

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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Navid Afshar
State Bar #14465
Deputy Special Public Defender
JoNell Thomas
State Bar #4771
Special Public Defender
330 South 3rd Street
Las Vegas, NV 89155
(702) 455-6265
Attorney for Larry Brown

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1 THE WITNESS: L-A-T-O-R-I-A.

2 THE COURT: All right. You may proceed.

3 MS. TRUJILLO: Thank you, Judge.

4 **DIRECT EXAMINATION**

5 BY MS. TRUJILLO:

6 Q Hi, Ms. Brown.

7 A Hi.

8 Q What is your relationship with Larry Brown?

9 A He's my father.

10 Q Can you speak up just a little?

11 A Oh. He's my father.

12 Q Okay. And how old are you?

13 A I'm 21.

14 Q Where do you live?

15 A I live in Atlanta, Georgia.

16 Q And have you always lived in Atlanta, Georgia?

17 A Yes.

18 Q Do you also -- do you have any other siblings?

19 A Yes, I do.

20 Q How many other siblings do you have?

21 A I have three brothers.

22 Q Three brothers. Do they also live in Georgia?

23 A Yes, ma'am.

24 Q Okay. Do you remember when your dad moved to Las
25 Vegas?

1 A The beginning of 2016, I believe.

2 Q After he moved away, did your dad come back and visit?

3 A That summer we went up there, he came. He came down
4 here -- well, he came down to Atlanta to get us and we came back
5 up here for the summer.

6 Q Okay. So that summer, you're referring to the summer
7 of 2016?

8 A Yes, ma'am.

9 Q Okay. So he went to Atlanta to pick you up and then
10 return back to Vegas?

11 A Yes, ma'am.

12 Q Okay. Did he visit Atlanta at any other times that you can
13 recall?

14 A Yes. He visited a little bit after Thanksgiving, and he was
15 there for Christmas.

16 Q Okay. So I want to go back to the summer of 2017; when
17 he went to pick you up, how was he acting?

18 A Normal, not out of the ordinary.

19 Q Did he appear scared to you or stressed out?

20 A No, ma'am.

21 Q Okay. And when you --

22 MR. GIORDANI: And, Judge, I apologize. I don't mean to
23 interrupt. I would object to the year. I think that --

24 MS. TRUJILLO: I said summer 2017? 2016, sorry.

25 MR. GIORDANI: 2016.

1 MS. TRUJILLO: Yes.

2 THE COURT: Okay.

3 MR. GIORDANI: Okay.

4 BY MS. TRUJILLO:

5 Q So summer 2016, you said he was acting how?

6 A He was normal.

7 Q Okay. And during your visit, you were actually here in
8 Vegas, right?

9 A Yes, ma'am.

10 Q And your brother was with you?

11 A Yes, ma'am.

12 Q And how was he acting during the time in Vegas?

13 A Not out of the ordinary, nothing to question. He was the
14 same.

15 Q All right. And when did he next visit Atlanta?

16 A In 2016?

17 Q Yes, in 2016.

18 A We went -- it was a little bit after my birthday. I think a
19 little bit after, around Thanksgiving --

20 Q Okay.

21 A -- he came down. We had a -- we attended a funeral in
22 Alabama.

23 Q And during that visit, you saw your dad, right?

24 A Yes, ma'am.

25 Q And he was still living in Vegas at the time?

1 A Yes, ma'am.

2 Q Okay. And the next time after Thanksgiving and the
3 funeral, when is the next time you remember your dad visiting your
4 in Atlanta?

5 A Christmas.

6 Q Christmas of 2016?

7 A Yes, ma'am.

8 Q And did you spend time with him during Christmas
9 of 2016?

10 A Yes. We -- yes, we --

11 MR. GIORDANI: And, Judge, I would object as to
12 relevance at this point. The murder's in 2017.

13 THE COURT: Oh. Counsel approach.

14 [Off-record bench conference.]

15 MS. TRUJILLO: Sorry about that, Ms. Brown.

16 BY MS. TRUJILLO:

17 Q Okay. So the last time you recall was around the holidays,
18 right?

19 A Yes, ma'am.

20 Q Did you guys go out to eat during the time he visited
21 during the holidays?

22 A Yes, ma'am, we did.

23 Q Did you see him regularly during the time he visited? And
24 I'm talking about the 2016 holidays.

25 A Regularly when he came to visit?

1 Q Yes.

2 A Yes, ma'am.

3 Q And do you recall how long he was there during that time
4 period when he visited?

5 A I would say a couple of weeks, a couple of weeks.

6 Q Okay. Do you know where he stayed when he visited
7 Atlanta?

8 A To my knowledge, he stayed at my great-grandmother's
9 house.

10 Q Okay. Would -- have you visited him at your
11 great-grandmother's house?

12 A Yes, I went over there. He had luggage and things over
13 there.

14 Q Okay. And after that holiday time period, when is the next
15 time you remember him visiting you in Atlanta?

16 A March.

17 Q Okay. And now we're in March of 2017?

18 A Yes, ma'am.

19 Q Okay. Did you see him when he visited that time?

20 A Yes, ma'am, I did.

21 Q How often did you see him --

22 A Rough --

23 Q -- during that time?

24 A Roughly every day, almost every day. I was still in school,
25 so he came and picked me up from school sometimes or from my

1 house or from work, because I had a job. Or he dropped me off at
2 work. So I'd see him almost every day.

3 Q Do you remember how long he was in Atlanta from
4 March 2017 till whenever you remember?

5 A All the way up until June.

6 Q June? Okay.

7 A Yes, ma'am.

8 Q During that time period -- so, now, March 2017 to
9 June 2017, when you said you saw him mostly every day, did you
10 guys go out to eat?

11 A Yes, we went out to eat. We went to the mall. He took me
12 prom dress shopping, because my prom was in April of --
13 April 15th. Yeah, I'd see him every day. We went out to eat. We
14 went festivals, malls. We --

15 Q Okay. And during that time period, how was your dad
16 acting around you?

17 A He was normal to me.

18 Q Did he appear scared to you?

19 A No, ma'am.

20 Q Did he appear stressed out?

21 A No, ma'am.

22 Q And you were going public places, fair to say?

23 A Yes, ma'am.

24 Q Okay. Like you just said, restaurants?

25 A [No audible response.]

1 Q And the mall?

2 A Yes, ma'am.

3 Q Okay. And he was acting completely normal?

4 A Yes, ma'am.

5 Q Was there any other event that he was -- that you know he
6 went to while you were there? For example, with you, were there
7 any events that you guys went to together?

8 A I'm trying to remember. I'm not sure.

9 Q It's okay if you don't remember.

10 A I'm not really sure.

11 Q Okay.

12 A Can't remember.

13 Q When he visited during the same period, so March 2017
14 through, like you just said, June, I believe you said?

15 A Yes, ma'am.

16 Q Do you personally know if he saw your brother?

17 A Yes. We had my -- we went places with my brother too.
18 He went out to eat with us and we did everything.

19 Q Okay. So there were times where you with your brother
20 and your dad?

21 A Yes.

22 Q Okay. And do you know when he was -- your father was
23 arrested?

24 A June 29th.

25 Q June 29th, how do you know that date? Were you there?

1 A That was the day before my brother's birthday. My
2 brother's birthday is June 30th.

3 Q And prior to June 29th, when is the last time you
4 remember seeing your father?

5 A I believe the day before. The day before. Because I had
6 summer school and I believe he took me to summer school. So the
7 day -- I believe the day before.

8 Q Okay. And how was he acting the day before?

9 A He was normal to me.

10 Q Okay. He didn't appear scared to you?

11 A No, ma'am.

12 Q Not nervous?

13 A No.

14 Q Okay. Thank you.

15 MS. TRUJILLO: No further questions, Judge.

16 THE COURT: All right. Cross?

17 MR. GIORDANI: No, thank you.

18 THE COURT: Any juror questions?

19 All right. I'll see counsel at the bench, please.

20 [Off-record bench conference.]

21 THE COURT: All right. Thank you for your testimony, and
22 please don't discuss your testimony with anybody else who may be
23 a witness in this case.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Thank you, and you are excused.

1 THE WITNESS: Okay.

2 THE COURT: And the defense may call its next witness.

3 MS. TRUJILLO: Thank you.

4 Defense calls Loshalonda Ford.

5 **LOSHALONDA FORD,**

6 [having been called as a witness and first duly sworn, testified as

7 follows:]

8 THE COURT CLERK: Thank you. Please have a seat.

9 State and spell your first and last name for the record.

10 THE WITNESS: Loshalonda Ford, L-O-S-H-A-L-O-N-D-A,

11 F-O-R-D.

12 THE COURT: All right. Thank you.

13 Ms. Trujillo?

14 MS. TRUJILLO: Thank you, Judge.

15 **DIRECT EXAMINATION**

16 BY MS. TRUJILLO:

17 Q Hi, Ms. Ford. How are you?

18 A I'm good. How are you?

19 Q Good, thank you.

20 How do you know Larry Brown?

21 A I met him at my kids' elementary school through the PTA

22 program.

23 Q How would you characterize your -- are you guys friends?

24 A Yes.

25 Q Okay. How long have you known Larry Brown?

1 A It's been a little bit over nine years.

2 Q Okay. Do you remember when -- let me ask you this, I
3 apologize: Where do you live?

4 A I live in Stone Mountain --

5 Q How long --

6 A -- Georgia.

7 Q How long have you lived in Georgia?

8 A About 25 years.

9 Q Okay. Do you remember when Larry moved to Vegas?

10 A Yes.

11 Q And when was that?

12 A It was early part of 2016. It was either March or April.

13 Q Okay. And while he was living in Vegas, did you remain
14 in contact with him?

15 A Yes.

16 Q After he moved to Las Vegas, did he visit Georgia?

17 A Yes.

18 Q Okay. And I'm going to talk about the different times he
19 visited Georgia. When is the first time after he moved to Vegas that
20 you remember he visited Georgia?

21 A It was the end of May. He came and got his kids once
22 they got out of school for the summer.

23 Q So that would be May 2016?

24 A Yes.

25 Q Okay. And when he visited at that time, did you see him?

1 A Yes.

2 Q Did you do anything with him, go out to eat, anything?

3 A Yeah. We went out and had dinner, just hung out a little
4 bit.

5 Q Okay. And so after May of 2016, when is the next time
6 you recall him visiting Georgia?

7 A He brought them back, it was -- I want to say the
8 beginning of August.

9 Q So August 2016?

10 A Yes.

11 Q Did you see him when he visited in August?

12 A Yes.

13 Q Do you remember how long he stayed in August of 2016?

14 A It was a few weeks, so about two or three weeks.

15 Q And then after August 2016, when is the next time you
16 remember him visiting Georgia?

17 A He was back at the end of September.

18 Q And how do you remember that?

19 A He stayed from September-October, I remember, because
20 me and my girlfriend came out here to Vegas in October and he
21 was at my home.

22 Q So during that time period, he stayed at your house?

23 A Yes.

24 Q So when he visited during September and October, you
25 saw him?

1 A Yes.

2 Q Did you hang out with him --

3 A Uh-huh.

4 Q -- like you normally would?

5 A Yes, uh-huh.

6 Q Did you guys go to restaurants?

7 A Uh-huh. Went out, hung out, ate dinner, to the movies,
8 just the usual.

9 Q Okay. And after September of 2016, when is the next time
10 you remember him visiting Georgia?

11 A It was after Thanksgiving, so it's like the beginning of
12 December.

13 Q Okay. Again, 2016?

14 A Yes.

15 Q And how long did he stay during that visit?

16 A He stayed to New Year's Eve.

17 Q Do you know where he stayed during that time?

18 A He was at my house and his grandma's.

19 Q Okay. So back and forth two places?

20 A Uh-huh.

21 Q So you -- fair to say you hung out with Larry during that
22 time?

23 A Yes.

24 Q Okay. And after New Year's Eve, when is the next time
25 you recall him visiting?

1 A The next time I saw him, it was March.

2 Q Okay. March?

3 A Uh-huh.

4 Q And in March, did you visit here -- did you come to visit in

5 Vegas?

6 A Yes, I flew back to Vegas -- flew to Vegas.

7 Q Okay. And then when was the next time that Larry Brown

8 went to Georgia that you know of?

9 A Well, we drove back to Georgia.

10 Q Okay. And what date was that? Or around what time?

11 A It was the middle of March, so around the 15th or so.

12 Q Around the 15th?

13 A Uh-huh.

14 Q Okay. You drove back to Georgia --

15 A Uh-huh.

16 Q -- with Larry?

17 A Uh-huh.

18 Q Okay. And during that drive, how was Larry acting?

19 A He was the normal, cheerful self. Just happened to be

20 going back, you know, he was in the process of moving back home,

21 so he was happy about that. And we just talked about things that

22 we want to do, the concert we were going to that following

23 weekend. So just a normal person.

24 Q Okay. You said in the process of moving back home; did

25 he tell you before that --

1 MR. GIORDANI: Objection. Did he tell you?

2 MS. TRUJILLO: Approach?

3 THE COURT: Yeah.

4 [Off-record bench conference.]

5 BY MS. TRUJILLO:

6 Q Sorry, Ms. Ford.

7 A Uh-huh.

8 Q So you said that he was excited about moving back home.

9 When is the first time you learned that he intended to move back to
10 Georgia?

11 A The -- before he moved here. It was only his plan to stay
12 here for a year.

13 Q Okay. So that would have been --

14 A In 2016.

15 Q -- in 2016?

16 A Yeah.

17 Q Okay. So you indicated he was fine on the drive, he didn't
18 seemed stressed out to you?

19 A Uh-uh.

20 Q He didn't seem nervous to you?

21 A No.

22 Q What did you do when you got -- first of all, how long did
23 it take you to get over there?

24 A A day and a half. The longest ride ever.

25 Q Okay. What did you do when you guys arrived to

1 Georgia?

2 A We picked my car up from the airport. We went home,
3 normal routine. That following weekend we went to a concert. Just
4 the normal things that we were doing.

5 Q Okay. Did -- so do you know where he stayed when he
6 visited that time?

7 A He was between my house and his grandmother's.

8 Q Okay. Between the time period of -- do you know when
9 he was arrested?

10 A It was the end of June of 2017.

11 Q So between -- when you went there, you said, around
12 the 15th of March to June of 2017, how often did you see Larry?

13 A I saw him on a consistent basis. Sometime daily.

14 Q Sometimes daily?

15 A Uh-huh.

16 Q And during that time period, how was he acting?

17 A Normal. Just the normal person.

18 Q Okay. So you guys were still doing the same things you
19 have done on prior visits?

20 A Uh-huh.

21 MS. TRUJILLO: No further questions.

22 THE COURT: Cross?

23 **CROSS-EXAMINATION**

24 BY MR. GIORDANI:

25 Q This little drive back to Georgia, this was just on a whim

1 or what?

2 A Well, we had discussed the year before that when he got
3 ready to move back, that I would help him drive.

4 Q Okay.

5 A And he would --

6 Q Didn't have to do with the fact he had just robbed and
7 killed somebody?

8 A I have no knowledge of what happens. I don't --

9 Q Okay.

10 A -- can't speak on that.

11 Q Okay. Was your understanding that he moved out here to
12 try to find some money or work?

13 A To work, uh-huh.

14 Q Uh-huh. And he was hurting for money at the time?

15 A I don't know about his finances.

16 Q Okay. Hurting so bad he had to rob somebody for
17 money?

18 MS. TRUJILLO: Objection, Judge.

19 THE COURT: It's sustained.

20 MR. GIORDANI: Okay.

21 BY MR. GIORDANI:

22 Q Did -- when you went back to -- oh, well, let me ask you
23 this: You seem to know Mr. Brown pretty well, right?

24 A I do.

25 Q You've never met me, never talked to me before, never

1 talked to any law enforcement in Vegas?

2 A No.

3 Q Okay. You knew him back in February 2017, right?

4 A Uh-huh.

5 Q And did you talk to him over the phone?

6 A Uh-huh.

7 Q You --

8 A Well, I -- February of -- yeah, that year. Uh-huh.

9 Q Okay. You'd agree with me his phone number was a 404

10 area code?

11 A I don't remember his number from then.

12 Q That's convenient. For -- how about 404-808-2233?

13 A That may have been the number. I don't remember.

14 Q But you communicated frequently?

15 A Yes.

16 Q Via text?

17 A Yes.

18 Q Okay. Does Mr. Brown have a nickname?

19 A I only call him Larry.

20 Q You call him Larry?

21 A Uh-huh.

22 Q You'd agree with me there's no documentation of this

23 drive, right?

24 A Not that I know of.

25 Q I mean, you probably stopped for gas at some point?

1 A Uh-huh.

2 THE COURT: And you have to answer yes or no --

3 THE WITNESS: Yes.

4 THE COURT: -- for the taped record.

5 THE WITNESS: Yes.

6 BY MR. GIORDANI:

7 Q And what's your phone number, ma'am?

8 A 770-899-0004.

9 Q How long have you had that number?

10 A About 12 years or so.

11 Q And you say 770-8 --

12 A 899-0004.

13 Q And you've had that number for how long?

14 A About 12 years.

15 Q 12 years?

16 A Uh-huh.

17 Q Okay. I just didn't hear you.

18 A Yes.

19 Q I don't -- I'm not trying to trick you, I just didn't hear you.

20 A Oh, no. You're fine.

21 Q And your testimony here today under oath, in front of this

22 jury, is that Mr. Brown didn't talk to you about anything that was

23 going on in Vegas with regard to criminal activity whatsoever?

24 A No.

25 Q Okay. Everything was peachy?

1 A I don't like -- he didn't talk to me about anything criminal,
2 so I don't know. That's something I don't know.

3 Q Okay. Did you help him get rid of the .40-caliber firearm?

4 A The who?

5 MS. TRUJILLO: Objection, Judge.

6 BY MR. GIORDANI:

7 Q The .40 --

8 MS. TRUJILLO: May we approach?

9 THE COURT: She already said no. Approach.

10 [Off-record bench conference.]

11 MR. GIORDANI: May I?

12 THE COURT: Yeah, proceed.

13 BY MR. GIORDANI:

14 Q When Mr. Brown allegedly drove back with you to Atlanta,
15 did he have cash on him?

16 A Yes.

17 Q How much?

18 A I don't know.

19 Q Couple thousand?

20 A No.

21 MR. GIORDANI: Court's brief indulgence.

22 Q You sure you didn't know anything about this robbery?

23 A I'm sure.

24 Q Do you agree with me that on February 21st, 2017 --

25 MR. GIORDANI: Give me a second.

1 Q Would you agree with me or disagree that you spoke with
2 Mr. Brown on February 21st, 2017?

3 A I don't remember.

4 Q Okay. Well, was it out of the norm to have phone
5 conversations?

6 A No.

7 Q Did there come a point in time on February 21st, 2017, or
8 after, where you attempted to contact him and his phone just
9 wasn't working?

10 A I don't remember.

11 Q Okay. When did you get a new number for Mr. Brown?

12 A I don't remember receiving a new number for him, so I
13 can't say you a date, so I don't.

14 Q Okay. Are you telling this jury that you don't recall texting
15 Mr. Brown and getting no response and then never hearing from
16 that number again?

17 MS. TRUJILLO: Objection. Asked and answered, Judge.
18 They're referring to records.

19 THE COURT: Right.

20 MS. TRUJILLO: If he doesn't know, she doesn't know.

21 THE COURT: If she doesn't -- do you recall --

22 MR. GIORDANI: That's fair.

23 THE COURT: What?

24 MR. GIORDANI: That's fair. She doesn't know, she
25 doesn't know. I'm asking her a question.

1 THE COURT: Do you --

2 MS. TRUJILLO: And I said asked and answered.

3 THE COURT: Okay. I think it was about a phone call.

4 Now he's asking about a text. Do you recall texting Mr. Brown and
5 getting no response on whatever the day it was you stated?

6 BY MR. GIORDANI:

7 Q February 22nd, 2017.

8 A No, I don't recall.

9 Q Okay. Do you recall that -- somehow communicating with
10 him on a new number after February 21st, 2017?

11 A I don't remember the exact date. But we did.

12 Q But you remember a new number coming up?

13 A Uh-huh.

14 Q Okay. Would you agree that was in February of 2017?

15 A I don't agree, because I don't remember.

16 Q How did you get that number?

17 A He called me.

18 Q From that number?

19 A Yes.

20 Q Okay. What is it?

21 A I don't -- I do not know.

22 Q Do you have your phone?

23 A Yes, I do.

24 Q Can you check?

25 A I don't have my phone here.

1 MS. TRUJILLO: Judge, may we approach?
2 THE COURT: Yeah, that's sustained, if you're objecting.
3 MS. TRUJILLO: Thank you.
4 THE COURT: Did your number remain the same?
5 THE WITNESS: For my cell phone?
6 THE COURT: Yes.
7 THE WITNESS: My cell phone has been the same.
8 THE COURT: Okay.
9 BY MR. GIORDANI:
10 Q How frequently did you see Mr. Brown between this
11 alleged drive in March 2017 up until he was arrested June 29, 2017?
12 A I would see him on almost daily basis.
13 Q Okay. Would you agree with me that he had cash on him
14 at that time?
15 A I would not agree, because I don't know what he had on
16 him. I didn't ask him about his finances.
17 Q Okay. That's fair. Would you agree with me that he had a
18 large amount of marijuana with him when you left Las Vegas?
19 A No, I would not, because I don't know.
20 Q Okay. You don't know?
21 A Yes.
22 Q You didn't check his bags; fair enough?
23 A No.
24 Q Okay. Did he pack heavily or lightly or what?
25 A It was just the normal things to start moving.

1 Q Oh, so he was actually in the process of moving right
2 then?

3 A Some of his stuff, yes.

4 Q Okay. And what date was this?

5 A This was in March.

6 Q Unsure on the date?

7 A Uh-huh.

8 Q Is that a yes?

9 A Yes.

10 Q Okay. Thank you, ma'am.

11 MR. GIORDANI: I'll pass the witness.

12 THE COURT: Redirect.

13 MS. TRUJILLO: Just briefly.

14 **REDIRECT EXAMINATION**

15 BY MS. TRUJILLO:

16 Q It was normal for you to have regular conversations with
17 Mr. Brown, right?

18 A Yes.

19 Q And that was during the entire time from when he left
20 Georgia and moved to Las Vegas?

21 A Yes.

22 Q You were in constant communication with him?

23 A Yes.

24 Q Okay.

25 MS. TRUJILLO: No further questions.

1 THE COURT: Anything else from the State?
2 MR. GIORDANI: No, Your Honor.
3 THE COURT: Do we have any juror questions for the
4 witness? All right.
5 Counsel approach.
6 [Off-record bench conference.]
7 THE COURT: All right. Ma'am, we have a question here
8 from a juror. A juror asks: Whose car was driven from Vegas to
9 Georgia?
10 THE WITNESS: It was a rental car.
11 THE COURT: It was a rental car?
12 THE WITNESS: Yes.
13 THE COURT: All right. Ms. Trujillo, any follow-up?
14 MS. TRUJILLO: No follow-up.
15 THE COURT: Mr. Giordani, any follow-up?
16 MR. GIORDANI: Can I have the Court's brief indulgence?
17 THE COURT: Sure.

18 **FURTHER EXAMINATION**

19 BY MR. GIORDANI:

20 Q Whose -- do you know who Angelisa Ryder is?

21 A Yes.

22 Q Who is that?

23 MS. TRUJILLO: Judge, may we approach?

24 THE COURT: Sure.

25 [Off-record bench conference.]

1 THE COURT: All right. That's sustained. Counsel,
2 rephrase.

3 BY MR. GIORDANI:

4 Q Do you know who rented the white SUV Mr. Brown --

5 MS. TRUJILLO: Objection.

6 THE COURT: Okay. Let me back up.

7 What kind of a car was it?

8 THE WITNESS: It was a SUV. I don't remember the exact
9 type.

10 THE COURT: Okay. It was an SUV?

11 THE WITNESS: Yes. Uh-huh.

12 THE COURT: Do you recall what color it was?

13 THE WITNESS: No, ma'am.

14 THE COURT: Mr. Giordani?

15 BY MR. GIORDANI:

16 Q Okay. So you're now describing the vehicle you drove to
17 Georgia with Mr. Brown in it?

18 A Yes.

19 Q How long prior to driving to Georgia was it rented?

20 A I have no knowledge of that. I came in and we left.

21 Q Okay.

22 MR. GIORDANI: Can we approach?

23 THE COURT: Sure.

24 [Off-record bench conference.]

25 THE COURT: We need a break anyway. We're almost

1 done.

2 MR. GIORDANI: I have no further --

3 THE COURT: Nothing else?

4 MR. GIORDANI: No.

5 THE COURT: Anything else, Ms. Trujillo?

6 MS. TRUJILLO: No, Judge.

7 THE COURT: All right. No other juror questions?

8 Ma'am, thank you for your testimony. Please don't
9 discuss your testimony with anybody else who may be a witness in
10 this case.

11 THE WITNESS: Okay.

12 THE COURT: All right. Thank you.

13 THE WITNESS: Thank you.

14 THE COURT: You are excused.

15 And ladies and gentlemen, we're going to go ahead and
16 take a break. Let's just take till 3:00.

17 During the break, you're all reminded that you're not to
18 discuss the case or anything relating to the case with each other or
19 with anyone else. You're not read, watch, or listen to any reports of
20 or commentaries on the case, person, or subject matter relating to
21 the case. Do not do any independent research by way of the
22 Internet or any other medium. And please don't form or express an
23 opinion on the case.

24 Please leave your notepads in your chairs and follow the
25 bailiff through the double doors.

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[Jury recessed at 2:47 p.m.]

THE COURT: Okay. As soon as the door shuts. I was going to do the canvass now and then give you an opportunity to talk to him. Do you want to do it the other way around?

MS. TRUJILLO: I did that before. The other way around.

THE COURT: Okay.

MS. TRUJILLO: And do you want me to put the objections now or when we come back?

THE COURT: Either way.

MS. TRUJILLO: I'll do it when we come back. That's fine.

THE COURT: Okay. So, yeah --

MS. TRUJILLO: Judge five minutes, Judge.

THE COURT: That's fine. I mean, I just -- sometimes I admonish them first and then they can ask questions of their lawyer. I don't care.

MS. TRUJILLO: I just want to go over what the Court's going to say to him.

THE COURT: Okay.

[Court recessed at 2:48 p.m., until 3:02 p.m.]

[Outside the presence of the jury.]

THE COURT: Are you ready?

MS. TRUJILLO: Yes, Judge.

THE COURT: All right. Mr. Brown --

THE DEFENDANT: Yes, ma'am.

THE COURT: -- if you'd stand up, please.

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: I need to go over your Fifth Amendment
3 rights.

4 You have the right to take the stand and testify on your
5 own behalf; are you aware of this right?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. If you choose to take the stand and
8 testify on your own behalf, the deputy district attorneys -- or one of
9 them -- will have the opportunity to cross-examine you. And
10 anything you say, whether it's in response to a question from your
11 lawyer, the deputy district attorney, one of the jurors, or even the
12 Court, would be the subject of fair comment by the deputy district
13 attorneys in their closing argument; do you understand?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right. Also, if you choose to take the
16 stand and you have been previously convicted of a felony crime,
17 the deputy district attorney may be allowed to question you about
18 that within certain limitations.

19 Does he have any prior felonies that could be used for
20 impeachment purposes?

21 MR. GIORDANI: I don't believe so. There's a bank
22 robbery, but it looks like it's outside of our --

23 THE COURT: It's outside? All right. We don't need to
24 worry about that.

25 Conversely, you have the right not to take the stand and

1 testify. If you choose to avail yourself of your right not to testify,
2 the deputy district attorneys are precluded or forbidden from
3 commenting up on that in their closing arguments; do you
4 understand?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Also, if you choose to avail yourself of your
7 right not to testify, the Court will give an instruction if asked to do
8 so by your lawyer. The instruction, essentially, says that an
9 accused in a criminal case may not be compelled to testify, thus the
10 decision as to whether or not he should testify is left to the
11 defendant on the advice of his counsel. And it also tells the jury
12 that the jury cannot draw any inference of guilt from the fact that he
13 does not testify, nor should that be discussed or considered by
14 them in their deliberations in any way; do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. Have you had an opportunity to
17 discuss your right to testify as well as your right not to testify with
18 your lawyers?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: All right. Do you have any questions you
21 would like to ask me, the Court, about any of these -- either of these
22 rights?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: All right. And have you made a
25 determination as to whether or not you wish to testify in this

1 matter?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And what is that decision?

4 THE DEFENDANT: Yes, I choose to testify.

5 THE COURT: I'm sorry?

6 THE DEFENDANT: I choose to testify.

7 THE COURT: You are going to testify? Okay.

8 Did I cover the admonishment of rights to the satisfaction
9 of the defense?

10 MS. TRUJILLO: Yes, Judge.

11 THE COURT: Did I cover the admonishment of rights to
12 the satisfaction of the State?

13 MR. GIORDANI: Yes.

14 THE COURT: Okay. If everybody's ready, bring them in.

15 [Jury reconvened at 3:06 p.m.]

16 THE COURT: All right. Court is now back in session.
17 Everyone can be seated.

18 And the defense may proceed.

19 MS. TRUJILLO: Thank you, Judge.

20 The defense calls Larry Brown.

21 THE COURT: All right. Mr. Brown, just come on up here
22 to the witness stand. Just follow the marshal. And then just please
23 remain standing, facing our court clerk, who will administer the
24 oath to you.

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LARRY BROWN,

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

THE COURT CLERK: Thank you. You may be seated.
State and spell your first and last name for the record.

THE WITNESS: Larry Brown, L-A-R-R-Y, B-R-O-W-N.

THE COURT: Okay. You may proceed.

MS. TRUJILLO: Thank you, Judge.

DIRECT EXAMINATION

BY MS. TRUJILLO:

Q Larry, where are you originally from?

A Atlanta, Georgia.

Q And how long did you live in Atlanta, Georgia?

A All my life.

Q Okay. Do you have family there?

A All my family's there.

Q Okay. When did you move to Las Vegas?

A I want to say April -- April of 2016.

Q Why did you move to Las Vegas?

A Well, I was recently out of divorce, starting a new relationship, just wanted a new life. Just wanted something -- to try something different, new life.

Q Who did you move to Las Vegas with?

A Angelisa Ryder.

Q And who did you live here in Vegas with?

1 A Angelisa Ryder.

2 Q Did you personally buy a house or did you rent a house?

3 A She was renting, she was already renting the house.

4 Q Was your name on that lease?

5 A No, ma'am.

6 Q In February of 2017, how long had you been living here in

7 Las Vegas?

8 A About a year.

9 Q About a year?

10 A Yes.

11 Q Okay. And during that year period that you lived in Las

12 Vegas, did you ever return to Georgia to visit?

13 A Several times.

14 Q Okay. Do you recall how many times you visited?

15 A I want to say maybe -- more than five. More than five.

16 Six, seven times, maybe. Yes.

17 Q Okay. And if you remember when you returned, who

18 were you there to visit?

19 A My kids and my family.

20 Q So just various family members?

21 A Yes.

22 Q Okay. Do you have friends here in Las Vegas?

23 A Well, I have Angelisa. I have Angelisa Ryder and I met a --

24 well, I got reconnected with a associate that I knew in Atlanta.

25 Q Okay. And what associate are you talking about?

1 A Anthony Carter.

2 Q Okay. And how did you meet him in Atlanta?

3 A We used to -- well, our families stayed in the same
4 neighborhood. We played basketball at the Sunny Recreation
5 Center. Just neighborhood, through the neighborhood.

6 Q And when did you first meet Anthony Carter?

7 A In '96.

8 Q Were you guys in contact from '96 to 2016, when you
9 moved here?

10 A No, ma'am.

11 Q Okay. When -- you say reconnected; how long had you
12 been out of touch with Anthony Carter?

13 A He moved away -- he moved away, I want to say, in '97.
14 So he moved away, that was the last time I talked to him.

15 Q Okay. And so around what time period, if you remember,
16 when did you become reconnected with Anthony Carter here Las
17 Vegas?

18 A Around January of 2016 -- 2017. 2017.

19 Q Okay. Were you working here in Las Vegas when you
20 moved here?

21 A Yes.

22 Q And what were you doing?

23 A I -- well, I own my own detail, mobile detail. And I was
24 doing -- I'm certified with the government to -- an EPA. So I do
25 heating and air contracts, install. I do heat pumps. I can come in

1 your house and, you know, pretty much evaluate your system and
2 replace various parts. And I have a CDL truck driving license.

3 Q Okay. And were you doing that type of work here or some
4 other work?

5 A Yes, I was doing the heating and air work and the mobile
6 detailing.

7 Q Okay. What kind of car does Angelisa drive?

8 A Well, when we first moved here, she had a Durango, and
9 now she has a Jeep.

10 Q Okay. And did you ever drive her car?

11 A On occasions, yes.

12 Q Okay. When you reconnected with Mr. Carter, did you --
13 did he ever visit your house?

14 A He never -- I brought him to my house once, but he never
15 came in and that. He just stayed outside.

16 Q Did you ever visit Mr. Carter's house?

17 A A few times, yes.

18 Q To your knowledge, did Anthony Carter have a car?

19 A No, he didn't have a car. He didn't have a driver license.

20 Q And did you ever hang out with Anthony Carter?

21 A I visited him while he was at his son's school for
22 basketball games. I went to his house on a few occasions, met his
23 wife, his mother-in-law, his father-in-law, his kids. He had a family,
24 so we might have went to the casino maybe a couple of times.

25 Q Okay. What was the nature of your relationship with him?

1 Why were you guys acquainted, associates, however you phrased
2 it?

3 A Well, like I said, we knew each other from Atlanta. So he
4 was the only person besides Angelisa in Las Vegas that I knew. So
5 we just had a, I guess, a mutual bond through the past.

6 Q Okay. And maybe I missed it, but how did you become
7 reconnected with him?

8 A Well, I had a friend that knows both of us. He does the
9 same work that I do, except he industrial. He goes and cleans off
10 the top of roofs, the HVAC system. So he was passing through Las
11 Vegas and he told me that Anthony was staying out here. So he
12 passed along -- he swapped our numbers out.

13 Q Okay. Do you know a person by the name of Carnell
14 Cave?

15 A No, I do not.

16 Q So you never met a person by the name of Carnell Cave?

17 A No, ma'am.

18 Q You never talked to a person by the name of Carnell Cave?

19 A No, ma'am.

20 Q Do you know a person by the name of Kwame Banks?

21 A No, ma'am.

22 Q Did you ever meet a person by the name of Kwame
23 Banks?

24 A No, ma'am.

25 Q Did you ever talk to a person by the name of Kwame

1 Banks?

2 A No, ma'am.

3 Q Okay. You know you're here because you're being
4 accused of murder, right?

5 A Yes, ma'am.

6 Q And it's your understanding that the murder happened on
7 February 21st, 2017?

8 A That's my understanding, yes, ma'am.

9 Q And were you here in Vegas -- you were here in Vegas
10 in 2017, February, that month, right?

11 A Yes, ma'am.

12 Q Okay. And, specifically, I want to talk about that day. Did
13 you have contact with Anthony Carter on February 21st, 2017?

14 A I believe so. Yes, ma'am, I did. Yes.

15 Q Okay. Why -- if you remember, why did you contact him
16 that day?

17 A Well, to be honest with you, I indulge, I smoke marijuana.
18 He was in the business of selling marijuana. And through the
19 previous meetings that we had, he would give me marijuana. I
20 would probably buy some from him. That was it.

21 Q Okay. So on that day, you contacted him for the purpose
22 of?

23 A To buy some marijuana.

24 Q Okay. Were you supposed to meet up with him?

25 A Yes, I was.

1 Q And where were you supposed to meet up with him that
2 day?

3 A He had various -- he -- various places he wanted me to
4 meet him at, but I felt uncomfortable. So I just -- I wound up just
5 meeting him -- I wound up just being at a store.

6 Q Have you previously met Anthony Carter at a store?

7 A Yes. Yes, several times. He would walk to a store, I would
8 pick him up. Like I said, he didn't have a car, so if he wanted to go
9 somewhere, he would just ask me, you know, take him a couple of
10 places and run him around and things like that.

11 Q Okay. So that -- was it -- what time was it that you were
12 supposed to meet with him?

13 A He wanted to meet up at a time he had suggested. It
14 was -- to me, it was late. I didn't -- like I said, I don't know anybody
15 else, so I've never really, like, hung out, except with Angelisa. So it
16 was late on in the evening, between 10:00 and 11:00 that I was
17 supposed to meet up with him. He wanted to meet up around
18 about that time.

19 Q Okay. And did you ever meet up with him?

20 A I never saw Anthony Carter, no.

21 Q Okay. You just said he wanted to meet you at a store.

22 A Right.

23 Q Did you go to the store?

24 A I went to the store, yes.

25 Q Okay. And what happened at the store? First of all, where

1 was the store?

2 A The store is -- it's off -- like I said, I'm not familiar with
3 Vegas. I was only here maybe four months out of the year that I
4 was here, despite going back and forth to Atlanta. So the store is
5 off the highway. I'm familiar with the highways. I want to say it's
6 the 95. I'm not -- the stores here, we don't have there. So it has
7 any representation of a dinosaur at the -- you know, for the gas
8 station. And the reason why, because it was directly off the
9 highway and that was convenient for me, because I -- like I said,
10 once I'm out, I don't like -- I don't like getting turned around. So it
11 was convenient to just go there and just get right back on the
12 highway.

13 Q Okay. So you don't remember the name of the store?

14 A Not off the top of my head, no.

15 Q Just that there was a dinosaur there?

16 A Yes.

17 Q Okay. And what happened when you got to the store to
18 meet Anthony Carter?

19 A Well, when I got there, we exchanged texts. I let him
20 know, you know, that I would be there. He told me that he was
21 waiting for a couple of people. He said he had some other business
22 to take care that same time that he wanted to meet me. I was, like,
23 Okay, cool. And during that time, like I said, he was -- he text me --
24 we text back and forth, because I was waiting on him. He wasn't -- I
25 hadn't seen him. He wasn't there. So I was just sitting there

1 waiting on him. So I would text him back and forth. We would text,
2 go back and forth and make phone calls.

3 So during that time, I was just, basically, just sitting there
4 waiting and going back and forth, asking him, you know, how long
5 he'll be or, you know, just will he be there.

6 Q Okay. So did he ever show up?

7 A No. He never showed up. Not that -- to be -- not that I
8 know that he showed up, if I can say it like that.

9 Q Yeah, I only want to talk about what you know. So you're
10 waiting for him, what did you do? Did you just wait there all night?
11 What did you do?

12 A No, I waited there a few minutes. And then he sent the
13 text. He told me that he'll be pulling in. So I was, like, okay. And at
14 that time, that text went in, a car pulls in. So I'm thinking with the
15 text, that was him. So I get out my vehicle, you know, just waiting
16 to -- thinking that was Anthony, you know.

17 The passenger door opens, guy gets out of that side, he
18 has -- they -- he has a hoodie on, he has his head down. By the
19 time I'm looking, he has a mask on, brings out a gun. Two other
20 guys get out of the car. I'm pistol whipped, my money's taken, I'm
21 beaten -- I was beat at the -- I was beat at the gas station, pistol
22 whipped, laid down on the ground. It was a very, very -- it was a
23 terrifying night, because I didn't know what was going on. I
24 thought it was really trying to kill me, because the way the beating
25 went on, it was just, like, it just seems it's out of the norm.

1 You know, after they got my -- they asked for the money.
2 I gave them my money. The told me they wanted my phone, I gave
3 them the phone. They just continued to beat me, and then I laid up,
4 just played unconscious. They got in the car, drove off. I made
5 sure that everything was okay. I got up, I got in my vehicle, and I
6 left.

7 Q Okay. So you said they were wearing masks.

8 A Yes.

9 Q Did you -- so you couldn't tell who they were?

10 A No, ma'am.

11 Q And it was two people?

12 A It was three.

13 Q Three people?

14 A Yes.

15 Q I'm sorry. Did you -- anything else that you noticed about
16 them besides you said one was wearing a hoodie?

17 A I saw the gun. I kind of -- to be honest with you, after I
18 saw that gun and they approached me, I really kind of like blacked
19 out. One of the voices sounded familiar. It sounded familiar. And I
20 want to say that it sounded like Anthony.

21 Q I want just what you know.

22 A Correct.

23 Q I don't want to talk about what you're thinking.

24 A That was it, yes.

25 Q Okay. So you couldn't tell any other identifying

1 information?

2 A No, ma'am.

3 Q Okay. Did you report this robbery?

4 A No, ma'am, I did not.

5 Q Why didn't you report the robbery?

6 A I was trying to buy some weed. It was -- I just thought it
7 was just illegal what I was doing, and they -- I mean, it was. And I
8 didn't -- to be honest, I didn't think the police was going to help.

9 Q Where did you go after you were robbed?

10 A I went to Angelisa's job.

11 Q Okay. And you didn't -- did you call the police when you
12 got to Angelisa's job?

13 A No, I did not.

14 Q Okay. I want to talk to you about when you went back to
15 Georgia in March. Why did you go back to Georgia in March?

16 A After that incident, I had already been contemplating on
17 moving back to Georgia. I didn't have nothing -- I mean, I was
18 lonely. The only person I had here was Angelisa. And we did
19 things together and I can say when I met Carter, it wasn't, like, a
20 bond, far as just -- let's just -- he had -- he was doing his thing. He
21 had his family. We wasn't really -- that was -- I didn't look for that. I
22 didn't look for him to give me any type of real type of friendship.
23 We grown. He has his kids, he has his family, I have my thing
24 going on. So I was just in the state of mind after that, it was kind of
25 like I was shell shocked. Like I said, man, I was just ready to go. I

1 just felt like the move was bad on my kids, they were missing me.
2 So I decided to move. I just -- I was deciding to move.

3 Q Okay. But you weren't -- were you actually moving back
4 at that time?

5 A No, no. Not at that time. No, not at that time.

6 Q Okay. How did you get to Georgia on that time when you
7 went in March of 2017?

8 A I drove.

9 Q And who was with you?

10 A Ms. Ford.

11 Q Okay. When you got to Georgia, who did you stay with?

12 A I stayed with my grandmother, I stayed with Ms. Ford.

13 And those are the two places I -- I basically, like, stayed -- oh, and I
14 rent -- I rented some rooms. I rented a couple of rooms too.

15 Q Okay.

16 A Yes. I rented a couple of rooms, yes.

17 Q So you stayed at a few different places?

18 A Yes.

19 Q Okay. While you were there, did you visit your family?

20 A Yes, I visit all my family.

21 Q Okay. Did you see your children?

22 A Yes.

23 Q How often did you see your children?

24 A As much as I could.

25 Q Okay. While you were in Georgia, you found out about

1 this case, right?

2 A Yes.

3 Q How did you find out about this case?

4 A I was at the park with my kids. I got a phone call from
5 Angelisa. She told me that the door had just got kicked in, a SWAT
6 team had just came in and they searched the place.

7 Q Okay. And after Angelisa told you about the search, what
8 did you do next?

9 A I grabbed my kids and I went back home. But I called her
10 back and I asked, Okay, did they leave any type of information, any
11 type of card? Did they say what it was for? She told me that they
12 said it was for a murder. At that time, I was -- I didn't know nothing
13 about that, so I was, like, totally confused on the fact that, why this
14 was happening. So in my mind, at that time, I just asked her if she
15 could reach out to, you know, any type of representation.

16 Q Okay. And what happened next, after you asked if she
17 could reach out for some representation?

18 A Either she gave me the number or either she -- she made
19 a few calls. And I checked on my phone too for some lawyers,
20 because the -- what she told me, it was serious, you know. And
21 they didn't leave a card for me to call to find out what was going
22 on. She didn't say they left a warrant saying anything about, you
23 know, did they wanted me. She just said they kicked in the door.
24 So, yeah, she found somebody for me.

25 Q Okay. So did you hire an attorney?

1 A Yes, I paid an attorney, yes.

2 Q Okay. And did you have to make some communications
3 with that attorney?

4 A Yes.

5 Q To your knowledge, did that attorney have
6 communications with the police?

7 A That's what I was told, yes.

8 Q Okay. Before you were arrested -- when were you
9 arrested?

10 A I was arrested the day before my son birthday, June 29th.

11 Q Okay. Before you were arrested, did you come back to
12 Las Vegas?

13 A No.

14 Q Why didn't you come back to Las Vegas?

15 A I was in the process of coming back to take care of this
16 situation. Well, just to answer the questions for the situation,
17 because I had no problem coming back, trying to see what was
18 going on to clear my name. And, like, I said, in the process, I was in
19 contact with the lawyer to find out what was going on.

20 Q Okay. So do you remember the day you were arrested?
21 You just said it was the day before your son's birthday, so --

22 A It's the 29th of June.

23 Q So you remember that day?

24 A Yes.

25 Q Okay. I want to talk about that day. Tell us what you were

1 doing that day before you were arrested.

2 A Well, I was at -- basically, I was in a -- I wanted to pick up
3 my son, he was at -- I had enrolled him in a sports camp. Me and
4 his mom, you know, we was -- we got divorced, so we had joint
5 custody, but he was staying with her and her friend. So I was trying
6 to see what time would she have him for me to come and get him.
7 So that's -- that was my day. My day was to go pick up my son, to
8 enjoy, you know, his birthday.

9 Q Okay. And who is the friend that you're referring to?

10 A You mean the friend I -- her friend or my friend?

11 Q Yes, you said her -- your son and her stayed at a friend's
12 house.

13 A Right. Oh, I call her Gigi. You know, Jamilah. Jamilah
14 Wiggins, Miggins.

15 Q Okay. And you were actually arrested near her house,
16 right?

17 A Yes, I was arrested right in front of her house.

18 Q Okay. I want to talk about -- what were you doing in that
19 area?

20 A I was right -- I was in the subdivision across the street
21 from -- I was at Ms. Ford's house. I was across the street from her
22 subdivision, so all I had to do was just leave that subdivision and go
23 down to -- go down just maybe not even a mile, half a mile, make a
24 left into the subdivision, and I was there.

25 Q Okay. So what were you doing driving around at that

1 time?

2 A Where I left the residence, I came out, I -- it's only one --
3 well, it's two lights. It's a light leaving out the subdivision. I made
4 that right. I went down to the next light, it's -- I have to make -- I
5 have to get in the left-hand turn to go into that subdivision.

6 At that time, I have to say -- can I just -- okay. In Atlanta,
7 it's not like here, how people can drive around with dark-tinted
8 windows. That's, like, against the law. You can't have a tint on
9 your window that's too dark where you can't see any -- I noticed
10 that a car was -- it wasn't directly behind me, but I noticed that
11 when I came out of the -- out of Ms. Ford's residence that the car
12 was behind me. But once I got to that light, it was, like, maybe, like,
13 two cars behind me. So it seemed kind of suspicious, especially
14 after what I had just went through here. It was, like, I didn't know
15 what was going on. You know, I didn't know --

16 Q Okay. Let me stop you. So you're talking about a car with
17 dark-tinted windows. What else about the car? You said it was
18 suspicious; what else about the car was suspicious?

19 A It was just, like I said, it just did ever -- it was just doing,
20 like, kind of like mirroring, like, kind of like mirroring what I was
21 doing, coming out, and when -- and in that subdivision, there's no
22 cars like that. I mean, the subdivision not that big, so the car didn't
23 belong in a -- it didn't belong to anybody in the subdivision.

24 Q Not like what -- what did the car look like?

25 A It was a gray -- it was a dark gray, I want to say, maybe a

1 Chevrolet Malibu, Chevrolet Impala.

2 Q Just plain?

3 A Yeah, it was just a plain, plain Jane dark-tinted window
4 car.

5 Q So you said suspicious, why did it bother you that this car
6 was following you?

7 A It bothered me for the fact that I know that Anthony still
8 has family there. I don't know if maybe some way, somehow that,
9 you know, we was -- that -- I don't know what was going on. So I
10 don't know if that was the case. I just know that the car stuck out.
11 And when I made that turn, I was headed back to the residence,
12 because at that time that I was -- I had something for my son that I
13 want to, you know, that I wanted to give to him for his birthday. I
14 thought that I left it at the residence, so I made a U-turn.

15 As I'm looking -- as I'm making the U-turn, I look in the
16 back seat, I had it. I had what I wanted to give to my son. So it was
17 just like a little short meeting. So I went up to the next meeting as I
18 knew that I had it, I made another U-turn. That's when the car was,
19 like, behind me. And I was, like, whoa.

20 So I went back to the light. The light was turned, it was in
21 the process of turning, like, green, yellow, red, so I was trying to get
22 through the light to get into the subdivision. And so I mashed the
23 gas to get through the light. I didn't want to be caught at the light,
24 like -- like my mom said, Dekalb County, they everywhere. So I just
25 wanted to make sure to get through the light. So I sped through to

1 get through the light into the subdivision.

2 Q Okay. Did you see any police lights?

3 A No.

4 Q Do you remember if you ran any red traffic lights?

5 A No. Like I said, it was only two lights. And the first light
6 was a -- it's a turn on right. So it's no matter what color that light is,
7 I can turn through that light. The second light, it's a U-turn light.
8 So those are only two lights. So no.

9 Q What is your ex-wife's name?

10 A I call her Mika, but her name is Douglisa, Douglisa Brown.

11 Q And you --

12 A Douglisa Braxton.

13 Q And you said she lived with Jamilah Miggins?

14 A Yes.

15 Q And your son also lived with Jamilah Miggins?

16 A Yes.

17 Q So before that day, you went to Jamilah's house that day,
18 right?

19 A Yes.

20 Q Okay. Before that day, had you visited Jamilah's house?

21 A Yes, I -- yes, my son stayed there and I would go there to
22 pick him up.

23 Q Okay. So you had been on more than one occasion to
24 Jamilah's house?

25 A More than one occasion. I -- matter of fact, before I

1 moved to Vegas, I spent the night there.

2 Q Are you friends with your ex-wife?

3 A We cordial, we co-parent.

4 Q Okay. When you were at Jamilah's house that, who else
5 was there?

6 A I guess that was a boyfriend. It was a boyfriend, it was a --
7 yeah, he -- it was a boyfriend.

8 Q And how long were you there at the house?

9 A Maybe a hour. Yeah, I was there -- I was there an hour. I
10 was there for a while. We was there, they offer -- he offer me a
11 beer. Drunk a beer. I asked Jamilah had she talked to Douglisha?
12 She told me that she did and she told me that she was on the way
13 home from work. So I was, like, okay, cool. So I sat down on the
14 sofa. They -- she was in the kitchen. She's like a little cook, so she
15 was cooking. Me and Greg, we was just having conversation. Just
16 drinking a beer.

17 Q Okay. So from the time period, March 2017, to the time
18 you're arrested, June 29th of 2017, you said you were regularly
19 hanging out with your children, right?

20 A Yes.

21 Q What kinds of things were you doing?

22 A Me and my son, right before that day, I want to say two
23 days before that, we went paint balling. Father Day was not too
24 far -- well, Father Day was right before that. That was when I was
25 with my mom and my son. I just -- I know my -- I thought my

1 daughter -- I took pictures, we took pictures there. My cousin was
2 there. I would go to the Falcon game, Hawks game, took pictures
3 with my son. Me and my son, everywhere I went, I would -- my
4 kids always would go with me. So I just did a lot of things with
5 them, to the park, paint ball. We went rock climbing. Took pictures
6 there, put it on Instagram.

7 Q Was this the same type of stuff you were doing on other
8 visits when you would visit your children?

9 A Yes. Yes, yes. Even when I went and picked them up and
10 brought them back out there, we went to San Diego, California,
11 Wet'N'Wild, bought season tickets for Wet'N'Wild. My kids are my
12 life, that's all I do.

13 Q Okay. And when you were there between March and
14 June, did you also see your mother?

15 A Yes.

16 Q Okay. Did you also see other family members?

17 A Yes. My grandma, cousins, my dad. Matter of fact, I went
18 and hung out with -- I'll go hang out with him, take him to the store.
19 He doesn't have a car, so I would take him grocery shopping, him
20 and his girlfriend. Yes, I saw all my family.

21 Q Okay. During that same time period, March 2017 to
22 June 2017, did you stay with multiple people?

23 A Yes, I stayed with Ms. Ford, my grandmother, and when I
24 had my son, when we would just -- just to have, you know, just
25 some guy time, I rent a room just for me and him, so he can go

1 swimming. I mean, it's Atlanta. So it gets hot there in, like, April,
2 May. You know, 90 degrees there is like double with the humidity.
3 So it gets hot.

4 Q Okay. Mr. Brown, did you kill Kwame Banks?

5 A No, I did not. No.

6 MS. TRUJILLO: No further questions, Judge.

7 THE COURT: All right. Cross, State?

8 **CROSS-EXAMINATION**

9 BY MR. GIORDANI:

10 Q You're the victim here, huh?

11 A Excuse me, sir?

12 Q You're the victim?

13 A Yes.

14 Q You're the robbery victim?

15 A Yes. I was --

16 Q Okay.

17 A I was robbed, sir.

18 Q February 21st, 2017?

19 A Yes, sir.

20 Q Okay. You seem to have a pretty good recollection of that
21 day; is that right?

22 A Yeah. I know that, yes, sir, that what happened with me,
23 yes, I do. Yes.

24 Q Okay. So let's walk back --

25 A Okay.

1 Q -- kind of glanced over it. You were planning on meeting
2 Anthony Carter that day, is your pitch?

3 A Right.

4 Q Okay. And you had planned on that through, what, text
5 message?

6 A Through text message, phone calls.

7 Q Okay. And what were you planning to meet him for?

8 A To buy some marijuana.

9 Q How much?

10 A I wanted, like, a few ounces.

11 Q Okay. Your testimony was that you went to this gas
12 station to meet him, right?

13 A Yes.

14 Q It just so happens the gas station falls in that cell tower
15 coverage area that we saw earlier this week, right?

16 A I guess so. Just so happened.

17 Q Okay. Well, you're saying it's up in that area, right?

18 A Well, I know that it was -- when I saw that -- the map, it's
19 by that highway, yes.

20 Q Okay.

21 A Yes.

22 Q Okay. So what time of day is it that you go to this
23 convenience store with the dinosaur on it?

24 A I got there early, just to make sure that everything would
25 be -- that's how I -- that's just what I do, I just make sure just to get

1 there early. So I got there I want to say around -- I had to take
2 Angelisa to work. Let me say that. So she had to be to work
3 at 7:00. So after I dropped her off, I went back to the house, sat
4 around, text Anthony, you know. He told me that he wanted to
5 meet up round about 9:30. So from that time, I want to say I got up
6 there about -- I was headed that way about 9:00, yeah.

7 Q Okay. You saw the mapping stuff that was done by the
8 detective on the big screen, right?

9 A I tried to follow it.

10 MS. TRUJILLO: Objection. Judge, can we approach?

11 THE COURT: Sure.

12 [Off-record bench conference.]

13 BY MR. GIORDANI:

14 Q So, Mr. Brown, did you -- as you sit here under oath in
15 front of the jury today, can you tell us where this alleged gas station
16 was?

17 A I can't --

18 Q Where you were robbed?

19 A I can't -- I know it was directly off the highway to the right,
20 once you get off the highway and make a right off the highway, it
21 sits down at a light.

22 Q Okay. So I just want to be clear, showing you State's 6;
23 are you talking about this highway?

24 A Yes. That's the -- yes.

25 Q Okay. So you're putting yourself in that area. We can

1 agree on that, at least. You're in that area around the time that
2 we've been discussing?

3 A Well, no. Because this map is only showing the top part.
4 It's -- if it was -- if it came down, it's, like, other exits that's way
5 before this.

6 Q Other exits from where? Summerlin?

7 A No. That's on this highway.

8 Q Okay. So you're saying you were in either this area or
9 some area just below this; is that fair?

10 A Yes. I was --

11 Q Okay.

12 A I was farther down, yes.

13 Q And you're saying that this was around what time?

14 A I would say between the times of -- like I said, I got up
15 there early, so had to be, like, after -- between -- after, like, 8:00 --

16 Q P.m.?

17 A Right. It was -- it had to be way after 8:00, because, like I
18 say, I drop Angelisa off and I went home. So it had to be, like, after
19 the time that he wanted me to meet him there.

20 Q Okay. And you're referring to he being Poke --

21 A Yes.

22 Q -- right? Anthony Carter?

23 A Anthony Carter, yes.

24 Q Who you're claiming robbed you and you don't know
25 anything about what happened to Mr. Banks?

1 A I didn't say that. I didn't see who robbed me, so I didn't
2 say he robbed me.

3 Q Okay. So the mystery men rob you, but you hear a voice
4 that could be Anthony Carter?

5 A Could be.

6 Q That's fair. And you're communicating with Anthony
7 Carter to set up this meeting for the gas station with your phone,
8 right?

9 A Yes.

10 Q The 404-808-2233 that you've been hearing about?

11 A That's the phone that I had, yes.

12 Q Yeah, that's your phone.

13 A Yes.

14 Q You're not disputing that?

15 A No.

16 Q Okay. You were communicating with the contact saved in
17 your phone as Poke --

18 A Yes.

19 Q -- right? And you're saying you went to this gas station
20 for an arranged meeting with Poke, and then you show up
21 around 8:00, February 21st, 2017; we're on the same page there?

22 A Yeah. No, no. It was after 8:00. Like I said, I had to drop
23 Angelisa off. I went to the house and I made my way up there, so it
24 had to be -- it was after 8:00.

25 Q Okay. When you get to the gas station, where do you

1 park?

2 A I park at the far end of the gas station away from the
3 pumps. Like I said, it -- I was -- I'm not -- I was there to buy
4 marijuana, so I was there, but it was, like, when you pull into the
5 gas station, you can pull around to the left. So I parked over there
6 away from the pumps.

7 Q Also away from the cameras?

8 A No, there was cameras there.

9 Q Okay. There's cameras that capture this alleged robbery
10 of you?

11 A I don't know.

12 Q Okay. And you say that you --

13 MS. TRUJILLO: Objection. Judge, can we approach?

14 THE COURT: That's sustained as to the phrasing.

15 MS. TRUJILLO: I still want to approach, Judge.

16 THE COURT: Uh-huh. Okay.

17 [Off-record bench conference.]

18 THE COURT: That objection is sustained. Defendant
19 wouldn't know.

20 BY MR. GIORDANI:

21 Q This gas station that you show up to, it's, like, 8:00 or 9:00
22 or whatever it is on a Thursday; you'd agree with me there?

23 A Thursday?

24 Q February 21st, 2017.

25 A No, I don't recall what day it was. But I --

1 Q Okay. The judge instructed the jury earlier --

2 THE COURT: Actually, I didn't. Counsel asked me to and I
3 had to verify the date.

4 MR. GIORDANI: Thank you.

5 THE COURT: And I did, in fact, verify that that date was a
6 Thursday. So we can take judicial notice of the date. And the
7 date -- I looked it up, and it now escapes me. The date was?

8 MR. GIORDANI: The date we asked you to take judicial
9 notice of earlier was June 29th was the arrest date. That was a
10 Thursday. February 21st, 2017, was a Tuesday.

11 THE COURT: All right. So --

12 MR. GIORDANI: And we'd asked for judicial notice of
13 those two facts.

14 THE COURT: February 17th, 2019?

15 MR. GIORDANI: '17.

16 THE COURT: I'm sorry.

17 MR. GIORDANI: February 21st, 2017, was a Tuesday.

18 THE COURT: All right. Ladies and gentlemen, you are
19 instructed that February 21st, 2017, was a Tuesday. You are also
20 instructed that July -- I'm sorry, I wrote July, but it's
21 June 29th, 2017, was a Thursday.

22 MR. GIORDANI: Thank you, Your Honor.

23 BY MR. GIORDANI:

24 Q And Tuesday or Thursday, my point is were there people
25 around at the gas station?

1 A I don't recall.

2 Q Okay. When these people, these three men -- there are
3 three men that allegedly robbed you, right?

4 A Yes, sir.

5 Q When they pull up, you say they hop out of a vehicle?

6 A Yes, sir.

7 Q Okay. Up until that point, you're actively communicating
8 on your phone?

9 A I'm sorry, I mean, I'm doing a lot on my phone.

10 Q Okay. Including communicating with Poke?

11 A Yes.

12 Q Okay. And your testimony earlier was they get out and
13 rob you. I want a little more detail. Where are you when they
14 arrive?

15 A I was in my vehicle.

16 Q Okay. What were you driving?

17 A Well, it's not my vehicle I was in.

18 Q Oh.

19 A Yes. Let me clarify, it is not my vehicle. I was in Angelisa
20 Ryder's vehicle.

21 Q The white SUV?

22 A Yes.

23 Q Okay. So we can agree on that point, you're driving the
24 white SUV?

25 A Yes.

1 Q Okay. You're in your vehicle, they're in what vehicle?

2 A I don't know what make and model vehicle, I just know it
3 was a dark -- actually, it was a dark four-door car with tinted
4 windows.

5 Q Okay. And they hop out and how do they rob you?

6 A Well, seeing it was chaotic. So they approached -- well,
7 the first guy approached at the passenger side, the other two guys
8 get out. I see the gun. I'm, like, in a daze. I don't know what's
9 going on with this gun. Next thing I know, they hit me with the
10 gun, they ask me for my money, they ask for the phone. I give
11 them both. I just comply.

12 First, I try to grab the gun. I realized that was a bad move,
13 because the other guys, they just started beating on me. The other
14 guy with the pistol, he's just hitting me in the back of the head. So I
15 fall to the ground. They stomping on me. I just lay down.

16 Q So you were in your vehicle when they arrive?

17 A No. I was -- when they arrived, I -- well, when the car
18 arrived, like I said, the text I received from Anthony, I'm thinking
19 that was him, so I get out the car.

20 Q Okay.

21 A I'm stepping out of my vehicle, stepping to that one that's
22 backing in.

23 Q Okay. So you receive a text from Anthony immediately
24 before you step out of your vehicle?

25 A Not immediately. Might have been a -- maybe a -- I don't

1 know how long. But it wasn't, like, the text come through, I get out
2 the car. It wasn't like that, no.

3 Q Okay. How long would you say you're waiting at this gas
4 station?

5 A Well, I pull up to the gas station, like I said, he wasn't --
6 nobody was around. So I pull out the gas station. I -- you know, I
7 just -- it just seemed real shaky. So I take some -- well, I called him,
8 he was, like, Yo, I'm on -- you know, I'll be there, you know,
9 whatnot. So I'm, like, Okay. So I pull back in. So I want to say
10 maybe about -- I really don't know the exact time. But --

11 Q Let's ask -- let me ask you this way: Less -- were you
12 waiting at the gas station less than an hour?

13 A Yes.

14 Q Were you waiting at the gas station less than 30 minutes?

15 A It might have been 30 minutes.

16 Q Around 30?

17 A Might have been.

18 Q Okay. Let's take that as a starting point. So you're -- you
19 think you're at the gas station around 8:00, right?

20 A No, I was heading in that direction.

21 Q Okay. So you get there later?

22 A I get there later. Because, like I said, I'm not familiar with
23 that area, so I was just trying to find somewhere that I knew, like I
24 said, off the highway, that gas station seemed suitable. So that's --
25 I wasn't going anywhere else but trying to get to that -- to a point to

1 where I can just feel comfortable.

2 Q Okay. Let's back up here. You said you dropped off
3 Angelisa at her work?

4 A Yes.

5 Q And you'd agree she worked at Summerlin Hospital at the
6 time?

7 A Yes.

8 Q In the telemetry room?

9 A Yes.

10 Q Okay. And you would agree with me she worked
11 at 7:00 p.m. that night?

12 A Yes.

13 Q Okay. So you would have dropped her off at or very close
14 to 7:00 p.m.?

15 A Yes.

16 Q Okay. And then you said you went home?

17 A Yes.

18 Q Was that to get your gun or what?

19 A I don't own a gun, sir.

20 Q You don't own a gun?

21 A No, sir.

22 Q Okay. So you go home to get what?

23 A I just go home, just -- that's -- coming from her hospital,
24 that was direction of me going back from the Summerlin Parkway.
25 So my incident was just to go back home, because, like I say, he

1 wanted to meet up -- he want to meet up a little later. So it was --
2 that's just what I did. I just went back home.

3 Q And when you say home, you're referring to --

4 A Well, to the house me and Angelisa share.

5 Q The Sierra Bello address?

6 A Yes.

7 Q 2520 Sierra Bello, Number 103?

8 A Yes.

9 Q Where the white SUV was?

10 A Yes.

11 Q And your Polo shoes?

12 A I have a lot of shoes, sir.

13 Q Two pairs of Polo shoes, 12D?

14 A I have -- I actually --

15 Q 13D?

16 A If that's -- yes.

17 Q They're your shoes, right?

18 A I have a lot of shoes, yes.

19 Q Those shoes that we saw in the photos are your shoes?

20 A Oh, the shoe they took out my house, yes.

21 Q Okay. So we can agree there. You go back to your home;
22 how long are you there after you drop off Angelisa at 7:00, how
23 long are you at your home?

24 A I don't really recall how long I was there.

25 Q Okay. Less than an hour?

1 A It would be hard for me to say to give you a timeframe. I
2 can't really recall.

3 Q Okay. Was it, like, five minutes?

4 A No, it was longer than five minutes.

5 Q 30 minutes?

6 A Like I said, it's hard -- it was -- that's three years ago. To
7 be honest with you, I don't know how long I was there, but I wasn't
8 there, like, five or 30 minutes. I was there for about -- I was there
9 for a while.

10 Q Okay. All I'm trying to get at -- I'm not trying to trick you.
11 Okay. I just want to know, did you just stop to pick some things up
12 and then go to meet at this gas station you're talking about?

13 A I just went back home.

14 Q Okay. And then later, you leave to go meet --

15 A Right.

16 Q Okay. So you're at home for whatever period of time, you
17 go to this gas station.

18 A Right.

19 Q And you find that gas station?

20 A Did I find it?

21 Q Yeah.

22 A I saw it off the highway, yes.

23 Q So had you been there before?

24 A No.

25 Q Okay. When you get to that gas station, does the guy

1 you're meeting, Poke, does he know where you are?

2 A I called him and told him, yes.

3 Q Okay. Not a text, you called and told him?

4 A Yes.

5 Q Okay. Did you give him the address or just say there's a
6 brontosaurus outside or something?

7 A Yeah. I described where I was. I told him it was off the
8 highway.

9 Q Okay. How long did it take him, after you told him where
10 you were, to get there?

11 A I never saw him, so I can't say that.

12 Q Okay. So you're not sure if he was one of these people
13 who allegedly robbed you?

14 A I'm not sure.

15 Q Fair enough. And then you say you're there, you park,
16 kind of tucked back, because it's a marijuana deal, right?

17 A I wasn't, say, tucked back, but I was away from the gas
18 pumps.

19 Q Okay. Away from the gas pumps?

20 A Right.

21 Q And then you're in your vehicle and these men pull up in a
22 vehicle?

23 A Yes.

24 Q Okay. What happens from there, when they pull up in the
25 vehicle?

1 A Well, like I just said, they pull up, they back in. As they're
2 backing in, I'm getting out of my vehicle. Like I said, I'm thinking, in
3 my mind, that from the text I just receive, that that was Poke.

4 Q Okay. So you get out?

5 A Right.

6 Q They get out?

7 A Right.

8 Q They approach you?

9 A Right.

10 Q What happens from there?

11 A That's when it --

12 MS. TRUJILLO: Objection. Asked and answered about
13 four times.

14 THE COURT: Overruled.

15 MR. GIORDANI: This --

16 THE COURT: Overruled.

17 BY MR. GIORDANI:

18 Q Go ahead.

19 A That's when -- that's when, like I said, they approach me,
20 guns are drawn, they start hitting on me. They ask me for -- I mean,
21 it was a full-on assault, you know, like I said. They ask me for my
22 money, they ask me for the phone. At first I put up a fight, but I
23 realized it was futile. So I just gave them what they wanted. They
24 beat me. I was beaten. I was on the ground.

25 Q They pistol-whip you?

1 A Yes, they pistol-whip me.

2 Q And did you lose consciousness or --

3 A No, I didn't lose consciousness, but I felt like I would.

4 Q Okay. So you go to the ground?

5 A Yes.

6 Q They take your what?

7 A They take my money and my phone.

8 Q The phone, 404-808-2233, right?

9 A Yes.

10 Q Okay. Was that phone passcode protected?

11 A I had passcodes on the phone. I mean, once you're inside

12 the phone, yes.

13 Q Okay. So in order to access the phone, you need to put a

14 password, or at least your thumbprint, right?

15 A Right.

16 Q Okay. And so when this robbery is allegedly happening,

17 are we in the kind of the timeframe of, like, 9:00 p.m. now?

18 A No, it was later than that.

19 Q Later than that?

20 A Yeah.

21 Q Okay. And you give them the phone and then give them

22 what -- what else?

23 A My money.

24 Q Okay. How much was that?

25 A Little bit over a thousand dollars.

1 Q Okay. And that was the thousand you were allegedly
2 going to spend with Anthony Carter?

3 A Yes, sir.

4 Q Okay. And then from there, you get beat up, you're on the
5 ground; does anyone come and help you?

6 A No. Nobody was --

7 Q Anyone scream?

8 A I didn't see anybody else around. No. No.

9 Q Okay. So no one was around?

10 A No.

11 Q Okay.

12 A I didn't even, like I said, at that time, I wasn't even looking.
13 I was trying to get to safety and back away from what was going on
14 after they pulled out.

15 Q Okay. So you get back in your vehicle?

16 A Yes.

17 Q What do you do from there?

18 A I head directly to Angelisa job.

19 Q Okay. So you go directly to Angelisa's job?

20 A Yes.

21 Q Do you stop anywhere?

22 A No.

23 Q Okay. Do you just show up at her job?

24 A Yes. I've done that before, so yes, I did. Yes.

25 Q Okay. You show up and, I guess, talk to her, tell her what

1 happened, right?

2 A Well, I pull in and I go up to the floor that I'm familiar that
3 she works at. I see another nurse. I let her know, you know,
4 because I didn't know exactly what room she worked in. So I see
5 this nurse and once I get off the elevator, I ask her about her. She
6 tells me that she can go get her. She asked me my name, I tell her
7 my name. And I wait in the little -- it's like a little -- kind of like a
8 little recess area where you get off the elevators, like, little seats
9 right there.

10 At that time, I walk out of there, because it took a while
11 before she even came out. So I walked in the direction where I'm
12 thinking that I saw the nurse go. I look in the doors, I'm -- I think I
13 remember seeing -- I do -- I think I remember seeing Angelisa. So I
14 walk back out and I sit in the waiting area.

15 Q Okay. So you see her; are you bleeding at this point?

16 A I remember bleeding in the back of my head, yes.

17 Q Okay. From the pistol whips, I guess, right?

18 A Yes.

19 Q And so you're at a hospital; do you get treated?

20 A She brings me something.

21 Q Okay. You treat your wounds however or she --

22 A Yeah, she brings -- she brought --

23 Q -- pats them down?

24 A Yeah, she brought me some aspirin and she brought me
25 something, yes.

1 Q How long did you stay there?

2 A I stayed there all night. I stayed there until she got off
3 from work.

4 Q Where did you go the next morning?

5 A We went home.

6 Q You and her?

7 A Yes.

8 Q Back to the Sierra Bello address?

9 A Yes.

10 Q When is it that you learn of this murder?

11 A When I was in Atlanta.

12 Q So the first time you ever hear anything about this murder
13 of Kwame Banks --

14 A Right.

15 Q -- is --

16 A When --

17 Q -- over a month later?

18 A Right. When she calls me and she tells me that the door
19 had just got kicked in and they came in, that's when they told her
20 about it, yes.

21 Q Okay. Would you agree with me it would be odd if
22 Angelisa is searching this murder on her phone hours after it
23 happened?

24 MS. TRUJILLO: Objection.

25 MR. GIORDANI: What's --

1 THE COURT: Well, counsel approach.

2 [Off-record bench conference.]

3 THE COURT: All right. That objection is sustained.

4 BY MR. GIORDANI:

5 Q So let me ask you a question about your phone, sir. You
6 would agree with me that the 404-808-2233 number, that phone,
7 physical phone, was in your possession on February 21st, 2017?

8 A Yes, prior to --

9 Q The entire day up until you're allegedly robbed?

10 A Yes, that's correct.

11 Q You'd agree with me that's your phone?

12 THE COURT: And for the record, what are you showing?

13 MR. GIORDANI: State's 298.

14 THE COURT: All right.

15 THE WITNESS: It's hard to say. I had a Samsung.

16 BY MR. GIORDANI:

17 Q Okay. If there's text messages from this phone with the
18 contact Poke, and it's the phone number 404-808-2233, you would
19 agree that's your phone?

20 A Your -- rephrase that one more time?

21 Q If there were text messages and phone calls and contacts
22 pulled from this device that had Poke as a contact and is associated
23 with your number, 404-808-2233, you would agree that that's your
24 phone?

25 A If I seen it pulled out of there, yes, I would.

1 Q Okay. So you would agree with me that the phone
2 number is yours, 404-808-2233?

3 A That's the number that I had. I've always had that
4 number. I've never had that number changed.

5 Q Okay. And a forensic scientist pulled from this phone and
6 tells this jury that's the phone number associated with this phone,
7 then you would agree, if those facts were true, this is your phone?

8 A If those facts were true.

9 Q Okay. That's all I need.

10 And you did indicate that it's password protected, right?

11 A I recall having a password on it, yes.

12 Q Okay. So I want to bring you to another exhibit. And
13 that's State's 302. Do you -- can you see on your screen,
14 Mr. Brown?

15 A Yes, sir.

16 Q You see this -- start with this first entry, 702-581-2072,
17 Poke, P-O-K-E --

18 A Yes, I do.

19 Q -- you see that?

20 A Yes, I do.

21 Q And it appears that's a text from this guy saying:
22 This blue pokey let me know when you want to link up?
23 You'd agree with me there?

24 A Yes. That's what it say, yes.

25 Q Yeah. I mean, that text probably doesn't stand out in your

1 mind, right?

2 A That --

3 Q It's my g-day, player, oh, yeah, I stay off Rancho near
4 Texas Station.

5 G-day is another way of saying birthday, right?

6 A Yes.

7 Q Okay. You indicated earlier that you don't know a person
8 by the name of Carnell Cave, right?

9 A No, I do not.

10 Q And I should have asked this earlier, you go to the -- you
11 said you went to this gas station that day and then you went
12 straight to Summerlin Hospital afterwards?

13 A Yes, I did.

14 Q Are you telling this jury that you never went to the scene
15 located at 5850 Sky Pointe Drive?

16 A No, I did not.

17 Q Had you been there before?

18 A No, I have not.

19 Q Did you know if -- well, did you know who Carnell Cave
20 was?

21 A No, I did not.

22 Q So you have no idea who this guy is?

23 A No.

24 Q Not that you just have never met him, but you don't know
25 who Carnell Cave is?

1 A Never heard that --

2 Q Okay.

3 A No. Not until the name started coming up for this
4 incident.

5 Q Okay. And you've never been to 5850 Sky Pointe Drive in
6 your life?

7 A No, I have not.

8 Q Does that address, other than what you've -- you know,
9 we've talked about in this trial, does that have any independent
10 significance to you?

11 A Oh, it might have been a address that -- I'm -- I drop -- like
12 I said, I've taken Anthony -- Poke, I've taken him around to several
13 different places. So that might have been one of the places that I
14 dropped him off at or maybe picked him up from.

15 Q Okay.

16 A Maybe.

17 Q And you indicated that you don't know who Carnell Cave
18 is, right?

19 A No, I do not.

20 Q Who's Nard?

21 A Say that, Nart?

22 Q N-A-R-D, who's Nard?

23 A Okay. That might be his -- that thing is Poke's brother.
24 But I think I called him something else. I might have called him by
25 his name.

1 Q Okay. You've indicated you've always had this phone.
2 You never let anyone borrow it or anything, right?

3 A I mean, I've let Angelisa and my kids use it, yes.

4 Q Okay. I want to show you a couple of things and ask you
5 about them. January 19th, 2017, you see this text here at the top?

6 A Yes, I do.

7 Q Boy, you know I'm a bloodhound for the money?

8 A Okay.

9 Q Is that you or is that Mr. Carter?

10 A I don't know. It doesn't say send or received or -- I just
11 see his name at the top and it's there.

12 Q Okay. Halfway down here, you see this text, it says:

13 That's what's up, I just need some guidance, my n-word,
14 I'm new out here, so I need you to point your finger in the right
15 direction.

16 You see that?

17 A No, not on my screen no.

18 MS. TRUJILLO: I don't see it, either, John.

19 MR. GIORDANI: Oh, I'm sorry.

20 BY MR. GIORDANI:

21 Q Right here.

22 A Okay.

23 Q You see that now?

24 A Yes.

25 Q You would agree that's you sending a text to Poke?

1 I'm new out here, I need some guidance. Point me in the
2 right direction.

3 A Yes.

4 Q Okay. And then you also send a follow-up text that says:
5 Never been to one for a real job, lol.

6 A Well, because --

7 Q See that?

8 A Yes. That's -- I've -- on my own, I've had my own
9 business for the last 10 years.

10 Q Oh, okay. So this is about legitimate business that you're
11 discussing with Mr. Poke?

12 A Yes. He know I had a detail.

13 Q Okay. Just for the record, we're on page 7 now. Do you
14 see this text from Poke, on February 8th, so quite a while before the
15 murder:

16 5850 Sky Pointe Drive.

17 A So let -- just to be clear, the text is coming in, that's with
18 the little -- how do I know that -- I'm just trying to be clear.

19 Q Oh, well, if the blue's on this side, it's Poke sending you
20 something, and if it's you on this side -- or blue on this side --

21 A Okay.

22 Q -- it's you sending Poke something.

23 A Okay. Now --

24 Q Make sense?

25 A Okay. Right.

1 Q Okay. So you'd agree with me he sent you that Sky Pointe
2 address back February 8th, 2017?

3 A If that's there, yes.

4 Q Okay. And I think it says coming or ciming? You see that?

5 A Yeah. I don't know.

6 Q And your response: Ouche.

7 A I guess.

8 Q And then Mr. Poke says:
9 Come up, fam, 2003.
10 You see that?

11 A I see that.

12 Q Okay.
13 Door number, walk upstairs.

14 A I see that.

15 Q We're the charger facing.

16 A I see that.

17 Q And you say:
18 Aight.

19 A I see that.

20 Q Okay.
21 Oh, yeah, don't forget wrestling Monday night, bruh.

22 A I see that.

23 Q Okay. And would you agree with me you then proceeded
24 up to Apartment 2003?

25 A No, I would not -- like I said, I've picked him up. He's

1 always come to the vehicle. Either he's getting out of a car from
2 other people that's dropping him off that was meeting me.

3 Q Come up fam, 2003.

4 You know that's Mr. Cave's apartment, right?

5 A No, I do not. I never met this Cave person, no.

6 Q So do you want to change your testimony now that you
7 have been to 5850 Sky Pointe Drive in your path -- in your life?

8 MS. TRUJILLO: Objection. Judge, can we approach?

9 THE COURT: Sure.

10 [Off-record bench conference.]

11 THE COURT: Overruled. You can answer the question.

12 Or state the question again.

13 BY MR. GIORDANI:

14 Q I'll ask you again, Mr. Brown, do you want to change your
15 testimony where you testified previously to this jury that you'd
16 never been to that address before?

17 A I've never been to that address before.

18 Q Okay. So you didn't show up, you didn't go up to 2003
19 fam?

20 A No, I'm not -- there's no way now I'm telling him I'm
21 coming up. No. Like I said, I've picked him up from several
22 addresses, I picked him up from several gas stations from getting
23 out of several vehicles.

24 Q Okay. Isn't it true that you and Mr. Carter had been
25 planning to rob Mr. Banks for over a week?

1 A No, sir.

2 Q Okay. Showing you page 11, same exhibit. See this text
3 at the top where Poke texted you:

4 Okay, I will hit him and play it off to see what's poppin'.

5 A I see that.

6 Q Do you see this one where he says:

7 Still no go.

8 A I see that.

9 Q See this one where he says:

10 Fam, you going to meet me at apartment between 9:30
11 and 10:00?

12 A I see that.

13 Q And turns out your phone died that day, right?

14 A I see that.

15 Q So you didn't rob him that day. 2/15 -- or 2/15/17, you see
16 his text:

17 He 5 minute away tomorrow cool?

18 A I see that.

19 Q You see where he's telling you:

20 I can keep him here.

21 A I see that.

22 Q Do you see where he's telling you:

23 How long you think?

24 A I see that.

25 Q See where he's telling you:

1 Apartment fam?

2 A Yes.

3 Q Apartment; you see that?

4 A Yes. Yes, I see that.

5 Q Come to apartment, he's still asleep.

6 A I see that.

7 Q Okay. You respond:

8 All right. Out here.

9 A I see that.

10 Q You see where he's texting you:

11 K still sleep, on my way out or OMW out?

12 A I see that.

13 Q See where he says:

14 I'm coming out, where are you at, fam?

15 A I see that.

16 Q Where he's saying:

17 This n-word still asleep.

18 A I see that.

19 Q And then you respond:

20 To your right, up against the wall by the dealership when

21 you first come in.

22 A I see that.

23 Q Is that these dealerships here?

24 A I don't know.

25 Q Okay.

1 MR. GIORDANI: And that was State's Exhibit 6 I was
2 referring to.

3 Q You would agree with me you text him:

4 That's good, he's tired.

5 Or:

6 That's good, he tire?

7 A I see that.

8 Q Onto page 12, a third of the way down the page. Well,
9 let's start at the top. You see where Poke texts you on
10 February 15, 2017, at 10:50 p.m.:

11 Okay.

12 A Yes, I see that.

13 Q And then he text you:

14 He was talking to a girl and said he might come over?

15 A I see that.

16 Q And you say:

17 On him?

18 A I see that.

19 Q He asked you:

20 Call back when you can.

21 A Yes.

22 Q Fam, you should come get me and I look with you, that
23 would help.

24 A Yes, I see that.

25 Q And, again, 5850 Sky Pointe Drive; you see that?

1 A Yes, I see that.

2 Q Okay. Apparently, nothing happened that day.

3 February 16th at 4:42 p.m., you have a new kind of a text thread
4 with Poke, right?

5 A Yes.

6 Q Okay. And on and on, you continually talk with Poke up
7 until February 21st, 2017; you agree with me there?

8 A Yes.

9 Q And at 9:37 a.m., Poke texts you:
10 Tonight the night, my brother.....

11 A Yes, I see that.

12 Q And you respond:
13 Just seen your text. Okay, cool.

14 A I see that.

15 Q Going on, you text him, 9:38:
16 How are we looking?

17 A I see that.

18 Q And that's p.m.; do you see that?

19 A Yes.

20 Q Okay. And then 9:39 p.m., you text:
21 He's supposed to be pulling up, my man that want the
22 bag's not here either.

23 Right?

24 A I see that.

25 Q He text you that?

1 A He text that -- yes, I see that.
2 Q Okay. He text you:
3 I told him be here at 9:30.
4 A I see that.
5 Q And you respond at 9:40:
6 Okay.
7 A No, you got to pull it up. Okay.
8 Q Okay? And you send a text at 9:43 that says:
9 On standby.
10 A I see that.
11 Q Poke sends you a text that says:
12 K.
13 And he says:
14 His girl he having problem with work at UMC Medical.
15 A I see that.
16 Q 10:14 p.m., you send a text that says:
17 Now.
18 A I see that.
19 Q 10:15, Poke sends a text that says:
20 Yes.
21 A Yes.
22 Q 10:17, you send a text that says:
23 You on the way, right?
24 A Yes.
25 Q Okay. So you'd agree with me that with your version of

1 events, if you're robbed on this night, you still haven't seen Poke
2 and you haven't been robbed by 10:17?

3 A That's what the phone say. And like I said before, it was
4 between the times of 10:30 and 11:00. Yes.

5 Q Okay. The answer's yes, right?

6 A Yes.

7 THE COURT: Mr. Giordani, I'm sorry to interrupt you, but
8 we have to take a quick break.

9 MR. GIORDANI: Okay.

10 THE COURT: So ladies and gentlemen, we're just going to
11 take a 10-minute break. During the brief recess, that'll put us
12 at 4:30, you are all reminded you're not to discuss the case or
13 anything relating to the case with each other or with anyone else.
14 Do not read, watch, or listen to any reports of or commentaries on
15 the case, person, or subject matter relating to the case. Don't do
16 any independent research by way of the Internet or any other
17 medium. And please do not form or express an opinion on the trial.

18 Please leave your notepads in your chairs and follow the
19 bailiff through the double doors.

20 [Jury recessed at 4:19 p.m.]

21 THE COURT: And, Mr. Brown, you can return to your seat
22 next to counsel.

23 THE WITNESS: Okay.

24 THE COURT: You can go back to sitting next to
25 Mr. Storms.

1 Quickly, on the -- we're off the record.
2 [Court recessed at 4:20 p.m., until 4:29 p.m.]
3 [Outside the presence of the jury.]
4 THE COURT: Okay. Is everyone ready?
5 MS. TRUJILLO: Yes. Are we going to wait to make our
6 record --
7 MR. GIORDANI: We will be ready, Your Honor.
8 MS. TRUJILLO: -- after everyone --
9 THE COURT: Yeah.
10 MS. TRUJILLO: Okay.
11 THE COURT: I thought the jury -- okay. Two of the jurors
12 can't stay past 5:00.
13 MS. TRUJILLO: Okay.
14 THE COURT: So we're going to go to 5:00 and then we
15 will stay late and you can make your record of everything.
16 MS. TRUJILLO: Okay.
17 THE COURT: And then I don't think -- I don't feel well. Do
18 I don't want to settle jury instructions tonight.
19 MR. STORMS: Okay.
20 MS. TRUJILLO: Okay.
21 THE COURT: Mr. Giordani, did you want to settle jury
22 instructions?
23 MR. GIORDANI: No.
24 THE COURT: Okay. So we'll do the record tonight and
25 then we'll leave, and then we'll figure out, obviously, before we

1 leave, we'll let -- actually, we need to do that now.

2 So I have a calendar in the morning. And I'm assuming
3 the State has a rebuttal case.

4 MR. GIORDANI: Yes.

5 THE COURT: How long --

6 MR. GIORDANI: Via Skype --

7 THE COURT: Okay.

8 MR. GIORDANI: -- for one. And then --

9 THE COURT: And then are you calling --

10 MR. GIORDANI: Well, it depends on what happens.

11 THE COURT: -- Mr. Carter or anybody else?

12 MR. GIORDANI: Depends on what happens from here on
13 out. I can't really say.

14 THE COURT: Okay. Well, I'm going to tell the jurors to
15 come back at 1:00. Unless you think the whole day is going to be
16 filled up, the whole afternoon is going to be filled up with
17 witnesses. Because if we're closing tomorrow, lawyers, we all have
18 to be here at 12:30 to settle jury instructions.

19 MR. GIORDANI: Okay.

20 THE COURT: That's -- because I have calendar. So that's
21 what I'm saying. Otherwise, they'll come back at 12:30, but if I have
22 them come back at 1:00, then we can settle jury instructions. Do we
23 still feel like we're going to close tomorrow?

24 MR. GIORDANI: I can't really say now.

25 THE COURT: Okay. Well, I'll have them come back at 1:00

1 then.

2 MR. GIORDANI: Yeah.

3 THE COURT: Because I don't want them to come back
4 at 12:30 and sit in the hallway because we have nothing to do.

5 MR. GIORDANI: No, I think we can all agree we can settle
6 instructions at 12:30, for sure.

7 THE COURT: Okay.

8 MR. DICKERSON: Yeah, definitely.

9 THE COURT: All right. Let's do that.

10 MS. TRUJILLO: And I'm fine with if we want to agree to
11 close -- I don't know if you want to do that already, or you know, or
12 you're going to let us know?

13 MR. GIORDANI: No, I mean, we're going to be prepared --

14 THE COURT: You have to --

15 MR. GIORDANI: -- to close tomorrow for sure -- right? For
16 sure.

17 THE COURT: Well, depending on who you have. I mean,
18 if you have Anthony Carter and the Skype -- if it's just the Skype
19 guy --

20 MR. GIORDANI: Yeah, it might be 15 minutes --

21 THE COURT: -- then -- right, that's why we --

22 MR. GIORDANI: -- and we can close.

23 THE COURT: -- have to settle jury instructions. So -- okay.
24 Bring them in. Thanks.

25 [Jury reconvened at 4:32 p.m.]

1 THE COURT: All right. Court is now back in session.

2 And, Mr. Brown, just come on back up here to the witness
3 stand and have a seat. And you are still under oath; do you
4 understand that?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: All right. Mr. Giordani, you may proceed
7 with your cross-examination or continue, rather.

8 MR. GIORDANI: Thank you, Your Honor.

9 **CROSS-EXAMINATION (CONT.)**

10 BY MR. GIORDANI:

11 Q I'm showing page 16 of -- I'm sorry, 15 of Exhibit 302.
12 Let's pick up where we left off, Mr. Brown. On the top here, you see
13 where it says:

14 But you on the way, right?

15 A Yes.

16 Q That's a text from you, correct?

17 A Yes.

18 Q To Poke? So you'd agree with me this alleged robbery of
19 you had not occurred by that point?

20 A No.

21 Q You wouldn't agree or you would?

22 A I hadn't been robbed yet, no.

23 Q Okay. 10:17 p.m., February 21st, Poke texts you:

24 Yes, yes.

25 A Yes.

1 Q And then he says:
2 I'm here.
3 A Yes.
4 Q And then he says:
5 I've been here, fam, you on the way?
6 A Yes.
7 Q Okay. And then you respond:
8 Yeah, I saw go in okay?
9 A Yes.
10 Q And to this point, you still haven't been robbed, correct?
11 A No.
12 Q Correct or not?
13 A Yes. Well, I'm saying --
14 Q You have not been robbed yet --
15 A -- nothing -- right.
16 Q -- yes or no?
17 A Yes.
18 Q I have not been robbed yet?
19 A I have not been robbed yet, yes.
20 Q Okay. 10:18 p.m., Poke texts you:
21 If you need Nard, he on standby.
22 A Yes.
23 Q At the hou.
24 H-O-U.
25 A Yes.

1 Q Right?

2 A Yes. Yes.

3 Q And then you respond:

4 I'm on it.

5 A You got to bring it up.

6 Q 10:21 p.m.?

7 A Yes.

8 Q You would agree with me at that point you'd not been

9 robbed yet?

10 A At that time, I don't -- like I said, that time, no.

11 Q Okay. 10:22 p.m., Poke texts you:

12 He have money in middle console to sometime, mostly on

13 him and in trunk in bags, if he riding heavy, he keep small

14 pocket knife on right side.

15 A Yes, I see it.

16 Q Okay. And then he says:

17 Okay, fam?

18 A Yes.

19 Q And you respond at 10:22:

20 Okay.

21 A Yes.

22 Q So you'd agree with me you hadn't been robbed by that

23 point in time?

24 A No.

25 Q Okay. And then he texts you at 10:40 that says:

1 Pulling in.
2 Is that right?
3 A Yes, I see it.
4 Q Okay. Up until that point, you'd not been robbed?
5 A No.
6 Q Okay. Is that the text, Pulling in, at 10:40, that you referred
7 to earlier when you said you're waiting at the gas station, I got a
8 text to know he was coming, and then a vehicle pulled up?
9 A Yes.
10 Q Okay. So that's the text?
11 A Yes.
12 Q Okay. Have your indulgence for a moment.
13 [Pause in proceedings.]
14 Q So there's no confusion, State's 274, who's that?
15 A That looks like Poke, yes.
16 Q State's 238?
17 A I don't know who that is.
18 Q Okay. State's 43; your testimony here today under oath,
19 Mr. Brown --
20 A Yes.
21 Q -- is that you didn't do that to Kwame Banks?
22 A Yes. No, I didn't do that. No.
23 Q Your testimony here is that you were just robbed at the
24 gas station, and from there, you left to Summerlin Hospital?
25 A Yes.

1 Q Your testimony here today under oath is that you never
2 went to that location?

3 A Yes.

4 Q And we're talking about never went there in your life?

5 A Like I said, I dropped him off, I picked him up from several
6 places. I don't remember that place, no.

7 Q Okay.

8 A This other texts that he takes me from other places that he
9 wanted me to pick him up from.

10 Q And those would be contained in your phone, then, right?

11 A Yes.

12 Q Want to go back through this?

13 A Yes.

14 Q Okay.

15 A Okay.

16 Q So --

17 A I know it was a place off of -- near my house.

18 Q Your address, 5420 Sierra Bello?

19 A 5420?

20 Q The Sierra Bello address; is that right?

21 A Yes.

22 Q Okay. I'm showing you State's 2, page 3; you see this
23 Sprint record --

24 A Yes.

25 Q -- Mr. Brown?

1 A Yes.

2 Q And you see your name as the billing address -- I'm sorry,
3 the subscriber associated with 404-808-2233?

4 A Yes.

5 Q And you didn't have any other phones at that time, to
6 throw away or burner or whatever they're called?

7 A No.

8 MR. GIORDANI: All right. I'll pass the witness.

9 THE COURT: All right. Redirect.

10 MS. TRUJILLO: Thank you. Just briefly.

11 **REDIRECT EXAMINATION**

12 BY MS. TRUJILLO:

13 Q That billing address he just showed you, that was a
14 Georgia address, right?

15 A That's my grandmother's address.

16 Q Okay. But it was a Georgia address?

17 A Yes.

18 Q Okay. And I know we talked about it a few times, but the
19 people who robbed you, were they wearing gloves?

20 A Yes.

21 MS. TRUJILLO: No further questions.

22 THE COURT: Anything else based on that?

23 MR. GIORDANI: No, thank you.

24 THE COURT: Any juror questions? All right.

25 Counsel approach.

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[Off-record bench conference.]

THE COURT: All right. Mr. Brown --

THE WITNESS: Yes, ma'am.

THE COURT: -- we have a couple of juror questions here.

A juror asks: You said you've always had the same phone
number --

THE WITNESS: Yes.

THE COURT: -- why did you change it?

THE WITNESS: I never changed my phone number.

THE COURT: All right. Another juror asks: If you know, in
the texts, who is being referred as he when talking about the man
with the knife and pants?

THE WITNESS: I don't know.

THE COURT: Okay. Ms. Trujillo, do you have any
follow-up to those last two juror questions?

MS. TRUJILLO: No, Judge.

THE COURT: Mr. Giordani, did you have any follow-up
just to those last two juror questions?

MR. GIORDANI: Yes, thank you.

FURTHER EXAMINATION

BY MR. GIORDANI:

Q Page 15 of Exhibit 302; you see this text from Poke
at 10:22 p.m.?

A Yes, sir.

Q He have money in middle console to sometime mostly on

1 him, and in trunk in bags, if he riding heavy, he keep small
2 pocket knife on right side.

3 You see that, right?

4 A Yes, sir.

5 Q Yeah. And your testimony, based upon that juror
6 question, is you don't know?

7 A No. Can I --

8 Q Go for it.

9 A There was phone calls, there -- we just wasn't texting. I
10 text him back after that phone -- after that text, because I didn't
11 have a clue to what he meant to that text.

12 Q Okay. So when you respond, Okay, why are you doing
13 that?

14 A Okay, prior to that, he has text me before I've called him
15 back, texted that just out of the blue, I'm like, you know, what's
16 going on with the text? He's, like, he has -- he had other problems.
17 He say he never had my phone number saved in his phone. So he
18 told me that, you know, that he was texting other people, he might
19 not have been texting -- the text was not directly for me. So I would
20 call back just to make sure, because I'm -- like I said, I know the
21 nature of his business. So a lot of times, it would just be like a, Hey,
22 okay, whatever.

23 Q Okay. So let me get this real clear: Mr. Carter texts you
24 what appears to be a conspiracy to commit robbery. You -- he then
25 says: Okay, fam. And you respond: Okay. Within 30 seconds. You

1 see the times?

2 A Yes.

3 Q So you're saying a phone call happened in between there
4 to explain away this statement?

5 A It's been, like I say, there'd been phone calls prior to that
6 to explain what was going on to that. So yes, it was a phone call.
7 Yes, I have made phone calls to address why he's text me random
8 texts out of the blue.

9 Q Okay. So there should be a phone call between you two
10 between, I guess, 10:13 p.m. and this last text which occurred
11 at 10:40?

12 A Yes, should.

13 MR. GIORDANI: Pass the witness.

14 THE COURT: Anything else, Ms. Trujillo?

15 MS. TRUJILLO: No, Judge.

16 THE COURT: Any other questions? No additional
17 questions.

18 Mr. Brown, you may return to your seat at counsel table
19 next to Mr. Storms.

20 Ladies and gentlemen, we're going to go ahead and take
21 our evening recess at this point. The Court has a calendar on
22 various unrelated matters in the morning. So we will not
23 reconvene until 1:00. 1:00. Once again, because of the last start,
24 we won't be taking a lunch break, so make sure you eat lunch or
25 bring a snack or do whatever you need to do.

1 Before I excuse you for the evening recess, I must
2 admonish you that you're not to discuss the case or anything
3 relating to the case with each other or with anyone else. You're not
4 to read, watch, listen to any reports of or commentaries on the
5 case, person, or subject matter relating to the case. Do not do any
6 independent research by way of the Internet or any other medium.
7 Do not visit the locations at issue. And please do not form or
8 express an opinion on the case.

9 Please leave your notepads in your chairs and follow the
10 bailiff through the double doors. 1:00 tomorrow.

11 [Jury recessed at 4:47 p.m.]

12 THE COURT: Okay. We're going to make a record of
13 various objections at this time. And then for the benefit of the
14 corrections officers, we will resume at 12:30.

15 Attorneys, do you want Mr. Brown here for jury
16 instructions?

17 MS. TRUJILLO: Yes, please.

18 THE COURT: All right. So Mr. Brown needs to be here
19 at 12:30 tomorrow. And then he can -- we're doing a little bit more,
20 so don't take him yet, but 12:30 for Mr. Brown. And, obviously, us.

21 All right. Ms. Trujillo, go ahead.

22 MS. TRUJILLO: All right. I don't know if I can remember
23 my notes, but during the testimony of Loshalonda Ford on
24 cross-examination, I objected to I believe it was the information
25 about a gun and, basically, accusing her of a crime and whether or

1 not she dumped the .40-caliber gun with him, as beyond the scope
2 of direct. The Court sustained it. I don't know if you want to do
3 additional commentary on that?

4 MR. GIORDANI: Yeah. Are we doing --

5 THE COURT: Let's just go one by one.

6 MR. GIORDANI: Okay.

7 THE COURT: Because that's easier on me.

8 MR. GIORDANI: As to that statement, this is the first time
9 the State has ever heard that Mr. Brown drove with this woman,
10 Loshalonda Ford, to Georgia. It's perfectly within my right to
11 cross-examine on whether he had the fruits of the robbery and/or
12 the firearm used in the homicide. And that's why I asked the
13 question.

14 THE COURT: I said it -- I think I said the State can ask
15 about if she saw the fruits of the crime or a gun, and I didn't think it
16 was implicating her in anything if he had a gun or -- and she said he
17 didn't, so there's no prejudice there, because she said she didn't
18 see marijuana, she didn't see a gun. All right.

19 MS. TRUJILLO: The second objection during Ms. Ford's
20 testimony as well was also beyond the scope of the juror question.
21 Which the juror question was, How did you get to Georgia? Was it
22 a rental or Mr. Brown's car? The response was it was a rental car.
23 The follow-up question was, do you know Angelisa Ryder? And
24 then I objected as beyond the scope of the juror's question.

25 And then at the bench we kind of went back and forth

1 about whether it was safe to get into the fact that it was a white
2 Jeep SUV and that's -- that was memory.

3 THE COURT: I sustained the objection. I let the State ask
4 the follow-up as to who rented the car. And I thought the talk about
5 the white SUV that wasn't the rental car was beyond the scope. So
6 that pretty much what happened?

7 MR. GIORDANI: Yes.

8 THE COURT: Okay. Next?

9 MS. TRUJILLO: During Mr. Brown's testimony, I objected
10 to the State's burden shifting, my perception of it, after he was
11 asking questions about whether or not there were cameras at the
12 location of the convenience store where Mr. Brown says he was
13 robbed. To me that's burden shifting, because then that's putting
14 on we should have gotten the cameras. And, obviously, we have
15 no burden.

16 THE COURT: I don't -- as I --

17 MS. TRUJILLO: So --

18 THE COURT: I'm sorry. But as I recall, you didn't object to
19 that. You objected when he asked the next question, which was:
20 So there would be film of the robbery or something like that. And
21 you objected that question to burden shifting, which I sustained
22 your objection for different reasons --

23 MS. TRUJILLO: For different reasons.

24 THE COURT: -- because I felt like how on Earth is
25 Mr. Brown going to know if the cameras were working, what angles

1 they were facing or anything like that.

2 MS. TRUJILLO: Okay.

3 THE COURT: So I sustained the objection for different
4 reasons.

5 MS. TRUJILLO: Right. And the commentary on, so there
6 would be footage, also suggests if there were, we should have
7 gotten it. Which is burden shifting in my opinion. And object the
8 next --

9 MR. GIORDANI: Can I respond?

10 THE COURT: Sure.

11 MS. TRUJILLO: She already --

12 MR. GIORDANI: It's not burden shifting. I didn't imply
13 that. I think Ms. Trujillo is taking leave to get to that next argument,
14 which I would never make, in that they had to do something or
15 collect something. I'm perfectly permitted to ask him during the
16 course of this alleged robbery, you were at a public place, and I
17 think everyone can infer that gas stations have video cameras, and
18 that's the line I was going with.

19 THE COURT: Well, like I said --

20 MR. GIORDANI: I think --

21 THE COURT: -- I sustained it for other reasons, because
22 Mr. Brown would have no way of knowing -- half the time they
23 don't even work.

24 MR. GIORDANI: Yeah, fair enough.

25 THE COURT: And you don't know what angle they're

1 facing and everything. I myself, I digress, but I've started, was
2 recently the victim of a hit-and-run. And my husband and I went to
3 try to collect the videotape. We talked to the owner of the
4 convenience store, who was very helpful. But when we looked at
5 the videotape, it's all, you know, like, really bad quality and stuff like
6 that. So just because there's videotape doesn't mean that it's
7 capturing anything or anybody could see it or anything like that.

8 So that is why, again, I sustained the objection, because
9 unless he went and looked at the videotape or talked to the owner,
10 how on Earth is Mr. Brown going to know anything about it?

11 MR. GIORDANI: Yeah.

12 THE COURT: So that was my basis. I -- you know, I don't
13 know that it was burden shifting, but like I said, it would -- it calls
14 for speculation because he doesn't know what a particular
15 convenience store would or wouldn't have.

16 MR. GIORDANI: That's fair. Let me just add to the record.

17 The intent of the question was not to elicit what
18 Ms. Trujillo thinks it was to elicit or said she thinks I was eliciting.
19 The intent of the question was, were you in a public place where
20 there could be video? It may be phrased in a way that wasn't
21 perfect, but that certainly wasn't the intent, and the State's well
22 aware that we can't shift the burden on them to collect evidence
23 years later. That wouldn't make any sense.

24 THE COURT: So you're saying your point was to suggest
25 that somebody wouldn't have robbed him in the parking lot --

1 MR. GIORDANI: A public --

2 THE COURT: -- of a convenience store where there's all
3 this video; is that -- was that point of that?

4 MR. GIORDANI: Yes. In addition, on a Tuesday night
5 around 8:00 p.m., I mean --

6 THE COURT: It looked busy.

7 MR. GIORDANI: I've made my record. Yeah.

8 THE COURT: Okay.

9 MS. TRUJILLO: Because people never commit robberies
10 on video. I mean, come on. That's a little outrageous. But I'll let it
11 go.

12 While you are still up there, I also objected to his
13 commentary on the mystery men as disparaging Mr. Brown's
14 testimony, which I think is inappropriate. And the Court just made
15 a suggestion that he change his wording. Is that fair?

16 MR. GIORDANI: Yes.

17 MS. TRUJILLO: Okay.

18 MR. GIORDANI: And I did.

19 THE COURT: Yeah, and he --

20 MS. TRUJILLO: There -- and he did. Yes.

21 And my next objection was asked and answered. We
22 were on, I believe, the third time of him asking Mr. Brown and what
23 happened at the robbery again? As I said, asked and answered.
24 The Court overruled the objection.

25 THE COURT: I over -- yeah, I mean, I think he's allowed to

1 try to elicit details. I felt like that's what he was doing, trying to, you
2 know, get more details on the case or, you know, on the alleged
3 robbery. And so he can -- you know, he can do that, in my opinion.

4 MS. TRUJILLO: Okay. And then the fourth objection was
5 to the assuming facts not in evidence when he asked, and I don't
6 remember how it was phrased, but it was phrase as something like,
7 Would it be weird or would it surprise you that Angelisa searched
8 under her phone about the murder? And I objected. That was
9 assuming facts not in evidence. There's been no testimony.
10 Angelisa has not testified nor any other person has testified that
11 there was a search that occurred.

12 We had a colloquy at the bench. Obviously, unless -- if
13 the State doesn't produce that evidence in rebuttal, the in will be
14 moving for a mistrial plea, because I think that now the jury is going
15 to infer that my -- Mr. Brown was aware of that and somehow
16 imputed to him, which I think is inappropriate.

17 THE COURT: Well, they -- okay. Apparently, the State has
18 the records. The Court said they'd better be prepared to produce
19 them. So since they have the records, they had a good-faith basis
20 to ask the question. Not like they're -- and Mr. Giordani, based on
21 our conversation at the bench, withdrew the question or said he
22 didn't -- it was fine if the Court sustained the objection. And --

23 MR. GIORDANI: Right. And let me -- if I may? Just add --
24 I think the Court's right. The standard is whether the State has a
25 good-faith basis to ask the question. Same standard applies to the

1 defense.

2 In this particular case, I think we can all agree that there is
3 a DFL dump of Angelisa's phone in which there are searches for
4 this event. The reason I said go ahead and sustain the objection,
5 and I'll move on, is because at the time, we didn't know if this
6 out-of-state witness who did the DFL examination was available or
7 not. So that's why I think --

8 THE COURT: Right.

9 MR. GIORDANI: -- to cure it, that was the remedy the
10 Court saw fit to do, and at that point, you did sustain it and he
11 didn't even answer the question.

12 THE COURT: Right.

13 MR. GIORDANI: So even if -- I'm not saying we're not
14 calling him, because I think that we have him available, but even if
15 we did not call him, the State's position would be the question itself
16 is not grounds for a mistrial, especially considering the fact that the
17 State [sic] sustained it and he never answered it.

18 With that said, it's my understanding that we're going to
19 be able to set him up for Skype tomorrow afternoon. I just haven't
20 spoken to him personally.

21 THE COURT: Okay.

22 MS. TRUJILLO: And, Judge, for the record, obviously, I
23 disagree. I'm going to start with I don't think it was a cure that you
24 sustained the objection and that he moved on, because the
25 inference is already out there, the question is out there. And the

1 question was clearly prejudicial to Mr. Brown.

2 Secondly, the good-faith basis is that you have a good
3 faith that you are going to introduce this evidence, not just that it
4 exists somewhere in the world. And therein lies the problem. So --

5 THE COURT: Well, I think the State is going to be
6 introducing the evidence. They're making, what, earnest efforts to
7 get the witness who's out of state to appear by Skype. They're -- I
8 mean, they're not just making stuff up. They've got the records that
9 show the texting or the communicating back and forth. I'll say the
10 same thing to the defense that I said to the State, you know, we
11 have to presume that, you know, that the jury will disregard the
12 questions if we say an objection was sustained.

13 So right now you have a question and an objection that
14 was sustained. You don't have Mr. Brown answering the question.
15 So I think it's okay, even if they don't produce the evidence.

16 MR. GIORDANI: And Craig and Ivy I just add, I hate to
17 draw it out, but Ms. Trujillo just said the standard is whether the
18 State has a good-faith basis that the evidence is going to be
19 admitted in order to ask question. I completely disagree. It's the
20 same thing with their cross-examination questions of all our
21 people. The detective, Didn't you talk to this person and they said
22 this? The thing I objected to hearsay.

23 They didn't have a good-faith basis that was going to later
24 be admitted. They have a good-faith basis that the evidence
25 existed. That's why they ask the question. That's the same thing

1 that applies here. I ask the question, because I had a good-faith
2 basis, because I've seen Angelisa's phone. So I understand the
3 Court's ruling --

4 THE COURT: Well, it's a little different, because she's
5 asking the detectives questions based on their personal knowledge,
6 like, didn't you talk to Sylvia and --

7 MR. GIORDANI: No, it was --

8 THE COURT: -- you talked to Bob. As opposed to the
9 question you asked was, Would you be surprised? The inference is
10 not necessarily he knew that she was searching, maybe he directed
11 her to do it, or the inference is, well, he said, Hey, my God, I've just
12 been involved in this murder. I hope the police aren't looking for
13 me. And she starts doing this searching, whether he said -- see if
14 they're looking -- you know, that's -- the inference is that he told
15 her. But not that he would be able to ask -- answer the question,
16 necessarily, the way it was phrased. Because you said would it
17 surprise you?

18 MR. GIORDANI: Right. And I'm --

19 THE COURT: As opposed, Did you tell -- did you ask, you
20 know, Annalee -- whatever her name is, to do a search.

21 MR. GIORDANI: Right.

22 THE COURT: In any event, like I said, Ms. Trujillo believed
23 that they had personal knowledge of this, because it's probably in
24 the report or in a statement or something.

25 Are there any other objections we need to put on the

1 record?

2 MS. TRUJILLO: No, Judge, that was it.

3 THE COURT: For the State, anything?

4 MR. GIORDANI: No.

5 THE COURT: Okay.

6 MS. TRUJILLO: Oh, wait, I apologize. One more
7 objection. Sorry.

8 My fifth objection was to -- when we were going through
9 the text messages and Mr. Giordani kept saying, And you went up
10 to 2003, and I -- we approached. And I said, also assuming facts not
11 in evidence. He had already testified he had never been to that
12 apartment and the fact that the text messages give that indication
13 of the address doesn't mean that he actually went up there. So.

14 THE COURT: I felt like he has the opportunity to say no, I
15 didn't know what he was talking about, or no, I haven't. I mean, it's
16 cross. So, I mean, he said I -- no, I haven't been there, I don't know.
17 I didn't know what it was or it was his grandmother's place or
18 something. I don't remember.

19 All right.

20 MS. TRUJILLO: And, Judge, wait -- I apologize.

21 THE COURT: Oh.

22 MS. TRUJILLO: Well, there was one more objection from
23 the beginning that I forgot to write down, and it was in reference to
24 the State referring to an exhibit and asking Mr. Brown to say, you
25 know, you -- we heard testimony that in this area, I don't remember

1 exactly what it was, but it was referencing the radius of the cell
2 tower pinging.

3 THE COURT: Right.

4 MS. TRUJILLO: And I said that was also commenting -- or
5 the inference was that Mr. Brown was tailoring his testimony,
6 because he has been sitting here and previously listening to the
7 evidence. So I objected to that.

8 MR. GIORDANI: And I --

9 THE COURT: At the bench, I told the State. They said that
10 wasn't their intent. I said, Well, that's an inference that could be
11 drawn, and I directed the State to rephrase the question, that, like,
12 you acknowledge you were in this area where it was a cell tower,
13 you acknowledge A, B, and C, which I think they can ask him.

14 Because, I mean, on cross, they can get him to admit, you
15 know, say there's 12 facts. If they can get him to admit 10 of them,
16 that's perfectly acceptable. So I told Mr. Giordani to rephrase and
17 he did, and --

18 MR. GIORDANI: And just --

19 THE COURT: -- anything you want to add?

20 MR. GIORDANI: Very briefly. That particular exhibit,
21 which did the mapping, you'll recall, took, you know, 20 minutes or
22 so to load on the computer. And it's all digitized, it's not, like, a
23 screenshot. So I couldn't just show him and say, Are you
24 acknowledging you were in this area? That's what I was saying,
25 Remember the mapping? Because I logistically could not show him

1 that exhibit.

2 THE COURT: Right. And as I said, I mean, he can get him
3 to acknowledge what he'll acknowledge to confirm other facts that
4 they've established or tried to establish other evidence. So I think
5 that was okay. And, like I said, I asked him to rephrase so that
6 inference wouldn't be drawn, like, okay, you're saying this now,
7 because you know what the evidence is, is obviously what they
8 can't do.

9 Anything else?

10 MR. GIORDANI: One real quick thing. I asked your
11 recorder if it would be permissible to burn a disc of the testimony of
12 Mr. Brown, so we can review it for closings. She indicated the
13 Court would -- the judge would have to allow it.

14 THE COURT RECORDER: Well, I said you don't release
15 JAVS, that he would have to talk to you about that.

16 THE COURT: I don't really release the JAVS.

17 MR. GIORDANI: Well, the problem is, is we don't have a
18 transcript, the dailies. And in order to accurately --

19 THE COURT: I saw Mr. Dickerson over there taking
20 excellent notes.

21 MR. GIORDANI: Yeah, but he was also searching on the
22 Internet and trying to help me out.

23 MR. DICKERSON: There's a lot going on over here.

24 MR. GIORDANI: Can we just burn a disc so we can review
25 it?

1 THE COURT: Are you requesting a disc, as well?

2 MS. TRUJILLO: No.

3 THE COURT: Oh, you know, years ago, Mr. Giordani, they
4 didn't have this technology. They had women -- and they were
5 predominantly women, but not exclusively, who sat at little chairs
6 with little things and they typed up transcripts. And you had to rely
7 on your own memory of what was said.

8 MR. GIORDANI: I think it's more accurate to rely on a
9 video recording, and that's what I'd like.

10 THE COURT: I'm just saying, it's like a new technology.
11 The reason I don't like to -- is, I mean, I know you didn't do it, but
12 then it -- some people make a separate record of the JAVS and stuff
13 like that that I don't really like.

14 MR. GIORDANI: A separate --

15 THE COURT: Yeah, we've had problems with civil
16 lawyers.

17 MR. GIORDANI: Oh.

18 THE COURT: So it's an across-the-board policy. But that's
19 how it started. Some people have wondered why I started the
20 policy of the JAVS, and we've had lawyers who've made their
21 own -- not them themselves, but rather -- that's where the policy
22 started.

23 MR. GIORDANI: Okay.

24 THE COURT: And it's kind of a blanket policy. And that's
25 the reason, people have speculated as to what the reason is for not

1 releasing the JAVS, that's where it all started, because we had seen
2 people preparing their own transcripts and not going through the
3 transcripts of the court recorder, like they're supposed to.

4 MR. GIORDANI: Oh, no.

5 THE COURT: Because -- no, I know you wouldn't do it, but
6 it's, like, an across-the-board policy.

7 MR. GIORDANI: Can you just order us --

8 THE COURT: You can release the transcript -- I mean,
9 we'll release the JAVS to both sides, but then you have to give it
10 back to us and not copy it or anything like that. And I know you
11 wouldn't do your own transcript, but I feel like it's unfair to single
12 out certain lawyers and say, Oh, you can't have the transcript, but --
13 or the JAVS, but this other lawyer can have it.

14 MR. GIORDANI: Yeah.

15 THE COURT: That's kind of the genesis of the policy and a
16 couple civil -- because civil lawyers have to pay a lot more for these
17 transcripts, and that's where it all started. We found a couple of
18 things where lawyers were citing to the record that had never been
19 actually made by way of an official transcript. So then I said forget
20 it, no one's getting the JAVS of anything unless it goes to, like,
21 UNLV, Boyd Law School, or something like that, or some kind of,
22 you know, Clark County Bar CLE, that's different. But I'll make an
23 exception, you can have the -- but, again --

24 MR. GIORDANI: Just for closing and then --

25 THE COURT: -- give it back --

1 MR. GIORDANI: -- give it back after.

2 THE COURT: -- and, obviously, both sides.

3 MR. GIORDANI: We can use it for closing, right?

4 THE COURT: Yeah, but you can't use, like, a clip of the
5 defendant testifying, obviously.

6 MR. GIORDANI: Oh. Why? I've done that in multiple
7 cases.

8 MS. TRUJILLO: No.

9 THE COURT: I don't care. I just think that's inappropriate
10 to use a clip from JAVS. You can, you know, if you listen to it, just
11 like you would in your PowerPoint. You can type out in the
12 PowerPoint, I didn't see Kwame or whatever the answer was, that
13 you're basing just on what you hear. But, yeah, we don't allow that
14 for people to start using clips of witnesses testifying and stuff like
15 that.

16 MR. GIORDANI: Okay.

17 THE COURT: I mean, you can use a picture in your
18 PowerPoint or whatever, but, yeah, no, we don't do that at all.
19 Because then I have to give everybody the JAVS of every single
20 person --

21 MR. GIORDANI: Okay.

22 THE COURT: -- and that's not what we do. And again, it's
23 not the official record. The transcript's the official record. So you
24 can have it, give it back when -- after your closings. And, like I said,
25 I just -- I have a broad policy, because I don't like to say, Well, this

1 lawyer's a good, fair lawyer and he wouldn't do something wrong.
2 But this other lawyer would do -- you know, you can't --

3 MR. GIORDANI: Yeah. Understood.

4 THE COURT: -- start picking and choosing among lawyers
5 who's trustworthy and who's not.

6 MR. GIORDANI: Thank you.

7 THE COURT: All right. So burn a disc for both of them.

8 MS. TRUJILLO: And, Judge, for tomorrow, 12:30 for jury
9 instructions and then, depending on Stat's witnesses, anticipate
10 closing in the afternoon?

11 THE COURT: Right. Depending on how, you know, late it
12 goes, probably closing in the afternoon.

13 MR. GIORDANI: Understood.

14 THE COURT: I mean, are you just thinking of the one
15 witness or maybe more?

16 MR. GIORDANI: I'm not -- I haven't talked to him
17 personally. We were trying to play telephone with our out-of-state
18 desk, but I don't know. I mean, we might have to call the detective,
19 we've just go to review this and, I mean, lots have happened over
20 the last two hours.

21 THE COURT: Okay. Well, I'm only interested for
22 scheduling, because, say we go to testimony till 3:30, we're not
23 going to be closing --

24 MR. GIORDANI: Oh, I don't think --

25 THE COURT: -- tomorrow, tomorrow afternoon,

1 because -- how long -- I mean, you're closing, I'm guessing, is,
2 what, an hour?

3 MR. DICKERSON: That probably, tops.

4 THE COURT: Huh?

5 MR. DICKERSON: Yeah, it would probably be around --

6 THE COURT: Your 30 -- by the way, you're 30 minutes
7 with the DNA expert was actually, like, an hour.

8 MS. TRUJILLO: I told him that already.

9 MR. GIORDANI: I know. Because I had the time.

10 THE COURT: Well, no --

11 MS. TRUJILLO: So their closings are going to be three
12 and a half hours.

13 THE COURT: -- and I said to them, thank God we didn't
14 stay, because it would have been 6:30 and would have had to leave
15 anyway, or it would have been --

16 MR. GIORDANI: If we had stayed, I would hammered
17 through that to get it done.

18 THE COURT: Okay. And Ms. Trujillo said an hour, but I
19 think hers was only 40 minutes.

20 MS. TRUJILLO: Because he ended up asking a lot, and I
21 wasn't going to repeat everything.

22 THE COURT: Right.

23 MS. TRUJILLO: So.

24 THE COURT: So I'm just saying we couldn't have finished
25 it the night before, anyway, because we would have been here

1 till 7:30 or 8:00.

2 MR. GIORDANI: Fair enough.

3 MR. DICKERSON: For sure.

4 THE COURT: In any event --

5 MS. TRUJILLO: But, Judge, if they end up calling Anthony
6 Carter, my cross is going to be pretty lengthy.

7 THE COURT: It's whatever it is.

8 MS. TRUJILLO: So --

9 THE COURT: I just am saying if we take testimony till,
10 like, 3:30, I'll probably read them the instructions, send them
11 home --

12 MS. TRUJILLO: And that's it.

13 THE COURT: -- for the evening, and then we'll close first
14 thing Friday. Because I -- there's no point in trying to close --

15 MR. GIORDANI: Agreed.

16 MR. STORMS: Yeah.

17 THE COURT: Right?

18 MR. DICKERSON: Yeah.

19 THE COURT: But I'll do everything we can before we start
20 the closings.

21 MR. GIORDANI: There's a chance our witnesses --

22 THE COURT: If it's 2:00 or whatever, then I think we can
23 close. But if it's, you know --

24 MR. GIORDANI: There's a chance our witnesses will be 10
25 minutes, there's a chance it'll be two to three hours. So we'll know

1 in the morning.

2 MS. TRUJILLO: Really?

3 MR. GIORDANI: Yeah.

4 MS. TRUJILLO: In the morning?

5 [Court recessed at 5:10 p.m.]

6 ///

7
8
9
10
11
12
13
14
15 ATTEST: I do hereby certify that I have truly and correctly
16 transcribed the audio/video proceedings in the above-entitled case
to the best of my ability.

17 
18 Shawna Ortega, CET*562

DEC 19 2019

BY A. Trujillo
ATHENA TRUJILLO, DEPUTY

JURL

DISTRICT COURT

CLARK COUNTY, NEVADA

State of Nevada

Plaintiff(s),

CASE NO. C326247

-vs-

Larry Brown

DEPT. NO. 21

Defendant(s).

AMENDED JURY LIST

- | | |
|--------------------------------|----------------------|
| 1. Joanne Calderon - Arkenburg | 8. Nancy Selby |
| 2. Diana Vallejo-Rodriguez | 9. Brooke O'Neill |
| 3. Chris Purcell | 10. Edwin Herrera |
| 4. David Marshall | 11. Jennifer Hackett |
| 5. Ellen Becker | 12. Phillip Davis |
| 6. Gavin Williams | |
| 7. Nicole Pucci-Johnson | |

ALTERNATES

13. Dawn Wallace
14. Kenneth Campbell



1 **OBJ**

2 JONELL THOMAS
3 SPECIAL PUBLIC DEFENDER
4 Nevada Bar #4771
5 MONICA R. TRUJILLO
6 Chief Deputy Special Public Defender
7 Nevada Bar #11301
8 W. JEREMY STORMS
9 Chief Deputy Special Public Defender
10 Nevada Bar #10772
330 So. Third Street, Suite #800
Las Vegas, Nevada 89155
(702) 455-6265
FAX: (702) 455-6273
EMAIL: monica.trujillo@clarkcountynv.gov
EMAIL: jeremy.storms@clarkcountynv.gov
Attorneys for Larry Decorleon Brown

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

DEC 19 2019

BY, *A. Trujillo*
ATHENA TRUJILLO, DEPUTY

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 STATE OF NEVADA,)	CASE NO. C-17-326247-1
)	DEPT. NO. 21
14)	
15 Plaintiff,)	
)	
16 vs.)	
)	
17 LARRY DECORLEON BROWN,)	
18 ID 8376788,)	
)	
19 Defendant.)	
)	

20
21 **DEFENDANT'S OBJECTIONS TO**
22 **STATE'S PROPOSED JURY INSTRUCTIONS**

23 Comes now the Defendant, Larry Decorleon Brown, by and through his counsel and
24 objects on the following grounds to the State's proposed jury instructions. Each of the objections
25 made herein is based upon the Nevada Constitutional and the United States Constitutional
26 guarantees of due process and a fair trial under the Fifth and Fourteenth Amendments; the right to
27 accurate and complete instructions on the law under the Fifth, Eighth and Fourteenth
28



1 Amendments; the right of equal protections of the laws under the Fifth and Fourteenth
2 Amendments.

3 **Malice**

4
5 The State proposes that the jury be instructed as follows:

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

12 Mr. Brown objects to this instruction as it is confusing, misleading and archaic. This instruction
13 will not assist the jury in its determination as to whether the State has established the element of
14 malice. Mr. Brown recognizes that the Nevada Supreme Court has found that a defendant is not
15 deprived of a fair trial if this instruction is given. See Leonard v. State, 114 Nev. 1196, 1208, 969
16 P.2d 288, 296 (1988). He raises this issue so as to preserve this issue for reconsideration by the
17 Nevada Supreme Court and to preserve it for review by the federal courts. He also notes that the
18 Nevada Supreme Court has not mandated this instruction, so this Honorable Court remains free to
19 refuse this instruction as a matter of discretion.
20

21 **Implied Malice**

22
23 The State proposes that the jury be instructed as follows:

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

26 Malice may be implied when no considerable provocation appears, or when all the
27 circumstances of the killing show an abandoned and malignant heart.
28

1 Mr. Brown objects to this instruction on the grounds that it relieves the State of its burden of
2 proving beyond a reasonable doubt the element of malice and uses terms that are archaic, without
3 rational content and of no real assistance to the jury in determining whether the State has met its
4 burden of proving that Mr. Brown acted with malice. He recognizes that the Nevada Supreme
5 Court has found that a defendant is not deprived of a fair trial if this instruction is given. See
6 Leonard v. State, 117 Nev. 53, 78-79, 17 P.3d 397, 413 (2001). He raises this issue so as to
7 preserve this issue for reconsideration by the Nevada Supreme Court and to preserve it for review
8 by the federal courts. He also notes that the Nevada Supreme Court has not mandated this
9 instruction, so this Court remains free to refuse this instruction as a matter of discretion.

11 **Alternative Theories of First Degree Murder**

12 The State proposes that the jury be instructed as follows:

13 Although your verdict must be unanimous as to the charge, you do not have to
14 agree on the theory of guilt or liability. Therefore, even if you cannot agree on whether the
15 facts establish the defendant is guilty of Premeditated and Deliberate Murder or Felony
16 Murder, or is liable as a principle, aider and abettor, or co-conspirator, so long as all of you
agree that the evidence establishes the defendant's guilt of murder in the first degree, your
verdict shall be Murder of the First Degree.

17 Mr. Brown objects to this instruction on the following grounds:

18 (1) The instruction misstates the burden of prove by speaking in the passive voice
19 rather than active voice. The instruction must be changed to reflect that it is the State of Nevada
20 which bears the burden of proving each of the alternative theories.

21 (2) Mr. Brown recognizes that the Nevada Supreme Court has held that the jury need
22 not be unanimous on the alternative theories of liability. He raises this issue so as to preserve this
23 issue for reconsideration by the Nevada Supreme Court and to preserve it for review by the federal
24 courts.
25

26 **Deadly Weapon Enhancements for Robbery**

27 The State proposes that the jury be instructed as follows:
28

1 You are instructed that if you find a defendant guilty of Robbery, you must
2 also determine whether or not a deadly weapon was used in the commission of this
3 crimes.

4 If you find beyond a reasonable doubt that the defendant committed Robbery With
5 the Use of a Deadly Weapon, then you are instructed that the verdict of Robbery With the
6 Use of a Deadly Weapon is the appropriate verdict.

7 If however, you find that a Deadly Weapon was not used in the commission of the
8 Robbery, but you do find that a Robbery was committed, then you are instructed that the
9 verdict of Robbery is the appropriate verdict.

10 Mr. Brown objects to this instruction on the following grounds:

11 (1) The deadly weapon enhancement is unconstitutional under the Second, Fifth, Ninth
12 and Fourteenth Amendments to the federal constitution and Article I, Section 11 of the Nevada
13 Constitution. Mr. Brown has a fundamental constitutional right to possess arms and that right may
14 not be infringed in the manner provided for by Nevada's deadly weapon enhancement.

15 (2) This instruction erroneously suggests that Mr. Brown may receive the weapons
16 enhancement for the use of weapons, even if Mr. Brown did not know of their weapons and did not
17 exercise dominion and control over those weapons. See Anderson v. State, 95 Nev. 625, 629, 600
18 P.2d 241, 243 (1979); Walters v. State, 108 Nev. 186, 189, 825 P.2d 1237, 1239-40 (1992).

19 (3) The State should not be allowed to seek enhancement of multiple offenses for use
20 of a single weapon. It should be limited to a single enhancement based upon the single incident.

21 (4) As a matter of public policy and statutory construction, the State should not be
22 permitted to seek weapons enhancements for acts committed by co-defendants as doing so
23 encourages each participant to an offense to bring a weapon as there is no discouragement for
24 bringing fewer weapons. There is no indication that the Legislature intended this absurd result and
25 no language in the aiding and abetting or conspiracy statute which suggests that enhancements, as
26 opposed to primary offenses, may be imputed to a co-defendant.

27 **Deadly Weapon Enhancements for Murder**

28 The State proposes that the jury be instructed as follows:

 You are instructed that if you find a defendant guilty of First or Second Degree
Murder you must also determine whether or not a deadly weapon was used in the
commission of this crime.

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

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

4 Mr. Brown incorporates by reference the objection listed above for the robbery deadly weapon
5 enhancement here.

6 **Definition of Deadly Weapon**

7 The State proposes that the jury be instructed as follows:

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

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

17 Mr. Brown objects to these instructions on the following grounds:

18 (1) The deadly weapon enhancement is unconstitutional under the Second, Fifth, Ninth
19 and Fourteenth Amendments to the federal constitution and Article I, Section 11 of the Nevada
20 Constitution. Mr. Brown has a fundamental constitutional right to possess arms and that right may
21 not be infringed in the manner provided for by Nevada's deadly weapon enhancement.

22 (2) The second paragraph erroneously suggests that the identity of the defendant who
23 owned and used the weapon is immaterial and that the weapons enhancement should be applied to
24 all participants in the offense, without regard to whether they each had knowledge, dominion and
25 control over the weapon.

26 **Conspiracy**

27 The State proposes that the jury be instructed as follows:

28 A conspiracy is an agreement between two or more persons for an unlawful
purpose. To be guilty of conspiracy, a defendant must intend to commit, or to aid in
the commission of, the specific crime agreed to. The crime is the agreement to do
something unlawful; it does not matter whether it was successful or not.

...
A conspiracy to commit a crime does not end upon the completion of the
crime. The conspiracy continues until the co-conspirators have successfully gotten
away and concealed the crime.

Mr. Brown objects to the third paragraph of this instruction as there are other means of terminating
a conspiracy, such as withdrawal or arrest, as a conspiracy does not live on indefinitely in cases
where the co-conspirators are unsuccessful in escaping or concealing the offense.

1 **Conspiracy: Agreement**

2 The State proposes that the jury be instructed as follows:

3 A conspiracy is an agreement between two or more persons for an unlawful purpose. To be
4 guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of, the
specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter
whether it was successful or not.

5 The last sentence of this instruction is misleading and erroneous. To be guilty of the crime of
6 conspiracy to commit murder, the State must prove that the defendant agreed to commit murder,
7 not to do something unlawful. Bolden v. State, 121 Nev. 909, 921, 124 P.3d 191, 200 (2005). The
8 instruction should state “the crime is the agreement to commit the offense of murder; it does not
9 matter whether it was successful or not.”
10

11 **Evidence of Conspiracy**

12 The State proposes that the jury be instructed as follows:

13 It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or
14 the making of an express or formal agreement. The formation and existence of a conspiracy may
15 be inferred from all circumstances tending to show the common intent and may be proved in the
same way as any other fact may be proved, either by direct testimony of the fact or by
circumstantial evidence, or by both direct and circumstantial evidence.

16 Mr. Brown objects to this instruction on the ground that it improperly minimizes the State’s burden
17 of proving the specific intent element of conspiracy and erroneously suggests that a conspiracy
18 may be found based upon the mere showing of a common objective, even in the absence of an
19 agreement.

20 **Conspiracy: Members**

21 The State proposes that the jury be instructed as follows:

22 Each member of a criminal conspiracy is liable for each act and bound by each declaration
23 of every other member of the conspiracy if the act or the declaration is in furtherance of the
24 object of the conspiracy.

25 The act of one conspirator pursuant to or in furtherance of the common design of the
26 conspiracy is the act of all conspirators. Every conspirator is legally responsible for a
27 specific intent crime of a co-conspirator so long as the specific intent crime was intended
28 by the Defendant. A conspirator is also legally responsible for a general intent crime that
follows as one of the reasonably foreseeable consequences of the object of the conspiracy
even if it was not intended as part of the original plan and even if he was not present at the
time of the commission of such act.

1 Mr. Brown objects to paragraph two of this instruction. This portion will not assist the jury in
2 determining whether a criminal conspiracy existed. Rather, the discussion of specific and general
3 intent crimes will confuse the jury.
4

5 **Co-conspirator Statements**

6 The State proposes that the jury be instructed as follows:

7 Whenever there is slight evidence that a conspiracy existed, and that the defendant was one
8 of the members of the conspiracy, then the statements and the acts by any person likewise a
9 member may be considered by the jury as evidence in the case as to the defendant found to
10 have been a member, even though the statements and acts may have occurred in the
11 absence and without the knowledge of the defendant, provided such statements and acts
12 were knowingly made and done during the continuance of such conspiracy, and in
13 furtherance of some object or purpose of the conspiracy.

14 Mr. Brown objects to this entire instruction as confusing to the jury.

15 **Reasonable Doubt**

16 Mr. Brown objects to the State's proposed instruction on the presumption of innocence. The State
17 proposes to instruct the jury as follows:

18 The Defendant is presumed innocent until the contrary is proved. This
19 presumption places upon the State the burden of proving beyond a reasonable doubt
20 every element of the crime charged and that the Defendant is the person who
21 committed the offense.

22 The Defendant is presumed innocent until the contrary is proved. This
23 presumption places upon the State the burden of proving beyond a reasonable doubt every
24 element of the crime charged and that the Defendant is the person who committed the
25 offense.

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

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
verdict of not guilty.

1 Mr. Brown objects to this instruction because the first paragraph is not supported by Nevada
2 statutory authority and Nevada statutes provide a better definition of this concept. Mr. Brown
3 urges this Court to instruct the jury in accordance with the applicable statutes.

4 The portion of the instruction at issue here is the first paragraph and not the second
5 paragraph. Mr. Brown recognizes that NRS 175.211 mandates the second paragraph of the
6 instruction and recognizes that the Nevada Supreme Court has repeatedly affirmed the
7 constitutionality of the second paragraph of this instruction. See e.g. Buchanan v. State, 119 Nev.
8 201, 221, 69 P.3d 694, 708 (2003); Lord v. State, 107 Nev. 28, 38, 806 P.2d 548, 554 (1991).

9 It does not appear that the Nevada Supreme Court has directly addressed the first paragraph
10 of the instruction in light of the statutory definitions of the presumption of innocence, which are
11 different than the instruction given here.

12 The first paragraph of this instruction is not mandated by statute. Either of Nevada's two
13 instructions on the presumption of innocence are more appropriate instructions. NRS 175.191
14 provides the following:

15 A defendant in a criminal action is presumed to be innocent until the
16 contrary is proved; and in case of a reasonable doubt whether the defendant's guilt
is satisfactorily shown, the defendant is entitled to be acquitted.

17 NRS 175.201 provides the following:

18 Every person charged with the commission of a crime shall be presumed
19 innocent until the contrary is proved by competent evidence beyond a reasonable
20 doubt; and when an offense has been proved against the person, and there exists a
reasonable doubt as to which of two or more degrees the person is guilty, the person
shall be convicted only of the lowest.

21 In light of the clear statute on point, it is appropriate to instruct the jury in the statutory terms
22 rather than the State's proposed instruction. Mr. Brown's state and federal constitutional rights to
23 due process of law require that the jury be instructed in accord with Nevada's statutory authority.

24 Mr. Brown submits that the jury must be instructed in accord with statutory authority and
25 that the first paragraph of the State's proposed instruction be replaced with the statutory language.

1 **Guilt or Innocence**

2 The State proposes that the jury be instructed as follows:

3 You are here to determine whether the Defendant is guilty or not guilty from the evidence
4 in the case. You are not called upon to return a verdict as to whether any other person is guilty or
5 not guilty. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of
6 the Defendant, you should so find, even though you may believe one or more other persons are
7 also guilty.

8 Mr. Brown objects to this instruction on the ground that it misstates the jury's role. The jury's sole
9 function in this phase of the trial is to determine whether the State has met its burden of proving
10 beyond a reasonable doubt that Mr. Brown is guilty of each of the offenses charged in the
11 Indictment. He also objects to this instruction on the ground that it informs the jurors that they are
12 to return a guilty verdict if they find Mr. Brown is guilty and also believe that other persons are
13 guilty, but it fails to give the jury any guidance as to what to do if they find Mr. Brown not guilty,
14 even though others are guilty.

15 **Equal and Exact Justice**

16 The State proposes that the jury be instructed as follows:

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

24 Mr. Brown objects to the last line of this instruction, which requires the jury to do "equal and exact
25 justice" because this instruction is confusing, it shifts the burden of proof, it relieves the State of its
26 burden of proof, and it is misleading. He recognizes that the Nevada Supreme Court has rejected
27 arguments concerning this instruction, see Thomas v. State, 120 Nev. 37, 46, 83 P.3d 818, 824
28 (2006), but he nevertheless raises this issue so as to provide the Nevada Supreme Court with the

1 opportunity to overrule its prior decision and to preserve this issue for federal court review. In
2 addition, Mr. Brown notes that the Nevada Supreme Court has not required that the district courts
3
4
5 give this instruction and this Court therefore retains the discretion to reject the objectionable
6 language.
7

8 **Premeditation:**

9 The State proposes to instruct the jury as follows:

10 "Premeditation need not be for a day, an hour, or even a minute. It may be
11 as instantaneous as successive thoughts of the mind. For if the jury believes from
12 the evidence that the act constituting the killing has been preceded by and has been
13 the result of premeditation, no matter how rapidly the act follows the premeditation,
14 it is premeditated."

15 The State does not cite to any legal authority in their proposed instruction but the relevant
16 Nevada case they most likely rely on is Byford v. State 994 P.2d 700, 714 (Nev. 2000). Mr.
17 Brown objects to this instruction because it removes the burden on the State to prove
18 premeditation and blurs the distinction between Murder in the 1st and 2nd degrees. Although
19 Byford is still valid law in Nevada, other jurisdictions have addressed this issue in a different light.
20 In State v. Thompson, the Arizona Supreme Court noted:

21 We conclude, as did the court of appeals, that if the only difference between first
22 and second degree murder is the mere passage of time, and that length of time can
23 be "as instantaneous as successive thoughts of the mind," then there is no
24 meaningful distinction between first and second degree murder. Such an
25 interpretation would relieve the state of its burden to prove actual reflection and
26 would render the first degree murder statute impermissibly vague and therefore
27 unconstitutional under the United States and Arizona Constitutions.

28 State v. Thompson, 204 Ariz. 471, 478, 65 P.3d 420, 427 (2003).

Although the Second Degree Murder instruction notes that Murder in the Second Degree
does not require premeditation and deliberation, Mr. Brown finds that the language of
"instantaneous" and "successive" is misleading, violates his rights under the U.S. Constitution, and

1 requests that this language be removed from the instruction or that the instructions include more
2 concrete language that adequately explains the State's burden to prove 1st and 2nd degree murder.

3 **Premeditation Continued**

4 The State proposes to instruct the jury as follows:

5 The law does not undertake to measure in units of time the length of the period during
6 which the thought must be pondered before it can ripen into an intent to kill which is truly
7 deliberate and premeditated. The time will vary with different individuals and under
8 varying circumstances.

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

13 Mr. Brown objects to this entire instruction as cumulative and repetitive to the previous
14 instruction.
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DATED this __ day of December, 2019.

RESPECTFULLY SUBMITTED:

/s/ MONICA TRUJILLO

MONICA R. TRUJILLO
W. JEREMY STORMS
Attorneys for BROWN

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing, was made on the __ day of
December, 2019, by Electronic Filing to:

DISTRICT ATTORNEY'S OFFICE
email: motions@clarkcountydade.com

/s/ Elizabeth (Lisa Araiza

Legal Secretary
Special Public Defender