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Respondent.

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1 THE MARSHAL: Ma'am, you're going to take the stand here
2 and I'll have you remain standing, face the Madam Clerk, and raise your
3 right hand, please.

4 WENDY RADKE, STATE'S WITNESS, SWORN

5 THE CLERK: Please be seated, stating your full name and
6 spelling your first and last name for the record.

7 THE WITNESS: Wendy Radke, W-E-N-D-Y R-A-D-K-E.

8 THE COURT: Okay. You may go ahead, State.

9 MS. WECKERLY: Thank you.

10 DIRECT EXAMINATION

11 BY MS. WECKERLY:

12 Q Ma'am, how are you employed?

13 A By the City of North Las Vegas.

14 Q And what do you do for North Las Vegas?

15 A I am a senior crime scene analyst.

16 Q So, as luck would have it, you are the third crime scene
17 analyst that we've had testify, so we have an idea of what you do. In this
18 particular case, can you tell the members of the jury what your initial
19 responsibilities were on December 13th into the 14th?

20 A On that night, I responded out to the area. And my job that
21 night was to document the crime scene with photos and also take
22 custody of the evidence there and then book it.

23 Q Okay. When you initially respond to a scene like that or that
24 particular scene, what happens when yourself and the detectives first get
25 there?

1 A We all meet up. It's called a briefing. Where the first
2 responders, usually patrol, brief us on what they know at the time.

3 Q Okay. And then are duties divided between yourself and
4 other crime scene analysts?

5 A Yes.

6 Q And that was Renee Harder --

7 A Yes.

8 Q -- that you worked with that night.

9 A Yes.

10 Q And I think you said you were the photographer.

11 A Yes.

12 Q Okay. Were there particular challenges that night for you as
13 the person assigned to photograph that scene?

14 A Well, first being a large open area. Night photography is
15 always a little bit challenging, just to be able to use ambient light that's
16 present. But that night using a tripod, there was -- my camera was on a
17 tripod. It was so windy and rainy and sleet. I guess it would be sleet
18 present that not only did it appear on my lens, it was shaking my tripod.
19 Therefore, some of my pictures are slightly blurry.

20 Q Okay. But and you noted that in your report, sort of the
21 challenge of the conditions that night?

22 A Yes.

23 Q And after yourself -- well, I guess crime scene analyst Radke,
24 she was the one that did the measurements in order to make the
25 diagram?

1 A Harder.

2 Q Or sorry.

3 A That's okay.

4 Q I'm sorry. You're Radke. Harder. She did the measurements
5 in order to make the diagram.

6 A Yes, ma'am.

7 Q And then those various items of evidence that we've seen
8 pictures of, which were cartridge casings and two pieces of fabric and a
9 cell phone, those would have been impounded by you.

10 A Yes.

11 Q When you take custody of evidence from a scene, does it
12 stay in your sole care and custody until you put it somewhere in the
13 North Law Vegas Police Department?

14 A Yes.

15 Q And is it locked up in a, you know, secure facility at that
16 point?

17 A Yes.

18 Q And then after you had done that, were you asked to respond
19 to an additional location?

20 A Yes.

21 Q Where was that?

22 A It was actually out of our city, I believe in Las Vegas, at a -- at
23 a residence, but I can't remember the name of the street. My --

24 Q That's --

25 A My apologies.

1 Q That's okay. When you went to that scene, crime scene
2 analyst Harder was there with you as well?

3 A Yes.

4 Q And you both worked together in order to take photographs
5 and impound various items of evidence there?

6 A Yes.

7 Q Do you and crime scene analyst Harder ever process or
8 attempt to process items of evidence for the presence of latent
9 fingerprints?

10 A Yes.

11 Q And can you explain to the members of the jury just briefly
12 the training you've had that allows you to do that?

13 A Basically, when I first started they booked me into like a
14 program where there are levels as, you know, to learn about the
15 challenges involved. So I would -- I would approximate that I had about
16 200 hours, I guess, in different subjects involved with the processing of
17 latent fingerprints.

18 Q And would you also have training in the comparison of a
19 latent fingerprint to a known sample of fingerprints?

20 A Yes.

21 Q And you, yourself, would do those comparisons in cases if
22 called upon to do so?

23 A Yes.

24 Q In this particular case, were you -- did you attempt to get a
25 latent fingerprint off any item of evidence from the original scene?

1 A No. I do not believe so, no.

2 Q Okay. Did you impound a cell phone at that scene?

3 A Yes.

4 Q And was there any like observations about whether or not
5 you could get a fingerprint from the cell phone?

6 A Yes. I mean, I did attempt to obtain fingerprints from that
7 cell phone, but there were none.

8 Q There were none.

9 A Yeah.

10 Q And then if there's none, there's no way to do a comparison?

11 A Correct.

12 Q Now I want to go back to the original scene just briefly. Do
13 you recall how many cartridge cases were impounded from that scene?

14 A From the scene itself where I was present was -- I believe
15 there were six.

16 Q Okay. And that was out on the roadway area with the cones
17 and all of that?

18 A Yes.

19 Q And then there were two pieces of fabric and then the cell
20 phone?

21 A Correct.

22 MS. WECKERLY: May I approach the witness, Your Honor?

23 THE COURT: Yes.

24 BY MS. WECKERLY:

25 Q Ma'am, I'm showing you what's been marked as State's 144 -

1 - or sorry. I apologize -- 141 to 145. Can you look through those and just
2 let me know when you're done?

3 A Sure. Okay.

4 Q So 141 is an item of evidence, a bottle, but the balance of
5 those photos are of that cell phone.

6 A Yes.

7 Q And that would be back at the lab.

8 A Correct.

9 Q Are they a fair and accurate depiction of these items of
10 evidence?

11 A Yes.

12 Q State moves to admit 141 through 145.

13 THE COURT: Any objection to 141 through 145?

14 MR. BASHOR: No, Your Honor.

15 THE COURT: 141 through 145 will be admitted.

16 [State's Exhibits 141-145 admitted into evidence]

17 BY MS. WECKERLY:

18 Q Just because we were just talking about the process of
19 obtaining latent fingerprints, I just want to put on the overhead briefly
20 what's been admitted as State's 141. Can you see that?

21 A Yes.

22 Q That -- we've seen that before. That's a baby bottle that was
23 collected from the secondary scene, the residence. Looking at that, are
24 you able to see any markers associated with an attempt to collect latent
25 fingerprints?

1 A Yes.

2 Q And can you explain to the members of the jury what you're
3 looking at that makes that a -- visible to you?

4 A Those are -- I see at least two pieces of what's called latent
5 lift tape. And you place those over what where you think you might be
6 able to obtain fingerprints from. And that one I see -- on that picture, I
7 see a number one, meaning that is lift one.

8 Q Okay. And then those are put onto cards and then you see if
9 it's of a sufficient quality in order to make a comparison?

10 A Yes.

11 Q And do you recall if this one was of sufficient quality?

12 A It was not.

13 Q Okay. And then those are put onto cards and then you see if
14 it's of a sufficient quality in order to make a comparison?

15 A Yes.

16 Q And do you recall if this one was of sufficient quality?

17 A It was not.

18 Q Okay. I want to move on to the cell phone that was collected
19 at the scene at I-15 and Lamb. This is State's 142. Obviously, that's back
20 at the lab. Would that be fair?

21 A Yes.

22 Q And what are your observations about this cell phone?

23 A It looks like the screen is cracked and there seems to be some
24 damage on the -- on the side of it.

25 Q And were you the one that took the photos in order to

1 document the damage to this phone?

2 A Yes.

3 Q This is State's 143. Is that just a closer image of the phone?

4 A Yes.

5 Q And this is 144, which looks like kind of more of a side view.

6 A Yes.

7 Q And 145, which would be the back.

8 A Yes.

9 Q And those photographs were all how the phone appeared at
10 the scene, but then you took it back in order to take these closer
11 photographs of it?

12 A Yes.

13 Q And I think you said that there was an attempt or maybe you
14 looked to see if you could get a fingerprint off this phone, but that -- that
15 wouldn't have worked out either.

16 A Correct.

17 Q Thank you very much. I will pass the witness.

18 THE COURT: Cross.

19 MR. BASHOR: Judge, can I approach the clerk and the
20 witness?

21 THE COURT: Yes.

22 CROSS-EXAMINATION

23 BY MR. BASHOR:

24 Q Good afternoon, CSA Radke.

25 A Hello.

1 Q Sorry. Okay. So let me understand. Both you and CSA
2 Harder responded to the scene, correct?

3 A Correct.

4 Q And to help process what was a relatively large scene, you
5 decided to divide the labor?

6 A Yes.

7 Q Okay. And your -- CSA Harder did some of the
8 measurements and you did the -- most of the photography.

9 A Yes.

10 Q All right. Now, do you recall upon arriving seeing cones any
11 place?

12 A Yes.

13 Q Okay. Were those cones already placed when you got there?

14 A Yes, sir.

15 Q I'm showing you what is State's Exhibit and admitted 15. Is
16 this an example of the cones that were placed?

17 A Yes, sir.

18 Q Okay. And the reason for that was the conditions that night,
19 right?

20 A Right.

21 Q It was extremely windy, correct?

22 A Yes.

23 Q And precipitation of varying forms were occurring, correct?

24 A Yes.

25 Q Now, by the way, processing a scene like this doesn't take

1 you ten minutes, right?

2 A Correct.

3 Q And on this night, the incident occurs approximately 10:00,
4 10:30. You get out there, I'm assuming, an hour or so later.

5 A About that.

6 Q And then you're there for several hours.

7 A Yes.

8 Q And so you -- by virtue of the fact that the cones were
9 already in place, you don't know how long it took responding officers to
10 place them in those locations, correct?

11 A True.

12 Q I mean, presumably as soon as possible.

13 A Correct.

14 Q Correct. Because they want to maintain the integrity of the
15 scene.

16 A Yes.

17 Q But given the conditions, things could have been moving
18 around?

19 A Yes.

20 Q In fact, and I think you mentioned this on direct, the wind
21 was in such a state that even your tripod was having trouble staying
22 still?

23 A Correct.

24 Q And you did your best, according to your report, that if you
25 were worried about the exposure, you would take the time to take

1 another photograph of the exact same thing?

2 A Yes.

3 Q And it's fair to say that this area was not well lit, correct?

4 A Oh, correct.

5 Q Naturally, I mean.

6 A Yes.

7 Q So I'm sure you used devices to amplify or provide some
8 light so that you could take these photographs.

9 A Yes.

10 Q And in the fact that it's not well lit, this is late -- this is mid-
11 December, correct?

12 A Yes.

13 Q The sun had long set by then.

14 A Yes.

15 Q Correct? And for whatever reason, the light posts aren't as
16 close together as they may be in some other parts of town here.

17 A True.

18 Q Now, as noted as an example in State's Exhibit 15, we see
19 that there's some blood stains on the ground, correct?

20 A Yes.

21 Q And, in fact, you noted that the amount of precipitation that
22 occurred that night, in all likelihood, distorted the size of those stains in
23 some areas, correct?

24 A Possible, yes.

25 Q Right. And you -- obviously you didn't see it happened, but

1 you were concerned enough to note it in your report, that the
2 participation (sic) was sufficient enough that they could begin to run.

3 A True.

4 Q And change shape.

5 A Yes.

6 Q Now, other items of physical evidence were collected that
7 evening up to and including some shell casings, correct?

8 A Correct.

9 Q Were any attempts made to process or fingerprint the shell
10 casings?

11 A Not that I'm aware of, no, sir.

12 Q And would that be a decision that you would make or a
13 decision the lead detective would make?

14 A Usually a lead detective would request such a thing.

15 Q So his -- your main responsibility is to document and collect,
16 correct?

17 A True.

18 Q And your training and experience that we heard sounds
19 extremely thorough. That's what you're trained to do, correct?

20 A Yes.

21 Q So the decision making on what is printed or tested may not
22 even occur that day. It could occur over the course of the investigation,
23 correct?

24 A True.

25 Q And at that point, the stuff has been professionally collected

1 by you, but that decision rests with the lead detective?

2 A True.

3 Q Okay. Now, directing your attention to Exhibit -- State's
4 Exhibit 144 we just saw, we did see -- this is an image of the cell phone
5 taken at the lab, correct?

6 A Correct.

7 Q And the cell phone obviously has damage to its -- I don't
8 know if that's glass or LCD or LED, whatever fancy thing they call the
9 face of the phone, right?

10 A True.

11 Q All right. But there's significant damage as you can see in
12 State's Exhibit 144, along the plane or the side of the phone. Would you
13 agree?

14 A Yes.

15 Q Okay. And that if you look closely in the center, that the
16 damage seems kind of circular?

17 A Like or oval, something.

18 Q Oval.

19 A Something round, yeah. Something. Something.

20 Q Round. Fair enough. Court's indulgence. Thank you so
21 much.

22 A Oh, thank you.

23 THE COURT: Any follow up?

24 MS. WECKERLY: Just briefly.

25 REDIRECT EXAMINATION

1 BY MS. WECKERLY:

2 Q Would precipitation on the ground or on the items of
3 evidence affect the ability to recover a latent fingerprint?

4 A No, not generally.

5 Q Okay. Are there any environmental factors that would affect
6 that?

7 A As far as recovering latent prints?

8 Q Uh-huh.

9 A Sometimes high temperatures or direct sunlight can dry out
10 a fingerprint.

11 Q Uh-huh.

12 A And they are not easily recoverable.

13 Q And in terms of casings, are those typically analyzed for
14 fingerprints after they've been shot? Like expended casings?

15 A No.

16 Q And why is that?

17 A Because as they travel through the barrel of the firearm, the
18 heat is so intense it usually either destroys DNA and or dries out any
19 fingerprints that might be present.

20 Q Thank you.

21 MR. BASHOR: Just briefly, Your Honor.

22 THE COURT: Okay.

23 RECROSS-EXAMINATION

24 BY MR. BASHOR:

25 Q You indicated that usually a print could be destroyed by that

1 process, correct?

2 A Correct.

3 Q But again, the ultimate decision in making an attempt to lift a
4 potential latent print from a shell casing comes from the lead detective?

5 A Yes.

6 Q Thank you very much.

7 THE COURT: Any follow up on that certain thing?

8 MS. WECKERLY: No. No, Your Honor.

9 THE COURT: Do the ladies and gentleman of the jury have
10 any questions for this witness?

11 Okay. Seeing no response, ma'am, you are excused. Thank
12 you very much for your testimony here.

13 THE WITNESS: Thank you.

14 THE COURT: State, you may call your next witness.

15 MS. WECKERLY: Thank you, Your Honor. Allison Rubino.

16 THE MARSHAL: Face the Judge and remain standing. Face
17 the Clerk and raise your right hand, please.

18 ALLISON RUBINO, STATE'S WITNESS, SWORN

19 THE CLERK: Please be seated, stating your full name,
20 spelling your first and last name for the record.

21 THE WITNESS: My name is Allison Rubino, A-L-L-I-S-O-N R-
22 U-B-I-N-O.

23 THE COURT: Okay. Whenever you're ready, Ms. Weckerly.

24 MS. WECKERLY: Thank you.

25 DIRECT EXAMINATION

1 BY MS. WECKERLY:

2 Q How are you employed?

3 A Hi. I'm a forensic scientist at the Las Vegas Metropolitan
4 Police Department in the biology DNA detail of the forensic laboratory.

5 Q And what does mean you do?

6 A To put it plainly, I examine evidence for the presence or
7 absence of biological materials and then conduct DNA analysis on those
8 samples, as well as other samples when they're requested to our section
9 within the laboratory.

10 Q And what's your educational and training background that
11 allows you to work in the DNA lab as a forensic scientist?

12 A I have a bachelor's of science in biochemistry from the
13 University of Scranton in Pennsylvania. And I have a master's of science
14 in forensic science from the University of New Haven in Connecticut. I
15 started here in Vegas in January of 2014. And prior to working here in
16 Las Vegas, I was a forensic scientist at the Armed Forces DNA
17 Identification Laboratory in Dover, Delaware. I was there for about a
18 year and a half. And before that, I was a research associate and forensic
19 scientist at the Suffolk County Crime Laboratory in Hauppauge, New
20 York. And I was there for about three years.

21 Q Okay. So, of course, we all see television shows and things
22 like that about DNA analysis and comparison. Can you explain to us
23 though generally though what is DNA?

24 A Sure. DNA, it stands for deoxyribonucleic acid. It's a
25 compound that's found in nearly every cell within our body. And it

1 contains all of the information that make us into the individuals that we
2 are, from our hair color, our eye color, the numbers of fingers and toes
3 that we have, the size of our organs, things like that. Our DNA is
4 inherited, which means we get half of our DNA from our mother and half
5 of our DNA from our father. And no two people are really known to have
6 the same DNA with the exception of identical siblings, identical twins,
7 identical triplets, et cetera.

8 Q And how is DNA used in a forensic setting then?

9 A We use DNA in order to make associations if they exist
10 between samples that are found at a crime scene and between samples
11 that come from known individuals.

12 Q Okay. So you get a known sample of DNA and then you
13 compare it to an item of evidence that's maybe found at a crime scene
14 and see if there's consistency or commonality?

15 A Yes.

16 Q In terms of someone's DNA profile, is it the same whether --
17 is it the same depending -- or regarding to whether or not it's from blood
18 or semen or saliva or skin?

19 A Correct. So the DNA within each cell, whether it's your blood
20 or in saliva or in skin cells, will be the same.

21 Q Now over the course of your career has the sensitivity of
22 DNA testing improved?

23 A Yes.

24 Q Okay. And what is -- what would you call or what is meant
25 by touch DNA?

1 A Touch DNA, it's also referred to, sometimes it's trace DNA.
2 And it's DNA that gets left behind when someone or something comes
3 into contact with someone or something else. And generally, we're
4 speaking of the transfer of skin cells. So if you think about the clothes
5 you're wearing right now, the collars of your shirt, or the cuffs of your
6 sleeve rubbing up against your skin, you're transferring your DNA from
7 your skin to the clothing. When you go into a room or open the door to
8 your house and you're turning the doorknob, the potential to leave skin
9 cells behind on the doorknob, that's possible. So it deals with the
10 transfer of generally skin cells from one surface to another.

11 Q Okay. And then another source of DNA which would yield
12 the same profile would be if you bleed on an item or saliva would also
13 contain DNA as well?

14 A Yes. The better sources of DNA that we encounter in the
15 laboratory are stuff like blood, semen, saliva, that kind of thing.

16 Q And if I were to just touch a place one time without a lot of
17 friction, do you have any or can you explain why or why not my DNA
18 would be present in a particular location?

19 A Trace DNA is very variable depending on a number of certain
20 circumstances. There are individuals that have a higher propensity to
21 shed their DNA than others, so that's a factor. Another factor is I guess
22 kind of the weather you're dealing with. I mean, we're dealing with
23 super hot temperatures now and you're sweating a lot, so sweat is really
24 a great vehicle for your skin cells. So the propensity to leave behind skin
25 cells when your hands are sweaty is more likely maybe than if I were in

1 the middle of winter on the east coast and everything is dry, so you may
2 not leave DNA behind in those kind of weather conditions. So there's a
3 number of different circumstances that come into play when we're
4 talking about trace DNA.

5 Q Now a few minutes ago you talked about known DNA
6 samples. We've had two crime scene analysts testify about the
7 collection of a buccal swab. Can you explain to the members of the jury
8 what that is?

9 A A buccal swab is just a DNA sample that has a known source.
10 So the package, it's this envelope that has documentation of the
11 particular individual that sample came from. And within it, there is kind
12 of like a long Q-tip and they take the swab from the inside of the cheek.
13 And it's just consistent documentation that this DNA sample came from
14 this person so that when I'm doing my examinations, when I'm making
15 any comparisons, I have that documentation, this sample came from this
16 person. And I can make the associations if they're present to those
17 evidence samples.

18 Q And so with the buccal swab itself, is -- are you determining
19 what someone's DNA profile is from the buccal swab or from the cells in,
20 you know, that they got from their cheek?

21 A Yes.

22 Q And then in terms of evidence collected at a crime scene or
23 in the field, what do you see at the lab when the question comes in on
24 question evidence?

25 A There are a couple of different forms. A main form that I'm

1 used to seeing are swabs, whether it be anybody on scene collecting a
2 swab from an item of evidence. It's usually packaged with
3 documentation that it came from a particular item. There are also
4 instances where we get an actual item that's collected at a scene. So
5 whether it's an item of clothing, an item of bedding, cigarette butts,
6 things like that. So we -- over the course of my experience, I've seen so
7 many different things from as little as fingernail clippings to as big as a
8 mattress. So the evidence that encountered in the lab can come in many
9 forms.

10 Q In this particular case, were you asked to analyze several
11 swabs and taken from items of evidence?

12 A Yes.

13 Q And did you have buccal swabs or known DNA samples with
14 which to do the comparison?

15 A Yes.

16 Q And who did you have the known DNA samples from?

17 A I had two buccal swabs. One was from an Anshanette
18 McNeil and the other one was from a Vernon Newson, Jr.

19 Q And who was it that made the request of you to analyze
20 these various items of evidence?

21 A The request came from an officer with, I believe, North Las
22 Vegas Police Department.

23 Q And that's a normal course of business for Metro to do DNA
24 testing for North Law Vegas?

25 A Yes.

1 Q Okay. So let's move into some of your results, if we could.
2 One of the items that you analyzed was identified as stain E to you.

3 A Yes.

4 Q And that was a swab -- we've had prior testimony -- taken
5 from some pavement off a freeway or an on ramp onto a freeway. But
6 when it comes to you, it's just like on a Q-tip swab?

7 A Yes. With some of the different jurisdictions the way that
8 they package it, it's like a plastic package and it's documented. It was
9 documented as E, so that's what I note it as in my report. And it comes
10 in kind of like a covered Q-tip. And it can have staining. It can have not
11 staining. And what I'll do is first document all of the packaging, the
12 exterior packaging, the interior packaging, just to close the gaps for all of
13 my examinations. And then I do a visual examination of the item. So I
14 document staining present. I do biological testing if that is indicative for
15 a particular item before I cut a sample for DNA analysis.

16 Q And when you cut the sample, like what happens to it? What
17 does it look like at the lab?

18 A So I will -- I'll take one of -- like a little razor and I'll just cut a
19 portion or all of the swab and put it in a tube. And that tube goes
20 through the entire DNA process.

21 Q And so what -- when you put it into the tube, is there -- like
22 what happens to the sample?

23 A So for the DNA process, the first step is called extraction.
24 And what that means is isolating the DNA from all of the other stuff
25 that's in that sample. So removing the DNA from the swab itself,

1 removing the DNA from all the other cellular material that we don't need
2 for further processing. So once I have isolated the DNA, we quantify it.
3 We find out how much DNA is in the sample. After I've figured out how
4 much DNA is present in the sample, we take a certain volume and put
5 that into our amplification phase.

6 And that's just putting it in a DNA copy machine and making
7 millions and millions of copies of different parts of the DNA. After I have
8 all my copies, it goes into an instrument, and this instrument has this
9 long thing tube that the DNA passes through. And at the end of the tube
10 is a camera. And the camera will take pictures of the DNA as it passes
11 through. And all of those pictures get compiled into a data software.
12 And that software creates this graphical representation of what I use as
13 the DNA profile.

14 To envision it, it looks like different rows of maybe an EKG, peaks,
15 when we say peaks throughout the DNA profile. They're farther apart,
16 but that's essentially kind of what I'm looking at.

17 Q And you do that as well with the known samples, with the
18 buccal swabs?

19 A Correct. The process is the same from evidence samples and
20 known samples.

21 Q Okay. And then you're kind of comparing how those two --
22 those two samples, the known and the unknown, look.

23 A Correct.

24 Q Okay. Let's go back to E, our first item. What were your
25 findings or your interpretation of the results with regard to that stain?

1 A So for the DNA profile obtained from the swab from stain E
2 is consistent with a full female DNA profile. And it was consistent with
3 that of Anshanette McNeil.

4 Q Okay. You did several other items, an analysis of several
5 other items in this case. Is that fair?

6 A Yes.

7 Q Was one reported to you as a car seat liner swab?

8 A It was the actual car seat liner.

9 Q Oh, okay. I'm going to put on the overhead. Do I have to
10 push this, Your Honor? One more?

11 THE COURT: One more. There we go.

12 MS. WECKERLY: Thank you.

13 BY MS. WECKERLY:

14 Q This is, for the record, State's 95. Is that the car seat liner?

15 A It looks similar to the one that I examined at the laboratory.

16 Q And when that is examined, what were your findings with
17 regard to that?

18 A So with my examination, the first thing that I'm doing is I'm
19 looking for possible red brown staining, looking for blood. And so that's
20 the first indication is a visual inspection. The next step is to test that
21 staining with chemicals. And if I take a little sampling and I add
22 chemicals to it, and if I get a color change, if it turns pink, it's positive for
23 the possible presence of blood. If in the picture you noticed there was
24 like red brown staining at that -- like the bottom back seam. And that is
25 what I ended up taking on for DNA analysis.

1 Q What were your results?

2 A So from that stain I also obtained a mixture DNA profile. It
3 was of two contributors, one of which was male. And within that, what I
4 mean by mixture, more than one, so I said it was two. And I was able to
5 obtain a major DNA profile, meaning that someone contributed more
6 DNA to that profile. And that major DNA profile was consistent with
7 Anshanette McNeil.

8 Q So with the car seat liner, if I'm understanding you, there was
9 from the area that was swabbed or that was tested that indicated a
10 mixture of two individuals, one of whom was male and one -- and then
11 there was a major profile. And who was that consistent to?

12 A It was consistent with Anshanette McNeil.

13 Q Okay. Now if a male baby, that was his car seat, and you had
14 a baby sitting in that all -- in that car seat quite a bit of time, is it possible
15 that that baby would leave DNA?

16 A It's possible, but I never had a reference to make any
17 comparisons.

18 Q Okay. If you have a blood stain on top of fabric or on top of a
19 surface that contains someone's touch DNA, could you get a mixture of
20 those two individuals?

21 A It's possible.

22 Q Okay. And in this case, it's unclear like who might have been
23 that secondary contributor?

24 A I could not make any determination as to that secondary
25 contributor at this time.

1 Q Okay. The major contributor though was who? Anshanette?

2 A Anshanette McNeil, yes.

3 Q Did you also analyze a blanket and sock and some pants?

4 A Yes.

5 Q And this, for the record, is State's 94. What were your
6 findings with regard to those items?

7 A So on those three items, I tested one area on each. And from
8 each of those, each stain on each item, I obtained a full single source
9 DNA profile that was consistent with Anshanette McNeil.

10 Q And did you also test a handle of a baby car seat?

11 A Yeah.

12 Q A swab, I guess, from that?

13 A Yes, I did.

14 Q And what were your findings?

15 A That was also a full single source DNA profile that was
16 consistent with Anshanette McNeil.

17 Q Were you also asked to analyze a swab from a bottle that
18 was collected in this case?

19 A Yes. It was a swab from the mouthpiece of a bottle.

20 Q Did you do the swab or was the swab taken by the crime
21 scene analyst and sent in an envelope to you?

22 A It was sent as just a swab.

23 Q Okay. What were your findings with regard to the bottle?

24 A I obtained a mixture DNA profile. It was two contributors, at
25 least one of which was male. I was able to pull a full DNA profile as the

1 major contributor, and that was an unknown, an unknown male that I
2 designated unknown male number 1.

3 Q Okay. And so that means that that DNA was not consistent
4 with the known profile of Vernon Newson?

5 A Vernon Newson was excluded.

6 Q Okay. And obviously if it's male, it's not Anshanette McNeil's
7 either?

8 A She was also excluded.

9 Q There were swabs taken in this case from a vehicle. Those
10 were submitted to you as well.

11 A Yes.

12 Q I'd like to first talk to you about the swab taken from the
13 rearview mirror, and this is State's 63. What were your findings with
14 regard to the rearview mirror?

15 A The DNA profile that I obtained from the rearview mirror was
16 consistent with a mixture of two contributors, at least one of which was
17 male. And I was able to get a major DNA profile and that was consistent
18 with Vernon Newson, Jr.

19 Q And were you also asked to analyze a swab taken from a
20 steering wheel? And this is State's 60.

21 A Yes, I was.

22 Q And what were your findings with regard to that?

23 A I was able to obtain a mixture DNA profile of three
24 individuals, at least one of which was male. And within that three
25 person mixture DNA profile, I was able to pull out a two person major

1 contributor, meaning two people gave a lot of DNA. And I was able to
2 make conclusions on that, that two person mixture. And that two person
3 mixture was consistent with the known DNA profiles of Anshanette
4 McNeil and Vernon Newson, Jr.

5 Q And the next one I wanted to ask you about was the gear
6 shift in the car. And I'm putting it on the overhead. It's State's 62.

7 A For the sample, I also obtained a mixture DNA profile of
8 three contributors, at least one of which was male. The sample, I was
9 also able to pull out a two person major component. And that two
10 person major component was consistent with that of originating from
11 Anshanette McNeil and Vernon Newson, Jr.

12 Q Okay. And we talked about the bottle, but you were also
13 asked to analyze a swab associated with a straw in this case as well.

14 A Yes.

15 Q And this is State's 85, just to reference it for the jury. What
16 were your findings with regard to the straw?

17 A With regards to the straw, it was a mixture DNA profile of
18 two contributors, at least one of which was male. I was able to pull out a
19 full single major DNA profile, and that was consistent with Vernon
20 Newson, Jr.

21 Q Now, the last item I want to talk about is a watch. Were you
22 given the watch itself or a swab from the watch band?

23 A I was just given a swab.

24 Q Okay. And the swab from the watch band, what type of
25 testing did you do?

1 A I first did that presumptive test for blood that I talked about,
2 and it was positive for the possible presence of blood. Then I conducted
3 my DNA analysis, and I obtained a mixture DNA profile of two
4 contributors, one of which was male. I was able to pull out a full major
5 DNA profile, and that was consistent with Anshanette McNeil.

6 Q Now you -- the stain itself, you talked about it, that there was
7 a presumptive test for blood. When you have a mixture, is it possible
8 that one person is, I guess, the source of the blood and the other
9 person's skin cells are present or is there a way to separate out like who
10 is the blood and who is maybe not the blood?

11 A Oh, we don't make the determination as to what DNA came
12 from what kind of cells. We can just give the information. In this
13 particular sample, it tested positive for the possible presence of blood.
14 And this was the DNA present within that sample, but we will not -- we
15 can't associate this DNA came from blood, this DNA came from this.
16 That's just not what we do.

17 Q And if someone were -- if someone were wearing a watch
18 and they had worn it, you know, for a number of days, would you expect
19 their DNA profile to be on their watch?

20 A Likely, yes.

21 Q And because that's the surface that's rubbing against the skin
22 or is in contact with?

23 A The interior of the band, I would -- I would anticipate to be
24 the most likely place to have wearer DNA.

25 Q Okay. And on this watch swab that you analyzed; it was

1 positive for the presence of blood. And it was a mixture and part of that
2 included Anshanette McNeil's or consistent with her profile?

3 A The major DNA profile, yes.

4 Q Thank you very much. I will pass the witness.

5 THE COURT: Cross.

6 MR. BASHOR: Thank you, Judge.

7 CROSS-EXAMINATION

8 BY MR. BASHOR:

9 Q Good afternoon, Ms. Rubino.

10 A Hi.

11 Q Hi. So just so I understand the process, you have CSAs both
12 in your department and in other departments in the Valley. And their job
13 is to document and collect evidence, correct?

14 A Correct.

15 Q And it's important that they do their jobs as well trained and
16 as professionally as possible, correct?

17 A Correct.

18 Q That way your results are not contaminated, messed with,
19 destroyed, correct?

20 A Correct.

21 Q Now the items that you tested in any case, it's usually at the
22 request of the lead detective.

23 A For the most part, it's a detective within a certain area,
24 command, or jurisdiction.

25 Q So in this case that you referenced on direct that a request

1 was made from a North Las Vegas police officer, it could have been a
2 detective?

3 A It could have been a detective.

4 Q So the -- but the list of items, the items given to you, they're
5 decided upon by the investigating agency, correct?

6 A Correct.

7 Q So in this case, this office or detective decided he wanted
8 these items tested for DNA?

9 A Yes, I guess.

10 Q What I guess I'm saying is the detective doesn't send you just
11 a box full of taped up bags and envelopes and that sort of thing and say,
12 "Hey, go at her."

13 A No. At the laboratory, there are policies in place for certain
14 types of incidences so that certain number of evidence samples can be
15 processed per request. That's not to say an officer can't submit multiple
16 requests. It's just on that first go around of a particular case. Certain
17 types of incidences have this number of samples that can be requested.
18 A different type of incident can have a different number. It really will just
19 depend. Also, for this particular case, those items were the ones
20 selected and requested.

21 Q And just so I understood you correctly, if after getting these
22 results, the results just discussed by the State, if the requesting agency
23 wanted further testing on different items, they could have been
24 submitted to you?

25 A Afterwards, yes.

1 Q Now we saw that a straw was analyzed, a gear shift, these
2 sorts of things. Were any shell casings submitted to you for DNA
3 testing?

4 A I -- because this was a while ago, I can't 100 percent
5 remember the policy on the cartridge casings. But I know as of right
6 now we don't do DNA analysis on cartridge casings unless it's a special
7 request and it's approved by my chain of command. So with this case,
8 one wasn't requested, but I cannot be for certain whether it was during
9 that time or not.

10 Q Now you mentioned that obviously with this -- your report
11 done was done back in April of 2016, correct?

12 A Correct.

13 Q And even since then, DNA technology has made leaps and
14 bounds improvements over that time, right?

15 A Things have definitely evolved since then.

16 Q Okay. Now we had not yet evolved to the point where -- and
17 we may never -- where someone in your position can determine when
18 DNA was placed in certain places, correct?

19 A That's another thing we will not -- like I said, we won't
20 determine what kind of cells the DNA came from. We won't determine
21 timeframe or circumstance like that. We just strictly say what DNA is
22 present in that sample.

23 Q And what is a secretor?

24 A A secretor?

25 Q A DNA secretor.

1 A I will say that's kind of like what I was talking about, a DNA
2 shedder. Someone who more easily sheds their DNA than someone
3 else. Some people will. Some people won't. It's person dependent.

4 Q So, for instance, at least four attorneys have touched this
5 podium over the course of this trial. A good secretor could have touched
6 this podium four weeks ago and you could potentially get a DNA mixture
7 that's testable, correct?

8 A If it hasn't been cleaned since four weeks ago, maybe. But
9 again, that's going to depend on how good the DNA is, what other stuff
10 came into contact with it. With that trace DNA, there's so many variables
11 in place, it's possible, but also, I wouldn't be surprised if it wasn't, so.

12 Q Very good. Thank you for your time.

13 MS. WECKERLY: Just one question, Your Honor.

14 THE COURT: Go ahead.

15 MS. WECKERLY: Judge, thank you.

16 REDIRECT EXAMINATION

17 BY MS. WECKERLY:

18 Q Ms. Rubino, why is it the policy not to analyze spent casings?

19 A For the most part, if you think about a spent cartridge casing,
20 two things. One, the surface is very small. It's very small and very
21 smooth. Two things on when it comes to being able to get trace DNA,
22 you think about things that are more -- if you think about the grips of a
23 gun, how it's textured, that textured surface could hold skin cells.
24 They're also -- they're really small and really smooth. The second thing
25 is when a cartridge is in a firearm while it's being spent, there's kind of a

1 mini explosion that happens within the firearm generating a lot of heat
2 or thermal energy within that, and that could break down DNA. So with
3 a spent cartridge casing, there hasn't been much success, so therefore
4 it's general lab policy that it's not going to be done.

5 Q And that's based on sort of the scientific results that, you
6 know, have been largely unsuccessful in obtaining DNA profile of spent
7 casings?

8 A Yes. I'm pretty sure we've done studies at the laboratory too,
9 to show it, but it's not to say that if it was a special request approved that
10 it wouldn't be done. It's just not something that's in routine requesting.

11 Q And in the -- like can you give us some sense of how many
12 requests you guys -- you, at the DNA lab, would get over the course of a
13 year?

14 A A lot. And it involves so many different types of incidences
15 that happen within the Valley. If we -- if I think about it, not just DNA-
16 based, but lab wide, we work in laboratory case numbers, and they start
17 with the year. So I'll just go with this year alone, 21, and then they go
18 with a dash. And then it's a sequential number. And this number is
19 request for -- all the sections within the laboratory just goes up. We're in
20 July and we have case numbers that are 21 dash in the, I guess 1200s
21 now. So that's just through half of the year, you know, nearly over half
22 of the year, so we get a lot.

23 Q And are there cases from 2020 that are awaiting processing
24 as well?

25 A Yeah. There are case -- still some cases from 2019 that are in

1 process.

2 Q And do you have a sense of how long Metro has had its own
3 DNA lab? Like do you know how old?

4 A Well before I got here. I honestly, I don't know.

5 Q But over time, I guess -- I guess my question is this. Over
6 however long the lab's been in existence, there's made it -- there's been
7 a determination made that it's not fruitful to get DNA off a spent casing.

8 A Well, especially now with even our technology is a lot more
9 sensitive than when the laboratory started. So back then you needed a
10 lot more sample to get a DNA profile. And even before then, there were
11 the DNA profiles of the charts that I was telling you about, they didn't
12 even have that technology. They were doing other technology. So while
13 we have evolved since then, there's still room for getting more sensitive
14 techniques, more involved techniques. And with time, we're kind of
15 working through the process that the forensic science field has made.
16 But with that, we are still having little success with spent cartridge
17 casings.

18 Q Thank you.

19 THE COURT: Any follow up, Mr. Bashor?

20 RECROSS-EXAMINATION

21 BY MR. BASHOR:

22 Q It sounds like the lab's really overwhelmed, fair?

23 A I don't necessarily think it's overwhelmed. There is a
24 procedure in place where management is responsible for dictating kind
25 of the priority of cases as they're requested to the lab. They're also

1 constantly in contact with detectives within our department and with
2 detectives from outside jurisdictions to make sure all of the requests that
3 are coming in are set to the point where once an analyst like myself gets
4 the case all of those checks of certain things have already taken place, so
5 I can just smoothly go through my process. There may be a lot of cases
6 to be worked, but the procedure is there, and we are -- we work with the
7 technology and the people that we have to get our jobs done.

8 Q So, if I understood you correctly on redirect examination, it's
9 been the labs experience that for the most part it's not fruitful to do
10 testing on shell casings, correct?

11 A Without a special request.

12 Q And the reason or need for the special request is a policy
13 that's set up by the Las Vegas Metropolitan Police Department?

14 A We fall under the police department, and so within the police
15 department manual, there are parts that indicate stuff for the laboratory.
16 Some of the procedures when it comes to evidence collection, some of
17 the procedures, evidence submissions and booking it, sample limits
18 policies that I was mentioning earlier. All of those things fall into there.
19 And that's based on management within the laboratory working with the
20 department to get those put into the department manual, so it all falls
21 kind of under the same umbrella.

22 Q So I'm confused. Are you an employee of the Las Vegas
23 Metropolitan Police Department?

24 A Yes.

25 Q And are your managers employees of the Las Vegas

1 Metropolitan Police Department?

2 A Yes.

3 Q So the people making the policies and procedures work for
4 the Las Vegas Metropolitan Police Department, correct?

5 A For the work that we do, yes.

6 Q So the answer to my question is yes?

7 A Yes.

8 Q Thank you.

9 THE COURT: Anything further, Ms. Weckerly?

10 MS. WECKERLY: No, Your Honor. Thank you.

11 THE COURT: Do the ladies and gentleman of the jury have
12 any questions for this witness?

13 Okay. Seeing no response, ma'am, you are excused. Thank
14 you very much for your testimony today.

15 State, you may call your next witness.

16 MS. WECKERLY: Your Honor, our next witness is a reader.

17 THE COURT: Okay.

18 THE COURT: And, ladies and gentleman, the next witness,
19 the testimony is going to be read from a previous deposition where this
20 testimony was taken because the witness is unavailable at this time to
21 testify in these proceedings. You are to consider this testimony the
22 same as you would consider any testimony that was given by a live
23 witness. Let's get the job done.

24 MR. DIGIACOMO: Good afternoon.

25 THE COURT: Good afternoon. Can you raise your right hand

1 so you can attest that you're going to read this accurately? Yes, you may
2 remove your mask.

3 MARK DIGIACOMO, STATE'S WITNESS, SWORN

4 MS. WECKERLY: And we're starting, Mr. DiGiacomo, on
5 page 5. Do you see there?

6 THE WITNESS: I do.

7 MS. WECKERLY: Okay. And, Your Honor, just for the record,
8 this is the deposition of Winston Reece.

9 THE COURT: Okay.

10 MS. WECKERLY: W-I-N-S-T-O-N R-E-E-C-E.

11 THE COURT: Okay.

12 MS. WECKERLY: Thank you.

13 DIRECT EXAMINATION

14 BY MS. WECKERLY:

15 Q Mr. Reece, I want to direct your attention to early January of
16 2016. What street were you living on at that time?

17 A Cincinnati Avenue.

18 Q And is that in Clark County, Nevada?

19 A Yes.

20 Q In early January of 2016, did you make a call in to the police
21 about a vehicle?

22 A Yes, I did.

23 Q Can you tell the members of the jury how many days before
24 you made that call that you noticed the vehicle?

25 A It was probably about four or five days. Nobody came back

1 to attend it. I took the VIN number and the tags, and I called it in to
2 Metro.

3 Q Did you ever see anyone around the vehicle?

4 A Yes.

5 Q And can you describe to the members of the jury what you
6 saw?

7 A Well, it was around between 4:00, 4:30 in the morning when
8 the vehicle pulled up and parked there. Then this guy got out of it. He
9 walked -- he went to the back passenger door. He closed it, he locked it,
10 and then he walked away.

11 Q And can you describe anything about -- you said a guy, so I
12 assume we're talking about a male?

13 A Yes.

14 Q And can you describe anything else that you could see or
15 observe about his clothing or how he looked?

16 A Well, he was athletic built, tall, about my height, a bit
17 muscular. He had on a dark outfit, like blue jean pants, and either a black
18 or a green jacket.

19 Q And how tall are you, sir?

20 A 6'1".

21 Q And you said he had a dark --

22 A Correction. 5'11 ½".

23 Q Okay. So he was about your height?

24 A Yes.

25 Q And you're 5'11 ½"

1 A Yes.

2 Q And you said he was wearing a darker green jacket and dark
3 pants?

4 A It could have been a green jacket or a black, but the light was
5 not excellent, although he was close to the street lamp, but that was as
6 much as I can tell of him.

7 Q And where were you observing him from?

8 A From my living room window.

9 Q Okay. So you could see -- I guess would your window have
10 been across the street or --

11 A Yes. Yes.

12 Q Okay. So you could see across the street, and you saw him
13 pull up at about 4:30?

14 A Yes.

15 Q And I think you said he had an athletic build.

16 A Yes.

17 Q Do you remember anything about his race?

18 A He was a black person. I can't tell if he is black Mexican or
19 black, you know, but he was black.

20 Q And I assume you couldn't see enough to see his face.

21 A No.

22 Q Now, as you're looking from your living room window, I
23 think you said you saw him go into the back --

24 A Passenger door, yes.

25 Q Kind of the passenger's side. Could you see what he was

1 doing there?

2 A No.

3 Q And after he did that, what did you see the figure doing?

4 A He closed the back door. He locked it because I could hear
5 when he hit the remote and it locked, and then he walked away.

6 Q Could you tell what direction he walked?

7 A He was going west and then he made a left going towards
8 Sahara Avenue.

9 Q Okay. And then I assume you lost sight of him.

10 A Yes.

11 Q Did you go up to the car immediately?

12 A No.

13 Q At some point, did you go up?

14 A About two days later.

15 Q And what did you see?

16 A Well, in the -- well, what happened, my neighbor called me
17 because he saw something that looked like a bullet hole in the trunk
18 area. And he called me, and I went, and I look. There was three spent
19 cartridges in the back seat and a bloody beanie hat. And then I turned
20 around and I called Metro and I give them that information and they
21 came out at same time.

22 Q And so when you described those items that you saw in the
23 back seat, I assume you -- sorry. I assume you could look into the car
24 window and see those things.

25 A Yes.

1 Q You didn't open the car or anything?

2 A No.

3 Q And you said you saw spent cartridge cases?

4 A Yes, three.

5 Q And some blood?

6 A On a white-ish looking beanie cap.

7 Q And based on that, you call it in to Metro?

8 A Yes.

9 Q And sometime after that, they come out to the car?

10 A Within a half hour, they were there.

11 Q And you give them a statement describing what you just told
12 us this morning?

13 A That's correct.

14 MS. WECKERLY: That concludes the deposition, Your Honor.
15 And then I believe the parties by stipulation will admit photos 138
16 through 140.

17 MR. BASHOR: That's correct, Your Honor.

18 THE COURT: Okay. 138 through 140 will be admitted.

19 [State's Exhibits 138-140 admitted into evidence]

20 MS. WECKERLY: Thank you.

21 THE COURT: Okay.

22 MS. WECKERLY: And that concludes the witnesses we have
23 this afternoon.

24 THE COURT: Okay. Okay. Ladies and gentleman, we do
25 have -- we do -- we're juggling a lot of scheduling with our witnesses

1 because, as you guys know, a lot of people are on vacation and they're
2 away. So we are juggling a lot of scheduling with our witnesses. So at
3 this point, we are going to take our evening recess.

4 During this recess, you must not discuss or communicate
5 with anyone, including fellow jurors, in any way regarding the case or its
6 merits either by voice, phone, email, text, internet, or other means of
7 communication or social media. You must not read, watch, or list any
8 news or media accounts or commentary about the case, do any research
9 such as consulting dictionaries, using the internet, or using reference
10 materials, make any investigation, test the theory of the case, recreate
11 any aspect of the case, or in any other way investigate or learn about the
12 case on your own. And you must not form or express any opinion
13 regarding this case until we are all back together in this room tomorrow
14 morning at 10:30.

15 So when you guys arrive tomorrow morning at 10:30, if you
16 could just wait outside and Officer Hernandez will come get you as soon
17 as we're ready.

18 THE MARSHAL: All rise for the jury. If you're in the jury
19 [indiscernible]

20 [Jury out at 4:03 p.m.]

21 [Outside the presence of the jury]

22 THE COURT: We're outside the presence of the jury. Do you
23 have any matters outside the presence?

24 MR. BASHOR: I don't from the Defense, Judge.

25 THE COURT: Okay.

1 MR. BASHOR: Your Honor, what time are we starting
2 tomorrow? I'm sorry.

3 THE COURT: Tomorrow at 10:30.

4 MR. BASHOR: 10:30?

5 THE COURT: Yes. As soon as I finish one homicide count,
6 then we're going to start.

7 MR. DIGIACOMO: You don't buy I'm 6'1", Judge?

8 THE COURT: No. You heard me laugh out loud, did you not?
9 Thank God for masks.

10 [Proceedings adjourned at 4:04 p.m.]

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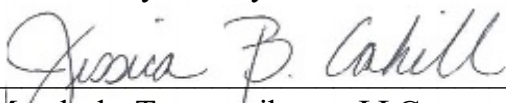
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

23

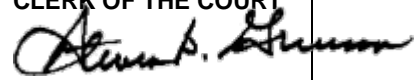
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Jessica B. Cahill, Transcriber, CER/CET-708



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 VERNON NEWSON, JR.,

12 Defendant.

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) CASE#: C-16-313919-1
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) DEPT. X
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13 BEFORE THE HONORABLE TIERRA JONES
14 DISTRICT COURT JUDGE
FRIDAY, JULY 16, 2021

15 RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 4

16
17 APPEARANCES:

18 For the Plaintiff:

BRANDON ALBRIGHT, ESQ.
PAMELA WECKERLY, ESQ.

19
20 For the Defendant:

RYAN BASHOR, ESQ.
KAMBIZ SHAYGAN-FATEMI, ESQ.

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25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

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Las Vegas, Nevada, Friday, July 16, 2021

[Case called at 10:27 a.m.]

THE COURT: This isn't for the first witness, is it?

UNIDENTIFIED SPEAKER: No.

THE COURT: Okay. Because your witness needs to get to the airport, right?

UNIDENTIFIED SPEAKER: Yes.

THE COURT: All right.

Brandon, bring the jury in. Brandon, if we take a break, we'll just have to take a break. But the witness need to get to the airport. So we have to start.

THE MARSHAL: Okay.

[Pause]

THE MARSHAL: All rise for the jury.

[Jury in at 10:29 a.m.]

THE MARSHAL: All present, Your Honor.

THE COURT: Okay. You may all be seated. We are back on the record in C-313919, State of Nevada v. Vernon Newson Jr. May the record reflect that Mr. Newson is present with his attorneys. Deputy District Attorneys on behalf of the State.

Do both parties stipulate to the presence of our jury?

MS. WECKERLY: Yes, Your Honor.

THE COURT: And it is my understanding that based on some scheduling for the witness, we are going to call a defense witness out of

1 order; is that correct?

2 MS. WECKERLY: That is correct, Your Honor.

3 THE COURT: Okay. And, ladies and gentlemen, the State
4 has not rested their case in chief. However, to accommodate this
5 witness' schedule, we are going to call the defense witness out of order.
6 So this will be a defense witness.

7 Defense, you may call your first witness.

8 MR. SHAYGAN-FATEMI Thank you, Your Honor. The
9 Defense calls Mel Pohl to the stand.

10 Before you have a seat, sir, I'll ask you to remain standing.
11 Face the Clerk. Raise your right hand.

12 MELVIN POHL, DEFENDANT'S WITNESS, SWORN

13 THE CLERK: Please be seated, stating your full name,
14 spelling your first and last name for the record.

15 THE WITNESS: Melvin Pohl, M-E-L-V-I-N-P-O-H-L.

16 THE COURT: Whenever you're ready, Mr. Shaygan-Fatemi.

17 MR. SHAYGAN-FATEMI Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. SHAYGAN-FATEMI

20 Q Dr. Pohl, what is your occupation, sir?

21 A I'm a physician specializing in addiction medicine.

22 Q And are you currently working?

23 A I am.

24 Q And where do you work?

25 A I work at a treatment center in Malibu, California.

1 Q Weather is a little better in Malibu?

2 A A little better in Malibu than it is here.

3 Q Can you tell us your educational background?

4 A I went to college at University of Michigan for four years,
5 medical school at the State University of New York for Buffalo for four
6 years, three as a residency in family practice and board certification in
7 family medicine. And I've been practicing for 42 years since then.

8 Q And what certificates or licenses do you have?

9 A A license to practice medicine in the state of Nevada and also
10 in California. And I'm certified by the American Board of Addiction
11 Medicine.

12 Q Have you attended or conducted any continuing education,
13 seminars, or conferences, or any related training?

14 A Yes, both attended and conducted trainings in -- my area of
15 expertise has become opioids and pain medicine. So I give lectures
16 about that. And I've attended an annual conference for the American
17 Society of Addiction Medicine that covers a variety of topics over the last
18 20 years.

19 Q Dr. Pohl, are you a member of any organizations or societies
20 pertaining to your profession?

21 A The American Society of Addiction Medicine, which is about
22 3,000 physicians work in the addiction field. And then I'm also a member
23 of the AMA.

24 Q I'm not trying to embarrass you. But have you received any
25 awards or professional recognitions?

1 A I was named as one of the best doctors in the country. It's an
2 organization that recognizes excellence in medical care.

3 Q Have you published any articles in your field?

4 A Yes. A number of articles about the topic co-occurring pain
5 and addiction, specifying opioids. And I've also written a couple of
6 books on that topics as well.

7 Q Dr. Pohl, roughly how many cases involving drug use would
8 you say you have handled in your career?

9 A That was several thousand I would say.

10 Q And have you worked anywhere else prior to your current
11 position?

12 A Yes. Most of my career was in Las Vegas. Most recently, I
13 was at the Las Vegas Recovery Center for 17 years, first as their medical
14 director and then chief medical officer. And I was moving towards
15 retirement and this new job came up. So that's why I'm working in
16 California.

17 Q Okay. I believe you've already stated this. But just for
18 clarification, how many years have you worked in this field?

19 A Since 1979, so about 40, 42 years.

20 Q 42 years. Before I was born.

21 A I don't want to acknowledge that.

22 Q Sorry. Dr. Pohl, what is a controlled substance?

23 A Well, the government has judged that certain substances
24 shouldn't be either available on the market as prescriptions or in any
25 legal sense. So they have proposed a series of controls, basically the

1 Drug Enforcement Administration, with levels of what -- you might say
2 safety. So the lower the levels -- schedule one is -- pretty much
3 shouldn't be used at all. And schedule five is controlled but much more
4 readily available. And it's all those levels of control that are exerted by
5 the government so that medicines just aren't handed out willy nilly.

6 Q And, Dr. Pohl, do you have experience as to the physical
7 effects of ingestion of these controlled substances of varying amounts
8 on the human body?

9 A Yes, I would say I do.

10 Q And would you say you have experience as to the ingestion
11 of these controlled substances, again, in varying amounts on the
12 behavioral or mental health of the human body?

13 A Yes, certainly.

14 Q Have you been used as an expert before in previous cases?

15 A I have, yes.

16 Q How many would you say?

17 A Approximately 30 cases maybe. Just estimating.

18 Q Okay. And were you retained by Mr. Bashor and I to be here
19 today?

20 A I was.

21 Q Okay. And did we pay you to be here?

22 A Not yet.

23 Q Okay. Thank you for your candor.

24 A Yes, but I will bill you.

25 Q Thank you. Dr. Pohl, did the Defense present you with any

1 materials to go over in anticipation of today?

2 A Yes.

3 Q And what did Mr. Bashor and I give you?

4 A I reviewed the arrest record of the Defendant, and I also
5 reviewed the autopsy reports of the decedent.

6 Q Okay. And including in that autopsy report was also a
7 toxicology report?

8 A Yes. The toxicology report was part of the autopsy.

9 Q Part of the autopsy. Okay. What is a toxicology report?

10 A Well, it's toxins or poisons. And basically, we're able to
11 assess the level of a number of toxins. And the report that presents the
12 information is a toxicology report. And it can be based on a number of
13 different tissues. Typically, it would be a urine report or a blood report.
14 Or in this case, there are certain tissues, the vitreous tissue of the eye
15 for the blood the liver for the substances, other substances.

16 Q Did you notice anything unusual about Ms. McNeil's
17 toxicology report that you reviewed?

18 A I don't know if it's unusual. I mean she had a significant
19 presence of two substances. One was methamphetamine and its
20 metabolites, and the other was hydrocodone and what I believe was its
21 metabolites.

22 Q Okay. Let me bring your in -- let me bring our attention to
23 the methamphetamine in the report that you reviewed. What effects, in
24 your experience, Dr. Pohl, does methamphetamine have on the human
25 body?

1 A So methamphetamine is a stimulant. It affects, primarily, the
2 brain. The brain, of course, guides the activity of the rest of the body. In
3 essence, it's the director of our function. So as a stimulant, it's really
4 working on a particular part of the brain that involves protection of the
5 organism but also reward. So we move towards things that are
6 supposedly good for us. Protection is good for us. If there's a loud
7 sound, we'll respond to that loud sound with a reaction of protection. So
8 our pupils dilate, and our pulse goes up and our blood drains from
9 nonvital organs, and we get ready to run or we get activated so that we
10 can fight.

11 Methamphetamine works in the part of the brain that that's all
12 happening. It so happens that the effect of methamphetamine is about
13 1000 times the effect of another stimulation like -- a normal stimulation.
14 So if there's a threat, there might be this level of activation. And we're
15 talking about activation of certain chemicals, adrenalin, dopamine. With
16 methamphetamine, the level of dopamine surge is way up here. So it's
17 an intense stimulation of a normal response of the body to threat that
18 can be exaggerated. And the more methamphetamine present the more
19 exaggerated that effect might be.

20 Q Dr. Pohl, what are the -- well, strike that.

21 MR. SHAYGAN-FATEMI: Forgive me, Your Honor.

22 BY MR. SHAYGAN-FATEMI:

23 Q What is a reporting limit?

24 A Well, different labs test, in these toxicology reports, tissue
25 samples. In this case it was liver. And the reporting limit is if it's under

1 this particular level, they won't mention that it's even there. So you have
2 to have more than the reporting limit in order to signify that there's
3 something there.

4 Q Okay. And what were the reporting limits for
5 methamphetamine in this toxicology report that you reviewed for this
6 case?

7 A My recollection was that it was 20 nanograms per gram of
8 tissue.

9 Q Okay. And can you tell us what nanograms per grams
10 means?

11 A No. I mean it's a quantitative numbers. So milligrams,
12 grams. And nanograms is a thousandth of a milligram, I suppose.

13 Q Okay.

14 A Yeah. Sorry. No, that's not my expertise.

15 Q No.

16 A But it's a very small amount.

17 Q Okay. And Ms. McNeil's levels in this case, what were her
18 levels that you reviewed?

19 A My recollection was 1600 nanograms per milligram --
20 nanograms per gram of tissue.

21 Q 1,600?

22 A Correct.

23 Q And so, that's 1,580 nanograms per gram above the
24 reporting limits on this toxicology report?

25 A Correct. Correct.

1 Q So if my math is correct, that's nearly 80 times the amount of
2 the reporting limit?

3 A Correct.

4 Q Dr. Pohl, can 1600 nanograms per gram of
5 methamphetamine in one system make a person aggressive?

6 A Yes. I didn't finish when I was talking about the bodily
7 effects. We talked about the defensive response, dilated pupils, rapid
8 heartbeat, elevated blood pressure, dry mouth, stimulation. The higher
9 the level of methamphetamine the more likely to have sort of the
10 extreme of those behaviors, so that awakesness and alertness becomes
11 anxiety and agitation, inability to sit still. Defensive posture, fearfulness
12 becomes paranoia, which is not uncommon. And with high levels of
13 methamphetamine intoxication we'll see people who are distorted from
14 reality. So not only paranoia but hallucinations.

15 There's a phenomenon known as picking, where people have the
16 sensation of worms crawling under their skin. And they'll actually pick at
17 their skin because it is -- it's called a tactile hallucination. So all of those
18 things, again, distortion of the body's defensive response which has
19 gone awry because of his hyperstimulation from methamphetamine.

20 Q Can 1600 nanograms of methamphetamine in one's system
21 make a person violent?

22 A Yes. The ultimate extreme negative behavior is because of
23 the paranoia and the heightened fear, you know, the stories that we hear
24 are somebody took my parking space and I shot them with an Uzi, you
25 know. The distortion of a normal response becomes astronomically

1 greater. And because it's a defensive response, aggression is commonly
2 associated with the levels of methamphetamine.

3 Q So it's safe to say that 1600 nanogram -- or nanograms per
4 gram of methamphetamine in one's system can make a person not act
5 like themselves?

6 A I would certainly say that's a true statement. Yes.

7 Q Could that much methamphetamine cause someone to
8 hallucinate?

9 A Yes.

10 Q Maybe another way of asking that is that much
11 methamphetamine can cause someone to just lose touch with reality?

12 A I mean that is psychosis, which is what I've been referring to,
13 is a loss of touch with reality. So part of psychosis would be
14 hallucinations, seeing and perceiving sensory experiences that simply
15 don't exist. But it's -- in the case of methamphetamine, it's a distortion.
16 So it might be a little tickle under the skin that becomes this conviction
17 because of the distortion of thinking that's there's bugs crawling
18 underneath the skin. A loud car door might signify somebody is coming
19 to assault somebody. It's that distortion of reality that is known as
20 psychosis.

21 Q Moving on from the methamphetamine. Let's talk this
22 morning a little bit about the opioids. What is an opioid?

23 A Opioid -- another name for opioid is narcotic. And they are
24 pain killers. They basically are available by prescription, hydrocodone,
25 oxycodone, morphine, methadone. They're also available illicitly.

1 Heroin is an example of an opioid. And the list goes on. I mean there's
2 multiple different versions of opioids. But they're all -- the purpose, at
3 least from a medical standpoint, is to relieve pain.

4 Q In your review of the toxicology report for this case, did you
5 notice any opioids?

6 A There were a number of opioids. And I don't have the report
7 in front of me. But there as -- hydrocodone was the highest. And there
8 was two known metabolites of hydrocodone. There was
9 hydroxycodone. Is that right? And hydromorphone. Hydromorphone is
10 available as Dilaudid, a brand name as a prescription, but it's also
11 commonly seen as a metabolite. And the levels of the hydromorphone
12 suggested to me that it was a metabolite, and that the probable ingestion
13 was of hydrocodone.

14 Q Okay. Dilaudid is something that is so strong that it's given
15 to people when they come out of serious surgeries; isn't that correct?

16 A Yes, that's correct.

17 Q Okay. So you have methamphetamine. We discussed how
18 that affects an individual. Then you have opioids. We discussed how
19 that affects an individual. Dr. Pohl, what about if you combine the two?
20 What effects can that have on the human body?

21 A Yeah. There is some unpredictability, of course, to any
22 combination. But, you know, the stimulated effect of methamphetamine
23 is not going to be mediated by the opioid. In fact, it's probably going to
24 be enhanced. If you remember the speed ball, which is what Belushi
25 overdosed on, that was heroin, an opiate, and cocaine, a stimulant. So

1 the stimulant opioid combinations are known in the drug using area and
2 not uncommonly used, again, because of the enhancement. Opioids do
3 suppress that alertness. So it might take a little of the edge off the
4 hyperactivity of the methamphetamine. But it would not, in my opinion,
5 change the nature of the psychosis.

6 Q So in other words, one's psychosis, it's not like a math
7 equation where you add and then subtract?

8 A Correct.

9 Q So once psychosis -- if someone takes the methamphetamine
10 and then they take the opioid, the opioid is not going to reduce the
11 amount of psychosis of the methamphetamine?

12 A That's correct.

13 Q Could the combination of the methamphetamine, the
14 hydrocodol, the hydrocodone, the hydromorphone, also known as
15 Dilaudid, can ingesting this combination of drugs make a person
16 aggressive?

17 A Again, I think the methamphetamine would be the primary
18 substance that would cause that aggression, and the answer is yes.

19 Q Okay. And that combination can make a person violent?

20 A Yes.

21 Q And that combination can make a person not act like
22 themselves?

23 A Correct.

24 Q And in that line of questioning, it can make a person
25 hallucinate?

1 A Yes.

2 Q And also can make a person out of touch with reality?

3 A Yes.

4 Q Thank you very much for your time this morning, doctor.

5 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

6 THE COURT: Thank you.

7 Cross for this witness.

8 MR. ALBRIGHT: Yes, Your Honor. Thank you.

9 CROSS-EXAMINATION

10 BY MR. ALBRIGHT:

11 Q Good morning, doctor.

12 A Good morning.

13 Q You kind of described what a controlled substance is,
14 schedule 1 to schedule 5. Schedule 5, is that still -- you're not allowed to
15 take it legally? Or is that what a prescription would be?

16 A Yeah. It would be -- it would -- a prescription would be
17 necessary. But the control is based on -- I mean up until schedule 2, any
18 prescription can prescribe those substances as long as he or she has
19 certification from the DEA to do so. So we have a DEA license that
20 enables us to controlled substances. Schedule 1 is not available to be
21 controlled -- I mean to be prescribed. Sorry.

22 Q Okay. Yes. And are you aware of phenomenon that certain
23 drugs, prescription drugs or even drugs that you can buy over the
24 counter, can result in false positives of methamphetamine and/or meth --
25 and/or phetamine [sic]?

1 A Yes.

2 Q And do those include, among other things,
3 pseudoephedrine?

4 A Yes.

5 Q Labetalol for -- a beta blocker for blood pressure?

6 A Yes.

7 Q Ritalin for ADHD.

8 A Ritalin is amphetamine like, so yes.

9 Q Zantac for acid reflux?

10 A Yes.

11 Q Various antidepressants?

12 A Yes.

13 Q Quinolone, antibiotics for urinary tract infections?

14 A Yes.

15 Q Phentermine, the most prescribed medication for weight loss
16 in the US?

17 A Yes.

18 Q Are you aware of recent studies regarding the formation of
19 false positive amphetamines found specifically in postmortem liver
20 samples?

21 A No.

22 Q You're unaware of those studies?

23 A I am unaware of those studies.

24 Q You talked about the effects that methamphetamine has on a
25 person, this fearfulness, hallucinations, picking at the skin, psychosis,

1 proclivity for violence you mentioned.

2 A Yes.

3 Q Is that a guarantee for anyone who takes meth? Does it
4 affect everybody the same way?

5 A No. As I think I mentioned already that the -- you know, the
6 way a person responds to a drug and then a combination of drugs is
7 based a lot on the individual makeup of the person.

8 Q Are you able to tell -- I know you said you reviewed the
9 autopsy and toxicology reports. Are you able to tell from that report
10 when the victim purportedly or allegedly took this methamphetamine?

11 A No.

12 Q All right. You had mentioned approximately testifying in 30
13 cases, correct?

14 A Yes.

15 Q Thirty trials or at least --

16 A More or less.

17 Q -- depositions like this?

18 A Yes.

19 Q Okay. And generally or how many approximately was that
20 for the defense?

21 A Most.

22 MR. ALBRIGHT: Brief indulgence.

23 [Counsel confer]

24 MR. ALBRIGHT: Nothing further, Your Honor.

25 THE COURT: Any redirect, Mr. Shaygan?

1 MR. SHAYGAN-FATEMI: A moment of indulgence, Your
2 Honor.

3 [Counsel confer]

4 MR. SHAYGAN-FATEMI: Nothing further from the Defense.

5 THE COURT: Do the ladies and gentlemen of this jury have
6 any questions for this witness?

7 Seeing no response, sir, you are excused. Thank you very
8 much for your testimony --

9 THE WITNESS: Thank you.

10 THE COURT: -- here.

11 Okay. State, you may call your next witness.

12 MR. ALBRIGHT: State calls Zarharia Marshall. She should be
13 on BlueJeans, Your Honor.

14 THE COURT: All right. She's on BlueJeans. All right.

15 [Pause]

16 THE COURT: Okay. Ms. Marshall, can you hear me?

17 She left the call. Now she's back. Ms. Marshall, can you
18 hear me?

19 MS. MARSHALL: Yes, ma'am.

20 THE COURT: Okay. Can you turn your video on? Okay.

21 There we go. Ma'am, can you please raise your right hand, so you can
22 be sworn?

23 ZARHARIA MARSHALL, PLAINTIFF'S WITNESS, SWORN

24 THE CLERK: Please state your full name, spelling your first
25 and las name for the record.

1 THE WITNESS: Zarharia Marshall, Z-A-R-H-A-R-I-A, Marshall,
2 M-A-R-S-H-A-L-L.

3 THE COURT: Okay. And, ma'am, are you alone in the room
4 where you are testifying?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: So there's no one else there?

7 THE WITNESS: No, ma'am.

8 THE COURT: Okay. And, ma'am, we ask that when you
9 testify that you testify directly from your memory. So do you have any
10 notes or anything there with you?

11 THE WITNESS: No.

12 THE COURT: Okay. Because you won't be allowed to refer
13 to any notes or anything. You'll be -- just be asked to testify from your
14 memory. Do you understand?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Okay. State, whenever you're ready.

17 MR. ALBRIGHT: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. ALBRIGHT:

20 Q Good morning, Zarharia. Can you see me here at the
21 podium?

22 A Yes, sir.

23 Q Okay. Where do you currently live, Zarharia?

24 A I live in Phoenix, Arizona.

25 Q And is that where you are currently?

1 A Yes, sir.

2 Q When did you move to Arizona?

3 A I moved to Arizona last year in September.

4 Q And did you move there from Las Vegas?

5 A Yes, sir.

6 Q Were you living here in Las Vegas in December 2015?

7 A Yes, sir, I was.

8 Q And did you know a woman by the name of Anshanette
9 McNeil?

10 A Yes.

11 Q How did you know Anshanette?

12 A She was my godsister.

13 Q Sorry. Did -- how did you refer to her?

14 A My godsister.

15 Q Your godsister. Okay. How long did you know Anshanette?

16 A I've known Anshanette for three years.

17 THE COURT: And I'm sorry, ma'am. What did you say?

18 THE WITNESS: Three years.

19 BY MR. ALBRIGHT:

20 Q Okay. Did you --

21 A Can you guys hear? I'm sorry. Can you guys hear, because I
22 don't know if you guys can hear me or not?

23 THE COURT: We can hear you. But sometimes your voice is
24 just a little muffled. So we might ask you to repeat it. Okay?

25 THE WITNESS: Okay.

1 BY MR. ALBRIGHT:

2 Q Did Anshanette sometimes go by Ann?

3 A Yes.

4 Q And how often during those three years that you knew
5 Anshanette, how often would you see her?

6 A Almost every day.

7 Q And in what capacity? In what way would you see her?

8 A Like holidays, just on occasions. Just to hang out
9 sometimes.

10 Q Did you babysit for Anshanette?

11 A Yes, I did.

12 Q How often would you babysit for her?

13 A Every day.

14 Q And so, I'm guessing Anshanette had children. Is that a safe
15 assumption?

16 A Yes.

17 Q Okay. How many kids did she have, if you know?

18 A Six.

19 Q Six children?

20 A Yes.

21 Q Would you babysit all six?

22 A No, just her two youngest.

23 Q And what were their names?

24 A Brandon and Major.

25 Q Both boys?

1 A Yes.

2 Q Okay. How old was Brandon in 2015?

3 A I believe Brandon was like two or three.

4 Q And what about Baby Major?

5 A Major was five months.

6 Q Do you know who Major's dad was?

7 A Yes.

8 Q Who's that?

9 A Vernon.

10 Q Do you know Vernon's last name?

11 A Newson.

12 Q Was Vernon the father of any of the other five kids to your

13 knowledge?

14 A No, sir.

15 Q Okay.

16 A No, sir. He wasn't.

17 Q Do you know -- well, how well can you see me, Zarharia?

18 A You're not far, but I can see you. Like I can see like the paper

19 you're picking up.

20 Q Okay. Are you able to see that photo that I'm showing you?

21 A Yeah. I can see that.

22 Q Okay. Is that Anshanette?

23 A Yes, sir.

24 Q Okay. Does that look like a photo of her taken in late 2015?

25 A Yes.

1 Q Okay. That's what she looked like in November and
2 December 2015?

3 A Yes, sir.

4 MR. SHAYGAN-FATEMI: Judge, can we get an exhibit
5 number on that one, please?

6 MR. ALBRIGHT: I apologize. That's Exhibit Number 137.

7 MR. SHAYGAN-FATEMI: Thank you.

8 BY MR. ALBRIGHT:

9 Q Do you know, Zarharia, what Anshanette did for a living for
10 work?

11 A She was a bus driver.

12 Q Do you know is that for the city or for the school system?

13 A I believe it was a city bus driver.

14 Q Was she working in December 2015?

15 A No.

16 Q Why?

17 A I believe she was still on maternity leave.

18 Q Was that because Baby Major was only five months old?

19 A Yeah.

20 Q Do you know, in all the time you spent with Anshanette, did
21 she take any prescription medications?

22 A Yes, she did.

23 Q Was that for chronic back pain to your knowledge?

24 A Yes.

25 Q In seeing Anshanette almost daily for three years, did you

1 ever see Anshanette take any illegal drugs?

2 A No, sir.

3 Q Not only see her take them. But to your knowledge, was she
4 ever high or intoxicated in your presence?

5 A No, she wasn't.

6 Q Are you aware if Anshanette was a gun owner?

7 A Yes.

8 Q And did you actually ever see that firearm?

9 A Yes, I have.

10 Q Did -- do you know if Anshanette carried that gun with her
11 regularly?

12 A Yes, she did.

13 Q Were you ever in the car with Anshanette where she had that
14 firearm?

15 A Yes.

16 Q If she was in the car, would she carry the gun in her purse?

17 A No.

18 Q Where would she put the gun?

19 A In the glove compartment.

20 Q What about when she was not in the car? Where would she
21 keep her gun?

22 A In her purse.

23 Q You mentioned babysitting Major and Brandon. Would you
24 do that at your house or at Anshanette's house?

25 A At my house.

1 Q And I know you moved last year. But do you recall what
2 your address was when you lived her in Las Vegas?

3 A It was 3613 [indiscernible], Las Vegas, Nevada 89115.

4 Q Did you Saint Bar Court?

5 A Yes.

6 Q Okay. You broke up --

7 A Yes.

8 Q -- a little bit. I want to talk to you specifically about
9 December 13, 2015. Okay. We're going back a couple years.

10 A Okay.

11 Q Did you receive a telephone call from Anshanette that
12 evening?

13 A Yes, I did.

14 Q Do you recall approximately what time that was?

15 A 9.

16 Q Is that 9 p.m. or a.m.?

17 A P.M.

18 Q Okay. Was the call from her cell phone?

19 A Yes.

20 Q Did you have her programmed in your phone, so you would
21 know when it was her calling?

22 A Yes.

23 Q That's how you knew it was from her cell phone?

24 A Yes.

25 Q What was the conversation between the two of you on this

1 phone call?

2 A She had called to let me know that she [indiscernible]
3 dropping off Major to me. And [indiscernible] I was just talking to her
4 about, you know, stuff like -- you know, the stuff that we had got the
5 baby and just like the baby in general. And she was telling me that --
6 you know, that she was going to be on her way and that her and Vernon
7 had got into an argument, and that she would be there in a sec to drop
8 the baby off. And then when she told me that, he was coming out the
9 store, the phone hung up.

10 Q Okay. So let me go over some of that, because I-- you came
11 in and out. She asked you to babysit Major?

12 A Yes.

13 Q Okay. Did she mention any other kids or just Major?

14 A Just Major.

15 Q Okay. She mentioned that her and Vernon had been in an
16 argument?

17 A Yes.

18 Q And then did I correctly? Did she say he's coming out of the
19 store and then she hung up?

20 A Yes.

21 MR. SHAYGAN-FATEMI: Can we approach, please?

22 THE COURT: Yes. Actually, you guys got to go out in the
23 hallway. BlueJeans picks up everything we're saying.

24 [Sidebar at 11:05 a.m., ending at 11:06 a.m., not transcribed]

25 BY MR. ALBRIGHT:

1 Q I apologize, Zarharia. Are you muted? We can't hear you
2 now.

3 A I said you're [indiscernible]. Could you hear me?

4 Q Yes, we can hear you.

5 A I'm sorry. My son was waking up.

6 Q Okay. You keep going in and out. So if I can't hear you, I'm
7 going to cut you off, not to be rude, and I'm going to ask you to repeat
8 your answer, okay?

9 A Okay. That's fine.

10 Q So we just described the conversation you had with
11 Anshanette, correct?

12 A Yes.

13 Q During that conversation, did Anshanette sound upset?

14 A No, she did not.

15 Q How did she sound to you?

16 A I'm sorry. Can you guys give me a second? My daughter is
17 waking up.

18 MR. SHAYGAN-FATEMI: Your Honor, can we approach?

19 THE COURT: Yeah. Yeah. We'll -- back in the hall.

20 [Sidebar at 11:08 a.m., ending at 11:09 a.m., not transcribed]

21 THE COURT: Okay. Ms. Marshall, are you on?

22 THE WITNESS: Yes.

23 THE COURT: Okay. And, Ms. Marshall, I apologize. I know
24 that there's some issues going on that affected your ability to travel. But
25 we need you to stay -- you have to stay in one place while you're

1 testifying, because we have to treat this just like we would if you were
2 here in court. And we have to ensure that you're alone and that you're
3 not with anyone. So could you -- are you able to stay in that one place
4 until you finish testifying?

5 THE WITNESS: Yes. I'm sorry. I just had to go get my
6 daughter out of the bedroom.

7 THE COURT: No. And I understand that. And just like we
8 still -- we're just trying to treat this just like it's court, okay?

9 THE WITNESS: Okay.

10 THE COURT: Okay. Go ahead, State.

11 MR. ALBRIGHT: Thank you, Your Honor.

12 BY MR. ALBRIGHT:

13 Q Was there anything about that conversation that gave you
14 concern about Anshanette?

15 A No.

16 Q Did you agree to babysit her as she -- babysit for her as she
17 requested?

18 A Yes.

19 Q Did you then expect her to drop off Major, the baby?

20 A Yes.

21 Q And did she ever arrive to drop that baby off?

22 A No, sir.

23 Q Did anybody arrive with the baby?

24 A Yeah. Vernon did.

25 Q Was it just Vernon and the baby or anybody else?

1 A It was Vernon, the baby, and Brandon.

2 Q How long after your conversation with Anshanette does
3 Vernon arrive with the two little boys?

4 A About an hour probably.

5 Q And are you outside waiting for Vernon when he shows up?

6 A Yeah.

7 Q Did you recognize the car he was driving?

8 A Yes.

9 THE COURT: And I'm sorry, ma'am. What did you say?

10 THE WITNESS: Yes.

11 THE COURT: Okay.

12 BY MR. ALBRIGHT:

13 Q Can you describe the vehicle?

14 A It was a Jeep, like a four-door car. I think it was like dark gray
15 I believe. If I remember correctly, it was like a dark gray, black.

16 Q Had you ever seen Anshanette drive that same car?

17 A No. He was always the one driving.

18 Q What does Vernon do when he arrives at your house?

19 A He got out of the car, and he went to the back seat to open
20 the door to give me Major.

21 Q Was Major in a baby seat?

22 A Yes, sir.

23 Q When I say seat, is it more like a carrier, like you actually
24 carry him with a handle?

25 A Yes, a -- yeah, a carrier car seat.

1 Q What does Vernon do next?

2 A He was trying to snatch Major out. But because Major was
3 still like buckled in with the car seatbelt, he couldn't get him out. And so,
4 he unbuckled him. And then when he took him out, he gave him to me.
5 And then he went around to the back of the car. He opened the trunk.
6 He gave me the diaper bag and the swing. And then his backpack had
7 fell out on the floor. And then I told him that his backpack had fell. And
8 he told me not to worry about it.

9 MR. SHAGYAN-FATEMI: I'm sorry.

10 THE WITNESS: And then he went around to the --

11 BY MR. ALBRIGHT:

12 Q Let me stop, Zarharia.

13 THE COURT: Hold on. Just one second, Ms. Marshall. Just
14 one second.

15 MR. SHAGYAN-FATEMI: Objection. Narrative response.

16 THE COURT: Okay.

17 Mr. Albright, can you break that up for us?

18 MR. ALBRIGHT: Yes, Your Honor.

19 BY MR. ALBRIGHT:

20 Q So, Zarharia, we're going to take this step by step. Is that
21 okay?

22 A That's fine.

23 Q So after he gets Major out, he then gets -- gives you the baby
24 bag; is that correct?

25 A Yes.

1 Q And a swing?

2 A Yes.

3 Q Is that a baby swing?

4 A Yeah.

5 Q What does he do next?

6 A He went around to the other side to get [indiscernible].

7 THE COURT: And I'm sorry, ma'am. Can you repeat that?

8 THE WITNESS: He went around to the other side to give me
9 Brandon.

10 BY MR. ALBRIGHT:

11 Q And Brandon, is he in a car seat or a baby seat?

12 A He's in a car seat.

13 Q So when he gets out of the car does his car seat stay in the
14 car?

15 A Yes.

16 Q Did you know that Brandon was staying with you?

17 A No.

18 Q Do you confirm with Vernon that, in fact, Brandon and Major
19 are going to be staying with you?

20 A Yes.

21 Q As the kids are getting out of the car, do you see anything
22 inside the car?

23 A Yes. I saw her purse, her --

24 Q Let me stop you, Zarharia. When you say her, do you mean
25 Anshanette's purse?

1 A Yes.

2 Q Okay. What else do you see?

3 A I saw her sandals.

4 Q Where are her purse and her sandals inside the vehicle?

5 A They were in the back seat behind the driver's side on the

6 floor.

7 Q Do you see anything else in the car?

8 A No, besides like the dark stains that were on the seats.

9 Q You saw some dark stains on the seats?

10 A Yeah, where she was sitting at.

11 MR. SHAGYAN-FATEMI: Objection. Speculation.

12 THE COURT: State.

13 MR. ALBRIGHT: I'll just clean up, Your Honor.

14 THE COURT: Okay.

15 BY MR. ALBRIGHT:

16 Q When you say where she was seated, are the dark stains on

17 the same seat where her shoes and her purse are at?

18 A Yes.

19 Q Without telling me what Vernon said, did you have a

20 conversation with Vernon out front?

21 A Yes.

22 Q What, if anything, is he doing while you're speaking to him?

23 A He was bullets inside of a gun clip.

24 Q Did he have a gun as well or just the clip?

25 A Just a clip.

1 Q While he's doing that and you're speaking, are you directly
2 right in front of each other?

3 A Yes.

4 Q Do you notice any scratches on Vernon's face or neck?

5 A No, sir.

6 Q What about redness?

7 A No, sir.

8 Q Does the purse stay in the vehicle or --

9 MR. SHAGYAN-FATEMI: Judge, can we approach?

10 THE COURT: Okay.

11 [Sidebar at 11:15 a.m., ending at 11:17 a.m., not transcribed]

12 BY MR. ALBRIGHT:

13 Q Can you hear me, Zarharia?

14 A Yes.

15 Q You mentioned seeing Anshanette's purse in the vehicle.

16 Does it stay in the car?

17 A No.

18 Q What happens to the purse?

19 A Vernon gave it to me.

20 Q Does Vernon eventually leave?

21 A Yes.

22 Q What, if anything, do you notice after he leaves?

23 A The bullets in the driveway.

24 Q You notice some bullets in the driveway?

25 A Yes.

1 Q Do you recall how many?

2 A Probably about like four.

3 Q Do you do anything with those bullets?

4 A I picked them up.

5 Q Where do you put them?

6 A In my house on the washing machine.

7 Q Do you, at any point after that, attempt to call Anshanette on
8 her phone?

9 A Yes.

10 Q Does she answer?

11 A No.

12 Q Do you attempt to call anybody else?

13 A Her mom, I believe.

14 Q When you say her mom, is that Anshanette's mom?

15 A Yes.

16 Q Do you notice anything later when you go inside that causes
17 concern?

18 A Yeah. When I had took Major out of his car seat to change
19 his diaper, and he had like red stains on the side of his pants.

20 Q What did you do next?

21 A I looked into his car seat, because I kind of figure that
22 whatever is on his pants was in his car seat. And when I looked into his
23 car seat it was blood all inside his car seat.

24 Q After you discovered that, do you eventually contact the
25 police?

1 A Yes.

2 Q And do they respond to your house?

3 A Yes.

4 Q And you speak with police officers?

5 A Yes.

6 MR. ALBRIGHT: Brief indulgence, Your Honor.

7 [Counsel confer]

8 MR. ALBRIGHT: Nothing further, Your Honor.

9 THE COURT: Cross-examination.

10 MR. SHAGYAN-FATEMI: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. SHAGYAN-FATEMI:

13 Q Ms. Marshall, good morning.

14 A Good morning.

15 Q Nice to see you. Ann was your godsister, correct?

16 A Yes, sir. She was.

17 Q And you testified with Mr. Albright that you were very close
18 with Ann?

19 A Yes.

20 Q And you testified that you would see her every day?

21 A Yes.

22 Q So it's safe to say that you would know about her lifestyle?

23 A Yeah.

24 Q Are you there?

25 A Yeah, I'm sorry. I had got a phone call.

1 Q Okay. I might ask you that from time to time if you're there,
2 okay?

3 A I know. It's okay.

4 Q All right. And you did not know her to be a drug user,
5 correct?

6 A No, sir.

7 Q Okay. Ann was in a relationship, per your understanding,
8 with Vernon for about three years, correct?

9 A Yes.

10 Q And you testified that they would leave their baby with you
11 to babysit since he was a one-month-old?

12 A Yes.

13 Q And because of your experiences with both Vernon and Ann,
14 it's safe to say you would know about how their relationship was going?

15 A Yes.

16 Q And Ann would start fights with Vernon if she saw
17 something she didn't like, correct?

18 A I wouldn't say like start a fight, but she would voice her
19 opinion.

20 Q Do you remember testifying at a proceeding in this case on
21 February 23, 2018?

22 A Yes.

23 Q And were you being truthful on that day when you testified?

24 A Yes.

25 Q And you weren't lying, were you?

1 A No.

2 Q Okay. Do you remember being asked, "Ann would start
3 arguments with Vernon if she saw something she didn't like, correct?"
4 And your response was yes. Do you remember saying that?

5 A Yes.

6 Q Okay. And while you knew then, Zarharia, Ann would yell at
7 Vernon, correct?

8 A Yes.

9 Q And they would fight almost every day, correct?

10 A Yes.

11 Q They would even fight in the car, correct?

12 A Not so much, because me and the kids were with them.

13 Q I'm going to bring your attention back to when you testified
14 at a prior proceeding in this matter, on February 23, 2018. You had
15 previously mentioned you do remember testifying on February 23rd,
16 when I asked you some questions. Remember that day?

17 A Yes.

18 Q Okay. And I asked you on that day, "And they would often
19 argue in the car?" And your response was yes. Do you remember that?

20 A Yes.

21 Q Okay. And in fact, the two of them would even tone down
22 their arguments in front of you, correct?

23 A Due to me and the kids being in the car, yes.

24 Q Okay. And because you knew the nature of their -- and
25 because you knew the nature of their relationship, there was constant

1 yelling between them, correct?

2 A Yeah.

3 Q There was constant disagreements?

4 A Yes.

5 Q And there was a constant back and forth between them?

6 A Uh-huh, yes.

7 Q I want to bring your attention now, Zarharia, to when Vernon
8 dropped off the kids with you, okay?

9 A Okay.

10 Q Do you remember what he was wearing?

11 A Like a black jacket. I don't know. I can't remember.

12 Q Can you describe the -- that black jacket he was wearing on
13 that cold evening?

14 A From my remembering, it was just black. Like I can't -- I
15 don't remember. I don't recall.

16 Q Okay. And it was unusual, Zarharia, that Vernon was there
17 by himself, correct?

18 A Yeah.

19 Q And that's because Vernon and Ann would always be
20 together, correct?

21 A Yes. Yeah.

22 Q And it's safe to say that when you saw Vernon that evening
23 he was acting frantically?

24 A Yes.

25 Q Frantic is kind of a funny word, Zarharia. In other words, he

1 was acting in a worried or hurried manner, correct?

2 A Yes.

3 Q Okay.

4 A Yes.

5 Q And he seemed very irritated?

6 A Yes.

7 Q You had mentioned Vernon grabbing some of the children's
8 items out of the car, correct?

9 A Yes.

10 Q And he was doing that in a quick manner?

11 A Yes.

12 Q And not -- you know, and just specifically, we are referring to
13 the diaper bag, correct?

14 A Yes.

15 Q And the swing?

16 A Yes.

17 Q You had mentioned something about how he was struggling
18 with the car seat. Can you clarify that for me, please?

19 A He was trying to just like grab the car seat and give it to me.
20 But because it was still buckled in with the car seat belt, he couldn't get it
21 out. So he was like tugging and tugging until he realized like it was
22 buckled in. And that he unbuckled him, and then he gave me the baby.

23 Q And when he was tugging, he was obviously in a frantic
24 manner in that moment?

25 A Yeah. You could tell he was getting frustrated, because he

1 couldn't -- he didn't know what was -- why it wasn't coming out.

2 Q And then you testified that Vernon actually came inside the
3 home, correct?

4 A Yes.

5 Q And when he came in at home, he was amped up, correct?

6 A He wasn't -- what do you mean by amped up?

7 Q His emotions were inflamed.

8 A Yeah, I believe so.

9 Q And he was moving quickly, Zarharia?

10 A Yeah. Yes, he was.

11 Q And he was full of adrenaline as you could perceive?

12 A Yeah.

13 Q And in fact, when he was inside, you saw him kiss the baby
14 goodbye, correct?

15 A Yes.

16 Q Mr. Albright asked you about Vernon loading bullets into a
17 gun. When you observed him, he was scared in that moment, correct?

18 A Yes. You could tell that something was wrong.

19 Q And he was acting frantically in that moment, correct?

20 A Yes.

21 Q And he was nervous, Zarharia?

22 A Yes.

23 Q And he was loading the bullet in their quickly, right?

24 A Yes.

25 Q And Vernon was also speaking to you when he was loading

1 those bullets into that gun, right?

2 A Yes.

3 Q And did he tell you to tell his son that he loved him?

4 MR. ALBRIGHT: Objection, Your Honor. Hearsay.

5 THE WITNESS: Yes.

6 THE COURT: Hold on just one second, ma'am. Don't answer
7 that.

8 Mr. Shaygan, your response to the hearsay objection?

9 MR. SHAGYAN-FATEMI: It's an excited utterance, Your
10 Honor.

11 THE COURT: Well, I think he has established the excitement.
12 It'll be overruled.

13 BY MR. SHAGYAN-FATEMI:

14 Q Let me repeat the question, Zarharia. When Vernon was
15 loading the bullet into that gun, he was also speaking with you, correct?

16 A Yes.

17 Q And in that frantic manner, he told you to tell his son that he
18 loved him, correct?

19 A Yes.

20 Q Okay. And he also told you, and I quote, "Just know
21 motherfuckers took me to the point where I can't take it no more," end
22 quote, correct?

23 A He actually said they pushed him too far, but yes, something
24 similar to that.

25 Q Okay. Thank you for your time, Zarharia.

1 MR. SHAGYAN-FATEMI: Your Honor, thank you.

2 THE COURT: Okay. Redirect, Mr. Albright.

3 MR. ALBRIGHT: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. ALBRIGHT:

6 Q Zarharia, you mentioned that Anshanette and Vernon would
7 argue quite often, correct?

8 A Yes.

9 Q Did you ever see Anshanette become physically violent with
10 Vernon?

11 A Never.

12 Q And just to clarify -- and I'm sorry if I sound really weird
13 saying this out loud. He said, as he was frantically talking to you, "Just
14 know motherfuckers pushed me too far."

15 A Yes.

16 Q Okay.

17 MS. WECKERLY: Your Honor, may we approach?

18 THE COURT: Yes.

19 [Sidebar at 11:33 a.m., ending at 11:34 a.m., not transcribed]

20 THE COURT: Mr. Shaygan, do you have any follow-up
21 questions?

22 MR. SHAGYAN-FATEMI: Very briefly, Your Honor.

23 RECROSS-EXAMINATION

24 BY MR. SHAGYAN-FATEMI:

25 Q Zarharia, Mr. Albright just spoke with you about what Vernon

1 had said to you when he was loading the bullet into that gun. And he
2 asked you about the quote from Vernon to you. And Mr. Albright
3 paraphrased it as just know motherfuckers took me to the point where --
4 and I'm paraphrasing -- took it too far?

5 MR. ALBRIGHT: Objection, Your Honor. That's misstated.

6 BY MR. SHAGYAN-FATEMI:

7 Q Or pushed me too far?

8 A Yes.

9 Q Okay. Do you remember testifying under oath at trial on
10 February 23, 2018, at a proceeding prior to this case?

11 A Yes.

12 Q Okay. And you were being truthful on that day, correct?

13 A Yes.

14 Q Okay. And at that time, do you remember the question
15 was --

16 MR. SHAGYAN-FATEMI: A moment of indulgence, Your
17 Honor.

18 BY MR. SHAGYAN-FATEMI:

19 Q The question was that he always loved him. I'm sorry. The
20 question was that he always loved him. Then he mentioned to you, and I
21 want to quote you, and correct me if I'm wrong, that, in quotations, "Just
22 know motherfuckers took me to the point where I can't take it no more,"
23 and your response was yes. You remember saying that?

24 A Yes.

25 MR. SHAGYAN-FATEMI: Thank you, Your Honor. Nothing

1 further.

2 FURTHER REDIRECT EXAMINATION

3 BY MR. ALBRIGHT:

4 Q Sorry, Zarharia. Fair to say that it's hard to recall word for
5 word what somebody said five or six years ago?

6 A Yes.

7 Q Okay. So to your best recollection -- and I know it's been
8 made clear that you've testified about this before. But to your best
9 recollection, what did Vernon say?

10 A He said that they pushed him too far to where he couldn't
11 take it no more.

12 Q Okay. Thank you.

13 THE COURT: Any follow-up, Mr. Shaygan?

14 MR. SHAGYAN-FATEMI: A moment of indulgence.

15 THE COURT: Okay.

16 [Counsel confer]

17 MR. SHAGYAN-FATEMI: Nothing further.

18 THE COURT: Okay. Do the ladies and gentlemen of the jury
19 have any questions for this witness? Okay. Ma'am, if you could write
20 your question on a full sheet of paper with your name and your juror
21 number.

22 [Sidebar at 11:38 a.m., ending at 11:39 a.m., not transcribed]

23 THE COURT: Okay. Ms. Marshall, can you hear me? Can
24 you unmute her?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Okay. Ms. Marshall, did you ask Vernon where
2 Anshanette was?

3 THE WITNESS: Yes, I did.

4 THE COURT: Okay. Do --

5 Mr. Albright, do you have any questions based on the juror
6 question?

7 MR. ALBRIGHT: Yes, Your Honor. Just briefly.

8 THE COURT: Okay. Can counsel approach?

9 [Sidebar at 11:40 a.m., ending at 11:41 a.m., not transcribed]

10 THE COURT: Any follow-up, Mr. Albright?

11 MR. ALBRIGHT: Yes, Your Honor. Thank you.

12 FURTHER REDIRECT EXAMINATION CONTINUED

13 BY MR. ALBRIGHT:

14 Q Zarharia.

15 A Yes.

16 Q You were just asked if you had asked where Anshanette was,
17 and you said yes, correct?

18 A Yes.

19 Q Was his response his statement that you talked about earlier
20 when he said, "Just know these motherfuckers pushed me too far"?

21 MR. ALBRIGHT: Nothing further, Your Honor.

22 THE COURT: Any follow-up, Mr. Shaygan?

23 MR. SHAGYAN-FATEMI: A moment of indulgence, Your
24 Honor.

25 THE COURT: Okay.

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[Counsel confer]

MR. SHAGYAN-FATEMI: Nothing further from the Defense.
Thank you.

THE COURT: Okay. Any more questions from the ladies and gentlemen of the jury?

Okay. Seeing no response, Ms. Marshall, you're excused.
Thank you very much for your testimony here today.

THE WITNESS: Thank you.

THE COURT: Ladies and gentlemen of the jury, we are going to take a brief recess. This is not going to be our lunch recess, because we are going to end early today based on the availability of the witnesses. So we are going to try to not keep you longer than we have to. So we are going to take a brief recess, and then we will come back.

During this recess, you must not discuss or communicate with anyone, including fellow jurors in any way regarding this case or its merits, either by voice, phone, email, text, or other means of communication or social media. You must not read, watch, or [indiscernible] news or media accounts or commentary about the case.

You must not do any research such as consulting dictionaries, using the internet, or using reference materials. You must not make any investigation, test the theory of the case, recreate any aspect of the case, or in any other way investigate or learn about the case on your own, and you must not form or express any opinion on this case until it is submitted to you.

Ladies and gentlemen, it is 11:50. We will be in recess until

1 12:05.

2 THE MARSHAL: All rise for the jury.

3 [Jury out at 11:43 a.m.]

4 [Outside the presence of the Jury]

5 THE COURT: Okay. May the record reflect we are outside
6 the presence of our jury.

7 Mr. Bashor.

8 MR. BASHOR: Judge, as you're aware, when the state filed
9 their motion to have Zarharia Marshall testify via audio/visual, I filed an
10 opposition, which I indicated how vital her testimony was. The
11 audio/visual technology utilized today, while it being the same we used
12 for Mr. Santana, was probably due onto -- on her end, perhaps no fault
13 of her own, kept going in and out during certain portions. There was a
14 portion of time when she would fall out, that Mr. Albright would ask
15 leading questions to bring her back. We corrected that problem I think
16 the first time we went into the back.

17 However, in addition to that, I think it really affected this
18 jury's ability to assess her demeanor and credibility. The smoke alarm
19 kept chiming. There was a portion of the time where she was moving
20 around the house. That's the second time we went in the back to try to
21 put that to an end. And then finally, I think when she was moving
22 around the house she retrieved the baby. And while the baby wasn't
23 shown on the screen, you could hear the baby making noises, which I
24 think may play on some of the heart strings and sympathy of the jury.

25 The representations made in the motion were that she lives

1 in Phoenix and her only day off was a Monday. As I indicated in my
2 opposition, those weren't COVID related. We now learned, in addition to
3 those two facts, that she's a fairly new mother. However, I think that Mr.
4 Newson was prejudiced in this regard, pursuant to his Sixth Amendment
5 right to adequately confront the witnesses against him. Specifically,
6 because Ms. Marshall is such a vital witness in this case, as you could
7 see, we had towards the end they were debating about three words of
8 statements that she was statement. Therefore, I moved for a mistrial in
9 the back, to which Your Honor denied.

10 MS. WECKERLY: So the State's first -- I mean my response is
11 I'm a little confused. What exactly was prejudicial to Vernon Newson
12 about having this witness testify. This witness is literally the reason this
13 case came back from the Nevada Supreme Court regarding that one
14 statement that she provides that triggers, according to the justices of the
15 Nevada Supreme Court, the instruction on voluntary manslaughter. It's
16 based on this statement that they elicited over our objection.

17 So when there's a suggestion that because the jury is aware
18 there's a baby in the background, I don't get how that prejudices them.
19 They want this witness to testify. They want this witness to be saying he
20 was frantic, he was upset, he said this statement. That is what they're
21 building their defense on. So in terms of the prejudice, I can't see how
22 there is any.

23 Now there are always -- I agree there are issues with the
24 sound, and she did move around. But when the Court directed her, that
25 was all -- that was corrected. I mean we're dealing with someone who's

1 in a different state, who didn't want to travel. She's a new mother. She
2 has children. She had work responsibilities. And under the rules, it's
3 appropriate for the Court to allow those types of witnesses to testify via
4 video means. But until there's more of a demonstration that there was
5 somehow a prejudice to him when this is the witness that they need and
6 wanted in order to trigger their defense, I don't see any basis for a
7 mistrial.

8 MR. BASHOR: Can I briefly respond, Judge?

9 THE COURT: Yes.

10 MR. BASHOR: It goes to her demeanor and credibility and
11 the flow of testimony on the stand. Ms. Weckerly is absolutely right.
12 This witness is critical to our defense. And because of constant
13 interruptions, it was broken into several pieces. We did want this
14 witness to testify. We wanted this witness to testify here in the
15 courtroom like it's been done forever. So I do think we've demonstrated
16 that there's been a prejudice here and that it's affected his right to
17 confront. I understand your Court's ruling and I understand the State's
18 position, but that's our position.

19 MS. WECKERLY: I don't think they filed a compelling request
20 in Arizona.

21 THE COURT: Well, I mean this is the situation we're in.
22 While it's not ideal to have any witnesses testifying via audio/visual
23 technology, it's a different time that we're living in, and we have people
24 under different circumstances. And in light of everything that has
25 happened in the last year, the Court has specific orders that are in place

1 by our chief judge that allows for this type of audio/visual testimony as
2 well as there are statutes that allow for this. This issue has been brought
3 before the legislature, and that is absolutely allowed.

4 Considering the circumstances of this witness, I did grant the
5 motion previously to allow her to testify via audio/visual testimony.

6 While I understand it was not ideal. And we all know we all have
7 different internet connections, and the Court, in and of itself, you guys
8 know on a daily basis we struggle with the calendars. Today I had to
9 have people log out and log back in just to get to my calendar. So
10 everybody's internet is different. And I understand you made the first
11 objection that she was -- Mr. Albright was repeating everything she was
12 saying.

13 And based on that objection, I directed him that if there was
14 confusion as to what she was saying, we were going to ask the witness
15 to repeat herself, which as you noticed a couple times I asked her to
16 repeat herself, because I couldn't understand what she was saying. But
17 she did repeat herself, and I think we were able to get through her
18 testimony.

19 Upon the second objection in regards to the baby, I
20 understand that the baby was present, but I do not see that the baby
21 caused a disruption in the proceedings. I believe the baby was present.
22 I never actually saw the baby. I don't believe the baby caused a
23 disruption in the proceedings. So based upon the issues that were
24 represented, I don't believe that this denied Mr. Newson his right to
25 confrontation of this witness. So I am going to deny your motion for a

1 mistrial.

2 MR. BASHOR: Very good.

3 MS. WECKERLY: Thank you.

4 THE COURT: The issue with -- I believe the State now is
5 going to seek to introduce the prior convictions based upon the Defense
6 being allowed to elicit Mr. Newson's statement over the State's
7 objection, which I did grant, because I do find the statement to be an
8 excited utterance based on the testimony of this witness as to the way
9 Mr. Newson was behaving upon the statement being stated to her. Ms.
10 Weckerly.

11 MS. WECKERLY: That's correct, Your Honor. I think we --
12 earlier in the trial we discussed this. And it was the *Gibbs* case, based
13 on 51.069(1), that allows for if the defense introduces an excited
14 utterance, that would trigger the -- that statute where he's testifying just
15 like a regular witness, making felony convictions relevant. In this
16 particular case, I believe the parties will stipulate that the Court can just
17 read in the convictions and the years. And I believe the Defense wants it
18 clear that it's under the case with regard to the convictions for two
19 counts of child abuse, and then also the ex-felon count, that it's this
20 same case. I think you could just say in a prior proceeding for those two.
21 And then the other one is just a regular conviction for forgery.

22 MR. BASHOR: And, Judge, I agree with the stipulation, but
23 that presumed you ruled that they would be coming in. I'd like to be
24 heard in that regard.

25 THE COURT: Absolutely. Go ahead.

1 MR. BASHOR: I think that 51.069(1) is -- maybe as a result of
2 this case, is going to have some constitutional infirmities in that the
3 same statement that the State introduced in the first trial, which was
4 characterized as a statement by a party opponent or a declaration
5 against interest, which is now offered by the Defense, changes the
6 [indiscernible], in fact, it was an admission, and it was a declaration
7 against interest. I realize that the person or party proffering the
8 statement has changed. But by virtue of us introducing what is
9 essentially a statement against interest and choosing to do so now
10 exposes Mr. Newson to attacks on his credibility just because the party
11 who's offering it has changed. In addition, Judge, I would just submit
12 that in the probative versus prejudicial value, especially considering it is
13 a statement against interest, that any probative value is outweighed by
14 the undue prejudice.

15 MS. WECKERLY: I think the exception they offered was
16 excited utterance not a statement against interest. And that was
17 addressed in the Gibbs case. This is exactly the same dynamics. How
18 we chose to present our evidence in the first case doesn't really bind us
19 in the second case. However, in this case, I did tell Defense counsel
20 we're not planning on eliciting that statement. We have had discussions
21 about that. So it certainly isn't a surprise that this issue was coming up.

22 MR. BASHOR: And I don't believe it to be a surprise, Judge.
23 And I appreciate, of course, Ms. Weckerly's courtesy in letting us know.
24 Nonetheless, I just think that the analysis that maybe the -- when this
25 was enacted by the legislature, it has some potential constitutional

1 infirmities when we're the party that is offering what was previously
2 described as a statement against interest. That's all.

3 THE COURT: Well, I mean -- and I understand what you're
4 saying, Mr. Bashor. And I understand, you know, a lot of times we're in
5 this situation where we would like to address something with the
6 legislature. But unfortunately, a month ago, they ended, and they won't
7 be back in session until 2023. But the Ernest Gibbs case, which is Gibbs,
8 128 Nv. 898, is explicitly on point about this issue. It says:

9 Gibbs strategically introduced his own hearsay statement.
10 And NRS 51.069(1) allows for an attack on the credibility of the declarant
11 of a hearsay statement. It provides that when a hearsay statement has
12 been admitted into evidence, the credibility of the declarant may be
13 attacked or supported by any evidence which would be admissible for
14 those purpose if the declarant had testified as a witness. And in that
15 case, they did introduce Gibbs' prior convictions. And it says they were
16 admissible for impeachment purposes.

17 That is essentially the situation that we have here. So based
18 upon that, the Court is going to allow the admission of the prior
19 convictions, because the Nevada Supreme Court has said that is
20 absolutely the correct way to do it. So following the precedent of our
21 Nevada Supreme Court, I am going to allow it.

22 MR. BASHOR: Okay. And, Judge, we do agree with the
23 stipulation that was made. We just do want it made it clear that the child
24 abuse and neglect counts and the prohibited person counts are
25 convictions related --

1 THE COURT: To this case.

2 MR. BASHOR: -- to this case.

3 THE COURT: Okay. So just so that we're clear, so that
4 there's no confusion, the case that is C258156, which is the case where
5 he was revoked off of probation back in 2010, so that conviction occurred
6 in 2009, and that was a conviction for forgery. So I'm just going to read
7 that as in C258156, the Defendant was convicted of forgery on November
8 13, 2009, in the Eighth Judicial District Court.

9 MR. BASHOR: I think you can add that it is a felony.

10 MS. WECKERLY: Yes.

11 THE COURT: Okay.

12 MS. WECKERLY: It's a felony.

13 THE COURT: Okay. And then in regards to the conviction of
14 the other case that we are not going to admit this judgment of
15 conviction, because it is in reference to this case --

16 MR. BASHOR: And -- I'm sorry, Your Honor.

17 THE COURT: -- are you -- you guys want me to say in the
18 subsequent proceeding regarding this case, which is case C-16-31391-1,
19 the Defendant was convicted of two counts of child abuse neglect and
20 endangerment and count of ownership of possession of a firearm by a
21 prohibited person on April 19, 2018?

22 MS. WECKERLY: Yeah. I think you can -- yeah. Just like a
23 prior proceeding not subsequent.

24 THE COURT: A prior -- yeah, a prior proceeding on this case.
25 Yeah. Sorry.

1 MR. BASHOR: And, Judge, I would object to the admission
2 of the other JOC, because it includes that probation violation language
3 as well.

4 MS. WECKERLY: That's fine as long as the Court makes
5 them aware of the convictions.

6 MR. BASHOR: Great.

7 MS. WECKERLY: I'll --

8 THE COURT: Okay. I'll make them aware of both. And then I
9 will mark -- I'm going to keep these and mark these --

10 MS. WECKERLY: Sure.

11 THE COURT: -- as Court's exhibits --

12 MR. BASHOR: Excellent.

13 THE COURT: -- just so that the record is correct. But I will
14 read them into the record just as I just previously stated. But we will not
15 have either of the judgments admitted into evidence.

16 MS. WECKERLY: Thank you.

17 MR. BASHOR: Thank you, Judge.

18 THE COURT: Okay. Any other issues?

19 MS. WECKERLY: No, not on behalf of the State.

20 MR. BASHOR: No, Your Honor.

21 THE COURT: Okay. I just need a small break before we
22 come back on. And you guys have two more witnesses?

23 MS. WECKERLY: We do, but I think they'll be really quick.

24 THE COURT: Okay. And then we'll --

25 MS. WECKERLY: [Indiscernible].

1 THE COURT: And then just for the record, we'll have two
2 more witnesses, and then we'll let the jury go. We'll stay and sort out
3 some issues with the jury instructions.

4 And then, Mr. Newson, I will admonish you about your right
5 to testify, but we'll get into that after we excuse the jury.

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Okay. Okay. You want me to -- okay. So we'll
8 just start out. I'll just read this into the record. Okay. You don't want me
9 to say anything about a stipulation of the parties, right? No.

10 MR. BASHOR: I'm agreeable.

11 THE COURT: Can you send them in?

12 [Pause]

13 THE COURT: Okay. We may have lost one of our jurors, so.

14 MS. WECKERLY: Are we missing a --

15 THE COURT: Yeah. We're missing a juror. I hope he didn't
16 go to lunch, but they said they saw him go downstairs, so. But
17 apparently all the clocks are wrong. And when I'm giving out the times,
18 I'm looking at that clock that says it's 12:15, but it's only 12:12. And then
19 the --

20 MR. ALBRIGHT: We heard it was three to five minutes off,
21 which is actually a long time.

22 THE COURT: Yeah. Well, no, they're late. I said 12:10. And I
23 was basing it on -- I always look at that clock. Yeah. I don't.

24 [Pause]

25 THE COURT: Okay. We got the juror.

1 THE MARSHAL: All rise for the jury.
2 [Jury in at 12:09 a.m.]
3 THE MARSHAL: All present, Your Honor.
4 THE COURT: Okay. You may be seated.
5 We are back on the record in C313911, State of Nevada v.
6 Vernon Newson, Jr. May the record reflect Mr. Newson is present with
7 his attorney. Deputy district attorneys on behalf of the State.
8 Do both parties stipulate to the presence of our jury?
9 MS. WECKERLY: Yes, Your Honor.
10 MR. BASHOR: Yes, Your Honor.
11 THE COURT: Okay. And ladies and gentleman of the jury,
12 this Court informs you that on November 13, 2019, here in Clark -- 2009 --
13 I apologize -- here in Clark County, Nevada, the Defendant, Vernon
14 Newson, Jr., was convicted of a forgery in case C258156 out of the 8th
15 Judicial District Court in Clark County.
16 The Court also informs you that in a previous proceeding on
17 this case, in case C313919, the Defendant was convicted of two counts of
18 child abuse, neglect, or endangerment and one count of ownership or
19 possession by a firearm -- of a firearm by a prohibited person. And that
20 was -- that happened on April 19, 2018, here in Clark County, Nevada.
21 MS. WECKERLY: Your Honor, our next witness --
22 THE COURT: Okay. State.
23 MS. WECKERLY: Yeah.
24 THE COURT: Yes.
25 MS. WECKERLY: With the Court's permission is Kathy Geil.

1 THE COURT: Okay.

2 THE MARSHAL: And go ahead and take the stand. I'll just
3 ask that you briefly remain standing, and you'll face Madam Clerk and
4 raise your right hand, please.

5 KATHY GEIL, STATE'S WITNESS, SWORN

6 THE CLERK: Please be seated, stating your full name,
7 spelling your first and last name for the record.

8 THE WITNESS: Okay. It's Kathy Geil, K-A-T-H-Y G-E-I-L.

9 MS. WECKERLY: May I proceed?

10 THE COURT: Yes.

11 DIRECT EXAMINATION

12 BY MS. WECKERLY:

13 Q How are you employed?

14 A I work for the Las Vegas Metro Police Department in the
15 forensic lab. My official job title, if you will, is forensic database
16 administrator for NIBIN, but really I'm a forensic scientist in the firearms
17 unit. But a part of that administrator duties, I am the NIBIN supervisor.
18 So it's kind of three titles now, but.

19 Q Well, we'll go through -- let's go through those three. What
20 is NIBIN?

21 A So it's the National Integrated Ballistic Information Network.
22 What it does is take pictures of cartridge cases and compares other
23 images of cartridge cases to see if those images maybe correspond or
24 associate so that we can link other shooting events to other shooting
25 events across jurisdictions, across time. And we default search to all of

1 California, Utah, South -- or the eastern half of Washington, parts of
2 Texas and parts of Arizona. So and then we can do national searches if
3 we like. So it's just examining images, but it's done via computer and
4 then we verify it with the human eye.

5 Q And then in addition to that, you actually work as an
6 examiner yourself?

7 A That's correct.

8 Q And for that particular job and maybe the one that you just
9 described, what is your training and background that allows you to do
10 that?

11 A So to be a forensic scientist as a firearms examiner, it's a --
12 roughly a two year training program, which is a series of modules that
13 you work through that have been developed by the Association of
14 Firearm and Toolmark Examiners. And Las Vegas Metro Police
15 Department also follows that. I had my training at a different agency, but
16 it's the same training pretty much throughout any agency you go to. So
17 this two year training program and these modules cover the history of
18 firearms, how firearms are manufactured, the tools that are used to make
19 firearms and the cartridge cases and the bullets. We take a lot of guns
20 apart, put them all back together, how they're modified, how that
21 modification causes things to, you know, to actually that cartridge or that
22 firearm to discharge a bullet out of a barrel.

23 And then obviously, the last component of that is the markings that
24 are imparted on a cartridge case and a bullet, how we can
25 microscopically compare them to maybe other cartridges cases and or

1 bullets that may have been fired from that firearm or may not have been
2 fired from that firearm, and what markings that you're looking at to make
3 those types of conclusions.

4 Q And I think I missed. What is the third job that you have?

5 A So I am a supervisor.

6 Q Oh, okay. So you supervise other examiners?

7 A Other NIBIN technicians.

8 Q Okay.

9 A So not the examiner side of the house, but the NIBIN side of
10 the house. I currently have five employees and I'm getting three more
11 by September 1, so we're busy.

12 Q So you mentioned that you currently work for the Las Vegas
13 Metropolitan Police Department. Did you ever work for a different
14 agency in this capacity?

15 A Yeah. Washington State Patrol, up in the Seattle laboratory.

16 Q Okay. So you've done this for a number of years?

17 A Quite a few, yes.

18 Q Okay. In terms of your testimony this morning, do you have
19 like a demonstrative aid that would kind of help and explain how you go
20 about making a firearms and toolmarks comparison?

21 A I do. A large plastic cartridge.

22 Q Okay. Your Honor, with the Court's permission, may she use
23 that demonstrative aid?

24 A Any objection?

25 MR. BASHOR: No, Your Honor.

1 THE COURT: Okay. Yes, ma'am.

2 BY MS. WECKERLY:

3 Q Okay. So that looks like a plastic --

4 A Yes.

5 Q -- model of a bullet --

6 A Yes.

7 Q -- or a cartridge, you would say.

8 A Yes.

9 MR. BASHOR: Do you think if I stood over there so I could
10 see?

11 MS. WECKERLY: Oh, I'm sorry.

12 MR. BASHOR: No. It's not your fault.

13 THE COURT: Absolutely. And I'm sorry. We can't move that
14 podium, Mr. Bashor.

15 MR. BASHOR: Thank you.

16 BY MS. WECKERLY:

17 Q So many, many members of our jury are quite familiar with
18 firearms, but there might be a couple that aren't. Can you explain what
19 you're holding there and the components of a cartridge?

20 A So this is essentially a round of ammunition. People call this
21 a bullet, but we actually call it a cartridge to denote the projectile part,
22 which is actually the bullet or whatever they shove in the mouth of the
23 cartridge case, right. So it can be shot. It's a shot shell or darts. You
24 know, if -- sometimes they're in shotgun shells. But the back part, we
25 call the cartridge case. So when this round of ammunition or this

1 cartridge is placed in a firearm, the back part here has a primer source
2 that when gets crushed, throws a spark, ignites the gun powder that's
3 inside, pushes the bullet or the projectile down the barrel. This cartridge
4 case, depending upon the firearm, can get extracted, ejected from the
5 firearm, or remain in the firearm, again depending on how that firearm is
6 made.

7 Q Okay. And when you talk about the case either being kept
8 within the firearm itself or ejected, can you explain the difference in guns
9 and why that might -- why it might be ejected, and which guns don't
10 eject?

11 A So the big, broad strokes of the different types of firearms is
12 you'll have a semiautomatic gun versus -- which include your handguns
13 and some rifles and shotguns or the revolver. Those are the two big -- in
14 the handgun world, it would be the pistol, the semiautomatic pistol, or
15 the revolver. So a revolver, you pull the trigger. It crushes the primer,
16 bang, the bullet goes out the barrel and it sits there. You pull the trigger
17 again, it rotates the cylinder so that there's another cartridge or round, if
18 it's available, in there and fires. They never leave the firearm until you
19 manually extract them and eject them.

20 Semiautomatic pistol, it has a magazine which I equate to a Pez
21 dispenser. It's spring loaded and you put the rounds on top. It fits into
22 the mag well, which is usually the grip. And you fire that round. It
23 extracts and ejects the cartridge piece and then loads a new cartridge in,
24 hence semiautomatic mode. And it's ready to pull the trigger again and
25 fire a new cartridge.

1 So it gets rid of out of the -- out of the ejection port, it will get rid of
2 the fired cartridge case. And then it just keeps going until you stop
3 pulling the trigger. Full auto, of course, is the next step. You pull the
4 trigger. It keeps going until it either runs out of ammo or you stop
5 holding down the trigger.

6 Q Okay. So in your work are you sometimes called upon to
7 compare a firearm with some cases and see if the gun itself is the
8 weapon that fired those cases?

9 A If a gun is submitted in a comparison case that I'm working,
10 we check to make sure that gun, one, is safe for me to fire and it's
11 operable. I'll go test fire that firearm, so the fired cartridge cases and
12 bullets that I get from that firearm, I then can use for microscopic
13 comparison to unknowns or cartridge cases from an event. And we're
14 looking at the markings that are left on those, either the test fires or the
15 cartridge cases.

16 Q What if you just have cartridge cases and you don't have the
17 gun? Are you able to do any sort of comparison amongst the cases?

18 A A hundred perfect. Just like we would do if there was test
19 fires, we just look at unknown to unknown or questioned cartridge case
20 to questioned cartridge case. Again, why it's a two year training
21 program is you're training your eye and your brain to look at these
22 potential markings that are on the cartridge case left by the firing pin, the
23 breach face where the firing pin comes out of, the extractor, the ejector,
24 the chamber walls that are reamed out to fit the cartridge in there all are
25 made by tools. And all of those tools have the ability to leave markings

1 on those surfaces which can be imparted in the cartridge case. So if
2 they're present and they're sufficient quantity and quality of marks and
3 have to have this random looking appearance, then I can make a
4 determination if they appear to have been fired from the same firearm.
5 If it's not present, then I can't.

6 Q So the comparison that you're actually making is sort of
7 unique to each weapon in that no matter how much like a gun might be
8 of a similar type, there's just literally how it's formed together or how it's
9 put together, there are slight deviations in each type of weapon that may
10 or may not impact on to the cartridges themselves?

11 A Well, our association, the AFTE, the Association of Firearm
12 and Toolmark Examiners, has been exploring this scientifically where
13 we'll look at a component, say a slide or a firing pin or extractor or
14 ejector consecutively made. They put them in the same firearm or in a
15 same component. Can we tell the cartridge case apart? If we're going to
16 just focus on cartridge case, can we tell them apart from each other even
17 if they're consecutively made? Because you would think that's the worst
18 case scenario.

19 If you're going to have something that looks just like it's, you
20 know, the gun before it or the gun after it, it's going to be these
21 consecutively made. In all those studies, we can tell the cartridge cases
22 apart if there's marks present, so I want to make sure that's clear. If
23 there's no marks present, then, of course, you can't make a conclusion.

24 So if there's marks present, then we can make a determination that
25 it was fired in that particular -- using that particular extractor or that slide

1 or that firing pin. So a combination of all of those even adds more data
2 points, if you will, to help us draw this conclusion. It is a subjective
3 conclusion. There isn't a computer or a database or an instrument that I
4 put the cartridge case in, and it spits out some data like chemistry or
5 toxicology, but so it is my eye. It is training. It is experience to
6 determine that there is a sufficient quality and quantity of marks and
7 they're random enough. They look good. There's enough of them there
8 and I make that determination.

9 Q So the markings you're talking about sound like they would
10 be quite small and maybe not visible grossly to just your eye. Are you
11 looking at it just with your eyes or is there a microscopic comparison
12 done?

13 A Definitely microscopic. We do a -- you can do a general
14 screen with your eye depending upon how good your close up vision is,
15 but when we're actually doing the comparison, it is done under
16 microscopes. And how that microscope is built is two independent
17 microscopes optically bridged. So when I look through the eye pieces, I
18 actually see both sides at the same time. I can move them each
19 independently, change their orientation, change the lighting, whether it's
20 oblique or coming from the other side, and I'm looking at those marks.

21 So, and then I can even change -- I have a dividing line. I can see
22 how much I want of one or the other. So I work -- they're -- you're
23 independent, so they never touch each other, but I can still see them at
24 the same time.

25 Q And so in a case like this where you were given a bunch of

1 cartridge cases to compare, that's what you're doing, a microscopic kind
2 of side by side comparison to see, in your expert opinion, if there's
3 sufficient characteristics to conclude that they are fired by the same
4 weapon?

5 A That's exactly right.

6 Q Okay. In this case, you were also given fragments of I would
7 say bullets. I don't know what you would call it. But like jacketing and
8 the projectiles themselves. What type of analysis are you able to do with
9 those?

10 A So very similar to cartridge cases, the bullets go down barrel.
11 And the barrel, again, is made by tools. So it's first -- it's reamed out and
12 then it's cut. The lands and grooves are cut into the barrel. The lands
13 and grooves in a barrel cause this bullet to spin and leave us these big
14 furrows. Of course, this is over exaggerated in my plastic bullet. But it
15 leaves us these big gross marks or big land and groove areas that I can
16 look at. Inside of this is picking up the small microscopic markings that
17 are in the barrel themselves. And it's actually causing -- giving some
18 striations for me to compare.

19 So I can put one bullet on one side and one bullet on the other side
20 and compare those microscopic markings to determine if they're
21 sufficient, again, quantity and quality of marks that would indicate that
22 they had been fired from the same firearm.

23 MS. WECKERLY: Your Honor, may I approach the witness?

24 THE COURT: Yes. Has the Defense seen what you're
25 showing her?

1 MR. BASHOR: I have, Judge.

2 THE COURT: Okay.

3 BY MS. WECKERLY:

4 Q Thank you. I am showing you what's been marked as State's
5 Proposed 159 to 162. Could you just look through those and let me know
6 when you're done, please? Do those photographs appear to be
7 represent -- well, not representations, but photos of your actual work on
8 this case?

9 A Yes.

10 MS. WECKERLY: State moves to admit 159 to 162.

11 MR. BASHOR: No objection, Your Honor.

12 THE COURT: Okay. 159 to 162 will be admitted.

13 [State's Exhibit 159-162 admitted into evidence]

14 MS. WECKERLY: Okay. I'm going to put on the overhead
15 maybe.

16 THE COURT: Okay. I don't know what's up.

17 MS. WECKERLY: Well, maybe I'm not.

18 THE COURT: Yeah. I have no idea why that's happening
19 today. Okay. You've got to press it again because now I'm like you are
20 seeing. No?

21 MS. WECKERLY: No?

22 THE COURT: So now it's flashing red, so clearly we have a
23 problem.

24 MS. WECKERLY: Okay. Oh, there we go.

25 THE COURT: Oh, there we go.

1 MS. WECKERLY: Thank you for your help.

2 BY MS. WECKERLY:

3 Q I'm going to put on the overhead what's been admitted as
4 State's 160. Can you see that on one of our screens around here?

5 A Yes.

6 Q Okay. And I think in this image we're obviously looking at
7 the end of a round or a casing actually, correct?

8 A Yeah. It would be the head stamp area of this cartridge case.

9 Q Okay. And that -- this would be actually an image of one of
10 the items that you analyzed in this case?

11 A That's correct.

12 Q Do you recall in this case if the brand or the manufacturer of
13 the rounds of the ammunition was all the same or was there variants in
14 the manufacturers?

15 A The head stamps on the cartridge cases did vary with
16 manufacturers, so there was different manufacturers listed.

17 Q And although the rounds of ammunition might have been
18 manufactured by different companies, are you still able to compare
19 those cases microscopically to determine whether or not they were fired
20 from the same gun?

21 A Yes.

22 Q Okay. And I'm going to put on the overhead next State's 162.
23 What are we looking at there?

24 A So this would be an image that I took while looking through
25 my comparative microscope. So this would be I backed up a little bit to

1 get both cartridge cases. You'll see down the center, that's my dividing
2 line that I can move to the right or to the left. And mostly this is an
3 image for me to remember because we do so much casework that what
4 they kind of look like side by side. It was a representation of my
5 microscopic examination. So I don't take a lot of them because it's not a
6 really clear -- it shows it, but it's not exactly what I see through the
7 scope. I have much better quality versus the camera that's attached to
8 the microscope.

9 But it's just showing you two of the cartridge cases that I examined
10 side by side in that head stamp area with the primer. The center dots
11 there, those are the firing pin impression. And then the kind of a donut
12 shape around it, that's the flow back of that primer into the -- what we
13 call the aperture or the hole that the firing pin comes out of and some of
14 the shear that you're seeing along the side there. And then the rest
15 would be impressed marks that it has against the breach face where that
16 firing -- oh, from the firing of that cartridge case.

17 Q Okay. And next, I'm going to put on State's 161. What are
18 we looking at there?

19 A So this was one of the items I was given. Lots of different
20 metal fragments and down below if I have to check my notes, how much
21 of that was actual lead or other types of metal. And then below you'll
22 see there, those are copper jacket fragments. So how a lot of bullets are
23 constructed -- and not every bullet is this way, but a lot of bullets are
24 constructed -- is inside here is a lead core. So it's just filled full of lead
25 and then they suage or they place a copper jacket over the top so that it

1 feeds well into the firearm and sometimes stays together. But when they
2 hit target material, a lot of times that fragments up. So that's what we're
3 seeing is one of these is fragmenting from wherever they collected it.

4 Q Now all of the cases in this case were what caliber?

5 A Nine millimeter Luger.

6 Q Okay. And what was your conclusion regarding the cases
7 that were submitted to you?

8 A That they had all been fired from the same firearm. They had
9 markings that indicated that.

10 Q Now with regard to -- and I'm sorry -- re-putting on the screen
11 State's 161. With regard to the fragments, what do you do in order to
12 make an assessment about those?

13 A So I'll collect all of the fragments or partially intact or intact
14 bullets that are submitted to me and I'm going to place this -- because
15 the jacket is actually what engages with the rifling. So I'm going to take
16 these smaller pieces below and actually do the same microscopic
17 comparison that I did with the cartridge case and put them side by side
18 with all of the fragments and partially intact bullets or intact bullets and
19 see whether or not there's sufficient markings to make a conclusion of
20 either identification or elimination. And if there's not, then it would be
21 an inconclusive.

22 Q Okay. And what were your findings with regard to this case
23 on the fragments?

24 A You know, I'm going to have to check my notes.

25 Q Okay.

1 A That one, I don't remember. Is that okay?

2 Q With the -- with the Court's permission, if she could?

3 THE COURT: Yes. Does that refresh your recollection,
4 ma'am?

5 THE WITNESS: Yes, it would, Your Honor.

6 THE COURT: Okay. Yes.

7 THE WITNESS: Thank you. It was an inconclusive.

8 BY MS. WECKERLY:

9 Q Okay. And is that because of the -- I guess the lack of detail
10 imparted onto that evidence, so you couldn't make a comparison or what
11 would that be based on?

12 A Yeah. All of the above. There's little bits. Maybe not
13 everything is represented because, of course, it's circular. So if I have a
14 fragment here and comparing it to a fragment over here. Also, a lot of
15 bullets will hit a target material, which then overmarks the initial rifling.
16 So sometimes we get damage, and that would cause the inability to
17 make the conclusion. Again, I don't have a -- I can't recall exactly in this
18 case of why I couldn't do the inconclusive, but I have notes. If you want,
19 I can refer.

20 Q No. That's okay. But it would be -- it's nothing that -- like we
21 couldn't test more. It's just more there isn't enough information on the
22 items for you to make any more conclusions. Would that be fair?

23 A Correct. Right. It -- with this closed loop of just what I was
24 looking at. If I had, say, test fires or more projectiles to look at, maybe,
25 but just within the items I was given, that's the conclusion that I could

1 come up with.

2 Q Okay. And the last questions or question or two I want to ask
3 is about semiautomatic firearms. You described how those guns will
4 eject a cartridge after the cartridge is fired and the bullet leaves the
5 barrel and then the casing or the case is ejected. With regard to those
6 types of firearms, are they manufactured in a way to eject a cartridge
7 case in a particular direction or are they made to eject in a particular
8 way?

9 A A lot of the semiautomatic handguns and rifles have an
10 ejection port to the right because most of us are right-handed. There are
11 left-handed ones that you can purchase, but I would say a majority of
12 them are right-handed. There is a hook, an extractor, that's on the right-
13 hand side of that ejection port or that cutout. And then there is the post,
14 which is the ejector, that's on the other side. So typically they're thrown
15 to the right and to the rear depending upon how you're holding that. So,
16 again, it's related to the ejection port itself, not to the person, right.

17 So if you can't that gun or bring it up or bring it down, that ejection
18 port then presents itself in a different orientation. But to the ejection
19 port, if you hold that gun correctly, it's going to be to the right and to the
20 rear of that -- of that firearm most of the time.

21 Q Okay. And obviously you didn't have a gun in this case, so
22 you're just giving us the -- sort of your expertise generally with those
23 semiautomatic guns?

24 A That's correct.

25 Q Thank you very much. I will pass the witness.

1 MR. BASHOR: Just very briefly, Judge.

2 THE COURT: Yes.

3 CROSS-EXAMINATION

4 BY MR. BASHOR:

5 Q Good afternoon.

6 A Good afternoon.

7 Q Sorry about that. So let me pick up where we just left off

8 there. So when the casing is ejected, it is -- and you said in most

9 likelihood or more often than not it's to the right and to the rear, right?

10 A Correct. If you're holding it perpendicular to yourself, that's

11 it. Yeah.

12 Q Right. Your typical, what you see normal position?

13 A Correct.

14 Q Okay. Now the casing itself, once the projectile is ejected, is

15 hollow, correct?

16 A It would actually be a smaller version of this, right?

17 Q Right.

18 A There's nothing inside. Yeah.

19 Q So hollow. It looks like a cup now?

20 A Correct.

21 Q Okay. And it's obviously then a lot lighter than the cartridge?

22 A Of course.

23 Q Okay. And when a casing is ejected, if you're in a confined

24 space it can -- before it hits, gravity takes its role, it can hit and bounce

25 off of different surfaces, correct?

1 A Yes, sir.

2 Q Okay. And then even when it hits the ground, because it's
3 circular, it could continue rolling in whatever direction it decides?

4 A That's correct.

5 Q Okay. Thank you very much.

6 MS. WECKERLY: Nothing else, Your Honor. Thank you.

7 THE COURT: Do the ladies and gentleman of the jury have
8 any questions for this witness?

9 Okay. Seeing no response, ma'am, you are excused. Thank
10 you very much for your testimony here today.

11 THE WITNESS: Thank you.

12 THE COURT: State, do you have your last witness here --

13 MS. WECKERLY: We do.

14 THE COURT: -- of the day?

15 MR. ALBRIGHT: The State calls Ben Owens.

16 THE MARSHAL: Officer, please remain standing, face
17 Madam Clerk, and raise your right hand, please.

18 BENJAMIN OWENS, STATE'S WITNESS, SWORN

19 THE CLERK: Please be seated, stating your full name,
20 spelling your first and last name for the record.

21 THE WITNESS: My name is Benjamin Owens. First name
22 spelling is B-E-N-J-A-M-I-N. Last name is O-W-E-N-S.

23 THE COURT: Whenever you're ready, Mr. Albright.

24 MR. ALBRIGHT: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. ALBRIGHT:

2 Q Mr. Owens, how are you employed?

3 A Currently I'm an inspector for the Nevada State Athletic
4 Commission.

5 Q Did you recently retire from a prior career?

6 A Yes, I did.

7 Q And what was your prior career?

8 A For 22 years, I was with the North Las Vegas Police
9 Department. And I retired as a detective in the robbery homicide detail.

10 Q So fair to say that you were working in that capacity as a
11 detective back in December of 2015?

12 A Yes, I was.

13 Q Can you explain to the jury what the responsibilities and
14 duties are of a detective as opposed to a patrol officer?

15 A Yes. Detectives are responsible for either the primary or
16 follow up investigation for serious crimes such as violent felonies that
17 patrol officers either don't have the time or the expertise to conduct.

18 Q And were you assigned to a homicide that occurred on
19 December 13, 2015, at approximately 10:30 p.m.?

20 A Yes, I was.

21 Q And where was the location of that homicide?

22 A It was in the area of the intersection of I-15, Interstate 15 and
23 Lamb Boulevard.

24 Q Did you respond to the scene that very evening?

25 A Yes, I did.

1 Q What did you see when you arrived?

2 A When I arrived, I noticed that -- I took note that there was a
3 police perimeter established, meaning that the off ramp was cordoned
4 off with marked patrol cars and crime scene tape.

5 Q Were there other individuals present?

6 A Yes. There was several police officers. There were several
7 what looked like privately owned vehicles with civilians standing by as
8 well.

9 Q Did crime scene analysts, were they there or arrive later?

10 A Yes.

11 Q Was there a victim at the scene when you arrived?

12 A No.

13 Q We heard earlier that cartridge casings were found at the
14 scene. Is that fair to say?

15 A Yes. I saw six cartridge casings myself that were at the scene
16 there.

17 Q In terms of your investigation, what's the importance of
18 finding casings at a scene?

19 A A cartridge case is an expended shell casing from a
20 semiautomatic firearm. In this case, it was a handgun that basically is
21 ejected from the firearm after it has been fired.

22 Q Is there anything distinctive or important about the six
23 casings that you find at the scene?

24 A Yes. They were all of the same caliber, 9 by 19 millimeter,
25 and they were of several different brand names of manufacturer.

1 Q So among the six, they're not all six from the same
2 manufacturer, but all 9 millimeter?

3 A Correct.

4 Q Can -- could all of them have been fired from the same gun
5 even though they're made from different manufacturers?

6 A Yes. As long as it's the same caliber as the firearm, it doesn't
7 matter what the brand manufacturer is.

8 Q While you're collecting evidence at the scene, are you
9 updated with any information to help you identify the victim?

10 A Yes.

11 Q And how was that?

12 A Well, first off, I was advised that there was a victim that was
13 transported to Sunrise Trauma Hospital. And I was also advised while
14 we were working the scene there at Interstate 15 and Lamb that the Las
15 Vegas Metropolitan Police Department was currently investigating what
16 started off as a missing persons case in their jurisdiction that appeared
17 like it was going to have ties to our investigation.

18 Q Based on that, did you go to the residence of the missing
19 person's report?

20 A Yes. That would have been 3613 Saint Bar Court, which is in
21 Metro's jurisdiction.

22 Q Do you recall how far away that address was from the off
23 ramp where the murder occurred?

24 A I do. It was 3.7 miles.

25 Q And did you drive to that location?

1 A I did.

2 Q How long approximately did it take you?

3 A I'd say between seven and eight minutes, definitely less than
4 ten minutes.

5 MR. ALBRIGHT: Permission to approach, Your Honor.

6 THE COURT: Yes. Has the Defense seen this?

7 MR. BASHOR: Yes, we have seen it. Thank you.

8 BY MR. ALBRIGHT:

9 Q I'm showing you what's been marked as Proposed Exhibit 86.
10 Do you recognize that?

11 A I do.

12 Q What is that?

13 A This is a printout of a Google Maps that I, myself, or it's
14 probably a copy, but I, myself, just did a Google Maps printout of the
15 area of the original crime scene to the house at 3613 Saint Bar Court.

16 Q Is this something that you do kind of in the ordinary course
17 of being a detective and investigating crimes?

18 A Yes. Oftentimes, if we have two different locations that are
19 pertinent to the investigation, it helps to have the visual representation
20 of the distances between the two locations and addresses.

21 MR. ALBRIGHT: Your Honor, move to admit Proposed 86.

22 THE COURT: Any objection to 86, Defense?

23 MR. BASHOR: No, Your Honor.

24 THE COURT: 86 will be admitted without objection.

25 [State's Exhibit 86 admitted into evidence]

1 THE COURT: [Indiscernible]

2 MR. ALBRIGHT: All right. Try it again.

3 THE COURT: Oh, hold on.

4 MR. ALBRIGHT: Okay.

5 BY MR. ALBRIGHT:

6 Q When you arrived at the Saint Bar --

7 THE COURT: Hold on just one second, sir. If it's frozen, are
8 we going to pull --

9 THE CLERK: No. I'm fixing it.

10 THE COURT: Oh, okay. Perfect. Go ahead.

11 MR. ALBRIGHT: Okay.

12 THE COURT: Well, you can't go ahead with that. Go ahead
13 with that, if you have a question.

14 MR. ALBRIGHT: That's all right.

15 BY MR. ALBRIGHT:

16 Q When you arrived at the Saint Bar residence, what do you
17 find there?

18 A I encountered two individuals, Zaharia Marshall and Tyra
19 Adkins (phonetic), who I later learned had a relationship with the
20 decedent, Anshanette McNeil. We also find or located items of
21 evidentiary value to our investigation.

22 Q And what items do you find that are of evidentiary value?

23 A There were three cartridges, which is a live, unfired round of
24 ammunition. They were all in caliber 9 by 19 millimeter and they had the
25 same brand of head stamp of cartridge cases that were located at the

1 crime scene on the roadway.

2 Q And publishing the State's 89, previously admitted, Your
3 Honor.

4 THE COURT: 89 is admitted.

5 BY MR. ALBRIGHT:

6 Q Do you recognize what's depicted here, Detective?

7 A I do. So this is inside the residence at 3613 Saint Bar Court,
8 that's -- looks like a washing machine. And on top of a plastic grocery
9 bag you see three cartridges, which is live, unfired rounds, of 9
10 millimeter ammunition.

11 Q And I believe you just said this. What's the importance in
12 terms of your investigation of these three rounds?

13 A So those three right there are Sellier & Bellot. They have the
14 head stamp of S&B. And it shows that's an abbreviation for the
15 manufacturer. And it also has the caliber imprinted on the head stamp.
16 And those were consistent with one of the cartridge cases that were
17 found on the side of the roadway at I-15 and Lamb.

18 Q You mentioned also some baby items, is that correct?

19 A Yes. There was two young children there. There was also a
20 car seat that found there.

21 Q Showing you what's been previously admitted or publishing,
22 State's 92. Does this appear to be the car seat here?

23 A It does.

24 Q And you mentioned earlier meeting with a woman named
25 Zaharia. Does this appear to be Zaharia in this photo?

1 A Yes.

2 Q Okay. And she is -- she is holding a child?

3 A Yes.

4 MR. ALBRIGHT: Permission to approach, Your Honor.

5 THE COURT: Yes.

6 BY MR. ALBRIGHT:

7 Q I'm showing you what's been marked as Proposed Exhibit
8 108. Do you recognize that?

9 A Yes. That's Major Newson, who I later found out was the
10 child in common with the Defendant, Vernon Newson, Jr., and the
11 decedent, Anshanette McNeil. And the baby is sitting in the lap of
12 Zaharia.

13 Q Is that a fair and accurate depiction of what you saw that
14 night when you were there with them?

15 A Yes.

16 MR. ALBRIGHT: Move to admit 108, Your Honor.

17 THE COURT: Any objection to 108?

18 MR. BASHOR: Yes, Your Honor.

19 THE COURT: Yes.

20 MR. ALBRIGHT: Can we approach?

21 THE COURT: Yes. If you can bring it.

22 [Sidebar at 12:44 p.m., ending at 12:44 p.m., not transcribed]

23 THE COURT: Okay. The objection is overruled. 108 will be
24 admitted over objection.

25 [State's Exhibit 108 admitted into evidence]

1 MR. ALBRIGHT: Permission to publish, Your Honor.

2 THE COURT: Yes.

3 BY MR. ALBRIGHT:

4 Q Publishing 108, Mr. Owens. Does that appear to be Baby
5 Major being held by Zaharia?

6 A Yes.

7 Q And this was taken obviously while you were there in the
8 residence?

9 A Yes.

10 Q You did just mention the name Anshanette McNeil. You do
11 learn that that is the name of the victim, correct?

12 A Yes.

13 Q Do you attempt her autopsy?

14 A I did.

15 Q Based on what you learned at the scene, the Saint Bar
16 residence, and the nature of the injuries at the autopsy, do you then
17 know who your suspect is?

18 A Yes.

19 Q And who is that?

20 A The Defendant, Vernon Newson, Jr.

21 Q Based on that, do you then generate an arrest warrant?

22 A I do. I did.

23 Q Is it for Vernon Newson?

24 A Yes.

25 Q Do you recall what the date was when you issued that

1 warrant?

2 A December 22, 2015.

3 Q Do you at some point learn that the Defendant has been
4 arrested pursuant to that warrant?

5 A I did.

6 Q When does that happen?

7 A That would be the evening of December 22, 2015.

8 Q The same day you've issued the warrant?

9 A Yes.

10 Q What do you do next after you learn about that?

11 A So I learned that he was located and apprehended in
12 Claremont, California. So the next morning I received permission to
13 travel to Claremont, California to recover some items of evidence that
14 were in possession of the Defendant and also to attempt an interview
15 with the Defendant.

16 Q You mentioned evidence in California. When you get there,
17 what state is that evidence in?

18 A It was packaged and sealed in evidence bags of the
19 Claremont Police Department.

20 MR. BASHOR: Judge, can we approach?

21 THE COURT: Yes.

22 [Sidebar at 12:47 p.m., ending at 12:49 p.m., not transcribed]

23 THE COURT: Okay, Mr. Albright.

24 MR. ALBRIGHT: Thank you, Your Honor.

25 BY MR. ALBRIGHT:

1 Q You mentioned Claremont Police have bagged certain
2 evidentiary items. What is among them?

3 A I later found out that they were -- these were the items that
4 were in the possession of the Defendant, Vernon Newson, when they
5 encountered him and took him into custody. Basically, it was a black
6 duffel bag. I think there was a backpack, a bunch of miscellaneous
7 clothing, paperwork. There was a watch that he was wearing. There
8 was some -- I think some cash and some -- a wallet with some IDs
9 maybe.

10 MR. ALBRIGHT: Permission to approach, Your Honor.

11 THE COURT: Yes. Has the Defense seen this?

12 MR. BASHOR: Yes, I have, Judge. Thank you.

13 THE COURT: Okay.

14 BY MR. ALBRIGHT:

15 Q I'm showing you what's been marked as Proposed Exhibits
16 182 and 183. Do you recognize those?

17 A I do.

18 Q How do you recognize those?

19 A So this was the watch that the Defendant was wearing when
20 he was taken into custody by officer of the Claremont Police Department.

21 THE COURT: Mr. Albright, can you just ask the witness if he
22 recognizes them and not describe them to the jury. Has it been
23 admitted?

24 MR. ALBRIGHT: Not yet, Your Honor.

25 THE COURT: Right. So can we --

1 MR. ALBRIGHT: Okay.

2 THE COURT: -- not describe to the jury what it is until it's
3 admitted?

4 MR. ALBRIGHT: Sure.

5 BY MR. ALBRIGHT:

6 Q Do you recognize these?

7 A Yes.

8 Q And how do you recognize them?

9 A These were in possession of the Defendant at the time he
10 was taken into custody.

11 Q And do they fairly and accurately depict how you saw this
12 item on that night when you received this in Claremont, California?

13 A Yes.

14 MR. ALBRIGHT: Move to admit, Your Honor.

15 THE COURT: What is the number?

16 MR. ALBRIGHT: 182 and 183.

17 THE COURT: Any objection to either?

18 MR. BASHOR: No, Your Honor.

19 THE COURT: Okay. 182 and 183 will be admitted.

20 [State's Exhibits 182 and 183 admitted into evidence]

21 BY MR. ALBRIGHT:

22 Q Publishing State's 182. What is that, Mr. Owens?

23 A That's the watch that the Defendant was wearing when he
24 was arrested by Claremont PD.

25 Q And what was important specifically in terms of your

1 investigation about this item?

2 A Number one, that he was in possession of it. Number two,
3 that he was wearing it. And number three, that if you look close to the --
4 on the picture of the bottom part of the band where the holes are, there's
5 some staining there that's blood.

6 Q Showing you 183, publishing. Does that appear to be a
7 closer up photo of the blood that you just described?

8 A Yes.

9 Q And in your capacity as a detective, did you then pass this
10 evidence on to people who could test this blood?

11 A I did.

12 Q Was a firearm ever recovered in this case, Detective?

13 A Not a firearm, no.

14 MR. ALBRIGHT: Brief indulgence. Nothing further, Your
15 Honor.

16 THE COURT: Cross.

17 MR. BASHOR: Congratulations on your retirement,
18 Detective. Thank you.

19 THE WITNESS: Thanks, Counsel.

20 THE COURT: Do the ladies and gentleman of the jury have
21 any questions of this witness? Seeing no response, Detective, you are
22 excused. Thank you very much for your testimony.

23 THE WITNESS: Thanks, Judge.

24 THE COURT: Is this the end of the witnesses for today?

25 MS. WECKERLY: Yes, Your Honor.

1 THE COURT: Okay. Okay. Ladies and gentleman of the jury,
2 we have reached the end of our witnesses for today, and I do apologize
3 that we're ending early on a Friday. I know you guys wanted to be here
4 until 5:00 or 5:30. But we are going to end early with the understanding
5 that we are on track to wrap this case up in the time that we told you that
6 this case would be finished. So I am going to send you off to recess for
7 the weekend.

8 During this recess, you must not discuss or communicate
9 with anyone, including fellow jurors, in any way regarding this case or its
10 merits, either by voice, phone, email, text, internet, or other means of
11 communication or social media. You must not read, watch, or listen to
12 any news or media accounts about this case, do any research such as
13 consulting dictionaries, using the internet, or using reference materials.

14 You must not make any investigation, test the theory of the
15 case, recreate any other aspect of the case, or in any other way
16 investigate or learn about the case on your own. And you must not form
17 or express any opinion regarding this case until we are all back together
18 in this room Monday morning, which is July 19th, at 10:30. So you guys
19 will be back here Monday morning at 10:30.

20 THE MARSHAL: All rise for the jury. Ladies and gentleman
21 of the jury, leave your notebooks behind. Step down when you're ready.

22 [Jury out at 12:53 p.m.]

23 [Outside the presence of the jury]

24 THE COURT: Okay. May the record reflect that we are
25 outside the presence of our jury.

1 Okay. We are going to talk about the jury instructions in just
2 a moment, but before that, I'm going to go through the admonishment.

3 Okay. Mr. Newson, do you understand that under the
4 Constitution of -- you can stay seated if you want to. Under the
5 Constitution of the United States and under the Constitution of the State
6 of Nevada, you cannot be compelled to testify in this case.

7 Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you understand you may at your own
10 request give up this right and take the witness stand and testify?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: If -- okay. If you do, you will be subject to
13 cross-examination by the deputy district attorney. And anything that you
14 say whether it's on direct or cross-examination, will be the subject of fair
15 comment when the deputy district attorney speaks to the jury in his or
16 her final argument.

17 Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: If you choose not to testify, the Court will not
20 permit the deputy district attorney to make any comments to the jury
21 because you have not testified.

22 Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: If you elect not to testify, the Court will instruct
25 the jury, but only if your attorney specifically requests as follows.

1 The law does not compel a defendant in a criminal case to
2 take the stand and testify. And no presumption may be raised, and no
3 inference of any kind may be drawn from the failure of Defendant to
4 testify.

5 Do you have any questions about the right to testify?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: You are further advised that if you have a
8 felony conviction and more than ten years has not elapsed from the date
9 you have been convicted or discharged from prison, parole, or
10 probation, whichever is later, and the Defense has not sought to
11 preclude that from coming before this jury and you elect to take the
12 stand and testify, the deputy district attorney in the presence of the jury
13 will be permitted to ask you the following questions. Have you ever
14 been convicted of a felony? What was the felony? And when did it
15 happen? However, no details may be gone into.

16 Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay. You don't have to tell me right now
19 whether or not you're going to testify. I will leave that to you and your
20 attorneys. You guys can have discussions about that over the weekend
21 and you can make that decision with them and then we'll find out when
22 we come back here on Monday.

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. Okay. In regards to the jury instructions,
25 okay, because we're just going to settle these while we are here. And let

1 me just get the right one. Do you remember when I send down the jury
2 instruction?

3 MS. WECKERLY: I think it --

4 THE COURT: There we go.

5 MS. WECKERLY: -- Monday.

6 THE COURT: All right. I got it. Okay. Okay. So the heat of
7 passion instruction. This is the instruction that was proposed by the
8 Defense that it's my understanding the State has no objection to. Is that
9 correct?

10 MS. WECKERLY: Well, I'd like to object, Your Honor, but
11 based on the Nevada Supreme Court opinion, I'm not going to.

12 THE COURT: Okay. Okay. So you did have an objection, but
13 based on the Nevada Supreme Court opinion, you're not going to?
14 Okay. Where would you guys like that?

15 MS. WECKERLY: So where I have it in the packet is after the
16 big definition of --

17 THE COURT: Voluntary manslaughter?

18 MS. WECKERLY: -- voluntary manslaughter.

19 THE COURT: Yes, I see that. So, is this one that you already
20 have? You want to substitute in the Defense one.

21 MS. WECKERLY: Well, I think what the Monday version,
22 Your Honor, probably reads, the heat of passion which will reduce a
23 homicide to voluntary manslaughter. And the Defense request is to
24 switch out the word --

25 THE COURT: Make homicide murder.

1 MS. WECKERLY: -- homicide and have murder. The State
2 doesn't have any objection to that.

3 THE COURT: Okay. So other than that, all the other
4 language is the same?

5 MS. WECKERLY: Right.

6 MR. BASHOR: Correct, Judge.

7 THE COURT: Okay.

8 MR. BASHOR: There isn't a substitution. The Defense's
9 instruction is just an additional instruction.

10 THE COURT: Okay. Okay. Hold on. Hold on. Okay. Hold
11 on. Let me see.

12 Okay. So, in regards to this instruction, as long as we
13 change murder at the top to read -- I mean, homicide to murder, you're
14 okay with that instruction?

15 MS. WECKERLY: Yeah.

16 MR. BASHOR: Yes, Your Honor.

17 THE COURT: Okay. And then the other instruction regarding
18 the fact that a person has been convicted of a --

19 MS. WECKERLY: So that one, I will have to retype for the
20 Court. Obviously you can see my handwriting on it. I just brought a
21 proposed one to Defense Counsel this morning to see if like that was
22 okay wording for them.

23 THE COURT: If you guys are okay with this, I can just add it
24 in.

25 MS. WECKERLY: Okay. That's fine with me if they --

1 THE COURT: Are you guys okay with this?

2 MR. BASHOR: Yes, Your Honor.

3 THE COURT: Okay. Where do you guys want this?

4 MS. WECKERLY: I have that one, I think --

5 THE COURT: Is it already in here?

6 MS. WECKERLY: -- I have -- no. No. It isn't in that packet at
7 all.

8 THE COURT: Okay.

9 MS. WECKERLY: I don't really care where we put it. I think
10 we probably should put it after the credibility instruction. Yeah. Maybe I
11 think after the credibility or believability or somewhere in that because
12 that's what it's --

13 THE COURT: Do you guys have any objection to that?

14 MR. BASHOR: No.

15 THE COURT: After credibility? Okay. I'll go ahead and add
16 that. Okay. Right after credibility and believability.

17 MS. WECKERLY: And then --

18 THE COURT: Hold on just one second.

19 MS. WECKERLY: Okay.

20 THE COURT: Let me just type this in so that we know exactly
21 what it says. So you guys are okay that this instruction reads:
22 statements of a person who has been convicted of a felony have come
23 into evidence. The fact that a person has been convicted of a felony, if
24 such be a fact, may be considered by you only for the purpose of
25 determining the credibility of that person. The fact of such a conviction

1 does not necessarily destroy or impair the person's credibility. It is one
2 of the circumstances that you may take into consideration in weighing
3 the statements of such a person.

4 Is that how you guys want it to read?

5 MS. WECKERLY: Yes.

6 MR. BASHOR: Yes.

7 THE COURT: All right. Hold on. Okay. So that will be
8 placed right there. Okay. Hold on. Okay. And then the Defense's
9 instructions.

10 Okay. So regarding the Defense instructions, the one, the
11 serious and highly provoking injury which causes the sudden heat of
12 passion for purposes of voluntary manslaughter can occur without direct
13 physical contact.

14 MS. WECKERLY: No objection to that.

15 THE COURT: Okay.

16 MS. WECKERLY: And my suggestion is that it either be --
17 could be added on to with regard to voluntary manslaughter, whether
18 the interval or right after that, if they want it as a separate instruction.

19 MR. BASHOR: We'd like it as a separate.

20 THE COURT: You'd like a separate instruction. Okay. So
21 you want it right after, with regard to voluntary manslaughter, right after
22 the interval one?

23 MS. WECKERLY: Yeah. That -- I think that's the best place.

24 THE COURT: Is that where you want it?

25 MR. BASHOR: Yes. That would be perfect.

1 THE COURT: All right. Let me add that. And no objection by
2 the State to that? Okay. So we've got that. Okay.

3 And does the Defense object to any of the other instructions
4 given by the State?

5 MR. BASHOR: No, Your Honor.

6 THE COURT: Okay. Does the State object to any -- I mean,
7 the Defendant didn't have any other instructions except that one, and
8 that's been added. And with this substitution, it's been added.

9 MS. WECKERLY: Correct.

10 THE COURT: Okay. So I know we're not going to number
11 the packet, but do we have any other issues regarding the jury
12 instructions?

13 MS. WECKERLY: Not on behalf of the State.

14 MR. BASHOR: Correct, Judge. The only thing that may need
15 swapped out would be the testimony by the Defendant instruction.

16 THE COURT: Right. And I'm not going to make you guys
17 make a decision about that right now. You guys can spend some more
18 time talking to your client about that because it's a simple delete
19 function, whether you want it or whether you don't want it, so you guys
20 can let me know about that on Monday --

21 MR. BASHOR: Okay.

22 THE COURT: -- when you get back after you guys have had
23 the weekend to discuss that with your client.

24 MR. BASHOR: Absolutely.

25 THE COURT: Okay. So that's the only -- that will be the only

1 issue left to resolve is the current instruction?

2 MS. WECKERLY: Correct.

3 MR. BASHOR: Correct.

4 THE COURT: Okay. Anything else we need to do?

5 MS. WECKERLY: Not on behalf of the State, Your Honor.

6 MR. BASHOR: Not on behalf of the Defense, Judge.

7 THE COURT: So we're moving right along. Okay. So what
8 we'll do, we'll plan on 10:30. You only have one more witness?

9 MS. WECKERLY: Yeah. And it'll be short. I think less than
10 15 minutes.

11 THE COURT: Okay. So just for scheduling and everything, if
12 you -- if you guys and your client decide Mr. Newson is going to testify,
13 that's strictly up to you guys, but if you decide he's going to, I would
14 intend to put him on before we take a break.

15 MR. BASHOR: Oh, absolutely.

16 THE COURT: Actually, no, we're not. We would have to take
17 a break anyway just to make sure we're okay with CCDC as to how they
18 want it done.

19 MR. BASHOR: Okay. Fair enough.

20 THE COURT: Okay. So I was going to try to move along and
21 rush things, but I'm not going to because that stuff is outside of my
22 control.

23 MR. BASHOR: I understand.

24 THE COURT: I don't control the security in here. These
25 people do.

1 MR. BASHOR: I understand.

2 THE COURT: So what we'll do is -- what we'll do is if he's
3 going to testify. No. It doesn't matter. Never mind. We will have to
4 take a break after that first witness because if he's going to testify, we'll
5 take a break and get him situated to testify. If he is not going to testify,
6 we will take a break, finalize these jury instructions, and then I will
7 probably just print you guys' copy and then read them to the jury and
8 give them copies before they deliberate.

9 MR. BASHOR: So we'll get a copy of the final?

10 THE COURT: I will have you guys a copy before you close.

11 MS. WECKERLY: Sure.

12 MR. BASHOR: Great.

13 THE COURT: But what I'll do, I'm probably not going to take
14 a break that's long enough to print all 14 of the copies. I will print
15 enough for you guys so you guys can close and then they can -- and just
16 let them know that I'll write down verbatim what I'm saying, and we'll
17 make sure they have their copies before they go.

18 MR. BASHOR: I had told the State, Judge, if we -- because
19 we've agreed on all that language, that's the language that we can use to
20 prepare for their closing.

21 THE COURT: Yeah. And, I mean, so but you guys will have --
22 I mean, if you want, I can send you guys a copy of what's in here now.

23 MR. BASHOR: I -- we have it.

24 THE COURT: Okay. You do? Okay.

25 MR. BASHOR: Yes.

1 THE COURT: So, yeah. As long as you guys are okay with
2 that and then they will get their copy before they deliberate.

3 MS. WECKERLY: Sounds good.

4 THE COURT: Okay.

5 MR. BASHOR: Thank you, Judge

6 THE COURT: Thank you, guys.

7 MR. ALBRIGHT: Thank you.

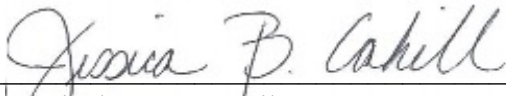
8 THE COURT: Do you have all the exhibits here?

9 THE CLERK: Yes.

10 THE COURT: Okay.

11 [Proceedings adjourned at 1:06 p.m.]
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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
22 best of my ability.

23 

24 Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708

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CASE#: C-16-313919-1
DEPT. X

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 5

RYAN BASHOR, ESQ.
KAMBIZ SHAYGAN-FATEMI, ESQ.

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Las Vegas, Nevada, Monday, July 19, 2021

[Case called at 10:22 a.m.]

[Outside the presence of the jury]

MS. WECKERLY: There are two prior instances of domestic violence. I told -- I've given -- one of them was reported and one of them is within Zaharia's statement. I don't think I'm allowed to get into those unless he says particular things like -- we've kind of discussed that I would approach if I think I've got it before I asked.

THE COURT: Okay.

MS. WECKERLY: So I don't think we really need to put it on the record.

THE COURT: Right. So if that door is open, then we'll address it at that time, or if the State believes that door is opened.

MS. WECKERLY: And then the only other point I could see is he gave a pretty lengthy statement at sentencing. I won't refer to it as sentencing, but I think if he testifies, it's fair to cross him on it.

THE COURT: Okay. All right. All right.

MR. BASHOR: I might ask for a break between direct and cross if the State believes -- I'm not going to talk to him about testimony, but just so we can address the evidentiary issues of the two priors like morally, that opposed to whispering at the bench.

THE COURT: Understood.

MR. BASHOR: Okay.

THE COURT: All right.

1 MS. WECKERLY: I am going to just double check that our
2 guy is here.

3 THE COURT: Your witness is here?

4 MR. BASHOR: Yes, ma'am.

5 THE COURT: All right. Are you guys ready for your time?

6 MR. BASHOR: Yes, please.

7 THE COURT: Can you please shut that door?

8 THE MARSHAL: You want to bring him in?

9 THE COURT: No. He'll know. Can you make sure he shuts
10 that door?

11 THE MARSHAL: Yes.

12 THE COURT: Because I'm looking at one of the jurors. Small
13 problem.

14 Oh, yeah. Can you guys bring them in?

15 MS. WECKERLY: Do you start another one tomorrow?

16 THE COURT: Tomorrow. And now Leavitt's (phonetic) case,
17 you know, went away --

18 MS. WECKERLY: Yeah.

19 THE COURT: -- yesterday. Because she can't -- she would
20 give up her right arm to do a trial. She can't do my case for tomorrow.
21 Like why? Why? And then I have another one, short-term, now it's
22 ready, starting to go next week. And then I had two of my regular cases
23 announce ready during calendar call this morning, so now I have to find
24 judges to try those, two of my regular criminal cases --

25 MS. WECKERLY: Yeah.

1 THE COURT: -- announced ready because I'm going to try
2 Schwartz's case, but then --

3 MS. WECKERLY: That's the 26th?

4 THE COURT: Uh-huh.

5 MS. WECKERLY: Yeah.

6 THE COURT: But then I had two regular cases announce
7 ready this morning too, so I can't be in three places at one time.

8 MS. WECKERLY: No.

9 THE COURT: So I'm going to see if someone is willing to
10 help me out.

11 MR. BASHOR: I'll let the judge know -- I'll let the judge be
12 aware of your demands.

13 [Pause]

14 THE COURT: Are you all ready? All right. Bring them in,
15 Greg.

16 And your witness is here, correct?

17 MS. WECKERLY: Yes.

18 THE COURT: Okay.

19 THE MARSHAL: All rise for the jury.

20 [Jury in at 10:27 a.m.]

21 THE MARSHAL: All present, Your Honor.

22 THE COURT: Okay. You may all be seated.

23 We are going to go back on the record C313919, State of
24 Nevada v. Vernon Newson, Jr.

25 May the record reflect Mr. Newson is present with his

1 attorneys. Deputy District Attorney is on behalf of the State.

2 Do both parties stipulate to the presence of our jury?

3 MS. WECKERLY: Yes, Your Honor.

4 MR. BASHOR: Yes, Your Honor.

5 THE COURT: Okay. Can you approach briefly?

6 [Sidebar at 10:28 a.m., ending at 10:30 a.m., not transcribed]

7 THE COURT: Okay. Just one second.

8 MS. WECKERLY: Thank you, Your Honor.

9 Before we do, I believe by stipulation the Defense and the
10 State will agree to admit photographs 146 through 149.

11 THE COURT: 146 to 149. Is that correct, Mr. Bashor?

12 MR. BASHOR: Yes, Your Honor.

13 THE COURT: 146 through 149 will be admitted pursuant to
14 stipulation.

15 [State's Exhibits 146 through 149 admitted into evidence]

16 MR. ALBRIGHT: Thank you, Your Honor.

17 State calls Rickey Hawkins, Your Honor.

18 THE COURT: Okay.

19 THE MARSHAL: And, sir, before you have a seat, I'm going
20 to have you remain standing, raise your right hand, and face the clerk
21 please.

22 RICKEY HAWKINS, STATE'S WITNESS, SWORN

23 THE CLERK: Thank you. Will you also please state your full
24 name, spelling your first and last name for the record please?

25 THE WITNESS: Rickey Hawkins, R-I-C-K-E-Y. Last name, H-

1 A-W-K-I-N-S.

2 THE COURT: All right. And, sir, you may remove your mask
3 if it makes you more comfortable during your testimony.

4 THE WITNESS: Thank you, Your Honor.

5 MR. ALBRIGHT: I'll be using the ELMO if we can get access
6 to that as well. Thank you.

7 DIRECT EXAMINATION

8 BY MR. ALBRIGHT:

9 Q Mr. Hawkins, how are you employed, sir?

10 A I'm a police officer for the West Covina Police Department.

11 Q And where is West Covina located?

12 A In Las Angeles County in Southern California.

13 Q Does that cover Claremont, or is that a different city?

14 A That is a different city. At the time, I was employed with
15 Claremont Police Department.

16 Q When you say at the time, when were you employed with
17 Claremont Police Department?

18 A On December 22, 2015.

19 Q And how long were you with the Claremont Police
20 Department?

21 A Approximately six years.

22 Q In what capacity were you employed by that office?

23 A As a police officer.

24 Q You just mentioned a specific date. I want to turn your
25 attention to December 22, 2015. You did just say you were employed as

1 a police officer with Claremont PD.

2 A Yes.

3 Q And were you on duty the evening of December 22, 2015?

4 A Yes.

5 Q As a patrol officer, what are some of your duties?

6 A Respond to emergency situations, 911 calls for service, as
7 well as any other emergency that may arise.

8 Q Do you recall a specific call to which you were called to
9 respond to on that evening?

10 A Yes.

11 Q What was the nature of the call?

12 A The reporting party called and stated that there was a male
13 outside her apartment using her Christmas lights to charge his cell
14 phone. And she gave a description of that -- that subject.

15 Q And you got the address, I assume?

16 A Yes.

17 Q Did you respond to that address?

18 A Yes, sir.

19 Q And when you arrived at the scene, did you find anyone that
20 matched the description of the person you were looking for?

21 A Yes.

22 Q What happens when you arrive?

23 A We arrive. We see the subject that matches the description.
24 And we contact him, and he's stating that he wasn't charging a phone
25 and that his friend lived in the apartment complex.

1 Q Did you identify or ask the person to identify themselves?

2 A Yes.

3 Q And did they identify themselves?

4 A Yes, they did.

5 Q How did they do that?

6 A With a California identification card.

7 Q Do you see in the courtroom today the man with which you
8 came in contact that evening?

9 A Yes, sir.

10 Q Can you point him out and describe to the jury what color
11 clothing he's wearing?

12 A He's to your left wearing a grey jacket and black pants.

13 MR. ALBRIGHT: May the record reflect identification of the
14 Defendant, Your Honor?

15 THE COURT: Record will so reflect.

16 BY MR. ALBRIGHT:

17 Q And you did say that you saw a California driver's license. Is
18 that correct?

19 A Identification card.

20 Q Okay. And was the name on that card a Vernon Newson?

21 A Yes.

22 Q In this kind of situation where you respond to a suspicious
23 person, you locate the person, what do you do next?

24 A Normally, we run a records check to confirm if that is their
25 true identity and see if they have any outside -- outstanding wants or

1 warrants.

2 Q Did you do that in this case?

3 A Yes, sir.

4 Q And what, if anything, was the result?

5 A Dispatch advised us that the subjects had a murder warrant
6 from Las Vegas, Nevada issued that day.

7 Q When you say that day, was it the -- December 22nd, the very
8 day

9 A Yes.

10 Q -- that you found him?

11 A Yes, sir.

12 Q Based on that discovery, what do you do next?

13 A At that point, my partner and I take him into custody for the
14 warrant and gather his property and then transport him to the Claremont
15 Police Department.

16 Q You mentioned your partner. Who was that?

17 A Corporal Tillman.

18 Q And he was with you this entire time?

19 A Yes.

20 Q You also mentioned his property. Were you referring to the
21 Defendant's property?

22 A Yes, sir.

23 Q What, if anything, do you recall him having with him?

24 A He had a duffel bag and layers of clothing.

25 Q And pursuant to his arrest, are his belongings kind of -- do

1 you go through those things?

2 A Yes.

3 Q And how do you document what he is found with?

4 A What he's found with, once you get to the jail, we search him
5 out. Given the nature of the warrant, we document them and book them
6 into evidence.

7 Q Are photos taken of all that stuff?

8 A Yes.

9 Q And what is the process in terms of how that -- how those
10 things are stored?

11 A Once they're stored, I book them into evidence and the
12 evidence technician at a later time will remove it. And then they have
13 custody of it, of the property.

14 Q You mentioned that the warrant was out of Las Vegas.
15 Because of that, do you contact Las Vegas Police Department?

16 A Yes.

17 Q Do they respond to California?

18 A Yes.

19 Q And you come in contact with detectives from Las Vegas?

20 A I personally never made contact with them, but our
21 detectives did.

22 MR. ALBRIGHT: Permission to approach, Your Honor.

23 THE COURT: Yes.

24 BY MR. ALBRIGHT:

25 Q Sir, I'm showing you a couple of photos here.

1 Would you like me to put the specific numbers on the record,
2 Your Honor?

3 THE COURT: Yes, please.

4 MR. ALBRIGHT: I don't know if they're in order at this point.

5 THE COURT: Well, have they been admitted?

6 MR. ALBRIGHT: They have not at this point.

7 THE COURT: Okay. No. Then you don't need to put the
8 numbers on the record while he's reviewing those.

9 BY MR. ALBRIGHT:

10 Q Okay. Can you review these photos for me --

11 A Yes.

12 Q -- officer? Do you recognize those?

13 A Yes.

14 Q How do you recognize those photos?

15 A Photos were taken from December 22nd when we took the
16 Defendant into custody as well as booked his property.

17 Q And do they fairly and accurately depict various pieces of
18 evidence and or things that were going on that evening on December
19 22nd we've been discussing this morning?

20 A Yes.

21 MR. ALBRIGHT: Move to admit, Your Honor.

22 THE COURT: Which ones?

23 MR. ALBRIGHT: The State moves to admit State's 166, 168,
24 173, 179, 180, 164, and 163.

25 THE COURT: Okay. Hold on. Can you say those numbers in

1 order?

2 MR. ALBRIGHT: Yes. 163.

3 THE COURT: Okay.

4 MR. ALBRIGHT: 164.

5 THE COURT: Okay.

6 MR. ALBRIGHT: 166, 168, 173, 179, and 180.

7 THE COURT: Any objection to those, Defense?

8 MR. BASHOR: No, Your Honor.

9 THE COURT: Okay. Those will be admitted without

10 objection.

11 [State's Exhibits 163, 164, 166, 168, 173, 179, and 180 admitted into

12 evidence]

13 MR. ALBRIGHT: Okay. Just a little sleepy?

14 UNIDENTIFIED SPEAKER: No. I think there might be

15 something [indiscernible].

16 MR. ALBRIGHT: Oh, to one of these?

17 UNIDENTIFIED SPEAKER: Yeah. [Indiscernible]

18 MR. ALBRIGHT: Okay.

19 THE COURT: Is it on?

20 MR. ALBRIGHT: All the lights are on.

21 UNIDENTIFIED SPEAKER: I think it's on.

22 MR. ALBRIGHT: Maybe just the tv is on. Is the tv on?

23 THE MARSHAL: Yeah. TVs are on. TV is on. They're on.

24 MR. ALBRIGHT: We could try and see if it's connected to the

25 -- yeah. Okay.

1 UNIDENTIFIED SPEAKER: He's logging back out and logging
2 back in.

3 THE COURT: Okay.

4 MR. ALBRIGHT: If not, I can just hold the photo up for the
5 jury, Your Honor.

6 THE COURT: Yeah. Let's see if you can hold it up.

7 MR. ALBRIGHT: It would be like court in the 1980s. It would
8 be very exciting.

9 THE COURT: You know, we could pretend like it's 1995.

10 UNIDENTIFIED SPEAKER: [Indiscernible]

11 MR. ALBRIGHT: Now it might?

12 THE COURT: Are you logged in? You're logged out of it.
13 Can you log into this screen though? Like do you have to enter your
14 password?

15 [Pause]

16 THE COURT: How do we get over to the computer?

17 THE CLERK: It's already there on the screen.

18 THE COURT: Huh?

19 THE CLERK: It's already there on the screen.

20 MR. BASHOR: Judge, can we approach real quick?

21 THE COURT: Yeah.

22 [Sidebar at 10:43 a.m., ending at 10:43 a.m., not transcribed]

23 THE COURT: All right. Ladies and gentleman, I apologize.
24 We were going to act like it's 1995 and proceed, but we do have some
25 things that we need you to see, so we're going to have to get IT up here

1 to fix this. So we're going to have to be in recess while we do this.

2 During this recess, you must not discuss or communicate
3 with anyone, including fellow jurors, in any way regarding this case or its
4 merits, either by voice, phone, email, text, internet, or other means of
5 communication or social media. You must not read, watch, or listen to
6 any news or media accounts or commentary about the case, do any
7 research such as consulting dictionaries, using the internet, or using
8 reference materials, make any investigation, test the theory of the case,
9 recreate any aspect of the case, or in any other investigate or learn about
10 the case on your own. And you must not form or express any opinion
11 regarding this case until it's submitted to you.

12 Ladies and gentleman, it's 10:49. We'll be in recess until
13 11:00. We're going to try and get this finished in about ten minutes.

14 THE MARSHAL: All rise for the jury.

15 Ladies and gentleman of the jury, please remove
16 [indiscernible]. All rise.

17 [Recess at 10:44 a.m., recommencing at 10:46 a.m.]

18 [Outside the presence of the jury]

19 THE COURT: Testimony is going to be emotional. The
20 closing arguments are going to be emotional in this case. So if anyone
21 thinks that's something that may affect them, we do -- we will have the
22 ability. You can view this online. You don't have to be here because we
23 cannot tolerate any outbursts and I'm not going to tolerate any
24 outbursts. The first person to have an outburst is going to be arrested
25 for disrupting these proceedings. And this Court is not going to tolerate

1 anything other than proper courtroom behavior because that is what we
2 demand and that is what is going to be accepted.

3 If anyone -- it may take a little while to go through the
4 testimony as well as to go through the closing arguments. If you think
5 you need to leave, you're going to have to leave, but you're not going to
6 be allowed to come back because it is very distracting for this jury, the
7 witnesses, and either of the attorneys who are doing their closing
8 argument if people keep walking in and out of the door. So if someone
9 needs to leave, please keep in mind if you leave during the testimony
10 and the rest of the testimony in this trial or if you leave during the
11 closing arguments, you will not be allowed to come back until we take a
12 recess. And you will be allowed to come back in at the conclusion of the
13 recess.

14 Does anyone have any questions regarding this
15 admonishment? Okay. We are going to conduct ourselves like we're in
16 Court. Thank you very much. So we'll be at ease until IT comes.

17 THE MARSHAL: All right, ladies and gentleman. Now for the
18 remainder of the break, you can step out if you need to.

19 THE COURT: Can you test this out and see if it's working?

20 MR. ALBRIGHT: Okay.

21 THE COURT: All right.

22 MR. ALBRIGHT: So there's that. Do you also want to try
23 doing theirs now or are we going to take a break before closings?

24 THE COURT: Oh, we're going to take a break before closing.
25 We haven't settled and finished the jury instructions.

1 MR. ALBRIGHT: So we don't have to -- we don't have to
2 work those out now?

3 THE COURT: Yeah. The jury instructions haven't been
4 numbered and we haven't printed them.

5 MR. ALBRIGHT: Okay.

6 THE COURT: Yeah. We have to take a break.

7 MR. ALBRIGHT: I have a lunch at 12:00 I can't miss, Your
8 Honor.

9 THE COURT: Oh, well, that's too bad. Did you call and tell
10 them you're not going to make it?

11 Yeah. So at this point, IT has fixed this, so we'll be ready to
12 go. If anybody needs to use the restroom or anything, we'll be back on.

13 MR. ALBRIGHT: Okay.

14 [Pause]

15 MR. ALBRIGHT: It's always Murphy's Law when it comes to
16 electronics during trial.

17 THE COURT: We think we're making progress --

18 MR. ALBRIGHT: Honestly.

19 THE COURT: -- and we keep moving backwards. Nightmare.

20 MR. ALBRIGHT: Probably the biggest difference versus
21 watching a tv show and real life.

22 THE COURT: Yeah. Everything works.

23 MR. ALBRIGHT: Yeah.

24 THE COURT: All right. I'm trying to get somebody to cover
25 our trials for next week. I know. That means nothing around here

1 because like covering our trials.

2 MR. ALBRIGHT: So do I push it again or do you give it --

3 THE CLERK: Just leave it. It's on that right now because it's
4 coming before the Court.

5 MR. ALBRIGHT: Okay.

6 THE CLERK: If I need it, I'm [indiscernible].

7 MR. ALBRIGHT: Okay.

8 THE CLERK: If they ask [indiscernible].

9 MR. ALBRIGHT: Okay.

10 [Pause]

11 THE COURT: What about 137?

12 MS. WECKERLY: I have that as admitted.

13 THE COURT: Oh, I didn't write that down. You have 137 as
14 admitted?

15 MR. ALBRIGHT: Yes, I do.

16 THE COURT: So 137 is admitted, okay.

17 So the only thing that's not in is 165 and 167, 69, 70, 71, 72.

18 MS. WECKERLY: Those are just -- yeah. He just did a --

19 THE COURT: Okay.

20 MS. WECKERLY: -- proffer of those in this last little --

21 THE COURT: Okay. What about 181?

22 MS. WECKERLY: I think, yeah. That was in this last group,
23 and I'll be good.

24 THE COURT: Okay. Okay.

25 [Pause]

1 THE COURT: Well, you were giving me the stare down like
2 you had something serious to say.

3 [Pause]

4 THE COURT: Is he out there, Mr. Bashor?

5 MR. BASHOR: He needed fluids, Your Honor.

6 [Pause]

7 THE COURT: Are you ready?

8 THE MARSHAL: Are you ready?

9 THE COURT: Yeah. Come on in.

10 MR. SHAYGAN-FATEMI: That was as fast as I could possibly
11 go.

12 THE COURT: I get it. Mr. Bashor likes to embellish my
13 responses.

14 [Pause]

15 THE MARSHAL: Just another minute or so, Judge. We have
16 one in the restroom.

17 THE COURT: Okay.

18 [Pause]

19 THE MARSHAL: All rise for the jury.

20 [Jury in at 10:58 a.m.]

21 THE MARSHAL: All present, Your Honor.

22 THE COURT: Okay. You may be seated.

23 We are back on the record in C313919, State of Nevada v.

24 Vernon Newson, Jr. May the record reflect Mr. Newson is present with
25 his attorneys. The Deputy District Attorneys on behalf of the State.

1 Do both parties stipulate to the presence of our jurors?

2 MR. ALBRIGHT: We do, Your Honor.

3 MR. BASHOR: Yes, Your Honor.

4 THE COURT: Okay. And, sir, I'll just remind you that you are
5 still under oath.

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: State, you may resume your questioning.

8 MR. ALBRIGHT: Thank you, Your Honor.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. ALBRIGHT:

11 Q Publishing what's now been admitted, State's 163. Officer
12 Hawkins, do you recognize that?

13 A Yes.

14 Q Is there three individuals here on the right side of the photo?

15 A Yes.

16 Q And who are those people?

17 A Myself, Mr. Newson, and Corporal Tillman.

18 Q Who was the second person you said?

19 A Mr. Newson.

20 Q Oh, the Defendant; is that correct?

21 A Yes.

22 Q Okay. And how was this photo taken?

23 A It's taken from the dashcam of one of our police units.

24 Q And this is as he's being escorted away from the house
25 where you found him?

1 A Yes.

2 Q Showing you -- publishing 164. What is that?

3 A That is 580 Bucknell [phonetic], the apartment complex, in
4 the area where we located Mr. Newson.

5 Q Publishing 173.

6 A That is the duffel bag that Mr. Newson had in his possession.

7 Q Showing 168. What is that?

8 A The additional items in property that Mr. Newson had in his
9 possession.

10 Q And these items were within the duffel bag that we just saw?

11 A Yes.

12 Q Showing 179. What are those?

13 A Those are 9 millimeter ammunition rounds that were found
14 in his jacket pocket during booking.

15 Q When you say during booking, was that jacket in the duffel
16 bag or was he wearing it?

17 A He was wearing that jacket.

18 Q I'm showing you State's 180. What is that?

19 A That is a photo of the 9 millimeter ammunition rounds that
20 we found.

21 Q I'm showing you 166. What is that?

22 A So after finding the 17 ammunition rounds in his jacket
23 pocket, given the warrant, we went back to the location with a canine
24 that's trained to sniff out ammunition and gun powder to look for
25 additional ammunition and a firearm. And we located that 9 millimeter

1 round in the area where I saw Mr. Newson.

2 Q And you said it was also a 9 millimeter?

3 A Yes.

4 Q You said to look for firearms. Was a firearm found?

5 A And finally, showing you 182. What is that?

6 A That's a watch that Mr. Newson was wearing at the time that
7 he was arrested.

8 MR. ALBRIGHT: Brief indulgence, Your Honor.

9 Nothing further.

10 THE COURT: Any cross?

11 MR. BASHOR: Yes. Thank you.

12 MR. ALBRIGHT: Do you need this pen?

13 MR. BASHOR: No, thank you.

14 Just briefly, Judge.

15 CROSS-EXAMINATION

16 BY MR. BASHOR:

17 Q Officer Hawkins, when -- after you approached Mr. Newson
18 and asked him to come to your -- in your direction, was he cooperative?

19 A Yes, sir.

20 Q And when you asked him to identify himself, he produced a
21 California issued identification card?

22 A Yes, sir.

23 Q In his name?

24 A Yes, sir.

25 Q Oh, nothing further.

1 THE COURT: Any redirect, State?

2 MR. ALBRIGHT: No, Your Honor.

3 THE COURT: Do the ladies and gentleman of the jury have
4 any questions for this witness?

5 Seeing no response, sir, you are excused. Thank you very
6 much for your testimony here today.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: State, do you have any further witnesses you
9 wish to call?

10 MS. WECKERLY: No, Your Honor. At this point, the State
11 rests.

12 STATE RESTS

13 THE COURT: Okay. Defense, I know you had previously
14 called a witness last week out of order. Do you have any additional
15 witnesses you would like to call?

16 MR. BASHOR: We do, Judge. We would like to call Vernon
17 Newson to the stand.

18 THE COURT: Okay. Mr. Newson, if you could come up to the
19 witness stand. And if you could remain standing and raise your right
20 hand so you can be sworn. Thank you, sir.

21 VERNON NEWSON, JR., DEFENDANT, SWORN

22 THE MARSHAL: Thank you. And would you please state
23 your full name, spelling your first and last name for the record, please?

24 THE WITNESS: Vernon Newson, Jr. Vernon, V-E-R-N-O-N,
25 Newson, N-E-W-S-O-N.

1 THE COURT: And, sir, you can remove your mask if it will
2 make you more comfortable while you're testifying.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Okay. Mr. Bashor, whenever you're ready.

5 MR. BASHOR: Thank you.

6 DIRECT EXAMINATION

7 BY MR. BASHOR:

8 Q Okay, Vernon. I'm going to draw your attention to the day in
9 question, December 13, 2015, okay? Where were you staying at that
10 day?

11 A I was staying at -- in the Siegel Suites on Tropicana.

12 Q Who were you staying with?

13 A Anshanette.

14 Q Anybody else?

15 A Major and Brandon.

16 Q And who is Major?

17 A Major is my son.

18 Q And who is Brandon?

19 A Brandon is Anne's son from a previous relationship.

20 Q So you wake up that day. What do you do?

21 A That day, I maybe woke up around 8:00, 8:30. I went to
22 McDonald's to get breakfast and I had went to Wild Wild West to place a
23 sports bet.

24 Q Okay. Did you do that on your own?

25 A Yes, I did.

1 Q So who was left back at the apartment?

2 A Anne, Brandon, and Major were still asleep.

3 Q Okay. What time does Ann wake up?

4 A She usually wake up later in the day, like, you know, 12:00 or

5 1:00.

6 Q And what time do the kids wake up?

7 A It varies from, you know, the previous day or whatever we

8 were doing.

9 Q Do you remember that day?

10 A Oh, they -- I believe Brandon had woke up like around 9:00

11 when I had got back.

12 Q And Brandon is the older one, right?

13 A Yeah. He was two.

14 Q Two. So after Anne wakes up, what does she do?

15 A Anne wakes up. She ate her breakfast, you know, brushed

16 her teeth.

17 Q Okay. And after that, what did she do?

18 A Around 5:00 she had left to go price matching and Christmas

19 shopping.

20 Q Okay. And did she go with anybody?

21 A Yeah. She had went with her friend, Angela, that lived in the

22 weeklies.

23 Q In the same weekly that you were staying?

24 A Yes.

25 Q Did anybody else go with you?

1 A No.

2 Q I'm sorry. With her.

3 A No. It was just Anne, Angela, and Brandon.

4 Q So Brandon went with them?

5 A Yes.

6 Q Okay. So that would leave who at home?

7 A Me and Major.

8 Q Okay. And so what did you do with Major?

9 A We, you know, I was watching football, and he was next to

10 me.

11 Q Okay. Does Anne return that night?

12 A Yes, she did.

13 Q About what time did she return?

14 A Some -- like around 9:00.

15 Q Okay. Is Angela and Brandon still with her?

16 A Yes.

17 Q So for about three, three and a half hours, it's fair to say it's

18 just you and Major?

19 A Yes.

20 Q Does Angela stick around, or does she leave?

21 A No. When they got back, she left to where she lived.

22 Q Okay. So what was the plan next for the evening, if there

23 was one?

24 A When Anne came back, she said, "We have to pick up Zay

25 [phonetic], that she'd been waiting for a while.

1 Q Okay. Who's Zay?

2 A That's Anne's daughter, her oldest daughter.

3 Q And how old is Zay?

4 A Fourteen, fifteen, something like that.

5 Q And so you -- again, you said you were on Tropicana. Did

6 you give a cross street of where you were?

7 A Valley View.

8 Q Valley View and Tropicana. And where was Zay?

9 A Zay was at a friend's house in North Las Vegas.

10 Q In what area?

11 A I don't know, sir.

12 Q Do you remember a major street nearby?

13 A Oh, Tropical was one of the streets.

14 Q Tropical?

15 A Yeah.

16 Q Okay. So there's a need to pick up Zay. So what happens?

17 A So we -- well, we get in the car. I was driving. Anne got in

18 the passenger's seat. And the kids was in the back in their seats.

19 Q Okay. So let's -- by passenger seat for Anne, you mean the

20 front passenger's seat?

21 A Yes.

22 Q And who's sitting directly behind Anne?

23 A Brandon.

24 Q And who's sitting next to Brandon?

25 A Major.

1 Q Is Major -- first of all, do you remember what kind of vehicle
2 this was?

3 A Yeah. It was a Kia, a rental car.

4 Q And can you describe the back seat? Was it kind of a bench
5 seat or like where all three people can sit or were there like those
6 captain's type chairs?

7 A It was like a bench seat.

8 Q So was Major then in the center of that bench seat?

9 A Yes.

10 Q So directly behind you as you're going to see Zay, nobody is
11 sitting right behind you?

12 A No.

13 Q Were there guns in the car?

14 A Yes.

15 Q To your knowledge, how many guns were in the car?

16 A Two.

17 Q Where were they?

18 A One was in a -- in the console and the other one, I believe,
19 was in Ann's purse.

20 Q Okay. Now we've heard evidence that Anne had a registered
21 gun.

22 A Yes.

23 Q Was the gun in the center console Anne's gun?

24 A No.

25 Q Whose gun was it?

1 A It was mines.

2 Q What caliber was it?

3 A A 9 millimeter.

4 Q So you get into the car, and you drive across town. Do you
5 remember how long that takes you?

6 A Twenty, twenty-five minutes.

7 Q Okay. And can you describe kind of like the weather that
8 day?

9 A It was night time, so I don't know.

10 Q Okay. But it was December?

11 A Yeah.

12 Q All right. When you get to Zay's, or where Zay is staying, I
13 should say, right?

14 A Yeah. Danielle is -- she was at Anne's friend, Danielle's,
15 house.

16 Q So Danielle had been watching Zay that day?

17 A Yeah. She had been there since Friday.

18 Q Okay. And when you pull up, what, if anything, happens?

19 A When we pull up, Anshanette exited the vehicle to go in the
20 house.

21 Q And so then you're in the vehicle with --

22 A Brandon and Major.

23 Q Brandon and Major. Does somebody come out of the house?

24 A Yes. About, you know, a couple minutes later, Zay come out
25 of the house. She opened the back door and kissed Major on the head,

1 and she kissed Brandon, and she say, "Hey, Mac, Hey, Zay." And she
2 asked me to unlatch the trunk.

3 Q Okay. Let's back up a few minutes or a few seconds here.
4 Who's Mac?

5 A That's my nickname.

6 Q So that's what she would call you?

7 A Yeah.

8 Q Okay. And she asked you to --

9 A Unlatch the trunk.

10 Q Unlatch the trunk.

11 A Right.

12 Q Now this was like a crossover or an SUV?

13 A Yeah.

14 Q So it didn't have like your traditional trunk? It was that lifted
15 thing.

16 A Yeah.

17 Q Is that fair to say?

18 A Yes.

19 Q Okay. So you popped -- do you pop the latch?

20 A Yes, I do.

21 Q And then what happens?

22 A Zay went to the back and got her bag out. And then she's
23 like, "All right, Mac," and went back in the house.

24 Q Okay. Then what happens? What happens next?

25 A I step out the car and I smoke a cigarette.

1 Q Okay. And at some point does somebody else come out of
2 the house?

3 A Yeah. About ten minutes later, Anne come out of the house.

4 Q And when she comes out of the house, what happens?

5 A She come out of the house. She knocks on the window for
6 me to roll the window down.

7 Q Hang on. So I'm sorry. The last thing we had you doing --
8 this is my fault -- is we had you smoking a cigarette outside the car. So
9 you got back in the car?

10 A Yeah. I got back in the car.

11 Q Okay. Didn't mean to interrupt you. So then you're back in
12 the car. Ann comes out, knocks on the window, and?

13 A I rolled the window down. "What, Anne?" She say, "Did Zay
14 ask you?" I say, "Did Zay ask me what?"

15 Q Okay.

16 A She asked me did Zay ask me could she spend the night.
17 And I say, "Anne, that's your daughter."

18 Q Okay. There's no screaming or yelling at this point?

19 A No. When I say, "Anne, that's your daughter." She said,
20 "Well, I'm just going to go get her."

21 Q Okay.

22 A And I -- and I stopped her. I say, "Well, Anne, is they going to
23 make sure Zay get to school?" She say, "Yeah. Danielle's daughter goes
24 to Mojave," the same school that Zay had went to.

25 Q Okay. So then what happens?

1 A I say, "Well, it shouldn't be such a problem."

2 Q Okay. Then what does Anne do?

3 A Ann opens the door, she gets her purse out, and then she
4 walks around the car and gets in the back seat.

5 Q Okay. So there's been a changing in seating arrangements?

6 A Yes.

7 Q On the way there, you told the ladies and gentleman of the
8 jury that Anne was in the front passenger's seat.

9 A True.

10 Q Where is she sitting now?

11 A She's sitting in the seat behind me.

12 Q In the -- on that bench seat we talked about?

13 A In the rear.

14 Q Rear driver's side?

15 A Yes.

16 Q What's the plan now?

17 A Well, the plan was to drop off Major and drop off Brandon
18 and, you know, have the night to ourself.

19 Q And that was the plan when you left the house?

20 A Yes.

21 Q Or the apartment. Excuse me. So what do you do? Where
22 do you go?

23 A I started driving down Tropical. I drop down Tropical all the
24 way to Lamb. Then I made a right on Lamb. And as I'm driving under
25 the overpass down Lamb, Anne reaches up and turns the music down.

1 Q Okay. So she -- my understanding then is that she reaches
2 for the stereo kind of with her arm past you.

3 A Like she reached in the middle of the car to turn the music
4 down.

5 Q Okay. And then what happened?

6 A She makes a statement, "You think that fat and that white girl
7 got you stressed out, you ain't seen nothing."

8 Q Okay. And who is she referring to?

9 A The mother of my -- some other child I have.

10 Q Okay. Was that a source of resentment or argument in the
11 past between you two?

12 A Yeah.

13 Q So what do you do?

14 A At that time, I make -- I turn the music back up first and then I
15 make a U-turn.

16 Q And what was the purpose of the U-turn?

17 A I wasn't going to drop the kids off no more. I figured I'd just
18 keep the kids because it seemed like, you know, it was going to be a long
19 night with Ann.

20 Q Okay. So where do you head?

21 A I head back towards the freeway.

22 Q And then --

23 A The 15 freeway.

24 Q Okay. And what happens?

25 A As I'm -- as I'm entering the freeway, Anne just reach up and

1 choked me.

2 Q Did she say anything?

3 A No. She didn't say nothing.

4 Q How did she choke you?

5 A Like a forearm choke with her arm.

6 Q Forearm choke?

7 A Yeah.

8 Q And was it with one arm?

9 A Yeah. I'm not really sure, but I know one arm is around my
10 neck.

11 Q Fair enough. So, what do you do?

12 A My first initial reaction to the choke is I grabbed the choke
13 with both hands and the car like, you know, jerks. I hold her choke with
14 one hand and I grabbed the steering wheel with the other one and eased
15 the car to the side of the road, you know, when I'm braking, you know
16 what I'm saying? As I'm easing the car to the side of the road as I'm
17 holding the choke.

18 Q Okay. Were you able to stop the car?

19 A Yes, I was.

20 Q Were you able to stop the choking?

21 A Yes, I was.

22 Q How did you do that?

23 A When I got the car to the side of the road I was able to pull
24 her arm off with both hands, the choke off with both hands at this point.
25 And as I pulled the choke off with both hands, Anne stated that I was

1 dead.

2 Q And how did you react?

3 A My reaction to that was I reached for the gun in the console.

4 Q Was Ann reaching for anything?

5 A Yes. After I pulled off the choke and she said I was dead, I
6 could hear Anne rumbling in her purse.

7 Q And that's when you reached for the gun in the center
8 console?

9 A Yes.

10 Q What happens when you have possession of the gun?

11 A As I get the gun, I still have my foot on the brake. I get the
12 gun and I turned around to back of the car and raised the gun.

13 Q So, and you're turning for to your left?

14 A Yes.

15 Q Okay. And do you fire?

16 A Well, when I turned around and raise the gun to Anne, she's
17 coming out of her purse. She's coming out of her purse with something,
18 and I closed my eyes and I fired.

19 Q Did you fire more than once?

20 A Yes.

21 Q How -- did you fire slowly, quickly?

22 A Well, I closed my eyes, and I fired the gun and I just
23 continued to fire the gun.

24 Q Okay. And until the gun ran out of bullets?

25 A Yes.

1 Q Now the car, with all the doors closed and at night, the inside
2 of the car, how would you describe the lighting?

3 A It was dark.

4 Q And where exactly was her purse on the floor of the back
5 seat?

6 A It was on the floor of the back seat.

7 Q And so would it be behind the center console? Would it be
8 behind the --

9 A Behind my chair.

10 Q Behind your chair?

11 A Yeah.

12 Q Okay. Are you able to see what object or if she's grabbing an
13 object?

14 A No.

15 Q After you stopped firing, what do you do?

16 A I hit the gas and drove off.

17 Q Now during -- if you remember, during the firing, does the
18 door, Ann's door, open?

19 A It had to. You know, I -- it was like I blacked out.

20 Q Okay. And you said your eyes were closed.

21 A Yeah.

22 Q Did you hear the door close when you sped off?

23 A Yes.

24 Q What do you -- where do you go?

25 A I go to Zaharia house.

1 Q And what do you do at Zaharia's house?

2 A When I get to Zaharia house, I get out of the car, and I go to
3 the back rear door behind the driver's side. I open it and I get Major out.

4 Q How are you feeling? Are you --

5 A Nervous. That's all I kind of was is just I'm nervous. I'm in a
6 rush.

7 Q Okay. And so what do you give to Zaharia?

8 A I give Zaharia Major first and then I go to the trunk and get
9 Major a diaper bag out and hand her Major's diaper bag.

10 Q Okay. Now did you know whether or not Ann used
11 methamphetamine?

12 A No, I did not.

13 Q You had never seen her use it?

14 A No.

15 Q But you did know that Zaharia would carry a gun?

16 A Oh, I knew that Ann carried a gun.

17 MS. WECKERLY: I'm sorry, Counsel. I think you misspoke.
18 You said Zaharia.

19 THE COURT: You said Zaharia.

20 MR. BASHOR: I apologize. Thank you.

21 BY MR. BASHOR:

22 Q Anne?

23 A Yes.

24 Q Thank you. So after you say goodbye to the kids, where do
25 you go?

1 A I head -- I head towards my cousin's house.

2 Q And by head, do you drive?

3 A Yes.

4 Q What do you do with the car?

5 A On my way to my cousin's house, I figured I didn't want to

6 live no more, so on my way to her house, I stopped before I get to her

7 house a couple of streets, and I pull over and I just stop the car.

8 Q And you said that you felt you didn't want to live no more.

9 What do you mean?

10 A I knew this was a bad situation and I didn't want to live no

11 more.

12 Q Well, you're here now, so obviously you didn't.

13 A Yes.

14 Q Okay.

15 A I put the gun to my head, and I couldn't do it.

16 Q All right. So when you leave the car, we heard from, or we

17 were read to Winston Reece's testimony, that's accurate that you leave

18 the car in that area?

19 A Yes, I did.

20 Q Okay. And where do you go from there?

21 A I didn't go to my cousin's house. I just walked down Sahara

22 to Nellis, and I walked from Nellis to Owens and Nellis to a friend house.

23 Q Who?

24 A My friend, C. Hard [phonetic] and Monique.

25 Q C. Harder?

1 A C. Hard.

2 Q C. Hard and Monique?

3 A Yeah.

4 Q Okay. And do you stay the night there?

5 A Yes, I do.

6 Q When -- we've learned that you were apprehended in

7 California. When did you leave Las Vegas?

8 A I left Las Vegas like two days after this incident happened.

9 Q And why did you do that?

10 A I wanted to see my kids --

11 Q Do you have other children?

12 A -- that was in California, yeah.

13 Q Do you take the gun with you out of the car?

14 A Yes.

15 Q Do you take the gun with you to California?

16 A Yes.

17 Q Obviously, we've heard that you were not arrested with a

18 gun.

19 A No, I wasn't.

20 Q So what happened to the gun?

21 A A friends of mines had took the gun from me.

22 Q A friend of yours took it from you?

23 A Yeah.

24 Q Can you describe the circumstances on how that happened?

25 A I was at a room, and I fell asleep and when I woke up, he was

1 gone, and the gun was gone.

2 Q Okay. And do you know who that was?

3 A Yes. It was Little Unknown [phonetic].

4 Q Little Unknown?

5 A Yeah.

6 Q So it's safe to say that some of your associates use
7 nicknames for one another?

8 A Yeah. I don't know their real names. It's just guys that are
9 from the same gang that I was from.

10 Q Okay. And when you were approached by Officer Hawkins
11 you cooperated and identified yourself?

12 A Yes.

13 Q Now we heard that you have some prior felony convictions.

14 A Yes.

15 Q You have a forgery.

16 A Yes, I do.

17 Q And you have two counts of child abuse or neglect. Excuse
18 me. Child abuse, neglect, or endangerment, right?

19 A Yes. I have two child abuse endangerment and an ex-felon
20 with possession of a firearm from this case.

21 Q From this case, okay. Court's indulgence.

22 THE COURT: Okay.

23 MR. BASHOR: We pass the witness, Judge.

24 THE COURT: Okay. Cross?

25 MS. WECKERLY: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MS. WECKERLY:

3 Q So, Mr. Newson, it is true you are a convicted felon, right?

4 A Yes.

5 Q And that one of the convictions is for forgery.

6 A Yes, it is.

7 Q One is for ex-felon in possession of a firearm.

8 A Yes.

9 Q And then you have two felony convictions for child abuse.

10 A Yes, I do.

11 Q Okay. So what is -- how tall is Anshanette?

12 A Probably 5'1", 5'2".

13 Q How tall are you?

14 A Probably 5'8".

15 Q So you're at least a few inches, five, six inches taller than
16 her?

17 A Yes, I am.

18 Q How much did she weigh at the time?

19 A I'm not sure.

20 Q How much did you weigh at the time?

21 A One seventy, one eighty.

22 Q Okay. Fair to say you're a larger person than her?

23 A Yes, I am.

24 Q Okay. Now no one else is responsible for Anshanette's
25 death, right?

1 A Yeah

2 Q It's you.

3 A Yeah. That's true.

4 Q Okay. You were the only other adult in the car.

5 A Yes.

6 Q Okay. Anshanette was sitting behind you.

7 A Yes.

8 Q Okay. And she was sitting behind you when you shot her.

9 A Yes.

10 Q Or you started shooting her. Major was in the middle seat.

11 A Yes.

12 Q And Brandon was on the passenger's side. Is that right?

13 A Yes.

14 Q Okay. How old is Brandon again?

15 A He was two at the time.

16 Q Okay. And no one helped you kill Anshanette, right?

17 A No.

18 Q And there's no doubt you were the one firing the gun.

19 A Yes.

20 Q Every time it was you firing, right?

21 A Yes.

22 Q Okay. You talked about Anshanette waking up later than the

23 children that morning and you said she had her breakfast at around

24 12:00. Is that right?

25 A Yeah.

1 Q And then she goes to a friend's and comes back at 5:00?

2 A No. She never left to her friend house. She left from the
3 weekly apartment we were staying in with the person to go shopping
4 with, Angela.

5 Q Okay. So she leaves with Angela and then comes back at
6 around 5:00?

7 A No. She comes back around 9:00.

8 Q Okay. Anything unusual about her behavior then?

9 A No.

10 Q Anything cause you concern?

11 A No.

12 Q Was she upset about anything?

13 A No.

14 Q Okay. And is that when you and Anshanette make the plan
15 that you're going to drop the kids off at Zaharia's?

16 A When she came back, she stated that we had to pick Zaharia
17 up.

18 Q Okay.

19 A I mean, Zay up.

20 Q Zay.

21 A That she'd been waiting for a while.

22 Q Okay.

23 A And that the plan was to drop Major off to Zaharia and to
24 drop Brandon off to Tide [phonetic] with her mother.

25 Q Okay. So the -- when you guys leave the house the first time

1 or when you leave the house, it's to go pick up her 14 or 15-year old
2 daughter. Is that right?

3 A Yes.

4 Q And she's at a friend's house in North Las Vegas, but you
5 don't recall the exact house or area?

6 A Yeah. I know the area, but I don't know the, you know,
7 streets or whatever.

8 Q Okay. When she walked out to the car or when she went out
9 to the car, did you know she had her gun with her?

10 A When Ann left the -- got out of the car, no. Her purse was
11 still in the car.

12 Q No. When you leave -- I'm sorry. When you leave your
13 residence did you see the gun, her gun?

14 A Oh, everywhere Anne goes, she keep her gun in her purse.

15 Q Okay. So it was always in her purse. Was it just in her purse
16 in a case or was it in her purse --

17 A No. Just in her -- in her purse. Just the gun in her purse.

18 Q Okay. So she didn't have a case for it or anything like that?

19 A No.

20 Q She just dropped the gun in her purse?

21 A Yes.

22 Q And it was always in her purse?

23 A Yes.

24 Q And when she got in the car, you didn't check to make sure
25 she had the gun, right?

1 A No, I didn't.

2 Q What about your gun? Do you always leave the house with a
3 gun?

4 A The gun was in the console from the previous night we had
5 went out. I never took the gun out of the car.

6 Q Okay. So it's your habit to always leave the gun in the center
7 console of the car?

8 A I wouldn't say it was a habit, but it was in the console when
9 we would drive, yes.

10 Q Okay. Anne would have been aware that you had a gun?

11 A Yes.

12 Q And Ann would have known that you would keep a loaded
13 gun in the car?

14 A Yes.

15 Q Okay. And you get to the house and the daughter, Zaharia,
16 or the daughter, Zay, has been there since Friday. Is that right?

17 A Yes.

18 Q And then you said there is some discussion about whether or
19 not she can keep staying at that residence, right?

20 A Yeah. The whole reason for us to go to Diane house was to
21 pick up Zay. It was a big rush. She had been waiting --

22 Q Uh-huh.

23 A -- or whatnot, so yeah.

24 Q Okay. And you said, you know, she comes out, according to
25 you, meaning Anshanette, and has a discussion with you about whether

1 Zay can keep staying at that location, is that right?

2 A Yes.

3 Q And you said, "This if your daughter. You can make the
4 decision?"

5 A Yes. I made the statement -- she asked, "Zay asked if she
6 could stay." I said, "Anne, that's your daughter."

7 Q Okay. And it was your habit to defer to her on parenting
8 decisions?

9 A Well, I didn't understand.

10 Q Would you normally let her parent her kids and you would
11 stay out of it?

12 A No. We'd parent them together.

13 Q Okay. So by suggesting that, what were you doing? Trying
14 to offer her advice on how to deal with her 15 or 14-year old daughter?

15 A No. I just made a statement like, you know, as it's a question
16 that she could have answered.

17 Q Uh-huh. And you were concerned about the daughter going
18 to school?

19 A Yes. Because Zay had missed the bus, I believe, from the
20 weekly to where we stayed in North Las Vegas to get Zay to school.

21 Q Okay. So after this discussion though Anne gets in the car,
22 but this time she's sitting in the back seat with the two babies, is that
23 right?

24 A Yes.

25 Q Was that normal?

1 A No. That's not normal at all.

2 Q Did you ask her about it?

3 A No, but I was kind of like in a rush. I really didn't think
4 nothing of it. I kind of knew she was kind of irritated about the statement
5 I made about Zay being her daughter.

6 Q She had previously been in the front seat though, right?

7 A Yes. That's how we drive.

8 Q Okay. And she for -- had she ever done it before where she
9 sat in the back seat?

10 A No.

11 Q This was the first time ever in the course of your
12 relationship?

13 A Yes.

14 Q And you didn't ask her why.

15 A I didn't think nothing of it at the time.

16 Q And she didn't offer a reason why?

17 A I didn't ask.

18 Q Okay. This is just out of the blue on December 13th?

19 A Yes.

20 Q Okay. And then you did mention though that she made a
21 point of getting -- collecting her purse which had been in the front, right?

22 A Yes. She opened the door and got her purse out.

23 Q Okay. So now she's sitting in the back with the two babies?

24 A Yes.

25 Q And she made some sort of comment about I think someone

1 else that you had a previous relationship with?

2 A Yes. She reached and turned that music down and stated,
3 "You think the white -- the fat and the white girl got you stressed out,
4 you haven't seen nothing."

5 Q Okay. So she's sort of threatening you at that point, right?

6 A I guess.

7 Q Okay. Well, saying that she's going to stress you out.

8 A Yes.

9 Q Okay. You remember you gave a version of these events
10 back in 2018, right?

11 A Yes, I do.

12 Q And that version of events, you'll agree with me, took place
13 in a courtroom?

14 A Yes.

15 Q Okay. And during that hearing when you were discussing
16 this series of events, you left out this threat of hers. Is that fair?

17 A When I -- what you are referring to is that during my
18 sentence --

19 Q Uh-huh.

20 A -- I chose to speak to the family and I gave a short version of
21 what happened --

22 Q Uh-huh.

23 A -- so they could have some type of closure. I didn't go
24 through the whole story that day.

25 Q Okay. But in this shortened version and affording them

1 closure, you neglected to mention that their daughter, sister, mother
2 threatened you, right? Is that right?

3 A Yes.

4 Q Okay. So that wasn't it. That's new today, right?

5 A Yeah. No. This occurred. This happened.

6 Q I get that. I get that that's your testimony, but this is the first
7 time you have mentioned it.

8 A Yes.

9 Q Do you agree with me?

10 A Yes.

11 Q Okay. And then you decide after she says that that it is going
12 to be a long night with Anne, right?

13 A Yes.

14 Q Okay. Was this a regular problem with her?

15 A Arguing back and forth? Yes.

16 Q Okay. And was it really like a long night with Anne meaning,
17 you know, is it really her who is the problem or was there sort of mutual
18 arguing in your relationship?

19 A It's mutual arguing in the relationship.

20 Q Okay. But it's going to be a long night. And what does a
21 long night mean for you two?

22 A I mean, I'd say a long night meaning I see she's picking at
23 me. Any little thing she's going to, you know, find a reason to complain
24 or pick an argument with me.

25 Q Okay. And so she's being unreasonable?

1 A Yes.

2 Q Okay. And is that making you angry?

3 A No.

4 Q You were calm even though she's picking at you?

5 A Yes, I was.

6 Q You were calm even though it was going to be a long night?

7 A Yes. I decided I would keep the kids to keep busy.

8 Q Okay. And then you -- right. You decide you're going to be

9 hanging out with the kids. No one's going to go anywhere that night.

10 A Yes.

11 Q So even though you're anticipating tension between yourself

12 and Anne, the plan is to keep the kids and I'll stay home?

13 A Yes.

14 Q In your mind?

15 A Yes.

16 Q Okay. Then you say that she choked you with her arm, like

17 her forearm, right?

18 A Yes.

19 Q Right or left?

20 A It was the left.

21 Q And so she's reaching kind of through like along the door

22 and going around?

23 A She's reaching over the chair and choking me like this. If I'm

24 driving right here, she's behind me. She reached over the chair and

25 choked me.

1 Q Okay. She's 5'1", right?

2 A Yes.

3 Q Okay. So did she get up out of her seat to do that?

4 A She had to.

5 Q Okay. And the car's moving at that point?

6 A Yes.

7 Q And her kids are right next to her in the car?

8 A Yes.

9 Q But she reaches up and chokes you. Does she say anything?

10 A No. She doesn't say nothing.

11 Q Do you say anything?

12 A No. I couldn't say nothing.

13 Q Okay. Because you are driving or --

14 A I'm being choked.

15 Q Okay. And was it like cutting off your airway or how was it?

16 A Yes, it was cutting off my airway.

17 Q She was able to get that tight a grip on you?

18 A Yes.

19 Q But then she stops choking you? You're able to kind of break

20 free.

21 A Yes.

22 Q Now when you're breaking free, has the car come to a stop

23 yet?

24 A Yes.

25 Q And you're on where? Like the on ramp to the freeway?

1 A The on ramp, yes.

2 Q Okay. So you get free from the choking, the car is stopped,
3 and you're on the on ramp to 15?

4 A Yes.

5 Q And this is near Lamb obviously?

6 A Yes.

7 Q Where our crime took place. Okay. Do you ask her at all,
8 why did you do that?

9 A I didn't get a chance to say anything.

10 Q Okay. Because that's when she says, "You're dead?"

11 A As I pulled the choke off, she said, "You're dead."

12 Q Okay.

13 A And I could hear her going in her purse.

14 Q Okay. And she says, "You're dead." How -- what's her voice
15 like when she says it?

16 A You're dead.

17 Q Just calm like that?

18 A I wouldn't say it was calm. She said like, "You're dead," like
19 she was angry, aggressive.

20 Q Okay. So angry and aggressive. And you don't -- do you
21 look back to see what she's doing?

22 A No.

23 Q You just -- someone says, "You're dead," and you don't look
24 back at her?

25 A No. I didn't look back at that point. I reached for the console.

1 Q Okay. So you hear, "You're dead." You reach to the console
2 because you're deciding you're getting your gun?

3 A Yes.

4 Q Okay. That's where you keep it, right?

5 A Yes.

6 Q And it's there, right?

7 A Yes.

8 Q And all you've heard her say at this point is, "You're dead,"
9 but you can't really see what she's doing?

10 A True.

11 Q True. Okay. And then you -- she doesn't say anything else to
12 you?

13 A No.

14 Q And you don't say anything to her?

15 A No.

16 Q You just start shooting?

17 A Yes.

18 Q Okay. When you're shooting, the way I understood it on
19 direct examination is you closed your eyes.

20 A Yes.

21 Q Okay. You will agree with me that in that prior hearing you
22 never mentioned closing your eyes before, right?

23 A I'm not sure.

24 Q Well, do you want to see a transcript of it?

25 A I mean, if you say I didn't say it, I must have not said it.

1 Q You'll trust my representation that you didn't mention
2 closing your eyes?
3 A Yes.
4 Q Okay. So you're turning back this way, right?
5 A No. I'm turning -- I'm turning towards the left.
6 Q Okay. So towards the doors of the car.
7 A Yeah.
8 Q Fair enough? And you're shooting back -- sorry, Mr. Bashor.
9 You're shooting back at Anne?
10 A Yes.
11 Q And your eyes are shut?
12 A Yes.
13 Q Is that right?
14 A Yeah.
15 Q Were they shut the whole time?
16 A No.
17 Q When were they open?
18 A I guess it's like an out of body experience when I shot. I
19 closed my eyes and I shot, and I just continued to shoot. I'm not sure
20 when my eyes came back open or not, you know. It was --
21 Q So you're not sure if your eyes were opened or were they
22 ever opened?
23 A Yeah. My eyes was open.
24 Q At the beginning when you started shooting?
25 A No.

1 Q When did they open?

2 A I guess while I'm shooting.

3 Q While you were shooting, okay. And like the first shot, the

4 second shot?

5 A I'm not sure. I can't recall.

6 Q You don't recall that? Okay. Then after the shooting you

7 speed off, right?

8 A Yes.

9 Q And you go to Zaharia's house.

10 A Yes.

11 Q When did you guys go to Cane's that night?

12 A I never went to Cane's.

13 Q So Ann must have done that when she was shopping?

14 A Yes.

15 Q Okay. And then you go to Zaharia's and then at that point

16 you're nervous and you're sort of flustered, right?

17 A Yes.

18 Q As of December of 2015, had you ever held a gun before?

19 A No. Well, I mean I have -- yes, I have held a gun.

20 Q Okay. Because it's your gun, right?

21 A Yeah.

22 Q Okay. And you have your gun in the console, right?

23 A Yes.

24 Q So you probably hold a gun every day?

25 A I wouldn't -- yes.

1 Q Okay. Had you ever fired that gun before?

2 A No, I haven't.

3 Q Okay. So this was the first time you'd ever fired that gun?

4 A Yes.

5 Q And it's a 9 millimeter?

6 A Yes.

7 Q When did you acquire that gun?

8 A Ann actually had got the gun for me.

9 Q She got the gun, your gun for you, and then she had that

10 other gun for herself?

11 A You're saying where did I -- I didn't understand the question,

12 I guess.

13 Q So my question is -- and I know it's confusing because we're

14 talking about a couple of guns. The gun that you used to kill her, the gun

15 that was in the console, the gun that you left there from the prior night,

16 where did that gun come from?

17 A Oh, Ann had got this gun.

18 Q When did she get it for you?

19 A This was back in like August.

20 Q Okay. So four or five months before.

21 A Yes.

22 Q Okay. But that was your gun, right?

23 A Yes.

24 Q Okay. And that gun, you probably handle every day, right?

25 A Yes.

1 Q Had you ever fired it before this night?

2 A No.

3 Q Okay. Did you load that gun?

4 A No.

5 Q It was loaded by -- it just happened to be loaded that night?

6 A When Ann gave me the gun, it came -- she gave it to me, it

7 was loaded.

8 Q Okay. And you kept it in that console loaded in the rental

9 car?

10 A Yes.

11 Q How long had you had that rental car?

12 A That one, I think we had it for a week.

13 Q A week. Who put the gun in the console?

14 A Oh, I did.

15 Q You did, okay. And then she has her own gun that you're

16 aware of, right?

17 A Yes.

18 Q Okay. So you knew when you got into the car that day that

19 you had a gun in the console.

20 A Yeah. I assumed it was still in there.

21 Q Okay. And you knew it was loaded?

22 A Yes.

23 Q And you knew how to work that gun?

24 A I pulled the trigger, yes.

25 Q So you knew how to work it?

1 A Yes.

2 Q Okay. And you were in control of that gun the entire
3 encounter, right?

4 A It was in the center console the whole time, yeah.

5 Q But I mean during the interaction with Ann you maintained
6 control of the gun the whole time?

7 A Yes.

8 Q Okay. You never lost control of that gun in some sort of
9 scuffle with her, right?

10 A No.

11 Q Okay. And the gun was with you when you left Zaharia's
12 house, right?

13 A Yes.

14 Q Actually, at that time, you were reloading a magazine, right?

15 A Yes.

16 Q What was that for?

17 A As I stated before, I didn't want to live no more.

18 Q Okay. So that was for -- your plan was you were suicidal?

19 A Yes.

20 Q Okay. When you left the shooting, you drove straight to
21 Zaharia's, right?

22 A Yes.

23 Q That was purposeful, right?

24 A To make sure the kids were all right.

25 Q Okay.

1 A And get them somewhere safe.

2 Q Right. The idea was I'm going to drop these kids off and I'm
3 leaving.

4 A I was making sure the kids was all right and in safe hands,
5 yes.

6 Q Okay. And you knew that she would take care of the kids?

7 A Yes.

8 Q And you said to her, "Tell my son I'll always love him?"

9 A Yes. I kissed him on the head and told her to make sure he
10 know that I always loved him.

11 Q Uh-huh. Because the plan was to leave, right?

12 A The plan was to kill myself.

13 Q It ended up being to leave though eventually, right, at some
14 point?

15 A Yes.

16 Q Okay. You never contacted anyone about your son from
17 December 13th to the 22nd though, right?

18 A No.

19 Q The one that you were always loving?

20 A Yes.

21 Q Okay. And then if your kid had been with you, it would have
22 made it more likely that you would have gotten caught, right? It's harder
23 to move around with a child.

24 A Yes.

25 Q You also ditched the car for that reason, right?

1 A No.

2 Q It'd be more likely you would be arrested if you were in the
3 car that actually -- where the crime took place, fair enough?

4 A Yes.

5 Q So you leave the car not at your house, not at the rental car
6 place, not at Zaharia's, but kind of in a neighborhood where you have no
7 connection?

8 A Actually, I was heading to my cousin's house, and I left the
9 car a street or two away from her house.

10 Q Okay. But I mean the purpose is in dumping the car is to
11 avoid detection?

12 A Yes.

13 Q Okay. And then how do you get to California?

14 A A friend picked me up.

15 Q Okay. So one thing that I didn't hear on direct examination
16 was the conversation you have with Zaharia. And we have had a lot of
17 debate over what was said in this conversation. You say something
18 about being pushed too far. What was the statement?

19 A Yes. When I handed Zaharia Anne's purse, she asked me
20 what was going on and I stated, "Just another mother fucker's pushed
21 me too far where I couldn't take it no more."

22 Q Okay. And I assume the mother fucker is Anshanette.

23 A Yes.

24 Q Okay. So you were a little angry maybe?

25 A Yes.

1 Q Okay. And she had pushed you too far because of the
2 choking?
3 A Yes.
4 Q And because of what?
5 A You're dead.
6 Q The statement. And had she ever said, "You're dead,"
7 before?
8 A No.
9 Q So you believed her on this day?
10 A Yes, I did.
11 Q Okay. Had she ever like physically hurt you before?
12 A Yes.
13 Q And when was the -- I guess the most recent time prior to the
14 13th?
15 A I can't remember the exact day, but she had found out I had
16 another child that she didn't know about, and she climbed on top of me
17 and socked on me.
18 Q Okay. And you're typically the calm one in your interactions?
19 A Yes, I'm usually is.
20 Q I'm sorry.
21 A Yes, I'm usually is.
22 Q Okay. Was there ever mutual fighting between the two of
23 you? Were you ever physical back to her?
24 A Yes.
25 Q Now let's talk about your eyes being closed and open. Your

1 son, Major, was literally right next to Anshanette, right?

2 A Yes.

3 Q In the car. And he was like not even six months old probably
4 at the time, right?

5 A Yes.

6 Q And when you shot at Anshanette, were you concerned at all
7 about hitting Major?

8 A When I shot at Anshanette, I was under the impression that
9 she was pulling a gun out and I closed my eyes and shot. And I was
10 nervous, but --

11 Q Were you concerned about shooting Major?

12 A No.

13 Q Why not?

14 A I didn't think I would shoot him. I --

15 Q Why?

16 A I didn't -- I wasn't thinking at all at this point.

17 Q Okay.

18 A It just happened.

19 Q But you avoided shooting him, right?

20 A Yes.

21 Q Okay. And is that because you opened your eyes at one
22 point or?

23 A I don't know.

24 Q Okay. Because you shoot right into her, and you avoid him.
25 How were you able to do that with your eyes shut?

1 A As I said before, I got the gun out of the console, and I
2 leaned.

3 Q Was the first shot to Anshanette the one to her face?

4 A I don't know.

5 Q That's the one with the stippling, right?

6 A I don't know.

7 Q And stippling means close range. So that means you got
8 that gun within two feet of her face.

9 A I'm not sure.

10 Q Do you recall doing that?

11 A No.

12 Q You don't dispute you did though, right?

13 A No, I don't dispute.

14 Q Okay. So and you close your eyes and yet you're able to get
15 that gun like right in her face and then you pull the trigger, right?

16 A That's not true.

17 Q You didn't pull the trigger?

18 A I pulled the trigger, but the gun --

19 Q And you got it close to her --

20 A -- never was pointed at --

21 MR. BASHOR: Your Honor, can I ask that the State allow Mr.
22 Newson to finish?

23 THE COURT: Yes. Ms. Weckerly, you need to let him finish
24 his answer.

25 MR. BASHOR: Thank you.

1 BY MS. WECKERLY:

2 Q Okay. Well, let's go over that. That shot with the stippling
3 that's within two feet of her, you were able with your eyes shut to
4 position the gun within two feet of her face, right?

5 A Yes.

6 Q And then you pulled the trigger.

7 A Yes.

8 Q I mean, you're the one that fired, right?

9 A Yes.

10 Q She didn't have a gun in her hands at that point, did she?

11 A I don't know what she had in her hand.

12 Q You didn't see?

13 A No, I didn't.

14 Q Okay. But you were able to avoid Major.

15 A Yes.

16 Q And you were able to get the gun really close to her face?

17 A Yes.

18 Q Okay. And then you shot her again though, right?

19 A When I shot the gun, I continued to shoot the gun.

20 Q Uh-huh.

21 A I never stopped.

22 Q Was the second shot the left side of the face?

23 A I don't know where Anshanette got shot. I --

24 Q Well, you know that now. You sat with this trial.

25 A Yeah. But I'm not sure which shot shot where first or

1 nothing.

2 Q Okay. But you know there was one on one side of her face,
3 one on the other?

4 A Afterwards, yes.

5 Q Okay. And you were the one that pulled the trigger, right?

6 A Yes.

7 Q Okay. And you didn't hit Brandon.

8 A No.

9 Q It certainly wasn't an accidental discharge, right?

10 A No.

11 Q She's not choking you at this point, right?

12 A No.

13 Q Is she touching you at all?

14 A No.

15 Q And she doesn't have a gun in her hands, right?

16 A I don't know what she has in her hands.

17 Q Well, we know that now, right?

18 A Yes.

19 Q Okay. You were the only one with a gun.

20 A I guess so, yes.

21 Q I mean, what happened to her gun?

22 A I don't -- I don't know.

23 Q It wasn't in the car, right?

24 A I don't -- I don't know if it was in her purse or not. I could tell
25 afterwards that what she came up with was her phone.

1 Q Right. No. But I mean anywhere, right? The gun is not in
2 the car when the police find it.

3 A Oh, you would have to ask her peoples.

4 Q Okay. So your suggestion now is that her family took her
5 gun.

6 A That's where it'd have to be.

7 Q Okay. You'll agree with me though that the police didn't
8 have it.

9 A Yes.

10 Q And you'll agree with me that she obviously didn't have it in
11 her hands, right --

12 A Yes.

13 Q -- because she was holding that cell phone, right?

14 A Yes.

15 Q She actually had a cell phone in her hand.

16 A Yes.

17 Q So after those first two shots you shot her again, right?

18 A As I said it before, when I shot -- when I pulled the trigger, I
19 continued to pull the trigger.

20 Q Okay.

21 A I never seen where I shot and I just --

22 Q And it didn't hit Major.

23 A It all just happened in a blur quick.

24 Q Right. The shot didn't hit Major either, right?

25 A No.

1 Q It didn't hit Brandon.

2 A No.

3 Q Like we know from the rods in the vehicle these go squarely
4 into her body, right?

5 A Yes.

6 Q And you did that with your eyes closed?

7 A Yes.

8 Q Never opened them once?

9 A Yes. My eyes was opened. Like I stated, when I initially fired
10 my eyes was closed because I was scared. I didn't know what she was
11 coming up with.

12 Q Well, at some point --

13 A My eyes are open though.

14 Q -- your eyes are open, and you know there's no gun.

15 A I don't know there's no gun, but my eyes is open. That's all.

16 Q Your eyes are open, and you can see her hands --

17 A I can.

18 Q -- are holding a cell phone.

19 A No, that's not true.

20 Q At some point she gets out of the car.

21 A Yes.

22 Q And you don't continue to fire in the same location, right?

23 A Yes, I am firing in the same location.

24 Q The same location in the back seat of the car?

25 A Yes.

1 Q Okay. So how does she get shot when she's outside on the
2 roadway?

3 A I don't know that she got shot when she was outside of the
4 car.

5 Q Well, there is a couple of shots to her back, right? You didn't
6 describe her turning around in the car, so she had to have gotten shot
7 when she was outside.

8 A It was impossible for her to get shot outside. I never -- I
9 never got out the car.

10 Q I'm not saying you got out of the car. I'm saying you shot
11 from inside the car to outside.

12 A Oh, when I was shooting, yes.

13 Q Okay. So you're no longer shooting in the back seat where
14 she's at. Now you've moved to where she's located out on the roadway,
15 right?

16 A I shot at the same location the whole time I was shooting.

17 Q So you never aimed at her when she was outside the car?

18 A No. I was shooting the same direction. Well, I'd have to be
19 aimed at her if I'm shooting at her.

20 Q I think on that, we agree. When you're shooting and she's
21 outside the car, it's not an accidental discharge, is it?

22 A No.

23 Q And it's certainly obvious at that point that she's not
24 shooting at you, right?

25 A It all happened so fast.

1 Q And you're not being choked at that point, right?

2 A No.

3 Q I mean, she's left you alone. She's injured, right?

4 A Yes.

5 Q I mean, and you had already -- you knew you had shot her a
6 couple of times, right?

7 A I knew I shot at her. I don't -- I can't say I knew I shot her, or I
8 seen that I shot her. I shot at her.

9 Q Well, what do you think she was getting out of the car for?

10 A I don't know.

11 Q Maybe to get away from being shot at.

12 A Yes.

13 Q Probably. That would be a normal reaction, right?

14 A Yes.

15 Q Okay. But six shots are shot -- you know this, right, because
16 you've sat through the trial. There is six casings found on the roadway,
17 right? It was you who shot those, right?

18 A Yes.

19 Q At the time you leave, you know you have discharged a gun
20 12 times. You might not have known the number, right?

21 A Right.

22 Q But you knew you had done it several times.

23 A Yes.

24 Q And you are abundantly aware that she is injured.

25 A I never knew if she was injured or not.

1 Q You never knew if she was bleeding?

2 A No. Not until I got Zaharia house and opened up the door
3 and seen blood.

4 Q Okay. And then you knew at that point. Let's accept that.
5 You knew you had hit her with the gun, right?

6 A Yes.

7 Q You had shot her.

8 A Yes.

9 Q Do you tell Zaharia, "Send an ambulance over to the on ramp
10 on Lamb?"

11 A No.

12 Q Did you call yourself?

13 A No.

14 Q You knew she was injured though, right?

15 A Yes.

16 Q But you didn't take any steps to possibly save her life.

17 A No.

18 Q Instead, you start formulating a plan of dropping off the kids
19 so you can leave.

20 A Yes.

21 MS. WECKERLY: Thank you, Your Honor. That concludes
22 cross-examination.

23 THE COURT: Redirect?

24 MR. BASHOR: Just briefly.

25 REDIRECT EXAMINATION

1 BY MR. BASHOR:

2 Q Vernon, at that other hearing that we talked about, right,
3 where you made a statement, did I ask you any questions?

4 A No.

5 Q Did Ms. Weckerly ask you any questions?

6 A No.

7 Q You were asked to give a statement.

8 A Yes.

9 Q Were you worried about details?

10 A No.

11 Q Okay. And I think no further questions, Judge.

12 THE COURT: State, any follow up based on that question --
13 those questions?

14 MS. WECKERLY: No, Your Honor. Thank you.

15 THE COURT: Do the ladies and gentleman of the jury have
16 any questions for this witness? Okay. Seeing no response, sir, you're
17 excused. Thank you very much for your testimony here today.

18 Does the Defense have any further witnesses?

19 MR. BASHOR: Let me just confer really quickly with Mr.
20 Newson, please.

21 THE COURT: Okay. I'll give you a couple of minutes.

22 [Pause]

23 MR. BASHOR: Judge, the Defense rests.

24 DEFENDANT RESTS

25 THE COURT: Okay. The Defense is going to rest.

Okay. Ladies and gentleman of the jury, we are going to take our lunch recess at this time so we can be ready to proceed with closing arguments after the lunch recess.

During this recess, you must not discuss or communicate with anyone, including fellow jurors in any way regarding this case or its merits either by voice, phone, email, text, internet, or other means of communication or social media. You must not read, watch, or listen to any news or media accounts or commentary about this case, do any research such as consulting dictionaries, using the internet, or using reference materials.

You must not make any investigation, test the theory of this case, recreate any aspect of the case, or in any other way investigate or learn about the case on your own. And you must not form or express any opinion regarding this case until it's finally submitted to you.

Ladies and gentleman, it is 11:58. We will be in recess until 1:15.

THE MARSHAL: All rise for the jury. Ladies and gentleman of the jury, step down when ready.

[Jury out at 11:53 a.m.]

[Outside the presence of the jury]

THE MARSHAL: And the remaining [indiscernible], please.

[Pause]

THE COURT: Okay. May the record reflect we are outside the presence of our jury.

All right. We need to go over the jury instructions before you

1 guys go to lunch so we can get them printed for everyone. All right. Do
2 you guys have your packets?

3 And, State, you submitted that packet including the self-
4 defense instructions. Does the Defense request those instructions?

5 MR. BASHOR: No.

6 THE COURT: Okay. All right. So in regards to where we left
7 off, I removed the Carter instruction because it's no longer necessary, so
8 we can start numbering them if you guys want.

9 We will start with number one as it is now my duty.

10 MS. WECKERLY: Your Honor, before you start, can you just
11 canvas Mr. Newson that he doesn't want self-defense instructions?

12 THE COURT: Okay.

13 MR. BASHOR: I don't have like a huge objection to that. I
14 just don't know that it's appropriate to, as it is defense strategy, but I
15 guess I'll leave it to Your Honor.

16 THE COURT: I mean, I'm just going to canvas him regarding
17 it. I understand the defense strategy either way and that's a decision that
18 has to be made by the three of you. It's not a decision I can make.

19 Mr. Newson, you understand that you guys are making a --
20 your attorneys are saying you guys are making a defense strategy. You
21 don't want me to advise this jury on self-defense. You guys are making
22 a defense strategy not to do that and to make a different argument in
23 closing. Do you understand that?

24 MR. BASHOR: May I have a question with him?

25 THE COURT: Do you guys want a couple of minutes to talk

1 about it?

2 MR. BASHOR: Yeah.

3 THE COURT: Okay.

4 [Pause]

5 MR. BASHOR: Okay. Go ahead. I'm sorry, Your Honor.

6 THE COURT: No problem.

7 MR. BASHOR: He's prepared to answer your question.

8 THE COURT: Okay. So you guys had an opportunity to
9 confer with your lawyers?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. So is it your desire, the desire of the
12 defense team, you guys do not want this jury instructed on self-defense.
13 You guys are choosing to go with a different defense strategy?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And you understand that that's the defense
16 strategy and you consent to that?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. All right. So, in light of that, let's
19 number the jury instruction.

20 Okay. So 1 is it is now my duty, 2, if in these instructions.
21 On number 3, I changed the first line to say a fourth amended
22 information because that's what we're operating off of, and I also
23 changed line 4 to say that as well.

24 MS. WECKERLY: That's fine.

25 THE COURT: Okay. So number 3 is a fourth amended

1 information. Number 4 is murder is. Number 5, malice of forethought.
2 Number 6 is express malice. Number 7, murder of the first degree.
3 Number 8, willfulness. Number 9 is deliberation. Number 10 is
4 premeditation. Number 11, the law does not. Number 12, when it is
5 possible. Number 13, all murder. Number 14, manslaughter. Number
6 15, voluntary manslaughter. Number 16, the heat of passion. Number
7 17, with regard to voluntary manslaughter. Number 18, the seriousness
8 and highly provoking. Number 19, you are instructed. Number 20, you
9 are instructed. Number 21 is deadly weapon. 22, the State is not
10 required. 23, the flight of a person. 24, in arriving at a verdict. 25,
11 during the course of this trial. 26, to counts to the crime charged. 27, the
12 Defendant is presumed. 28, the evidence which you are to consider. 29
13 is the credibility or believability. 30, statements of a person. 31,
14 witnesses who have special knowledge. 32, although you are to
15 consider. 33, when you retire. 34, if during your deliberation. That's a
16 playback instruction. And I changed the playback just to say so that the
17 court recorder can arrange her notes instead of the his and her. And I
18 know you guys never know when you type these, so I just changed it to
19 her notes.

20 MS. WECKERLY: That's fine.

21 THE COURT: 35 is now you will listen. And on the verdict
22 form, I added Count 1 just so it looks more uniform in front of murder
23 with use of a deadly weapon. I mean, murder using, yeah.

24 MS. WECKERLY: Okay.

25 THE COURT: So it says Count 1, murder with use of a deadly

1 weapon, and then lists the seven options.

2 MS. WECKERLY: Okay. Thank you.

3 THE COURT: Okay. So, in regards to that, let's just make a
4 record of it. Okay. So is the State familiar with the Court's proposed jury
5 instructions 1 through 35?

6 MS. WECKERLY: Yes, Your Honor.

7 THE COURT: Does the State object to the giving of any of
8 these instructions?

9 MS. WECKERLY: No, Your Honor.

10 THE COURT: Does the State have any additional instructions
11 to propose?

12 MS. WECKERLY: No, Your Honor.

13 THE COURT: Is the Defendant familiar with the Court's
14 proposed jury instructions 1 through 35?

15 MR. BASHOR: Yes, Your Honor.

16 THE COURT: Does the Defense object to the giving of any of
17 these instructions?

18 MR. BASHOR: No, Your Honor.

19 THE COURT: Does the Defense have any additional
20 instructions to propose?

21 MR. BASHOR: No, Your Honor.

22 THE COURT: Do the State or the Defense object to the
23 proposed verdict form?

24 MS. WECKERLY: The State does not.

25 MR. BASHOR: The Defense does not.

1 THE COURT: Okay. Then I will copy these and print them for
2 you guys. And because we're going to do it over the lunch hour, we'll
3 have everyone's printed by the time we come back. So when we get
4 back we'll be prepared for me to read these, and you guys will be
5 prepared to give your closing argument?

6 MS. WECKERLY: Yes.

7 MR. BASHOR: Yes, Your Honor.

8 MS. WECKERLY: Can we stay just to make sure we've got
9 this working for --

10 THE COURT: Oh, yeah. Sure. Yeah.

11 MR. BASHOR: The computer stand?

12 MS. WECKERLY: Yeah. I just want to make sure.

13 THE COURT: Oh, yeah. No problem. Yeah.

14 MS. WECKERLY: Thank you.

15 THE COURT: So I'll just print these for you guys and then
16 we'll have them.

17 All right. So we'll be in recess until 1:15.

18 [Recess taken from 12:01 p.m. to 1:11 p.m.]

19 THE MARSHAL: All rise for the jury.

20 [Jury in at 1:12 p.m.]

21 THE MARSHAL: All present, Your Honor.

22 THE COURT: Okay. You may be seated.

23 We are back on the record in C-313919 State of Nevada v.

24 Vernon Newton, Jr. May the record reflect Mr. Newson's present with

25 his attorneys. Deputy District attorneys on behalf of the State. Do both

1 parties stipulate to the presence of our jury?

2 MRS. WECKLERY: Yes, Your Honor.

3 MR. BASHOR: Yes, Your Honor.

4 THE COURT: Okay. Ladies and gentleman of the jury we
5 have now reached the section of the trial where I'm going to read you
6 the instructions on the law that apply to this case. You should have
7 received a packet of jury instructions on your chair. I'm required to read
8 this packet to you verbatim, so you guys feel free to follow along but
9 with the packet I'm reading to you should be verbatim with the packet
10 that you have, and you will be allowed to have your packet with you
11 when you guys go back to deliberate this case.

12 Instructions to the jury. Instruction number one. Members
13 of the jury, it is now my duty as judge to instruct you in the law that
14 applies to this case. It is your duty as jurors to follow these instructions
15 and to apply the rules of law to the facts as you find them from the
16 evidence. You must not be concerned with the wisdom of any rule of
17 law stated in these instructions, regardless of any opinion you may have
18 as to what the law out to be, it would be a violation of your oath to base
19 the verdict upon any other view of the law then that given in the
20 instructions of the court.

21 Instruction number two. If in these instructions any rule,
22 direction or idea is repeated or stated in different ways, no emphasis
23 thereon is intended by me, and none may be inferred by you. For that
24 reason you're not to single out any certain sentence or any individual
25 point or instruction and ignore the others, but you are to consider all the

1 instructions as a whole and regard each in the light of all the others. The
2 order in which the instructions are given has no significant as to their
3 relative importance.

4 Instruction number three. A fourth amended information is
5 but a formal method of accusing a person of a crime and is not of itself
6 any evidence of his guilt. In this case it is charged in the fourth
7 amendment information that on or about the 13th day as December,
8 2015 within the County of Clark State of Nevada contrary to the form
9 force and effective statues and such cases made and provided and
10 against the peace and dignity of the State of Nevada, the Defendant
11 committed the crime of murder with use of a deadly weapon by willfully
12 unlawfully [indiscernible] scene with malice aforethought killing
13 Anshanette McNeil, a human being, with the use of a deadly weapon to
14 wit, a firearm by the Defendant shooting at and into the body of the said
15 Anshanette McNeil. That the said killing having been willful, deliberate
16 and premeditated.

17 It is the jury of the duty of the jury to apply the rules of law
18 contained in these instructions to the facts of the case and determine
19 whether or not the Defendant is guilty of the crime charged.

20 Instruction number four. Murder is the unlawful killing of a
21 human being with malice aforethought either expressed or implied. The
22 unlawful killing may be affected by any of the various means by which
23 death may be occasioned.

24 Instruction number five. Malice aforethought means the
25 intentional doing of a wrongful act without legal cause or excuse or what

1 the law considers adequate provocation. The condition of [indiscernible]
2 described as malice aforethought may arise from anger, hatred, revenge
3 or from particular ill will, spite or grudge toward the person killed. It
4 may also arise from any unjustifiable or unlawful motive or purpose to
5 injure another. Preceding from a heart fatally bent on mischief or with
6 reckless disregard of consciousness and social duty.

7 Malice aforethought does not imply deliberation or the lapse
8 of any considerable time between the malicious intention to injure
9 another and the actual execution of the intent but denotes an unlawful
10 person and design as opposed to accident and mischance.

11 Instruction number six. Express malice is that deliberate
12 intention unlawfully to take away the life of a human being which is
13 manifested by external circumstances capable of proof. Malice may be
14 implied when no considerable provocation appears or when all the
15 circumstance of the killing show an abandoned and malignant heart.

16 Instruction number seven. Murder of the first degree is
17 murder which is perpetuated by means of any kind of willful, deliberated
18 and premeditated killing. All three elements willfulness, deliberation and
19 premeditation must be proven beyond a reasonable doubt before an
20 accused can be convicted of first-degree murder.

21 Instruction number eight. Willfulness is the intent to kill.
22 There need be no appreciable space of time between formation of the
23 intent to kill and the act of the killing.

24 Instruction number nine. Deliberation is the process of
25 determining upon a course of action to kill as a result of thought

1 including weighing the reasons for it against the action and considering
2 the consciousness of the actions. A deliberate determination may be
3 arrived at in a short period of time, but in all cases determination must
4 not be formed in passion or if formed in passion it must be carried out
5 after there has been time for the passion to subside and deliberation to
6 occur. A mere unconsidered and rash impulse is not deliberate even
7 though it includes the intent to kill.

8 Instruction number 10. Premeditation is a design and
9 determination to kill distinctively formed in the mind at the time of
10 killing. Premeditation need not be for a day, an hour or even a minute. It
11 may be as instantaneous as successive thoughts of the mind. For if the
12 jury believe from the evidence that the act constituted in the killing has
13 been proceeded by and has been the result of premeditation no matter
14 how rapidly the act follows the premeditation, it is premeditated.

15 Instruction number 11. The law does not undertake to
16 measure in units of time the length of period during which the thought
17 must be pondered before it can ripen into an intent to kill which is truly
18 deliberate and premeditated. The time will vary with different
19 individuals and other varying circumstances. The true test is not the
20 deration of time but rather the extent of the reflection. A cold calculated
21 judgement and decision may be arrived at in a short period of time but a
22 mere unconsidered and rash impulse even though it includes an intent to
23 kill is not deliberation and premeditation as will fix an unlawful killing as
24 murder of the first degree.

25 Instruction number 12. When it is impossible to commit a

1 particular crime without committing at the same time and by the same
2 conduct another offense of a lesser greater degree the ladder is with
3 respect to the former a lesser included offense. If you are not satisfied
4 beyond a reasonable doubt that the Defendant is guilty of the offense
5 charged he may however be found guilty of a lesser included offense if
6 the evidence is sufficient to establish his guilt of such lesser offense
7 beyond a reasonable doubt.

8 The offense of murder which actually charges the Defendant
9 with first degree murder necessarily includes the lesser offense of
10 second-degree murder. Voluntary manslaughter is a lesser included
11 offense of both first and second-degree murder. Thus you may only
12 return a verdict of voluntary manslaughter if you first rule out both first
13 and second-degree murder.

14 Instruction number 13. All murder which is not murder of
15 the first degree is murder of the second degree. Murder of the second
16 degree is murder with malice aforethought but without admixture of
17 premeditation and deliberation.

18 Instruction number 14. Man slaughter is the unlawful killing
19 of a human being without expressed malice or implied and without any
20 mixture of deliberations.

21 Instruction number 15. Voluntary manslaughter is the
22 unlawful killing of a human being without malice aforethought and
23 without deliberation or premeditation. It is a killing that upon a sudden
24 quarrel or heat of passion caused by a provocation sufficient to make the
25 passion irresistible. The provocation required for voluntary

1 manslaughter must either consist of a series and highly provoking injury
2 inflicted upon the person killing sufficient to excite an irresistible passion
3 in reasonable person or an intent by the person killed to commit a
4 serious personal injury on the person killing.

5 For the sudden violent impulse of passion to be irresistible
6 resulting in a killing, which is voluntary manslaughter, there must not
7 have been an interval between the assault or provocation in the killing
8 sufficient for the voice of reason and humanity to be heard. For if there
9 should appear to have been sufficient time for a cool head to prevail and
10 the voice of reason to be heard the killing shall be attributed to deliberate
11 revenge and determined by you to be murder.

12 The law assigns no fixed period of time for such an interval
13 but leaves its determination to the jury under the facts and
14 circumstances of the case.

15 Instruction number 16. The heat of passion which will
16 reduce murder to voluntary manslaughter must be such an irresistible
17 passion as naturally would be aroused in the mind of an ordinarily
18 reasonable person in the same circumstances. A defendant is not
19 permitted to set up his own standard of conduct and to justify or excuse
20 himself because his passions were aroused unless the circumstances in
21 which he was placed and the facts that confronted him were such as also
22 would have aroused the irresistible passion of the ordinary reasonable
23 man if likewise situated. The basic inquiry is whether or not at the time
24 of the killing the reason of the accused was obscured or disturbed by
25 passion to such an extent as would cause the ordinarily reasonable

1 person of average disposition to act rationally and without deliberation
2 and reflection and from such passion rather than from judgement.

3 Instruction number 17. With regard to voluntary
4 manslaughter. Whether the interval between the provocation and the
5 killing is sufficient for the passions of a reasonable person to cool is not
6 measured exclusively by any precise time. What constitutes a sufficient
7 cooling off period also depends upon the magnitude of the provocation
8 and the degree to which passions are aroused.

9 Instruction number 18. The serious and highly provoking
10 injury which causes the sudden heat of passion for purposes of
11 voluntary manslaughter can occur without direct physical contact.

12 Instruction number 19. You are instructed that if you find the
13 State has established that the Defendant has committed first degree
14 murder you shall select first degree murder as your verdict. The crime of
15 first-degree murder includes the crime of second-degree murder and
16 voluntary manslaughter. You may find the Defendant guilty of second-
17 degree murder if you have not found beyond a reasonable doubt that the
18 Defendant is guilty of first-degree murder and all 12 of you are convinced
19 beyond a reasonable doubt the Defendant is guilty of the crime of
20 second-degree murder.

21 You may find the Defendant guilty of voluntary manslaughter
22 if you have not found beyond a reasonable doubt that the Defendant is
23 guilty of first-degree murder or murder of the second degree and all 12
24 of you are convinced beyond a reasonable doubt the Defendant is guilty
25 of the crime of voluntary manslaughter.

1 If you are convinced beyond a reasonable doubt the
2 Defendant is guilty of the crime of voluntary manslaughter -- oh I'm
3 sorry. And if all 12 of you are convinced beyond a reasonable doubt
4 that the Defendant is guilty of the crime of voluntary manslaughter. If
5 you are convinced beyond a reasonable doubt that the crime of murder
6 has been committed by the Defendant, but you have a reasonable doubt
7 whether such murder was first or of the second degree you must give
8 the Defendant the benefit of that doubt and return a verdict of murder of
9 the second degree. If you have a reasonable doubt as to whether the
10 crime of second-degree murder or voluntary manslaughter you must
11 give the Defendant the benefit of that doubt and return a verdict of
12 voluntary manslaughter.

13 Instruction number 20. You are instructed that if you find the
14 Defendant guilty of first or second-degree murder or voluntary
15 manslaughter you must also determine whether or not a deadly weapon
16 was used in the commission of the crime. If you find beyond a
17 reasonable doubt that a deadly weapon was used in the commission of
18 such an offense you shall return the appropriate verdict reflecting with
19 use of a deadly weapon. If however you find that a deadly weapon was
20 not used in the commission of such an offense, but you find that it was
21 committed, you shall return the appropriate guilty verdict reflecting that
22 a deadly weapon was not used.

23 Instruction number 21. Deadly weapon means any
24 instrument which if used in the ordinary manner contemplated by its
25 design and construction will or is likely to cause substantial bodily harm

1 or death or any weapon, device, instrument, material or substance which
2 under the circumstances in which it is used, attempted to be used or
3 threatened to be used is readily capable of causing substantial bodily
4 harm or death. A firearm is a deadly weapon.

5 Instruction number 22. The State is not required to have
6 recovered the deadly weapon used in an alleged crime or to produce a
7 deadly weapon in court at trial to establish that a deadly weapon was
8 used in the commission of the crime.

9 Instruction number 23. The flight of a person after the
10 commission of a crime is not sufficient in itself to establish guilt however
11 flight is proved it is circumstantial evidence to determine guilt or
12 innocence. The essence of flight embodies the idea of deliberately going
13 away with consciousness of guilt and for the purpose of avoiding
14 apprehension and prosecution. The weight to which circumstances
15 entitled is a matter for the jury to determine.

16 Instruction number 24. In arriving at a verdict in this case as
17 to whether the Defendant is guilty or not guilty, the subject of penalty or
18 punishment is not to be discussed or considered by you and should in
19 no way influence your verdict.

20 Instruction number 25. During the course of this trial and
21 your deliberations you are not to -- sorry. Communicate with anyone in
22 any way regarding this case or its merits either by phone, text, internet
23 or other means. Read, watch or listen to any news or media accounts or
24 commentary about the case. Do any research such as consulting
25 dictionaries, using the internet or using reference materials. Make any

1 investigation, test a theory of the case, recreating the aspect of the case
2 or in any other way investigate or learn about the case on your own.

3 Instruction number 26. To constitute the crime charged there
4 must exist a union or joint operation of an act forbidden by law and an
5 intent to do the act. The intent with which an act is done is shown by the
6 facts and circumstances surrounding the case. Do not confuse intent
7 with motive. Motive is what prompts the person to act. Intent refers
8 only to the state of mind with which an act is done.

9 Motive is not an element of the crime charged and the State
10 is not required to prove a motive on the part of the Defendant in order to
11 convict. However you may consider evidence of motive or lack of motive
12 as a circumstance in this case.

13 Instruction number 27. The Defendant is presumed innocent
14 unless the contrary is proven beyond a reasonable doubt. This
15 presumption places upon the State the burden of proving beyond a
16 reasonable doubt every element of the crime charged and that the
17 Defendant is the person who committed the offense. A reasonable
18 doubt is one based on reason. It is not mere possible doubt but is such a
19 doubt as would govern or control person in the more weighty affairs of
20 life. If the minds of the jurors after the entire comparison and
21 consideration of all of the evidence are in such a condition that they say
22 they feel in an abiding conviction of truth of a charge there's not a
23 reasonable doubt. Doubt to be reasonable must be actual, not near
24 possibility is speculation. If you have a reasonable doubt as to the guilt
25 of the Defendant he is entitled to a verdict of not guilty.

1 Instruction number 28. The evidence which you are to
2 consider in this case consists of the testimony of the witnesses, the
3 exhibits and any facts admitted to or agreed to by counsel. There are
4 two types of evidence direct and circumstantial. Direct evidence is the
5 testimony of a person who claims that personal knowledge of the
6 commission of the crime which has been charged such as an eyewitness.
7 Circumstantial evidence is the proof of the chain of facts and
8 circumstances which tend to show whether the Defendant is guilty or not
9 guilty.

10 The law makes no distinction between the weight to be given
11 to either direct or circumstantial evidence. Therefore all the evidence in
12 the case including the circumstantial evidence should be considered by
13 you in arriving at your verdict. Statements, arguments and opinions of
14 counsel are not evidence in this case, however if the attorney's stipulate
15 to the existence of a fact you must accept the stipulation as evidence and
16 regard the fact as proved.

17 You must not speculate to be true any insinuations
18 suggested by question asked the witness. A question is not evidence
19 and may considered only as it supplies meaning to the answer. You
20 must disregard any evidence in which an objection was sustained by the
21 Court and any evidence ordered stricken by the Court. Anything you
22 may have seen or heard outside the courtroom is not evidence and must
23 also be disregarded.

24 Instruction number 29. The creditability or believability of a
25 witness should be determined by his manner up on the stand, his

1 relationship to the parties, his fears, motives, interests or feelings, his
2 opportunity to have observed the matter to which he testified, the
3 reasonableness of his statements and the strength or weakness of his
4 prior recollections. If you believe that a witness had lied about any
5 material fact in the case you may disregard the entire testimony of that
6 witness or any portion of the testimony which is not proved by other
7 evidence.

8 Instruction number 30. Statements of a person who's been
9 convicted of a felony have come into evidence. The fact that a person
10 has been convicted of a felony if such be a fact may be considered by
11 you only for the purpose of determining the creditability of that person.
12 The fact of such a conviction does not necessarily destroy or impair the
13 person's creditability. It is one of the circumstances that you may take
14 into consideration and weigh in the statements of such a person.

15 Instruction number 31. Witnesses who have special
16 knowledge, skill, expertise, training or education in a particular subject
17 must have testified to certain opinions. This type of witness is referred
18 to as an expert witness. In determining what weight to give any opinion
19 expressed by an expert witness you should consider the qualifications
20 and believability of the witness, the fact or materials upon which the
21 opinion is based and the reasons for each opinion. An opinion is only as
22 good as the facts and reasons for which it's based. If you had -- if you
23 find that any fact has not been proven or has been disproved you may
24 consider that in determining the value of the opinion. Likewise you must
25 consider the strength and weakness of the reasons on which it is based.

1 You are not bound by an opinion, give each opinion the weight you do
2 find it deserves. You may disregard any opinion if you find it to be
3 unreasonable

4 Instruction number 32. Although you are to consider all the
5 evidence in the case in reaching a verdict you must bring to
6 consideration of the evidence your everyday common sense and
7 judgement as reasonable men and women. That you're not limited
8 solely to what you see and hear as the witnesses testify. You may draw
9 reasonable inferences from the evidence which you feel are justified in
10 the light of common experience. Keep it in mind that such inferences
11 should not be based speculation or guess. A verdict may never be
12 influenced by sympathy, prejudice or public opinion. Your decision
13 should be the product of sincere judgement and sound discretion in
14 accordance with these rules of law.

15 Instruction number 32 -- 33. When you retire to consider
16 your verdict you must select one of your number to act as a foreperson
17 who will preside over your deliberation and will be your spokesperson
18 here in court. During your deliberation you will have all the exhibits that
19 were admitted into evidence, these written instructions and form of
20 verdict which have been prepared for your convenience.

21 Your verdict must be unanimous. As soon as you've agreed
22 upon a verdict have it signed and dated by your foreperson and then
23 return with it to this room.

24 Instruction number 34. If during your deliberation you
25 should desire to be further informed on any point of law or hear again

1 portions of the testimony you must reduce your request to writing
2 signed by the foreperson. The officer will then return you to court where
3 the information sought will be given to you in the presence of and after
4 notice to the district attorney and the Defendant and his counsel.
5 Playbacks of testimony are time consuming and are not encouraged
6 unless you deem it a necessity. Should you require a playback you must
7 carefully describe the testimony to be read back so that the court
8 recorder can arrange her notes. Remember the Court is not at liberty to
9 supplement the evidence.

10 Instruction number 35. Now you will listen to the arguments
11 of counsel who will endeavor aid you to reach your proper verdict by
12 refreshing in your minds the evidence and by showing the application of
13 thereof to the law. But whatever counsel may say you will bear in mind
14 that it is your duty to be governing your deliberation by the evidence as
15 you understand it and remember it to be and by the law as given to you
16 in these instructions with the sole fix and steadfast purpose of doing
17 equal and exact justice between the Defendant and the State of Nevada.

18 State are you prepared to give your closing argument?

19 MRS. WECKLERY: Yes, Your Honor. Thank you.

20 THE COURT: And ladies and gentlemen the State will -- gets
21 to open and close the closing arguments because they have the burden
22 of proof.

23 STATE'S CLOSING ARGUMENT

24 MRS. WECKLERY: Good afternoon. On a cold windy
25 December night back in 2015 Anshanette McNeil was left to bleed out on

1 a roadway. You heard from a young lady by the name of Janei Hall
2 Bailey, a stranger to Anshanette McNeil, about what she saw that
3 evening. She was driving with her husband to dinner, she was caught
4 off guard by the sound she heard, and she had her husband turn around
5 and she solemnly observed the last breaths of Anshanette McNeil.

6 This young lady also saw some of the ballistic evidence on
7 the road, she observed a stranger had injuries that were consistent with
8 gunshot wounds, and she waited there for the police to come for hours
9 in order to give information about what she had seen.

10 And you also heard the testimony from the paramedic
11 August Corrales, and he explained how they arrived, and their number
12 one priority is to get to those injuries. They cut away the clothing in
13 order to get to Anshanette's body to give her the best chance of survival,
14 the slimmest hope. And they work on her furiously and as their working
15 to save her life the Defendant is working to save his own.

16 At this point in the case there are two questions that I don't
17 think there's going to be a lot of dispute about amongst the State and the
18 Defense. The first is obviously who is responsible for the crime. We
19 know now Vernon Newson is the person who killed Anshanette McNeil.
20 The second issue I think is probably not going to be in dispute and that is
21 that a deadly weapon was used in the course of this crime.

22 Now you heard from firearms expert, and you've heard
23 about casing, and jacketing, and bullet fragments and you also heard
24 from Dr. Gavin about the injuries suffered by Anshanette McNeil and
25 there is no doubt that a firearm or a deadly weapon was used in order to

1 kill her. You also probably noticed and observed that we don't know
2 where that gun is, the gun's gone. But what your instructions tell you in
3 your packet is that the State need not produce that gun or deadly
4 weapon in order for you to make that finding in your jury verdict. The
5 instruction reads, the State is not required to have recovered the deadly
6 weapon used in an alleged crime or to produce a deadly weapon in court
7 at trial to establish that deadly weapon was used in the commission of
8 this crime. It is quite obvious at this point that a deadly weapon was
9 used in order to kill Anshanette McNeil on behalf of Vernon Newson.

10 So what you're left with as jurors is to make a decision
11 amongst three forms of murder. The least serious, the least severe form
12 of murder is a crime known as voluntary manslaughter. In your packet
13 one of the instructions that you'll have, or that you have, defines
14 voluntary manslaughter as follows; manslaughter is the unlawful killing
15 of a human being without malice expressed or applied and without any
16 mixture of deliberation.

17 Now malice is a word that's really important, right, because if
18 malice is present that means you're in the category of murder. If malice
19 is not present you're in the category where you can consider voluntary
20 manslaughter. So what is malice? Malice is defined in your instructions
21 as well and what malice is, is essentially the intentional doing of a
22 wrongful act. When you're intentionally doing a wrongful act you are
23 acting with malice. The instruction's really long, and you will have it --
24 you will have you packet back there to consult. I'm going to highlight a
25 few pieces of it, but you are free to read the whole thing and consult

1 your packet in your deliberations. But it essentially describes where
2 malice comes from, and where malice comes from, it's sort of like the
3 third line down is malice can arise from anger, hatred, revenge or ill will.
4 And if you're acting on those types of feelings, if you're intentionally
5 acting, if you're intentionally doing a wrongful act, if there's some
6 intention about what you're doing, you are acting with malice and that's
7 puts you in the category of murder.

8 Now we know that there was one gunshot wound inflicted on
9 Anshanette McNeil that caused stippling. Clothing could block stippling,
10 but we do have one that we know from the firearms expert and Dr. Gavin
11 that would be in close range, within two feet, and it was a shot to her
12 face. So what you are to consider as jurors in this case is if you are
13 shooting someone in the face is that an act of malice, is that an
14 intentional doing of a wrongful act, is there intentionality behind that
15 type of action, shooting someone in the face.

16 Shooting someone in the face alone is an aggressive act,
17 shooting someone at close range in the face is a malicious act, there is
18 intentionality behind it. You don't end up accidentally or rationally or with
19 -- or on a sudden emotion shooting someone in the face. And what do
20 we know about this bullet, right? This is bullet A, gunshot wound A, and
21 this one was probably in the car because if he didn't get out of the car he
22 had to inflict this close range shot to her face while they were in the car.
23 But this injury doesn't exit, right? So this is one of the shots in the car
24 and you know from other testimony from the crime scene analyst that
25 there were three other shots in that car because there were those rods

1 that went through the backseat. This couldn't have been one of those
2 because this one doesn't exit; it doesn't go through her.

3 So even if you give Vernon Newson the benefit of the doubt
4 on that first shot or likely first shot, that was somehow rationally done,
5 you'd have to give him the benefit of the doubt three more times of
6 shooting at Anshanette McNeil in a confined space at close range and
7 that is simply not a sudden impulse, that is an act done with
8 intentionality.

9 You heard him testify to you this afternoon, or I guess it was
10 more this morning, and you heard him describe the interaction that he
11 and Anshanette had in the moments leading up to her death. And what
12 you are to determine from his testimony and all the other evidence in
13 this case is whether he was acting based on feelings of anger, hatred,
14 revenge or ill will with intentionality when he was killing and shooting at
15 Anshanette McNeil.

16 Now we heard in the opening statements of defense counsel
17 that there was a lot of emotion in -- between the two, that these two had
18 a fiery relationship, that they were -- that he -- it was full of passion. And
19 what the instructions tell you is that the fact there's emotion behind a
20 killing, the fact that there is anger, the fact that there's ill will doesn't tell
21 you immediately what category of murder you're in. You have to look
22 for these elements of malice and then I'll speak to some other elements
23 later in my closing argument. But the fact that there's emotion alone in a
24 murder, I'm sure is not lost on you, isn't really that unusual. Murders
25 don't generally occur amongst people who are getting along. So

1 emotion doesn't change it. The fact that someone is angry doesn't
2 change it. You have to analyze their actions to see what -- if what they
3 did fits in the category of a rash impulse or an intentional act and that's
4 up to you to decide as jurors.

5 Couple other things I'd like to point out with -- about the
6 crime of voluntary manslaughter. Again this is an instruction in your
7 packet. Voluntary manslaughter is the unlawful killing of a human being
8 without malice aforethought, which we've been over. It is the killing
9 upon a sudden quarrel or heat of passion caused by a provocation
10 sufficient to make that passion irresistible. So what you have to ask
11 yourselves is in that car, even by own his own explanation if you were to
12 believe that, was what she did enough to provoke a shooting that took
13 place.

14 You could maybe give him the first shot, right? Maybe.
15 Maybe her saying you're dead in a flat voice with no weapon seen,
16 maybe that would justify the first shot. But you know that there were 11
17 shots fired after that, 11. There were 6 casings found in that car and 6
18 found out on the roadway. Now the casings moved around car because
19 the car, you know, isn't in pristine condition when they find it two weeks
20 later. So you can't really read a lot where the casings landed in the car,
21 but you know that the casings meant that the gun was fired. So maybe
22 you can give him the benefit of the doubt on the first shot but the 11
23 others that follow showed this wasn't a sudden act, he had to pull that
24 trigger 12 times.

25 Now another aspect of voluntary manslaughter is that

1 whether -- or when you consider whether or not there's passion or a
2 sudden impulse you have to consider whether or not whatever that thing
3 was, the provocation, would be enough to provoke an ordinary person
4 into shooting. You don't get to setup your own standard of behavior,
5 you know, that I'm particular sensitive to, you know, whatever
6 Anshanette said, she hurt my feelings when she was talking about the
7 other women that I have a child with, or whatever. It is a reasonable
8 person standard.

9 And the instruction explains the heat of passion which will
10 reduce a murder to voluntary manslaughter must be an irresistible
11 passion as naturally would be aroused in the mind of an ordinary
12 reasonable person. And all that's saying is you don't get to set up your
13 own standard of conduct, it is assessed according to reasonableness. Is
14 his reaction to what happened, even by his own explanation reasonable?
15 If it is not he is no longer in the category of voluntary manslaughter.

16 In his explanation to you this afternoon, or I guess this
17 morning is more accurate, he explained that Anshanette choked me, and
18 she threatened me. But listening to his testimony all of that was done
19 before he fires the shots. She wasn't even touching him, even according
20 to him, at the time he fires the shots. And even if you gave him some
21 credit that he all of a sudden was afraid because she out of the blue said
22 allegedly, "you're dead" he sees nothing in her hands, there's no
23 indication that there's any danger. And even if you give him credit for
24 that, but like hey look this was a tense situation, maybe there were
25 problems in their relationship and he would believe that she would take

1 some sort of action against him that would only explain one shot, right?
2 I mean she's shot in the face; she's not talking, threatening, holding a
3 gun or doing anything to him for all the shots that follow. Is that an
4 ordinary reasonable person's reaction to even what he described?

5 The last thing I'd like to highlight for you about voluntary
6 manslaughter is that it has to be sudden. There must not have been an
7 interval between the assault or provocation and the killing sufficient for
8 the voice of reason and humanity to be heard. But we know in the case
9 that there's almost like two steps to this crime, right? Because there's a
10 bunch of shooting in the car and then the shooting when she gets out of
11 the car. And in that time there is an interval of time in order for him to
12 come to his senses, realize that he's not under any kind of threat or
13 danger anymore and essentially stop killing her.

14 We know that after a gunshot wound A at some point in this
15 interaction between the two there was another gunshot wound to her
16 face. When he shot her this time it would have been clear there's
17 nothing in her hands, she's not talking to him because she's already
18 been shot and she's not doing anything provoking or threatening. Then
19 we know the gunshot wound B that exits, we know that there's gunshot
20 wound C, we know there's gunshot wound D and E and F for that matter.

21 It's not just a single injury, these injuries were inflicted over
22 an interval of time during which the voice reason and humanity could
23 have been heard. You cannot shoot someone this many times as a
24 sudden and rash impulse. When you shoot someone this many times
25 there's intentionality behind it, it is not a case of manslaughter.

1 We're now dealing with murder and murder is defined in
2 Nevada as the unlawful killing of a human being with malice
3 aforethought and you have the malice instruction from earlier in our
4 discussion. In Nevada there are two forms of murder, there's first
5 degree murder and there's second degree murder. The thing that
6 distinguishes the two forms of murder are three elements.

7 For a first-degree murder, the murder must be willful, it must
8 be deliberate, and it must be premeditated. And that's what this
9 instruction says. Murder of the first degree is murder which is
10 perpetrated by any -- by means of any kind of willful, deliberate and
11 premediated killing. So those three elements have to be present in order
12 for you to find first degree murder.

13 So let's talk about those elements and what they mean, and
14 you may have had like some conception of what first degree murder is
15 prior to coming in and sitting as jurors and states define it differently. In
16 Nevada this is -- the law that you have, as Judge Jones instructed you,
17 that is how first-degree murder is defined in Nevada. So the first
18 element is willfulness and it's kind of a simple one and it's sort of
19 obvious. Willfulness is the intent to kill, there need be no appreciable
20 space of time between the formation of the intent to kill and the act of
21 killing.

22 So all it is, is when I'm shooting am I intending to kill the
23 person. Well, we know where Anshanette was sitting as she was shot at
24 initially, right? She's sitting in the back seat, she's 5'1 and she is getting
25 shot, I would say you could say at least four times because the one to the

1 face doesn't exit and if he doesn't get out of the car there's no way to get
2 that close to her. But we know from these rods that she is shot in this
3 confined space then at least four times before she's able to get herself up
4 out of the car.

5 So if you're sitting in a car and you're pointing a gun at
6 someone who's probably less than three feet away, and you're firing a
7 gun at them close range one time, two times, three times, four times, is
8 your intent to kill or is it just merely to injure? And look at where those
9 shots are into the seat, it's like the center of her body and we know from
10 her injuries where she was injured. That shows an intent to kill.

11 The second element that has to present in order for there to
12 be a first-degree murder is deliberation. Deliberation is the process of
13 determining upon a course of action to kill as a result of thought,
14 including weighing the reasons for and against the action and
15 considering the consequences of the action.

16 Now first-degree murders occur all the time. Very few
17 people are, you know, charting it out, showing the pluses and minuses,
18 making tables, graphing it out what might occur in the event of a murder
19 or if they don't commit a murder. Deliberation doesn't require all those
20 charts, it's simply a determination to kill, a decision has to be made. It's
21 a course of action to engage in the killing itself.

22 Now we talked about I guess a little bit in opening
23 statements about how this crime occurred and I think defense counsel
24 mentioned to you in opening statements that this is a regrettable
25 decision or a decision that, you know, was really a bad decision, it was

1 sort of a bad plan to murder Anshanette on the roadway there.
2 Deliberation does not require it to be a good decision, it doesn't require
3 it to be a decision that, you know, benefits your life. When you think of
4 murder, murder's always a bad decision. So the instruction doesn't have
5 that sort of requirement to it. All it is, is a course of action to kill.

6 And in this case when you think about how this crime played
7 out we really have two crime scenes, right? Like there's the car is sort of
8 one scene and then there's the scene out on the roadway. And I ask you
9 to consider those scenes when you're making an assessment about
10 deliberation in this case.

11 In terms of the car, as we discussed with the rods and the
12 gunshot wound to her face, there are probably I think at a minimum four
13 shots at her in the car. And maybe those were inflicted quickly but when
14 you pull a trigger four times you're thinking about what you're doing,
15 you're deciding to kill someone. And we know that when Anshanette
16 was in that car she was bleeding on the seat, she bled through part of
17 the seatbelt, she bled onto baby Major's blanket and clothing. All of that
18 took place obviously before she got out of the car. And we know that
19 she eventually got herself out of the car and what happened after that?

20 Well, the Defendant he continued shooting at her. He shot
21 six more times, probably more, but there are six casings on the outside
22 of the -- around the roadway there. At what point did he make a
23 determination to kill? He had a plenty of time to decide to kill her rather
24 than just leave her.

25 We also know that once he was done shooting he sped off,

1 you heard that from Anshanette -- or sorry from Janei, that he sped off.
2 So he had the presence of mind to understand that it was important to
3 get out of there quickly because if he stayed on the roadway he would
4 have been caught more quickly, police would have come but he leaves.
5 And when he gets to Zaharia's house he actually went to a place that
6 made sense, right? I mean he's not so cloudy and disheveled and not
7 sure about what he's doing. He goes to the place where he knows he
8 can drop off those kids and get himself out of State.

9 And he does that, yes. And as Zaharia described, he was
10 frantic, and he was in a hurried mannered and of course the reason for
11 that is he just committed a murder and he needs to get out of town. And
12 he also had the presence of mind to be reloading a weapon literally as
13 he's standing there after having shot Anshanette. His reaction after that
14 is not I'm distraught, it's not I'm falling to pieces, it's I'm reloading my
15 gun and I'm getting out of town.

16 One other thing I'd ask you to consider in the course of
17 deliberation is we all know at this point that she got out the car, that
18 Anshanette had the strength to get herself out. And what do you think
19 would have happened had she gotten herself out and not been shot
20 again, she might have survived, right? And what would that have meant
21 for Vernon Newson? If she had gotten out, she had her phone, if she had
22 gotten out and was able to get help and wasn't shot at anymore, that
23 would have been bad for him. But he made sure that didn't happen,
24 right? Because he shot her once she was out the car.

25 So the last element of first-degree murder is premeditation.

1 And what premeditation is, is a design, a determination to kill distinctly
2 formed in the mind by the time of the killing. And the next line is,
3 premeditation need not be for a day, an hour or even a minute.

4 So what that instruction tells you is that if I think about killing
5 someone and I make the decision to do it and I do it a year from now,
6 that is premeditation. If I make the decision to kill someone and I do it a
7 month later, that is premeditation. If I decide to kill someone and I do it a
8 day later, that is premeditation. If I do it an hour later, that is
9 premeditation. Or if I even do it a second later, that is premeditation. It
10 is simply a decision to kill before the act of killing.

11 And what do we know about this case? When you shoot
12 someone in the face, have you made a decision to kill? If you shoot
13 someone a second time having shot them in the face, have you made a
14 decision to kill? If you shoot someone a third time, have you made a
15 decision to kill them? If shoot them a fourth time, have you made a
16 decision to kill them? How about a fifth time, have you made a decision
17 to kill them at that point? Or a sixth time? There were 12 cartridge
18 cases. He fired that gun 12 times, not all of them hit her but each time he
19 had made the decision to kill.

20 Now in this case you are left with no questions about who
21 was responsible and your job right now as jurors at the conclusion of
22 closing arguments will be to make a determination about what crime is
23 committed. It is not about how anyone feels about this crime now. It is
24 literally an assessment of the crime that was committed.

25 Anshanette McNeil was a victim of first-degree murder with

1 use of a deadly weapon. Anything under that is a compromise. In your
2 jury instructions it is your duty to give equal and exact justice and justice
3 in this case is first-degree murder.

4 THE COURT: Defense are you prepared to give your closing
5 argument?

6 MR. BASHOR: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. BASHOR: Thank you, Judge.

9 THE COURT: Okay. Whenever you're ready.

10 DEFENDANT'S CLOSING ARGUMENT

11 MR. BASHOR: Good afternoon. In preparing for closing
12 argument in this case in the last few weeks I've been reading a book
13 about John Adams and his successful defense of Captain Preston in the
14 Boston massacre case. He closed -- and part of his closing argument
15 was facts are stubborn things and whatever may be our wishes, our
16 inclination of the dictates of our passion they cannot alter the state of
17 facts in evidence.

18 And as applied to this case I would submit to you what that
19 means is, it's perfectly natural for every single person in this room to feel
20 sympathy, passion and remorse. Our condolences for Ms. McNeil.
21 She's not with us anymore. We know that and Mr. Newson, Vernon, he's
22 admitted to that as being the reason for that. And as upsetting as that
23 might be to the normal human being that a killing has occurred, you
24 folks took an oath to apply the law to the facts of this case without
25 relying on sympathy, passion, et cetera.

1 A verdict may never be influenced by sympathy, prejudice or
2 public opinion. Your decision should be the product of sincere
3 judgement and sound discretion according with the rules of law. Facts
4 are stubborn things. There are good facts, there are bad facts and there
5 are facts. All of them exist in this case. And we are confident that when
6 you apply the law to the facts in this particular case the appropriate --
7 and we submit to you, the appropriate verdict would be a voluntary
8 manslaughter. But it doesn't matter that I tell you or submit to you that
9 it's a voluntary manslaughter just as it doesn't matter that Ms. Weckerly
10 tells you it's a murder in the first degree. What matters is your decision.

11 Now the instructions, the State read you some, I'm going to
12 read you some, I'm not a betting man but I'm pretty sure Mr. Albright
13 might read one or two. It's not meant to patronize you, it's not meant to
14 -- that we think that your incapable of comprehending them, it's just that
15 as you've probably guessed since the very beginning they're extremely
16 important in a case like this because murder and manslaughter aren't
17 easily defined.

18 When's the last time that you used the word admixture in
19 your normal daily life? These are complicated instructions. They've
20 been provided to you in writing and you're going to be able to take them
21 back there with you, but I don't want you to think that we're up here
22 enjoying lecturing and rereading them. I think it's fair to say that both
23 sides place their own emphasis on certain instructions for a reason.

24 As you can tell the defense didn't ask a lot of questions. The
25 defense didn't ask questions of several witnesses, why? Because the

1 facts are fairly undisputed. What is very much in dispute is what kind of
2 crime occurred that day. So I submit to you that these really important,
3 they're the rules, your guide, your recipe. You've made an oath to follow
4 along, we ask that you embrace the law and follow those instructions.

5 And why are those instructions so important? Or excuse me,
6 before we get to that. Also I'm going to quote excerpts of the
7 instruction, I'm not hiding the ball, I'm not saying this one part of an
8 instruction is important and disregard the others, no. You have to read
9 the instructions in their entirety, you have to consider them in their
10 completion. Don't read into the fact that I don't have the entire sentence
11 up there as I'm trying hide something from you.

12 Guess what, I know you have the instructions in your hands,
13 the entire instruction. And that we ask that you read them and utilize
14 them. As you probably or may or may not remember during voir dire I
15 was asking those perspective jurors you had prior jury service whether
16 or not they found these instructions helpful or having them assisting
17 them coming up with a decision. And I believe every single one with
18 prior jury service indicated, yeah, they were helpful.

19 So whether -- what's the evidence here, right? Is it just the
20 pictures? No. It's the testimony, all the exhibits and whatever we've
21 agreed to. But guess what also -- is also evidence? What Vernon had to
22 say, when Vernon took the oath just like the other witnesses and got on
23 the stand. Now it's up to you folk to determine, not just for Vernon, but
24 for all the witnesses in this case, their creditability and believability
25 about what happened.

1 Now this is why I submit to you these instructions are so
2 critically important is because under the law not all killings are the same.
3 You were told that by the Judge over and over again during jury
4 selection and I think that the review of these jury instructions has shown
5 you folks that yes. There are three choices for you here. And we trust
6 that you will use these instructions and determine where you believe the
7 culpability resides in one of those three choices. Vernon took
8 responsibly for killing Anshanette, it's up to you folks to determine what
9 that responsibility is for.

10 First degree murder requires willfulness, deliberation and
11 premeditation. It's not one of the above it's all of the above. If you
12 believe the State has proven willfulness and proven premeditation but
13 not deliberation, you cannot find Vernon guilty of first-degree murder.
14 All three must exist.

15 We heard that willfulness is an intent to kill, probably the
16 easiest definition of anything you have in that packet. It's right there,
17 right? An intent to kill. Now things get muggy by legalese and that sort
18 of thing and so we got to dive in, right? We've got to figure out well,
19 what's this next element.

20 Well, the next element for first degree murder is deliberation.
21 Weighing the reasons for and against the action and considering the
22 consequences of the actions. I submit to you, and this is not just what
23 Vernon said, in the amount of time that this occurred he did not have the
24 time to consider the consequences of his actions until it was over. And
25 look, his reaction afterwards, long afterwards after leaving the kids with

1 Zaharia and stuff like that. Yeah. Now he's considering the
2 consequences of his actions as he's getting out of dodge, right? But
3 that's not when the deliberation occurs, not afterwards, not half an hour
4 afterwards, it's during the act. So when was there time to consider these
5 consequences?

6 Ms. Hall testified, not Vernon, Ms. Hall testified that there
7 was rapid succession of firing without pause. The State wants to slow
8 things down. They want to make that moment kind of that movie Matrix,
9 where the guy's doing this sort of thing, right? That's not what
10 happened in reality. In reality things happened quickly, things happened
11 extremely rapidly. As described by Ms. Hall, she hears the firing, she
12 hears the car speeding off in seconds. That's her testimony. An
13 independent lay witness, not Vernon.

14 The facts in evidence support that Vernon didn't weigh the
15 consequences of his actions, he didn't deliberate, he didn't have time, he
16 reacted. Reflection, that sort of thing afterwards, yeah, absolutely. But
17 at the time in the moment when you're rapid firing.

18 So under the circumstances what makes more sense? We
19 don't leave that at the door, we don't check our common sense at the
20 door but was going or happen in it that car was a killing upon the sudden
21 quarrel of heat of passion. Vernon had been attacked and threatened.
22 And again the State wants you to slow down that the choke and then
23 there's this pause before the threat and then there's a pause before the
24 reaching for the purse. Yes. Those things happened in order, but they
25 happened very quickly. This isn't instant replay, an NFL game or

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VERNON NEWSON JR.,) No. 83335
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 Appellant,)
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 v.)
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 THE STATE OF NEVADA,)
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 Respondent.)
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