

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 83796

DONTE JOHNSON,
Petitioner,

Electronically Filed
May 27 2022 06:04 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

STATE OF NEVADA, *et al.*,
Respondent.

Appeal From Clark County District Court
Eighth Judicial District, Clark County
The Honorable Jacqueline M. Bluth, District Judge
(Dist. Ct. No. A-19-789336-W)

APPELLANT'S APPENDIX

Volume 30 of 50

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198. Voluntary Statement of Jeff Bates (handwritten)_Redacted (Aug. 14, 1998)	02/13/2019	46	11508–11510
199. Voluntary Statement of Jeff Bates_Redacted (Aug. 14, 1998)	02/13/2019	46	11511–11517
200. Presentence Investigation Report, State’s Exhibit 236, <i>State v. Young</i> , District Court, Clark County, Nevada Case No. C153461_Redacted (Sep. 15, 1999)	02/13/2019	46	11518–11531
201. Presentence Investigation Report, State’s Exhibit 184, <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. C153624_Redacted (Sep. 18, 1998)	02/13/2019	46	11532–11540
202. School Record of Sikia Smith, Defendant’s Exhibit J, <i>State v. Smith</i> , District Court, Clark County, Nevada (Case No. C153624)	02/13/2019	46	11541–11542
203. School Record of Sikia Smith, Defendant’s Exhibit K, <i>State v. Smith</i> , District Court, Clark County, Nevada (Case No. C153624)	02/13/2019	46	11543–11544

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204. School Record of Sikia Smith, Defendant's Exhibit L, <i>State v. Smith</i> , District Court, Clark County, Nevada (Case No. C153624)	02/13/2019	46	11545–11546
205. Competency Evaluation of Terrell Young by Greg Harder, Psy.D., Court's Exhibit 2, <i>State v. Young</i> , District Court, Clark County, Nevada Case No. C153461 (May 3, 2006)	02/13/2019	46	11547–11550
206. Competency Evaluation of Terrell Young by C. Philip Colosimo, Ph.D., Court's Exhibit 3, <i>State v. Young</i> , District Court, Clark County, Nevada Case No. C153461 (May 3, 2006)	02/13/2019	46	11551–11555
207. Motion and Notice of Motion in Limine to Preclude Evidence of Other Guns Weapons and Ammunition Not Used in the Crime, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Oct. 19, 1999)	02/13/2019	46	11556–11570
208. Declaration of Cassondrus Ragsdale (Dec. 19, 2018)	02/13/2019	46	11571–11575
209. Post –Evidentiary Hearing Supplemental Points and Authorities, Exhibit A: Affidavit of Theresa Knight, <i>State v. Johnson</i> ,	02/13/2019	46	11576–11577

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210. Post –Evidentiary Hearing Supplemental Points and Authorities, Exhibit B: Affidavit of Wilfredo Mercado, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154, June 22, 2005	02/13/2019	46	11578–11579
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212. Motion in Limine Regarding Referring to Victims as “Boys”, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154	02/13/2019	46	11582–11585
213. Declaration of Schaumetta Minor, (Dec. 18, 2018)	02/13/2019	46	11586–11589
214. Declaration of Alzora Jackson (Feb. 11, 2019)	02/13/2019	46	11590–11593
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217. Letter from Charla Severs, dated Sep. 27, 1998	12/13/2019	49	12112–12113
218. Decision and Order, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed Apr. 18, 2000	12/13/2019	49	12114–12120
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¹ This transcript was not filed with the District Court nor is it under seal.

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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2022, I electronically filed the foregoing Appendix with the Nevada Supreme Court by using the appellate electronic filing system. The following participants in the case will be served by the electronic filing system:

Alexander G. Chen
Chief Deputy District Attorney
Clark County District Attorney's Office

/s/ Celina Moore

Celina Moore
An employee of the Federal
Public Defender's Office

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- A. No.
- TT. Any of... of his friends?
- A. Oh, uh, him and Ace.
- TT. Him and Ace?
- A. Yes.
- TT. What's Ace's last name?
- A. Uh, I don't know his last name.
- TT. Do you know Todd's last name?
- A. No, I don't.
- TT. Do you know where Todd lives?
- A. He lives, uh, at that address. Where... where, uh, Donte was found.
- TT. When Donte was arrested?
- A. Yeah, when he was arrested, that's his house.
- TT. Okay. And, uh, did Todd ever drive with you to the house, did you say?
- A. No.
- TT. He didn't. When you drove by the house the first time you came back, then you went the second time.
- A. Mm-hmm (affirmative).
- TT. To actually go do it.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- A. Mm-hmm (affirmative).
- TT. How much time went by?
- A. Maybe about... I'd say about ten... ten minutes.
- TT. Okay. And how come you didn't just go do it the first time? How come you came back and then went back again?
- A. 'Cause they said they had to go get the guns.
- TT. They had to go back and get the guns?
- A. Yeah.
- TT. So they were just checkin' it out, make sure somebody's home?
- A. Yeah.
- TT. How many people did Todd tell them would be at the house, that he would expect to be there?
- A. Uh, I think he told... I think two or three. Two or three.
- TT. Two or three people?
- A. Yeah.
- TT. Okay. When you went back that second time, where did the car park? When the guy with the garden hose was grabbed.
- A. Uh, ri... in... in the driveway.
- TT. In the driveway?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- A. Yeah.
- TT. Okay. And did the car get left there or did it get moved?
- A. It got left there.
- TT. Okay. The people that were inside that... the four people that were eventually shot, were they white, black, Oriental? How would you describe them?
- A. They were white.
- TT. Was everybody white?
- A. Yeah.
- TT. Okay. Did any of the four people get mouthy, get disrespectful,--
- A. No.
- TT. --say anything?
- A. No. Not... Not that I'm aware of.
- TT. Not that you're aware of.
- A. Yeah.
- TT. Okay. And were you around the people the whole time or you were in other rooms searching at different times.
- A. I was, like, back and forth.
- TT. Back and forth?
- A. Yeah.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

TT. As you were searching, and as the other... Donte and... was Red searching also?

A. No, he was in there. He was seated in there.

TT. You're pointing to the--

A. To--

TT. --main living room?

A. Yeah, to the main living room.

TT. What was he seated in there for?

A. He... just make sure they... I guess they don't go anywhere or--

TT. Okay.

A. --anything.

TT. So it was mostly you and Donte doin' all the searchin' for the money and the drugs?

A. Yeah.

TT. Did you have any idea where you were supposed to look?

A. No.

TT. Just anyplace.

A. Yeah.

TT. Did you take anything down when you looked or were you very neat? Were you clean about lookin'?

A. No, we were... took... we... we weren't neat.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

TT. So you took things down.

A. Yeah.

TT. Okay. You opened drawers and cabinets and things?

A. Yeah.

TT. Were you guys wearing anything on your hands?

A. No.

TT. No gloves or anything?

A. No.

TT. When the people were taped up, who was taping them up and who was coverin' them with the gun?

A. Red.

TT. Red was...?

A. Red was tapin' 'em up and Donte was coverin' 'em with the gun.

TT. Okay. What kind of gun was Donte usin' when he was coverin'?

A. I think he had a small black gun. I... I don't know what kind a gun it was, but it was small and black.

TT. Do you know what caliber it was?

A. Mmm, no, I don't.

TT. Do you re—

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

A. I think... I think it was three eighty, but--

TT. Okay.

A. --I'm no sure.

TT. And what kind a gun did Red have?

A. He had a .22 rifle.

TT. Okay. So, when the guys were taped, Donte's coverin', Red's tapin'?

A. Yeah.

TT. How exactly were their hands taped?

A. Like, they were taped, uh, to the back.

TT. Okay.

A. And they had their hands behind their back and... and taped behind 'em.

TT. Okay. Do you know if their hands were palms together or backs together?

A. I think it was palms together.

TT. How were the fingers?

A. Mmm, I... I'm not sure.

TT. Okay. Were they taped anyplace else?

A. Uh, their feet.

TT. Okay. And who taped their feet?

A. Red.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- TT. Was everybody taped the same or were some taped different than others?
- A. I think they were t... They were all taped the same.
- TT. Okay. Were they face up, face down, sittin' up?
- A. Face down.
- TT. Face down. All four?
- A. Yeah.
- TT. Okay. Were they doin' any talkin' durin' this time?
- A. No.
- TT. Did you guys ask 'em any... where's... where can we look to find the dope? Look to find the money?
- A. Yeah.
- TT. Did they have any answers.
- A. No. They said it was nothin' in there.
- TT. They just kept sayin' there's nothin' in there?
- A. Yeah.
- TT. How many of 'em were cryin'?
- A. Um... Think only one. Think only one.
- TT. Which one was he?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- A. Um... I'm not sure. I don't know. Which one was cryin'. I don't know. I... I'm not sure, I'm not sure.
- TT. You just remember that one of 'em was cryin'. Was he cryin' a lot or just part of the time?
- A. Just, like, whimperin' like cry. Like a whimper cry.
- TT. Okay. Was... Was he sayin' somethin' about to not shoot him and stuff like that?
- A. No, he wasn't.
- TT. He was just kinda whimperin'.
- A. Yeah.
- TT. Okay. Did anybody, uh, have any guns or knives that you saw?
- A. No.
- TT. Of the... the victims?
- A. No.
- TT. Did anybody try to fight with you guys?
- A. No.
- TT. Did anybody try to get away from you?
- A. No.
- TT. When Red was watchin' over them, was he sitting or standing?
- A. What do you mean?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- TT. When Red was watchin' over the people in the front room you're talkin' about.
- A. Mm-hmm (affirmative).
- TT. Was Red sittin' down or was he standin' up?
- A. He was standin' up.
- TT. Okay. Was he doin' anything else? Was he eating or drinkin' or...?
- A. No.
- TT. Okay. When you went to leave, was the car still parked the same place?
- A. Yeah.
- TT. Who drove the car when you left?
- A. Donte.
- TT. And where did you sit?
- A. In the back seat.
- TT. And where did Red sit?
- A. In the front. Passenger seat.
- TT. The pass... front passenger seat?
- A. Yeah.
- TT. Okay. And when you got back, did you explain to Todd that, uh, this was all the money there was and that you had to shoot these guys?
- A. Yeah. Yeah, Donte and Red explained that.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- TT. Okay. And Todd was upset 'cause there was no cocaine for him?
- A. Yeah.
- TT. What'd he say about the guys bein' shot? Anything at all?
- A. No.
- TT. Just, what happened, what about the cocaine is--
- A. Yeah.
- TT. --his... his concern.
- A. Yeah.
- TT. Had Todd, uh, discussed with you guys any of the other licks that were done?
- A. No. No.
- TT. This was the first one?
- A. Yeah.
- Q. Was, uh, Ace present when you discussed doin' this?
- A. No, he wasn't.
- Q. Was he ever present when you discussed it? Did he ever give you guys any information on this or talk to you guys about it at all?
- A. No.
- Q. Okay. Um, now, did you, Red and Donte ever do a lick on that street before?
- A. No.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- Q. You guys di... didn't go over and hit a guy that was sleepin' in a truck?
- A. No.
- Q. Okay.
- TT. Who took, uh, jewelry from the victims?
- A. Who took jewelry? Uh, I don't know. I didn't see any jewelry took.
- TT. You didn't see any jewelry took at all?
- A. No, I didn't.
- TT. Nobody showed you any later on?
- A. No.
- TT. Okay. The jewelry you're wearin' tonight's not from them or anything.
- A. No. No.
- TT. Okay. Also, when we were talkin' to you earlier, um, tryin' to get an idea of where everybody was, I drew a little square box here.
- A. Mm-hmm (affirmative).
- TT. And a little ____ sign. And, uh, pointed out the different rooms, and you explained what room was what. And then we asked you to draw where the... the bodies were. Is that correct?
- A. Yeah.
- TT. And you drew, uh, three stick people in one room.

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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

A. Mm-hmm (affirmative).

TT. Closest by the front door. And you drew another stick person in another room that we discussed, that--

A. Yeah.

TT. --you said was the dining room. Is that right?

A. Yeah.

TT. Okay. And, when you were pointin' at this picture earlier, you were explaining that the... the person furthest away in the dining room, he got shot first?

A. Mm-hmm (affirmative).

TT. By...?

A. Donte.

TT. Donte.

A. Yeah.

TT. And then, the next furthest from the front door got shot?

A. Mm-hmm (affirmative).

TT. And then the next and then the closest guy to the door got shot last.

A. Yeah.

TT. When Donte was shooting them, where were you standing exactly?

A. I was standing, like, by the front door.

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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- TT. Just inside the front door?
- A. Yeah, like... like... like... like right over here. In the corner.
- TT. Kind of in the corner?
- A. Yeah.
- TT. To the... as you walk in the door, it'd be, like, to the right of the front door there?
- A. Yeah, like, if you open up the door, I'll be standin', like, behind the door.
- TT. Okay. And so as you're standin' there, where is Red standin'?
- A. Red's standin', like, over here on this side.
- TT. On the opposite side of the front door?
- A. Yeah. Like, open it, like, by in the corner.
- TT. Okay. And, uh, does Donte come inside and turn up the radio and then go in the other room? Or does he--
- A. Yeah.
- TT. --go in the _____. Okay.
- A. He came in and turned up the radio, then went in there.
- TT. Did he--
- A. Then he came back.
- TT. What did Donte say to him as he... as he pulled the trigger?
- A. _____ (Inaudible)

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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- TT. Not a word. How many of the victims made a noise when they got shot?
- A. Mmm... I really didn't hear no noise.
- TT. You didn't hear any of 'em—
- A. No, I—
- TT. —make any kind a sound?
- A. Mm-mm (negative).
- TT. Okay.
- A. I didn't hear no sound. I guess 'cause the radio was so loud. I didn't hear no sound.
- TT. What part of the body did Donte shoot them in?
- A. Uh, I think the head.
- TT. Looked like the head?
- A. Yeah, looked like the—
- TT. Could you see blood comin' out?
- A. Yeah.
- TT. Did it seem like they were dead right away or were they wigglin' around for a minute or two?
- A. They kinda, like, wiggled around for a—
- TT. For a little bit?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

A. Yeah.

TT. Did anybody check to see if they were dead or--

A. No.

TT. --do anything else to 'em?

A. No. After that we just walked out.

TT. Okay. Did anybody take anything from the house, like to drink or anything, when you guys left?

A. No.

TT. Okay.

Q. Are you aware of anything that, uh, may have been buried in Todd's back yard?

A. No.

Q. Uh, anything that was taken from the robbery?

A. No. No.

Q. So, you don't know of any, uh, uh, uh, electronical items or anything that... like that--

A. No.

Q. --that were taken?

A. No, I don't.

Q. Okay.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

- TT. Um, is there anything else that you can tell us this... Are you being truthful about all this?
- A. Yes.
- TT. You're tryin' to be up front, is that correct?
- A. Yes, I am.
- TT. Is there anything you can help us, being truthful, about the, uh, killing of Snoop over at the Thunderbird?
- A. No. I don't know anything about that.
- TT. You don't know anything about that one.
- A. No.
- TT. Okay. You weren't present?
- A. No.
- TT. Nobody mentioned anything to you about it?
- A. No.
- TT. Not that you wouldn't see it, but just that they explained it to you.
- A. No.
- TT. About this is what had to happen.
- A. No, I don't... I don't know.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
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EVENT: 980814-1600
SMITH, SIKIA LAFAYETTE

TT. Okay. Any other capers that you can bring to light and... and put to rest here for us? Since you're tryin' to help us out here and... and be up front.

A. No.

TT. Nothin' else.

A. This is it.

TT. This is it.

A. Yes, sir.

TT. Okay.

Q. I don't have anything else.

TT. That's all I have.

Q. Okay. It's currently 1722 hours. Same date, uh, same location, same people present.

I HAVE READ THIS STATEMENT CONSISTING OF 27 PAGES AND AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT 1722 HOURS ON THE 8TH DAY OF SEPTEMBER, 1998.

WITNESS: _____

WITNESS: _____

SIGNATURE OF PERSON GIVING STATEMENT

JB:alf
983203

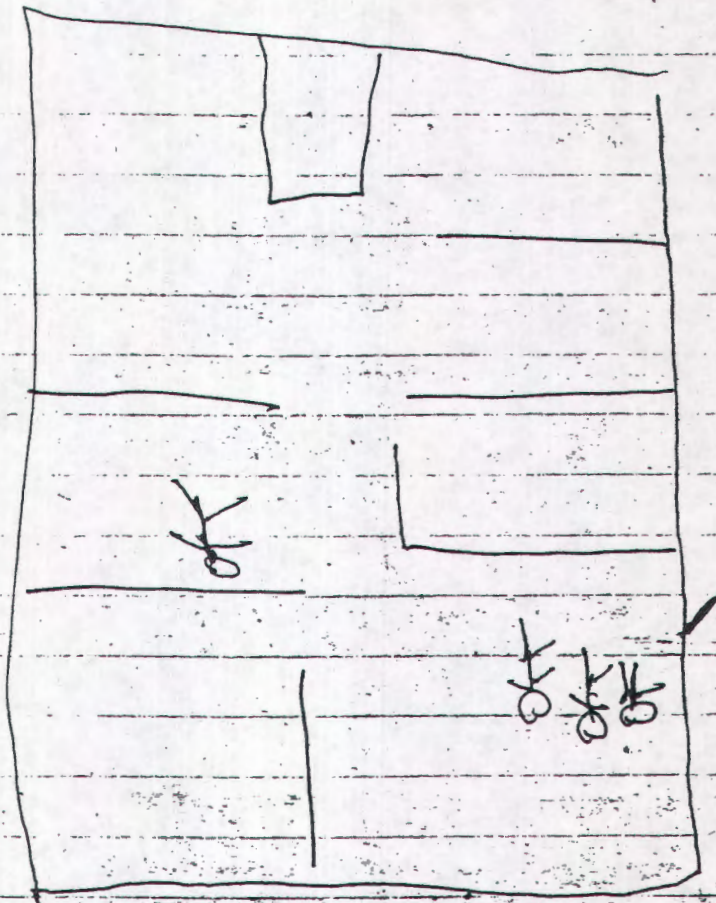
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Sika Smith

9-8-98

Sika Smith

J. Houser 1467



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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
RIGHTS OF PERSONS ARRESTED

You have the right to remain silent. If you give up that right to remain silent anything you say can and will be used against you in a court of law. You have the right to speak to an attorney before answering any questions, and to have an attorney present with you while you answer any questions. If you cannot afford an attorney, an attorney will be appointed for you by the court at no cost to you, and you need not answer any questions until that attorney has been appointed for you. If you decide to answer questions now, you may stop at any time and ask to talk to an attorney before any questioning continues. If you decide to stop answering questions once you have begun, all questioning will stop.

Date and Time 09/08/98 1640 HRS	Signed X <u>Sikia Smith</u>
Officer <u>J. Buey, L</u>	File # 980814-1600

LVMPD 99 (REV. 4-94)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONSENT TO SEARCH CARD

Date: 9-8-98 1845 Event #: 980814-1600

I, SIKIA SMITH, having been informed of my right not to have a search made of the premises/property listed hereafter without a search warrant issued by a court of jurisdiction, and of my right to refuse to consent to a search for items directly or indirectly related to the investigation of

HOMICIDE
do hereby voluntarily consent to a search of Address/Description
MY ROOM FOR DNA

Signature: Sikia Smith

Witness: J. Ho 1467

LVMPD 79 A (REV. 2-97)

EXHIBIT 52

EXHIBIT 52

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IND
STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff

FILED

SEP 16 1 06 PM '98

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DONTE JOHNSON,
#1586283, John Lee White

Defendant(s).

Case No. C153154
Dept. No. V
Docket H

**SUPERSEDING
INDICTMENT**

STATE OF NEVADA }
COUNTY OF CLARK } ss.

The Defendant(s) above named, DONTE JOHNSON aka John Lee White, accused by the Clark County Grand Jury of the crimes of **BURGLARY WHILE IN POSSESSION OF A FIREARM (Felony - NRS 205.060, 193.165); CONSPIRACY TO COMMIT ROBBERY AND/OR KIDNAPING AND/OR MURDER (Felony - NRS 199.480, 200.380, 200.310, 200.320, 200.010, 200.030); ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.165); FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165); and MURDER WITH USE OF A DEADLY WEAPON (Open Murder) (Felony - NRS 200.010, 200.030, 193.165);** committed at and within the County of Clark, State of Nevada, on or about the 14th day of August, 1998, as follows:

0131

1 COUNT I -BURGLARY WHILE IN POSSESSION OF A FIREARM

2 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
3 then and there wilfully, unlawfully, and feloniously enter, while in possession of a firearm, with
4 intent to commit larceny and/or robbery and/or murder, that certain building occupied by
5 MATHEW MOWEN and TRACEY GORRINGE and JEFFREY BIDDLE, located at 4825
6 Terra Linda Avenue, Las Vegas, Clark County, Nevada; the Defendant aiding or abetting
7 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and
8 encouragement and by entering into a course of conduct whereby the said Defendant arrived at
9 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
10 SMITH; the said Defendant entering the residence with TERRELL COCHISE YOUNG and/or
11 SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or
12 SIKIA LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or
13 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding MATHEW
14 MOWEN and TRACEY GORRINGE and JEFFREY BIDDLE and PETER TALAMENTEZ and
15 placing them on the floor of the residence; then Defendant and/or TERRELL COCHISE
16 YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said
17 MATHEW MOWEN and TRACEY GORRINGE and JEFFREY BIDDLE and PETER
18 TALAMENTEZ with a firearm.

19 COUNT II - CONSPIRACY TO COMMIT ROBBERY AND/OR KIDNAPING
20 AND/OR MURDER

21 did then and there meet with TERRELL COCHISE YOUNG, SIKIA LAFAYETTE
22 SMITH and/or another unknown individual, and between themselves, and each of them with
23 the other, wilfully, unlawfully, and feloniously conspire to commit a crime, to wit: robbery
24 and/or kidnaping and/or murder, and in furtherance of said conspiracy, Defendant did commit
25 the acts as alleged in Counts III thru XIV of this indictment, together with TERRELL COCHISE
26 YOUNG and/or SIKIA LAFAYETTE SMITH, which acts are incorporated herein by this
27 reference as though fully set forth.

28 //

1 COUNT III - ROBBERY WITH USE OF A DEADLY WEAPON

2 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
3 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money
4 of the United States, from the person of JEFFREY BIDDLE, or in his presence or company, by
5 means of force or violence, or fear of injury to, and without the consent and against the will of
6 the said JEFFREY BIDDLE, said Defendant using a deadly weapon, to wit: a firearm, during
7 the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE YOUNG
8 and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering into a
9 course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with
10 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant
11 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
12 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
13 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE
14 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said JEFFREY BIDDLE and placing
15 him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or
16 SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person of
17 JEFFREY BIDDLE and/or other persons in his presence or company; then Defendant and/or
18 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the
19 body of the said JEFFREY BIDDLE with a firearm.

20 COUNT IV - ROBBERY WITH USE OF A DEADLY WEAPON

21 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
22 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money
23 of the United States, from the person of TRACEY GORRINGE, or in his presence or company,
24 by means of force or violence, or fear of injury to, and without the consent and against the will
25 of the said TRACEY GORRINGE, said Defendant using a deadly weapon, to wit: a firearm,
26 during the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE
27 YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering
28 into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with

1 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant
2 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
3 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
4 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE
5 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said TRACEY GORRINGE and
6 placing him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG
7 and/or SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person
8 of TRACEY GORRINGE and/or other persons in his presence or company; then Defendant
9 and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into
10 the body of the said TRACEY GORRINGE with a firearm.

11 COUNT V - ROBBERY WITH USE OF A DEADLY WEAPON

12 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH
13 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money
14 of the United States, from the person of MATHEW MOWEN, or in his presence or company,
15 by means of force or violence, or fear of injury to, and without the consent and against the will
16 of the said MATHEW MOWEN, said Defendant using a deadly weapon, to wit: a firearm,
17 during the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE
18 YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering
19 into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with
20 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant
21 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
22 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
23 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE
24 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said MATHEW MOWEN and
25 placing him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG

26 //

27 //

28 //

1 and/or SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person
2 of MATHEW MOWEN and/or other persons in his presence or company; then Defendant and/or
3 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the
4 body of the said MATHEW MOWEN with a firearm.

5 COUNT VI - ROBBERY WITH USE OF A DEADLY WEAPON

6 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH
7 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money
8 of the United States, from the person of PETER TALAMENTEZ, or in his presence or company,
9 by means of force or violence, or fear of injury to, and without the consent and against the will
10 of the said PETER TALAMENTEZ, said Defendant using a deadly weapon, to wit: a firearm,
11 during the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE
12 YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering
13 into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with
14 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant
15 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
16 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
17 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE
18 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said PETER TALAMENTEZ and
19 placing him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG
20 and/or SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person
21 of PETER TALAMENTEZ and/or other persons in his presence or company; then Defendant
22 and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into
23 the body of the said PETER TALAMENTEZ with a firearm.

24 COUNT VII - FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON

25 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH
26 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,
27 decoy, abduct, conceal, kidnap, or carry away JEFFREY BIDDLE, a human being, with the
28 intent to hold or detain the said JEFFREY BIDDLE, against his will, and without his consent,

1 for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL
2 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a
3 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL
4 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and
5 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda
6 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said
7 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA
8 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
9 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL
10 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said JEFFREY BIDDLE
11 and placing him on the floor of the residence for the purpose of committing robbery and/or
12 murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
13 SMITH shooting at and into the body of the said JEFFREY BIDDLE with a firearm.

14 COUNT VIII - FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON

15 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
16 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,
17 decoy, abduct, conceal, kidnap, or carry away MATHEW MOWEN, a human being, with the
18 intent to hold or detain the said MATHEW MOWEN, against his will, and without his consent,
19 for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL
20 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a
21 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL
22 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and
23 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda
24 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said
25 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA
26 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
27 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL
28 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said MATHEW MOWEN

1 and placing him on the floor of the residence for the purpose of committing robbery and/or
2 murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
3 SMITH shooting at and into the body of the said MATHEW MOWEN with a firearm.

4 COUNT IX - FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON

5 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
6 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,
7 decoy, abduct, conceal, kidnap, or carry away TRACEY GORRINGE, a human being, with the
8 intent to hold or detain the said TRACEY GORRINGE, against his will, and without his consent,
9 for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL
10 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a
11 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL
12 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and
13 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda
14 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said
15 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA
16 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
17 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL
18 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said TRACEY
19 GORRINGE and placing him on the floor of the residence for the purpose of committing
20 robbery and/or murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
21 LAFAYETTE SMITH shooting at and into the body of the said TRACEY GORRINGE with a
22 firearm.

23 COUNT X - FIRST DEGREE KIDNAPING WITH USE OF A DEADLY WEAPON

24 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
25 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,
26 decoy, abduct, conceal, kidnap, or carry away PETER TALAMENTEZ, a human being, with
27 the intent to hold or detain the said PETER TALAMENTEZ, against his will, and without his
28 consent, for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL

1 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a
2 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL
3 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and
4 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda
5 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said
6 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA
7 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
8 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL
9 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said PETER
10 TALAMENTEZ and placing him on the floor of the residence for the purpose of committing
11 robbery and/or murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
12 LAFAYETTE SMITH shooting at and into the body of the said PETER TALAMENTEZ with
13 a firearm.

14 COUNT XI - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

15 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
16 then and there wilfully, feloniously, without authority of law, and with premeditation and
17 deliberation, and with malice aforethought, kill JEFFREY BIDDLE, a human being, by shooting
18 at and into the body of said JEFFREY BIDDLE, with a deadly weapon, to wit: a firearm, the
19 said Defendants being responsible under the following theories of criminal liability, to wit: 1)
20 Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL COCHISE
21 YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the perpetration or
22 attempted perpetration of kidnaping and/or robbery; 3) Aiding or Abetting, the Defendant aiding
23 or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and
24 encouragement and by entering into a course of conduct whereby the said Defendant arrived at
25 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
26 SMITH; the said Defendant entering the residence with TERRELL COCHISE YOUNG and/or
27 SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or
28 SIKIA LAFAYETTE SMITH were in possession of a firearm; Defendant and/or TERRELL

1 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the victim and placing him
2 on the floor of the residence; Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
3 LAFAYETTE SMITH shooting at and into the body of the said JEFFREY BIDDLE with a
4 firearm; 4) Conspiracy, by the said Defendant acting pursuant to a conspiracy to commit robbery
5 and/or kidnaping and/or murder with TERRELL COCHISE YOUNG and/or SIKIA
6 LAFAYETTE SMITH, whereby the said Defendant entered the residence with TERRELL
7 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL
8 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm or
9 firearms; Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
10 SMITH binding the said JEFFREY BIDDLE and placing him on the floor of the residence; then
11 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting
12 at and into the body of the said JEFFREY BIDDLE with the firearm or firearms.

13 COUNT XII - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

14 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
15 then and there wilfully, feloniously, without authority of law, and with premeditation and
16 deliberation, and with malice aforethought, kill TRACEY GORRINGE, a human being, by
17 shooting at and into the body of said TRACEY GORRINGE, with a deadly weapon, to wit: a
18 firearm, the said Defendant being responsible under the following theories of criminal liability,
19 to wit: 1) Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL
20 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the
21 perpetration or attempted perpetration of robbery and/or kidnaping; 3) Aiding or Abetting, the
22 Defendant aiding or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
23 SMITH by counsel and encouragement and by entering into a course of conduct whereby the
24 said Defendant arrived at 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or
25 SIKIA LAFAYETTE SMITH; the said Defendant entering the residence with TERRELL
26 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL
27 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm;
28 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding

1 the victim and placing him on the floor of the residence; Defendant and/or TERRELL COCHISE
2 YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said
3 TRACEY GORRINGE with a firearm; 4) Conspiracy, by the said Defendant acting pursuant to
4 a conspiracy to commit robbery and/or kidnaping and/or murder with TERRELL COCHISE
5 YOUNG and/or SIKIA LAFAYETTE SMITH, whereby the said Defendant entered the
6 residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while
7 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were
8 in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE YOUNG and/or
9 SIKIA LAFAYETTE SMITH binding the said TRACEY GORRINGE and placing him on the
10 floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
11 LAFAYETTE SMITH shooting at and into the body of the said TRACEY GORRINGE with the
12 firearm or firearms.

13 COUNT XIII - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

14 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
15 then and there wilfully, feloniously, without authority of law, and with premeditation and
16 deliberation, and with malice aforethought, kill MATHEW MOWEN, a human being, by
17 shooting at and into the body of said MATHEW MOWEN, with a deadly weapon, to wit: a
18 firearm, the said Defendant being responsible under the following theories of criminal liability,
19 to wit: 1) Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL
20 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the
21 perpetration or attempted perpetration of kidnaping and/or robbery; 3) Aiding or Abetting, the
22 Defendant aiding or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
23 SMITH by counsel and encouragement and by entering into a course of conduct whereby the
24 said Defendant arrived at 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or
25 SIKIA LAFAYETTE SMITH; the said Defendant entering the residence with TERRELL
26 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL
27 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm;
28 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding

1 the victim and placing him on the floor of the residence; Defendant and/or TERRELL COCHISE
2 YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said
3 MATHEW MOWEN with a firearm; 4) Conspiracy, by the said Defendant acting pursuant to
4 a conspiracy to commit robbery and/or kidnaping and/or murder with TERRELL COCHISE
5 YOUNG and/or SIKIA LAFAYETTE SMITH, whereby the said Defendant entered the
6 residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while
7 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were
8 in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE YOUNG and/or
9 SIKIA LAFAYETTE SMITH binding the said MATHEW MOWEN and placing him on the
10 floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
11 LAFAYETTE SMITH shooting at and into the body of the said MATHEW MOWEN with the
12 firearm or firearms.

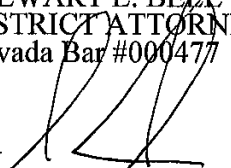
13 COUNT XIV - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

14 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
15 then and there wilfully, feloniously, without authority of law, and with premeditation and
16 deliberation, and with malice aforethought, kill PETER TALAMENTEZ, a human being, by
17 shooting at and into the body of said PETER TALAMENTEZ, with a deadly weapon, to wit: a
18 firearm, the said Defendant being responsible under the following theories of criminal liability,
19 to wit: 1) Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL
20 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the
21 perpetration or attempted perpetration of robbery and/or kidnaping; 3) Aiding or Abetting, the
22 Defendant aiding or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
23 SMITH by counsel and encouragement and by entering into a course of conduct whereby the
24 said Defendant arrived at 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or
25 SIKIA LAFAYETTE SMITH; the said Defendant entering the residence with TERRELL
26 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL
27 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm;
28 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding

1 the victim and placing him on the floor of the residence; Defendant and/or TERRELL COCHISE
2 YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said PETER
3 TALAMENTEZ with a firearm; 4) Conspiracy, by the said Defendant acting pursuant to a
4 conspiracy to commit robbery and/or kidnaping and/or murder with TERRELL COCHISE
5 YOUNG and/or SIKIA LAFAYETTE SMITH, whereby the said Defendant entered the
6 residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while
7 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were
8 in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE YOUNG and/or
9 SIKIA LAFAYETTE SMITH binding the said PETER TALAMENTEZ and placing him on the
10 floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
11 LAFAYETTE SMITH shooting at and into the body of the said PETER TALAMENTEZ with
12 the firearm or firearms.

13 DATED this 15th day of September, 1998.

14 STEWART L. BELL
15 DISTRICT ATTORNEY
16 Nevada Bar #000477

17 BY 
18 GARY L. GUYMON
19 Deputy District Attorney
Nevada Bar #003726

20 ENDORSEMENT: A True Bill

21 
22 Foreperson, Clark County Grand Jury
23

24 //

25 //

26 //

27 //

28 //

1 Names of witnesses testifying before the Grand Jury:
2 ACE HART, C/O DISTRICT ATTORNEY INVESTIGATOR ALEXIA CONGER
3 TOD ARMSTRONG, C/O DISTRICT ATTORNEY INVESTIGATOR ALEXIA CONGER
4 NICHOLAS DE LUCIA, [REDACTED], LVN 89120
5 DR. ROBERT BUCKLIN, CCME, [REDACTED], LVN 89106
6 SHAWN FLETCHER, P#5221, LVMPD
7 B.C. GROVER, P#4934, LVMPD
8 EDWARD GUENTHER, P#5891, LVMPD
9 KEN HEFNER, P#2185, LVMPD
10 CHARLA (LA LA) SEVERS, C/O DISTRICT ATTORNEY INVESTIGATOR ALEXIA
11 CONGER
12 BRYAN C. JOHNSON, C/O DISTRICT ATTORNEY INVESTIGATOR ALEXIA CONGER
13 JUSTIN ULRICH PERKINS, [REDACTED], HENDERSON, NV 89014
14 DEWAYNE ANDERSON, C/O DISTRICT ATTY INVESTIGATOR ALEXIA CONGER
15 Additional witnesses known to the District Attorney at the time of filing this Indictment:
16 CARLON J. FRUGE, P#1460, LVMPD
17 THOMAS THOWSEN, P#1467
18 DAVID HORN, P#1928, LVMPD
19 DEBRA MCCRACKEN, P#2542, LVMPD
20 JAMES STELK, JR., P#2550, LVMPD
21 RANDY SUTTON, P#3239, LVMPD
22 JAMES BUCZEK, JR., P#3702, LVMPD
23 MICHAEL PERKINS, P#4242, LVMPD
24 DAVID L. WEST, P#4338, LVMPD
25 SHAWN MCLAIN, P#5221, LVMPD
26 JAMES E. O'DONNELL, P#5709, LVMPD
27 SHEREE NORMAN, P#3110
28 COR LVMPD COMMUNICATIONS
29 LUIS AMADO CABRERA, [REDACTED], LVN 89121

1 JEFF LYNN BATES, [REDACTED] LVN 89120
2 GREGORY TRAVIS, [REDACTED], LVN 89101
3 ALBERT TALAMANTEZ, [REDACTED], LVN 89122
4 M. WASHINGTON, P#4725, LVMPD
5 MELVIN E. ROYAL, [REDACTED] NLVN

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97BGJ184X/98F11830X/1g
LVMPD EV#9808141600
BURG WDW; CONSP ROBB/KIDNP/MURD;
MURD WDW; RWDW; 1ST KIDNP WDW - F

EXHIBIT 53

EXHIBIT 53

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 1

EVENT: 980814-1600

SPECIFIC CRIME MURDER WITH DEADLY WEAPON (4 COUNTS)

DATE OCCURRED

TIME OCCURRED

LOCATION OF OCCURRENCE

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT TOD ARMSTRONG

DOB: [REDACTED]

SOCIAL SECURITY #: [REDACTED]

RACE: W

SEX: M

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS:

HONOLULU, HAWAII
96822

HOME PHONE: [REDACTED]

WORK ADDRESS:

WORK PHONE:

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE SGT. K. HEFNER, P# 2185, LVMPD HOMICIDE Detail, on 09/17/98 at 1000 hours. Also present is DETECTIVE J. BUCZEK, P# 3702, LVMPD HOMICIDE Detail.

Q: First of all Tod, you're aware we're recording this statement?

A: Yes.

Q: And you've given us a statement before and testified also regarding this case we're discussing?

A: Yes.

AA07286

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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TOD ARMSTRONG

Q: Okay. I want to ask you a couple of questions to clarify a few things. Um, I wasn't present the first time you were interviewed by the detectives when you guys came down to the detective bureau. Is that correct?

A: Yes.

Q: Um, I was outside but you were in the room with the detectives.

A: Yes.

Q: And it's my understanding after talking to the detectives, I want to confirm with you, uh, they asked you whether these guys, particularly, um, Deko and Red lived at your house and you told them that they didn't. Is that true?

A: Yes.

Q: I understand at the house that we're talking about, this is the Everman house where you lived. It's your mom's house but you lived there?

A: Yes.

Q: Your mom is living and working out of state here in Hawaii.

A: Yes.

Q: So you're the only one that really has any control over the house. Is that correct?

A: Yes.

Q: And, uh, you told me when you lent me a key that this was the one and only key to the house?

AA07287

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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PAGE 3

EVENT: 980814-1600

TOD ARMSTRONG

A: Yes.

Q: Uh, later on when I went to the house and you also told us that the bathroom window which would be the window to the master bathroom is not broken but completely gone?

A: Yes.

Q: And is that the way that generally Deko and Red and these people would come and go to your house?

A: That or, uh, Lala would stay there at the house and let 'em in.

Q: Okay. So...

A: She, she never really left the house. She was there all the time pretty much.

Q: Okay. Would it be accurate to say then that you couldn't totally control who came and went in that house?

A: Yes.

Q: Particularly regarding these three?

A: Yes.

Q: How did these, uh, these three being Red, Deko and then later Lala...how did they come to be at your house in the first place? My understanding is did they come through some association with, um, Ace?

A: Ace, yes.

AA07288

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PAGE 4

EVENT: 980814-1600

TOD ARMSTRONG

- Q: Ace and they used to share a motel room or something, perhaps at the T-Bird?
- A: Yeah. Ace rented them a hotel room so they could stay in.
- Q: And, now before this episode where Ace was at the T-Bird for a while, did he live with you there at the house?
- A: Yeah. Ace was with me. He never stayed at the T-Bird. He lived with me.
- Q: So he rented them a room there?
- A: Yes.
- Q: But he stayed at your house?
- A: Yes.
- Q: So these three individuals then...your...you got to know them through Ace?
- A: Yes.
- Q: Ace kind of brought them into your life and into your house?
- A: Yes.
- Q: Now Ace was allowed to stay there but...
- A: Yes. Ace was previously staying with me.
- Q: Okay. Uh, when they were staying, the three people, at the house, were they compensating you in any way for staying there at the house? They weren't paying you rent or anything?

AA07289

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TOD ARMSTRONG

A: No. I mean, uh, Deko, uh, let me smoke a couple times. So he gave me some free dope before but that was at the very beginning.

Q: That was at the very beginning?

A: Yeah.

Q: I think you may have related a story to me once that, uh, uh, you had trouble...did you ever try to get these guys to leave?

A: Yes.

Q: Could you?

A: I, uh...well, no...I couldn't really. What I said was, uh, my mom was coming home which I didn't know 'cause the phone was disconnected. I was...my girlfriend and I were just trying to think of things to get them out of the house. And uh, I was like "yeah, my mom's coming home so you guys gotta go. You can't be there when my mom gets here." And then, uh, Deko...I told Deko that or Donte Johnson and he said that, he was like, "Well, find out what day she comes in. Then we'll leave."

Q: So you made this story up with your girlfriend in an effort to try to get rid of them?

A: Yes.

Q: It wasn't true...

A: No.

AA07290

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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TOD ARMSTRONG

Q: But then he wanted to sort of know the specific day and time that your mom was going to be home because he would stay up until that very minute?

A: Yeah.

Q: Okay. So you couldn't get rid of him?

A: No.

Q: Were you somewhat afraid of him?

A: Yes. I mean he, he, he would be nice to me, you know, I mean but I didn't know how he was thinking. I didn't know...yeah, I was very scared of 'em. They always had guns carrying around and I just, I just...yeah, I was scared.

Q: So he was nice to you on one hand but you also believed that he was dangerous?

A: Unpredictable and dangerous.

Q: Okay. So you were afraid of him?

A: Yes.

Q: And you didn't have total control of him in your house?

A: No.

Q: And at this point when you're making up these stories and stuff, you wanted...

A: 'Cause I couldn't. Yeah, I couldn't just tell him to leave 'cause then they would think well, if he's kicking me out of my, out of his house then he might go and tell on me for the things that I've told him. Okay.

AA07291

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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TOD ARMSTRONG

Q: So you had a concern about that...you could only push him so far...

A: Exactly. And I didn't want to, like you know, test the limits.

Q: And then again, if they come and go through this window, so you couldn't really totally control that circumstance either.

A: They, they'd been through the window before. They came in through the window.

Q: So even if you did get him out, he could return through the open window?

A: Yes.

Q: Um, do you know whether Deko or Red had any contact with any of the homicide victims before the murder? Did they know each other?

A: Yes. They, uh...he used...Deko used to sell drugs to the Matt, the bigger one.

Q: And did he know any of the others?

A: I don't believe so. Not, not that I know of.

Q: Matt had on occasion come over to your house?

A: Yeah, he's been there like two or three times.

Q: Okay. Do you know Matt's brother Nick?

A: Yes.

Q: Has he ever been to your house?

A: Yes. That's the one that I knew first. I knew Nick before any of the...any...Matt or Tracy I met before, too.

AA07292

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TOD ARMSTRONG

Q: My understanding is there was a...when these guys came home and told you about the murders, then I think the next day there was a second conversation and I'm also kind of alluding to some things we learned from Ace and I'm trying to, to pin down some details. Uh..

A: _____ are you talking about?

Q: Yeah, you had a conversation with, with Deko and/or Red regarding the pager.

A: Okay. That, that was in the master bedroom.

Q: Okay. And was Ace present during that?

A: Yes.

Q: Was Ace present when they were telling you about the murders on the second day?

A: Yes. In the laundry room.

Q: Okay. So he was there when all this stuff occurred in the laundry room?

A: Yes.

Q: Did you ever hear Nick telling of his plans to go on tour with the Pfish and, and he had some business prospects where he thought me might be making beaucoup bucks, big money?

A: Uh, he told me he was living town for like two months. I didn't know if he was going on tour or what. But I found out from Matt that they were going on tour.

AA07293

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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PAGE 9

EVENT: 980814-1600

TOD ARMSTRONG

Q: Okay. Um, as you know, we've arrested Red and he has given us a statement.
And then we've also arrested this person that you've identified here for us, uh,...

A: Tiny Bug.

Q: Tiny Bug. Also known as Sikia Smith. Did you ever know him by the name Sikia Smith?

A: No.

Q: Just Tiny Bug?

A: Yes.

Q: And this picture that I'm showing you, that's Tiny Bug?

A: Yes.

Q: And it has an ID number on it of 1594788. Is that correct?

A: Yes.

Q: Okay. And you've already looked at this picture, identified this guy as Tiny Bug and you, you've signed it for us, correct?

A: Yes.

Q: Um, did you know of any involvement with Tiny Bug in this homicide?

A: No.

Q: What we're trying to do here is, um, one thing we want to try to reconcile is we've got Tiny Bug and Red who basically have given us statements...

AA07294

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EVENT: 980814-1600

TOD ARMSTRONG

A: Uh huh.

Q: Um, to what degree they're accurate, we don't know. But in these statements they have implicated themselves in the robbery and the homicides. So I mean they're saying they were there, this thing happened, uh, they're not always sure on exactly details of things that precede and post-date what happened but, you know, that, that's not unusual.

A: Yes.

Q: Donte, of course, hasn't talked to us. Uh, but Donte's got his own worries. And we've also talked to Lala who's Donte's girlfriend. And she also has given us a statement. And, uh, you could see her being torn between her boyfriend and telling the truth...

A: Right.

Q: And realizing, you know, she's got information on, on four homicides. But ultimately she came across with information and what she has told us to date, we believe to be true. I don't know if she's told us everything she knows, maybe she has, maybe she hasn't but you could tell it came from her painfully 'cause she's giving up information...

A: Yeah.

AA07295

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PAGE 11

EVENT: 980814-1600

TOD ARMSTRONG

Q: On somebody she likes. And we're trying to reconcile, uh, various statements of people that are all talking about one thing. And, and one thing that, uh, Lala has mentioned in her statement and Red and Tiny Bug to some degree is that there was a conversation at your house regarding this thing before they went and went over and did it. Were you around or present...did you hear 'em discussing this situation before they left over to go do it?

A: No. Only thing that, that I talked to them about was, uh, stealing this guy's car. 'Cause I didn't like him. I'll admit it.

Q: Whose car?

A: Uh, Chris.

Q: Oh, so this is some other...

A: Yeah. This is...it was some other...so I was thinking about anything that I had any involvement of being.

Q: Can you think of a time when you might have been around having a discussion with these guys talking about what Matt and maybe, uh, Nick and those guys do and how they get by and how they make money?

A: Only that night that he came by. And he, he bought drugs off of Deko. And then they, they were talking about it then.

Q: Okay.

AA07296

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PAGE 12

EVENT: 980814-1600

TOD ARMSTRONG

A: There was..they were talking about...'cause he just came in and said "Oh, he may, he made all this money selling my acid on tour" so...

Q: Yeah. 'Cause that, that's what we're trying to rectify and don't misunderstand me...if you have a conversation with somebody and you happen to talk about "oh yeah, they got money. They, they sell a lot of dope. They've generally got big money around the house." And then these three nimrods go and go off and do something, I mean, that doesn't mean that you knew or you're a mind-reader, you could think what these guys are, you know...

A: Yeah. I understand.

Q: Thinking ahead of time. But, one of the things that's missing here is that these guys, uh, all three of them are saying yeah, we had a conversation at Tod's house regarding these guys and then ultimately later, they'd go over and commit this robbery. So I'm wondering if in some type of casual conversation perhaps with you or around you, maybe between you and Ace or something...they had picked up that these guys had money?

A: Just that when he came over...when Matt came over that I could remember.

Q: So, so the day or the evening that these homicides occurred, you didn't have a conversation with them?

A: Oh no.

AA07297

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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PAGE 13

EVENT: 980814-1600

TOD ARMSTRONG

Q: They didn't say something like hey, we're going to go rip those guys off that we...

A: No.

Q: That we learned about?

A: No. 'Cause I woke up when they came in and I was like "where were you guys?"
I didn't know.

Q: Jim, do you have any questions?

JB: Um, yeah I do. Actually, uh, did you ever ride around in the...that four door white
car that they had?

A: Yes.

JB: Okay now, uh, do you use it the next day after the murders, do you remember?

A: I only drove it once but I don't know if it was the next day.

JB: Could Ace have driven it another time or?

A: I don't know.

JB: Uh, did you guys go over and look at the bodies after you found out about the
murders?

A: No. I was never in that house.

JB: You were never in the house?

A: Never. I never even went on the property.

JB: Now is that including before the murders?

AA07298

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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EVENT: 980814-1600

TOD ARMSTRONG

A: Even before. I never knew.

JB: Okay. Is there a reason why someone might tell us that, that, uh, they saw that car and you guys over at the house the day after, the day after the murders?

A: In that...in the white car?

JB: Yeah. Or in a white car. I'm not necessarily...

A: No. The only time that I remember ever even going by was just driving by up Tropicana and looking 'cause you could see off Tropicana and just looking over.

JB: Did, did maybe Ace go over or BJ?

A: Not that I know of at all.

JB: 'Cause I know you guys have had a lot of conversation...

A: Yeah. I don't know of all. Um, usually if they went, I went. If we went...if they were like going anywhere, I would usually go with them. But, I don't...Ace and BJ weren't even around then. Well the day after they weren't.

JB: Okay.

A: I'm trying to remember. I didn't go by there, I know that, until like after it was already all taped up. Maybe...is that what they're talking about? After it's taped up?

JB: Before it was taped up.

A: Oh. No.

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TOD ARMSTRONG

JB: Before we were aware of what had happened.

A: Oh no.

JB: Because, uh, I have...

A: Because there was one time that I was on like at their house like on the street and it was me, Ace...me and Ace. Trying to remember who was...think it was my girlfriend, Brandy, driving. And BJ. I think we drove.

JB: What kind of car does Brandy have?

A: A black, uh, Hyundai.

JB: And what time was this that you...

A: In the morning I believe. I can't really remember what... I remember I drove by

there and we were just like, just thinking like dang, you know, I can't believe this happened. And we drove up from like Nellis way, up and then flipped around, and then came back by.

JB: Okay. So then you drove by the house before the police were notified of the murder...

A: No, it was after.

JB: After, after the police were there?

A: Yeah.

JB: When we drove by.

AA07300

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TOD ARMSTRONG

A: But then I, I drove on Tropicana.

JB: Uh huh.

A: And looked over from the Tropicana going up Trop.

JB: Uh huh.

A: And didn't see any like tape or anything so I just figured that they didn't

JB: Okay. And that would have been in the morning or in the afternoon?

A: I don't know. It was still daylight. It was daylight, I know. But I, I can't remember what time.

JB: Okay. Uh, did you ever show Donte where Matt lived?

A: No.

JB: Never?

A: No.

JB: Do you know how Donte knew how to get over there?

A: I don't know. I just figured they knew each other. I don't know if he ever went over there before or what. Just like he knew where I lived.

JB: Who knew where you lived?

A: Uh, Donte.

JB: Okay.

AA07301

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TOD ARMSTRONG

A: Like I don't know. Probably to sell drugs or... That's how they found out where I lived probably, so...

JB: Okay. Do you have anything _____?

Q: Yeah, um, Brandy, is this the same girl that was in your room the day I showed you that picture? Is that your girlfriend?

A: Uh, at the...

Q: At the hotel?

A: Yeah.

Q: What's her last name?

A: Priest.

Q: Priest?

A: Yes.

Q: You know her date of birth?

A: Well, uh, 4/11 70...80...uh, she's 18.

Q: Okay.

A: So...

Q: You know her phone number?

A: No, it, it would be 1980 she was born.

Q: Okay. Do you know her, uh, phone number?

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TOD ARMSTRONG

A: Uh, 363-9785.

Q: Um, in Red's statement, and Tiny Bug's statement, and in Lala's statement...now you have to understand Red and Tiny Bug are basically admitting to murder.

A: Um.

Q: _____ I was there, I was involved. Uh, they're saying hey, I didn't know Deko was going to go off the deep end and shoot these guys. We were there just to rip 'em off for their drug money and their drugs because, you know, that's, that's what they do. Uh, those guys don't call the cops and nobody gets hurt but, you know, apparently something went bad there and he ended up shooting 'em. Deko shot 'em and they're saying that Deko did all the shooting just kind of on a whim and we're inclined to believe 'em. Uh, that they're there. One thing that these guys are telling us in their statements and Lala is that they had a conversation with you regarding this...

A: Me?

Q: Yeah. Regarding these guys and their activities and what they do and that, uh, you know, they were going to go rip this place off because of what information you provided them. Now I want you to understand, we're not saying that you were in on this thing...

A: Yeah.

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TOD ARMSTRONG

Q: Uh, this is...uh somehow could be some misconstrued conversation but they're fairly consistent in that and it doesn't make any sense if they would lie about this, say hey, you know, yeah I did this murder and then lie about this thing. I mean, 'cause...

A: Yeah.

Q: You can understand that?

A: I don't recall the conversation that...I don't even remember, uh, Tiny Bug ever being around any of this, any of this time. That's why I'm...I didn't even know there was a third person, so... I don't know what they're talking about.

Q: So the night before, they weren't at your house talking about this?

A: The...whatever night that Matt came over is the only night that was ever talked about, uh, that I could remember. I mean, I, I don't know. Like I said, I can't remember every, you know, every conversation and everything that happened. I...

Q: You didn't, for instance, go with them, uh, in the car and point out the house to them?

A: No. No.

Q: Okay. You weren't there in the car while they were inside ripping these drugs off?

A: Oh no. I was, um, no...I mean, Lala, I'm sure might have like believed she said I was at the house sleeping on the couch but she was the only person there.

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TOD ARMSTRONG

Q: You weren't expecting to get drugs out of...as a result of this rip-off in which you'd helped turn in the cash for them?

A: No.

Q: And, and for you?

A: No. Like I said the only thing I don't...'cause I wasn't doing too good myself. I wasn't paying any of my bills. My phone got turned off and everything. The only thing that I wanted any part of was that guy and his car. And that's the sum total, the sum total of other thing.

Q: You wanted them to rip, rip his car off?

A: Yes.

Q: And this 'cause you didn't like this guy or he had done you wrong or something or something like that?

A: I didn't like him. I just didn't like him.

Q: Okay. So that they were going to rip his car off...

A: And I had somebody that wanted the stuff that was on his car, so...

Q: You had somebody that wanted his stuff?

A: Yeah.

Q: They were going...do you know if they ever did it?

A: No.

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TOD ARMSTRONG

Q: But they were going to rip his...what kind of stuff are you talking about on the car?

A: The rims and the stereo.

Q: So, they were going to rip it off and you had somebody that could turn the stuff around for you?

A: Yeah.

Q: For them. But this never happened?

A: No.

Q: Um, what was that guy's name? The guy you didn't like that had the...

A: Chris. I don't know his last name. I know him from high school.

Q: What kind of truck?

A: It was a car. It was a red, like Honda, I think. I don't know. Maroon, red kind of.

Q: You can see our dilemma here with this, this issue, you know, they're saying that they're sitting around kind of like we are and had a conversation...boom, they go do the robbery and they're supposed to bring the stuff back to you.

A: What's that?

Q: They're supposed to bring the drugs back to you and you're going to help...

A: Oh no.

Q: You're going to help them get rid of it, split the cash with them.

A: No.

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TOD ARMSTRONG

Q: Never happened?

A: No. I mean I'll take a lie detector test or anything if you want. That did nev..., never happened.

Q: Were you ever present perhaps when Ace gave them some information regarding these guys' activities? Now this might have even been, you know, a couple weeks prior.

A: The only thing I can think of, uh, to get by, I used to buy 'shrooms, mushrooms, off of Nick and that would be the only thing that I would think of that we had ever told 'em. And then we would sell 'em.

Q: Nothing like, uh, Nick was supposed to be coming back off tour and have, you know, 10,000 bucks on him and then he'd...he's going to be back on a particular day and he'd have this money and be fat?

A: No.

Q: Can you think of any reason why they would say that about you?

A: No clue. That's why I, I don't know.

Q: Okay. You understand that there's a big difference between going and doing what those guys did...

A: Yeah.

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TOD ARMSTRONG

Q: And having a reckless conversation with somebody that they go and take off on their own and do whatever they're going to do?

A: I understand that.

Q: Okay. But you need to be honest with that.

A: Yeah. I am, I am.

Q: Because, you know, we have these people who are exposing themselves to, shit, probably the, uh, death penalty. And they're, they're saying hey, Tod told us about this stuff and these guys.

A: Well I didn't, so...

JB: There's another thing you have to understand too, Tod, is, uh, this morning, Ace went over to Gary Guymon's office...

A: Uh huh.

JB: And met with Gary Guymon and my partner, Tom Thowsen, and has given up everything. So, so you have...

A: I already have given up everything.

JB: Well, I'm, I'm not totally convinced that you have.

A: Oh man.

JB: Not totally convinced and what we're here is, we're, we're here on a fact finding mission. All we want to do is we want to make sure that everyone's story is right

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TOD ARMSTRONG

and we believe that Red's story is right. We believe that Tiny Bug's story is right. We believe that Lala's story is right. And we believe that Ace's story is right because they're all, all together. They're all saying the same thing. And then we're here talking to you and your story isn't jiving with everyone else's, it's not matching, and I'm including Ace. Okay. I'm including Ace. So what we're trying to do is we're just trying to get the story right. We get the story right, we walk out the door.

A: I don't know, but I don't know, I don't know what you're trying to expect me to say then. I'm telling you what I know.

JB: If you were present and you knew about them sitting around...

A: Not that I recall. I don't. I don't recall it. Only time that I ever remember them talking about it is when Matt came over to buy drugs.

JB: Well then what happened then...what, what did they, what did they discuss then? Who was there?

A: They would...What's that?

JB: Who, who was there? Who was discussing it?

A: Deko was there. Red was there. I don't if Lala was there or not. Ace was there. I think Bryan was there but I don't think he was in the room when he came over. And then when they...he, like I said, when he came over and he said that they had all this, uh, they sold all these sheets of acid and everything, they was like oh, they

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TOD ARMSTRONG

got all kinds of money, huh. I was like "I guess." I was like "We used to buy 'shrooms off of 'em." And that's the only thing...

JB: That's, that's the only thing...they didn't say they were going to go do a lick or anything like that?

A: No. No.

JB: And again, all, all I want is, is...the truth about this.

A: I understand that. I mean...I understand that, so, what do you expect me to say? I'm telling you, I mean I, I came forward and I'm telling you what I know.

JB: Okay.

A: I don't want, I don't want to sit here and get pressured into saying something that I don't know that happened.

JB: Okay.

A: I'm not going to say anything that I don't, I don't know if it happened. So, I can't remember. I mean...what do you expect from me?

JB: Okay, uh...

A: I mean, you know what I'm saying.

JB: I'll move, I'll move on. I'll move on. I'm, uh, also...the, the Play Station and Nintendo that was in your house...

A: Yeah.

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TOD ARMSTRONG

JB: You said that that was yours.

A: The Nintendo was Joel's. And the Play Station was mine. The Nintendo was Joel's, my ex-roommate's.

JB: Okay. Because, uh, now they're saying that they gave you the Play Station and the Nintendo that they got out of, out of the other place.

A: They didn't give me anything.

JB: How about the...well, ...

A: That's like them saying they gave me the VCR.

JB: _____ giving it to you...okay, they put it in your house and it was there for your use, I'm sorry.

A: I don't know. The, the Play Station I had one but that one wasn't mine.

JB: That VCR, did you recognize that VCR at all prior to...had you ever seen it before?

A: No.

JB: But that Play Station and the Nintendo was yours?

A: No. The Play Station wasn't mine.

JB: Well, it was Joel's.

A: No. That wasn't even mine.

JB: Whose?

A: It was their's.

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TOD ARMSTRONG

JB: It was their's?

A: Yeah.

JB: From when?

A: They brought it.

JB: When did they bring it?

A: The...when they brought the VCR.

JB: Okay. So that...

A: And then Ace took it.

JB: Ace took it?

A: And gave it away

JB: Okay. Um, how come when we went that night you told me that the Play Station was yours?

A: Well, Ace said it was mine. And I just kind of went along with it. It was like the next day. It wasn't that night. It was the next day then when we said that, that it was ours. 'Cause it was left over. 'Cause when I went in to get my stuff, Ace was like "Well, I'm grabbing the Play Station." "Go ahead." Like I don't have a Play Station here.

JB: What other games did they bring?

A: Uh, I had some games from when I had my Play Station.

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TOD ARMSTRONG

JB: Do you remember any new games being there?

A: There were some. I don't remember which ones though. 'Cause I had, I had like three or four games myself. But I didn't have my Play Station anymore. I sold it, so...

JB: Okay. Okay so you're honest with us about...

A: Yeah.

JB: Calling us up. And then you're honest with us about, about not being present when they were discussing doing the lick and then you weren't honest with us about the Play Station?

A: Yep.

JB: Okay. Go ahead.

Q: You remember me, you and I had some conversations probably even that day, when you told me that this VCR just suddenly appeared?

A: Yes.

Q: And led me to believe that this was probably brought over by them?

A: Yes.

Q: And deposited there. So now you're including the Play Station in that same category?

A: Yes.

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TOD ARMSTRONG

Q: Uh, do you remember me asking you like Jim just alluded to about the Play Station that morning...you said "no" that was yours, you guys had already one?

A: Uh, yeah, I don't, I don't remember really if you asked me or I know somebody asked.

Q: But nobody ____ that the Play Station suddenly appeared just like the VCR?

A: Yeah.

Q: Okay. The, the reason why it's so important as, as to what we're trying to head to and I know it's kind of difficult. I mean you got, you got thrust into this situation maybe by, you know, no circumstances of your own but and also like you said earlier, we're not trying to pressure you into saying anything. We only want the truth out of you. But, you know, you're involved in a difficult situation and you guys...nobody, I think at this point, not even including the people that have given us statements and confessed to murder against themselves are telling us 100 percent the truth...

A: Uh huh.

Q: And, and I don't mean that as, as an insult or a slight...it's just human nature. Things like this happen especially when you're talking about high pressure situations. But, we're trying to corroborate what these guys said basically against themselves and against each other primarily the three people that committed this

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TOD ARMSTRONG

murder and we have two out of the three saying kind of the same thing. We have Lala reinforcing it against the, the interest of her boyfriend and you can tell she didn't want to give us this information. We had to extract it from her. But, but she was being truthful. And Ace's statements. And we want this all to fit. If we have you standing out here on the outside then people are going to say...

A: I don't see how I'm standing out here on the outside. I mean I told you what I know. I can't...I don't what else..what, what I'm leaving out or what you think I'm leaving out or...

Q: Then you're telling me that you did not know that this robbery was going to happen before it happened?

A: No.

Q: And you did not expect to benefit from any of the proceeds of the robbery?

A: No.

Q: They weren't going to bring you anything...

A: No.

Q: And give it to you and you were going to share and split the proceeds?

A: No.

Q: And you said you'd take a polygraph on that and you think you'd pass it?

A: I know I would.

AA07315

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TOD ARMSTRONG

Q: You understand our concern here. Here's how I see it...

(End of Tape, Side A)

(Beginning of Tape, Side B)

JB: Tape's turned over and uh, we'll continue.

Q: Turn over time on the tape was, uh, 10:30. You know we have this, we have this information and we want to help you guys solve this crime...my understanding is, is that BJ wanted to get his car from his dad which he had restricted, he was restricted from 'cause you guys wanted to _____ out of town. His dad kind of figures, hey, what's going on and determines that something isn't quite right. Learns some of this, what's going on, calls the cops, an officer comes to that house, digs a little more and figures out now, you guys had befriended with a policeman and, and _____

A: He didn't do anything. We just told him. He, he just walked in and we just told him.

Q: But BJ's dad called, right?

A: Yeah. Over a family disturbance because his...he was yelling at his mom.

Q: 'Cause BJ wanted the car.

A: Well, I don't, I don't know, I don't know that whole, that whole thing what, why that all happened. But either way I came forward and I told what happened.

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TOD ARMSTRONG

Q: You did tell us what happened. I mean this is what started this whole thing rolling is you gave us information that, that uh, Red and Deko did this crime. You didn't mention Tiny Bug but you mentioned these two guys and...

A: Yeah.

Q: Now how come it is you didn't know about Tiny Bug?

A: I don't...I didn't know he was there. I didn't see him. I didn't know he was there.

Q: So he never came over to your house after this thing happened?

A: Not that I remember. If so I would have said something.

Q: And he wasn't there before this thing happened?

A: No. I mean I don't remember, I don't remember. He might have been there before, I don't know. There was people always in and out of the house. But I don't remember him at all being there afterwards.

Q: Sometimes these people are in and out of the house when you're not there.

A: Yes.

Q: Again, 'cause you can't control access to your house.

A: That's correct.

Q: And you can't kick these guys out.

A: Uh, yeah.

Q: Even though you wanted to.

AA07317

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TOD ARMSTRONG

A: Tried.

Q: How long have you been, how long have you been trying to kick them out before, uh, this thing occurred?

A: Like right before. Like a week.

Q: So for the week prior, you wanted them out...

A: Just kinda...I didn't really...I, I said that about my mom afterwards after the murders had happened. 'Cause then I really wanted them out. But before, I was just, I was thinking like how I can get 'em out. And I was talking to other people and like what should I say. You know, and they, they would be just like well don't, don't say "get out" you know, 'cause then they might take it the wrong way. But you just gotta, kinda just say that the cops are, the cops are getting hot around the area.

Q: Okay.

A: In which I...there was, there was, um, private investigators or cops or somebody right around the corner the whole time that they were staying there. And, 'cause like they, they had binoculars and they were surveillancing somebody and then like I...I kept pressuring on them. I'm like, you know what I'm saying, like "uh, there's, there's all kinds of cops over here. I don't know why you want to stay here." You know, trying to like, you want to stay somewhere else but...he didn't seem to mind.

AA07318

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TOD ARMSTRONG

Q: You never had any conversations then with these three maybe even just B.S. conversations and again, you come across some dope, I can move it for you, I can get rid of it for you?

A: No. Not that I, not that I recall at all, no.

Q: Anything that you could think would, would cause these guys to say what they're saying?

A: No. That's what I'm saying. I don't, I don't know. I don't know what...I don't know.

JB: Okay. This will be the end of the interview. It is currently 10:35. Thank you.

Q: Uh, we are resuming the tape rolling at about eight minutes to 11, local time. Uh, during the meantime we've had some conversations with, uh, Tod. We've also allowed him to read some, uh, portions of statements from Red and Lala's situation and now we're back on tape. Tod, you realize we're rolling the tape again?

A: Yes.

Q: Okay. Why don't you go ahead and continue, Jim.

JB: Okay. You said that you and Ace took who over and showed 'em where Matt lived?

A: I believe it was Red and Deko. I don't remember Bug ever having anything to, to do with this... (Laughing) 'Cause I, I mean he may have. I just, I don't remember.

JB: And, and whose, whose car?

A: In the, the Tempo.

AA07319

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TOD ARMSTRONG

JB: Okay. In the Tempo. Now who was, who was driving?

A: Deko.

JB: Who was sitting in the front seat?

A: Red.

JB: And where were you seated?

A: Back seat.

JB: Where in the back seat? Passenger side or...

A: The passenger side.

JB: Okay.

A: And then Ace was on the...

JB: Ace was on the driver's side?

A: Driver's side.

JB: Sitting right behind Deko?

A: Yes.

JB: Okay.

A: So they pulled, they uh, pulled in through the...by the apartments across the street
off of Tropicana.

JB: Okay.

A: I don't know what they are. Apartments or condos or something.

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TOD ARMSTRONG

JB: Okay.

A: And it's like they... lives right there. And there was like four people out, standing outside.

JB: Do you know who, who was standing outside?

A: I didn't even look. I didn't want...I didn't want anything to do with it.

JB: Okay. So if you didn't want anything to do with it...

A: Why'd I go?

JB: Well, no... Okay, why'd you go?

A: I, I really, I don't know. I just kind of went along. I...stupid...I mean to involve myself but I really no logical answer.

JB: Okay, so, when did this occur?

A: The night before, two nights before.

JB: Very, very close to when the robbery occurred?

A: Yeah. Yes.

JB: Okay. And now to take them over there and show 'em where they lived, you obviously had to know why they wanted to go there. Why did they want to go there?

A: To rob 'em.

JB: Okay. Did they sit down and, and discuss robbing them in front of you?

AA07321

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TOD ARMSTRONG

A: No. Just besides that time that Matt came over.

JB: Okay, so now, the time when Matt came over, could you describe that discussion to me...what happened?

A: It was the same. It was just that Matt came over and he said that he had, had sold all kinds of drugs and, and he made all kinds of money on this tour thing but he, he didn't like it...the, the tour...he couldn't...he said he couldn't hang with it or something. And uh, so he dropped off the tour and came back home. And then when Matt left they were just...they just kind of like "oh, so he has all kinds of money." And I was like "yeah, I used to buy 'shrooms off him." And I used to sell 'shrooms 'cause that's how I was getting by 'cause I didn't, I didn't have a job. And really that was it. They just kind of...everybody's kind of like...got quiet. And it was no discussion.

JB: So how did you know they wanted to rob him?

A: Just by their looks...I could...you could tell. I mean it's obvious when, when, when you're talking about somebody having all kinds of money and they've been doing robberies previously then they just kind of look at each other and like get that like smirk, you know.

JB: So, but no one ever, ever said anything about doing a robbery, right?

A: No.

AA07322

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TOD ARMSTRONG

JB: Okay. So then...that was about what, three, three days, three days prior?

A: Two...two, three days prior. Somewhere.

JB: When Matt was over there?

A: Yeah.

JB: Okay, so...when do you go, that night over?

A: I don't, I don't recall what night it was. I really don't.

JB: Okay. But...

A: But it was somewhere in between that time...I mean, I was with them when they found out where he lived. 'Cause I found out where he lived, too, at the same time.

JB: So...okay, so, how, how do they, how do they say to you and Ace? "Come on, let's?"

A: Yeah. They, they were talk...they just said "come on, let's go." And then Ace and I...

JB: So you guys get in the car and you have no idea where you're going?

A: I didn't, no. Then they started talking about like, "yeah, we're going to go to Matt's house. I'm going to show them where they live."

JB: Who said that?

A: Ace.

JB: So evidently there was a conversation with Ace?

AA07323

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TOD ARMSTRONG

A: Ace..

JB: And them prior to it?

A: Yeah. Evidently.

JB: Alright. Uh, so again, you, you're totally unaware as to what's going on?

A: Yeah.

JB: And uh...

A: Well, I knew like when we were going to the car. I knew that we were going to Matt's house. So I figured it out.

JB: You figured it out or did Ace tell you?

A: I figured it out. Ace said that he, that they were going to Matt's. So when do you figure why.

JB: Okay. So Ace told you prior to getting in the car?

A: Yeah. Right by the, right by the side door.

JB: Okay. So was there ever any, any discussion as to what was going to happen the night of the murders? Did, did you happen to hear them in the house talking about going over to Matt's house that night that they're going to do the lick?

A: No.

JB: Okay.

A: I didn't know they went there that night.

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TOD ARMSTRONG

JB: So, so that night you're, you're sleeping out in the living room?

A: Yeah.

JB: And uh, and evidently they, they leave the house and you're unaware of that?

A: No. They left the house all the time.

JB: Okay.

A: I just...I didn't think of anything new.

JB: Okay.

A: When they left...I believe I was awake when they left. And then when they came back, I was sleeping.

JB: Okay. But they leave the house, according to what they say, they leave the house, go over and, uh, uh, see Matt outside watering the lawn then come back and get their guns. Do you, do you know they come back a second time?

A: I think they came back. I mean I, I don't, I don't recall, really. I can't really recall.

JB: Alright. You have anything?

Q: Yeah. Yeah, just before we turned the tape back on, we were discussing this...you were alluding to us that you hadn't been quite honest with us in the beginning, right?

A: Yes.

Q: Uh, why was that? Are you trying to protect somebody?

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TOD ARMSTRONG

A: No.

Q: Trying to protect Ace?

A: Not really, I mean, I mean, sort of, I didn't, I didn't...there shouldn't...like, I didn't do anything wrong and Ace didn't kill anybody. So I, I just pretty much didn't want to give anything that would have us involved with it.

Q: Okay.

A: And somehow us get brought into it.

Q: Alright.

A: 'Cause they, more...like into the actual, the criminal part, let alone telling what's happening in the court and everything.

Q: Okay. Is Ace a good friend of yours?

A: Yes.

Q: I noticed you said you didn't do anything wrong...meaning you and Ace didn't kill anybody.

A: Well, Ace didn't do anything wrong either. (Laughing)

Q: Well, well, that's what I'm trying to determine here. It's true that we don't think Ace killed anybody but we're not sure if Ace didn't do anything wrong either. Um, I mean we have a report from...we haven't been back, back to Las Vegas so we're

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TOD ARMSTRONG

not exactly sure what has transpired back there today. Um, so it was at your hesitancy in telling us about the situation is that you were trying to protect Ace?

A: Everybody really.

Q: But, I mean you don't care about Red or Deko do you?

A: No. No.

Q: Okay.

A: I'm talking about like me or Bryan, Ace, any, anybody that didn't have anything to do with...I was trying to hold withhold something that may put us with that, you know.

Q: Okay. Now you said as you were getting into the car, you, you knew you were going over to...

A: Yes.

Q: Matt's. And you said you figured why they were going over there.

A: Yeah. Well, I knew they were going to rob 'em anyways ever since that Matt had that conversation with them in the living room...that...the day that he gave 'em the pills. Those Valiums or whatever. They weren't Valiums, they were something else.

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TOD ARMSTRONG

Q: So did this reinforce for you then that, uh, by since, them wanting you or Ace to point out where they lived, that this thing was impending then? That they were really going to do it?

A: Oh I knew they were going to do it anyways.

Q: Yeah but I mean...you already told me that.

A: Yeah.

Q: But I mean...now by...

A: Pretty much.

Q: Gong over and reconning the place, did that reinforce for you that this thing was going to happen?

A: Yeah. I didn't think they were gonna, you know, I just figured it was another robbery like they did before.

Q: Let's go back to along the lines of, and again, I understand B.S. talk between people that are just getting by and selling drugs to get by and you know, may not be doing the mainstream things that everybody talks about. Was there ever any conversation even casual or off-hand between you and these guys that "oh yeah, hey, and if you get some dope, I know how to get rid of it for you and I'll, you know, do it for a cut of the money"? I mean nobody would expect you to do that for free.

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TOD ARMSTRONG

A: Yeah, no. No. The only thing, the only thing I could think of where they, anybody would get that is from me selling drugs before.

Q: Well yeah, that's exactly what I'm saying.

A: Yeah, but I never said that I would sell any of their stuff for 'em.

Q: Did they ever come to you and say "hey, if we get this stuff, you'll help us move it"?

A: No.

Q: And, and you may have just said "yeah, yeah" because now I understand you're, you're somewhat afraid of these guys...you don't want to offend them.

A: No. I don't remember them ever asking me to move any of their drugs. I don't even think they were going for drugs. They just mainly wanted money.

Q: Now that we're on a little more honest tact here, do you know how the VCR and Play Station got to your house?

A: They brought it. That, I... I mean, yeah. It came up that night that they came back.

Q: Did you see them returning with those things?

A: They returned the bags.

Q: Okay. So again we're back to they showed up, this thing has happened and now all of a sudden there's a VCR and a Play Station at your house that weren't there before.

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TOD ARMSTRONG

A: When they said, they said they got 240 bucks and then they said something about a Play Station. Red did. Red said something about the Play Station.

Q: And now there's a Play Station at your house...

A: But, yeah.

Q: That wasn't there before?

A: Yeah. And then I just went back to sleep. But Red, Red is the one that ...and said he grabbed the Play Station.

Q: I, I want to make it clear, um, that you said you pulled into some apartments. There's some apartments and I can't...is it the Wildwood Apartments?

A: I have no clue.

Q: In about the 4800 block of East Tropicana, right? Tropicana west of, well it's across from...

A: It would be east of Nellis. It was right across the street like their house, across the street there's...

Q: Right.

A: Some apartments.

Q: You could pull into these apartments into a parking area...

A: And see their house.

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TOD ARMSTRONG

Q: And then there's a wall and since the grade is different, you can see right across into their house?

A: Yes.

Q: So that's where you went?

A: Yes. To show 'em the place.

Q: Well, let's...

A: I didn't show 'em...I mean Ace knew where...

Q: Well I meant 'cause...

A: Yeah.

Q: Knew collectively.

A: 'Cause whenever, whenever, uh, I got drugs from them like the 'shrooms, they would...Nick would always come to my house.

Q: Was that the first time you'd ever been to where they lived?

A: Yes.

Q: It's the first time you...on that occasion is when you learned where they lived then, is that what you're saying?

A: Yes. Yes.

Q: So Ace was the only one who knew?

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TOD ARMSTRONG

A: Yes. That I know of, yeah. I mean I guess because Deko needed to find out where he lived, so...

Q: In the car was there any conversation, casual or otherwise about hitting 'em on the way back...did they discuss it..."we're going to go do it" or...Red and Deko talking amongst each other, anything said like that?

A: I don't remember. I don't want to say yes or no and... I don't remember. There was so much talk about like everything...they were always up to something. Just, depended on if I comprehended it or not. They were always up to something.

JB: There was also, uh, uh, a blue pager.

A: Yeah.

JB: Remember the blue pager that was found...

A: Yes.

JB: In...where was that found again?

A: Where was it found?

JB: Yeah.

A: In the backyard.

JB: Okay. Uh, whose pager was that?

A: I don't know. It was one of their's they said. They goes "it came from the house."

JB: Okay.

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TOD ARMSTRONG

A: And I asked about it.

JB: Okay. Now, uh...

A: 'Cause I figured it was from...'cause they robbed some Crips like a couple of days before that...

JB: Uh huh.

A: And they had the \$2500.00 in cash or whatever, a big stack of money. I thought it was their's so I asked about it and they were like "No, that's one of the people over there." I was like oh. 'Cause I seen it in the master bedroom on the, the bathroom counter.

JB: Uh huh.

A: And I was like oh, you know, I don't want no, no part of it then. They're like "yeah, we're going to bury it."

JB: Okay. Uh...

A: They said they were going to bury the gun, too.

JB: Did that work or...do you know if that pager worked or not?

A: I don't know.

JB: Okay.

Q: Did there come a point in time when you asked about having that pager because your's, you broke yours?

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TOD ARMSTRONG

A: Yeah. Yeah.

Q: Like that you told me.

A: Yeah.

Q: And you said earlier that you thought that was Matt's pager.

A: Yeah. It was one of their's. I don't know if it was Matt's or...they said it came from them.

Q: 'Cause you were asking about it and they said "no, you can't have it." And then they explained to you...

A: No, they didn't say I couldn't have it. They said "well, it came from that house." I was like "oh" (laugh), "I don't want nothing to do with it then."

Q: By "that house" meaning where the homicides occurred?

A: Yes. And Ace is in the room then, too. And that's when they said they were going to bury the gun and the, the pager.

Q: Did you see them bury the gun?

A: No.

Q: Do you know where they buried the gun?

A: I have no clue. I didn't even know they ended up burying the pager.

Q: When you went over there and showed them this apartment, do you remember if it was daytime, nighttime?

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TOD ARMSTRONG

A: Night. It was like...there was quite a few cars there. There was like four or five people standing out front. Right there at the bottom of the...like where the driveway and the street.

Q: Alright.

A: And just drove on through.

Q: Had you ever seen anybody out watering the lawn while you were out there showing them the place?

A: No.

Q: Do you know who Ace gave the Play Station to?

A: Uh, no. But what I do remember is them coming back and they said...it was, it was like three days...it was like the day that Matt came over because I remember we showed them then because they ended up going by the house I guess. And there was some guy sleeping in a car. And they said that they, they knocked on the window and woke 'em up and he didn't have a key to the house or something and they stole his CD's.

Q: Okay. So now, now...

A: So it was before, it wasn't, it wasn't the same night. It was before.

Q: What was before?

A: That we showed 'em where they lived.

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TOD ARMSTRONG

Q: Before?

A: Before the murders happened. Like it wasn't that same day or night.

Q: But you think...

A: Because they had already gone there.

Q: Right. So it was after Matt came by but before the murders?

A: Yes.

Q: And Matt came by three days before the murders?

A: Yeah.

Q: So it couldn't have been, uh, the day before or maybe two days before the murders?

A: Right. Or even the night that we showed 'em.

Q: The murders could have occurred the night that you showed them?

A: No. That they went and took the CD's there. Whoever, Wayne, and the...with the car. I don't know who it was.

JB: Is there anything else that you may be able to tell us, you know, shed a little more light on to what was going on as far as the, the planning of, of this robbery? Um,...

A: Not that I can...

JB: If, if you were there for any, any discussion...

A: No, just besides what I've told.

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TOD ARMSTRONG

JB: Of the robbery...

A: Yeah.

JB: That...

A: I wasn't...

JB: That night?

A: No.

JB: There was no...

A: I, I didn't know that they were going that night. I didn't know they were doing it that night.

JB: Okay. But you knew it was...

A: I knew...yeah, I knew that it was, it was going to happen. I just didn't know. 'Cause they were, they were...I didn't even think they were going to end up gonna do that right then because they were trying to get those Crips 'cause they, I guess the Crips shot it...one of 'em...at Tiny Bug and so they were trying to get them. That was mainly what the focus was at that point in time.

JB: Okay.

A: So...

Q: Okay uh, we're ending again this time, the second time, at 10 minutes after, uh...

A: 11.

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EVENT: 980814-1600

TOD ARMSTRONG

Q: 11. Local time. Same persons are present as were at the beginning.

I HAVE READ THIS STATEMENT CONSISTING OF 53 PAGES AND AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS VOLUNTARY STATEMENT WAS COMPLETED AT: 927 PROSPECT #1204, HONOLULU, HAWAII ON THE 17TH DAY OF SEPTEMBER, 1998 AT 1110 HOURS.

WITNESS: _____

WITNESS: _____

SIGNATURE OF PERSON GIVING STATEMENT

/kb
98V0777

AA07338

EXHIBIT 54

EXHIBIT 54

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VOLUNTARY STATEMENT
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EVENT: 980814-1600

SPECIFIC CRIME: QUADRUPE MURDER W/DEADLY WEAPON

DATE OCCURRED: 08/14/98

TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: ACE RAYBURN HART

DOB: [REDACTED]

SOCIAL SECURITY #: [REDACTED]

RACE: WHITE

SEX: MALE

HEIGHT:

WEIGHT:

HAIR:

EYES:

WORK SCHEDULE:

DAYS OFF:

HOME ADDRESS:

LAS VEGAS, NV 89123

HOME PHONE: [REDACTED]

WORK ADDRESS:

WORK PHONE:

BEST PLACE TO CONTACT:

BEST TIME TO CONTACT:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE T. THOWSEN, P# 1467, LVMPD Homicide Detail, on 09/22/98 at 1450 hours. Persons present during this interview are ACE RAYBURN HART, DETECTIVE J. BUCZEK, P#3702, and DETECTIVE THOWSEN.

Q. Ace, first off, you're aware this statement is being tape recorded, is that correct?

A. Yes, sir.

Q. And you understand that, uh, you're not under arrest. You're free to go at any time.

We just asked if you'd come down and talk to us today to clarify a few points.

A. Yes.

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ACE RAYBURN HART

Q. And how did you get down here today?

A. My mother.

Q. And she drove you?

A. Yeah.

Q. And that would be Shirley Hart?

A. Yeah.

Q. Okay. Uhm, one of the things that I had talked about you-- or with you was any conversation that Todd Armstrong or, uh, Deko (phonetic), otherwise known as Donte (phonetic) Johnson, or Red, otherwise known as Terrell (phonetic) Young, would have said to you either before, during, or after the quadruple homicide. Uhm, is there any conversations that you can recall that somebody said to you in that time frame?

A. Yes, it was after the murder-- on the Saturday. It was just said in a sentence, uh--

Q. Where-- where were you when this happened?

A. At, uh, [REDACTED], at our house.

Q. Okay.

A. That's where everybody was stayin' at. Uh, that-- just that Todd had sent us to the hippies and, you know, it just kept goin' on and on.

Q. So who's saying this?

A. Deke (phonetic). Donte Johnson.

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ACE RAYBURN HART

- Q. Okay. And can you-- (both talking at once)
- A. Just brought it up.
- Q. -- say as much as you can recall about what he said.
- A. Uhm--
- Q. He said that Todd sent him to the hippies?
- A. Yeah. I can't-- I-- I remember he was sayin' somethin'. It was just in a sentence. He's like, "Yeah, we were here last night." Uh, they were talkin' about somethin' and he just went in, he just was like, "Todd sent us to the hippies and then when we got over there, this and that happened."
- Q. What did he say this and that happened?
- A. Uh, that-- I can't remember. I'm thinkin' that he was tellin'-- right then he was tellin' me that that's when Matt was standin' outside with the beer. He was drinkin' a beer and he pulled up and he was tellin' him to get in the house.
- Q. Okay. And then did he go on to describe robbing and killing the people?
- A. Uhm-hmm (affirmative). Yes.
- Q. Is that the same information that you gave us originally in your statement?
- A. Yes.
- Q. Nothing has actually changed in that aspect?
- A. No.

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EVENT: 980814-1600
ACE RAYBURN HART

Q. Uhm, thinking back to the time that you had, uh, been around Todd when Todd was around, uhm, Donte and Red, was Todd smoking rock cocaine prior to meeting Donte Johnson?

A. Yes.

Q. And did his cocaine use increase or decrease with his involvement with Donte Johnson?

A. Increased.

Q. How would you say-- how much would you say? A little bit, a lot?

A. A lot. Before ev-- all the drugs, like before Deko was even around, it wasn't I mean bad at all. It was maybe on the weekends or that-- that-- this and that. But when Donte moved in is when it got bad.

Q. Okay. So Donte would hang around and he would bring lots of rock cocaine around?

A. Yeah. 'Cause he'd have it there, you know. Only reason we never really wanted it, we'd be partying with people and nobody'd wanna go get it or, you know, go to the troubles of tryin' to find any. But when Donte lived there, he always had some so BJ always came over with a lotta money and-- 'cause he knew all's-- it was already there.

Q. So BJ would front the money a lotta times and buy it from--

A. Yeah.

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ACE RAYBURN HART

Q. -- from Donte?

A. BJ'd buy it.

Q. And then he'd share it with everybody else?

A. Yeah.

Q. Did, uh, Donte ever just give some to-- to Todd or to you?

A. Yes.

Q. Or to BJ?

A. He did a-- he'd come in-- he did a robbery with some Crips. I don't know where-- some hotel room. And he robbed for money and they had drugs there. And he gave us some of the drugs.

Q. And did you-- did you know before they were goin' out that they were talkin' about they were gonna go do a robbery on some of these guys?

A. Yes.

Q. Okay.

A. They were talkin' about goin' to pull a robbery.

Q. Were they tryin' to see if anybody wanted to go with them?

A. Yes. They-- they wanted Todd to. They asked Todd if, uh, he was-- if he wanted to go pull a robbery with them. And I could tell that Todd, that he kinda wanted to but, you know, was talkin' to Todd. I was like, "It ain't the same goin' out and fightin'

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ACE RAYBURN HART

with me, BJ, and all our buddies is fightin'. I mean when you go with these guys, it's gonna be a lot different." And then Todd never did go.

Q. Okay. But he was thinkin' about it for a minute?

A. Yeah. He was-- it just probably crossed his head that--

Q. Did you hear any conversations that Deko or Red had with Todd where they were praising him in some way, saying how'd he be good to go with them for certain reasons?

A. Oh, yeah. They said that it'd be good for him to go with them 'cause he's a big boy if anything happened. But they-- I mean they never really kept on him about it.

Q. But they mentioned that to him. (Both talking at once)

A. They mentioned it to him.

Q. Okay. And so it seemed like that kinda pumped Todd up a little that they would talk about him like that?

A. Yeah.

Q. Fire him up a little bit?

A. Yeah.

Q. Okay. But Todd didn't go with 'em that night?

A. No. Todd never went with 'em.

Q. How soon prior to the-- how far prior to the quadruple homicide was this incident that you're talkin' about?

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ACE RAYBURN HART

A. Probably like two weeks.

Q. About two weeks before?

A. Right before I moved. I don't remember-- yeah, it's right then.

Q. Who--

A. Yeah, I'm thinkin' two weeks prior.

Q. Okay. And they left from the Everman house when they went to go do the robbery?

A. Yeah.

Q. Who was with, uh, Donte Johnson when he went that night?

A. Uhm, Donte Johnson, uh, Red, and Scale (phonetic).

Q. And, uh, are you familiar with Scale? Do you know what his real name is?

A. No. I just knew him as Scale.

Q. Okay. When they came back from doing this robbery, uh, you say they gave some rock cocaine out?

A. Yes.

Q. Who did they give the rock cocaine to?

A. Uhm, I think fir-- first person that mentioned to it was-- was Todd, but he didn't get it-- you know, we had a table in the livin' room and he put it on the table, was like, "That's ya'll guys's."

Q. Okay.

A. So I really can't put it on any of us.

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ACE RAYBURN HART

- Q. But Todd asked for it first, is that what you're saying?
- A. Yeah. Or-- Todd was like, "Can you-- can you hook us up with some-- with some shit?" And he was like, "Alright." You know, and he went in his bag and he pulled out some.
- Q. And-- and who is-- who was sayin' "can you hook us up with some shit" and who was takin' it out of the bag?
- A. Donte-- Todd I think-- I'm pretty sure Todd was the first one to mention it. And then, uh, Donte-- or Deko is the one that gave it to us.
- Q. Okay. And about how much did he give you?
- A. Uh, I don't remember. Like maybe a hundred dollar-- eight to a hundred dollars worth.
- Q. Okay.
- A. Maybe even more. I don't even remember.
- Q. Okay. Are there any other instances where, uh, Donte Johnson asked Todd if he would go with him to do a robbery?
- A. No.
- Q. That you're aware of?
- A. No.
- Q. Did Todd ever mention to you himself that, uh, he had anything to do with planning the quadruple murder and robbery?

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ACE RAYBURN HART

A. No. Never once he said anything about it.

Q. After the robbery happened, did Todd seem, uh, nervous? Was he worried about Deko?

A. I wouldn't-- I-- I guess you could say nervous. He didn't-- he left for two days and then that's when-- before he went back is when we came to you guys. Uh, like-- I guess you could say he was-- felt kinda nervous.

Q. Okay.

A. Like he didn't wanna go back there. He's like, "I ain't goin' back there unless you guys are goin' back there with me." So--

Q. Okay.

A. And then-- I don't know. We never all-- we never went back there. So it was like that'd be the worse times for all of us to go back there.

Q. Okay.

A. If one of 'em's is back there. I mean so they can only hurt one person and the other two would know.

Q. Prior to the, uh, evening of the quadruple homicide, had you been staying at the Everman house or were you staying some place else?

A. I was stayin' at Brian's house. I don't know the address.

Q. For about how long?

A. Two weeks.

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ACE RAYBURN HART

Q. About two weeks?

A. Yeah.

Q. Had you, uh, gone over prior to the homicide, the quadruple homicide occurring?
Had you, yourself, gone over and ridden in a car with Deko and Red, by yourself
or with Todd, to go by the Moens' (phonetic) house?

A. No. Af-- after the murder?

Q. Before the murder.

A. No. Uh, no.

Q. Okay. Do you know if Todd did?

A. No. I don't know.

Q. You don't know?

A. I don't know. I can't say yes or no.

Q. Okay. You didn't see Todd do this?

A. I didn't see Todd or hear.

Q. Or did you hear from Todd that he did this?

A. No. But I barely kept in contact with any of 'em because the phone was turned off.
It was just when Todd would go to the pay phone and if we were there at Brian's
when he called.

Q. Okay.

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ACE RAYBURN HART

- A. I can only remember talkin' to him one time and he was tellin' me just to call his girlfriend three-way to see if she was comin' to pick him up.
- Q. Okay. After I, uh, spoke with you last week, did you get any phone calls from Todd?
- A. Yeah, I talked to him that day. He called me that-- that day _____. (Both talking at once)
- Q. Which woulda been last Thursday?
- A. Yeah.
- Q. Is what I recall that we met. And--
- A. No. I think it was-- yeah, it was Thursday. 'Cause I got in Tuesday night and I had to be there Wednesday morning. Then the ne-- he was goin'-- that Gary Guyman (phonetic) was leavin', so it was Thursday.
- Q. Okay. So I spoke with you on Thursday. Was it Thursday or Friday that Todd talked to you?
- A. Thursday.
- Q. Thursday?
- A. Yeah.
- Q. Okay.
- A. Thursday.
- Q. And where was Cod-- uh, Todd calling from?
- A. Pol-- I guess his house.

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- Q. Okay. What did he say to you?
- A. Just that they were thinkin' he set up the robbery.
- Q. Who-- who was thinking?
- A. That the detective-- Jim. He didn't say Jim. He said the detectives that were there.
- Q. Well, just tell me what he said-- his words.
- A. Uh, that the detectives that were there were sayin'-- thinkin' that he set up the robbery and that they were tellin' him I was the one tellin' on him. And, uh, his phones were tapped.
- Q. Did he say it because his phones were tapped that he couldn't talk?
- A. Yeah. He--
- Q. Or not to say anything?
- A. -- he just said-- he told me from the very beginning that his phones were tapped.
- Q. From the beginning of the conversation?
- A. Yeah. Like maybe-- he was just like, "What's up, man? What are you up to?" And then he's like, "Well, they got my phones tapped." And then that's when he went on to tellin' me about that, uh--
- Q. So what did he say specifically about the phone being tapped and what you should or shouldn't say?
- A. He was just like, "Be--" you know, "don't talk 'cause the phones are tapped."
- Q. Okay.

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- A. I was like, "Alright." And he said that the detectives that were out there said that I was tellin' them that he set up the robbery.
- Q. Okay. What happened-- what'd he say next?
- A. Uh, nothin'. Just that they were tryin' to put him in prison for it. And that's all he said. Then we talked about his mom was ascaresd [sic] because she-- they-- they were scared that-- so he was gonna get an attorney. And I told him I wasn't gonna get one.
- Q. Okay. Did you explain to him that you talked to the police?
- A. Yeah. I told him I had talked to you guys that day.
- Q. Did you tell him that you didn't have anything to hide or-- what was your conversation like?
- A. Nothin'. I was just tellin' him about the phones bein' tapped. I just said that, well, don't matter 'cause I don't have nothin' to hide anyway. And I was like, "I ain't gonna go spend my money on an attorney when I don't need one." And I said, "It's money I don't have anyway."
- Q. Okay. Did he mention anything else about the homicide?
- A. No.
- Q. Did he say if he was coming back or staying over there, what his plans were?
- A. No. He didn't say nothin'.
- Q. Did he ask you what you were gonna do?

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- A. Uh, no, I don't think so. He was just tellin' me that he was goin' to the beach every day. Uh, he's been goin' to church. That's it.
- Q. Okay.
- A. Then he got off the phone. His mom was yellin' about the phone bill in the background. I could hear her.
- Q. Did he say that he was gonna call you again on any other day?
- A. No. He said, "I'll just talk to you later." I said, "Alright."
- Q. Did he mention anything about Deko or Red?
- A. No.
- Q. About how long were you on the phone talkin' to him?
- A. Five-- maybe five minutes.
- Q. Okay. And you were at your house when you got the phone call?
- A. Yes.
- Q. Backin' up a little bit to the quadruple murder, uh, the people that you knew, that you heard were talkin' about it as far as being involved were which two people?
- A. Donte and Red.
- Q. Donte and Red?
- A. Yes.
- Q. And was there anybody else's name that was mentioned?

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- A. His-- Tiny Bug's name was never mentioned. Uh, I can-- I remember Don-- Deko actin' like he's talkin' about somethin' one time. I don't remember exactly what it was, but it was so brief, you know, but like sayin' "us" or that Red was laughin' at someone else 'cause they did somethin' or somethin'. But I never really caught on to it until you guys said, uh, somethin' to me about there bein' three people.
- Q. Okay.
- A. I didn't-- honestly, they never-- I mean I don't know Tiny Bug, so I wouldn't wanna protect him.
- Q. Have you ever met Tiny Bug?
- A. Yes. I met him, uh, like two times. Maybe two times.
- Q. Do you know his real name?
- A. No. And, uh, I can't even pronounce it now. That's from readin' it in the paper.
- Q. Can you describe him?
- A. Uh--
- Q. Is he white or black?
- A. Black. Kinda young. Not that big. I mean a little taller than Deko, but he ain't real built. He's got-- his eyes. I-- I remember just his eyes bein' real dark. Like right around here, he was always-- he was black but his eyes always seemed so much darker.
- Q. Okay.

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A. Plus he had a big mouth. And--

Q. A big mouth. You mean a large mouth or he was always talkin'?

A. Yeah, like-- like-- no. Like big mouth.

Q. Okay.

A. A big boned mouth. But he never seemed like he was a violent person.

Q. Okay.

A. 'Cause he'd come over and he-- the first time I seen him, he was at my house. And I don't even remember-- recall seein' him with a gun. And he come over and he turned on the music and sat in the corner the whole time. He didn't say nothin'. You know, didn't-- just was kinda like a shy person.

Q. And who was he friends with?

A. Uh, I gue-- he was there with Deko and Red.

Q. Okay.

A. I don't know whose--

Q. So he was there more with-- he wasn't there with you or he wasn't there with Todd.

A. No.

Q. He was there with Deko and Red?

A. Oh, yeah. He's with Deko and Red. And the other time-- the other time I seen him I'm thinkin' was when Deko-- or, not-- no. Deko and Red had just left and went to the Sunset Station and Scale and Tiny Bug and two girls came over and said that

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they needed to find Deko and Red because the guys were shootin' at 'em that they robbed.

Q. Okay.

A. Yesterday. Or-- yeah, it was the next day because-- that's right. When I left-- moved out, and they said the-- the next day is when they came. They were sayin' that they were shootin' at them. The guys they robbed last night, they were shootin' at 'em. And it was later the next night though.

Q. Okay.

A. They were out watchin' H20 at Sunset Station. 'Cause they were askin' us if we wanted to go with them.

Q. And did they say where the shooting happened?

A. N-- uh, yeah. At-- at the-- I don't know if it's Valley or Vegas, right down Fremont, by Maryland Parkway and Fremont. I think they said the Valley.

Q. Motel?

A. Yeah.

Q. Okay.

A. That they were shootin' out of the room at 'em and Scale took off running and Tiny Bug took off runnin'.

Q. Okay. So and-- in your conversations with, uh, Tiny Bug, he never mentioned anything to you personally about any involvement in this?

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A. Uhm-uhm (negative). Neither did Donte or Red.

Q. They never mentioned his name specifically to you.

A. No.

Q. Okay. Do you know who set up the robbery and murder of the four boys?

A. No.

Q. No idea?

A. No idea.

Q. Jim, do you have any questions?

JB Just one. Did you happen to go by the, uh, the victim's house the day of the murders?

A. No.

JB Okay.

Q. Do you have anything else that you have, Ace, that you wanna put on here?

A. No. That's it.

Q. Is everything that you've told us today the truth?

A. Yes.

Q. That'll be the end of the statement. The same persons are present. The time is now 1510. That's all. Thank you.

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STATEMENT CONCLUDED.

TT/cc
983373

I HAVE READ THIS STATEMENT CONSISTING OF 19 PAGES AND AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS VOLUNTARY STATEMENT WAS COMPLETED AT LVMPD HOMICIDE OFFICE, WEST CHARLESTON, LAS VEGAS, NV ON THE 22ND DAY OF SEPTEMBER, 1998 AT 1510 HOURS.

WITNESS: _____

WITNESS: _____

SIGNATURE OF PERSON GIVING STATEMENT

AA07358

EXHIBIT 55

EXHIBIT 55

CASE NO.

C156303

Shirley E. Rungius

IN THE JUSTICE'S COURT OF HENDERSON TOWNSHIP

COUNTY OF CLARK, STATE OF NEVADA

* * * * *

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

-vs-

MICHAEL CELIS,

Defendant.

Case No. 1659-98FH

REPORTER'S TRANSCRIPTOFPRELIMINARY HEARINGBEFORE RODNEY T. BURR, JUSTICE OF THE PEACE

Thursday, January 21, 1999

10:00 A.M.

APPEARANCES:

For the State:

DAVID SCHWARTZ, ESQ.
Chief Deputy District Attorney
&
CHRISTOPHER LAURENT, ESQ.
Deputy District Attorney

For the Defendant:

DAYVID FIGLER, ESQ.
Special Deputy Public DefenderReported by: LISA BRENSKE, CCR No. 186
Official Court Reporter

CE11

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E X H I B I T S

	<u>MARKED</u>	<u>ADMITTED</u>
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1 HENDERSON, CLARK COUNTY; THURSDAY, JANUARY 21, 1999

2
3 P R O C E E D I N G S
4

5 THE COURT: This is the time set for
6 preliminary hearing in the case of Michael Celis, 98FH-1659.

7 State call their first witness, please.

8 MR. SCHWARTZ: Your Honor, we have a few
9 housekeeping matters. The State has an amended criminal
10 complaint it wishes to file. I believe it was on calendar
11 this past Tuesday but for some reason got passed until
12 today. I've given Mr. Figler a copy of the Amended
13 Information, the amended criminal complaint, and the only
14 thing that's changed is the State added a count, Count III,
15 ex-felon possession of a firearm. Should this case proceed
16 to trial we understand under current Nevada law we'd have to
17 sever that count out. Rather than have to go through a
18 second preliminary hearing just for that count, we want to
19 incorporate it in this particular hearing.

20 MR. FIGLER: I received it, Your Honor. No
21 objection to the filing of the amended criminal complaint.

22 MR. SCHWARTZ: I have a judgment of conviction
23 out of the State of California that I've shown to Mr.
24 Figler.

25 MR. FIGLER: The only thing about this it

1 appears Mr. Celis was committed to the youth authority and
2 it appears from the date of the offense that this occurred
3 when Mr. Celis was a juvenile. As I understand it it's an
4 assault charge that they're attempting to use as the
5 percipient crime for the ex-felon in possession of firearm.

6 MR. SCHWARTZ: It's an assault with a deadly
7 weapon charge.

8 MR. FIGLER: With that representation I don't
9 know if that would be sufficient for purposes of ex-felon
10 under our statute. So I'd reserve that argument, just bring
11 that to the court's attention. Otherwise I have no
12 objection to the documents, the authenticity thereof.

13 THE COURT: Mr. Schwartz, what is your
14 position?

15 MR. SCHWARTZ: I believe under our current
16 status we can charge the defendant with ex-felon possession
17 of a firearm. I believe it was a 1993 felony he was
18 convicted of and he was sentenced to I believe five years.

19 THE COURT: We'll have that marked as Exhibit
20 1. It is admitted.

21 (State's Exhibit No. 1 was
22 marked for identification and
23 admitted into evidence.)

24 THE COURT: Anything else?

25 MR. SCHWARTZ: Yes, one additional thing, Your

1 Honor. I believe Mr. Figler would stipulate to the
2 testimony of Dr. Green. He has two preliminary hearings in
3 Las Vegas that he's at this morning and I called Mr. Figler
4 yesterday and asked just for purposes of this hearing if he
5 would stipulate to Dr. Green's testimony as to the cause of
6 death with regard to Erik Gates.

7 MR. FIGLER: Your Honor, I'm quite familiar
8 with Dr. Green so I'd have no objection to his
9 qualifications as an expert for the purposes of the
10 preliminary hearing.

11 Additionally, for purposes of the preliminary
12 hearing only I will stipulate that the cause of death was as
13 stated in Dr. Green's autopsy report which would be a bullet
14 to the heart and that it wasn't self-inflicted.

15 MR. SCHWARTZ: That's correct, Your Honor. It
16 was a gunshot wound which entered the back and ultimately
17 the heart and that was his cause of death at least in the
18 autopsy that he performed on March the 1st, 1997. We expect
19 that would be his testimony here today.

20 MR. FIGLER: So for purposes of the prelim only
21 we do stipulate to that.

22 THE COURT: That'll be noted.

23 MR. FIGLER: We'd also invoke the exclusionary
24 rule, Your Honor, prior to the start of the case.

25 THE COURT: Who will the first witness be?

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MR. SCHWARTZ: Chance Lesueur.

THE COURT: Mr. Lesueur, you can come forward.

MR. SCHWARTZ: He's in custody, Your Honor.

THE COURT: Now, the exclusionary rule has been invoked, ladies and gentlemen. That means if you're a witness under subpoena in this case I am going to ask that you step outside the courtroom. You're not to discuss your testimony amongst yourselves. When it's your turn to testify the bailiff will summons you into court.

GROVER CHANCE LESUEUR,

called as a witness by the State, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please state your name and spell your last name for the record.

THE WITNESS: Grover Chance Lesueur,
G-r-o-v-e-r, L-e-s-u-e-u-r.

DIRECT EXAMINATION

BY MR. SCHWARTZ:

Q Mr. Lesueur, let me direct your attention to February the 28th, 1997. Did you have occasion to be at a party at 505 Crony Street in Henderson, Clark County, Nevada?

1

1 A Yes.

2 Q And do you recall who you went to that party
3 with?

4 A I do.

5 Q And who did you go there with?

6 A Mike Austin and Chris Johns.

7 Q And in addition to those two individuals did
8 you make arrangements to get together with some other people
9 and travel kind of one vehicle behind the other?

10 A Yes.

11 Q And who was that?

12 A There were several vehicles. I believe there
13 was four or five.

14 Q Do you know an individual by the name of Miguel
15 Lopez?

16 A I do.

17 Q Was he one of the individuals who traveled to
18 the party along with you in a separate vehicle?

2

19 A Yes. He was in a separate vehicle among the
20 four or five vehicles.

21 Q And was it you who told Miguel Lopez about this
22 party?

23 A No. There were about 200 invitations that were
24 handed out.

25 Q Do you know if Miguel Lopez traveled to that

2 1 party with any other individuals in his company?

2 A From the freeway it looked like there were two
3 or three people in the back of the truck and the front was
4 also filled.

5 Q Did there come a time while at the party at
6 505 Crony when Miguel Lopez introduced you to any
7 individuals?

8 A Yes. He introduced me to his little brother
9 and a couple of girls and another guy by the name of he
10 called him Bones.

11 Q Do you know the name of Miguel Lopez's brother
12 or brothers?

13 A No, I can't recall that.

14 Q The individual whom he introduced you to and
15 referred to as Bones, do you see him in the courtroom today?

16 A I do.

17 Q And could you indicate where he is located and
18 describe what he's wearing today.

19 A What he was wearing at the time?

20 Q No. What he's wearing today. What is he
21 wearing right now?

22 A All red.

23 Q Is he seated next to the gentleman in the suit
24 to my left?

25 A Yes, sir.

2 1 MR. SCHWARTZ: Would the record reflect the
2 identification of the defendant, Your Honor?

3 THE COURT: It shall.

4 BY MR. SCHWARTZ:

5 Q Now, you indicated a moment ago that there were
6 some 200 people who received invitations to this particular
7 party?

8 A Yes, sir.

9 Q When you arrived at the party or during the
10 course of the party did there seem to be that many
11 individuals there?

12 A At least. You couldn't even move in the house
13 it was that packed.

14 Q Now, did there come a time due to the number of
15 people that were at this party when the guests were asked to
16 leave the residence at 505 Crony?

17 A Yes.

18 Q And did you leave the residence?

19 A No.

20 Q Did there come a time after guests started
21 leaving when you left the residence?

22 A Yes.

23 Q When you left the residence after you got
24 outside of 505 Crony did there come a time when you
25 witnessed a fight?

2

1 A Yes.

2 Q And was one of your friends or acquaintances
3 involved in this particular fight?

4 A No.

5 Q Do you know Jim Reed?

6 A I met him maybe one time before at another
7 party.

8 Q Did you observe him involved in a fight?

9 A Yes.

10 MR. FIGLER: At this time I am going to object
11 as to the leading nature of these questions.

12 THE COURT: All right.

13 MR. SCHWARTZ: It's just preliminary, Your
14 Honor. All right.

15 MR. FIGLER: It's putting people there and I
16 object as leading.

17 THE COURT: If you can watch that, Mr.
18 Schwartz.

19 BY MR. SCHWARTZ:

20 Q Did you observe a fight that involved Mr. Reed?

21 A Yes.

22 Q Can you tell the court what you saw.

23 A Yes. Miguel's little brother stole a couple
24 bottles of liquor and he was putting them inside his jacket
25 and he left the house and Mr. Reed said, "Hey, take your

2 1 jacket off." As he started removing his jacket Reed hit him
3 2 across the face with a bottle.

4 Q Were you able to tell when Mr. Reed struck
5 3 Miguel Lopez's brother with the bottle if it caused injury
6 4 to any area on Miguel's brother's body or face?

7 A No.

8 Q What happened to Miguel's brother after he was
9 5 struck with this bottle?

10 A I'm not sure, sir. There was a gunshot right
11 6 after.

12 Q After Miguel's brother was struck by Jim Reed
13 7 with a bottle what's the next thing you remember seeing?

14 A Miguel pulled out a gun and fired it into the
15 8 air.

16 Q Now, when you say Miguel, who are you referring
17 9 to? What's his full name if you know?

18 A Miguel Octavio Lopez.

19 Q How long had you known Miguel Lopez prior to
20 10 February 28, 1997?

21 A About five or six months.

22 (State's Exhibit No. 2 was
23 marked for identification.)

24 BY MR. SCHWARTZ:

25 Q Showing you what's been marked State's Proposed
26 11 Exhibit 2 are you able to identify the individual depicted
27 12 in that exhibit?

2

1

A Yes.

2

Q Who is that?

3

A Miguel Lopez.

4

MR. SCHWARTZ: The State would move for the admission of Proposed 2.

6

MR. FIGLER: No objection, Your Honor.

7

THE COURT: It's admitted.

8

(State's Exhibit No. 2 was admitted into evidence.)

9

10

MR. SCHWARTZ: And we'd also move for the admission of 1 and I don't know if that's been admitted?

12

THE COURT: Yes, it has.

13

BY MR. SCHWARTZ:

14

Q You indicated, Mr. Lesueur, that Miguel Lopez pulled out a gun and fired one shot into the air; is that correct?

16

17

A That's correct.

18

Q And what happened after that?

19

A People started scattering.

20

Q And what did you do?

21

A Ran too.

22

Q What's the next thing you remember seeing or hearing that evening after the first gunshot and the people started scattering?

24

3

25

A There was a bunch of fights that broke out into

3

1 the street and another gunshot was fired.

2 Q Did you see who fired that second gunshot?

3 A I did.

4 Q And who was that?

5 A Miguel Lopez.

6 Q Now, you indicated earlier that you were
7 introduced to an individual by the name of Bones who you've
8 identified as the defendant here in court today; is that
9 correct?

10 A Yes, sir.

11 Q Did you see Bones outside during this time
12 frame, during these altercations?

13 A Yes, sir.

14 Q And what was the defendant doing at that time?

15 A Fighting, sir.

16 Q What if anything did you observe with regards
17 to the fighting that the defendant was involved in? What
18 did you see?

19 A Sir, could you repeat the question.

20 Q You indicated that you saw the defendant
21 involved in a fight; is that correct?

22 A Yes, sir.

23 Q Did you ever observe the defendant being
24 injured in this fight?

25 MR. FIGLER: Objection, Your Honor, with regard

3 1 to leading again.

2 MR. SCHWARTZ: How am I suggesting an answer if
3 I asked if he observed the individual in a fight get hurt?
4 Yes or no.

5 MR. FIGLER: If he could testify as to what he
6 observed, I think we'd be in much cleaner legal grounds.

7 MR. SCHWARTZ: I believe that's what I asked.

8 MR. FIGLER: I don't like the leading.

9 THE COURT: That particular question I don't
10 think there was any way to get around that or bring it up so
11 it's overruled.

12 BY MR. SCHWARTZ:

13 Q What did you observe, sir?

14 A Bones was hit over the head with a 40 bottle.

15 Q When you say "a 40 bottle", what do you mean?

16 A Mickey's 40 ounce bottle of malt liquor.

17 Q And did you see who hit the defendant with that
18 bottle?

19 A I did.

20 Q And who hit the defendant with the bottle?

21 A A guy by the name of Bobby Mireles.

22 Q What if anything did the defendant do as a
23 result of being hit with the bottle by Bobby Mireles?

24 A He took his shirt and wiped the blood away from
25 his face, walked over and took the gun out of Miguel Lopez's

3 1 hand, came back and fired it twice.

2 Q Were you able to determine whether either of
3 those two shots fired by the defendant struck anyone?

4 A Yes. The first bullet struck Bobby Mireles in
5 the chest and exited out his back.

6 Q Now, at the time you're witnessing these events
7 are you able to see a bullet go into his chest and exit the
8 back?

9 A Yes. It wasn't -- I was no more than ten feet
10 away.

11 Q What's the next thing that happened after the
12 defendant fired those two shots?

13 A Went to another person, fired it, no one was
14 hit. And I looked back at Bob Mireles, he took two steps
15 and fell to the ground.

16 Q At the time you witnessed this defendant fire
17 those two shots do you know where Miguel Lopez was?

18 A Had to have been --

19 Q Do you know, do you recall where he was?

20 A Sir, no, sir.

21 Q After this defendant fired the two shots what
22 if anything did this defendant who is in the courtroom today
23 do?

24 A Sir, I don't know, sir.

25 Q Did you go over to Bobby Mireles after the

3 1 shooting stopped?

2 A Sir, no, sir.

3 Q Did you see Erik Gates after the shooting
4 stopped?

5 A Sir, no, sir.

6 Q Later that night or the early morning hours of
7 March the 1st did you come in contact with Miguel Lopez and
8 this defendant?

9 A Sir, no, sir.

10 Q Are you sure about that?

11 A Sir, yes, sir.

12 Q Did you ever see this defendant who you were
13 told goes by the name of Bones, the defendant in the
14 courtroom today, again after he fired those two shots?

15 A Sir, no, sir.

16 Q So from February the 28th, 1997 till today you
17 hadn't seen this defendant?

18 A Sir, no, sir.

19 Q Had you had contact with Miguel Lopez since the
20 incident?

21 A Sir, no, sir.

22 Q Now, initially you gave a statement to the
23 Henderson Police Department with regards to what if anything
24 you had observed at this particular party on February 28th,
25 1997, correct?

3

1 A Sir, yes, sir.

2 Q And you didn't tell the police that you
3 witnessed the shooting, did you?

4 A Sir, no, sir.

5 Q Would it be fair to say that you withheld a lot
6 of information from the police?

7 A Sir, yes, sir.

8 Q But after you gave that statement to the police
9 there came a time when you were arrested and initially
10 charged with the crime of attempt murder; is that correct?

11 A Sir, that was before.

12 Q Okay. Prior to the shooting, prior to February
13 28th, 1997 you had been arrested for attempt murder?

14 A Sir, yes, sir.

15 Q And that charge was subsequently reduced down
16 to a gross misdemeanor; is that correct?

17 A Sir, yes, sir.

18 Q And you were allowed to plead guilty to a gross
19 misdemeanor in exchange for testifying truthfully as to what
20 if anything you had witnessed at that party on February the
21 28th, 1997; is that correct?

4

22 A Sir, that's part of the plea negotiations, yes,
23 sir.

24 Q And the State of Nevada agreed to recommend or
25 not oppose probation?

4 1 A Sir, yes, sir.

 2 Q And you were placed on probation?

 3 A Sir, yes, sir.

 4 Q And there came a time while on probation that

 5 you did things that were not in accord with the regulations

 6 or the provisions of your probation agreement, correct?

 7 A Sir, yes, sir.

 8 Q And the Department of Parole and Probation

 9 moved to revoke your probation?

 10 A Sir, yes, sir.

 11 Q And you were represented at that time by Mr.

 12 John Moran?

 13 A Sir, yes, sir.

 14 Q And at that time you contacted the district

 15 attorney through your office and agreed to give them

 16 information regarding the events that we're here today to

 17 discuss if in lieu of revocation we would allow you to go to

 18 boot camp?

 19 A Sir, yes, sir. Two days after.

 20 Q And currently you are in boot camp?

 21 A Sir, yes, sir.

 22 Q Have any other promises been made to you by the

 23 State of Nevada to get you to testify here today?

 24 A Sir, no, sir.

 25 Q Do you understand that if you testify falsely

4 1 under oath you'll be charged with perjury?

2 A Sir, yes, sir.

3 Q And there won't be any negotiations in the
4 future, do you understand that?

5 A Sir, yes, sir.

6 Q Is that clear?

7 A Sir, yes, sir.

8 Q Is there any doubt in your mind that the
9 defendant Michael Celis was at that party at 505 Crony on
10 February the 28th, 1997?

11 A Sir, no, sir.

12 Q Is there any doubt in your mind that he was the
13 individual who you observed fire a shot into the chest of
14 Bobby Mireles?

15 A Sir, no, sir.

16 Q Is there any doubt in your mind he's the
17 individual who took the gun from Miguel Lopez?

18 A Sir, no, sir.

19 Q Now, did you know Erik Gates prior to going to
20 this party on February the 28th, 1997?

21 A Sir, yes, sir.

22 Q When Miguel Lopez fired the first shot into the
23 air, did you see Erik Gates at that time?

24 A Sir, yes, sir.

25 Q And where was he in relation to where Miguel

4 1 Lopez was standing?

2 A Sir, probably about 20 or 25 feet, sir.

3 Q And how far were you from Miguel Lopez at this
4 time?

5 A Sir, on the other side of the street so which
6 would have been probably about 30 feet, sir.

7 Q I believe you testified that Miguel Lopez fired
8 a second shot, is that correct, or did you testify to that?

9 A Sir, yes, sir.

10 Q And were you able to tell in what direction he
11 fired the second shot?

12 A Sir, yes, sir.

13 Q What direction was he firing the second shot?

14 A Sir, towards a group of about four or five
15 people, sir.

16 Q And what were the people doing, those four or
17 five people that you're talking about, what were they doing
18 at the time Miguel Lopez fired this second shot?

19 A Sir, fighting, sir.

20 Q Were you able to tell if anyone was injured as
21 a result of the second shot?

22 A Sir, yes, sir.

23 Q And how were you able to do that?

24 A Sir, Erik Gates collapsed, sir.

25 Q Did you ever see Erik Gates get up after he

4 1 collapsed?

2 A Sir, no, sir.

3 Q How much time would you say elapsed or passed
4 from the time Miguel Lopez fired his first shot in the air
5 to the second shot that he fired?

6 A Sir, maybe about a minute, sir.

7 Q Now, hadn't you testified earlier that after
8 the first shot people just started running, scattering?

9 A Sir, into the street, yes, sir.

10 Q And you ran as well?

11 A Sir, yes, sir.

12 Q After the first shot did lots of people get
13 down or duck down just for cover?

14 A Sir, yes, sir. Under cars and wherever they
15 could hide, sir.

16 Q And after the second shot was fired did people
17 get down and duck for cover?

18 A Sir, around where the bullet was fired, sir,
19 around where it went, sir.

20 Q Is that a yes?

21 A Sir, yes, sir.

22 Q And then when the defendant fired his two shots
23 did people also get down and duck for cover?

24 A Sir, yes, sir.

25 MR. SCHWARTZ: I have nothing further, Your

4 1 Honor. Thank you.

2 THE COURT: Cross.

3 MR. FIGLER: Thank you, Your Honor.

4

5 CROSS-EXAMINATION

6 BY MR. FIGLER:

7 Q It's your testimony today that the very first
8 time you saw Michael Celis was at this party, correct? Is
9 that correct?

10 A Sir, yes, sir.

11 Q And it's your testimony also that there were
12 approximately 200 if not more persons at this party; isn't
13 that correct?

14 A I couldn't count, but there was a lot of people
15 there. 200 invitations.

16 Q The house was pretty full of people?

17 A Sir, yes, sir.

18 Q Couldn't move there?

5

19 A Not easily, sir.

20 Q When the party was called off and everyone went
21 into the street, it was pretty crowded out in the street
22 too, wasn't it?

23 A Sir, yes, sir.

24 Q You also testified today that you have never
25 seen Michael Celis since that night; isn't that correct?

5 1 A Sir, yes, sir.

2 Q Now, you were approximately 20 to 25 feet away
3 from the gun itself; isn't that correct?

4 A Sir, yes, sir.

5 Q And you were no closer than that at any time;
6 isn't that correct?

7 A Sir, no, sir.

8 Q And yet you have identified Michael Celis as
9 being the person who fired at least the third and fourth
10 shot; is that correct?

11 A Sir, yes, sir.

12 Q And about how far away do you think you are
13 from him right now?

14 A Sir, about 15, 20 feet, sir.

15 Q And you could make out that this was the
16 individual you saw about two years ago for that brief
17 moment?

18 A Sir, yes, sir.

19 Q And you also indicated that one of the Lopez
20 brothers was being injured; is that correct?

21 A Sir, yes, sir.

22 Q Was the younger Lopez bleeding from his injury
23 that you saw?

24 A Sir, I'm not sure if it was the young one, but
25 he was bleeding.

5 1 Q There was a Lopez brother bleeding; is that
2 correct?

3 A Sir, yes, sir.

4 Q Was he bleeding from the head?

5 A Sir, from the face, sir.

6 Q From the face?

7 A Sir, yes, sir.

8 Q And you testified that you saw Miguel Lopez
9 pull out the gun; isn't that correct?

10 A Sir, yes, sir.

11 Q Now, you have testified previously in a Grand
12 Jury proceeding; isn't that correct?

13 A Yes, sir.

14 Q And in that Grand Jury proceeding you had
15 testified to tell the truth, the whole truth and nothing but
16 the truth under oath; is that correct?

17 A Sir, yes, sir.

18 Q Do you recall in that Grand Jury proceeding
19 that you stated that Miguel Lopez fired the second shot into
20 the crowd?

21 A Sir, yes, sir.

22 Q And do you recall responding that after that
23 second shot you saw a figure go down?

24 A Sir, yes, sir.

25 Q And you were able to identify who that figure

5 1 was who went down from that second shot; isn't that correct?

2 A Sir, yes, sir.

3 Q And that figure was Erik Gates; isn't that
4 correct?

5 A Sir, yes, sir.

6 Q And you used the word collapse; isn't that
7 correct?

8 A Sir, yes, sir.

9 Q Do you have any doubt that Erik Gates was shot
10 then?

11 A Sir, no doubt, sir.

12 Q Thank you. Now, you also testified today that
13 you didn't give this information to the police the night of
14 the offense; isn't that correct?

15 A Sir, yes, sir.

16 Q And you were charged with attempt murder with a
17 deadly weapon on October 23rd, 1996; is that accurate?

18 A Sir, yes, sir.

19 Q So that was prior to any of the events of the
20 night that we're speaking of; is that correct?

21 A Sir, yes, sir.

22 Q So you were walking around with that charge; is
23 that correct?

24 A Yes, sir.

25 Q And you knew that was the charge against you?

5 1 A Sir, yes, sir.

 2 Q And that deadly weapon, was that a gun?

 3 A Sir, yes, sir.

 4 Q Now, at some point you retained the services of

 5 an attorney named William Kephart; is that correct?

 6 A Sir, yes, sir.

 7 Q You instructed William Kephart to contact the

 8 district attorney's office; isn't that correct?

 9 A Sir, yes, sir.

 10 Q And you instructed Mr. Kephart to inform the

 11 district attorney's office that you would be willing to give

 12 them information about this case in exchange for a deal on

 13 your attempt murder case; isn't that correct?

 14 A Sir, yes, sir.

 15 Q And you ultimately received a deal on your

 16 attempt murder case?

 17 A Sir, yes, sir.

 18 Q Gross misdemeanor?

 19 A Sir, yes, sir.

 20 Q You got probation?

 21 A Sir, yes, sir.

 22 Q And you're in boot camp right now?

 23 A Sir, yes, sir.

 24 Q You got revoked because of some drug problem?

 25 A Sir, no, sir.

5 1 Q Now, I notice from your responses to myself and
2 the prosecutor that you use the sir, yes, sir. That's
3 something they teach you in boot camp?

4 A Sir, yes, sir.

5 Q And at some point you were shown a photo lineup
6 of six persons and you were able to positively identify
7 Miguel Lopez as the shooter of Erik Gates; is that correct?

8 A Sir, yes, sir.

9 Q And that's your testimony today that that's
10 what happened?

11 A Sir, yes, sir.

12 MR. FIGLER: No further questions, Your Honor.

13 THE COURT: Redirect?

14 MR. SCHWARTZ: Just one, Your Honor.

15

16 REDIRECT EXAMINATION

17 BY MR. SCHWARTZ:

18 Q Mr. Lesueur, as you look at the defendant today
19 as he sits here in the courtroom has his appearance changed
20 in any manner since you last saw him back in February of
21 1997?

22 A Sir, yes, sir.

23 Q In what way?

24 A Sir, he has hair now, sir.

25 Q Was his hair shaped or cropped back on February

5 1 the 28th, 1997?

2 A Sir, same as mine, sir.

3 MR. SCHWARTZ: Thank you. I have nothing
4 further.

5

6 RECROSS EXAMINATION

7 BY MR. FIGLER:

8 Q So even after a change of appearance you're
9 sure that this was the fellow that was there that night?

6 A Sir, you don't forget something like that, sir.

11 Q So even though he looks differently today
12 you're still positive that this is the individual who was
13 there?

14 A I am 100 percent.

15 Q But you do say there is a change of appearance?

16 A With hair now, sir.

17 MR. FIGLER: No further questions.

18 MR. SCHWARTZ: Nothing further, Your Honor.

19 THE COURT: Thank you for your testimony.

20 THE WITNESS: Sir, yes, sir.

21 THE COURT: You're excused and free to leave.

22 THE WITNESS: Sir, yes, sir.

23 THE COURT: Will the State call their next
24 witness, please.

25 MR. SCHWARTZ: James Reed.

6

1

JAMES REED,

2

called as a witness by the State, having been first duly

3

sworn, was examined and testified as follows:

4

5

THE CLERK: Please state your name and spell
your last name for the record.

7

THE WITNESS: James Reed, J-a-m-e-s, R-e-e-d.

8

9

DIRECT EXAMINATION

10

BY MR. SCHWARTZ:

11

Q Mr. Reed, let me direct your attention to

12

February the 28th, 1997 about 11:45 in the evening. Did you

13

have occasion to be at a party at 505 Crony in Henderson,

14

Clark County, Nevada?

15

A Yes.

16

Q And did there come a time while at the party

17

when the guests were asked to leave the residence?

18

A Yeah.

19

Q How many people would you estimate were at this

20

party?

21

A About 60.

22

Q Did you leave the residence sometime after

23

being asked?

24

A Yeah.

25

Q And can you tell the court what happened as you

6 1 were leaving 505 Crony?

2 A I was walking out the front door and a lot of
3 people were trying to get out one door and as I was walking
4 out I was bumped from behind which made me bump the person
5 in front of me which was a Hispanic girl, and she turned
6 around -- right in the doorway like right outside the
7 doorway -- she turned around and started like in my face,
8 she was cursing at me and just saying stuff. So I
9 eventually told her it wasn't my fault and I said I was
10 sorry. And I eventually got mad because she kept yelling at
11 me. And so I said something back and that's when I was
12 confronted by a Mexican male.

13 Q And what happened when this Hispanic or Mexican
14 male confronted you?

15 A Well, I told him -- he was standing in front of
16 me and he had his friends right behind him and I was against
17 the wall, almost my back to the wall, and I told him -- he
18 was just saying a bunch of stuff which I can't really
19 recall.

20 Q But it was basically an argument between the
21 two of you?

22 A Yes.

23 Q Did you have anything in your hand at that
24 time?

25 A Yeah, I had a Budweiser.

6 1 Q What happened while you were having this
2 confrontation with this Hispanic male?

3 A I told him -- at first I said, "Get out of my
4 face," and he kept, you know, kept yelling. And I took a
5 step back just to take a look to see where I was at and I
6 was like -- it was like about five of them in front of me
7 and I looked over their shoulders and my friends were right
8 there. So I said something to the effect, "Oh, you want to
9 fight," and he's like, "Oh, yeah," and he took a step back
10 and he started pulling off his jacket. And it was February
11 so it wasn't warm, it was cold. He started pulling off his
12 jacket and that's when I proceeded to strike him.

13 Q Now, what if anything did you use to strike
14 this Hispanic?

15 A I had the bottle in my hand.

16 Q So you struck him with a beer bottle?

17 A Yeah.

18 Q And on what area of his body did you strike
19 him?

20 A In his mouth.

21 Q And what happened after you struck the
22 individual in the mouth with the beer bottle?

23 A He fell against the wall and fell down to the
24 ground and out of pure reaction because I didn't want to get
25 jumped so I went after him.

6 1 Q Did you jump on top of him?

 2 A Yeah.

 3 Q And it was just the two of you involved in the

 4 struggle?

 5 A Uh-huh.

 6 Q Is that a yes?

 7 A Yes.

 8 Q What happened as you and this Hispanic male

 9 were struggling?

 10 A From the stories I've heard --

 11 Q I don't want to hear anything you heard. What

 12 did you yourself hear or see, not what anybody told you?

 13 You're struggling with the Hispanic male; what happens?

 14 A I felt the back of my shirt being pulled and my

 15 friend Brian Peterson pulled me out because by then it was

 16 like a big rumble. He pulled me out and as we were walking

 17 down the sidewalk on the side of the house a Mexican male a

 18 good five feet away from us had a gun pointed at us.

 19 Q Did you see the individual who was pointing the

 20 gun at you?

 21 A Yes.

 22 Q Could you describe him?

 23 A It was kind of blurry, I didn't want to look at

 24 him dead in his eyes, I was looking at the gun pointed at us

 25 and he asked us if -- he said, "Are you going to hit me?"

7 1 and he pointed at him, and me and Brian Peterson both said
2 2 no as we were backing away.

3 Q Do you remember what this individual who was
4 pointing the gun at you was?

5 A He was Mexican, Hispanic.

6 Q Do you know what type of clothing he was
7 wearing?

8 A I said on the night I thought he had a hat on
9 with like a light jacket.

10 Q So this man with the gun, the light jacket and
11 the hat on, asked you if you wanted a piece of him or you
12 wanted some?

13 A Yeah.

14 Q And you and Brian Peterson said no?

15 A Yeah.

16 Q What happened next?

17 A As he had the gun and he still pointed it at
18 us, I was backing up and I backed into a car and I was still
19 looking at the gun pointed at me, and he looked at the fight
20 and that's when I turned the corner and ran to the car.

21 Q As you ran to the car were you by yourself or
22 was anybody with you?

23 A I was by myself.

24 Q Did you hear anything as you ran to the car?

25 A As I ran I was almost to the car I thought I

7 1 heard a gunshot and I jumped into the car and that's when I
2 2 heard more gunshots. I was in the back of the car around
3 3 the corner.

4 Q How many gunshots do you believe you heard that
5 5 evening?

6 A Three or four.

7 Q How would you describe the spacing of the
8 8 gunshots time-wise?

9 A I heard like one go off and it was awhile
10 10 before I heard anymore. Maybe 30 seconds. And then I heard
11 11 three more.

12 Q So the first shot you heard and then 30 seconds
13 13 go by and you hear a series of shots?

14 A Yeah.

15 Q Now, you said you saw some of your friends
16 16 outside as you were having these words with this Hispanic
17 17 fellow.

18 A Yeah.

19 Q You mentioned Brian Peterson. Who else did you
20 20 see outside at that time?

21 A I saw Mike Arthur, Jansen Taylor, Bobby Mireles
22 22 and I can't recall anybody else.

23 Q Are you friends with Bobby Mireles?

24 A Yes.

25 Q Did you see Bobby Mireles get shot on the

7 1 evening of February 28th?

2 A No.

3 Q Did you know Erik Gates?

4 A Yes.

5 Q Did you see Erik Gates get shot on the evening
6 of February 28th, 1997?

7 A No.

8 Q Showing you State's Exhibit 2, asking you if
9 you are able to recognize the individual in that photograph?

10 A When I was in front of the Grand Jury I said
11 that he looked like the one that pointed the gun at us at
12 first, me and Brian Peterson.

13 Q Is that still your testimony today?

14 A Yes.

15 MR. SCHWARTZ: I have nothing further, Your
16 Honor.

17 THE COURT: Cross.

18
19 CROSS-EXAMINATION

20 BY MR. FIGLER:

21 Q On that night you say that you hit some guy in
22 the face with a beer bottle?

23 A That's right.

24 Q Did you cause him to bleed?

25 A I couldn't tell. At the time he had his face

7

1 down.

2 Q Have you told police before that, that you
3 struck somebody with a beer bottle?

4 A Yes.

5 Q Have you been charged with any offense?

6 A No.

7 Q And there were a lot of people out there that
8 night?

9 A Yes.

10 Q Would you say it was more than a hundred?

11 A No.

12 Q But it was pretty crowded?

13 A It was packed. The whole house was packed.
14 You could barely walk through it.

15 Q When you said you saw some guy with a gun, it
16 was a Mexican male?

17 A Yes.

18 Q You also said you were pretty much focused on
19 the gun?

20 A But when he was talking that's how I got the
21 assumption, the way he said it.

22 Q And this guy who had the gun, he had a hat on,
23 right?

24 A That's what I thought, yes.

25 Q And you took off, right?

7

1 A Uh-huh.

2 Q And you heard -- that's a yes?

3 A Yes.

4 Q And so you were exiting the area or attempting
5 to exit the area where you heard gunshots; is that correct?

6 A Yes.

7 Q You didn't see the individual fire the weapon,
8 right?

9 A No.

10 Q So you didn't see anyone fire any weapon,
11 right?

12 A No.

13 Q And the guy with the hat is the only guy you
14 saw with the gun?

15 A Yes.

16 MR. FIGLER: No further questions.

17 MR. SCHWARTZ: Nothing further, Your Honor.

18 THE COURT: Mr. Reed, thank you for your
19 testimony. You're excused and you're free to leave.

20 Next witness.

21 MR. SCHWARTZ: Erick Lopez, Your Honor.

22

23 ERICK LOPEZ,

24 called as a witness by the State, having been first duly

25 sworn, was examined and testified as follows:

7 1 THE CLERK: Please state your name and spell
2 your last name for the record.

3 THE WITNESS: Erick Lopez, E-r-i-c-k,
4 L-o-p-e-z.

5
6 DIRECT EXAMINATION

7 BY MR. SCHWARTZ:

8 Q Mr. Lopez, let me direct your attention to
9 February 28th, 1997. On that evening did you have occasion
10 to go to a party at 505 Crony in Henderson, Clark County,
11 Nevada?

12 A Yes.

13 Q Who did you go to the party with?

14 A My older brother, my younger brother and a
15 friend.

16 Q What is your older brother's name?

17 A Miguel Lopez.

18 Q And what is your younger brother's name?

19 A Jesus Lopez.

20 Q Let me show you an exhibit, State's Exhibit No.
21 2, and ask if you recognize the person shown in this
22 exhibit?

23 A Yeah, that's my older brother.

24 Q Is that Miguel Lopez?

25 A Yes.

8

1 Q You said there was you, your two brothers and
2 another individual?

3 A Yes.

4 Q Do you remember the name of the other
5 individual who went with you to the party?

6 A Just some guy named Lido. I don't know his
7 last name.

8 Q Lido?

9 A Yes.

10 Q Do you know Chance Lesueur?

11 A No, I don't.

12 Q Did you follow any other vehicles to this party
13 or did you just go by yourselves?

14 A No. Actually a truck followed us, a white
15 truck.

16 Q How many people would you estimate were at this
17 party when it really started going?

18 A A couple hundred.

19 Q And did there come a time because of the number
20 of people that were at this party when the guests were asked
21 to leave the residence?

22 A Yes. I don't know if it was because so much
23 people there. I think the cops had showed up and said to
24 break up the party. That's what my understanding was.

25 Q Did there come a time that you actually left

8

1 the party?

2 A Yeah.

3 Q And did you leave with your brothers or by
4 yourself?

5 A When everybody says we're leaving, I started
6 walking out towards the front door by myself.

7 Q And did something happen to you after you got
8 outside the front door?

9 A Yeah. I started fighting with some guy.

10 Q Could you tell the court what happened.

11 A I was walking out in front of the door and I
12 walked to the left and some guy was screaming and cursing so
13 I turned back because I didn't know if he was talking to me.
14 So I turned back and obviously he was talking to me because
15 he was pointing his finger at me. He was saying mother
16 fucker, that punk right there and just saying a lot of curse
17 words.

18 So I said, "Man, what's your problem, dude?
19 What's up? Are you talking to me?" He said, "Yeah, I'm
20 talking to you, you fool. What's up?" and he started
21 jumping up and down and at that moment I knew something was
22 going to happen. So I started walking back and somebody hit
23 me from the side with a bottle.

24 Q Were you able to see the person who hit you
25 with the bottle?

8

1 A No.

2 Q And what area of your body was struck with this
3 bottle?

4 A My mouth.

5 Q And what happened as a result of you being
6 struck in the mouth with this bottle?

7 A I lost five of my front teeth.

8 Q But at the time you were struck after you were
9 struck did you fall down?

10 A Yeah, I fell down to the floor.

11 Q And what happened as you lay on the ground?

12 A They started jumping me.

13 Q So you continued to engage in a fight with
14 somebody?

15 A I continued to get my ass whooped. That's what
16 I continued to do.

17 Q Was it more than one person on top of you?

18 A Yeah, a lot of people. I'd say about five,
19 six, seven. I can't really count all of them.

20 Q Had you done anything inside the residence
21 where the party was going on that may have caused somebody
22 to get mad at you?

23 A I didn't do nothing to nobody. All I did was
24 have a couple drinks. That's all I did.

25 Q Did you take any property from inside the

8 1 residence?

2 A I took nothing, I stole nothing, I didn't curse
3 nobody, I didn't push nobody. I didn't do nothing to cause
4 any trouble to do what they did.

5 Q As you were involved in this fight on the
6 ground do you know where your brother Miguel Lopez was?

7 A I didn't know where nobody was at. All I know
8 I was on the floor getting beat up. That's all I know.

9 Q Does there come a time during the fight as
10 you're getting beat up when you hear Miguel's voice?

11 A I heard my brother's voice. I heard my brother
12 say to get off my brother. That's all I heard.

13 Q And was that Miguel Lopez's voice saying that?

14 A Yeah, I could recognize his voice. Because he
15 was screaming it so I could recognize it was him.

16 Q While he was screaming for them to get off you
17 or shortly thereafter do you hear anything?

18 A That's when I heard a gunshot.

19 Q And how many gunshots did you hear at that
20 particular time?

21 A Just one shot.

22 Q And what happened, what if anything happened
23 after you heard that one shot?

24 A Everybody got off me.

25 Q And what did they do, if you know?

8
9

1 A When everybody got off me I was still on the
2 floor and I got up slowly, I took my shirt off because I was
3 bleeding, I wrapped it around my hands, put it on my mouth,
4 everybody was fighting and I ran across the street.

5 Q Does there come a time when you hear any
6 additional gunshots?

7 A Yeah. When I was running across the street
8 towards the truck, because I was headed towards my brother's
9 truck, I heard three gunshots.

10 Q How much time would you estimate passed from
11 hearing that first gunshot till hearing the other gunshots
12 as you're running across the street?

13 A A minute, two. I'm not sure. I really
14 couldn't tell you.

15 Q How many gunshots did you hear after you ran
16 across the street or as you're running across the street?

17 A Just three.

18 Q So you heard one as you lay on the ground?

19 A Yeah.

20 Q And then three as you were running across the
21 street?

22 A Uh-huh. Correct.

23 Q Did it appear to you that the three were fairly
24 close in succession?

25 A I don't know. I just heard boom, boom, boom.

9

1 That's all I heard.

2 Q Was it like that, boom, boom, boom?

3 A Yeah.

4 Q Now, you ran across the street. Were you
5 heading for a car or a truck?

6 A My brother's truck.

7 Q And did you get to the truck?

8 A Yeah, I got to the truck.

9 Q Was anybody at the truck when you got there?

10 A No. I was the first one to get to the truck.

11 Q Did there come a time when other people arrived
12 at the truck?

13 A Yeah, my brother -- my two other brothers got
14 there and we took off.

15 Q Now, you went to the party with a friend named
16 Lido; is that correct?

17 A He's not my friend.

18 Q But with somebody you knew as Lido?

19 A Yeah.

20 Q Did he also leave with you in the truck?

21 A No. When we left it was just us three, the
22 brothers.

23 Q Was your brother Miguel fairly excited when he
24 got into the truck?

25 A What do you mean by excited?

9 1 Q Well, did he seem anxious or was his adrenaline
2 pumping?

3 A Adrenaline? You're engaged in a fight,
4 obviously you're breathing hard. I don't understand what
5 you're trying to say by that.

6 Q Did you know at that time when you got into the
7 truck whether anybody had been shot?

8 A No, I didn't know. I just heard the gunshots.

9 Q Did Miguel say anything about being shot?
10 MR. FIGLER: I'll object to what Miguel said.

11 MR. SCHWARTZ: I'm offering it as an excited
12 utterance.

13 MR. FIGLER: I don't know how excited he was or
14 what the context was when this occurred. Maybe we could
15 have more foundation.

16 THE COURT: I agree. You need a little more
17 foundation.

18 BY MR. SCHWARTZ:

19 Q You hear a gunshot, you run across the street
20 and you hear three additional gunshots?

21 A Yes.

22 Q And you run to your truck?

23 A Yes.

24 Q How would you describe your brother as he
25 approached the truck, your brother Miguel? Was he walking

9 1 slow, nonchalantly?

2 A No. He was like jogging to the truck.

3 Q He's moving?

4 A Yeah.

5 Q And when he gets to the truck does he appear
6 excited like he's seen something, like something's happened?

7 MR. FIGLER: Perhaps if he could just describe
8 the demeanor, otherwise I'd object as leading.

9 THE COURT: I think we're having a
10 communication problem so I am going to allow him to explore
11 that.

12 Do you understand the question?

13 THE WITNESS: I don't understand what he is
14 trying to ask me. You could say is he excited killing
15 somebody?

16 BY MR. SCHWARTZ:

17 Q Nobody is accusing him of killing anybody.

18 A I don't understand what you're trying to ask
19 me.

20 Q I'm trying to ask you how did he appear when he
21 came over to the truck?

22 A Breathing hard. When your adrenaline is
23 pumping you're --

24 Q You'd say his adrenaline was pumping?

25 A Right.

1 Q He's not calm, relaxed and laid back?

2 A No.

3 Q What did he say?

4 MR. FIGLER: I'm not sure that noncalm,
5 nonrelaxed is a standard for excited utterance.

6 MR. SCHWARTZ: The State is going to show and I
7 think it's already shown that two people are shot within a
8 minute of this encounter; one is dead, one survives. Miguel
9 Lopez is the one who has been identified as at least having
10 the gun initially, firing a shot and maybe two shots. He
11 comes to his brother's truck, he says something, I think
12 it's obvious that he's in a state of excitement.

13 MR. FIGLER: Was it solicited, not solicited,
14 was it normal conversation? These are factors of an excited
15 utterance.

16 THE COURT: We have the adrenaline pumping, the
17 heavy breathing. Taking into account all the circumstances
18 that have transpired with the gunshots I'll allow it.

19 Go ahead. What did he say?

20 THE WITNESS: He was just like, "Let's go,
21 let's go," so we took off.

22 BY MR. SCHWARTZ:

23 Q Did he have his gun with him?

24 A No.

25 Q What happened to his gun?

1 A He said somebody took it from him.

2 Q Had you seen the gun on Miguel earlier that
3 night?

4 A No. I didn't even know he had a gun.

5 Q Did he tell you who it was that took the gun
6 from him?

7 A No. He said, "Some fool took my gun." That's
8 what he said.

9 Q Now, do you know an individual by the name of
10 Michael Celis?

11 A Yes.

12 Q Do you see him in the courtroom today?

13 A Yes.

14 Q Could you point to where he's located and
15 describe what he's wearing today.

16 A The red jumpsuit.

17 MR. SCHWARTZ: Could the record reflect the
18 identification of the defendant, Your Honor?

19 THE COURT: Yes.

20 BY MR. SCHWARTZ:

21 Q Mr. Lopez, how long have you known the
22 defendant?

23 A We grew up as kids for a couple years in L.A.
24 and I moved out here and we hadn't kept in contact for
25 awhile. I think we called each other a couple times, but

1 1 it's not like we've been friends for ten, 20 years.

2 Q So when did you first know the defendant? How
3 old were you when you first knew him?

4 A I think 12 years old.

5 Q And how old are you today?

6 A I'm 22.

7 Q Would you consider him a close friend of yours?

8 A Like a friend, yeah.

9 Q Did you see him at the party that night on
10 February the 28th, 1997?

11 A No, I didn't.

12 Q Would you tell this court if you had seen him?

13 A If I had seen him, yes, I would, but I can't
14 even recognize the people I got in a fight with. So I
15 couldn't point nobody out.

16 Q Of your three brothers, yourself, Miguel and
17 Jesus, who was closest to the defendant, friendship-wise?

18 A I think me and my older brother talked to him
19 more.

20 Q You and Miguel?

21 A Yeah. My little brother really don't know him.

22 Q Do you recall seeing a picture of the defendant
23 in your home or in your parents' home, a picture of the
24 defendant along with yourself or other friends or family
25 members?

1 A Yeah.

2 Q And did anyone from your family provide the
3 district attorney's office with a photograph that included a
4 picture of the defendant?

5 A I don't know.

6 MR. SCHWARTZ: Thank you. I have nothing
7 further, Your Honor.

8 THE COURT: Cross.

9 MR. FIGLER: Thank you, Your Honor.

10

11 CROSS-EXAMINATION

12 BY MR. FIGLER:

13 Q You said that you were knocked on the ground at
14 the party that night?

15 A Yes.

16 Q And somebody broke a beer bottle on your face;
17 is that correct?

18 A Yes.

19 Q And you also testified you were bleeding?

20 A Yes.

21 Q You went to the dentist shortly thereafter;
22 isn't that correct?

23 A Yes.

24 Q Now, when you got up from being hit with the
25 beer bottle and the other individual was on you, you noticed

1 1 that other people were still fighting around you?

2 A Oh, yeah, everybody was mostly fighting.

3 Q There were a lot of people there?

4 A Yeah.

5 Q Now, you stated that an individual named Lido
6 had come to this party with you; is that correct?

7 A Yes.

8 Q And Lido lives here in Las Vegas, right?

9 A Yes, I think he does.

10 Q Now, have you ever introduced Michael Celis to
11 Chance Lesueur?

12 A No.

13 Q And so you didn't introduce Michael Celis to
14 Chance Lesueur at that party that night?

15 A I don't even know Chance.

16 Q And it's your testimony that Michael Celis
17 wasn't at the party, you didn't see him at that party,
18 correct?

19 A My understanding.

20 Q You didn't come to the party with Michael
21 Celis, did you?

22 A No.

23 Q You're saying you never saw Michael Celis
24 there?

25 A I never seen Mike there.

1

1

Q You know that night you heard some gunshots,
right?

2

3

A Yes.

4

Q And you're aware that a boy named Erik Gates
was shot?

5

6

A Not at the time.

7

Q But you learned that, right?

8

A Yes. A few days later.

9

Q Now, you know that your brother was charged
with the murder of Erik Gates; isn't that correct?

10

11

A That's correct.

12

Q You know he was indicted by a Grand Jury, you
heard that?

13

14

A That's correct, yes.

15

Q So do you get along with your brother?

16

A Yes.

17

Q Do you love your brother?

18

A Yes.

19

Q Do you want to do something to help your
brother?

20

21

A I'll do anything for my brother.

22

Q And yet today you're saying that another person
who is accused of killing Erik Gates was not there; isn't
that correct?

23

24

2

25

A From my understanding. My brother was accused

2 1 of it and he didn't do it so I don't know what's going on to
2 tell you the truth.

3 Q Do you know it would help your brother if you
4 were to say that Michael Celis was there?

5 A It would help my brother?

6 Q Sure. Someone else shooting the guy.

7 A Why would I say if he was there? I don't
8 recognize anybody that was at the party. Just us three, the
9 brothers and friends of my brother.

10 Q Not Michael Celis?

11 A I didn't see Mike that night. I hadn't talked
12 to Mike none of those days.

13 MR. FIGLER: No further questions, Your Honor.

14
15 REDIRECT EXAMINATION

16 BY MR. SCHWARTZ:

17 Q Do you have any explanation why someone from
18 your family would give the district attorney's office a
19 photograph of Michael Celis?

20 A I don't know who gave that photograph.

21 Q Now, is it your testimony that the defendant
22 wasn't there that night or you just didn't see him there
23 that night?

24 A I didn't see him there. So to me I don't think
25 he was there.

2 1 Q How many people were at that party?

2 A A couple hundred.

3 MR. SCHWARTZ: Thank you. I have nothing
4 further.

5 MR. FIGLER: Nothing on recross.

6 THE COURT: Thank you for your testimony, Mr.
7 Lopez. You're excused and you're free to leave.

8 This is an appropriate time to break. We'll
9 take our noon recess, I'll ask everybody to be back at one
10 o'clock.

11 (Recess.)

12 THE COURT: Back on the record.

13 Next witness.

14 MR. FIGLER: I have a couple things to put on
15 the record before we call the next witness. First of all I
16 was served this morning with a notice of reservation to seek
17 the death penalty. I understand that after speaking with
18 the State that this is a procedural compliance with Supreme
19 Court Rule 250, that in fact it's not the same as an intent
20 and therefore with regard to the 250 requirement of the two
21 counts that wouldn't be applicable at this proceeding. So I
22 wanted to see if that was the court's understanding as well?

23 THE COURT: Yes.

24 MR. FIGLER: Secondly, I'd ask the court to
25 revisit the issue with the excited utterance. The court had

2 1 admitted that hearsay statement of Miguel Lopez I believe
2 through the witness Erick Lopez. It's kind of my
3 understanding since Miguel Lopez is in fact subpoenaed and
4 present, therefore he would not be unavailable and I am not
5 sure exactly what exception the court allowed it under, I
6 don't know if there is a statute that the court cited, but I
7 think that one of the requisites of admitting that would be
8 that the witness be unavailable, otherwise he'd be subject
9 to cross-examination. So if we could clean up that issue,
10 Your Honor, that's the only other thing that I had.

11 THE COURT: I don't think unavailability is an
12 element, is it? Let me check real quick. Yes, NRS 51.095
13 states, "A statement relating to a startling event or
14 condition made while declarant was under stress of
15 excitement caused by the event or condition is not
16 inadmissible." So the unavailability is not an element that
17 needs to be satisfied.

18 MR. FIGLER: Thank you, Your Honor.

19 THE COURT: Next witness.

20 MR. SCHWARTZ: Eric Rogasch.

21
22 ERIC ROGASCH,
23 called as a witness by the State, having been first duly
24 sworn, was examined and testified as follows:
25

2 1 THE CLERK: Please state your name and spell
2 your last name for the record.

3 THE WITNESS: Eric Rogasch, E-r-i-c,
4 R-o-g-a-s-c-h.

5
6 DIRECT EXAMINATION

7 BY MR. SCHWARTZ:

8 Q Eric, let me direct your attention to February
9 28, 1997 at about 11:45 in the evening. Did you have
10 occasion to be at a party located at 505 Crony Street here
11 in Henderson, Clark County, Nevada?

12 A Yes.

13 Q And did there come a time when you and other
14 people who were attending this party were asked to leave the
15 residence?

16 A Yes.

17 Q Back in February 28th, 1997 did you know Bobby
18 Mireles?

19 A Yes.

20 Q Do you know if he was at this party?

21 A Yes.

22 Q And did you know Erik Gates?

23 A Yes.

24 Q And was he at this party as well?

25 A Yes.

2 1 Q Now, after you left the party did there come a
 2 time when you saw Erik Gates?

3 A What do you mean after the party?

4 Q After you guys or you left the residence at 505
5 after people were asked to leave did there come a time when
6 you saw Erik Gates on the street?

7 A Yes.

8 Q And did there come a time when you saw someone
9 shoot Erik Gates?

10 A Yes.

11 Q Could you describe the person that you saw
12 shoot Erik Gates?

13 A Yeah.

14 Q Go ahead.

15 A Hispanic, brown hair, kind of shaved, short on
16 the sides, thinner on top, wore like a sweat shirt, had a
17 cut on the side of his head.

18 Q When you say he had a cut on the side of the
19 head, did you notice blood on the forehead?

20 A Uh-huh.

21 Q Is that yes?

22 A Yes.

23 Q Do you see the individual who shot Erik Gates
24 in the courtroom today?

25 A Yes.

3 1 Q Could you point to where he is located and
2 describe what he's wearing today.

3 A Right there in the red coveralls.

4 MR. SCHWARTZ: Would the record reflect the
5 identification of the defendant?

6 THE COURT: It shall.

7 BY MR. SCHWARTZ:

8 Q Prior to seeing the defendant shoot Erik Gates
9 had you heard any other gunshots?

10 A Yes.

11 Q Do you know how many you heard prior to the
12 shots that resulted in Erik's death?

13 A I believe one.

14 Q Were you able to see the person who fired the
15 first shot that you heard?

16 A I didn't directly see the person first shoot.

17 Q So as you sit here today do you know whether it
18 was the defendant who fired the first shot or somebody else?

19 A I'm not clear.

20 Q How many shots did you see the defendant fire?

21 A At least two or three. At least. I don't know
22 exactly.

23 Q And when was it that you became aware of the
24 fact that Erik had been hit?

25 A After actually the shooting. I mean, at first

3 1 I thought he was probably just ducking out of the way of
2 2 fire. I wasn't sure, you know, until afterwards he had
3 3 said, "I've been hit."

4 Q Did you actually see Erik go down after you
5 5 heard those three shots?

6 A Yes.

7 Q What happened after the defendant fired two or
8 8 three shots and you saw Erik go down? What's the next thing
9 9 you remember happening in sequence?

10 A Basically I was watching for myself. I ducked
11 11 down because I saw and heard the gunshots go off too. And
12 12 then I saw a bunch of people running around trying to get
13 13 out of the area I guess. Couldn't really notice a lot. And
14 14 then I saw Erik, you know, he got up and he was holding
15 15 himself, and he walked to the sidewalk and that's where he
16 16 collapsed.

17 Q Did you hear any other shots after you made
18 18 these observations?

19 A I don't remember. I don't think so.

20 Q Did you go over to Erik to see if he was okay?

21 A Yes.

22 Q So you actually saw his condition at that time?

23 A Yeah. We couldn't -- me and about three other
24 24 people were trying to find where he'd been shot and we
25 25 couldn't and later we found out it was on his back.

3 1 Q Were you able to communicate as you went to see
2 if he was okay?

3 A He couldn't talk.

4 MR. SCHWARTZ: I have no further questions,
5 Your Honor. Thank you.

6 One further one if I might.

7 Q You mentioned a moment ago you knew Bobby
8 Mireles and saw him at the party; is that correct?

9 A Correct.

10 Q Did you see Bobby Mireles get shot?

11 A No.

12 MR. SCHWARTZ: Thank you.

13 THE COURT: Cross.

14

15 CROSS-EXAMINATION

16 BY MR. FIGLER:

17 Q You're friends with Bobby Mireles?

18 A That is correct.

19 Q You saw him at the party that night?

20 A Earlier.

21 Q He was definitely there?

22 A Yes.

23 Q And you're friends with Erik Gates too, right?

24 A Yeah.

25 Q Do you know who Erik Gates is?

3

1

A I've known him since I was a freshman in high school.

2

3

Q You knew who his name was?

4

A I can tell you everything about him.

5

Q And these are friends of yours you expected to see perhaps at this party that night?

6

7

A Yeah, actually I think we drove with Erik Gates.

8

9

Q So you actually came with Erik Gates?

10

A If I remember correctly, yeah. Because we came in a carload. There were about 13 cars of people and I think he was in one of the cars we were with.

11

12

13

Q So is it fair to say then you're good friends with Erik Gates, or were?

14

15

A Yeah.

16

Q And Bobby Mireles too?

17

A Better friends with Erik than I was with Bobby because I just met Bobby probably two months before this.

18

19

Q And it's your testimony that the person who you saw shoot Erik Gates had long hair on top and short on the sides, right?

20

21

A Longer. Not long. It was like shaved longer. Like short on the sides and still shorter on the top.

22

23

Q You testified that you didn't see any first shot, right? You just had heard that?

24

25

3

1 A Correct.

2 Q Now, let me ask you when you saw the subsequent
3 shots, you saw Erik get shot, right? Is that what your
4 testimony is? You saw Erik get shot or you believe you saw
5 Erik get shot?

6 A I believe that's what it was.

7 Q Can you tell me how far away from Erik you
8 were?

9 A No more than 20 feet.

10 Q 20 feet away from Erik?

11 A No more. Maybe less.

12 Q And can you describe with accuracy -- and if
13 you can't do it with words I'm sure that the court might
14 have a piece of paper for you to draw, but can you tell me
15 where you were positioned when you saw Erik? I mean, was he
16 facing you, was he away from you, where was he when you said
17 you saw this?

4

18 A I was facing him, when I saw him actually go
19 down he was -- his right side was towards me but he was
20 facing away from the crowd.

21 MR. FIGLER: Your Honor, is there a pad of
22 paper somewhere?

23 THE COURT: Sure, or you can have him use the
24 board.

25 MR. FIGLER: If we could do it so we can

4 1 preserve it.

2 May I approach?

3 THE COURT: Sure.

4 BY MR. FIGLER:

5 Q I am handing you a red pen. Why don't you put
6 an X where you were standing and an X where Erik was
7 standing. I'm sorry. X where you were standing and put a
8 double X or that circle there. So we can distinguish it.
9 So the circle on that paper is where Erik was standing and
10 the X is where you were standing, right?

11 A Correct.

12 Q Now, you were able to identify it as Erik Gates
13 because you saw his face, correct?

14 A Of course I knew who he was.

15 MR. SCHWARTZ: Could we ask him to put the
16 initials.

17 BY MR. FIGLER:

18 Q Put Erik Gates's there and your initials there.

19 Q Now, you said that you saw the shooter. Where
20 was the shooter standing?

21 A How do you want me to specify that?

22 Q Do that with a triangle. So he's off to the
23 left of where you're standing, correct?

24 A Yeah.

25 Q And why don't you put the word shooter there.

4 1 Okay. Now, did you see the shooter's face? Was he looking
2 2 at you or Erik?

3 A He was -- basically from what I saw he was
4 4 looking up. Like I don't know if he was looking directly at
5 5 Erik. I mean, from what I remember is he was looking and I
6 6 did see his face perfectly because he looked in my
7 7 direction.

8 Q And how far away from him would you say that
9 9 you were?

10 A No more than same distance from Erik.

11 Q So that would be about 20 feet?

12 A Uh-huh.

13 Q And you didn't see Bobby Mireles there?

14 A No.

15 Q So you didn't put Bobby Mireles anywhere on
16 16 that diagram; is that correct?

17 A No.

18 Q You cannot?

19 A I cannot.

20 MR. FIGLER: Why don't we admit this as
21 21 Proposed Defense Exhibit A and we'll mark it that way.

22 THE COURT: Any objection?

23 MR. SCHWARTZ: No objection.

24 THE COURT: It will be admitted as A.

25 MR. FIGLER: So that's admitted now?

4

1

THE COURT: Yes.

2

(Defendant's Exhibit A was
marked for identification and
admitted into evidence.)

3

4

5

MR. FIGLER: Thank you, Your Honor.

6

Q So you're actually standing right there when
you see this happen?

8

A Yeah.

9

Q Yes?

10

A Yes.

11

Q And where in the street is that?

12

A As to what do you mean by where?

13

Q Well, is it in the street, is it on the
sidewalk?

14

15

A It's in the street.

16

Q So you're in the street and there are --

17

A I'm not in the street. They were on the
street.

18

19

Q Where were you?

20

A I was in the yard right next to this car in the
driveway.

21

22

Q So there was a car there too?

23

A Red Firebird.

24

Q A red?

25

A Firebird.

4 1 Q So this occurred in the physical street itself
2 on Crony, right?

3 A If that's the name of the street, yes.

4 Q And you're not in the street, you're in a yard
5 of some house?

6 A Across the street from the party.

7 Q And it's your testimony that that position is
8 no more than 20 feet, correct, away?

9 A Correct.

10 Q How many people are in that street at that
11 time?

12 A I don't remember.

13 Q How many people were at that party? Were there
14 a lot?

15 A Correct.

16 Q Would you say there were more than a hundred
17 people at this party?

18 A Probably.

19 Q And there was some point in the party when the
20 people who threw the party said everyone has to go, there's
21 too many people here; is that right?

22 A Roundabout way, yeah.

23 Q So all these kids are pouring out into the
24 street, right?

25 A Going to their cars.

4 1 Q Now, do you notice any other fights going on in
2 the street?

3 A Well, I was one of the first people to get out
4 so the fights didn't break out right at first.

5 Q Did you ever see any fights?

6 A Vaguely, yeah, from a distance. I was already
7 away from everything going on.

8 Q Where were you?

9 A I was already away from everything going on.

10 Q When the fights broke out?

11 A Yeah.

12 Q Where was that?

13 A I think like right in front of the house in the
14 street or in the yard or something.

15 Q I want to make sure I have this right. You're
16 saying you were away from everything when you saw the fights
17 going on but you're saying you're in front of the house you
18 exited; is that correct?

19 A No.

20 Q So where are you when you say you were away
21 from everything?

22 A When I was away from them -- I walked out of
23 the house first. When I was walking to the car, the car was
24 down the street so I was cutting through a yard.

25 Q Now, where was your car parked?

5 1 A Where it was -- Crony, was that the name of the
2 street?

3 Q Right.

4 A And Haren was the other one. Right where they
5 intersect but a little further up. More towards the
6 apartments.

7 Q So you were heading in the direction to your
8 vehicle because you wanted to get out of there, right?

9 A I was told to.

10 Q You were told by the police?

11 A No. I was told by the person that threw the
12 party. Actually he had told us, you know, leave for a
13 little while and then come back.

14 Q So when you said then that you were away from
15 everything when the fight started breaking out, you were
16 closer to your car than you were to the house you were just
17 leaving from, right?

18 A About halfway. I mean, this all happened
19 relatively quick.

20 Q So you were halfway to your car when you
21 noticed vaguely that fights had started breaking out?

22 A I heard people arguing and commotion going on,
23 glass breaking.

24 Q That sort of happened behind you?

25 A I turned around and started going back over

5 1 towards that direction because I noticed some of the people
2 2 that I knew was over there.

3 Q So then you did see fights going on before you
4 3 heard the shots?

5 A Yes.

6 Q And did you know people who were fighting?

7 A Yes.

8 Q Who did you see fighting?

9 A Jansen Taylor, Jim Reed, Bobby Mireles. That's
10 4 all I can really remember. There was a lot of people
11 5 fighting. I mean, this was a long time ago also.

12 Q Were you fighting?

13 A No.

14 Q So you never threw a punch at anybody?

15 A No. I wasn't around all those people.

16 Q You weren't close enough?

17 A If you want to say that.

18 Q I don't want to say anything.

19 A I don't know what happened if. I can't
20 6 speculate. I wasn't there actually.

21 Q Were you close enough if you were to swing your
22 7 hands you would have hit somebody?

23 A No, because I was halfway between my car and
24 8 the house. I was walking back over there.

25 Q And you're saying that you didn't have any --

5 1 you don't have any personal knowledge of the first shot that
2 2 went off, you just heard it, right? You heard a shot, you
3 3 were there, right?

4 A Yeah, I heard a shot. I'm trying to remember
5 5 exactly. I heard the shot, yeah.

6 Q Now, when you heard a shot did you scatter for
7 7 cover?

8 A Yeah.

9 Q That seems to be a logical thing to do?

10 A And I started running back towards my car.
11 11 That's how I ended up in the yard.

12 Q And you started running back towards your car.
13 13 So this is away from where the fighting is going on, right?

14 A Correct.

15 Q Now, you were standing upright when you saw
16 16 what you said was this guy Erik Gates being shot, right?

17 A Correct.

18 Q Standing up like I'm standing up right now,
19 19 just regular stand up?

20 A I guess so. I wasn't really paying attention
21 21 how I was standing.

22 Q You weren't down on the ground?

23 A No, I wasn't down on the ground. When the
24 24 first shot went down, that was my natural reaction.

25 Q You were running to your car?

5 1 A That was my natural reaction. Anybody's
2 natural reaction is to duck and I got back up.

3 Q So there's a lot of chaos going on, kids
4 running around the street?

5 A Yes.

6 Q Maybe hundreds of kids running around that
7 time?

8 A Not that many. Most people had left. Most
9 girls were leaving and stuff and there's like guys that were
10 leaving too so probably not hundreds.

11 Q Now, you drew a diagram for me that had a
12 picture or an indication of you, an indication of Erik and
13 the person you say who was the shooter, correct?

14 A Correct.

15 Q In that diagram there must have been other
16 people around that area too, right?

17 A Yeah.

18 Q So we didn't reflect those on the diagram?

19 A No.

20 Q But you don't know how many people might have
21 been around in that area at that time?

22 A I remember specifically one kid right next to
23 me that I didn't know who he was and he was hiding actually
24 behind the car.

25 Q So you didn't have an unobstructed view of

5 1 this, there was people around there, right?

2 A There wasn't people in front. There was a
3 couple people that I did know who they were and not exactly
4 blocking the view, but they were standing right there.

5 Q So there might have been people who were kind
6 of in and out of this line between you and Erik, right?

7 A I don't remember particularly.

8 Q Now, you remember testifying in an earlier
9 proceeding under oath, correct?

10 A Correct.

11 MR. FIGLER: I'm looking at page 78 of the
12 Grand Jury proceeding.

6 13 Q That was a Grand Jury proceeding where you were
14 sworn in, the whole thing?

15 A Uh-huh.

16 Q Is that yes?

17 A Yes.

18 Q And do you remember saying that you didn't see
19 Bobby Mireles outside in the street that evening?

20 A I did not see him -- I misunderstood that
21 question. I do remember saying that, yes.

22 Q And do you also remember saying that, "After
23 the first shot went off, I went behind like bushes and a
24 vehicle"? Do you remember saying that?

25 A Uh-huh.

6 1 Q So you were behind bushes and a vehicle when
2 you saw the shooting occur, the second shot?

3 A No.

4 Q So you misspoke during that other proceeding
5 under oath?

6 A No. You said right there — could you
7 reiterate what you said.

8 Q I will tell you what. Why don't I show it to
9 you and tell me if that's what you said.

10 MR. FIGLER: May I approach?

11 THE COURT: Yes.

12 THE WITNESS: After the first shot, it went off
13 and I told you there was the red car right there and there
14 were bushes there, which you didn't ask about. You might
15 have. And I saw a guy holding a gun. I stood back up to go
16 back to my car and that's when I saw him.

17 BY MR. FIGLER:

18 Q So it's your recollection now that you
19 testified that, "After the first shot went off, I went
20 behind like bushes and a vehicle"?

21 A Correct. That's when I said I ducked.

22 Q You didn't tell me about the bushes because I
23 didn't ask about the bushes?

24 A Correct. There were bushes. Because if you
25 want me to I can draw it out for you. I already done it for

6 1 Grand Jury. If you want me to draw it out.

2 Q Draw the bushes.

3 A Where they're at and where I saw him.

4 Q It's your testimony that you then stood up to
5 get a better view when you heard the first shot, you didn't
6 duck for your own cover?

7 A I don't know about getting a better view, but I
8 mean I ducked when I heard the first shot and I got back up
9 and that's when I noticed everything else.

10 Q Now, did there come a time when you filled out
11 a statement to the police that night?

12 A Yeah. Yes.

13 Q A handwritten statement?

14 A Yeah, basically, yes.

15 Q What are you laughing about that?

16 A Because I just wanted to get out of there that
17 night. I didn't really care. It was four o'clock in the
18 morning and I was really cold and the cops were actually
19 yelling at us more than anything and I just wanted to get
20 out of there.

21 Q Did they take you into custody or anything like
22 that?

23 A Oh, no. They actually took us to the police
24 station for questioning.

25 Q They took you to the police stations?

6 1 A If that's what it's called. I am not familiar
2 2 with this side of town. I think it was the Henderson Police
3 3 Department.

4 4 Q You were transported to a different place?

5 5 A They told us to follow them.

6 6 Q And you did that, you complied with them?

7 7 A Yeah.

8 8 Q Did you give them your identification or did
9 9 you give them your name or social security number or
10 10 anything like that?

11 11 A I think so, yeah.

12 12 Q And did they let you know that they knew about
13 13 the battery with substantial bodily harm that you had picked
14 14 up just about two weeks prior to that?

15 15 A No. They didn't even say anything about that
16 16 at all.

17 17 Q Was that on your mind at all?

18 18 A No, because I didn't even know I had anything
19 19 to do with anything. What's that got to do with this?

20 20 Q You knew you'd been arrested for that a couple
21 21 weeks just before that?

22 22 A And?

23 23 Q Did you know that, yes or no?

24 24 A Yeah.

25 25 Q And you gave them a handwritten statement at

6 1 that time? You wrote it out yourself?

2 A I believe so, yes.

3 Q It's your own handwriting?

4 A Yes.

5 Q And you told the police that night that a
6 Mexican male with a shaved head carrying a blue, gray and
7 black sweat shirt with a cut on his head shot Erik Gates and
8 Bobby Mireles. Did you write that?

9 A Correct.

10 MR. SCHWARTZ: Your Honor, I believe he
11 misspoke. It's wearing a blue, gray, not carrying.

12 MR. FIGLER: I'm sorry. It's hard to read
13 here, Your Honor.

14 MR. SCHWARTZ: I read it.

15 BY MR. FIGLER:

16 Q I do believe wearing a blue, gray and black
17 sweat shirt with a cut on his head shot Erik Gates and Bobby
18 Mireles, right, you told the police that?

19 A Correct.

20 Q But now today you're telling us you don't know
21 who shot Bobby Mireles, right?

22 A Correct.

23 Q You didn't see Bobby Mireles get shot?

24 A Correct. People -- that night you have to
25 understand people were telling me things and I wasn't sure

6
7

1 what I saw. I don't really know.

2 Q Do you know who was telling you things?

3 A Everybody. People were talking. You know how
4 people talk.

5 Q This was before you went to the police station
6 with the police people were telling you things?

7 A Of course. It was two or three hours before we
8 went to the police station.

9 Q Two or three hours a period elapsed?

10 A Correct.

11 Q Now, who were some of the people who were
12 telling you things? Do you remember any names?

13 A I don't remember.

14 Q Could it have been James Reed?

15 A No, I didn't see him.

16 Q Could it have been Todd Anderson or Peterson?

17 A Armstrong. I went to the police station with
18 him because I came to the party in his car.

19 Q Did there come a time after this event when you
20 were approached by a private investigator named Michael
21 Levin?

22 A Correct.

23 Q Do you remember that?

24 A Uh-huh.

25 Q Yes?

7 1 A Yes.

 2 Q The reason I say yes because of --

 3 A I understand.

 4 Q Did Mr. Levin talk to you about this case?

 5 A Yes.

 6 Q Do you understand he was a private

 7 investigator, he didn't work for the police, right?

 8 A I understood private investigator. I didn't

 9 know in conjunction with the case.

 10 Q He didn't indicate that he worked for Henderson

 11 or Metro police, did he?

 12 A No.

 13 Q And do you remember he showed you some

 14 pictures, correct?

 15 A Correct.

 16 Q And he asked you if you recognized anyone in

 17 the photos that he showed you; isn't that correct?

 18 A Yes.

 19 Q And do you recall being unable to pick out

 20 anyone in particular from those pictures?

 21 A 100 percent, yes, I remember not being able to

 22 say 100 percent, yes.

 23 Q So when he asked you if you recognized people,

 24 your answer was no, wasn't it?

 25 A I said kind of looks familiar but I didn't say

7 1 yes or no.

2 Q So you weren't sure at that time, right?

3 A Correct.

4 Q However today as you stand in court you're sure
5 that this individual was the person who shot Erik Gates?

6 A I see his face. I know.

7 Q You recognize it?

8 A Yeah. The pictures were totally -- I don't
9 know if you've seen the pictures, but they didn't look
10 anything like familiar.

11 Q Pictures did not look familiar?

12 A They were vaguely familiar, but I couldn't
13 definitely put my finger on any of them.

14 Q Now, that night you're saying that he looked
15 different than he looks now?

16 A Yeah. He didn't have -- he didn't have a
17 haircut now. His hair was shorter. He's wearing different
18 clothes.

19 Q Now, you also say that he had blood on his face
20 that night?

21 A Correct.

22 Q So there's no blood on his face now, correct?

23 A No.

24 Q Now, it wasn't like transparent blood, it was
25 red blood on the guy's face?

7

1

A Yeah.

2

MR. FIGLER: No further questions, Your Honor.

3

MR. SCHWARTZ: Just a couple, Your Honor.

4

5

REDIRECT EXAMINATION

6

BY MR. SCHWARTZ:

7

Q Mr. Figler asked you about a statement that you

8

gave to the Grand Jury wherein you testified when asked did

9

you see Bobby Mireles out in the street that evening and you

10

said no. Is it correct that earlier today you brought that

11

to my attention and said that was a mistake, that you had

12

seen him earlier but you hadn't seen him get shot?

13

A Yes.

14

Q Do you recall talking with Detective Gerald

15

Collins of the Henderson Police Department on several

16

occasions in connection with this investigation?

17

A I believe so. I don't remember names because

18

I've talked to so many people about that, but that name

19

sounds familiar.

20

Q And do you recall there being a time when

21

Detective Collins showed you what's called a photographic

22

lineup?

23

A Yeah.

24

Q And do you recall identifying one of the

25

pictures in the photographic lineup and telling Detective

7 1 Collins that's a picture of the guy who shot Erik Gates?

2 A Yeah, I believe I said that. I'm pretty sure
3 that's the guy.

4 (State's Exhibit No. 3 was
5 marked for identification.)

6 MR. SCHWARTZ: May I approach?

7 THE COURT: Yes.

8 BY MR. SCHWARTZ:

9 Q Showing you State's Proposed Exhibit 3 does
10 that look like the picture or a copy of the picture that
11 Detective Collins showed you that you identified?

12 A Yes.

13 MR. SCHWARTZ: Your Honor, we'd move the
14 admission of State's 3.

15 MR. FIGLER: Well, Your Honor, was it shown to
16 him separately or was it shown to him with other pictures
17 around it? I think that would --

18 THE WITNESS: I believe it was shown to me with
19 both.

20 MR. SCHWARTZ: We have Detective Collins who
21 will elaborate on how the photo display was shown.

22 MR. FIGLER: Perhaps foundation. We could
23 reserve our objection until Detective Collins testifies with
24 regard to the foundation, what he showed, and Your Honor
25 could withhold ruling on the admissibility until that point.

7 1 THE COURT: That'll be fine.

2 MR. SCHWARTZ: I have nothing further, Your
3 Honor.

4 THE COURT: Thank you for your testimony.
5 You're excused.

8 6 MR. FIGLER: One question on recross if I
7 might.

9 RECROSS EXAMINATION

10 BY MR. FIGLER:

11 Q Do you remember Mr. Levin the private
12 investigator showing you a picture that looked like that
13 too?

14 A You know, I don't remember. I've seen so many
15 pictures from so many different people. I've been shown
16 pictures by four, five different people. I do remember
17 Detective Collins showing me that, though.

18 MR. FIGLER: Thank you. No further questions.

19 THE COURT: Thank you. You're excused.

20 Next witness.

21 MR. SCHWARTZ: Jesus Lopez.

22

23 JESUS LOPEZ,

24 called as a witness by the State, having been first duly
25 sworn, was examined and testified as follows:

8

1

THE CLERK: Please state your name and spell
your last name for the record.

2

3

THE WITNESS: Jesus Lopez, J-e-s-u-s,
L-o-p-e-z.

4

5

6

DIRECT EXAMINATION

7

BY MR. SCHWARTZ:

8

Q Jesus, let me direct your attention to February

9

28th, 1997. Did you have occasion to go to a party at 505

10

Crony Street here in Henderson, Nevada?

11

A Yes, sir.

12

Q And who did you go there with?

13

A I evidently went with my brother Miguel Lopez,

14

Erick Lopez my other brother and that was it and we were

15

followed by another vehicle.

16

Q Do you know Chance Lesueur?

17

A I know who he is but I don't know him

18

personally.

19

Q Do you know if he was one of the people that

20

also went to the party with you in a different vehicle?

21

A Yes, sir. He was in a different vehicle in a

22

white truck, white Nissan truck I think it was. And he

23

followed us to the party. I mean we followed him.

24

Q You and your brothers followed Chance to the

25

party; is that correct?

8 1 A Yes, sir.

2 Q Now, did there come a time while you were at
3 the party when people were asked to leave, that the party
4 was over?

5 A Yeah. The party was broken up by Metro police
6 I believe, Henderson police.

7 Q Did there come a time prior to your seeing any
8 police officers when you were out in the street before the
9 police actually got there?

10 A No. I didn't see the police.

11 Q Did there come a time after you left the house
12 where the party had been taking place when you were out in
13 front of the house or out on the street along with your
14 brothers and lots of other people?

15 A When I got out of the house I was right in the
16 exit.

17 Q I can't hear you.

18 A When I exited the house I left through the
19 front exit and I was standing right there the whole time.

20 Q So you stayed by the front of the house?

21 A Yes, sir.

22 Q Did there come a time when you witnessed
23 somebody getting shot?

24 A Yeah. Yes, sir.

25 Q Could you describe the person, if you saw,

8 1 firing the gun?

2 A At that time everything was going on so quickly
3 that I got a glance of the person who evidently did the
4 shooting. To me he appeared to look Caucasian and that's
5 all I seen, was just a glimpse of him, but I didn't get a
6 clear description.

7 Q Did you notice anything about whether this
8 person who you saw firing a gun had any injuries on him?

9 A Yes. I seen that he had blood on his head.

10 Q Did you witness how it came to be that this
11 person with the gun had blood on his head?

12 A Yes, sir. While everything was going on, the
13 fighting and everything, I noticed somebody got hit with a
14 bottle across the head.

15 Q Now, the somebody who got hit with a bottle,
16 was that the same person you saw who was bleeding?

17 A Yes, sir.

18 Q And that's the same person you saw who had the
19 gun in his hand?

20 A Yes, sir.

21 Q Now, what did the person do after he got hit
22 with the bottle, the person with the gun in his hand?

23 A I noticed he got hit with a bottle because it
24 was a few feet away from me and I thought I was going to get
25 hit with the bottle. That's how I noticed it. And when he

8

1 was struck with the bottle he continued to — I'm not sure
2 exactly what happened, but all I know is he walked a
3 different direction and then he came right back in the same
4 direction towards the person who did that to him.

5 Q And what if anything did he do when he came
6 back?

7 A He continued by shooting rounds at him.

8 Q So he was shooting the gun at the person who
9 hit him with the bottle?

10 A Yes, sir.

11 Q How many shots did this person who was bleeding
12 fire?

13 A I'm not sure.

14 Q Do you know if it was more than one?

15 A Maybe -- I am not sure. A few shots. I'm not
16 sure exactly how many. So I'm not going to go ahead and say
17 it.

18 Q As a result of this person who was bleeding
19 firing either one or two or however many shots, did you see
20 anybody fall?

21 A Yes. I seen the gentleman who he had shot at
22 fall. He continued to walk. He did not fall. But there
23 was a gentleman behind him who fell right down.

9

24 Q So the person who had hit the man who did the
25 shooting with the bottle you saw him get shot but he didn't

9 1 fall?

2 A Yeah, he was hurt. I seen that he was hurt.
3 It was clear to me that he was seriously injured but he did
4 not fall, but there was a gentleman behind him that did
5 fall.

6 Q So as a result of the shots fired by the person
7 who was bleeding is it your testimony that two people were
8 injured?

9 A Yes, sir.

10 MR. FIGLER: Your Honor, I am going to object
11 to the characterization here two people were injured from
12 the shooting, but I don't know if this witness is qualified
13 on ballistics or anything like that to indicate anything
14 further than that. I think it would be speculation and so I
15 would move to strike the response to that extent.

16 THE COURT: Which part?

17 MR. FIGLER: Well, I'm not sure. The question
18 I guess — the answer was a little vague so maybe we could
19 rephrase the question.

20 MR. SCHWARTZ: I thought the question was as a
21 result of the shooting that was done by the person who was
22 bleeding was it your feeling here today that two people were
23 shot, were injured, and he said yes.

24 MR. FIGLER: If that's the question then I
25 withdraw the objection. So perhaps we could strike the

9 1 other one and clean it up with this one.

2 THE COURT: That's fine.

3 BY MR. SCHWARTZ:

4 Q Now, after you witnessed what you've just
5 testified to with regard to the person who is bleeding
6 firing the gun what did you do? After you make these
7 observations what do you Jesus do?

8 A When I started to hear the gunshots, everybody
9 started to run and that's exactly what I did.

10 Q Where did you run to?

11 A I ran in the direction where everybody else was
12 running which was the opposite direction of where they were
13 at.

14 Q Did you come in contact with either of your
15 brothers that night after the shooting?

16 A Yes. Me and my two brothers left the scene
17 together.

18 Q Where did you hook up or meet after you heard
19 these shots?

20 A We went to my brother's vehicle which is a blue
21 GMC truck.

22 Q And which brother would it be whose vehicle you
23 went to?

24 A My brother Miguel's.

25 Q Now, did Miguel Lopez your brother have a gun

9 1 with him that night at the party?

2 A Yes, sir.

3 Q When you hooked up again with your brother
4 Miguel and I guess your other brother Erick, did Miguel have
5 his gun at that time?

6 A No, sir.

7 Q Was it your brother Miguel who was shooting at
8 these people that you saw fall down?

9 A No, sir.

10 Q But when you met with Miguel at his vehicle
11 later on he no longer had his gun; is that correct?

12 A That's correct.

13 Q And prior to seeing the fellow who was bleeding
14 do the shooting was it your testimony that he ran over one
15 direction and came back and then did the shooting?

16 A Yes, sir.

17 Q Could you tell what he did when he ran over and
18 came back?

19 A It was clear to me that he ran over and grabbed
20 the pistol from my brother and ran back.

21 MR. SCHWARTZ: Thank you. I have nothing
22 further, Your Honor.

23 THE COURT: Cross.

24 MR. FIGLER: Thank you.

25

9

1

CROSS-EXAMINATION

2

BY MR. FIGLER:

3

Q You testified that you saw two people go down

4

kind of quick around the same time?

5

A Yeah. At the same time.

6

Q Excuse me?

7

A At the same time when it happened.

8

Q So these two people were pretty close to each

9

other, right?

10

A Yes.

11

Q They were both in your line of sight at that

12

same time, right?

13

A I was a few feet away, but I seen clearly what

14

had happened.

15

Q But my question to you is you saw the two of

16

them close to each other?

17

A They weren't right close to each other like

18

standing next to each other or him right behind him, but

19

evidently they were close enough.

20

Q Now, you remember also being out there with

21

someone named Chance where you went to the party with

22

somebody named Chance, right?

23

A I didn't go with him, but we followed him.

24

Q You saw him there at the party, right?

25

A Yes.

9 1 Q And some guy named Lido, he was there too?

2 A He showed up with a couple of other gentlemen.

3 Q But you all know each other, right?

4 A I don't know any of the other people, but I

5 knew maybe Lido and Chance, that was it.

6 Q Now, did you take some bottles from this party?

7 A Yes. As I was exiting the building because it

8 had been broken up by Metro police I went over to the

9 counter and took two bottles.

10 Q You know your brother was accused of taking
11 those bottles, right?

12 A I don't know.

13 Q You know your brother got beat up pretty good
14 that night, right?

15 A Yeah, I was right there.

16 Q And your brother's mouth was bleeding pretty
17 badly, right?

18 A Yes, sir.

19 Q You said it definitely wasn't Miguel who shot
20 the two guys, right?

21 A Yes, sir.

10

22 Q Definitely wasn't this guy either, right?

23 A He does not look like the person I seen.

24 MR. FIGLER: No further questions.

25

10

REDIRECT EXAMINATION

BY MR. SCHWARTZ:

Q Do you know, Jesus, an individual by the name of Michael Celis?

A No, sir.

Q Have you ever heard your brother Miguel or your brother Erick talk about Michael Celis?

A Not that I know of.

Q Would it surprise you to learn that a picture of Michael Celis this defendant was in your home or your parents' home?

MR. FIGLER: I will object to that question, Your Honor. I don't think there's any proof that there is such a picture and there is no such picture in evidence. So I will ask it be stricken and the question not be asked.

MR. SCHWARTZ: Your Honor, I believe there was testimony from Erick Lopez that it's quite conceivable that this fellow's picture was in his house because he's a good friend, they grew up together.

MR. FIGLER: It's not the same thing, conceivable and actually being. Directing this witness with regard to a picture would be improper. Unless they can make an offer of proof that they're going to introduce this picture.

THE COURT: Mr. Schwartz.

10

1 MR. SCHWARTZ: I'll withdraw the question and
2 ask another one, Your Honor.

3 Q Jesus, do you know whether or not your brother
4 Erick is close friends with this defendant?

5 A I don't know. I don't know if he's close
6 friends with him or not.

7 Q Now, has he talked to you about Michael Celis?

8 A We do not discuss personal life together. He
9 lives in a different home, he has his own life, his own
10 wife, his own kids. I'm sorry we're not close, we don't
11 discuss friends or anything like that.

12 Q So would it surprise you if your brother came
13 in here and testified that he knew this fellow very well,
14 this defendant?

15 A If he was to testify to that, then that's him.
16 I don't know about this fellow right here.

17 Q Do you think your brother Erick would have a
18 reason to come in here and not be truthful about his
19 relationship with the defendant?

20 MR. FIGLER: Objection, speculation.

21 THE WITNESS: No, sir.

22 THE COURT: Sustained.

23 MR. SCHWARTZ: I pass the witness.
24
25

10

1

RE CROSS EXAMINATION

2

BY MR. FIGLER:

3

Q You know that your brother Miguel was charged
4 with a murder?

5

A Correct.

6

Q It's your testimony you don't really speak
7 about those things with your brother or your brothers?

8

A We discuss his case, yes.

9

Q Did you talk about Michael Celis at all with
10 Miguel?

11

A No.

12

MR. FIGLER: No further questions.

13

MR. SCHWARTZ: I have nothing else, Your Honor.

14

Thank you.

15

THE COURT: Thank you for your testimony.

16

You're excused and free to leave.

17

Next witness.

18

MR. LAURENT: Bobby Mireles, Your Honor.

19

20

BOBBY MIRELES,

21

called as a witness by the State, having been first duly
22 sworn, was examined and testified as follows:

23

24

THE CLERK: Please state your name and spell
25 your last name for the record.

10

1

THE WITNESS: Bobby Mireles, B-o-b-b-y,

2

M-i-r-e-l-e-s.

3

4

DIRECT EXAMINATION

5

BY MR. LAURENT:

6

Q Mr. Mireles, directing your attention to

7

February 28, 1997 did you have occasion to be in the area of

8

505 Crony Street in Henderson, Nevada?

9

A Yes.

10

Q What were you doing in that area and about what

11

time were you there, sir?

12

A I was attending a house party. I got there

13

about eight o'clock at night. 8:30.

14

Q Did something occur that evening that causes

15

you to be in the courtroom today?

16

A Yes.

17

Q Did there come a time when that party started

18

to break up?

19

A Yes.

20

Q Do you recall about what time that was?

21

A I am not exactly sure. Somewhere around 10:45

22

to eleven o'clock.

23

Q When that party started to break up can you

24

tell us what happened?

25

A A fight broke out in the front of the front

10

1 door — do you want me to go to specifics?

2 Q Yes, please tell us what happened.

3 A Jim Reed apparently threw a bottle and hit
4 somebody because there was about to be a fight defending
5 himself. From there a gun was pulled, fired once in the air
6 and right after that I heard the guy say, "Get the bad guy."
7 They went around my friend Jansen. I approached right
8 behind him. I seen him get pistol whipped and then it's
9 kind of confusing from there because —

10 Q Let me stop you for a minute. When you say
11 that Jim Reed threw a bottle at someone, did you actually
12 see him throw the bottle?

13 A Yes.

14 Q And did he throw a bottle or hit someone with a
15 bottle?

16 A He hit him.

17 Q The person that Mr. Reed hit with a bottle, did
18 he come and testify in court today?

19 A Yes, he is.

20 Q Do you know that person's name by any chance?

21 A I don't, but he was the middle-sized one, the
22 one in the brown.

23 Q He wasn't the witness that just last testified,
24 was he?

25 A No, he wasn't.

10 1 Q And was that a Latin person or is it Caucasian?

2 A He's I believe Mexican just like me.

11 3 Q What happened after Reed hit that person with
4 the bottle?

5 A Right then and there about maybe ten seconds
6 within that time people were getting -- it was getting
7 chaotic and at that same time there was a gun pointed right
8 at Brian Peterson's head and Jim Reed's head and do you want
9 some of this?

10 Q That person that pointed the gun at your head,
11 can you describe that person?

12 A He was wearing a red hat at the time, about six
13 foot, Mexican.

14 Q Have you seen him today as well?

15 A Yes.

16 Q Can you describe what he's wearing today?

17 A He's wearing a white shirt with the black tie
18 and black pants.

19 MR. LAURENT: If I can approach, Judge?

20 THE COURT: Yes.

21 BY MR. LAURENT:

22 Q I show you State's 2. Do you recognize that
23 person?

24 A Yes.

25 Q Who is that person?

11 1 A That is Miguel Lopez I believe.

2 Q Is that the person you were just describing as
3 wearing a red hat and pointing a gun at Brian Peterson?

4 A Correct.

5 Q Did there come a time when you heard shots that
6 evening?

7 A Yes.

8 Q When was that?

9 A Right when he said, "Do you want some of this,"
10 there was a gun fired then I believe in the air.

11 Q When you say "in the air", can you show the
12 court, did you see the person's hands up at all?

13 A He went just like this right when the bottle
14 was thrown and there was ten, 20 seconds -- when it was
15 getting chaotic he went like this to Jim Reed and Brian's
16 head and said, "Do you want some of this."

17 MR. LAURENT: May the record reflect the
18 witness has extended his body in a horizontal fashion in
19 almost a pointing manner?

20 THE COURT: It shall.

21 BY MR. LAURENT:

22 Q Was the gun pointed at that time?

23 A Yes -- no. It wasn't fired at that point.

24 Q So it wasn't fired horizontally, it was fired
25 vertically?

11

1

A Correct.

2

Q That's the person you identified as being

3

depicted in State's Exhibit 2?

4

A Yes.

5

Q What happened next?

6

A That's when they said, "Let's get the fat guy."

7

Jim and Brian already broke up, but I was standing over

8

there to the left of them. I don't think he noticed I was

9

there.

10

Q And the fat guy is?

11

A Jansen Taylor.

12

Q What happened to Jansen at that time?

13

A They ran out to the middle of the street, they

14

started jumping him and pistol whipping him.

15

Q When you say "they", to whom are you referring?

16

A I'm including people that kind of knew Jansen

17

as well people that know us and that's Miguel and his

18

brothers. I seen Miguel mainly.

19

Q And they got on Jansen?

20

A Correct.

21

Q Then what happened?

22

A Then at the time I pulled someone off Jansen

23

and I put him to the ground, I started striking him. At the

24

same time Mike Arthur was helping me strike him. Right

25

after that when I looked at the person somebody said — I

11

1 don't remember hitting somebody but that's my honest opinion
2 right there, but somebody said I did, but I don't remember.
3 I remember looking at the person — looking at him dead in
4 his eye and he was bleeding in his face and I said, "Drop
5 the gun. Do you want some of this?" Right then and there
6 he looked right at me with no hesitation and fired.

7 Q Do you see that person in the courtroom today?

8 A Yes, I do and I've never been so sure of it in
9 my life.

10 Q Would you point to that person and describe an
11 article of clothing that person is wearing?

12 A Michael Celis right there.

13 Q What is he wearing?

14 A What is he wearing?

15 Q Right.

16 A He's in the orange.

17 MR. LAURENT: May the record reflect
18 identification of the defendant?

19 THE COURT: Yes.

20 BY MR. LAURENT:

21 Q How many shots had been fired prior to the shot
22 that was fired at you?

23 A Like I said things were really hazy when I got
24 shot. I believe there was two more right after I got shot.

25 Q Can you tell us what the defendant was wearing

11 1 that night when he was pointing the gun at you just before
2 he fired?

3 A In a way I believe he was wearing a jacket. It
4 was really quick when he pointed at me. He was bleeding in
5 the face. That's the best thing I can honestly say.

6 Q Did he have a cap on?

7 A I don't believe so. I mean, it's hard. I was
8 shot, it was quick, I just remember the face, that's the
9 best thing I remember. I mean, I just don't forget. I just
10 don't. I've never been so sure.

11 Q What happened after you were shot?

12 A I didn't fall. My chest concaved and I spun to
13 my right and that's when I heard boom, boom. I looked to my
14 right and I seen Erik Gates falling to his knees.

15 Q Did you see anybody else with a gun at that
16 point?

17 A No.

18 Q How quickly after the shot that you received
19 did you see Erik Gates fall?

12 20 A Well, put it this way. It was a boom, I
21 folded, turned around, looked right to my right and when I
22 was running as I was running I seen him fall to his knees,
23 and then I seen him get up again and I believe he went
24 towards the curb or something. It was at least a matter of
25 eight seconds just turning around, falling. It was quick.

12 1 I had really quick reflections.

2 Q As a result of your injuries did you have to go
3 to the hospital?

4 A Yes.

5 Q And where were you shot?

6 A Should I show you?

7 Q Show the court where you were shot.

8 A Right here in my chest and it exited back here.

9 MR. LAURENT: Judge, may the record reflect
10 that the entry wound appears to be over the left breast
11 above the left nipple and it appears to have gone out the
12 left side of the back as well? Is that accurate? I really
13 couldn't see as well as you could from here.

14 THE COURT: Yes.

15 THE WITNESS: It's right here. Right above my
16 left nipple.

17 BY MR. LAURENT:

18 Q About two inches?

19 A Yes.

20 Q How long were you in the hospital?

21 A I believe I was in there ten days.

22 Q How certain are you that the person who fired
23 the shots in the air was Miguel Lopez?

24 A I'm absolutely positive.

25 Q That's a distinct person from the person who

12

1 fired into your shirt?

2 A Pardon me?

3 Q That's a different person from the person who
4 fired into your chest; is that correct?

5 A Yes.

6 Q Did you see where the defendant got his gun
7 from?

8 A No, I didn't.

9 Q Did the compressions, the booms that you say,
10 sound to be the same as the one that had hit you?

11 A Absolutely. It was big.

12 MR. LAURENT: I'll pass the witness. Thank
13 you.

14

15 CROSS-EXAMINATION

16 BY MR. FIGLER:

17 Q You didn't see Erik Gates get shot, right?

18 A No, I didn't. Like I said he was behind me.

19 Q So you can't say who shot Erik Gates?

20 A Obviously, no, I can't.

21 Q When you were asked on direct examination who
22 shot you, you said you had no doubt in your mind it was
23 Michael Celis, right?

24 A Yes, I do. And -- go ahead.

25 Q Thank you. Had you ever met Michael Celis

12

1

before?

2

A No, I haven't.

3

Q Have you ever seen him since?

4

A No.

5

Q So the only interaction you had with Michael

6

Celis according to your testimony was when he shot you,

7

correct?

8

A Yes.

9

Q And that was over two years ago?

10

A Yeah. February 28th is coming up two years.

11

Q Is it your testimony everything happened pretty

12

quickly?

13

A It happened quickly, but like I said I'm pretty

14

aware of what happened. It was just hazy. Everything was

15

chaotic. There were 300 people there.

16

Q There were a lot of people around you when that

17

happened?

18

A Mainly the crowd jumping Jansen in front of me.

19

That's it. There was just a couple people after that around

20

there.

21

Q Would you say there were more than a hundred

22

people at this party?

23

A Yes.

24

Q Have you ever testified in a court proceeding

25

about this before?

12 1 A In a court like this?

 2 Q Yes.

 3 A No.

 4 Q So this is your first time?

 5 A Yes.

 6 Q Have you ever been shown pictures of people

 7 before?

 8 A Yes.

 9 Q Do you remember ever being talked to by an

 10 investigator named Michael Levin?

 11 A I am not too sure about investigators' names at

 12 all. I just waited for them to contact me. I haven't spoke

 13 to anybody lately.

 14 Q More than one investigator, though?

 15 A Yes.

 16 Q Did anyone approach you who said they were a

 17 private investigator, not affiliated with Henderson or

 18 Metro?

 19 A No.

 20 Q Who told you the name Michael Celis? Where did

 21 you learn that name?

 22 A From Eric Sparks.

 23 Q Who is Eric Sparks?

 24 A He's the one that Michael knows. He's a friend

 25 that went to Cimerron. It was his party that night. He

12 1 invited Miguel and all of them there.

2 Q So it was Eric Sparks told you the name Michael
3 Celis?

4 A Yes.

5 Q You didn't know that name independently, right?

6 A No. I never heard of it before.

7 Q And Eric Sparks was the one that told you
8 Michael Celis was the guy that shot you, didn't he?

9 A No.

10 Q He just told you Michael Celis was a guy?

11 A He just said Michael Celis was there.

12 Q So you put two and two together and you figured
13 Michael Celis was the one that shot you?

14 A Oh, no.

15 Q You seem pretty confident that Michael Celis
16 shot you.

17 A I know he did. I see him in front of my face
18 right now. I got shot. I'm still here today. I'm living.
19 There is nothing wrong with me. I am a hundred percent
20 healthy. That bullet didn't do nothing to me and I know he
21 did it.

22 Q You want to see somebody pay for shooting you?

23 A No. I want this handled, the right person. I
24 told the D.A. that I wasn't sure Miguel shot me. I've told
25 them the truth. I don't want the wrong person going down

13

13

1 for this.

2 Q You want to see justice for your shooting,
3 right?

4 A No. I want to see everything -- the court of
5 law really handle this right. I don't really care about me.
6 I'm here.

7 Q Were you friends with Erik Gates?

8 A No.

9 Q Now, you knew Jesus Lopez sort of?

10 A No.

11 Q Now, you know that some kid had stolen some
12 bottles from the party, right?

13 A I don't know about that. We came with our own
14 12 packs.

15 Q It's your testimony that Jim Reed threw a
16 bottle at one of the Lopez's to defend himself?

17 A Yes.

18 Q And you saw that, you have personal knowledge
19 of that?

20 A To interrupt you really quick it's all because
21 of one of the girlfriends. This whole thing. This whole
22 thing, seriously.

23 Q So this has nothing to do with bottles being
24 stolen?

25 A No. Never heard nothing like that.

13 1 Q Now, you're saying that Jim Reed threw a bottle
2 at someone to defend himself, right?

3 A No, I didn't say that.

4 Q You didn't testify to that on direct?

5 A I said he hit him with it, I didn't say he
6 threw it.

7 Q Are you sure about that?

8 A I'm positive. He said he hit him with it. I
9 was standing right next to him.

10 Q So to defend himself that implies that he was
11 hit first, right?

12 A I don't know what exactly happened with Jim.
13 All I know he's his own man and he did what he had to do.

14 Q You said defend himself?

15 A Because they were approaching him.

16 Q So you saw them approaching him?

17 A Yes.

18 Q So he took a beer bottle and struck it against
19 someone's face; is that correct?

20 A Yes. What does that have to do with the
21 shooting?

22 THE COURT: Just listen to the question.

23 BY MR. FIGLER:

24 Q Is that what you saw?

25 A Yes.

13

1

Q And you saw Jim Reed and his friends tackle

2

that guy on the ground, didn't you?

3

A No.

4

Q You didn't see any of that?

5

A No, I didn't. You want to know exactly what I

6

seen?

7

Q I'll ask you the questions.

8

THE COURT: The D.A. will follow up if there is

9

any.

10

THE WITNESS: I'm sorry. My apologies.

11

BY MR. FIGLER:

12

Q So you're saying that nobody attacked the Lopez

13

brothers, right?

14

A What's that?

15

Q You didn't see anyone attack the Lopez

16

brothers, right?

17

A After he got hit?

18

Q At any time did you see anyone attack the Lopez

19

brothers?

20

A The only thing I seen was them coming towards

21

Jim and Jim striking him with a bottle.

22

Q And it's your testimony or your belief that

23

this was all about some girl, right?

24

A I seen the girl start the whole thing.

25

Q So how many people were you punching that

13 1 night?

2 A I just hit the one, pulled the dude off Jansen
3 and that's about it. Protecting Jansen, my friend.

4 Q So you pulled one guy off Jansen, that's the
5 only physical contact you had with anyone?

6 A I'm not sure. Somebody said -- people said I
7 hit this guy, that I hit him.

8 Q So you don't have specific memory that night?

9 A I'm not sure.

10 Q People have told you that you did certain
11 things --

12 A I don't believe what --

13 Q Can you let me finish my question, please?
14 Okay. Are we understanding each other?

15 A Yes, sir.

16 Q It's your testimony that people told you that
17 you did things that night that you don't remember; isn't
18 that correct?

19 A Yes. They told me that.

20 Q So it's possible that you have some lack of
21 memory from that night; isn't that correct?

22 A Yeah, I have memory.

23 Q Is it possible you have absence of some memory
24 of hitting people that night?

25 A Oh, yes.

13 1 Q After all you were shot that night, weren't
 2 you?

 3 A Yes.

 4 Q And you've had two years to reflect upon this,
 5 haven't you?

 6 A Yes.

 7 Q And you've spoken with lots of people about
 8 what happened that night; isn't that correct?

 9 A At first.

 10 Q And a lot of people gave you their theories of
 11 who shot you; isn't that correct?

 12 A Well, no. Everybody was -- kept on asking me,
 13 "who do you think shot you?" and I said I don't know.

 14 Q Some people had offered some suggestions as to
 15 who shot you; isn't that true?

 16 A Only Eric Sparks told me who was there and who
 17 he thinks had to do with it.

14 18 Q Somebody told you somebody with a nickname
 19 Bullet; is that right?

 20 A I guess Bullet did have a gun. I spoke with
 21 Bullet about the whole thing. He was there.

 22 Q Who was Bullet?

 23 A He's from 28th Street. I don't know him.

 24 Q And he had a gun there?

 25 A That's what somebody said. I'm not sure. He

14 1 said he didn't but he said he was there, that he knew
 2 Miguel.

 3 Q The reason you talked to Bullet was because
 4 somebody told you that maybe Bullet had done it?

 5 A You're right.

 6 Q And that wasn't Eric Sparks, that was someone
 7 else?

 8 A Yes.

 9 Q Do you remember who that was?

 10 A I really don't. Because I don't even think I
 11 knew that girl -- it was a girl though.

 12 Q Now, was there ever a time when you were being
 13 questioned by the police detectives from the Henderson
 14 Police Department where they recorded you that you know of?

 15 A I'm not sure. No, I am not sure. I don't
 16 remember. Mainly Henderson came and seen me a lot when I
 17 was in the hospital. And I remember giving a statement but
 18 I was on so many drugs and I was out of it.

 19 Q You were at the trauma center you remember?

 20 A Yes.

 21 Q Do you remember telling the police that a
 22 second Hispanic male produced a handgun and pointed at you
 23 from ten feet away? Do you remember telling that to the
 24 police?

 25 A No.

14

1

Q How close was the person who shot you when he

2

shot you?

3

A About from maybe -- if I'm standing about this

4

far maybe from that box to there.

5

Q And how far would you estimate that is?

6

A I don't know. That's about 15, 20 feet.

7

Q Are we talking about --

8

A No, from in between here and there. About 15,

9

20 feet.

10

Q And the table?

11

A Where he's sitting.

12

Q That's how close the person was to you when

13

they shot you?

14

A Yes.

15

MR. FIGLER: Is that about accurate?

16

THE COURT: From where to where exactly?

17

BY MR. FIGLER:

18

Q Are you saying from the witness stand to this

19

table?

20

A The end of right here to the table, about 15,

21

20 feet away.

22

THE COURT: It's actually about 18 feet.

23

BY MR. FIGLER:

24

Q So about 18 feet maybe?

25

A Yeah, 18 feet.

14

1 Q Do you remember any of them saying anything
2 about his brother?

3 A No, I don't.

4 Q And you said earlier you saw Jansen Taylor
5 getting pistol whipped by these guys?

6 A Yes.

7 Q By the Lopez brothers, right?

8 A I seen Miguel Lopez pistol whip.

9 Q And so after you pulled some guys off of Jansen
10 did you pull Miguel off of Jansen?

11 A No.

12 Q So Miguel still had his gun, right?

13 A Yes.

14 Q And then after that a second Hispanic male from
15 about 18 feet shot you, right?

16 A No.

17 Q That's not what happened?

18 A No. Not just like that. I mean, not just like
19 that. It wasn't like that because like I told you I pulled
20 the guy off. It was hazy like I said. I told him -- I
21 remember my exact words looking at him telling him to, "Drop
22 the gun. Let's fight head up. You want some of this."

23 Q That wasn't Miguel Lopez?

24 A Like I said he was getting jumped for a minute,
25 Jansen was.

14 1 Q Did you see this person who shot you with
2 Miguel Lopez?

3 A Yes.

4 Q When did that happen?

5 A When did I see them?

6 Q Together.

7 A Oh, they were right next to each other all
8 night. I didn't see them once or twice all night.

9 Q So are you saying that the person who shot you
10 was also pistol whipping Jansen Taylor?

11 A No, I'm not saying that.

12 Q But again it was pretty hazy, remembering
13 details two years later is a little hard for you?

14 A Yes, that's about what it is. It's two years
15 ago.

16 MR. FIGLER: No further questions, Your Honor.

17 THE COURT: Mr. Laurent.

18

19 REDIRECT EXAMINATION

20 BY MR. LAURENT:

21 Q You spoke about this Sparks and you said he was
22 friends with Michael?

23 A Yes.

24 Q Which Michael are you referring to?

25 A Miguel.

14

1

Q Miguel Lopez?

2

A Yes. He's the one who told me --

3

Q Just answer the question.

4

MR. LAURENT: I have nothing further, Judge.

5

MR. FIGLER: One question, Your Honor.

6

7

RECROSS EXAMINATION

8

BY MR. FIGLER:

9

Q Was the person who shot you left handed or
right handed?

10

11

A What's that?

12

Q Was the person who shot you left or right
handed?

13

14

A I don't know what hand.

15

Q Was he holding the gun in his left or right
hand?

16

17

A He was holding the gun exactly in his right
hand.

18

19

MR. FIGLER: No further questions.

20

MR. LAURENT: No questions.

21

THE COURT: Thank you for your testimony.

22

You're excused and free to leave.

23

MR. LAURENT: State would call Todd Armstrong.

24

25

14

1

TODD ARMSTRONG,

2

called as a witness by the State, having been first duly

3

sworn, was examined and testified as follows:

4

5

THE CLERK: Please state your name and spell
your last name for the record.

7

THE WITNESS: Todd Armstrong, T-o-d-d,
A-r-m-s-t-r-o-n-g.

9

10

DIRECT EXAMINATION

11

BY MR. LAURENT:

15

12

13

14

15

Q Mr. Armstrong, directing your attention to
February 28, 1997 at approximately 11, 11:45 p.m. did you
have occasion to be in the area of 505 Crony Street
Henderson, Nevada?

16

A Yes.

17

Q Why were you there, sir?

18

A I was at a friend of mine's birthday party.

19

Q What's that friend's name?

20

A Eric Sparks.

21

22

Q Did you observe some events that causes you to
be here today, sir?

23

A Yes.

24

25

Q Did there come a time when the party was
breaking up?

15

1 A Yes.

2 Q Tell us what happened as the party broke up.

3 A Well, everybody was just leaving out the doors.

4 It was like probably a couple hundred people and I went to
5 the corner of the street and I was talking to a friend of
6 mine and then —

7 Q What is your friend's name?

8 A Danielle Batterton.

9 And then I heard like a gunshot and like a
10 bunch of ruckus down the street and I looked over and I saw
11 like a couple of my friends over there. So I started going
12 over there, I like jogged over there. And I seen three guys
13 walking from like the middle of the street up into some
14 houses and everybody was like throwing rocks at him and
15 stuff. And then they walked from the yard back into the
16 street and then a guy wearing a red hat handed another guy
17 the gun and he turned around and shot Erik Gates and then he
18 limped off and he shot a couple more times in the crowd.

19 Q Do you know Bobby Mireles?

20 A Yes.

21 Q Did you see him get shot that evening?

22 A No, I didn't see him get shot.

23 Q Did you see him in the street that evening?

24 A No, I didn't see him in the street.

25 Q Did you see who else may have been shot when

15

1 that person was firing?

2 A Excuse me?

3 Q Did you see whom else may have been shot?

4 A I saw Bobby getting like on a stretcher after
5 the cops came and everything.

6 Q That was after. You didn't actually see him
7 get shot?

8 A No. The only person that I saw get shot was
9 Erik Gates.

10 Q Did you see the person that shot Erik Gates?

11 A Yeah. Him right there.

12 Q You see the —

13 A He had shorter hair.

14 Q You recognize him?

15 A Yeah, I recognize him. He had shorter hair.

16 It was short on the sides and phases up.

17 Q Anything else about his description?

18 A He was wearing a gray shirt I think with a blue
19 stripe across the middle.

20 Q Did he have a hat on?

21 A No. I know a guy had a red hat that was next
22 to him that handed him the gun.

23 Q The guy with the red hat handed him the gun?

24 A Yes.

25 Q And you see that person in the courtroom today.

15 1 Will you describe an article of clothing that person is
 2 currently wearing?

 3 A The red outfit, red jail suit on.

 4 MR. LAURENT: Judge, may the record reflect the
 5 identification of the defendant?

 6 THE COURT: It shall.

 7 MR. FIGLER: May the record reflect there is
 8 only one person in the courtroom with any jail suit on, any
 9 handcuffs, anything like that, Your Honor?

 10 THE COURT: Yes.

 11 BY MR. LAURENT:

 12 Q How close were you when you saw the shooting?

 13 A About 20 feet away.

 14 Q Were you facing the shooter?

 15 A Yes.

 16 Q Did you notice anything about his facial
 17 features, if he'd been injured in any way or anything?

 18 A No, I didn't notice anything. It happened
 19 pretty quick, though.

 20 Q What did you do after you saw Erik get shot?

 21 A I fell to the ground and rolled underneath a
 22 car that was right there.

 23 Q How many shots came after Erik got shot?

 24 A Two.

 25 Q So --

15

1 A There was about three shots that happened.

2 Q Just so I'm clear on this are you standing
3 behind Erik?

4 A Yeah. I was about -- Erik was about five feet
5 to the right of me.

6 Q Five feet to the right?

7 A Five feet to the right and a little in front.

8 Q So if you were to look at him would you be
9 looking at his back?

10 A Erik's?

11 Q Yes.

12 A Yes. But then when he turned around to shoot,
13 Erik turned around and started running. Like he started
14 just going off like to the other side of the street and I
15 went and left.

16 Q Had Erik started running before the gunshot
17 went off?

18 A It was about the same time.

19 Q Were there people between the shooter and Erik?

20 A No.

21 MR. LAURENT: I pass the witness, Your Honor.

22 THE COURT: Cross.

23

24

25

CROSS-EXAMINATION

BY MR. FIGLER:

Q You only saw one shooter that night, right?

A Yes.

Q And you were taken into the Henderson police station to give a handwritten statement; isn't that right?

A Yes. No, I wasn't taken in. I went in on my own.

Q They told you to come with them, though?

A Yeah.

Q They said follow us, right?

A Yes.

Q So you and who else followed them?

A There was me, Eric Rogasch, Don Veer, Lyndsey Moore.

Q You don't remember who the other one was?

A I'm not sure.

Q Could it have been John Reed?

A Maybe. I'm not really sure who all was there that night.

Q Do you know John Reed?

A John Reed? James?

Q James.

A Yes.

Q Do you all go to school together, know each

16

1 other somehow?

2 A Yeah, I know all them.

3 Q Do you know Jansen Taylor?

4 A What's that?

5 Q Do you know Jansen Taylor?

6 A Sort of. Heard of him.

7 Q If he were to walk up to you, would you know
8 who he is?

9 A Yes.

10 Q And you know Eric Sparks?

11 A Yes.

12 Q So these are all kind of your friends, people
13 that you --

14 A Acquaintances.

15 Q People that you weren't surprised to see at
16 this party, right?

17 A Right.

18 Q Now, that night did you ever get into a fight
19 with anyone?

20 A No.

21 Q So you weren't fighting with anyone at all?

22 A No.

23 Q Never took a punch at anyone?

24 A No.

25 Q And you were there when they told everyone to

16

1 leave, right?

2 A Yes.

3 Q So what did you do when they told everyone to
4 leave?

5 A I walked out with that girl.

6 Q And where were you headed?

7 A Went up to the corner, street corner.

8 Q What were you doing there?

9 A I was talking to the girl. I was talking to
10 her.

11 Q A girl you're interested in, giving her
12 conversation?

13 A Yeah. It was a friend of mine.

14 Q What corner is that?

15 A The one by the apartments I guess.

16 Q So --

17 A The one where the house was and the party was,
18 that corner about two houses up, three houses up.

19 Q What did you do after that?

20 A After I went to the corner?

21 Q Yeah.

22 A Well, after I heard all the noise over there I
23 started running over there.

24 Q So you ran towards the noise?

25 A Yes.

16 1 Q What noise did you hear that caused you to run?

 2 A Fighting and gunshot.

 3 Q Fighting and gunshots caused you to run over?

 4 A Yeah.

 5 Q How many gunshots did you hear before you

 6 actually made it over there?

 7 A I believe it was only one.

 8 Q So when you say gunshots, you actually meant

 9 gunshot?

 10 A One or two. I'm not sure.

 11 Q So it could have been two?

 12 A It was one or two.

 13 Q And who did you see fighting?

 14 A Really when I first ran over there, there

 15 wasn't anybody fighting. Everybody was throwing rocks at

 16 the three guys.

 17 Q What three guys?

 18 A There was that guy there and the guy with the

 19 red hat and then I don't remember what the other one looked

 20 like, but I know there was three of them.

 21 Q People were throwing rocks at them?

 22 A Yeah.

 23 Q People that you knew?

 24 A Just a whole crowd of people. It was like a

 25 lot of people.

16

1 Q Were throwing rocks?

2 A Yeah. Rocks, just throwing things at them.
3 Just like yelling at them.

4 Q Did you see who was throwing rocks, any names?

5 A No.

6 Q You didn't see that?

7 A Yeah. I wasn't paying attention at who was
8 throwing the rock.

9 Q So now where did you stop when you were out
10 there?

11 A What do you mean?

12 Q Did you keep running past everything down the
13 street or to the other street or did you stop at some point?

14 A No. I stopped about — it was a little past
15 the house with the party. And then they started coming back
16 up the street.

17 Q Who is "they"?

18 A The people that everybody was chasing.

19 Q So people were chasing the three people?

20 A Not chasing but walk behind them.

21 Q Running after them?

22 A Like talking like yelling at them.

23 Q And you're saying that you saw this after you
24 heard at least one gunshot?

25 A Yes.

16

1 Q Maybe two?

2 A Yes.

3 Q Did you see Jansen Taylor at that point?

4 A No, I didn't see him until after.

5 Q Did you see Bobby Mireles at that point?

6 A No. I can't recall anybody that I -- like at
7 that point in time I can't recall anybody that was right
8 there except for Erik. They were out in the street.

9 Q So who else was standing near you when you saw
10 Erik get shot?

11 A Nobody that I know of that was right next to
12 me.

13 Q Nobody was near you?

14 A No.

15 Q So you had a clean, unobstructed view, there
16 was nobody between you and Erik?

17 A There was nobody between us.

18 Q Nobody at all?

19 A Nobody at all.

20 Q And there was nobody between you and the person
21 who you said shot the individual?

22 A No.

23 Q So you had a clean shot at that guy too, right?

24 A Yes.

25 Q Nobody at all?

16
17

1 A No, there was nobody between us.
2 Q Were you behind any bushes or anything like
3 that?
4 A No. I was in the middle of the street.
5 Q You were in the middle of the street?
6 A Yes.
7 Q How far away from the person who shot would you
8 say you were?
9 A About 20 feet.
10 Q 20 feet?
11 A Yeah.
12 Q And how far away were you from Erik?
13 A About five feet.
14 Q Five feet from Erik?
15 A That's approximate.
16 Q Were you looking at the back of Erik's head,
17 the front of Erik's face, what were you looking at?
18 A The back left.
19 Q You saw the back of Erik's head?
20 A Yeah. The side of his face.
21 Q But you saw the full face of the guy who shot?
22 A When he turned around, yes.
23 Q Where was he standing in proximity to Erik?
24 A He was standing straight ahead from me. But
25 then he turned all the way around.

17

1 Q So this was like a faceoff between him and
2 Erik?

3 A Well, pretty much.

4 Q So they were looking face to face at one point
5 you saw?

6 A Well, they started running. Everybody started
7 running when he pulled the gun out.

8 Q Because you're saying that Erik at one point
9 saw the person who was going to shoot him, right?

10 A Yes.

11 Q And then he turned and started running away,
12 right?

13 A I don't know if he got shot first or what. I
14 wasn't trying to pay attention.

15 Q If you saw Erik's face, then the shooter was
16 looking right at him and you saw the shooter's face too,
17 right?

18 A Yes.

19 Q Now, you testified today that one guy hands
20 another guy the gun, right?

21 A Yes.

22 Q Now, do you remember at that police station you
23 gave a written statement to the police?

24 A Yes.

25 Q You didn't tell the police that, did you?

17

1

A Yes, I did.

2

Q You did?

3

A Yes.

4

Q Would you have put it in your statement if it

5

happened?

6

A I don't know it was in the statement or not but

7

they recorded my statement what I said to them.

8

Q You're sure they recorded it?

9

A Yeah. They had a recorder right there.

10

MR. FIGLER: May I approach?

11

THE COURT: Yes.

12

BY MR. FIGLER:

13

Q I am going to show you a document. Can you

14

tell me if this is your handwritten statement?

15

A Yes.

16

Q You recognize your handwriting, correct?

17

A Yes.

18

Q Is that from that night?

19

A Yes.

20

Q Why don't you read over that statement to

21

yourself and then see if that refreshes your memory whether

22

or not you said anything about someone handing a gun to

23

someone.

24

A I didn't write it down in here.

25

Q You didn't write it down that night?

17

1 A No.

2 Q But today you remember that fact, right?

3 A I remembered it then too. I didn't write it
4 down, I don't know why I didn't.

5 Q Just didn't think it was important to tell the
6 police that night?

7 A I did tell the police.

8 Q You didn't write it down?

9 A No.

10 Q Now, have you ever heard the name Michael Celis
11 before?

12 A No.

13 Q You don't know that name?

14 A No. Except for now.

15 Q Now, you were in a car with some other guys
16 going to the police station?

17 A Yes.

18 Q Now, how long after the shooting took place did
19 you wind up at the police station?

20 A About three hours.

21 Q And while you were out there were you
22 conversing with other people who were in the street or at
23 the party or whatever?

24 A Not really. Not about what happened. Because
25 there was still fights that were going on most of the time.

17

1 Q So you were completely --

2 A And then a cop grabbed me and told me to go and
3 he had me sit over by the cop car the whole time.

4 Q Did the cop grab you because you were fighting
5 with some people?

6 A No, because I told him that I saw what happened
7 so he was like, "Well, come sit over there," and he had me
8 sit at the cop car.

9 Q So for the three hours you sat in the cop car
10 alone?

11 A I sat on the cop car.

12 Q Alone, no one else around?

13 A No.

14 Q Not one other person?

15 A Not that I know of. Not that I remember.

16 Q And at some point you got into a vehicle with
17 some other male individuals?

18 A Yes.

19 Q And then you drove to the police station with
20 those male individuals?

21 A Yes.

22 Q That was the first time you came in contact
23 with those male individuals that night?

24 A I'm sure -- there was like everybody was
25 around. I don't know if I was -- I don't know exactly who I

17

1 talked to, said anything to or bumped into or anything. I'm
2 not sure.

3 Q So you're saying it is possible you talked with
4 some people that night during that three, four hour period?

5 A I'm sure I did talk to somebody.

6 Q And when you were driving to the police station
7 you were talking about that night's events, weren't you?

8 A Oh, yeah.

18

9 Q They were giving you information, you were
10 giving them information, that sort of thing?

11 A They just said what they saw and I said what I
12 saw.

13 Q What else can you tell me about the person who
14 was the shooter. Do you remember what kind of shoes he had
15 on?

16 A No.

17 Q Do you remember if he was holding a gun with
18 his right hand or left hand?

19 A I can't remember.

20 Q You were looking at the gun, though, right?

21 A Yeah. I saw him hand off the gun.

22 Q You're saying that you saw the gun itself
23 though?

24 A Yes.

25 Q You told the police that night that it was

18 1 something bigger than a .380?

2 A Yeah, it looked like -- it was black. It
3 looked pretty big like a nine millimeter.

4 Q How do you know about guns?

5 A My mom worked for the police department for ten
6 years.

7 Q Your mom worked for the police department?

8 A Yes.

9 Q Henderson or Metro?

10 A Henderson.

11 Q What did your mom do for them?

12 A Dispatch. She almost married a cop.

13 Q Now, at some point did someone show you
14 pictures of people?

15 A Excuse me?

16 Q Did people show you pictures of anyone?

17 A No.

18 Q No one ever showed you pictures of anyone?

19 A No.

20 Q Now, did this individual look this way two
21 years ago when you're saying he was at this party and he
22 shot someone?

23 A No. He looks a little bit different.

24 Q Looks different?

25 A A little bit.

18

1 Q So this person looks different from the person
2 that night?

3 A It's the same person but his hair is longer and
4 he's a little bit bigger.

5 Q Anything else different about him?

6 A Not that I know of, no.

7 Q Is there anything specifically distinguishing
8 about him that you remember from that night?

9 A No.

10 Q Nothing?

11 A Nothing --

12 Q Nothing that jumps out at you?

13 A Just what he looks like.

14 Q In fact, you remember he had his hair shaved on
15 the sides, right?

16 A Yeah.

17 Q And that he was a Mexican guy, right?

18 A Yes.

19 Q Did he shoot you?

20 A No.

21 Q Did he ever point the gun at you?

22 A Yes.

23 Q He pointed the gun at you too?

24 A That's when I rolled underneath the car.

25 Q He pointed the gun at you?

18

1 A He didn't like actually point it like with the
2 arm up but turned towards me and I just rolled underneath
3 the car.

4 Q Is there any chance that two years later you
5 could be mistaken about exactly who it is?

6 A No. That's him.

7 Q So based on the fact that the person you saw
8 was a Mexican with a shaved head you're sure it's this guy?

9 A Yeah. It doesn't matter -- I mean, just
10 because they're Mexican and shaved heads, a lot of Mexicans
11 have shaved heads, but they still have their own look.

12 Q You didn't give any more details to the police
13 that night, though, did you?

14 A No.

15 Q Now, I'm sorry I don't remember the answer to
16 your question but was he right handed or left handed or did
17 he have the gun in his right or left hand?

18 A I wasn't sure.

19 Q You don't remember that?

20 A No.

21 MR. FIGLER: No further questions.

22 THE COURT: Redirect?

23 MR. LAURENT: No redirect, Your Honor.

24 THE COURT: Mr. Armstrong, thank you for your
25 testimony. You're excused and you're free to leave.

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Next witness.

MR. SCHWARTZ: Miguel Lopez.

MIGUEL LOPEZ,

called as a witness by the State, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please state your name and spell your last name for the record.

THE WITNESS: Miguel Lopez, M-i-g-u-e-l, L-o-p-e-z.

DIRECT EXAMINATION

BY MR. SCHWARTZ:

Q Miguel, on February 28th, 1997 at about 11:45 in the evening did you have occasion to be at a party at 505 Crony Street here in Henderson, Nevada?

A Yes.

Q And were you there with your brothers?

A Yes.

Q And what are their names just for the record?

A Jesus and Erick Lopez.

Q Do you know a Chance Lesueur?

A Yes.

Q And do you recall if he was at that party as

18

1 well?

2 A Yeah.

3 Q Did he go with you to the party or did you go
4 with him to the party?

5 A We just met there. We had separate cars.

6 Q Did there come a time because of the number of
7 people who were at the party that the guests at this party
8 were asked to leave?

9 A Yes.

10 Q And did there come a time after you left the
11 party when you saw your younger brother Erick appearing to
12 have been injured in a fight?

13 A Yes.

14 Q Can you describe Erick's condition when you saw
15 him?16 A He was spitting out teeth and just full of
17 blood all over his mouth.18 Q And were you concerned for his welfare, his
19 safety?

20 A Yes.

21 Q And did you do something at that time when you
22 noticed what was happening to your brother?23 A I choose to plead the Fifth on that question,
24 sir.

25 Q Do you know an individual by the name of Miguel

18 1 Celis or Michael Celis?

19 2 A Yes.

3 Q And do you see him in the courtroom today?

4 A Yes.

5 Q Could you point to where he's located in the
6 courtroom and tell the court what he's wearing today.

7 A Sitting right there wearing red.

8 MR. SCHWARTZ: Would the record reflect the
9 identification of the defendant, Your Honor?

10 THE COURT: Yes.

11 BY MR. SCHWARTZ:

12 Q While you observed your brother bleeding on the
13 ground outside of the residence where the party had taken
14 place did the defendant take a gun from you and shoot into
15 the crowd?

16 MR. FIGLER: I'll object as leading.

17 THE COURT: Sustained.

18 BY MR. SCHWARTZ:

19 Q What if anything did you see the defendant do
20 on February the 28th, 1997 while you're concerned for the
21 safety of your brother?

22 A Nothing.

23 Q Was the defendant just standing there not doing
24 anything?

25 A I don't know.