

IN THE SUPREME COURT OF THE STATE OF NEVADA

ASHLEY W. BENNETT

Appellant,

vs.

STATE OF NEVADA

Respondent.

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APPENDIX TO APPELLANT'S OPENING BRIEF – VOLUME ONE

**Appeal from Dismissal of Petition for Determination of Factual Innocence
Eighth Judicial District Court, Clark County**

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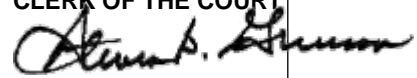
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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

ASHLEY BENNETT,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No. _____

Dept. _____

Docket _____

DEFENDANT ASHLEY BENNETT'S PETITION FOR
DETERMINATION OF FACTUAL INNOCENCE

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SUMMARY

The unshakeable mandate of the criminal justice system is not to obtain and uphold convictions at all costs, but rather it is the pursuit of justice. Ashley William Bennett (“Mr. Bennett”) is an inmate at the Southern Desert Correctional Center serving life without the possibility of parole for his 2002 conviction for murder with use of a deadly weapon, plus an equal and consecutive life sentence without the possibility of parole for a weapon enhancement. Mr. Bennett is asking this Court to reverse his conviction, in the interest of justice, because he is factually innocent of all charges.

On March 3, 2001, Joseph Williams died after being shot by multiple shooters in a crowded courtyard outside the Buena Vista Springs Apartments in North Las Vegas, Nevada. Mr. Bennett was subsequently convicted for the murder of Mr. Williams solely on the testimony of two purported eye witnesses. Pamela Neal (“Ms. Neal”) identified Mr. Bennett as one of the shooters nearly two months after the shooting occurred, and only after serious felony charges filed against her for breaking into a home and shooting a six-year-old girl in the face were dropped. Mr. Bennett’s co-defendant, Anthony Gantt (“Mr. Gantt”), a juvenile at the time, also claimed that Mr. Bennett was involved after he was improperly threatened with the death penalty and received a favorable plea bargain in exchange for his testimony. At Mr. Bennett’s trial, the prosecution presented a case against Mr. Bennett based on Ms. Neal’s and Mr. Gantt’s identifications. No other witnesses or physical or scientific evidence linked Mr. Bennett to the crime, and he has maintained his innocence from the day the police first focused their investigation on him through nearly 19 years of incarceration. Both Ms. Neal and Mr. Gantt have recanted their testimony and, under penalty of perjury, have established that their trial testimony was false and Mr. Bennett was not involved in Mr. Williams’ murder.

As set forth below and in the attached documents, Mr. Bennett is factually innocent. Significant material evidence proving Mr. Bennett’s innocence includes: (1) a new 2017 declaration from Ms. Neal (attached as Exhibit A), the prosecution’s star witness who originally identified Mr. Bennett as a shooter, recanting her trial testimony, stating that she could not

identify the shooters and asserting that police detectives coerced her into testifying against Mr. Bennett; (2) a 2012 declaration from Calvin Walker (attached as Exhibit B¹), a member of Mr. Williams' gang, who witnessed the shooting and who states that Mr. Bennett was not involved; and (3) a material and now corroborated² 2002 affidavit from co-defendant and actual perpetrator Anthony Gantt (attached as Exhibit C), who absolves Mr. Bennett, recants his trial testimony, and states that police detectives coerced him into implicating Mr. Bennett. Had this evidence been presented to the jury, Mr. Bennett would not have been convicted.

Mr. Bennett now seeks relief from his wrongful conviction under the newly passed Nevada Innocence Statute. (Nev. Rev. Stat. 34.960, attached as Exhibit D.) He respectfully requests that this Court order a hearing to examine his innocence claim. The newly discovered evidence listed above, along with other reliable evidence, including Mr. Gantt's recantation, justifies relief because it proves Mr. Bennett is factually innocent of the crime for which he has spent the last 18 years in prison.

STATEMENT OF FACTS

A. The Crime

On Saturday, March 3, 2001, at approximately 3:09 p.m., police responded to reports of shots fired and a man down outside an apartment building in the Buena Vista Springs Apartments in North Las Vegas, Nevada. (Tr. Transcript Vol. V, 64.)³ When police arrived at the scene, they found Mr. Williams lying face down on the ground in the apartment courtyard with numerous gunshot wounds. (Tr. Transcript Vol. V, 65.) Approximately 25 to 50 people were

¹ As explained *infra*, Mr. Walker's 2012 declaration has never been presented to a court. Under the newly enacted factual innocence statute, Mr. Bennett, for the first time, has the ability to present this new exculpatory evidence to the court to establish his factual innocence without also having to assert a separate habeas claim that alleges "a fundamental miscarriage of justice . . .", Nev. Rev. Stat. § 34.950, amounting to a violation of the United States constitution.

² Mr. Gantt's recantation was previously reviewed by a court in Mr. Bennett's first federal habeas petition. However, the Court in that review held that, even without Mr. Gantt's trial testimony, the conviction could still stand on Ms. Neal's testimony alone. Now that Ms. Neal has also recanted her trial testimony, both affidavits together are material and warrant reversal of Mr. Bennett's conviction.

³ All relevant Trial Transcript excerpts are attached hereto as Exhibit E.

gathered around Mr. Williams, who was unresponsive but still breathing. (Tr. Transcript Vol. V, 67, 100.) Mr. Williams later died as a result of his injuries. (Tr. Transcript Vol. VII, 35, 39.)

B. The Initial Police Investigation

Detective Michael Bodnar (“Detective Bodnar”) was the lead detective assigned to investigate Mr. Williams’ murder. (Tr. Transcript Vol. VII, 110.) Officers went door to door at the apartment buildings in the surrounding courtyard to obtain witness statements; however, none of the occupants admitted to knowing anything about the shooting. (Tr. Transcript Vol. V, 76.) An officer approached the group of nearly 50 bystanders that surrounded Williams and asked if they had seen or heard anything, but no witnesses were willing to speak with the police. (*Id.* at 87.) By the evening of March 3, 2001, police had not spoken to any individuals who admitted to seeing the shooting. (Tr. Transcript Vol. VII, 114.)

Although the police were unable to talk with anyone who admitted to witnessing the shooting, they did speak to James Golden (“Mr. Golden”), a security guard at Buena Vista Springs Apartments, who did not witness the shooting but heard the shots. (Tr. Transcript Vol. V, 6-7.) As Mr. Golden ran toward the scene, he witnessed three “suspicious” individuals from approximately 20 yards away. (*Id.* at 10.) Mr. Golden recognized one of the suspicious individuals as Mr. Gantt. (*Id.* at 14.) Mr. Golden said that as Mr. Gantt was running from the scene, it appeared that he was stuffing a gun into the front of his pants. (*Id.* at 15.) Mr. Golden described all three suspicious individuals as black, under the age of 18, and wearing black pants and white shirts. (*Id.* at 18.)⁴

On March 6, 2001, Detective Bodnar was advised that another officer had received information that an individual named Wyatt King (“King”), who also went by the moniker of “Face,” may have been involved in the shooting. (Tr. Transcript Vol. VIII, 44.) King was a juvenile between the ages of 15 and 16, (*Id.*), and generally matched a description given by Mr. Golden of the young individuals running away from the shooting. Moreover, King lived at 2012

⁴ Mr. Bennett was 26 years old at this time. Based on this, Mr. Golden’s description of the shooters does not match Mr. Bennett.

Bennett Street in North Las Vegas, only a few blocks from the crime scene. (*Id.*) Despite the clear similarities to the suspicious individuals identified as running away from the shooting, there is no evidence that officers interviewed King in relation to the shooting.

On March 7, 2001, Detective Bodnar received an anonymous phone call from a woman who refused to identify herself but claimed that she had information regarding Mr. Williams' murder. (Tr. Transcript Vol. VII, 115.) After the phone call, Detective Bodnar decided to speak with Mr. Gantt and Mr. Bennett.⁵ (*Id.* at 115-16, 117.) On March 21, 2001, Detective Bodnar interviewed Mr. Gantt, who was at juvenile hall for an unrelated incident. (*Id.* at 115-16.) Mr. Gantt lied about being involved with or knowing anything about Mr. Williams' murder. (*Id.* at 116.)

On March 24, 2001, Detective Bodnar and gang officers first interviewed Mr. Bennett. (*Id.* at 117.) Detective Bodnar pointedly asked Mr. Bennett why he killed Mr. Williams. (*Id.* at 118.) Mr. Bennett responded with surprise and emphasized that he could never kill anyone. (Tr. Transcript Vol. VIII at 39.) Throughout the rest of the interview, Mr. Bennett repeatedly denied being involved in Mr. Williams' murder. (*Id.*)

C. Pamela Neal

On April 15, 2001, officers were dispatched to a shooting of a child at 2508 West Street, #C, near the Buena Vista Springs Apartments. (NLVPD Report dated June 4, 2001, attached as Exhibit F.) Six-year-old Tonishia Looney ("Tonishia") was shot in the face while visiting her grandmother. (*See id.*) Officers learned that, after hearing a knock at the door, Tonishia went to answer it and was shot when a bullet entered the front door just above the doorknob. (*See id.*) Immediately after the shot, Ms. Neal and two men entered the apartment. (Tr. Transcript Vol. IV, 4-5.) Both Tonishia's grandmother and father identified Ms. Neal as one of the intruders and told officers that she was wearing a grey shirt and black pants. (*See id.*) Officers went to Ms. Neal's

⁵ Neither the available police reports nor the trial testimony states what information, if any, the anonymous caller provided or how, or if, this anonymous call was related to Detective Bodnar's decision to interview Mr. Bennett and Mr. Gantt.

house later that day and, as described, she was wearing a gray shirt and black pants. (*See id.*) Based upon the grandmother and Tonishia's father's identification, Ms. Neal was placed under arrest. (*See id.*) Ms. Neal confessed to going to the apartment and forcing her way in to confront Tonishia's father about the shooting of Eric Bass. (*See id.*) Based on Ms. Neal's voluntary confession and the eyewitness identifications of Tonishia's grandmother and father, Ms. Neal was charged with conspiracy to commit murder, burglary while in possession of a deadly weapon, battery with use of a deadly weapon with substantial bodily harm, discharging a firearm at or into a structure, and coercion with use of a deadly weapon.⁶ (Trial Transcript Vol. VIII, 14.)

On May 1, 2001, two weeks after she was charged, Ms. Neal accompanied Tammy Hannibal ("Ms. Hannibal") to the police station to speak with Detective Rodrigues about the unrelated murder of Eric Bass ("Mr. Bass"), Ms. Neal's cousin. (Tr. Transcript Vol. VIII, 17.) At this time, Ms. Neal erroneously believed that Mr. Bennett was involved in Mr. Bass's murder. While they were at the police station, Detective Bodnar met with Ms. Neal, who claimed that she was standing outside her apartment door when Mr. Williams was murdered, although she could not remember neither the date nor time of the shooting. (*See id.* at 119). When Detective Bodnar first spoke with Ms. Neal, he was aware Ms. Neal was facing serious felony charges. (Tr. Transcript Vol. VIII, 14.)

Ms. Neal alleged that Mr. Bennett (whom Ms. Neal knew as "Face"), Mr. Gantt, and Lailoni Morrison ("Mr. Morrison"), as well as "three to four other Gersons"⁷ were responsible for Mr. Williams' murder. (Tr. Transcript Vol. VII, 119.) Ms. Neal later identified Louis Matthews ("Mr. Matthews") and Jermaine Webb ("Mr. Webb") as also involved in Mr. Williams' murder. (Tr. Transcript Vol. VIII, 29.)

⁶ Detailed *infra*, the judge excluded any details of Tonishia's shooting at Mr. Bennett's trial so the jury did not understand Ms. Neal's motive to testify falsely. (Tr. Transcript Vol. IV, 4-5.) This court can now consider this critical impeaching evidence under the totality of the circumstances.

⁷ "Gersons" refers to the Gerson Park Kingsmen ("GPK"), a local gang. Mr. Bennett was not a member GPK or any other gang. (Preliminary Hearing Transcript, 217-18.)

D. Mr. Gantt

On May 7, 2001, Detective Bodnar interviewed Mr. Gantt a second time at juvenile hall. (Tr. Transcript Vol. VII, 126.) During this interview, Mr. Gantt lied again and maintained that he was not involved in Mr. Williams' murder. However, in direct contradiction of his original statement, Mr. Gantt claimed he knew who was involved. (*Id.* at 127.) Mr. Gantt claimed that Mr. Bennett, Mr. Matthews, Frederick Schneider ("Mr. Schneider"), Antwan Graves ("Mr. Graves"), and Mr. Morrison were responsible for Mr. Williams' murder. (*Id.* at 126.) Mr. Gantt contended this group was walking toward the Hunt house (a gang hangout for the Rolling 60s, another local gang and a rival of GPK) when they encountered Williams. (Tr. Transcript Vol. VIII, 5.) After almost an hour of questioning, Mr. Gantt changed his statement again and admitted to shooting Williams.⁸ (*Id.* at 31-33.) According to Mr. Gantt, Mr. Bennett, Mr. Matthews, Mr. Graves, Mr. Schneider and Mr. Morrison surrounded Mr. Williams and began shooting. Mr. Gantt claimed that during the shooting Mr. Bennett and Mr. Graves used 9 millimeters, Mr. Morrison used a .38 Super, Mr. Schneider possessed a .357 but possibly did not shoot, and Mr. Gantt himself used a .32.⁹ (*Id.* at 45.)

E. Mr. Bennett's Arrest and Second Interrogation

On May 17, 2001, Detective Bodnar drafted and submitted an affidavit requesting arrest warrants for certain individuals, including Mr. Bennett, in large part based on Ms. Neal's statement. (Tr. Transcript Vol. VIII, 15, 27.) Detective Bodnar did not inform the issuing court about the serious felony charges pending against Ms. Neal in his affidavit. (*Id.*)

⁸ Bodnar told Gantt "he was a juvenile and he had a lot to lose if he didn't help [the police]." (Tr. Transcript Vol. VIII, 30.)

⁹ On May 23, 2001, a firearms report was created by James Kryllo ("Mr. Kryllo"), a Las Vegas Metropolitan Police Department firearms examiner. (Tr. Transcript Vol. VIII, 46.) Mr. Kryllo determined the casings collected from Mr. Williams' murder scene came from four separate guns. (Tr. Transcript Vol. VII, 86.) Specifically, Mr. Kryllo determined seven casings were fired from a Colt .32 semiautomatic pistol that had been recovered by police and linked to Mr. Gantt, (Tr. Transcript Vol. VII, 87), and nine other casings were fired from a Colt .38 super semiautomatic pistol, that had been recovered by police and linked to Mr. Morrison. (Tr. Transcript. Vol. VII, 88.) The 9 millimeter lugers collected from the scene could not be conclusively linked to identified firearms. (Tr. Transcript Vol. VII, 99.). While this physical evidence was presented against Mr. Gantt and Mr. Morrison, the only other individuals convicted of shooting Mr. Williams, no casings or guns were ever recovered that were linked to Mr. Bennett.

On May 18, 2001, Detective Bodnar arrested and interviewed Mr. Bennett. (*Id.* at 36.) Mr. Bennett again denied any involvement in Mr. Williams' murder. (*Id.*) Mr. Bennett fully cooperated with police and signed a waiver of his rights to remain silent and have counsel present. (*Id.*)

F. Preliminary Hearing

Mr. Bennett, Mr. Morrison, Mr. Matthews, Mr. Gantt, and Mr. Webb appeared as co-defendants in Mr. Williams' murder at the preliminary hearing on June 5, 2001. (Preliminary Hearing, 3.)¹⁰ Before Ms. Neal was called to the stand, the Court noted that at the conclusion of the preliminary hearing, Ms. Neal would be arraigned on charges of conspiracy to commit murder, burglary and possession. (*Id.* at 64.) The prosecution informed the Court that they wanted to dismiss the charges against Ms. Neal "right now" because they "[could not] prove the case"¹¹ against her. (*Id.* at 64-65.) After an exchange with the court, Ms. Neal was granted full immunity by the prosecutor for all charges after being pressed on this issue. (*Id.* at 66.)

Ms. Neal testified that she was at her apartment building on March 3, 2001, and planned to take Michelle Wilson ("Ms. Wilson") to work at 4:00 or 4:30 p.m. (*Id.* at 72-73.) Ms. Wilson lived in the apartment directly below Ms. Neal. (*Id.* at 70.) Ms. Neal claimed she witnessed Williams' murder from her balcony as she was leaving to pick up Ms. Wilson at 3:35 p.m. (*Id.* at 73.) While Ms. Neal claimed that she witnessed the entire shooting, she repeatedly claimed that she "wasn't looking" when she was unable to give details. (*Id.* at 120, 143, 172.)

When asked to identify those involved, Ms. Neal identified one of the shooters as Mr. Morrison, whom she had known for approximately five to six years. (*Id.* at 78, 81.) Although Ms. Neal initially said she was not close enough to the group to see what type of gun Mr.

¹⁰ Preliminary Hearing Transcript is attached hereto as Exhibit G.

¹¹ This statement is in direct contradiction to a police report created the day before the preliminary hearing, which included the following information: Both Tonishia's grandmother and father identify Ms. Neal as one of the individuals who broke into the house immediately after Tonishia was shot. *See* Exhibit F. Both witnesses told police that Ms. Neal was wearing a grey shirt and black pants. *See id.* When police went to Ms. Neal's house to interview her later on the same day, she was wearing a grey shirt and black pants. *See id.* After she was arrested, Ms. Neal admitted to forcing her way into the apartment to confront Tonishia's father about her cousin's murder. *See id.*

Morrison used, she then changed her testimony and said the gun was black, and she thought “it wasn’t a revolver.” (*Id.* at 80.)

Ms. Neal then identified Mr. Bennett as the second shooter, whom she claimed to be familiar with from seeing him around the neighborhood. (*Id.* at 84.) However, Ms. Neal did not know Mr. Bennett’s real name until she saw it in the paper. (*Id.*) Ms. Neal testified that although she did not see Mr. Bennett’s gun, she “knew” he was holding one. (*Id.* at 90.) Ms. Neal also said she could identify Mr. Bennett and Mr. Morrison even though they were standing with their backs towards her. (*Id.* at 143.)

Ms. Neal identified Mr. Gantt as the third shooter, whom she said was closest to Mr. Williams. (*Id.* at 91-92.) Ms. Neal could not identify what type of gun Mr. Gantt had, but testified that it was silver. (*Id.* at 93.) Ms. Neal testified that Mr. Gantt shot at Mr. Williams multiple times. (*Id.*)

When she was initially interviewed by police, Ms. Neal identified Mr. Webb and Mr. Matthews as shooters. (Tr. Transcript Vol. IV, 123-25.) However, at the preliminary hearing Ms. Neal explained she identified Mr. Webb and Mr. Matthews as shooters originally because she recognized them from around the neighborhood and saw them on the day of the shooting but could no longer say whether they were involved. (Preliminary Hearing, 96, 108-109.) She excused her inconsistent identifications in several ways: first, she claimed that because there were so many people, she did not focus on Mr. Webb or Mr. Matthews; second, she decided that either she could not see their hands or was not certain whether they had guns; third, she insisted she simply could not remember who was there that day; and finally, she claimed that she knew Mr. Webb and Mr. Matthews were there but she may have been mixed up about their involvement. (*Id.* at 108-110, 120-122, 180).

Ms. Neal was then asked if she knew the names of any of the other people who were outside at the time of the shooting. (*Id.* at 147-48.) Ms. Neal stated she knew a lot of them but refused to give names. (*Id.*) Ms. Neal admitted it was likely these people witnessed what happened. (*Id.* at 148.) After Ms. Neal was asked to identify the people she saw who witnessed

the shooting, she stopped responding to questions and refused to testify further. (*Id.*) Ms. Neal refused to provide the names even after the Court instructed her to answer, so the Court threatened to arrest Ms. Neal and hold her in contempt. (*Id.* at 159.) Ms. Neal then told the Court that Ms. Wilson and another neighbor also witnessed the shooting. (*Id.* at 160.) At the conclusion of her preliminary hearing testimony, Ms. Neal asserted that officers had driven her to the hearing at her request, but denied receiving any funds from the District Attorney's office or police department. (*Id.* at 184.)

At the end of the preliminary hearing, the Court determined there was probable cause that Mr. Bennett, Mr. Morrison, and Mr. Gantt committed the offense of murder with a deadly weapon. (*Id.* at 219-20.) The charges against Webb and Matthews were dismissed. (*Id.* at 220.) Notably, the gang enhancement against Mr. Bennett was also dismissed as no evidence was presented that would establish he was a member of the GPK or any other gang. (*Id.* at 217-18.)

On June 7, 2001, the State of Nevada filed a one-count information charging Mr. Bennett, and co-defendants Mr. Morrison and Mr. Gantt with murder with the use of a deadly weapon. (Criminal Court Minutes, attached as Exhibit H.)

G. Trial and Direct Appeal

Mr. Bennett's trial began on January 22, 2002, in Las Vegas, Nevada, with the Honorable Michael L. Douglas presiding. (*Id.*) After the testimony was presented, the jury found him guilty of all charges. (*Id.*)

i. Ms. Neal's Trial Testimony

a. Ms. Neal's testimony regarding witnessing the crime was inconsistent with her prior statements and the evidence.

Ms. Neal's trial testimony not only introduced new inconsistencies, but also reiterated her prior inconsistencies, both with her own statements and with the uncontroverted evidence¹²:

¹² These highlighted inconsistencies also corroborate Ms. Neal's recantation of her trial testimony. Based on the significant changes in Ms. Neal's testimony, it is clear that she did not witness the shooting of Mr. Williams.

1. Timing: Ms. Neal told the jury she left her apartment around 3:30 p.m. to take her friend Ms. Wilson to work around four when she witnessed the shooting. (Tr. Transcript Vol. IV, 29.) She also indicated that she was certain she left her apartment at 3:30 because she picked her son up at school at 3:20 and had just arrived back home when the shooting occurred. (*Id.* at 84.) However, police responded to the scene at 3:09 p.m. after the shooting had already taken place. (Tr. Transcript Vol. V, 64.) Further, the shooting took place on a Saturday when her son would not have been in school. (Tr. Transcript Vol. IV, 85.)

2. Mr. Bennett's alleged weapon: At trial, Ms. Neal testified that Mr. Bennett used a silver gun during the shooting. (Tr. Transcript Vol. IV, 67.) However, at preliminary hearing, Ms. Neal testified that she did not see Mr. Bennett's gun. (Preliminary Hearing, 90.)

b. Ms. Neal's criminal charges were dropped.

Ms. Neal testified in front of the jury that the charges pending against her on the day of Mr. Bennett's preliminary hearing were dropped due to "lack of evidence." (Trial Transcript Vol. IV at 76.) However, outside the presence of the jury, defense counsel informed the court that there was significant, material evidence that implicated Ms. Neal in that crime. (*Id.* at 77.) The Court held that it was the District Attorney's decision to determine whether charges should be brought against particular defendants, and therefore it was not going to allow inquiry into whether the State had sufficient evidence to pursue charges against Ms. Neal. (*Id.* at 83.) The Court never inquired into what evidence the police had gathered against Ms. Neal, which included Ms. Neal's confession that she forced her way into the apartment where the young girl was shot.

ii. Mr. Golden's Trial Testimony

Mr. Golden worked as a security guard at the Buena Vista Springs Apartments. (Tr. Transcript Vol. V, 3.) On March 3, 2001, Mr. Golden heard over 20 gunshots. (*Id.* at 3-4.) At the time, Mr. Golden was about one building away from where the shots occurred. (*Id.* at 4.) When

Mr. Golden arrived at the scene of the shooting, he saw many adults and children running away. (*Id.* at 8.) Mr. Golden testified he saw three suspicious individuals about 20 yards away from the crime scene. (*Id.* at 10.) All three individuals were wearing a white t-shirt and black pants. (*Id.* at 11.) Mr. Golden identified Mr. Gantt as one of the suspicious individuals. (*Id.* at 14.) When Mr. Golden saw Mr. Gantt, it appeared that Mr. Gantt was stuffing a gun into the front of his pants. (*Id.* at 15.) Mr. Golden estimated that all three suspicious individuals were under the age of 18. (*Id.* at 18.) Despite being called as a witness to the immediate aftermath of the shooting at Mr. Bennett's trial, Mr. Golden did not identify Mr. Bennett and was never asked whether he even saw Mr. Bennett on the day of the shooting.

iii. Mr. Gantt's Trial Testimony

On November 26, 2001, Mr. Gantt entered into a plea agreement with the State to testify against his co-defendants, including Mr. Bennett, in exchange for a lesser sentence of ten years to life on a reduced second-degree murder charge. (Tr. Transcript Vol. VI, 81.) Before the agreement, Mr. Gantt was facing a potential sentence of life without the possibility of parole for first-degree murder with use of a deadly weapon. (*Id.* at 117.) Shortly after he was sworn in, Mr. Gantt refused to testify against Mr. Bennett. (*Id.* at 72.) The Court took a recess and gave Mr. Gantt the opportunity to speak privately with his counsel. (*Id.* at 73-74.) After the recess, Mr. Gantt then agreed to testify against Mr. Bennett. (*Id.*)

Mr. Gantt stated that on the day of the shooting, Gantt was at a gathering at "L-Wak's" house to mourn the death of L-Wak's brother, Mark Doyle, who was murdered the day before. (*Id.* at 82, 83.) After they arrived at L-Wak's house, Mr. Gantt claimed Mr. Bennett suggested that they should shoot up the Hunt house, a known hang-out for the Rolling 60s, in retaliation for Mark Doyle's murder. (*Id.* at 83-84.)

As the group walked through the parking lot, Mr. Williams exited an apartment. (*Id.* at 90.) Mr. Bennett, Mr. Gantt, Mr. Graves, Mr. Morrison, and Mr. Matthews spread out and shot at Mr. Williams. (*Id.* at 91.) Mr. Gantt denied Neal's testimony that he fired the last shot into Mr.

Williams and testified that, after the group shot off approximately 20 rounds, Mr. Matthews took the final shot and the group ran away in separate directions. (*Id.* at 94-95.)

iv. Ms. Wilson's Testimony

Ms. Wilson, the woman who Ms. Neal testified she was driving to work on the day of the shooting, testified as a witness for the defense. (Tr. Transcript Vol. VIII, 103.) Ms. Wilson testified that Ms. Neal frequently drove her to work, and they would typically leave the apartment complex at 3:45 p.m. (*Id.* at 108.) On March 3, 2001, the day of the shooting, Ms. Wilson saw Ms. Neal “getting high,” which she testified was typical. (*Id.* at 109.) Specifically, Ms. Wilson testified Ms. Neal was “always high.” (*Id.* at 110.)

Ms. Wilson testified that on that day she heard gunshots as she was getting ready for work. (*Id.* at 106-07.) About a minute after the shots ended, Ms. Wilson saw Ms. Neal in the hallway of Wilson’s apartment. (*Id.* at 110). Ms. Wilson testified that she and Ms. Neal walked to the courtyard and saw Mr. Williams had been shot. (*Id.* at 111.) Ms. Wilson testified and she and Ms. Neal were asked by a police officer if they witnessed the shooting, and they both said “no.” (*Id.* at 112.) Instead of driving to Ms. Wilson’s work as planned, the women returned to Ms. Wilson’s apartment and stayed there until approximately 7:30 p.m. (*Id.*) During this time, Ms. Neal never told Ms. Wilson she witnessed the shooting. (*Id.* at 113.)

H. Post Trial

On February 11, 2002, Mr. Bennett’s counsel filed a Motion for a New Trial, which the Court denied on March 1, 2002. (Criminal Court Minutes) On March 14, 2002, Mr. Bennett’s defense counsel filed a Motion to Withdraw as Counsel alleging a breakdown of the relationship with Mr. Bennett. (*Id.*) Defense counsel’s motion was granted on March 19, 2002, and new counsel was confirmed as counsel for sentencing on March 21, 2002. (*Id.*) Through new counsel, Mr. Bennett filed a second Motion for a New Trial on June 10, 2002, and that motion was also denied. (*Id.*) On June 18, 2002, the Court sentenced Mr. Bennett to life without parole, plus an equal and consecutive term of life without parole for the weapon enhancement. (*Id.*) The Court

also ordered Mr. Bennett to pay restitution in the amount of \$30,432.06, jointly and severally with co-defendants Mr. Morrison and Mr. Gantt. (*Id.*)

Mr. Bennett directly appealed to the Nevada Supreme Court, and his sentence and conviction were affirmed on October 5, 2004. (Order of Affirmance attached as Exhibit I.)

I. State Post-Conviction Proceedings

On November 10, 2004, Mr. Bennett filed his first petition for post-conviction relief and filed a Supplement to his Petition on May 31, 2005, through newly appointed appellate counsel. (*State of Nevada v. Bennett*, Case No. C175914 (8th Dist. Nev., Nov. 29, 2005), Findings of Fact, Conclusions of Law and Order, attached as Exhibit J). An evidentiary hearing was conducted beginning on November 1, 2005, and concluding November 4, 2005. (*Id.*) On November 29, 2005, the Honorable Michelle Leavitt denied Mr. Bennett's petition for post-conviction relief. (*Id.*)

Mr. Bennett filed a notice of appeal with the appellate court on November 18, 2005. (8th Judicial District Court Docket.) On December 15, 2005, Mr. Bennett filed a Motion to Appoint Appellate Counsel, which was denied on October 10, 2006, and no appellate decision was issued. (*Id.*)

J. Federal Court Proceedings

On March 19, 2007, Mr. Bennett filed a pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (*Bennett v. E.K. McDaniel*, No. 3:06-cv-536-ECR-VPC (D. Nev. May 18, 2010), Order, attached as Exhibit K). On May 18, 2010, after several amendments were filed and extensions of time were requested by Mr. Bennett, the United States District Court denied Mr. Bennett's petition. (*Id.*) The Court also denied Mr. Bennett's certificate of appealability. (*Id.*) Through counsel, Mr. Bennett filed a Motion for Certificate of Appealability directly with the United States Court of Appeals for the Ninth Circuit on June 18, 2010. This motion was denied on July 18, 2011. (*Bennett v. E.K. McDaniel*, No. 10-16351 (9th Cir. 2011), Order, attached as Exhibit L).

K. Post-Conviction Investigation

The Rocky Mountain Innocence Center's investigation began in 2010. Over the almost ten years the case has been under investigation, attorneys, investigators, and student interns have repeatedly sought materials from the police, the court, trial counsel, and other sources. When produced, police records, witness statements, preliminary hearing and trial transcripts, and court records have been carefully scrutinized. The available materials led to the investigation and interviews of witnesses and other individuals with information about the case, some of whom had been ignored in the past.

i. Gantt Affidavit

On July 3, 2002, Mr. Gantt signed a sworn affidavit that Mr. Bennett "is innocent of his homicide charge he is imprisoned for." (*See Exhibit C.*) Mr. Gantt admitted that he did not know Mr. Bennett at the time of the murder, nor did he see Mr. Bennett on the day of the crime. (*Id.*) He also admitted that he falsely testified against Mr. Bennett which led the jury to believe Mr. Bennett took part in Mr. Williams' murder. (*Id.*) In the affidavit, Mr. Gantt asserted that investigating detectives threatened him with the death penalty, even though he was a minor, if he did not say the individuals also implicated by Ms. Neal were involved in Mr. Williams' murder. (*Id.*) Mr. Gantt further asserted that investigating detectives threatened him with additional charges in unrelated murder cases. (*Id.*)¹³

ii. Calvin Walker Declaration

On April 1, 2012, Mr. Walker signed a declaration stating he witnessed Mr. Williams' murder. (*See Exhibit B.*) Mr. Walker was a member of the Rolling 60s when his fellow gang member, Mr. Williams, was murdered. (*Id.*) In the afternoon of March 3, 2001, Mr. Walker was visiting his mother at the Buena Vista Springs Apartments when he saw Mr. Williams and another friend in the courtyard. (*Id.*) Mr. Walker then witnessed four young men start shooting at Mr. Williams. (*Id.*) After Mr. Walker witnessed the shooting, he ran to his mother's apartment.

¹³ Mr. Gantt was 15 years old when he shot Mr. Williams and when detectives interviewed him in connection with that crime. (*See Exhibit C.*)

(*Id.*) Mr. Walker did not know any of the individuals who murdered Mr. Williams but described them to be between 16 and 20 years old. (*Id.*) At the time he signed this declaration, Mr. Walker had known Mr. Bennett for about 20 years and knew Mr. Bennett was not involved in the shooting. (*Id.*) Police did not interview Mr. Walker, and he did not come forward at the time because he feared his fellow gang members would retaliate if he volunteered any information about the shooting. (*Id.*)

iii. *Pamela Neal Declaration*

On February 11, 2017, Ms. Neal signed a sworn declaration recanting her statements to police, her preliminary hearing testimony and her trial testimony implicating Mr. Bennett in Mr. Williams' murder. (*See Exhibit A.*) Ms. Neal admitted that she was never sure of who shot Mr. Williams, but detectives pressured her to testify anyway. (*Id.*) In so doing, detectives "threatened to bring the attempted murder charges back and take [Ms. Neal's] kids." (*Id.*)¹⁴ Ms. Neal repeatedly told the detectives Mr. Bennett was not involved in Mr. Williams' murder even after Mr. Bennett's conviction, but no action was ever taken. (*Id.*)

Ms. Neal's recantation is supported by the proffered trial testimony of Reginald Don Fobbs ("Mr. Fobbs"), Ms. Neal's brother. Mr. Fobbs testified that he frequently spoke with Ms. Neal about the shooting of Mr. Bass. (Tr. Transcript Vol. VIII, 98.) The Court did not allow defense counsel to question Mr. Fobbs further regarding Ms. Neal's mistaken belief that Mr. Bennett was responsible for the murder of her cousin, Mr. Bass, because the Court ruled this testimony would be hearsay. (*Id.* at 99-100). As a result of the Court's ruling regarding hearsay, defense counsel was unable to question Mr. Fobbs regarding his conversations with Ms. Neal about the murder of Mr. Williams. However, according to a defense investigation, Ms. Neal had told Mr. Fobbs that she did not see the shooting of Mr. Williams; and further, detectives told Ms. Neal they would prosecute her for shooting Tonishia unless she testified against the five defendants at the preliminary hearing. (*See Dennis Reefer Investigation Report, attached hereto*

¹⁴ This threat is not only improper; it directly contradicts statements made by the prosecutor to the Court at the preliminary hearing that the charges were being dropped because they did not have enough evidence.

as Exhibit M.) Mr. Fobbs also stated that Detective Bodnar led Ms. Neal to believe that Mr. Bennett paid to have her cousin Mr. Bass killed, further motivating her to falsely testify against him. (*See id.*)

ARGUMENT

I. NEWLY DISCOVERED EVIDENCE, WHEN CONSIDERED WITH ALL THE OTHER EVIDENCE, RAISES A BONA FIDE AND COMPELLING CLAIM OF MR. BENNETT’S FACTUAL INNOCENCE.

Since he was first implicated in Mr. Williams’ murder and for his more than 19 years in prison, Mr. Bennett has maintained his innocence. Newly discovered evidence now exists which proves Mr. Bennett’s factual innocence and corroborates Mr. Gantt’s previously considered recantation. The recently enacted Nevada Factual Innocence Statute (“Innocence Statute”)¹⁵ authorizes this Court, after an initial review of the petition, to vacate his conviction and issue an order of innocence and exoneration either on stipulation of the parties, or after a hearing where Mr. Bennett is given the opportunity to prove his innocence by clear and convincing evidence.¹⁶ Nev. Rev. Stat. § 34.960 (2019).

Specifically, under the Innocence Statute, a person who was convicted of a felony may petition the court for a hearing to establish their factual innocence based on newly discovered evidence.¹⁷ *Id.* at § 1. A petition for factual innocence must meet two primary requirements. First, the petitioner must assert, under oath, that newly discovered evidence exists, is specifically identified, and establishes a bona fide issue of factual innocence when viewed with all other

¹⁵ “Factual innocence” means that a person did not: (1) Engage in the conduct for which he or she was convicted; (2) Engage in conduct constituting a lesser included or inchoate offense of the crime for which he or she was convicted; (3) Commit any other crime arising out of or reasonably connected to the facts supporting the indictment or information upon which he or she was convicted; and (4) Commit the conduct charged by the State under any theory of criminal liability alleged in the indictment or information. Nev. Rev. Stat. § 34.920.

¹⁶ If parties stipulate that the newly discovered evidence establishes the Petitioner’s factual innocence, the Court may affirm the Petitioner’s factual innocence without a hearing, vacate Petitioner’s conviction, and issue an order of factual innocence and exoneration. Nev. Rev. Stat. § 34.970. If, in the alternative, the prosecuting attorney does not stipulate to the Petitioner’s factual innocence, the Court shall order a hearing where Petitioner must prove his/her innocence by clear and convincing evidence. *Id.*

¹⁷ “Newly discovered evidence” means evidence that was not available to a petitioner at trial or during the resolution by the trial court of any motion to withdraw a guilty plea or motion for new trial and which is material to the determination of the issue of factual innocence . . . Nev. Rev. Stat. § 34.930.

evidence in the case. *Id.* at § 2(a)-(d). Second, the petition must assert that neither the petitioner nor petitioner’s counsel knew of the newly discovered evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or post-conviction petition, and the evidence could not have been discovered by the petitioner or the petitioner’s counsel through the exercise of reasonable diligence. *Id.* at § 3(a).¹⁸

If the Court finds that the Petitioner has met the statutory pleading requirements, the Court should order the State to respond to the petition, and the case then progresses to either a stipulated finding of factual innocence or a full evidentiary hearing. Nev. Rev. Stat. § 34.970(1). Here, Mr. Bennett meets both statutory pleading requirements as demonstrated below. First, he specifically identifies newly discovered material evidence that when viewed with all the other evidence in the case demonstrates his factual innocence. Second, the newly discovered evidence was not and could not have been discovered by Mr. Bennett or his trial counsel. Third, the interests of justice compel this case to go forward regardless of whether the evidence was known or should have been known to Mr. Bennett or his trial counsel.

A. Mr. Bennett Presents Newly Discovered Evidence That Meets All of the Statutory Requirements and, When Viewed With All the Other Evidence, Establishes His Factual Innocence.

As a threshold matter, the Innocence Statute requires the petitioner to “aver, with supporting affidavits or other credible documents, that newly discovered evidence exists that is specifically identified and, if credible, establishes a bona fide issue of factual innocence¹⁹. Nev. Rev. Stat. § 34.960(6)(2)(a). The petitioner must also show that the newly discovered evidence is (1) material and not reliant solely on the recantation of a witness against the petitioner; (2) not merely cumulative of evidence that was known; (3) not merely impeachment evidence; and (4)

¹⁸ Notwithstanding the foregoing, the court can always consider compelling evidence of innocence if the petitioner or his counsel did not discover the evidence; the evidence is material to the issue of factual innocence; and the evidence has never been presented to a court. *Id.* at § 6(4)(b)(2). This is, in essence, an interests of justice provision recognizing that in some cases with compelling evidence of innocence, it would be patently unjust to ignore the evidence of innocence due to procedural bars.

¹⁹ “Bona fide issue of factual innocence” means that newly discovered evidence presented by the petitioner, if credible, would clearly establish the factual innocence of the petitioner. Nev. Rev. Stat. AB 356 § 3.

when viewed with all other evidence, the newly discovered evidence demonstrates that the petitioner is factually innocent. Nev. Rev. Stat. § 34.960(6)(2)(b)(1)-(3). Mr. Bennett meets each of these elements.

1. The newly discovered and other evidence is material and, reliant solely on the recantation of a single witness.

Under the Innocence Statute, newly discovered evidence must be “material” and must not rely “solely on the recantation of the testimony of a witness against the petitioner.” *Id.* at § (6)(b)(1)-(2). The Innocence Statute defines material evidence as evidence that “establishes a reasonable probability of a different outcome.” Nev. Rev. Stat. § 34.940. Importantly, the Innocence Statute also does not preclude evidence of recantation, but simply states that the recantation of a single witness is not sufficient alone to create a bona fide issue of factual innocence. Nev. Rev. Stat. § 34.960(6)(2)(b)(2).

Specifically, the new evidence that proves Mr. Bennett’s innocence includes: (A) a 2017 declaration from Ms. Neal, recanting her trial testimony where she identified Mr. Bennett as one of the shooters, stating that she could not identify the shooters and admitting that she was coerced into testifying against Mr. Bennett by the police detectives investigating the case; and (B) a 2012 declaration from an eyewitness to the shooting, Mr. Walker, who states Mr. Bennett was not involved in the crime. This evidence is additionally corroborated by the 2002 affidavit from an actual perpetrator, Mr. Gantt, who exculpates Mr. Bennett of any involvement in Mr. Williams’ murder, recants his trial testimony, and states that police detectives investigating the case coerced him into testifying against and implicating Mr. Bennett. If the jury in Mr. Bennett’s trial had been given the opportunity to hear this evidence proving Mr. Bennett was not involved in Mr. Williams’ murder, when viewed with all of the exculpatory evidence discussed *infra*, it is reasonably probable that the jury would have found Mr. Bennett not guilty of the charges.

This evidence requires that Mr. Bennett’s claim of factual innocence be carefully reviewed and that his erroneous conviction be reversed.

2. The new evidence is not cumulative of evidence that was known.

Another requirement for newly discovered evidence is that it must not be “merely cumulative of evidence that was known” at the time of trial. Nev. Rev. Stat. 34.930. While cumulative is not defined in the Innocence Statute, Nevada courts have given it meaning in other settings. *See, e.g., Porter v. State*, 576 P.2d 275, 280 (Nev. 1978) (holding that the proffered evidence, even if material, was cumulative because it was significantly referred to during trial); *Grey v. Harrison*, 1 Nev. 502, 1865 WL 1103 Nev. 1865) (holding that evidence is only cumulative if is in addition to or corroborative of what has been given at the trial).

In *Hennie v. State*, the Nevada Supreme Court explains when evidence is not considered cumulative. 968 P.2d 761, 762 (Nev. 1998). In that case, the defendant claimed he had been framed by his two roommates for a number of burglaries. 968 P.2d 761, 762 (Nev. 1998). Both roommates testified against him, and he was ultimately convicted of all charges. *Id.* At sentencing, the defendant learned that both witnesses had been involved in a murder conspiracy four years earlier and one had testified untruthfully about his indebtedness. *Id.* Based upon this information, the defendant appealed and moved for a new trial. *Id.* Although the defendant attacked the witnesses’ credibility throughout the trial, the Nevada Supreme Court held that the evidence was not cumulative because “the newly discovered evidence, which the jury never heard, severely undermine[d] the credibility of the State’s two key witnesses upon whose testimony [the defendant] was largely convicted.” *Id.* at 764. As a result, the Court also held that the defendant was entitled to a new trial. *Id.* at 765.

In the present case, the evidence showing Mr. Bennett’s factual innocence is not cumulative and much stronger than in *Hennie*. First, recantations by their very nature cannot be cumulative. Further, like the witnesses in *Hennie*, Mr. Bennett was convicted solely on the basis of witnesses who were falsely framing him for Mr. Williams’ murder. The jury never heard the truth and, as a result, Mr. Bennett was wrongfully convicted. Further, the trial court excluded critical evidence about Ms. Neal’s motive to lie and relevant facts regarding the aggressive

crimes with which she was charged. Second, in addition to the recantations of the only two people who falsely claimed to see Mr. Bennett shoot Mr. Williams, Calvin Walker, a new eyewitness, states that Mr. Bennett was not involved in Mr. Williams' murder. This newly discovered evidence is of a completely different kind, character and nature than anything that was presented at trial and refutes the only evidence against Mr. Bennett. As such, none of the statements can be considered cumulative.

3. The new evidence is not merely impeachment evidence.

Under the Innocence Statute, new evidence cannot merely be impeachment evidence. Nev. Rev. Stat. § 34.960(6)(2)(b)(2). Impeachment evidence is used to attack the credibility of a witness. *See* Nev. Rev. Stat § 50.075. The Nevada Supreme Court has held that evidence is “merely impeachment if its *sole* purpose is to discredit a witness. *O’Neill v. State*, 238 P.3d 843 (Nev. 2008) (emphasis added). Importantly, the Nevada Supreme Court has waived the requirement that newly discovered evidence cannot be merely impeachment evidence and therefore may be enough to justify granting a new trial if the witness impeached is so important that impeachment would necessitate a different verdict. *King v. State*, 596 P.2d 501, 503 (Nev. 1979).

In *Hennie*, *supra*, the newly discovered evidence implicated two key prosecution witnesses in an unrelated murder conspiracy and proved that one of the two witnesses had lied on the stand during trial. *Hennie v. State*, 968 P.2d 761, 762 (Nev. 1998). Although the State argued that the new evidence was merely impeachment evidence because the defense had attacked their credibility at trial, the Nevada Supreme Court rejected the State’s argument holding that because the jury did not hear this “crucial impeachment testimony” and it was “extremely material” to the defense, a new trial was warranted. *Id.* at 764. This result was mandated even though the impeachment testimony did not directly contradict the witnesses’ trial testimony. *Id.*

Here, the facts demonstrate Neal and Gantt lied at trial and directly contradict their trial testimony. They demonstrate the witnesses were not truthful at trial and establish the factual innocence of Mr. Bennett, a wrongfully accused person. The declaration of Mr. Walker states

facts and does not impeach another testifying witness. Finally, the information in the statements is “extremely material” to Mr. Bennett’s claim of factual innocence.

4. When considered with all the other evidence, the newly discovered evidence demonstrates that Mr. Bennett is factually innocent.

The Innocence Statute requires the petitioner to show that “when viewed with all other evidence in the case, regardless of whether such evidence was admitted during trial, the newly discovered evidence demonstrates” his factual innocence. Nev. Rev. Stat. § 34.960(6)(2)(d). Although Nevada courts have never had the opportunity to interpret the Innocence Statute as it was just passed during the 2019 legislative session, the Utah Supreme Court has emphasized that a nearly identical provision in its innocence legislation²⁰ provides that: “[A] determination of factual innocence can be based on a combination of newly discovered evidence and previously available evidence.” *Brown v. State*, 308 P.3d 486, 497 (Utah 2013). The Utah Supreme Court further emphasized that the Utah innocence legislation does not require “the newly discovered evidence alone must be determinative.” *Id.* at 495. Finally, the Utah Supreme Court held that this final requirement exists because:

[I]t is not workable to require courts to identify particular evidence as pivotal. A court could be faced with two pieces of evidence: one developed at the original trial and a second at the factual innocence hearing. Either one alone could be meaningless, but both taken together could be significant.

Id. at 496.

The new evidence here, standing alone, proves that Mr. Bennett was not involved in Mr. Williams’ murder. Without Neal and Gantt, there is **no** evidence. When combined with all other relevant evidence, the only reasonable conclusion is that Mr. Bennett was wrongfully convicted and should be declared factually innocent.

²⁰ Utah Code Ann. §§ 78B-9-402(2)(a)(2012) states that the petitioner must show that when “viewed with all the other evidence, the newly discovered evidence demonstrates that the petitioner is factually innocent.”

- a. *Ms. Neal had motive to lie and her inconsistent statements during the investigation and trial bolster her recantation.*

Police originally interviewed Ms. Neal at the scene of the crime, but she unequivocally stated that she did not witness Mr. Williams' murder. Tr. Transcript Vol. IV, 49. Nearly two months later, Ms. Neal changed her story. *Id.* at 51-52. On May 1, 2001, and only after Ms. Neal faced several serious felony charges of her own for her involvement in the shooting of a six-year-old girl, did she claim to remember seeing Mr. Williams' murder. *Id.* at 112. At that time, Neal was also upset about the murder of her cousin, Mr. Bass. *Id.* at 111. Ms. Neal believed the GPK, and possibly Mr. Bennett, were responsible for Mr. Bass's death, and coincidentally, all of the shooters she identified in Mr. Williams' murder she believed were GPK affiliated. *Id.*

Notably, the charges against Ms. Neal were dropped and she was granted full "immunity" at Mr. Bennett's preliminary hearing and before she testified at the hearing. Preliminary Hearing, 64-66. In hopes of enhancing her credibility, Ms. Neal testified that the charges against her were dropped due to "lack of evidence" and not in exchange for her testimony. Tr. Transcript Vol. IV, 76.

Moreover, Ms. Neal's statement to police, her preliminary hearing testimony and her trial testimony are rife with inconsistencies because the statements and testimony were false. These inconsistencies are exposed in her 2017 declaration in that they show she simply was never certain who was involved in Mr. Williams' shooting. It is clear that Ms. Neal had no idea what day or what time the shooting actually occurred. She testified that the shooting occurred after police had already arrived on the scene, and that it occurred on a weekday when it, in fact, occurred on a Saturday. She identified individuals and then changed her identifications repeatedly. Ms. Neal never saw any guns. However, in an attempt to add credibility to her lies, she put different guns in different alleged participants' hands at each recitation of her fictional story. Simply put, despite threats, promises and lies from law enforcement, Ms. Neal has now decided to tell the truth, that Mr. Bennett was not involved in Williams's shooting. *See Exhibit A.*

b. Michelle Wilson's trial testimony corroborates Ms. Neal's recantation.

Ms. Wilson, the woman who Ms. Neal testified she was driving to work on the day of the shooting, testified as a witness for the defense. Tr. Transcript Vol. VIII, 103. Importantly, Ms. Wilson testified that she did not believe Ms. Neal witnessed the shooting, *id.* at 114, and although the court sustained an objection to this testimony as speculation, Ms. Wilson had facts to support her statement that Ms. Neal did not witness the shooting. These facts corroborate Ms. Neal's recantation.

c. Reginal Don Fobbs' trial and proffered testimony further corroborates Ms. Neal's recantation.

Mr. Fobbs, Ms. Neal's brother, testified as a witness for the defense. Tr. Transcript Vol. VIII, 97. Mr. Fobbs testified he frequently spoke with Ms. Neal about the shooting. *Id.* at 99. Mr. Fobbs also indicated that at one point, Ms. Neal told him something about Mr. Bennett possibly being involved in Mr. Bass's murder. *Id.* The Court did not allow defense counsel to question Mr. Fobbs further regarding any of this information because the Court previously ruled this testimony would be hearsay. *Id.* at 99-100. However, because this Court may consider all evidence, regardless of whether it was admitted at trial, Mr. Fobbs' information that was not presented or considered by the jury is relevant to Mr. Bennett's factual innocence determination.

Mr. Fobbs' testimony is important to Mr. Bennett's factual innocence claim for two distinct reasons. First, his testimony corroborates Ms. Neal's recantation (and Ms. Wilson's testimony) in that Ms. Neal told Mr. Fobbs that she did not witness the shooting. Second, Mr. Fobbs' testimony further establishes Ms. Neal's motivation for lying – her belief that Mr. Bennett was responsible for the death of her cousin, Mr. Bass, and her fear of being prosecuted and convicted of shooting a six-year-old girl.

d. Anthony Gantt's testimony and plea agreement corroborate his recantation

Mr. Gantt entered into a plea agreement with the State to testify against Mr. Bennett and Mr. Morrison in exchange for a lesser sentence of ten years to life on a reduced second-degree murder charge. Tr. Transcript Vol. VI, 81. Before this agreement, Mr. Gantt faced a potential

sentence of life without the possibility of parole for first-degree murder with use of a deadly weapon. *Id.* at 117.

When viewed together with Mr. Gantt's trial testimony, his 2002 affidavit becomes even more credible. The then 15-year-old Mr. Gantt testified against Mr. Bennett even though he did not know Mr. Bennett and did not see Mr. Bennett at the scene of Mr. Williams' murder. He testified because he had been improperly threatened with the death penalty and he just wanted to "save his own skin."

e. James Golden's trial testimony has always supported Mr. Bennett's factual innocence

During their investigation, police spoke to Mr. Golden, a security guard at Buena Vista Springs Apartments, who did not witness the actual shooting but heard the shots and witnessed the immediate aftermath of the shooting. Tr. Transcript Vol. V, 6-7. His trial testimony was consistent with his police statement. Both included the following: As Mr. Golden ran toward the scene, he saw a number of people running away from the area. *Id.* at 8. Specifically, Mr. Golden witnessed three "suspicious" individuals from approximately 20 yards away. *Id.* at 10. Mr. Golden recognized one of the suspicious individuals as Mr. Gantt. *Id.* at 14. Mr. Golden testified that as Mr. Gantt was running from the scene, it appeared that he was stuffing a gun into the front of his pants. *Id.* at 15. Mr. Golden described all three suspicious individuals as black, under the age of 18, and wearing black pants and white shirts. *Id.* at 18. Not only did Mr. Golden not identify Mr. Bennett as one of the people he saw running from the scene, his description of the "suspicious" individuals clearly does not match Mr. Bennett. As such, his testimony is additional evidence that Mr. Bennett was not involved in Mr. Williams' murder.

In sum, the newly discovered evidence alone, and particularly when viewed with all of the other evidence, establishes that Mr. Bennett is factually innocent. His petition meets the statutory requirement that allows him, if necessary, to prove his innocence at an evidentiary hearing.

B. The New Evidence was Neither Known nor Should Have Been Known to Mr. Bennett or his Trial Counsel.

The Innocence Statute further requires that “[n]either the petitioner nor the petitioner’s counsel knew of the newly discovered evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or post-conviction petition, and the evidence could not have been discovered by the petitioner or the petitioner’s counsel through the exercise of reasonable diligence.” Nev. Rev. Stat. § 34.960(6)(3)(a).

As discussed above, neither Mr. Bennett nor his trial counsel knew of the new evidence discussed in this Petition, nor could have they discovered that evidence by exercising reasonable diligence. No one knew the names and identities of individuals who had witnessed Mr. Williams’ murder. Despite their best efforts, the police were stonewalled by individuals who were at the Buena Vista Springs Apartments that day. Thus, Mr. Walker’s eyewitness account could not have been discovered until he was ready to come forward. What is more, Mr. Bennett and his counsel were prevented from learning what Ms. Neal really knew because she not only lied, but also, according to her statements, she was coerced into providing the false testimony. This claim is corroborated by Mr. Gantt’s recantation, because he also claimed that he was coerced by the police.

In short, none of the newly discovered evidence was available to Mr. Bennett or his trial counsel, nor could they have discovered it in the exercise of reasonable diligence.

C. This Court Should Waive the New and Unknown Evidence Requirement in the Interests of Justice.

Under the Innocence Statute, if the court finds that the petitioner and/or his counsel knew or should have known of the newly discovered evidence, the court may still allow the petition to proceed in the interests of justice. *See* Nev. Rev. Stat. § 34.960(6)(4)(b)(2). Specifically, the court may waive the “knew or should have known requirement” and allow the petition to proceed to a hearing if the evidence; “(I) Was not discovered by the petitioner or the

petitioner's counsel; (II) Is material upon the issue of factual innocence; and (III) Has never been presented to a court." *Id.*

As discussed above, neither Mr. Bennett nor his counsel discovered the new evidence. The police were unsuccessful in locating witnesses and getting them to talk. Further, as discussed above, this newly discovered evidence is material to the issue of Mr. Bennett's factual innocence. At this point, the evidence presented in this Petition establishes that Mr. Bennett was not involved in Mr. Williams' murder.

Finally, the new evidence has never been presented to a court. The jury heard that Ms. Neal witnessed Mr. Williams' murder and that she could identify Mr. Bennett as one of the shooters. The jury also heard Mr. Gantt, a co-defendant, implicate Mr. Bennett and identify him as being involved. Mr. Walker did not testify at trial as he had not been identified at the time of Mr. Bennett's trial. Although Mr. Bennett presented Mr. Gantt's affidavit during post-conviction proceedings, the case was ultimately dismissed because the Court determined that Ms. Neal's now-recanted testimony was sufficient to sustain Mr. Bennett's conviction.

Mr. Bennett's conviction rests solely on the testimony of Mr. Gantt and Ms. Neal, both of whom have now recanted their false testimony, and their recantations are consistent with trial witness testimony and proffered evidence, including the testimony of Ms. Wilson and Mr. Fobbs. A new eyewitness, Mr. Walker, has declared under penalty of perjury that Mr. Bennett was not involved in Mr. Williams' murder. Nearly 18 years ago, Mr. Bennett was wrongfully convicted of this crime. Based upon the newly discovered evidence, along with all of the other evidence, Mr. Bennett's conviction should be reversed.

CONCLUSION

Ashley Bennett is an innocent man who has been wrongfully incarcerated in the Nevada prison system since 2001. Mr. Bennett's conviction rests entirely on false trial testimony. Based upon the foregoing, Mr. Bennett requests the Court to hold a hearing based on newly discovered evidence so his post-conviction innocence claim may be heard.

DATED this 10th day of February 2020.

/s/ Neil A. Kaplan

NEIL A. KAPLAN

KATHERINE E. PEPIN

Attorneys for Petitioner Ashley Bennett

/s/ Jennifer Springer

JENNIFER SPRINGER

Attorney for Petitioner Ashley Bennett

/s/ D. Loren Washburn

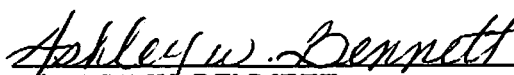
D. LOREN WASHBURN

Attorney for Petitioner Ashley Bennett

1
2 **PETITIONER'S OATH**

3 Pursuant to Nev. Rev. Stat. § 34.960, I declare under criminal penalty under the laws of
4 the state of Nevada that I have read the foregoing petition and the foregoing petition is true and
5 correct.

6 DATED this 22 day of January 2020 in Clark County, State of Nevada.
7

8
9 
10 ASHLEY W. BENNETT
11 Petitioner
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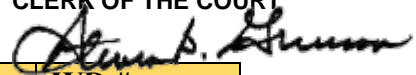


Exhibit List to Petition

Exhibit	Description	WD #
Exhibit A	2017 declaration from Ms. Neal	1622073
Exhibit B	2012 declaration from Calvin Walker	1622074
Exhibit C	2002 affidavit Anthony Gantt	1622075
Exhibit D	Nevada Innocence Statute. (Nev. Rev. Stat. 34.960	1622152
Exhibit E	All relevant Trial Transcript excerpts: Tr. Transcript Vol. IV, 4-5, 29, 33-35, 49, 51-52, 67, 71, 72, 76, 77, 83, 84-85, 103, 108, 111-112, 123-125 Tr. Transcript Vol. V, 3-4, 6-8, 10, 11, 14, 15, 18, 64, 65, 67, 76, 87, 100 Tr. Transcript Vol. VI, 71-74, 81-84, 90-91, 94-95, 117, 128, 134 Tr. Transcript Vol. VII, 35, 39, 86, 87, 88, 99, 110, 112, 114, 115-116, 117, 118-119, 123-127 Tr. Transcript Vol. VIII, 5, 14, 15, 17, 27, 29, 30, 31-33, 36, 39, 44, 45, 46, 47, 97, 98, 99-100, 103, 106-113, 114	1631461
Exhibit F	NLVPD Report dated June 4, 2001	1622163
Exhibit G	Preliminary Hearing Transcript (page 9)	1622224
Exhibit H	Criminal Court Minutes, Hon. Michael L Douglas (page 11)	1631453
Exhibit I	Order of Affirmance dated October 5, 2004 (Nev. S.Ct.) (page 16)	
Exhibit J	Findings of Fact, Conclusions of Law and Order, <i>State of Nevada v. Bennett</i> , Case No. C175914 (8th Dist. Nev., Nov. 29, 2005.) (page 16)	1622241
Exhibit K	Order, <i>Bennett v. E.K. McDaniel</i> , No. 3:06-cv-536-ECR-VPC (D. Nev. May 18, 2010) (page 17)	1622261
Exhibit L	Order, <i>Bennett v. E.K. McDaniel</i> , No. 10-16351 (9th Cir. 2011) (page 17)	1622266
Exhibit M	Dennis Reefer Investigation Report (page 20)	

CASE NO. A-20-810154-W
Department 8

EXHIBIT A

Pamela Neal declare under penalty of perjury
that the foregoing is true + correct

I cannot be sure of who shot daughter as
it happened so quickly.

I felt pressured by the district attorney, William
Coat, police, det Rodriguez + Bodnar, + investigator
Reg to testify.

The above individuals threatened to bring back my
charges of conspiracy to commit a crime and
attempted murder (which had been dropped) if I
did not testify.

They also threatened to take away my kids.

I told the above individuals that I could not
be sure that Ashley was involved in the shooting
of Joseph Williams

and tell P.N.
I tried to call Det Rodriguez + Bodnar that I
made a mistake regarding identifying Ashley

The above individuals gave me \$300-\$400 to
move from Carey Arms to Saratoga Springs II

X Pamela Neal 2-11-15

My
Apartment

AB

E

DB

Pamela real

I Pampela declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. I did not want to testify, because I wasn't totally sure of all the people shooting at daddy boy. I didn't want to testify I felt like I was pressured. On the day of the first court date I wasn't coming to court. They called me on the phone. They was around the corner from my mom's house they came to pick me and took me to the courthouse. Det. Bodnar ~~told~~ told me I had to go to the DA Office he followed me to drop my kids off. And he followed me all the way to the DA Office. I told Reg I wasn't sure, I also told the detectives I wasn't sure. They threatened to bring the attempted murder charges back and take my kids. They gave me a check to move out of Cursey Arms because I told them once.

this gets out I'm not going
to be able to live here.
I tried to tell them after he
was convicted that I don't think
he was one of the shooters.

Pomplunhead
2-11-17

EXHIBIT B

AFFIDAVIT OF CALVIN WALKER

STATE OF NEVADA)

) SS:

COUNTY OF CLARK)

TO WHOM IT MAY CONCERN:

I, CALVIN WALKER, the undersigned, do hereby swear that all the following statements and description of events, are true and correct, of my own knowledge, information, and belief, and to those I believe to be true and correct. Signed under penalty of perjury pursuant to NRS 208.165.

(1) THAT, I CALVIN WALKER, WAS WALKING SOUTH THROUGH CARY ARMS (BUANA VISTA SPRINGS) ABOUT 3:00pm ON SATURDAY MARCH 3, 2001 COMING FROM A GIRLS HOUSE NAMED KE.KE WHO LIVED IN THE HOUSES CALLED THE NEW WINSLOW PARK. I WAS WALKING THROUGH CARY ARMS HEADED TO MY MOMS APARTMENT IN CARY ARMS ON CARY BLVD. SHE HAS LIVED OVER THERE FOR YEARS AND EVEN THOUGH I AM FROM 60'S EVERYONE KNOWS MY MOM AND FAMILY AND I GREW UP IN THE AREA, SO IM COOL WITH EVERYONE. AS I WAS WALKING THROUGH CARY ARMS TO MY MOMS PLACE I SEEN JOSEPH (DOUGH BOY) AND RIDDLER COMING FROM AN APARTMENT, SO I STARTED TO WALK OVER TO THEM TO SAY "WHAT'S UP", AND TO SEE WHAT THEY WERE ABOUT TO DO. AS I WALKED BETWEEN THE BUILDINGS AS I GOT TO THE CORNER OF THE BUILDING AND ENTERED INTO THE COURT YARD (PARKING LOT) I SEEN 4 GUYS WALKING TOWARDS DOUGH BOY AND RIDDLER... THEN THEY STARTED SHOOTING. RIDDLER TOOK OFF RUNNING

AND DOUGH BOY

1 FELL ON THE WALK WAY IN FRONT OF HIS CAR
2 (A LIGHT BLUE CADILLAC). I DID NOT RUN AT FIRST
3 BECAUSE I WAS IN SHOCK. WHEN THEY WERE DONE
4 SHOOTING, ABOUT 5 SECONDS AFTER THEY WERE
5 DONE SHOOTING, I WALKED OFF BEHIND THE BUILDING
6 AND BLENDED IN WITH THE PEOPLE RUNNING AND
7 WENT TO MY MOMS APARTMENT. I SEEN ALL THE
8 SHOOTERS. THEY WERE YOUNGSTERS ABOUT 16-20
9 YEARS OLD. THAT'S WHY I DID NOT KNOW ANY OF
10 THEM. I KNOW NONE OF THEM WAS ASHLEY BENNETT
11 (FACE), BECAUSE I HAVE KNOWN HIM FOR LIKE 20
12 YEARS. BACK IN 2001, I KNEW HIM FOR ABOUT
13 11-12 YEARS. I HAVE KNOWN ASHLEY FOR ABOUT
14 20 YEARS AND HE WAS NOT ONE OF THE SHOOTERS
15 OR EVEN IN THE PARKING LOT. WHEN I HEARD HE
16 WAS ARRESTED FOR KILLING MY HOMEBY, I KNEW
17 THEY WOULD NOT FIND HIM GUILTY, BECAUSE HE
18 DID NOT DO IT. BUT WHEN I FOUND OUT HE GOT
19 FOUND GUILTY I FELT BAD, BECAUSE I KNOW HE
20 DIDN'T DO IT. AND EVERYBODY KNOWS HE DID NOT
21 DO IT! I NEVER CAME FORWARD AND SAID ANYTHING
22 BECAUSE I THOUGHT SOME OF MY HOMIES FROM
23 60'S MIGHT TRY TO HURT ME SO I DESIDED TO JUST
24 STAY OUT OF IT. THEN YEARS LATER, I HEARD ASHLEY
25 WAS STILL LOCKED UP AND I SEEN HIM AFTER ALOT
26 OF SOUL SEARCHING. I TOLD HIM I SEEN EVERY-
27 THING THAT HAPPENED AND I WOULD BE READY TO

1 COME FORWARD BECAUSE I KNOW HE DID NOT
2 DO IT. I SEEN EVERYTHING. I HAVE CHANGED
3 MY LIFE, SO I DON'T CARE WHAT MY HOMIES
4 THINK AND IT'S NOT RIGHT THAT HE IS LOCKED
5 UP FOR SOMETHING HE DID NOT DO. AND I HEARD
6 HOW THE PEOPLE TESTIFIED ON HIM AND LIED TO
7 GET THERESELVES OUT OF TROUBLE. THEY HAVE A
8 REASON TO LIE... I DON'T! IT WAS MY FRIEND
9 WHO WAS KILLED!

22 FURTHER, AFFIANT SAYETH NAUGHT.

23 EXECUTED AT HIGAL DESERT STATE PRISON this day of APRIL 2012

24 IN FRONT OF:

BY Laleim Walkers
NDOC # 74348

EXHIBIT C

AFFIDAVIT OF ANTHONY GANTT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)
 A.G

I, ANTHONY GANTT, do hereby swear under the penalty of perjury that the assertions of this Affidavit are true and correct.

1. That I am the Affiant herein and of sound mind and body; that I have personal knowledge of the facts herein set out and make this Affidavit on behalf of ASHLEY BENNETT as to the charges filed against him by the State of Nevada in which he was accused of first degree murder.
2. That, I was 15 years old at the time when this incident in question happened and when questioned by Detectives they threatened me with the death penalty if I didn't say that ASHLEY BENNETT was involved in this homicide case.
3. That, at no time when being questioned, threatened and pressured by both the Detectives investigating this homicide and my attorney, Kristen Wildaveld, did either of them advise me, that it is constitutionally illegal to execute a 15 year old defendant.
4. That, when questioned by Detectives they threatened me to say ASHLEY BENNETT was involved in this homicide by saying "it was a guy with long hair and that he is light skinned".
5. That, I refused to make a deal on several occasions via my attorney, however, I was told if I did not take a deal to testify against ASHLEY BENNETT, the Detectives were then going to charge me with other murder cases "that I didn't do".
6. That, I made false statements and testimony against ASHLEY BENNETT that he was involved in this homicide sanctioned by the State of Nevada and its agents.
7. That, "I do not know ASHLEY BENNETT" and "I did not see ASHLEY BENNETT nowhere at the crime scene". "ASHLEY BENNETT is innocent of this homicide charge he is imprisoned for.

Further your Affiant sayeth naught.

Dated this 3rd day of July, 2002

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 3rd day of July, 2002

NOTARY PUBLIC

X Anthony Gantt
AFFIANT

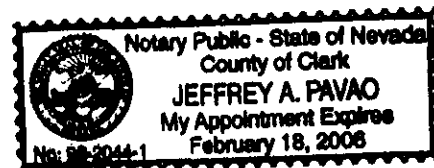


EXHIBIT D

West's Nevada Revised Statutes Annotated

Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)

Chapter 34. Writs: Certiorari; Mandamus; Prohibition; Habeas Corpus (Refs & Annos)

Petition to Establish Factual Innocence

N.R.S. 34.960

34.960. Person convicted of a felony may petition district court for a hearing to establish factual innocence based on newly discovered evidence

Effective: July 1, 2019

[Currentness](#)

<2019 legislation subject to revision and classification by the Legislative Counsel Bureau>

1. At any time after the expiration of the period during which a motion for a new trial based on newly discovered evidence may be made pursuant to [NRS 176.515](#), a person who has been convicted of a felony may petition the district court in the county in which the person was convicted for a hearing to establish the factual innocence of the person based on newly discovered evidence. A person who files a petition pursuant to this subsection shall serve notice and a copy of the petition upon the district attorney of the county in which the conviction was obtained and the Attorney General.

2. A petition filed pursuant to subsection 1 must contain an assertion of factual innocence under oath by the petitioner and must aver, with supporting affidavits or other credible documents, that:

(a) Newly discovered evidence exists that is specifically identified and, if credible, establishes a bona fide issue of factual innocence;

(b) The newly discovered evidence identified by the petitioner:

(1) Establishes innocence and is material to the case and the determination of factual innocence;

(2) Is not merely cumulative of evidence that was known, is not reliant solely upon recantation of testimony by a witness against the petitioner and is not merely impeachment evidence; and

(3) Is distinguishable from any claims made in any previous petitions;

(c) If some or all of the newly discovered evidence alleged in the petition is a biological specimen, that a genetic marker analysis was performed pursuant to [NRS 176.0918](#), [176.09183](#) and [176.09187](#) and the results were favorable to the petitioner; and

(d) When viewed with all other evidence in the case, regardless of whether such evidence was admitted during trial, the newly discovered evidence demonstrates the factual innocence of the petitioner.

3. In addition to the requirements set forth in subsection 2, a petition filed pursuant to subsection 1 must also assert that:

(a) Neither the petitioner nor the petitioner's counsel knew of the newly discovered evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or postconviction petition, and the evidence could not have been discovered by the petitioner or the petitioner's counsel through the exercise of reasonable diligence; or

(b) A court has found ineffective assistance of counsel for failing to exercise reasonable diligence in uncovering the newly discovered evidence.

4. The court shall review the petition and determine whether the petition satisfies the requirements of subsection 2. If the court determines that the petition:

(a) Does not meet the requirements of subsection 2, the court shall dismiss the petition without prejudice, state the basis for the dismissal and send notice of the dismissal to the petitioner, the district attorney and the Attorney General.

(b) Meets the requirements of subsection 2, the court shall determine whether the petition satisfies the requirements of subsection 3. If the court determines that the petition does not meet the requirements of subsection 3, the court may:

(1) Dismiss the petition without prejudice, state the basis for the dismissal and send notice of the dismissal to the petitioner, the district attorney and the Attorney General; or

(2) Waive the requirements of subsection 3 if the court finds the petition should proceed to a hearing and that there is other evidence that could have been discovered through the exercise of reasonable diligence by the petitioner or the petitioner's counsel at trial, and the other evidence:

(I) Was not discovered by the petitioner or the petitioner's counsel;

(II) Is material upon the issue of factual innocence; and

(III) Has never been presented to a court.

5. Any second or subsequent petition filed by a person must be dismissed if the court determines that the petition fails to identify new or different evidence in support of the factual innocence claim or, if new and different grounds are alleged, the court finds that the failure of the petitioner to assert those grounds in a prior petition filed pursuant to this section constituted an abuse of the writ.

6. The court shall provide a written explanation of its order to dismiss or not to dismiss the petition based on the requirements set forth in subsections 2 and 3.

7. A person who has already obtained postconviction relief that vacated or reversed the person's conviction or sentence may also file a petition pursuant to subsection 1 in the same manner and form as described in this section if no retrial or appeal regarding the offense is pending.

8. After a petition is filed pursuant to subsection 1, any prosecuting attorney, law enforcement agency or forensic laboratory that is in possession of any evidence that is the subject of the petition shall preserve such evidence and any information necessary to determine the sufficiency of the chain of custody of such evidence.

9. A petition filed pursuant to subsection 1 must include the underlying criminal case number.

10. Except as otherwise provided in sections 2 to 9, inclusive, of this act, the Nevada Rules of Civil Procedure govern all proceedings concerning a petition filed pursuant to subsection 1.

11. As used in this section:

(a) "Biological specimen" has the meaning ascribed to it in [NRS 176.09112](#).

(b) "Forensic laboratory" has the meaning ascribed to it in [NRS 176.09117](#).

(c) "Genetic marker analysis" has the meaning ascribed to it in [NRS 176.09118](#).

Credits

Added by [Laws 2019, c. 495, § 6, eff. July 1, 2019](#).

N. R. S. 34.960, NV ST 34.960

Current through the end of the 80th Regular Session (2019)

EXHIBIT E

1 desire to do, about having them previously charged with and
2 then limiting it to the nature of what those charges were and
3 information, be it pertinent, that the matter was dismissed
4 and even, as you're indicating, I guess, it was dismissed the
5 same day of preliminary hearing, --

6 MS. DE LA GARZA: Yes, Your Honor.

7 THE COURT: -- without getting into the specific
8 facts?

9 MR. BINDRUP: Your Honor, we certainly didn't intend
10 on getting into all of the facts of that matter. However,
11 there are some important elements of those particular events
12 that show Ms. Neal's violence and that she was fully willing
13 and looked at -- She had mentioned earlier in the preliminary
14 hearing that, you know, if she or her family was threatened,
15 she was going to do what she had to do. And here's a
16 situation where a beloved relative of hers, Eric Bass, was
17 killed and we believe she blamed --

18 THE COURT: You are -- Okay, you are in a position
19 where you can ask or you can show a relationship to the person
20 who has been killed, that's appropriate, because that goes to
21 bias, but, in terms of what she might do, that's not relevant,
22 but clearly her charges, the fact that -- or for whatever
23 reason, I'm not getting into that, the matter had been
24 dropped, that it had been dropped on that day, those kind of
25 things are relevant to show bias and to give the jury

1 something to deal with the credibility, but as to the
2 specifics of the charges and what she might or might not do,
3 the difference is she's not on trial, but the other things do
4 clearly fall in and I think they're appropriate to be asked.

5 MR. BINDRUP: Still, the fact in this particular
6 incident is she, along with co-perpetrators, knocked and
7 physically barged in a door. A shot was fired, not by Ms.
8 Neal, but --

9 THE COURT: Again, the specific facts are not
10 appropriate.

11 MR. BINDRUP: Okay. And the fact that during that
12 incident a six year old girl was shot in the face, in the
13 chin --

14 THE COURT: Again, that is pursuant to NRS, the
15 specific incident, because she's not on trial. Her
16 credibility may be at issue and her credibility for
17 truthfulness, her credibility issues as to bias, but the other
18 no and so this Court --

19 MR. BINDRUP: Okay, may I make one more?

20 There was one other statement that she made to
21 police at that time in conjunction with their investigation of
22 that offense, in this shooting, that she was asked if she
23 thought that this six year old girl deserved to be shot and
24 her response was she asked the police officer, "Do you think
25 that Eric Bass deserved to be shot?" Can I get into that

1 BY MS. DE LA GARZA:

2 Q So you had known her quite a long time?

3 A Uh-huh.

4 Q Approximately what time are you supposed to take her
5 to work?

6 A She had to be there at like 4:00, maybe 4:30, and I
7 was leaving about 3:30.

8 Q Did you actually leave your house?

9 A No.

10 Q What happened?

11 A There was a shooting outside.

12 Q How do you know there was a shooting outside?

13 A Because I witnessed it.

14 Q Tell me what you witnessed. What did you do?

15 A I came out my door and I saw the gentleman that was
16 killed coming on the side of the building. There was some
17 guys on the side of him and there was guys coming from the
18 other way and they started shooting him.

19 Q Did they shoot him once?

20 A No.

21 Q How many times did they shoot him?

22 A I can't tell you. There was so many guns going off.
23 I don't know.

24 Q More than five?

25 A Yeah.

NEAL - DIRECT

1 Q Is that correct?
2 A Yes.
3 Q And you said Monique Hunt lived at the apartment
4 across the way, is that correct?
5 A Yes.
6 Q Is that 2535?
7 A I think so. Yes, it is.
8 Q Did she live on the top floor or the bottom floor?
9 A The bottom.
10 Q When you said that initially you saw a guy that
11 eventually got killed, when he was walking, was he walking
12 towards you or away from you?
13 A Towards me.
14 Q Was he closer to 2535 or was he closer to 2529, your
15 apartment?
16 A 2535.
17 Q Was he in front of 2535 coming towards you?
18 A He was on the side of the building, coming toward
19 me, to the front of the building.
20 Q But he was on the side of 2535?
21 A Yes.
22 Q And you said at that time there were some other
23 gentlemen around him?
24 A Yes.
25 Q Now those people that were around him, approximately

1 how many would you say?

2 A Maybe five or six.

3 Q Maybe five or six, okay.

4 This person that gets killed, as he's walking
5 towards you, and you know that guy as Dough Boy, --

6 A Yes.

7 Q -- what do you see him do?

8 A He threw his hands up in the air.

9 Q Before he threw his hands up in the air, what did
10 you think he was doing with these guys over there?

11 A Talking.

12 MR. BINDRUP: Objection to her opinion on what she
13 may have been doing or what he may have been doing over there.
14 That's total speculation.

15 MS. DE LA GARZA: Judge, I'll lay some foundation.

16 THE COURT: I'll allow her to answer the question as
17 long as it's confined to the generic term, but not any
18 specific content.

19 BY MS. DE LA GARZA:

20 Q As they were talking, or what you believe to be
21 talking, were they moving at all?

22 A Yes.

23 Q And, again, what direction were they moving?

24 A Walking towards me.

25 Q Did you recognize the people that were walking with

NEAL - DIRECT

1 him, the five or six guys? So far you've said five or six, is
2 that correct?

3 A Yes.

4 Q That were walking with Dough Boy?

5 A Yes.

6 Q Okay, so initially we have Dough Boy, correct, and
7 you say five or six guys are walking with him?

8 A Yes.

9 Q Can you identify those people that were walking with
10 him?

11 A One.

12 Q Who was that?

13 A Wacky G.

14 Q Do you know Wacky G by any other names?

15 A Wayne Gantt.

16 Q Who else was walking with him?

17 A Chew and Wing. The other three, I'm not sure about
18 the other three.

19 Q Were they older?

20 A I don't think so, youngsters.

21 Q Youngsters.

22 What do you consider to be a youngster?

23 A Like in the age of 25 and under.

24 Q Where is Wacky G and Chew and Wing in relationship
25 to Dough Boy?

NEAL - DIRECT

1 Q Does your daughter hang out with him?
2 A Sometimes.
3 Q Now right after this happened on March 3rd, were the
4 police called?
5 A Yes.
6 Q Did you see the police come out?
7 A Yes.
8 Q Where were you when the police got there?
9 A I was downstairs.
10 Q Were you with anybody in particular?
11 A Michelle.
12 Q And is that the Michelle Wilson that you referred to
13 earlier?
14 A Yeah.
15 Q What did you and Michelle do when the police got
16 there?
17 A We just stood there looking.
18 Q Did the police ever ask you what happened?
19 A Yes.
20 Q Did you tell them?
21 A No.
22 Q Why not?
23 A It wasn't none of my business at the time.
24 Q Did the police ask Michelle what happened?
25 A Yes.

1 girlfriend about his murder.

2 Q And who's your cousin?

3 A Eric Bass.

4 Q When had your cousin been killed?

5 A April 15th.

6 Q And so on May 1st your cousin's girlfriend has to go
7 down to the police station?

8 A Yes.

9 Q And what happens there at the police station that
10 makes you talk to the police about this murder?

11 A It had been eating at me since it happened. And the
12 day that Dough Boy got shot Eric came running through the
13 apartments to see was I okay and my kids and, when he seen
14 Dough Boy laying on the ground, he started crying and asked me
15 why did they do that and I told him I didn't know.

16 And that same day that he got killed there was a lot
17 of people outside crying and, you know, looking at me, asking
18 me what happened, did you see who did this and I just turned
19 my head.

20 Q You're referring to the Dough Boy murder, you just
21 turned your head?

22 A Yes. And so the day Eric got killed someone came
23 and got me and told me he got shot in his car.

24 MR. BINDRUP: Objection, hearsay.

25 MS. DE LA GARZA: Judge, it's not --

NEAL - DIRECT

1 THE COURT: I'll --

2 MR. BINDRUP: Is there a question pending?

3 THE COURT: I heard it and I'll overrule the
4 objection.

5 Please continue.

6 BY MS. DE LA GARZA:

7 Q Go ahead.

8 A Someone came and got me and told me he had been shot
9 on the other side and, when I got there, there was a lot of
10 people outside and I asked them the same thing they was asking
11 me about Dough Boy and I got the same kind of response.

12 Q What was that response?

13 A Everybody turned their head like they didn't know
14 what happened.

15 Q Were you close to your cousin?

16 A Yes. He's lived with me since he was 16.

17 Q On the day that Dough Boy was killed, were you the
18 only person out there?

19 A No.

20 Q How many other people were out there?

21 A There was a lot of people outside.

22 Q Can you give us an approximate number?

23 A Over 20.

24 Q Do you know whether any of those people came
25 forward?

1 Q Do you feel like you've put your children in
2 jeopardy by coming forward?

3 MR. BINDRUP: Objection.

4 THE COURT: I'll sustain the objection.

5 BY MS. DE LA GARZA:

6 Q Pam, when we had the preliminary hearing on June 5th
7 over in North Las Vegas, prior to that preliminary hearing did
8 you want to testify?

9 A What do you mean prior, like what?

10 Q Right before you testified, did you want to?

11 A No, not at first.

12 Q Why?

13 A I don't want them to do anything to my brother.

14 THE COURT: I'm gonna have the parties approach.

15 (Off-record bench conference)

16 BY MS. DE LA GARZA:

17 Q Pam, on the day of the shooting did you see what
18 kind of gun Wacky G had?

19 A I can't tell you how many calibers it was, but it
20 was silver.

21 Q What about what type of gun Face had?

22 A It was silver.

23 Q Did you see the type of gun Lailoni had?

24 A It was black.

25 Q Do you know what type of gun it was or do you just

NEAL - DIRECT

1 A One of the defense attorneys brought it up.

2 Q Did we tell you right before court that it had been
3 dismissed?

4 A Yeah, I think so.

5 Q Was there any type of deal?

6 A No.

7 Q Did we enter into any type of plea negotiation or
8 anything to dismiss that case?

9 A No.

10 Q Did we promise you anything at all?

11 A No.

12 Q Do you know why that case was dismissed?

13 A Lack of evidence.

14 Q But there wasn't a promise?

15 A No.

16 Q Have we made any promises to you regarding your
17 testimony here?

18 A No.

19 Q When you went to move out of that area, did the
20 D.A.'s Office give you any type of money?

21 A Yes.

22 Q What did we give you?

23 A I think it was three hundred and twenty-five dollars
24 (\$325).

25 Q Do you know why we gave you that money?

NEAL - DIRECT

1 A So I could move my kids to a new place.

2 Q Why did you need to do that?

3 A Because I didn't want them to get hurt.

4 Q Was that in exchange for your testimony?

5 A No.

6 Q Were you at all concerned for your safety when you
7 testified?

8 MR. BINDRUP: Objection, leading.

9 THE COURT: I'll sustain the objection as to the
10 form of the question.

11 BY MS. DE LA GARZA:

12 Q Pam, you said you've lived there -- or you did live
13 there at Morton for two years, at 2529.

14 A Yes.

15 Q During that two years that you lived there, was
16 there ever -- Strike that:

17 Was there a shooting right there in front of 2535?

18 A Besides this one?

19 Q Yes.

20 A Not to my knowledge.

21 MS. DE LA GARZA: No further questions.

22 MR. BINDRUP: May we approach, please?

23 THE COURT: Yes.

24 (Off-record bench conference)

25 THE COURT: Ladies and gentlemen, we're gonna take a

1 allowed to come down and mark on the exhibit. And hopefully
2 it was consistent or, if it's not, defense will let us know,
3 with her prior testimony without using that chart, using, I
4 guess, our Proposed A just for location. The Court didn't
5 feel it was overly suggestive once that was marked out and the
6 foundational basis of the testimony was provided.

7 Additionally, the Court's aware that defense had
8 offered their blank exhibit, which might have been the best to
9 use, however, the State is allowed to proceed with their
10 theory of the case and to use a diagram that they may attempt
11 to tie up later with all appropriate markings, as opposed to
12 going to multiple documents.

13 Now I'd like to move to our next objection by
14 defense and that is, at the conclusion of the direct
15 examination with Ms. Neal, Mr. Bindrup approached the bench as
16 to the issue -- as to the statement by Ms. Neal as to the
17 dismissal of the criminal action.

18 Mr. Bindrup.

19 MR. BINDRUP: Your Honor, when queried by the State,
20 she acknowledged that she was told by the District Attorney
21 before court that the case would be dismissed and she
22 volunteered that the case was being dismissed because of,
23 quote, "lack of evidence," end quote. That is not true, Your
24 Honor. I have a thick sheet of discovery in reference to her
25 particular case, which was 01FN0625. It was on calendar that

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2 it was consistent or, if it's not, defense will let us know,
3 with her prior testimony without using that chart, using, I
4 guess, our Proposed A just for location. The Court didn't
5 feel it was overly suggestive once that was marked out and the
6 foundational basis of the testimony was provided.

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14 defense and that is, at the conclusion of the direct
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19 MR. BINDRUP: Your Honor, when queried by the State,
20 she acknowledged that she was told by the District Attorney
21 before court that the case would be dismissed and she
22 volunteered that the case was being dismissed because of,
23 quote, "lack of evidence," end quote. That is not true, Your
24 Honor. I have a thick sheet of discovery in reference to her
25 particular case, which was 01FN0625. It was on calendar that

1 very morning of the preliminary hearing on June 5th of 2001.

2 Had she not testified that day, she would have been
3 held to answer charges on that and a preliminary hearing would
4 have been set for her in that matter. Basically she's told
5 the jury, "Hey, this case went away because there wasn't any
6 evidence. I am innocent of that charge and that's why it went
7 away." That's clearly not what happened.

8 There was plenty of evidence she barged into a place
9 with two other unidentified black males and a six year old,
10 young black girl of Antonio Luney [phonetic] was shot in the
11 chin and had to be hospitalized, taken in. They barged in.
12 She rushed in, confronted Antonio and demanded to know whether
13 or not he was involved with the killing of her beloved
14 relative, Eric Bass. There was a scuffle and that man came
15 close to being killed on that particular day.

16 This is not a case of insufficient evidence and she
17 has mischaracterized it to the jury. I believe that clearly
18 opens the door and that I have a right now to get into more
19 specific allegations of what occurred and should have an
20 opportunity to cross-examine her further than the Court
21 indicated I would be allowed when we had a previous hearing on
22 this.

23 THE COURT: Thank you.

24 Ms. De La Garza.

25 MS. DE LA GARZA: Your Honor, I'd challenge Mr.

NEAL - CROSS

1 not what this trial is about. She was charged, the matter was
2 dismissed and it was ultimately dismissed with immunity.

3 Mr. Koot, who is a representative of the D.A., who
4 was also handling this case, said that they couldn't prove the
5 case. The Court is not gonna question whether they could or
6 could not and we're not gonna allow defense to question
7 whether they could or could not, but we are stuck with what
8 was done and what was stated on the record and that's the
9 position of the Court.

10 With that, we'll take about a three-minute recess,
11 because we're over, and we need to get our jury back here.

12 (Court recessed)

13 (Jury is present)

14 THE COURT: We're back on the record. At this time
15 all of our jurors are present and accounted for. We'll pick
16 back up with the cross-examination of Ms. Neal.

17 Mr. Bindrup.

18 MR. BINDRUP: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. BINDRUP:

21 Q Ms. Neal, you testified earlier that it was about
22 3:30, the shooting?

23 A Yes.

24 Q Do you recall previously telling police that it
25 wasn't 3:30, but more like 3:40?

1 A 3:35, 3:30.

2 Q So do you know what time it was really or are you
3 just taking a guess?

4 A I don't know the exact time, no.

5 Q So is that why you said about 3:30?

6 A Yes.

7 Q And would it surprise you that in your statement to
8 police on May 5th, 2001 you indicated 3:40?

9 A No, it wouldn't surprise me.

10 Q Do you know why you were able to determine the
11 approximate time? Was there a reason?

12 A Because I picked my son up at 3:20 and it takes him
13 a time to come out of the schoolyard.

14 Q And you picked him up from an elementary school?

15 A Yes.

16 Q And his school gets out at -- right at 3:20?

17 A Yes.

18 Q And so, from the time he gets out, it takes you
19 about five minutes to get back to your place?

20 A Yeah.

21 Q And so you had just picked your son up from school
22 and had arrived back and that's why you believe it was around
23 3:30?

24 A Yes.

25 Q Would it surprise you that March 3rd, 2001 was a

1 Saturday?

2 A No.

3 Q Okay. If March 3rd, 2001 was a Saturday, you
4 wouldn't have been picking up your son from elementary school
5 at 3:20, would you have?

6 A No.

7 Q Do you have any idea what day of the week that was?

8 A No. Well, maybe he was at football practice, one of
9 those. I had just got back.

10 Q And what, football practice also, coincidentally,
11 ended every Saturday at 3:20?

12 A No.

13 Q You're really not sure what day of the week it was,
14 are you?

15 A No.

16 Q From Monday through Friday though, your normal
17 schedule would have been picking -- walking, picking up your
18 son at 3:20 and being back around 3:30, correct?

19 A Driving.

20 MR. BINDRUP: May I approach the witness, please?

21 THE COURT: Yes, you may. And if you'll show the
22 State.

23 (Pause in the proceedings)

24 BY MR. BINDRUP:

25 Q Do you recall giving a statement to the police on

1 answer to stand likewise.

2 BY MR. BINDRUP:

3 Q And at some point later, on June 5th, what caused
4 you to change your mind as to Louis Matthews being one of the
5 shooters?

6 A I sat down and I really thought about it and my mom
7 asked me to think about it and make sure I pick the right
8 people.

9 Q So did you feel guilty about it on --

10 MS. DE LA GARZA: Objection.

11 THE COURT: Sustained.

12 Mr. Bindrup, please do not ask that question again.

13 MR. BINDRUP: I'm sorry, Your Honor.

14 BY MR. BINDRUP:

15 Q Jermaine Webb or Wing, based upon your
16 representations to police on May 1st and picking him in a
17 photo lineup on May 8th, you're aware that those
18 representations led to his arrest and being charged for
19 murder?

20 A Yes.

21 Q And you, again, changed your mind just approximately
22 a month later and changed your story?

23 A Yes.

24 Q You're sure with the police, but not sure later?

25 A They were asking me a lot of questions and I really

1 transcript on June 5th, you were asked on -- is it true that
2 on line 2, page 179, when asked, "And there were a lot of
3 people running all over," you answered, "Not in the parking
4 lot," and then when questioned --

5 THE COURT: If you have a question as to the
6 shooters, ask that question or go to that transcript, because
7 that's not what you started with here. If that's what you're
8 doing, fine, get there.

9 BY MR. BINDRUP:

10 Q And on line 4 when asked, "Is it possible you would
11 have gotten one of the guys walking with Dough Boy and Anthony
12 mixed up," that you responded, "It's possible"?

13 THE COURT: We're gonna strike that last question.
14 Can we have a new question? That misstates the previous
15 question you asked, counsel. You asked questions as to
16 shooters, not walking.

17 BY MR. BINDRUP:

18 Q Were there other people and other shooters involved
19 that you may not have identified to the police?

20 A There could have been.

21 Q Do you recall testifying previously that because of
22 the confusion and number of people that there may well have
23 been other people and guns that you did not notice?

24 A Yes.

25 Q Besides you witnessing this shooting, who else --

1 A I didn't say he was at the shooting at all. You
2 asked me did I see him that day. He lived across from me. I
3 seen him that day. I never said he was involved in any
4 shooting.

5 Q One of the reasons you went to police and gave them
6 a statement on May 1st is because you wanted to solve Eric
7 Bass' murder, right?

8 A Yes.

9 Q You wanted to give them as much information as you
10 could to help, right?

11 A No. I didn't know anything about Eric's murder
12 except that I found him in the car slumped over.

13 Q You somehow felt that an individual from Gerson was
14 responsible for Eric's death?

15 A Yes.

16 Q Did you somehow feel Lailoni Morrison was
17 responsible?

18 A No.

19 Q Isn't part of the reason that you're pointing the
20 finger at individuals associated with this Gerson because you
21 hold them responsible for the tragic death of Eric?

22 A No.

23 Q And also one of the reasons you interviewed with
24 police on May 1st is because you had a criminal matter of your
25 own that you wanted resolved?

1 A No.

2 Q You were charged with a criminal offense in North
3 Las Vegas, were you not, based upon an April 15th, 2001
4 incident?

5 A Yes.

6 Q You were charged with multiple counts?

7 A Yes.

8 Q You were charged with conspiracy to commit murder?

9 A Yes.

10 Q You were charged with burglary while in possession
11 of a deadly weapon?

12 A Yes.

13 Q You were charged with battery with use of a deadly
14 weapon with substantial bodily harm?

15 A Yes.

16 Q You were charged with discharging a firearm at or
17 into a structure?

18 A Yes.

19 Q And you were charged with coercion with use of a
20 deadly weapon?

21 A Yes.

22 Q When you interviewed with police on May 1st, you had
23 this criminal charge hanging over your head, didn't you?

24 A Yes.

25 Q And you're telling us that had nothing to do with

1 BY MS. DE LA GARZA:

2 Q When the police arrived and Dough Boy's body was
3 down there on the ground, do you know whether it was still
4 alive -- whether he was still alive?

5 A He wasn't moving.

6 Q But do you know?

7 A But somebody was trying to give him mouth-to-mouth.

8 Q Somebody was trying to give him mouth-to-mouth?

9 A Yes.

10 Q So is it possible that these other individuals that
11 came and tried to move him were trying to give him medical
12 attention, trying to take him to the hospital, trying to do
13 all sorts of things that you don't know?

14 A Yes.

15 Q When you come out of your apartment building and
16 you're standing there on the balcony, do you always just look
17 right down at your feet?

18 A No. I just look outside to see who's outside and
19 what's going on.

20 Q And is that what you did on this day?

21 A Yes.

22 Q And is that when you witnessed the murder of Dough
23 Boy?

24 A Yes.

25 Q You were asked about what the shooters were wearing.

NEAL - REDIRECT

1 Isn't it true that in your previous testimony at the
2 preliminary hearing that you did note that Lailoni had black
3 pants on?

4 A Yes.

5 Q And that's the only person that you could remember
6 what they were wearing?

7 A Yes.

8 Q Were you trying to remember what everybody was
9 wearing when you saw this shooting?

10 A I really wasn't looking at their clothes. I was
11 trying to remember them, but I just couldn't.

12 Q But you know who was out there, don't you?

13 A Yes.

14 Q And do you know from seeing them time and time again
15 in your neighborhood?

16 A Yes.

17 Q These aren't people that were strangers to you?

18 A No.

19 Q And, in fact, you did tell the police initially,
20 when they first questioned you, that you weren't sure about
21 all the youngsters, the first three people that you said were
22 Wacky G, Lailoni and Face --

23 A Yes.

24 Q -- and you weren't sure?

25 A I was sure about them. I wasn't sure about the

1 people that were on the side of Dough Boy.

2 Q And you asked to look at some pictures because then
3 maybe you could identify Chew and Wing?

4 A Yes.

5 Q You didn't even know their names, did you?

6 A No.

7 Q And then, when you identified them, you came back
8 and you said I'm not positive about these people?

9 A Yes, I did.

10 Q And you were honest with the Court?

11 A Yes.

12 Q And you didn't go back and just stick with that word
13 because that's what you had said before. You tried to correct
14 your mistake, didn't you?

15 A Yes, I did.

16 Q And isn't it true that in your prior statement to
17 police on May 1st that you said that it was an old-time gun?

18 A Yes.

19 Q And that's about as far as you could go?

20 A That's it.

21 Q Now you were asked about Wacky G loading and
22 reloading and you said you're not sure. It's been a long
23 time.

24 A Yes.

25 Q Have some things in your mind faded, some things

COPY

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

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Shirley E. Langjume
CLERK

STATE OF NEVADA

Plaintiff

vs.

ASHLEY WILLIAM BENNETT

Defendant

CASE NO. C175914

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE MICHAEL L. DOUGLAS, DISTRICT JUDGE

JURY TRIAL - DAY 5
MONDAY, JANUARY 28, 2002
VOLUME V

APPEARANCES:

For the State:

MELISA DE LA GARZA
BECKY GOETTSCHE
Deputy District Attorneys

For the Defendant:

SCOTT L. BINDRUP, ESQ.
MELINDA SIMPKINS, ESQ.

COURT REPORTER:

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District Court

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Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

GOLDEN - DIRECT

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MS. DE LA GARZA:

4 Q Mr. Golden, I'd like to direct your attention to
5 March 3rd of 2001. At that time by whom were you employed?

6 A It would have been Apollo Security.

7 Q Apollo Security?

8 A Yes.

9 Q Did Apollo Security have you working at a particular
10 location?

11 A Buena Vista Springs Apartments.

12 Q Is that in North Las Vegas, Clark County, Nevada?

13 A Yes.

14 Q What is the approximate area there in North Las
15 Vegas? Do you know the cross streets?

16 A It would basically be Carey and MLK, Martin Luther
17 King.

18 Q Now I'd like to direct your attention to March 3rd.
19 Were you actually on duty?

20 A Yes.

21 Q What shift were you working?

22 A That day 9:00 a.m. to 5:00 p.m.

23 Q In the afternoon hours did you hear any gunshots?

24 A Yes.

25 Q Can you please tell me about those gunshots?

GOLDEN - DIRECT

1 A Basically it was multiple gunshots. My first
2 impression was either a drive-by or a gang war, as you would
3 say, considering the many shots that were heard.

4 Q Now when you say multiple, can you give me an
5 approximate number?

6 A I would say 20 plus.

7 Q What area were you in when you heard these shots?

8 A I was on Helen, in the area of Helen Street, which
9 was about one building over from where the shots were heard.

10 Q Now just there to your right, a little bit behind
11 you, is an exhibit. It's an aerial there that's been marked
12 and is admitted as States's Exhibit 1.

13 Do you recognize that?

14 A Yes.

15 Q And what do you recognize that as?

16 A That's basically the complex and I guess it would be
17 an aerial shot.

18 Q I'm going to ask you, Mr. Golden, to go ahead and
19 grab that pointer there that's right underneath the exhibit.
20 Can you do that for me?

21 Thank you, sir.

22 Now if you had to point to where you were when you
23 heard that shot or those shots, the multiple shots,
24 approximately where were you?

25 A I was in this proximity here.

GOLDEN - DIRECT

1 A It would be in between, actually, 35 and 39. These
2 two are back to back.

3 Q Okay.

4 MS. DE LA GARZA: And would the record reflect that
5 he has indicated with the pointer being right there between
6 those two buildings, just to the west of them, Judge, and that
7 being 2539 and 2535?

8 THE COURT: The record will so indicate.

9 BY MS. DE LA GARZA:

10 Q Once you heard those gun -- Strike that. Let me
11 back up.

12 At that time who were you with?

13 A I was with one of the property workers.

14 Q Do you know his name?

15 A Don Stewart, yeah.

16 Q Don Stewart?

17 A Right.

18 Q What were you and Don Stewart doing right there?

19 A Actually, we had a service call from a building
20 across from 2539, which was 1516, Apartment B, Baker. We were
21 there boarding up a window.

22 Q Okay. So were you on any type of vehicle or were
23 you just walking in that area?

24 A Yeah, we were on, what do you call it, a cart.

25 Q Do you mean like a golf cart?

GOLDEN - DIRECT

1 A Yeah, a golf cart, exactly.

2 Q When you hear those shots, what do you do?

3 A Well, basically -- Let me back that up.

4 We were on a -- We were leaving that particular
5 unit. We had finished that up. We were leaving, so we took
6 the back of 2539 and, just as we reached 2539, is when the
7 shots began, so at that point I had him stop the cart and told
8 him to take cover.

9 Q Okay, so that means that Don Stewart's actually
10 driving the cart and you're just a passenger?

11 A Right, right. And then, at that point, I posted up
12 behind a tree which was directly behind 2539.

13 Q And is that that same area that you indicated?

14 A Right.

15 Q And what did you do at that point when you're
16 posting up behind the tree?

17 A At that point I pulled my weapon and I stood until
18 the shots ceased and then I took a path in between 2535 and
19 39, which is a back -- it's a breezeway in between the two
20 buildings.

21 Q And can you just indicate for the jury the path that
22 you're taking?

23 A That would have been in between these two buildings.

24 Q Okay. And you're --

25 A I came from this way towards the street. And my

GOLDEN - DIRECT

1 first thought, as I said, I thought maybe it was a drive-by,
2 so I was looking for a vehicle. And then, since there wasn't
3 a vehicle spinning off or taking off at the time, I ran back
4 towards the park area again to --

5 Q Okay, let me stop you right there.

6 When you say you're running towards the street, what
7 street is that?

8 A That would be Morton Street.

9 Q And then you say you run back. When you run back,
10 do you run in front of 2535 or behind it, in between 2535 and
11 2539?

12 A Right, right in between. The same path, I took it
13 back.

14 Q So you take the same path?

15 A Right.

16 Q What happens at that point?

17 A Well, basically I was checking on -- I was checking
18 on Don and then I'm also looking for subjects running.

19 Q Did you see anybody?

20 A At that point it was multiple, I mean, many people
21 running, children, adults, and basically, by the time we
22 noticed anyone suspicious, I will say, they were clear across
23 the field.

24 Q Okay. Now when you say clear across the field,
25 which field are you referring to?

GOLDEN - DIRECT

1 Now you said you saw some subjects that looked
2 suspicious, is that correct?

3 A Yeah, basically the clothing that they had on and
4 one particular subject that was pointed out basically because
5 of an incident he was involved in moments before the situation
6 happened.

7 Q Okay, let me stop you there.

8 How many subjects are we talking about?

9 A At that particular point I believe it was three
10 individuals.

11 Q And when you spot them there, where are you?

12 A Still at the 2535 area.

13 Q Just to the west of 2535?

14 A Right.

15 Q How far away from you would you say that these
16 subjects are?

17 A Oh, that would be probably about 20 yards.

18 Q About 20 yards.

19 Was it difficult to see these subjects under these
20 conditions?

21 A Yeah. Basically, like I say, the clothing is the
22 only thing that really --

23 Q I'm sorry, sir, I didn't hear you. Just a little
24 bit louder for me. I'm sorry.

25 A The clothing is the only thing that we basically

GOLDEN - DIRECT

1 could recognize them.

2 Q Okay. What was the lighting like outside?

3 A The lighting was fair.

4 Q Was it dark?

5 A No, it was daylight, daylight, fair.

6 Q Okay. Now when you talk about this clothing, you
7 say there's three subjects. Let's just label one as 1. Can
8 you describe the clothing that the first subject was wearing?

9 A If I remember correctly, it was white t-shirts and
10 black pants.

11 Q Is that just for that first subject or were all
12 three of the subjects wearing the same thing?

13 A All three, all three.

14 Q All three.

15 Did you recognize any of those subjects?

16 A We had one, as I stated, because he was involved in
17 an earlier situation.

18 Q Okay. Other than that earlier situation, had you
19 ever seen this subject before?

20 A Yes.

21 Q How often?

22 A Practically on a daily basis.

23 Q Do you know if that subject lives in the area or how
24 would you come across him?

25 A Yeah, he lived -- he lived in the complex, yeah.

GOLDEN - DIRECT

1 MS. SIMPKINS: No objection, Your Honor.

2 THE COURT: 9 then so admitted.

3 (Plaintiff's Exhibit No. 9 admitted)

4 BY MS. DE LA GARZA:

5 Q Now you said you were asked to identify that
6 individual and you did so. Did you know that individual by
7 any name?

8 A At the time it was believed to be Wayne.

9 Q And you said you had seen him almost on a daily
10 basis there in that area?

11 A Correct.

12 Q When you say a daily basis, for how long? For a
13 week, for a month, for a year?

14 A Yeah, well over a year.

15 Q For well over a year?

16 A Right.

17 Q Did you notice whether Wayne was doing anything that
18 you felt was unusual when you saw him?

19 A At that particular time or --

20 Q Tell me --

21 A Are you saying at that particular time?

22 A In this time frame when you're identifying him or
23 seeing him, yes.

24 Q Well, basically he was seen with his hand wrapped
25 and it was bleeding through a towel and he was implicated in a

1 burglary.

2 THE COURT: Stop, stop.

3 MS. DE LA GARZA: Okay.

4 THE COURT: Stop right there.

5 BY MS. DE LA GARZA:

6 Q What I'm talking about is this time frame when
7 you're there, just to the west of Morton, 2535 Morton, and you
8 say you see him across the field.

9 A Oh, okay. Okay.

10 Q That's the time frame I'm talking about.

11 A Okay. At that point he was running towards the 2520
12 area.

13 Q And is that the area you marked with a triangle?

14 A Correct. And as he was pointed out to me, he was
15 more or less making a motion as to where he was stuffing
16 something into the front of his pants.

17 Q Okay, is there any way, Mr. Golden, that you could
18 stand up and demonstrate that motion for the jury?

19 A He was running, as to leave, a trot and he was seen
20 doing this.

21 Q Now when you say he was seen doing this, you're kind
22 of putting your hand flat against your stomach area and almost
23 going into the waistband of your pants, is that correct?

24 A That's correct.

25 MS. DE LA GARZA: And, Judge, would the record so

GOLDEN - DIRECT

1 Q Could you tell if they were of a particular age?

2 A Basically, I would say under 18 and the reason why
3 was that those particular colors that they were wearing was
4 like a little click that they have going on around their
5 little gang affiliation that they have around there, so they
6 were wearing those particular colors.

7 Q Okay. And those colors are white and black?

8 A Right.

9 Q You didn't see any other colors?

10 A Well, nothing that, you know, outstanding at the
11 time.

12 Q Okay. Now could you tell what race these juveniles
13 were, if you're saying they're under 18?

14 A They were all black.

15 MS. DE LA GARZA: The Court's indulgence.

16 THE COURT: That's fine.

17 (Pause in the proceedings)

18 BY MS. DE LA GARZA:

19 Q Mr. Stewart -- I apologize, Mr. Golden, you've said
20 that when you saw them they were basically close to West
21 Street. Did you see where they had run from?

22 A No.

23 Q Could you tell at least what direction they were
24 running? Were they running north to south, east to west? Can
25 you give us an approximation?

ARNONA - DIRECT

1 Q What is your position there?
2 A Patrol officer.
3 Q And how long have you been so employed?
4 A About two and a half years.
5 Q I'd like to direct your attention back to March 3rd,
6 2001. Were you on duty on that date?
7 A Yes, I was.
8 Q At approximately 3:09 p.m. were you dispatched to
9 2535 Morton?
10 A Yes.
11 Q Is that in North Las Vegas, Clark County, Nevada?
12 A Yes, it is.
13 Q What was the purpose of you being dispatched there?
14 A I was dispatched to a report of a man down, victim
15 of a gunshot wound.
16 Q What did you do upon arrival?
17 A Once I arrived, my thing was to control the scene,
18 protecting the evidence and to try to locate witnesses as
19 quickly as possible.
20 Q When you arrived, were there any other police
21 officers there?
22 A No, I was the only one. I was the first.
23 Q You were the first person to arrive?
24 A Yes.
25 Q So, when you arrived, what did you actually observe

1 initially?

2 A I saw a young man, actually an adult male, laying on
3 the ground face down, his head was kind of like cocked to the
4 side, he was facing towards an apartment and I saw that he had
5 several gunshot wounds about his body.

6 MS. DE LA GARZA: And, for the record, Your Honor,
7 the defense has stipulated that that was the victim in this
8 case, Joseph Williams.

9 THE COURT: We would so note.

10 MS. SIMPKINS: That's correct, Your Honor.

11 BY MS. DE LA GARZA:

12 Q Now you said he was in front of an apartment?

13 A Yes.

14 Q Do you know what building that was?

15 A I believe it was building 1509. It was in front of
16 Apartment B.

17 Q Okay. If you're looking at this aerial behind you,
18 State's Exhibit 1, does that look familiar to you?

19 A Yes, it does.

20 Q Okay. And could you take that pointer and kind of
21 point to where that victim would have been in front of?

22 A It was -- Oh, I'm sorry, he was lying on this grassy
23 area in front of this white -- pretty much where this white
24 car was.

25 Q Okay. Officer Arnona, do you know if that's the

ARNONA - DIRECT

1 A I'd say about seven, five to seven.

2 Q What did you do based upon finding this person
3 laying there in front of that building?

4 A I went over there and, you know, I was checking his
5 responsiveness. I didn't know whether he was -- he had
6 expired or not. And I went over there and I saw that he was
7 breathing real shallow breaths and he did have a pulse and I
8 called for medical.

9 Q At that time, Officer Arnona, were there other
10 people gathered around the body?

11 A There was quite a few people around.

12 Q Now when you say quite a few, can you give me an
13 approximate number?

14 A 25, 30, but there was one -- there was one gentleman
15 that was actually kneeling next to him and talking to him.

16 Q Do you know who that was?

17 A I believe he said he was a brother of his.

18 Q He said he was his brother?

19 A Brother or cousin. It was really quick. You know,
20 I just wanted him to back away, give him some room to breathe
21 and then after that he disappeared.

22 Q Okay, so whoever this person was, initially you
23 asked him to back up.

24 And then did you have any further contact with him?

25 A No, I did not.

ARNONA - DIRECT

1 Q Did you speak with somebody there?

2 A Yes, I did.

3 Q What about D?

4 A No one answered.

5 Q At all of those apartments that you went to, I think
6 that's one, two, three, four times three, 12 apartments, did
7 anybody tell you that they had seen anything?

8 A No.

9 Q Additionally, officer, was it your duty to impound a
10 particular car in this incident?

11 A Yes.

12 Q Can you describe that car for us?

13 A Actually, I could not. I'd have to look at my
14 report.

15 Q If that would -- If that would help to refresh your
16 recollection, please do so.

17 (Pause in the proceedings)

18 And, officer, it might help you if you look at page
19 13 of your report.

20 A Right. I have it.

21 Q Does that help to refresh your recollection?

22 A Yes, it does.

23 Q Did you have to impound a vehicle that was there in
24 that parking lot?

25 A Yes.

1 in, who goes out and make sure the evidence stays intact.

2 Q What did you do after that scene was secured?

3 A I was directed to try to contact any witnesses.

4 Q How did you do that?

5 A I simply walked into the bystanders and asked if
6 they saw anything, heard anything.

7 Q Did you get any responses in doing that?

8 A I got two initial responses.

9 Q And who did you contact or how did that come about?

10 A I asked if you saw or heard something and the
11 subject said yeah.

12 MS. SIMPKINS: Objection.

13 THE COURT: I'll let the answer stand.

14 BY MS. DE LA GARZA:

15 Q Now, officer, you said there was approximately 25
16 people out there at that time and only two people told you, in
17 fact, that they had seen something?

18 A Correct.

19 Q Who were those people that you contacted?

20 A Larasha [phonetic] Hill and Edwards or Eddie
21 Edwards, Edward Edwards.

22 Q And once they responded to you in the affirmative
23 that they had seen something, what did you do?

24 A Have them complete a written statement.

25 Q Did you speak with them at all before having them

GARCIA - DIRECT

1 Q How many people would you say?

2 A Close to 50, if not more.

3 Q If not more.

4 Now how do you go about controlling this type of a
5 crowd?

6 A You just try to keep them away from the victim and
7 try to calm them down and move them away from the crime scene
8 so they don't contaminate the area, but it's very difficult
9 because it's an emotional situation for them.

10 Q Okay. Why is it an emotional situation for them?

11 A Some of them are friends, some of them are relatives
12 of the victim and, when something like this occurs, some of
13 them are crying and screaming and they get very emotional.

14 Q Did you have any indication that those people that
15 were actually standing out there had witnessed the actual
16 shooting?

17 A No.

18 Q Okay. So were you dealing with emotional people or
19 --

20 A Yes, ma'am, I was.

21 Q Okay. You say you're there within minutes of
22 hearing these gunshots.

23 A Yes, ma'am.

24 Q And is it your job at that time, when you're setting
25 up this perimeter, to start putting out tape?

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DISTRICT COURT
CLARK COUNTY, NEVADA

MAR 13 11 02 AM '02

* * * * *

Shirley D. Langmuir

CLERK

STATE OF NEVADA

Plaintiff

vs.

ASHLEY WILLIAM BENNETT

Defendant

CASE NO. C175914

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE MICHAEL L. DOUGLAS, DISTRICT JUDGE

JURY TRIAL - DAY 6
TUESDAY, JANUARY 29, 2002
VOLUME VI

APPEARANCES:

For the State:

MELISA DE LA GARZA
Deputy District Attorney

For the Defendant:

SCOTT L. BINDRUP, ESQ.
MELINDA SIMPKINS, ESQ.

Also Present:
For Anthony Gantt

KRISTINA WILDEVELD
Deputy Special Public Defender

COURT RECORDER:

CATHY NELSON
District Court

TRANSCRIPTION BY:

NORTHWEST TRANSCRIPTS, INC.
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GANTT - DIRECT

1 THE COURT: Mr. Gantt, would you please stand so you
2 can be sworn by our clerk.

3 ANTHONY GANTT, PLAINTIFF'S WITNESS, SWORN

4 THE CLERK: You may be seated. State and spell your
5 name for the record.

6 THE WITNESS: Anthony, A-N-T-H-O-N-Y G-A-N-T-T.

7 DIRECT EXAMINATION

8 BY MS. DE LA GARZA:

9 Q Mr. Gantt, you understand that this is the trial of
10 Mr. Ashley Bennett; is that correct?

11 A Yes.

12 Q Do you know Mr. Bennett by any other name?

13 A No.

14 Q Do you know him as Ashley Bennett?

15 A Yes.

16 Q There was no other name that you knew him by?

17 A No.

18 Q Are you aware why we're here today?

19 A Yes. To testify on Ashley Bennett.

20 Q Isn't it true that you've given some prior
21 statements in this case?

22 A Yes.

23 Q And isn't it true at that time that you identified
24 Ashley Bennett as Face?

25 A Yes.

1 Q Did you know him as Face, or did you know him as
2 Ashley Bennett?

3 A Face.

4 Q Now, in this trial you're aware that we're talking
5 about a murder that occurred on March 3rd, 2001; is that
6 correct?

7 A Yes.

8 Q Earlier in the year were you additionally charged
9 with this murder of -- occurring on March 3rd, 2001?

10 A Yes.

11 Q Because you were charged, did you make an agreement
12 with the State to testify in this case?

13 A I did, but --

14 Q But what?

15 A I ain't testifying.

16 Q You're not going to testify here today?

17 A Yes.

18 Q Are you going to testify or not?

19 A No.

20 THE COURT: Ladies and gentlemen of the jury, I'm
21 going to have to have you take a short recess at this time.
22 Please go back to jury services. And again the admonition not
23 to converse among yourselves or anyone else as to any subject
24 matter that might be connected with the trial. Please refrain
25 from reading, watching, or listening to any commentary, should

1 there be any, as to this trial. But most importantly, you've
2 not all -- heard all the evidence. Court would ask that you
3 not form or express any opinion as to outcome of the subject
4 matter until this case is submitted to you at its conclusion.

5 (Jury is not present)

6 THE COURT: If we can have the courtroom cleared of
7 all spectators at this time.

8 THE BAILIFF: Please leave the courtroom.

9 THE COURT: Arthur, would you check to see, once
10 they're clear, to see if Department 12 is empty.

11 MS. DE LA GARZA: May I approach, Your Honor?

12 THE COURT: Just -- just hold.

13 -- Gantt step down the stand, go with his -- his
14 counsel only at this time, and the investigator, just as
15 security, and discuss. And then after that we'll come back.

16 (Court recessed)

17 (Jury is not present)

18 THE COURT: We're back on the record at this time
19 outside the presence of our jury and our spectators.

20 Mr. Gantt is in the witness box at this time.

21 Mr. Gantt, for the record, you previously were asked
22 reference to testifying as to the events of March 3 of last
23 year, a murder. At that time you indicated that you would not
24 testify. The Court took a recess, allowed you to go and speak
25 with your counsel outside the presence of either State or

1 defense. After talking to your counsel, what is your wish at
2 this time, sir?

3 THE WITNESS: To go forward.

4 THE COURT: By going forward, does that mean you're
5 going to testify, or does that mean you're not going to
6 testify?

7 THE WITNESS: Going to testify.

8 MS. DE LA GARZA: Your Honor, at this time State
9 would request that all the spectators be excluded from the
10 courtroom. In speaking with Mr. Gantt's attorney,
11 specifically Ms. Kristina Wildeveld, she noted that not only
12 is a codefendant in here, there is one of his cousins, and
13 there's some other people that we're concerned might be
14 affiliated with Gerson Park Kings, and it's at this point
15 intimidating this witness, and basically the State is viewing
16 it as a veiled threat by having him in here. I know that
17 there were some letters sent earlier by Mr. Bennett to Mr.
18 Gantt, saying that he was going to try and have a lot of
19 people in here, in the courtroom, to see what Mr. Gantt was
20 going to say, and basically, again, a veiled threat to Mr.
21 Gantt about his testimony. So it would be the State's request
22 that the spectators be excluded from the courtroom at this
23 time.

24 THE COURT: Mr. Bindrup or Ms. Simpkins?

25 MR. BINDRUP: Your Honor, there -- it is a

GANTT - DIRECT

1 Q Now, once you were charged, you said that you
2 entered into agreement to testify; is that correct?

3 A Yes.

4 Q And as part of that agreement both you and the State
5 agreed that you would receive a sentence of 10 to life on a
6 second-degree murder; is that correct?

7 A Yes.

8 Q Additionally, the State would retain the right to
9 argue as to your sentence on conspiracy to commit murder; is
10 that correct?

11 A Yes.

12 Q And part of that agreement is that we agreed upon
13 that sentence, rather than the other sentences that you could
14 have received; is that correct?

15 MR. BINDRUP: At this point, Your Honor, I'd -- I
16 object to the continuing leading. I think we've been lax.
17 I --

18 THE COURT: Objection noted. Overruled --

19 MR. BINDRUP: Thank you.

20 THE COURT: -- in terms of these questions.

21 BY MS. DE LA GARZA:

22 Q And pursuant to that guilty plea agreement, are you
23 going to testify here today?

24 A Yes.

25 Q Now, Mr. Gantt, how old are you?

GANTT - DIRECT

1 A Sixteen.

2 Q Back on March 3rd, 2001, how old were you?

3 A Fifteen.

4 Q On March 3rd, 2001, do you remember being at a
5 gathering?

6 A Yes.

7 Q Where was that gathering?

8 A At L-Wack house.

9 Q L-Wack?

10 A Yes.

11 Q Do you know L-Wack's real name?

12 A No.

13 Q That's the only way you know him, is as L-Wack?

14 A Yes.

15 Q What was the reason for being over at L-Wack's
16 house?

17 A 'Cause his little brother got killed.

18 Q And who was his little brother?

19 A Mark Doyle.

20 THE COURT: Ms. De La Garza, I'm going to stop you
21 there. Mr. Bindrup had lodged an objection as to leading.
22 The preliminary I didn't have a problem with. But as we get
23 into specific areas, we need him to say what he needs to say,
24 whatever that is.

25 MS. DE LA GARZA: I'm sorry.

GANTT - DIRECT

1 BY MS. DE LA GARZA:

2 Q Okay. And we ended off with who is L-Wack's
3 brother.**

4 A Mark Doyle.

5 Q And do you know when he was killed in relation to
6 March 3rd?

7 THE COURT: Could I have -- stop right there. Could
8 I have counsel approach.

9 (Off-record bench conference)

10 BY MS. DE LA GARZA:

11 Q So why were you gathered on March 3rd at L-Wack's?

12 A 'Cause Mark Doyle got killed.

13 Q When was that?

14 A March 2nd.

15 Q Who was gathered over at L-Wack's?

16 A Me, Face, T-Wack, Chew-Wack, Henry, and Lailoni.

17 Q Approximately what time did you go over there?

18 A Around 11:00, 12:00, afternoon.

19 Q In the afternoon? While you were over there did
20 there come a time when there was a plan to leave?

21 A Yes.

22 Q What was that plan?

23 A They're going to shoot up Big Mama house, the Hunts'
24 house.

25 Q How do you know that was the plan?

GANTT - DIRECT

1 A 'Cause I heard it.

2 Q Who said it?

3 A Face.

4 Q Who went with you to do that?

5 A Me and Face, Lailoni, T-Wack, and Chew-Wack.

6 Q What'd you do?

7 A Walked toward the Hunts' house.

8 Q So L-Wack's house is in what area of town?

9 A In the far back in the Carey Arms.

10 Q Is that in North Las Vegas, Clark County, Nevada?

11 A Yes.

12 Q You said in the far back?

13 A Yes.

14 Q And where is Big Mama's house?

15 A In the front.

16 Q In the front of it?

17 A Yes.

18 Q Do you know what direction that is?

19 A Martin Luther King and Cartier.

20 Q And when you say "front," what do you mean? Can you

21 give us a direction as to north, west, east --

22 A North.

23 Q Now, you called it two different things. You called

24 it Big Mama's house and the Hunts' house. Why?

25 A 'Cause Big Mama, that's the owner of the house.

GANTT - DIRECT

1 Q So then what happens once they come into contact
2 with that security guard?

3 A They start coming back towards the parking lot.

4 Q Is anybody encountered when they start coming back
5 through the parking lot?

6 A Yes.

7 Q Who is that?

8 A Dough Boy.

9 Q Where is Dough Boy when you first see him?

10 A Coming out the apartment.

11 Q And I'm going to ask you to write a V.
12 What happens once you see Dough Boy?

13 A Face said, there go the 60 nigger, and started
14 shooting.

15 Q What happens once he starts shooting?

16 A Dough Boy tried to run.

17 Q Where did he try to run to?

18 A Where they was coming from on the side of 2535.

19 Q Kind of draw a little dash line to where he's
20 running to. I think you put an X there; right?

21 A Yes. Yes.

22 Q Is that the only place that he runs to?

23 A Yes.

24 Q And then what happens?

25 A He get killed.

GANTT - DIRECT

1 Q Does he get killed right there?

2 A Yes.

3 Q Now, once Face says -- or makes that statement and
4 he starts shooting, does anybody else start to shoot?

5 A Yes. Everybody starts shooting.

6 Q And who is everybody?

7 A Me, T-Wack, Lailoni, and Chew-Wack.

8 Q How do you guys know to start shooting?

9 A Because he went to the trunk to try to reach -- try
10 to get something.

11 Q Now, you just kind of indicated previously that he
12 went east and he kind of started going back around 2535. Now
13 you're saying he went to the trunk. Tell me where he went.

14 A As he walked out, he was coming toward the trunk
15 when he saw us.

16 Q So where was he when you saw him, then?

17 A Right somewhere down here.

18 Q And you've drawn another X. But it's --

19 A Yes.

20 Q -- it's just north of the parking lot?

21 A Yes.

22 Q Had he hit the sidewalk yet?

23 A Yes, he was on the sidewalk.

24 Q And what happens once he hits the sidewalk, then?

25 A That's when Face said, there go the 60 nigger, and

GANTT - DIRECT

1 A A 9 millimeter.
2 Q When you say everybody starts shooting, is there
3 just one shot?
4 A No.
5 Q How many shots?
6 A A whole bunch.
7 Q Can you give us a number?
8 A Around 20 shots.
9 Q What does it sound like to you at that time?
10 A Like Fourth of July or something.
11 Q Do you know how many shots each person did?
12 A No.
13 Q But would you say more than one?
14 A Yes.
15 Q What happens after -- after everybody shoots into
16 Dough Boy?
17 A They started running separate ways.
18 Q Do you know who shot first?
19 A Yes.
20 Q Who was that?
21 A T-Wack.
22 Q How do you know that?
23 A 'Cause I saw him.
24 Q Do you know the next order that everybody starts
25 shooting in?

GANTT - DIRECT

1 A No.

2 Q Do you know who shoots last?

3 A Yes.

4 Q Who's that?

5 A Chew-Wack.

6 Q And how do you know that?

7 A 'Cause I saw him.

8 Q And what does he do?

9 A Go up to him and shoot him.

10 Q Do you know how far away he is when he shoots him?

11 A Close up.

12 Q Now, when you see Dough Boy initially coming out of

13 that house and going towards the sidewalk, does he have any

14 type of weapon on him?

15 A No.

16 Q Does he do anything that makes you think he has a

17 weapon on his person?

18 A No.

19 Q Why did you start firing on him?

20 A 'Cause he was going towards the trunk.

21 Q Now, you've said that these other people were

22 feuding --

23 A Yes.

24 Q -- with the 60s. You've said that the Gerson were

25 feuding with the 60?

GANTT - CROSS

1 BY MR. BINDRUP:

2 Q Just yes or no. Are you aware that Pam Neal blamed
3 the Gerson group for the killing of Eric Bass? Do you know
4 that, whether --

5 MS. DE LA GARZA: Objection, Your Honor. That's a
6 misstatement of the testimony. He said that --

7 THE COURT: I'll let the question -- the question's
8 going to stand.

9 THE WITNESS: No.

10 BY MR. BINDRUP:

11 Q Do you know a Wyatt King, 16-year-old individual
12 that goes by the nickname Face?

13 A No.

14 Q Because of the charges against you, you were facing
15 a potential sentence, if convicted, of life without the
16 possibility of parole; is that correct?

17 A Yes.

18 Q So if convicted, you were looking at spending the
19 rest of your life in prison; right?

20 A Yes.

21 Q And you understood that that meant that you might
22 never return to your family for the rest of your life?

23 A Yes.

24 Q That you would die in prison? Did you understand
25 that?

GANTT - CROSS

1 A Yes.

2 Q Did you ever, when you were -- after your entry of
3 plea did you ever send Mr. Bennett a letter?

4 A Yes.

5 Q One letter, more than one letter?

6 A One letter.

7 Q And about when did you send that to him?

8 A I think last month.

9 Q And do you remember what you said in the letter?

10 A Yes.

11 Q What did you say in the letter?

12 A I told him I wasn't testifying.

13 Q You told him what?

14 A I wasn't testifying.

15 Q Did you also tell him that you had lied and you
16 weren't going to lie against him again?

17 A No.

18 Q Did you ever -- did you mention to him that you had
19 lied?

20 A No.

21 Q Did you mention to him that you had pled guilty
22 because you were pressured into doing that?

23 A Yes.

24 Q Do you recall in the letter saying that you would
25 tell the Judge that you were being peer pressured into lying?

1 attorney, you've been furnished a copy of all the police
2 reports and all the witness statements; right?

3 A Yes.

4 Q And you've had a chance since your arrest on this
5 charge to be familiar with all the exhibits and the testimony
6 of witnesses; correct?

7 A Yes.

8 Q That diagram that you pointed to to your immediate
9 right, you've seen that before, too; right?

10 A Yes.

11 Q And there's -- there's a piece of paper blocking
12 part of that. You know what's underneath that, don't you?

13 A Yes.

14 Q And what is underneath that?

15 A The names of the guns that was used in the crime.

16 MR. BINDRUP: May I remove the piece of paper,
17 please, Your Honor?

18 THE COURT: For our jury's information, that was put
19 up at defense's request.

20 MR. BINDRUP: At my request.

21 THE COURT: You can remove it.

22 BY MR. BINDRUP:

23 Q So as you sit here today, this wasn't the first time
24 you've seen this. You've seen it on several occasions; right?

25 A Yes.

COPY

DISTRICT COURT
CLARK COUNTY, NEVADA

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MAR 13 11 04 AM '02

Ashley S. Bennett

CLERK

STATE OF NEVADA

Plaintiff

vs.

ASHLEY WILLIAM BENNETT

Defendant

CASE NO. C175914

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE MICHAEL L. DOUGLAS, DISTRICT JUDGE

JURY TRIAL - DAY 7
WEDNESDAY, JANUARY 30, 2002
VOLUME VII

APPEARANCES:

For the State:

MELISA DE LA GARZA
BECKY GOETTSCH
Deputy District Attorneys

For the Defendant:

SCOTT L. BINDRUP, ESQ.
MELINDA SIMPKINS, ESQ.

COURT RECORDER:

CATHY NELSON
District Court

TRANSCRIPTION BY:

NORTHWEST TRANSCRIPTS, INC.
Las Vegas Division
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Las Vegas, Nevada 89133-5257
(702) 658-9626

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produced by transcription service.

TELGENHOFF - DIRECT

1 would be between .25 and including a .38; 9 millimeter would
2 be in a medium caliber range.

3 Q In addition to going through and finding these
4 different entrances and exit wounds, do you do any type of
5 other examination?

6 A I look at the entire body. I don't just look at the
7 wounds at hand, I look at the entire body to be sure there's
8 no other disease processes present or any other abnormalities
9 that may contribute to this case one way or another. However,
10 I must say with so many bullet wounds it seems like that might
11 -- may be a trite point but I still look at every case the
12 same way.

13 Q How many bullet entries are we talking about in this
14 case?

15 A Entrance wound total 14.

16 Q But you said you do look at this case as you look at
17 any other case, so aside from these bullet wounds would this
18 have been a healthy person?

19 A Yes.

20 Q In addition to looking at this entire body, do you
21 do any type of measurements as to weight and height?

22 A Yes.

23 Q And what were they in this particular case?

24 A That is noted on the first page of the report under
25 external examination, this individual was 255 pounds and 73

TELGENHOFF - CROSS

1 Q Based on everything that you did were you able to
2 make a medical opinion as to the cause of death in this case?

3 A Yes.

4 Q And what was that?

5 A Multiple gunshot wounds.

6 Q What about the manner of death?

7 A Homicide.

8 MS. DE LA GARZA: No further questions, Your Honor.

9 THE COURT: Cross at this time, please.

10 MS. SIMPKINS: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. SIMPKINS:

13 Q Now, Dr. Telgenhoff, you explained what a
14 perforating wound is, that's a through and through wound; is
15 that correct?

16 A Yes.

17 Q And you also explained what a penetrating wound is,
18 that it goes into the body but does not exit; is that correct?

19 A Correct.

20 Q And what is a graze wound?

21 A A graze wound could be considered a graze wound, it
22 does not do really either, it skims the surface of the skin
23 and does not really enter.

24 Q How many perforating wounds were there?

25 A I'll have to look at the report once again.

KRYLO - DIRECT

1 A No, I have not received that gun.

2 Q Okay. But you do note that it is the same gun?

3 A Yes.

4 Q What's the next thing you did?

5 A The next thing was just to continue on with the
6 microscopic comparisons of the other cartridge cases.

7 Q Could you tell us any other grouping that were fired
8 from the same gun that wasn't this first initial gun?

9 A Well, there were four of the WIN 9 millimeter --.9
10 millimeter luger cartridge cases left, and those four I was
11 able to identify as all having been fired in a single gun.

12 Q And for the record were that -- was that 27, 28, 30,
13 and 32?

14 A Yes.

15 Q So that's the next gun. And those were basically
16 the WIN luger 9 millimeters?

17 A Yes.

18 Q What about -- were there only two guns that you
19 determined had been fired --

20 A No.

21 Q -- with these casings?

22 A No, there were a total of four guns.

23 Q There was a total of four. So what about the next
24 grouping?

25 A Well, the next group -- and this may not have

KRYLO - DIRECT

1 actually been the order, just so you know, that I compared
2 them in, but these are the groups that I compared. The .32
3 auto cartridge cases, there were seven of those in items 10,
4 11, 12, 24, and 25, and all of those had been fired in the
5 same gun.

6 Q Were you able to determine what gun that was that
7 I've marked with the orange?

8 A Yes.

9 Q What gun was that?

10 A That was a Colt .32 auto semiautomatic pistol,
11 serial number 519771, that had been recovered under a --

12 MS. SIMPKINS: Objection, Your Honor. May we
13 approach?

14 THE COURT: Yes.

15 (Off-record bench conference)

16 BY MS. DE LA GARZA:

17 Q And I'm sorry, officer, just for clarification, this
18 gun that fired the R&P .32's, you said that that was a Colt
19 .32 semiautomatic and you gave us a serial number, is that
20 correct?

21 A Yes.

22 Q But that gun was not recovered under this event
23 number?

24 A No, I received it under a different event number.

25 Q Different event number, a whole different thing that

1 complete the written statement?

2 A Yes, I did.

3 Q Who did you speak with first?

4 A I believe it was Larasha Hill.

5 Q Okay. Now when you spoke with her, did she, at that
6 time, tell you that she had seen who the shooter was?

7 A She did.

8 Q Did she describe that person to you?

9 A Yes.

10 Q And how did she describe that person?

11 THE COURT: Stop right there. Will the parties
12 approach?

13 (Off-record bench conference)

14 BY MS. DE LA GARZA:

15 Q Officer, as to Larasha Hill, she initially gave you
16 one version of events, is that correct?

17 A Correct.

18 Q Now did you then have her fill out a written
19 statement?

20 A Yes.

21 Q And at that written statement did she give you the
22 same version of events?

23 A No, ma'am.

24 Q As to Mr. Edwards, did you have him -- did you speak
25 with him initially?

KRYLO - CROSS

1 you received, they're only conclusively linked to 9
2 millimeters, is that correct?

3 A The cartridge --

4 Q Cartridges.

5 A Cartridge cases.

6 Q Thank you.

7 A Right.

8 Q I'm sorry, the casings.

9 A The cartridge cases, two 9 millimeter lugers, yes.

10 Q Okay. When you fire a 9 millimeter semiautomatic,
11 where -- you mentioned that the cartridge cases eject from the
12 gun, is that correct?

13 A Yes.

14 Q What side of the gun do they eject on?

15 A Most typically with most of the guns that you'll
16 see, the semiautomatic pistols, they're going to eject
17 somewhere out to the right. Now, some guns may be forward to
18 the right, others may be straight out, some kind of to the
19 rear to the right, but generally somewhere off to the right.

20 Q Okay. Now, I have some questions about the .38
21 super that was recovered. The .38 super and a .38 those are
22 two different kinds of bullets, is that correct?

23 A They're two different kinds of cartridges.

24 Q Cartridges, I'm sorry. So a .38 super cartridge is
25 going to be longer than a .38 cartridge?

BODNAR - DIRECT

1 Q You say that there were other patrolmen. Were there
2 additionally other detectives?

3 A I believe when I got there Detective Prieto was
4 already on scene, Sergeant Judd was on scene, and Detective
5 Jackson was also en route.

6 Q Did you receive a particular assignment?

7 A Detective Jackson and I talked and I decided that I
8 was going to be the lead detective on this case.

9 Q Based on the fact that you're the lead detective,
10 what does your duty become at that point?

11 A Well, we're responsible for the initial
12 investigation, making sure right when we get there that the
13 crime scene is secure, that there is enough police tape
14 surrounding the area. That way the scene is not contaminated
15 and/or people don't come into the scene and potentially
16 destroy any type of evidence that may be inside.

17 Q Did you make sure that that was done?

18 A Yes.

19 Q Additionally, did you have the duty of contacting
20 witnesses?

21 A Yes.

22 Q Did you attempt to do that?

23 A Yes.

24 Q Do you remember in particular if you contacted any
25 witnesses --

BODNAR - DIRECT

1 witnesses that you talked to on that night --

2 A Yes.

3 Q -- that you found of --

4 A I spoke to a security officer that worked up in
5 Carey Arms, James Golden. He had indicated that he was --

6 MS. SIMPKINS: Objection, Your Honor, hearsay.

7 MS. DE LA GARZA: And without --

8 THE COURT: Excuse me. Overruled at this point. He
9 indicated he just talked to them, he did not go into the
10 conversation.

11 BY MS. DE LA GARZA:

12 Q And without going into the conversation as to
13 exactly what he told you, did you eventually have him fill out
14 a witness statement and you had him contact us as a witness?

15 A Yes, he had actually filled out the witness
16 statement prior to me speaking to him.

17 Q Who else did you contact as a potential witness?

18 A On that evening I don't believe there was anybody
19 else.

20 Q So that was it that you got coming forward to you
21 saying that they had seen the crime on that evening or had any
22 significance?

23 A I take that back. There was one other person I
24 spoke to that evening. They weren't really a witness, they
25 actually lived in the apartment and came back. It was -- she

BODNAR - DIRECT

1 Q Additionally, did it come to your attention that
2 there was a sock on the backside, and just for the record
3 that's on the west side, of 2531?

4 A Yes.

5 Q Did you request any type of testing in relation to
6 this sock?

7 A No.

8 Q Why is that?

9 A Again, there was no significance in this case.

10 Q Did you have any indication that the victim had been
11 over there or anything of that nature?

12 A No.

13 Q Now you've mentioned to us thus far on that evening
14 that you talked to a couple of people. At that point do you
15 have anybody who has actually seen the shooting?

16 A At that point, no.

17 Q When is the next time frame or time that you
18 received some information regarding this?

19 A Believe on March 7th, I was in my office and I
20 received a phone call --

21 MS. SIMPKINS: Objection, Your Honor. May we
22 approach?

23 THE COURT: Please approach.

24 (Off-record bench conference)

25 //

BODNAR - DIRECT

1 BY MS. DE LA GARZA:

2 Q Detective, you stated that you received an anonymous
3 phone call on March 7th. Now without telling me exactly what
4 that caller told you, did that caller give you some indication
5 as to who might be involved in this case?

6 A Yes.

7 Q Now, were you ever able to follow up as to that
8 anonymous caller?

9 A Yes.

10 Q Tell me how.

11 A Even though the caller wouldn't identify herself I
12 was able to take the information along with additional
13 information that was gathered at a later date and provide
14 photo lineups for the witness that we later encountered.

15 Q So that's how you used that information at that
16 time?

17 A Yes.

18 Q Do you know whether you ever came into contact with
19 that anonymous caller, or was that the only contact that you
20 had?

21 A Not to my knowledge.

22 Q Okay. You said that's on March 7th. What's the
23 next information that you receive?

24 A With that -- with that information I had contacted
25 one of the people on March 21st, that person being Anthony

BODNAR - DIRECT

1 Gantt, at juvenile hall. When I contacted Anthony Gantt,
2 after reading him his rights he agreed to talk to me, I
3 questioned him on a number of shootings. At that time he
4 didn't offer any information on this shooting at all, he
5 declined being involved or knowing anything about it.

6 Q Now when you said that you read Anthony Gantt his
7 rights, what do you mean?

8 A I told him he had the right to remain silent,
9 anything he said can and will be used against him in a court
10 of law. He had a right to an attorney and a parent present
11 during any questioning, and if he wished to talk to me about
12 the shootings that were going on, then I'd be willing to talk
13 to him.

14 Q At that time you said that he didn't tell you
15 anything about this shooting. Did he tell you anything about
16 his affiliations?

17 A Yes.

18 Q And what was that?

19 A He said he was a --

20 MS. SIMPKINS: Objection, Your Honor. May we
21 approach?

22 THE COURT: I'm going to let the question and him
23 stand in light of the other testimony.

24 Go ahead, re-ask the question.

25 //

BODNAR - DIRECT

1 BY MS. DE LA GARZA:

2 Q Did he tell you anything about his affiliations?

3 A Yes, he said he was a Gerson.

4 Q Now you didn't get any information about the
5 shooting at that time other than that, just his affiliation?

6 A That's correct.

7 Q What's the next information that you receive, or
8 what do you do next in relation to this case?

9 A A couple days later, on March 24th, some of the gang
10 officers had contacted another subject that was also mentioned
11 in that anonymous phone call and asked him if he would like to
12 come to the station and talk to the detectives regarding the
13 shootings that had been occurring on the Westside and that
14 person, Ashley Bennett, agreed to come down to the station and
15 talk to us.

16 Q Do you see that person, Ashley Bennett, here in
17 court today?

18 A Yes.

19 Q Would you please point to him and describe something
20 that he is wearing?

21 A It's the black male sitting up front with the suit
22 on.

23 Q Okay. Can you give me some kind of other direction?

24 A Next to Mr. Bindrup.

25 Q Thank you.

BODNAR - DIRECT

1 MS. DE LA GARZA: The State would request
2 identification of the defendant.

3 THE COURT: So reflect.

4 BY MS. DE LA GARZA:

5 Q Now, when you met with Face at that point or --
6 strike that. When you met with Mr. Bennett at that point did
7 he identify himself in any other way?

8 A He said he's also known on the street as Face.

9 Q Did you talk to him?

10 A Yes.

11 Q About this shooting?

12 A Yes.

13 Q What did he tell you?

14 A Right off the bat while questioning him I asked him
15 why he killed Joseph Williams. He responded, "What? Come
16 on." He didn't deny it at that point.

17 Q Are you able to receive any other information from
18 him at this point about this shooting?

19 A I don't believe so.

20 Q What's the next thing you do in this particular
21 case?

22 A We had attempted to contact many other witnesses, or
23 potential witnesses, up in that area, and I don't remember if
24 it came before or after speaking to Pam Neal but we had
25 contacted -- it was afterwards, so. The next point would be

BODNAR - DIRECT

1 on May 1st. At that time Detective Rodrigues was
2 investigating another shooting and he had called me and said
3 he had a witness on the Joseph Williams murder. I met with
4 Pam Neal that afternoon along with my partner, James Jackson.
5 Pam was in the company of a friend of hers. While questioning
6 her Pam Neal had said that she witnessed the Joseph Williams
7 murder, she was standing outside her apartment door.

8 Q At that time was she able to identify the shooters?

9 A Some of them.

10 Q Who was that?

11 A She identified Ashley Bennett, who she knows as
12 Face. She identified Wacky G, who she knows as Wayne Gantt,
13 and she also identified Lailoni.

14 Q Was there a question as to anybody else being
15 involved?

16 A Yes, she had mentioned that there was three to four
17 other Gersons that were involved in this shooting. She said
18 that she didn't know the name off the top of her head. My
19 partner had some photographs from the murder from the night
20 before and showed her the pictures of the individuals,
21 covering up the name on the -- on the photograph. She
22 identified Wayne Gantt as Wacky G; she also identified Louis
23 Matthews as Chew, and Jermaine Webb as Wing and said that they
24 were involved in the shooting. She additionally identified a
25 subject by the name of Michael Thomas and said that he wasn't

BODNAR - DIRECT

1 A This is a photo lineup with the main target as
2 Jermaine Webb.

3 Q And what is the date on that?

4 A May 8th.

5 Q Is that one of the photo lineups that you gave her?

6 A Yes.

7 Q When you gave her this photo lineup did you in any
8 way suggest who was part of that shooting?

9 A No.

10 Q Did you give her any names, anything of that nature?

11 A No.

12 Q Are these things that she gave to you?

13 A That's correct.

14 Q And when you gave her these -- this lineup did you
15 ask her to identify, if she could point out one of the
16 shooters?

17 A Yes.

18 Q And how did she do so?

19 A She looked over the photographs and she pointed to
20 Jermaine Webb and said he was one of the shooters.

21 Q And did she do any type of marking to indicate so?

22 A Yes, she put her initials and the date.

23 Q Additionally, I'm showing you what's been marked as
24 State's Exhibit 6. Do you recognize that?

25 A Yes.

BODNAR - DIRECT

1 Q And what is that?

2 A This is a photo lineup with the main target being
3 Ashley Bennett.

4 Q And what did you ask her to do there?

5 A To look at the photographs and see if she noticed
6 anyone in the photograph that was involved in the shooting.

7 Q And was she able to do so?

8 A Yes.

9 Q And what did she put there?

10 A She indicated that Ashley Bennett, who she knows as
11 Face, was one of the shooters.

12 Q Did you in any way suggest the person in this photo?

13 A No.

14 Q Showing you what's been marked as State's Proposed
15 -- or State's Exhibit 5, do you recognize that?

16 A Yes.

17 Q What is that?

18 A This is a photo lineup with the main target being
19 Lailoni Morrison.

20 Q And what did you ask her to do with that?

21 A The same thing, if she recognized anybody that was
22 involved in the shooting in this photo lineup.

23 Q And did she indicate?

24 A Yes, that Lailoni was one of the shooters.

25 Q And I'm showing you what's been marked as State's

BODNAR - DIRECT

1 Exhibit 4, do you recognize that?

2 A Yes.

3 Q And what is that?

4 A It's a photo lineup with Anthony Gantt. Again it
5 was showed to Pam Neal and asked if she had recognized anybody
6 in there that was involved in the shooting.

7 Q And did she indicate?

8 A She indicated that Wacky G, who she knows as Wayne
9 Gantt, was.

10 Q And I'm showing you what's been marked as State's
11 Exhibit 7, do you recognize that?

12 A Yes, this is a photo lineup with the main target
13 being Louis Matthews. She indicated that Louis Matthews, who
14 she knows as Chew, was one of the shooters.

15 Q And, again, did you suggest to her any of these
16 people that she pointed out?

17 A No.

18 Q Additionally, when you looked at the front of these
19 photo lineups that I have previously showed you, is there any
20 indication as to the name of the potential suspects?

21 A No.

22 Q Now, on most of these there looks like there are six
23 people in each photo lineup. Why is that?

24 A It's a system that we have, it's called Print Track
25 and it enables us to put in a main target and then we select

BODNAR - DIRECT

1 five other individuals that are similar in appearance and age.

2 Q Why do you want somebody who's similar in appearance
3 and age?

4 A Well, it -- that way it gives the target or suspect
5 person every benefit of the doubt and it's not suggestive in
6 any way, and they're able to look and really make an accurate
7 determination if that person was involved in the crime.

8 Q And was Pam Neal able to do that on that date?

9 A Yes.

10 Q Now, I'd like to direct your attention to May 7th.
11 Did you have an interview with somebody regarding this case on
12 that date?

13 A Yes.

14 Q And who was that?

15 A Anthony Gantt.

16 Q How did you come into contact with Mr. Gantt?

17 A He was still at juvenile hall at the time. I went
18 down and had him pulled out and interviewed him in a room,
19 again reading him his rights and asked him if he wished to
20 speak to me regarding the shootings and he agreed that he
21 would speak to me. While talking to him he said he wasn't
22 involved in anything, then he said that he knows who was.

23 Q How did you follow that up?

24 A When I asked him who was involved he named Face,
25 Chew, Mr. Henry, T-Wack, and Lailoni.

BODNAR - DIRECT

1 Q Is that as far as he went in this interview?

2 A No, he went on to say that -- he started off giving
3 a little bit of information at a time that he wasn't involved,
4 then he went on to say what each person that he named what
5 their role was. He even went as far as to say what kind of
6 gun they were shooting, and approximately how many rounds they
7 fired, and in what position they were in. He initially said
8 that he was around the basketball courts -- let me back up
9 just a minute. They had all got together that day to mourn
10 the death of Mark Doyle who died the night before. While they
11 were over there Anthony Gantt had mentioned that Face, Ashley
12 Bennett, had made a comment --

13 MS. SIMPKINS: Objection, Your Honor. May we
14 approach?

15 THE COURT: Yes.

16 (Off-record bench conference)

17 THE COURT: Pursuant to a note given to me by the
18 bailiff, as a request for creature comfort by our jurors,
19 they've asked to take a short break. The Court understands.

20 With that the admonition not to converse among
21 yourselves or anyone else as to any subject matter that might
22 be connected with the trial. Please refrain from reading,
23 watching or listening to any commentary should there be any as
24 to the trial. But most importantly you've not been charged,
25 you've not heard all the evidence, you've not heard

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CLARK COUNTY, NEVADA

* * * * *

Shirley D. Langjume
CLERK

STATE OF NEVADA

Plaintiff

vs.

ASHLEY WILLIAM BENNETT

Defendant

CASE NO. C175914

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE MICHAEL L. DOUGLAS, DISTRICT JUDGE

JURY TRIAL - DAY 8
THURSDAY, JANUARY 31, 2002
VOLUME VIII

APPEARANCES:

For the State:

MELISA DE LA GARZA
BECKY GOETTSCH
Deputy District Attorneys

For the Defendant:

SCOTT L. BINDRUP, ESQ.
MELINDA SIMPKINS, ESQ.

COURT RECORDER:

CATHY NELSON
District Court

TRANSCRIPTION BY:

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Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

BODNAR - DIRECT

1 question pending at this point with this witness.

2 THE COURT: I will concur with that.

3 BY MS. DE LA GARZA:

4 Q Detective Bodnar, did Anthony Gantt relay his
5 actions and what he saw on March 3rd, 2001?

6 A Yes.

7 Q What did he tell you about that incident?

8 A He said that they were walking over towards the
9 Hunt's residence, which is the 2600 block of -- or actually
10 2600 Martin Luther King is the address, which is right around
11 the corner from where this incident took place. He said that
12 as they traveled through the complex to that area they were
13 diverted by a security guard who saw them, so they started
14 heading back, and that's when they encountered Joseph
15 Williams.

16 He said at that point they all knew what they were
17 going to do, surrounded him, and pulled their guns out and
18 started shooting. When I asked him who was shooting, he said
19 that Face, Ashley Bennett; Chew, Louis Matthews; T-Wack,
20 Antwon Graves; Lailoni, Lailoni Morrison; and him had all
21 pulled guns out and started shooting. He said that T-Wack
22 initiated the shooting and after the shooting took place,
23 Joseph Williams fell to the ground, face first in the dirt,
24 and Chew walked up and finished him off.

25 MS. DE LA GARZA: No further questions, Your Honor.

1 THE WITNESS: No.

2 BY MR. BINDRUP:

3 Q So even though you requested that a warrant of
4 arrest be issued as to Frederick Schneider in this particular
5 case, one was never issued?

6 A That's correct.

7 Q And he was never charged?

8 A Not as of this date.

9 Q Did you know Pamela Neal by any other names?

10 A I believe she used the last name Davis.

11 Q When you talked to Pamela Neal on May 1st, 2001, you
12 were aware, were you not, that she was facing Count 1,
13 conspiracy to commit murder; Count 2, burglary while in
14 possession of deadly weapon; Count 3, battery with use of a
15 deadly weapon with substantial bodily harm; Count 4,
16 discharging a firearm at or into structure; and Count 5,
17 coercion with use of a deadly weapon, for incidents occurring
18 on or about April 15th, 2001, weren't you?

19 A I knew that she was facing charges. I wasn't aware
20 of the extent of the charges.

21 Q Your affidavit for arrest indicates some of the
22 things you learned from Pamela Neal concerning your May 1st
23 interview with her; right?

24 A Yes.

25 Q And they formed part of the basis for your

1 requesting arrest warrants for certain individuals; right?

2 A Yes.

3 Q And you chose to not mention a five-count criminal
4 complaint against her when you filed that affidavit, did you?

5 A It was not included in my affidavit.

6 Q When you interviewed Pamela Neal on May 1st, 2001,
7 you weren't concerned about questioning her concerning that
8 criminal complaint or the incident around April 15th, were
9 you?

10 A I didn't investigate that case.

11 Q You were concerned and focused on this particular
12 case; correct?

13 A Yes.

14 Q So what she did or didn't do in her past was no
15 concern to you?

16 MS. DE LA GARZA: May we approach, Your Honor?
17 Objection.

18 THE COURT: Yes, please approach.

19 (Off-record bench conference)

20 BY MR. BINDRUP:

21 Q You are aware that there was a preliminary hearing
22 conducted in this matter on June 5th, 2001; correct?

23 A Yes.

24 Q All right. Did you actually take -- drive Pamela
25 Neal to court that day?

1 BY MR. BINDRUP:

2 Q Did Pamela Neal -- during her interview in May when
3 she came in, was she with another person?

4 MS. DE LA GARZA: Objection as to misstatement of
5 the testimony.

6 THE COURT: I'll allow the question to stand as
7 whether or not she was with another person when she came in on
8 that date, if the officer knows.

9 THE WITNESS: Yes.

10 BY MR. BINDRUP:

11 Q And that other person was?

12 A Tammy Hannibal.

13 Q And do you know Tammy Hannibal's relationship with
14 Eric Bass?

15 A Yes.

16 Q And what was that relationship?

17 A She was his girlfriend.

18 Q So in and during your May interview you knew that
19 part of the reason she was there to interview with you is to
20 try to solve the killing of Eric Bass?

21 MS. DE LA GARZA: Objection, Your Honor.

22 THE COURT: I'll allow him to answer the question if
23 he knows.

24 BY MR. BINDRUP:

25 Q Do you know, Detective?

1 double Ls for the second area, and they are estimations.

2 BY MR. BINDRUP:

3 Q And if it would be easier as you're making those Ls
4 if you want to get your diagram closer so you can be more
5 exact, you're free to do that.

6 So -- could you please take the stand again -- LL
7 would designate what?

8 A Where he was when the shooting started.

9 Q And L would designate what?

10 A The spot he was in when she first saw him.

11 Q In comparing this to your diagram from the interview
12 doesn't it appear as if the first L is closer to the building
13 than you've depicted it on State's Exhibit 2? Thank you.

14 A My interpretation of this diagram, this is not the
15 building here. The building is the square in the back. I
16 don't know if you confuse this with the building.

17 Q Okay. So this would be an accurate depiction, then,
18 in your opinion, of the diagram as existed during her May
19 interview; correct?

20 A This is a better depiction than it is on the paper.

21 Q Please turn to your affidavit of arrest again, and
22 will you just verify that that was made on May 17th, 2001?

23 A Yes.

24 Q Do you recall Anthony Gantt interview May 7th, which
25 would be before this affidavit, correct? So Anthony Gantt

1 A I don't believe everything is necessary.

2 Q Now, Pamela Neal didn't mince words when she said
3 that Wing or Jeremy [sic] Webb was one of the shooters on
4 March 3rd, 2001, did she?

5 A That's correct.

6 Q And she didn't mince words when she said that Louis
7 Matthews, also known as Chew, was one of the shooters on March
8 3rd, 2001?

9 A Did she?

10 A That's correct.

11 Q And Pamela Neal didn't mince words when she said
12 that Antwont [sic] Graves or T-Wack was also one of the
13 shooters on March 3rd, 2001, did she?

14 A That's correct.

15 Q Would you agree with me that your interview with
16 Anthony Gantt on May 7th was a highly pressured interview?

17 A On what date?

18 Q May 7th, 2001. This would have been the second
19 interview you had with Anthony Gantt.

20 A I would agree with that.

21 Q And would you agree that you used just about every
22 police interrogation technique that you knew in order to get
23 Anthony Gantt to spill his guts and tell you what happened?
24 Right?

25 A I wouldn't say every one, but I threw a lot at him..

BODNAR - CROSS

1 Q And when you say you threw a lot at him, give me a
2 list of either techniques or things that you hit on to get him
3 to spill his guts.

4 A I tried to minimize his role in the incident. I
5 think the turning point in the interview was when I asked him
6 if he was -- if he didn't like Dough Boy or if he was just
7 caught up in the moment of what was going on. And at that
8 point he agreed and his actual comments to me were, what you
9 said. And then when I asked him where his rounds went, he
10 went on to tell me how he actually played a part and did shoot
11 and --

12 Q Would you agree with me that you basically led him
13 by the nose that day?

14 A I wanted to bring out the facts of the case and
15 determine what his actual role in this whole incident was.

16 Q You reminded him that he was a juvenile and had a
17 long life ahead of him?

18 A That's correct.

19 Q You reminded him that people weren't just going to
20 pick him out of the hat for no reason at all?

21 A That's correct.

22 Q You reminded him that he was a juvenile and he had a
23 lot to lose if he didn't help you?

24 A That's correct.

25 Q You even talked about his mom and grandma. How did

1 you use them?

2 A I had actually talked to them a few days before I
3 talked to him. They both seemed to be very street wise and
4 aware that Anthony wasn't all that innocent. However, I
5 wasn't able to determine from them what he was involved with.

6 Q So you used family, his mom, his grandma, the love
7 of the family for him to get him to talk with you?

8 A It was all part of it.

9 Q You used the threat and possibility of being sent to
10 Elko as a reason to get him to talk?

11 A No. He had already -- he had already been committed
12 to go to Elko. I spoke to his probation officer and asked
13 that they put a hold on that because of the investigation.

14 Q Did you tell him that if he helped you out that he
15 would avoid the death penalty?

16 A No.

17 Q You kept encouraging, persuading him to come clean;
18 right?

19 A Correct.

20 Q You're the one that suggested to him that he admit
21 to shooting him in the leg?

22 A Run that by me again.

23 Q Are you the one that suggested to Anthony Gantt to
24 admit to shooting Joseph William [sic] in the leg so that he
25 could avoid a harsher penalty?

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1 A No.

2 Q You told him you didn't believe the story he was

3 telling at first; right?

4 A That's right.

5 Q You told him he was a liar?

6 A I told him I didn't believe it.

7 Q Would you please turn to 43 of the interview,

8 please. And just read lines 15 through 17, and just nod to me

9 when you're done.

10 A Page 43?

11 Q Yes, please. Lines 14 through 17.

12 A Okay.

13 Q This -- this whole statement was recorded; right?

14 A That's correct.

15 Q And then you gave the recording to a stenographer to

16 type up a nice transcript; right?

17 A That's correct.

18 Q Now, transcripts don't show emotion or feelings, do

19 they?

20 A That's correct.

21 Q Just shows words that were spoken?

22 A Yes.

23 Q Out of this entire 54-page transcript of his

24 interview isn't it true that the first time he admitted to

25 shooting at the body was on page 43?

BODNAR - CROSS

1 A Yes.

2 Q And that's because you had worked him heavy and hard
3 minute after minute after minute; right?

4 A That would be fair.

5 Q Do you recall approximately how long this interview
6 was?

7 A No, I do not.

8 Q Was it close to an hour, over an hour?

9 A I'd say over an hour.

10 Q And where did -- at that point of the interview,
11 page 43, when he acknowledged shooting at and into the body of
12 Joseph Williams, what did he -- where did he admit to shooting
13 him?

14 A He said that he had fired into the dirt and noticed
15 one round hit his leg.

16 Q That statement was made only after you suggested he
17 make it, wasn't it?

18 A No.

19 Q Please turn to just the page earlier, page 42.
20 Please read lines 3 to 8. And just nod to me when you're
21 done, please.

22 A Okay.

23 Q The difference on a transcript between page 43, page
24 42, a matter of seconds or minutes, timewise, at most?

25 A Yes.

VIII-33

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BODNAR - CROSS

1 A Yes.

2 Q And on May 18th you interviewed Mr. Bennett?

3 A Yes.

4 Q And he denied being involved in the shooting of
5 Joseph Williams, didn't he?

6 A Ultimately, yes.

7 Q This is even after you informed him of all of his
8 rights, his right to remain silent, et cetera?

9 A Yes.

10 Q He even signed a waiver of rights, saying he was
11 willing to talk to you without an attorney present?

12 A Yes.

13 MR. BINDRUP: May I approach, please?

14 THE COURT: Yes.

15 BY MR. BINDRUP:

16 Q Showing you what's been marked for identification as
17 Defendant's Proposed Exhibit 5, what is that?

18 A It's a rights of an adult arrested.

19 Q And you read him these rights, and he signed them?

20 A I had him read these rights.

21 Q And he signed that?

22 A Yes.

23 Q He talked to you and denied being involved in the
24 shooting and killing of Joseph Williams, didn't he?

25 A Yes.

BODNAR - CROSS

1 Q Do you recall Mr. Bennett, when asked out of the
2 blue, why did you shoot him, that he leaned towards you,
3 cocked his head and said, what?

4 A I don't recall him leaning forward and cocking his
5 head.

6 Q The way that he said, what, didn't that indicate to
7 you, and his body language, that he was surprised and was in
8 disbelief that you suggested that he had shot Dough Boy?

9 MS. DE LA GARZA: Objection. Asked and answered.
10 He'd already --

11 THE COURT: I'll sustain the objection.

12 BY MR. BINDRUP:

13 Q Do you recall him also saying, come on?

14 A Yes.

15 Q And by him saying, come on, that didn't indicate to
16 you that he was specifically denying involvement?

17 A I don't believe that.

18 Q You also recall him subsequently saying, I wouldn't
19 do anything like that?

20 A Yes.

21 Q Isn't it true that then, through the course of your
22 interview, that Mr. Bennett repeatedly denied being involved
23 in the shooting?

24 A Yes.

25 Q You recall him also swearing that he didn't do the

1 Face?

2 A That's correct.

3 Q And that that individual -- what is his name?

4 A Wyatt King.

5 Q And where does he live at?

6 A 2012 Bennett.

7 Q Now, sometimes monikers or nicknames, there can be
8 many different people in the community, in the country, that
9 might have the same nickname; is that true?

10 A That's true.

11 Q And this particular Wyatt King, who lives at 2012
12 Bennett and goes by the moniker Face, is a young juvenile
13 between the ages of 15 and 16?

14 A Correct.

15 MR. BINDRUP: Nothing further.

16 THE COURT: Before we get into redirect we're going
17 to take about a fifteen-minute recess. Be ready to come back
18 here in fifteen minutes, ladies and gentlemen. Again the
19 admonition not to converse among yourselves or anyone else as
20 to any subject matter that might be connected with the trial.
21 Please refrain from reading, watching, or listening to any
22 commentary, should there be any. But most importantly, as
23 always, please do not form or express any opinion as to the
24 outcome of the subject matter until this case is concluded.
25 Fifteen minutes, ladies and gentlemen.

BODNAR - REDIRECT

1 Once the jury is down, you can step down.

2 (Court recessed)

3 (Jury is present)

4 THE COURT: All of our jurors are present, counsel
5 for both sides, Mr. Bennett, Officer -- Detective Bodnar is on
6 the stand, still under oath.

7 We're back to -- we've just finished cross. Pick
8 back up with any redirect.

9 REDIRECT EXAMINATION

10 BY MS. DE LA GARZA:

11 Q Detective Bodnar, you've been asked a lot of
12 questions about you suggesting testimony to Anthony Gantt.
13 Isn't it true on that May 7th that Anthony Gantt told you that
14 Face used a 9 millimeter?

15 A Yes.

16 Q And Lailoni used a .38?

17 A .38 Super.

18 Q And that he used a .32?

19 A Yes.

20 Q And that T-Wack used a 9 millimeter?

21 A Yes.

22 Q And that Henry had a .357, but he wasn't sure about
23 him shooting and all of that and him being behind you [sic]?
24 Isn't that true, on May 7th he told you that information?

25 A Yes.

BODNAR - REDIRECT

1 Q Isn't it true that you didn't even have the Firearms
2 Expert Krylo's report until May 23rd?

3 A That's correct.

4 Q So there's no possible way you could have told him
5 what type of guns were being used there, could you?

6 A No.

7 Q Is it your job to bolster the testimony of the
8 witnesses that come in here?

9 A No.

10 Q What is it your job to do?

11 A To gather the facts of the case.

12 Q Let's talk about Pam Neal when she came to see you
13 on May 1st. Isn't it true that she came to the police station
14 with Tammy, who was there to give information about Eric
15 Bass's murder?

16 A That's correct.

17 Q Wasn't it Tammy that needed the support?

18 A That's correct.

19 Q And wasn't that because nobody was coming forth on
20 Eric Bass's murder?

21 MR. BINDRUP: Objection to, again, leading.

22 THE COURT: I'll sustain the objection.

23 MR. BINDRUP: Thank you.

24 BY MS. DE LA GARZA:

25 Q Why did Pam Neal tell you she was coming forward?

BODNAR - REDIRECT

1 A 'Cause she was tired of all the people dying. She
2 had a grandfather that was shot and -- a couple years back and
3 ultimately died, her cousin was killed, and there was just a
4 lot of murders going on and it was senseless.

5 Q You were asked about being -- being provided with
6 the defendant's witness list. Isn't that something that comes
7 after the case is submitted and all of that stuff?

8 A Yes.

9 Q And that's actually submitted to the D.A.'s Office.
10 That's not given to you?

11 A That's correct.

12 Q So at that point is that something for you to
13 handle, or is that something for my office to handle?

14 A For your office.

15 Q You were asked about things that were in your
16 affidavit. What is the point of an affidavit?

17 A To send the facts of the case to the District
18 Attorney's Office so they can determine whether there is
19 enough information that would warrant a warrant of arrest for
20 the --

21 Q Now -- I'm sorry.

22 A -- for the individuals.

23 Q Along with that affidavit are there other things
24 that you send?

25 A Yes.

FOBBS - DIRECT

1 Could I have counsel approach.

2 (Off-record bench conference)

3 THE COURT: Defense's next witness, please.

4 MS. SIMPKINS: Reginald Fobbs.

5 THE COURT: Thank you.

6 REGINALD DON FOBBS, DEFENDANT'S WITNESS, SWORN

7 THE CLERK: You may be seated. State and spell your
8 name, please.

9 THE WITNESS: Reginald Don Fobbs, R-E-G-I-N-A-L-D
10 D-O-N F-O-B-B-S.

11 THE CLERK: F-O what?

12 THE WITNESS: B-B-S.

13 DIRECT EXAMINATION

14 BY MS. SIMPKINS:

15 Q Mr. Fobbs, do you know Ashley Bennett?

16 A Yes, ma'am, I do.

17 Q How do you know Ashley Bennett?

18 A From just being around the neighborhood.

19 Q Could you please point to him and tell me something
20 he's wearing.

21 A He's the gentleman sittin' right there with the
22 burgandy tie on and black overcoat.

23 MS. SIMPKINS: Record reflect identification?

24 THE COURT: So reflect the ID.

25 //

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FOBBS - DIRECT

1 BY MS. SIMPKINS:

2 Q Do you know Pamela Neal?

3 A Yes, ma'am, I do.

4 Q What -- how do you know Pamela Neal?

5 A Pamela Neal is my sister:

6 Q Where were you on March 3rd of this year -- of last
7 year? I'm sorry.

8 A Of 2001?

9 Q Yes.

10 A I was incarcerated.

11 Q And when did you get out of jail?

12 A March 12th of 2001.

13 Q Since you got out of jail have you been in touch
14 with Pamela Neal?

15 A Yes, ma'am. I speak with Pam every day.

16 Q Would you consider yourself close to Pam?

17 A Me and Pamela is very close.

18 Q Now, there came a time when someone in your family
19 was killed?

20 A Yes, ma'am. My -- my first cousin, Eric Antonio
21 Bass.

22 Q Now, after that --

23 MS. DE LA GARZA: Objection. Leading.

24 THE COURT: We didn't have a question on the floor.

25 Overruled at this point.

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901

FOBBS - DIRECT

1 BY MS. SIMPKINS:

2 Q After Mr. Bass was killed did you have an
3 opportunity to speak with Ms. Neal?

4 A Yes, ma'am. I spoke with my sister every day.

5 Q Did she tell you something about the Eric Bass
6 killing that involved Mr. Bennett?

7 A Yes, ma'am.

8 MS. DE LA GARZA: Objection. Leading.

9 THE COURT: Sustain the objection.

10 BY MS. SIMPKINS:

11 Q Did she discuss the Eric Bass killing with you?

12 A Yes, ma'am, she did.

13 Q What did she tell you?

14 MS. DE LA GARZA: Objection. Hearsay.

15 THE COURT: Sustain the objection.

16 BY MS. SIMPKINS:

17 Q When did you have this conversation with Ms. Neal?

18 MS. DE LA GARZA: Objection. Foundation.

19 MS. SIMPKINS: That is foundational, Your Honor.

20 THE COURT: I'll allow the question to stand.

21 THE WITNESS: Can you repeat the question, please?

22 BY MS. SIMPKINS:

23 Q When did you have this conversation with Pam Neal?

24 A That involved Ashley Bennett?

25 Q Yes.

FOBBS - DIRECT

1 A I had that conversation with my sister every day,
2 and it was right after my cousin got killed my sister was
3 told --

4 THE COURT: Stop. Stop right there.

5 BY MS. SIMPKINS:

6 Q When did your cousin get killed?

7 A April 15th.

8 Q Did Pam discuss this on a regular basis, or just one
9 time with you?

10 A Ma'am, she discussed this with me quite frequently,
11 every day.

12 MS. SIMPKINS: Court's indulgence, Your Honor.

13 THE COURT: That's fine.

14 (Pause in the proceedings)

15 MS. SIMPKINS: Your Honor, may we approach?

16 THE COURT: Yes, you may.

17 MS. SIMPKINS: Thank you.

18 (Off-record bench conference)

19 BY MS. SIMPKINS:

20 Q Okay, Mr. Fobbs, just yes or no. Did you ever have
21 a conversation with your sister regarding some statements that
22 she heard from homicide detectives? Yes or no.

23 A Yes, ma'am.

24 Q That's enough. That's it.

25 MS. SIMPKINS: I have no further questions, Your

MICHELLE WILSON - DIRECT

1 BY MS. SIMPKINS:

2 Q Ms. Reed, do you know Pamela Neal?

3 A Not personally, no.

4 Q Do you know who she is?

5 A Yes.

6 Q You've -- have you seen her before?

7 A Yes.

8 Q Have you talked to her on the phone before?

9 A No.

10 MS. SIMPKINS: Got no further questions.

11 THE COURT: State have any questions?

12 MS. DE LA GARZA: No, Your Honor.

13 THE COURT: You can step down. Thank you.

14 Defense have another witness, please?

15 MS. SIMPKINS: Michelle Wilson.

16 THE COURT: Thank you.

17 MICHELLE WILSON, DEFENDANT'S WITNESS, SWORN

18 THE CLERK: You may be seated. State and spell your
19 name, please.

20 THE WITNESS: Michelle Wilson, M-I-C-H-E-L-L-E

21 W-I-L-S-O-N.

22 THE COURT: Thank you.

23 DIRECT EXAMINATION

24 BY MS. SIMPKINS:

25 Q Ms. Wilson, do you know Mr. Bennett?

MICHELLE WILSON - DIRECT

1 hear gunshots being fired in that area?

2 A No, ma'am.

3 Q Is there something that you -- what do you hear --
4 what do you do when you hear gunshots being fired?

5 A Get down.

6 Q I'm sorry?

7 A Get down. Get on the ground.

8 Q Were you at home on March 3rd of 2001?

9 A Yes, ma'am. Yes, I was.

10 Q Do you remember hearing shots on that day?

11 A Yes, ma'am.

12 Q What were you doing when you heard these shots?

13 A Curling my hair.

14 Q And what did you do when you heard these shots?

15 A I started to the door at the first shot and -- to
16 shut my door, 'cause the door was open. Then I ran and got in
17 my storage closet.

18 Q Did you see outside?

19 A No. I didn't make it past the couch.

20 Q Did you make it to your door?

21 A No, ma'am. No. I wasn't -- no way.

22 Q Now, you indicated you were curling your hair. Why
23 were you curling your hair?

24 A I was getting ready for work.

25 Q Now, do you have a car?

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MICHELLE WILSON - DIRECT

1 A No, ma'am.

2 Q What time did you have to be at work?

3 A 4:30.

4 Q Did you have a car then?

5 A No, ma'am.

6 Q How did you get to work?

7 A Pam Neal.

8 Q Did she drive you to work on a regular basis?

9 A Yes, ma'am.

10 Q Did you have an arrangement with her?

11 A Yes, ma'am.

12 Q What was that arrangement?

13 A Every day she took me to work. I pay her \$5 to take

14 me every day.

15 Q Now, did you have to be at work on March 3rd of

16 2001?

17 A Yes, ma'am.

18 Q What -- do you always work on Saturdays?

19 A Yes, ma'am. I -- I had -- that was my last Saturday

20 working. I had won the bid at my job for Friday and Saturday

21 off, so that was my last Saturday working, that Saturday.

22 Q Where did you work?

23 A I work at -- I worked at the Harrah's Hotel.

24 Q Now, you said you won the bid at your job.

25 A Yes, ma'am.

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MICHELLE WILSON - DIRECT

1 Q What does that mean?

2 A It's -- when you want to change positions you bid
3 for another position. And that's what I did. I bid for
4 another position, got different days off. I bid it for Friday
5 and Saturday off, and I won the bid.

6 Q Now, how many times per week did Pam Neal drive you
7 to work?

8 A Five.

9 Q I'm sorry?

10 A Five.

11 Q How long did it take you to drive from your home to
12 work?

13 A Approximately like 20 minutes.

14 Q What time would you usually leave for work?

15 A About 3:45, because we stayed -- like 3:23 all our
16 kids get out of school, so we'll wait --

17 Q When you say "our kids," whose kids are you talking
18 about?

19 A My kids and Pam kids.

20 Q Okay.

21 A And we'll wait for them to get out of school, and
22 then I would drop my -- my kids off to my sister. Then she'll
23 take me to work.

24 Q Now, did your kids get off school on March 3rd?

25 A No. It was a Saturday.

MICHELLE WILSON - DIRECT

1 Q Did you drop your kids off at your sister's that
2 day?
3 A No.
4 Q Now, if Pamela Neal was going to drive you to work,
5 what time does she usually leave her home?
6 A 3:45.
7 Q Did she come downstairs to get you?
8 A No. I always yell for her.
9 Q You yell for her?
10 A I holler upstairs, Pam, I'm ready, you know.
11 Q Did she ever come down to get you?
12 A No.
13 Q Now, did you see Pam Neal on March 3rd of this year
14 -- of last year?
15 A Yes, ma'am.
16 Q What did you see her doing that day?
17 A Gettin' high, what she always do.
18 Q Okay. Could you explain that a little more? You
19 saw her getting high? What was she doing exactly?
20 A Me, her, a girl Bernice, and 'Vonne, we was all
21 sittin' on the curb, and they was gettin' high and drinkin' or
22 whatever before I got ready for work. We started sittin' out
23 at about 11:00.
24 Q Were you drinking?
25 A No. I had to go to work. I woulda been, but I

MICHELLE WILSON - DIRECT

1 don't smoke. I woulda been drinkin', but I had to go to work.

2 Q From looking at her could you tell she was high?

3 A She always high.

4 Q Now, you indicated that during the shooting you hid
5 in the closet; is that correct?

6 A Yeah. I got a storage closet right next to my
7 bathroom.

8 Q Did you see Pam Neal anytime after --

9 A Yeah.

10 Q -- you got out of the closet?

11 A Yeah. She --

12 Q What -- why don't you --

13 A -- was standing in my hallway?

14 Q Okay. Why don't you take me through that day. What
15 happened after you got out of the closet?

16 A When I came out the closet, Pam was standing
17 directly in front of me in my hallway. She said, did you hear
18 that; I say, yeah. She say, girl, all them -- all them
19 gunshots something. And then her cousin came in the door. He
20 was --

21 Q Who is her cousin?

22 A Eric Bass.

23 Q Okay. Go ahead. Please continue.

24 A And he was jumpin' all up and down. He say, you all
25 get you all kids and get away from here, they just killed

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9/3

MICHELLE WILSON - DIRECT

1 Evian.

2 Q Evian? Who's Evian?

3 A Umm, he's a gang member of the Rollin' 60s.

4 Q Did -- did there come a time when you found out that
5 that wasn't true?

6 A Yes.

7 Q How did you find out?

8 A We walked and looked. We walked --

9 Q We who?

10 A Me, Pam, and Eric.

11 Q Walked where?

12 A Across the park -- not the park, the driveway. It's
13 a driveway. We walked there.

14 Q You didn't walk around the sidewalk?

15 A No, ma'am.

16 Q You walked straight across the park?

17 A Straight to the body.

18 Q Now, how long -- after you walked across the parking
19 lot, what did you do then?

20 A We -- when people started crowdin' around in there
21 and the police got there, it was like 70 people out there,
22 just piled up. And the police got there. I came in the
23 house. And when I came in the house, I called the police lady
24 that was standing there in front of the door, the first lady
25 on the scene or whatever. And I asked -- I said, am I going

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914

MICHELLE WILSON - DIRECT

1 to be able to go to work; and she said that she'll see, I
2 guess. And she walked out the door. I don't know what she
3 did. She came back in and she said, no. She got on the phone
4 and she called my boss.

5 Q And what did -- okay.

6 A And at that time she asked us had we seen anything.
7 And we both, Pam and I, said no. And they -- and she -- at
8 that time she asked Pam -- well, before that she asked Pam
9 which car was hers. Pam said, that white Cadillac is mine.
10 And then she was like, did you guys see anything. And we
11 said, no. And she said, okay, or whatever. She said that
12 that's it. That's all she said.

13 Q Now, how long Pam Neal at your apartment after the
14 shooting?

15 A Till about 7:30, 7:45.

16 Q Do you recall about what time that shooting took
17 place?

18 A About 3:00 o'clock. It had to be.

19 Q Why do you say it had to be?

20 A Because it was like 2:40 something like that I went
21 -- got up off the curb to go get in the shower. Someone said
22 it was 2:40. And I never put on my uniform shirt until I get
23 ready to leave. I just had like a little shirt that I wear
24 under it. And it was about 3:00 o'clock, 'cause it wasn't no
25 time soon I was leaving.

MICHELLE WILSON - DIRECT

1 Q Now, during the time that Pamela Neal was there did
2 she ever once mention that she had seen the shooting?

3 A No, ma'am.

4 Q Did she ever talk about it with you?

5 A No, ma'am.

6 Q Did she know who had been shot?

7 A No, ma'am.

8 MS. DE LA GARZA: Objection. Speculation.

9 THE COURT: I'll sustain -- I'll overrule the
10 objection. The answer stands.

11 BY MS. SIMPKINS:

12 Q Now, during the time that Pam Neal was with you,
13 where were her children?

14 A Upstairs.

15 Q Did she ever go up and check on them?

16 A No, ma'am.

17 Q How many children does she have?

18 A Four.

19 Q What are their ages?

20 MS. DE LA GARZA: Objection as to relevance.

21 THE COURT: I'll allow the question to stand.

22 THE WITNESS: Courtney is twelve, Dior is ten,
23 Doobop is four, and the baby at that time had to have been
24 about four or five months.

25 //

MICHELLE WILSON - DIRECT

1 BY MS. SIMPKINS:

2 Q Were they all at home?

3 A Yes, ma'am.

4 Q Now, did there come a time when Pam Neal asked you
5 for something?

6 A Yes.

7 Q Can you explain that, please.

8 A Her husband couldn't get in because they had the
9 scene taped off, so she said her kids hadn't ate. And I -- I
10 told her that I had some corn dogs.

11 MS. DE LA GARZA: Objection as to relevance, Your
12 Honor.

13 THE COURT: I'll give her some --

14 THE WITNESS: And umm --

15 THE COURT: Stop right there.

16 I'm going to give counsel some leeway with this
17 question and see where it's going.

18 MS. SIMPKINS: Thank you, Your Honor.

19 BY MS. SIMPKINS:

20 Q Did you give her food for her children?

21 A Yes, ma'am.

22 Q Now, you indicated that you know Ashley Bennett.
23 I'm sorry. Let me -- one more thing.

24 Do you think Pamela Neal actually saw the shooting?

25 A No, ma'am.

EXHIBIT F

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.....
CASE: 01010083      ---N TH LAS VEGAS POLICE DEPARTMENT--- REF: 133246
DATE: 6/04/01      -----POLICE REPORT----- PAGE: 1
TIME: 11:04        -----INVESTIGATIVE PORTION----- OF: 5
*****
-----INCIDENT FOLLOWUP-----
classification/additional information: ! gang related?
CONSPIRACY TO COMMIT A CRIME/ATTEMPT MURDER WITH DEADLY WEAP ! YES
-----
invest bureaus/units notified:
-----
location of occurrence: ! rpt. dist: A2 neighborhood: CAN
2508 WEST ! ADAM 2 CAREY ARMS NORTH
-----
from: date / time ! to: date / time ! report: date / time
4/15/01 / 10:30 ! 4/15/01 / 10:30 ! 4/16/01 / 6:30
-----
hate crime? NO ! fingerprints? NO !
-----
routing? ! prosecute? ! prop report? ! vehl report? ! arrest rpt? ! attach?
OTHER ! YES ! NO ! NO ! ADULT ONLY ! YES
*****
-----METHOD OF OPERATION-----
residential---type: target: security:
-----
non-residtl---type: target: security:
-----
entry---location: method:
exit---location: method:
-----
suspect actions:
A. B. C.
D. E. F.
G. H. I.
*****DISPOSITIONS*****
[ ]-UNFOUNDED/NO CRIME--0 [X]-SUBMITTED D.A.-----5 [ ]-RECLASSIFY-----10
[ ]-JUVENILE-----1 [ ]-ADMIN. CLEARED-----6 [ ]-VIC REFUSED PROS.--11
[ ]-NON DETECTIVE CLR---2 [ ]-EXCEPTIONALLY CLR---7 [ ]-AFFIDAVIT-----12
[ ]-DETECTIVE ARREST---3 [ ]-SCREEN CLEARED-----8 [ ]-CA/DA DENIAL-----13
[ ]-SUBMITTED CITY ATTY-4 [ ]-NO CHGS FILED(NCF)--9 [ ]-OTHER-----14
[ ]-SUBMITTED US ATTNY-15
*****
-----RECORDS-----
class code---ucr ! sid number ! date ser no ! date ser no
! ! enter ! cleared
! ! scope ! scope
! !
-----
records bureau processed ser no ! detective bureau processed ser no
BROOKS/TERESA 0969 !
-----
supervisor approving ser no ! officer reporting ser no
JUDD/MICHAEL 0398 ! KOCH/MARK 0704
-----

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.....
CASE: 01010083 -----NORTH LAS VEGAS POLICE DEPARTMENT----- REF: 133246
DATE: 6/04/01 -----POLICE REPORT----- PAGE: 2
TIME: 11:04 -----PERSONS PORTION----- OF: 5
.....

name of person (001): ! type: V ! occupation: ! susp id?
LOONEY/TONISHIA ! VICTIM ! ! YES

sex ! race: B hisp: N ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp
F ! BLACK ! 1/29/95 ! 6 ! 000 ! 000 ! ! ! !

alias-aka: ! birthplace:
alias-aka: ! ssn: mf no:

addr: 2508 WEST #C NLV NV 89030 !
business: !

descriptors:
descriptors:

name of person (002): ! type: W ! occupation: ! susp id?
LOONEY/ANTONIO ! WITNESS ! ! YES

sex ! race: B hisp: N ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp
M ! BLACK ! 3/21/73 ! 28 ! 000 ! 000 ! ! ! !

alias-aka: ! birthplace:
alias-aka: ! ssn: 530767729 mf no:

addr: 2508 WEST #C NLV NV 89030 !
business: !

descriptors:
descriptors:

name of person (003): ! type: W ! occupation: ! susp id?
DONAHUE/BRENDA ! WITNESS ! ! YES

sex ! race: B hisp: N ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp
F ! BLACK ! 5/18/54 ! 47 ! 000 ! 000 ! ! ! !

alias-aka: ! birthplace:
alias-aka: ! ssn: 530469509 mf no:

addr: 2508 WEST #C NLV NV 89030 !
business: !

descriptors:
descriptors:

records bureau processed ser no ! detective bureau processed ser no
BROOKS/TERESA 0969 !

supervisor approving ser no ! officer reporting ser no
JUDD/MICHAEL 0398 ! KOCH/MARK 0704

.....
.....
CASE: 01010083 ---NORTH LAS VEGAS POLICE DEPARTMENT--- REF: 133246
DATE: 6/04/01 -----POLICE REPORT----- PAGE: 3
TIME: 11:04 -----PERSONS PORTION----- OF: 5
.....

name of person (004): ! type: S ! occupation: ! susp id?
NEAL/PAMELA ! SUSPECT ! ! YES

sex ! race: B hisp: N ! dob ! age ! hgt ! wgt ! hair ! eyes ! bld ! cmp
F ! BLACK ! 6/05/69 ! 31 ! 000 ! 000 ! ! !

alias-aka: PAMELA DAVIS ! birthplace:
alias-aka: ! ssn: 530174900 mf no:

addr: 2529 MORTON #D NLV NV 89030 !
business: !

descriptors:
descriptors:

records bureau processed ser no ! detective bureau processed ser no
BROOKS/TERESA 0969 !

supervisor approving ser no ! officer reporting ser no
JUDD/MICHAEL 0398 ! KOCH/MARK 0704

.....

CASE: 01010083	-----NORTH LAS VEGAS POLICE DEPARTMENT-----	REF: 133246
DATE: 6/04/01	-----POLICE REPORT-----	PAGE: 4
TIME: 11:04	-----NARRATIVE PORTION-----	OF: 5

.....

ON APRIL 15, 2001 DETECTIVE M. RODRIGUES AND I WERE DISPATCHED TO 2508 WEST APARTMENT #C IN NORTH LAS VEGAS REFERENCE A SHOOTING. PRIOR TO RESPONDING TO THE SCENE WE WENT TO UNIVERSITY MEDICAL HOSPITAL TO CONTACT THE VICTIM, TONISHIA LOONEY. SHE HAD A GUNSHOT WOUND TO THE CHIN AND WAS BEING TREATED FOR HER INJURIES. HER GRANDMOTHER, BRENDA DONAHUE, WAS WITH HER. ANOTHER WITNESS, ANTONIO LOONEY, WAS ALSO BEING TREATED FOR AN INJURY TO HIS SHOULDER WHICH OCCURED WHEN HE WAS STRUGGLING WITH THE SUSPECTS.

I FIRST INTERVIEWED BRENDA DONAHUE, THE GRANDMOTHER OF SIX YEAR OLD TONISHIA LOONEY. DONAHUE TOLD ME THAT AT APPROXIMATELY 1030 HOURS SHE WAS IN THE KITCHEN OF HER RESIDENCE WHEN SHE HEARD SOMEONE KNOCKING AT THE DOOR. TONISHIA WAS IN THE KITCHEN WITH HER AND RAN TO ANSWER THE DOOR. DONAHUE THEN HEARD A LOUD BANG AND TONISHIA RAN BACK TO HER, POINTING TO HER CHIN. DONAHUE WALKED TO THE FRONT DOOR AND SAW THREE SUSPECTS FORCING THEIR WAY IN. SHE DESCRIBED THEM AS TWO UNKNOWN BLACK MALES AND A BLACK FEMALE KNOWN TO HER AS "PAM", THE COUSIN OF ERIC. PAM TOLD DONAHUE THAT TYRONE HAD TOLD HER THAT ANTONIO, DONAHUE'S SON, HAD KILLED HER COUSIN. PAM ASKED DONAHUE WHERE HER SON WAS AND THEN PROCEEDED UPSTAIRS TO WHERE ANTONIO WAS WITH THE OTHER TWO SUSPECTS. DONAHUE RAN TO THE PHONE TO CALL THE POLICE WHILE THE SUSPECTS WERE UPSTAIRS WITH ANTONIO LOONEY.

AFTER A CONFRONTATION OCCURED BETWEEN LOONEY AND THE SUSPECTS, THE SUSPECTS LEFT THE RESIDENCE BEFORE THE POLICE ARRIVED. TONISHIA AND ANTONIO LOONEY WERE TAKEN BY SOUTHWEST AMBULANCE TO UNIVERSITY MEDICAL CENTER FOR TREATMENT.

I THEN CONTACTED ANTONIO LOONEY WHO TOLD ME HE SAW THREE SUSPECTS COME INTO THE RESIDENCE. HE IDENTIFIED ONE OF THE SUSPECTS AS "PAM", THE COUSIN OF ERIC BASS AND SAID SHE WAS WITH AN UNKNOWN BLACK MALE WEARING A HOODED SWEATSHIRT. LOONEY SAID THERE WAS A THIRD SUSPECT BUT COULD NOT GIVE A DESCRIPTION. HE SAID PAM FORCED HER WAY INTO THE BEDROOM AND WAS DEMANDING TO KNOW TO KNOW IF HE KILLED ERIC. LOONEY SAID HE TOLD HER HE DID NOT KILL ERIC. HE THEN GOT INTO A STRUGGLE WITH THE OTHER TWO SUSPECTS WHICH IS HOW HE GOT HURT. LOONEY WAS VISIBLY UPSET WHILE I WAS TALKING TO HIM SO I ASKED HIM TO CALM DOWN. I ASKED HIM TO CALL ME AFTER HE GOT OUT OF THE HOSPITAL SO I COULD GET A MORE DETAILED STATEMENT FROM HIM. I ALSO TRIED TO TALK TO TONISHIA BUT SHE WAS TOO UPSET WHILE SHE WAS BEING TREATED TO TALK TO ME. BEFORE I LEFT THE HOSPITAL I OBTAINED A DESCRIPTION OF WHAT PAM WAS WEARING FROM DONAHUE AND LOONEY. THEY BOTH TOLD ME A GRAY SHIRT AND BLACK PANTS. I ALSO OBTAINED A CONSENT TO SEARCH FROM BRENDA DONAHUE SO THE RESIDENCE COULD BE SEARCHED AND PROCESSED FOR EVIDENCE.

CRIME SCENE INVESTIGATOR M. BRADY PHOTOGRAPHED THE INJURY TO TONISHIA AND COLLECTED THE PROJECTILE WHICH WAS REMOVED FROM HER CHIN. SEE HER FOLLOWUP REPORT FOR DETAILS OF HER INVESTIGATION.

AT APPROXIMATELY 0100 HOURS ON APRIL 15, 2001 DETECTIVE M. RODRIGUES AND I

records bureau processed	ser no ! detective bureau processed	ser no
BROOKS/TERESA	0969 !	
supervisor approving	ser no ! officer reporting	ser no
JUDD/MICHAEL	0398 ! KOCH/MARK	0704

CASE: 01010083
DATE: 6/04/01
TIME: 11:04

-----NORTH LAS VEGAS POLICE DEPARTMENT-----
-----POLICE REPORT-----
-----NARRATIVE PORTION-----

REF: 133246
PAGE: 5
OF: 5

HAD RESPONDED TO THE PARKING LOT AT 2504 WEST STREET TO INVESTIGATE THE MURDER OF ERIC BASS. WHILE CONDUCTING THAT INVESTIGATION ONE OF THE WITNESSES I CONTACTED WAS PAMELA NEAL WHO TOLD ME SHE WAS THE COUSIN OF ERIC BASS. AT THAT TIME SHE TOLD ME A FEMALE KNOWN TO HER AS ARMANI HAD COME TO HER RESIDENCE TO TELL HER ERIC HAD BEEN SHOT. NEAL SAID SHE THEN RAN TO THE SCENE AND FOUND ERIC IN HIS CAR WHERE HE WAS DEAD.

AS A RESULT OF THE FACTS AND INFORMATION OBTAINED DURING THE MURDER INVESTIGATION AND FROM LOONEY AND DONAHUE, DETECTIVE RODRIGUES AND I WENT TO PAMELA NEAL'S RESIDENCE AT 2529 MORTON #D. UPON ARRIVAL I SAW HER SITTING OUTSIDE AND SHE WAS WEARING A GRAY SHIRT AND BLACK PANTS. DUE TO THE FACT THE DESCRIPTION OF PAMELA NEAL MATCHED WHAT DONAHUE AND LOONEY HAD GIVEN ME AND THEY BOTH IDENTIFIED HER BY NAME I PLACED HER UNDER ARREST. AFTER I PUT HER IN THE CAR I READ NEAL HER MIRANDA RIGHTS AND SHE SAID SHE UNDERSTOOD THEM. I ASKED HER IF SHE HAD GONE TO 2508 WEST APT #C WHERE LOONEY WAS AND SHE ADMITTED SHE HAD. I THEN ASKED HER IF SHE WANTED TO GO TO THE NORTH LAS VEGAS POLICE DEPARTMENT AND GIVE ME A STATEMENT AND SHE SAID "YES".

I TRANSPORTED PAMELA NEAL TO THE NORTH LAS VEGAS POLICE DEPARTMENT WHERE DETECTIVE RODRIGUES AND I INTERVIEWED HER. PRIOR TO STARTING THE INTERVIEW, NEAL WAS GIVEN A WRITTEN MIRANDA RIGHTS FORM WHICH SHE READ ALOUD AND SIGNED. THIS INTERVIEW WAS VIDEO TAPED AND AUDIO TAPED. PAMELA NEAL ADMITTED TO GOING TO 2508 WEST APT #C AND FORCING HER WAY IN. SHE SAID SHE WENT THERE TO CONFRONT LOONEY ABOUT SHOOTING HER COUSIN ERIC BASS. I ASKED HER WHO WAS WITH HER AND WHO FIRED THE SHOT THROUGH THE DOOR BUT SHE WOULD NOT TELL US. I ASKED HER HOW SHE KNEW LOONEY SHOT ERIC BASS AND SHE SAID "ARMANI" TOLD HER. NEAL SAID ARMANI TOLD HER THIS AFTER THE POLICE CLEARED FROM THE HOMICIDE SCENE EARLY SUNDAY MORNING. I ASKED NEAL IF SHE THOUGHT THE SIX YEAR OLD GIRL DESERVED TO BE SHOT AND SHE ASKED ME IF ERIC BASS DESERVED TO BE SHOT.

AFTER THE INTERVIEW I TRANSPORTED PAMELA NEAL TO THE NORTH LAS VEGAS DETENTION CENTER. AS A RESULT OF PAMELA NEAL BEING IDENTIFIED AS ONE OF THE SUSPECTS WHO FORCED THEIR WAY INTO THE RESIDENCE AT 2508 WEST APT #C WHERE TONISHIA LOONEY WAS SHOT AND HER ADMITTING THAT SHE WENT OVER THERE TO LOOK FOR LOONEY I BOOKED HER FOR CONSPIRACY TO COMMIT A CRIME, ATTEMPT MURDER WITH A DEADLY WEAPON AND BURGLARY WITH A DEADLY WEAPON. THE INVESTIGATION IS CONTINUING.

records bureau processed
BROOKS/TERESA

ser no ! detective bureau processed
0969 !

ser no

supervisor approving
JUDD/MICHAEL

ser no ! officer reporting
0398 ! KOCH/MARK

ser no
0704

EXHIBIT G

COPY

DISTRICT COURT NO. 117314

IN THE JUSTICE COURT OF NORTH LAS VEGAS TOWNSHIP

COUNTY OF CLARK, STATE OF NEVADA

-000-

THE STATE OF NEVADA,

Plaintiff,

vs.

ASHLEY BENNETT, LALLORE
MORRISON, LOUIS MATTHEWS,
ANTHONY GANTT, JERMAINE WEBB,

Defendants.

CRASE NO. 01FN0810A
01FN0810C
01FN0810D
01FN0810E
01FN0810F

REPORTER'S TRANSCRIPT
OF
PRELIMINARY HEARING

BEFORE THE HONORABLE STEPHEN T. DARD
JUDGE OF THE PEACE
JUNE 5, 2001, 9:55 A.M.

APPEARANCES:

For the State:

WILLIAM T. ROOT, ESQ.
Deputy District Attorney

For the Defendant:
(Bennett)

SCOTT L. BINDMAN, ESQ.

For the Defendant:
(Morrison)

DAVID H. SCHIESS, ESQ.

For the Defendant:
(Matthews)

SEAN P. SULLIVAN, ESQ.

For the Defendant:
(Gantt)

CHRISTINA WILDEVEDD, ESQ.
Special Deputy Public Defender

For the Defendant:
(Webb)

RANDALL M. PIER, ESQ.

Reported by: SHARON M. EHLING

1/8

W I T N E S S E S

FOR THE STATE:

	DR.	CR.	REDR.	RECR.	VD.
SANDRA NIELSON					
BY MR. KOOT	4				
BY MR. BINDRUP		11			
BY MR. SCHIECK		20			
BY MR. PIKE		25			
BY MR. SULLIVAN		30			
BY MS. WILDEVELD		33			

GARY TELGENHOFF, M.D.

BY MR. KOOT	37				
BY MR. BINDRUP		46			
BY MR. SCHIECK		--			
BY MR. PIKE		58			
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PAMELA NEAL

BY MS. DE LA GARZA	68		207		
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BY MR. SCHIECK		139			
BY MR. BINDRUP		180			
BY MS. WILDEVELD		166			

FOR THE DEFENSE:

None

* * * * *

1 NORTH LAS VEGAS, CLARK COUNTY, NEVADA

2 JUNE 5, 2001, 9:30 A.M.

3 P-R-O-C-E-E-D-I-N-G-S

4
5 THE COURT: Ashley Bennett, Lailoni
6 Morrison, Louis Matthews, Anthony Gantt, and Jermaine
7 Webb, 01FN0810A, C, D, F and G.

8 Is everyone ready to proceed?

9 MR. KOOT: The State's ready, your Honor.

10 MR. PIKE: Yes, your Honor, on behalf of
11 Jermaine Webb.

12 MR. BINDRUP: Yes.

13 MR. SULLIVAN: Judge, on behalf of
14 Mr. Matthews, yes.

15 MR. SCHIECK: Yes, your Honor, on behalf
16 of Mr. Morrison.

17 MS. WILDEVELD: Yes, your Honor, on
18 behalf of Mr. Gantt.

19 THE COURT: State, call your first
20 witness.

21 MR. KOOT: Your Honor, we would call
22 Sandra Nielson Haynes.

23 MR. SCHIECK: Your Honor, we need our
24 clients.

25 THE COURT: Are we getting the

SHARON M. EULIANO
(702) 896-6599

23 MR. KOOT: Yes.

24 THE WITNESS: I'm a police officer with
25 the city of North Las Vegas assigned to the Crime

SHARON M. EULIANO
(702) 896-6599

1 defendants?

2

3

SANDRA NIELSON,

4

having been first duly sworn was
examined and testified as follows:

5

6

THE BAILIFF: Please be seated.

7

8

Please state your full name for
the record and spell your last.

9

10

THE WITNESS: Sandra Nielson,
N-i-e-l-s-o-n.

11

12

DIRECT EXAMINATION

13

BY MR. KOOT:

14

15

Q. I didn't hear that name. Was that Sandra
Nielson Haynes?

16

A. Yes.

17

Q. And, Ms. Haynes, what is your occupation?

18

A. I'm a police officer for the --

19

Q. Could you speak up, please.

20

21

THE COURT: Get as close to the
microphone as possible.

22

THE WITNESS: Is that better?

23

MR. KOOT: Yes.

24

25

THE WITNESS: I'm a police officer with
the city of North Las Vegas assigned to the Crime

1 Scene Investigations unit.

2 BY MR. KOOT:

3 Q. And how long have you been employed in
4 that capacity?

5 A. Over 12 years.

6 Q. I direct your attention to March 3rd of
7 this year around 4:00 in the afternoon. Did you go
8 to the vicinity of 2529 Morton in North Las Vegas,
9 Clark County, Nevada?

10 A. Yes, I did.

11 Q. And when you arrived at that location,
12 had the body been moved from that location?

13 A. Yes, it had.

14 Q. Were photographs taken at that location?

15 A. Yes, they were.

16 Q. And did you cause a crime scene sketch to
17 be drafted?

18 A. Yes.

19 Q. And did you note on that crime scene
20 sketch the various items of physical evidence that
21 you felt were important in this case?

22 A. Yes, I did.

23 Q. Did that include a number of shell
24 casings?

25 A. Yes.

1 Q. In addition, I think this morning I
2 showed you an aerial photograph of the area; is that
3 right?

4 A. Yes.

5 Q. Showing you what has been marked as
6 Exhibit No. 1 -- strike that. Let's go with number
7 -- yes, Number 2 first. Is that a diagram that you
8 prepared based on your observations at that scene?

9 A. Yes, it is.

10 MR. BINDRUP: Excuse me. I don't think
11 anybody moved to exclude witnesses. For the record,
12 I would like to make sure there are no other
13 witnesses.

14 THE COURT: Do you have any witnesses
15 present in the court now?

16 MR. KOOT: Mr. Golden. Where is
17 Mr. Golden? Would you please leave.

18 Q. Does that chart assist us, you believe,
19 and assist yourself in describing the various items
20 of physical evidence found at that location?

21 A. Yes.

22 Q. And are those three buildings in that
23 approximate location with the exception I believe one
24 of those apartment buildings is actually on a slant;
25 isn't it?

1 A. Yes.

2 Q. Which one is that?

3 A. I believe it was 2529.

4 Q. I think I put you on the spot there;

5 didn't I? I'm going to show you Exhibit No. 1.

6 A. Okay. That would be 30.

7 Q. This one here?

8 A. Yes.

9 Q. Is this the square that we're looking at?

10 A. Yes, it is.

11 Q. 2529 would be the same as 2529 below,
12 right?

13 A. Correct, so it would be 2535 is the
14 slant.

15 Q. All right. So then we go to the north of
16 that is the 2535?

17 A. Correct.

18 Q. And were you able to determine where the
19 body had been based upon evidence you saw at the
20 scene?

21 A. Yes, I was.

22 Q. And whereabouts was that?

23 A. The clothing had been removed by
24 paramedic units, so the area that the shirt was found
25 with the beeper.

1 Q. That would show on Exhibit No. 2?

2 A. Six and seven.

3 Q. Six and seven.

4 A. And there was a blood puddle where the
5 victim was lying.

6 Q. Right about in this area?

7 A. Correct.

8 Q. Now this Exhibit No. 2 is color coded; is
9 that correct?

10 A. Yes, it is.

11 Q. And could you explain that to us and
12 about how many shell casings of each type of weapon
13 were found at that location?

14 A. There were numerous rounds found at the
15 scene, so to differentiate, I color coded the numbers
16 to coordinate with the round found. The burgundy
17 off-red American 9 millimeter are the ones that are
18 36, American 9 millimeter, I believe eight. The Win
19 Lugger are in green, which are 27, 28, 29, 30, 31,
20 32. The R & P are done in red and the 38 are done in
21 the dark blue.

22 Q. The R & P is the 32 caliber, R & P,
23 correct?

24 A. Right.

25 Q. So you have a total of, what, nine

1 expended 38 super shell casings?

2 A. Yes, I had 38 -- I'm sorry -- 38
3 round --

4 Q. Just answer my questions.

5 Do you have nine, 38 cal super
6 expended shell casings?

7 A. Yes.

8 Q. Do you have seven, 32 caliber R & P shell
9 casings?

10 A. Yes.

11 Q. Do you have five, 9 millimeter Lugger
12 expended shell casings?

13 A. Yes.

14 Q. One live 9 millimeter Lugger?

15 A. Yes.

16 Q. And eight, American 9 millimeter shell
17 casings expended?

18 A. Correct.

19 Q. For a total of 29 expended shell casings?

20 A. Correct.

21 Q. And one live round?

22 A. Yes.

23 MR. KOOT: Okay. At this time I would
24 move for the admission of Exhibits Nos. 1 and 2.

25 THE COURT: Objection?

1 MR. SCHIECK: No objection.

2 MR. SULLIVAN: No.

3 MR. BINDRUP: No.

4 MS. WILDEVELD: No.

5 MR. PIKE: None, your Honor.

6 THE COURT: All right. It will be
7 admitted.

8 (Whereupon, State's Exhibits Nos. 1
9 and 2 were admitted into
10 evidence.)

11 MR. KOOT: No further questions. Oh, I'm
12 sorry. Hold it.

13 May I ask some questions on this?

14 THE COURT: Yes.

15 BY MR. KOOT:

16 Q. We have three photographs of that scene.
17 Examine those, please, and tell me if they truly and
18 accurately depict the area that is described on the
19 diagram Exhibit No. 2.

20 A. Yes, they do.

21 Q. All right. I think we can -- they are
22 fairly easy to orient, but let me at least show you
23 Exhibit No. 5. If you look at it you see a blue it
24 looks like a Cadillac in the foreground and two
25 individuals standing down below, is that right,

1 behind the Cadillac?

2 A. Correct.

3 Q. Just to orient us as to Exhibit No. 2,
4 where would that building be?

5 A. The building they are standing in front
6 of would be 2529.

7 MR. KOOT: Thank you. Move to admit
8 Exhibits Nos. 3, 4, and 5.

9 THE COURT: Objection?

10 MR. BINDRUP: No objection.

11 MR. SCHIECK: No objection.

12 MR. SULLIVAN: No objection.

13 MS. WILDEVELD: No objection.

14 THE COURT: It will be admitted.

15 (Whereupon, State's Exhibits Nos. 3,
16 4 and 5 were admitted into
17 evidence.)

18 MR. KOOT: Thank you, your Honor. I have
19 no further questions.

20 THE COURT: Have you all decided on what
21 order?

22

23 CROSS-EXAMINATION

24 BY MR. BINDRUP:

25 Q. When you arrived at the scene, were there

1 any other officers there?

2 A. There were several officers on the scene.

3 Q. Approximately how many officers were
4 there?

5 A. I didn't really count. There were
6 several. More than two and less than 20.

7 Q. So it was between two and 20 that were
8 there when you showed up first?

9 A. Well, there were several officers, yes.

10 Q. And as far as bystanders, would it be
11 safe to characterize it as a very confused high-crowd
12 area at that time when the police were there
13 investigating?

14 A. Negative. The area that I diagrammed was
15 cordoned off with a crime scene tape.

16 Q. When you arrived, was the entire area
17 cordoned off?

18 A. We had security tape securing the parking
19 lot area.

20 Q. When you say parking lot, would you come
21 and with your finger mark where the tape was placed
22 on this area. Would you do that right now, please.

23 A. There was tape securing the parking lot
24 area, securing this area.

25 Q. You're pointing to the area on the

1 street. And this street is what?

2 A. This is Morton.

3 Q. So the entire parking lot was from
4 Morton --

5 A. There was tape back here.

6 Q. When you say back there, there was tape
7 behind Building 2531?

8 A. There was tape, yes.

9 Q. Was there tape --

10 A. There was an officer standing here.

11 Q. "Here" being to what direction?

12 A. The back of 2531, to the north of 2531
13 right in here.

14 Q. Okay. So approximately where the trees
15 are depicted by 2531, that area was cordoned off?

16 A. And during my measurements I had to go
17 under tape in this area.

18 Q. Would you please describe for us what
19 you're pointing to.

20 A. This is in front of 2535. There was tape
21 from possibly this tree across.

22 Q. Would you please describe more exactly
23 where the tape was?

24 A. Well, it was in this area.

25 Q. Okay. Between --

1 A. As I was taking my measurements, which I
2 took from this box and stretched it to the tree, I
3 had to go under the crime scene tape in this area in
4 front of 2535.

5 Q. You were pointing to the area in front of
6 2535 that the tape would appear to dissect the 38
7 super rounds found and where the other rounds were
8 found; is that correct?

9 A. Are you asking me why the tape was placed
10 there? To secure the scene.

11 Q. No, that's not my question.

12 The line then of tape was between
13 the 38 super casings that were found and the other
14 rounds, correct?

15 A. It was in this area, correct. It was in
16 this area.

17 Q. From what you've said, it appears then
18 that the first cordoning off of the area was closer
19 in proximity to one that was done later; is that
20 correct or not?

21 A. I'm not sure when the officers got there
22 what their primary area was. You'd have to ask them.
23 At the time that I arrived, there was evidence tape
24 up securing this area.

25 Q. When you say this area, you're telling me

1 the outside perimeters. Let's finish just the
2 outside perimeters.

3 You indicated there was tape behind
4 2531 and stretching to the back of 2535?

5 A. It was in this area.

6 MR. BINDRUP: Could I have her draw on
7 the diagram? Do you have any problem with that?

8 MR. KOOT: Yeah, I have a problem with
9 that. This is the defense diagram. Somebody has
10 some diagrams over there. Unless you've got some
11 clear plastic, I don't want her drawing on this.

12 MR. BINDRUP: You're not going to let us
13 mark up your exhibit then?

14 MR. KOOT: No. I plan to use that with
15 another witness. I don't want to mess her up.

16 MR. BINDRUP: Would you please mark
17 this.

18 Q. Okay. I'm showing you Defense Exhibit A.
19 Does this appear to adequately depict the same
20 location as depicted on State's Exhibit 2?

21 A. The apartment buildings are in the same
22 location, light pole and the trash bin, yes.

23 Q. Okay. I'm handing you a red pen and I'd
24 like you to diagram when you arrived at the scene
25 what areas had been cordoned off with yellow police

1 tape.

2 A. There was tape from here. I think there
3 was something to attach it to here. This was secured
4 and there was an officer standing in this area.

5 Q. And you are now depicting the area
6 directly behind 2531, correct?

7 A. To the north of 2531.

8 Q. Thank you.

9 A. There was tape securing this area.

10 Q. And that would be the area between the
11 parking lot and Morton Street?

12 A. This is the parking lot, correct, and I
13 believe there was tape in this area.

14 Q. But you don't know for sure?

15 The area between 2531, 2529 and
16 Morton Street you do not recall if there was tape on
17 that area or not?

18 A. I believe there was tape in here and in
19 here.

20 Q. But you're not sure?

21 A. We had no foot traffic in here.

22 Q. Would you please then mark -- would it be
23 accurate to mark where you believe the tape was and
24 in each section just put a question mark because
25 you're not sure if there was tape there or not.

1 A. Okay.

2 Q. Would you please put a question mark on
3 the --

4 A. The tape was secured. I'm not sure what
5 it was fastened to, but there was tape surrounding
6 the area.

7 Q. Okay. So the lines that you've drawn
8 towards Building 2529 you're now saying you are sure
9 that the tape was there?

10 A. There was tape surrounding the entire
11 scene.

12 Q. Okay. Now to Apartment 2535, what tape,
13 if any, was around that particular area?

14 A. There is a tree somewhere around here.

15 Q. That's to what side of Apartment 2535?

16 A. Well, it's near 2535. I'm not sure where
17 the trees --

18 MR. KOOT: Judge, are we filibustering
19 here or what? He's been talking about tape for the
20 last 15 minutes. I think we are getting to the point
21 of no relevance.

22 THE COURT: Well, I think the witness --

23 MR. KOOT: I'm --

24 THE COURT: Directed to the witness,
25 you're making this a lot harder. All he's asking you

1 to do is draw a line where the tape was. He's not
2 asking where trees were. He's not asking where
3 electrical boxes were. He wants a line where the
4 tape was. That's all he's asking.

5 THE WITNESS: The tape was around the
6 scene.

7 THE COURT: Draw the line where there was
8 tape. That's all he's asking for.

9 THE WITNESS: Okay.

10 BY MR. BINDRUP:

11 Q. Previously you indicated there was
12 another line directly in front of 2535.

13 A. There was.

14 Q. Please draw where that line was.

15 A. There was tape somewhere in here.

16 Q. Okay. My question is, Why was this
17 particular area taped off if it was inside the entire
18 crime scene area?

19 A. I didn't place the tape there, so I'm not
20 sure of the intent of the person that placed the tape
21 there. I arrived after.

22 Q. Was there any other tape in any other
23 areas within that?

24 A. Not that I recall.

25 Q. Okay. You would agree with me though

1 that where the tape was in front of 2535 would
2 effectively cut in half where many of the rounds were
3 found? Would you agree with that?

4 A. Cut in half? I don't understand what.

5 Q. You have no idea then why a line would
6 have been drawn within the major crime scene area?
7 You have no idea why that was?

8 MR. KOOT: That's an assumption on the
9 part of counsel, your Honor, within that question.

10 THE COURT: Overruled.

11 BY MR. BINDRUP:

12 Q. You have no idea why that was done, why
13 that line was there?

14 A. I didn't place the tape there. I'm not
15 sure of the intent.

16 Q. If you were the initial arriving officer,
17 would you have placed a tape line in front of 2535?

18 MR. KOOT: Your Honor, this goes
19 beyond --

20 THE COURT: Sustained.

21 MR. BINDRUP: I move to introduce
22 Defense Exhibit A.

23 MR. KOOT: No objection.

24 THE COURT: It will be admitted.

25 (Whereupon, Defendant's Exhibit No. A

1 was admitted into evidence.)

2 MR. BINDRUP: Thank you. I have nothing
3 further.

4 THE COURT: Next.

5

6 CROSS-EXAMINATION

7 BY MR. SCHIECK:

8 Q. Officer Nielson --

9 A. I'm sorry. I can't hear you.

10 Q. Pardon me?

11 A. You're kind of blocked.

12 Q. I'm coming around. It's awkward.

13 A. There we go.

14 Q. You indicated that you marked all the
15 things you collected at the scene. Did you also
16 notice a blood trail at the scene?

17 A. Yes, I did.

18 Q. Is that depicted on Exhibit 2?

19 A. Yes, it is.

20 Q. Okay. And how is that depicted?

21 A. The red cross scratching. If I may get
22 up.

23 Q. Sure.

24 A. In this area.

25 Q. Did you determine if the blood trail that

1 you saw there started at one point and continued that
2 it was the same blood trail? Do you understand what
3 I'm saying? It's not more than one blood trail?

4 A. That would be virtually impossible
5 without DNA testing to see if it's the same.

6 Q. Did it appear to flow in such a manner
7 that it was from one person that was bleeding?

8 A. I wouldn't be able to say.

9 Q. Where did it start at and where did it
10 end at?

11 A. The downstairs apartment of 2535 is where
12 I initially marked and started to document. It went
13 down the sidewalk, at one point crossed the sidewalk
14 in front of 2535, and I found it back on the sidewalk
15 on Morton.

16 Q. Okay. So it crossed the grassy area
17 here, the corner of the grassy area?

18 A. I lost track of it at the grassy area,
19 but the directional showed that it seemed to veer
20 onto the dirt area.

21 Q. Okay. And then it ended up here in this
22 sidewalk area at the top of the diagram?

23 A. Blood was noticed up there also.

24 Q. What was the distance from the beginning
25 to the end of that blood trail?

1 A. From the front of 2535?

2 Q. Yes.

3 A. That would have been about --

4 Q. Would you have documented that in your
5 report?

6 A. At the time that we found the blood, it
7 was not determined to be involved, but the evidence
8 was documented. I took samples in various spots and
9 it was in close proximity, so it was added onto the
10 report.

11 Q. Did it at any point go near where the
12 clothing was found?

13 A. The clothing was found at six.

14 Q. At six and seven on the diagram?

15 A. Correct.

16 Q. Did the trail lead to that area at any
17 point in time?

18 A. No.

19 Q. How many samples did you collect?

20 A. I'm sorry. I didn't hear you.

21 Q. How many samples did you collect?

22 A. If I could refer to my report. I booked
23 them into evidence.

24 Q. Sure.

25 A. Three samples and control samples were

1 collected.

2 Q. Did you note in your report where you
3 collected those samples?

4 A. Sample and control sample taken in front
5 of Apartment B.

6 Q. Okay.

7 A. Sample and control sample on the sidewalk
8 just east of 2535, and sample and control sample on
9 the sidewalk where the stain ended --

10 Q. Now --

11 A. -- in front of 2535.

12 Q. You got noted on your diagram there is a
13 power box to the west of Apartment 2535.

14 A. Correct.

15 Q. Were there basketball courts over there
16 also?

17 A. There is a courtyard behind this
18 apartment building.

19 Q. Where would that be?

20 A. The courtyard is to the west.

21 Q. To the west, further west than the power
22 box?

23 A. Right.

24 Q. Just so I'm clear, in looking at your
25 diagrams you prepared, you selected a certain point

1 from which all measurements were taken; is that
2 correct?

3 A. Correct.

4 Q. And that was from this light pole?

5 A. My sergeant had instructed me to stretch
6 a line from the cable box that was just north of 2531
7 to the sidewalk, and all measurements were taken off
8 of the small square, correct.

9 Q. This is the cable box here?

10 A. The small square.

11 Q. Okay. North of 2531?

12 A. Correct.

13 The line was extended to the
14 sidewalk.

15 Q. Here?

16 A. Correct.

17 Q. Okay. And then all measurements are off
18 of that line?

19 A. North and south, correct.

20 Q. Okay.

21 A. North and south of that line.

22 Q. And did you line up -- I mean when you
23 stretched the line, how did you make sure that it was
24 going straight? If you know what I'm saying. Did
25 you parallel the building exactly and then just

1 extend on out from that point?

2 A. Correct.

3 MR. SCHIECK: No further questions, your
4 Honor.

5

6 CROSS-EXAMINATION

7 BY MR. PIKE.

8 Q. Hi. I have a few questions.

9 How many crime scene collectors or
10 people were out there that perform your function or
11 was this specifically assigned to you?

12 A. There were two of us, Officer Gerald
13 Herieda, myself, and then my sergeant was on the
14 scene, Sergeant Dimauro.

15 Q. Between the three of you, are you the
16 three that are called out to every scene that
17 involves a death or are you called to all the crime
18 scenes that involve collection and documentation of
19 evidence?

20 A. We do various crime scenes.

21 Q. Okay. In reference to this area, what is
22 the policy with the department, the North Las Vegas
23 Police Department, on coming out and responding to a
24 shots-fired call where there is no indication that
25 anyone has been injured or any property has been

1 struck? Are you called out to those crime scenes?

2 A. We respond when the initial officer
3 arrives at the scene and determines the need for us
4 to show up, then we're dispatched.

5 Q. Okay. And what is the need that triggers
6 you coming out to collect evidence at a scene like
7 this?

8 A. The initial officer that responds.

9 Q. So if an officer came out and came to
10 this apartment and say there was just a call for
11 shots-fired and he determined that nobody was struck
12 or there was no property damage done, then you would
13 not then be called to this scene to try and locate
14 casings or anything else?

15 A. If the officer, the original officer on
16 the scene feels that we are needed, then he calls us
17 through dispatch.

18 Q. In your investigation of this scene, do
19 you know how many times in the two months preceding
20 March 3rd of this year there were calls of
21 shots-fired in that location? Did you check that
22 out; do you know?

23 A. No.

24 Q. As part of your collection of evidence
25 and documentation of this evidence, you went through

1 and marked where there were blood droplets, drippings
2 or the rest of that. Have you been trained in any
3 sort of blood spatter analysis or in the
4 interpretation of blood droppings?

5 A. Yes, I have.

6 Q. Have you ever qualified to testify as an
7 expert in reference to those things?

8 A. No, I haven't.

9 Q. Were you called upon by either your
10 preparation in this case or your conversations in
11 reference with the preparation to this case that you
12 are going to at some point in time be called upon to
13 offer your expert testimony in reference to the blood
14 evidence that you observed?

15 A. Could you repeat that question.

16 Q. Maybe I could do it in English.

17 Let me ask you this. From the
18 blood drops and the drippings that you saw on the
19 sidewalk that you marked with the hash markings,
20 could you tell whether or not the direction of the
21 individual that that blood was coming from if they
22 were standing still or if they were moving?

23 A. Yes, I can.

24 Q. Okay. And how could you tell that?

25 A. In the photographs that were taken, the

1 cones standing upright are 90-degree blood stains up
2 and down.

3 Q. Just round drops?

4 A. Correct.

5 And the directional are depicted by
6 the cone pointing -- laying on it's side --
7 pointing the direction of the blood stain.

8 Q. And you went through as part of your
9 crime scene analysis and took a photograph of all of
10 those cones for reference at some point in the
11 future?

12 A. Officer Herieda and I, yes.

13 Q. Okay. From your observation of the blood
14 evidence then that you observed, were you able to
15 form any opinion as to where you believe the
16 individual first that ultimately ended up as the
17 deceased here at 67, where was the first blood
18 evidence that you observed?

19 A. Where did I notice it first?

20 Q. Yes.

21 A. Or what direction was it going in?

22 Q. Why don't you tell me both.

23 A. I don't feel that it was involved. There
24 were several directions. The blood stain on the
25 sidewalk appeared to be going away from the sidewalk

1 back and forth. The stains up next to 35 -- 2535,
2 Apartment B I believe there were some straight up and
3 down circular stains and there were some elongated
4 stains.

5 Q. Okay. Do you know if the North Las Vegas
6 Police Department -- well, let me ask another
7 question.

8 In the two months preceding the
9 date you came out to investigate this scene,
10 approximately how many other homicide scenes did you
11 investigate within a one-mile radius of this if you
12 can recall?

13 A. In what amount of time?

14 Q. Within a two-month radius. From the
15 beginning of the year, roughly.

16 A. Where blood has been shed in this area?

17 Q. Yes.

18 A. A one-mile radius.

19 Q. That will put you right around Martin
20 Luther King, Lake Mead, up around Carey and circle
21 down about halfway to Cheyenne?

22 A. A one-mile radius would probably take you
23 past Cheyenne. I would venture to say probably ten
24 or twelve.

25 Q. You indicated the blood up here on the

1 sidewalk seemed to be going back and forth but always
2 away from the location of 67; is that correct?

3 A. Six and seven, correct.

4 Q. That's six and seven? Not 67?

5 A. Six and seven.

6 MR. PIKE: Okay. Thank you very much.

7 MR. KOOT: Judge, before we go on with
8 cross, my mistake. I talked to Dr. Telgenhoff. He's
9 the pathologist. He has to be in Judge Oesterle's
10 court on another homicide case. I wonder if I could
11 call him out of order and then call the crime scene
12 analyst back. I know that is inconvenient for her,
13 but I have to get to Dr. Telgenhoff.

14 THE COURT: Let me ask the two remaining
15 defense counsel. Do you have many questions?

16 MR. SULLIVAN: I only have three or four
17 questions.

18 MS. WILDEVELD: I only have about three.

19 THE COURT: We could wrap this up
20 probably in five minutes, so let's finish up with
21 this witness then.

22
23 CROSS-EXAMINATION

24 BY MR. SULLIVAN:

25 Q. How many bullet holes did you account for

1 at the scene?

2 A. There were -- you're talking total
3 bullet holes?

4 Q. That you accounted for.

5 A. Nine or ten.

6 Q. Not including in the body?

7 A. The body was removed prior to my arrival.

8 Q. So you wouldn't know how many were in the
9 body?

10 A. No.

11 Q. Okay. And then how many casings did you
12 find? Did you testify to 29?

13 A. Correct.

14 Q. Are you familiar with the weapons that
15 are listed on counsel's exhibit here?

16 A. Familiar as far as?

17 Q. The weapons themselves, the 9 millimeter,
18 the Lugger, the --

19 A. Those are types of ammunition, the
20 American 9 millimeter and the Win Lugger 9
21 millimeter.

22 Q. Okay. So those types of ammunition, you
23 only found four types; is that correct?

24 A. Correct.

25 Q. And did you have a chance to find any

1 other shell casings, a 45 around there?

2 A. No.

3 Q. Any other type of weapons around there?

4 A. Any type of weapons?

5 Q. Casings not consistent with these shells.

6 A. No.

7 Q. Okay. And are you familiar with a 9
8 millimeter handgun?

9 A. I carry a handgun, yes.

10 Q. And how many shells does that typically
11 hold?

12 A. Mine personally?

13 Q. Yes.

14 A. I carry 16. I have an extended mag.

15 Q. Is there one that would hold more than
16 16?

17 A. I guess probably you could find one more
18 extended than mine.

19 Q. How about the 32, is that a six-shot
20 revolver?

21 A. I'm not sure.

22 Q. You are not familiar with the 32?

23 A. I'm not.

24 Q. Are you familiar with a 38?

25 A. 38, I personally don't have a 38, so no.

1 MR. SULLIVAN: Okay. I don't have
2 anything further.

3
4 CROSS-EXAMINATION

5 BY MS. WILDEVELD:

6 Q. Officer --

7 A. Yes.

8 Q. -- what is not depicted on this diagram,
9 was there a basketball court on this side?

10 A. I don't recall a basketball court behind
11 there. I know there is an opening between the
12 apartment buildings from west over onto Morton.

13 Q. And was there anything over in this area
14 on the right-hand side of Exhibit 2?

15 A. There is apartment buildings on the east
16 side.

17 Q. This is the east side over to the right
18 side of the exhibit?

19 A. Correct.

20 Q. Okay. Is there any open area over on the
21 right side of the exhibit?

22 A. There is a construction site. It's
23 fenced. It's all fenced off.

24 Q. You've been out to this location numerous
25 times, right? This was not your first time out to

1 this location?

2 A. Correct.

3 Q. And so you've had opportunities to
4 observe this area before?

5 A. I've been out there before, yes.

6 Q. Do you know if there is open space over
7 on the right-hand lower corner of Exhibit No. 2?

8 A. In front of 2529?

9 Q. I'm talking about to the right of 2529.

10 A. Okay. To the east there is a
11 construction site where new apartment buildings are
12 being erected.

13 Q. On March 3rd were the apartment buildings
14 already erected or were they still under construction
15 and was it flat?

16 A. I believe to the north end of that
17 construction site is flat.

18 Q. The north end would be what side of
19 Exhibit No. 2?

20 A. I believe --

21 Q. The top of Exhibit No. 2?

22 A. Correct. But there is a construction
23 site in and around there that they're building
24 three-story apartments, I believe.

25 Q. And those were not erected on March 3rd,

1 2001, right?

2 A. They were building them.

3 Q. But they were still flat, right? I mean
4 they didn't have the walls up, they didn't have the
5 roof on already, right?

6 A. They were being built.

7 Q. Okay. So they were in the process?

8 A. Yes, they are still building over there.

9 Q. All right. The apartments at 2529, 2531
10 and 2535, are there only apartments facing the
11 parking lot or are there also apartments on the back
12 side of the buildings?

13 A. Facing the parking lot.

14 Q. Were there balconies on the back side of
15 the buildings?

16 A. No.

17 MS. WILDEVELD: Thank you. Nothing
18 further.

19 MR. KOOT: Nothing further on redirect.

20 THE COURT: Thank you. You are excused.

21 MR. KOOT: Your Honor, Dr. Telgenhoff is
22 next.

23 On the criminal complaint -- while
24 we're waiting to talk to Dr. Telgenhoff -- I'm not
25 proceeding on Count I, conspiracy.

1 THE COURT: Okay.

2 MR. KOOT: Just on the murder.

3 THE COURT: All right. Will all the
4 defense counsel stipulate to the expertise of
5 Dr. Telgenhoff for the purposes of preliminary
6 hearing?

7 MR. BINDRUP: Yes, your Honor.

8 MR. SULLIVAN: Yes, your Honor.

9 MR. SCHIECK: Yes, your Honor.

10 MS. WILDEVELD: Yes, your Honor.

11 MR. PIKE: Yes, your Honor.

12 MR. Koot: I gave counsel -- all counsel
13 have copies of Exhibits 9 through -- they are now
14 marked 9 through 14, which I'll be using with the
15 doctor.

16 THE COURT: Are those all body diagrams?

17 MR. KOOT: Yes, they are, Judge.

18

19 GARY TELGENHOFF, M.D.,

20 having been first duly sworn was
21 examined and testified as follows:

22 THE BAILIFF: Please be seated, sir.

23 Please state your full name for the
24 record and spell your last name and try to talk into
25 the microphone as much as possible.

1 THE WITNESS: My name is Dr. Gary
2 Telgenhoff. My last name is spelled,
3 T-e-l-g-e-n-h-o-f-f.
4

5 DIRECT EXAMINATION

6 BY MR. KOOT:

7 Q. And, Doctor, you did the autopsy on a
8 person identified to you as Joseph J. Williams on
9 March the 4th, 2001; is that correct, sir?

10 A. Correct.

11 Q. Counsel stipulated to your qualifications
12 for purposes of the preliminary hearing. For that
13 reason we'll go right into the autopsy.

14 To assist us, first of all I'll
15 show you a few photographs previously shown to
16 counsel, Exhibit No. 6, 7 and 8. Number 6 being a
17 facial shot of an individual. Is that the person on
18 whom you performed the autopsy?

19 A. Yes.

20 Q. Joseph Williams?

21 A. Yes.

22 Q. Thank you.

23 And Exhibits No. 7 and 8, that was
24 introduced only to show the identification on the
25 name tag; is that correct?

1 A. Right.

2 Q. All right. Beyond that, Doctor, each
3 counsel has been provided -- and I'm showing you what
4 has been marked as Exhibits No. 9, through 14. I
5 stapled them all together. They are in the same
6 order, 9 starting with Wound A, and on through the
7 back of them with No. 14 being the x-rays. So if you
8 could just take my exhibits, Exhibits No. 9 through
9 14, and using that diagram so we can all follow
10 along, describe to us -- before you do that, what
11 was the cause of death in this case?

12 A. The cause of death was multital gunshot
13 wounds.

14 Q. And manner of death?

15 A. Homicide.

16 Q. And now if you would please itemize using
17 those exhibits the various wounds that you have
18 marked so that we can understand what your markings
19 mean.

20 A. Beginning on the first page of the
21 drawings, which you handed me -- which, by the way
22 corresponds with my autopsy report -- Wound A is a
23 wound to the chest on the upper right side. It's
24 also described in detail in my autopsy report on page
25 3. This goes through the interior chest wall, the

1 right lung, the liver, and the right kidney and exits
2 on the right flank lateral aspect of the back.

3 Q. So we actually see that on the drawing.
4 It enters on the body diagram that's facing us on the
5 left-hand side and exits on the lower right?

6 A. Correct.

7 Q. Okay. Thank you.

8 A. The trajectory is front to back acutely
9 downward slightly left to right.

10 Moving on to the next page, Wound
11 B. Wound B is incorrectly labeled on the autopsy
12 report. It says perforating gunshot wound to the
13 back. It should be penetrating.

14 There is an entrance wound on the
15 right side of the back near the small of the back.
16 It goes through the skin and musculature of the back
17 and enters the right chest. The trajectory is from
18 the decedent's back to front. Recovered from the
19 right lower aspect of the chest was a projectile
20 reportedly removed at the hospital through surgical
21 intervention. I didn't have a chance to see that.

22 Q. In fact, when we look at the photograph
23 on Exhibit No. -- as we go on to the next chart, on
24 Exhibit No. 6 we notice a lot of stitching or staples
25 around the body. That was done at the hospital I

1 take it.

2 A. Yes.

3 Q. All right.

4 A. That is a thoracotomy incision, which is
5 used to save an individual if they have a collapsed
6 lung, to stop bleeding and possibly to recover a
7 projectile if needed.

8 Q. All right. So this photograph No. 6 was
9 done before you, yourself entered the body?

10 A. Yes.

11 Q. Thank you.

12 A. Moving on to the third drawing. This
13 contains a number of wounds. I typically only make
14 one drawing. I made a number this time. Because of
15 the number of shots, I wanted to reduce the amount of
16 confusion.

17 Wound C is a perforating gunshot
18 wound to the left arm. In essence it traverses the
19 elbow on the back of the left arm in and out.

20 Wound D, this was a through and
21 through gunshot wound of the left thigh on the back
22 just below the buttock. It enters and exits. It
23 traverses from the decedent's left to right. It's
24 slightly downward, and it only goes through skin and
25 subcutaneous tissue relatively superficial.

1 Wounds E was the greatest wound of
2 the right hand. No other details could be determined
3 simply because there is just a small graze between
4 the right fourth and fifth fingers, the web of skin
5 between those fingers.

6 Wound F is a penetrating gunshot
7 wound of the right thigh, but the wound is just above
8 the right knee. It's in the lower aspect of the
9 thigh. It enters but does not exit. Recovered from
10 the tissue within the leg was a gray metallic non
11 jacketed flattened projectile fragment, and the
12 fragment was in such a condition that it appeared to
13 be shaved flat. And this typically results from a
14 ricochet off of a hard surface like cement.

15 Q. Was that ricochet round -- let's assume
16 that's a ricochet. Was that associated with Wound F
17 or is that different?

18 A. No. Wound F is the ricochet bullet.

19 Q. Okay. Thank you. Oh, that's right. I
20 was looking at G. I confused myself.

21 A. G is a separate wound. Once again this
22 was a penetrating injury. In other words, it enters
23 but does not exit. This occurs just below the right
24 knee on the inside of the right leg, and it basically
25 affects just the skin and subcutaneous tissue, would

1 not be life threatening. Retrieved from the soft
2 tissue is a gray non jacketed deformed projectile,
3 and it was in such condition I could not determine a
4 caliber from it.

5 Wound H, a perforating through and
6 through gunshot wound of the right foot. The wound
7 enters on the right top aspect of the foot, goes
8 through the skin and underlying tissue and bone of
9 the foot and then exits on the inside of the right
10 foot. So the trajectory is right to left, slightly
11 front to back and slightly downward.

12 Moving onto the next page.

13 Q. What's the exhibit number on that? Right
14 by your left hand there is an exhibit number.

15 A. I'm sorry. I was looking for exhibit
16 numbers. This is Exhibit 12.

17 Q. Thank you.

18 A. Wound I, there is a simple graze wound on
19 the skin in the upper right aspect of the abdomen.
20 So the bullet did not enter, it simply skipped over
21 the surface of the skin.

22 Wound J, this was a perforating
23 gunshot wound to the right thigh. The entrance was
24 on the upper right thigh near the groin. The path
25 was through skin, underlying tissue muscle and then

1 exits on the posterior aspect of the right thigh.
2 For those who have a diagram, it's on the right side
3 of the drawing on the back of the right thigh. J
4 exit is the label. The trajectory is from the
5 decedent's front to back acutely downward and right
6 to left.

7 Wound K is a penetrating gunshot
8 wound to the back. The entry is on the high aspect
9 of the left buttock. The path involves the skin
10 underlying tissue, musculature of the back and hits
11 the spine in the lower lumbar area. The trajectory
12 is back to front, upward left to right. Recovered
13 from the spine is a medium caliber copper jacketed
14 deformed projectile.

15 Q. Did that do damage to the spine such that
16 it would restrict movement?

17 A. It chipped the bone, entered the bone.
18 The bullet had to be dug from the bone.

19 L, Wound L, a penetrating gunshot
20 wound of the left buttock. This wound was lower on
21 the buttock in the central area. It went through the
22 skin underlying tissue, the pelvic wall, muscles, and
23 went to the right iliac vein, which is the large vein
24 in the pelvis. Recovered from the right pelvic wall
25 was a deformed copper jacketed medium caliber

1 projectile.

2 Exhibit 13, the next page.

3 Wound M, looking at the right side of the diagram
4 indicates the entrance under M and the exit is
5 displayed in the left drawing. Wound M enters the
6 right buttock. It goes through skin underlying
7 tissue, the pelvic wall. It goes through multiple
8 loops of the large and small bowel. It exits on the
9 right lower aspect of the abdomen. The trajectory is
10 from the decedent's back to front upward and no other
11 deviation.

12 Wound N, is a graze wound of the
13 left leg on the back side just above the foot and
14 heel. The nature of the skin tags of this wound
15 indicate that it was from the left to the right
16 acutely upward. The total entrance wounds were 14.

17 Q. One-four, 14 did you say?

18 A. Fourteen.

19 Q. Thank you.

20 A. Total exit wounds, six. Total graze
21 wounds, two. Total projectiles that I recovered,
22 five. Total projectiles recovered at the hospital
23 reportedly one.

24 Q. Was there any sooting or unburned
25 gunpowder on any of the wounds?

1 A. No.

2 Q. I notice from your report that the
3 gentleman, Mr. Williams, was six-foot-one, 255
4 pounds. Is that based on reports that you received
5 or is that based on measurements and weights taken
6 there at the coroner's office?

7 A. It's based on measurements and weights
8 taken at the coroner's office at the time of the
9 autopsy.

10 Q. The toxicology, what was the result of
11 that?

12 A. We sent blood to APL laboratory that we
13 use in town, and the report states there was no
14 alcohol found and no drugs identified in the blood.

15 Q. All right. And lastly, with regard to
16 the severity of the various wounds, I'm talking about
17 which ones may have in and of themselves resulted in
18 death had there not been fairly rapid medical
19 intervention. Are there any wounds that can be
20 described in that fashion?

21 A. Certainly Wound A would be categorized as
22 such. Wound K possibly. Wound L possibly. Wound
23 M likely.

24 Q. So on Wound M, as in Mike, you actually
25 have a wound that enters almost square into the right

1 buttock; is that correct?

2 A. Not square.

3 Q. It travels upward?

4 A. Upwards, correct.

5 Q. And so it does a lot of damage as it
6 passes through the body I take it.

7 A. Yes.

8 MR. KOOT: Thank you. I have no further
9 questions of the doctor.

10 THE COURT: Cross?

11

12 CROSS-EXAMINATION

13 BY MR. BINDRUP:

14 Q. Were you able to ascertain the
15 approximate time of death? Were you given any
16 information on that?

17 A. I don't recall.

18 Q. By the time you looked at this
19 individual, it was already clear that he had hospital
20 or paramedic intervention, correct?

21 A. Allow me to review my report. Yes.

22 Q. Okay. And what -- by what you observed
23 and -- just tell me what sort of items did you
24 observe or what was it on his body that indicated
25 that health care personnel had been working on him.

1 A. Referring to page 2, I list those items.
2 There is an endotracheal tube in the throat, which is
3 used to help a person breath. There is a nasal
4 gastric tube which goes to the stomach. There are
5 various intravenous lines, needle sticks and lines
6 for solutions to hydrate a person to give them
7 medications. There is a Foley catheter in the
8 urethra to help with urination.

9 The thoracotomy incision was on the
10 chest and this was sutured. This indicates rapid
11 emergency therapy. This happens only as a last
12 report typically when someone looks like they're
13 clinging to life and they need to go in to do
14 something immediately to try to save the individual.

15 There is also a laparotomy incision
16 on the chest and abdomen. This is an incision that
17 goes from the chest down through the abdomen area.
18 Obviously they were searching for multital injuries
19 and life-threatening hemorrhages and most likely
20 trying to stop them, but that's just speculation on
21 my part. And that's basically it.

22 Q. So based upon what you observed, was it
23 at least clear to you that not only had there been
24 some paramedic who probably worked on him but also
25 work by professionals at a hospital setting?

1 A. Yes, sir.

2 Q. And were you given any indication as to
3 when he was pronounced dead?

4 A. It would be on the investigator's report.
5 I don't recall right off the top of my head.

6 Q. You said the only clear potentially fatal
7 wound was Wound A; is that correct?

8 A. No, that's not what I said. There were
9 three that were --

10 Q. Three that possibly or might lead to
11 death --

12 A. Rapidly.

13 Q. -- rapidly?

14 As far as Wound A, you would
15 characterize that as the most serious wound he
16 received?

17 A. Yes. A person might not even make it
18 away from the scene even if they tended to rapidly
19 with a wound like that. He did. There were other
20 wounds and the combinations of all wounds together.
21 You have to look at the entire picture. It's not any
22 one wound. It's a combination of wounds. It's
23 multiple trauma, multiple problems, multiple sites of
24 bleeding, and multiple stress on an individual. You
25 can emphasize one over the other, but I choose to

1 call them multipal gunshot wounds as far as the cause
2 of death.

3 Q. Other than the wounds that you designated
4 as potentially fatal, A, K, L, M, it would be
5 accurate to say that the rest of the wounds you would
6 classify as non fatal wounds?

7 A. Most likely survivable, yes.

8 Q. The drug screen that you did on his
9 blood, is there anything either that paramedic or
10 hospital intervention, anything done by them that
11 could have skewed the results on any blood analysis
12 done by the drug screen?

13 A. No.

14 Q. Do you have any idea as far as with these
15 particular wounds and those that you categorized as
16 potentially fatal, do you have any opinion as to
17 after receiving those injuries at what point loss of
18 consciousness would have occurred?

19 A. No. That would be mere speculation, but
20 I would think minutes at the outset.

21 Q. So around minutes and you really can't be
22 any more accurate than that?

23 A. No.

24 Q. Other than what you already described in
25 these state's exhibits and your report, was there

1 anything that would lead you to more accurately
2 ascertain the caliber of any of the bullets?

3 A. I don't do that. I leave that for
4 ballistic experts.

5 Q. Out of the wounds you listed, were any of
6 those wounds that would indicate that the shooter was
7 either at a close distance or at a far distance?

8 A. All shots appear to be at least over 2
9 feet.

10 Q. Now if a shot had been fired that was
11 closer than 2 feet, what sort of indication would be
12 evident in the body?

13 A. If a shot is contact -- there are two
14 types. There's hard contact and loose contact.
15 Those tend to leave soot on the skin or any
16 underlying tissue. If it's a hard contact, it might
17 leave a muzzle imprint. Anything between contact and
18 distant shot, which is generally with handguns,
19 anything over about 2 feet, in that range it's called
20 intermediate, and that tends to leave stippling on
21 the skin, which is gunpowder particles which scrape
22 the skin.

23 It's incorrectly called powder
24 burns. But it's basically unburned gunpowder
25 particles that scrape the skin, and it is very

1 obvious for those who have seen it once or twice.

2 Q. So out of all these wounds, there were,
3 in your opinion, no evidence of contact or near
4 contact with the gun?

5 A. That's correct.

6 Q. And did you see any indication of what
7 you call the stippling effect to indicate that a shot
8 may have been fired from around 2 feet or closer?

9 A. I have no evidence, but I must clarify
10 that clothing can sometimes prevent stippling from
11 occurring. I have no evidence to suggest that there
12 was a contact or intermediate shot. I have to leave
13 it at that statement of no evidence.

14 Q. All right. When you first examined this
15 individual, his clothing had, of course, been all
16 removed?

17 A. Yes. He came from the hospital so I did
18 not have a chance to see it as I recall. I always
19 look at clothing when I get it, and I did not have a
20 category for that this time, so obviously he was
21 disrobed at the hospital.

22 Q. So you assume that that clothing is
23 impounded someplace?

24 A. I don't have any idea.

25 Q. Okay. If the clothing would have either

1 been with him or if you would have needed to remove
2 the clothing, would that be something that you would
3 do is check for any evidence of close proximity
4 firing before you actually did your examination of
5 the body?

6 A. That is what I do when a decedent is
7 clothed and I receive them as such. There are times
8 that the hospital removes things, puts them in a bag.
9 A crime scene analyst or other official removes that.
10 I don't know what happens in those situations. I
11 only deal with the material that I get.

12 Q. So if you had on this occasion been
13 privy, been able to view some of the clothing, it is
14 possible then you may have concluded after
15 examination --

16 MR. KOOT: Your Honor, this is
17 speculation. My goodness gracious. Objection.

18 MR. BINDRUP: May I finish the question.

19 THE COURT: Finish the question.

20 BY MR. BINDRUP:

21 Q. If the clothing had been on this
22 individual and if you had been able to observe it, it
23 is possible that your opinion today then would have
24 been yes --

25 MR. KOOT: Objection --

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1 BY MR. BINDRUP:

2 Q. -- to gunshots fired at a closer
3 distance than what was evident from just looking at
4 the body?

5 THE COURT: I'm going to sustain the
6 objection.

7 BY MR. BINDRUP:

8 Q. So your estimation then is that at some
9 point beyond 2 feet, would that be accurate, that any
10 shooting that occurred was beyond the 2 feet distance
11 from the body?

12 A. That is the evidence that I have.

13 Q. And as far as is there anything beyond
14 the 2 feet, is there anything from your examination
15 that would determine the maximum area or is that
16 totally speculative?

17 A. No one can do that. That's total
18 speculation.

19 Q. Did you observed any tatoos or any other
20 unusual marking on the body?

21 A. Yes.

22 Q. And would you please state what those
23 are.

24 A. There's a list. There's a large tatoo
25 that covered the majority of the back -- it's on my

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1 report page 2 -- with inscriptions of a skull, the
2 hat, and lettering that's spelled "outlaw," a
3 headstone with the lettering R-I-P, Joe Williams,
4 Johnny McHenry.

5 There's a tattoo on the left arm of
6 a figure with a hat with smoke emanating from the
7 mouth.

8 There's a tatoo on the right arm of
9 a skeleton with the inscription R-I-P, zigzag.

10 There's an illegible tatoo on the
11 right arm. Illegible to me because it was in
12 Spanish.

13 Praying hands were tattooed to the
14 upper right aspect of the chest with the inscription
15 "God Bless" and "Ghetto Child."

16 The word "Jabar," J-a-b-a-r, was
17 tattooed to the abdomen.

18 Mr. Doughboy -- Doughboy is one
19 word -- was tattooed to the left arm.

20 A tatoo with the inscription R-I-P,
21 J-W was on the anterior left forearm.

22 There are multiple scars on the
23 body mostly on the extremities.

24 There's a cross tattooed to the
25 anterior aspect of the right arm with the inscription

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24 laying against a flat object or standing against a
25 flat, hard object?

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1 "Only God can judge me."

2 Q. Thank you.

3 Which of the wounds would you
4 describe as being received when this individual was
5 laying on the ground?

6 A. I can't speculated as to that.

7 Q. There was some indication though on some
8 of the wounds where there was a hard object behind
9 the body?

10 A. Not necessarily.

11 Q. You had mentioned some of the projectiles
12 that were in such a condition that would indicate to
13 you that there was a ricochet or a hit off of some
14 sort of hard object?

15 A. Yes, there was a projectile recovered
16 that had a flat sheered surface which typically goes
17 with ricochet. I felt comfortable that it had hit
18 some other object before striking the body. I can't
19 tell you what the object is. I can't tell you what
20 position the body was in.

21 Q. Looking at Wound F, you indicate that was
22 a ricochet projectile fragment. For that particular
23 wound it was clear that the decedent was either
24 laying against a flat object or standing against a
25 flat, hard object?

1 A. Repeat that question, please.

2 Q. Okay. Looking at Wound F, please, on
3 your report -- that would be on page 5 -- you
4 indicated you recovered the ricochet projectile
5 fragment.

6 A. Yes.

7 Q. Now on that particular wound wouldn't
8 that indicate to you that the decedent was either
9 laying down on a flat, hard surface or standing
10 against a flat, hard surface?

11 A. It wouldn't indicate either way to me.
12 I'm describing to you what I found. I'm not
13 speculating as to the position of the body. I won't.

14 Q. So the difference between -- generally
15 speaking -- between a through and through bullet
16 wound and one in which there is an entrance and the
17 projectile does not leave the body, are you telling
18 me there is really no difference and you can't make
19 any conclusion as far as a through and through wound
20 and one in which you were able to recover a
21 projectile?

22 A. I don't understand that question either.

23 Q. Okay. There is no difference between a
24 through and through wound and -- Doctor, you
25 indicated that there was a ricochet projectile

1 fragment. You have no idea what could have caused
2 that?

3 A. No. It could have ricocheted before it
4 hit the body, which is what I feel happened. It
5 ricocheted off of something before it struck the
6 body. Ricochet, it hit something, ricocheted and
7 struck the body.

8 Q. Okay. Is it also possible that you would
9 have found a fragment in that condition if this
10 individual had been laying down on a hard concrete
11 surface? Is it possible?

12 A. If you're asking me if they're laying
13 down, the bullet hit something and then entered the
14 body while they were laying down, yes, that's
15 possible.

16 Q. Any of the wounds that you have
17 characterized here that in your opinion could not
18 have been wounds received while this individual was
19 in a standing up position?

20 A. Again, restate that if you would.

21 Q. From all the wounds that you described,
22 is there any of those wounds that would indicate to
23 you that they could not have been received by the
24 decedent in a standing up position?

25 A. No.

1 MR. BINDRUP: Nothing further.

2 MR. SCHIECK: I have no questions, your
3 Honor.

4
5 CROSS-EXAMINATION

6 BY MR. PIKE:

7 Q. Were there any tests performed to
8 determine whether or not Mr. Williams, the deceased,
9 had recently used or discharged a firearm himself?

10 A. We don't do that.

11 Q. Do you collect any evidence from the
12 hands to determine so that that analysis could be
13 done?

14 A. We do not do that. However, some police
15 agencies still attempt to get swabs from the hands.
16 I don't recall if they did in this case or not. I
17 can tell you that the Metropolitan Police Department
18 has not done residue test for years.

19 Q. What about the North Las Vegas Police
20 Department?

21 A. I believe they still swab occasionally,
22 and when they do, there's tests that need to be sent
23 out, but I can't recall if that was performed or not.

24 Q. Do you recall when you received the body
25 to perform your analysis or your investigation if

1 there was anything covering the hands, bags or
2 anything else?

3 A. I need to check.

4 Q. Please review your report if that would
5 refresh your recollection.

6 A. Yes, it will.

7 I do not mention it in the report.

8 Q. Do you have any independent recollection
9 as to whether or not there was anything that would
10 trigger memory in reference to that that would not be
11 on your report?

12 A. No. I see thousands of bodies, so there
13 is no way I could recall it.

14 MR. PIKE: Okay. Thank you very much,
15 Doctor.

16 MR. SULLIVAN: Judge, just briefly.

17
18 CROSS-EXAMINATION

19 BY MR. SULLIVAN.

20 Q. Doctor, have you ever been trained with
21 regard to bullet hole entry wounds and the size of
22 the caliber that causes those wounds?

23 A. Absolutely.

24 Q. Well, could you tell us then how many
25 were 9 millimeter bullets?

1 A. My training has indicated that there is
2 no correlation whatsoever with size of wound and with
3 the caliber of weapon or bullet.

4 Q. So a .22 wouldn't be a smaller wound?

5 A. Not necessarily, no.

6 MR. SULLIVAN: Okay, thanks. I have no
7 further questions.

8
9 CROSS-EXAMINATION

10 BY MS. WILDEVELD:

11 Q. Doctor, in your training is there any way
12 you could tell what order these bullets were received
13 in?

14 A. No.

15 Q. You have them labeled A through M.

16 A. That is only just for organizational
17 purposes. It does not indicate temporal
18 relationship.

19 Q. Wounds H and G were to the lower part of
20 the body, to the feet area?

21 A. It's hard for me to hear. I'm sorry.

22 Q. Wounds G and H, particularly H, was to
23 the feet of Mr. Williams. Was there any way
24 Mr. Williams could have died from just a bullet wound
25 to his feet?

1 A. Most likely not.

2 Q. Most likely not?

3 A. Just a bullet wound to the foot, no, he
4 probably would not have died from that.

5 MS. WILDEVELD: Thank you. Nothing
6 further.

7 THE COURT: Any redirect?

8 MR. KOOT: No, your Honor.

9 THE COURT: Thank you, Doctor. You're
10 excused.

11 MR. KOOT: Your Honor, the next witness
12 is Ms. Pam Neal, and she has some serious trepidation
13 in testifying with an audience. She still resides in
14 this area. I know I've talked to her in the past.
15 She was crying in my office. She is truthfully
16 fearful, and because there has been so much
17 retaliation in this area, there is legitimacy to her
18 fear. We have had a dozen or so shootings all gang
19 related in the area, and a lot of that is
20 retaliation.

21 I'm concerned about an open
22 courtroom hearing. I don't know if Ms. Neal will or
23 will not testify with or without it. I know right
24 now she's fearful, and I'm asking for a closed
25 hearing on her. I would invite the Court to go and

1 discuss this with Ms. Neal, and perhaps the Court can
2 draw its own conclusion from that. We'll certainly
3 go with whatever the Court orders. I would also ask
4 that regardless of the Court's ruling that no
5 photographs be taken of Ms. Neal. She is an
6 eyewitness.

7 She saw the -- according to her
8 report -- she saw the entire shooting. She gave a
9 statement and perhaps from a certain point of view
10 that was her biggest mistake because she married
11 herself to the criminal justice system.

12 On the other hand, it was an
13 extremely brave thing for her to do. She came
14 forward of her own accord. We'll bring that out.
15 And she is the only eyewitness who has come forward
16 even though there were, no doubt, a number of eye-
17 witnesses. And she is in the position -- at least
18 based on her statement -- to identify each of the
19 defendants as being present. But I'm seriously --
20 I'm fearful for her life. She's fearful for her
21 life.

22 I think it's within the Court's
23 authority to order a closed hearing. That doesn't
24 prohibit counsel from fully cross-examining the
25 witness. It doesn't say anything about the

1 confrontation clause. The defendants are present.
2 They can look at her. And again I would invite the
3 Court to speak to Ms. Neal.

4 MR. BINDRUP: Your Honor, we would
5 strenuously object. We have basic constitutional
6 principles where in a courtroom setting in order to
7 allege criminal active, it's necessary for someone to
8 come in in a public and open hearing to indicate
9 that.

10 We have a right to the individuals
11 here, the individuals that are charged with this
12 offense, each and every one of them is detained, is
13 in custody. Certainly she is not -- she is not in
14 jeopardy of anything with their in-custody status.
15 If the Court thinks certainly there are ways that can
16 be, her address does not have to be disclosed, her
17 whereabouts does not need to be disclosed.

18 THE COURT: All these folks all know who
19 she is. I mean there is probably not anyone in the
20 courtroom today who doesn't know who she is.

21 MR. BINDRUP: There are other -- the
22 Court could, you know, query the audience. I'd ask
23 the Court to query the audience for their names
24 before taking the step in which we're going to have a
25 hearing that basically is going to be behind closed

1 doors.

2 Even though we're going to have a
3 transcript, even though we're going to be able to
4 cross-examine her, this is something that should be
5 public. We are here in a public forum of record, and
6 like every other individual she should, like all of
7 us, be subject to this constitutional privilege and
8 right.

9 MR. KOOT: All of us -- most of us live
10 in gated communities, Mr. Bindrup. You can't put
11 yourself in her position, for Christ's sakes, so
12 don't try.

13 THE COURT: Well, there is ample
14 authority. There's lots of cases where there's Mafia
15 related cases, for example, where they allow
16 informants to testify from behind a screen to protect
17 their identity and things like that. But we've got
18 another problem that I guess we might as well address
19 here.

20 In talking about some of the
21 retaliation, when we're done with her testifying
22 today, Ms. Davis is going to be arraigned on charges
23 of conspiracy to commit murder --

24 MR. KOOT: Yes, we're going to dismiss
25 that case right now.

1 THE COURT: -- and other charges.

2 MR. KOOT: We're moving to dismiss that,
3 your Honor, Case Number 01FN0625X before she even
4 testifies. Whether she testifies or not, I've
5 reviewed this case, we can't prove the case and I'm
6 moving to dismiss it.

7 THE COURT: She'd be granted full
8 immunity?

9 MR. KOOT: The case is dismissed.

10 THE COURT: Well, the State has the
11 option under the statute of voluntarily dismissing
12 once and then bringing it back.

13 MR. Koot: It will not be refiled.

14 THE COURT: My concern for her is that
15 certainly she is at least until --

16 MR. KOOT: No. On that case, absolutely,
17 if counsel want to go into that, I would ask for
18 immunity on that charge absolutely.

19 THE COURT: Because the one concern I had
20 was her own Fifth Amendment rights and certainly
21 counsel would want to go into that other incident
22 because it's interrelated. She's accused of
23 conspiring to commit a murder, burglary and
24 possession, the victim being Antonio Luni (phonetic).

25 Mr. Luni is now in custody having

1 been arrested over the weekend for another murder
2 that was committed. I mean the whole thing is like
3 some kind of big chart that you need a score card to
4 know what's going on as far as the allegations.

5 But the State is dismissing that
6 and giving her full immunity on that charge?

7 MR. KOOT: That is correct, your Honor.

8 Did you hear the murmurs in the
9 courtroom? That's how personally involved these
10 people are.

11 MR. BINDRUP: That's how offended certain
12 people are, your Honor. Here is the ultimate
13 persuasion. Here we are not only going to dismiss
14 outright your felony charges, but you can come into
15 the courtroom and you can swear under oath and, by
16 the way, nobody is going to hear what you have to
17 say.

18 THE COURT: Well, for 01FN0625X it's
19 dismissed.

20 I think the presumption is the
21 defendant is entitled to an open and public hearing.

22 MR. KOOT: We'll give it a shot.

23 THE COURT: And secondly, clearing the
24 courtroom isn't going to change anything because they
25 all know each other. The people in the courtroom

1 know who she is. I don't know who is sitting on what
2 side. There's obviously a victim side and the
3 defendants' side and whatever. They all know who she
4 is. They all live in the same neighborhood and are
5 aware of each other.

6 So I just don't think it would
7 accomplish the purpose of confidentiality or
8 protection, which I think is the only reason really
9 to close the hearing. Because I know they've done
10 that. But in this case the name's out there, the
11 defendants know who she is and people in the
12 courtroom know who she is, so I'm not going to clear
13 the courtroom for her and the hearing will stay open.

14 If you want a chance to talk to her
15 first about that, I would be glad to take a recess so
16 you could talk to her.

17 MS. DE LA GARZA: Could we please, Judge.

18 THE COURT: Okay. We'll be in recess for
19 a few minutes.

20 (Whereupon a recess was had.)

21
22 THE COURT: I failed to rule on a portion
23 of the State's motion. I am going to grant the
24 State's request and order that the media not take
25 pictures of the witness, but the hearing will remain

1 open to anyone who wants to come in.

2 Do you want to call your next
3 witness, please.

4 MS. DE LA GARZA: The State would call
5 Pamela Neal.

6
7 PAMELA LISA NEAL,

8 having been first duly sworn was
9 examined and testified as follows:

10 THE BAILIFF: Go ahead and be seated,
11 please.

12 State your full name for the record
13 and spell your last name for me, please.

14 THE WITNESS: Pamela Lisa Neal, N-e-a-l.

15 THE COURT: Ms. Neal, could you get up as
16 close to the microphone as possible, please.

17

18 DIRECT EXAMINATION

19 BY MS. DE LA GARZA:

20 Q. Ms. Neal, I want to direct your attention
21 to March 3rd of this year. At that time where were
22 you living?

23 A. 2529 Morton.

24 Q. I'm showing you what has been previously
25 marked as State's Exhibit 1. Do you recognize this?

1 A. Yes.

2 Q. And on here is 2529 Morton marked?

3 A. Yes.

4 Q. Is it a true and accurate depiction of
5 the way this area was when you lived there on March
6 3rd?

7 A. Yeah.

8 Q. Okay. Now if this is 2529 Morton, it
9 looks like there is a parking lot there in front of
10 it.

11 A. Yes.

12 Q. Is it also surrounded by other buildings?

13 A. Yes.

14 Q. What building is right across from it?

15 A. I don't know the address.

16 Q. Would that be 2535 Morton? Does that
17 sound accurate to you?

18 A. Yes.

19 Q. And what building would be to the left of
20 your building? Would that be 2531 Morton?

21 A. I think so.

22 Q. How long have you lived in that
23 particular area on March 3rd?

24 A. Two years.

25 Q. Two years.

1 So you had kind of gotten to know
2 the people that lived around there and kind of
3 frequented that area?

4 A. Uh-huh.

5 Q. Now on March 3rd in the early afternoon
6 hours at approximately 3:00 were you there at your
7 residence?

8 A. Yes.

9 Q. Had you made plans to do something with
10 somebody else there in your building?

11 A. Yes.

12 Q. And what was that?

13 A. Take that person to work.

14 Q. You were supposed to take a person to
15 work, and who was that person?

16 A. Michelle Wilson.

17 Q. And where did Michelle Wilson live in
18 relation to you?

19 A. Directly downstairs from me.

20 Q. Okay. And I'm showing you now what has
21 been marked as State's Exhibit 2. This again shows
22 2529 Morton. Does this look like a depiction of the
23 area that you live in?

24 A. Yes.

25 Q. Okay. Now you said that Ms. Wilson lived

1 right underneath you at 2529 Morton?

2 A. Yes.

3 Q. I'm showing you what has been marked as
4 State's Exhibit 15. Do you recognize that?

5 A. Yes.

6 Q. And what is that?

7 A. The grass area in front of my building.

8 Q. Does this show your building?

9 A. Uh-huh.

10 Q. Is this a true and accurate depiction of
11 the way it looked on March 3rd?

12 A. Yes.

13 MS. DE LA GARZA: I would move for the
14 admission of State's Proposed Exhibit 15.

15 THE COURT: Any objection?

16 MR. BINDRUP: No objection.

17 MR. SCHIECK: No objection.

18 MR. PIKE: No objection.

19 MR. SULLIVAN: No objection.

20 MS. WILDEVELD: No objection.

21 THE COURT: It will be admitted.

22 (Whereupon, State's Exhibit No. 15
23 was admitted into evidence.)

24 BY MS. DE LA GARZA:

25 Q. So in looking at this building that we

1 show to the left of the picture here, that is the
2 front of your building; is that correct?

3 A. Yes.

4 Q. Are we looking at a two-story building?

5 A. Yes.

6 Q. If you looked at that building, where is
7 your house from there?

8 A. Right here.

9 Q. It's the second door if you went up the
10 steps?

11 A. Second door.

12 Q. What about Michelle Wilson, where does
13 she live?

14 A. You can't see it because of the wall
15 there.

16 Q. What kind of wall is this?

17 A. A garbage dumpster.

18 Q. Okay. And they kind of cordoned that off
19 with a wall?

20 A. Uh-huh.

21 Q. What time were you supposed to take
22 Michelle Wilson to work?

23 A. Like 4 or 4:30.

24 Q. So what time were you planning to leave?

25 A. About 3:35.

1 Q. About 3:35 or so?

2 A. Or 3:40.

3 Q. Did there come a time when you actually
4 walked out of your apartment?

5 A. Yes.

6 Q. Were you alone or were you with anybody
7 else?

8 A. By myself.

9 Q. When you walked out of your apartment on
10 that day, did you see something that disturbed you?

11 A. Yes.

12 Q. What was that?

13 A. A murder.

14 Q. Tell me exactly what you saw, Ms. Neal.

15 A. I saw this guy coming on the side of 2535
16 on the side of the building.

17 MR. PIKE: Judge, could she speak up. I
18 can't --

19 MR. SULLIVAN: I can barely hear a word
20 that she's saying.

21 THE COURT: Could you try to speak more
22 into the microphone.

23 THE WITNESS: Well, maybe you ought to
24 fix this microphone.

25 THE BAILIFF: If you could do that for

1 us, it would be great. Thanks.

2 BY MS. DE LA GARZA:

3 Q. Okay, Pam. You said that you saw
4 somebody coming on the side of 2529?

5 A. 35.

6 Q. 2535.

7 And I'm going to ask you to come up
8 to what has been marked as State's Exhibit 2. Okay?
9 Can you do that for me.

10 And for the record, I'm handing the
11 witness a red pen, and I'm also going to also --
12 oops, hold on.

13 I'm going to hand you some
14 stickies. All right. So I want you to mark a V on
15 that sticky where you first saw this person coming on
16 the side.

17 Now what name did you know that
18 person by?

19 A. Doughboy.

20 Q. Okay. So you knew him as Doughboy?

21 A. Yes.

22 Q. Did you know his real name?

23 A. No.

24 MS. WILDEVELD: Your Honor, for the
25 record, that V was placed in the center of 2535 on

1 the right side of Exhibit No. 2.

2 THE COURT: Yes.

3 BY MS. DE LA GARZA:

4 Q. I'm showing you what has been marked and
5 admitted as State's Exhibit 6. Do you recognize this
6 picture, Pam?

7 A. Yes.

8 Q. Who is that?

9 A. Doughboy.

10 Q. That's the same person you saw that
11 afternoon when you came out of your apartment?

12 A. Uh-huh.

13 Q. When you initially saw Doughboy, was he
14 with anybody?

15 A. There was some guys walking with him. I
16 don't know if they were together.

17 Q. There were some guys walking with him.
18 Would you please just put -- do you know who those
19 guys were?

20 A. I'm not sure. I'm really not sure about
21 them.

22 Q. Okay. Tell me what you know about those
23 guys.

24 A. I seen them around the neighborhood.

25 Q. All right. So how many guys did you see

1 with Doughboy at that time?

2 A. Three or four.

3 Q. So you see three or four guys around
4 Doughboy at that time. And where were they generally
5 in relation to Doughboy?

6 A. On the side.

7 Q. Kind of surrounding him?

8 A. Yes.

9 Q. And at that point you didn't really
10 recognize who they were?

11 A. No.

12 Q. All right. What did you see happen to
13 Doughboy or where did you see Doughboy go?

14 A. He was coming toward the front of the
15 building, to the front of the building on this side
16 coming up.

17 Q. When you say the front of the building,
18 you mean 2535?

19 A. Yes.

20 Q. What happened as he came to the front of
21 the building?

22 A. He threw his hands up and other guys
23 start coming out of the woodwork --

24 Q. Okay.

25 A. -- coming around.

1 Q. Now when you saw Doughboy throw his hands
2 up, where was he on this chart?

3 A. He was in this grass. He was coming in
4 front.

5 Q. Let's put an X where you saw him throw
6 his hands up. Okay.

7 Were those other guys still around
8 him?

9 A. Yes.

10 Q. Now you said that you saw some other guys
11 come out of the woodwork. Now you indicated one
12 between 2535 and 2531?

13 A. Uh-huh.

14 Q. Okay. Now let's talk about initially a
15 person coming between 2535 and 2531. Do you know who
16 that person was?

17 A. Yes.

18 Q. Who was that person?

19 A. Lailoni.

20 Q. Do you know that person's last name?

21 A. No.

22 Q. Do you see that person here in court
23 today?

24 A. Yeah.

25 Q. Could you please point to that person and

1 describe something that he's wearing.

2 A. The guy in the beige, whatever, a jail
3 suit --

4 Q. Okay.

5 A. -- right behind the man with the tie
6 with the glasses in his hand, he's right behind him.

7 Q. And that's behind Mr. Schieck?

8 A. Whatever his name is.

9 Q. If this is Mr. Schieck here with the
10 glasses, you are pointing to the guy in the beige
11 behind him?

12 A. Yeah.

13 MS. DE LA GARZA: Would the record
14 reflect the identification of Lailoni Morrison.

15 THE COURT: Yes.

16 BY MS. DE LA GARZA:

17 Q. And let's put an L right here on the map
18 where you see Lailoni. Okay.

19 And you kind of drew a line there
20 also. Is that the direction that he took --

21 A. Yes.

22 Q. -- when you saw Doughboy throw up his
23 hands?

24 A. Yes.

25 Q. Where did you see Lailoni end up?

2 Q. Yes.

3 Well, let me ask you. This is your
4 building, 2529. What's right in front of you there?

5 A. The parking lot.

6 Q. Okay. Does that look like the parking
7 lot here and is this how cars would be situated in
8 that parking lot?

9 A. Uh-huh.

10 Q. Okay.

11 A. This right here.

12 Q. Which one?

13 A. This.

14 Q. D?

15 A. Uh-huh.

16 Q. You don't remember being there?

17 A. I don't remember a car being there.

18 Q. Okay. But do you remember other cars
19 being there?

20 A. Uh-huh.

21 Q. All right.

22 MR. PIKE: Is that a yes for the record?

23 THE WITNESS: Yes, it is, yes.

24 THE COURT: You can't say uh-huh or
25 huh-uh. You need to say yes or no.

1 THE WITNESS: I gotcha.

2 BY MS. DE LA GARZA:

3 Q. All right, Pam. So initially you see
4 Lailoni between 2535 and 2531?

5 A. Uh-huh.

6 Q. You say he goes here into the courtyard
7 and he ends up in the parking lot?

8 A. Uh-huh.

9 Q. What happens once you see him in the
10 parking lot?

11 A. He pulled out his gun.

12 Q. What did he do with that gun?

13 A. He shot at Doughboy right here.

14 Q. You saw him shooting Doughboy?

15 A. With these two eyes right here.

16 Q. All right. Let me ask you what kind of
17 gun you saw Lailoni with?

18 A. I don't know. I wasn't close enough to
19 see what kind of gun it was.

20 Q. Do you know what color it was?

21 A. Black.

22 Q. And was it a revolver or an automatic or
23 semiautomatic? Do you know the difference between
24 those?

25 A. I think it wasn't a revolver.

1 Q. It wasn't a revolver?

2 A. No.

3 Q. So you believe it was a black
4 semiautomatic or automatic?

5 A. Yes.

6 Q. Okay. Now you said that somebody else --
7 let me back up a little bit.

8 Let me ask you about Lailoni. How
9 do you know Lailoni?

10 A. From my brother and my first cousin.

11 Q. When did you first meet Lailoni?

12 A. Five or six years ago.

13 Q. And how did you meet him?

14 A. From my brother.

15 Q. What's your brother's name?

16 A. Reggie.

17 Q. And how was Lailoni and your brother
18 Reggie interacting

19 A. I guess they was partners.

20 Q. They were partners?

21 A. They went to school together.

22 Q. Okay. Tell me what you mean by that.

23 A. They used to just be together kicking it
24 sometime.

25 Q. Okay. So you've seen him and you know

1 him for at least the last four to five years?

2 A. Uh-huh.

3 Q. When you would see him with your brother
4 you would be close up to him sometimes?

5 A. Uh-huh.

6 Q. And would he also come around your
7 neighborhood there?

8 A. Uh-huh.

9 THE COURT: Are those yeses?

10 THE WITNESS: Yes. Sorry about that. I
11 forgot.

12 BY MS. DE LA GARZA:

13 Q. So you're familiar with Lailoni; is that
14 correct?

15 A. Yes.

16 Q. Additionally did you meet with Officer or
17 Detective Bodnar --

18 A. Sure did.

19 Q. -- on May 8th?

20 A. Sure did.

21 Q. Did he show you some photo lineups at
22 that time?

23 A. Sure did.

24 Q. I'm showing you what's been marked as
25 State's Exhibit 18. Do you recognize that?

1 A. That's my initials and that's what I
2 wrote right there.

3 Q. What did you write?

4 A. The date, my initials, and Lailoni was
5 one of the shooters.

6 Q. And what is that date?

7 A. May 8th.

8 Q. All right. And your initials are P.N.?

9 A. That's right.

10 MS. DE LA GARZA: I move for the
11 admission of State's Exhibit 18, Judge.

12 THE COURT: Any objection?

13 MS. WILDEVELD: No, your Honor.

14 MR. BINDRUP: No.

15 MR. SCHIECK: No.

16 MR. SULLIVAN: No.

17 MR. PIKE: No.

18 THE COURT: It will be admitted.

19 (Whereupon, State's Exhibit No. 18
20 was admitted into evidence.)

21 BY MS. DE LA GARZA:

22 Q. You knew that was Lailoni that you saw on
23 that date shooting at Doughboy?

24 A. Sure did.

25 Q. Okay. You drew another line there on

1 that chart between 2531 and 2529.

2 A. Uh-huh.

3 Q. Tell me what you meant by putting that
4 line down.

5 A. This is Face like this.

6 Q. Okay. And you again had somebody end up
7 in the parking lot. And you refer to this person as
8 Face?

9 A. Yes.

10 Q. Do you know Face's real name?

11 A. I just found it out in the paper.

12 Q. Okay. But at that time did you know
13 Face's real name?

14 A. No.

15 Q. Okay. When did you first meet Face?

16 A. We never actually met.

17 Q. How do you know him?

18 A. I just know him from the neighborhood.

19 Q. And tell me what you mean by that when
20 you say you just know him from the neighborhood.

21 A. Just seeing him outside.

22 Q. So --

23 A. I seen him in the Gerson before when I
24 lived over there.

25 Q. Okay. And how long was it that you lived

1 in the Gerson?

2 A. About nine years ago.

3 Q. Okay. And you kind of grew up there in
4 the Gerson?

5 A. No, I was already grown.

6 Q. But you knew Face from there also?

7 A. Uh-huh.

8 Q. And you said -- how long had you lived
9 here at 2529?

10 A. Two years.

11 Q. And you continued to know Face?

12 A. Uh-huh.

13 Q. Let's go ahead and put an F by that line
14 that you marked.

15 A. Here.

16 Q. Yes.

17 So you were pretty familiar with
18 Face?

19 (A.) No, just knowing his face.

20 Q. Okay.

21 A. That's as far as it goes.

22 Q. All right. But you saw him around quite
23 often?

24 MR. BINDRUP: Objection. Leading the
25 witness.

1 THE COURT: Sustained.

2 THE WITNESS: Not too much. I seen him.

3 MR. BINDRUP: Objection.

4 THE COURT: The objection is sustained.

5 There is no question.

6 BY MS. DE LA GARZA:

7 Q. But you seen him around?

8 A. Uh-huh.

9 MR. BINDRUP: Objection. Leading the
10 witness.

11 THE COURT: Sustained.

12 BY MS. DE LA GARZA:

13 Q. I'm going to direct your attention again
14 to May 8th. You looked at more than one lineup when
15 you met there with Detective Bodnar?

16 A. Uh-huh.

17 MR. SULLIVAN: Judge, I'm going to
18 object. I'm going to ask that she have the witness
19 ID them while they're here instead of showing the
20 picture where she signed her name at an earlier
21 interview with the police present showing her what to
22 pick out.

23 THE WITNESS: He didn't show me which one
24 to pick out. He gave me some pictures. We're going
25 to get that right.