

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR MOORE,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

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Case No. 82747

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**RESPONDENT'S APPENDIX
Volume 1**

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on November 23, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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JEV/Glenn Anderson/ed

12:00AM 1 GRAND JURORS PRESENT ON JUNE 22, 2016

2

3 APRIL SANSON, Foreperson

4 CRYSTAL HALL, Deputy Foreperson

12:00AM 5 PAUL KRAIG, Secretary

6 ANGELA SHARRON, Assistant Secretary

7 CARRIE BIELAK

8 MARC CAREY

9 JEAN DANGLER

12:00AM 10 FRANCESCA GREEN

11 ELIZABETH HARWELL

12 CHRISTINA HERN

13 JOSEPH HUWYLER

14 WILLIAM LABIE

12:00AM 15 THOMAS RESHA

16 MICHAEL SEMINOFF

17 JEROME VAUGHAN

18

19

12:00AM 20 Also present at the request of the Grand Jury:

21 Danielle Pieper
Chief Deputy District Attorney

22 Binu Palal
Chief Deputy District Attorney

23

24

25

12:00AM

1

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TERRELL MOORE

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12:00AM

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12:00AM 1 LAS VEGAS, NEVADA, JUNE 22, 2016

2 * * * * *

3

4 LISA BRENSKE,

12:00AM 5 having been first duly sworn to faithfully

6 and accurately transcribe the following

7 proceedings to the best of her ability.

8

9 MS. PIEPER: Good morning. My name is

8:59AM 10 Danielle Pieper. I'm Chief Deputy District Attorney

11 with the Clark County District Attorney's office. With

12 me is Binu Palal. He is also Chief Deputy District

13 Attorney. We are here on an investigative Grand Jury,

14 Grand Jury Case Number is 15BGJ096X.

9:00AM 15 We will be presenting witnesses and

16 evidence to you over the course of a period of time.

17 At the conclusion of it we may ask you to indict, you

18 may ask us to indict, but as you know this is an

19 investigative Grand Jury.

9:00AM 20 Are there any questions? Seeing no

21 questions we will call the first witness Terrell Moore.

22 THE FOREPERSON: Please remain standing

23 and raise your right hand.

24 Do you solemnly swear that the testimony

9:01AM 25 that you are about to give upon the investigation now

9:01AM 1 pending before this Grand Jury shall be the truth, the
2 whole truth and nothing but the truth, so help you God?

3 THE WITNESS: Yes, ma'am.

4 THE FOREPERSON: Please be seated.

9:01AM 5 You are advised that you are here today to
6 give testimony in the investigation pertaining to the
7 2009 murder.

8 Do you understand this advisement?

9 THE WITNESS: Yes, ma'am.

9:01AM 10 THE FOREPERSON: Please state your first
11 and last name and spell both for the record.

12 THE WITNESS: Terrell Moore.

13 T-e-r-r-e-l-l. M-o-o-r-e.

14 MS. PIEPER: May I proceed?

9:01AM 15 THE FOREPERSON: Yes.

16

17 **TERRELL MOORE,**

18 having been first duly sworn by the Foreperson of the
19 Grand Jury to testify to the truth, the whole truth,
9:01AM 20 and nothing but the truth, testified as follows:

21

22 EXAMINATION

23 BY MS. PIEPER:

24 Q. Terrell, I want to draw your attention to

9:01AM 25 February of 2009. Approximately how old were you at

9:01AM 1 that time?

2 A. I think like 16, 17.

3 Q. And what high school were you going to at

4 that time?

9:02AM 5 A. Global.

6 Q. And on February 20th of 2009 did you go

7 to a party?

8 A. Yes.

9 Q. And who did you go to the party with?

9:02AM 10 A. It was me, my friend Angelo, my friend

11 Joseph, a friend of mine named Shannon and a friend of

12 mine named Aric Brill.

13 Q. And Aric's name is spelled A-r-i-c?

14 A. Yes.

9:02AM 15 Q. And Brill is B-r-i-l-l?

16 A. Yes.

17 Q. And did you go to school with everybody?

18 A. No. I went to school with Angelo, Joseph

19 and Aric.

9:02AM 20 Q. And how did you know Shannon?

21 A. I met him that night.

22 Q. So you didn't really know Shannon at all?

23 A. Not at all.

24 Q. And the other guys, had you gone to school

9:02AM 25 with them?

9:02AM 1 A. Yes.

2 Q. How long have you gone to school with
3 them?

4 A. Aric going on that year and Angelo I grew
9:02AM 5 up with like inside school and outside of school and
6 Joseph going on that year.

7 Q. So February 20th of 2009 you went to a
8 party?

9 A. Yes.

9:03AM 10 Q. And how did you find out about the party?

11 A. A friend called -- Angelo called me and
12 was telling me that there was a party going on.

13 Q. And did you live near these guys?

14 A. Yeah. Me and Angelo, we stayed close. We
9:03AM 15 both stayed on the east close like by Mount Hood.

16 Q. And do you know where Aric or Joseph
17 lived?

18 A. No. No.

19 Q. So you hear about this party from Angelo
9:03AM 20 and do you remember approximately what time you heard
21 about the party?

22 A. No. Honestly. I know it was nighttime.

23 Q. How did you meet up with them and how did
24 you get to the party?

9:03AM 25 A. So after Angelo called I just got dressed

9:03AM 1 and I jumped on the bus. I think I took like the Lake
2 Mead bus to Nellis and Nellis all the way over to
3 Charleston.

4 Q. And the party was at 65 Beesley; is that
9:03AM 5 correct?

6 A. Yes, ma'am.

7 Q. And that's sort of in the area of East
8 Charleston and Tree Line?

9 A. Yes.

9:04AM 10 Q. Do you go to the party on the bus by
11 yourself or are other people with you on the bus?

12 A. I go on the bus by myself.

13 Q. And did you guys have a meet-up spot
14 somewhere near the party?

9:04AM 15 A. Yes. We met up around the bus stop. Like
16 I called and let them know I was getting close and they
17 started walking down to meet me.

18 Q. Once you get off the bus what's the first
19 thing that you guys do?

9:04AM 20 A. Literally we're just talking and walking.

21 Q. And when you say talking and walking,
22 talking and walking to the party?

23 A. Towards the party.

24 Q. As you're walking up to the party can you
9:04AM 25 describe for the members of the Grand Jury is it

9:04AM 1 crowded, are there a lot of people?

2 A. It's pretty crowded. Like you could tell
3 the party is just starting but it's pretty crowded.
4 It's a lot of people there.

9:04AM 5 Q. And approximately what time is this if you
6 can remember that you guys sort of get to the party?
7 If you don't know, that's fine.

8 A. Yeah, I'm sorry. I wouldn't remember.

9 Q. Was it light or dark outside?

9:05AM 10 A. It was dark for sure.

11 Q. As you're walking up the street to the
12 party does anything significant happen or are you guys
13 just kind of walking and talking?

14 A. Yeah, we're walking and talking. Nothing
9:05AM 15 major. Probably asked how the party was going because
16 I was pretty sure Joseph and Angelo made it to the
17 party before I did. So they were able to be there a
18 little bit earlier before me until they left to meet up
19 with me.

9:05AM 20 Q. So do you guys actually walk up and go
21 into the party?

22 A. Yes.

23 Q. You go into the party and does everybody
24 go into the party or does just a couple people go in?

9:05AM 25 A. We all go into the party.

9:05AM 1 Q. Do you actually go up into the house?

2 A. Yes.

3 Q. As you're walking up the street can you

4 tell us what the lighting conditions are like?

9:05AM 5 A. Very dark. It's closer to pitch black

6 because there's no light poles. Like none.

7 Q. You walk up into the house and can you

8 describe for us what the atmosphere was like inside the

9 house?

9:06AM 10 A. It was dark inside the house -- of course

11 loud music. It was a lot of people but they're still

12 like standing around. Everybody wasn't comfortable yet

13 so to actually start dancing. But, yeah, there was a

14 lot of people.

9:06AM 15 Q. Did you know anybody inside the party?

16 A. No. Not that I could remember.

17 Q. How long did you guys stay inside of the

18 party?

19 A. When we walked in we was in there for no

9:06AM 20 more than three, four minutes. Like we walked in,

21 walked all the way through the house, cased it, got to

22 the back sliding door and then walked back towards the

23 front.

24 Q. And at that point was there a decision

9:06AM 25 made whether you wanted to stay or to leave the party?

9:07AM 1 A. We basically -- we was leaving back out
2 the front door to like get some air and we probably
3 talked about leaving or going to grab like someone
4 else, but we didn't really want to just leave leave.

9:07AM 5 Q. So as you're leaving the party what
6 happened next?

7 A. So when I'm heading out of the party my
8 friend Joseph, he told me he didn't like the vibe at
9 the party.

9:07AM 10 MS. PIEPER: And just for the members of
11 the Grand Jury please disregard the statement that
12 Joseph made as it is hearsay.

13 BY MS. PIEPER:

14 Q. So you're walking out of the party, Joseph
9:07AM 15 makes a statement and what happens next?

16 A. And then I get on the phone and I call my
17 girlfriend and I tell her -- I don't know if I tell her
18 I'm on my way to her or if -- I can't remember exactly
19 what I told her, but it was going to be transportation
9:07AM 20 wise, either I was going to come to her or she was
21 going to come to me.

22 Q. As you're doing this what is the group
23 doing?

24 A. We're walking. We're walking somewhere
9:08AM 25 past the house but we're in front of the house still.

9:08AM 1 Q. So you guys are walking, you're on the
2 phone and what happens next?

3 A. And then once I get off the phone we're
4 passing a group of guys on a brick wall. It's like a
9:08AM 5 small brick wall where you sit to just rest for a
6 second.

7 Q. Okay.

8 A. And I probably took maybe two, three steps
9 past them and then you just hear a lot of guns cock
9:08AM 10 back.

11 Q. When you say you hear a lot of guns cock
12 back, what do you mean by that?

13 A. Like you hear people loading up their guns
14 like at least like four or five people. Like chink,
9:08AM 15 cah, cah, cah, chink.

16 Q. I'm not sure how to spell that.

17 A. I don't know how to say it.

18 Q. It's okay. The record's my problem. I'll
19 fix it. There's noise that implies to you that there
9:08AM 20 are firearms?

21 A. Yes. Yes.

22 Q. What happens next?

23 A. Once I hear the guns a guy says almost
24 word for word -- I think he says like if you shoot --
9:09AM 25 if you run, we're going to shoot. If you run, we're

9:09AM 1 going to shoot.

2 Q. How far away from the guy are you or how
3 far away is the guy from you?

4 A. Like from me to her.

9:09AM 5 Q. And when you say her, you mean the Court
6 Reporter?

7 A. Yeah. This lady here.

8 Q. Is there anybody with the guy that says
9 that?

9:09AM 10 A. Yes, at least four other guys.

11 Q. And where are the other guys in relation
12 to the person that says that to you?

13 A. Maybe a step behind him but also right
14 next to him in the little group.

9:09AM 15 Q. So on either side of him?

16 A. Yes.

17 Q. The person that says that to you, does he
18 have a gun in his hands?

19 A. Yes. And he's the one closest to me.

9:09AM 20 Q. What does he do with the gun?

21 A. Okay. So once he says if you run, we're
22 going to shoot, I instantly put my hands up and --

23 MS. PIEPER: For the record he put his
24 hands up.

25

9:10AM 1 BY MS. PIEPER:

2 Q. Go ahead.

3 A. Yes. And like there was no other words.

4 Like he moved the gun over a little bit because I

9:10AM 5 didn't know my friends took off running and he just
6 started shooting.

7 Q. When you say he started shooting, did he
8 start shooting towards the direction of people that
9 were running?

9:10AM 10 A. Yes. Yes. He started shooting towards
11 Joseph and Aric.

12 Q. At some point -- because you started off
13 by saying you didn't realize that your friends took off
14 running.

9:10AM 15 A. Right. I didn't.

16 Q. At some point do you realize your friends
17 took off running or do you hear the shots being fired
18 first?

19 A. Once I'm hearing the shots being fired, I
9:10AM 20 figured somebody took off running. I never heard no
21 steps or nothing.

22 Q. How many times does that person shoot the
23 gun?

24 A. At least 15 times. At least.

9:10AM 25 Q. And as he's shooting the gun is he

9:10AM 1 pointing the gun in one direction or is he moving his
2 hand as he's moving the gun?

3 A. The first few shots, because I'm so close
4 to him, he moved it as if he's trailing somebody. And
9:11AM 5 then once he started shooting I instantly put my head
6 down and kneeled all the way to the floor.

7 Q. For the record when you said you put your
8 head down you had your hands up in the air?

9 A. Yes.

9:11AM 10 Q. So as he's shooting are you down on your
11 knees with your hands in the air and your head down?

12 A. Yes, crouched down.

13 Q. As he continues to shoot what can you hear
14 and can you see anything at all?

9:11AM 15 A. I'm literally hearing nothing but
16 gunshots. No screaming, no nothing. Just rapid
17 gunfire.

18 Q. What happens next?

19 A. After he stops shooting he grabbed me by
9:11AM 20 my shoulder and pulls me back up to stand straight up
21 and I instantly throw my hands like bro, you can take
22 whatever you want. Like whatever.

23 Q. And for the record both of your hands are
24 up in the air again. And then what happens next?

9:11AM 25 A. Yes. I'm pretty sure he reaches for my --

9:11AM 1 I want to say my key chain first. I know I had my
2 house keys.

3 Q. Did you have your house keys around your
4 neck?

9:12AM 5 A. Yes.

6 Q. Did you have anything else around your
7 neck?

8 A. I had a chain around my neck. I'm pretty
9 sure I had a watch on because my dad, that's what he
9:12AM 10 gives me a lot that he passes his watches down. So I'm
11 pretty sure I had a watch on. So he went for my
12 jewelry on my neck and then he starts slipping into my
13 pockets one by one each pocket. And then while he's
14 robbing me I see the four guys, they're like ruffling
9:12AM 15 up Angelo.

16 Q. When you say ruffling up, are they kind of
17 touching Angelo?

18 A. Yeah. They're trying to find anything on
19 him. They took his Side Kick off his neck cause he had
9:12AM 20 a Side Kick that the lights flash a lot.

21 Q. Just for the record a Side Kick is a
22 phone?

23 A. Is a cell phone, yes, where the lights
24 flash on all the sides of the phone. So it was being
9:12AM 25 flashy and they robbed us.

9:12AM 1 Q. So he takes a chain, he takes a watch you
2 think?

3 A. Yes.

4 Q. He takes your keys. What else does he
9:13AM 5 take from you?

6 A. He takes my wallet for sure. He takes my
7 phone for sure. And that's pretty much it.

8 Q. You can see that the other four guys are
9 now at Angelo?

9:13AM 10 A. Yes.

11 Q. The guy that was in front of you with the
12 gun that did the shooting, did he at any time go
13 towards Angelo?

14 A. No. After he robbed me he walked away.

9:13AM 15 Q. When he walked away did he walk forward or
16 backward if you can remember?

17 A. I want to say he walked forward towards
18 the opposite way at Charleston. He walked towards down
19 Beesley more. That's what it seemed like.

9:13AM 20 Q. And then what happened to the four guys
21 that were with Angelo?

22 A. They followed behind. Like he was the
23 ring leader.

24 Q. And then what happens next?

9:14AM 25 A. Once they're walking -- they're walking

9:14AM 1 away and I'm literally backing up away from them.

2 Q. You're backing up away from them. Is your
3 back to them or is your front to them?

4 A. My front is to them. I'm scared they are
9:14AM 5 going to shoot so I'm backing up. I'll still facing
6 them. And then that's when I basically trip over
7 Aric's body. Like the back of my heel kicks a part of
8 his body.

9 Q. So you're backing up away from where the
9:14AM 10 guy with the gun was and his four other friends?

11 A. Yes.

12 Q. You're backing up and as you're backing up
13 do you physically hit something?

14 A. Yes, I physically run into Aric's body.

9:14AM 15 Q. And at that point what do you do?

16 A. I go to the ground and I stare at him for
17 a second and you just see like blood coming into the
18 dirt. So then I pick him up and I'm just cradling him
19 literally. I don't know what to do.

9:15AM 20 Q. And at that point could you tell if he was
21 breathing or not?

22 A. He was breathing. He was just shaking.
23 He wouldn't respond but he just kept shaking.

24 Q. Did you see any injuries to --

9:15AM 25 A. I didn't see where it was coming from. It

9:15AM 1 was just a lot of blood and he just kept shaking.

2 Q. What happens next?

3 A. Okay. So I'm holding him. Angelo, he's
4 like yelling. It's crazy and hectic. We yell out for
9:15AM 5 somebody to help us. We're like somebody call 9-1-1.

6 Somebody. Somebody call 9-1-1. And that's when
7 everybody that was out front of the party go inside.

8 Like literally everybody just starts walking into the
9 house and shuts the door as if nothing happened. And

9:15AM 10 it was just me and Angelo just standing out there.

11 Q. And then what happens next?

12 A. That I know of I'm sure he had a little
13 Metro phone.

14 Q. When you say he, you mean Angelo?

9:16AM 15 A. Angelo, yes. Angelo had a Metro phone
16 that they did not grab from him. They only took the
17 Side Kick off his neck. He used that phone to call the
18 police.

19 Q. What happened next?

9:16AM 20 A. So I'm still holding Aric the whole time.

21 When the police pull up they tell me to get away from
22 him so I lay him back down. So one cop is talking to
23 me trying to figure out what happened. Another cop is
24 trying to help Aric. And he's yelling out like we got

9:16AM 25 a GSW to the neck, GSW to the neck. And so after that

9:16AM 1 so we're all just standing there.

2 Maybe like two minutes later a neighbor
3 had came and walked down the street and whispered into
4 a cop's ear and the cop just took off running up the
9:16AM 5 street. I naturally just started following behind him
6 because I know I had more friends with me when it
7 happened. So I follow the cop. We end up in the
8 neighbor's driveway and I see Joseph. I didn't
9 recognize him at first because he doesn't have his
9:17AM 10 shirt on or nothing now.

11 Q. When you see Joseph, what does he look
12 like?

13 A. He's laying on the ground, he's on his
14 back and he's like reaching out to nobody but he's
9:17AM 15 reaching out. He's like it hurts, it hurts, it hurts,
16 help me.

17 Q. Physically what did you see on Joseph?

18 A. I just see a lot of blood and sweat.
19 That's it. All over his chest.

9:17AM 20 Q. What do you do next?

21 A. I stand there and I look at him while he's
22 saying it hurts. And then the officer, he was like
23 calm him down and then I go to my friend Joseph and I
24 just keep repeating, I'm like it's just a bullet, bro.

9:17AM 25 It's just a bullet. You're going to be okay. Like

9:17AM 1 don't sweat it. And that's just all I remember telling
2 him.

3 Q. Why did you tell him that?

4 A. Because my cousin told me -- like I was
9:17AM 5 always told like people sometimes die just from
6 panicking. So I was just trying to do the best I can
7 to calm him down.

8 Q. When you saw Joseph and you said you saw
9 blood all over him, did you see any injuries to him or
9:18AM 10 did you just see blood?

11 A. I didn't physically see the injuries. I'm
12 just looking at him whole. He's just sweat and blood
13 and he's just panicking.

14 Q. What happens next?

9:18AM 15 A. After that the cop -- a cop, he pulls me
16 back to the side and asks -- he starts asking me
17 questions if I can make a statement and then so forth.

18 Q. So you give a taped statement to police;
19 is that correct?

9:18AM 20 A. Yes.

21 Q. I am going to show you some pictures.
22 They are going to be up on this. Showing you Grand
23 Jury Exhibit Number 1. So let me orientate you a
24 little bit. This right here is Charleston Boulevard,
9:19AM 25 this is Beesley and where it has the little red mark is

9:19AM 1 65 Beesley, the party that you guys were at. Do you
2 recognize that area?

3 A. Yes.

4 Q. You originally told the members of the
9:19AM 5 Grand Jury that you took the bus there and when you got
6 off the bus you met up with everybody.

7 A. Yes.

8 Q. Can you show them sort of where you guys
9 met up. You can stand up.

9:19AM 10 A. So we met on Charleston down this area,
11 down by Nellis more.

12 Q. And then you guys sort of walked up?

13 A. And we walked up.

14 Q. Showing you Grand Jury Exhibit 2 that is
9:19AM 15 65 Beesley. Do you see it?

16 A. Yes.

17 Q. Just to orientate you this is sort of like
18 a short brick wall and obviously this is the driveway
19 to the house?

9:20AM 20 A. Yes.

21 Q. When you guys are walking up to the house,
22 do you physically go into this party into this house?

23 A. Yes.

24 Q. Do you guys go in the backyard of the
9:20AM 25 house?

9:20AM 1 A. No. We get to the sliding door, I looked
2 out and we turned around and came back out.

3 Q. When you guys are leaving the party,
4 you're talking to your girlfriend and you're sort of
9:20AM 5 walking down the driveway. Where is it that you get
6 approached by these four to five men?

7 A. I want to say the brick wall is right
8 here. So they're sitting on this brick wall like I
9 want to say right here.

9:20AM 10 Q. Okay.

11 A. And they're lined up all sitting there.

12 Q. When they come out and confront you, is
13 that happening here, here, here or where is it
14 happening? And Charleston is down here.

9:20AM 15 A. Yes. Right in the dirt area for sure
16 because when I went down to help Aric, the blood was
17 coming from behind. Like he was on his back. It was
18 coming from behind him and pouring into the dirt.

19 Q. So it's sort of on the dirt but kind of on
9:21AM 20 the street?

21 A. Yes. Exactly.

22 Q. Showing you what's been marked as Grand
23 Jury Exhibit Number 4 this is the front.

24 A. Yes.

9:21AM 25 Q. And it doesn't show in the picture but

9:21AM 1 this white area is the wall.

2 A. Yes. It can only be about 2 feet high
3 maybe.

4 Q. So is this sort of the front of the house,
9:21AM 5 the wall area where they were sitting?

6 A. Yes.

7 Q. Now, this area in front of the home
8 there's yellow crime scene tape -- it wasn't there at
9 the time?

9:21AM 10 A. No.

11 Q. The area in front of the home, were there
12 a lot of people out on the grass area?

13 A. Yeah. They were all standing lined up
14 against basically this back part and then when I yelled
9:22AM 15 out for them to help, it's like they all simultaneously
16 started walking into the house as if you was letting
17 them in for a club or something. They all started
18 walking in at the same time.

19 Q. When you say people are lined up, did they
9:22AM 20 charge to go into this party?

21 A. That I remember no. I don't think so.

22 Q. Were people lined up sort of like a club
23 when they're paying to go in?

24 A. No. They lined up as if -- as if they

9:22AM 25 heard the gunshots and they all ran out to see what

9:22AM 1 happened. But they stood back there cautious.

2 Q. Okay. So they didn't come down by the
3 pony wall, they didn't come down by the street?

4 A. No. There was some people still around.
9:22AM 5 But not by them. They were all by the house.

6 Q. Approximately how many people would you
7 say were up by the house?

8 A. At least 20 people was out there when I
9 asked for help. At least.

9:22AM 10 Q. And when you asked for help and you were
11 yelling for help, you said everybody just went back
12 into the house?

13 A. Like they stared at me and then just went
14 back in like as if this never happened.

9:23AM 15 Q. Showing you what's marked as Grand Jury
16 Number 6 do you sort of recognize that as that's the
17 front of the house, the wall and then sort of off --
18 the picture is taken off to the --

19 A. It's a little over, yeah.

9:23AM 20 Q. Do you see any street lights on that
21 street?

22 A. No.

23 Q. Showing you Grand Jury Exhibit Number 7 do
24 you see any street lights on that street on Beesley?

9:23AM 25 A. No.

9:23AM 1 Q. And Grand Jury Exhibit Number 8 is looking
2 towards Charleston?

3 A. Yup. Yes, it is.

4 Q. And can you see the house is sort of here
9:24AM 5 in the background?

6 A. Yeah. It would be on the right.

7 Q. And then do you see some clothing from
8 Aric?

9 A. Yes.

9:24AM 10 Q. And that would be in the right part of the
11 picture. Is that where you walked and sort of bumped
12 into Aric?

13 A. Yes. And that's when -- that little dirt
14 area, that's what I remember where the blood started
9:24AM 15 pouring.

16 Q. And so in actuality were the guys closer
17 to Charleston or further away? Could you see if they
18 left in a car or they walked out of here?

19 A. That's what messes me up. I didn't see
9:24AM 20 how they left the scene. I didn't see -- I just seen
21 them walk away and once I ran into Aric all my
22 attention went to Aric.

23 Q. So if I'm standing looking at 65 Beesley,
24 Charleston is to my left. Is Aric's body to the right
9:25AM 25 or to the left of the house? Does that make sense?

9:25AM 1 A. Well, in that picture the way I can
2 explain it is I want to say his legs was like coming
3 from Charleston way.

4 Q. So his legs are pointing towards
9:25AM 5 Charleston, his head is pointing away from Charleston?

6 A. Yes.

7 Q. Showing you Grand Jury Exhibit Number 15
8 who is that?

9 A. That's Angelo.

9:25AM 10 Q. Showing you Grand Jury Exhibit Number 14
11 who is that?

12 A. That looks like me. Yeah, that looks like
13 me. Is that Shannon?

14 Q. Showing you Grand Jury Exhibit Number 16
9:26AM 15 who is that?

16 A. That's Shannon right there.

17 Q. So 16 is Shannon and 15 is?

18 A. Me.

19 Q. That's what you looked like?

9:26AM 20 A. I mean, five, six -- eight years ago.

21 Q. The guy that was standing closest to you
22 that was doing the shooting, could you tell how tall he
23 was?

24 A. Yes. Well, yes, yes.

9:26AM 25 Q. How tall was he approximately?

9:26AM 1 A. My height.

2 Q. How tall are you?

3 A. I'm 5'7".

4 Q. Were you 5'7" around this time?

9:26AM 5 A. I'm pretty sure. I've been short all my

6 life.

7 Q. So he was exactly your height. Could he

8 have been a little taller, shorter?

9 A. If anything he could have only been an

9:27AM 10 inch taller.

11 Q. Was he white, black or Hispanic?

12 A. He was black for sure. Dark skinned.

13 Q. Can you describe anything for the members

14 of the jury about what he looked like?

9:27AM 15 A. I honestly cannot. I know he's dark

16 skinned for sure. I know he has like a low like raspy

17 voice, like a deep voice.

18 Q. Like yours kind of?

19 A. Yeah, but I get excited and my voice gets

9:27AM 20 high pitched. He's more like puberty. He got a deep

21 voice like more of a man.

22 Q. Could you tell how old he was? If you

23 can't, that's okay.

24 A. No, I can't. But he probably a few years

9:27AM 25 older than us around that time.

9:27AM 1 Q. So he's not like 45 years old?

2 A. Oh, no, not at all. He'd had to have been
3 at that time early twenties. If not his teens.

4 Q. Any of the guys behind him can you tell
9:28AM 5 their height, their race, facial features, anything
6 about them?

7 A. Only thing I know for sure is they were
8 all black and they were like dark skinned type of black
9 because that's the reason why we couldn't make them out
9:28AM 10 because it was dark outside and they're dark.

11 Q. And the area where the party was did they
12 have a lot of lights on?

13 A. No.

14 Q. But enough lighting to see that nobody
9:28AM 15 helped you guys?

16 A. Yeah.

17 MS. PIEPER: I have no further questions
18 for Mr. Moore. And does anyone else?

19 BY THE FOREPERSON:

9:28AM 20 Q. Do you know what type of a gun the guy
21 had?

22 A. I want to say a Glock. I'm real -- I'm
23 fascinated with guns sort of kind of. The amount of
24 shooting he did and as rapid as he did it like it was
9:29AM 25 like had to have been like a Glock or Smith & Wesson.

9:29AM 1 I know it wasn't no cheap firearm.

2 Q. So semiautomatic?

3 A. Semiautomatic, yes.

4 BY A JUROR:

9:29AM 5 Q. Quite a big party so how many cars were
6 parked out and around?

7 A. There were a few cars. There were a lot
8 of cars, but the people who didn't help us were in the
9 house and the people who were standing around just got
9:29AM 10 in the cars and left.

11 Q. But I mean, were the cars kind of parked
12 towards the neighbors?

13 A. Across the street. They would be on the
14 neighbor's house. There wasn't really no cars right in
9:29AM 15 front of us, in front of the house, no. There would be
16 more like across street.

17 Q. Do you feel that maybe they were trying to
18 run for cover when they were being pursued?

19 A. Joseph and Aric?

9:30AM 20 Q. Yes.

21 A. I think they were just scared. Like you
22 should have heard how many guns cocked back. It was --
23 their natural reaction was to run. I would have ran
24 too but I can tell how close it sounded. Like it was
9:30AM 25 just too late. They were too close.

9:30AM 1 Q. Do you feel that any of the other people
2 that may have had guns shot?

3 A. No. There was only one shooter for sure.
4 But they all had guns. They all had guns.

9:30AM 5 BY THE FOREPERSON:

6 Q. You may have stated this but I didn't hear
7 it. When you got to the party was there anybody on the
8 wall when you walked in?

9 A. Not that I remember. I didn't even really
9:30AM 10 notice it. But I know when we was walking that way
11 that's why I noticed it was five of them because I'm
12 looking while -- it's dark so of course I'm watching my
13 surroundings and I actually physically see them. But
14 it's also a party so I'm thinking nothing of it. But
9:31AM 15 once we passed them we heard the guns.

16 BY A JUROR:

17 Q. When you were casing the party did anybody
18 say or do anything to make you feel unwelcome?

19 A. Nobody said nothing. Joseph said that he
9:31AM 20 wasn't feeling the vibe, but it wasn't nothing
21 personal. Like no one threatened him or nothing like
22 that.

23 BY MS. PIEPER:

24 Q. Do you know what happened to Aric?

9:31AM 25 A. I mean, okay, so he got shot and I wanted

9:31AM 1 to say he made it all the way to Sunday on life support
2 and Angelo's little brother called me, Josh, and told
3 me that they pulled the plug.

4 Q. You said I think you're about, what, 15,
9:31AM 5 16, 17?

6 A. Yes.

7 Q. How traumatic of an incident was this on
8 you?

9 A. Real traumatic. Like I've been forever
9:32AM 10 scarred about it. I personally feel we were targeted
11 due to the phones, the flashiness. So I don't wear
12 jewelry -- I know I have earrings in, but I don't wear
13 chains, I don't wear no type of jewelry now. Since
14 that accident I haven't been without a firearm,
9:32AM 15 registered or illegal honestly. It's a lot of things I
16 don't do no more.

17 MS. PIEPER: I don't have any other
18 questions.

19 THE FOREPERSON: Mr. Moore, by law these
9:32AM 20 proceedings are secret and you are prohibited from
21 disclosing to anyone anything that transpired before us
22 including evidence presented to the Grand Jury, any
23 event occurring or statement made in the presence of
24 the Grand Jury or any information obtained by the Grand
9:32AM 25 Jury.

9:32AM 1 Failure to comply with this admonition is
2 a gross misdemeanor punishable up to 364 days in the
3 Clark County Detention Center and a 2000-dollar fine.
4 In addition you may be held in contempt of court which
9:32AM 5 is punishable by an additional 500-dollar fine and 25
6 days in the Clark County Detention Center.
7 Do you understand this admonition?
8 THE WITNESS: Yes, ma'am.
9 THE FOREPERSON: Thank you for your time.
9:33AM 10 THE WITNESS: All right. Thank you.
11 THE FOREPERSON: You're excused.
12 MR. PALAL: State's next witness will be
13 Joseph Bentley.
14 THE FOREPERSON: Please raise your right
9:33AM 15 hand.
16 You do solemnly swear that the testimony
17 that you are about to give upon the investigation now
18 pending before this Grand Jury shall be the truth, the
19 whole truth and nothing but the truth, so help you God?
9:33AM 20 THE WITNESS: Yes, ma'am.
21 THE FOREPERSON: Please be seated.
22 You are advised that you are here today to
23 give testimony in the investigation pertaining to a
24 2009 murder.
9:34AM 25 Do you understand this advisement?

9:34AM 1 THE WITNESS: Yes, ma'am.

2 THE FOREPERSON: Please state your first
3 and last name and spell both for the record. And if
4 you could speak up a little louder.

9:34AM 5 THE WITNESS: Joseph Bentley.
6 J-o-s-e-p-h. B-e-n-t-l-e-y.

7 THE FOREPERSON: Thank you.

8

9 **JOSEPH BENTLEY,**

9:34AM 10 having been first duly sworn by the Foreperson of the
11 Grand Jury to testify to the truth, the whole truth,
12 and nothing but the truth, testified as follows:

13

14 **EXAMINATION**

9:34AM 15 BY MR. PALAL:

16 Q. Mr. Bentley, do you recall going to a
17 party on February 20th of 2009?

18 A. Yes, sir.

19 Q. Who did you go to the party with?

9:34AM 20 A. I went there with Angelo and Shannon.

21 Q. And how did you find out about the party?

22 A. Through text message.

23 Q. From whom; do you recall?

24 A. No, sir. Well, I heard about it from

9:34AM 25 Angelo, but I don't know who told Angelo.

9:34AM 1 Q. So Angelo tells you there's a party?

2 A. Yes, sir.

3 Q. And then you're with Angelo and Aric?

4 A. Yes, sir.

9:34AM 5 Q. And how did you know Angelo?

6 A. From school. We all knew each other from

7 school.

8 Q. What school did you guys go to?

9 A. Global Community High School.

9:35AM 10 Q. And you also knew Aric from school then?

11 A. Yes, sir.

12 Q. Did you hang out a lot with Angelo and

13 Aric?

14 A. Yes, sir.

9:35AM 15 Q. How did you get to the party?

16 A. We all took the bus.

17 Q. And by you all, you mean you, Angelo and

18 Aric?

19 A. Yes, sir.

9:35AM 20 Q. At some point did anybody join you on the

21 bus or was that just you three?

22 A. Well, Shannon was with us too at the time

23 I think.

24 Q. So Shannon was with you also?

9:35AM 25 A. Yes, sir.

9:35AM 1 Q. And where did you take the bus to?

2 A. We took it to Charleston and Beesley.

3 Q. And is that here in Clark County, Nevada?

4 A. Yes, sir.

9:35AM 5 Q. Do you guys go to the party?

6 A. Yes, sir.

7 Q. Do you go inside the party?

8 A. Yes, sir.

9 Q. What if anything did you notice when you

9:35AM 10 go inside the party?

11 A. I mean, nothing really. For one it was

12 just way too crowded and I'm not the type to be out

13 like that anyway. So we went in and then we waited

14 for -- I think we waited for Terrell and we left to go

9:36AM 15 get him. And then we came back and went back in when

16 we got him.

17 And so we was -- like we was about to

18 leave and I guess we was going to go to crash at

19 Angelo's house I think we were or something like that.

9:36AM 20 Q. Let me ask you this: Why did you guys

21 decide not to stay at the party?

22 A. Because it was -- just wasn't -- for one

23 it was -- we weren't feeling it that night.

24 Q. Fair to say you got kind of a bad vibe

9:36AM 25 from the party?

9:36AM 1 A. Yeah, like we didn't -- like it didn't sit
2 well with us, you know?

3 Q. And did you recognize anybody at the
4 party, did you know anybody?

9:36AM 5 A. I didn't know anybody there but the ones
6 that I came with. I wasn't -- I'm not from here at the
7 time. I had just moved out here. I knew them from
8 school, my school years, but I really was kind of still
9 new out here.

9:37AM 10 Q. Where did you move from?

11 A. Vicksburg, Mississippi.

12 Q. So you decide to leave the party for a
13 second time?

14 A. Yeah. We left again.

9:37AM 15 Q. And then what happened as you were leaving
16 the party the second time?

17 A. When we was leaving the second time, it
18 was like four guys out there, four or five guys out
19 there, and they was like you run, we're going to shoot
9:37AM 20 or we're going to kill you or something like that. And
21 they was already cocking the guns and everything. So
22 by the time they said that, Shannon, he left -- he
23 already started to run and then about the same time
24 when Aric started to run, I started to run at the same
9:37AM 25 time.

9:37AM 1 Q. And where were they? Were they by the
2 door of the house or were they by the street outside
3 the house? Were they by the wall? Where were they?

4 A. I can't really tell you because obviously
9:38AM 5 I think we passed them when we went out the second time
6 and then we came back out. And because it's like --
7 it's kind of dark out there on that road out there so
8 it's kind of hard to tell if they was on the wall or
9 what. But as soon as we came out and we was hitting
9:38AM 10 where the turn by the wall, that's when everything had
11 happened.

12 Q. So you see four or five guys come up to
13 you and you said you heard some guns getting racked.
14 Is that what you said?

9:38AM 15 A. Yeah, they was like cocking them.

16 Q. How many guns did you hear getting cocked?

17 A. I don't know. For me I just heard one.
18 But honestly like Terrell and Angelo, they actually
19 stayed there and got robbed. But when Aric took off
9:39AM 20 running, I see Aric fall because I was in the midst of
21 running off too. And then when he fell I had already
22 got shot in my arm so I just kept going and then that's
23 when they still shooting the whole time.

24 Q. Why did you run?

9:39AM 25 A. Because I knew that they was going to try

9:39AM 1 to rob us anyway. I mean, we was young kids, we
2 probably had more stuff than we probably should have.
3 Like we had phones and nice shoes and stuff like that.
4 We probably -- that's probably what it was.

9:39AM 5 Q. How old were you at the time?

6 A. I was 19, 18. Nineteen.

7 Q. So you're running and you said you saw
8 Aric fall?

9 A. Uh-huh.

9:39AM 10 Q. Is that a yes?

11 A. Yes, sir.

12 Q. How many gunshots did you hear prior to
13 seeing Aric fall?

14 A. They was -- it was a lot. I know it was a

9:40AM 15 lot because -- I knew it was a lot because when I was
16 running, like you can see like the sparks off the
17 ground from the ones that was passing me. And I didn't
18 know how many times I got shot but I knew I got shot in
19 my arm because I had on a long sleeved shirt like this
9:40AM 20 red, but it was like a hole in it so I knew I got shot
21 in my arm.

22 Q. And after you got shot did you hear more
23 shots? Did you get shot once or did you hear more
24 shots coming at you after you got shot?

9:40AM 25 A. It was more shots coming out.

9:40AM 1 Q. Do you recall approximately how many shots
2 you heard that night?

3 A. I don't even know.

4 Q. Fair to say more than 10?

9:40AM 5 A. Yeah. I think it was more than 10.

6 Q. Now, where are you running to?

7 A. I don't know honestly. I was just trying
8 to get out of there.

9 Q. And at some point do you jump over a
9:41AM 10 fence?

11 A. Yes, sir.

12 Q. And what do you do after you jump over the
13 fence?

14 A. I jump one gate and I was in some lady's
9:41AM 15 backyard or somebody's backyard, I don't know whose
16 house it was. They had a dog back there. That's what
17 scared me the most for real. I was scared because I
18 don't like dogs and I managed -- when I jumped the
19 first gate I crawled up to her door and I was trying to
9:41AM 20 get her to come outside to help me because I knew

21 something was wrong with me. But I didn't know that at
22 the time -- I had a collapsed lung at the time and she
23 was saying something out the window I didn't know. And
24 so I managed to get up again and I jumped another gate

9:42AM 25 and I was in her front yard and that's when the lady at

9:42AM 1 the house or the owner at the house, he came out and he
2 was about to shoot -- try to shoot me again and he told
3 me to lay on the ground. And I laid on the ground and
4 that's when I realized I got shot more than just one
9:42AM 5 time.

6 Q. At some point does an officer come to try
7 and help you; do you remember?

8 A. I don't remember because I was going in
9 and out. Only thing I remember is like I think Angelo
9:42AM 10 tried to keep me awake and then I think an officer did
11 come. I'm not sure.

12 Q. Because you were going in and out of
13 consciousness?

14 A. I was like fading in and out.

9:42AM 15 Q. Did you ultimately go to a hospital?

16 A. Yes, sir.

17 Q. How long were you in the hospital?

18 A. I think like a week, week and a half.

19 Q. Do you recall now what injuries you
9:43AM 20 suffered as a result of the gunshot wounds?

21 A. I think it's called a pneumothorax or
22 something like that. I had a collapsed lung. My left
23 arm wasn't working properly. Like my fingers didn't
24 move at all. I lost all my feelings in my fingers and
9:43AM 25 my hands and my wrist. My elbow got fractured.

9:43AM 1 Q. Do you know how many gunshot wounds you
2 actually suffered? Now do you know how many?

3 A. Yes, sir. Three. It was three. I got
4 twice in my arm and once in my back.

9:43AM 5 Q. Did you have any plans for after high
6 school?

7 A. Yes, sir.

8 Q. And what were those plans?

9 A. I had already took my ASVAT because I was
9:43AM 10 getting ready to ship out but I got shot and then I had
11 to wait another -- I got delayed another year process
12 because of my collapsed lung. So it took me longer and
13 I had to do like all of these training events to make
14 sure that I was good to go because they kept denying me
9:44AM 15 because of all the injuries that I had.

16 Q. And how long of rehabilitation did you
17 have to do to ultimately get accepted into the Army?

18 A. It took me a good -- it took me about a
19 year.

9:44AM 20 Q. And were you ultimately able to enroll?

21 A. Yes, sir.

22 Q. To this day do you have any other injuries
23 as a result of the shooting?

24 A. I mean, it bothers me still. I don't
9:44AM 25 really like to do big groups. I rarely go out. Like I

9:44AM 1 rarely go out now and then it makes me even more --
2 because I got a son now too and it makes me more like
3 iffy. I want him to go out when he gets older and
4 stuff like that.

9:45AM 5 Like as you probably know I haven't been
6 back in Vegas since I got -- since that situation.
7 When I left, when I got the chance to leave and go to
8 the Army, I never came back after that.

9 Q. Now, were you able to get a look at any of
9:45AM 10 the people, the four or five gentlemen who were doing
11 the robbing?

12 A. I never got like a good visual of them but
13 I knew how many it was. And that's all I can really
14 tell you. I know for a fact that Terrell probably
9:45AM 15 could have gave you a good description.

16 Q. I'm just asking for your observations.

17 A. Yeah.

18 Q. From what you actually saw can you tell us
19 anything about the four or five people that robbed you?
9:46AM 20 First of all were they men or women?

21 A. They definitely were men.

22 Q. Were they tall or short or do you know?

23 A. I don't remember.

24 Q. And when you guys were walking were you at
9:46AM 25 the front of the group or were you in the back of the

9:46AM 1 group when you guys got robbed?

2 A. When everything was going down?

3 Q. Yes.

4 A. I mean, we was like all standing side by
9:46AM 5 side because we was like trying -- I guess we was
6 trying to plan what we was going to do like next or
7 whatever.

8 Q. I am going to show you some photos if you
9 don't mind and you can look onto the TV and I'll show
9:46AM 10 you. I am going to show you what's previously been
11 marked as Grand Jury Exhibit 17. Do you recognize this
12 area where the party occurred?

13 A. Yeah, I think that's the wall right there,
14 ain't it?

9:47AM 15 Q. If you want to stand up and point.

16 A. I think it's the wall right here in the
17 front of the house if I'm not mistaken. It's one of
18 these. I know there's like a wall where the front of
19 the house was. I'm not sure though.

9:47AM 20 Q. You're not sure which house it is but do
21 you recognize the street?

22 A. Yeah.

23 Q. And was it brightly lit or was it dark
24 that night?

9:47AM 25 A. It was really dark. I don't even think

9:47AM 1 there was a street light on the street.

2 Q. I am going to show you Grand Jury Exhibit
3 19. Do you recognize this as the gate you had to hop
4 over to get to the other house?

9:47AM 5 A. Yeah. That's the house I passed out in
6 front of.

7 Q. I am going to show you Grand Jury Exhibit
8 20. Do you recognize what we're looking at in Grand
9 Jury Exhibit 20? There's shoes there. Do you

9:48AM 10 recognize whose shoes those are?

11 A. Those are my shoes and that's my house key
12 and everything.

13 Q. And there's some blood there. Is that
14 where you were laying?

9:48AM 15 A. Uh-huh.

16 Q. I am going to show you Grand Jury Exhibit
17 21. Does Grand Jury Exhibit 21 show items that you
18 were wearing as well?

19 A. Yeah, those are my jeans.

9:49AM 20 Q. I will show you Grand Jury Exhibit 22.
21 Are these also your jeans?

22 A. Yes, sir.

23 Q. I am going to show you Grand Jury Exhibit
24 23. Is this your ID?

9:49AM 25 A. Yes, sir.

9:49AM 1 Q. Is that what you looked like way back in
2 2009?

3 A. Yeah.

4 Q. You looked a lot younger back then. I am
9:49AM 5 going to show you Grand Jury Exhibit 25. Do you
6 recognize the article of clothing depicted in Grand
7 Jury Exhibit 25?

8 A. Yes, sir.

9 Q. What is that?

9:50AM 10 A. That's my shirt. That's the white shirt I
11 had on.

12 Q. Did you take off your clothes? Is that
13 why you were running or how did the clothes come off?

14 A. I know I took my shirt off to try to like
9:50AM 15 to stop my arm from bleeding because my arm was
16 bleeding like real bad and my arm didn't work. So it
17 took me -- so it was harder for me to get over the
18 gate.

19 Q. And is this the gate we're talking about
9:50AM 20 over here or is it the gate we saw before?

21 A. The gate before.

22 Q. I am going to show you Grand Jury Exhibit
23 Number 26. Is this you in the hospital?

24 A. Yes, sir.

9:51AM 25 Q. I am going to show you Grand Jury Exhibit

9:51AM 1 Number 27. Can you tell us what Grand Jury Exhibit 27
2 depicts?

3 A. I think that's my arm.

4 Q. The center of the exhibit there appears to
9:51AM 5 be a bullet wound. Is that the bullet wound you
6 suffered?

7 A. Yes, sir.

8 Q. I am going to show you Grand Jury Exhibit
9 28. Is that also a picture of the bullet wound you
9:51AM 10 suffered?

11 A. Yes, sir.

12 Q. I am going to show you Grand Jury Exhibit
13 29. Is that also a bullet wound that you suffered?

14 A. Yes, sir.

9:52AM 15 Q. I am going to show you just a general map,
16 Grand Jury Exhibit 2. Do you recognize this 65 Beesley
17 as the house you guys were going to for the party?

18 A. Yes, sir.

19 Q. You said you were running away from the
9:53AM 20 people shooting at you. Can you actually get up here
21 and show me the direction that you ran.

22 A. This is the front end and like right
23 around here where everything was taking place.

24 A JUROR: Can you speak louder.

9:53AM 25 THE WITNESS: Everything happened like

9:53AM 1 around in this area right here.

2 BY MR. PALAL:

3 Q. For the record that's the front --

4 A. Where the wall was at the house.

9:53AM 5 Q. And the front of the house near the
6 driveway, the dirt area right in front of the house?

7 A. Uh-huh.

8 Q. And then where did you go?

9 A. I ran this way.

9:54AM 10 Q. So that's up on Beesley?

11 A. I ran up this way. And I think I had
12 turned I think and went over that gate. And then I
13 ended up over here though.

14 Q. On the driveway area?

9:54AM 15 A. Yeah.

16 Q. So you turned left I guess on the dirt
17 road and hopped the fence?

18 A. Because I was running -- because it was
19 like a car here I think and so when I was running I had
9:54AM 20 tried to curve to get some kind of cover because there
21 was so much guns going off and I had turned and that's
22 when I hopped the gate.

23 Q. When you say there was a car right here,
24 you're talking about the side of Beesley where the
9:54AM 25 house party was?

9:54AM 1 A. Yeah. The car here and so when I was just
2 going and that's what happened.

3 Q. You said you saw Aric fall?

4 A. Uh-huh.

9:55AM 5 Q. Is that a yes?

6 A. Yes, sir.

7 Q. Do you know what ultimately happened to
8 Aric?

9 A. Yes, sir.

9:55AM 10 Q. What happened to Aric?

11 A. He died. He got shot in the back of the
12 head and it came out I think under his -- when they
13 asked me --

14 Q. Let me ask you this: Did you actually see
9:55AM 15 the injuries to Aric?

16 A. I didn't actually get to see him. They
17 wouldn't let me see him.

18 Q. When you said you saw Aric fall, can you
19 point out to us where you saw Aric fall?

9:55AM 20 A. I think it was like right here if I'm not
21 mistaken because we was all walking side by side and we
22 was hit in the corner and Shannon took off running
23 first and Aric -- and then we took off around the same
24 time, but I think Aric fell like across from over here
9:56AM 25 if I'm not mistaken. It was somewhere over here in

9:56AM 1 this area.

2 Q. So not very far from where everything
3 happened?

4 A. Yes.

9:56AM 5 Q. And you ran in the same direction as Aric
6 but the opposite direction of Shannon?

7 A. Yeah. But I think -- honestly I think --
8 I don't know, man. I think Shannon knew like -- or
9 Shannon felt like something was about to happen because

9:56AM 10 he took off like quick. He was fast. He was younger.

11 MR. PALAL: Does the Grand Jury have any
12 questions for Mr. Bentley?

13 BY A JUROR:

14 Q. If you were all lined up is it fair to say
9:57AM 15 you were kind of more to the inside and he was more in
16 the middle and Shannon was on the outside?

17 A. Yes. I guess. I mean, I can't really
18 remember.

19 Q. Your left arm was hit?

9:57AM 20 A. Yes, ma'am.

21 Q. And Aric was more in the middle?

22 A. Yeah. I'm guessing.

23 BY MR. PALAL:

24 Q. If you remember. If you don't remember --

9:57AM 25 A. I really don't remember. And everything

9:57AM 1 happened so fast.

2 BY A JUROR:

3 Q. Do you know if these guys were in the
4 party earlier or not?

9:57AM 5 A. No, sir.

6 BY A JUROR:

7 Q. By any chance do you know if maybe they
8 knew anybody at the party?

9 A. Who?

9:58AM 10 Q. The gentlemen on the fence.

11 A. I didn't have no idea. I mean, I was just
12 there with my friends so I thought everything was --

13 Q. So you --

14 A. I didn't question him. So he was like do
9:58AM 15 you want to go to a party and I was like yeah. Because
16 I was getting ready to leave to go to the Army so I
17 just wanted to hang out with my friends before I leave.
18 And that's what happened.

19 Q. How long did it take before your hand
9:58AM 20 started working again?

21 A. Like a year and a half. A year. Like a
22 year I think. It took awhile though.

23 Q. Is there any permanent damage as far as
24 like are you, let's say, 80 percent?

9:58AM 25 A. Yeah. I mean, my left hand's still not

9:58AM 1 fully mobile. So it's like I can't turn my left hand
2 all the way around. Like it still goes like this and I
3 still don't -- I have like numbness up in here. Like I
4 still can't feel like these fingers.

9:59AM 5 Q. How is your breathing with the lung?

6 A. I mean, it got better now since my time in
7 the Army because I used to run a lot so it got better.
8 But when I first started it wasn't good. Like it took
9 a lot of effort for me to get past that.

9:59AM 10 THE FOREPERSON: Mr. Bentley, by law these
11 proceedings are secret and you are prohibited from
12 disclosing to anyone anything that transpired before us
13 including evidence presented to the Grand Jury, any
14 event occurring or statement made in the presence of
9:59AM 15 the Grand Jury or any information obtained by the Grand
16 Jury.

17 Failure to comply with this admonition is
18 a gross misdemeanor punishable up to 364 days in the
19 Clark County Detention Center and a 2000-dollar fine.
9:59AM 20 In addition you may be held in contempt of court which
21 is punishable by an additional 500-dollar fine and 25
22 days in the Clark County Detention Center.

23 Do you understand this admonition?

24 THE WITNESS: Yes, ma'am.

10:00AM 25 THE FOREPERSON: Thank you for your time.

10:00AM 1 You're excused.

2 Please remain standing and raise your
3 right hand.

4 Do you solemnly swear that the testimony
10:00AM 5 that you are about to give upon the investigation now
6 pending before this Grand Jury shall be the truth, the
7 whole truth and nothing but the truth, so help you God?

8 THE WITNESS: Yes.

9 THE FOREPERSON: Please be seated.

10:00AM 10 You are advised that you are here today to
11 give testimony in the investigation of a 2009 murder.

12 Do you understand this advisement?

13 THE WITNESS: Yes.

14 THE FOREPERSON: Please state your first
10:01AM 15 and last name and spell both for the record.

16 THE WITNESS: Shannon Williams-Sutton.

17 S-h-a-n-n-o-n. Last name W-i-l-l-i-a-m-s hyphen

18 S-u-t-t-o-n.

19 THE FOREPERSON: Thank you.

10:01AM 20

21

22

23

24

10:01AM 25

10:01AM 1 SHANNON WILLIAMS-SUTTON,
2 having been first duly sworn by the Foreperson of the
3 Grand Jury to testify to the truth, the whole truth,
4 and nothing but the truth, testified as follows:

10:01AM 5
6 EXAMINATION

7 BY MS. PIEPER:

8 Q. Shannon, I need you to move up to
9 microphone. You don't want to be here, right?

10:01AM 10 A. Absolutely.

11 Q. You are compelled to be here by a
12 subpoena, correct?

13 A. Yes.

14 Q. On February 20th, 2009 did you go to a
10:01AM 15 party?

16 A. (No answer.)

17 Q. That's a yes or no question.

18 A. I told you I don't want to be here.

19 Q. I understand that. On February 20th,
10:01AM 20 2009 did you go to a party?

21 A. I want to go home.

22 Q. I'm sorry?

23 A. I don't want to be here. I want to go
24 home.

10:01AM 25 Q. I understand that you don't want to be

10:02AM 1 here. But you are compelled to be here by the Grand
2 Jury subpoena.

3 A. So where does this say I have to answer
4 any questions? I want to go home. I told you I don't
10:02AM 5 want to be here. I don't want to go there, I don't
6 want to relive it no more. Just let me go home.

7 You've got all these other people here.
8 Go ask them. I want to go home. I don't want to be
9 here. I don't care.

10:02AM 10 Q. Why don't you want to be here?

11 A. I want to go home. If it's going to be a
12 long ass interview, excuse my language, but I don't
13 want to be here. I told you all I had to say. It's
14 written down. Let me go home.

10:02AM 15 Q. In order to get your statement you have to
16 testify.

17 A. Okay. Then I'm not going to say anything.

18 Q. I am going to ask that we take a break so
19 we can go see the Chief Judge.

10:18AM 20 (Off the record.)

21 MS. PIEPER: Okay. We are back on the
22 record in Grand Jury Case Number 15BGJ096X. Shannon
23 Williams is still on the stand.

24 BY MS. PIEPER:

10:18AM 25 Q. Shannon, you said to us that you gave a

10:18AM 1 statement to police; is that correct?

2 A. I need to put more money in my parking
3 space.

4 Q. On February 20th, 2009 you gave a
10:18AM 5 statement to police; is that correct?

6 A. I need to put more money in my parking
7 space.

8 Q. And in regard to the statement that you
9 gave to police you actually talked about going to a
10:18AM 10 party at 65 Beesley; is that correct?

11 A. (No response.)

12 Q. When you went to the party at Beesley you
13 actually went to the party and then you went to get
14 something to eat and then you went back to the party;
10:19AM 15 is that correct?

16 A. (No response.)

17 Q. And while you guys were leaving the party
18 there was some guys sitting on a wall and they told you
19 not to run or you would shoot and a couple of your
10:19AM 20 friends ran and they got shot; is that correct?

21 A. (No response.)

22 Q. I'm sorry. I can't hear you.

23 A. (No response.)

24 Q. And you actually ran in the opposite
10:19AM 25 direction as Aric Brill and Joseph Bentley; is that

10:19AM 1 correct?

2 A. (No response.)

3 Q. They ran in one direction and you ran
4 towards I think it was Charleston; is that correct?

10:19AM 5 A. (No response.)

6 Q. And then in the statement you gave to
7 police you actually said Joseph was there, Angelo was
8 there, Aric, A-r-i-c, was there, Terrell was there and
9 somebody named Scooby; is that correct?

10:20AM 10 A. (No response.)

11 Q. And you also told police that you didn't
12 really know the guys, you mostly knew Joseph Bentley.

13 And for the record each of these questions
14 that I am asking, this witness is not speaking at all.

10:20AM 15 Initially he said that he needed to put money in his
16 parking, I think he repeated that twice, but now since
17 the break after we have resumed from the break he is
18 not answering any of the questions.

19 You actually told the police that when you
10:21AM 20 were inside the party there was a guy with a red
21 burgundy sweater and he sort of was inside the party
22 and then he walked past you. Do you remember telling
23 that to police?

24 A. (No response.)

10:21AM 25 Q. And that when you went outside of the

10:21AM 1 party and you got confronted in the front of the home
2 that guy with the red burgundy sweater said if you run,
3 we will start busting. Do you remember saying that on
4 page six? Would you like to see your statement? Would
10:21AM 5 that refresh your recollection of what happened?

6 I am going to put your statement right
7 there in case you want to look at that. That's on page
8 six if you want to look.

9 You actually gave police a description of
10:21AM 10 the person with the red burgundy sweater. Do you
11 remember that?

12 A. (No response.)

13 Q. You said his hair was nappy like an Afro,
14 you said he was 6'3", you described him wearing a
10:22AM 15 burgundy jacket and you told the police that he started
16 to shoot when they ran. Do you remember telling police
17 that?

18 A. (No response.)

19 Q. You said everybody ran north except you
10:22AM 20 and Scooby when the guy started to shoot. You and
21 Scooby ran towards Charleston. Do you remember saying
22 that at all?

23 A. (No response.)

24 Q. You said there were eight people in the
10:22AM 25 group ran up to them, a couple of them said not to run,

10:22AM 1 the guy in the burgundy sweater had two guns. You told
2 police on February 20th, 2009 that you heard four
3 shots before you started to run and you don't know how
4 many shots you heard after that. Do you remember that?

10:23AM 5 A. (No response.)

6 Q. You told police that your friends were in
7 front of you and you and Scooby were on the other side
8 of the street. You told police that the guy with the
9 burgundy sweater pointed the gun toward the people
10:23AM 10 running north and you were on the east side of the
11 roadway. Do you remember saying that to police?

12 A. (No response.)

13 Q. Do you remember saying to the police that
14 prior to the shooting the guys on the wall didn't say
10:23AM 15 anything to you, they just walked up to you and your
16 friends?

17 A. (No response.)

18 Q. Do you remember telling police that you
19 ran across the street, across Charleston into an
10:23AM 20 apartment complex, you waited until you heard the
21 sirens from police and once you heard the sirens, then
22 you walked back to 65 Beesley to see people?

23 A. (No response.)

24 Q. You didn't see what direction the gunmen
10:24AM 25 left in nor did you see a specific car.

10:24AM 1 You also told police on February 20th,
2 2009 that you noticed tension in the house prior to the
3 shooting, that these guys were mad dogging people when
4 they walked but they didn't move. You told police you
10:24AM 5 were in the party about five minutes and then you left
6 to go to the store. You said you never went inside the
7 store, you guys were gone for about 20 minutes and then
8 you guys walked back to the party. Do you remember
9 telling police any of that?

10:24AM 10 For the record for each of these questions
11 the witness is refusing to testify.

12 A. (No response.)

13 Q. You told police that there were girls
14 sitting on the wall next to these guys that robbed you.
10:24AM 15 You described the gun as an automatic. You said the
16 guy with two guns with the burgundy sweater had a dark
17 gun and a silver gun. Do you remember saying that to
18 police?

19 A. (No response.)

10:25AM 20 Q. You said you never saw these guys before,
21 they were 17 to 20 years old, you described the shooter
22 as 20 years old. You said that the shooter had a
23 burgundy jacket, sweater, he had a hood and the hood
24 was all the way up. He had a little bit of hair on his
10:25AM 25 chin and you think he had a mustache. Do you remember

10:25AM 1 that?

2 A. (No response.)

3 Q. He was a little bit taller than everybody

4 else, the guy with the gun. You felt like the guys

10:25AM 5 that robbed you were waiting for you guys when you got

6 back. You never really hung out with Aric, Angelo or

7 Terrell and you were told about the party from Angelo.

8 Do you remember any of that?

9 A. (No response.)

10:26AM 10 Q. Showing you what's marked as Grand Jury

11 Exhibit Number 16 do you recognize that person?

12 A. (No response.)

13 Q. Is that you?

14 A. (No response.)

10:26AM 15 MS. PIEPER: For the record he shrugged

16 his shoulders. And then smiled.

17 BY MS. PIEPER:

18 Q. For the record I need you to come back

19 next week Wednesday at 8:30 in the morning to answer

10:26AM 20 questions.

21 Do any of the members of the Grand Jury

22 have any questions for this witness?

23 BY THE FOREPERSON:

24 Q. Were you traumatized by this event?

10:27AM 25 A. No.

10:27AM 1 BY A JUROR:

2 Q. By not testifying do you think Aric
3 deserved to die?

4 A. I'm glad everybody is just concerned about
10:27AM 5 Aric like he was the only person there. But okay.

6 Q. We were hoping that you would testify --

7 A. I was hoping to go home. I don't want to
8 be here. He dead, ain't shit I can do, nobody can do.
9 What the hell you all want from me? Leave me alone.

10:27AM 10 BY THE FOREPERSON:

11 Q. Did you happen to know any of the guys
12 sitting on the wall?

13 A. I didn't know nobody there. Only person I
14 knew was Joe Joe.

10:27AM 15 BY MS. PIEPER:

16 Q. For the record is Joe Joe Joseph Bentley?

17 A. Yes.

18 BY THE FOREPERSON:

19 Q. Did you want to go to the party at all?

10:28AM 20 A. I didn't care. I was invited so I went.

21 Q. How dark was it when you guys were walking
22 down the street?

23 A. I want to go home. I don't want to answer
24 any more questions. I'm not saying nothing else so

10:28AM 25 just let me go.

10:28AM 1 MS. PIEPER: Any other questions from the
2 members of the Grand Jury?

3 THE FOREPERSON: Mr. Williams-Sutton, by
4 law these proceedings are secret and you are prohibited
10:28AM 5 from disclosing to anyone anything that transpired
6 before us including evidence presented to the Grand
7 Jury, any event occurring or statement made in the
8 presence of the Grand Jury or any information obtained
9 by the Grand Jury.

10:28AM 10 Failure to comply with this admonition is
11 a gross misdemeanor punishable up to 364 days in the
12 Clark County Detention Center and a 2000-dollar fine.
13 In addition you may be held in contempt of court which
14 is punishable by an additional 500-dollar fine and 25
10:28AM 15 days in the Clark County Detention Center.

16 Do you understand this admonition?

17 THE WITNESS: Yes.

18 THE FOREPERSON: Thank you.

19 THE WITNESS: I never said nothing anyways
10:29AM 20 so I don't care.

21 MS. PIEPER: We need you back here next
22 Wednesday.

23 THE WITNESS: I don't want to be here.

24 MS. PIEPER: I understand that but for the
10:29AM 25 record --

10:29AM 1 THE WITNESS: Why do you all want to keep
2 putting me here? Why do you all want me to relive this
3 shit over and over again? I've been reliving it for
4 seven fucking years. Leave me the fuck alone.

10:29AM 5 THE FOREPERSON: Perhaps you can bring it
6 to an end.

7 THE WITNESS: It's not going to be the
8 end. It's still going to be there. He still got shot.
9 They still was going to kill me if I didn't run. So
10 what? And it's still like that.

11 THE FOREPERSON: They're probably still
12 out there.

13 THE WITNESS: Probably. So what? What
14 the fuck? They can't do nothing to me. If they kill
10:29AM 15 me, oh, well. Shit. Maybe you all will leave me the
16 fuck alone.

17 MS. PIEPER: We need you here next
18 Wednesday at 8:30.

19 THE WITNESS: I do not want to be here. I
10:30AM 20 don't want shit to do with this case. I don't want
21 nothing to do with it. I don't care. You're all not
22 understanding. I don't want to talk. I don't want to
23 talk. I don't want to talk. I don't want to be here.
24 Leave me alone. For real. Like you all got enough
10:30AM 25 people to talk to. Talk to them. Leave me alone. For

10:30AM 1 seven years ain't nobody came and said shit to me. So
2 leave me alone.

3 MS. PIEPER: Next week we need you outside
4 the Grand Jury.

10:30AM 5 THE WITNESS: Fuck.

6 THE FOREPERSON: Would you please stand
7 and raise your right hand.

8 You do solemnly swear that the testimony
9 that you are about to give upon the investigation now
10:31AM 10 pending before this Grand Jury shall be the truth, the
11 whole truth and nothing but the truth, so help you God?

12 THE WITNESS: Yes.

13 THE FOREPERSON: Please be seated.

14 You are advised that you are here today to
10:31AM 15 give testimony in the investigation of a 2009 murder.

16 Do you understand this advisement?

17 THE WITNESS: Yes.

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

10:31AM 20 THE WITNESS: Angelo Gilbert.

21 A-n-g-e-l-o. G-i-l-b-e-r-t.

22 MS. PIEPER: May I proceed?

23 THE FOREPERSON: Yes.

24

10:31AM 25

10:31AM 1 ANGELO GILBERT,
2 having been first duly sworn by the Foreperson of the
3 Grand Jury to testify to the truth, the whole truth,
4 and nothing but the truth, testified as follows:
10:31AM 5
6 EXAMINATION
7 BY MS. PIEPER:
8 Q. Angelo, I want to draw your attention to
9 February of 2009. At that time what school were you
10:31AM 10 going to?
11 A. Global Community High School.
12 Q. And who were you hanging out with at that
13 time?
14 A. At the school Joseph Bentley, Terrell,
10:31AM 15 Aric Brill.
16 Q. And Aric is A-r-i-c, correct?
17 A. Correct. And I had a couple other friends
18 that I only really associated with at that school.
19 Only people that I associated outside of school was
10:32AM 20 Joseph and Terrell. And Aric was -- only hung out with
21 Aric one time outside of school.
22 Q. Do you know Shannon Williams?
23 A. No. He wasn't a friend of mine. I didn't
24 remember him.
10:32AM 25 Q. Did he go to school at Global?

10:32AM 1 A. No.

2 Q. I want to draw your attention to
3 February 20th, 2009.

4 A. Okay.

10:32AM 5 Q. In the early evening who were you hanging
6 out with?

7 A. That was that Friday, correct?

8 Q. Correct. Day of the party.

9 A. Yeah, I was with Aric and Joseph for most
10 of the day. We left school. Aric and Joseph actually
11 came to my house after we left school. We went to
12 Joseph's house. Actually I don't even remember if we
13 went to Joseph's house first or my house first after
14 school. We went to Joseph's house. We were hanging
10:33AM 15 out at my house for awhile, hanging at my house for a
16 couple hours. Not long, though.

17 Q. And then at some point did you get
18 information about a party that was happening that
19 night?

10:33AM 20 A. Yeah. I was asking around. I know me
21 being me I was asking friends about parties. Like I
22 said me and my brothers, we would go out to house
23 parties every weekend, every Friday and Saturday
24 almost. I don't remember receiving the text but I know
10:33AM 25 I got the text because I wound up at the party. But I

10:33AM 1 know I got a text. I'm pretty sure I got a few.

2 Q. And so you got the text about the party
3 and this was on a Friday night; is that correct?

4 A. Correct.

10:34AM 5 Q. And so you're already with Joseph and Aric
6 and you?

7 A. Right. I had another buddy with me that
8 was riding the bus with us, his name was DeMarcus, but
9 he got off the bus and went home before we actually
10 headed to the party.

11 Q. And is that Scooby?

12 A. No. He didn't go by Scooby. If I
13 remember Scooby was just a friend that I knew -- I'm
14 pretty sure he went to Chaparral or Vegas. I knew so
15 many people back in high school. It's so many
16 different nicknames I know people by, but I'm pretty
17 sure it was just from a different high school I knew
18 him from. And if anything it was -- I went to Eldorado
19 for two years prior to me going to Global. So I knew a
20 lot of people at Eldorado as well. But he was a friend
21 of mine at the time.

22 Q. And in 2009 approximately how old were
23 you?

24 A. Seventeen years old.

10:35AM 25 Q. So you, Joseph and Aric get on the bus to

10:35AM 1 go to the party?

2 A. Correct.

3 Q. And DeMarcus?

4 A. At the time we were riding the bus around
10:35AM 5 the city. I don't know where Shannon came into play on
6 the bus. Like I said he wasn't a friend of mine, but
7 we were all riding around for a little bit after we
8 left my house, left Joseph's house. DeMarcus got off
9 the bus long before we even actually -- I'm pretty sure

10:35AM 10 where we found out where the party was because he was
11 just wanting to go home. I don't remember him talking
12 about not wanting to go to a party. It was actually
13 one of Terrell's neighbors. That's how I met DeMarcus.
14 And I was hanging out with DeMarcus, know him at

10:36AM 15 Eldorado and that's where I met Terrell at. And, yeah,
16 I think he would have come to the party if he had known
17 we were going to a party.

18 Q. So at some point it's you, Joseph and Aric
19 and you guys get off the bus. What do you do when the
10:36AM 20 three of you get off the bus?

21 A. We were sitting on Charleston and Tree
22 Line for awhile. I don't remember what time we got off
23 the bus, but we sat on the corner after we got off the
24 bus -- we crossed the street, went to the east side of
10:36AM 25 the street -- went to the north side of the street.

10:36AM 1 Sorry. We waited -- there was a little fencing around
2 this vacant property that didn't have no buildings on
3 it. We were sitting on the fence for a little bit.

4 Me and Aric went to a store off of
10:36AM 5 Charleston and Sloan, quarter mile down the street, to
6 go get something to drink and something to snack on and
7 in the process of us walking back up the street I
8 know -- I'm pretty sure Terrell had met up with Joseph
9 getting off the bus. And actually prior to me meeting
10:37AM 10 up with Terrell we had walked up and down Beesley a
11 couple times to initially look for the party.

12 Q. So let me back you up there. You talked
13 about getting off the bus and going to the store. When
14 you guys got off the bus, did you guys walk up Beesley
10:37AM 15 prior to going to the store?

16 A. When we first got off the bus I don't
17 remember. We might have walked down Beesley. We went
18 up and down the street so many times.

19 Q. Why were you going up and down Beesley?

10:37AM 20 A. We didn't know where the party was
21 exactly.

22 Q. I can't talk over you and you can't talk
23 over me.

24 A. Sorry.

10:37AM 25 Q. It's okay. You guys are walking up and

10:38AM 1 down Beesley. Can you remember if this is before you
2 went to the store or after you went to the store?

3 A. We were walking up and down before and
4 after.

10:38AM 5 Q. To find the party?

6 A. Yes.

7 Q. When you were walking up and down Beesley,
8 who was with you? Was it just you, Aric and Joseph?
9 If you can remember.

10:38AM 10 A. I'm pretty sure and I think Shannon was
11 with us as well, but I really don't remember. Like I
12 said he wasn't a friend of mine so I don't remember
13 where he came into play at.

14 Q. When you say you're walking up and down
10:38AM 15 the street, do you remember actually walking into the
16 party?

17 A. I don't remember.

18 Q. Now, you said you were walking up and down
19 the street to find the party. Was it well lit? Was
10:38AM 20 the street well lit?

21 A. No. There was very little street lights
22 on the street. It was really dark out and it was hard
23 to see going down the street at all.

24 Q. At some point you're in a group with you,
10:38AM 25 Terrell, Joseph, Aric and Shannon; is that correct?

10:39AM 1 A. Correct. And I believe Scooby was with us
2 as well.

3 Q. Who is Scooby?

4 A. If I'm correct he was one of my friends
10:39AM 5 that I knew from one of the other high schools. I
6 mean, I went to a lot of football games, basketball
7 games. I did a lot of events in high school.

8 Q. So at some point you guys are all walking
9 to the party; is that correct?

10:39AM 10 A. Correct.

11 Q. And as you're walking to the party have
12 you been into the party yet?

13 A. I might have. I'm not sure, though. I
14 don't remember. I don't think I did.

10:39AM 15 Q. At some point you're walking into the
16 party and what happens next?

17 A. We come down the street. As we're coming
18 down the street all the noise from everybody --

19 Q. I am going to stop you for a second. We
10:40AM 20 need a break so just go in the side room right here.

21 (Off the record.)

22 THE FOREPERSON: Mr. Gilbert, let me
23 remind you you're still under oath.

24 BY MS. PIEPER:

10:44AM 25 Q. So at some point it's you, Joseph, Aric,

10:44AM 1 Terrell, Shannon and Scooby are walking up to the
2 house; correct?

3 A. Correct.

4 Q. Do you actually walk up and go into the
10:44AM 5 party or are you just walking up to the house?

6 A. I don't remember walking into the party.
7 I don't remember walking onto the property.

8 Q. As you're walking up to the 65 Beesley
9 address what happens?

10:44AM 10 A. We're walking in the middle of the street.
11 I'm on the far left of everybody. Everybody is to my
12 right. As we get towards the middle of the house --

13 Q. Middle of the house or middle of the
14 street?

10:45AM 15 A. We're in the middle of the street. As we
16 get to the middle of the house in the middle of the
17 street it's about four, five gentlemen jumped off the
18 wall. They didn't like jump off but they all got off
19 the wall. I heard three, four guns cock. Only reason
10:45AM 20 I knew it was so many because of the charge of how many
21 times I heard the slide rack. I heard it go back one
22 time, slide back forward one time and that was one.
23 And I hear that four, five more times, six times and I
24 knew it was multiple guns.

10:45AM 25 The first dude comes up to me, he bangs my

10:45AM 1 head with the barrel of the gun, told me don't run,
2 that way he wasn't going to shoot. He snatched -- I
3 had a Side Kick LX09 was the model.

4 Q. That's a phone, correct?

10:46AM 5 A. Correct.

6 Q. Where was that phone?

7 A. It was hanging off of a necklace on my
8 neck. He snatched it off my neck. I remember him
9 turning the gun and I'm pretty sure Terrell was the
10:46AM 10 first person right next to me.

11 Q. Is Terrell to your right or left?

12 A. Nobody is to my left. When we're walking
13 down the street everyone is to my right. I'm on the
14 far left.

10:46AM 15 Q. Closest to the house?

16 A. Correct.

17 Q. Okay. The guy comes up to you and he hits
18 the barrel of the gun against your head, he snatches
19 the phone off of your neck and what happens next?

10:46AM 20 A. I think he was about to try to take some
21 stuff from Terrell and I'm pretty sure that's when
22 everybody started running.

23 Q. When you say everybody, did you run?

24 A. No.

10:47AM 25 Q. Did Terrell run?

10:47AM 1 A. Honestly I don't know. I didn't take my
2 eyes off of the gentleman with the gun.

3 Q. Okay. At some point something happens,
4 right?

10:47AM 5 A. Right.

6 Q. What happened to change the direction of
7 what was going on?

8 A. I think once everybody realized that we
9 were getting robbed -- this was all happening in a
10:47AM 10 matter of five, no more than 10 seconds.

11 Q. Okay.

12 A. It happened too fast. I think once
13 everybody realized what was happening, everybody just
14 started running their own directions.

10:47AM 15 Q. What did the guy with the gun do?

16 A. He was pointing it at -- I'm pretty sure
17 he had it pointed at Terrell when he turned it away
18 from me. Within a matter of seconds shots just start
19 ringing out.

10:48AM 20 Q. How many shots did you hear firing?

21 A. I'd say 17, 18.

22 Q. Is he moving as he's shooting?

23 A. No, he's standing right in front of me.

24 Q. Is his hand moving at all or is he just
10:48AM 25 stationary?

10:48AM 1 A. If I'm correct while he was firing it
2 was -- it had to move away because he was so close to
3 Terrell's head. I know he moved it away from him and
4 then he had to move it to what would be his right
10:48AM 5 because how far everybody was to my right. So in his
6 initial line of fire pointing at Terrell, he would have
7 been shooting at air if he didn't move to the right
8 because of where everybody else was compared to where I
9 was.

10:48AM 10 Q. Let me ask you this: I'm the gunman, I'm
11 standing in front of you. Everybody is to your right,
12 he pulls out the gun and does he have the gun in his
13 right hand or in his left hand?

14 A. I think it was the left hand.

10:49AM 15 Q. If you can't remember, that's okay. If
16 I'm the gunman and I'm shooting, do I turn to my
17 left --

18 A. No. Yes. He had to stray. Well, like I
19 said where to Terrell was -- he would be here, I was
10:49AM 20 here and Terrell is here.

21 Q. Wait. I have to figure out how to do this
22 for the record. Hold on a second.

23 Showing you what's been marked as Grand
24 Jury Exhibit Number 2 do you see this?

10:50AM 25 A. Uh-huh.

10:50AM 1 Q. This is the front of Beesley?

2 A. Yes.

3 Q. This is the home. This is the driveway.

4 A. Correct.

10:50AM 5 Q. I want you to describe for us and show us

6 with the pen. And this is Charleston down here.

7 A. Right. Charleston is back here in this

8 area. Now, I would be about right here and everybody

9 else would be going down off to my right.

10:50AM 10 Q. Okay.

11 A. Now when we got to about right here --

12 Q. Okay. So it's kind of near where the tree

13 is. There's a huge tree on this property.

14 A. Correct. They were sitting right under

10:50AM 15 this tree right here. Only reason I know because where

16 the tree was and I'm pretty sure it's a street light

17 down here on the other side of this wall here.

18 Q. For the record you're pointing to the

19 house that's next to the Beesley home. There's a

10:51AM 20 property and brick wall that's on the other side of

21 that?

22 A. Correct. And there was cast in this light

23 shadow making it even darker just right under here.

24 Q. And that would be under the tree?

10:51AM 25 A. Right. That's what made it so difficult

10:51AM 1 to see these gentlemen here.

2 Now, when they walked up and stopped us
3 here, I was about -- they were all about right here.

4 Q. So they're sort of on the dirt area but
10:51AM 5 also on the road area?

6 A. Right. Correct.

7 Q. So you're closest to them. One of them
8 approaches you first?

9 A. Right.

10:51AM 10 Q. One of them approaches you. Where are the
11 other guys in relation to the person that comes up to
12 you?

13 A. All right behind him.

14 Q. Are they like in a line in a formation --

10:52AM 15 A. No. They're all just like jumbled up just
16 all standing right next to each other. But they're no
17 farther than two, three feet from behind him and all
18 the way -- they're all really, really close to each
19 other.

10:52AM 20 Q. Can you see faces?

21 A. Not really, no.

22 Q. Can you see how many there are?

23 A. As he turned the gun away that's when I
24 started picking through as I'm paying attention to him
10:52AM 25 trying to realize how many people there were compared

10:52AM 1 to what I was listening to when they initially walked
2 up to me.

3 Q. How many people did you see?

4 A. About four or five if I was correct.

10:52AM 5 Q. Including the guy that had the gun?

6 A. Right. Looking through heads into the
7 darkness I was trying to make --

8 Q. So you're standing there, everything is to
9 your right?

10:52AM 10 A. Uh-huh.

11 Q. Is that a yes?

12 A. Yes.

13 Q. The guy has the gun pointed to you and he
14 has people behind him and then what happens?

10:52AM 15 A. Terrell had moved. When he's standing in
16 front of me, Terrell had moved --

17 Q. When you say he, you mean the guy with the
18 gun?

19 A. The gentleman with the gun. I'm pretty
10:53AM 20 sure Terrell had moved right here up closer on my right
21 because I see him on my peripheral because I didn't
22 turn to look right because I didn't see nobody run. I
23 had my eyes fixed on the gentleman in front of me.

24 Q. Okay.

10:53AM 25 A. He turns. That's why I said he had to

10:53AM 1 turn right because if he would have went too far left,
2 he probably would have shot Terrell in the head.

3 Q. Okay. So if I'm the gunman, I'm standing
4 in front of you. I turn to my right or turn to my
10:53AM 5 left?

6 A. No. Terrell is here and I'm here.

7 Q. Okay.

8 A. He's in between me and Terrell.

9 Q. Okay.

10:53AM 10 A. And when they start running, he had to go
11 right. If he would have went left, like I said he
12 would have aimed more in Terrell's direction.

13 Q. So he is pointing now towards you and
14 going past you?

10:53AM 15 A. Right. So he comes up to me this way.
16 Everybody -- like I said everybody is on my right.
17 Terrell winds up somewhere about right here.

18 Q. And where is all the rest of your friends;
19 do you know?

10:54AM 20 A. I could not see them.

21 Q. Okay.

22 A. So when I'm standing here -- and only
23 reason I know he had to come back from my way and away
24 from Terrell because everybody wasn't there except me
10:54AM 25 and Terrell actually were.

10:54AM 1 Q. So you initially said everybody was to
2 your right, but they're to your right and actually kind
3 of behind you?

4 A. Right. To my right and rear. So it would
10:54AM 5 be in this area of my right side.

6 Q. So back right?

7 A. Right.

8 Q. The guy has the gun --

9 A. I'm sorry. We walk down the street in a
10:54AM 10 little line halfway blocking almost a lane of traffic
11 in the street but there was no traffic. So we're
12 walking like this down the street in a line like this
13 and that's how Terrell winds up slightly here and
14 everybody else was still back here on my right end and
10:55AM 15 that's why I said he had to sway to the right to get
16 away from Terrell's head because I'm pretty sure -- as
17 I saw Aric take off -- I saw Aric run and that's the
18 only person I actually saw running.

19 Q. Okay. Did Aric run up your right?

10:55AM 20 A. Correct. So we're all here.

21 Q. Okay.

22 A. Aric is running this way like this.

23 Q. Okay.

24 A. I don't know if he ran through this dirt
10:55AM 25 here, but I know he ran and got behind -- tried to get

10:55AM 1 behind the car here.

2 Q. Okay. So Aric ran away from Charleston?

3 A. Correct.

4 Q. Sort of in a semi-circle?

10:55AM 5 A. It would be north on Beesley he was
6 headed.

7 Q. And what did the guy with the gun do?

8 A. He kept firing.

9 Q. And did he turn to his left and follow
10:56AM 10 Aric this way or did he turn to the right and --

11 A. No. I don't know if Terrell ducked and
12 moved out the way, but as everybody started running
13 that's when he went from right and then started moving
14 back to the left.

10:56AM 15 Q. Okay.

16 A. I know that's how Aric got caught as he
17 was moving back the other way.

18 Q. So the gunman starts sort of for lack of a
19 better term he's tracking Aric? Where Aric is running
10:56AM 20 the gun is firing towards Aric?

21 A. I would say yes.

22 Q. So the gunman is firing from his right to
23 his left tracking Aric?

24 A. Right.

10:56AM 25 Q. So you're standing there. At some point

10:56AM 1 you must have saw Aric run?

2 A. I did. It was for a real quick second and
3 when I saw him it looked like he kind of dove behind
4 the car or something.

10:57AM 5 Q. And you sort of marked for us in the area
6 where there was a car?

7 A. Yeah. And I'm pretty sure it was about
8 right here.

9 Q. So it's a little bit outside of the
10:57AM 10 Beesley property home on the dirt sort of --

11 A. Right. It wasn't blocking the driveway.

12 Q. So you see Aric kind of dive?

13 A. From what I thought he was doing, correct.

14 Q. And then what happens next?

10:57AM 15 A. I back up -- while the shots are ringing
16 I'm backing up to this trash can and that's when I
17 noticed Aric. When I started getting away from him, I
18 started seeing more through my peripheral. I could see
19 a little more to the right as I'm backing up, I could
10:57AM 20 see the fence and that car -- the car sitting next to a
21 fence right here.

22 Q. Okay.

23 A. For a quick second as right before I get
24 behind the trash can I just see Aric's body turn and
10:57AM 25 just fall over and I couldn't see him no more. And I

10:58AM 1 went all the way behind this trash can. I looked to my
2 left towards Charleston. These gentlemen had a car
3 parked approximately right here.

4 Q. When you say these gentlemen, you mean the
10:58AM 5 group --

6 A. The gunman and all the gentlemen behind
7 him. Hopped in the car. One was kind of running slow
8 behind everybody and he jumped in the car and they --
9 they were pulling off before he actually even closed
10:58AM 10 the door.

11 Q. Okay.

12 A. Like I said it had to be at least four,
13 five of them.

14 Q. Okay. Where did the car go?

10:58AM 15 A. Went down Charleston and made a right so
16 it would be westbound on Charleston going towards
17 Nellis.

18 Q. What type of car was it? If you can tell.

19 A. It would be an earlier, mid 2000 Malibu or
10:59AM 20 like Impala, the four-door sedan model.

21 Q. And could you tell what color it was?

22 A. Like I said before there was one street
23 light that was casting a slight reflection off of that
24 big tree right here before this brick wall and that's
10:59AM 25 what made that shadow so dark under that tree. And

10:59AM 1 when they went through that under that street light I
2 noticed it was either black or dark purple. There was
3 no other dark -- if anything blue, but it looked black
4 or dark purple.

10:59AM 5 Q. Okay. They drive away. What do you do
6 next?

7 A. I come from behind the trash can. I was
8 just -- I'm pretty sure I was just screaming for
9 everybody. I remember watching Aric go behind the car
10:59AM 10 so that's the first person I ran over to.

11 Q. You go over to Aric and when you first see
12 Aric describe for us what you see.

13 A. When I first see Aric I thought he was
14 just on the ground laying there. His body was kind
11:00AM 15 of -- it was like he was breathing extremely hard so
16 his body was jerking off the ground.

17 Q. Do you know what convulsing is?

18 A. There you go.

19 Q. Was he facing down or was he facing up?

11:00AM 20 A. He was I'm pretty sure exit wound in the
21 dirt sideways laying down with all of his side in the
22 dirt and this half his face in the dirt.

23 Q. So when you saw him his face was down?

24 A. Correct.

11:00AM 25 Q. Could you see any wounds to his body?

11:00AM 1 A. No. I got to Aric --

2 Q. Do you want to take a little bit of a
3 break?

4 A. I got to Aric and I rolled him over and he
11:01AM 5 had a big 'ol -- he had a hole in his face.

6 Q. And what happened next?

7 A. I kept calling for everybody. I don't
8 know where Terrell came from but he popped up where
9 Aric was. I went down the street, I heard somebody
11:02AM 10 down the street making noise. It was the neighbor down

11 the street a couple houses down. He was outside with
12 his gun drawn. So I came up to the property, pointed
13 his firearm, I hid behind his wall, I told him that I
14 just got robbed and my buddy just got shot, put his
11:02AM 15 firearm away.

16 Joseph was laying in his driveway,
17 bleeding out the mouth. I didn't know where Joseph was
18 shot at. He was struggling to breathe.

19 Q. I am going to ask you to come up here
11:02AM 20 again and this is Grand Jury Exhibit Number 2. You
21 said that you went up the street.

22 A. Uh-huh.

23 Q. Do you see the house where Joseph ended up
24 at or where you also --

11:03AM 25 A. If I'm correct it's this house right here.

11:03AM 1 He was in the driveway.

2 Q. So when you said you came up and there was
3 a guy with a shotgun, there's a fence around this
4 property; is that correct?

11:03AM 5 A. Right. His gate was opened right here
6 where -- it's the mechanical to put it closed but it
7 wasn't closed. That's where I initially stopped at
8 right here.

9 Q. And that's where you tried to go in and
11:03AM 10 then the guy came out?

11 A. He was already out. I tried to go in and
12 when I saw him and he saw me, I didn't even make it --
13 hit the pavement here. I was still in the dirt and I
14 went behind the wall here because I didn't want him to
11:04AM 15 shoot me and I started yelling at him.

16 Q. Eventually police showed up, correct?

17 A. Yup.

18 Q. And then Joseph was taken away to the
19 hospital?

11:04AM 20 A. Yes.

21 Q. And you stayed on scene?

22 A. All morning.

23 Q. Showing you what's been marked as Grand
24 Jury Exhibit Number 7 do you recognize that picture?

11:04AM 25 A. That's the front of the house.

11:04AM 1 Q. Do you see the sort of garbage can area
2 that you had initially pointed out --

3 A. This isn't the can. This would be the can
4 right here. You can barely see it but this is the can
11:05AM 5 here.

6 Q. Let me show you this and this picture is
7 just a little bit graphic. Showing you what's been
8 marked as Grand Jury Exhibit Number 8?

9 A. I think this was the car right here. I
11:05AM 10 thought it was parked right here.

11 Q. So let me ask you this: Looking at Grand
12 Jury Exhibit Number 8 -- let me back up. This is the
13 first time you've seen these photographs, correct?

14 A. Correct. I've tried to block out a lot of
11:05AM 15 this since it happened. It's bothering me the past
16 seven years.

17 Q. Grand Jury Exhibit Number 8 you can see
18 that there's a street. Can you see any street lights
19 on Beesley?

11:06AM 20 A. No.

21 Q. And this is a perspective that they're
22 looking down towards Charleston; is that correct?

23 A. Correct.

24 Q. Closest to us you see some cones and some
11:06AM 25 blood; is that correct?

11:06AM 1 A. Correct.

2 Q. You also see a car parked on the opposite

3 side of the street where the blood is?

4 A. Uh-huh.

11:06AM 5 Q. Is that correct?

6 A. Uh-huh. Correct.

7 Q. And then also in the picture you see like

8 it looks like one of those kind of like metal dumpsters

9 that doesn't really move?

11:06AM 10 A. Yes.

11 Q. Is that what you hid behind?

12 A. Yes. This is the actual dumpster I hid

13 behind here.

14 Q. And down from that dumpster you see a

11:06AM 15 series of cones?

16 A. Here.

17 Q. And the Beesley house I will tell you down

18 here.

19 A. Right before this brick wall, right before

11:07AM 20 this post here.

21 Q. So that depicts sort of the trash can

22 where you were?

23 A. Right. So we would be probably where this

24 car is far enough back. I initially thought this car

11:07AM 25 was here because I thought he actually got behind the

11:07AM 1 car right here. From what I remember. So he had to
2 come behind -- Aric had -- in looking at this picture,
3 this car here, if this is the same car that he ran
4 behind this car and that's where he got shot after
11:07AM 5 coming from behind this car.

6 Q. So I am going to show you Grand Jury
7 Exhibit Number 7. So in the other picture we saw the
8 car, we saw Aric's things here and then we saw the
9 trash can where you were at?

11:07AM 10 A. No, this is not the trash can.

11 Q. I am going to show you Grand Jury Exhibit
12 Number 6. Is that a perspective near where the trash
13 can that you were looking back at the Beesley home?

14 A. Correct. The trash can is right here and
11:08AM 15 these gentlemen would have came off this brick wall
16 right here. Now, the bright lights -- again I thought
17 it was a street light here, but these lights had
18 slightly brought a shadow down onto these trees which
19 made it that much darker just here.

11:08AM 20 Q. So let me ask you this: In looking at
21 this picture we see that there are street lights in the
22 back. Do you see that?

23 A. Yup.

24 Q. And are those street lights actually on
11:08AM 25 Charleston?

11:08AM 1 A. Yes.

2 Q. So in front of the home and near the area

3 where you talk about there being a street light do you

4 see a street light there?

11:08AM 5 A. On the block, no. Not even 50 feet within

6 the home.

7 Q. Showing you what's been marked as Grand

8 Jury Number 16 who is that?

9 A. I don't remember. He doesn't look

11:09AM 10 familiar to me. Not a friend of mine. It looks like

11 Shannon, though.

12 Q. Showing you Grand Jury Exhibit Number 14

13 who is that?

14 A. That would be Terrell.

11:09AM 15 Q. And Grand Jury Exhibit Number 15 who is

16 that?

17 A. And myself.

18 Q. Is that what you were wearing that night?

19 A. Yeah. I don't remember that.

11:09AM 20 Q. Photograph or the clothes?

21 A. I don't remember wearing the clothes. I

22 blocked out so much.

23 Q. The person that approached you with the

24 gun that hit the barrel of the gun to your head, can

11:10AM 25 you give us any descriptions of him?

11:10AM 1 A. He was a dark skinned male, short hair
2 what they would call a fade, just a little bit left up
3 top, nothing that sticks like off the head. Just a
4 little bit of hair brush. I don't remember what he had
11:10AM 5 on. I couldn't really see too much of a face at all.
6 And then I was thinking about so much at one time
7 trying to pay attention to so much at one time honestly
8 I don't know.

9 Q. That's okay. It's all right. Could you
11:11AM 10 tell how old he was?

11 A. From the gentleman's voice he couldn't
12 have been that old at all. He didn't have a deep
13 voice. It wasn't any kind of raspy.

14 Q. I am going to ask you this question
11:11AM 15 because I don't know what you may consider old or
16 young. So how old approximately was the person that --

17 A. I'd say 17 to 19 years old at the max.

18 Q. And the group of people that he was with,
19 could you see their faces, any descriptions about them?

11:11AM 20 A. No.

21 Q. What about ages?

22 A. I don't think anybody was over 18, 19
23 years old. At that time I wasn't hanging out with
24 nobody really older than me. I didn't really know too
11:11AM 25 many people older than me. I was hanging out with

11:12AM 1 people in high school. If anything, you were my age or
2 just a little younger. Most of the people I was
3 hanging out at the parties my age or younger. Usually
4 they graduated from high school they didn't come to the
11:12AM 5 house parties no more.

6 Q. What about height, the person that came up
7 to you with the gun, could you tell if he was taller
8 than you or shorter than you?

9 A. He was about the same height as me. Maybe
11:12AM 10 a little bit taller. Inch, maybe two.

11 Q. How tall are you?

12 A. About 5'7". And he stood about eye level
13 to me just about.

14 Q. And the people that were with him, could
11:12AM 15 you tell anything about height?

16 A. Everybody was about eye level. I
17 didn't -- when I was looking at everybody there wasn't
18 too big of a distinction between 6 inches, 4 inches. I
19 wasn't looking past over by the -- over nobody's head
11:13AM 20 or looking at a head in front of a head too high in
21 front of another. Everybody was around the same height
22 and the way they were all together and in their little
23 circle group. Even how they got off the brick wall, it
24 wasn't hard -- it was hard to tell how many there was,
11:13AM 25 but like I said when I heard the guns and I started

11:13AM 1 looking at how many people were actually there, it had
2 to be at least four or five gentlemen there. No
3 questions asked.

4 And I didn't want to run. I did, but I
11:13AM 5 didn't want to just because of how close he was, I
6 didn't have no where to run. I knew I was in the
7 middle of the street with no where to go.

8 MS. PIEPER: I have no further questions
9 of this witness. Do any of the members of the Grand
11:13AM 10 Jury?

11 THE FOREPERSON: Mr. Gilbert, by law these
12 proceedings are secret and you are prohibited from
13 disclosing to anyone anything that transpired before us
14 including evidence presented to the Grand Jury, any
11:14AM 15 event occurring or statement made in the presence of
16 the Grand Jury or any information obtained by the Grand
17 Jury.

18 Failure to comply with this admonition is
19 a gross misdemeanor punishable up to 364 days in the
11:14AM 20 Clark County Detention Center and a 2000-dollar fine.
21 In addition you may be held in contempt of court which
22 is punishable by an additional 500-dollar fine and 25
23 days in the Clark County Detention Center.

24 Do you understand this admonition?

11:14AM 25 THE WITNESS: Yes, I do.

11:14AM 1 THE FOREPERSON: Thank you for your time.

2 THE WITNESS: Thank you.

3 MR. PALAL: Ladies and gentlemen, at this
4 time we are going to take about a 10-minute break if
11:14AM 5 that's okay. We have one more witness that's on his
6 way.

7 (Off the record.)

8 MR. PALAL: State's next witness is going
9 to be Edward Kruse.

11:30AM 10 THE FOREPERSON: Please raise your right
11 hand.

12 You do solemnly swear that the testimony
13 that you are about to give upon the investigation now
14 pending before this Grand Jury shall be truth, the
11:30AM 15 whole truth and nothing but the truth, so help you God?

16 THE WITNESS: Yes, ma'am.

17 THE FOREPERSON: Please be seated.

18 You are advised that you are here today to
19 give testimony in the investigation of a 2009 murder.

11:30AM 20 Do you understand this advisement?

21 THE WITNESS: Excuse me?

22 THE FOREPERSON: You are advised that you
23 are here today to give testimony in an investigation of
24 a 2009 murder.

11:30AM 25 THE WITNESS: Yes, ma'am.

11:30AM 1 THE FOREPERSON: Please state your first
2 and last name and spell both for the record.

3 THE WITNESS: Edward Kruse. E-d-w-a-r-d.
4 K-r-u-s-e.

11:30AM 5 THE FOREPERSON: Thank you.

6

7

EDWARD KRUSE,

8 having been first duly sworn by the Foreperson of the

9 Grand Jury to testify to the truth, the whole truth,

11:30AM 10 and nothing but the truth, testified as follows:

11

12

EXAMINATION

13

BY MR. PALAL:

14

Q. Mr. Kruse, in the beginning portion of

11:30AM 15 2009 were you in custody?

16

A. Yes, I was.

17

Q. Where were you in custody?

18

A. Clark County Detention Center.

19

Q. During that time did you share a cell with

11:31AM 20 somebody named Nadin Hiko?

21

A. Yes, I did.

22

Q. And is that N-a-d-i-n, H-i-k-o?

23

A. Yes. I think he pronounced it Nadin Hiko.

24

Q. Hiko?

11:31AM 25

A. Yes.

11:31AM 1 Q. During that time did you develop a
2 relationship with Mr. Hiko?

3 A. Yea, I guess so. I mean, we talked just
4 like cellies do and I told him about my history and how
11:31AM 5 I changed my life and turned it over to God and
6 everything and he started telling me some of his
7 escapades.

8 Q. So I guess is it fair to say that part of
9 this conversation were you telling him some of your
11:31AM 10 history?

11 A. Yes.

12 Q. And then as a part of that conversation he
13 told you aspects of his history?

14 A. Yes.

11:32AM 15 Q. And him being Nadin Hiko?

16 A. Right.

17 Q. Did Nadin Hiko in 2009 ever tell you about
18 a party he went to around Tree Line in 2009?

19 A. Yes, he did.

11:32AM 20 Q. What did he tell you about that party?

21 A. He told me that they usually done this
22 like go rob people at parties or whatever. And they
23 pulled up to this one and there was people going into
24 the party and they got out and they went to rob
11:32AM 25 whoever, whoever they could, and everybody scattered.

11:32AM 1 And one of the guys got shot from -- Hiko said he shot
2 him in the back of the head I believe.

3 And then I think he looked on the computer
4 and seen if he died or something or on YouTube or
11:33AM 5 something because I'm not familiar with all this still
6 as far as computers.

7 Q. So just to clarify your statement a little
8 bit. So Mr. Nadin Hiko told you that he went to a
9 party near Tree Line; is that correct?

11:33AM 10 A. Yes.

11 Q. And he told you that he was robbing
12 somebody else?

13 A. Yeah, whoever they could. Yeah.

14 Q. And was this at this party?

11:33AM 15 A. Yes.

16 Q. And do you recall if the party was on
17 February 20th or do you remember the date that the
18 party occurred?

19 A. I don't remember exactly, but it was
11:33AM 20 right -- because it was like a month before I got
21 arrested and I got arrested March 23rd.

22 Q. So sometime in February but you can't say
23 what date?

24 A. Right.

11:33AM 25 Q. He told you the area around Tree Line?

11:33AM 1 A. Yeah.

2 Q. That's what you remember?

3 A. Yup.

4 Q. And --

11:34AM 5 A. Tree Line and Charleston.

6 Q. Did he tell you whether he knew if the

7 person he shot had died?

8 A. He told me that he died. What he said he

9 started off with I think the worst ever I did was I

11:34AM 10 killed somebody. At first I didn't believe it and then

11 he started giving me details and I didn't ask for none

12 of that.

13 Q. Why didn't you believe him initially?

14 A. Who is going to tell somebody that they

11:34AM 15 killed somebody? Unless they're convicted of it.

16 Q. And in your experience in custody would

17 people sometimes say they did things bigger than they

18 actually did to get some sort of reaction?

19 A. Sure.

11:34AM 20 Q. Was that one of the reasons initially you

21 didn't believe Nadin?

22 A. Part of it.

23 Q. What made you change your mind into

24 believing that Nadin may have actually committed the

11:35AM 25 crimes that he said he committed?

11:35AM 1 A. Started talking about the size gun that he
2 used, his friend used and just the details that he was
3 going into. So I come to the conclusion he was telling
4 the truth.

11:35AM 5 Q. Did you recall exactly what kind of guns
6 he was talking to you about that were used in this
7 shooting?

8 A. One was a .22 or what you call a duce
9 duce. And the other one is either -- I think a
11:35AM 10 9-millimeter the other one was.

11 Q. Did you attempt to contact law enforcement
12 in 2009 regarding Nadin Hiko's admission of
13 participating in killing someone?

14 A. Yes, I did.

11:36AM 15 Q. How did you go about attempting to contact
16 law enforcement?

17 A. I wrote the homicide thing I think, the
18 homicide detective units.

19 Q. So you wrote letters?

11:36AM 20 A. Yeah.

21 Q. Fair to say you wrote a number of letters?

22 A. Yeah. That's pretty fair.

23 Q. And is it fair to say as part of sharing
24 that information in letters to Metro you were hoping to
11:36AM 25 get a better deal for the crime that you were accused

11:36AM 1 of?

2 A. That I was accused of, but yeah, never
3 happened.

4 Q. So I guess the follow-up question did you
11:36AM 5 in fact get a better deal as a result of sharing this
6 information?

7 A. No.

8 Q. Did you meet with the police regarding
9 this information?

11:36AM 10 A. Yeah. Detective Rates and some lady, I
11 don't remember her name.

12 Q. And that was back in 2009?

13 A. Yes.

14 Q. Sir, it's now 2016. Between 2009 and
11:37AM 15 earlier this year in 2016 has anybody else talked to
16 you about Nadin Hiko's role in a possible --

17 A. There was two detectives that came up like
18 about four months ago to Pahrump and asked me what I
19 remembered and everything and I explained to them.

11:37AM 20 They said that they'd be maybe making arrests and I was
21 kind of confused why it was taking so long.

22 Q. So I guess fair to say between 2010 and
23 2015 nobody contacted you?

24 A. Right.

11:37AM 25 Q. And you had mentioned that two detectives

11:37AM 1 came to speak to you earlier this year; is that right?

2 A. Yes.

3 Q. Did they show you a couple of photo
4 lineups?

11:37AM 5 A. Yes, they did.

6 Q. I am going to show you Grand Jury Exhibit
7 Number 30. Do you recognize Grand Jury Exhibit Number
8 30?

9 A. Yes. That's my writing that I wrote after
10 I recognized him. This one right here.

11:38AM 11 Q. So it looks like there's a signature under
12 spot number five?

13 A. Yes.

14 Q. And looks like there's a circle?

11:38AM 15 A. Yes.

16 Q. And there's a number up there. What's
17 that number?

18 A. I don't know.

19 Q. Looks like a one zero zero. Does that --

11:38AM 20 A. I don't know. I might have -- I don't
21 remember.

22 Q. You don't remember?

23 A. No.

24 Q. And what was the purpose of circling the
11:38AM 25 number five spot?

11:38AM 1 A. They just wanted to make sure that I was
2 pointing out which one it was.

3 Q. And who is the number five spot?

4 A. That's Nadin Hiko.

11:38AM 5 Q. That's the person that you shared a cell
6 with who told you about killing somebody?

7 A. Yes.

8 Q. And seven years later you still remember
9 this person as being Nadin Hiko?

11:38AM 10 A. Yes.

11 Q. Now, you were also shown another photo
12 array; is that correct?

13 A. Yes.

14 Q. I am going to show you Grand Jury Exhibit

11:39AM 15 Number 31. Do you recognize Grand Jury Exhibit Number
16 31?

17 A. Yes.

18 Q. Is that your handwriting on it?

19 A. Yes, it is.

11:39AM 20 Q. And your signature?

21 A. Yes. And I didn't recognize nobody on
22 that one.

23 Q. So you didn't recognize anybody in Grand
24 Jury Exhibit Number 31?

11:39AM 25 A. No.

11:39AM 1 Q. I guess to clarify, when you were given
2 both photo lineups, there's a set of instructions on
3 the top half of the photo lineup. Did you read those
4 or was that read to you?

11:39AM 5 A. Yeah. He read it to me and then he let me
6 read it.

7 Q. And you understood the instructions as
8 given?

9 A. Yes.

11:40AM 10 Q. In 2009 when you were cellies with Nadin
11 was he an older guy or younger guy?

12 A. Younger. He just turned 18 I believe.
13 Him and his twin brother just turned 18.

14 Q. Now, you mention a twin brother. Was the
11:40AM 15 twin brother also housed in CCDC at some point?

16 A. I think he was in CCDC, but I seen him
17 later on in prison for sure. I seen him before at High
18 Desert.

19 Q. Did Nadin ever make any comments regarding
11:40AM 20 the race of the victim in the shooting he was talking
21 about?

22 A. Yes, he did. When he was telling about it
23 he said it was a white guy that I killed, but he
24 said -- he says some kind of something, it was the only
11:41AM 25 white guy or something. It was a comment that I

11:41AM 1 didn't.

2 Q. Did he ever talk about the car that he
3 left in?

4 A. Yeah. I believe it was either his
11:41AM 5 mother's or brother's -- it was a van.

6 Q. Do you recall specifically that it was a
7 van or do you recall that he said it was one of his
8 parent's cars?

9 A. One of his parent's cars probably. But I
11:41AM 10 think at one point he said a van. But I could be
11 mistaken. He talked about several different incidents
12 that they had been doing. It was just like all bad.

13 Q. So he talked to you about many events, not
14 just this particular one?

11:42AM 15 A. Right. I believe it was his parents'
16 vehicle, whatever it was.

17 Q. In your six pack that you did and in
18 talking also to police back in 2009 did you ever recall
19 Mr. Nadin Hiko talking about anybody else he was with
11:42AM 20 that night?

21 A. His brother and some guy named Moore. His
22 brother -- I don't know if he ever said his name, but
23 when I met him later it was Cooper. They call him Coop
24 I think.

11:42AM 25 Q. His twin brother?

11:42AM 1 A. I don't know his real name or nickname or
2 what, but that's what he called him.

3 Q. And somebody else named Moore?

4 A. Yeah, Moore.

11:42AM 5 Q. Do you remember telling the police that
6 his name is Arthur Moore?

7 A. Arthur Moore.

8 MR. PALAL: The State is done with the
9 questioning of this witness. Any questions by the

11:43AM 10 Grand Jury?

11 BY A JUROR:

12 Q. It wasn't very clear from the photo. Is
13 Nadin Hiko African American?

14 A. No, sir.

11:43AM 15 Q. What race would you say he is?

16 A. He's Caucasian, but I think -- he might be
17 from a different -- his parents along the line is from
18 a different country somewhere. Russia. I don't know.

19 Even the last name I think is -- I don't know. But
11:43AM 20 he's American now or whatever.

21 Q. You say he's Caucasian?

22 A. Yeah, he's white.

23 BY A JUROR:

24 Q. When he spoke to you, you said he had

11:43AM 25 quite a few details. He never told you exactly how

11:43AM 1 many people were there with him?

2 A. Two -- one was waiting in the car and two
3 was with him. I'm not sure. I think he said the other
4 guy shot first but he just started emptying his .22.

11:44AM 5 And he said that he was the one that shot him.

6 Q. But he said he did more than one of these
7 type?

8 A. Oh, yeah.

9 Q. But he claimed to be the shooter?

11:44AM 10 A. Uh-huh.

11 BY MR. PALAL:

12 Q. Is that a yes?

13 A. Yes.

14 THE FOREPERSON: Mr. Kruse, by law these
11:44AM 15 proceedings are secret and you are prohibited from
16 disclosing to anyone anything that transpired before
17 us --

18 THE WITNESS: You don't have to worry
19 about that. I don't want to see nobody.

11:44AM 20 THE FOREPERSON: I have to advise you.

21 By law these proceedings are secret and
22 you are prohibited from disclosing to anyone anything
23 that transpired before us including evidence presented
24 to the Grand Jury, any event occurring or statement
11:44AM 25 made in the presence of the Grand Jury or any

11:44AM 1 information obtained by the Grand Jury.

2 Failure to comply with this admonition is
3 a gross misdemeanor punishable up to 364 days in the
4 Clark County Detention Center and a 2000-dollar fine.

11:44AM 5 In addition you may be held in contempt of court which
6 is punishable by an additional 500-dollar fine and 25
7 days in the Clark County Detention Center.

8 Do you understand this admonition?

9 THE WITNESS: Yes, ma'am.

11:45AM 10 I got -- I came in with a case of
11 claustrophobia three years ago and I don't never want
12 to be in jail or handcuffs or anything and I'm scared.

13 MR. PALAL: Fair enough. You're excused.
14 You can go out that door. You're free to go.

11:45AM 15 Just a couple instructions to give you
16 folks before we're done for today. First, you may have
17 heard this last witness Mr. Kruse talk about other
18 criminal events that may or may not have been committed
19 by Nadin Hiko. You are not to consider that at all as
11:46AM 20 part of your deliberations in this case. Any evidence
21 of any other act is not to be considered at all in your
22 deliberations with regard to any deliberations
23 regarding the 2009 murder.

24 Number two, you may have heard that Nadin
11:46AM 25 Hiko, Jamel Hiko and Arthur Moore were in custody

11:46AM 1 during this time period. You're not to consider their
2 custodial status, the fact that they were in custody,
3 may have been accused of another crime at all in your
4 deliberations regarding the 2009 murder that we're
11:46AM 5 investigating.

6 MS. PIEPER: The other thing is in regard
7 to Mr. Kruse's photo lineups, his address and phone
8 numbers on them, we are going to redact that
9 information prior to the close of the Grand Jury.

11:47AM 10 MR. PALAL: With that we are done for
11 today. Thank you all very much for your patience.

11:47AM 15 (Proceedings concluded.)

16 --oo0oo--
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11:47AM

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REPORTER'S CERTIFICATE

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STATE OF NEVADA)
 : Ss
COUNTY OF CLARK)

4

11:47AM

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11:47AM

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13

I, Lisa Brenske, C.C.R. 186, do hereby
certify that I took down in Shorthand (Stenotype) all
of the proceedings had in the before-entitled matter at
the time and place indicated and thereafter said
shorthand notes were transcribed at and under my
direction and supervision and that the foregoing
transcript constitutes a full, true, and accurate
record of the proceedings had.

14

11:47AM

15

16

17

18

/S/LISA BRENSKE

19

Lisa Brenske, C.C.R. 186

11:47AM

20

21

22

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24

25

11:47AM

1

AFFIRMATION

2

Pursuant to NRS 239B.030

3

4

The undersigned does hereby affirm that the
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER
15BGJ096X:

11:47AM

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7

8

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

9

11:47AM

10

-OR-

11

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

12

13

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

14

-OR-

11:47AM

15

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

16

17

18

/S/LISA BRENSKE

19

Signature

June 28, 2016

Date

11:47AM

20

21

Lisa Brenske
Print Name

22

23

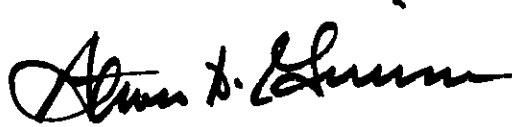
Official Court Reporter
Title

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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CLERK OF THE COURT

IN RE: INVESTIGATION OF 2009)
MURDER.)
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) GJ No. 15BGJ096X
) DC No. C316287
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Taken at Las Vegas, Nevada
Wednesday, June 29, 2016
8:45 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
VOLUME 2

12:00 1 Reported by: Danette L. Antonacci, C.C.R. No. 222
2 GRAND JURORS PRESENT ON JUNE 29, 2016
3
4 APRIL SANSON, Foreperson
12:00 5 CRYSTAL HALL, Deputy Foreperson
6 PAUL KRAIG, Secretary
7 ANGELA SHARRON, Assistant Secretary
8 CARRIE BIELAK
9 MARC CAREY
12:00 10 JEAN DANGLER
11 FRANCESCA GREEN
12 ELIZABETH HARWELL
13 CHRISTINA HERN
14 JOSEPH HUWYLER
12:00 15 WILLIAM LABIE
16 THOMAS RESHA
17 JEROME VAUGHAN
18
19 Also present at the request of the Grand Jury:
12:00 20 Danielle Pieper, Chief Deputy District Attorney
21 Binu Palal, Deputy District Attorney
22
23
24
25

12:00

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TATIANA JACKSON

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12:00 1 LAS VEGAS, NEVADA, JUNE 29, 2016

2 * * * * *

3

4 DANETTE L. ANTONACCI,

12:00 5 having been first duly sworn to faithfully
6 and accurately transcribe the following
7 proceedings to the best of her ability.

8

9 THE FOREPERSON: Let the record reflect

08:26 10 that I have canvassed the waiting area and no one has
11 appeared in response to Notice of Intent to Seek
12 Indictment.

13 MS. PIEPER: Good morning. My name is

14 Danielle Pieper and I'm here with Binu Palal. We are

08:45 15 back on the record in 15BGJ096X. The State is going to
16 call Tatiana Jackson.

17 THE FOREPERSON: Please raise your right
18 hand.

19 You do solemnly swear the testimony you are
08:46 20 about to give upon the investigation now pending before
21 this Grand Jury shall be the truth, the whole truth, and
22 nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE FOREPERSON: Please be seated.

08:46 25 You are advised that you are here today to

08:46 1 give testimony in the investigation of a 2009 murder.

2 Do you understand this advisement?

3 THE WITNESS: Yes.

4 THE FOREPERSON: Please state your first

08:46 5 and last name and spell both for the record.

6 THE WITNESS: Tatiana Jackson. First name

7 T-A-T-I-A-N-A, last name Jackson, J-A-C-K-S-O-N.

8 THE FOREPERSON: Thank you.

9 MS. PIEPER: May I proceed?

08:46 10 THE FOREPERSON: Yes.

11 TATIANA JACKSON,

12 having been first duly sworn by the Foreperson of the

13 Grand Jury to testify to the truth, the whole truth,

14 and nothing but the truth, testified as follows:

08:46 15

16 EXAMINATION

17

18 BY MS. PIEPER:

19 Q. I want to draw your attention to

08:46 20 February 20, 2009. Did you or any of your family

21 members, did they live at 65 Beesley?

22 A. Yes.

23 Q. Is that here in Las Vegas, Clark County,

24 Nevada?

08:46 25 A. Yes.

08:46 1 Q. And on that date and time were you at the
2 Beesley residence?

3 A. Yes.

4 Q. Why was that?

08:46 5 A. For my sister's birthday party.

6 Q. What's your sister's name?

7 A. Demetria.

8 Q. Can you spell that please?

9 A. D-E-M-E-T-R-I-A.

08:47 10 Q. What's her last name?

11 A. Smith, S-M-I-T-H.

12 Q. And you have other sisters; is that
13 correct?

14 A. Yes.

08:47 15 Q. What are your other sisters' names?

16 A. Lameisha.

17 Q. Can you spell that?

18 A. L-A-M-E-I-S-H-A.

19 Q. And her last name?

08:47 20 A. Smith, S-M-I-T-H.

21 Q. And another sister?

22 A. Sharmaine which is S-H-A-R-M-A-I-N-E.

23 Q. Last name?

24 A. Smith, S-M-I-T-H.

08:47 25 Q. And on that evening were you guys planning

08:47 1 a celebration?

2 A. Yes.

3 Q. What were you planning?

4 A. Demetria's surprise birthday party.

08:47 5 Q. How old was Demetria going to be?

6 A. Eighteen.

7 Q. And who actually planned the birthday
8 party?

9 A. It was mutual agreement through the family.

08:47 10 Q. When you say the family, was it sisters?

11 A. Yes, me, my sisters and my mom.

12 Q. What's your mom's name?

13 A. Dorothy Johnson.

14 Q. Dorothy, regular spelling of Dorothy?

08:48 15 A. Yeah, D-O-R-O-T-H-Y.

16 Q. And then Johnson, J-A-H --

17 A. J-O-H-N-S-O-N.

18 Q. Thank you.

19 You guys planned this party. Was it a
08:48 20 surprise party or was it sort of she knew about the
21 party?

22 A. Well, it was supposed to have been a
23 surprise party but she end up finding out about it.

24 Q. Who did you invite and how did you guys

08:48 25 invite people?

08:48 1 A. Well, we invited people, but somehow it got
2 on My Space.

3 Q. And back in 2009 My Space is similar to
4 what Facebook is now; is that correct?

08:48 5 A. Correct.

6 Q. You can post information on it and people
7 can find out about it?

8 A. The whole world can see it.

9 Q. What time was the party supposed to start?

08:48 10 A. I want to say around 8:00-ish.

11 Q. And how was it supposed to go? Did you
12 invite people and they were supposed to come over? Did
13 they have to pay? Did you guys provide food?

14 A. We provide food. They didn't have to pay.
08:49 15 So it was just like a party, like a celebration.

16 Q. Do you remember if you guys had a DJ?

17 A. No, we did not have a DJ.

18 Q. Do you remember if you had music?

19 A. There was music.

08:49 20 Q. At what time did people start arriving?

21 A. I want to say 8:00.

22 Q. Okay. And what was the flow of traffic of
23 people like?

24 A. It got pretty crazy.

08:49 25 Q. When you say crazy, what do you mean by

08:49 1 that?

2 A. It was a lot of people.

3 Q. Was it a lot of people you knew?

4 A. No.

08:49 5 Q. Did that concern you?

6 A. Yes.

7 Q. And when you say a lot of people, what does
8 that mean to you?

9 A. I want to say over 50. Over, it could have
08:49 10 been over like 75 people.

11 Q. At around 8 o'clock in the evening?

12 A. No, I'm sorry. Around that time it was
13 like 30.

14 Q. And how big is your house or how big is the
08:49 15 house on Beesley?

16 A. It was kind of big but it was laid out
17 weird.

18 Q. When you say it's laid out weird, what do
19 you mean by that?

08:50 20 A. Like when I say if you like walk in the
21 front door, that was the dining area. If you make a
22 left it was like another dining area. So it was a lot
23 of space.

24 Q. So at around 8 o'clock there's 30, 35,
08:50 25 people or so?

08:50 1 A. Yes.

2 Q. And then you said that at one point you
3 testified there was about 75, 50 to 75 people?

4 A. Correct.

08:50 5 Q. Approximately what time was that that
6 this --

7 A. I want to say around 10:00.

8 Q. And are people just coming and going out of
9 the house?

08:50 10 A. Yes.

11 Q. Okay. And is your sister having a good
12 time?

13 A. Yes.

14 Q. How about your mom?

08:50 15 A. She was.

16 Q. At that time were you dating somebody?

17 A. Yes.

18 Q. What was his name?

19 A. Devon Phillips.

08:50 20 Q. How do you spell the first and last name?

21 A. D-A-V-O-N, Phillips, P-H-I-L-L-I-P-S.

22 Q. And was Devon invited to this party?

23 A. Yes.

24 Q. And did you talk to Devon sort of

08:51 25 throughout the day about the party and what you guys

08:51 1 were doing?

2 A. Yes.

3 Q. At some point did Devon call you?

4 A. Yes.

08:51 5 Q. And what happened -- around that time did
6 he call you and what did he say?

7 A. I want to say he called around 10:00, 10:00
8 something. He was calling to let me know he was on his
9 way.

08:51 10 Q. What did you do as a result of the phone
11 call?

12 A. I went outside.

13 Q. And when you say you went outside, did you
14 go outside into the front --

08:51 15 A. The front door.

16 Q. Or the front yard area?

17 A. Yes.

18 Q. And what happened next?

19 A. They pulled up in a car.

08:51 20 Q. When you say they, who is they?

21 A. It was him, Devonte --

22 Q. I'm sorry. Devon?

23 A. Devon, Devonte Wash.

24 Q. How do you spell Devonte?

08:51 25 A. D-E-V-O-N-T-E, Wash, W-A-S-H.

08:51 1 Q. And then who else?

2 A. The twins.

3 Q. When you say the twins, can you describe
4 for us the twins?

08:51 5 A. The only thing I know is they were white.

6 Q. So they arrive. Do you know what kind of
7 car they arrived in?

8 A. I want to say it was like a darkish blue
9 Malibu or something like that.

08:52 10 Q. And when you say darkish blue --

11 A. I mean like her dress blue.

12 Q. And for the record her that she's pointing
13 to --

14 A. Is it royal blue?

08:52 15 Q. -- is the court reporter. And I'm going to
16 say it's a royal blue or a navy blue. A deep blue?

17 A. Yes.

18 Q. They pull up and where do they pull up?

19 A. It wasn't like in front of our house. It
08:52 20 was like a little behind the brick wall.

21 Q. Showing you what's marked, and you'll be
22 able to see it up on the screen, showing you what is
23 marked as Grand Jury Exhibit Number 6. Do you recognize
24 that photograph?

08:52 25 A. Yes.

08:52 1 Q. And what is that a photograph of?

2 A. The front of the house.

3 Q. And when you say they parked, they came and

4 they parked in the front of the house, can you point to

08:53 5 where --

6 A. Like behind the police car.

7 Q. And is the car facing the same direction as

8 the police car --

9 A. Yes.

08:53 10 Q. -- or is it --

11 A. It was the same direction.

12 Q. So they pull up. And can you tell who's

13 driving the car?

14 A. No.

08:53 15 Q. And what happens next?

16 A. They came up, we greeted, we talked a

17 little while.

18 Q. Did you talk to everybody or did you just

19 talk to Devon?

08:53 20 A. Mostly Devon.

21 Q. Did you know Devonte?

22 A. Yes.

23 Q. How do you know Devonte?

24 A. Through a friend.

08:53 25 Q. And did you know the twins?

08:53 1 A. No.

2 Q. Was that the first time you met them?

3 A. Yes.

4 Q. So you and Devon are talking. What happens

08:53 5 next?

6 A. We went in the house.

7 Q. When you say we, is it the whole group?

8 A. The whole group.

9 Q. You guys go in the house and what happens

08:53 10 next?

11 A. We went in the house, we start, I started

12 mingling with everybody else.

13 Q. Okay.

14 A. But I noticed one thing.

08:53 15 Q. What was that that you noticed?

16 A. Devonte was walking around showing his gun.

17 Q. When you say showing his gun, what do you

18 mean by that?

19 A. It was like tucked in his pants but he had

08:54 20 his shirt inside tucked in his pants so like the gun was

21 showing.

22 Q. See my cell phone?

23 A. Yes.

24 Q. For the record it's not a gun, correct?

08:54 25 When you say it was tucked in his pants,

08:54 1 was it tucked in his pants but the shirt that he was
2 wearing was behind the gun?

3 A. Yes.

4 Q. So that the gun was visible?

08:54 5 A. Yes.

6 Q. And when you saw this gun, did you say
7 anything?

8 A. No.

9 Q. Why not?

08:54 10 A. I don't know. I probably was scared. I
11 think I was scared to say something.

12 Q. And around 2009 how old were you?

13 A. Nineteen. No, I was 18. I was 18. I
14 would have been 19 in March.

08:54 15 Q. And how old is Devonte or how old was he
16 around that time?

17 A. I want to say he was 17.

18 Q. And how old was Devon around that time?

19 A. He was 18.

08:54 20 Q. So when you say he's walking around showing
21 the gun, is he just walking around with the gun showing?

22 A. Yes.

23 Q. As opposed to like physically going up to
24 people and showing them the gun?

08:55 25 A. No.

08:55 1 Q. He's not doing that?

2 A. No.

3 Q. He's not physically showing them?

4 A. No.

08:55 5 Q. You start mingling. Does the group of

6 Devon, Devonte and the two twins, what are they doing?

7 A. They was like holding up the wall.

8 Q. When you say holding up the wall, do you

9 mean --

08:55 10 A. They were just standing on the wall, by the

11 wall.

12 Q. And what was Devon's sort of demeanor like?

13 A. I honestly don't remember his demeanor.

14 Q. What was Devonte's demeanor like?

08:55 15 A. To me Devonte was walking around like he

16 was checking out the scene, like he was trying to see

17 who all was there.

18 Q. And what about the twins?

19 A. I don't remember.

08:55 20 Q. What did you do? Did you hang out with

21 them?

22 A. No. I was mingling. I was talking to

23 everybody that was there.

24 Q. And sort of checking on the food?

08:56 25 A. Yeah.

08:56 1 Q. And checking on your sister, checking on
2 your mom?

3 A. Checking on my sisters, correct.

4 Q. What happened next?

08:56 5 A. Devon told me they were going outside.

6 Q. They're just going to go outside?

7 A. I'm not sure if they went to just a car but
8 they went outside to the car.

9 Q. Did you ever see them walk into the back
08:56 10 part of the house?

11 A. No.

12 Q. They just stayed --

13 A. They just stayed in that one area which was
14 kind of like by the door.

08:56 15 Q. The front door?

16 A. Yes.

17 Q. And so after he said that to you, what did
18 you do?

19 A. We walked outside.

08:56 20 Q. And when you say we, is it you and the rest
21 of the guys?

22 A. Me and the rest of the guys.

23 Q. You guys walk outside. And what happens
24 next?

08:56 25 A. I talked to Devon for like two minutes and

08:56 1 then I went back in the house. When I went back in the
2 house I heard gunshots.

3 Q. Did you see Devon, Devonte and the two
4 twins, did you see them walk anywhere?

08:56 5 A. No.

6 Q. And when you left them, where were they in
7 the front of the house?

8 A. They were like walking, like when I was
9 walking in the house they was like walking towards the
08:57 10 car.

11 Q. Okay. You said you heard gunshots. How
12 were you able to hear gunshots over the music?

13 A. I was barely closing the door so I heard
14 like three gunshots.

08:57 15 Q. And then what did you do next?

16 A. Then everybody, we turned the music off and
17 everybody started running.

18 Q. When you say everybody started --

19 A. Everybody meaning everybody in the party,
08:57 20 everybody that was in the house.

21 Q. Where did they run?

22 A. Everywhere. Some ran out the back door,
23 some ran in the rooms, yeah, they ran everywhere.

24 Q. Were people running out the front door?

08:57 25 A. Not exactly at the time of the shooting.

08:57 1 Q. After the shooting or -- so everyone is
2 running everywhere. What are you doing?

3 A. I was checking, at the time of the, after
4 the shooting I was checking on my sisters to make sure
08:57 5 they was okay and then after that we ran outside.

6 Q. When you say we, who is we?

7 A. Me, my sister Sharmaine Smith and my cousin
8 Arneisha.

9 Q. Where did you guys run to?

08:58 10 A. The gate which was on the other side of the
11 police car.

12 Q. You can actually get up and show the
13 members of the Grand Jury.

14 A. It's not even on that side. It was on the
08:58 15 other side.

16 Q. Showing you Grand Jury Exhibit Number 9.
17 I'm not sure if this is going to be helpful. No?

18 A. I'm trying to figure out where that's at.
19 No.

08:58 20 Q. You can get up if you want.

21 A. That's still the front of the house.

22 Q. Okay. So can you show me the general area?

23 A. Okay. It's basically, okay, this is the
24 driveway right there by the trees.

08:58 25 Q. You can actually go up and touch the

08:58 1 picture.

2 A. This is the driveway.

3 Q. So for the record she's pointing her hand
4 on the right side of the picture.

08:58 5 A. So on the right side of the driveway is a
6 gate which is where we saw Aric's body.

7 Q. Is that A-R-I-C?

8 A. Yes.

9 Q. And did you say body?

08:59 10 A. Body.

11 Q. So you ran out the front of the house and
12 you run, I would assume you run sort of down towards the
13 street?

14 A. Yeah.

08:59 15 Q. And when you get there you see a body?

16 A. Yes.

17 Q. And what happens next?

18 A. I panicked.

19 Q. What do you mean by that?

08:59 20 A. Meaning I was scared. I was -- I had all
21 types of feelings. My adrenaline was pumping. I was
22 scared like to see his body laying there. It scared me.

23 Q. At the time that you saw Aric's body, can
24 you describe for us what it looked like?

08:59 25 A. It looked like he had been running.

08:59 1 Q. Why do you say that?

2 A. Because the way his body was functioning,
3 like his right arm was up but his left arm was down and
4 his legs looked like, like they shot him in the leg or
09:00 5 something. I'm not sure. But he looked kind of
6 dysfunctional.

7 Q. I'm going to ask you what you mean by
8 dysfunctional.

9 A. Like something was broke. Like he broke
09:00 10 some bones when he was running. Like the way he fell or
11 something, the way he fell, it looked like he broke
12 something.

13 Q. You then saw Aric's body. Then what
14 happened next?

09:00 15 A. We heard the police sirens so we went back
16 in the house and we made sure everybody was okay again
17 and that's when the police came and we spoke with the
18 police.

19 Q. When you say that you went, we went back --

09:00 20 A. We meaning me, Arneisha and Sharmaine.

21 Q. Okay. Went back into the house. Police
22 arrived?

23 A. Uh-huh.

24 Q. Is that a yes?

09:00 25 A. Correct.

09:00 1 Q. And then you spoke to the police?

2 A. Yes.

3 Q. Did you ever speak to Devon later that
4 night?

09:00 5 A. Yes.

6 Q. When?

7 A. I want to say, I'm not for sure exactly
8 what time, I'm not sure if it was before the police came
9 or after the police came, but I called him and he -- no,
09:01 10 it was before, it was before the police came. I called
11 him and he answered the phone and I asked him what
12 happened and he told me he don't know, he didn't know,
13 that he was running cause he thought they was shooting
14 from him. Shooting at him.

09:01 15 Q. Okay. And he said he was running. And
16 then what else did he say?

17 A. At that time he didn't say much.

18 Q. What did you respond?

19 A. I basically felt like he was lying so I
09:01 20 kept asking him like how were you running when you don't
21 even sound like you're tired, like you don't sound like
22 you've been breathing hard, you don't sound like your
23 adrenaline was pumping. I asked him where he was and he
24 told me he was at the apartments which was across the
09:01 25 street on Tree Line and Charleston.

09:01 1 Q. And when he told you that did you believe
2 him?

3 A. No.

4 Q. Why?

09:01 5 A. It just didn't seem, honestly I just didn't
6 feel like he was telling me the truth.

7 Q. And what happened next?

8 A. Then the police came and I spoke with the
9 police. I talked to Devon after that also.

09:02 10 Q. Were you calling him or was he calling you?

11 A. I was calling him.

12 Q. Why were you calling him?

13 A. I was scared. The second time I called
14 him, I kept calling him, he wasn't answering, and then

09:02 15 the second time I called him was because they was
16 talking about taking my mom to jail and I was freaked
17 out so I wanted to know if he knew what happened.

18 Q. When you say they, you mean the police?

19 A. The police.

09:02 20 Q. When you called him and you're asking him,
21 what does he say?

22 A. He told me that he didn't know why I was
23 calling because he didn't have anything to do with it.

24 Q. And what did you do as a result of that?

09:02 25 A. I think I hung up cause I didn't believe

09:02 1 him.

2 Q. Why?

3 A. It just didn't, I had this gut feeling that
4 he wasn't telling me the truth.

09:02 5 Q. But it's not based on anything that you
6 saw?

7 A. No.

8 Q. After that did you have any sort of contact
9 with Devon?

09:03 10 A. I did but not as much. We barely talked.

11 Q. And how long had you guys been kind of
12 dating or seeing each other prior to that?

13 A. I want to say a year.

14 Q. In this area where the party was, what were
09:03 15 the lighting conditions like?

16 A. It was very dark.

17 Q. When you say very dark, what do you mean by
18 that?

19 A. I mean like no streetlights.

09:03 20 Q. Eventually sometime in 2009 you met with
21 Detective Cook; is that correct? The guy that's sitting
22 out there.

23 A. Yes.

24 Q. And you did some photo line-ups with him;

09:03 25 is that correct?

09:03 1 A. Yes.

2 Q. Showing you Grand Jury Exhibit Number 35.

3 And I'm going to put it up here on the screen. He asked

4 you to do some photo line-ups and identify some people;

09:04 5 is that correct?

6 A. Correct.

7 Q. Grand Jury Exhibit Number 35. What I am

8 showing you is an instruction sheet; correct? Can you

9 see it?

09:04 10 A. Yes.

11 Q. The first part of it is an instruction that

12 sort of tells you that you're going to look at a photo

13 line-up or as we commonly refer to them as a six pack,

14 somebody may be in the pictures, somebody may not; is

09:04 15 that correct?

16 A. Correct.

17 Q. And then under that is an area where you

18 can write a statement?

19 A. Correct.

09:04 20 Q. I'm then showing you the second page of

21 that exhibit, and I know the pictures aren't that great,

22 but you actually circled a number; is that correct?

23 A. Correct.

24 Q. What number was that?

09:04 25 A. Three.

09:04 1 Q. Did you write something on there?

2 A. Yes.

3 Q. What did you write?

4 A. That I recognized the person that was in

09:04 5 here.

6 Q. And who was that?

7 A. Devon Philips.

8 Q. Did you sign and then you put 100 percent

9 next to it?

09:04 10 A. Correct.

11 Q. Showing you grand jury Exhibit Number 34.

12 Again that's a set of instructions and then there is a

13 statement that you wrote; is that correct?

14 A. Correct.

09:05 15 Q. On State's Exhibit 34, you actually circled

16 a picture of somebody and then you attached a number to

17 that; is that correct?

18 A. Correct.

19 Q. And the person that -- what number did you

09:05 20 circle?

21 A. Two.

22 Q. And did you put your name under there?

23 A. Yes.

24 Q. What percentage did you say?

09:05 25 A. Ten percent.

09:05 1 Q. And the person depicted in number 2, can
2 you read that statement? Here, I'll show you. Can you
3 read the statement that you said about that person in
4 State's 34?

09:05 5 A. The person in number 2 looks familiar. As
6 in he could be one of the twins. I'm not really sure,
7 only like 10 percent, only seen him in person that one
8 time.

9 Q. And in regard to State's Exhibit 33, you
09:05 10 did not recognize anyone; is that correct?

11 A. Correct.

12 Q. And I'm showing you actually the six pack
13 of pictures; is that correct?

14 A. Correct.

09:06 15 Q. And the detectives were asking you to
16 identify Devon, Devonte and then the twins that you had
17 talked about coming to the party with Devonte; is that
18 correct?

19 A. Correct.

09:06 20 Q. You talked about the car that you saw the
21 twins, Devon and Devonte come in.

22 A. Yes.

23 Q. After the shooting was the car still there
24 or do you know if the car was still there?

09:06 25 A. I don't think it was.

09:06 1 MS. PIEPER: I have no other questions for
2 this witness.

3 THE FOREPERSON: Miss Jackson, by law,
4 these proceedings are secret and you are prohibited from
09:06 5 disclosing to anyone anything that has transpired before
6 us, including evidence and statements presented to the
7 Grand Jury, any event occurring or statement made in the
8 presence of the Grand Jury, and information obtained by
9 the Grand Jury.

09:06 10 Failure to comply with this admonition is a
11 gross misdemeanor punishable up to 364 days in the Clark
12 County Detention Center and a \$2,000 fine. In addition,
13 you may be held in contempt of court punishable by an
14 additional \$500 fine and 25 days in the Clark County
09:06 15 Detention Center.

16 Do you understand this admonition?

17 THE WITNESS: Yes.

18 THE FOREPERSON: Thank you for your time.

19 A JUROR: Thank you.

09:07 20 MR. PALAL: State's next witness is Darin
21 Cook.

22 You do solemnly swear the testimony you are
23 about to give upon the investigation now pending before
24 this Grand Jury shall be the truth, the whole truth, and
09:08 25 nothing but the truth, so help you God?

09:08 1 THE WITNESS: Yes, I do.
2 THE FOREPERSON: Please be seated.
3 You are advised that you are here today to
4 give testimony in the investigation pertaining to a 2009
09:08 5 murder.

6 Do you understand this advisement?

7 THE WITNESS: Yes, I do.

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

09:08 10 THE WITNESS: My first name is Darin,
11 D-A-R-I-N, my last name is Cook, C-O-O-K.

12 THE FOREPERSON: Thank you.

13 DARIN COOK,

14 having been first duly sworn by the Foreperson of the
09:08 15 Grand Jury to testify to the truth, the whole truth,
16 and nothing but the truth, testified as follows:

17

18 EXAMINATION

19

09:08 20 BY MR. PALAL:

21 Q. Sir, how are you employed?

22 A. I'm employed as a detective with the Las
23 Vegas Metropolitan Police Department.

24 Q. In that capacity were you assigned a 2009

09:08 25 open murder case?

09:08 1 A. I was, yes.

2 Q. Who was the decedent in that 2009 open
3 murder case?

4 A. A young man named Aric Brill.

09:08 5 Q. How did you commence your -- when were you
6 assigned this investigation?

7 A. February 1st, 2016, this year.

8 Q. So how did you begin your investigation of
9 a seven year old murder case?

09:09 10 A. I was asked by the lieutenant of homicide,
11 a Dan McGrath, to review the case file and February 1st
12 I received the officer's report and the case file to
13 review the case.

14 Q. In your investigation did you become aware
09:09 15 of someone named Edward Kruse?

16 A. I did.

17 Q. What was the significance of Mr. Kruse?

18 A. Mr. Kruse had written several letters,
19 approximately I believe 11 letters that were in the case
09:09 20 file dealing with a individual he was housed with at
21 that time and he detailed different parts of the
22 homicide investigation.

23 Q. And who was that person that he was housed
24 with?

09:09 25 A. He was talking about Nadin Hiko.

09:09 1 Q. And ladies and gentlemen, just as an
2 instruction. This information is not being offered for
3 the truth of the matter asserted but rather to explain
4 the detective's subsequent actions. You already heard
09:10 5 from Mr. Kruse.

6 And I'm going to show you what's been
7 marked as State's Exhibit 36. Do you recognize all the
8 people and photographs in State's Exhibit 36?

9 A. Yes, I do.

09:10 10 Q. I'm going to put it on the Elmo.

11 As a result of reviewing the case file and
12 reviewing Mr. Kruse's correspondence, did you develop
13 any suspects in the 2009 murder?

14 A. Yes, I did.

09:10 15 Q. Who did you develop as suspects?

16 A. Mr. Arthur Moore, Devon Philips, Devonte
17 Wash, Jamel Hiko that Nadin Hiko.

18 Q. After developing these suspects did you
19 attempt to interview any of your suspects?

09:11 20 A. I did, yes.

21 Q. Who is the first person you attempted to
22 interview?

23 A. After reviewing the case file I ran all the
24 subjects through Metro records and I realized that
09:11 25 Devonte Wash was currently somebody that I could

09:11 1 interview.

2 Q. So did you meet up with Devonte Wash?

3 A. I did.

4 Q. Did you interview him regarding the 2009

09:11 5 murder?

6 A. I did, yes.

7 Q. Did you Mirandize him prior to interviewing
8 him?

9 A. I did, yes.

09:11 10 Q. And did he waive his rights per Miranda?

11 A. Yes, he did.

12 Q. What did you ask, what did Mr. Wash tell
13 you about this?

14 A. When I first interviewed Mr. Wash, I talked

09:11 15 to him about his being present at this party up at 65

16 Beesley which is in the area of Tree Line and Charleston

17 on the east side of town. He talked to me about yes, he

18 remembered it just like it was yesterday, that he was

19 there visiting, he went to the party, he got a call. He

09:12 20 said that he first arrived with a young female in a

21 green Jeep but he couldn't recall her name or how to get

22 in contact with her and gave little information about

23 that. He says when he arrived at the party he went into

24 the house, he met up with the girls that lived at the

09:12 25 house, he called her Meisha. We further learned that it

09:12 1 was Lameisha Smith and Tatiana Jackson. He said he went
2 into the house. He was in the kitchen for a little bit.
3 He went to the backyard where there was a dice game, but
4 he said he felt uncomfortable because of the atmosphere
09:12 5 at the party so at that time he went back into the
6 house, there was some gunshots that he heard but he ran
7 into the front bedroom. He was in the front bedroom
8 with Tatiana, Lameisha and I believe he said the mother
9 was there as well. He said that after the gunshots he
09:13 10 ran out the front door. He said he did see a fight off
11 to the side. He said he ran down the street, jumped
12 over a wall into an apartment complex. Then he made it
13 out to Charleston. He jumped into a car with unknown
14 females to get out of the area. They dropped him off at
09:13 15 a convenience store. He called another female to come
16 and pick him up and take him home. None of these people
17 could ever be corroborated. We asked if he knew their
18 names, who picked him up, where did he call for, he
19 couldn't give us any of that information.

09:13 20 Q. Did that affect your assessment of
21 Mr. Wash's credibility?

22 A. Yes, it did.

23 Q. All right. Then who did you interview
24 after this initial interview with Mr. Wash?

09:14 25 A. At that time I went and located Tatiana

09:14 1 Jackson.

2 Q. During the course of your interview with
3 Tatiana Jackson, did she tell you that she was at the
4 party at 65 Beesley on February 20, 2009?

09:14 5 A. Yes, she did.

6 Q. And did you in the course of your
7 investigation or course of your interview give her six
8 packs or photo line-ups to review?

9 A. I did.

09:14 10 Q. Looking first at Grand Jury Exhibit 35. It
11 appears that Miss Jackson identified the person depicted
12 in spot 3 of the six pack; is that correct?

13 A. Yes, it is.

14 Q. Can you tell us who the person depicted in
09:14 15 the third position of this six pack is?

16 A. This is Mr. Devon Philips.

17 Q. Did she give you a percentage as to how
18 sure she was that was Devon Philips?

19 A. She said that she was 100 percent sure that
09:15 20 this was, positive that this was Mr. Devon Philips.

21 Q. And then I'm going to show you what's been
22 marked as Grand Jury Exhibit 34. Is this another six
23 pack you administered to Tatiana Jackson during that
24 interview?

09:15 25 A. Yes, it is.

09:15 1 Q. And it looks like she identifies somebody
2 in position number 2; is that correct?

3 A. She did, yes.

4 Q. Who is the person depicted in position
09:15 5 number 2?

6 A. That is Nadin Hiko.

7 Q. And did she assign a percentage as to how
8 sure she was that that was the person at the party in
9 2009?

09:15 10 A. Yes, she said she was about 10 percent sure
11 that this was Nadin Hiko.

12 Q. And then did you give her a third photo
13 array?

14 A. Yes, I did.

09:15 15 Q. And in this third photo array marked Grand
16 Jury Exhibit 33, was she able to identify anybody?

17 A. No, she was not.

18 Q. And who of interest to you was in this
19 photo array?

09:15 20 A. This was Nadin Hiko's twin brother Jamel
21 Hiko.

22 Q. After conducting your interview with
23 Tatiana Jackson, did you seek to interview anybody else?

24 A. I did. After I spoke to Tatiana Jackson, I
09:16 25 actually went back and interviewed Mr. Devonte Wash.

09:16 1 Q. And what was the purpose of reinterviewing
2 Mr. Wash?

3 A. The reason that I, because his first
4 interview I know that there were things that he could
09:16 5 not clarify in that interview of his whereabouts, where
6 he was at, and when I talked to Tatiana Jackson she gave
7 me other statements of what he did and where he was at
8 and what took place at the party. So I went back to
9 confront him about the information that was inconsistent
09:16 10 in his first statement.

11 Q. And did Mr. Wash give a different statement
12 to you -- well, let me back up. Did you Mirandize him
13 prior to questioning him in this second interview?

14 A. No, I did not.

09:16 15 Q. Why is that?

16 A. He was not in custody at the time, he was
17 free to leave and I explained that to him when we sat
18 down and talked to him.

19 Q. Okay. And so did you ask him about his
09:17 20 story regarding the 2009 murder of Aric Brill?

21 A. Yes, I did.

22 Q. Did his story change?

23 A. His story changed to state that now he
24 believed that, he admitted that yes, he did see the
09:17 25 twins there, Jamel and Nadin, he talked about the

09:17 1 vehicles that they drove, but he did not give a
2 statement to the facts that he give in a later
3 statement. He actually give a statement to Nadin and
4 Jamel being present at the location of 65 Beesley.

09:17 5 Q. Now you mentioned that he talked about the
6 vehicles that he used to drive in with Jamel and Nadin
7 Hiko. Was there a particular vehicle relevant to your
8 investigation?

9 A. Yes, there was. It was a Chevy Impala,
09:18 10 2006.

11 Q. Is that the same Chevy depicted in Grand
12 Jury Exhibit Number of which I cannot remember at the
13 moment but -- Grand Jury Exhibit Number 36?

14 A. Yes, it is.

09:18 15 Q. Now the photo taken of the car in Grand
16 Jury Exhibit Number 36, was that photo taken in 2009?

17 A. That photo was taken in 2016.

18 Q. Where was that car found?

19 A. At the parents house in North Las Vegas of
09:18 20 Nadin and Jamel Hiko.

21 Q. And what model and make of vehicle is it?

22 A. That is a Chevy Impala. It's blue in color
23 and it's a 2006.

24 Q. After speaking to Devonte did you speak to
09:19 25 another suspect?

09:19 1 A. I did.

2 Q. Who did you speak to?

3 A. From, after speaking with Devonte I spoke
4 to a Devon Philips.

09:19 5 Q. Did you Mirandize Mr. Philips?

6 A. Yes, I did.

7 Q. Did he waive his Miranda rights?

8 A. Yes, he did.

9 Q. What did Mr. Philips tell you, if anything?

09:19 10 A. When I sat down with Mr. Philips after
11 reading him his Miranda rights, he had requested me
12 first to come down and talk to him about the
13 information. I came down, I read him his Miranda
14 rights, he agreed to talk to me. He stated that, cause
09:19 15 I had confronted him with the facts that I knew between
16 all the other interviews prior to him, he stated to me
17 that on that day and time, on February 20, 2009, he
18 received a phone call from Tatiana Jackson stating that
19 her sister was going to have a birthday party at their
09:20 20 house at 65 Beesley. He stated that himself, and he
21 named the parties, Nadin Hiko, Jamel Hiko, Devonte Wash,
22 himself and a guy he called Greedy at first but then he
23 said his real name was Arthur Moore, as well as he also
24 mentioned another individual named Larry, Larry Russum,
09:20 25 that had all went up there to the house. Once they got

09:20 1 to the house they went inside. He said that he was
2 dating Tatiana Jackson at the time. He said that him
3 and Tatiana went into the bedroom, the others went to
4 the backyard. He came out of the bedroom, the others
09:20 5 were inside the house, there was some tension in the
6 house, he didn't feel comfortable, so they left out of
7 the front house, they went down the walkway.

8 Q. And I'm sorry, let me interrupt you there.
9 When you say they, who are you referring to?

09:21 10 A. The group I mentioned. He said that it was
11 him, Jamel Hiko, Nadin Hiko, Devonte Wash, Arthur Moore,
12 Larry Russum and himself walked out the door, walked
13 down the walkway down to the front of the street of
14 Beesley where the blue car was parked, the Chevy Impala.
09:21 15 He said when they got down to the Chevy Impala, Arthur
16 Moore turned to him and said "I'm going to hit a lick."
17 Which when I asked him what is a lick, he said that's a
18 robbery, a street robbery. He said that --

19 Q. Let me just interrupt you here.

09:21 20 Statements made by a defendant are only to
21 be used to determine whether or not this establishes
22 probable cause against that particular defendant and not
23 against any other defendant.

24 Proceed.

09:21 25 A. He said that Arthur Moore turned to him,

09:22 1 and he referred to him as Greedy, but he did clarify his
2 name was Arthur Moore, he said Greedy turned to him and
3 said "I'm going to hit a lick." They turned a few feet
4 away, 10 to 15 feet away, there was a group of five
09:22 5 young males, he said he did not know who these males
6 were, he said that when they were walking up Arthur
7 Moore pulled his handgun, he started to rob the
8 individuals, Nadin Hiko was behind Arthur Moore. He
9 says that when, for some reason the group started to
09:22 10 run, Arthur Moore begins to fire. He thought that he
11 fired about nine times. He says that at that time Nadin
12 has his handgun out, he fires two to three times, then
13 the group runs back to the car, the Chevy Impala, they
14 enter the car, Jamel is, when this is happening Jamel is
09:23 15 at the driver's door, he said Devonte is on the
16 passenger side, he's standing in front of the car, they
17 all run back to the car. When I say they all, Jamel,
18 Nadin, Devonte Wash, himself, Arthur Moore, and he also
19 says Larry Russum all runs back into the car, they jump
09:23 20 in the car and they leave the area.

21 Q. Now when, into the course of your
22 investigation and the investigation that occurred in
23 2009, are you aware who the five individuals who were
24 confronted by the people that Mr. Philips is talking
09:23 25 about, do you know who those five people are?

09:23 1 A. I do.

2 Q. Who are those five people?

3 A. Aric Brill, Joseph Bentley, Shannon
4 Williams or slash Sutton, Terrell Moore and Angelo

09:23 5 Gilbert.

6 Q. And those people are depicted on the right
7 side of Grand Jury Exhibit Number 36?

8 A. Yes.

9 Q. All right. So after interviewing Devon
09:24 10 that first time, do you go and interview Devon a second
11 time?

12 A. I do.

13 Q. What's the purpose of interviewing him a
14 second time?

09:24 15 A. The second interview is what I just stated.
16 He had called me back. The first interview is when I
17 confronted him with the facts. I'm sorry about that.
18 I --

19 Q. It's fine. So let me just clean up a
09:24 20 little bit on the second interview. The recounting of
21 the story of a shooting occurred in the second
22 interview?

23 A. Yes, that's when he called me to give a
24 statement.

09:24 25 Q. Did you Mirandize him prior to his second

09:24 1 interview?

2 A. I did.

3 Q. Did he waive his rights? Did he say he
4 understood his rights per Miranda and waived his rights?

09:24 5 A. Yes, he did.

6 Q. When he's talking about the shooting that
7 occurs, the lick and the shooting that occurs, does he
8 say that he's with the rest of the group from the
9 beginning through the end of the shooting?

09:25 10 A. Yes, he does.

11 Q. And leaves with the rest of the group?

12 A. Yes, he does.

13 Q. As a result of this interview did you speak
14 to Devonte Washington (sic)?

09:25 15 A. I do.

16 Q. And do you Mirandize him prior to
17 interviewing him?

18 A. No, I do not.

19 Q. Why is that?

09:25 20 A. Because he was not in custody. I explained
21 that to him, that he's not in custody, he could leave at
22 any time that he wanted and that I wanted to clarify
23 some facts that I have already revealed and uncovered
24 with prior interviews with Devon and Tatiana Jackson,
09:25 25 Edward Kruse, and I confronted him about that

09:25 1 information.

2 Q. Okay. And I'm sorry. So did you get to
3 the content of the interview, the third interview with
4 Devonte?

09:25 5 A. I did not.

6 Q. Can you tell us what Devonte said in that
7 third interview?

8 A. So I confronted him with the facts that now
9 that I know that Devon had came forth and that he had
09:26 10 said what happened, where they went, how the shooting
11 took place, I confronted him with that. He stated to me
12 that, you know, that he didn't want to make a statement
13 at this time because he was afraid that he was going to
14 be arrested for murder.

09:26 15 Q. Did you question him anymore after that?

16 A. I did not.

17 Q. As a result of these interviews did you
18 interview yet another suspect?

19 A. I did. Several weeks later I located

09:26 20 Arthur Moore and I interviewed Arthur Moore.

21 Q. Did you Mirandize him prior to interviewing
22 him?

23 A. Yes, I did.

24 Q. Did he acknowledge his rights per Miranda

09:26 25 and agree to waive them?

09:26 1 A. Yes, he did.

2 Q. What if anything did Arthur Moore tell you
3 relevant to your investigation?

4 A. My interview with Arthur Moore, Arthur
09:26 5 Moore talked about 2009, that he went to a lot of
6 different parties during the course of later 2008/2009.
7 He said there were multiple shootings at these parties
8 that he went to. He said he played basketball with
9 Devon Philips, Nadin Hiko and Jamel Hiko. He said that
09:27 10 during the course of going to these parties there were
11 several shootings, as well as that they knew that they
12 were involved in several robberies, that these guys
13 carried guns and that they were involved in other
14 activities.

09:27 15 Q. I'm going to stop you there.

16 The Grand Jury is to disregard any alleged
17 criminal activity that any of the suspects in this case
18 may have committed and other cases.

19 So Detective, can you proceed without
09:27 20 discussing any other cases that these defendants or
21 suspects may or may not have been involved in?

22 A. Yes. So when Arthur Moore was confronted
23 with the facts of the shooting at 65 Beesley, Arthur
24 Moore broke down crying and he stated that, you know,
09:28 25 I'm going to go to prison. He said that the night of

09:28 1 the shooting he did not come with Nadin Hiko, Jamel Hiko
2 and Devon Philips in their car, however he left with
3 them. He said when he arrived at the party he arrived
4 in his own Chevy Monte Carlo, white in color, that he
09:28 5 parked around the corner. He said that when they walked
6 up to the party, they all were inside, he said at a
7 point that they came back outside and they were sitting
8 on the wall, which is a little pony wall that's in front
9 of the residence, he said that there was five
09:28 10 individuals that were walking up the street. There was
11 a light skinned black male with a necklace around his
12 neck. He said he didn't know whose idea it was but they
13 got off the wall and they began to take that guy's
14 property, his necklace. He said that during the course
09:28 15 of taking the property he heard three gunshots from
16 behind him and at that time he ran. He said the others
17 ran back to the blue car, to the Chevy Impala, he said
18 that he ran southbound, he said the car pulled up
19 alongside of him, he jumped in the back passenger seat,
09:29 20 as he jumped back into the back passenger seat they
21 drove off. Initially he said that they took him home.
22 We confronted him about did he go anywhere else and he
23 stated that they also went to Devon Philips' baby's
24 mama's house which was, he referred to as the Roughish
09:29 25 and those apartment complexes are named that but by a

09:29 1 street name, but they're actually the Vera Johnson
2 complex which is located downtown.

3 Q. Do you recall him recounting other people
4 asking him or anybody else in the car why did you do
09:30 5 that?

6 A. Yes. So when he got into the back of the
7 car, he stated that there was an unknown black male that
8 was in the back seat that was saying why did you do
9 that, how could you do that, they know who we are. And
09:30 10 that's what he indicated to us. And at that point they
11 went downtown.

12 Q. Now was this consistent with something
13 Devon had told you during one of his interviews?

14 A. Yes, it was.

09:30 15 Q. What did Devon tell you during one of his
16 interviews?

17 A. Devon told us during that second interview
18 with him when he called us back down there, Devon told
19 us that when everyone got back into the car, himself and
09:30 20 Devonte, because they were known to the sisters, that
21 they were like why did you do that, why did you shoot,
22 they know who we are. And they used some pretty, he
23 used foul language, I won't use it in here, but he was
24 like why did you do this to us. And then they went
09:30 25 downtown to Devon's baby's mama's house, which he

09:31 1 referred to as the Roughish. Devon said that when they
2 got there, Devon said that they wanted to hide the guns
3 in the baby's mama's house.

4 Q. What did Devon tell you his reaction was
09:31 5 about the plan to hide the firearms at his baby's
6 mother's house?

7 A. Devon said that they weren't going to not
8 allow them to hide the guns in the house. They hid the
9 guns. Devon hid the guns along with Nadin. When we
09:31 10 asked him well, where, what gun did you hide, he said I
11 hid Nadin's gun. And I asked him well, do you know
12 where that gun went, he said it's still there today and
13 I said how do you know somebody didn't remove it, he
14 says only Nadin and I know where it's at and Nadin is
09:31 15 not tall enough to reach the gun. I asked him is there
16 a search warrant issue, is it going to be inside a
17 structure, is it going to be on top of a building, he
18 said no. He said I'm not going to give the gun up
19 because I want a deal.

09:32 20 Q. All right. And then this conversation you
21 had with Devon is from the second interview you did with
22 him that we previously discussed?

23 A. Yes, it was.

24 Q. Now can you tell us a little bit about what
09:32 25 Arthur Moore's demeanor was when you were questioning

09:32 1 him regarding the 2009 shooting?

2 A. At first when I was talking to him and the
3 general party, where he was, what he did between 2008
4 and 2009, his demeanor was very calm, very, he gave
09:32 5 information very clearly. As soon as I confronted him
6 with the facts of the case of the Beesley shooting, at
7 the 65 Beesley, he immediately broke down crying saying
8 that he was going to go to prison and that he was very
9 emotional. He actually at that time drew us a picture
09:32 10 of the crime scene.

11 Q. All right. And speaking of that picture,
12 I'm going to show you Grand Jury Exhibit Number 38. Do
13 you recognize what Grand Jury Exhibit Number 38 is?

14 A. Yes, this is a copy of the picture that
09:33 15 Arthur Moore drew for myself and Detective Moreno.

16 Q. I'm going to put it on the elmo.
17 If you can come up here and tell us what
18 we're looking at on Grand Jury Exhibit 38.

19 A. Can everybody see here?

09:33 20 Arthur Moore, we gave him this piece of
21 paper and he drew a house, he drew the brick wall and he
22 drew the street.

23 Q. And just for the record I want to clarify.
24 The square on top is the house, the line represents the
09:33 25 wall and then a rectangle on the bottom of Grand Jury

09:33 1 Exhibit 38 with a squiggly lines through it represents
2 the street?

3 A. Yes.

4 Q. Okay. Proceed.

09:34 5 A. Arthur Moore said they were sitting on the
6 brick wall, meaning Nadin Hiko and he mentioned them,
7 Nadin Hiko, Jamel Hiko, Devon Philips and two other
8 black males. He said they were sitting on the wall,
9 they seen five individuals walking up the street. He

09:34 10 said that there was a light skinned black male with a
11 necklace around his neck. They got off the wall, he
12 said that when they walked up they began to rob him, and
13 he kind of drew this to indicate where they were walking
14 up. At that time he had stopped his interview.

09:34 15 Q. And then at the outset of this, of your
16 testimony, I asked you if you knew someone named Edward
17 Kruse. Did you ultimately interview Edward Kruse?

18 A. I did.

19 Q. Did you present him a photo array as part
09:34 20 of his interview?

21 A. I did.

22 Q. I want to show you what's been marked as
23 Grand Jury Exhibit 30. Is this one of the photo arrays
24 that you submitted to Edward Kruse?

09:35 25 A. Yes, it is.

09:35 1 Q. Was he able to identify somebody in the
2 photo array?

3 A. Yes, he identified Nadin Hiko. And he was
4 100 percent positive that was Nadin Hiko.

09:35 5 Q. And then did you present him another photo
6 array?

7 A. I did.

8 Q. I'm going to show you Grand Jury
9 Exhibit 31. Is this that second photo array you
09:35 10 presented to Mr. Kruse.

11 A. Yes, it is.

12 Q. Was Mr. Kruse able to identify anybody in
13 the photo array?

14 A. No, he was not.

09:35 15 Q. And who was the potential suspect that you
16 had placed in the photo array?

17 A. Jamel Hiko.

18 Q. Just to clarify. So in looking at Grand
19 Jury Exhibit Number 36, there are photos and names under
09:35 20 those photos; is that correct?

21 A. Yes, they are.

22 Q. And have you reviewed Grand Jury Exhibit
23 Number 36?

24 A. I have.

09:35 25 Q. Do those names correctly correspond to the

09:36 1 depictions of the people in Grand Jury Exhibit

2 Number 36?

3 A. Yes, they do.

4 Q. Was there a firearm relevant to this case?

09:36 5 A. Yes, there was.

6 Q. Can you tell us about that?

7 A. This firearm was found later 2010,
8 approximately about a year and a half, year and eight
9 months after the crime had occurred at 65 Beesley. That

09:36 10 firearm matched the 9-millimeter casings from the
11 firearm matched the 9-millimeter casings that were
12 located at the crime scene of 65 Beesley. That firearm
13 was recovered under a party at the Palms Hotel. There
14 was approximately 80 juveniles at that party.

09:36 15 Individuals had ran and when officers took several
16 individuals into custody they noticed that there was a
17 handgun laying next to the garbage dumpster at the
18 Palms. They recovered that gun and that gun
19 forensically tested back to those casings to be a
09:37 20 positive match to the gun that fired the 9 millimeter
21 casings at the homicide scene.

22 Q. And in fairness, you cannot in fairness,
23 you have no evidence that any one of the five potential
24 suspects in this case was at that party?

09:37 25 A. No.

09:37 1 Q. All right. And then in reviewing the case
2 file, did you become aware of photo arrays that were
3 presented to the victims?

4 A. Yes, I was.

09:37 5 Q. Were any of the victims able to positively
6 identify any of the five potential suspects in this case
7 at that time?

8 A. They were not positively identified, no,
9 but there was people that were selected, but there was
09:37 10 not positively identified, no.

11 Q. And the people who were selected, were any
12 of them Arthur Moore, Devon Philips, Devonte Wash, Nadin
13 Hiko or Jamel Hiko?

14 A. That were selected, no.

09:38 15 MR. PALAL: The State is done with its
16 questioning and will pass the witness to the grand
17 jurors if they have any questions.

18 BY A JUROR:

19 Q. During the course of your investigation
09:38 20 were you able to interview either of the Hiko twins?

21 MR. PALAL: I'm just going to ask that the
22 detective not answer that as it may implicate other
23 rights.

24 BY A JUROR:

09:38 25 Q. You probably said this but I didn't catch

09:38 1 it. What connection did Kruse have? Was he a person at
2 the party or what was his connection?

3 A. Mr. Edward Kruse had a relationship with
4 Mr. Nadin Hiko and some information was revealed to
09:39 5 Mr. Kruse. He did not know any of the individuals.
6 He's a much older man. They had met and Mr. Kruse had,
7 Nadin had revealed some information to Mr. Kruse.

8 Q. Thank you.

9 BY MR. PALAL:

09:39 10 Q. Let one follow-up question. In your
11 research into this case, were you able to determine that
12 Mr. Kruse and Mr. Hiko were housed in the Clark County
13 Detention Center at the same time?

14 A. Yes, they were.

09:39 15 Q. And approximately what year, month and year
16 was this?

17 A. They were housed together on March 25, 2009
18 at the Clark County Detention Center in the same module
19 and the same room.

09:39 20 Q. And as I instructed you I believe last
21 week, you are not to consider the fact that Nadin Hiko
22 was in custody on another case as part of our
23 deliberations into this case.

24 Any other questions?

25

09:39 1 BY A JUROR:

2 Q. The shell casings that were found at the
3 crime scene, was it just one gun or was there two guns?

4 A. There was one, a 9-millimeter gun. Those
09:40 5 shell casings were fifteen 9-millimeter shell casings,
6 cartridge casings. Those casings matched the gun that
7 was recovered in 2010, December of 2010. Those casings
8 matched that gun through forensic testing.

9 Q. So all the casings were just the one gun?

09:40 10 A. Yes.

11 THE FOREPERSON: Detective Cook, by law,
12 these proceedings are secret and you are prohibited from
13 disclosing to anyone anything that has transpired before
14 us, including evidence and statements presented to the
09:40 15 Grand Jury, any event occurring or statement made in the
16 presence of the Grand Jury, and information obtained by
17 the Grand Jury.

18 Failure to comply with this admonition is a
19 gross misdemeanor punishable up to 364 days in the Clark
09:40 20 County Detention Center and a \$2,000 fine. In addition,
21 you may be held in contempt of court punishable by an
22 additional \$500 fine and 25 days in the Clark County
23 Detention Center.

24 Do you understand this admonition?

09:41 25 THE WITNESS: Yes, I do.

09:41 1 THE FOREPERSON: Thank you for your time.

2 THE WITNESS: Thank you very much.

3 MS. PIEPER: At this time I was just told
4 that Shannon Williams is on his way. He is not outside

09:41 5 so I don't know if you want to take a 10 or 15 minute
6 break.

7 THE FOREPERSON: Fifteen minute break
8 please.

9 (Recess.)

10:01 10 MR. PALAL: All right. Ladies and
11 gentlemen, just a few housekeeping matters.

12 With regards to Grand Jury Exhibit 37, it
13 is a death certificate for Aric Michael Brill noting the
14 cause of death being a perforating gunshot wound of the
10:01 15 neck. It's a self-authenticating document. And the
16 manner of death is homicide.

17 We also have Grand Jury Exhibit 32 which is
18 a transcript of last week's proceedings.

19 With regards to Grand Jury Exhibits 33, 34,
10:01 20 35, 31 and 30, we'll be redacting the telephone numbers
21 and addresses of those witnesses.

22 And then I just want to re-admonish you all
23 that statements made by the suspects in this case can be
24 used as an admission by party opponent against them to
10:02 25 determine whether or not they are culpable or not with

10:02 1 regards to this case. However, statements made by
2 suspects in reference to other suspects cannot be used
3 in considering the culpability of the other suspects.
4 And that goes to both Mr. Cook's testimony, Detective
10:02 5 Cook's testimony and Mr. Kruse's testimony.

6 You may have heard, again you may have
7 heard of other crimes that may have been committed by
8 some of these suspects. You're not to consider any of
9 that in your deliberations. You are instructed only to
10:02 10 consider the evidence with regards to the 2009 homicide
11 of Aric Brill in deliberations.

12 And that's all. We'll see you back next
13 week.

14 (Proceedings adjourned, to reconvene on
10:03 15 Wednesday, July 6, 2016.)

16 --oo0oo--

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REPORTER'S CERTIFICATE

STATE OF NEVADA)
 : Ss
COUNTY OF CLARK)

I, Danette L. Antonacci, C.C.R. 222, do
hereby certify that I took down in Shorthand (Stenotype)
all of the proceedings had in the before-entitled matter
at the time and place indicated and thereafter said
shorthand notes were transcribed at and under my
direction and supervision and that the foregoing
transcript constitutes a full, true, and accurate record
of the proceedings had.

Dated at Las Vegas, Nevada,
July 19, 2016.

/s/ Danette L. Antonacci

Danette L. Antonacci, C.C.R. 222

10:03

1

AFFIRMATION

2

Pursuant to NRS 239B.030

3

4

The undersigned does hereby affirm that the
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER
15BGJ096X:

10:03

5

6

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8

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

9

10:03

10

-OR-

11

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

12

13

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

14

-OR-

10:03

15

16

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

17

18

/s/ Danette L. Antonacci

19

Signature

7-19-16

Date

10:03

20

21

Danette L. Antonacci

Print Name

22

23

Official Court Reporter

Title

24

25

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A JUROR: [1] 29/18	10 [2] 41/4 56/5	3
BY A JUROR: [3] 53/17 53/23 54/24	10 percent [2] 28/7 36/10	30 [4] 10/13 10/24 50/23 56/20
BY MR. PALAL: [2] 30/18 54/8	100 percent [3] 27/8 35/19 51/4	31 [2] 51/9 56/20
BY MS. PIEPER: [1] 6/16	10:00 [3] 11/7 12/7 12/7	32 [1] 56/17
MR. PALAL: [4] 29/19 53/14 53/20	11 [1] 31/19	33 [3] 28/9 36/16 56/19
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THE FOREPERSON: [14] 5/7 5/16	16 [1] 59/18	36 [8] 32/7 32/8 38/13 38/16 42/7
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29/2 29/17 30/1	18 [3] 16/13 16/13 16/19	364 [2] 29/11 55/19
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/s [2] 58/17 59/18	239B.030 [1] 59/2	80 [1] 52/14
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8	adjourned [1] 57/14	43/23
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9	administration [1] 59/15	am [1] 26/7
9 millimeter [1] 52/20	admission [1] 56/24	ANGELA [1] 2/7
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 13, 2016

C-16-316287-1 State of Nevada
vs
Arthur Moore

July 13, 2016 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

PARTIES

PRESENT:	Gill, Adam L	Attorney for Defendant
	Moore, Arthur	Defendant
	Palal, Binu G.	Deputy District Attorney
	Pieper, Danielle K.	Deputy District Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- INITIAL ARRAIGNMENT...INDICTMENT WARRANT RETURN

Also present: Co-Deft Nadim Hiko, in custody, represented by Attorney Erick Ferran; Co-Deft Devonte Wash, in custody, represented by Attorney Kenneth Frizzell; Co-Deft Devon Phillips, in custody, represented by Attorney Craig Mueller; Deputy Special Public Defender Randall Pike, observing.

Counsel advised the charges have been discussed with the Defts and they can proceed today with entry of plea. Court inquired whether the State is filing a notice of intent to seek the death penalty. CONFERENCE AT BENCH, per Ms. Pieper's request. COURT ORDERED, based upon Ms. Pieper's representations, matter SET for status check on State's notice of intent to seek the death penalty for August 8, 2016.

Deft Moore WAIVED a formal reading of the Indictment. DEFT. MOORE ARRAIGNED and PLED NOT GUILTY. Mr. Gill requested they reserve invocation of the 60-day rule until August 8th.

PRINT DATE: 07/19/2016

Page 1 of 2

Minutes Date: July 13, 2016

COURT ORDERED, Deft will INVOKE for now and if he decides to waive he can tell the Court on August 8th. COURT ORDERED, matter set for trial. INDICTMENT WARRANT RETURNED.

CUSTODY

8-8-16	9:00 AM	STATUS CHECK: STATE'S NOTICE OF INTENT TO SEEK THE
DEATH PENALTY		
8-10-10	9:00 AM	CALENDAR CALL
8-29-16	1:00 PM	JURY TRIAL

Felony/Gross Misdemeanor

COURT MINUTES

January 28, 2020

C-16-316287-1 State of Nevada
 vs
 Arthur Moore

January 28, 2020 08:30 AM Defendant's Motion for Discovery

HEARD BY: Leavitt, Michelle COURTROOM: RJC Courtroom 14D

COURT CLERK: Pannullo, Haly

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Arthur Moore	Defendant
Binu G. Palal	Attorney for Plaintiff
Emily Katherine Strand	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Ms. Strand advised the autopsy that was requested has been resolved. As to the crime stoppers data, Co-Defendant's jail calls and mail, a request has been sent to the DA's office and have not yet received those yet. Mr. Palal advised there is an ROC stating the Defense previously received the autopsy. As to the Co-Defendant's jail calls, Mr. Palal argued the Defendant can subpoena those items and the State is not in possession of those items as the State cannot use those items. Ms. Strand argued in her experience of subpoenaing jail calls, the jail usually directs the Defense to contact the State. Court directed the Defense to prepare a Court Order. Ms. Strand argued the State took the Co-Defendant's mail through a search warrant. Mr. Palal stated they will not be using the mail in their case and upon review, there was nothing in the mail that would exculpate this Defendant. The Defense argued the Defendant's involvement came from an anonymous call that happened after the letters were going back and forth. Court stated the State only needs to turn them over if they are using it in their case or if it is brady material and the State has confirmed that it is not. State so confirmed. Court inquired as to the tips to crime stoppers. Mr. Palal advised he will look into that. Ms. Strand requested a settlement conference in this matter. COURT SO NOTED.

CUSTODY

Felony/Gross Misdemeanor

COURT MINUTES

February 07, 2020

C-16-316287-1 State of Nevada
 vs
 Arthur Moore

February 07, 2020 10:00 AM Settlement Conference

HEARD BY: Bluth, Jacqueline M. COURTROOM: RJC Courtroom 10C

COURT CLERK: Reed, Keith

RECORDER: Takas, De'Awna

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Pursuant to the Judicial Executive Assistant (J.E.A.), the case did not settled and is CONTINUED to February 21st for ongoing negotiations.

2-21-20 9:30 AM SETTLEMENT CONFERENCE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 21, 2020

C-16-316287-1 State of Nevada
 vs
 Arthur Moore

February 21, 2020 10:30 AM Settlement Conference

HEARD BY: Bluth, Jacqueline M.

COURTROOM: RJC Courtroom 10C

COURT CLERK: Michaela Tapia

JOURNAL ENTRIES

- Matter not settled. Calendar Call date STANDS.

3/3/20 8:30 AM CALENDAR CALL

Felony/Gross Misdemeanor

COURT MINUTES

March 03, 2020

C-16-316287-1 State of Nevada
 vs
 Arthur Moore

March 03, 2020 08:30 AM Calendar Call

HEARD BY: Leavitt, Michelle COURTROOM: RJC Courtroom 14D

COURT CLERK: Pannullo, Haly

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Arthur Moore	Defendant
Binu G. Palal	Attorney for Plaintiff
Emily Katherine Strand	Attorney for Defendant
Osvaldo E Fumo	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Second Amended Superseding Indictment FILED IN OPEN COURT.

NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. MOORE ARRAIGNED AND PLED GUILTY TO COUNT 1 MURDER (SECOND DEGREE) (F), COUNT 2 CONSPIRACY TO COMMIT ROBBERY (F) and COUNT 3 ROBBERY (F). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing; trial dates VACATED.

CUSTODY

05/20/20 8:30 AM

1 WNC
2 Arthur Moore, natural person
3 Clark County Detention Center
4 330 S. Casino Center Blvd.
5 Las Vegas, NV 89101

FILED
MAY 28 2020
Ann L. Plummer
CLERK OF COURT

District Court
CLARK COUNTY, NEVADA

9 The State of Nevada
0 plaintiff,

11 -VS- Case No: C-16-316287-1

2 Arthur Moore
3 2578207
4 Defendant, Dept: D

Hearing: 6/18/2020
Time: 8:30 AM

15 EMERGENCY MOTION TO DISMISS COUNSEL : APPOINT
16 CONFLICT FREE COUNSEL

19 Now comes Defendant Arthur Moore, : moves the Honorable Court to
20 dismiss counsel Osvaldo E. Fumo due to ineffective counsel : assistance,
21 break in communication, : Iscronic Coercion.

22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

RECEIVED
MAY 07 2020
CLERK OF THE COURT

PROCEDURAL BACKGROUND

1. This Complaint is one of many that I, the Defendant, have against Osvaldo E. Fumo for ineffective counsel : assistance, blatant refusal to carry out Defendants request : failure to protect the rights of the Client ;

2. Osvaldo E. Fumo has failed to take any investigative measures in my case.

He's instead solely relied on what the prosecution has provided, subsequently failing to use any : all available resources to obtain a proper defense for Defendant. See Buffalo VS- State Ill Nov. 1139/1995 ;

3. During the entire time Osvaldo E. Fumo has been my counsel not a single pre-trial motion filed on my behalf has been effective. Mr. Fumo has continuously disregarded my legal request : has done nothing but misled the Defendant : deprive him of his right to effective counsel ;

4. Because of counsel ineffective counsel : assistance, Defendant begun filing a civil suit in regards to this matter which has now become a conflict of interest, because of the inconsistency of the Clients interest : the personal interest of a public official ;

5. Protected by the sixth Amendment requires that the accused have "counsel acting in the role of an advocate" Anderson VS California 875 - ct 1396 198, 1967 ;

6. Osvaldo E. Fumo has shown through his actions : behavior his loyalty is not in favor of the Defendant. Even if counsel is confident/competent a serious breakdown in communication can result in an inadequate defense.

7. Clearly a conflict of interest now exist between Counsel :

Defendant as well as faith & trust has been diminished as a

result of Counsel actions & lack thereof. A showing of conflict

of interest requires no showing of Prejudice. Cuyler vs. Sullivan

100 S. ct. ch. 1717

POINTS AND AUTHORITIES

Defendant asserts he is being denied his right to effective

counsel or representation due to the inadequate actions on

behalf of his state appointed Counsel. Furthermore, Counsel's

actions constitute a violation of the Defendants due process

rights if the complete collapse of Attorney client relationship

is evident a refusal to substitute counsel violates Defendants

"6th Amendment right". Young vs. State 120 Nev 963 (2004)

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Dated this day April 16th 2020, I Arthur Moore
Swear under penalty of perjury that this motion to
dismiss counsel & appoint new counsel is accurate & correct
to the best of my knowledge.

Respectfully submitted

Arthur Moore 2578207

A. Moore

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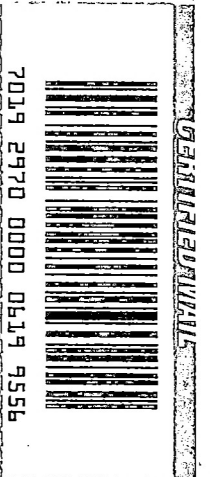
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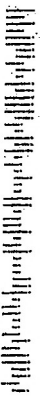
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A Moore # 2578307
330 Casino Center Bld
Las Vegas 89101



\$4.20
US POSTAGE
FIRST-CLASS
071V01330124
88031
00713276

Regional Justice Court Clerk Dept 12
200 Lewis Ave
Las Vegas 89101



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD A DOTTED LINE

Felony/Gross Misdemeanor

COURT MINUTES

July 17, 2020

C-16-316287-1 State of Nevada
 vs
 Arthur Moore

July 17, 2020 12:00 PM All Pending Motions

HEARD BY: Leavitt, Michelle COURTROOM: RJC Courtroom 14D

COURT CLERK: Pannullo, Haly

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Arthur Moore	Defendant
Binu G. Palal	Attorney for Plaintiff
Kendall S. Stone	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIESDEFENDANT'S EMERGENCY MOTION TO DISMISS COUNSEL; APPOINT CONFLICT
FREE COUNSEL ... SENTENCING

Court stated the Defendant Motion was received and it appears the Defendant wants to withdraw his plea. Defendant confirmed the Court's representations and stated it is based upon the legal advice that he received. COURT SO NOTED and ORDERED, matter REFERRED to Mr. Christensen's Office and SET for Status Check regarding confirmation of counsel and Motion to Withdraw Plea; 07/21/20 Motion VACATED.

CUSTODY

07/24/20 12:00 PM STATUS CHECK: CONFIRMATION OF COUNSEL ... STATUS CHECK:
MOTION TO WITHDRAW PLEA

CLERK'S NOTE: Matter referred to Mr. Christensen's Office by way of email. hvp/7/17/20

Felony/Gross Misdemeanor

COURT MINUTES

August 14, 2020

C-16-316287-1 State of Nevada
 vs
 Arthur Moore

August 14, 2020 12:00 PM All Pending Motions

HEARD BY: Leavitt, Michelle COURTROOM: RJC Courtroom 14D

COURT CLERK: Pannullo, Haly

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Arnold Weinstock Attorney for Defendant

Arthur Moore Defendant

Binu G. Palal Attorney for Plaintiff

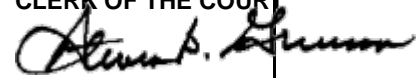
State of Nevada Plaintiff

JOURNAL ENTRIESSTATUS CHECK: CONFIRMATION OF COUNSEL (DREW'S OFFICE) STATUS CHECK:
MOTION TO WITHDRAW PLEA

Mr. Weinstock accepted appointment. Mr. Weinstock requested 30 days to review the file and speak with the Defendant. COURT ORDERED, matter CONTINUED as to the Motion to Withdraw Plea. Defendant requested contact information. Mr. Weinstock provided phone number in open court.

CUSTODY

CONTINUED TO: 09/16/20 8:30 AM OR 09/18/20 12:00 PM (DEPENDING ON PANDEMIC)



DAN M. WINDER, ESQ.
Nevada State Bar No.: 001569
ARNOLD WEINSTOCK, ESQ.
Nevada State Bar No.: 00810
LAW OFFICE OF DAN M. WINDER, P.C.
3507 W. Charleston Blvd.
Las Vegas, NV 89102
Telephone: (702) 474-0523
Facsimile: (702) 474-0631
winderdanatty@aol.com
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,)	Case No.:	C-16-316287-1
)		
Plaintiff,)	Dept. No.:	XII
)		
vs.)		
)		
ARTHUR MOORE, #2578207,)		
)		
Defendant,)		

MOTION TO WITHDRAW GUILTY PLEA AND PROCEED TO TRIAL

COMES NOW, Defendant, ARTHUR MOORE, by and through his attorney, DAN M. WINDER, ESQ., and moves this Court to allow the Defendant to withdraw his GUILTY plea and proceed to trial.

This motion is made and based upon all the papers and pleadings on file herein, and upon the attached points and authorities which are incorporated herein by reference, along with any evidence which may be introduced at the time of the hearing on this matter.

DATED this 11th day of January, 2021.

Respectfully Submitted,

LAW OFFICE OF DAN M. WINDER, P.C.

/s/ Dan M. Winder
DAN M. WINDER, ESQ.
Nevada State Bar No.: 001569
ARNOLD WEINSTOCK, ESQ.
Nevada State Bar No. 000810

1 **POINTS AND AUTHORITIES**

2 **A. Procedural History**

3 The State presented a proposed indictment against defendant, Arthur Moore (“Moore”) to
4 an empaneled Grand Jury on June 22, 2016. In support of the charges, the grand jury heard testimony
5 from the following witnesses– Terrell Moore, Joseph Bentley, Shannon Williams-Sutton, Angelo
6 Gilbert, Edward Kruse. Tatiana Jackson, and Detective Cook.

7 An indictment was returned July 7, 2016.

8 **I.**

9 **STATEMENT OF FACTS**

10 After leaving a house party, Terrell Moore (“Terrell”) along with his friends Joseph Bentley
11 (“Joseph”), Shannon Williams-Sutton (“Shannon”), Aric Brill (“Aric”), and Angelo Gilbert
12 (“Angelo”) were held up at gun point by four or five individuals. Joseph, Aric, and Angelo ran and
13 were shot at by the robbers. Id. Aric was shot and would later die from his wounds. Joseph was shot
14 in the arm, but he survived. Terrell called the police and was the first to be interviewed. Terrell gave
15 a taped statement indicating he did not run and was face to face with who he believed was the person
16 in charge of the crew robbing them. After the shooting Terrell called for help, but everyone at the
17 party went inside the house, closed the door and did nothing. Terrell stated that the area was dark,
18 but described the ring leader and shooter as being a dark skinned black male, approximately 5’ 7”
19 in height, approximately 17-20 years old, with a deep, raspy voice. Terrell couldn’t see the other
20 people involved in the robbery were dark black males that he couldn’t identify because it was dark
21 outside during the incident. Joseph could not make an identification. Shannon did not want to testify
22 and was largely questioned through leading questions using her prior statement given to police. She
23 was shown her statement describing the shooter as wearing a burgundy sweater, 6’3’ in height, with
24 a “nappy afro”. Angelo looked directly at the shooter. After the shooting he saw the robbers get in
25 a 2000 Malibu and leave the area. Angelo confirmed there were no street lights where the incident
26 occurred. However, he did describe the shooter as a dark skinned male, approximately 5’ 7” in height

1 with short hair with a fade. Angelo described the person as not having a deep or raspy voice. The
2 party was hosted by Tatiana Jackson (“Tatiana”). She stated that four individuals – Devonte Wash
3 (“Devonte”), Devon Phillips (“Devon”), and two twins she didn’t know – showed up in a blue
4 Chevy Malibu. Devonte walked around the party with gun exposed in his waist band. Devonte,
5 Devon and the twins left the party and were sitting on a pony wall just outside the residence.

6 Tatiana would be interviewed by Detective Cook later that year, months after the incident.
7 He provided a photo “six pack” lineup and was asked if she could identify any one from the lineup.
8 She identified Devonte.

9 Detective Cook interviewed Devonte in 2016 based on a tip from a cellmate of Devonte in
10 an unrelated case. Detective Cook also interviewed Devon who supposedly told him that he, Devonte
11 and the twins were at the party with Defendant, Arthur Moore. Detective Cook testified that Devon
12 told him that Arthur said “I’m going to hit a lick” – a slang term for commit a robbery. Devon
13 allegedly then told Detective Cook that Arthur robbed a group of individuals and shot at them when
14 they attempted to flee. Devonte confirmed the same events. Detective Cook interviewed Arthur who
15 allegedly said he visited lots of house parties. Arthur is claimed to have told Detective Cook that he
16 was standing on the wall when another person robbed the group and a third person shot at the group.
17 Supposedly, Arthur broke down in tears stating he was going to prison when he spoke to Detective
18 Cook. No other evidence was presented tying Arthur to the robbery or shooting. The Grand Jury
19 returned an Indictment on Arthur on July 7, 2016.

20 **A. Defendant’s Decision to Enter Into a Guilty Plea Agreement.**

21 With a July 10, 2018 trial date looming, the Defendant filed a proper person motion to
22 dismiss counsel. As a result, the calendar call was vacated. After a two (2) day settlement
23 conference on February 7 and 21, 2020, Moore received an offer from the State which he was
24 pressured by his prior counsel to accept. The plea offer was never fully explained to Moore and he
25 was told by his prior counsel that he must sign the plea agreement, or he would lose at trial and
26 spend the rest of his life in prison. Moore was told by prior counsel that if he signed the guilty plea
27

1 agreement, that he would serve only ten (10) to twenty -five(25) years in prison.

2 At the insistence of his prior legal counsel, Defendant accepted the State's offered guilty plea
3 negotiation. Pursuant to an executed guilty plea agreement, Defendant entered guilty pleas to three
4 counts; Murder in the Second Degree, Conspiracy to Commit Murder and Robbery. Pursuant to the
5 plea agreement, Moore agreed to serve ten (10) to twenty-five (25) years in prison on count one (1)
6 and the State retained the right to argue as to counts two (2) and three (3). Moreover, the State
7 retained the right to argue for consecutive sentences on counts 2 and 3. Based upon the guilty plea
8 negotiations, the trial date was vacated and a sentencing hearing was scheduled. This motion follows.

9 **B. Defendant's Motion to Withdraw Guilty Plea Agreement.**

10 Defendant's sentencing hearing was originally scheduled for May 20, 2020 and continued
11 five (5) times until July 17, 2020. Prior to the date of the sentencing, this Court deemed it necessary
12 to appoint counsel to brief the issue of withdrawing Moore's plea. Thereafter, as sentencing neared,
13 this Court granted defendant's request to appoint new counsel for this motion to withdraw his plea
14 and to possibly assist Mr. Moore with his sentencing hearing if the case proceeded in that direction.
15 It has always been Moore's position that his plea was not taken knowingly, voluntarily, or in a free
16 manner as Mr. Moore was rushed and pressured by prior counsel. To avoid a possibility of life in
17 prison, Mr. Moore accepted the plea under terms that were not the ones he had agreed. His plea
18 should be withdrawn for these and the following reasons:

19 **1. Moore was never given explanation as to the consequences of the plea. Moore was**
20 **led to believe, by prior counsel, that his plea was for concurrent time between all three**
21 **(3) counts.**

22
23 **2. Moore has a remedial IQ and is of special needs and was confused about the meaning**
24 **of concurrent and consecutive.**

25
26 **3. Moore would not have entered plea if he understood that he was getting consecutive**
27

1 time in addition to the stipulated second degree murder sentence.

2
3 4. Moore never had opportunity to speak with prior counsel personally. He was only
4 afforded the chance to speak with his two inexperienced associates.

5
6 5. Prior counsel had been personally assigned responsibility for this case, but he
7 assigned responsibility to two associated attorneys with very little experience. Neither
8 had the requisite knowledge or experience or understanding of his case.

9
10 6. Moore felt under extreme pressure to immediately make a decision on accepting the
11 plea agreement and did not have any time to review plea with prior counsel directly.

12
13 7. Moore was told he either signed the plea agreement, or he would go to trial
14 immediately and lose resulting in his doing a life sentence.

15
16 8. Moore has always made it clear to prior counsel that in order to avoid trial, he would
17 only accept a 10-25, but never agreed to anything more than that amount.

18 19 II.

20 LEGAL ARGUMENT

21 A. Introduction

22 The Defendant argues to this Court that he should be permitted to withdraw his plea due to
23 various coercive circumstances in existence at the time the State conveyed the plea offer that he
24 ultimately accepted. After Defendant entered his guilty plea, it was discovered that Defendant was
25 misinformed about length of the sentence he was ultimately going to serve. Critical facts were
26 inaccurately communicated to Defendant by prior counsel and/or his inexperienced associates within
27

1 a short period of time prior to the court hearing where Defendant was forced to make a final decision
2 to accept or reject the State's offer to negotiate. As detailed herein, these various factors are certainly
3 relevant to a determination of whether Defendant's guilty plea was knowing, voluntary, and
4 intelligent. However, these same factors are more adequately analyzed under a framework that
5 determines if the proceedings below, and Defendant's guilty plea, was not the product of a
6 fundamentally fair process. Moore asks this Court to find that he presented a substantial, fair, or just
7 reason to withdraw his plea of guilt when he filed a motion to withdraw his plea before sentencing.
8 See Woods v. State, 114 Nev. 468, 475 (1998).

9 Before those legal principles can be applied to this case, it is necessary to determine how
10 Nevada law defines a substantial, fair, and just reason to withdraw a guilty plea. It must be inquired
11 whether, "the provision allowing a defendant to withdraw his guilty plea prior to sentencing for any
12 substantial, fair, and just reason encompass reasons other than merely whether the guilty plea was
13 knowing, voluntary, or intelligent?" Answering that question requires one to trace the origin of the
14 "substantial, fair, and just" language and to determine if the Nevada Legislature intended NRS
15 176.165 to include those principles. Moore argues herein that these historical treks reveal that
16 Nevada Law is properly interpreted to allow a defendant to withdraw a guilty plea before sentencing
17 for reasons beyond the issue of whether the plea was knowing, voluntary, or intelligent.

18 As applied to this case, the Defendant has, in fact, presented a substantial, fair, and just
19 reason to withdraw his plea.

20 **B. The Origin of the "Substantial, Fair, and Just Reason" Standard.**

21 Nevada Law, for the decades preceding the 1960's, did not explicitly provide a defendant
22 with the avenue to withdraw a previously entered plea of guilty no matter when that request was
23 made relative to sentencing. Prior to 1967, neither a Nevada statute nor an Opinion published by the
24 Nevada Supreme Court addressed the right to withdraw a guilty plea after it was entered by the
25 defendant. In 1967, the Nevada Legislature, during its 54th Session, sought to enact a fairly
26 comprehensive set of laws to govern the rules of criminal procedure for all Nevada state courts.

1 Report of the Assembly Committee to Judiciary for Revision of the Criminal Law to the Legislative
2 Commission, 54th Leg., at 2-3. As stated at the time, the goal of the subcommittee tasked with
3 enacting the rules of criminal procedure was:

4 “[T]o adopt in statutory form, but not as rules of court, the
5 Federal Rules of Criminal Procedure, discarding those not
6 applicable in state courts and retaining existing Nevada statutes
concerning matters not covered by the federal rules.”

7 As part of that effort to enact a comprehensive scheme governing the rules of criminal
8 procedure, the Assembly Committee to the Judiciary recommended a section that addressed motions
9 to withdraw guilty pleas made by a defendant before and after sentencing. *Id.* at § 245. The
10 committee’s recommendation was then included within Assembly Bill 81 of the 54th
11 Legislature. See A.B. 81, 54th Leg., Sec. 245. During that same legislative session, Assembly Bill
12 81 was passed and enacted into law in 1967. See NRS 176.165. While the same cannot be said for
13 all proposed rules of criminal procedure, the language proposed for the section that became NRS
14 176.165 was not altered from its original form as it was proposed by the subcommittee.
15 Compare A.B. 81, 54th Leg., Sec. 245; NRS 176.165. The language of NRS 176.165 has remained
16 nearly unchanged since it was enacted in 1967. In its current form, NRS 176.165 reads:

17 Except as otherwise provided in this section, a motion to
18 withdraw a plea of guilty, guilty but mentally ill or nolo
19 contendere may be made only before sentence is imposed or
20 imposition of sentence is suspended. To correct manifest
injustice, the court after sentence may set aside the judgment of
conviction and permit the defendant to withdraw the plea.

21 As the subcommittee to the 54th Legislature indicated, NRS 176.165 borrowed its legal foundation
22 from the Federal Rule of Criminal Procedure that addressed the same subject. See Fed. R. Crim. P.
23 11(d). While Rule 11 of the Federal Rules of Criminal Procedure covers issues beyond motions to
24 withdraw guilty pleas, the relevant subsection states:

25
26 The only changes that have occurred to NRS 176.165 involved amending the
27 language concerning pleas of insanity and mentally ill to conform to changes in

1 that
body of law.
2 (d) Withdrawing a Guilty or Nolo Contendere Plea. A
defendant may withdraw a plea of guilty or nolo contendere:
3 (1) before the court accepts the plea, for any reason or no reason;
or
4 (2) after the court accepts the plea, but before it imposes sentence
if:
5 (A) the court rejects a plea agreement under Rule 11(c)(5); or
6 (B) the defendant can show a fair and just reason for requesting the
withdrawal.
7 (e) Finality of a Guilty or Nolo Contendere Plea. After the court
imposes sentence, the defendant may not withdraw a plea of guilty
or nolo contendere, and the plea may be set aside only on direct
8 appeal or collateral attack.
9 Fed. R. Crim. P. 11(d)-(e).

10 A comparison of NRS 176.165 to its federal counterpart reveals that the specific phrase “fair
and just reason” was not included in the Nevada version. However, the jurisprudence of Nevada’s
11 High Court swiftly interpreted the Nevada statute to include the “fair and just” language found in the
12 Federal rule. See *State v. Second Judicial Dist. Court*, 85 Nev. 381 (1969).
13 After the enactment of NRS 176.165, the Nevada Supreme Court’s first occasion to specifically
14 address the statute occurred two years later, in 1969. *State v. Second Judicial Dist. Court*, 85 Nev.
15 381 (1969). After quoting NRS 176.165, the 1969 Nevada Supreme Court wrote:

16 The above statute was taken from and is substantially the same as
17 Rule 32(d)[now rule 11], Fed.Rules Crim.Proc. The action of the
lower court is discretionary and will not be reversed unless there
18 has been a clear abuse of that discretion. *Gearhart v. United States*,
106 U.S.App.D.C. 270, 272 F.2d 499 (1959); *Bergen v. United*
19 *States*, 145 F.2d 181 (8th Cir.1944). The granting of the motion to
withdraw one's plea before sentencing is proper where for any
20 substantial reason the granting of the privilege seems ‘fair and
just.’ *Gearhart v. United States*, supra. It is even held in *Woodring*
21 *v. United States*, 248 F.2d 166 (8th Cir.1957): ‘The question of a
defendant's guilt or innocence is not an issue on a motion under
22 Rule 32(d) of the Federal Rules of Criminal Procedure, 18
U.S.C.A., for leave to withdraw a plea of guilty * * *.’ (emphasis
23 added) See also *United States v. Paglia*, 190 F.2d 445 (2d Cir.1951). Id. at 385

24 Since the aforementioned case, the opinions of the Nevada Supreme Court have consistently
25 approved of, cited to and quoted the “fair and just” language without exception. See e.g., *Mitchell*
26 *v. State*, 109 Nev. 137, 141 (1993); *Woods v. State*, 114 Nev. 468, 475 (1998); *Molina v. State*, 120

1 Nev. 185, 191 (2004). Eventually, the Court provided greater definition and detailed more contours
2 to guide Nevada trial courts when deciding a defendant's presentence motion to withdraw a guilty
3 plea. See Woods v. State, 114 Nev. 468, 475 (1998). In Woods, the Nevada Supreme Court observed
4 that "a district court may, in its discretion, grant a defendant's motion to withdraw a guilty plea for
5 any "substantial reason" if it is "fair and just." 114 Nev. at 475 (citing State v. Second Judicial Dist.
6 Court, 85 Nev. 381 (1969)).

7 The Woods Court also stressed that a district court "must also look to the totality of the
8 circumstances and the entire record" when making such a determination. 114 Nev. at 475 (citations
9 omitted). The Nevada Supreme Court also observed that a court "may not simply review the plea
10 canvass in a vacuum, conclude that it indicates that the defendant understood what she was doing,
11 and use that conclusion as the sole basis for denying a motion to withdraw a guilty plea." Mitchell
12 v. State, 109 Nev. 137, 141 (1993).

13 From 1967, when NRS 176.165 was first enacted, through the end of the twentieth century,
14 the jurisprudence of this Court recognized that district courts had discretion to allow a defendant to
15 withdraw a guilty plea before sentencing for any "substantial reason" if it is "fair and just." For the
16 most part, the "substantial reason" basis to withdraw a plea stood separate from those issues
17 surrounding whether a guilty plea was knowing, voluntary, and intelligent. See Mitchell, 109 Nev.
18 at 141-43.

19 The Mitchell opinion, 109 Nev. at 141-43, illustrates this Court's willingness to permit a
20 defendant to withdraw a guilty plea for reasons other than a showing that the plea was not knowing,
21 voluntary, and intelligent. In Mitchell, the defendant pled guilty to Attempt Burglary for entering an
22 apartment within an apartment complex where she worked as a maid. Id. at 141. Prior to sentencing,
23 the defendant filed a motion to withdraw her guilty plea. Within that motion, the defendant wrote:

24 [T]hat she was a maid at the apartment complex and had a master key to every room.
25 The buildings of the complex were designated A, B, C, etc., and the rooms within
26 each building were numbered identically. On the day in question, Defendant was
27 given a list of rooms to clean. Defendant accidentally went to an apartment which
28 corresponded to a number on her list, but was in the wrong building. When she
entered the apartment, it appeared to be vacant. Tenants sometimes leave loose

1 change in the apartments when they vacate them, and when Defendant saw some
2 loose change, she assumed that it had been left by the tenants. After she had been in
3 the apartment just a few minutes and had touched nothing but the loose change, she
4 realized that the apartment was still occupied. Defendant realized that she had
5 mistakenly entered the wrong apartment, but no one would allow her to explain. One
6 occupant of the apartment held her at gun point until the police arrived. Defendant
7 stated that she never had an opportunity to speak with her public defender about what
8 really happened because he never had time. Defendant emphasized that she had
9 simply entered the apartment by mistake and had not entered with the intention to
10 commit a crime.

11 In reversing the district court's denial of defendant's motion to withdraw, this Court held:

12 Under the circumstances of this case, it was a clear abuse of discretion for the
13 district court to deny Defendant's motion to withdraw w her guilty plea.
14 Defendant provided the court with a credible story explaining her actions and
15 denying any criminal intent, and only a very minor amount of money was
16 involved. Moreover, Defendant filed her motion to withdraw her plea before
17 sentencing, thereby avoiding any prejudice to the state. Thus, viewing the
18 record as a whole, especially in light of Defendant's credible claim of factual
19 innocence and the lack of prejudice to the state, we conclude that it was a
20 clear abuse of discretion for the district court to deny Defendant's motion to
21 withdraw her guilty plea.

22 Id. at 143 (citations omitted).

23 Defendant, herein submits that Mitchell illustrates an occasion where this Court deemed it
24 fair and just to permit defendant to withdraw her guilty plea for reasons beyond a strict analysis
25 concerning the knowing, voluntary, and intelligent nature of the guilty plea itself. The Mitchell
26 Court's reliance on (1) defendant's credible claim of factual innocence, and (2) the lack of prejudice
27 to the State are indicative of an analysis wholly apart from deciding whether the plea was knowing,
28 voluntary, and intelligent. Logic dictates that a defendant's claim of innocence and prejudice to the
State would be irrelevant if the sole basis to withdraw a plea under NRS 176.165 was a showing that
the plea was not knowing, voluntary, or intelligent. See Mitchell, 109 Nev. at 143; Taylor v. Warden,
96 Nev. 272, 274 (1980) ("In reviewing an attack on a guilty plea a court must consider whether the
plea was voluntarily entered as well as whether, considered as a whole, the process by which the plea
was obtained was fundamentally fair.")

29 In 2001, the opinions published by the Nevada Supreme Court started to blend the concepts
30 of whether a plea was knowing, voluntary, and intelligent with that of what constitutes a substantial

1 reason that is fair and just. See Crawford v. State, 117 Nev. 718, 721 (2001). As a result, the question
2 as to whether the provision, found in the Nevada appellate jurisprudence, allowing a defendant to
3 withdraw his guilty plea prior to sentencing for any substantial, fair, and just reason encompasses
4 reasons other than merely whether the guilty plea was knowing, voluntary, or intelligent became
5 more difficult to decisively answer. Defendant submits that this blending of these two concepts was
6 inadvertent and not intended to abolish a defendant's ability, pursuant to NRS 176.165, to withdraw
7 a plea by showing a fair and just substantial reason to do so.

8 The Crawford Court wrote:

9 “District courts may grant a motion to withdraw a guilty plea prior to sentencing for
10 any substantial, fair, and just reason. Woods v. State, 114 Nev. 468, 475, 958 P.2d
11 91, 95 (1998). To determine whether the defendant advanced a substantial, fair, and
12 just reason to withdraw a plea, the district court must consider the totality of the
circumstances to determine whether the defendant entered the plea voluntarily,
knowingly, and intelligently. Id. at 475; see also State v. Freese, 116 Nev. 1097, 13
P.3d 442, 448 (2000). Crawford, 117 Nev. at 721-22.

13 The primary case relied upon and cited by the Crawford opinion, Woods v. State, did not
14 provide support for language in Crawford that blended these two, previously distinct, doctrines.
15 Instead, Woods, 114 Nev. at 475, stated:

16 A district court may, in its discretion, grant a defendant's motion to withdraw a guilty
17 plea for any “substantial reason” if it is “fair and just.” State v. District Court, 85
18 Nev. 381, 385, 455 P.2d 923, 926 (1969). Woods concedes that the canvass was
“textbook” perfect, and we defer to the district court judge who concluded that
19 Woods' reactions were not “robot-like”; however, this court has held that the district
court must also look to the totality of the circumstances and
20 the entire record. Mitchell v. State, 109 Nev. 137, 140–41, 848 P.2d 1060, 1061–62
(1993). In Mitchell, we concluded that, “viewing the record as a whole, especially in
21 light of Defendant's credible claim of factual innocence and the lack of prejudice to
the state,” the district court abused its discretion in denying the motion to withdraw
Defendant's guilty plea. 109 Nev. at 141, 848 P.2d at 1062.

22 Following Crawford, 117 Nev. at 721, no Nevada Supreme Court published opinion has
23 quoted the sentences in Crawford, *supra*, which blended these two doctrines into one. Defendant
24 submits that legislative history of NRS 176.165 and the Nevada appellate jurisprudence predating
25 2001 decisively illustrate that the provision allowing a defendant to withdraw his guilty plea prior
26 to sentencing for any substantial, fair, and just reason encompasses reasons other than a finding that

1 the guilty plea was not knowing, voluntary, or intelligent.

2 **C. The Legislative History & Intent of NRS 176.165.**

3 When interpreting a Nevada statute, legislative intent “is the controlling factor.” Robert E.
4 v. Justice Court, 99 Nev. 443, 445 (1983). The initial focus when determining legislative intent
5 centers on the statute's plain meaning. *Id.* When a statute “is clear on its face, a court cannot go
6 beyond the statute in determining legislative intent.” *Id.* However, if “the statutory language lends
7 itself to two or more reasonable interpretations, the statute is ambiguous, and we may then look
8 beyond the statute in determining legislative intent.” State v. Lucero, 127 Nev. Adv. Op. 7, 249 P.3d
9 1226, 1228 (2011). To interpret an ambiguous statute, the Court must look to the legislative history
10 and construe the statute in a manner that is consistent with reason and public policy. *Id.*

11 NRS 176.165, in regards to the issue at bar, is ambiguous in that it does not state what a
12 defendant must show in order to withdraw a guilty plea before sentencing. NRS 176.165 does
13 provide that a defendant must show “manifest injustice” before a guilty plea may be withdrawn after
14 sentence is imposed. Logic dictates that the defendant who makes a presentence motion can show
15 less than “manifest injustice” and withdraw a guilty plea based on a showing of this lesser degree
16 of egregiousness. However, the plain language of the statute does not lend itself to logical
17 implications of greater specificity regarding what a defendant must show to withdraw a guilty plea
18 before sentencing. Thus, one must look beyond the statute to discover the legislative intent behind
19 the enactment of NRS 176.165 to determine the statute’s meaning.

20 As previously mentioned, *supra* at § 5.2, the intent of the 1967 Nevada Legislature was “to
21 adopt in statutory form of the Federal Rules of Criminal Procedure[.]” Report of the Subcommittee
22 for Revision of the Criminal Law to the Legislative Commission, 54th Leg., at 2. That statement
23 evidencing the legislative intent at the time does not stand in isolation. Within the 1967 Legislative
24 Session, during a Joint Meeting of the Assembly and Senate Committee on the Judiciary, the same
25 intent is evident. “Most of AB 81 is taken from or conforms to the Federal rules. It is just a matter
26 of transplacing the entire language from the Federal to 81.” Minutes of the Joint Subcommittee
27

1 Meeting of Assembly Committee on Judiciary: 54th Leg., February 8, 1967, at 38 (statement of W.
2 Raggio). Approximately a month later, when discussing a different criminal procedure rule within
3 AB 81, it was noted that the subcommittee “wanted to stay with the Federal Rules.” Minutes of the
4 Meeting of Assembly Committee on Judiciary: 54th Leg., March 9, 1967, at 169 (statement of F.
5 Daykin).

6 The Federal Rule of Criminal Procedure addressing motions to withdraw a guilty plea in both
7 1967 and today provides that a presentence motion to withdraw should be granted if “the defendant
8 can show a fair and just reason for requesting the withdrawal.” Fed. R. Crim. P. 11(d)-(e). From
9 1967 through present day, Federal Court consistently interpreted the federal counterpart to NRS
10 176.165 in the same manner the Nevada Supreme Court did when it held that a court should grant
11 a defendant's motion to withdraw a guilty plea for any “substantial reason” if it is “fair and just.”
12 Woods, 114 Nev. at 475 (citing State v. Second Judicial Dist. Court, 85 Nev. 381 (1969)); see also,
13 United States v. Rosen, 409 F.3d 535, 538 (2d Cir. 2005); United States v. Wilson, 81 F.3d 1300,
14 1303 (4th Cir. 1996); United States v. Gaitan, 954 F.2d 1005, 1008 (5th Cir. 1992).

15 In all Federal Circuits, the test used in determining whether defendant should be allowed to
16 withdraw plea of guilty requires trial court to weigh whether defendant has offered credible evidence
17 that his plea was not knowing or not voluntary, whether defendant has credibly asserted his legal
18 innocence, whether there has been delay between entering of plea and filing of motion,
19 whether defendant has had close assistance of competent counsel, whether withdrawal will cause
20 prejudice to government, and whether it will inconvenience court and waste judicial resources. See
21 e.g., Wilson, 81 F.3d at 1304; United States v. Puckett, 505 F.3d 377, 382-83 (5th Cir. 2007).

22 Following the 1967 enactment of NRS 176.165, the Nevada Supreme Court interpreted the
23 intent of the statute in the exact same manner in which Federal Courts interpreted the comparable
24 Federal statute. The Nevada Supreme Court implicitly recognized the legislative intent behind NRS
25 176.165 in 1969 when it started using the “fair and just” language from the Federal Rule to review
26 district court’s refusal to permit a defendant to withdraw a guilty plea before sentencing. See State

1 v. Second Judicial Dist. Court, 85 Nev. 381 (1969); see also, Woods, 114 Nev. at 475; Mitchell, 109
2 Nev. at 141-43. Defendant submits that the legislative intent behind 176.165 remains unchanged and
3 no reason exists to revisit and reevaluate the legislative intent at this point in time. Stevenson v.
4 State, 131 Nev. 598, 354 P. 3d 1277 (2015).

5 **D. Defense Counsel's Lack of Work Product and Lack of Contact with the Client During the**
6 **Time Pending Trial as Grounds to Be Considered in its Ruling on a Fair and Just Reason to**
7 **Withdraw the Plea.**

8 A defendant may move to withdraw a guilty plea before sentencing. NRS 176.165. A district
9 court can grant the motion "for any reason where permitting withdrawal would be fair and just."
10 Stevenson v. State, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015) (disavowing the previous
11 standard, which focused exclusively on whether the plea was knowingly, voluntarily, and
12 intelligently made). When making this determination, "the district court must consider the totality
13 of the circumstances." *Id.* at 603, 354 P.3d at 1281. "This court will not reverse a district court's
14 determination concerning the validity of a plea absent a clear abuse of discretion." Johnson v. State,
15 123 Nev. 139, 144, 159 P.3d 1096, 1098 (2007).

16 The Nevada Supreme Court has held that an ineffective assistance of counsel argument can
17 form the basis of a motion to withdraw a guilty plea. See Molina v. State, 120 Nev. 185, 190, 87 P.3d
18 533, 537 (2004) (A defendant who pleads guilty upon the advice of counsel may attack the validity
19 of the guilty plea by showing that he received ineffective assistance of counsel under the Sixth
20 Amendment to the United States Constitution." (internal quotation marks omitted)).

21 Defendant in the instant matter has established that counsel was ineffective, and he has
22 proven that, but for counsel's errors, he would not have pleaded guilty.

23 **E. It Would be Error to Deny Defendant's Presentence Motion to Withdraw Guilty Plea**

24 Defendant's motion asking this Court to allow him to withdraw his guilty plea before
25 sentencing requires this Court to apply a "more relaxed standard" to the merits of Defendant's
26 request. Molina v. State, 120 Nev. 185, 189 (2004). To determine whether the defendant advanced
27 a substantial, fair, and just reason to withdraw a plea, the court must evaluate the "totality of the
28

1 circumstances.” State v. Freese, 116 Nev. 1097, 1104 (2000).

2 As part of that analysis, a defendant’s credible claims of misrepresentations by prior counsel,
3 ineffectiveness of prior counsel and an absence of prejudice to the State are important factors that
4 heavily weigh in favor of permitting a Defendant to withdraw his plea. Woods, 114 Nev. at 475.
5 Using all of those factors, this Court must allow Moore to withdraw his previously entered guilty
6 plea and allow this matter to proceed to trial. Alternatively, this Court may require the State to
7 stipulate to a ten (10) to twenty-five (25) year sentence, which Moore was led to believe was the
8 consequence of his plea.

9 **III.**

10 **CONCLUSION**

11 Defendant entered the plea because of the information given to him by defense counsel
12 and/or his associates. Specifically, Defendant was led to believe that his sentences would be run
13 concurrent to one another and the he would do no more than a sentence of ten (10) to twenty-five
14 (25) years in prison. Since that ended up not being the case, Mr. Moore should be permitted to
15 withdraw his plea and proceed to trial. As such, based on the numerous improprieties, as outlined
16 herein, it is respectfully requested that this Court order that Moore’s guilty plea be withdrawn and
17 that this matter proceed to trial.

18
19 DATED this 11th day of January, 2021.

20
21 Respectfully Submitted,

22 **LAW OFFICE OF DAN M. WINDER, P.C.**

23 /s/ Dan M. Winder
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