
23 MS. TRUJILLO: Yep.
24 THE COURT: Right. So if it's one question to the
25 whole panel obviously only one of you can ask the question.

1 How are you going to -- are you going to do it by person or by
2 row or --

3 MS. TRUJILLO: I'm going to really switch it up. I
4 mean, I was telling him he asked a lot yesterday so I think we
5 know quite a bit so I'm just going to mostly follow up.

6 THE COURT: Okay.

7 MS. TRUJILLO: There's going to be a couple of the
8 group, but I don't think -- I think we should be done by 12:00.

9 THE COURT: Okay.

10 MR. GIORDANI: We arranged four witnesses for this
11 afternoon. So we're all -- I think we're all in agreement that
12 we should open just around lunch or after lunch.

13 THE COURT: Okay. How long is your opening, just for
14 scheduling?

15 MS. TRUJILLO: Too long.

16 MR. GIORDANI: 20 to 30.

17 MR. DICKERSON: Yeah, that'd be safe.

18 THE COURT: How long is your --

19 MS. TRUJILLO: Probably about 10, 15.

20 THE COURT: Okay. All right. Well, I'm going to go.
21 Anything else we need to do on the record?

22 MR. GIORDANI: No.

23 THE COURT: Okay.

24 (Recess taken 9:14 a.m. to 9:39 a.m.)

25 (Outside the presence of the prospective jury panel.)

1 THE COURT: All right. We are on the record out of
2 the presence of the jury.

3 MR. GIORDANI: Thank you, Your Honor. I do have a
4 for-cause challenge. I apologize, it just came to my
5 attention. It's to Juror Number 454, Ms. Allen. If the Court
6 recalls yesterday, Ms. Allen indicated that her two older
7 brothers went to prison for robbery and kidnap. It was a 2008
8 case here in Clark County. The victim was a drug dealer that
9 they knew. They ended up going to trial on that case and were
10 convicted.

11 THE COURT: Right.

12 MR. GIORDANI: Although that was concerning in and of
13 itself --

14 THE COURT: Which isn't a for cause though --

15 MR. GIORDANI: Right.

16 THE COURT: -- because she said they were treated
17 fairly.

18 MR. GIORDANI: Right. The problem is, is
19 Mr. Dickerson pulled the reports associated with that case, and
20 it's Event 081209-3779, and in reviewing them this morning, our
21 lead detective on the instant case, Detective Dosch was the
22 lead detective on her brothers' cases. Detective Dosch
23 conducted interviews; he responded to the scene where the
24 3-year-old child was located. He pulled phone records of her
25 brothers and their cohort. He's one of the lead detectives.

1 This did go to trial. My concern is number one when she --

2 THE COURT: Well, if she recognizes him there could
3 be a problem, but here's what I'm the --

4 What's the defense's position?

5 MS. TRUJILLO: That it's not a for-cause challenge.
6 Obviously, like Mr. Giordani said, he anticipated it being an
7 issue, and I think that her responses were very clear. As you
8 just said, the criminal justice system treated her brothers
9 fairly. They did what they did, and they were punished for it.
10 And she didn't even go to court she said. She went to
11 hearings, she didn't go to the trial.

12 THE COURT: Right.

13 MS. TRUJILLO: So I'm not sure she would recognize
14 him. I mean, maybe the name I'm not sure, but it sounded like
15 she really wasn't involved in this trial.

16 THE COURT: Well, I'm just going to follow up if she
17 was ever interviewed by detectives in connection with her
18 brothers' case.

19 MS. TRUJILLO: And also --

20 THE COURT: And then also because she didn't attend
21 the trial, he, you know, if he was at the sentencing, sometimes
22 very, very rarely the police may show up at the sentencing.
23 Very rare. She wouldn't have known who the heck he was anyway
24 because he's just sitting in the audience. Although and that's
25 very rare. So she did come, I think, to the sentencing or

1 hearing she said. So if it -- I'm -- if no one cares, I'll
2 follow up and find out if she went to a preliminary hearing and
3 if she was ever interviewed by detectives. And if neither of
4 those things happened, then based on her answers I don't think
5 there's any reason to believe that she would have known
6 Detective Bosh (sic). I mean, her -- she seemed pretty
7 unfamiliar with the case.

8 MR. GIORDANI: Well, respectfully I disagree. I
9 think she was there. She said she attended hearings; she
10 visited them in prison. I mean, I know that --

11 THE COURT: Well, Detective Bosh wasn't in prison.

12 MR. GIORDANI: No, I get that, but you gotta
13 understand the State's concern. Whatever she says here today,
14 if Detective Dosch walks into this courtroom and she recognizes
15 him.

16 THE COURT: You know, isn't that what peremptory
17 challenges are for?

18 MR. GIORDANI: That's what cause challenges are for
19 too; right?

20 THE COURT: Well, yeah, but I don't see a for-cause
21 challenge if she doesn't -- if she knows it's Detective Bosh
22 then I'll say, okay.

23 MR. GIORDANI: Okay.

24 THE COURT: But if -- right now we don't have enough
25 of a record that she would have known it's Detective Bosh or be

1 able to recognize him, and so I'm going to inquire further. If
2 I believe she recognizes, might recognize Detective Bosh then
3 there may be an issue. Otherwise, if you're concerned, then
4 you can use one of your nine perempts on her.

5 MR. GIORDANI: Okay. And it's Dosch with a D.

6 THE COURT: Oh, Dosch.

7 MS. TRUJILLO: And then, Judge, I would ask the Court
8 to follow up if she does say she attended a prelim or whatever
9 the Court's going to ask, whether he testified or not because
10 all the time -- they don't always testify at those hearings.
11 So I don't want to just presume --

12 THE COURT: Right.

13 MS. TRUJILLO: -- that she knows who he is. And just
14 to complete my record that I was initially saying, she also
15 made two comments. I can judge the case fairly despite the
16 charges against my brother and the fact that they went to
17 prison. And then John, Mr. Giordani actually, specifically
18 said, you know, are we going to start on a level playing field
19 because of what your brothers were into, and she specifically
20 said no. So I think that that's sufficient.

21 THE COURT: Right. I'm mean, I feel like she seemed
22 to think that they were treated fairly because they did it.

23 MR. GIORDANI: Right. And if I could complete my
24 record.

25 THE COURT: Sure.

1 MR. GIORDANI: I mean, I didn't make a for-cause
2 challenge based upon what she said here in court.

3 THE COURT: Right. No, no, I get it. It's on the --

4 MR. GIORDANI: This is new information.

5 THE COURT: It's on the -- it's on the police report.
6 But again, the issue is whether she knows it's Detective Bosh
7 or could recognize Detective Bosh. If she doesn't know it's
8 Detective Bosh and there's no risk of her recognizing him, then
9 I don't see the basis for a for-cause challenge. And, you
10 know, again, you have to presume that the jurors are going to
11 follow the instructions and not discuss the case with family
12 members or anything like that.

13 MR. GIORDANI: Sure.

14 THE COURT: And I think it's unlikely after how many
15 years the brothers are going to say, oh, that gosh darn
16 Detective Dosch, you know what I mean, and start talking about
17 it just out of the blue. She didn't recognize the name, and
18 like I said, I have to believe that they follow the admonition,
19 and, you know, I'll follow up.

20 MR. GIORDANI: Okay.

21 THE COURT: Can we bring them in?

22 THE MARSHAL: Yep, and everyone's here.

23 THE COURT: All right. Everyone's here. We're
24 starting 45 minutes late because that late juror just got here.
25 Someone please use your perempt on her.

1 MR. GIORDANI: Well, now I have to use one on Allen
2 so they should have to use it on her.

3 THE COURT: Well, we'll see what she says. Without
4 anybody indicating Detective Dosch is involved --

5 MR. GIORDANI: Have you ever seen him? He kind of
6 stands out.

7 THE COURT: I don't --

8 MS. TRUJILLO: No, get out of here.

9 THE COURT: What does he look like?

10 MR. GIORDANI: Like a detective.

11 MR. DICKERSON: Yeah.

12 MS. TRUJILLO: They all do.

13 MR. GIORDANI: Big barrel chested guy, a buzz cut. I
14 guess you could argue that that makes him not stand out as a
15 detective.

16 THE COURT: Right. Exactly.

17 (Pause in the proceedings.)

18 THE COURT: Now, he would've been in robbery at that
19 time.

20 MR. GIORDANI: He was in robbery, and he's been in
21 homicide for years. So this was a --

22 THE COURT: Right. So she may not even be able to,
23 you know, if those were robbery detectives, she's not
24 necessarily going to think, oh, okay, now he may be a
25 homicide --

1 I'll follow up. We'll see what she says.

2 MR. GIORDANI: Okay.

3 (Panel of prospective jurors entering 9:46 a.m.)

4 THE COURT: All right. Court is now back in session.
5 The record should reflect the presence of the State, the
6 presence of the defendant along with his counsel, the officers
7 of the court and the ladies and gentlemen of the prospective
8 jury panel.

9 And I wanted to follow up with you is it, Ms. Allen?
10 In Chair 2 --

11 PROSPECTIVE JUROR NO. 454: Allen.

12 THE COURT: Allen. I'm sorry. No wonder everyone's
13 looking at me. All right.

14 Ms. Allen, I wanted to follow up on a couple of
15 things you said yesterday regarding the case involving your two
16 brothers.

17 PROSPECTIVE JUROR NO. 454: Okay.

18 THE COURT: You indicated you'd attended some
19 hearings. Do you recall which hearings you attended?

20 PROSPECTIVE JUROR NO. 454: No.

21 THE COURT: Okay. Did you go into the courtroom or
22 did you, you know, sit in the hallway while the hearings were
23 going on?

24 PROSPECTIVE JUROR NO. 454: No. It was in the
25 courtroom, and they were up against the wall.

1 THE COURT: Okay. Was there any testimony from the
2 witness stand at the hearings?

3 PROSPECTIVE JUROR NO. 454: No.

4 THE COURT: Okay. So it was mainly just the Judge
5 and the lawyers talking?

6 PROSPECTIVE JUROR NO. 454: Yes.

7 THE COURT: Okay. And then were you ever interviewed
8 by any police officers or detectives in connection with your
9 brothers' case?

10 PROSPECTIVE JUROR NO. 454: No.

11 THE COURT: So you never give a statement or anything
12 of that nature?

13 PROSPECTIVE JUROR NO. 454: No.

14 THE COURT: All right. Thank you.

15 Mr. Giordani, any other questions for the panel?

16 MR. GIORDANI: Just real briefly, Ms. Allen. Did you
17 have any interaction with detectives on that case?

18 PROSPECTIVE JUROR NO. 454: No.

19 MR. GIORDANI: That you're aware of? And did your
20 brothers indicate to you any names of detectives?

21 PROSPECTIVE JUROR NO. 454: No.

22 MR. GIORDANI: Okay. And based upon the witness list
23 that you heard you didn't recognize any names?

24 PROSPECTIVE JUROR NO. 454: No.

25 MR. GIORDANI: Okay. Thank you, ma'am.

1 THE COURT: I have a follow-up. Did your brothers
2 ever when you -- either currently or back then or whatever, did
3 they ever express any ill will or, you know, bad blood, so to
4 speak, toward Metro police or Metro detectives either
5 specifically or generally?

6 PROSPECTIVE JUROR NO. 454: No.

7 THE COURT: Okay. All right.

8 MR. GIORDANI: No further questions.

9 THE COURT: Pass for cause?

10 MR. GIORDANI: Yes.

11 THE COURT: All right. Thank you.

12 Ms. Trujillo, you may follow up with the panel.

13 MS. TRUJILLO: Thank you. Good morning everyone.

14 This is a little awkward, sorry. I like to walk around, but
15 that's not going to happen today. So if you recall my name is
16 Monica Trujillo, and again my cocounsel is Jeremy Storms, and
17 we're both going to actually get up here and talk to you and
18 have some interaction with you. I know this has been
19 uncomfortable. We made references to it yesterday.

20 You know, the point of it, everyone keeps saying be
21 fair, be fair, that's what we want. But the reality is, we are
22 here to determine if you're the appropriate juror for this
23 case, and sometimes people aren't. Sometimes, you know,
24 there's another case better suited for you. You know the
25 allegations are murder, and some people have a problem with

1 that obviously.

2 We heard some stories shared here yesterday so I know
3 a lot of the topics are hard to discuss. It's very personal
4 information. And along that vein, you know, we're going to try
5 to make you as comfortable as we can. But the reality is
6 there's no right or wrong answer. We're not looking for a
7 specific answer. We're looking for your opinions and feelings.
8 Okay.

9 We're all human. Everything we do, everything we've
10 done our entire lives affects us. It makes us who we are, our
11 experiences, our interactions. And while we all like to walk
12 around and say, okay, we're fair people. I'm a good person.
13 The reality is we all make assumptions. We often prejudge.
14 There are a lot of things that we do that come naturally. So I
15 just want you to be as comfortable as possible.

16 And yesterday we got a lot of information because
17 Mr. Giordani did a good job of talking to everyone
18 individually. So I'm just going to have some follow-ups for
19 people. So don't take any offense. As you could see yesterday
20 we were taking a lot of notes.

21 All right. So I want to start with yesterday -- I'm
22 going to kind of hit a topic that he touched on yesterday. He
23 made a comment about CSI shows and a couple of you watch
24 criminal justice documentaries and other things like that. But
25 he made the comment are -- everyone knows those aren't real;

1 right? Some of you guys nodded and some of you guys responded,
2 well, they're somewhat real.

3 Who here agrees that they are based in science?
4 Raise your hand if you agree that they're based on science.
5 And we agree that science is real; right? And that crime scene
6 investigation does happen in real life; do you agree? And that
7 part of the police's job when they prosecute a case or when
8 they're looking for evidence is to collect crime scenes,
9 photos, document, whatever.

10 For example, Ms. Simon, you mentioned yesterday that
11 when you were -- sorry, you can pass the microphone. You
12 mentioned yesterday that initially you didn't want to testify
13 against your ex-boyfriend, but when the police officers showed
14 you the photos that you kind of made the decision to do so;
15 right?

16 PROSPECTIVE JUROR NO. 183: Right.

17 MS. TRUJILLO: Why do you think that they took photos
18 of you?

19 PROSPECTIVE JUROR NO. 183: I think it was part of
20 the process.

21 MS. TRUJILLO: Okay. To kind of help document what
22 you looked like and what happened to you?

23 PROSPECTIVE JUROR NO. 183: Yes.

24 MS. TRUJILLO: Okay. And when you saw those photos,
25 you pictured yourself as you were that day; right?

1 PROSPECTIVE JUROR NO. 183: Yes.

2 MS. TRUJILLO: And that's kind of -- that's kind of
3 what helped you decide, okay, I'm going to testify against him.

4 PROSPECTIVE JUROR NO. 183: Yes.

5 MS. TRUJILLO: What kinds of other things do you
6 think that are involved with crime scene investigation?

7 PROSPECTIVE JUROR NO. 183: I guess behavior, whether
8 actions that were taken from both sides of the party. I mean,
9 were there any calls made or -- at this moment I don't know.

10 MS. TRUJILLO: That's okay. You can pass it to
11 Ms. Allen.

12 Ms. Allen, do you have any idea what other types of
13 things a crime scene investigator can do to collect evidence in
14 a case?

15 PROSPECTIVE JUROR NO. 454: What do you mean like
16 take pictures?

17 MS. TRUJILLO: Uh-huh.

18 PROSPECTIVE JUROR NO. 454: Take notes.

19 MS. TRUJILLO: Write reports.

20 PROSPECTIVE JUROR NO. 454: Uh-huh.

21 MS. TRUJILLO: Okay. Anybody else have anything that
22 they want to share? Ms. Devine? Do you want to pass the mic
23 there.

24 PROSPECTIVE JUROR NO. 338: Like any DNA or
25 fingerprinting, anything like that.

1 MS. TRUJILLO: Okay. And that's science-based; you'd
2 agree?

3 PROSPECTIVE JUROR NO. 338: Uh-huh.

4 MS. TRUJILLO: Okay. Someone else had their hand up?
5 Ms. Blankenship.

6 PROSPECTIVE JUROR NO. 521: Yeah, testimonies are,
7 you know, people's accounts of what happened and how it
8 happened and who was there and basically their observations if
9 they witnessed anything happening so they could get reports
10 from whoever was around to put the pieces together.

11 MS. TRUJILLO: Okay. So to help kind of --

12 PROSPECTIVE JUROR NO. 521: Kind of paint a picture
13 for those who weren't there as to what happened and then the
14 evidence is gathered and matched with statements to see --
15 basically a puzzle and putting all the pieces together.

16 MS. TRUJILLO: Okay. And then someone else had their
17 hand -- looks like Mr. Davis.

18 PROSPECTIVE JUROR NO. 500: In addition, you use
19 technology to ascertain the location of individuals to validate
20 or substantiate whether the claims were true or not true.

21 MS. TRUJILLO: Okay. All right. Thank you. I kinda
22 gotta go into a difficult topic here. Nobody really likes to
23 talk about race. Like I said earlier, you know, people make
24 assumptions all the time, and that's based on our experiences.
25 It could be based on how we were raised, on our culture, and in

1 the interest of disclosure and to make you more comfortable,
2 I'm going to give you a couple of instances in my life where,
3 you know, I've had issues with race and/or assumptions.

4 So in college I was in an interracial relationship,
5 and my family's from Mexico. It was unacceptable. So, you
6 know, I got -- I had got flak from my family, and that was
7 something I had never encountered before. And that wasn't
8 based on anything that they really had experience, but based on
9 how they were raised.

10 Another issue that I had with assumptions is, for
11 example, I walk into a courtroom and because I look the way I
12 do people assume I'm an interpreter. And they ask me, hey, are
13 you the interpreter; can you help me. I don't take offense to
14 it. It's just because people make assumptions based on their
15 experience.

16 So that being said, does the fact that race is
17 involved in this case and Mr. Brown is African-American, does
18 anyone have issues with that?

19 MR. GIORDANI: Can we approach?

20 THE COURT: Sure.

21 (Conference at the bench not recorded.)

22 THE COURT: All right. Ms. Trujillo, can you
23 rephrase that, please.

24 MS. TRUJILLO: Yes.

25 So by -- when I made the comment of obviously

1 Mr. Brown is -- well, what I said was race is going to be
2 involved in this case and that Mr. Brown was African-American.
3 He's obviously a different race from some of the people who are
4 going to be chosen on this jury. Is that going to be a problem
5 for anyone? No. Okay. I'll move on. Thank you.

6 Ms. Blankenship -- Can we pass the microphone,
7 please. How are you this morning?

8 PROSPECTIVE JUROR NO. 521: I'm doing good; how are
9 you?

10 MS. TRUJILLO: Good.

11 So yesterday you made the comment of obviously we
12 talked about your very emotional job and the many hats you
13 wear.

14 PROSPECTIVE JUROR NO. 521: Uh-huh.

15 MS. TRUJILLO: And part of that you told us that in
16 an effort to better assess what your client, for lack of a
17 better word, your students need that you review information and
18 you assess it, and you determine how you can best help your
19 student; right?

20 PROSPECTIVE JUROR NO. 521: Uh-huh. Yes, the
21 families and the children.

22 MS. TRUJILLO: Right.

23 PROSPECTIVE JUROR NO. 521: Uh-huh.

24 MS. TRUJILLO: And in doing that you take information
25 from multiple parties; right?

1 PROSPECTIVE JUROR NO. 521: Yeah. Basically, going
2 into family's homes and, you know, hey, how are things going.
3 Follow-up on medical appointments, anything -- any priorities
4 or concerns that have come up since our last visit together,
5 that kind of stuff. So following up with them and making sure
6 everything's going okay, and that kind of stuff.

7 MS. TRUJILLO: Okay. And when you're doing that, how
8 do you assess someone -- what they're telling you? How do you
9 assess their credibility, what they're telling you? How do you
10 evaluate that information?

11 PROSPECTIVE JUROR NO. 521: From the rapport that
12 I've built with them. You know, from the initial home visit
13 that I had, to meeting them, getting to know about them, what
14 their medical history is, their family history has been and
15 just hearing about their story -- their life story and becoming
16 part of a team with them and then eventually part of their
17 family because I'm in their home with them, and it's very
18 personal. I'm in their space so -- respecting their space and,
19 you know, just knowing them and hearing what they're saying and
20 responding to it.

21 MS. TRUJILLO: Okay. Have you ever had a situation
22 where you get different information like the -- the like,
23 contrast each other, that doesn't go together, doesn't mesh
24 well, doesn't make sense to you?

25 PROSPECTIVE JUROR NO. 521: Oh, absolutely.

1 MS. TRUJILLO: And how do you determine who to
2 believe or what you're looking for? How do you determine that?

3 PROSPECTIVE JUROR NO. 521: Well, I -- I've, you
4 know, I write down and document everything that is said, you
5 know, that's subjective. And then, you know, making sure it's
6 documented and it's there, and then I do my part in documenting
7 the objective. You know, progress being made, what the --
8 what -- the facts basically of what happened at a family visit.
9 And then I'll follow up, you know. I'll follow-up with the
10 family, or I'll follow-up with the doctor, you know, and try to
11 make sense of the information of its consistency.

12 MS. TRUJILLO: Okay. And can you pass to
13 Ms. Wallace.

14 PROSPECTIVE JUROR NO. 521: Yes.

15 MS. TRUJILLO: Ms. Wallace, preschool teacher at a
16 school for many years.

17 PROSPECTIVE JUROR NO. 393: Yes.

18 MS. TRUJILLO: And you -- so if you have an issue at
19 your school and you have two kids that are fighting and someone
20 is telling -- obviously -- usually they're telling you
21 different information; right? How do you assess credibility?

22 PROSPECTIVE JUROR NO. 393: Well, the age I teach, I
23 teach 2 year olds so that's rather difficult. We usually try
24 to help them understand why they're feeling the emotions that
25 they're feeling. My classroom emphasizes social and emotional

1 development. So we spend a lot of time teaching about feelings
2 and reactions and emotions and how to deal with them and how --
3 which -- which ways are appropriate and which ways aren't for
4 a -- well, as a 2 year old, 3 year old can handle.

5 I -- I'm observing constantly. I'm in a classroom
6 set up in a way that I can have my eyes all around. I have an
7 aide with me also, and he -- he also keeps, you know, we keep
8 track of the children where they're at and what they're doing.
9 So if conflict develops, we usually can intervene right away
10 and -- and if need to, you know, talk -- talk them through the
11 situation or sometimes separate them and talk individually to
12 them or find a different solution. So it's -- it's just the
13 ages is a lot different to deal with than adults.

14 MS. TRUJILLO: Right. So besides actual word -- like
15 them saying something to you is there any other things that you
16 look at like their -- the way that they respond, their physical
17 responses, is there anything you look to when they're telling
18 you things?

19 PROSPECTIVE JUROR NO. 393: Yeah. A lot of times
20 it's physical because they don't have the communication skills
21 that, you know, older children have so we usually assess what
22 situations are about to happen. If they're sharing toys and
23 fighting over a toy or something then, you know, we're able to
24 interview before a conflict begins.

25 If it's physical, it's -- we usually separate the

1 child and work it out in a way that give him a separate toy or
2 have him understand that it's the other child's turn. So we do
3 a lot of -- it's a lot of talking. A lot of teaching of
4 self-discipline and self-regulation. Teaching them about their
5 emotions and why they're feeling the way that they feel.
6 Teaching a lot of empathy also.

7 MS. TRUJILLO: Thank you. Can you pass it back to
8 Mr. Davis, please.

9 Mr. Davis, yesterday we were talking about your
10 sister-in-law. I don't mean to harp on that situation, but you
11 made a comment that you said sometimes when people are telling
12 stories they omit facts and that it's a subjective experience;
13 can you elaborate on that.

14 PROSPECTIVE JUROR NO. 500: Well, this is the human
15 experience; right. It's, you know, two people can see the same
16 thing and interpret it completely different, and in the case of
17 my sister-in-law, especially in times of stress, you know, your
18 memory can -- can be forgetful, and you can focus or hone in on
19 areas that otherwise you might have not paid a lot of attention
20 to.

21 So, you know, I just was acknowledging the fact that
22 again it's almost like the story when you're a kid where you
23 tell a secret to someone and they keep passing the secret, and
24 eventually it's completely different from the initial, you
25 know, message. So when --

1 MS. TRUJILLO: -- that's what happened now. Okay.
2 So I just wanted to be clear, you're not necessarily, they're
3 purposely omitting facts. You were just saying that human
4 experience by nature it happens.

5 PROSPECTIVE JUROR NO. 500: No, I -- yeah, I'm
6 acknowledging the fact that it could be a traumatic experience,
7 right, and in light of that especially the time in which, you
8 know, the arrest took place and her first DUI, and truthfully
9 there's probably a stigma attached to it. And so when you --
10 when you factor in all those aspects, I think there's
11 definitely going to be some events that, you know, you omit,
12 and there could be some things that you just forget, you know.

13 MS. TRUJILLO: Okay. Anyone want to add anything to
14 that? Can you pass the mic back to Ms. Vargas.

15 PROSPECTIVE JUROR NO. 354: Hi.

16 MS. TRUJILLO: So yesterday Mr. Giordani asked you if
17 you could be fair to Mr. Brown.

18 PROSPECTIVE JUROR NO. 354: Uh-huh.

19 MS. TRUJILLO: And your response was I believe so.

20 PROSPECTIVE JUROR NO. 354: Yeah.

21 MS. TRUJILLO: And why the hesitation or what was
22 that; can you just tell me.

23 PROSPECTIVE JUROR NO. 354: I said I believe so
24 because it's a lot of pressure to be a part of what's going to
25 happen to him.

1 MS. TRUJILLO: Uh-huh.

2 PROSPECTIVE JUROR NO. 354: Because initially that's
3 what we all are, and it's a small piece of the jurors that we
4 potentially could be, but it -- it's a lot of responsibility.

5 MS. TRUJILLO: Well, ultimately you answered that you
6 were able to listen to the evidence before you made a decision;
7 do you still think you could do that?

8 PROSPECTIVE JUROR NO. 354: Yes.

9 MS. TRUJILLO: Okay. And then we also talked about
10 your very close friend's husband who is a part of SWAT, and you
11 see him, you said weekly, at least once a week; right?

12 PROSPECTIVE JUROR NO. 354: Yes.

13 MS. TRUJILLO: So nothing about that relationship is
14 going to make you feel any differently towards police officers.
15 For example, because they are police officers you're not going
16 to say, okay, they might be a little more credible than regular
17 people?

18 PROSPECTIVE JUROR NO. 354: No.

19 MS. TRUJILLO: Okay. Can you pass it to Mr. Flangas.
20 How are you today?

21 PROSPECTIVE JUROR NO. 367: Good. How are you?

22 MS. TRUJILLO: Good. So yesterday you made the
23 comment that you're absolutely not interested in what we do.

24 PROSPECTIVE JUROR NO. 367: Correct.

25 MS. TRUJILLO: Any -- should I be concerned is that

1 that you have any dislike towards defense attorneys, or you
2 just don't like the act of litigation in trial? Just want to
3 flush that out.

4 PROSPECTIVE JUROR NO. 367: Oh, no, it's just not for
5 me.

6 MS. TRUJILLO: Okay.

7 PROSPECTIVE JUROR NO. 367: No reason why or why not,
8 just not something I'm interested in.

9 MS. TRUJILLO: And then nothing -- your -- I know you
10 have -- we talked about your family being -- doing some
11 criminal defense. So nothing about that's going to make you
12 look down on defense attorneys?

13 PROSPECTIVE JUROR NO. 367: Nothing.

14 MS. TRUJILLO: Okay. And then pass that back to
15 Mr. Pursell.

16 PROSPECTIVE JUROR NO. 368: Hi.

17 MS. TRUJILLO: Hi, how are you?

18 PROSPECTIVE JUROR NO. 368: Good.

19 MS. TRUJILLO: So you also have a lot of friends and
20 family in law enforcement. So kind of the same question I
21 asked Ms. Vargas, you know, you're not going to think just
22 because they're a police officer testifying, okay, he might be
23 a little more credible than Bob Joe coming in to testify next?

24 PROSPECTIVE JUROR NO. 368: No, I mean -- I mean my
25 family is my family, I can't help that. I have great respect

1 for law enforcement. I think they have a hard job, but on the
2 other hand, you know, even the best cop has bad days. They
3 make mistakes. God knows I've seen a lot of it, and especially
4 covering crime as a reporter and so forth. So and you know the
5 facts are facts and that's all I'm looking for.

6 MS. TRUJILLO: Thank you. Will you pass that to
7 Mr. Williams right behind you.

8 PROSPECTIVE JUROR NO. 368: Sure.

9 MS. TRUJILLO: Hi. How are you?

10 PROSPECTIVE JUROR NO. 480: I'm great.

11 MS. TRUJILLO: Good. So yesterday you said you would
12 be a good fit for this jury, and I know that one of the
13 comments you said is because you believe you're upfront and you
14 can be fair. Any other things you want to elaborate on why you
15 would be a good fit for this jury?

16 PROSPECTIVE JUROR NO. 480: I mean, not to toot my
17 own horn, but I'm just honest. I would say I'm not judgmental
18 whatsoever. I don't judge anything by its cover. As I said
19 yesterday, I just try to see my best every time from both sides
20 so in order to do that you have to hear both sides so.

21 MS. TRUJILLO: And then you also talked about a very
22 personal incident that, you know, you were involved in.

23 PROSPECTIVE JUROR NO. 480: Uh-huh.

24 MS. TRUJILLO: When you were looking at what
25 happened, you know, the difference between what your friend's

1 mom told you and from what you saw and maybe from what other
2 people told you, how did you decide for yourself what you
3 believed happened?

4 PROSPECTIVE JUROR NO. 480: I believe what I saw just
5 because that's what I saw. I took into what everybody else
6 said, his mother, his family above what I heard from peers and
7 other ballplayers I played with that talked to me about it and
8 stuff like that, but I believe what I saw from my own eyes,
9 you know, me in my own, I don't know, what do you call it
10 observations on it.

11 MS. TRUJILLO: Okay. And before you saw that video
12 footage though you got the call from his mom; right?

13 PROSPECTIVE JUROR NO. 480: Yeah.

14 MS. TRUJILLO: Did you make any assumptions before
15 you saw that video footage just based on the story she told
16 you?

17 PROSPECTIVE JUROR NO. 480: No.

18 MS. TRUJILLO: Okay. Just took it for what it was?

19 PROSPECTIVE JUROR NO. 480: Yeah. It was his mom.

20 MS. TRUJILLO: Will you pass it to Mr. Tyler Bayne.

21 So the topic of drugs is probably going to come up in
22 this case, and I know that you had -- a lot of people had some
23 kind of family issues with drugs; right? But you had an aunt
24 that died of an addiction; is that going to be a problem for
25 you? Is that going to affect you in any way?

1 PROSPECTIVE JUROR NO. 408: No.

2 MS. TRUJILLO: Okay. Neither the topic of drug use
3 or drug sales?

4 PROSPECTIVE JUROR NO. 408: No.

5 MS. TRUJILLO: Okay. Anyone going to have an issue
6 with the topic of drugs?

7 Yesterday Mr. Giordani talked about reasonable doubt,
8 and we can't obviously go into any information because the
9 Judge is going to instruct you on the law, but just like some
10 of you watch shows, and we kind of know what the concept is,
11 you know, they have to prove their case beyond a reasonable
12 doubt. Anyone here thinks that that is an unfair standard?
13 Anyone think that that's just too much for the State to have to
14 do? Okay.

15 All right. Mr. Storm's going to come talk to you
16 now.

17 MR. STORMS: Good morning, everyone. I'm going to
18 spend about 10 minutes with each one of you, just kidding, I'm
19 not. I know you've been through a lot. I just want to follow
20 up with a couple of things.

21 Starting with the concept of beyond a reasonable
22 doubt that Monica just mentioned. Does everyone understand and
23 is okay with the idea that beyond a reasonable doubt means
24 Monica and I can not do an opening, not ask any questions of
25 any of these folks the State's going to bring in, and if they

1 don't meet their burden then your decision in the case would be
2 not guilty; does anyone have an issue with that?

3 Does anyone -- does everyone understand that it means
4 that, you know, what we make is -- what we make our
5 arguments -- they make arguments; we make arguments, but
6 reasonable doubt doesn't have to be anything that Monica and I
7 come up with, but your own personal evaluation of the case is
8 where you can find reasonable doubt. Everyone's okay with that
9 idea?

10 We talked about this criminal justice being an idea.
11 There's good people on both sides. Reasonable doubt says that
12 they have to prove the case to you the citizen jurors; right?
13 And you are this -- these -- this gatekeeper, the stat finder
14 to see that they make their burden. So in that sense do you
15 guys understand that it's not a matter of both sides. It's a
16 matter of the State proving the case. Does anyone have any
17 questions about that?

18 Those kind of two possible ideas about a way the
19 police might run their case. You get enough information, you
20 make an arrest and that's good. Or you keep going. You do
21 CSA, you run tests, you do everything you can and you present
22 everything you can to a jury to make sure that you prosecute
23 the right person, and you're not prosecuting someone that's
24 innocent. Is everyone okay with that idea? Does anyone border
25 on the kind of arrest and that's the end of the case? Okay.

1 Testifying, okay. We've talked about how -- and the
2 State talked about that yesterday about how Mr. Brown doesn't
3 have to testify in the case. Okay. Can anyone think of a
4 reason why someone might not want to testify in a case?

5 Thank you, sir, Mr. Davis. Could someone pass that
6 back to him.

7 PROSPECTIVE JUROR NO. 500: They're going to
8 incriminate themselves.

9 MR. STORMS: Yeah. That's the elephant in the room;
10 right? That is the elephant in the room. And that's what we
11 worry about it. It could also be they're not a particularly
12 good witness; is that fair to say? They're not the brightest
13 person in the world to be tripped up by a lawyer; right? What
14 I want to make sure you guys understand is what we're really
15 worried about is people prejudging or making assumptions about
16 why someone might not testify if Larry chooses not to testify
17 in this case.

18 They can't compel him to testify and a part of that
19 is that he has the right to determine whether or not he's going
20 to testify or not with the advice of counsel, and we don't get
21 to tell you why that is. Can everyone not make that leap to
22 think that, hey, he's not testifying because they're afraid
23 he's going to incriminate himself. Is everyone okay with not
24 making that leap?

25 It's hard. Some of these things are not natural the

1 way we think, you know, are we -- we're designed to solve
2 problems. And to solve problem is making assumptions; right?
3 But the law asks you not to do that. Commands you not to do
4 that. Is everyone okay with not doing that in this case?

5 Mr. Davis, could you pass the microphone to
6 Mr. Herrera, to 420.

7 Mr. Herrera, if after all the evidence is entered in
8 the case --

9 PROSPECTIVE JUROR NO. 420: Yes.

10 MR. STORMS: -- and you think there are reasonable
11 doubts in the case, but you also think there's other evidence
12 pointing to Larry's guilt, what would be your decision as to
13 guilt or -- as to whether he's guilty or not guilty?

14 PROSPECTIVE JUROR NO. 420: I would wait until I hear
15 everything that's to be presented before I could make a
16 decision.

17 MR. STORMS: So say we're there. Say you're at the
18 end, you're back there, you've heard everything, you've heard
19 all the arguments, and you see some evidence you think says
20 he's guilty, but you have a reasonable doubt based on other
21 evidence in the case, what would be your decision at that
22 point?

23 PROSPECTIVE JUROR NO. 420: You're saying that me
24 personally, I have doubts.

25 MR. STORMS: Reasonable doubts.

1 PROSPECTIVE JUROR NO. 420: Then I would have to make
2 that statement that I have a reasonable doubt to make that
3 verdict.

4 MR. STORMS: Okay. Thank you. Does anyone else have
5 an issue with that? If you have a reasonable doubt that you'll
6 express that to the other jurors and talk about it? Does
7 anyone here feel uncomfortable about the idea of being in the
8 minority about reasonable doubt and not standing up for that?

9 I don't see anyone raising their hand at that.

10 So if you do find reasonable doubt in this case and
11 come back with a verdict of not guilty, you're obviously saying
12 that the police didn't do their job in this case. They didn't
13 prove to you beyond a reasonable doubt that the crimes they're
14 charging were committed.

15 There's a lot of folks here that have friends that
16 are police officers, does anyone feel like that would make them
17 uncomfortable being with those friends, that there would be
18 some sort of social pressure there? Okay.

19 No hands to that either so I appreciate it.

20 Mr. Pursell, could we had the mic to him.

21 Where were you a beat cop -- beat reporter from? I'm
22 trying to remember.

23 PROSPECTIVE JUROR NO. 368: I was a beat reporter for
24 the Mexico City news.

25 MR. STORMS: Okay. Mexico City news for 10 years.

1 PROSPECTIVE JUROR NO. 368: No, no, no. I was in
2 Mexico City news for two and a half years.

3 MR. STORMS: Oh, two and a half years.

4 PROSPECTIVE JUROR NO. 368: Yeah.

5 MR. STORMS: In that time as a reporter did you see
6 people wrongfully convicted or see situations where there
7 was -- there were cases where errors made or something along
8 those lines from the prosecution?

9 PROSPECTIVE JUROR NO. 368: Yes. Yeah, many times.
10 And -- and, yeah, both ways. There's also errors made when it
11 came to the defense and so forth.

12 MR. STORMS: Uh-huh.

13 PROSPECTIVE JUROR NO. 368: And so, you know, it's
14 human nature, and there are cases, multiple cases of corruption
15 and multiple cases of basically anything you can say I probably
16 covered it at some point or another.

17 MR. STORMS: Uh-huh.

18 PROSPECTIVE JUROR NO. 368: So, yes.

19 MR. STORMS: Can you -- have you seen errors with
20 something like forensics?

21 PROSPECTIVE JUROR NO. 368: Yeah, I mean, I wasn't an
22 expert in it. I was fresh out of college and kind of thrown
23 into that job, but from what the -- what the case ended up
24 being when they ended up reviewing it, they said there were
25 errors in forensics, and so I wrote about it from that way.

1 Again, I wasn't an expert; I just used what the determination
2 was from the courts in my story.

3 MR. STORMS: Thank you. Thank you.

4 PROSPECTIVE JUROR NO. 368: Yeah.

5 MR. STORMS: Court's indulgence and the jury's
6 indulgence.

7 Mr. Thurgood, would you mind taking the mic there.
8 You had mentioned yesterday that you were a pragmatic person;
9 you think that's fair to say?

10 PROSPECTIVE JUROR NO. 522: Yeah, been a nonpartisan
11 registered voter my entire voting career. So that --

12 MR. STORMS: That's good. That's good. Going back
13 to this idea of reasonable doubt, can you see how that's not a
14 pragmatic burden on the State there?

15 PROSPECTIVE JUROR NO. 522: Yeah, definitely. More
16 than -- than just a slightly better than say 50-50 I suppose.

17 MR. STORMS: Uh-huh. And you'd be willing to hold
18 them to something -- to that burden?

19 PROSPECTIVE JUROR NO. 522: Yeah, and I think that
20 the fact that our legal system holds people to a reasonable
21 doubt is what makes it work.

22 MR. STORMS: In your experiences as a child, that
23 story -- that -- that awful him occurrence when you're a little
24 guy are not going to affect your ability to participate in
25 this?

1 PROSPECTIVE JUROR NO. 522: No. It happened a long
2 time ago. Those scars are -- are healed for the most part, and
3 I don't think about it hardly ever unless a Judge asks me to
4 talk about it.

5 MR. STORMS: Yeah, this -- this whole process is it's
6 getting to also to things we don't normally tell our closest
7 friends often; right?

8 PROSPECTIVE JUROR NO. 522: Uh-huh.

9 MR. STORMS: Thank you for that. With that I will
10 pass the panel to this Court and not make any challenges.

11 THE COURT: All right. Counsel, approach.

12 (Conference at the bench not recorded.)

13 THE COURT: All right. I'm sorry, counsel approach
14 again.

15 (Conference at the bench not recorded.)

16 THE COURT: Did you want to be relieved of the
17 microphone?

18 Kenny. All right. We'll just be at ease for a
19 moment.

20 MS. TRUJILLO: Judge, may we approach?

21 THE COURT: Sure.

22 (Conference at the bench not recorded.)

23 THE COURT: Ladies and gentlemen, it looks like we're
24 going to just take our morning recess now. We'll give you 15
25 minutes for the morning recess. Let's just say 10:45.

1 During the brief recess -- that clocks a little
2 fast -- you're all reminded you're not to discuss the case or
3 anything relating to the case with each other or with anyone
4 else. You're not to read, watch or listen to any reports of or
5 commentaries on the case, person or subject matter relating to
6 the case. Do not do any independent research by way of the
7 Internet or any other medium, and please do not form or express
8 an opinion on the case.

9 If everybody would please follow Officer Hawkes
10 through the double doors.

11 (Panel of prospective jurors recessed at 10:33 a.m.)

12 THE COURT: All right. We are out of the presence of
13 the jury, and we took a break because defense counsel had
14 approached and indicated that they were making a Batson
15 challenge, and so we do those contemporaneously on the record.

16 And go ahead and make your challenge.

17 MR. STORMS: Judge, they moved to strike Juror
18 Number 183, Maria Simon who identified as Hispanic on her -- on
19 her juror information sheet, and she's a member of a protected
20 class and otherwise her statements were not something that
21 she -- she said she could be fair to both sides. Sure she had
22 had some crime problems in her own life, her children's lives,
23 but she did not express any bias towards the -- or against the
24 police. She's also been a victim of DV where she, you know,
25 participated in a prosecution.

1 THE COURT: Well, okay. Because this is not done on
2 the taped record, and it's the sheet passed back and forth,
3 what number of -- which perempt is it that the --

4 MR. STORMS: It's their second.

5 THE COURT: Okay. So the first perempt was on whom?

6 MR. STORMS: Devine, the -- the continually late
7 person.

8 THE COURT: Okay.

9 MR. STORMS: But, you know, the law does not ask
10 that -- that there has to be a second Hispanic person, second
11 African-American person --

12 THE COURT: Right.

13 MR. STORMS: -- just they're a member of protective
14 class --

15 THE COURT: Well, what's your prima facie showing
16 that their motive was discriminatory because by my recollection
17 there are a number of people of different ethnic backgrounds,
18 say nonwhite people in the group of 32 including Hispanic
19 people. So just the fact that they struck a Hispanic person I
20 don't think gives you the prima facie showing that their motive
21 was discriminatory in this case.

22 MS. TRUJILLO: The prima facie case is just that it's
23 a member of a protected class, and because here it's mainly
24 composed -- I mean, the breakdown really is mostly Caucasian
25 even though we do have other people in this group of 32. So

1 that prima facie case is the protective class, doesn't matter
2 if it's one or two; it can be just one, and it can be mixed.
3 So even if they go the next and strike an African-American
4 person, we can still claim that it is discriminatory,
5 especially on this case where the record appears that there was
6 no basis for a cause challenge, obviously this is different
7 it's a peremptory, but there's no other reason that appears to
8 be why they would kick her off except the fact that she's
9 Hispanic.

10 THE COURT: Well, that's, I'm sorry, that's -- that's
11 not true because that's the whole point of peremptory
12 challenges. Let's just say, you know, somebody's looking at
13 Mr. Giordani and scowling at him. When I was trying cases as a
14 DA, you know, if somebody was nodding and looking like they
15 were, you know, really, you know, digging the process, I kept
16 them on the jury and the people who were scowling and angry I
17 would kick them off and sometimes it's just about body
18 language.

19 I mean, it doesn't necessarily have to be limited to
20 their answers, and again the whole point of a perempt is to get
21 rid of those people that you think for whatever reason, they
22 don't like you, may be less favorable to your case, may have
23 other issues like the gal who's habitually late, made us all
24 sit around 45 minutes this morning the first challenge.

25 So I don't even see that you've made the threshold

1 showing. But I'm going to let the State respond because again
2 the issue isn't for cause. That's what these nine perempts are
3 for is to get rid of the people who for whatever reason, as
4 long as it's not racially or improperly biased, and my own take
5 on that is I even expand that to include, you know, gender
6 orientation, sexual orientation, things like that.

7 MS. TRUJILLO: Understood. However --

8 THE COURT: You know, as long as it's not improper --

9 MS. TRUJILLO: However, I've made my case. It's a
10 protected class. I made the statement. It's the State's job
11 to now insert a race neutral not to allow the Court to say it
12 could be for any reason. Obviously, I understand it could be
13 for any reason.

14 THE COURT: Right.

15 MS. TRUJILLO: But the State's obligation is to state
16 a race-neutral reason. So that's where we're at.

17 THE COURT: No, I think the first --

18 MR. GIORDANI: That's not --

19 THE COURT: -- prong is to make a prima facie case,
20 and I don't believe a prima facie case is established simply by
21 virtue of the fact that somebody may be a member of a different
22 racial or ethnic group or for that matter a religious group or
23 anything else. So I don't see it, but I'm going to let the
24 State respond and see what they have to say. But I think it's,
25 you know, the first prong is your burden and then it turns to

1 them.

2 Now, I normally make them state a race-neutral reason
3 anyway just because a reviewing Court may not agree with my
4 assessment of the first prong. But my opinion is just because
5 somebody happens to be a member of a particular group does not
6 mean that they can't challenge them or it does not necessarily
7 automatically make a peremptory challenge suspect. I don't
8 agree with that. I don't believe that that's the law.

9 MR. GIORDANI: And I agree with the Court. I
10 wouldn't -- I would note that a prima facie showing has not
11 been made so I don't think we need to give a race-neutral
12 reason.

13 THE COURT: Like I said, I normally ask the State to
14 give a race-neutral reason because a reviewing Court may not
15 agree with me.

16 MR. GIORDANI: Sure. I will --

17 THE COURT: Like I said, I don't think they've met
18 the first prong in my opinion.

19 MR. GIORDANI: I completely agree, but I will give
20 the reasons, and Number one I'll note that there's several
21 Hispanic people on the jury that we don't intend to strike.
22 This one in particular, Ms. Simon, was our second perempt, our
23 first perempt was on what appears to be a white woman, but
24 again I -- as I said to this Court in prior cases, I don't
25 agree with the characterization that the defense continually

1 proffers that because someone has a little bit more tan skin
2 they're Hispanic. In this case I believe Ms. Devine identified
3 herself as White and --

4 THE COURT: What's her badge number?

5 MR. GIORDANI: 338. That was our first strike and
6 that was --

7 MS. TRUJILLO: I'm sorry. I don't believe I said
8 that. Did I say that?

9 MR. GIORDANI: Say what?

10 MS. TRUJILLO: You said that -- that you said that's
11 been happening in this case that someone's a little more tanned
12 skin.

13 MR. GIORDANI: No, not in this case. I'm saying in
14 other cases. And so --

15 MS. TRUJILLO: Okay. I just want to be clear, I
16 didn't say that.

17 MR. GIORDANI: No, no.

18 MS. TRUJILLO: No one on behalf of Mr. Brown said
19 that.

20 MR. GIORDANI: No, that is true.

21 But back to my point. Number one, our first strike
22 was what appears to be a white woman who --

23 THE COURT: A white woman. I think she identified as
24 White or Caucasian.

25 MS. TRUJILLO: She did.

1 MR. GIORDANI: Right. And then the second strike,
2 Ms. Simon, this is an individual who said she was, quote, a
3 troubled youth. She had various misdemeanors up until she was
4 22, several interactions with the system both as a defendant
5 and a victim. She hung out with lots of gang members in LA.
6 Her son and daughter have interactions with the system that she
7 didn't really get into although I think that with regard to her
8 daughter she didn't know, to be fair. She also indicated that
9 she herself had solicited prostitution at some point.

10 THE COURT: I didn't really hear -- I couldn't -- I
11 thought she -- something she was arrested for soliciting, and
12 she wanted to be a stripper or something of that nature.

13 MR. GIORDANI: Yeah. Right.

14 THE COURT: I didn't really get what that whole
15 incident was but something like that, but she was charged with
16 soliciting. Whether she was really soliciting or just trying
17 to be a stripper, I couldn't really get what she was saying,
18 but I remember that.

19 MR. GIORDANI: Right. And she visibly appeared tired
20 and drained yesterday.

21 THE COURT: She did.

22 MR. GIORDANI: And today I can't really tell, I
23 didn't have much interaction with her today with regard to how
24 she was, but in any event the perempts --

25 THE COURT: Yeah, I didn't -- just for the record I

1 didn't notice her today. The reason I didn't notice her today,
2 is the Court has two monitors blocking my view of her because
3 her chair is here in the well of the courtroom. So I don't
4 know if she looked tired, alert; I have no opinion. I can't
5 make a record on that.

6 MR. GIORDANI: Fair enough. And in the grand scheme,
7 I mean, perempts are here for a reason. They're in contrast,
8 this person who has a solicitation charge in her past, was a
9 troubled youth, went to a youth facility, stayed in a youth
10 facility which appeared to be jail or juvie, whatever. In
11 contrast to the other 32, she's a clear perempt strike for us.
12 With that I would submit.

13 MS. TRUJILLO: Okay. And just for a response because
14 I know we're running -- probably have a further record after
15 this. For the record many people in this panel have
16 convictions. They might not have been a troubled youth, so to
17 speak, that there were plenty of DUIs. There's plenty of other
18 issues so I just want to make that record clear as we go forth.

19 THE COURT: Well, we'll see, you know, if they strike
20 some of the other people with other problems in their past, and
21 we'll see if they do or they don't.

22 What record if anything do you want to make on that?

23 MR. GIORDANI: Oh, I don't need to make a record.

24 THE COURT: Yeah. All right. I'm satisfied with the
25 race neutral reason. As I said already, I don't think a prima

1 facie showing has been made. I certainly don't think the state
2 of the law is that any time someone happens to be of a race or
3 ethnicity that's nonCaucasian that it's racially motivated.

4 So I don't recall how many -- I think, this -- look,
5 it struck me as a pretty diverse panel. Just when we went
6 through and everybody self identified, but, you know, the
7 record is what the record is.

8 So let's -- if anyone needs to use the -- take a
9 quick break, do that now and then we'll come back.

10 And while we're here which number were we on then?
11 The defense's second?

12 MS. TRUJILLO: Yes.

13 THE COURT: Okay. So can you enter that right now.
14 Do you know who you were going to strike for your second?

15 MS. TRUJILLO: No, we were -- we were just going to
16 talk about it 'cause you said do it contemporaneously so we
17 paused --

18 THE COURT: Okay. That's fine. I was going to say
19 if you know who your third is going to be then do your second
20 now if you can. And then if you already know who your third
21 one is going to be do the third one. Because then if that's a
22 Batson we can just do it right now as opposed to bring
23 everybody in and then us all say, oops.

24 (Pause in the proceedings.)

25 THE COURT: All right. We'll go on the record. All

1 right. We took our break.

2 Was anyone able to exercise their third perempt?

3 MR. STORMS: They exercised their third perempt and
4 we're challenging it. They exercised their third perempt
5 against Mr. Peries, Number 465. He's the last Asian man on the
6 jury.

7 THE COURT: Were there any other Asian men?

8 MS. TRUJILLO: There's no other Asians from my
9 records left on the jury.

10 THE COURT: Right. I mean, but were there ever any
11 other Asians? Because I only --

12 MR. STORMS: Yes, there was a Taiwanese lady earlier
13 in the process.

14 THE COURT: Right. She was a for-cause we stipulated
15 to because her husband had the medical appointment for the
16 cardiac stress test, thallium for the stress test in
17 California.

18 MR. STORMS: At this point their last two strikes
19 were minorities. Ms. Simon and then now Mr. Peries.

20 THE COURT: And he's the gentleman in the front row
21 that identified as Asian; correct?

22 MR. STORMS: That's correct.

23 THE COURT: All right. I'm just saying that there
24 weren't -- there's only one Asian left and the other Asian
25 woman who I've forgotten about we stipulated on that one.

1 MR. STORMS: That's right.

2 THE COURT: Okay. All right. Once I -- I still
3 don't see the prima facie case because other than the fact the
4 person happens to identify as Asian, I don't think we can make
5 inference from a stipulated for cause -- it wasn't even for
6 cause. It was a hardship excuse.

7 MR. GIORDANI: Correct.

8 THE COURT: I keep saying for cause, but it was a
9 hardship that the lady, the gal from Taiwan was excused.

10 Mr. Giordani, for purposes of completing the record.

11 MR. GIORDANI: For the record, I don't think they've
12 met a prima facie case once again, but Mr. Peries who obviously
13 identified as Asian was clearly a valid perempt on our behalf.
14 This is the individual who spoke yesterday that he's had
15 negative interactions with law enforcement to the point where
16 he was put in a segregation tank or something to that effect
17 for fighting with the officers. He had other negative
18 interactions with law enforcement. One, he indicated was his
19 friend -- were his friend's fault. But both of those negative
20 interactions combined with his demeanor, the Court referenced
21 demeanor earlier.

22 With regard to Mr. Peries, he wouldn't give me much,
23 and he was slouched back in his chair --

24 THE COURT: He was kind of slouchy and his legs were
25 extended.

1 MR. GIORDANI: And I -- I agree and just based upon
2 his demeanor here in court and those responses being put in a
3 segregation tank, that's pretty unique. And I just don't like
4 him as a juror, and in contrast with the other 30 or so we have
5 left I think it's a completely valid perempt and has nothing to
6 do with the fact that he identified as Asian.

7 MS. TRUJILLO: And, Judge, if I may respond. I'm
8 going to reiterate again. It doesn't have to be -- let's
9 forget about the Taiwanese lady. It doesn't have to be a
10 member of the same protected class. The pattern is
11 discrimination based on protected classes. So there's --
12 there's already been two, Ms. Simon and now Mr. Peries. And in
13 response to the race neutral, and I'm going to put that in
14 quotes, "reason," he also said he had both interactions with
15 police officers, and the fact that he could recognize that it
16 was actually his friend's fault that caused the officers to do
17 their job and respond the way that they did. He said he could
18 still be fair, that his interactions were pretty neutral.

19 At first he started off saying it was negative, and
20 then he also said it was positive. And he made the comment
21 there's good people in every category. I can see both sides
22 and -- and I see how my friend and even my own interaction
23 caused the police officers to act the way that they do.

24 THE COURT: Well, first of all, its, again, to
25 reiterate, it's not a for-cause challenge. They didn't try to

1 strike him for cause. He, you know, did say those things. He
2 was sitting slouchy in his chair. I thought, you know, one we
3 stipulated to for hardship, but a couple here in the front row
4 been visiting. I thought the one that we agreed to on
5 hardship, the guy from Israel really had a bad attitude and was
6 talking and slouchy, and then this guy was less slouchy, but he
7 was a little slouchy. But there's been a few in the front row
8 that have been kinda visiting. I thought the worst attitude
9 was the guy from Israel, but like I said, we stipulated on
10 hardship as to him so that's not really an issue right now.

11 So look, I think they stated a legitimate reason. I
12 still don't think though just because people, again, happen to
13 be of an ethnic or racial minority doesn't mean that it's
14 racism or that it's, you know, pretextual.

15 So now we -- was the defense, before you bring them
16 all back, was the defense able to exercise their third
17 challenge?

18 MS. TRUJILLO: We just -- we're about to.

19 THE COURT: And can the State try to exercise
20 their -- at some point you may not remember if we need to bring
21 them back. I'm trying to get as many done as we can in case we
22 need to make a record of anything.

23 MR. GIORDANI: Yeah, and I had requested previously
24 that they sit in the room just because in the past it's been
25 more helpful to be able to see their faces.

1 THE COURT: If you need them to come in the room, I
2 just meant if your next one's coming up or something that may
3 elicit an objection let's do it now.

4 MR. GIORDANI: Well, I don't know what they're going
5 to object to because it shouldn't be just any time someone
6 other than -- a race other than white is stricken that they're
7 racist.

8 THE COURT: I agree. I agree with you. Particularly
9 when you have a number of people on that -- in the 32 that are
10 people of different races and ethnic backgrounds.

11 MR. GIORDANI: We're kicking Mr. Flangas, so unless
12 defense attorneys are a protected class I think we're good.

13 MR. STORMS: Obviously we're not a protected class.

14 MS. TRUJILLO: Why are you giving me this.

15 MR. GIORDANI: Oh. I'm sorry.

16 MR. STORMS: We're not protected from --

17 MS. TRUJILLO: Nobody protects us ever.

18 MR. STORMS: Yeah. We have to be a protecting class,
19 but we have no one protecting us.

20 (Pause in the proceedings.)

21 THE COURT: So while they're doing that,
22 Mr. Giordani, your position is if you waive one then it's
23 whoever's sitting in Chair 32 would be that perempt is that how
24 you do it?

25 MR. GIORDANI: Right. And it just moves up, you

1 know --

2 THE COURT: Right.

3 MR. GIORDANI: -- the panel moves up as we go.

4 THE COURT: Right. Because what I -- here's how I do
5 it, I excuse them. So I'll say okay, Badge Number 75,
6 Mr. Jones, you are excused. Badge number whatever, you are
7 excused. And then the 14 left are the jurors.

8 MR. GIORDANI: Right. Just as -- as it's going, you
9 know, we're striking each person that we and the defense
10 strike --

11 THE COURT: Right.

12 MR. GIORDANI: -- and so as of now there's three
13 people left in the front row, and the back end is what
14 disappears; right?

15 THE COURT: Okay.

16 MR. GIORDANI: So everyone moves up.

17 THE COURT: Okay. Well --

18 MR. GIORDANI: In that same order by chair.

19 THE COURT: Right.

20 MR. GIORDANI: Right. Okay.

21 THE COURT: I don't do this whole musical chair
22 thing, you know, everybody get up and turn around. I just say
23 thank you, Mr. Jones, you are excused. Thank you, Ms. Smith,
24 you are excused and then there's 14 people and Kenny seats them
25 the right way.

1 MR. GIORDANI: Yeah.

2 THE COURT: Right. Okay.

3 MR. GIORDANI: As long --

4 THE COURT: Right, I mean --

5 THE MARSHAL: Are we going to seat them by their
6 badge number?

7 THE COURT: Badge number.

8 THE MARSHAL: Okay.

9 THE COURT: I don't know what they're doing so let's
10 just -- whatever they think. What number are we on?

11 MR. GIORDANI: We finished five.

12 MS. TRUJILLO: Five.

13 THE COURT: Okay. If you guys need me to bring them
14 back in I will.

15 MS. TRUJILLO: We're fine.

16 THE COURT: But if you remember who all they are it's
17 kind of easier to do it this way.

18 MR. GIORDANI: Yeah. Yeah, we're, okay.

19 THE COURT: Don't forget if they're, you know,
20 excluding people in a racially biased way, State --

21 MS. TRUJILLO: Judge, you can't help the State.

22 THE COURT: No.

23 MS. TRUJILLO: You cannot help the State.

24 THE COURT: No, I mean I've had cases where I wanted
25 to make the Batson challenge where I've seen the defense excuse

1 like -- and I'll just say --

2 MS. TRUJILLO: Right.

3 THE COURT: -- look, if you excuse another Asian
4 person --

5 MS. TRUJILLO: Right.

6 THE COURT: -- and, you know, and this is unusual.
7 Usually there are more Asians on the panel.

8 MR. STORMS: Judge, we're making another -- they just
9 struck Number 2, Marquita Allen, who we had that earlier
10 colloquy about the detective in her brother's case. So now
11 with Marquita Allen we've got at least two other -- we've got
12 Hackett and Cadieux; so we've got a number of jurors that have
13 had the same sort of experience with family members that have
14 had cases with law enforcement that, I mean, she has been back
15 and forth. She's actually gotten a lot more questioning than a
16 lot of these other folks that have had family members that have
17 had cases with law enforcement, and she has given the same
18 types of answers although she's been talked -- she's been asked
19 a lot more about it. I mean we've gone back to her three or
20 four times at this point.

21 THE COURT: We haven't been back to her three or four
22 times.

23 MR. STORMS: Well, about three times.

24 THE COURT: I questioned her initially, then
25 Mr. Giordani questioned her. Then there was the issue that was

1 raised on a for-cause challenge which I said that record's been
2 made.

3 MR. STORMS: Uh-huh.

4 THE COURT: But I said, look I'm not inclined to
5 grant it, but I'm happy to follow up. And I did follow up, and
6 then I gave, I think, counsel the opportunity to follow up on
7 just my additional questions. So that's why there was more
8 questioning.

9 MR. STORMS: Uh-huh.

10 THE COURT: And once she answered the questions, I
11 felt comfortable that she was, you know, fine on the for cause.

12 MR. STORMS: The questions that she -- she's answered
13 the questions consistent with other members of the panel that
14 have had law enforcement contact in their family. She's
15 expressed no bias against the police that the fact that we're
16 dealing with our third Batson challenge --

17 THE COURT: What number was that? For their
18 challenge it's Number what, five?

19 MR. STORMS: Number six.

20 THE COURT: Six.

21 MR. STORMS: So I want to point out to the Court Dan
22 Pomo [phonetic] it's a 124 Nevada 427; it's a case from 2008
23 that denotes that a mixed challenge of multiple minority
24 classes is also a basis to make a Batson claim. But just on --
25 on the disparate questioning with the answers consistent

1 with -- the just nonquestioning where she's giving answers
2 consistent to other members of the panel that aren't African
3 American. I don't see there being any difference in her
4 responses, and I think that this is a prima facie case of
5 discrimination.

6 There's not -- this is not a situation like the other
7 two where they've had problems with the police themselves, or,
8 you know, Ms. Simon who had been -- been involved with gang
9 bangers in her past and had a criminal background as it were,
10 had a solicitation in her past, or Mr. Peries who had been put
11 in an aggregated cell for being rowdy while drunk. She has
12 nothing like that in her past, and she has answered the
13 questions and shown -- expressed neutrality when it comes to
14 issues of law enforcement despite her brothers' trial and so on
15 and so forth.

16 THE COURT: All right. I would note, I believe,
17 there or two other African Americans in the 32.

18 MR. GIORDANI: I think there's three, and the defense
19 just struck one that we really liked, number one.

20 THE COURT: Okay. Who -- was that the gentleman in
21 the back.

22 MS. TRUJILLO: Because we're not racist we go both
23 ways.

24 MR. GIORDANI: Ms. Gebretensie -- Ms. Gebretensie,
25 who's from Africa or African --

1 THE COURT: Oh, she identified as Eritrean.

2 MR. STORMS: Yes. She's Ethiopian?

3 THE COURT: No, Eritrean.

4 MR. STORMS: Eritrean.

5 THE COURT: Which last I checked is in Africa.

6 MR. STORMS: Yes.

7 MS. TRUJILLO: Yes.

8 MR. GIORDANI: Who the defense just struck. In
9 addition, let me just back up a second. Number one, the
10 disparate questioning was not on the State's behalf.
11 Yesterday, we indicated we were going to pass for cause at the
12 bench, and that included Ms. Allen. Her responses seemed
13 perfectly appropriate notwithstanding the cases of her
14 brothers. There wasn't anything there that would cause -- rise
15 to a for-cause challenge. This morning, as I indicated, which
16 I hope was on the record.

17 THE COURT: Oh, yeah, it was on the record, a hundred
18 percent.

19 MR. GIORDANI: We -- I looked at the police report
20 where the lead detective in our case is the lead detective in
21 her brothers' case. So while I actually liked her vibe, I
22 liked her demeanor as of yesterday --

23 THE COURT: Yeah, I thought she was very respectful.

24 MR. GIORDANI: I did too. As of this morning, that's
25 a big problem if I don't know that when my lead detective walks

1 in this room one of the jurors is going to dislike him for
2 putting her brothers in prison. That's a big problem. So, I
3 mean, I hope the Supreme Court reads this one day, but I'm
4 going to say this. When you raise a Batson challenge, you're
5 calling the prosecutor racist. That's what it is. The defense
6 just struck almost all white people. I didn't say a thing
7 because I don't think it's appropriate to do that. They've
8 just indicated that because we struck a Hispanic person who had
9 a soliciting charge and was a troubled youth, an Indian guy who
10 fought with cops and ended up in a segregation tank and then an
11 African-American woman whose brothers were apprehended and sent
12 to prison based upon our lead detective's actions that we're
13 racist all of a sudden.

14 I will also note --

15 MS. TRUJILLO: [Inaudible] --

16 MR. GIORDANI: Hold on. I will also note the two
17 people prior to that were -- that we struck, the State struck
18 prior to Ms. Allen were white folks. I mean, we're going
19 through this list and comparing the people who are in the --
20 what's remaining with the others. Out of all the people that
21 are left I sure as hell don't want Ms. Allen on my jury knowing
22 that issue is hanging out there when my detective walks in this
23 courtroom that she might recognize him as someone who was
24 involved in her brothers' case. Or God forbid she does talk to
25 her brothers. I mean I don't think she would do that. She

1 seems like she'll follow the Court's admonition.

2 THE COURT: Right. Like I said, I was getting a
3 respectful vibe from her unlike the other, I don't know if he's
4 Indian or Pakistani --

5 MR. GIORDANI: Mr. Devine -- or Peries, yes. I agree
6 with the Court there.

7 THE COURT: I guess he could be Sri Lankan or, you
8 know, but I would say probably from that area of Asia.

9 MR. GIORDANI: I would like to offer this declaration
10 as a court's exhibit where Detective Dosch, who again is our
11 lead detective in the instant case, is referenced throughout.
12 It's -- just as a court's exhibit.

13 THE COURT: Okay. We'll go ahead and make that a
14 court's exhibit. If defense counsel wants a copy of that,
15 we're happy to make one for them, but it will be a court's
16 exhibit.

17 MS. TRUJILLO: No, I just want to respond to
18 Mr. Giordani's comments. I mean, I apologize. Actually, I
19 don't. This is, you know, a live person here. Forget what the
20 State is saying about -- they're trying to say reverse
21 discrimination or whatever the case is. It's my job to ensure
22 that Mr. Brown has a fair trial, and part of that analysis is a
23 fair cross-section of this community. And right now we're not
24 looking at very much of a fair cross-section of the community.

25 As I said before, we can establish a pattern of

1 discriminatory action, and I'm not saying Mr. Giordani is
2 racist. I'm saying for some reason there is a pattern that he
3 is eliminating protected classes. And I can make the mixed
4 argument in the case that --

5 THE COURT: No, no.

6 MS. TRUJILLO: Judge, I just want to finish --

7 THE COURT: No, no. No, actually -- I was saying you
8 are absolutely right. You can make the mix argument.

9 MS. TRUJILLO: Okay. And so that's what we've been
10 doing, and it only has to be a single juror. It doesn't even
11 have to be a pattern. It doesn't have to be two. That's what
12 everyone keeps arguing about even in other cases. Not
13 necessarily in this court. It only has to be one. One
14 protected class is going to violate his right to a fair trial,
15 and the reason that I understand this is not a for-cause
16 challenge, but my job is to respond to their alleged pretext or
17 race-neutral response, and the way that I do that is by
18 comparing other people on the panel and establishing what they
19 have said is actually fair and neutral because that was the
20 whole point of voir dire.

21 So that's why I'm responding in that matter. Not
22 that I'm saying, oh, this is a for-cause challenge. That's the
23 only way I can respond is with their answers.

24 THE COURT: All right. First of all, I agree with
25 you, the prima facie case can be on one particular juror, and,

1 you know, I think a relevant inquiry is what kind of questions,
2 you know, were they being targeted. There's that case that was
3 reversed where they're actually running scope on people of
4 color and not other people. Clearly that's, you know, racially
5 motivated.

6 So I agree with you there, but I'm -- but just again
7 to reiterate, just the fact that people happen to be of a
8 minority race or ethnicity does not necessarily mean that the
9 State is acting in a racially motivated way. And I think that
10 that's just always important to keep in mind that just because
11 a number of people may be of different or the same ethnic or
12 racial group doesn't necessarily mean that they're being
13 discriminatory in their exercise.

14 So that's my point, not that it has to be more than
15 one person, not that it can't be a diverse group of people of
16 color. That's my point.

17 MS. TRUJILLO: Right.

18 THE COURT: But that just doesn't necessarily mean
19 that it's discriminatory; that's all I'm saying.

20 MS. TRUJILLO: And I understand, but part of that
21 analysis and what I do before I do the Batson challenge is I
22 analyze their responses. That -- that's my point. So I'm
23 saying in my opinion, and granted we have obviously very
24 differing viewpoints, very different experiences, but if --
25 there didn't appear to be a race-neutral reason based on the

1 answers that were given during the panel, and that's why I
2 raised the Batson issue.

3 THE COURT: Well, you're free to raise the Batson
4 issue. I don't take umbrage or offense or anything like
5 that --

6 MS. TRUJILLO: But I just want to be clear.

7 THE COURT: -- if you raise an issue. I think it's
8 your job to raise the issue.

9 But again, look, you know, the State thought there
10 was a basis for a for-cause challenge, Court disagreed.

11 In terms of the questioning and the extent of the
12 questioning, I'd just remind everybody that that started off in
13 response to a question from the Court, the routine question
14 that I always ask any, you know, friends or family, close
15 friends or family that have been arrested or charged or accused
16 of a crime, and she raised her hand. I would, you know, just
17 based on my recollection, you folks took more extensive notes,
18 but it seemed like her family members were, I don't want to say
19 peculiar, but unique is a better word in that -- in the fact
20 that, you know, they actually went to prison, and it was here
21 in Clark County.

22 MR. GIORDANI: And for robbing a drug dealer.

23 THE COURT: Right.

24 MR. GIORDANI: And our victim was dealing drugs when
25 he was robbed and killed by Mr. Brown. So it's an issue.

1 THE COURT: And, you know, they were housed here in
2 Clark County, and so, you know, I think her experiences or
3 her, slash, family experience was some -- unique from some of
4 the other people that maybe it was a misdemeanor or maybe it
5 occurred in a different state. So, you know, I think that
6 brought on more questioning from maybe me where some people
7 raised their hand it's a DUI; it's a misdemeanor thing in
8 Connecticut or whatever.

9 I'm not going to follow up as much as I do with
10 people who had stuff happen here. As you know, I always try to
11 find out, well -- because sometimes people will say what law
12 enforcement agency because I've heard people say I hate
13 Henderson, but I love Metro, or, you know, I've had great
14 experiences with Henderson and terrible experiences -- so
15 that's why I kind of even wonder why I oftentimes will even
16 follow up with -- you'll notice if it's other states I don't
17 really ask those questions, you know, so much.

18 Sometimes I might want to know is it like a trooper
19 or is it, you know, like local law enforcement, but beyond
20 that. So that's just my comment on that.

21 Anything that you'd like to add from the defense
22 side?

23 MR. STORMS: Yes, just to point out, her answers to
24 the questions were that she was at a hearing, she was at a
25 sentencing. There's no evidence that she has any connections

1 to Detective Dosch. This could be actually figured out by
2 looking at the records from that case. The mere fact that he
3 was a detective on a case that her brothers were involved with,
4 I don't see the connection there. I mean, based upon her
5 responses to the questions and -- and, you know, whether or not
6 she would be familiar with him could be readily determined some
7 other way.

8 THE COURT: Well, I don't know how we would determine
9 that --

10 MR. GIORDANI: I disagree --

11 THE COURT: -- because we can't say, hey, do you
12 recognize this big guy as the detective on your brother --
13 because now we've tainted her if we do it that way.

14 MR. STORMS: If her brothers -- her brothers were
15 convicted, there was a preliminary hearing maybe; there
16 definitely was a trial. I mean, she said she didn't -- she
17 didn't say she went to the trial. I mean, there's no evidence
18 that she would know who Detective Dosch was.

19 MR. GIORDANI: I completely agree with that. That in
20 the record the way she answered the questions, yes, I
21 completely agree. The reason she's being kicked is because I
22 can't be sure. I can't be sure her brothers didn't say in the,
23 you know, however long it took for them to be arrested, you
24 know, this detective is coming and questioning us, or Detective
25 Dosch came and questioned my friends about where I was that

1 night or anything like that. I have no idea, and I don't want
2 to take the risk that halfway through this trial when we put of
3 the detective she recognizes him or she recognizes his name all
4 of a sudden or something. I mean, I agree with the answers
5 that were given, and that's why initially, you know, it wasn't
6 going to be a for-cause challenge because although, the facts
7 of her brothers' case are eerily similar to this one, they
8 robbed a drug dealer that one of them knew or one of their
9 party knew that wasn't quite enough.

10 But once I learned this morning in reading that
11 report our lead detective's name was all over it, that's an
12 issue, and I can't take the risk if there's a juror sitting in
13 the box that's going to see that detective and disfavor him for
14 any reason whatsoever. I have no further for the record.

15 THE COURT: All right. What number are we on?

16 MS. TRUJILLO: Six.

17 THE COURT: Why did the defense excuse the gal from
18 Eritrea? Is that how you say it?

19 MR. DICKERSON: Eritrea.

20 THE COURT: Is that how you say it?

21 MS. TRUJILLO: Because historically from my
22 experience and other people's experiences, people from Africa
23 tend to have discriminatory views toward black African
24 Americans.

25 MR. GIORDANI: Isn't that a racial reason?

1 THE COURT: Yeah, that's a racial reason.

2 MS. TRUJILLO: There's plenty of others.

3 THE COURT: I didn't know that she was from Africa.
4 I couldn't tell.

5 MS. TRUJILLO: I don't -- I don't know if she is --

6 THE COURT: She didn't appear to have an accent.

7 MS. TRUJILLO: She just said, you know --

8 THE COURT: Right.

9 MR. GIORDANI: I'm going to make a Batson
10 challenge --

11 MS. TRUJILLO: How do you -- how do you say that
12 Ari -- I don't even know how to say that --

13 MR. GIORDANI: Eritrea.

14 MS. TRUJILLO: Eritrea. Eritrea.

15 MR. STORMS: Yeah.

16 MR. GIORDANI: I'm making a Batson challenge.

17 THE COURT: Well, yeah. That to me is prima facie.

18 MS. TRUJILLO: No, there's other --

19 THE COURT: Well, it's not prima facie. I mean,
20 that's like generalizing that all, you know --

21 MS. TRUJILLO: Which we all do which is what I was
22 just saying --

23 THE COURT: African -- African Americans have
24 negative views on African Americans. So I'm going to call say
25 native born African Americans, and by native born I mean born

1 in the United States, African Americans.

2 MS. TRUJILLO: Right.

3 THE COURT: Isn't that exactly racism to say that all
4 people of a particular or national origin or in this case
5 continental origin have a particular viewpoint? Isn't that the
6 definition of racism?

7 MS. TRUJILLO: I didn't say that. I said in my
8 experience, so my personal experience has shown me, but there
9 are other race-neutral reasons if you want me to say it --

10 THE COURT: Because actually in the world, the United
11 States has far less racism than most other countries.

12 MS. TRUJILLO: Oh, other countries, I agree. That's
13 why I shared my story with the rest -- I mean, first of all
14 let's not even get into colorism in -- within one race you have
15 that alone.

16 THE COURT: Oh, no, that's huge in the world.

17 MS. TRUJILLO: Right. Absolutely. Especially in the
18 Latin cultures.

19 THE COURT: Right. It's true. When, I mean I've
20 seen -- I watch inordinate amount of PBS, but there was
21 something that like Mexican immigrants --

22 MS. TRUJILLO: Uh-huh.

23 THE COURT: Were interviewed, and they were dark
24 skinned --

25 MS. TRUJILLO: Right.

1 THE COURT: -- and they were talking about how amazed
2 they were at the fact that Americans weren't racist on skin
3 tone the way people in Latin America were.

4 MS. TRUJILLO: Uh-huh. Absolutely. And Brazil and
5 all those Latin countries.

6 THE COURT: Well, even in China, traditionally there
7 was a lot of racism based on skin tone.

8 MS. TRUJILLO: That's why they have all those skin
9 bleaching products --

10 THE COURT: Uh-huh.

11 MS. TRUJILLO: -- they're like very readily
12 available.

13 THE COURT: And white people, we're all, you know,
14 going to tanning beds and; right? Trying to look darker;
15 right. Trying to get rid of our pale, pasty complexions.
16 We're all getting skin cancer. It's true, because white people
17 look in the mirror, and it's like, oh, my God I'm so pasty. I
18 don't anymore, but I used to always be the person, you know, no
19 sun, no product except for the lemon juice on the hair in the
20 backyard.

21 What number are we on?

22 MS. TRUJILLO: They're doing their seventh.

23 THE COURT: Okay. You guys working on your seventh?

24 MR. GIORDANI: No, we're discussing -- can we get --

25 THE COURT: Do you need me to bring them back in?

1 Off the record, okay.

2 MR. GIORDANI: Yes.

3 THE COURT: If we needed to bring them back in, if
4 you don't remember, we'll bring them back in and finish up.

5 (Conference at the bench not recorded.)

6 THE COURT: All right. Just to be clear, we were
7 engaged in some lighthearted joking, is the State making a
8 Batson challenge as to the gal who identified as -- it will be
9 spelled correctly in the written record, Eritrean?

10 MR. DICKERSON: Yes.

11 THE COURT: Etri --

12 MR. GIORDANI: No.

13 THE COURT: Okay.

14 MR. GIORDANI: We are not making a Batson challenge,
15 and for the record I am not calling Ms. Trujillo racist.

16 THE COURT: All right. And, Ms. Trujillo, just to
17 complete the record because, you know, the comment was based on
18 stereotyping about people of African origin meaning people who
19 come from Africa directly. What were -- what were the other
20 reasons that you struck that particular juror?

21 MS. TRUJILLO: Well, to start, she works at -- in
22 admin at Sunrise, and I -- and she sees a lot of officers come
23 in and she mentioned she sees a lot of gunshot wounds and other
24 things. And not that it was going to sway her one way or
25 another, but her interaction with Metro, in my opinion, could,

1 you know, the way they investigate what happens, the
2 procedures, what they do, and I just didn't want her -- the way
3 she thinks and has, you know, has personal experience with it
4 to infect the jury if it all.

5 And also she did mention that she has a friend named
6 Officer G, because we all laughed about it when that happened.
7 She did say that she doesn't talk about work, but obviously
8 that's obviously a concern when you have a friend and you -- I
9 mean, you may not talk about work, but you're calling them
10 Officer John G, like that seems very personal to me.

11 Additionally, and my final reason is because
12 comparatively when I'm speaking with her and when John was
13 speaking with her I think she spoke a lot less than everyone
14 else. I mean, I have four points as opposed to, like, half
15 pages for other people. So the fact that people don't disclose
16 a lot of information to me always makes me nervous because I'm
17 not sure which way they're going to go. So that -- those were
18 the other reasons for me --

19 THE COURT: She was quiet, I mean I did notice that.
20 I would define her as quiet and respectful.

21 MS. TRUJILLO: Right.

22 THE COURT: In her demeanor.

23 MS. TRUJILLO: For the record, I am not calling
24 Mr. Giordani racist, and we were bantering informally because
25 the panel is not here.

1 THE COURT: That's correct.

2 MS. TRUJILLO: And he made a comment of I was calling
3 him racist so obviously, I was -- we were bantering back and
4 forth.

5 THE COURT: Right.

6 MS. TRUJILLO: Which maybe was not appropriate, but,
7 you know, there are many race neutral reasons other than just
8 set forth that we would have struck her.

9 THE COURT: Everything you stated I recall from my
10 own independent recollection that she did say, and she did
11 indicate as working and that was brought out I think by
12 Mr. Giordani.

13 MS. TRUJILLO: Uh-huh.

14 THE COURT: That -- because when she said she worked
15 in admitting I kind of imagined her in more of an office
16 setting --

17 MS. TRUJILLO: In the front desk, correct.

18 THE COURT: Not right up there, and if anyone's been
19 to the emergency room you know that, you know, they're right
20 there.

21 MS. TRUJILLO: Taking notes. Right.

22 THE COURT: Right. Where the patients are and the
23 police are and all the action is happening, you know --

24 MS. TRUJILLO: Right.

25 THE COURT: -- right by that triage desk are usually

1 their desks.

2 MS. TRUJILLO: Right.

3 THE COURT: So I think it is valid that she would
4 have a lot of interaction with law enforcement just kind of --
5 I didn't follow up because, like I said, I imagined her in an
6 office in back.

7 MS. TRUJILLO: Right.

8 THE COURT: But then, yeah, clearly she's -- like I
9 said, typically those desks are kind of right by, you know,
10 where they have the triage desk and the --

11 MS. TRUJILLO: And then they have the new mobile
12 computer as the Court said --

13 THE COURT: Right.

14 MS. TRUJILLO: -- and move it into the rooms as
15 they're taking notes.

16 THE COURT: Right. And they're right in the rooms
17 with the patients.

18 MS. TRUJILLO: Right.

19 THE COURT: Because it always seems ironic to me when
20 I've been in the ER with a family member that, you know, you're
21 waiting forever for a nurse, but the admit people who are
22 getting your insurance information so you can pay for it are
23 right there Johnny on the spot.

24 MS. TRUJILLO: And checking it.

25 THE COURT: Right. All right. I'm satisfied with

1 your race neutral reasons.

2 MS. TRUJILLO: Okay. Thank you.

3 THE COURT: All right. So what are we on?

4 MR. GIORDANI: We're on our seventh. We just got a
5 little sidetracked there.

6 Your Honor, while the defense is making their next
7 one, would it be possible to have your recorder rewind to
8 something that was said this morning? I mean, if I tell you a
9 juror number can you figure it out? Or is it going to take --

10 THE COURT: What's the issue?

11 MR. GIORDANI: Well, as to it's 354, Ms. Vargas, we
12 like her as of yesterday, but this morning when the defense
13 questioned her she indicated --

14 MS. TRUJILLO: Am I missing something? Should I
15 be --

16 MR. GIORDANI: Well, some hesitancy -- I'm trying to
17 get her to play back from where --

18 THE COURT: Okay.

19 MR. GIORDANI: Ms. Trujillo was questioning her, and
20 there was some hesitancy, and I tried to jot the notes down,
21 but I didn't get everything. So I was hoping we could review
22 that.

23 MR. STORMS: Which juror?

24 MS. TRUJILLO: Vargas.

25 MR. STORMS: Okay.

1 MR. GIORDANI: 354.

2 THE COURT RECORDER: Yeah. I just kinda need -- I
3 need a little bit of time to get to it, but I can try.

4 MR. GIORDANI: Okay. I'm sorry to be a pain, but
5 we're still on track to open at 1:00; right?

6 THE COURT: Okay. So you're envisioning lunch at
7 noon and then coming back at 1:00 for opening?

8 MS. TRUJILLO: Can we have 1:30?

9 THE COURT: Is that what you want to do?

10 MR. GIORDANI: Well, we scheduled our first witness
11 for 1:00 so we're for sure she's here on time. But if you need
12 an extra --

13 THE COURT: I'm fine with that. I was going to bring
14 them all in and send out the ones -- or maybe what we'll do is
15 bring them all in, excuse the people who aren't going to be
16 jurors. I'll do the initial admonition. We'll go to lunch for
17 an hour and then come back and do the openings. Could we do
18 that?

19 MR. GIORDANI: Sure.

20 MS. TRUJILLO: Uh-huh.

21 THE COURT: All right. Do you have the thing to
22 read?

23 (Proceedings recessed 11:43 a.m. to 11:56 a.m.)

24 THE COURT: You guys ready?

25 MS. TRUJILLO: No.

1 THE COURT: Where are we?
2 MS. TRUJILLO: They're on --
3 MR. GIORDANI: We just had our last.
4 THE COURT: Okay. Is that your ninth?
5 MS. TRUJILLO: This is eight.
6 THE COURT: Be anticipating your ninth so we can get
7 started.
8 MS. TRUJILLO: Uh-huh.
9 MR. GIORDANI: I was going to -- I think we might
10 wait, but I want to confirm with them that they think that --
11 (Pause in the proceedings.)
12 MS. TRUJILLO: Okay.
13 THE COURT: Are you on your ninth?
14 MR. GIORDANI: Yes.
15 MS. TRUJILLO: Uh-huh.
16 THE COURT: Then I'm going to go over the list on the
17 record to make sure we got it correct. Okay. Approach. Oh,
18 no, I just meant with the list. We're going to do this on the
19 record. All right.
20 The State's first challenge was for Badge Number 338,
21 Christina Devine in Chair 5.
22 The defense's first challenge was Badge 362, Scott
23 Williams in Chair 10.
24 The State's second challenge was Badge Number 183 --
25 what chair?

1 MR. GIORDANI: Seat 1.

2 THE COURT: -- in Seat 1.

3 The defense's second challenge --

4 MS. TRUJILLO: Judge, before you finish reading can
5 we approach really quick.

6 THE COURT: Sure.

7 (Conference at the bench not recorded.)

8 THE COURT: Then that's how it is. Okay. So
9 chair -- defense's second perempt is Badge 522 and that is --
10 522 is who?

11 UNIDENTIFIED SPEAKER: Thurgood.

12 THE COURT: What chair?

13 MR. GIORDANI: I'm looking. Oh, yeah, Seat 6.

14 MS. TRUJILLO: 6.

15 THE COURT: All right. Seat 6. All right. And then
16 the defense -- the State's third is Badge 465 and that's
17 Badge --

18 MR. STORMS: That's Seat 4.

19 THE COURT: Okay. Seat 4.

20 And the defense's next one is Badge 509.

21 MR. GIORDANI: Seat 7.

22 THE COURT: And that's in Seat 7. And then the
23 State's next one, their fourth is Badge 367 and that's
24 Mr. Flangas in Seat 12.

25 Defense's fourth is Mazzarella, Badge 515 and that

1 person is in seat --

2 MR. STORMS: 16.

3 THE COURT: 16. And then State's fifth is
4 Blankenship, Badge 521 in Seat --

5 MR. STORMS: 14.

6 THE COURT: -- 14. And than defense's fifth is
7 Gunnell, in Badge 473 in seat --

8 MR. STORMS: 19.

9 THE COURT: Seat 19.

10 MR. GIORDANI: Wait, that's not 473.

11 MR. STORMS: No.

12 THE COURT: No, that's right.

13 MR. GIORDANI: That's Badge 18 -- 189.

14 THE COURT: It's 189. So do you care if we
15 interlineate -- the Court interlineates on your fifth and makes
16 that Badge Number 189, Gunnell?

17 MS. TRUJILLO: Yes.

18 THE COURT: Okay. Right. Because the person there
19 before -- so that should be Badge Number 189, Mr. Gunnell, in
20 Seat 19.

21 State's sixth is Allen, Badge 454. So 454 is where?

22 MR. STORMS: 2.

23 THE COURT: In Seat 2. Okay.

24 And then defense's sixth is the Bayne, Badge 408.

25 MR. STORMS: 21.

1 THE COURT: In Seat 21 and then the State waived. So
2 we don't do anything; right?

3 And we go to defense's seventh which is Cruz, Badge
4 361.

5 MR. GIORDANI: Seat 9.

6 THE COURT: In Seat 9 and then Badge 354, Vargas in
7 Seat 15.

8 MR. GIORDANI: No.

9 MR. STORMS: Seat 8.

10 THE COURT: Oh, I'm sorry.

11 MR. GIORDANI: Badge 354.

12 THE COURT: In Seat 8. And that was the State's, and
13 then defense's eight is Cadieux, Badge 413.

14 MS. TRUJILLO: Seat 23.

15 THE COURT: And that person's in Chair 23, and then
16 the State waived again.

17 And the defense exercised 443, and that person is in
18 Seat 29. And then based on the State's two waivers, that would
19 be 32 and the person in Chair 32, 512, Fuentes.

20 And the person in Chair 31, 446, Eugene. Is that
21 right?

22 MR. GIORDANI: Are gone.

23 THE COURT: Oh. The person in Chair 31 is who?

24 MS. TRUJILLO: Deborah Eugene.

25 THE COURT: That's what I've got.

1 MR. STORMS: Yes.

2 MR. GIORDANI: Yeah, that means those two are gone.

3 THE COURT: Yeah, they're going to be excused.

4 MR. GIORDANI: Right.

5 THE COURT: All right. I guess that's --

6 MS. TRUJILLO: But what -- but the problem was that I

7 used my ninth -- sorry, Judge -- my ninth peremptory based on

8 the fact that I thought the Court said we could only use the

9 ninth one on the two last ones in the --

10 THE COURT: Well, it is now on the alternate so

11 that's fair and appropriate.

12 MR. GIORDANI: Right.

13 THE COURT: And the State waived their ninth.

14 MR. GIORDANI: Correct.

15 THE COURT: So now --

16 MS. TRUJILLO: But I'm saying it's not fair and

17 appropriate to restrict it; that's why I was confused because

18 you said that it could be anywhere. So are you -- is that a

19 change in position? I'm confused.

20 MR. GIORDANI: No, no. I don't mean to interrupt,

21 but our whole calculus, and what Mr. Dickerson and I both

22 remember was like in every other case where we do this type of

23 process, the ninth is restricted to whoever are in there two

24 alternate seats. That's how we calculated this whole thing.

25 THE COURT: Well, the ninth should be the two

1 alternates because it's your alternate --

2 MR. GIORDANI: Perempt.

3 THE COURT: It your alternate perempt. So had you
4 not exercised it, your two alternates would be Kenneth Campbell
5 and Deborah Reese. Since you did exercise it, your two
6 alternates are now Kenneth Campbell and Philip Davis.

7 MR. GIORDANI: No, it would have been --

8 THE COURT: Who is it?

9 MR. GIORDANI: Had it --

10 THE COURT: Who does it this way? Everybody else --
11 are you saying every other Judge does it this way?

12 MR. GIORDANI: Well, the way you're saying is
13 correct. I was just correcting the numbers. Had they not
14 exercised nine on Number 443, it would have been 500 and 443 as
15 the alternates. Because they did, it eliminate --

16 THE COURT: Right. I just said Number 500 Philip
17 Davis is the alternate; right?

18 MR. GIORDANI: Yep.

19 THE COURT: Okay. All right.

20 Kenny, bring them all back in. I'm just going to
21 excuse them as I've marked on my chart, and that way, of
22 course, they won't know how they were challenged or who
23 challenge them. And this will be made a court's exhibit of
24 your perempts.

25 Who are all these so-called Judges that do it this

1 way?

2 MS. TRUJILLO: I was going to take note.

3 MR. GIORDANI: Well --

4 THE COURT: I'm serious. All right. Kenny's coming.

5 (Panel of prospective jurors entering 12:06 p.m.)

6 THE COURT: All right. Court is now back in session.
7 The record should reflect the presence of the State through the
8 deputy district attorneys, the presence of the defendant along
9 with his counsel, and the ladies and gentlemen of the
10 prospective jury panel.

11 And ladies and gentlemen, jury selection is now
12 complete.

13 At this time Badge Number 183, Ms. Simon, you are
14 excused from these proceedings. Thank you very much for being
15 here and your willingness to serve as a juror. Yes, you're
16 ready to leave, and Officer Hawkes will direct you from the
17 courtroom.

18 Badge Number 454, Ms. Allen, you are excused from
19 these proceedings, and thank you for your willingness to serve.

20 Badge Number 465, Mr. Peries, you are excused from
21 these proceedings, and thank you for your willingness to serve
22 as a juror.

23 Badge Number 338, Ms. Devine, you are excused from
24 these proceedings, and thank you for your willingness to serve.

25 Badge Number 522, Mr. Thurgood, you are excused from

1 these proceedings, and thank you for your willingness to be a
2 juror.

3 Badge Number 509, Ms. Gebretensie --

4 PROSPECTIVE JUROR NO. 509: Yeah.

5 THE COURT: -- you are excused from these
6 proceedings, and thank you for your willingness to serve.

7 And Badge Number 354, Ms. Vargas, you are also
8 excused, and thank you for your willingness to serve as a
9 juror.

10 Badge Number 361, Mr. Cruz, you are excused from
11 these proceedings, and thank you for your willingness to serve.

12 Badge Number 362, Mr. Williams, you are excused, and
13 thank you for your willingness to serve.

14 Badge Number 367, Mr. Flangas, you are excused from
15 these proceedings, and thank you for your willingness to serve
16 as a juror.

17 Badge Number 521, Ms. Blankenship, you are excused
18 from these proceedings, and thank you for your willingness to
19 serve.

20 Badge Number 515, Ms. Mazzarella, you are excused
21 from these proceedings, and thank you for your willingness to
22 serve as a juror.

23 Badge Number 189, Mr. Gunnell, you are excused from
24 these proceedings, and thank you for your willingness to serve
25 as a juror.

1 Badge Number 408, Mr. Bayne, you are excused from
2 these proceedings, and thank you for your willingness to serve
3 as a juror.

4 Badge Number 413, Mr. Cadieux -- I'm not sure if I'm
5 saying your name correctly.

6 PROSPECTIVE JUROR NO. 413: Yep, that's fine.

7 THE COURT: You are excused, and thank you for your
8 willingness to be a juror.

9 Badge Number 443, Ms. Reese (sic), you are excused
10 from these proceedings. Thank you for your willingness to
11 serve as a juror.

12 Badge Number 446, Ms. Eugene, you are excused, and
13 thank you for your willingness to serve.

14 And finally, Badge Number 512, Mr. Fuentes, thank you
15 for your willingness to serve as a juror, and you are excused
16 from these proceedings.

17 And to the ladies and gentlemen seated in the
18 audience, you folks are all excused as well, and thank you for
19 your being here and participation in the jury selection
20 process. And Officer Hawkes will direct you from the
21 courtroom.

22 All right. Ladies and gentlemen, you are the 14
23 members of our jury. And what I would like everyone to do is
24 to kind of move down. So basically, wait a minute. I'd like,
25 Mr. Campbell, you're in Chair -- if you could move down one

1 chair -- just one chair the other way.

2 PROSPECTIVE JUROR NO. 444: Okay.

3 THE COURT: And then if everyone in the back row
4 would just move down so that there's -- everybody's seated next
5 to somebody. There's no empty chairs in between.

6 All right. And then if Ms. Selby, if you would
7 please have the second to the last chair in the back row.

8 PROSPECTIVE JUROR NO. 418: That way?

9 THE COURT: Yes. And, Ms. Johnson, if you'd have the
10 corner chair in the back row. I'm doing Kenny's work here. I
11 don't know what he's doing out in the hallway.

12 THE MARSHAL: I'm taking care of the leaving jurors.

13 THE COURT: I know. I'm kidding.

14 And then, Mr. Williams, if you would move all the way
15 down -- let's see, one, two, three, four, five, six, seven --
16 second to the last chair. And then if the other two jurors
17 would move down next to, I'm sorry, Mr. Williams, yes. Have a
18 seat.

19 THE MARSHAL: Would you like me to take over my job?

20 THE COURT: And then if Ms. Arkenberg, would have the
21 first chair.

22 THE MARSHAL: Right over here, ma'am, in the back
23 over here.

24 THE COURT: If Ms. Rodriguez-Vallejo would have the
25 second chair. If Mr. Pursell would have the third chair, and

1 if Ms. Wallace would have the fourth chair.

2 All right, ladies and gentlemen, this is the order
3 that you will be seated in the jury box throughout these
4 proceedings from now on. So please remember what chair we have
5 you seated in. Okay.

6 I'm going to go ahead and direct the clerk to
7 administer the oath to the jury which she will do in a moment,
8 and Officer Hawkes is going to be passing out blue badges that
9 identify you as Department 21 jurors. It's important that you
10 wear those badges when you're in and around the building so
11 that people can recognize you as Department 21 jurors and
12 someone doesn't inadvertently start talking about the case or
13 something like that in your presence.

14 So every day from now on wear the badges when you go
15 to lunch, when you're in and around the building.

16 Officer Hawkes is also going to hand out some
17 notepads for you that you can utilize to take notes throughout
18 these proceedings. And while he's doing that we'll have the
19 court clerk administer the oath to the jury in a second.

20 All right. And then, ladies and gentlemen, in a
21 moment I'm going to have the court clerk administer the oath to
22 you. After that I'll be reading to you some introductory
23 comments and then we'll take our lunch break.

24 So, Ms. Trujillo, if you would please administer the
25 oath to the ladies and gentlemen of the jury.

1 And, ladies and gentlemen, if you would please all
2 rise for the oath.

3 (Jury sworn.)

4 THE COURT: All right. Thank you. Please be seated.

5 Ladies and gentlemen, I'm now going to take a few
6 minutes to talk to you about what to expect in this trial. My
7 comments are intended to serve as an introduction to the trial.
8 At the end of the trial, I will give you more detailed
9 instructions in writing, and those detailed instructions will
10 control your deliberations.

11 This is a criminal case brought by the State of
12 Nevada against the defendant. The case is based on an Amended
13 Information. The clerk will now read that document to you and
14 state the plea of the defendant.

15 (Clerk reads Amended Third Superseding Indictment.)

16 THE COURT: All right. Thank you.

17 Ladies and gentlemen, you should distinctly
18 understand that the Amended Indictment just read to you is
19 simply a description of the charges made by the State against
20 the defendant. It is not evidence of anything. It does not
21 prove anything.

22 Therefore, the defendant starts out with a clean
23 slate. The defendant has pled not guilty and is presumed
24 innocent.

25 This is a criminal case, and there are two basic

1 rules you must keep in mind. First, the defendant is presumed
2 innocent unless and until proved guilty beyond a reasonable
3 doubt. The defendant is not required to present any evidence
4 or prove his innocence. The law never imposes upon a defendant
5 in a criminal case the burden of calling any witnesses or
6 introducing any evidence.

7 Second, to convict, the State must prove beyond a
8 reasonable doubt that the crime was committed and that the
9 defendant is the person who committed the crime.

10 It will be your duty to decide from the evidence to
11 be presented whether the defendant is guilty or not guilty.
12 You are the sole judges of the facts. You will decide what the
13 facts are from the evidence which will be presented. The
14 evidence will consist of testimony of witnesses and documents
15 and other things received into evidence as exhibits.

16 You must apply the facts to the law which I shall
17 give you and in that way reach your verdict. It is important
18 that you perform your duty of determining the facts diligently
19 and conscientiously. For ordinarily there is no way of
20 correcting an erroneous determination of facts by the jury.

21 You should not take anything I may say or do during
22 the trial as indicating my opinion as to how you should decide
23 the case or to influence you in any way in your determination
24 of the facts. At times I may even ask questions, excuse me,
25 questions of witnesses. If I do so, it is for the purpose of

1 bringing out matters which should be brought out and not in any
2 way to indicate my opinion about the facts or to indicate the
3 weight or value you should give to the testimony of a witness.

4 There are two kinds of evidence, direct and
5 circumstantial. Direct evidence is testimony about what the
6 witness personally saw, heard or did.

7 Circumstantial evidence is indirect evidence. It's
8 proof of one or more facts from which you can find another
9 fact. By way of example, if you wake up in the morning and see
10 that the ground, the sidewalks and the streets are all wet and
11 water is running down the gutters, you may find from those
12 facts that it rained during the night. This proof of one or
13 more facts from which you can find another fact.

14 Conversely, if you were awake during the night and
15 saw the rain fall, that would be direct evidence, which is
16 something you personally saw.

17 You may consider both direct and circumstantial
18 evidence in deciding this case. The law permits you to give
19 equal weight or value to both, but it's for you to decide how
20 much consideration to give to any evidence. Certain things are
21 not evidence, and you must not consider them as evidence when
22 deciding the facts of this case.

23 They include statements and arguments by the
24 attorneys, questions and objections of the attorneys, testimony
25 I instruct you to disregard and everything you see or hear if

1 the court is not in session, even if what you see or hear is
2 done or said by one of the parties or by one of the witnesses.
3 Remember, evidence is sworn testimony by a witness from the
4 witness stand while court is in session and documents and other
5 things received into evidence as exhibits.

6 There are rules of law which control what can be
7 received into evidence. When a lawyer asks a question or
8 offers an exhibit into evidence and the lawyer on the other
9 side thinks it is not permitted by the rules, that lawyer may
10 object. If I overrule the objection, the question may be
11 answered or the exhibit received. If I sustain the objection,
12 the question cannot be answered or the exhibit cannot be
13 received.

14 Whenever I sustain an objection to a question, ignore
15 the question, and do not guess what the answer might have been.
16 Sometimes I may order evidence stricken from the record and
17 tell you to disregard or ignore such evidence. This means that
18 when you're deciding the case you must not consider the
19 evidence which I have told you to disregard.

20 It is the duty of a lawyer to object to evidence
21 which the lawyer believes may not be permitted under the rules.
22 You should not be prejudiced in any way against the lawyer who
23 makes objections on behalf of the party the lawyer represents.

24 Also, I may find it necessary to admonish a lawyer.
25 If I do, you should not be prejudiced toward the lawyer or

1 client because I have found it necessary to admonish him or
2 her.

3 You are not to concern yourself in any way with the
4 sentence which the defendant might receive if you should find
5 the defendant guilty. Your function is to decide whether the
6 defendant is guilty or not guilty of the charges. If and only
7 if you find the defendant guilty, then because the duty of the
8 Court to pronounce sentence.

9 Until this case is submitted to you, do not talk to
10 each other about it or about anything, I'm sorry, or about
11 anyone having anything to do with it until you go into the jury
12 room to deliberate on the case and all of you are present in
13 the jury deliberation room.

14 Do not talk with anyone else about this case or
15 anyone having anything to do with it until the trial has ended
16 and you have been discharged as jurors by me. Anyone else
17 includes members of your family and your friends. You may tell
18 them that you are a juror in a criminal case, but do not tell
19 them anything else about it until after you've been discharged
20 by me.

21 Do not let anyone talk to you about the case or about
22 anyone having anything to do with it. If someone should try to
23 talk to you, please report it to me immediately by contacting
24 the bailiff. Do not read any news stories, listen to any radio
25 broadcast or watch any television reports about the case or

1 about anyone having anything to do with it.

2 Do not do any research on your own or make any
3 investigation about this case. You may be tempted to visit the
4 location. Please do not do so. In view of the time that has
5 elapsed since this case has come to trial, substantial changes
6 may have occurred at the location in question.

7 Also, in making an unauthorized visit without the
8 benefit of explanation you may get erroneous impressions.
9 Therefore, please avoid going near or past the location until
10 after the case has been completed.

11 At the end of the trial you'll have to make your
12 decision based on what you recall of the evidence. You will
13 not have a written transcript to consult, and it's difficult
14 and time-consuming for the court recorder to play back lengthy
15 testimony. Therefore, I urge you to pay close attention to the
16 testimony as it is given.

17 If you wish, you may take notes to help you remember
18 what witnesses said. If you do take notes, please keep them to
19 yourself until you and your fellow jurors go to the jury room
20 to decide the case. Do not let note taking distract you so
21 that you do not hear other answers by witnesses. You should
22 rely upon your own memory of what was said and not be overly
23 influenced by the notes of the other jurors.

24 Do not make up your mind about what the verdict
25 should be until after you've gone to the jury room to decide

1 the case and you and your fellow jurors have discussed the
2 evidence. It is important that you keep an open mind.

3 A juror may not declare to a fellow juror any fact
4 relating to this case of which the juror has knowledge. If any
5 juror discovers during the trial or after the jury has retired
6 that that juror or other juror has personal knowledge of any
7 fact in controversy in this case, that juror shall disclose
8 that situation to me in the absence of the other jurors. This
9 means that if you learn during the course of the trial that you
10 have personal knowledge of any fact which is not presented by
11 the evidence in this case, you must declare that fact to me.
12 You communicate to the Court through one of the bailiffs.

13 During the course of this trial the attorneys for
14 both sides and all court personnel other than the uniformed
15 bailiff are not permitted to converse with members of the jury.
16 These individuals are not being antisocial. They are bound by
17 ethics and the law not to talk to you. To do so might
18 contaminate your verdict.

19 The trial will proceed in the following manner. The
20 deputy district attorney will make an opening statement which
21 is an outline to help you understand what the State expects to
22 prove. Next, the defendant's attorney may but does not have to
23 make an opening statement. Opening statements serve as an
24 introduction to the evidence which the party making the
25 statement intends to prove.

1 The State will then present its evidence, and counsel
2 for the defendant may cross-examine the witnesses. Following
3 the State's case, the defendant may present evidence, and the
4 deputy district attorney may cross-examine those witnesses.
5 However, as I have already said, the defendant is not obligated
6 to present any evidence or to call any witnesses.

7 After all the evidence has been presented, I will
8 instruct you on the law. After the instructions on the law
9 have been read to you, each side has the opportunity to present
10 oral argument. What is said in closing argument is not
11 evidence. The arguments are designed to summarize and
12 interpret the evidence. Since the State has the burden of
13 proving the defendant guilty beyond a reasonable doubt, the
14 State has the right to both open and close the closing
15 arguments. After the arguments have been completed, you will
16 retire to deliberate on your verdict.

17 Jurors are permitted to ask questions of the
18 witnesses. If you have a question for one of the witnesses, I
19 ask that you write it down using a full sheet of your notebook
20 paper, and then wait until the attorneys for both sides have
21 had an opportunity to question the witness because very often
22 one of the lawyers will ask your question. If not, please get
23 my attention or the bailiff's attention, and he will retrieve
24 the question from you.

25 Please do not be offended if I don't ask one of your

1 questions. The questions from the jury are governed by the
2 same rules of evidence that control what the lawyers can ask.
3 So if your question were to call for hearsay or some other type
4 of inadmissible evidence, I may not ask it. It doesn't mean
5 it's not an interesting question or something like that, but I
6 do have to follow the rules of evidence with respect to the
7 juror questions.

8 That concludes my introductory remarks. We're going
9 to go ahead and take our lunch break. We'll take an hour.
10 That will put us at 1:30.

11 During the lunch break -- a couple minutes after
12 1:30. During the lunch break you're all reminded, you're not
13 to discuss the case or anything relating to the case with each
14 other or with anyone else. You're not to read, watch or listen
15 to any reports of or commentaries on the case, person or
16 subject matter relating to the case. Do not do any independent
17 research by way of the Internet or any other medium. Do not
18 visit the location at issue, and please do not form or express
19 an opinion on the trial.

20 Officer Hawkes will give you instructions on where to
21 meet after the lunch break. Any questions, please address
22 Officer Hawkes in the hallway. He'll also be talking to you at
23 some point today about where you'll be parking from now on and
24 things of that nature. So if you have questions, please
25 address Officer Hawkes.

1 And please leave your notepads in your chairs and
2 follow Officer Hawkes through the double doors. We'll see
3 everyone back after the lunch break.

4 (Jury recessed at 12:31 p.m.)

5 THE COURT: Okay. So who did -- and this is totally
6 off the record.

7 (Proceedings recessed 12:32 p.m. to 1:41 p.m.)

8 (In the presence of the jury.)

9 THE COURT: All right. Court is now back in session.
10 The record should reflect the presence of the State through the
11 deputy district attorneys, the presence of the defendant along
12 with his counsel, the officers of the court and the ladies and
13 gentlemen of the jury.

14 Is the State ready to proceed with their opening
15 statement?

16 MR. DICKERSON: We are, Your Honor.

17 THE COURT: All right.

18 MR. DICKERSON: Thank you.

19 MR. DICKERSON: Ladies and gentlemen, you'll hear
20 that the events that bring us here were not random. There was
21 a plan in place, and the plan that was in place was for Larry
22 Brown to be the gunman.

23 On February 21st, 2017 --

24 (Audio playing.)

25 MR. DICKERSON: You'll hear from Ms. Nelson. She'll

1 tell you what she saw. She'll tell you exactly what she heard
2 that evening as she was in her room in apartment Number 2005.
3 She was awoken with the commotion outside. She saw the victim
4 ultimately being tossed around on top of her vehicle and then
5 winds up dead on that pavement after being shot.

6 You will also hear from other neighbors within the
7 neighborhood including -- the victim in this case is Kwame
8 Banks. What you're going to hear about him is that he was 26
9 years old at the time that he died. He was killed by a single
10 close range bullet that entered his chest and exited out of his
11 back. We know the bullet was close range because what you're
12 going to hear from the coroner, Dr. Diloreto who's going to
13 testify that there's soot on the wound. We also know that
14 based upon the witness testimony. He was ultimately pronounced
15 dead at the scene.

16 Officers responded, conducted a canvass of the area.
17 During their canvass they found Jakhai Smith.

18 MS. TRUJILLO: Judge, can we approach?

19 THE COURT: Yeah, I was just having a moment with the
20 bailiff but --

21 (Conference at the bench not recorded.)

22 MR. DICKERSON: Jakhai Smith at the time was 15 years
23 old. He was asleep in his bedroom in Apartment 2008, there at
24 5850 Sky Pointe. It's an apartment complex as you can see, and
25 this what you're looking at here is his vehicle. When he was

1 awoken like Ms. Nelson next door to a commotion outside, he
2 looked out. He saw the victim, Mr. Banks, and a black male
3 adult wearing all black fighting right in that same area.
4 Ultimately, what he sees is Mr. Banks on his back on the ground
5 and the suspect in all black pointing a firearm at him. As
6 Mr. Banks tries to get the firearm from the suspect he's shot.

7 Mr. Smith then turns, looks away and when he comes
8 back to the window there's Mr. Banks has now flipped over on to
9 his stomach, and the suspect in all black is gone. But that's
10 when sees him reappear, and he sees the suspect then start
11 picking Mr. Banks' pockets, and taking what he has.

12 As the officers continue their investigation, the
13 crime scene was cordoned off. The crime scene investigators
14 arrived. The homicide detectives, Detective Dosch and
15 Detective Cook arrive to take lead on the investigation. On
16 the scene what they noticed was that there was one bullet hole
17 into the awning right above where Mr. Banks was killed. There
18 was one cartridge case on the ground, a .40 caliber cartridge
19 case. Another cartridge case, a .40 caliber cartridge case was
20 ultimately found when they rolled Mr. Banks over. It was stuck
21 to his chest as his shirt was up.

22 What they also noticed when they were on scene is
23 that both of Mr. Banks' pockets were, in fact, pulled out of
24 his pants, an indication to them that he had been robbed.

25 Next to his left-hand pocket they find a piece of a

1 torn rubber glove. This black rubber glove right next to his
2 pocket and then up there was marked as Number 5 is a cell
3 phone. Ultimately, you'll hear about who owns the cell phones
4 here and that's not the only one.

5 In addition to that, in front of that white vehicle
6 that you've seen in those previous pictures and near Mr. Banks'
7 body was this black Hardy work glove that was found right there
8 as well. And then in the rocks right in front of that same
9 area was another cell phone. That cell phone was also
10 collected along with the evidence they'd previously seen.

11 In addition to that, these are just two of them, but
12 there was a series of footprints leading away from Mr. Banks'
13 body, bloody footprints that had a distinctive feature as to
14 their soles. Looking at this, this is a crime scene diagram
15 and what you can see in the lower right-hand corner is the area
16 where Mr. Banks was, where all the arrows are pointing and
17 where that is. Up to the top is an entrance exit to the
18 apartment complex; there was additional evidence found.
19 Another cell phone that was broken into three pieces, this is
20 one of the pieces. A \$10 bill right there at marker 17 and at
21 marker 18 another foreign black rubber glove.

22 You're going to hear that officers then went and made
23 contact with Tiffany Seymour. Tiffany Seymour was Mr. Banks'
24 girlfriend. At the time they had one son together, and she was
25 pregnant with their other. Mr. Banks spent the entire day with

1 them doing things with the kids and things that needed to get
2 done. She'll tell you that for a living Mr. Banks sold
3 marijuana. That's what he did and that he carried phones for
4 work and phones for personal. He usually carried two to three
5 phones on him.

6 Specifically on this day, February 21st, 2017,
7 there was a contact on her phone -- on his phone, on Mr. Banks'
8 phone had been calling him excessively and trying to get in
9 touch with him to set up some sort of marijuana deal. That
10 contact was POE [phonetic] ATL. That's how it was listed in
11 Mr. Banks' phone.

12 You will hear that as the day went on ultimately
13 Mr. Banks went out to go meet Mr. POE ATL. This was late at
14 night after Mr. Banks usually doesn't go out to do work.
15 Sometime around 10:15 at night, Mr. Banks at leaves the house.
16 He loads the back of his vehicle up with marijuana and drives
17 away in his black Nissan Altima.

18 At that point in time detectives had not found
19 Mr. Banks' vehicle. They didn't even know that he had one
20 until they interviewed Ms. Seymour. So at that moment is when
21 they said, well, where's that vehicle. What are we doing
22 without that anywhere in this crime scene. They did an ATL of
23 the area, ultimately not far at all from the crime scene which
24 is located on the map to the right, 5850 Sky Pointe Drive.
25 They end up finding Mr. Banks' black Nissan Altima. They find

1 it two days later, February 23rd, 2017, parked in the
2 business complex at 7495 West Azure. You'll see that that's
3 just right down the road from 5850 Sky Pointe. It was parked
4 right where it is in the picture that's on the left-hand side
5 of the screen in that spot with no license plate fixed with it.

6 On inspection of the interior, they find that it had
7 been burned, obviously, not the way that it had been left
8 before by Mr. Banks.

9 Officers then canvassed the area. You'll see all
10 these businesses up to the right, Findlay Volkswagen, Findlay
11 Honda, One Stop Auto. They looked for surveillance footage,
12 and then they were able to find surveillance footage which
13 shows the Nissan Altima entering on the 21st at 11:32 p.m.,
14 entering that business complex just across the street from
15 Findlay Volkswagen, Findlay Honda.

16 A short time later on those videos you'll see a white
17 SUV entering the same complex. And then ultimately, early in
18 the morning on the 23rd we have this video fire that ends up
19 burning Mr. Banks' vehicle. I'll show it to you.

20 [Video played]

21 MR. DICKERSON: And shortly after that fire we can
22 see that white SUV driving by. From that moment on, detectives
23 turn their attention to the other evidence that they had on the
24 scene. Looking at the multiple cell phones that they've
25 located, determining who those belong to and what information

1 can we get related to those. Ultimately, the phone that is
2 under Mr. Banks, determined to belong to him. The phone at the
3 entrance that's broken into three pieces also determined
4 belonged to Mr. Banks having these two separate phone numbers.

5 In Mr. Banks' phone was the contact POE ATL. From
6 there, detectives got that phone Number 702-581-2072 and
7 subpoenaed the phone company for records of who that phone
8 number belonged to. You'll see that that phone
9 Number 702-581-2072 belonged to Anthony Carter. That's
10 according to T-Mobile's records. And in furtherance of that,
11 the detectives got additional records to determine who was
12 calling who and what calls were made.

13 They also determined that the subscriber of the phone
14 that was located in the rocks just near Mr. Banks' body was
15 Larry Brown with this 404-808-2233 number. So in looking at
16 the records that the police were able to find, they were able
17 to determine one thing right away. Mr. Brown had never
18 contacted Mr. Banks. But the same wasn't true for Mr. Carter.

19 Early in the morning, February 21st, 2017, a call
20 between Mr. Carter and Mr. Banks, ultimately a text and then a
21 call. Mr. Banks called Mr. Carter. Mr. Carter texts Mr. Banks
22 back at 9:34 a.m. 9:36 a.m. Mr. Carter called Mr. Larry Brown
23 and then a text to Larry Brown immediately following that call.
24 Mr. Banks, 9:38 a.m., texts Mr. Carter and a call shortly
25 thereafter.

1 Larry Brown and Mr. Carter trade text messages and
2 calls in the short period between 11:40 and 11:42 and another
3 call later on in the afternoon. Then after 7:00 o'clock is
4 when things really start to get into motion. 7:10 p.m. we have
5 a call to Mr. Banks from Mr. Carter, and then immediately after
6 that a call from Mr. Carter to Mr. Brown, and then 7:57 p.m. a
7 call to Mr. Banks, 7:58 immediately after that call, a call to
8 Mr. Brown.

9 Now, what you'll hear is that associated with these
10 records is location data. Location data of the cellular --
11 cellular towers that are being used to make these calls which
12 tell you generally where those persons' phones were at the time
13 these calls were made. You'll hear that during this period,
14 7:35 to 7:58 p.m. is a very specific time that these two
15 individuals, Mr. Brown and Mr. Carter were moving.

16 First, Mr. Carter from his residence goes into the
17 area of 5850 Sky Pointe Drive. Then shortly thereafter, 7:58
18 Mr. Brown appears in the area of 5850 Sky Pointe Drive. You'll
19 hear about that time period, Mr. Brown's calls that were made
20 during that time, where he was, and what you'll see is that
21 that entire time Larry Brown stays at that location taking us
22 into after 10:00 p.m. when Kwame Banks arrives into the same
23 location.

24 You'll hear that at that point in time detectives got
25 search warrants approved for several residences including

1 Mr. Brown's residence which was at 2540 Sierra Bello. Outside
2 the front of his residence they located this vehicle, white
3 Jeep SUV. Inside the residence they located two pairs of Polo
4 size 13 D boots with this distinctive sole. Upon further
5 comparison, looking to the bloodied foot print that was found
6 on scene you can see exactly --

7 MS. TRUJILLO: Objection, Judge. Can we approach?

8 THE COURT: Sure.

9 (Conference at the bench not recorded.)

10 MR. DICKERSON: And ladies and gentlemen, you can see
11 exactly what that is. In addition to that, forensic testing
12 was ordered on the evidence that was found at the crime scene.
13 Those two cartridge cases, the one found next to Mr. Banks'
14 body and the one found underneath his body, both .40 caliber
15 cartridge cases were compared to each other. Those two were
16 determined to have been fired from one single firearm.

17 In addition to that, DNA evidence was processed on
18 the gloves that were located on the scene. That piece of
19 rubber glove located just outside of Mr. Banks' left pocket, as
20 well as the Hardy work glove that's located just by that white
21 vehicle, right next to Mr. Banks as well. Both come back to
22 Larry Brown.

23 You're going to hear that it took some time to get
24 Mr. Brown in custody. Ultimately he was located in Decatur,
25 Georgia, and you're going to hear from an FBI agent who

1 insisted in taking him into custody and several witnesses that
2 were present at the time. You're going to hear that he was
3 aware the police were after him, and he was trying to get away.

4 And based upon all the evidence in this case and even
5 more than I've discussed here, at the end of this trial we're
6 going to come back here, Mr. Giordani and myself, and ask you
7 to find the defendant guilty of first-degree murder, robbery
8 with use of a deadly weapon and conspiracy to commit robbery.
9 Thank you.

10 THE COURT: All right. Thank you.

11 Does the defense wish to make an opening statement at
12 this time?

13 MS. TRUJILLO: Yes, Judge. May I approach the jury?

14 THE COURT: You may.

15 MS. TRUJILLO: Thank you.

16 MS. TRUJILLO: Whoever is careless in small matters
17 cannot be trusted in important affairs. This case is about
18 careless moves during an investigation, about an incomplete
19 investigation and about witnesses who say different things, but
20 ultimately see nothing. We're here today for one reason and
21 one reason only, and for one person and one person only. We're
22 here because of Anthony Carter.

23 This case is about carelessness. Anthony Carter is
24 the only tie to Kwame Banks. He was friends with Kwame Banks
25 for at least a year. The evidence will show you that the only

1 reason he went over to Sky Pointe Apartments that night was
2 because Anthony Carter needed more drugs.

3 In addition to just being friends, Kwame Banks was
4 Anthony Carter's drug supplier, and he called him there that
5 night because he needed more drugs. Anthony Carter was often
6 at the Sky Pointe Apartments, even though he didn't live there.

7 The evidence will show you that on that night he was
8 at his friend's apartment at Sky Pointe Apartments, that he
9 stayed there overnight and that was unusual. He usually didn't
10 stay the night with his friends. But on the night of the 21st
11 he stayed there.

12 You'll also hear that when the police arrived at Sky
13 Pointe to do their own investigation into the death of Kwame
14 Banks, that no one answered the door where Anthony and his
15 friend were staying. Police knocked on that door. Nobody
16 answered.

17 During this trial you will learn that Larry Brown is
18 from Georgia. He moved here about 2016, and he didn't know
19 many people. He had previously met Anthony Carter in Georgia,
20 and they had a mutual friend. So that mutual friend when they
21 realized they were both in Vegas reacquainted them.

22 In February of 2017, Larry Brown had only been in
23 contact with Anthony Carter for a short period of time. He
24 also regularly went back to Georgia; that was his home state.
25 He had only been in Vegas for about a year. His mother lives

1 in Georgia. His kids live in Georgia. His friends live in
2 Georgia. And most of his family is still there. So he
3 regularly went back to Georgia to visit his friends.

4 You're also going to hear that shortly after February
5 21st, Metro put a surveillance team on Mr. Brown, March 8th
6 to be specific. He was still here in Las Vegas. He had not
7 left the area. He was living his normal life, driving around.
8 You're going to hear that from Metro. So in addition to
9 Anthony Carter being the only link to Kwame Banks, you're going
10 to hear about the carelessness in this case.

11 The evidence will show you that DNA was found in a
12 place where it shouldn't have been with no explanation. You're
13 going to hear about incomplete investigation. You're also
14 going to hear about the search at Larry Brown's house. Nothing
15 related to Kwame Banks was found at that house.

16 But let's talk about what was found on Kwame Banks'
17 person when the crime scene went to the scene. He had about
18 \$256 on him, a yellow metal necklace with a lions pendant, a
19 yellow metal ring, multiple cell phones and then later it was
20 determined that he had \$1900. He had all that stuff on him at
21 the time of his death.

22 Carelessness leads to wrong conclusions. As you
23 listen to the evidence here, pay close attention to the
24 evidence that the State brings forth. Pay close attention to
25 the witness testimony, but most importantly pay close attention

1 to the evidence you don't hear. This case is about incomplete
2 investigations, carelessness during the investigation and
3 witnesses who don't really say much.

4 After you consider all of the evidence, you will find
5 Larry Brown not guilty. Thank you.

6 THE COURT: All right. Thank you, Ms. Trujillo.

7 Is the State ready to call its first witness?

8 MR. GIORDANI: Yes, Your Honor. The State calls
9 Tiffany Seymour.

10 **TIFFANY SEYMOUR**

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

13 THE CLERK: Thank you. Please be seated. State and
14 spell your first and last name for the record.

15 THE WITNESS: Tiffany Seymour. S-e-y-m-o-u-r.

16 THE COURT: If you'd spell your first name too,
17 please.

18 THE WITNESS: T-i-f-f-a-n-y.

19 THE COURT: Thank you. Go ahead, Mr. Giordani.

20 MR. GIORDANI: Thank you, Your Honor.

21 **DIRECT EXAMINATION**

22 BY MR. GIORDANI:

23 Q Good afternoon, ma'am.

24 A Good afternoon.

25 Q At the time of his death were you in a relationship

1 with Kwame Banks?

2 A Yes.

3 Q Do you have of couple kids together?

4 A Yes.

5 Q When he died were both of those kids born yet?

6 A No, I was seven months pregnant with the baby.

7 Q Did you live together?

8 A Yes.

9 Q I want to talk to you about February 21st of 2017,
10 the day he died.

11 A Okay.

12 Q During the course of the day were you with Kwame?

13 A Yes, the whole day.

14 Q What types of things were you doing throughout the
15 day?

16 A I had two doctor appointments for the baby. The
17 first one was just the heartbeat, the check up. The second
18 appointment was our last ultrasound. We left there. We went
19 out to eat, went home, took a nap and just hung out the rest of
20 the day -- the rest of the night.

21 Q And how old was your -- your first child at that
22 point.

23 A 3.

24 Q Okay.

25 A 3 years old.

1 Q A little boy; right?

2 A Uh-huh.

3 Q Was he with you throughout the course of the day?

4 A Yes, the whole day.

5 Q Were you driving in a vehicle?

6 A Yes.

7 Q Whose vehicle was that?

8 A His car.

9 Q Was that his Nissan?

10 A Yes.

11 Q What color was that?

12 A Black.

13 Q Were there car seats in the vehicle?

14 A Yes, just the one.

15 Q Okay. Is that for the 3 year old?

16 A Yes.

17 Q At some point in time during the course of the day,

18 did you notice Kwame getting calls from a particular contact in

19 his phone?

20 A Later on that night I did.

21 Q Go ahead, what do you mean by that?

22 A He did get a phone call that he answered. He got

23 phone calls throughout the day but he didn't answer. At night

24 when he finally did it was -- it said POE ATL.

25 Q POE ATL as in P-O-E space A-T-L?

1 A Yes.

2 Q Okay. Had you interacted with that person POE ATL
3 before?

4 A No.

5 Q When -- when he got that call, did you actually see
6 the phone?

7 A Yes.

8 Q And was the contact on the face of the phone?

9 A I saw the name.

10 Q Okay. That's what I meant. The name POE ATL?

11 A Yes.

12 Q Okay. Did you hear the content of that conversation?

13 A Yes.

14 Q And what was that generally?

15 A He was just telling him to come over. He had some
16 guy coming over for work.

17 Q Okay. And what did Kwame do for work?

18 A Sold marijuana.

19 Q When you say he told him to come over, are you
20 referring to the POE, the person on the other end of the phone?

21 A Told Kwame to come.

22 Q And then POE had a third person that was waiting to
23 potentially get something?

24 A Yes.

25 Q Did you hear a number associated with that

1 transaction?

2 A I don't remember.

3 Q Okay. Do you remember giving a statement to the
4 police close in time to Kwame's death?

5 A Yes.

6 Q Would looking at that statement refresh your
7 recollection as to the number?

8 A It could, yeah.

9 MR. GIORDANI: May I approach?

10 THE COURT: You may. You may move freely.

11 MR. GIORDANI: And counsel has page 14.

12 MS. TRUJILLO: Thank you.

13 BY MR. GIORDANI:

14 Q Do you see your name in the top right there?

15 A Yes.

16 Q Go ahead and read this Q and A right here.

17 A He did and what you hear --

18 Q No. Not into the record, I'm sorry.

19 A Oh.

20 Q Just to yourself --

21 A Okay.

22 Q -- to refresh your recollection.

23 A Yes.

24 Q Does that refresh your recollection as to a number?

25 A Yes.

1 Q What was that number?

2 A 19.

3 Q Can I presume Kwame didn't sold -- sell \$19 bags of
4 marijuana?

5 A I couldn't tell you. I don't know how much or
6 anything about that.

7 Q Okay. During the course of that conversation, you
8 said it was at night?

9 A Uh-huh.

10 Q Do you recall around when it was at night?

11 A The first call was around 8:00, 8:00 at night.

12 Q Okay. And did Kwame stay home after the first call?

13 A Yes.

14 Q At some point in time did he leave your home?

15 A Yes.

16 Q Did he load some things up into the car before he
17 left?

18 A Yes.

19 Q What was that?

20 A Marijuana.

21 Q And how was it packaged?

22 A Bags.

23 Q Just for the jurors who might not be familiar with
24 bags of marijuana, how large are we talking?

25 A Kind of like that.

1 Q Okay.

2 MR. GIORDANI: For the record, Your Honor, the
3 witness held out her hands about a foot apart.

4 THE COURT: All right.

5 BY MR. GIORDANI:

6 Q So we're not talking about little dime bags here.

7 A No.

8 Q It's a good amount.

9 A Uh-huh.

10 Q Do you know how many bags there were?

11 A I have no idea.

12 Q And do you know where they would have gone in the
13 vehicle?

14 A The trunk.

15 Q Okay. When he left, did he leave for good or did he
16 come back real quick?

17 A He -- when he initially left he came back within like
18 5, 10 minutes.

19 Q And what did he do when he came back?

20 A Dropped off the car seat.

21 Q Okay.

22 A And ate some food.

23 Q So he dropped the car seat back off?

24 A Uh-huh.

25 Q Is that a yes?

1 A Yes.

2 Q I forgot to ask you earlier, ma'am, did Kwame have
3 multiple phones?

4 A Yes.

5 Q Off the top of your head do you remember those phone
6 numbers as you sit here?

7 A No.

8 Q Okay. If I were to represent some numbers to you, do
9 you think you may recognize them as his phones?

10 A Possibly.

11 Q 702-755-2805, 702-786-9811, 702-277-4856?

12 A The second one I recognize.

13 Q Okay. Think you recognize that number?

14 A Yes.

15 Q Okay. Were some of those phones used for his
16 business and then some or one for family stuff?

17 A Yes.

18 Q When Kwame left, do you remember generally what he
19 was wearing?

20 A An olive green sweatsuit and red and white Nike's
21 with a white T-shirt.

22 Q And he left once again for the final time in the
23 vehicle that you've described already?

24 A Yes.

25 Q Do you remember if that -- that vehicle had a key to

1 it or, like, a electric starter?

2 A The car was a push to start.

3 Q Okay. With a key associated -- a key fob, I guess,
4 associated with it?

5 A Yes.

6 Q Do you remember that key fob getting lost or
7 something to that effect?

8 A The whole day he didn't have it.

9 Q Okay.

10 A But he knew it was in the car because we could still
11 start the car.

12 Q Okay. So just in case the jurors might not be
13 familiar with it, is it something where you have a little key
14 device and as long as that's in the car you can push the button
15 on the dash?

16 A Right.

17 Q Okay.

18 A And the car will start.

19 Q And the car was starting, no problem?

20 A Uh-huh.

21 Q Is that a yes?

22 A Yes.

23 Q At some point in time later that evening did you get
24 a little concerned about Kwame?

25 A Yes.

1 Q And did you attempt to contact him on his phone?

2 A Yes.

3 Q Did you get any response?

4 A No.

5 Q Okay. All right. Thank you very much, ma'am.

6 MR. GIORDANI: I'll pass the witness, Your Honor.

7 THE COURT: All right. Thank you.

8 Mr. Storms.

9 MR. STORMS: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. STORMS:

12 Q Good afternoon, Ms. Seymour.

13 A Good afternoon.

14 Q I just have a couple of questions for you. Okay.

15 A Okay.

16 Q Talking about this keyless fob -- this is -- this is
17 a fob that if you have in your purse, then you can just push
18 the button and the vehicle starts?

19 A Yes.

20 Q And this thing was lost in the vehicle is what you
21 understood?

22 A Yes.

23 Q So that means that the vehicle was unlocked?

24 A Yeah.

25 Q And that anyone could go on and push the button and

1 it would start at that point in time?

2 A Yes.

3 Q And you had had the same problem with your vehicle
4 too; right, where you had lost the fob?

5 A Yes.

6 Q And it was the same exact model -- the vehicle?

7 A Yes.

8 Q And you had stated that before Kwame had left you had
9 seen him take calls on his phone?

10 A Uh-huh. Yes.

11 Q And the ID was for POE ATL; is that right?

12 A Yes.

13 MR. STORMS: Okay. Thank you. No more questions.

14 THE COURT: Any redirect?

15 MR. GIORDANI: No, Your Honor. Thank you.

16 THE COURT: Any juror questions for this witness?

17 All right, ma'am, I see no additional questions.

18 Thank you for your testimony. Please do not discuss your
19 testimony with anyone else who may be a witness in this case.

20 THE WITNESS: Okay.

21 THE COURT: Thank you and you are excused.

22 THE WITNESS: Thank you.

23 THE COURT: Call your next witness.

24 MR. GIORDANI: The State would call Dereka Nelson.

25 **DEREKA NELSON**

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

3 THE CLERK: Thank you. Please be seated. State and
4 spell your first and last name for the record.

5 THE WITNESS: Dereka Nelson. D-e-r-e-k-a, last name
6 Nelson, N-e-l-s-o-n.

7 THE COURT: Thank you.

8 Mr. Giordani, you may proceed.

9 MR. GIORDANI: Thank you.

10 DIRECT EXAMINATION

11 BY MR. GIORDANI:

12 Q Good afternoon, ma'am.

13 A Good afternoon.

14 Q I want to bring you back to February 21st of 2017.
15 On that date were you living in 5850 Sky Pointe?

16 A Yes.

17 Q And were you living in an apartment building?

18 A Yes.

19 Q Do you remember the name of the complex?

20 A At the time, I believe it was Sky Pointe Landing.

21 Q Okay.

22 MR. GIORDANI: And by stipulation the parties are
23 going to admit 7.

24 THE COURT: Objection?

25 MS. TRUJILLO: No objection.

1 THE COURT: All right. That will be admitted.

2 (State's Exhibit No. 7 admitted.)

3 BY MR. GIORDANI:

4 Q I'm going to show you Exhibit 7 here, ma'am, and I
5 believe your screen is on in front of you?

6 A Yeah.

7 THE COURT: It's really blurry.

8 MR. GIORDANI: Okay. I'm going to focus it.

9 BY MR. GIORDANI:

10 Q Does that look familiar to you, ma'am?

11 A Yes, it does.

12 Q And is this outlined in pink the Sky Pointe Landing
13 Apartments?

14 A Yes.

15 Q Is there main entry here in the front?

16 A Yes.

17 Q And for the record I'm pointing to the middle of the
18 exhibit. Just to the -- just to the right of the main entry,
19 was your apartment just in here?

20 A Yes.

21 Q Okay. And that's for the record, the first building
22 on the right when you enter from Sky Pointe Drive.

23 A Yes.

24 Q Okay. I want to bring you to the late evening hours
25 around 10:30, 10:40 in the evening. Did something outside your

1 window draw your attention?

2 A Yes. I heard a gunshot, and I heard a young boy
3 saying help me.

4 Q Okay. You said you heard a gunshot and then a young
5 boy saying help me. Was that the order in which you heard it?

6 A I believe I heard help me first followed by the
7 gunshot.

8 Q What did you do in response to that?

9 A I was scrambling for my phone.

10 Q All right. Once you got your phone, I presume you
11 got your phone?

12 A Yes.

13 Q What did you do?

14 A I called 9-1-1.

15 Q Okay.

16 MR. GIORDANI: And by stipulation, Your Honor, we're
17 going to move to admit Exhibit 1.

18 THE COURT: All right.

19 MR. GIORDANI: The 9-1-1 call.

20 THE COURT: No objection?

21 MS. TRUJILLO: No objection, Judge.

22 THE COURT: All right. That will be admitted.

23 (State's Exhibit No. 1 admitted.)

24 MR. GIORDANI: I'm just going to briefly publish --

25 THE COURT: You may publish.

1 MR. GIORDANI: Thank you.

2 (Audio played.)

3 BY MR. GIORDANI:

4 Q Ma'am, I'm just going to stop that for a moment. You
5 heard the little time stamp at the beginning, that robotic
6 sounding voice?

7 A Yes.

8 Q 10:49 p.m.

9 A (Witness nods head.)

10 Q Is that a yes?

11 A Yes.

12 Q Would you agree that's when you scrambled for your
13 phone and placed the 9-1-1 call?

14 A Yes.

15 Q And obviously, what we're hearing, is that your
16 voice?

17 A Yes.

18 (Audio played.)

19 BY MR. GIORDANI:

20 Q Let me stop that for a moment, ma'am. So when you
21 scrambled to get your phone, at some point do you approach your
22 window?

23 A I do approach my window. After I heard the first
24 gunshot and grabbed my phone, I looked out.

25 Q What do you see when you look out at that point?

1 A I see two men tussling on top of my car.
2 MR. GIORDANI: May I approach?
3 THE COURT: Sure. You can move freely.
4 MR. GIORDANI: Thank you.
5 BY MR. GIORDANI:
6 Q I'm showing you State's Proposed 68; do you recognize
7 that?
8 A Yes.
9 Q Does that appear to be your apartment?
10 A Yes.
11 Q The front door?
12 A (Witness nods head.)
13 Q State's 69.
14 A Yes.
15 Q Do you recognize that?
16 A My vehicle.
17 Q And your vehicle.
18 A (Witness nods head.)
19 MR. GIORDANI: I'd move for the admission of State's
20 68 and 69.
21 THE COURT: Any objection?
22 MS. TRUJILLO: No objection.
23 THE COURT: Those will be admitted.
24 (State's Exhibit Nos. 68, 69 admitted.)
25 MR. GIORDANI: Thank you.

1 BY MR. GIORDANI:

2 Q Just for the record, showing you State's 68, is that
3 your front door?

4 A Yes.

5 Q Is your apartment on the first floor or the second
6 floor?

7 A Second floor.

8 Q State's 69, is that your view out into the parking
9 structure area?

10 A Yes.

11 Q Okay. You said that you saw two men tussling over
12 your vehicle; which one is your vehicle?

13 A The pearl white Toyota on the left.

14 Q Okay. And obviously just to the left of that you see
15 one individual down on the ground?

16 A Yes.

17 Q On that evening that we were discussing, is this what
18 you ultimately end up seeing?

19 A Yes.

20 Q Okay. When you -- when you look out, you said you
21 saw two men tussling. Was -- well, describe what you saw.

22 A I saw a pretty heavysset man on top of another body.
23 The body underneath was concealed.

24 Q The individual that you see in this photo, could you
25 tell if that's the person who's on the bottom or the top?

1 A The person on the bottom.

2 Q Was the person on top, did he appear to be the
3 aggressor or the one in control of the situation as you saw it.

4 A Yes, the aggressor.

5 Q Okay. And you indicated you called 9-1-1, but at
6 that point had you seen the tussling on your vehicle?

7 A During the 9-1-1 call, yes, I did.

8 Q Okay. And then you indicated on the 9-1-1 call what
9 we just heard, he's picking his pockets is what your words
10 were. What did you mean by that?

11 A When I heard the second gun shot, I went into my
12 closet; as I was on the phone with dispatch she had asked me to
13 come out of my closet and look back out of my window. When I
14 looked back out of my window, there was just the body that you
15 see there laying on the ground, and then about five seconds
16 later I saw someone come back and pick his pockets.

17 Q Okay. That someone that came back and picked his
18 pockets, was it the same person that you had just seen earlier
19 tussling and overpowering the person in the photo?

20 A Yes.

21 Q When you hear the second gunshot, are you still
22 looking out or at that point had you already jumped in your
23 closet?

24 A I jumped in my closet.

25 Q Okay. Do you recall after the other individual is

1 picking this individual's pockets, seeing where he went?

2 A I saw him heading on going south.

3 Q And which direction is that in this photo?

4 A In this photo, it would be to the right.

5 Q Okay. And what did you hear or see after that?

6 A I saw a vehicle. First I saw feet and that it
7 converted into vehicle wheels.

8 Q Did you see the color or make of that vehicle?

9 A It was pretty dark; I assume it was maybe midnight
10 blue or black.

11 MR. GIORDANI: All right. Thank you very much,
12 ma'am.

13 I'll pass the witness, Your Honor.

14 THE COURT: All right. Thank you. Cross.

15 CROSS-EXAMINATION

16 BY MS. TRUJILLO:

17 Q Good afternoon, Ms. Nelson.

18 A Good afternoon.

19 Q You never actually saw anyone's face; right?

20 A That is correct.

21 Q Your only comment -- well, one of your comments to
22 the police were that the person could have been between 5-10
23 and 6 foot; is that correct?

24 A Correct.

25 Q And you made a statement to officers the night or

1 going into the morning of the 22nd; right?

2 A Yes.

3 Q And you made two statements; is that right?

4 A One statement on paper.

5 Q One handwritten statement.

6 A And then one recorded.

7 Q Okay. So two statements; right?

8 A Yes.

9 Q And at that time you told officers you were uncertain
10 whether the person picking the pockets was the same person
11 tussling earlier; do you recall that?

12 A I do.

13 Q Okay. But now you're saying that it's absolutely the
14 same person?

15 A I believe it is the same person.

16 Q You believe, but you could be wrong?

17 A I could be.

18 Q Okay. And just to be clear, the person went to your
19 right, if we're looking at the screen now towards where the
20 blue car is?

21 A That is correct.

22 Q Okay. And you never actually saw a van; right?

23 A That is correct.

24 Q And you never actually saw anyone get into a vehicle;
25 right?

1 A That is correct.

2 Q So your memory is that a person was walking away
3 after picking the decedent's pockets; right?

4 A Yes.

5 Q And then the next thing you know you saw a vehicle?

6 A Correct.

7 Q Never saw anyone get into a vehicle?

8 A Correct.

9 Q And you've mentioned it looked like a Mazda. Did you
10 tell the police earlier that that was a Mazda 626?

11 A I did.

12 MS. TRUJILLO: Okay. Nothing further, Judge.

13 THE COURT: All right. Thank you. Any redirect?

14 MR. GIORDANI: Yes, real briefly.

15 REDIRECT EXAMINATION

16 BY MR. GIORDANI:

17 Q Ma'am, Ms. Trujillo, just asked you the question
18 about not seeing anyone get into a vehicle; do you recall that
19 question?

20 A I do.

21 Q Do you recall indicating in your statement, he then
22 moved from view, and I heard him get into a vehicle?

23 A Yes, I did.

24 Q So you heard it not saw it?

25 A I heard it.

1 MR. GIORDANI: Thank you.
2 I'll pass.
3 THE COURT: Any follow-up?
4 MS. TRUJILLO: No follow-up.
5 THE COURT: Any juror questions for this witness?
6 All right, ma'am. Thank you for your testimony.
7 THE WITNESS: You're welcome.
8 THE COURT: Please do not discuss your testimony with
9 anyone else who might be a witness in this case.
10 THE WITNESS: Yes, ma'am.
11 THE COURT: Thank you and you're excused.
12 THE WITNESS: You're welcome.
13 THE COURT: And just follow the bailiff.
14 State, call your next witness.
15 MR. GIORDANI: Court's brief indulgence.
16 THE COURT: Sure.
17 MR. DICKERSON: State calls Jakhai Smith.
18 THE COURT: Just right up here by me. Okay.
19 **JAKHAI SMITH**
20 [having been called as a witness and being first duly sworn,
21 testified as follows:]
22 THE CLERK: Please be seated. Please state and spell
23 your first and last name for the record.
24 THE WITNESS: Jakhai Smith.
25 THE COURT: And can you spell that for us, please.

1 THE WITNESS: J-a-k-h-a-i.

2 THE COURT: And your last name?

3 THE WITNESS: Smith. S-m-i-t-h.

4 THE COURT: All right. Thank you.

5 Mr. Dickerson, you may proceed.

6 MR. DICKERSON: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. DICKERSON:

9 Q How you doing today?

10 A Good.

11 Q How old are you?

12 A 18.

13 Q Back in February of 2017, how old were you?

14 A 15.

15 Q 15?

16 A Uh-huh.

17 Q And at that point in time where were you living?

18 A House, apartment.

19 Q In an apartment?

20 A Uh-huh.

21 Q And was it located at 5850 Sky Pointe?

22 A Yeah.

23 Q Is that here in Las Vegas, Clark County, Nevada?

24 A Yes.

25 Q Was it a specific apartment there in that complex?

1 A Uh-huh.

2 THE COURT: Can everybody on the jury hear the
3 witness? All right. You have a quiet voice and those 14
4 people need to be able to hear you. So just kind of try to
5 speak towards the microphone.

6 And, Kenny, maybe if you put the books under the
7 microphone.

8 THE MARSHAL: Sure.

9 THE COURT: That will put it closer to your mouth.

10 MR. DICKERSON: Thank you, Your Honor.

11 THE COURT: And then also you see this gal here in
12 the, I don't know, the teal green colored blouse, she's our
13 court recorder and everything that is said during these
14 proceedings is recorded, and then she has to make a transcript.
15 So when you answer questions, don't say ahhh because she
16 doesn't know how to transcribe that. So make sure you say, yes
17 or no; okay?

18 THE WITNESS: All right.

19 THE COURT: All right. Mr. Dickerson, go ahead.

20 MR. DICKERSON: All right. Thank you, Your Honor.

21 BY MR. DICKERSON:

22 Q So, Jakhai, you were 15 years old in February of
23 2017; right?

24 A Yes.

25 Q Were you living in Apartment 2008 there at that

1 apartment complex?

2 A Yes.

3 Q You see what we have up here on this screen right in
4 front of you? It's going to be State's Exhibit 7; do you see
5 that?

6 A Yes.

7 Q Is that the apartment complex that you were living at
8 at the time?

9 A Yes.

10 Q And your apartment 2008; is that somewhere right
11 around here?

12 A Yes.

13 Q Now, I want to draw your attention specifically to
14 February 21st, 2017, the reason we're here; do you remember
15 that night?

16 A Yeah.

17 Q And what were you doing that evening?

18 A I was asleep in my bed, and I overheard some stuff,
19 people arguing and then I looked out my window. I seen two
20 grown men arguing, you know, and then the dude that was
21 fighting, and then they was on the floor, and then I heard
22 gunshots -- well, a gunshot and then I went back in my room and
23 told my mom that somebody got shot.

24 Q Okay. I'm going to show you a couple of photos here.

25 MR. DICKERSON: May I approach, Your Honor?

1 THE COURT: Sure. You can move freely.

2 MR. DICKERSON: Thank you.

3 BY MR. DICKERSON:

4 Q I have in my hand State's Proposed 64, 65, 66, and
5 67. First, 64, do you recognize that?

6 A Yes.

7 Q Does that appear to be a fair and accurate depiction
8 of your front door there at that apartment complex?

9 A Yes.

10 Q And now, 65 through 67, can you take a look at all
11 three of those. Do you recognize those?

12 A Yes.

13 Q Does this appear to be a fair and accurate depiction
14 of the view that you had from your window there in that
15 apartment?

16 A Yes.

17 Q Okay.

18 MR. DICKERSON: State -- State's going to move for
19 the admission of 64 through 67.

20 MS. TRUJILLO: Judge, can we approach?

21 (Conference at the bench not recorded.)

22 THE COURT: Those will be admitted.

23 (State's Exhibit Nos. 64-67 admitted.)

24 MR. DICKERSON: Thank you.

25 / / /

1 BY MR. DICKERSON:

2 Q Okay. So you're asleep around 10:00 p.m.; is that
3 right?

4 A Yes.

5 Q And then some time just before 11:00 p.m. you start
6 to hear something?

7 A Yes.

8 Q What is the things you start hearing?

9 A I start hearing voices, like two people just saying
10 stop, you know.

11 Q Okay. So could you tell whether they were male or
12 female voices?

13 A Male.

14 Q And could you tell where they were coming from?

15 A No.

16 Q What was it that you were hearing?

17 A I just heard, like, somebody saying no and then, you
18 know, for like a lot of noise, like somebody was like on top of
19 somebody's car or something.

20 Q Okay. Ultimately, do you then go and look outside
21 your window?

22 A Yes.

23 Q And I'm going to show you here Grand Jury Exhibit 66.

24 THE COURT: You mean Trial Exhibit 66.

25 MR. DICKERSON: I'm sorry. I'm sorry, State's

1 Exhibit 66.

2 BY MR. DICKERSON:

3 Q Do you see that there?

4 A Yes.

5 Q Okay. This is your view that you have from your
6 window?

7 A Yes.

8 Q And when you first look out the window, what do you
9 see there in that area?

10 A I see the guy that was -- the guy that approached him
11 on that car, the white car, and then that's when the dude threw
12 him on the floor, and that's when they was fighting and then
13 that's when he got shot.

14 Q Okay. So the guy that is here shot in that parking
15 space right there, is that how it looks at the end of the night
16 when you last saw him?

17 A Yes.

18 Q And is that what you recall him wearing?

19 A Yes.

20 Q Red shoes?

21 A Yes.

22 Q And what you described as gray sweatpants?

23 A Yes.

24 Q The other guy, what did he look like?

25 A I don't know. I didn't see him. I didn't see his

1 face or nothing. I just saw his clothes and that was it.

2 Q Okay. And what did his clothes look like?

3 A It was just black.

4 Q All black?

5 A Yes.

6 Q And when you first saw them before the victim with
7 the red shoes had been shot, where exactly were they?

8 A Just right here in this empty parking space.

9 Q Okay. And what was going on in that moment?

10 A They was just fighting and that was it. They was
11 just fighting.

12 Q And how was it that they were fighting?

13 A You know, just slamming each other in the car like
14 that.

15 Q And who did you see getting slammed?

16 A The dude that got shot.

17 Q Okay. The guy that's laying right there in this
18 photograph?

19 A Yeah.

20 Q And from that point when you saw that individual
21 getting slammed into the vehicle, what occurred?

22 A I just kept looking, and then that's when I heard --
23 that's when I seen it and then I just told somebody.

24 Q So you kept watching it; is that right?

25 A (Witness nods head.)

1 Q Is that a yes?

2 A Yes.

3 Q And at some point in time do you see a gun?

4 A No.

5 Q Do you remember telling the police that you saw a

6 gun?

7 A Oh, yes, yes, yes. My bad. Yes.

8 Q Okay. When was it that you saw a gun?

9 A I probably said before.

10 Q Before this guy that's laying down here in the

11 photograph was --

12 A No, after. I seen it after.

13 Q Okay. After. And do you remember how you described

14 that gun?

15 A No. No, I didn't. I don't remember.

16 Q Do you remember who was holding that gun?

17 A Yes.

18 Q Who was it that was holding that gun?

19 A The guy in the all-black.

20 Q Okay. And where was he standing when he was holding

21 that gun?

22 A I don't -- I don't really know. I just know he was

23 just on top of him.

24 Q Okay. When you say he was on top of him, are you

25 talking about on top of this guy that's laying here in this

1 photograph?

2 A Yes.

3 MS. TRUJILLO: Judge, I'm going to object and ask
4 that the exhibit be removed. We're not even really referring
5 to it in the last five questions.

6 MR. DICKERSON: We are --

7 THE COURT: All right.

8 MR. DICKERSON: -- referring to it. That's how he's
9 describing the scene.

10 THE COURT: Okay. Well, unless you're actually
11 asking him to point something out on the photo, then take it
12 off the monitor. If your -- if he's pointing things out and
13 describing the photo, then obviously, leave it on the monitor.

14 MR. DICKERSON: Okay.

15 BY MR. DICKERSON:

16 Q So, sir, you're going to have a mouse in front of
17 you. Okay. You see it to your left? Go down to the bottom of
18 the screen, and you see that red thing, go ahead and click on
19 that. Okay.

20 Now, I'm sure you're -- you've used computers before;
21 right? So this isn't going to be a problem.

22 A Yeah.

23 Q You're able to draw on the screen. So when I ask you
24 to point where something was, go ahead and use that. Okay.

25 A Okay.

1 Q So when you saw the man in black with the gun, can
2 you just show us where it was that he was at that time.

3 A Where he was?

4 Q Yeah.

5 A Like, right here. Just right here where he's
6 sitting.

7 Q Okay. And for the record, you drew a red line circle
8 what is to the left of the victim's body in the photograph.

9 A Yes.

10 Q And where was he facing at that moment? You can just
11 describe it for us.

12 A All right. Straight towards this blue car.

13 Q Okay. And at that moment where was the victim?

14 A Like, what do you mean?

15 Q Where was the victim? Was he on the ground? Was he
16 standing up?

17 A Oh, he was on the ground.

18 Q Okay.

19 A And then he stood up.

20 Q And how was it that he was on the ground, on his
21 stomach or on his back?

22 A On his stomach.

23 Q Okay. And so you saw the gun come out?

24 A Yes.

25 Q Do you remember describing it as a chromish --

1 MS. TRUJILLO: Judge, may we approach?

2 THE WITNESS: Yes.

3 THE COURT: Sure.

4 (Conference at the bench not recorded.)

5 BY MR. DICKERSON:

6 Q Do you remember describing it as a chromish
7 semiautomatic handgun?

8 A Yes.

9 Q Okay. And that was after seeing the detective's gun
10 who was talking to you?

11 A Yes.

12 Q And that was also a semiautomatic?

13 A Yes.

14 Q You don't know a lot about guns?

15 A No.

16 Q Now, when -- when you saw that gun come out, where
17 was the victim laying?

18 A Just still right there --

19 Q Okay.

20 A -- where he was.

21 Q And did you hear anybody say anything at that time?

22 A Yes. After he got shot, the dude ran towards the
23 left, and he heard somebody say, hey, and he ran back the other
24 way.

25 Q Okay. Did you hear the guy in all-black say

1 anything?

2 A No.

3 Q Do you -- you remember talking to the police officers
4 about this; right?

5 A Yes.

6 Q And do you remember telling the police officers
7 anything that you heard him say to the victim?

8 A No, I didn't.

9 Q Is it something you're uncomfortable saying?

10 A No.

11 Q Okay. There is a transcript of your interview with
12 the police; right?

13 A Yes.

14 Q Would looking at that transcript help refresh your
15 recollection as to whether you said that he said something?

16 A Yes.

17 Q Okay.

18 MS. TRUJILLO: Judge, I don't believe that was the
19 testimony, so I'm going to object. I believe he said I didn't.
20 Not that he doesn't remember. So it's inappropriate to --

21 THE COURT: I think it was ambiguous. Is it that you
22 didn't say that or you don't recall if you said that?

23 THE WITNESS: I don't recall if I said that.

24 THE COURT: All right. Go ahead and --

25 MR. DICKERSON: Okay.

1 THE COURT: Mr. Dickerson's going to show you the
2 transcript, and you can just read that quietly to yourself and
3 see whether or not that refreshes your memory.

4 BY MR. DICKERSON:

5 Q It's all right here, page 3. Take a look at this.
6 Okay. Feel free to turn the next page. Read through that and
7 then flip it over when you're done reading through it.

8 A I'm done.

9 Q Did that refresh your recollection?

10 A Yes.

11 Q What did you hear the guy in all black say?

12 A He said, don't move nigga, and then just took him
13 down. Maybe that's when he was trying to fight -- fight him
14 off and that's when it happened.

15 Q That's when the victim was trying to fight him off?

16 A Yeah.

17 Q And at that point in time, what was the victim doing?

18 A He was just trying, like, help, just like, you know,
19 just trying to just keep his life.

20 Q Okay. And then what happened?

21 A And that's when he got shot.

22 Q That's when the guy in black shot the victim?

23 A Yeah.

24 Q After the victim was shot, did you have an
25 opportunity to see him laying there?

1 A Yes.

2 Q And what happened as he was laying there?

3 A He was -- it was -- that was just it. He just -- he

4 tried; he just couldn't do it.

5 Q What do you mean he tried but he couldn't do it?

6 A Like he tried to move and then after that he just --

7 he was gone.

8 Q Okay. And what part of his body did you see the

9 victim try to move?

10 A His arm.

11 Q Okay. And how was it that he tried to move?

12 A Like, reach out.

13 Q And he just didn't reach that far?

14 A Uh-huh.

15 Q And was that the last movement that you saw?

16 A Yes.

17 Q When the victim was shot was he -- he was on his

18 back?

19 A Yes.

20 Q And then ultimately, he had rolled over to his front?

21 A Yes.

22 Q After he rolled over and tried to move, what did you

23 see?

24 A Nothing, really.

25 Q Did you see anybody come back over?

1 A Oh, yes, I did. I seen him come back to check his
2 pockets and he took something.

3 Q Okay. The guy in black?

4 A Yes.

5 Q The same guy?

6 A Yes. Same guy.

7 Q What did you see him take it?

8 A I seen him take some money, and then he left after
9 that.

10 Q Pockets that he was checking, what pockets of the
11 victim's were those?

12 A Both pockets.

13 Q On his pants?

14 A Yes.

15 MR. DICKERSON: Okay. The State will pass the
16 witness.

17 THE COURT: All right. Cross.

18 CROSS-EXAMINATION

19 BY MR. STORMS:

20 Q Good afternoon, Mr. Smith.

21 A Good afternoon.

22 Q I just have a few questions for you, okay?

23 A Okay.

24 Q You remember that evening after this happened you
25 talked to the detective for a while at your house; right?

1 A Yes.

2 Q And you gave them a statement.

3 A Yes.

4 Q Your mom was there.

5 A Yes.

6 Q At that time, I mean, this had just happened; right?

7 A Yes.

8 Q Okay. Do you remember at that time that you told the

9 detective that the two men were slamming each other back and

10 forth?

11 A Yes.

12 Q Okay. And, you know, you were -- when it comes to

13 the man that you described in black clothes --

14 A Yes.

15 Q -- you didn't see his face?

16 A No.

17 Q You can't say what his build was?

18 A No.

19 Q How tall he was?

20 A No.

21 Q Okay. Did you see this man get into any vehicle or

22 anything like this?

23 A No.

24 Q You talked about seeing a gun?

25 A Yes.

1 Q Did you see a struggle over the gun?

2 A Yes.

3 Q Okay. Did you see both men with their hands on the
4 gun?

5 A No.

6 Q But they were there in that ground -- in that area on
7 the ground you were shown earlier?

8 A Yes.

9 Q With the gun between them?

10 A Yes.

11 MR. STORMS: Court's indulgence.

12 THE COURT: Uh-huh.

13 BY MR. STORMS:

14 Q And you didn't see this person get in any vehicle?

15 A No.

16 Q And did you -- and you didn't hear any vehicle
17 either, did you?

18 A No.

19 MR. STORMS: Thank you.

20 THE COURT: Any redirect?

21 MR. DICKERSON: Yes.

22 REDIRECT EXAMINATION

23 BY MR. DICKERSON:

24 Q Now, you did describe the guy with the gun; right?

25 A Yes.

1 Q He was wearing all black?
2 A Yes.
3 Q And being a black male?
4 A Yes.
5 Q And, in fact, you only saw one person holding the
6 gun; right?
7 A Yes.
8 Q And was that the individual wearing all black?
9 A Yes.
10 Q The guy who ended up dying there that night, you
11 never saw him with the gun?
12 A No.
13 Q You never saw him with any weapon?
14 A No.
15 Q The only thing that you saw him do was reach for the
16 gun?
17 A Yes.
18 Q While the guy in black was holding it?
19 A Yes.
20 Q When he hit him?
21 A Yes.
22 MR. DICKERSON: The State will pass the witness.
23 THE COURT: Anything else, Mr. Storms?
24 MR. STORMS: No. Thank you, Your Honor.
25 THE COURT: Any juror questions for this witness?

1 All right. Counsel, approach.

2 (Conference at the bench not recorded.)

3 THE COURT: All right. We have some juror questions
4 here.

5 A juror asks, did you see the shoes of the man
6 dressed in black?

7 THE WITNESS: No.

8 THE COURT: Did you see the man dressed in black
9 wearing anything on his head?

10 THE WITNESS: Yes, just a hoodie.

11 THE COURT: A what?

12 THE WITNESS: A hoodie.

13 THE COURT: Okay. So he had a hoodie?

14 THE WITNESS: Yes.

15 THE COURT: How many shots did you hear?

16 THE WITNESS: Just one.

17 THE COURT: Just one? All right.

18 Follow up from the State?

19 MR. DICKERSON: Nothing, Your Honor.

20 THE COURT: Follow up from the defense?

21 MR. STORMS: No, thank you.

22 THE COURT: Any additional juror questions?

23 All right. Thank you for your testimony. Please
24 don't discuss your testimony with anybody else who may be a
25 witness in this case. All right. Thank you. And you are

1 excused and just follow the bailiff out of the courtroom.
2 Okay.

3 THE WITNESS: All right.

4 THE COURT: All right, ladies and gentlemen, I think
5 it's time for our break. We'll go ahead and take a break
6 until, I don't know, is 10 minutes enough for everybody? That
7 will put us right at five minutes after 3:00.

8 During the brief break you're all reminded that
9 you're not to discuss the case or anything relating to the case
10 with each other or with anyone else. You're not to read, watch
11 or listen to any reports of or commentaries on the case, person
12 or subject matter relating to the case. Don't do any
13 independent research by way of the Internet or any other
14 medium. Please don't form or express an opinion on the trial.

15 Please leave your notepads in your chairs and follow
16 the bailiff through the double doors.

17 (Jury recessed at 2:55 p.m.)

18 (Outside the presence of the jury.)

19 THE COURT: We can make your record now.

20 MS. TRUJILLO: Okay. Okay. So I have --

21 THE COURT: Wait till the door shuts. All right.
22 There were four objections.

23 MS. TRUJILLO: Yes.

24 THE COURT: You can -- I made notes, but if you want
25 to do them -- okay. Go ahead.

1 MS. TRUJILLO: Okay. So -- wow, I can't read my
2 very -- okay. So my first objection was the family, rightfully
3 so was crying, but they were just a little loud, and I noticed
4 a few jurors looked over. So obviously that's prejudicial to
5 my client. We approached the bench, and I had mentioned my
6 concern, but the Court was already handling that with her
7 marshal --

8 THE COURT: With my bailiff.

9 MS. TRUJILLO: Yes, bailiff. Sorry.

10 THE COURT: Or marshal.

11 MS. TRUJILLO: Whichever you prefer.

12 THE COURT: Either one. I use them interchangeably.

13 MS. TRUJILLO: I do too, but other people don't like
14 it so I'm not sure.

15 THE COURT: Yes. I had, before you asked to
16 approach, asked Officer Hawkes to go tell the family that even
17 though, you know, they could cry quietly or whatever, not to be
18 too emotive, and he went over and addressed that and then
19 they --

20 MS. TRUJILLO: Were able to contain themselves a
21 little bit.

22 THE COURT: A little bit more; right. So that one.

23 MS. TRUJILLO: And then my second objection was to
24 during the State's opening statement their -- they put up
25 photographs of the shoes that was the basis of one of my

1 motions in limine that were recovered from the search of
2 Angelisa Ryder's house, and right within it they put the photo
3 of the bloody impression, again, the basis of my motion in
4 limine and much argument and the writ to the Supreme Court.

5 And then the State made the statement of these very
6 distinctive soles -- shoes with soles were found at the search
7 of Larry Brown's home, and then you can see by comparison that
8 it is -- and then that's when I jumped in and we walked up.
9 And I mentioned this is the exact inference that I said that
10 the State was going to make. I also said it was an argument in
11 opening statement which is improper. It wasn't in -- it's not
12 in evidence yet so I think that --

13 THE COURT: Well, none of the photos were in
14 evidence. Nothing they showed in their PowerPoint was in
15 evidence.

16 MS. TRUJILLO: Right. And it -- and -- but it's my
17 job if I want to strategically object to certain things and not
18 others, so I objected to that on the basis that one, it was
19 argumentative. It's prejudicial and it's improper.

20 THE COURT: Well, the Court told him it's fine. They
21 have a reasonable belief that it's going to be admitted. I'd
22 already denied the motion in limine, and I think I said as long
23 as they don't, you know, make argument or their own conclusions
24 they could say that the jury was going to be able to compare
25 them for themselves or something like that. But Mr. Dickerson

1 didn't say that; he just kind of moved on after the objection
2 was made at the bench.

3 Anything to add on that one?

4 MR. DICKERSON: All I said was that you can see
5 exactly what that is.

6 MS. TRUJILLO: No. He said and after comparison --
7 look, we can run the tape, but the record --

8 THE COURT: Yeah, we don't need --

9 MR. DICKERSON: And after comparison you can see
10 exactly what --

11 MS. TRUJILLO: Exactly, which is the actual argument
12 which is what the Court said they couldn't do.

13 THE COURT: I never said they couldn't do that. I
14 said that they could --

15 MR. DICKERSON: No. not at all.

16 THE COURT: -- the jury could compare with their own
17 eyes.

18 MR. DICKERSON: Right.

19 MS. TRUJILLO: And then if you recall, Giordani sat
20 here and said -- held up the photos and said I'm just going to
21 do this and say you can, you know, you can decide for yourself.
22 Use your common sense. They specifically said they were not
23 going to argue.

24 MR. GIORDANI: That's what I'm going to do in
25 rebuttal.

1 MR. DICKERSON: Yeah.

2 MS. TRUJILLO: See. Okay. The State is one
3 person --

4 THE COURT: All right. Well --

5 MR. DICKERSON: A lay witness --

6 MS. TRUJILLO: -- and for the record the State now is
7 in argument in opening statements.

8 THE COURT: Okay. Well, I told them to rephrase it,
9 but Mr. Dickerson just moved on from that point. He didn't
10 rephrase it the way I told, you know, and he just moved on to
11 another topic. So -- and then I think the next two related to
12 the photos of the victim in the parking lot.

13 MS. TRUJILLO: That's correct. So the third
14 objection is to the photographs that were, quote, unquote, the
15 bird's-eye view of Jakhai Smith's view which is from the second
16 floor down. And the discussion, obviously, when you're saying
17 bird's-eye view you're saying this was your view; however, the
18 photos that the State sought and the Court allowed them to
19 admit into evidence over my objection was -- had the decedent
20 in the photo. And in my opinion it's overly prejudicial to
21 Mr. Brown. It violates his right to have a fair trial. It's
22 cumulative. We're already going -- already going to have
23 gruesome photos, autopsy photos and presumably crime-scene
24 photos. We don't need additional photos of a dead body for the
25 jurors to take back.

1 And just because the next portion also deals with it,
2 my next objection was to the photo remaining on the Elmo during
3 questioning. So we had went through about five questions, if I
4 remember correctly, where Mr. Dickerson had completed using
5 that photograph but nonetheless left it on the screen. And the
6 reason I noticed is because Mr. Pursell looked over and kept
7 looking at the photograph. So I said, you know, may we
8 approach. I approached, and I said we should take the photos
9 off. And the Court said, well, if you're using it, then they
10 can remain on the Elmo.

11 THE COURT: Otherwise take it down.

12 MS. TRUJILLO: Correct. So then we come back and, of
13 course, now he's going to use the photo. So he starts using
14 the photo, and then thereafter we return back to the gun which
15 was the original questioning and the original basis for my
16 objection. And then I then asked again can we take it off.

17 So on those basis and really for the last two reasons
18 it's my position that I need to move for a mistrial. I don't
19 think any of those errors can be corrected, and that's
20 something I have to do so that Mr. Brown has a fair trial.

21 THE COURT: Now, I think -- Okay. First of all --
22 first of all I don't think they're errors, and second of all if
23 they were errors they're incredibly minor.

24 First of all, I think you're putting the cart before
25 the horse to object on cumulative grounds because the autopsy

1 photos and all those other photos, crime scene photos haven't
2 been admitted yet. So the time to object to cumulative is
3 later on not now. You're kind of anticipating they'll be
4 admitted, Number 1.

5 Number 2, I think up here at the bench you sort of
6 argued, I don't remember your word, but the idea that it's
7 redundant because the witness is testifying to seeing the body
8 in the parking lot. Well, if he didn't testify to seeing the
9 body in the parking lot, we couldn't admit the photo through
10 the witness. So any time you admit a photo, you are also
11 getting witness testimony about the content of the photo.
12 Otherwise, you couldn't admit the photo.

13 So I don't find that that's a valid objection in this
14 case. I don't think the photo is what -- the photos will speak
15 for themselves. But that's the way the body looked lying in
16 the parking lot. It was a distant shot of the body. It looked
17 like there was blood, but it wasn't, you know, kind of off to
18 the side. It wasn't really clear what color it was, and it was
19 a faraway look.

20 So I don't think that as, you know, photos of bodies
21 go, it was unduly gruesome or prejudicial or anything like
22 that, and as I said, it wasn't redundant because how do you
23 admit the photo unless the witness testifies about what's in
24 the photo.

25 So on the photo on the Elmo, the Court agreed that

1 leaving it up can be prejudicial. I told the State, look you
2 can put it up there as long as he's pointing to it or referring
3 to it; otherwise, take it down. He didn't -- Mr. Dickerson
4 left it up there when he transitioned to the gun. He was then
5 told to take it off, which he did, but he didn't push the blue
6 button to clear the screen.

7 Mr. Giordani then popped up realizing what had
8 happened and pushed the blue button, and it was taken off the
9 screen.

10 So I agreed with you. It wasn't up there that long.
11 They've been admonished at this point not to do it.

12 Mr. Dickerson, now you know that you've got to take
13 the photo off or you gotta put -- and then push the blue
14 button.

15 MR. DICKERSON: I understand.

16 THE COURT: Because otherwise the image is captured
17 and it's still going to be on the screen. So going forward
18 just be mindful of that. You know, to me it wasn't a big deal.
19 The jury's going to have all the photos in the back anyway, and
20 like I said, as photos of victims -- dead victims go this one
21 really is not gruesome, and you can't see the wound or anything
22 from this distance vantage point of the body.

23 Although, you can generally see the clothes and the
24 red sneakers and the fact that the sneaker is off the foot, and
25 I think it was against the tire of the car in the next space.

1 So there are some points to the photo that I saw.

2 State, you want to respond?

3 MR. DICKERSON: Yeah. It's a -- I mean, the photo's
4 incredibly relevant and probative given the fact that it is
5 that witness's actual point of view. I did want to use that
6 photo for him to describe the entire scene and what he was
7 seeing. He was -- it was just like pulling teeth with that
8 witness to get him to go in the appropriate direction.

9 THE COURT: Oh, I think he -- my assessment was he
10 was, like, terrified.

11 MR. DICKERSON: Yeah.

12 THE COURT: I didn't know if he's terrified because
13 it's a murder trial or terrified because it's a court
14 proceeding and he's a young man --

15 MR. DICKERSON: I think it's both.

16 THE COURT: -- and that's just kind of scary anyway.
17 Or he's afraid of some kind of retali -- I don't know. And
18 there's many reasons somebody might be afraid to come into
19 court and testify. But to me he seemed very frightened and/or
20 nervous.

21 MR. DICKERSON: Right.

22 MR. GIORDANI: If we're all -- if we're done with
23 that issue I would just --

24 THE COURT: I don't know that we're done with it
25 because --

1 MR. GIORDANI: Oh, I'm sorry.

2 THE COURT: -- Mr. Dickerson --

3 MR. DICKERSON: That -- that's what I have, Your
4 Honor. It was my intent to continue using that particular
5 photo for him to describe the locations where he was seeing the
6 suspect and the victim during that entire action where they're
7 moving, but it was just a product of his overall testimony that
8 didn't make it something that I could constantly do throughout.

9 MS. TRUJILLO: And, Judge, I believe since I
10 requested a mistrial you have to rule on the mistrial.

11 THE COURT: Oh, it's denied. I thought I already did
12 implicitly by saying, A, there's no errors.

13 MS. TRUJILLO: I need a clean record.

14 THE COURT: And B, if there are any errors, they're
15 minor errors.

16 MR. GIORDANI: May I?

17 THE COURT: Yes.

18 MR. GIORDANI: While the jury's out, the next witness
19 is the medical examiner, Dr. Diloreto. We met with her for
20 pretrial and whittled down the couple hundred autopsy photos or
21 whatever it was to 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13.
22 I'm going to show defense in a second. I just want to make a
23 record. Three of those only show property -- the victim's
24 property.

25 THE COURT: Okay.

1 MR. GIORDANI: So that brings us down to 10. I then
2 did ask Dr. Dimoreto, if -- what photos are necessary for you
3 to describe what you're going to describe in these remaining 10
4 or what indicated would assist in her testimony. So they have
5 been marked for a couple of days, but I don't think the defense
6 has looked at them yet.

7 THE COURT: All right. So you two can look those
8 over and then if you have objections to make you can make them
9 when we come back. We're going to go.

10 (Recess taken 3:07 p.m. to 3:18 p.m.)

11 (Outside the presence of the jury.)

12 THE COURT: Is everyone ready?

13 MS. TRUJILLO: Yes, Judge, we're ready.

14 MR. GIORDANI: Yes.

15 THE COURT: All right. Everybody ready?

16 MR. GIORDANI: Yes.

17 THE COURT: Bring them in.

18 THE CLERK: We don't --

19 THE COURT: Oh, I'm sorry. I forgot. On the record.

20 MR. GIORDANI: We showed 104 through 115 to defense
21 counsel, and by stipulation we're going to admit all of these.

22 MS. TRUJILLO: That's correct.

23 THE COURT: All right.

24 (State's Exhibit No. 104-115 admitted.)

25 THE COURT: Okay. Now, you can bring them in.

1 (Jury entering 3:19 p.m.)

2 THE COURT: All right. Court is now back in session,
3 and the State may call its next witness.

4 MR. DICKERSON: The State calls Dr. Di Loreto.

5 **CHRISTINA DI LORETO**

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

8 THE CLERK: Thank you. Please be seated. State and
9 spell your first and last name for the record.

10 THE WITNESS: My name is Christina Di Loreto.
11 C-h-r-i-s-t-i-n-a. The last name is D-i, space, L-o-r-e-t-o.

12 THE COURT: All right. Thank you. Mr. Dickerson,
13 you may proceed.

14 MR. DICKERSON: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. DICKERSON:

17 Q What do you do for a living, ma'am?

18 A I am a forensic pathologist with the Clark County
19 Coroner's Office.

20 Q Okay. And how long have you been employed in that
21 capacity?

22 A I have been with the office since July 30th of
23 2018.

24 Q What is a forensic pathologist?

25 A I am a physician that is trained to do postmortem

1 examinations to determine cause of death.

2 Q So what sort of training and experience do you have
3 that's brought you to this point?

4 A So I received my medical degree from Boston
5 University. I completed a residency in anatomic and clinical
6 pathology followed by a fellowship in forensic pathology and
7 then a fellowship in neuropathology.

8 Q And prior to starting here with the Clark County
9 Office of Coroner Medical Examiner what were you doing?

10 A I was completing my fellowship training in
11 neuropathology.

12 Q Okay. You're here today to testify about a specific
13 case of decedent Kwame Banks; is that right?

14 A Correct.

15 Q And is that somebody that you, in fact, examined
16 yourself?

17 A I did not.

18 Q Okay. That was somebody else in your office?

19 A Yes. She has -- it's Dr. Elaine Olsen, but she has
20 retired.

21 Q Okay. And so you're here to testify about the
22 findings that your office made; is that right?

23 A Correct.

24 Q What did you review to get up to speed on this
25 particular case?

1 A I reviewed the coroner investigator's report, the
2 scene photos taken by the coroner investigator, the examination
3 photos at the coroner's office, Dr. Olsen's autopsy report, the
4 x-rays that were completed at the coroner's office.

5 Q Okay.

6 A And the toxicology report.

7 Q Okay. After reviewing everything, do you concur with
8 the findings that your office made?

9 A I do.

10 Q And is it common for experts in your field to review
11 matters such as this and be able to testify about them to the
12 juries here today?

13 A Yes, it is.

14 Q Okay. So let's specifically turned to the decedent
15 in this case, Kwame Banks. What was the determination about
16 his age, height, weight?

17 A He was a 26-year-old male. 71 inches and 204 pounds.

18 Q And when he came in did he come in with any property?

19 A He did.

20 Q And when I say come in, where is it that his body is
21 coming into?

22 A So from the scene where he was found deceased, the --
23 his body was placed in a bag that was then sealed with a tamper
24 evident seal. And I should say prior to that, his hands were
25 also -- bags were placed over his hands, and then the bag was

1 sealed. It was then taken to the coroner's office for
2 examination.

3 Q And so the property that he would've had with him
4 would have come with the body to the coroner's office?

5 A Correct.

6 Q When he arrived, what property did Mr. Banks have?

7 A He had a pair of earrings, a bracelet and cash.

8 Q Okay. I'm going to show you here Grand Jury
9 Exhibit 104.

10 THE COURT: No, State's Exhibit.

11 MR. DICKERSON: State's Exhibit -- I did it again, I
12 apologize. This has been admitted by stipulation, Your Honor.

13 THE COURT: All right.

14 BY MR. DICKERSON:

15 Q Do you recognize this?

16 A This isn't a photo taken from our office, but it is
17 similar in appearance to our photograph.

18 Q Okay. These are photos that were taken at your
19 office?

20 A The photograph does appear similar. Photographs from
21 our office typically have a placard with the name -- with the
22 case number.

23 Q Let's try this. State's Exhibit 106, does this look
24 familiar?

25 A Yes, it does.

1 Q Is this, in fact, a photo that you reviewed?

2 A Yes, it is.

3 Q Does this photo fairly represent the property that
4 Mr. Banks, his body came into the coroner's office with?

5 A Yes.

6 Q Okay. As far as the examination of Mr. Banks' body,
7 what particular injuries were noted?

8 A So on the external examination, he had an abrasion on
9 the inside of his lower lip. There were abrasions on the back
10 of his right hand, and he had some abrasions on his right lower
11 extremity. Additionally, there was a gunshot wound on the
12 chest and another gunshot wound on the back.

13 Q Okay. I'm going to show you here Grand Jury
14 Exhibit 107.

15 MR. GIORDANI: State's Exhibit.

16 BY MR. DICKERSON:

17 Q State's Exhibit 107. I don't know why I keep doing
18 that. Do you recognize that?

19 A Yes, I do.

20 Q Is that a photo of Mr. Banks as he came into your
21 office?

22 A Yes, it is.

23 Q Showing you State's Exhibit 116. Do you recognize
24 that?

25 A Yes.

1 Q What is it that we're seeing there?

2 A So this is the lower lip opened, and in the bottom
3 left corner you can see a portion of an abrasion or scrape on
4 the lower lip.

5 Q Showing you State's Exhibit 108. What is it that
6 we're seeing there?

7 A This is the back of his right hand, and there or two
8 abrasions on the back of the hand next to the second digit.

9 Q And you can actually use the mouse in front of you,
10 go ahead and circle those.

11 A Right in this area here.

12 Q Okay. Showing you State's Exhibit 109. What is it
13 that we're seeing there?

14 A This is the -- a photograph of the palm of the right
15 hand.

16 Q State's Exhibit 110.

17 A This is a photograph of the left hand.

18 Q State's Exhibit 111.

19 A This is a photograph of the palm or aspect of the
20 left hand.

21 Q And these are all photos that you have reviewed?

22 A Yes.

23 Q And photos of Mr. Banks' body as it came into your
24 office?

25 A Correct.

1 Q I'm going to show you here State's Exhibit 112; what
2 is it that we're seeing there?

3 A This is a photograph of the anterior aspect of the
4 chest. And there's an abrasion on the chest here that I'm
5 circling and then down here is a gunshot wound.

6 Q Is that the only gunshot wound that you found on
7 Mr. Banks' body?

8 A This is one wound. There is a corresponding wound on
9 the back.

10 Q Okay. Let me show you here State's Exhibit 113.
11 What is that?

12 A This is a close-up view of the gunshot wound on the
13 anterior aspect of the chest.

14 Q Okay. So what if anything is notable about this
15 wound?

16 A So this wound has a circumferential rim of abrasion
17 along its edges, meaning all the way around. And there is soot
18 deposited in and around the defect.

19 Q And so based on your training and experience what
20 does that indicate?

21 A So this is an entrance wound.

22 Q Okay. And would this be a close-contact wound?

23 A This -- this wound would be close range, yes.

24 Q Okay. That soot with the wound -- inside the wound,
25 what does that indicate?

1 A That indicates that it's close range. There's no
2 stippling around the wound, which is small punctate abrasions
3 that you get from unburned gunpowder particles. That is seen
4 in gunshot wounds that are intermediate in range. So this has
5 soot without that stippling, so that indicates that it's a
6 close range.

7 Q Okay. And so an intermediate range would be similar
8 to what?

9 A It's -- so the only way to truly determine the range
10 of fire is to test fire the weapon with the ammunition used.
11 But you can start to see stippling after approximately, you
12 know, this is -- this wound is within a few inches.

13 Q Okay. And so then after a few inches or a few inches
14 further away from the wound you could start to see stippling
15 into the exterior around the wound?

16 A Correct. In general.

17 Q But since this wound would have been created from a
18 shot fired within a few inches, we see the soot inside the
19 wound?

20 A Correct.

21 Q Okay. Showing you State's Exhibit 114. What is it
22 that we're seeing there?

23 A This is the gunshot exit wound.

24 Q Okay. And this wound right here is corresponding to
25 the wound we were just looking at on the chest?

1 A Yes.

2 Q So in looking at that, what were you able to
3 determine about the travel of the bullet from the front to the
4 back?

5 A The projectile traveled from front to back, left to
6 right and upward.

7 Q After the bullet entered Mr. Banks' chest, where did
8 it go inside his body?

9 A So it injured the second rib on the left side. It
10 entered the pericardial sac which is the sack that is around
11 the heart. It injured the aorta and the esophagus and exited
12 through the soft tissues of the back.

13 Q The aortic arch, what is that?

14 A So the aorta is the major blood vessel arising from
15 the heart that carries oxygenated blood to the rest of the
16 body.

17 Q Okay. And so this is a piece of the heart as a
18 whole?

19 A It's -- it's sort of just past the heart. It's the
20 major blood vessel that's coming off of the heart that's
21 carrying the blood.

22 Q What, in your expertise, would you say would be the
23 time of death after having a perforation of the aortic arch?

24 A Death would occur quickly, within minutes.

25 Q Okay. And I should clarify that. How is it that

1 you're able to determine the path of this bullet as it travels
2 through the body?

3 A So it -- in reviewing the photographs, familiarity
4 with the anatomy and in reviewing the autopsy report.

5 Q And there's actually an internal examination of
6 Mr. Banks' body that occurred?

7 A Yes.

8 Q Where the forensic pathologist looks at -- opened him
9 up and looked at his organs and looked at the travel of that
10 particular bullet; is that correct?

11 A Correct. And documented it photographically and in
12 their report.

13 Q Okay. And the photos of the internal examination
14 were not included today; is that right, in what you've seen?

15 A In what I've seen, no.

16 Q But they were included in what you prepared for --
17 for your testimony today?

18 A Correct.

19 Q So based upon everything that you've reviewed,
20 what -- were you able to determine what the cause of Mr. Banks'
21 death was?

22 A Yes.

23 Q And what was that?

24 A A gunshot wound to the chest.

25 Q And were you able to determine the manner of his

1 death?

2 A Yes.

3 Q And what was that?

4 A Homicide.

5 MR. DICKERSON: The state will pass the witness.

6 THE COURT: All right. Cross.

7 CROSS-EXAMINATION

8 BY MR. STORMS:

9 Q Good afternoon, Dr. Di Loreto, how are you?

10 A Good afternoon.

11 Q I just have a couple questions for you if I could.

12 As part of the processing that you do at the coroner's office,
13 you take samples whenever there is an autopsy performed; is
14 that fair to say?

15 A Correct. Typically, our samples are collected.

16 Q So you mentioned earlier the hands are bagged to
17 prior to being put in the bag and transported to the office;
18 right?

19 A Correct.

20 Q And when the -- when the body gets to the office,
21 those bags are removed and fingernail clippings are taken?

22 A They can be. That's -- that's part of the police
23 processing. So if they determined that they would like nail
24 clippings, then that could be done.

25 Q Do you remember from this particular case if that was

1 performed?

2 A I do not.

3 Q Would looking at the report refresh your recollection
4 on that point?

5 A Yes.

6 Q Although, it looks like actually this is something
7 that maybe was -- that had been done by your -- your
8 investigator is the one that normally does the bagging?

9 A Yes.

10 Q And does samples?

11 A Well, they -- they do the bagging. But if nail
12 clippings are taken, that's done by the crime scene analyst.

13 Q Okay. When you're talking about the directionality
14 of the wound, you're talking about it in terms of the track
15 through the -- through the body itself; correct?

16 A Correct. And I should also state that it's with
17 reference to the body in anatomical position, meaning, standing
18 upright with the palms and feet facing forward.

19 Q So -- so you're not to say when you're talking about
20 moving upwards and so on, it's through the direction of the
21 body, but not commenting on how the body was when it was --
22 when they received the wound essentially?

23 A Correct.

24 Q Okay.

25 MR. STORMS: Court's indulgence.

1 THE COURT: Uh-huh.

2 BY MR. STORMS:

3 Q And you noted a number of abrasions in this -- in
4 this autopsy?

5 A Yes.

6 Q And there was one in the chest area, and then you
7 talked about the hand and the extremities?

8 A Yes.

9 Q And those abrasions are -- abrasions are essentially
10 kind of tears in the skin?

11 A Yes, scrapes in the skin.

12 Q Okay. Thank you.

13 A Okay.

14 THE COURT: All right. Redirect?

15 MR. DICKERSON: Nothing further, Your Honor.

16 THE COURT: All right. Any juror questions for the
17 witness? All right. I'll see counsel at the bench.

18 (Conference at the bench not recorded.)

19 THE COURT: All right. We have a couple of juror
20 questions here, Doctor.

21 A juror asks, what were the toxicology results?

22 THE WITNESS: So on toxicology a Delta 9 THC, which
23 is the main ingredient -- the active ingredient of marijuana
24 and its metabolites were detected.

25 THE COURT: And another juror asks, could you

1 determine if the shooter was right-handed or left-handed?

2 THE WITNESS: I cannot tell that based on the
3 injuries.

4 THE COURT: Does the State have any follow up to
5 those last juror questions?

6 MR. DICKERSON: No, Your Honor.

7 THE COURT: Does the defense have any follow up?

8 FOLLOW-UP EXAMINATION

9 BY MR. STORMS:

10 Q Doctor, do you recall there being another test of
11 codeine?

12 A I do not.

13 MR. STORMS: If I could approach.

14 THE COURT: Sure.

15 MR. STORMS: With the NMS report. Actually, strike
16 that.

17 THE COURT: Okay.

18 MR. STORMS: This isn't --

19 THE COURT: Nothing else?

20 MR. STORMS: No.

21 THE COURT: Any other juror questions?

22 MR. GIORDANI: Well, then we just ask to strike that
23 question.

24 THE COURT: Right. The question's stricken from the
25 record and not to be considered.

1 MR. GIORDANI: Can we ask any follow up?

2 THE COURT: Sure.

3 FOLLOW-UP EXAMINATION

4 BY MR. DICKERSON:

5 Q There was no coding found in Mr. Banks' system; is
6 that right?

7 A No.

8 Q Okay. Just THC metabolites --

9 A And THC.

10 MR. DICKERSON: Okay. Thank you.

11 THE COURT: Any follow-up to that?

12 MR. STORMS: No, Your Honor. Thank you.

13 THE COURT: Any additional juror questions for the
14 witness?

15 All right, Doctor, I see no additional questions.
16 Thank you for your testimony. You are excused at this time.

17 THE WITNESS: Thank you.

18 THE COURT: State, do you have any additional
19 witnesses for today?

20 MR. GIORDANI: Not scheduled for today, no.

21 THE COURT: All right. Well, we're moving right on
22 track.

23 Ladies and gentlemen, we're going to go ahead and
24 take our evening recess as there are no other witnesses
25 scheduled for today.

1 The Court has a very lengthy calendar on various
2 unrelated matters in the morning so we will not reconvene until
3 12:30 tomorrow. Since we're starting so late, we won't be
4 taking a lunch break. So once again make sure you eat lunch or
5 bring a snack or do whatever you need to do in that regard.

6 Just to give you a heads up, on Friday we will be
7 starting at 9:00 a.m. 9:00 a.m. on Friday so we'll have a full
8 day on Friday, but tomorrow it's just an afternoon.

9 So before I excuse you for the evening recess I must
10 advise you that you are not to discuss the case or anything
11 relating to the case with each other or with anyone else. You
12 are not to read, watch, listen to any reports of or
13 commentaries on the case, person or subject matter relating to
14 the case. Do not do any independent research by way of the
15 Internet or any other medium. Do not visit the location at
16 issue, and please do not form or express an opinion on the
17 trial.

18 Please leave your notepads in your chairs and Officer
19 Hawkes will be giving you directions on where to meet tomorrow
20 and where to park tomorrow. And any other questions please
21 address Officer Hawkes in the hallway. And we'll see everyone
22 back tomorrow.

23 (Jury recessed for the evening at 3:43 p.m.)


24 THE COURT: We didn't have anything to put on the
25 record.

1 MS. TRUJILLO: Not on behalf of Mr. Brown, Your
2 Honor.

3 THE COURT: Okay. I didn't think so. All right.
4 (Proceedings recessed for the evening 3:45 p.m.)

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

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11 Dana L. Williams
12 Transcriber
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