

IN THE SUPREME COURT OF THE STATE OF NEVADA

ASHLEY BENNETT,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

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Case No. 82495

RESPONDENT'S APPENDIX
Volume 1

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IN THE SUPREME COURT OF THE STATE OF NEVADA

ASHLEY WILLIAM BENNETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46324

FILED

AUG 29 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On June 20, 2002, the district court convicted appellant, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. This court affirmed the judgment of conviction on direct appeal.¹ The remittitur issued on November 2, 2004.

On January 3, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant retained counsel to represent him, and counsel supplemented the petition. Pursuant to NRS 34.770, the district court conducted an evidentiary hearing. On November 29, 2005, the district court denied appellant's petition. This appeal followed.

¹Bennett v. State, Docket No. 39864 (Order of Affirmance, October 5, 2004).

Appellant and several others were charged in the shooting death of Joseph Williams. One of appellant's co-defendants, Anthony Wayne Gantt, eventually agreed to plead guilty to a lesser charge and testify against appellant. Gantt testified at appellant's trial.

In his petition, appellant claimed Gantt had recanted his trial testimony. Appellant attached an affidavit from Gantt indicating that appellant was not present at Williams' killing. In Callier v. Warden,² this court articulated the standard for assessing whether recanted testimony warrants a new trial:

[I]n evaluating recantation cases, whether in the context of a new trial motion or a habeas petition, the trial court should apply the following standard:

- (1) the court is satisfied that the trial testimony of material witnesses was false;
- (2) the evidence showing that false testimony was introduced at trial is newly discovered;
- (3) the evidence could not have been discovered and produced for trial even with the exercise of reasonable diligence; and
- (4) it is probable that had the false testimony not been admitted, a different result would have occurred at trial.

Only if each component is met should the trial court order a new trial.³

After the evidentiary hearing, the district court ruled this claim was barred because appellant failed to raise it in a motion for a new trial within the two year limitation of NRS 176.515. However, this claim may also be brought in a post-conviction petition for a writ of habeas

²111 Nev. 976, 901 P.2d 619 (1995).

³Id. at 990, 901 P.2d at 627-28.

corpus, as appellant did in this case.⁴ Nevertheless, we conclude the district court reached the right result.⁵ After a review of the trial record, we conclude that Gantt's affidavit is not newly discovered evidence; appellant conceded he obtained the affidavit before August 2002, but he did not present it to the trial court until January 2005. We further conclude it is not probable that a different result would have occurred at trial if Gantt had not testified as he did. Pamela Neal also identified appellant as one of Joseph Williams' killers, and the jury was capable of assessing her credibility.⁶ Accordingly, we conclude the district court did not err in denying this claim.

Appellant also contended that he received ineffective assistance of trial counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice such that counsel's errors were so severe that they rendered the jury's verdict unreliable.⁷ The court need not address both components of the inquiry if the

⁴See, e.g., Callier, 111 Nev. 976, 901 P.2d 619. We encourage the district court to fully analyze the Callier factors and state its analysis in its findings of fact and conclusions of law or on the record in order to expedite our review of its decision.

⁵See Milender v. Marcum, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994) (holding that this court may affirm the district court's decision on grounds different from those relied upon by the district court).

⁶See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

⁷Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

petitioner makes an insufficient showing on either one.⁸ A petitioner must demonstrate the factual allegation underlying his ineffective assistance of counsel claim by a preponderance of the evidence.⁹ The district court's factual findings regarding ineffective assistance of counsel are entitled to deference when reviewed on appeal.¹⁰

First, appellant claimed trial counsel, Melinda Simpkins,¹¹ was inexperienced and was therefore unable to properly examine witnesses or elicit responses to present crucial evidence to rebut the State's charge that he and several others murdered Joseph Williams. Specifically, appellant claimed Simpkins was unable to elicit from witness Golden that his trial testimony regarding the suspects' clothing differed from the description he gave in his voluntary statement shortly after the killing. This claim is belied by the record,¹² which indicates that after Golden testified that the suspects were wearing white T-shirts, Ms. Simpkins confronted him with his voluntary statement, which said the suspects wore grey T-shirts. Mr. Golden responded that "It is possible that I couldn't remember the colors." Accordingly, we conclude the district court did not err in denying this claim.

⁸Strickland, 466 U.S. at 697.

⁹Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

¹⁰Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

¹¹Ms. Simpkins tried the case as second-chair to lead counsel, Scott Bindrup. Mr. Bindrup testified at the evidentiary hearing that he was present for all stages of the trial, except for a half-hour period during final jury selection. Our review of the record indicates that Mr. Bindrup conducted the cross-examination of two eyewitnesses, Anthony Gantt and Pamela Neal, and of the lead detective, Detective Bodnar.

¹²See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

Second, appellant claimed Simpkins and Bindrup did not interview his alibi witnesses before trial. Appellant failed to demonstrate counsel's performance was deficient or prejudiced him. At the evidentiary hearing, Simpkins testified that she interviewed the alibi witnesses, and that she probably discussed those interviews with Bindrup but did not specifically recall doing so. Appellant failed to demonstrate how Bindrup's interviewing the witnesses would have changed the outcome of his trial. Accordingly, we conclude the district court did not err in denying this claim.

Third, appellant claimed Bindrup was ineffective for failing to cross-examine Pamela Neal regarding whether she believed appellant was involved in her cousin Eric Bass's murder, and therefore whether she had a motive to falsely accuse appellant of Williams' murder. Appellant failed to demonstrate that counsel's performance was deficient. At the evidentiary hearing, Bindrup testified that he made a tactical decision not to raise this with Neal because he felt it would prejudice appellant before the jury to be associated with another murder. Counsel's tactical decisions are "virtually unchallengeable absent extraordinary circumstances,"¹³ which are not present here. Accordingly, we conclude the district court did not err in denying this claim.

Appellant also claimed he received ineffective assistance of appellate counsel. To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable

¹³Doleman v. State, 112 Nev. 843, 848, 921 P.2d 278, 280-81 (1996) (quoting Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990)).

probability of success on appeal.¹⁴ Appellate counsel is not required to raise every non-frivolous issue on appeal.¹⁵ This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.¹⁶

First, appellant claimed appellate counsel was ineffective for failing to argue that a co-defendant, Lailoni Morrison, was given more latitude in cross-examination of Neal, which led to Morrison being convicted of second-degree murder, rather than first-degree murder as appellant was. Appellant failed to demonstrate counsel's performance was deficient. At the evidentiary hearing, appellant's appellate counsel, Christopher Oram, testified that his understanding regarding the difference in Morrison's and appellant's trials came from discussions with their respective counsel. Oram also testified he did not believe he could cite to any facts outside the record of appellant's case to support a direct appeal claim and thought the claim was more appropriately brought in a petition for a writ of habeas corpus. Generally, counsel is barred from citing facts outside the record on appeal.¹⁷ Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant claimed appellate counsel was ineffective for failing to argue that the district court violated appellant's right to equal protection when it limited his ability to cross-examine Pamela Neal but

¹⁴Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (citing Strickland, 466 U.S. 668).

¹⁵Jones v. Barnes, 463 U.S. 745, 751 (1983).

¹⁶Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

¹⁷See NRAP 28(e); see generally State Dep't Taxation v. Kelly-Ryan, Inc., 110 Nev. 276, 282, 871 P.2d 331, 336 (1994).

allowed Lailoni Morrison more latitude to cross-examine her.¹⁸ Appellant failed to allege that he is a member of a protected class or that he was treated differently than Morrison based on his membership in a protected class.¹⁹ Accordingly, we conclude the district court did not err in denying this claim.

Third, appellant claimed appellate counsel was ineffective for failing to argue that the district court erred in giving a jury instruction on conspiracy. Appellant did not object to the instruction at trial, so such a claim would only have been reviewed by this court on direct appeal if the district court's giving the instruction constituted plain error. Appellant failed to specify how the instruction harmed him.²⁰ We are therefore unable to conclude that the district court's giving of the instruction

¹⁸We note that our review of the record does not reveal a significant difference in the latitude given to Morrison and appellant. Judge Douglas, who presided over both trials, instructed both defendants that the dismissal before appellant's trial of Pamela Neal's criminal charges in an unrelated case could be made known to the jury, but the details of those charges could not. Those charges allegedly stemmed from Neal's attempt to gain information or exact revenge after allegedly learning that Morrison, appellant, and others were involved in Bass' death. Morrison's counsel cross-examined Neal more thoroughly about whether she believed Morrison killed Bass, whereas Bindrup testified at the evidentiary hearing that he chose not to question her extensively on whether she believed appellant was involved in Bass' death to avoid prejudice to appellant. That was a strategic decision, not a result of differing rulings by Judge Douglas in the two trials.


¹⁹See generally Plyler v. Doe, 457 U.S. 202, 213 (1982) (holding that the "Equal Protection Clause was intended to work nothing less than the abolition of all caste-based and invidious class-based legislation.").


²⁰See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

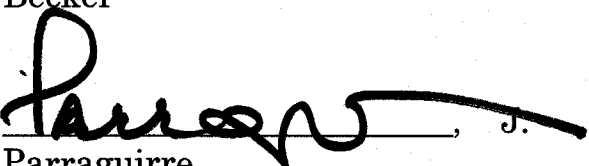
constituted plain error.²¹ Accordingly, we conclude the district court did not err in denying this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.²² Accordingly, we

ORDER the judgment of the district court AFFIRMED.²³

 _____, C.J.
Rose

 _____, J.
Becker

 _____, J.
Parraguirre

²¹The State charged appellant with murder and included conspiracy as a theory of liability. This was sufficient to place appellant on notice that the State may have presented evidence of conspirator liability. See Randolph v. State, 117 Nev. 970, 977, 36 P.3d 424, 429 (2001).

²²See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance. In light of this decision, appellant's motion for the appointment of counsel is denied.

cc: Hon. Michelle Leavitt, District Judge
Ashley William Bennett
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

FILED

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Shirley B. Pangione

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 4
FRIDAY, JANUARY 25, 2002
VOLUME IV

APPEARANCES:

For the State:

MELISA DE LA GARZA
BECKY GOETTSCH
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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CE05

1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 25, 2002, 1:00 P.M.

2 (Jury is not present)

3 THE COURT: We're back on the record this afternoon
4 in State of Nevada versus Bennett, C175914. We're outside the
5 presence of our jury. Counsel for both sides are present,
6 along with Mr. Bennett.

7 Ms. De La Garza, I understand you have something.

8 MS. DE LA GARZA: Yes, Your Honor. The State
9 anticipates that after opening statements the first witness
10 would be Pamela Neal. This morning, in preparation for trial,
11 I was going through the preliminary hearing transcript and
12 that was the preliminary hearing conducted in the North Las
13 Vegas Justice Court on June 5th. At that time Mr. Bindrup, as
14 well as the State, brought up the fact that Ms. Neal had
15 another case in the system, that being 01FN0625X. At that
16 time that case -- The charges in that were conspiracy to
17 commit murder, burglary with a deadly weapon, battery with a
18 deadly weapon with substantial bodily harm, discharging a
19 firearm and coercion with a deadly weapon. That case against
20 Ms. Neal was dismissed on that morning.

21 Now I understand the defense reason for bringing up
22 that dismissal. As the State fully understands, that's gonna
23 go towards credibility, any motivation or bias to testify for
24 the State, et cetera. However, there were additionally
25 attempts by Mr. Bindrup to go into the facts of this case and

1 it's the State's position that under NRS 50.085, Subsection 3,
2 that specific instances of conduct of a witness to attack
3 credibility is not admissible, number one, to prove extrinsic
4 evidence -- to be proved by extrinsic evidence, excuse me, or
5 unless they can show that it's relevant to the truthfulness of
6 this witness.

7 Now it's the State's position that the facts
8 themselves of that crime are not relevant to this witness'
9 truthfulness, saying that either she's violent, et cetera. I
10 don't believe that there's any type of self-defense issue when
11 it comes to Pam Neal. And if the defense does attempt to get
12 into the specific facts of that case, it's the State's
13 position that they need to go through a Petrocelli hearing
14 just like the State had to.

15 If they want to get in evidence of other bad acts,
16 they would have to go through the same type of procedures,
17 which would mean filing a motion to have this other bad act
18 heard and then going before the Court, having a hearing, et
19 cetera and showing that there is some relevance when it goes
20 to this witness' credibility and truthfulness.

21 THE COURT: Well, let's come to the nub of it in
22 terms of from the defense's standpoint.

23 Does the defense have any difficulty in being, I'll
24 use the term limited, even though it's not limited in light of
25 the NRS, in at least asking the question, if that's what they

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 limited statement that she made?

2 Again, that particular statement shows at least her
3 state of mind at the moment, that she was so intent on revenge
4 for the Eric Bass murder that she would take great steps,
5 including lying about individuals that were involved in this
6 murder, to pay back for her dear relative's death.

7 MS. DE LA GARZA: Judge, if I may respond.

8 That doesn't go to the issue of her lying. It
9 doesn't show anything about her lying. What it shows is maybe
10 that Pam Neal was a violent individual at that time and I
11 think that's what they're trying to bring out. They're not
12 trying to show her truthfulness. They're not trying to show
13 her credibility. What they're trying to show is that she's
14 violent. That's exactly what Mr. Bindrup said. He said the
15 elements of this offense show that she's violent and that, if
16 threatened, she would do what she needs to do.

17 Again, that is not the issue and that's a collateral
18 issue when it comes to this witness. She is not charged with
19 being violent in this case and her violence has nothing to do
20 with this case.

21 THE COURT: I'll allow defense to ask the question
22 that, "In regard to the criminal matter that you were charged
23 with that later was dismissed, did you make a statement?"
24 And, as Mr. Bindrup, "I'm not gonna try to verbatim repeat the
25 statement, but did you make this statement?"

1 I'll allow you to go with that because that at least
2 gives a context that there were events without getting into
3 the specific events and a statement was made by her and that,
4 along with the ability to show the relationship, that goes to
5 the issue of bias.

6 MR. BINDRUP: Thank you.

7 THE COURT: But, again, we're not to get into the
8 specifics of what happened.

9 Anything else?

10 Mr. Bindrup, do you have anything that needs to be
11 placed on the record outside?

12 MR. BINDRUP: No, sir.

13 THE COURT: With that, we'll take, I guess, about
14 five minutes and get them down here and get them seated.

15 (Court recessed)

16 (Jury is present)

17 MS. DE LA GARZA: Your Honor, may we approach?

18 (Off-record bench conference)

19 THE COURT: We are back on the record this afternoon
20 in State of Nevada versus Bennett. Mr. Ashley Bennett is
21 present and likewise counsel for both the State and defense.

22 Is the State ready to proceed this afternoon?

23 MS. DE LA GARZA: We are, Your Honor.

24 THE COURT: And, likewise, is the defense ready to
25 proceed this afternoon?

1 MS. SIMPKINS: Yes, Your Honor.

2 THE COURT: Ladies and gentlemen, what I will now
3 say is intended to serve as an introduction to the trial of
4 this case. It is not a substitute for the detailed
5 instructions on the law which I will give you at the close of
6 the case and before you retire to consider your verdict. I'll
7 just note that at the end, when you get the instructions, they
8 will be in written form. I will read them to you, but, when
9 you go back for deliberation, you will have a hard copy of
10 those instructions for your review.

11 This is a criminal case commenced by the State of
12 Nevada, which I may sometimes refer to as the State, against
13 Mr. Ashley William Bennett. The case is based upon an amended
14 information. The Clerk will now read that information to you,
15 ladies and gentlemen of the jury, and state the plea of Mr.
16 Bennett to that amended information.

17 (Proceedings continue with reading of amended information and
18 preliminary instructions, not transcribed)

19 * * * * *

20 THE COURT: If we have anyone who is present who has
21 been identified as a witness in the case in chief of either
22 side, they are asked to leave the room at this time.

23 Ladies and gentlemen of the jury, the State is
24 entitled to present the first opening statement.

25 Ms. De La Garza.

1 MS. DE LA GARZA: Thank you, Your Honor.

2 PLAINTIFF'S OPENING STATEMENT

3 MS. DE LA GARZA: Good afternoon, ladies and
4 gentlemen. Again, my name is Melisa De La Garza and I am the
5 prosecutor in this case assigned to prosecute the case of
6 State of Nevada versus Ashley Bennett.

7 Over the next few days the State will present to you
8 this case where Joseph Williams was killed. The State will
9 show you that Mr. Williams was gunned down by 14 bullets into
10 his body by this defendant, Ashley Bennett, and his friends.
11 The evidence will show you that Ashley Bennett is guilty of
12 first degree murder.

13 Mr. Williams was 26 years old. He was 6'1" and
14 weighed about 255 pounds. He was a big guy and, hence, he had
15 the nickname of Dough Boy. That's what he went by. That's
16 what everybody knew him as.

17 There's gonna be quite a few players in this trial
18 and I'm gonna try and lay out some of them for you right now.
19 Monique Hunt, also known as Nicki, lived at 2535 Morton Avenue
20 in North Las Vegas. It's called the Carey Arms Apartments and
21 it's right around the area of MLK and Carey. Now Monique Hunt
22 and Mr. Williams, the victim in this case, had been in an on-
23 and-off dating relationship. On March 3rd, 2001 they were no
24 longer in that relationship. They had broken it off.
25 However, Monique Hunt, Nicki, had given Mr. Williams a key to

1 her apartment so he could go into the apartment to sleep, to
2 shower or if he just simply needed a place to go.

3 Now on March 1st Mr. Williams had been over at her
4 apartment and then he returned on the afternoon of March 3rd.
5 Unfortunately, Nicki wasn't there. She had gone off to the
6 mall, so he missed her, so there comes a point at which Mr.
7 Williams is leaving the apartment and going back to his car.
8 Now about the same time that he's leaving the apartment and
9 going back to his car, a neighbor, Pamela Neal, is leaving her
10 apartment.

11 (Pause in the proceedings)

12 MS. DE LA GARZA: Again, the evidence will show you,
13 and you will hear from Ms. Pam Neal, that Mr. Williams is
14 leaving 2535 and Ms. Neal is here at 2529, across the parking
15 lot. Now Ms. Neal's gonna tell you that she's leaving the
16 apartment, probably around 3:40 in the afternoon. It's broad
17 daylight. She'll tell you that she's lived in this area, at
18 this apartment on Morton, for approximately two years and in
19 that area of North Las Vegas basically her entire life. She
20 will tell you that this is the type of community where people
21 know each other, people have heard of each other, people see
22 each other, they're familiar and they're familiar by face.

23 Now one of these faces that Ms. Neal will tell you
24 that she's familiar with is Mr. Williams. She doesn't know
25 him as Joseph Williams. She knows him as Dough Boy, just like

1 everybody else knows him. She can't tell you where he lives
2 or what he does as a job, but she knows that his name is Dough
3 Boy, she knows who he associates with and she knows that off
4 and on he dates Nicki Hunt.

5 She will tell you that as she leaves her apartment
6 on that day she looks across that apartment, she sees Dough
7 Boy over on the side of 2535, the side closest to Morton, and
8 he's kind of surrounded by about five or six guys. She knows
9 at least three of them by name and by face and she's seen some
10 of the other ones around in the neighborhood, but she's not as
11 familiar with them and thinks they might even be juveniles.

12 She says that it appears as if Dough Boy is talking
13 with these gentlemen, although she will tell you she doesn't
14 hear what they're saying and she doesn't know what they're
15 talking about. It just appears as if they're talking. And
16 she doesn't think anything's terribly wrong at that point
17 until something happened. She sees Dough Boy throw up his
18 arms and at that point she says, almost on cue, these people
19 that have surrounded him pull out guns and start shooting into
20 his body.

21 Pam's able to identify at least three of those
22 people that were shooting into Dough Boy. She identifies one
23 as Lailoni Morrison, knows him, sees him, seen him around.
24 She knows the other as Wayne Anthony Gantt, also known as
25 Wacky G. She's know him, in fact, since he was a baby. And

1 she knows the third as Face, this defendant, Ashley Bennett.
2 She'll tell you that as these men surrounded Dough
3 Boy, these five or six men, that she believes that Lailoni
4 Morrison actually pulled out his gun and shot first and then
5 the others jumped in, just shot, just shooting. She'll tell
6 you that initially, as Dough Boy was walking out of here, he
7 was facing her, but, once the shots began, he actually turns
8 around and starts going back the other way, but actually falls
9 to the ground from the shots. And she'll tell you that she
10 sees Anthony Gantt actually go up and finish Dough Boy off,
11 continue to shoot into his body.
12 She'll tell you that they all shot, she believed,
13 until their guns were empty. She can't tell you how many
14 shots. She just knows that there was multiple shots. She'll
15 tell you Face, this defendant, had a gun, maybe a revolver.
16 She's not sure. She knows that Wacky G, Anthony Gantt, had a
17 gun. She thinks it was black and maybe a revolver.
18 Now she says that once they all shot into Dough Boy
19 and he was down on the ground, they scattered and they went in
20 different directions and she will tell you what she believed
21 to be the directions that they went into.
22 Meanwhile, there's some -- a security guard right
23 around the other way and the security guard's name is James
24 Golden and he's with the maintenance worker, Don Stewart.
25 They will tell you they also heard shots and they saw a couple

1 of black teenagers run by them and one of them, again, they
2 recognized as Wacky G, Anthony Gantt, and they called 911.
3 And they believed, and they're not sure again, that they saw
4 him stuffing something in his pants, possibly a gun.

5 Now already in the area is Officer Garcia, North Las
6 Vegas Police Department. He also hears the shots and calls
7 them in, so several officers arrive on the scene. At that
8 time they're there to protect the scene. They're there to
9 talk to people. Arnona arrives, he finds the body there, he
10 finds people grouped around the body and he sees numerous
11 visible holes in the body of Dough Boy. At that point Dough
12 Boy is still alive, remarkably, but he's transported to UMC.
13 He undergoes surgery, but the damage is just too extensive and
14 he dies.

15 You'll hear from crime scene analysts additionally
16 who will tell you they go out to that scene and they find
17 casings, bullets, different rounds and they'll describe what
18 they found and they'll describe the differences and they'll
19 describe what sometimes different guns will do or what you
20 will find from a particular gun shooting. And what you'll
21 find is where these casings are shown and where this evidence
22 is shown is consistent with what Pam Neal tells you happens.
23 And there are numerous gun casings found there on that ground.

24 You will additionally hear from James Krylo that
25 works at the Las Vegas Metropolitan Lab and he will tell you

1 that at least four different guns were out there being shot,
2 not one, but at least four. Crime scene analysts will also
3 tell you where the victim was found, that his car was found
4 there and the condition of his body.

5 Now a detective from the North Las Vegas Police
6 Department arrives and starts directing people as to what they
7 should do. He'll also tell you that there were numerous
8 people out there and that they attempted to contact and speak
9 to witnesses. You'll hear from Officer Aker, you'll hear from
10 Officer Arnona and you'll hear from Officer Garcia, who will
11 all tell you that they attempted to talk to all the people
12 that were around, but people in this neighborhood don't talk
13 with the police and people weren't cooperative, so at this
14 point the investigation stagnates.

15 You'll hear from Officer Bodnar that there were no
16 big leads until March 7th when he received an anonymous phone
17 call in which a lady said Ashley Bennett --

18 MR. BINDRUP: Objection at this point to a statement
19 that's otherwise inadmissible, Your Honor.

20 THE COURT: I'll sustain the objection at this time.

21 MS. DE LA GARZA: Your Honor, this isn't
22 inadmissible. This is not for the --

23 THE COURT: The objection is sustained at this
24 time..

25 MS. DE LA GARZA: Nonetheless, you will hear from

1 Officer Bodnar, who says that he received an anonymous phone
2 call and based on that phone call he goes out and contacts
3 Anthony Gantt, who denies it, he also contacts Ashley Bennett
4 and he contacts some of the other people involved and
5 basically gets denials. And then what happens on May 1st is
6 that Pamela Neal comes forward. And Pamela Neal will tell you
7 that she didn't initially come forward and the only reason she
8 came forward at this time is because her cousin had been
9 killed and, when her cousin had been killed, nobody came
10 forward and she now understood how difficult it was to be a
11 family member and have nobody come forward when somebody's
12 killed.

13 At the point when Pamela Neal tells the detectives
14 what happened, Anthony Gantt is basically busted. He has
15 nowhere to go. Not only was he seen by Pamela Neal, but he
16 was seen by the security guard, James Golden, and he was
17 identified. This young man, Anthony Gantt, wasn't even 18
18 years old. And at the point that he's approached, after
19 Pamela Neal's statement, he goes forward and gives a statement
20 to the police and he tells the police what happened again and
21 the circumstances and, as a result of his statements to
22 police, -- and you will get to hear from him, he will be on
23 the stand, even though he was a person that was involved in
24 the shooting and killing of Dough Boy, you will learn that he
25 did enter into a guilty plea agreement with the State and you

1 will get to hear the details of that guilty plea agreement.

2 And you will hear from his mouth, again, the details
3 and he will tell you that on March 3rd he was with this
4 defendant, Lailoni Morrison, T-Wack, also known as Antwon
5 Graves, and Chew, Louis Matthews, over at a funeral for
6 another slain person and while there they made a decision to
7 go over and shoot up a place that they called the Hunt house,
8 because it was owned by the Hunt family.

9 On the way there they run into security and so they
10 turn around and, when they turn around, Dough Boy is out.
11 Dough Boy is somebody they affiliate with a group called the
12 Rolling 60's and at that point one of them says, "I'm gonna
13 smoke this dude," and this defendant says, "There goes that 60
14 nigger."

15 And that person, Anthony Gantt, will tell you that
16 they all shot into the body of Joseph Williams. He'll tell
17 you that they shot, he thought, again, until they all emptied
18 their clips. He can't tell you how many shots. All he can
19 tell you is like New Years Eve.

20 The evidence will show that Anthony's testimony and
21 Pam Neal's testimony corroborates the testimony of the crime
22 scene analysts that are out there and find bullets and shell
23 casings, et cetera, as well as the evidence that's found by
24 the Coroner as to the shots and the number of shots that were
25 in the body of Dough Boy. Again, that was 14 shots into his

1 chest, into his back, into his elbow, to the back of his
2 thighs, into his hands, into his legs, into his feet, into his
3 stomach, into his buttocks, 14 shots, and the multitude of
4 shots killed this 26 year old.

5 At the end of this case, ladies and gentlemen, the
6 State is confident that you will see that this defendant,
7 Face, Ashley Bennett, is responsible and guilty of first
8 degree murder.

9 Thank you.

10 THE COURT: Thank you.

11 We'll take a second before defense comes forward.

12 (Pause in the proceedings)

13 THE COURT: Ms. Simpkins, once you are set up,
14 please go forward.

15 MS. SIMPKINS: Thank you, Your Honor.

16 (Pause in the proceedings)

17 DEFENDANT'S OPENING STATEMENT

18 MS. SIMPKINS: Good afternoon, ladies and gentlemen.
19 Again, my name is Melinda Simpkins and along with my partner,
20 Scott Bindrup, we represent the defendant in this matter, Mr.
21 Ashley Bennett.

22 Now as you remember, possibly from a high school
23 social studies class, there are three branches of the
24 government, the legislative, executive and judicial, and each
25 branch acts as a check and a balance on the other branches.

1 And you are here today acting as part of the judicial system
2 to act as a check and to help balance the power of the State.

3 Now you've heard what the State thinks the evidence
4 will show and, as you know, there are two sides to every
5 story. For Mr. Bennett the morning of March 3rd, and that was
6 a Saturday, started out pretty much as any other Saturday. He
7 was at home with his girlfriend and his daughter and they had
8 some steaks and they decided that they were gonna have a
9 cookout that afternoon and invite some friends over to be with
10 them, that this was gonna be a grown-up affair, so his three
11 year old daughter was gonna go to her grandmother's house and
12 spend the night.

13 Now Ashley took his daughter to his grandmother's --
14 to her grandmother's house and on the way he stopped at Perry
15 Macklin's residence and invited Perry Macklin and his
16 girlfriend over that afternoon to have the cookout and he told
17 Perry be there between 2:00 and 3:00 o'clock this afternoon.
18 And Perry said fine, he would be there, and later on that
19 afternoon, when Ashley Bennett gets home, he's there with
20 Kyuasha and they start to cook. And Perry Macklin arrives
21 right on schedule, around 2:30, 3:00 o'clock that afternoon.
22 They cook steaks, they had potatoes, they drank beer, they
23 watched TV and they hung out until Perry Macklin left that
24 evening around 6:00 o'clock, Perry and his girlfriend.

25 Now you're gonna hear from Kyuasha Parker and you're

1 gonna hear from Perry Macklin and they are both gonna tell you
2 that story. The technical term for this is an alibi, but
3 whatever you want to call it, ladies and gentlemen, when
4 Joseph Williams was being shot at 3:00 o'clock that afternoon,
5 Ashley Bennett was at home with friends having a cookout.
6 This is not a case, ladies and gentlemen, of mistaken
7 identity. This is a case about witnesses and their motivation
8 to lie.

9 Police were under a lot of pressure. There had been
10 quite a few shootings in the area and the police were under a
11 lot of pressure to solve these crimes and to solve them very
12 quickly. And the State's gonna tell you that there were just
13 no witnesses that came forward and we ask that you not mistake
14 a hasty police investigation for witness fear about coming
15 forward, because the State is gonna present eyewitnesses and
16 she told you about a couple of them, Anthony Gantt, for
17 instance.

18 Anthony Gantt is a 16 year old kid and he's gonna be
19 sitting up there on the stand and he is an admitted murderer,
20 ladies and gentlemen. He admitted it to the police and he has
21 entered a plea of guilty to this crime, the shooting of Joseph
22 Williams. Now, if he cooperates with the State, he is looking
23 at a potential sentence of ten years to life. That's ten
24 years before he's eligible for parole. If he fails to
25 cooperate, he's looking at a potential sentence of 40 years to

1 life. That's 40 years before he's eligible for parole.

2 Now he's 16 years old. He's made a deal. He's a
3 snitch. He's a convicted murderer. He's not only confessed
4 to murdering Joseph Williams in this case, but you're gonna
5 hear testimony from other witnesses that, when all the
6 shooting was over and Joseph Williams was laying there face
7 down in the dirt, that it was Anthony Gantt that walked up to
8 him and finished him off.

9 Now there are a lot of statements to the police and
10 Anthony Gantt's made these statements and he's told a lot of
11 different stories. In the first statement he says he wasn't
12 there, that he was at his grandmother's house. In the next
13 statement, where he actually does confess, first he's in the
14 park, then he's at the basketball court and then, all of a
15 sudden, he's there and he does shoot Joseph Williams, but then
16 he gives a third statement to police and in that third
17 statement he not only shoots Joseph Williams, but he shot him
18 in self-defense because Joseph Williams was going for a gun.

19 You're also gonna hear from Pamela Neal. Now Pamela
20 Neal has her own time line, ladies and gentlemen. She doesn't
21 give any statements to the police right away. The shooting
22 was on March 3rd of 2001 and she doesn't give any statements
23 to the police until May. Now in between March and May is
24 April and a lot of things happened to Pamela Neal in April.
25 Her cousin, Eric Bass, was murdered and Pamela Neal comes into

1 some information about who shot Eric Bass. Now she goes to
2 this person's house and by the time everything --

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

4 THE COURT: I'll sustain the objection.

5 MS. SIMPKINS: I'll move on.

6 And by the time everything is over, Pamela Neal ends
7 up being charged with conspiracy to commit murder, burglary
8 while in possession of a deadly weapon, battery with use of a
9 deadly weapon with substantial bodily harm, discharging a
10 firearm at or into a structure and coercion with use of a
11 deadly weapon. Now Pam is a distinctive looking woman.
12 You're gonna see her. She's six foot two inches tall and she
13 was easily identified and she was arrested the same day.
14 That's April 15th.

15 She makes bail a few days later and two weeks later
16 she's in talking to the police about this case. Now Pamela
17 Neal also tells different stories. The State told you that
18 Pamela Neal identified three people. There was a lot more
19 than three people that she identified. She identified Ashley
20 Bennett as a shooter, she identified Lailoni Morrison, Anthony
21 Gantt, Louis Matthews and Jermaine Webb, in addition to
22 several other people and when she testifies at the preliminary
23 hearing in this case, however, she changes that story. There
24 was only three. There was Ashley Bennett, Lailoni Morrison
25 and Anthony Gantt.

1 Ladies and gentlemen, as a result of Pamela Neal's
2 cooperation in this case, her case for conspiracy to commit
3 murder and all those other charges that I just read to you
4 gets dismissed.

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

6 THE COURT: I'll let her continue.

7 MS. SIMPKINS: That case gets dismissed.

8 MS. DE LA GARZA: Objection, Your Honor. This is as
9 to what the defense -- or what they believe that the evidence
10 is gonna show.

11 THE COURT: The objection has been --

12 MS. DE LA GARZA: There's gonna be no evidence to
13 that case.

14 THE COURT: The objection has been overruled at this
15 time. Please sit down, counsel.

16 MS. SIMPKINS: Not only that, she gets money to move
17 from the neighborhood that she's living in.

18 Now, in addition, that's not all, she gets immunity
19 from prosecution in that case, those charges I just read to
20 you. Now why, you might ask, is she still testifying if she's
21 got immunity. Because she, we believe the evidence will show,
22 has placed Ashley Bennett with the group of people that she
23 believes is involved in the killing of her cousin, Eric Bass.

24 These are the eyewitnesses that the State is gonna
25 present to you and we believe that the evidence will show that

1 Pamela Neal and Anthony Gantt have motives to lie, ladies and
2 gentlemen. The evidence will show that this testimony that
3 they're gonna give today, or in the future, near future, is
4 gonna be inconsistent with statements that they have given in
5 the past and the evidence will show that the benefits that
6 they have received from the State is their sole motivation to
7 testify in this case.

8 Ladies and gentlemen, it is a very sad tragedy
9 that's brought us here today, but Ashley Bennett played no
10 part in the murder of Joseph Williams and we ask that you not
11 find him guilty, because it would be even a greater tragedy
12 for someone --

13 MS. DE LA GARZA: Objection as to argument.

14 MS. SIMPKINS: I'll wrap it up, Your Honor.

15 THE COURT: Thank you.

16 MS. SIMPKINS: Ashley Bennett was not there when
17 Joseph Williams was killed, ladies and gentlemen, and at the
18 conclusion of this case we are gonna ask that you find him not
19 guilty.

20 Thank you.

21 THE COURT: Thank you.

22 (Pause in the proceedings)

23 THE COURT: If the State would call its first
24 witness, please.

25 MS. DE LA GARZA: The State calls Pamela Neal.

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1 THE COURT: Thank you.

2 (Pause in the proceedings)

3 THE CLERK: Would you raise your right hand, please?

4 PAMELA NEAL, PLAINTIFF'S WITNESS, IS SWORN

5 THE CLERK: You may be seated.

6 State and spell your name for the record.

7 THE WITNESS: Pamela Neal, N-E-A-L.

8 DIRECT EXAMINATION

9 BY MS. DE LA GARZA:

10 Q Ms. Neal, I'd like to direct your attention to March
11 3rd, 2001. At that time where were you living?

12 A 2529 Morton Avenue, Apartment D.

13 Q What is the name of that apartment complex where you
14 lived?

15 A Buena Vista Springs.

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

17 A Yes.

18 Q Approximately what are the cross streets?

19 A Carey and Martin Luther King.

20 Q I'm showing you what's been marked as State's
21 Proposed Exhibit 1. Do you recognize this area?

22 A Yes.

23 Q How do you recognize it?

24 A From the streets.

25 Q Is that the street where you lived?

NEAL - DIRECT

1 A Yes.

2 Q Do you see 2529 on that map and is it marked?

3 A Yes.

4 Q And is that your apartment building?

5 A Yes.

6 Q And is it a true and accurate depiction of your
7 apartment building on March 3rd, 2001?

8 A Yes.

9 MS. DE LA GARZA: I'm move for the admission of
10 State's Exhibit 1, Your Honor.

11 THE COURT: Any objection as to Proposed 1?

12 MR. BINDRUP: No objection, Your Honor.

13 THE COURT: 1 is admitted.

14 (Plaintiff's Exhibit No. 1 admitted)

15 BY MS. DE LA GARZA:

16 Q Now on March 3rd, 2001 how long had you lived in
17 this apartment?

18 A Two years.

19 Q Two years at that time?

20 A Uh-huh.

21 Q Prior to living there on Martin -- or Morton, excuse
22 me, where had you lived?

23 A On Rancho. No, before that on the other side, on
24 West Street.

25 Q And when you say the other side, is that still in

NEAL - DIRECT

1 North Las Vegas?

2 A Yes.

3 Q How long have you lived in North Las Vegas?

4 A All my life.

5 Q You grew up --

6 A Yes.

7 Q -- in that area?

8 A Yes.

9 Q Now, having grown up in that area, are you familiar
10 with the people that live in that area of North Las Vegas?

11 A Yes.

12 Q And, more specifically, right there on Morton, at
13 2529, are you familiar with the people that lived in that
14 area?

15 A Yes.

16 Q Now you said you kind of moved across the way, you
17 lived there, but you've lived in that general -- North Las
18 Vegas all your life?

19 A Yes.

20 Q Do you keep seeing a lot of the same faces, a lot of
21 the same people?

22 A Yes.

23 Q Now I'd like to direct your attention to the
24 afternoon of March 3rd, 2001. Did there come a time when you
25 were planning to leave your house?

NEAL - DIRECT

1 A Yes.

2 Q What was the plan?

3 A To take the girl downstairs from me to work.

4 Q And when you say that she's downstairs from you
5 there at 2529 Morton, is this a single-story apartment or is
6 this a two-story apartment?

7 A A two story.

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

9 THE COURT: Yes, you may.

10 BY MS. DE LA GARZA:

11 Q I'm showing you what's been marked as State's
12 Proposed Exhibit 3. Do you recognize that?

13 A Yes.

14 Q And what is that? How do you recognize that?

15 A It's a picture of my building and the parking lot
16 and the other two buildings.

17 Q Is that a true and accurate representation of the
18 way your apartment looked on March 3rd, 2001?

19 A Yes.

20 Q And you're saying you lived on the upper floor of
21 this?

22 A This one right here.

23 Q Okay. And, for the record, you're referring to the
24 apartment more to the right on the second floor, is that
25 correct?

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NEAL - DIRECT

1 A Yes.

2 MS. DE LA GARZA: May I publish this?

3 THE COURT: Any objection to the admission?

4 MR. BINDRUP: No objection to its admission or
5 publication.

6 THE CLERK: Is it 3?

7 THE COURT: That will be 3.

8 (Plaintiff's Exhibit No. 3 admitted)

9 BY MS. DE LA GARZA:

10 Q You lived on the top floor, the second floor, and
11 you were taking your neighbor right beneath you?

12 A Yes.

13 Q And you were gonna take her to work?

14 A Yes.

15 Q What was that neighbor's name?

16 A Michelle.

17 Q What's her last name? Do you know?

18 A Wilson.

19 Q Michelle Wilson?

20 A Yes.

21 Q And you were gonna take her to work?

22 A Yes.

23 Q How long had you known her at that point?

24 (Colloquy between Court and Bailiff)

25 THE WITNESS: Ever since like '88, '89.

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 More than ten?

2 A Yeah.

3 Q If you had to approximate for us, could you?

4 A Maybe about 20.

5 Q Thus far you've just said that there was some guys.
6 Let's try and break that down a little bit.

7 Initially you said there was one guy walking that
8 you apparently saw get killed?

9 A Yes.

10 Q Do you know what that guy's name was?

11 A Dough Boy.

12 Q Do you know him by his first and last name?

13 A No.

14 Q If I told you his first and last name was Joseph
15 Williams, would that sound right? Have you subsequently
16 learned his name?

17 A Yes.

18 Q But at that time all you knew him by was Dough Boy?

19 A Yes.

20 Q Did you know whether Dough Boy lived there in that
21 apartment complex?

22 A No.

23 Q You don't know or he didn't?

24 A No, he didn't live there. You talking about my
25 area?

NEAL - DIRECT

1 Q Yes.
2 A No, he didn't live there.
3 Q Do you know what his purpose was for being in that
4 area?
5 A No.
6 Q Do you know whether he affiliated with a lady named
7 Monique Hunt?
8 A Yeah. She lived downstairs.
9 Q In your same building?
10 A Yes -- No, in the building directly across from me.
11 Q Do you know whether Dough Boy was over there to see
12 Monique Hunt?
13 A Yes.
14 Q How did you know Monique Hunt?
15 A I've known her for a long time.
16 Q And when you say for a long time, what do you mean?
17 A Like maybe '91, '92.
18 Q Is Monique Hunt affiliated with any particular group
19 there --
20 A Yes.
21 Q -- in that area?
22 A Yes.
23 Q What is that?
24 A The 60's.
25 Q What is the 60's?

NEAL - DIRECT

1 A It's a gang.

2 Q Is that the whole name of it, just the 60's?

3 A Rolling.

4 Q You've got to say the entire name for me. I don't
5 understand.

6 A Rolling 60's.

7 Q It's called the Rolling 60's?

8 A Yes.

9 Q Do you know if Dough Boy was also affiliated with
10 that group?

11 A Yes.

12 Q Is this a dangerous area for the 60's to be in?

13 MR. BINDRUP: Objection, leading.

14 THE COURT: I'll sustain the objection. Restate the
15 question.

16 BY MS. DE LA GARZA:

17 Q Did you see Dough Boy in that area often?

18 A No.

19 (Pause in the proceedings)

20 MR. BINDRUP: Excuse me, may we approach?

21 THE COURT: Yes.

22 (Off-record bench conference)

23 BY MS. DE LA GARZA:

24 Q Now, Ms. Neal, you've said that you lived at 2529.

25 A Yes.

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

NEAL - DIRECT

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 A They're on this -- I'm him and they're on this side
2 of him.

3 Q Okay. And when you say this side, --

4 MS. DE LA GARZA: Judge, for the record, she's
5 motioning to her left side.

6 THE COURT: The Court would so note for the record.

7 BY MS. DE LA GARZA:

8 Q And when you're saying I'm him, you mean you're
9 Dough Boy?

10 A Yes.

11 Q Are they pretty close to him?

12 A Yeah.

13 Q And then you say he throws up his hands?

14 A Yes.

15 Q What do you see happen after that?

16 A A guy come between the building this way and a guy
17 come between the building this way, closer to in front of my
18 building.

19 Q Okay. So your building is 2529 on that chart?

20 A Yes.

21 Q Now, if we look at that chart, it looks like there's
22 a building across the way.

23 A Yes.

24 Q And that's what you've described previously as 2535?

25 A Yes.

NEAL - DIRECT

1 MS. DE LA GARZA: And I'm just gonna move this for
2 the jury, Your Honor.

3 (Pause in the proceedings)

4 BY MS. DE LA GARZA:

5 Q And are you pretty much facing each other, 2529 and
6 2535?

7 A Yes.

8 Q Is there anything in between you?

9 A The parking lot.

10 Q Now if you've got the parking lot, do you have
11 anything to the left or to the right if we're standing at your
12 building on the second floor?

13 A To the left there's another building.

14 Q Do you know what the address of that building is?

15 A I think it's 2531.

16 MS. DE LA GARZA: Judge, would you have any
17 objection to her writing on this exhibit the different numbers
18 that she has indicated to the jury?

19 THE COURT: Objection as to writing on that exhibit?

20 MR. BINDRUP: No objection, Your Honor.

21 THE COURT: Thank you.

22 (Pause in the proceedings)

23 BY MS. DE LA GARZA:

24 Q Pam, if you could come down and write on this
25 exhibit where those numbers are.

NEAL - DIRECT

1 (Pause in the proceedings)

2 A This is my number here.

3 THE COURT: And at this point just repeat what you
4 want her to do, because you're mike'd and she's not.

5 MS. DE LA GARZA: I understand, Your Honor.

6 BY MS. DE LA GARZA:

7 Q Pam, just looking at your building, mark the other
8 two buildings, the 2535 and then 2531.

9 (Pause in the proceedings)

10 Now you say one guy goes this way. Tell me, this
11 first guy, which way does he go? You've described the
12 buildings. In between which buildings does he come?

13 A He comes between 2531 and 2535.

14 Q Do you know the name of that guy?

15 A Yes.

16 Q What's his name?

17 A Lailoni.

18 Q And you say then this guy, which I guess is gonna be
19 guy number 2, comes another way. Which way is that?

20 A Between 2529 and 2531.

21 Q Do you know the name of that guy?

22 A Face.

23 Q Do you see Face here in court today?

24 A Yes.

25 Q Would you please point to him and describe something

1 that he's wearing?

2 A Right there. He has on a burgundy tie.

3 MS. DE LA GARZA: I'm sorry, would the record
4 reflect the identification of the defendant?

5 THE COURT: The record will so reflect.

6 BY MS. DE LA GARZA:

7 Q What did Lailoni and Face do?

8 A Shot Dough Boy.

9 Q When you say they come between the buildings, how
10 far did they come?

11 A In the parking lot.

12 Q And they're in the parking lot when they shoot Dough
13 Boy?

14 A Yes.

15 Q Are they standing right beside each other?

16 A No. No, they're not.

17 Q Are there any cars in the parking lot?

18 A Yes.

19 Q Are they behind those cars or are they in front of
20 those cars?

21 A Behind.

22 Q And I'm talking about from Dough Boy's perspective.

23 So you'd have Dough Boy, car, Lailoni and Face or
24 Dough Boy, Lailoni and Face and then the cars?

25 A It would be Dough Boy, the cars and then Lailoni and

NEAL - DIRECT

1 Face.

2 Q And is that where they start shooting or where do
3 they start shooting from?

4 A There.

5 Q The parking lot?

6 A Yes.

7 Q From your perspective, you're at 2529 and you're
8 looking out onto the parking lot, is Lailoni on the left or is
9 Face on the left?

10 MR. BINDRUP: May we approach, please?

11 THE COURT: Yes.

12 (Off-record bench conference)

13 BY MS. DE LA GARZA:

14 Q So who's on the left?

15 A Lailoni.

16 Q And who's on the right?

17 A Face. It's not so much on the right as in the
18 middle.

19 Q They're kind of in the middle? Of what?

20 A The parking lot.

21 Q And is that where they're shooting from?

22 A Yes.

23 MS. DE LA GARZA: Your Honor, may we approach?

24 THE COURT: Yes.

25 (Off-record bench conference)

NEAL - DIRECT

1 THE COURT: Ladies and gentlemen, before we go any
2 further, at this point we're gonna take our first break of the
3 day with the admonition not to converse among yourselves or
4 with anyone else as to any subject matter that may be
5 connected with the trial, please refrain from reading,
6 watching or listening to any commentary, should there be any,
7 but, most importantly, the Court would ask that you not form
8 or express any opinion as to the outcome of the subject matter
9 until this case is submitted to you at its conclusion.

10 We have about ten minutes to 3:00. At 3:00 o'clock
11 be ready to come back down here.

12 Mr. Sewell.

13 (Court recessed)

14 (Jury is present)

15 THE COURT: We're back on the record in the presence
16 of our jury. Our witness is in the box. Ms. Neal is still
17 under oath. The parties and Mr. Bennett likewise are here.

18 I would remind our spectators that there should not
19 be any conversation in our hallway except with the people that
20 you came here with, no cross-conversation. If we have any
21 kind of problems, the Court will instruct the Bailiff to ask
22 the individuals to leave the building.

23 Ms. De La Garza, if you would continue with your
24 direct examination of Ms. Neal.

25 MS. DE LA GARZA: Thank you, Your Honor.

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NEAL - DIRECT

DIRECT EXAMINATION (Continued)

1
2 BY MS. DE LA GARZA:

3 Q Now, Pam, I showed you what was an aerial view of
4 that area and where you lived and the apartments that were
5 around you. And you identified some numbers, is that correct?

6 A Yes.

7 Q Now I'm showing you what's been marked as State's
8 Proposed Exhibit 2. Do you recognize this?

9 A Yes.

10 Q How do you recognize it?

11 A It's my building and the other buildings and the
12 parking lot, the street.

13 Q Is this what you described earlier on that larger
14 aerial view?

15 A Yes.

16 Q Is this a true and accurate depiction of the way
17 those apartments were arranged back on March 3rd, 2001?

18 A Yes.

19 MS. DE LA GARZA: Your Honor, I'd move for the
20 admission, conditionally, of State's Proposed Exhibit 2.

21 THE COURT: Does defense wish to note -- Any
22 objection by defense at this time?

23 MR. BINDRUP: We can just make a record later, Your
24 Honor.

25 THE COURT: Thank you.

NEAL - DIRECT

1 The Court notes that we have a conditional admission
2 and we also note the objection of defense, which we'll clarify
3 later.

4 MS. DE LA GARZA: Your Honor, may I go to the center
5 of the room?

6 THE COURT: Yes, you may.

7 BY MS. DE LA GARZA:

8 Q Now, Pam, I'm gonna ask you to step down from the
9 jury -- or from the witness box and come to the center of the
10 room where we have this diagram and we're gonna talk about it,
11 but you need to wait until the court reporter plugs in the
12 mike.

13 THE COURT: Do we have our marker for her to use?

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

15 THE COURT: Thank you.

16 BY MS. DE LA GARZA:

17 Q Now, Pam, I'm gonna hand you a marker. You
18 initially told us that Dough Boy was on the side of 2535, is
19 that correct?

20 A Yes.

21 Q And you said that was on the right-hand side of
22 2535?

23 A Yes, from this --

24 Q From your perspective --

25 A Well, from me it was right there.

IV-43

NEAL - DIRECT

1 Q -- if you were standing at 2529?

2 A Right, right, uh-huh.

3 Q And, I'm sorry, I'm just really gonna have to ask
4 you to speak up.

5 A Okay.

6 Q Because we've got a really bad mike system and I
7 apologize.

8 A Okay.

9 Q Can you mark an X where you saw Dough Boy initially?
10 And you said you saw some other people around Dough
11 Boy and you said there was approximately five to six guys, is
12 that correct?

13 A Yes.

14 Q And you said one of those was Wacky G, Gantt?

15 A Yes.

16 Q Can you please put a G where you initially saw Wacky
17 G? Then you said Chew. Can you put a C where we have Chew?
18 And what about a W for Wing. And then you said there was
19 maybe three other youngsters, but you weren't sure. Why don't
20 you just put a Y for youngsters. Just one?

21 So, with these markings, have you marked where you
22 initially saw these people?

23 A Yes.

24 Q Then you said you saw Dough boy pick up his hands,
25 raise his hands, is that correct?

NEAL - DIRECT

1 A Yes.

2 Q Approximately where was he? If you can just draw
3 some dotted lines to where you saw him go. Make them dashes.

4 A Right here.

5 Q And you've put a bigger circle, just kind of a black
6 dot where he was?

7 A Yeah.

8 Q What does that black dot signify?

9 A It's where Dough Boy was standing.

10 Q Then you said that Lailoni came between 2531 and
11 2535 and you've drawn a line.

12 A Yes.

13 Q Can you put an L beside that line for me? Is that
14 where he ended up?

15 A Yes.

16 Q And then you said Face came between 2529 and 2531.
17 Put an F there.

18 And you said the shooting occurred once they hit
19 that parking lot, is that correct?

20 A Yes.

21 Q Now, once that shooting occurred, where was Anthony
22 Gantt -- excuse me, Wacky G?

23 Okay. And you've put a W for Wacky, I assume?

24 A Yes.

25 Q At this point -- And, Pam, I think at this point I

NEAL - DIRECT

1 can probably have you go back to the witness stand.

2 THE COURT: Can we have that board, and it can still
3 face the jury, if we can have it put down so counsel can see
4 the witness.

5 (Pause in the proceedings)

6 BY MS. DE LA GARZA:

7 Q Now, Pam, between 2529, your apartment, and 2535 are
8 there a lot of trees there?

9 A Between my apartment and 2535, I think there's a
10 palm tree and a tree in the middle.

11 Q Was the palm tree and the tree in the middle in
12 between where you were standing and where Dough Boy was
13 standing?

14 A I was across from Dough Boy.

15 Q And in between you and Dough Boy are there any
16 trees?

17 A No.

18 Q Why is that?

19 A It's the parking lot.

20 Q You said this happened about 3:30?

21 A Yes.

22 Q Was it dark outside?

23 A No, daytime.

24 Q Is there anything else in your way?

25 A No.

NEAL - DIRECT

1 Q Do you know how big that parking lot is?

2 A It will hold about maybe 12 cars.

3 Q Can you tell us in feet or yards how far away you
4 were?

5 A Maybe about -- Maybe about 18, 20 feet.

6 Q When you were standing there on your balcony, did
7 you ever move when you saw this happening?

8 A No.

9 Q Why not?

10 A I was shocked.

11 Q Did you go down the stairwell at all while this was
12 happening?

13 A No.

14 Q Did you move to your left? Did you move to your
15 right?

16 A No.

17 Q Was anybody with you?

18 A No.

19 Q Was it possible for you to run back in your house?

20 A If I'd have took the time and unlocked the door.

21 Q So the door was already locked?

22 A Yes.

23 Q Now we've talked a little bit about these people
24 that were around Dough Boy and Lailoni and the defendant, who
25 you know as Face. How do you know Wacky G?

NEAL - DIRECT

1 A I've known Wacky G ever since he was a baby.

2 Q How did you get to know a little baby?

3 A From his grandmother and his mother.

4 Q Did you have any other connection to him or his dad?

5 A My husband.

6 Q And what was that connection?

7 A They used to ride four-wheel motorcycles together.

8 Q Does Wacky G live in that area?

9 A Yes.

10 Q Do you know exactly where?

11 A Yeah.

12 Q And approximately how far from this little complex
13 is it?

14 A On the next street, Carey -- Cartier I meant.

15 Q Do you know approximately how old Wacky G is?

16 A He's either 15 or 16.

17 Q Do you see him often?

18 A Yeah.

19 Q How often?

20 A Every day.

21 Q How do you see him every day?

22 A He would be outside or sometimes he would knock on
23 my door for my daughter to braid his hair.

24 Q Do you hang out with him?

25 A No.

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.

NEAL - DIRECT

1 Q Did she say what happened?

2 A No.

3 Q Did you have a conversation with Michelle regarding
4 the incident?

5 A Yes.

6 Q Was it a long conversation?

7 A No.

8 Q What did you say to each other?

9 A She looked at me and I looked at her and we both
10 said Face at the same time.

11 Q Did you say anything else?

12 A No.

13 Q Did you say anything about Wacky G?

14 A No.

15 Q Why didn't she tell the police what had happened?
16 Do you know?

17 A I don't know.

18 Q Did there come a time when you finally went to the
19 police?

20 A Yes.

21 Q When was that?

22 A May 1st.

23 Q Did you just happen to go to the police station or
24 how did you end up there?

25 A The detectives wanted to talk to my cousin's

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?

NEAL - DIRECT

1 A No.

2 Q When you talked to the police on that first day, May
3 1st, who did you tell them you knew that had done the Dough
4 Boy murder?

5 A Lailoni, Face and Wacky G.

6 Q Now when we were talking earlier you also mentioned
7 Chew and you mentioned Wing. When you initially talked to the
8 police, did you tell them these two names?

9 A Yes.

10 Q You did?

11 A I couldn't remember their faces at first.

12 Q Did you know their names at first?

13 A No, not until I saw the lineup.

14 Q They gave you a lineup of Chew and Wing?

15 A And a bunch of other pictures?

16 Q And at that point did you tell them about Chew and
17 Wing?

18 A Yes.

19 Q Now later -- Strike that.

20 Did they additionally show you some other lineups?

21 A Yes.

22 Q Besides Chew and Wing?

23 A Yes.

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

25 THE COURT: Yes. And let defense know.

NEAL - DIRECT

1 BY MS. DE LA GARZA:

2 Q I'm showing you what's been marked as State's
3 Proposed Exhibit 4. Do you recognize that?

4 A Yes.

5 Q How do you recognize that?

6 A My initials, the date and the time.

7 Q And what are your initials?

8 A PN.

9 Q And what's the date?

10 A May 1st, 2001.

11 Q And what's the time?

12 A 4:26.

13 MS. DE LA GARZA: I'd move for the admission of
14 State's Proposed Exhibit 4.

15 MR. BINDRUP: Could some identification be made of
16 this, Your Honor?

17 THE COURT: Thank you.

18 A little more foundation, please, before that's
19 admitted.

20 BY MS. DE LA GARZA:

21 Q What is this?

22 A It's a picture lineup.

23 Q And were you shown this picture lineup on May 1st?

24 A Yes.

25 MS. DE LA GARZA: I'd move for the admission of

NEAL - DIRECT

1 State's Proposed Exhibit 4.

2 THE COURT: And if we can have what she did on that
3 date, please.

4 BY MS. DE LA GARZA:

5 Q When you were shown this lineup, were you asked to
6 do anything by the detective?

7 A Identify one of the shooters that was outside.

8 Q Were you able to do that?

9 A Yes.

10 Q And how did you identify that shooter?

11 A By looking and putting my initials next to his
12 picture.

13 Q And when you say his picture, who do you mean?

14 A Wacky G.

15 Q And you identified him on that date and you wrote
16 your initials --

17 A Yes.

18 Q -- for the officer?

19 A Yes.

20 Q Did the officer tell you that the shooter was in
21 here?

22 A No.

23 Q What did he ask you to do?

24 A He asked me could I identify one of those people
25 that were the shooters out there.

NEAL - DIRECT

1 Q Did anybody tell you this is Wacky G?

2 A No.

3 Q Did anybody tell you who to pick out?

4 A No.

5 Q Were you with anybody when you picked Wacky G out of
6 this photo lineup?

7 A I was with Tammy.

8 Q Did Tammy tell you?

9 A No.

10 Q Did Tammy have anything to do with this Dough Boy
11 murder?

12 A No.

13 Q Was she there?

14 A No.

15 Q Did she know who was involved?

16 A No.

17 Q Do you still believe Wacky G was involved in this?

18 A Yes.

19 MS. DE LA GARZA: Again, Your Honor, I would move
20 for the admission of State's Exhibit 4.

21 MR. BINDRUP: No objection.

22 THE COURT: 4 is so admitted.

23 (Plaintiff's Exhibit No. 4 admitted)

24 BY MS. DE LA GARZA:

25 Q On that date of May 1st did the officer have all of

1 the lineups there or did he have to meet with you on another
2 date?

3 A He had to meet with me on another date.

4 Q And at that time were you shown more lineups?

5 A Yes.

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

7 THE COURT: Yes, you may. And show defense what
8 you're going to show next.

9 (Pause in the proceedings)

10 BY MS. DE LA GARZA:

11 Q I'm showing you what's been marked as State's
12 Proposed Exhibit 5. Do you recognize that?

13 A Yes.

14 Q And how do you recognize that?

15 A The date, my writing, my initials.

16 Q And what is that date?

17 A May 8th.

18 Q And what are your initials again?

19 A PN.

20 Q What other writing did you put on there?

21 A Lailoni was one of the shooters.

22 Q Were you shown this lineup?

23 A Yes.

24 Q And how do you know that was Lailoni?

25 A Because I know him.

NEAL - DIRECT

1 MS. DE LA GARZA: I'd move for the admission of
2 State's Proposed Exhibit 5.

3 MR. BINDRUP: No objection.

4 THE COURT: 5 is so admitted.

5 (Plaintiff's Exhibit No. 5 admitted)

6 BY MS. DE LA GARZA:

7 Q How else did you know Lailoni besides seeing him on
8 that date?

9 A I knew him from my brother and my cousin.

10 Q How long had you known him?

11 A About five years.

12 Q Did you see him often?

13 A Yeah.

14 Q How often?

15 A Like every other day.

16 Q Now you said you knew him from your brother and your
17 cousin. Were they friends with him?

18 A Yes.

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

20 THE COURT: Yes.

21 BY MS. DE LA GARZA:

22 Q And I'm showing you what's been marked as State's
23 Proposed Exhibit 7. Do you recognize that?

24 A Yes.

25 Q What is that?

NEAL - DIRECT

1 A That's a picture of Chew with my initials, the date
2 and Chew was one of the shooters.

3 Q And, again, what is that date?

4 A May 8th.

5 Q And is this what you wrote?

6 A Yes.

7 Q And, again, you identified this?

8 A Yes.

9 Q Did anybody tell you that's Chew?

10 A No.

11 Q You did that?

12 A Yes.

13 MS. DE LA GARZA: I'd move for the admission of
14 State's Exhibit 7.

15 MR. BINDRUP: No objection.

16 THE COURT: 7 is so admitted.

17 (Plaintiff's Exhibit No. 7 admitted)

18 BY MS. DE LA GARZA:

19 Q And I'm showing you what's been marked as State's
20 Proposed Exhibit 8. Do you recognize that?

21 A Yes.

22 Q How do you recognize that?

23 A My handwriting, my initials, the date and he was one
24 of the shooters and my signature.

25 Q And what's the date?

NEAL - DIRECT

1 A May 8th.

2 Q And who is one of the shooters?

3 A Wing.

4 Q Did you know his name?

5 A Yes.

6 Q Did you put his name anywhere on there?

7 A No.

8 Q But you knew him as Wing?

9 A Yes.

10 MS. DE LA GARZA: I'd move for the admission of
11 State's Proposed Exhibit 8.

12 MR. BINDRUP: No objection.

13 THE COURT: 8 is so admitted.

14 (Plaintiff's Exhibit No. 8 admitted)

15 BY MS. DE LA GARZA:

16 Q And I'm showing you what's been marked as State's
17 Proposed Exhibit 6. Do you recognize that?

18 A Yes.

19 Q How do you recognize that?

20 A My initials, my signature, the date, May 8th, and
21 Face was one of the shooters.

22 Q And, again, you were asked to identify if he was one
23 of the shooters?

24 A Yes.

25 Q Were you specifically told that it was him?

NEAL - DIRECT

1 A No.

2 MS. DE LA GARZA: I'd move for the admission of
3 State's Proposed Exhibit 8.

4 MR. BINDRUP: No objection.

5 THE COURT: That was 6.

6 MR. BINDRUP: Didn't you say 6?

7 MS. DE LA GARZA: I'm sorry, 6, Your Honor.

8 THE COURT: 6 will be so admitted.

9 (Plaintiff's Exhibit No. 6 admitted)

10 BY MS. DE LA GARZA:

11 Q Let's talk about Chew first. How did you know Chew?

12 A Just from seeing him around the neighborhood.

13 Q I'm sorry, could you repeat that?

14 A Just from seeing him around the neighborhood.

15 Q Where?

16 A In the area where I lived. It was another date. On
17 West Street I asked him for a light for my cigarette, but I
18 don't think he knew who I was, but I knew who he was from my
19 cousin.

20 Q How long had you known who he was?

21 A Maybe about a year.

22 Q Now, when you testified at a hearing that was held
23 before this one, in fact, on June 5th, 2001 in North Las
24 Vegas, did you have some concerns about your identification of
25 Chew?

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RA70

NEAL - DIRECT

1 MR. BINDRUP: Objection, leading the witness.

2 THE COURT: I'll sustain the objection.

3 BY MS. DE LA GARZA:

4 Q Did you say anything differently?

5 A That I couldn't be sure if he was one of the
6 shooters out there.

7 Q Why did you say that?

8 A I couldn't be sure 'cause there were so many people
9 outside.

10 Q And that's what you told the judge?

11 A Yes.

12 Q And the case against him was dismissed because you
13 weren't sure?

14 A Yes.

15 Q And you were honest with the court at that time?

16 A Yes.

17 Q Today are you sure?

18 A Yes.

19 Q That it is him or that it isn't?

20 A Isn't, that it's not.

21 Q Why did you tell the officer that it was Chew and
22 then tell the court on June 5th that it wasn't?

23 A Because I didn't see a weapon in his hand.

24 Q Did that concern you?

25 A Yes.

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RA71

NEAL - DIRECT

1 Q Why?

2 A I didn't see a weapon in his hand and I just
3 couldn't lie and say that he was one of them that was shooting
4 too.

5 Q So why did you say on May 8th that it was him?

6 A I don't know. There were so many people out there
7 and he was closer to him, one of the ones that was closer to
8 Dough Boy.

9 Q And what about Wing, here on May 8th you identified
10 Wing as being one of the shooters.

11 A Because he was closer to him also.

12 Q And on June 5th was that your testimony in front of
13 the North Las Vegas Justice of the Peace?

14 A I can't recall.

15 Q Did you say that he was a shooter?

16 A Yes, I did.

17 Q Did you say that same thing there at the preliminary
18 hearing?

19 A No.

20 Q What did you say at that point?

21 A That I couldn't be sure.

22 Q And, again, his case was dismissed because you
23 weren't sure?

24 A Yes.

25 Q Let me ask you about Face. You said Face was one of

NEAL - DIRECT

1 the shooters on May 8th. What did you say on June 5th?

2 A That he was one of the shooters.

3 Q And what are you telling us here today?

4 A That he was one of the shooters.

5 Q Are you sure?

6 A Positive.

7 Q Now, if you weren't sure, like you weren't sure on
8 Chew and you weren't sure on Wing, would you tell us?

9 A Yes.

10 Q Why?

11 A I would tell you. If he didn't do it, he didn't do
12 it.

13 Q Do you think this is a serious matter?

14 A Yes, I do.

15 MR. BINDRUP: Objection, leading.

16 THE COURT: I'll let the question stand.

17 BY MS. DE LA GARZA:

18 Q Do you think this is a serious matter?

19 A Yes.

20 Q And, if you weren't positive, would you tell us?

21 A Yes.

22 Q How long have you known Face?

23 A About 14 years, 14, 15 years.

24 Q How do you know Face?

25 A From my cousin Eric and a friend of theirs, Eugene.

NEAL - DIRECT

1 Q Do you additionally see him anywhere else?
2 A See who?
3 Q Face.
4 A Yes.
5 Q Where is that?
6 A When I used to live in the Gerson and when I used to
7 live in Carey Arms.
8 Q Tell me what the Gerson is.
9 A It's a gang.
10 Q But you said you used to live in the Gerson.
11 A It used to be a housing complex.
12 Q Is that still there today?
13 A No.
14 Q Was it still there on March 3rd, 2001?
15 A No.
16 Q And then you said it was a gang. What do you mean
17 by that?
18 A They were called the Gerson Park Kingsmen.
19 Q Who is they?
20 A My brother, Face, a lot of them.
21 Q And they had formed some type of group? Explain to
22 me what you mean by a gang.
23 A I can't explain it. You got to live over there.
24 Q And you do live over there, is that correct?
25 A Yes.

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1 Q Did you know Face to be a member of that?

2 A Yes.

3 Q What about Wacky G?

4 A Yes.

5 Q What about Chew?

6 A I'm not sure.

7 Q And what about Wing?

8 A I'm not sure.

9 Q You said your brother was one of them?

10 A Yes.

11 Q Are there any type of consequences for you pointing
12 out one of them as a murderer?

13 A What do you mean consequences? Am I afraid?

14 Q Yes.

15 A I'm afraid for my kids. I'm not afraid for myself.

16 Q Do you still live at 2529 Morton?

17 A No.

18 Q Why did you leave?

19 A I had to get my kids out of there. .

20 Q Why?

21 A They wanted to leave because Dough Boy got killed
22 out there and they really wanted to leave when Eric got
23 killed, so I had to go.

24 Q Did it have anything to do with you coming forward?

25 A No.

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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

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1 know the colors?

2 A What gun?

3 Q Lailoni's.

4 A It wasn't a revolver.

5 Q So what was it? Do you know?

6 A It could have been a 9 millimeter.

7 Q Okay, you're just saying it could have been. Do you
8 know for sure?

9 A No.

10 Q Do you know for sure what type of gun Face had?

11 A No.

12 Q Do you know for sure what type of gun Wacky G had?

13 A No.

14 Q What about the other youngsters out there, do you
15 know what they had?

16 A No.

17 Q Pam, do you know what type of order these people
18 shot at Dough Boy?

19 A I know Lailoni shot first.

20 Q How do you know that?

21 A That was the first gun I saw.

22 Q What about after that?

23 A After that I can't tell you who was the next in line
24 to shoot. It was just going off at the same time.

25 Q What about the last person to shoot, do you know

NEAL - DIRECT

1 that?

2 A Wacky G.

3 Q And how do you know that?

4 A Because everybody else had left and Dough Boy was
5 laying on the ground on his stomach and Wacky G leaned over a
6 car and kept on shooting him.

7 Q After he was already down on the ground?

8 A Yes.

9 Q Do you know when Dough Boy fell to the ground?

10 A When he put his hands up and turned his back toward
11 me, that's when he fell.

12 Q Did he turn his back towards you before the gunshots
13 or after?

14 A I would say during. He was trying to turn with his
15 hands up.

16 Q Now you marked on this diagram kind of a black dot --

17 A Uh-huh.

18 Q -- where you kind of show the end trail of where
19 Dough Boy was. Is that where the shooting occurred?

20 A Yes.

21 Q Did he ever get to his car? Do you know where his
22 car was?

23 A No.

24 Q Do you know what kind of car he drives?

25 A Yeah.

NEAL - DIRECT

1 Q What kind of car is that?

2 A A light blue Cadillac.

3 Q Do you know if it was in the parking lot that day?

4 A Yes.

5 Q But it's your testimony he didn't get there?

6 A No.

7 Q Do you know at what point Face started shooting?

8 A After Lailoni.

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

10 THE COURT: That's fine.

11 (Pause in the proceedings)

12 BY MS. DE LA GARZA:

13 Q Now, Pam, on that day of the preliminary hearing was
14 there a case pending against you?

15 A Yes.

16 Q What happened with that case?

17 A It was dismissed.

18 Q Were you there in the courtroom when it was
19 dismissed?

20 A No.

21 Q And when you testified that day, do you know whether
22 it had been dismissed?

23 A Like in the middle of the proceedings, kind of like
24 at the beginning.

25 Q How did you find out?

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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?

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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 real curt break before we start cross-examination and that
2 way, hopefully, we can get through our cross without having to
3 take a break during it.

4 Again, ladies and gentlemen of the jury, I'd ask
5 that you not converse among yourselves or with anyone else as
6 to any subject matter that might be connected with the trial,
7 please refrain from reading, watching or listening to any
8 commentary, should there be any, but, most importantly, you've
9 not been charged, from forming or expressing any opinion as to
10 the outcome of the subject matter until this case is formally
11 submitted to you at its conclusion.

12 At 4:00 o'clock be ready to come back down here.
13 The jury, at this time, can go back to the small TV room area
14 once they are excused and then we'll have our courtroom
15 cleared.

16 (Jury recessed)

17 THE COURT: We're outside the presence of our jury.

18 We have, at least initially, two issues. We may
19 have more, but we'll try to cover those issues. The first is
20 just a note for the record as to State's -- I think it's
21 State's Proposed 2, the diagram that was prepared by the
22 criminologist.

23 Mr. Bindrup.

24 MR. BINDRUP: Yes, Your Honor.

25 I objected to the presentment of this exhibit to

1 this particular witness because of the markings that have
2 previously been made by the crime scene technicians and I
3 believe that this would be too suggestive to Ms. Neal during
4 her testimony, that in seeing the representations upon the
5 diagram that she would be more inclined to place the
6 particular identified shooters in those areas in which
7 markings or casings -- and I think she could and did as a
8 witness assume that where there are identified numbers there
9 are some items of evidence, including casings, which would
10 suggest to her that she needed to mark a shooter in one of
11 those specific areas and, because of that, I objected.

12 I proposed a neutral and an unmarked exhibit. And,
13 in fact, it's a defense exhibit that shows the area and it's
14 blank. And I'd suggest to the Court that the State utilize
15 that and allow Ms. Neal to mark up our blank exhibit rather
16 than allowing her to mark and use the diagram that sets forth
17 other items of evidence and their markings.

18 THE COURT: Thank you.

19 Ms. De La Garza.

20 MS. DE LA GARZA: Your Honor, prior to the witness
21 being shown this particular diagram, she did indicate exactly
22 where these defendants had gone on another diagram that didn't
23 have any evidence marked and she consistently drew marks on
24 this second diagram of what she had described prior to seeing
25 this diagram.

1 Additionally, Your Honor, this second diagram that
2 she wrote on only has numbers. It doesn't show the
3 significance of those numbers. There was a legend, which the
4 Court asked be marked out, and it was, so the witness had no
5 idea as to what these numbers meant.

6 Additionally, she has never been told by the
7 District Attorney's Office. I have had this case from day one
8 and we have never talked with her about what those numbers
9 mean. They could be anything. She has no idea.

10 Additionally, Your Honor, I think that her testimony
11 was consistent in the prior hearings with where she had spaced
12 these shooters, as well as the victim in this case, and that's
13 what I would proffer and that this is not suggestive and she
14 had no idea of knowing what any of those little numbers were.

15 THE COURT: Thank you.

16 As to the issue, this first issue, defence did
17 object. The Court asked for two things. One, the Court
18 marked out some references to guns that was in large bold
19 letter, covered that up with a piece of white paper so it
20 could not be viewed. There's a clear shield on top of that,
21 which was used for the demonstrative purposes of marking.

22 Prior to the exhibit being used, the Court asked to
23 have a proper foundational basis as to what it represented
24 and, secondly, to have independent testimony of the locations
25 of the alleged shooters for the time in question and then be

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

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.

1 Bindrup to try and try that case. It was unprovable and that
2 was the one and only reason that it was dismissed. It was
3 discussed by Deputy -- Chief Deputy Koot and I at the time and
4 it was dismissed. There was absolutely no agreement. There
5 was no reason for that to be dismissed other than lack of
6 evidence and that's exactly what Pam Neal was told on that
7 day, "We are not gonna go forward, we're not promising you
8 anything," and that's why it was dismissed.

9 Now the only reason I asked her why is because in
10 opening statements Ms. Melinda Simpkins stood in front of this
11 jury and made the allegation, in fact, that she would prove
12 that there was an agreement with the State. I think there was
13 no good basis, no good faith basis, for them to make that
14 allegation, because they have nobody to prove that and
15 absolutely no showing of that.

16 If, in fact, they wanted to bring Chief Deputy Koot
17 into this office today or prior, they could have done that for
18 a showing, but there's absolutely no proof that there was an
19 agreement for this woman to testify. We could not prove that
20 case, just like so many cases over in North Las Vegas.

21 Yes, the State contends that she was present. The
22 State doesn't know what happened outside that door. We know
23 who was present with her. We didn't know if there was a plan.
24 There was no gun found. She went into that house, she left
25 and she was arrested later. How we can prove she did anything

1 out of those facts is beyond the State. It would be
2 impossible. We couldn't even show that she had a gun. We
3 couldn't even show that she went there with those other
4 people. We couldn't show how they got there or what they said
5 before, after or during. And, initially, the -- not the
6 victim, the little girl, but Antonio Luney, who Ms. Neal did
7 believe had possibly killed her cousin, wasn't even
8 cooperative with the police.

9 Once again, it's a North Las Vegas case, Your Honor.
10 We didn't have the evidence to prove it and that was the one
11 and only reason for the dismissal.

12 The State's questioning as to why it was dismissed
13 does not in any way open the door for this defense to go into
14 specific facts. It still doesn't go to her truthfulness. It
15 might go to her violent tendencies, but it doesn't -- those
16 facts have nothing to do with whether she's a truthful person
17 and that's the State's contention at this point, Your Honor.

18 THE COURT: Thank you.

19 Anything additional, Mr. Bindrup?

20 MR. BINDRUP: If there was insufficient evidence,
21 the State wouldn't have taken the additional step, not only a
22 dismissal that morning, but, on the record, a grant of
23 immunity forever and ever. There were plenty of eyewitnesses
24 who identified her, who knew her. And she had no right to be
25 there in the house, she had no right to barge in and she was

1 with another individual that had a gun when the gun was
2 discharged and a young person was injured.

3 MS. DE LA GARZA: Your Honor, may I respond?

4 THE COURT: I don't want a response at this time.
5 If we have some documents as to that proceeding that indicate
6 that there was a dismissal, coupled with immunity, I'd like to
7 see them.

8 MR. BINDRUP: May I approach, please?

9 THE COURT: Yes.

10 MR. BINDRUP: And I'll be showing the Court the
11 dismissal and immunity language colloquy between the Court and
12 Mr. Koot from approximately page 64 through 66.

13 MS. DE LA GARZA: Your Honor, I don't have a copy of
14 that.

15 (Pause in the proceedings)

16 THE COURT: In the transcript before the Court,
17 beginning on line 64, a conversation with Mr. Koot addressing
18 Mr. Bindrup, then with the Court and then a statement by Mr.
19 Koot on the bottom of page 64, lines 24 and 25.

20 Mr. Koot: "Yes, we're going to dismiss this case
21 right now and other charges."

22 And it goes on and Mr. Koot, again, at line 9 on
23 page 65, says just that the case is to be dismissed. On 13,
24 "It will not be refiled."

25 The Court asked a question, but ultimately the Court

1 asked, on page 66, line 2, and I'm taking it partially out of
2 context, but the pertinent part, "I mean the whole thing is
3 like some kind of big chart that you need a score card to know
4 what's going on as far as the allegations." And then it
5 continues, "But the State is dismissing that and giving her
6 full immunity on that charge."

7 Mr. Koot: "That is correct, Your Honor. Did you
8 hear the murmurs in the crowd," and so on.

9 Mr. Koot has a statement in there about whether it's
10 provable or not provable in his review, but the assertion that
11 is being made by Mr. Bindrup, as to what the State did, the
12 State is dismissing and giving her full immunity.

13 The Court is not going to deviate from its prior
14 position in terms of going into the specific allegations, (a),
15 because it's not appropriate and, (b), because it's a waste of
16 time. This trial is not about that. However, as I indicated
17 previously, her credibility or bias is at issue and counsel,
18 because of the statement as to dismissal, can indicate what
19 Mr. Koot told the Court or, more specifically, that it was
20 being dismissed and immunity was being offered, but, again,
21 we're not gonna get into the specifics as to what happened,
22 except what she was originally charged with. And that is what
23 the transcript says.

24 I know, Ms. De La Garza, you say you haven't seen
25 it, but you also indicate --

1 MS. DE LA GARZA: Your Honor, I have, and I
2 apologize for saying that.

3 THE COURT: -- you were there and I think it's
4 appropriate for Mr. Bindrup to be at least able to say what
5 Mr. Koot told the Court when asked and he was told -- Mr. Koot
6 told the Court this is dismissed and with immunity.

7 MS. DE LA GARZA: And, Your Honor, if I could just
8 make sure that I make a full record here.

9 THE COURT: Go ahead.

10 MS. DE LA GARZA: On page 65, when it says, "We're
11 moving to dismiss that, Your Honor," and he states the case
12 number, he says, "Whether she testifies or not, I've reviewed
13 this case, we cannot prove the case and I'm moving to dismiss
14 it." Then further down, on line 17, he says, "If counsel
15 wants to go into that, I would ask for immunity on that
16 charge, absolutely."

17 So what he is saying is, if they are going to ask
18 her questions, --

19 THE COURT: Counsel, it's not so much -- you don't
20 need to attempt to clear it up. The record speaks for itself
21 and that's what I am stuck with, what the record says. And
22 the record goes back and forth, but ultimately what was said
23 on the record is that the case is dismissed with immunity.
24 And, in terms of that, again, if I allow the door to be
25 opened, then we need to go into the whole thing, but that's

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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?

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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 May 1st, 2001?

2 A Yes.

3 Q And directing your attention to page 2 of the
4 statement from lines 14 through 23, would you please review
5 that?

6 When you were asked what time you witnessed the
7 shooting, is it correct that in your police statement, at
8 least, you indicated it was 3:40?

9 A Yes, it's there.

10 Q Directing your attention to page 51 of the statement
11 to police, and that would be lines 17 and 18, when you were
12 asked about what time the incident was, is it true that you
13 indicated it was about 3:30, 3:40 and that I think she had to
14 be at work at 4:00 or 4:30?

15 A Yes.

16 Q Just one final question on the time. Do you think
17 it was 3:30 or 3:40?

18 A It was in between that time, 3:30 or 3:40. I can't
19 tell you the exact time. I didn't have a watch on.

20 Q And if you based your time estimation upon your
21 picking up your son from school and it was really a Saturday,
22 then you may be off as far as your time assessment?

23 A Yeah.

24 Q Were you drinking at all that day?

25 A I had a wine cooler.

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1 Q And do you know exactly what kind that was?

2 A Smirnoff.

3 Q And how many bottles did you have?

4 A Maybe one.

5 Q Did you happen to ingest any marijuana?

6 A No.

7 Q So other than the cooler, you were not under the
8 influence of any kind of drug that day?

9 A No.

10 Q When this happened, you had four kids inside?

11 A Yes.

12 Q And what were their ages?

13 A 12, 8 and she was 3 -- 12, 8, 3 and 1 -- eight
14 months.

15 Q So during the shooting, you had four children just
16 inside the apartment?

17 A Yes.

18 Q When the shooting occurred, you'd characterize it as
19 a huge commotion in the neighborhood?

20 A Yes.

21 Q And people started running immediately?

22 A Yeah.

23 Q And people started ducking for cover?

24 A Yes.

25 Q You, however, didn't duck for cover. You sat --

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1 stood on the balcony and observed everything from start to
2 finish?

3 A Yes.

4 Q With no concern of your four children inside the
5 apartment?

6 A They were inside and my apartment wasn't being shot
7 at. The guns were pointed in a different direction.

8 Q Would it be accurate to say that you were in shock
9 during this time period?

10 A Yes.

11 Q You had been in that neighborhood before when you've
12 heard gunshots go off?

13 A Yes.

14 Q Isn't your usual reaction to flee immediately for
15 cover or go inside?

16 A For my kids, not myself.

17 Q And on this occasion though you chose to stand
18 outside on the balcony and observe a shooting from start to
19 finish?

20 A Yes.

21 Q Do you recall testifying previously that there were
22 over 30 people that were outside in that area?

23 A Yes.

24 Q I want to talk to you about the actual distance.

25 MR. BINDRUP: May I approach, please?

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1 THE COURT: Yes, you may.

2 BY MR. BINDRUP:

3 Q I'm showing you Defendant's Proposed Exhibit A.
4 Does that appear to be an accurate depiction of your apartment
5 and the parking lot and the area where the shooting occurred?

6 MS. DE LA GARZA: Your Honor, I'm gonna have an
7 objection at this time. It looks like that picture was taken
8 on May 31st. I don't know if those cars were there. I don't
9 know if it is true and accurate since it is taken later.. It's
10 not taken on the day of the crime.

11 MR. BINDRUP: May I rephrase the question, please?

12 THE COURT: Yes.

13 BY MR. BINDRUP:

14 Q Other than the cars that may appear parked in the
15 parking lot, do the buildings themselves and the trees appear
16 similar to how they were on the day of the shooting?

17 A Yes.

18 THE COURT: That's a yes for the record.

19 BY MR. BINDRUP:

20 Q And just distance-wise, would you please describe,
21 from your balcony to the ground, that's a drop off, right?

22 A Uh-huh. Yes, it is.

23 Q And approximately how far of a drop off?

24 A It's a two story and I live up here in the corner.

25 Q So from the top of the balcony to the bottom, would

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1 you -- could you estimate how many feet that would be from the
2 ground?

3 A About 12 feet.

4 Q And from the bottom of your apartment to the
5 sidewalk approximately how far?

6 A It would be about 17 or 18 feet more.

7 Q And then there's a sidewalk and a parking lot that
8 has the ability for cars on both sides of the parking lot to
9 park, correct?

10 A Uh-huh.

11 Q And then the other building, correct?

12 A Yes.

13 Q The other building, does it have approximately the
14 same grass area as from your apartment to the parking lot?

15 A No, I think there is -- on this side is a little
16 narrower.

17 Q Okay, you're talking about on the right side across
18 --

19 A From me.

20 Q Thank you.

21 MR. BINDRUP: May I publish this, please?

22 THE COURT: It hasn't been admitted at this time.

23 MR. BINDRUP: I'm sorry, I'd move to admit it.

24 THE COURT: Ms. De La Garza?

25 MS. DE LA GARZA: No objection, Your Honor.

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1 THE COURT: So admitted, Defense's A.

2 (Defendant's Exhibit A admitted)

3 BY MR. BINDRUP:

4 Q Immediately after the shooting, you still didn't go
5 into your apartment, did you?

6 A No.

7 Q You went downstairs and talked to Michelle?

8 A That was after Eric came running through the
9 apartments.

10 Q So when the shooting ended, Eric came running
11 through the apartments, correct?

12 A My daughter came out the door and told me he was on
13 the phone and I wouldn't get on the phone.

14 Q So you stayed outside?

15 A Yes.

16 Q And you went downstairs?

17 A Yes.

18 Q Before police arrived, you and Michelle had an
19 occasion to go and look at the downed individual, didn't you?

20 A No. I didn't walk over there.

21 Q Did you walk close to the area at all?

22 A No.

23 Q Did you observe individuals, after Mr. Williams was
24 down, attempt to move him to another location?

25 A They just turned him over.

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1 Q So, even after the last shot was fired, you
2 testified people ran from the area. There were then people
3 that congregated around the downed individual, right?

4 A Yeah. Everybody didn't run from the area.

5 Q There were some people that stayed around the crime
6 scene area, right?

7 A Yes.

8 Q And many looky-loos came to check out the area,
9 correct?

10 A Yes.

11 Q And many people were by and around the body,
12 correct?

13 A Yes.

14 Q And you even remember seeing people physically turn
15 him over?

16 A Yes.

17 Q Did you see anybody move him from the area and try
18 to get him to a car?

19 A No.

20 Q You said there were about, at least before or during
21 the time of shooting, about 30 people milling around. Is it
22 true that after the shooting that even a greater crowd came
23 into the area?

24 A Yes.

25 Q So, prior to police arriving, could you estimate

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1 approximately what number greater than 30 were congregating in
2 that entire area?

3 A No.

4 THE COURT: Ms. Neal, I need you to bring your voice
5 up, because you're real soft.

6 THE WITNESS: No. There was people coming toward
7 the -- from the direction of Martin Luther King, running to
8 the apartments, running toward his body.

9 BY MR. BINDRUP:

10 Q Would it be an estimation of over 50, over 75?

11 A It wasn't that many.

12 Q Over 50?

13 A No, it wasn't that many.

14 Q Over 40?

15 A Yeah, it could have been over 40.

16 Q So there was quite a lot of activity after the
17 shooting, but before the police arrived, correct?

18 A Yes.

19 Q I'm showing you two photographs, Defense Proposed
20 Exhibits B and C, which appear to be -- can you tell me if
21 those accurately depict your apartment complex and where you
22 were at?

23 A Yes.

24 Q There appear to be two individuals at the bottom.

25 A Yes.

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1 Q Would that be Michelle Wilson's apartment?

2 A Yes.

3 Q Would that be a picture of you and Michelle?

4 A Yes.

5 Q In both photographs do you see both of you standing
6 there?

7 A Yes.

8 Q So, after the shooting, you and Michelle basically
9 stayed on the ground floor and observed things and checked
10 things out?

11 A Yes.

12 MR. BINDRUP: I'd move to introduce Defendant's
13 Proposed B and C, please.

14 MS. DE LA GARZA: No objection, Your Honor.

15 THE COURT: B and C then so admitted.

16 (Defendant's Exhibits B and C admitted)

17 BY MR. BINDRUP:

18 Q You said you were leaving to take Michelle to work?

19 A Yes.

20 Q And you said she needed to be to work at 4:00, maybe
21 4:30?

22 A Yes.

23 Q Isn't the truth that her work started at 4:30?

24 A I'm not sure.

25 Q Hadn't you taken her to work so many times before

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1 that date that you knew she needed to be to work at 4:30?

2 MS. DE LA GARZA: Objection, asked and answered.

3 THE COURT: I'll sustain the objection.

4 BY MR. BINDRUP:

5 Q How long had you been taking Michelle to work on a
6 regular basis?

7 A It wasn't a regular basis. It was just, when she
8 didn't have a ride, she would come, knock on the door or send
9 one of her kids to knock on the door to take her to work.

10 Q And how long did it take to drive her to work?

11 A About 25 minutes, 20, 25 minutes.

12 Q And do you take her straight to work or do you go
13 elsewhere?

14 A Straight to work or sometimes she would drop her
15 kids off at her sister's.

16 Q And you're telling me that you don't believe then
17 that she had to be at work at 4:30? You think it was closer
18 to 4:00?

19 MS. DE LA GARZA: Objection, asked and answered.

20 THE COURT: I'll sustain the objection.

21 Can we have another question, please?

22 BY MR. BINDRUP:

23 Q Right after the shooting, didn't you believe that an
24 individual by the name of Avion [phonetic] was shot?

25 A No.

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1 Q And when police talked to you, you denied seeing
2 anything, correct?

3 A Yes.

4 Q How long did you stay downstairs with Michelle
5 Wilson before returning to your apartment?

6 A Maybe two hours, a little bit over two hours.

7 Q And do you recall during that time period your
8 children having to come down and find you?

9 A No.

10 Q Do you recall Michelle -- Did Michelle end up
11 feeding any of your children on that date?

12 A No.

13 Q As you're outside on the balcony, you were standing
14 there hanging out or were you walking?

15 A I had just come out the door and I locked the door
16 and I turned around and looked in the parking lot.

17 Q Were you headed someplace or were you just still
18 waiting?

19 A I was standing there and I was looking in the
20 parking lot. I was gonna take Michelle to work.

21 Q And there was nothing out of the ordinary to direct
22 your attention to the parking lot until you heard the first
23 gunfire, right?

24 A No. It was something out the ordinary.

25 Q Individuals out and about, that was out of the

1 ordinary?

2 A Yes, one individual.

3 Q Your main attention was focused on the scene only
4 after the first shot, correct?

5 A No.

6 Q You mentioned watching Mr. Bennett walking between
7 buildings and into the open parking lot area. Because of the
8 location where you were at, you were never able to see him
9 face on, were you?

10 A Yes.

11 Q Weren't you only able to see the side of his face
12 and then the back of his head?

13 A No.

14 Q Are you telling me that, as he walked in front of
15 you, you were able to see the front of his face?

16 A Yes, I did.

17 Q And when the shooting started, you were not able to
18 see his face at all, were you?

19 A No.

20 Q And that was because his back was to you?

21 A Yes.

22 Q And Lailoni Morrison's back was to you as well?

23 A Lailoni was more to the side.

24 Q To the side.

25 What side did you see of him?

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1 A Like this, like this way.

2 MS. DE LA GARZA: And, Your Honor, just for the
3 record, she's kind of turning to the right, kind of half
4 facing forward.

5 THE COURT: The record will so reflect. Thank you.
6 BY MR. BINDRUP:

7 Q So please tell me what Mr. Bennett was wearing that
8 day, what clothes he had on.

9 A I can't remember what clothes he had on.

10 Q And please tell me what Lailoni Morrison was wearing
11 that day?

12 A He had on some black pants.

13 Q Do you recall testifying previously at the prior
14 court appearance that you could not identify any of the
15 shooters' clothing?

16 A Yeah.

17 Q And now today you can remember that Lailoni Morrison
18 was wearing black pants?

19 A I think I said that in my police statement, that he
20 had on black pants. I'm not sure, but I said it before.

21 Q Anthony Gantt, you don't remember what he was
22 wearing?

23 A No.

24 Q Jermaine Webb or Wing, you don't remember what he
25 was wearing?

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1 A No.

2 Q Louis Matthews or Chew, you don't remember what he
3 was wearing?

4 A No.

5 Q Do you know Antwon Lamont Graves?

6 A Yes.

7 Q Is he also known as T-Wack?

8 A I don't know.

9 Q He was also there, wasn't he?

10 A Yes.

11 Q And he had a gun, didn't he?

12 A No.

13 Q You identified him to police as one of the shooters;
14 didn't you?

15 A Yes.

16 Q Because of your identification of Antwon Lamont
17 Graves as one of the shooters, he was charged with the
18 offense, wasn't he?

19 A Yes.

20 Q Do you recall going to court to testify against
21 Antwon Lamont Graves?

22 A No.

23 Q Do you recall being served a subpoena to appear in
24 court?

25 A No.

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1 Q And you clearly told police though that Antwon
2 Graves had a gun and shot into Joseph Williams' body?

3 A Yes.

4 Q And you later changed your mind?

5 A Yes.

6 Q Did you change your mind because you were friends
7 with some of Lamont Graves' family?

8 A No.

9 Q Was he there and shooting or was he not?

10 A He was there, but I wasn't sure if he had a gun or
11 not.

12 Q So to the police you're sure he has a gun and then
13 later you change your mind and he doesn't have a gun?

14 A I had to really sit down and think about it.

15 Q Louis Matthews or Chew, you had a chance to tell
16 police that you saw him with a gun and he shot Joseph
17 Williams, didn't you?

18 A Yes.

19 Q You picked him out of a photo lineup and said
20 specifically Chew was one of the shooters?

21 A Yes.

22 Q Now you could have said Chew was one of the shooters
23 maybe or I think, but you said Chew was one of the shooters,
24 correct?

25 A Yes.

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1 Q And when you gave that statement on May 5th and
2 picked him out of a photo lineup on May 8th, you were
3 absolutely positive that he shot into the body and killed
4 Joseph Williams, weren't you?

5 A Yeah.

6 Q And then later you, all of a sudden, come to the
7 conclusion you're mistaken?

8 A I just couldn't be sure.

9 Q When you gave your statement to police, you knew
10 that the police would rely on what you were telling them?

11 A Yes.

12 Q And do you know that Antwon Lamont Graves was
13 arrested and charged with murder because of your
14 representations?

15 A Yes.

16 Q Do you feel badly that he was in jail?

17 MS. DE LA GARZA: Objection as to relevance.

18 THE COURT: I'll sustain the objection as to the
19 question.

20 Can we have a new question, please?

21 (Pause in the proceedings)

22 BY MR. BINDRUP:

23 Q Louis Matthews or Chew, you also on May 1st told
24 police he had a gun and shot the victim and picked him out of
25 a photo lineup on May 8th, didn't you?

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1 A Yes.

2 Q And you didn't mince words. You said he was one of
3 the shooters?

4 A Yes, I did.

5 Q Coincidentally enough, the statements on all the
6 photo lineups have a person's name and then "Was one of the
7 shooters," identical language. Did the police suggest that
8 you should write it down like that?

9 A No.

10 Q Is it just a coincidence then that on every person
11 that you identified, Mr. Bennett, Mr. Graves, Mr. Morris
12 [sic], Mr. Matthews, Mr. Gantt and Mr. Webb, that you said the
13 same thing about them, that they were one of the shooters?

14 A Yes.

15 Q It's just a coincidence then?

16 A Yes. I wrote it.

17 Q The police suggested to you who to pick out and name
18 as shooters, didn't they?

19 A No, they didn't.

20 Q So Louis Matthews or Chew, because of
21 representations you made to police, was arrested and charged
22 with the crime of murder, wasn't he?

23 A Yes.

24 MS. DE LA GARZA: Objection, asked and answered.

25 THE COURT: I'll allow the question to stand and the

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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

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1 wasn't sure about the people that were on the side of Dough
2 Boy. I told them that in the beginning, I wasn't sure, and
3 maybe if I saw some pictures I could be sure.

4 Q Now you link many of these individuals as Gerson
5 Park individuals, except for Chew and Wing. You just
6 testified that you weren't sure if they were associated with
7 Gerson Park or not.

8 A Yes.

9 Q Is that correct?

10 A Yes.

11 Q So is it just a coincidence that those are two
12 individuals, Chew, Louis Matthews, and Wing, Jeremy Webb, that
13 you happened to change your story about?

14 A No.

15 Q No what? It is a coincidence or not?

16 A No, it's not a coincidence.

17 Q During all times of the shooting Mr. Bennett's back
18 was to you, correct?

19 MS. DE LA GARZA: That's been asked and answered,
20 Your Honor. Objection.

21 THE COURT: I'll sustain the objection.

22 BY MR. BINDRUP:

23 Q Since Mr. Bennett's back was to you during the
24 shooting, you really have no idea whether he had a gun or not,
25 do you?

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1 MS. DE LA GARZA: Objection, Your Honor,
2 misstatement of the testimony.

3 THE COURT: Sustained.

4 BY MR. BINDRUP:

5 Q Do you recall testifying previously that you never
6 saw Mr. Bennett with a gun?

7 A No.

8 Q So what kind of gun did he have?

9 A It was silver. I don't know what kind of gun it
10 was.

11 Q Are you just assuming he had a silver gun?

12 A No. I saw it.

13 MR. BINDRUP: May I approach, please?

14 THE COURT: Yes.

15 BY MR. BINDRUP:

16 Q Directing your attention to a transcript from June
17 5th, 2001, on page 90, do you recall being asked, "Did you
18 ever see Face's gun," and your response being no?

19 A Yes.

20 Q And now today you're saying he had a silver gun.

21 A I know he had a silver gun.

22 Q So when you testified on June 5th under oath and you
23 said you never saw his gun, was that incorrect?

24 A Yes.

25 Q So now you're changing your story and saying you did

1 see a silver gun?

2 A I'm not changing my story. They were asking me a
3 lot of questions, a lot of different police.

4 Q So you were just confused?

5 A Yes.

6 Q But you definitely don't know if it was a revolver
7 or if it was an automatic?

8 A No.

9 Q Do you recall telling police, in your statement of
10 May 1st, that you thought he had an old-time gun or a
11 revolver?

12 A It was silver. It looked like those guns that you
13 buy at the grocery store for the little kids.

14 Q Okay, when you said old-time gun, that would be a
15 revolver, correct?

16 A Like a western gun.

17 Q Would that be like a revolver as opposed --

18 THE COURT: We'll let her answer -- Counsel, we'll
19 let her answer stand. She stated what she believed it to be
20 and now can we have the next question, please?

21 (Pause in the proceedings)

22 BY MR. BINDRUP:

23 Q It was Mr. Gantt that shot more than any other
24 individual, right?

25 A Yes.

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1 Q Did you see him reload his weapon?

2 A No.

3 Q No, you didn't see him reload?

4 A Maybe I did, but I don't think so. It's been a
5 while.

6 Q And Lailoni Morrison had what kind of weapon?

7 A It was a black gun.

8 Q And other than Lailoni Morrison's black pants, you
9 really can't remember any of the shooters, how they were
10 dressed, on that particular day, can you?

11 MS. DE LA GARZA: Objection, asked and answered.

12 THE COURT: I'll allow the answer to -- the question
13 to stand this one last time.

14 THE WITNESS: No.

15 BY MR. BINDRUP:

16 Q Is it possible that in your being scared, the
17 excitement of the moment, that you mixed up some of the
18 shooters with each other?

19 A I mixed up the ones that were on the side of Dough
20 Boy, not the three I saw right off.

21 MR. BINDRUP: May I approach again, please?

22 THE COURT: Yes, you may.

23 (Pause in the proceedings)

24 BY MR. BINDRUP:

25 Q Directing your attention to page 179 of the

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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 --

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1 what other neighbors of yours witnessed this?

2 MS. DE LA GARZA: Objection as to speculation.

3 THE COURT: She can answer the question if she
4 knows.

5 THE WITNESS: It was Toy and -- I think it was Toy
6 and Pat, I'm not sure, but I know Toy was one of them.

7 BY MR. BINDRUP:

8 Q And do you recall, at the time of the last hearing
9 in June, being reluctant to say who was out and witnessed the
10 shooting?

11 A Yes.

12 Q And do you recall being told what would happen if
13 you wouldn't identify who else had witnessed this that you
14 were aware of?

15 A Could you repeat that?

16 Q I'll strike that.

17 You loved your cousin, Eric Bass, correct?

18 A Yes, I did.

19 Q You were very shaken and upset when he was killed?

20 A Yes.

21 Q And do you recall the date of that?

22 MS. DE LA GARZA: Objection as to relevance, Your
23 Honor.

24 THE COURT: I'll allow the question to stand.

25 THE WITNESS: The day he got murdered?

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1 MR. BINDRUP: Yes.

2 THE WITNESS: April 15th.

3 BY MR. BINDRUP:

4 Q And at that time you decided you wanted to find out
5 who was responsible, right?

6 A Yes.

7 MS. DE LA GARZA: Objection, Your Honor. May we
8 approach?

9 THE COURT: Yes.

10 (Off-record bench conference)

11 BY MR. BINDRUP:

12 Q When that happened, in your anger, you wanted to
13 find out who was responsible, correct?

14 A Yes.

15 Q Do you know Frederick Schneider or a Henry?

16 A Yes.

17 Q Did you also see Mr. Schneider on the day of the
18 shooting?

19 A Yes.

20 Q And do you recall telling police that this was
21 another individual that was responsible for the shooting of
22 Joseph Williams?

23 A No.

24 Q Did you tell police he was not involved or just
25 there?

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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?

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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

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1 the statement you gave to police?

2 A No.

3 Q That wasn't a concern of yours on May 1st?

4 A No.

5 Q You were out on bail on the charge on May 1st,
6 weren't you?

7 A Yes.

8 Q The detectives that interviewed you on May 1st had
9 no interest in discussing your case with you, did they?

10 A No.

11 Q You were there just to help them solve the Joseph
12 Williams killing, weren't you?

13 A No. I was there with Eric's girlfriend because they
14 had some questions to ask her.

15 Q When you went, didn't it cross your mind, "Hey, if I
16 help the police, they'll help me"?

17 A No.

18 Q It didn't cross your mind, if you helped solve a
19 murder, that a multiple count violent offense would be
20 dismissed against you?

21 A No. If you go back in your papers to the
22 preliminary hearing, I told the State to give me back all my
23 charges if that's why they thought I was here testifying
24 against these individuals, which was not it.

25 Q So before you testified on June 5th, 2001, this

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1 multiple count complaint was dismissed against you, wasn't it?

2 A Before I testified, yes.

3 Q And you were also granted immunity, weren't you?

4 A Yes.

5 Q And you're telling us that all those counts being
6 dismissed against you and that you be granted immunity so that
7 you would never have to face those charges had nothing to do
8 with your testifying against individuals in June?

9 A No, no, because they made it very clear to me, the
10 police and the State, that my testimony against these
11 individuals would not get me out of trouble of my own
12 business. It had nothing to do with that. I didn't care
13 about those charges.

14 Q So that was just a coincidence, that your criminal
15 case was dismissed and you were granted immunity, that was a
16 coincidence?

17 A You have to ask them. I didn't ask them to dismiss
18 anything. I didn't make any deals with them, nothing like
19 that, except that they made it clear to me what I was telling
20 them had nothing to do with mine, they couldn't drop mine
21 because of that, nothing to do with it.

22 Q You also received money from the State, correct?

23 A Yes.

24 Q And how much?

25 A Three twenty-five (325).

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1 Q Did you receive other funds?

2 A No, just the thing you take to the window for coming
3 to court, for the subpoena.

4 Q When you come to court you get paid?

5 A Yeah.

6 Q Detectives or people from the District Attorney's
7 Office have not indicated to you that by your helping them
8 that you can get more financial gain?

9 A No.

10 Q The apartment -- Do you still receive monies for the
11 apartment that was over in the location of the shooting?

12 A Do I still receive money?

13 Q Do you receive money or funds from them?

14 A No.

15 Q You are in a better apartment now, better
16 neighborhood, than you were at the time of the shooting,
17 right?

18 A No.

19 Q So the dismissal and grant of immunity is simply
20 good news for you on that day. It had nothing to do with your
21 testimony?

22 MS. DE LA GARZA: Objection, asked and answered.

23 THE COURT: I'll sustain the objection.

24 BY MR. BINDRUP:

25 Q If you had not proceeded to testify against these

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1 individuals, your case would not have been dismissed that day,
2 would it have?

3 A I don't know. You'd have to ask the State.

4 Q Did the police officers suggest to you, if you name
5 certain individuals, that you would be taken care of?

6 A Never.

7 Q Who is Reginald Fobbs?

8 A My brother.

9 Q Are you close with him?

10 A Kind of.

11 Q Do you recall having conversations with Mr. Fobbs
12 within the last six-month period about what you saw on that
13 date?

14 A No.

15 Q Do you recall telling him that you did not really
16 see the shooting that day?

17 A No, never.

18 Q Do you recall being -- Do you know a Lakiesha Reed?

19 A No.

20 Q Do you recall being --

21 MR. BINDRUP: The Court's indulgence.

22 (Pause in the proceedings)

23 BY MR. BINDRUP:

24 Q You don't know Lakiesha Reed?

25 A No.

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1 Q Do you recall being -- Do you know an individual by
2 the name of HK?

3 A Yes.

4 Q Were you at his home within the last six months in
5 which you had occasion to talk with a Lakiesha Reed on the
6 phone?

7 A No. I wasn't at his home. I was outside his home
8 at my nephew's house next door.

9 Q Do you recall, since the shooting, telling any
10 family, friends or acquaintances that you had not really seen
11 the shooting?

12 A No.

13 Q So would it be accurate to say that since May 1st,
14 when you interviewed with police, that you have never denied
15 seeing what you saw?

16 A I saw what I saw.

17 Q You mentioned Gerson. Isn't part of being a Gerson
18 simply living or having lived in a particular geographical
19 area?

20 A No.

21 Q Today it appeared to be that all of the individuals
22 you've named previously, you know them all much better than
23 you know Mr. Bennett, is that accurate?

24 A Not Wing and Chew.

25 Q Pardon?

NEAL - CROSS

1 A Not Wing and Chew.

2 Q Okay. Of all the individuals though, is it accurate
3 to say you know Mr. Bennett the least well?

4 MS. DE LA GARZA: Objection, asked and answered.

5 THE COURT: I'll allow the question in that form to
6 stand.

7 THE WITNESS: Out of Lailoni and Wacky G, I know him
8 the least.

9 BY MR. BINDRUP:

10 Q You never socialized with him, correct?

11 A No.

12 Q You've never hung out with him?

13 A No.

14 Q You never had dinner with him?

15 A No.

16 Q You've never gone anyplace with him?

17 A No.

18 Q So all you really know about Mr. Bennett is what
19 you've heard from others, right?

20 A Yeah.

21 Q You said today you knew him about 14, 15 years?

22 A Yes.

23 Q Do you recall telling police, in your May '1st
24 interview, that you only knew him four years ago?

25 A Yes.

NEAL - CROSS

1 Q Okay, which is accurate? Did you know him four
2 years ago or have you known him 14, 15 years?

3 A 14, 15 years.

4 Q And do you recall that you changed your estimation
5 of when you knew him at the time of the preliminary hearing of
6 June 5th and indicated you had known him for nine years?

7 A Yes.

8 Q So what is to be believed, the four years, the nine
9 years or the 14, 15 years?

10 A The 14, 15 years.

11 Q When you say Gerson and somehow call Mr. Bennett a
12 Gerson, this is based on just what you've heard and really not
13 what you know, correct?

14 A What I know and what I've seen.

15 Q Isn't a gang just girls and guys that kick it or
16 hang out together?

17 A Yeah. That could be a gang.

18 Q And when you say Gerson, isn't that saying more
19 about a neighborhood where somebody is from than anything
20 else?

21 A No. My brother's a Gerson and he never lived in the
22 Gerson, except when we were one year old.

23 Q And you didn't even know Mr. Bennett's name until
24 the police told you what his name was, right?

25 A No. I saw his name in the paper. I always knew him

NEAL - CROSS

1 as Face.

2 Q His name, Ashley Bennett, though, you didn't know
3 that until the police told you that?

4 A I saw it in the paper.

5 Q Okay. And the police verified though his name was
6 Ashley Bennett?

7 A Yes.

8 MR. BINDRUP: The Court's indulgence.

9 THE COURT: That's fine.

10 (Pause in the proceedings)

11 BY MR. BINDRUP:

12 Q We were talking about the criminal complaint that
13 had been dismissed based upon an April 15th incident. And you
14 had an occasion to be arrested for that?

15 A Yes.

16 Q And do you recall an Officer Mark Koch, K-O-C-H, at
17 the time of arrest asking you certain questions?

18 A Yes.

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

20 THE COURT: Let's see where the next question's
21 going.

22 MR. BINDRUP: May we approach?

23 THE COURT: Yes.

24 (Off-record bench conference)

25 //

NEAL - REDIRECT

1 BY MR. BINDRUP:

2 Q Is it true that when you were asked about the
3 incident that you indicated to Officer Mark Koch and -- you
4 asked him if your cousin, if Eric Bass, deserved to be shot?
5 Do you recall responding to one of his questions like that?

6 A Yes.

7 (Pause in the proceedings)

8 MR. BINDRUP: Nothing further.

9 THE COURT: The State.

10 REDIRECT EXAMINATION

11 BY MS. DE LA GARZA:

12 Q Pam, isn't it true that when you were asked on May
13 1st what time this incident occurred, this killing of Dough
14 Boy, that you said you weren't even sure what date or day, you
15 just know you were taking your neighbor downstairs to work?

16 A Yes.

17 Q You didn't even know the date?

18 A No.

19 Q You didn't know the day?

20 A No.

21 Q You were just trying to tell them what you did know?

22 A Yes.

23 Q And you told them that you knew she had to be at
24 work at between 4:00 and 4:30?

25 A Yes.

NEAL - REDIRECT

1 Q When the shooting happened, did you stop and look at
2 your watch?

3 A I didn't have one on.

4 Q So when you gave them a time, were you just
5 approximating?

6 A I was just estimating about what time it was.

7 Q Let me ask you about your kids. Mr. Bindrup's
8 making a big deal about you being outside --

9 MR. BINDRUP: Objection to that characterization,
10 Your Honor.

11 THE COURT: I'll sustain the objection as to the
12 form of the question, counsel. It's not personal.

13 MS. DE LA GARZA: Strike that.

14 BY MS. DE LA GARZA:

15 Q You're outside and your kids are inside. Isn't it
16 true, in your previous testimony, that you said you had
17 actually instructed your children what to do --

18 MR. BINDRUP: Objection, leading.

19 MS. DE LA GARZA: -- if they heard shots?

20 THE COURT: I'll allow the question to stand in
21 light of the cross.

22 THE WITNESS: Yes. They already know. We live over
23 there in that. A gunshot just don't go off one day and don't
24 ever happen again. It happened every day, so they already
25 knew what to do. I taught them that.

NEAL - REDIRECT

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

NEAL - REDIRECT

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

NEAL - REDIRECT

1 you're not sure about?

2 A Some things.

3 Q Were you more sure about those things when you did
4 testify back -- or speak to the police on the 1st and then
5 when you testified in June?

6 A Some of the things.

7 Q And you said at the preliminary hearing that maybe
8 you could have mixed up the people on the side with Dough Boy?

9 A Yes.

10 Q And you were honest with the Court about those
11 people on the side?

12 A Yes.

13 Q But you said there weren't other people in the
14 parking lot itself?

15 A No.

16 Q And who were the people in the parking lot?

17 A Face, Lailoni and Wacky G.

18 Q And who were the people shooting?

19 A Face, Lailoni and Wacky G.

20 Q And who are you sure about?

21 A Face, Lailoni and Wacky G.

22 Q You were asked about your reluctance at the
23 preliminary hearing to talk about the other witnesses.

24 A Uh-huh.

25 Q Were you concerned for their safety at that time?

NEAL - REDIRECT

1 A Yes.

2 Q Is that why you were reluctant to talk about other
3 people's names and name other people out in an open courtroom?

4 A Yes.

5 Q But eventually you did, didn't you?

6 A Yes, I did.

7 Q At that June 5th preliminary hearing, when you
8 initially started testifying, did you know at that point that
9 that case against you had been dismissed?

10 A No, not at that point.

11 Q You only found out after one of the defense
12 attorneys started asking about it?

13 A That's when I found out.

14 Q And then it was explained to you why that was
15 dismissed, is that right?

16 A Yes.

17 Q Has the State promised you anything?

18 A No.

19 Q And isn't it true that the State told you whether
20 you testified or not --

21 MR. BINDRUP: Objection, leading.

22 THE COURT: I'll allow the question.

23 Go ahead.

24 BY MS. DE LA GARZA:

25 Q -- whether you testified or not that that case was

NEAL - RECROSS

1 gonna be dismissed?

2 A Yes.

3 Q Pam, did you see Dough Boy get murdered by Lailoni,
4 Face, Chew and others on March 3rd, 2001?

5 A He got murdered by Face, Lailoni and Wacky G. Those
6 are the ones I'm sure of.

7 MS. DE LA GARZA: No further questions.

8 THE COURT: Mr. Bindrup.

9 MR. BINDRUP: May I approach, please?

10 THE COURT: Yes.

11 MR. BINDRUP: Where is the photograph? Thank you.

12 RECROSS EXAMINATION

13 BY MR. BINDRUP:

14 Q Directing your attention to the June 5th transcript
15 on page 205, isn't it true that when you were asked, "And you
16 couldn't describe at all what sort of gun Mr. Bennett had,
17 could you," your response was no?

18 A Yes.

19 Q And today you're changing that by saying silver?

20 A No. I think I said it in my police statement.

21 Q I'm showing you Defendant's Exhibit C. Your
22 particular apartment is on the far right?

23 A Yes.

24 Q As soon as you walk out of your door, there is a
25 wall to your immediate left, is there not?

NEAL - RECROSS

1 A Yes.

2 Q And that wall precludes you from seeing anything to
3 your left, correct?

4 A Yes.

5 Q In fact, you can't see anything at all but wall to
6 your left unless you actually went to the balcony edge and
7 leaned over, right?

8 A No, you don't have to lean over. You could just
9 walk to the edge, turn your head and look straight that way to
10 the park.

11 Q From your door entrance and exit, however, you cannot
12 see between the two apartment buildings, can you?

13 A No.

14 Q You have to actually get out further so that you're
15 not obstructed by the wall?

16 A Yes.

17 MR. BINDRUP: May I please -- I'd move to -- I
18 believe it was introduced already, B and C. May I publish
19 them?

20 THE COURT: Not at this point. We will publish them
21 later.

22 (Pause in the proceedings)

23 BY MR. BINDRUP:

24 Q And just two final questions. It was Lailoni
25 Morrison, that you're clear about, he started firing first?

NEAL - RECROSS

1 A Yes.

2 Q And clearly it was Anthony Gantt, Wayne Gantt, Wacky
3 G that, after the shooting was over, he leaned over towards
4 Mr. Williams and continued to shoot?

5 A Yes.

6 MR. BINDRUP: Nothing further.

7 MS. DE LA GARZA: Nothing further, Your Honor.

8 THE COURT: You're excused. You can step down.
9 Thank you very much.

10 (Pause in the proceedings)

11 THE COURT: Ladies and gentlemen, that's gonna bring
12 our day to a conclusion. We went a little longer than I
13 expected today, being Friday, but, again, thank you, as
14 always, for your patience and your attention.

15 We're gonna get started at 1:00 o'clock on Monday,
16 but, again, the admonition not to converse among yourselves or
17 with anyone else as to any subject matter that might be
18 connected with the trial, please refrain from reading,
19 watching or listening to any commentary, should there be any,
20 but, most importantly, you've not heard all the evidence,
21 you've not heard instructions, you've not heard closing
22 argument and the Court would ask that you not form or express
23 any opinion as to the outcome of the subject matter until the
24 case is submitted to you at its conclusion.

25 With that, I bid you a safe and pleasant weekend.

1 Goodnight.

2 (Court recessed at 5:22 p.m. until Monday,
3 January 28, 2002 at 1:00 p.m.)

4 * * * * *

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DEFENDANT'S WITNESSES

None

EXHIBITS

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CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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