

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 82700

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Elizabeth A. Brown
Clerk of Supreme Court

SHAWN GLOVER JR.

Appellant,

v.

THE STATE OF NEVADA

Respondent.

Appeal from Judgment of Conviction
Eighth Judicial District Court, Clark County
The Honorable Michael P. Villani, District Court Judge
District Court Case No. C-16-312448-1 / A-20-821176-W

APPELLANT'S APPENDIX

VOLUME III

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on September 13, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

ALEXANDER CHEN
Chief Deputy District Attorney

By: /s/ Lucas Gaffney
An Employee of Gaffney Law

1 is explain to the jury how the house is situated; does that make sense? So --

2 A It's a townhouse.

3 Q It's a townhouse. Is there another unit attached to it?

4 A Yes, with a townhouse.

5 Q Okay. So, where the townhouse, is the -- how are the living
6 arrangements? Are there multiple levels? What are the basics of that?

7 A It's a two-story level. When you come in, you have the entrance
8 and a garage on the lower floor. You go up a flight of stairs, which is -- you'll
9 see in the pictures how the stairs go. And you're up in the second part of the
10 townhouse.

11 Q So, let me just backtrack a little bit. So, on the ground floor -- I'm
12 on the ground floor and you said there's a garage?

13 A Yes.

14 Q And there's also a front door?

15 A Yes.

16 Q If I go in through the front door, where am I standing?

17 A On the landing. There's a landing right there in front of the front
18 door.

19 Q Right in front of the door you said a landing. And by landing I
20 assume you mean the bottom of a stairway?

21 A Yes.

22 Q Are there any other doors in that landing?

23 A There's a front door and there's a garage door.

24 Q So, a door that leads outside and a door that leads into a garage?

25 A Right.

1 Q And then so if you're standing there, the only places you could go
2 at that point are out the front door, out to the garage, or up the stairs?

3 A Up the stairs, right.

4 Q Okay. So, if you start to go up the stairs, what do you see or where
5 do you go in the house?

6 A You go right into the dining room from the steps. And right off
7 from there is the kitchen. And then you had Angela's room right in front of the
8 kitchen almost and the boys room was off to the side.

9 Q Now, I'm going to ask you a little bit more about who the people
10 are that you're talking about.

11 A Okay.

12 Q So, if you walk up the stairs, you're in the dining room. There's a
13 living room straight through--

14 A Right.

15 Q -- do I have that right?

16 A Right.

17 Q The boys' room, and you said Angela's room?

18 A Yes.

19 Q Are too?

20 A Angela's room -- if I'm standing here and this is the front door,
21 Angela's room was off over here, and the boys room is off over here to the
22 right-hand side. Right here you have the dining room going into the living
23 room.

24 Q If you could, I know you said this is Angela's house, your
25 goddaughter. Would you please tell the jury who all was living in this

1 particular townhouse at that time?

2 A Yes. When we first got there it was my daughter, Angela, and her
3 three kids. Then my husband, myself. My daughter was just -- Akira, which
4 was 21 came, and we had twins that's 12 years old, they also came.

5 Q So, there are four -- if I counted correctly, four adults living in the
6 house and then some small children?

7 A Yes. It was --

8 Q Younger children.

9 A -- Angela's house that was there and myself and my husband,
10 Patrick, came and Akira was there.

11 Q Okay. Were there any other adults at that time?

12 A Not when we first got there.

13 Q When did you first get there?

14 A We had been there almost a week prior to.

15 Q So, about a week before January 1st, 2016?

16 A Yes.

17 Q So, during that period from when you first got there to January 1st,
18 did anyone else come and stay at that house?

19 A Shawn -- Shawn came and stayed there.

20 Q When you say Shawn, did you know a last name for Shawn?

21 A Shawn Glover.

22 Q The person you described known to you as Shawn Glover, is that
23 person present in the courtroom today?

24 A Yes.

25 Q Could you please tell the Court where that person is sitting and just

1 identify some clothing he's wearing?

2 A Right there with the green tie on.

3 MR. FLINN: May the record reflect she identified the Defendant?

4 THE COURT: The record shall so reflect.

5 BY MR. FLINN:

6 Q So, the Defendant came during that week and was staying at the
7 house?

8 A Yes.

9 Q How so? I mean who does he know at the house that he would
10 come and stay there?

11 A Angela. He has a daughter by her, also.

12 Q So, he has a child in common with Angela?

13 A Yes.

14 Q And so, during that week he came to live at the house, as well?

15 A Yes.

16 Q So, as of January 1st there's a total of five adults that are now
17 living in the house and then there's the children?

18 A Right.

19 Q Okay. Starting with in the morning of January 1st, 2016, of course,
20 who was home in the morning?

21 A We had all gotten up that morning from the New Year's Eve. And
22 Angela had to be to work at 10:00. Patrick took Angela to work that morning.
23 And I think he went by his job after that to grab his check.

24 Q So, Patrick you said took Angela to work. I assume he drove?

25 A Yes.

1 Q So, he drove Angela. Approximately at the time how old was
2 Angela? If you know.

3 A Thirty something.

4 Q Thirty something. Fair enough. So, he took her to work. And did
5 he use his own vehicle or was there some other vehicle there?

6 A Yes, he used his own vehicle. He had just taken both of them to
7 work the day before.

8 Q So, he took her to work on the morning of the 1st?

9 A Uh-huh.

10 Q And you thought maybe he stopped by his job to pick up a check?

11 A Right.

12 Q Did there come a point that morning where he arrived back at the
13 house?

14 A Yes.

15 Q What happened when Patrick came back to the house?

16 A When Patrick came back to the house, he came in and he was
17 discussing something about the night before when my daughter was -- had
18 went out. And he said that he was going to look at something on his phone
19 and went to go check out his phone, or what the video was, or whatever. And
20 he said that he wanted to talk to Akira, my 21-year-old. And they went
21 downstairs to talk, and I went with them. And it was a lot of arguing and a lot
22 of discussion down there about her being -- of her age and her being a
23 responsible 21-year-old at the time. And --

24 Q Let me stop you for just a second. So, you said Patrick came back
25 and you said with your daughter, and you, obviously, just mentioned Akira,

1 that's who you're referring to?

2 A Yes.

3 Q And when you say go downstairs, where downstairs?

4 A Into the garage.

5 Q So, down that stairs, that landing, and then through the door into
6 the garage area?

7 A Yes.

8 Q Okay. So, again, if you could just kind of slowly, what is really the
9 nature of the discussion that's going on?

10 A Akira going out the night before, and Patrick seen a video of her
11 the night before and discussing with her about lying to him.

12 Q What did he think she was lying about?

13 A About having a young man in his vehicle when he asked her not to.

14 Q So he, Patrick, and Akira were addressing that --

15 A Exactly.

16 Q -- in the garage?

17 A Yes. And was me and Patrick really addressing it.

18 Q And so you joined in on this discussion, right?

19 A Yes.

20 Q Would you describe it as a talk, an argument? I mean what was
21 sort of the tone of that?

22 A It was an argument, it was a loud argument. It was a lot of
23 shouting and that's primarily why we went to the garage. There was a lot of
24 handclapping, you know, when you talk with your hands. But other than that,
25 no, it was a typical argument that we were having.

1 Q So, while this is going on, does anyone else come down to the
2 garage while you're having this argument?

3 A Yes. Shawn came down to the garage, and he had the house
4 phone in his hand. It was a phone. I don't know if it was the house phone or
5 cell phone. I knew he had a phone. And he said that Angela's on the phone.
6 And I said yes? And she -- I was talking to Angela on the phone, and she said
7 mommy, are you okay?

8 MR. BASHOR: Objection, Your Honor, hearsay.

9 THE COURT: Okay. Counsel --

10 MR. FLINN: It's not offered for the truth, Your Honor. She's --

11 THE COURT: Okay. Then it's not relevant, so it's sustained.

12 BY MR. FLINN:

13 Q So, he -- the Defendant, told you someone's on the phone and
14 handed you the phone?

15 A Yes. And I told Angela I was okay, everything was fine. And he left
16 back out.

17 Q So, at that point the Defendant leaves the garage?

18 A Right.

19 Q Did he go outside or through the door to the stairway?

20 A He went back up into the townhouse.

21 Q So, what did you, Patrick, and Akira do at that point?

22 A Nothing. We were still standing there discussing everything and
23 actually calming down. It wasn't a big discussion after all - after, you know, so
24 long. It was like everything had gotten out, everybody had said what they had
25 to say. And Shawn came back downstairs.

1 Q So, everybody had said what they said, but the Defendant came
2 back down to the garage?

3 A Yes.

4 Q What happened when the Defendant came back to the garage?

5 A He asked me if he could speak with me upstairs.

6 Q Did you agree to do that?

7 A Yes.

8 Q So, you and the Defendant walked back upstairs?

9 A Yes.

10 Q Was it just you two or was --

11 A It was just me and him.

12 Q So, Patrick --

13 A And Akira were still in the garage.

14 Q Okay. So, when you got upstairs, where did you -- where did you
15 go to talk to the Defendant?

16 A Into Angela's room. He went towards Angela's room.

17 Q What did you two talk about?

18 A He came in there, and he asked me, do you want me to handle this,
19 do you want me to take care of it? And I said take care of what, handle what?
20 And he said well, he's down there fighting you guys. I said no, he's not. I said
21 we're down there, and there's a lot of handclapping, but everything is okay.
22 Trust me, I got this, there's no problem.

23 Q When the Defendant said do you want me to take care of this, what
24 were you thinking he meant by that? What was your state of mind on that?

25 MR. BASHOR: Objection, Your Honor. It calls for speculation.

1 THE COURT: Her state of mind?

2 MR. BASHOR: As to what he might mean by something.

3 THE COURT: He asked her what she believed him to be saying.

4 MR. BASHOR: Very good, Your Honor.

5 THE COURT: Not what he was saying. With that understanding
6 that's what the question is being asked, it's overruled.

7 BY MR. FLINN:

8 Q You can answer.

9 A Repeat it, please.

10 Q Sure. You said that the Defendant told you -- you know, asked you,
11 do you want me to handle this?

12 A Yes.

13 Q And then you responded to him that you got this, but what made
14 you respond in that way?

15 A Yes. I thought, that he thought, that we were fighting down there,
16 Patrick was fighting us. And I said no, that's not the case, we're down there
17 doing a lot of shouting. And as that right there was said, Patrick and Akira was
18 coming back up the steps. And he could see them --

19 Q Let me stop you right there. So, you had this conversation. You
20 said I got this. And by now Patrick and Akira are coming up from the garage?

21 A Yes.

22 Q Do they come to the same place that you and the Defendant are
23 talking?

24 A They're coming up to where we are. I'm coming out of the
25 bedroom, and they're coming up the stairs. And they're smiling, talking, and

1 everything is okay.

2 Q When they get up there, what happens next?

3 A It's like a whole different vibe. Patrick asked Shawn what does he
4 want to talk to his wife about. And Shawn said well, you're down there
5 tripping with them and fighting them. And Patrick said, no, I'm not. And
6 Patrick went to touch Shawn on his shoulders to say man, no, I'm not. And
7 Shawn did some move like this, like man, get off me, you're too close to me.

8 MR. FLINN: And, for the record, Your Honor, she kind of put her
9 hands out, palms up, away from her body.

10 THE COURT: The record shall so reflect.

11 THE WITNESS: And that's when Patrick looked at Shawn and said,
12 do we have a problem, do we need to talk? He said well let's -- let's go down
13 here, let's go -- we talk.

14 BY MR. FLINN:

15 Q You said he said let's go down there. Who's he?

16 A Patrick looked at Shawn and said, let's go downstairs so we can
17 talk.

18 Q So, now when he says that, you and Akira are still standing up
19 there toward the top of the stairs, correct?

20 A Yes.

21 Q What happens after Patrick says let's go downstairs?

22 A Patrick looked right at me, and I said no, you don't need to talk to
23 him. And Patrick pushed me to the side and went right on downstairs first.

24 Q So, you see Patrick start walking down the stairs?

25 A Yes.

1 Q Where is the Defendant at that point?

2 A Coming right behind him.

3 Q So, when you say coming behind him, is he also going
4 downstairs?

5 A Yes, he's going downstairs also.

6 Q As they start walking down the stairs, what do you do?

7 A I'm going back up toward Angela's room to get the stuff for the
8 baby, and I hear the shots.

9 Q You say you hear the shots. Can you just -- just back up. You're -
10 going toward Angela's room. What do you hear?

11 A Three loud shots.

12 Q When you heard those three shots, can you say how long had it
13 been since you saw the Defendant and Patrick start walking down the stairs?

14 A It couldn't have been a couple seconds. Patrick is tall. He went
15 downstairs first. Shawn came right after him. I had already turned around to
16 go to the bedroom and I heard -- before I even got in the bedroom, I heard the
17 shots.

18 Q When you heard the shots, what did you do next?

19 A Looked straight at Akira to make sure, because I know I don't have
20 hearing problems that bad, I said did you hear that? And we ran to the stairs.

21 Q So, you and Akira ran toward the stairs?

22 A Yes. The stairs, the way the stairs are, there's -- when you come
23 off of the -- from upstairs there's a little landing. There's a little stairwell, a
24 little staircase, and then there's a landing. And then there's another set of
25 staircases down below that that goes all the way to the front door.

1 Q So, you came over to the stairs?

2 A Yes. And we were like on the top -- on the top of the -- of the
3 landing. I was looking straight down at him and Akira was right behind me.

4 Q So, just so I have this clear, you're on that couple steps down, then
5 a landing?

6 A Yes.

7 Q And you're looking down the rest of the stairs?

8 A Yes.

9 Q What do you see as you look down those stairs?

10 A I see Patrick laying on the floor, and I see Shawn standing over
11 him.

12 Q How did -- how did Patrick look to you at that point laying there?
13 Was he moving, was he saying anything?

14 A No, not at all. Not at all. He looked like he was slumped over on
15 his side. And I could see Shawn standing down there with the gun, and I could
16 see him standing over Patrick, and he's standing there looking at me with the
17 gun in his hand. When I looked down, I could see he looks up at me with the
18 gun in his hand.

19 Q So, as you're looking down the Defendant lifts the gun and points
20 it in your direction?

21 A Yes.

22 Q Did you or the Defendant say anything at that point?

23 A I raised my hands, and he said don't tell on me. He said
24 something like don't tell on me, don't say anything. And all I could do was
25 raise my hands and say okay. I really thought that I was going to be shot next.

1 Q When he said that and that's what you're thinking, what did you do
2 next?

3 A I panicked. All I could do was stand there. He was trying to get out
4 of the garage door trying to move Patrick's body with the door to get out of the
5 garage door. That's the only way you could get out of the door because
6 Patrick's body was in front of the garage door and the front door.

7 Q Did you see whether the Defendant made it out one of those doors
8 at that point?

9 A You could hear the garage door going up. You could -- you knew
10 that he was - all I know is that I was trying to get to Patrick. By then Akira had
11 called 911 and I was on the -- the phone, and she asked me to try and do CPR.

12 Q So, as you were coming down the stairs, and saw all of this, and
13 the Defendant pointed the gun at you, where was Akira; if you know?

14 A I -- I knew she was behind me and then when I raised my arms, I
15 don't know what -- you know, all I could say was okay to her.

16 Q You said that Akira called 911, but you talked to them?

17 A Yeah. She had to call 911. I know that I had the phone somehow
18 because I had to do -- try to do CPR.

19 Q So, at some point you're listening to the phone and being told to
20 try to do CPR?

21 A Yes.

22 Q So, did you go down the stairs to where Patrick was laying and try
23 to do that?

24 A Yes. Shawn had already went down to Patrick. I don't know where
25 the phone came from, but I knew that I was doing the CPR on him. I had to

1 pull him toward me because he was face down when I got to him. I had to pull
2 him toward me over so that I could do the CPR on him.

3 Q So, did you turn him more so that then his -- he would be more
4 facing up?

5 A Yes. To see his face to try and do the CPR.

6 Q Did -- when you went up to him to try to do that, was -- did he have
7 anything obvious to you in terms of just being hurt?

8 A Yes.

9 Q What was that?

10 A Obviously, when he was down, I could see the back of his head. It
11 was engorged, it was big right here. When I turned him over, you know, I
12 knew right then and there that he had - -it was -- it was in his head.

13 Q So, you tried to do CPR at that point?

14 A Yes.

15 Q Did Patrick respond at all to you trying to do CPR?

16 A No.

17 Q At what point did you stop? There are some tissues just to the
18 right of you.

19 A Thank you. I didn't stop until the officers came in. And they had to
20 come through the garage, because they couldn't come through the front door.

21 Q So, at some point police officers arrive and make their way in?

22 A Yes.

23 Q That's when you stopped?

24 A Yes. And they took over.

25 Q Where did you go after the officers arrived and took over the

1 situation?

2 A They told us to go back upstairs, and we were upstairs.

3 Q Was Akira upstairs when you went up there?

4 A Yes, Akira was up there.

5 Q You previously said that there were I think it was a total of five
6 smaller children, not adult children, that were living in the house?

7 A Yes, there were. Yes.

8 Q Where, if you know, were those children while all of this was going
9 on?

10 A They were -- when we went downstairs in the beginning, they were
11 all like in the living room, in the bedroom, playing games, you know, video
12 games.

13 Q So, after the Defendant and Patrick went downstairs, and Patrick
14 was shot, and you went back up, where were the children?

15 A They were in the room with the door closed.

16 Q Had you closed that door?

17 A No. The door was open when we went downstairs. The kids told
18 me that Shawn put them in a room. That he took the clothes off the door, that
19 he put them in a room and closed the door and told them to stay in the room.

20 MR. FLINN: May we approach the Clerk, Your Honor?

21 THE COURT: Yes.

22 [Clerk and State counsel confer]

23 MR. FLINN: Your Honor, for the record I'm showing Defense
24 counsel State's proposed Exhibits 4, 5, 6, 7, 10, and 11.

25 MR. BASHOR: Judge, may we approach?

1 THE COURT: Yes. Can I see you in the hallway for a minute? I'm
2 going to step outside in the hallway. If you can remain seated and not talk to
3 anyone, I'm going to be right back.

4 [Court and counsel exit courtroom at 10:43 a.m., not recorded]

5 [Court and counsel return to courtroom at 10:44 a.m.]

6 THE COURT: Okay. So, State you had a motion?

7 MR. FLINN: Yes, Your Honor. The State moves to admit State's
8 proposed Exhibits 4, 5, 6, 7, 10, and 11 by stipulation of the parties.

9 THE COURT: Okay. So, any time the lawyers enter a stipulation,
10 whether it's to admit something or they admit -- they stipulate to the existence
11 of a particular fact, that means they've agreed, and you have to regard that fact
12 as proved. And the stipulation to admit these means that the Defense and the
13 State have agreed to their admission. 4, 5, 6, 7, 10, and 11 are admitted.

14 [STATE'S EXHIBITS 4, 5, 6, 7, 10, AND 11 RECEIVED]

15 MR. FLINN: Thank you, Your Honor.

16 BY MR. FLINN:

17 Q So, Miranda, I'm going to show you some photographs of the
18 house on Smokey Fog and ask you to explain to the jury what they're looking
19 at, okay?

20 A Okay.

21 Q I'm going to show you State's Exhibit 4, and I'm going to put that
22 up on the screen. Can you see that picture on the screen in front of you,
23 Miranda?

24 A Yes.

25 Q Okay. So, as we're looking at that building there, what is the jury

1 looking at?

2 A You're looking at the front of the townhouse.

3 Q So, there --

4 A Right there where it says 102 is where the garage is. And right
5 there where the white truck is, is the front entrance. If you go down that
6 sidewalk, it's the front entrance.

7 Q Now, just so -- to make sure we're talking about the same thing,
8 the white truck that you're referring to, is that what -- the vehicle we're looking
9 at on the left-hand side of the picture?

10 A Yes, that's --

11 Q And there's a sidewalk next to it?

12 A Right.

13 Q So, the garage door -- it looks like there's three garage doors.
14 The one that's open went to your townhouse?

15 A Yes.

16 Q And that sidewalk, does that go toward the front door?

17 A Yes.

18 Q I'm going to show you State's Exhibit 5.

19 A That's down the sidewalk. That's the apartment 201.

20 Q So, the sidewalk you were just talking about comes around the
21 building where those numbers are?

22 A To the front door right there, to 201.

23 Q That's the front door?

24 A Yes.

25 Q I'll show you Exhibit 6.

1 A That's the garage. Right there is the door. Right in front of that
2 door is where Patrick was laying at. And this is the door that Shawn exited out
3 of, the garage door. That's the garage door. It opens up.

4 Q When you say the door, we're obviously -- we're looking inside
5 the garage?

6 A Yes.

7 Q And would it be fair to say toward the top right section of that
8 picture is the door you're talking about?

9 A Yes.

10 Q Just past what looks like a mattress?

11 A Yes.

12 Q And Patrick's body is on the other side of that door?

13 A Of that door, yes.

14 Q I'm showing you State's Exhibit 7. Is that just a little bit closer
15 up of that door?

16 A Yes.

17 Q That's the same door?

18 A Yes.

19 Q I'll show you Exhibit 10.

20 A That's the -- that's the stairwell.

21 Q I'm going to zoom out real quick before you -- okay. What are
22 we looking at there?

23 A That's the stairwell. At the bottom -- down here, at the bottom is
24 where Patrick was laying at. The steps that go up -- and then up where you
25 see the plant at, there's a landing right there. So, it's like a little -- you could

1 peek around the corner to see down into the stairwell.

2 Q So that landing, if you walk up the stairs to where you described
3 that plant, the rest of the stairs, the couple more stairs you talked about, that's
4 to the right?

5 A Yes. And it goes straight up into the townhouse.

6 Q So, when you came down and saw Patrick's body and the
7 Defendant pointed the gun at you, where were you standing in the picture?

8 A I was standing right up here at the top where you see there's
9 another little banister that's hanging out, right there. All you had to do is look
10 around the corner to just look down. That's as far as I went. When I looked
11 down, I look around that corner.

12 Q So, you looked around the corner toward the bottom of the
13 stairs?

14 A Yes.

15 Q I'm going to show you exhibit -- State's Exhibit 11.

16 A Yes. That's the top of the stairs. That leads into the townhouse.
17 This is the landing that I was telling you about, the second -- the first landing
18 right here that leads down.

19 Q In the lower right corner? I'm sorry. In the lower right corner of
20 the screen is the landing?

21 A Yes. That's the landing right there. There's a set of stairs about
22 three or four steps that goes down. And then that's the landing, the first
23 landing. And then it goes down into the stairwell and there's a second landing
24 at the bottom of the steps.

25 Q So, when -- as you described Patrick started to walk down the

1 stairs --

2 A Yes.

3 Q -- and then the Defendant started to walk behind him, are you
4 standing near this area?

5 A No.

6 Q So, where are you in relation to this part?

7 A I'm all the way over here by Angela's room when they start to go
8 downstairs.

9 Q So, you saw them start to go down and that's when you're
10 walking away from this spot?

11 A Yes. I was over here near the stairs. I was blocking Patrick's
12 way. That's why he pushed me to the side.

13 Q Okay.

14 A And as soon as he walked downstairs, I started walking toward
15 the bedroom because I figured he had it. You know, he's just going to go
16 down there and talk to him like he talked to us.

17 Q So, as we're looking at this picture, you -- they start going down
18 the stairs, and you turn just as we're looking at it to the left?

19 A Uh-huh.

20 Q Okay.

21 THE COURT: Is that a yes?

22 THE WITNESS: Yes.

23 THE COURT: Thank you.

24 BY MR. FLINN:

25 Q When you testified that the Defendant pointed a gun at you and

1 spoke to you --

2 A Yes.

3 Q -- do you recall, at the moment, the precise words that the
4 Defendant said to you?

5 A All I know is he said something like don't snitch on me, don't tell.
6 I seen his mouth moving. All I could do was put my hands up and say okay. I
7 knew that I -- I could see my husband laying right there on the ground. I just
8 felt like all he -- all he had to do was just -- I don't even know why I'm sitting
9 here right now.

10 Q The day after this happened you talked to the police. And do
11 you recall telling them the precise words that the Defendant said to you at that
12 point?

13 A It was fresher then, yes.

14 Q Would reviewing a transcript just of that statement refresh your
15 memory about what the Defendant said to you?

16 A Yes, it could.

17 MR. FLINN: May I approach, Your Honor?

18 THE COURT: Yes.

19 BY MR. FLINN:

20 Q I'm going to show you a page of that and if you could just read this
21 paragraph to yourself and then tell me when you're done.

22 [Witness reviews document]

23 A Yes.

24 Q Does that refresh your memory?

25 A Yes.

1 Q Would you please tell the jury --

2 A To the --

3 Q -- specifically what he said?

4 A He said, if you and your kids want to live, you'll shut the fuck up.

5 MR. FLINN: No further questions, Your Honor.

6 THE COURT: Cross-examination.

7 MR. BASHOR: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. BASHOR:

10 Q Good morning.

11 A Good morning.

12 Q I'd like to talk to you a little bit about some events leading up to
13 this day. It's my understanding that you, and your husband, and your
14 daughter, Akira, were living at a different location, and then moved in with
15 Angela; is that correct?

16 A Yes.

17 Q And that was about two weeks before this occurred?

18 A Yes, about two weeks.

19 Q So, it would be fair to say you were kind of transitioning from one
20 residence --

21 A To another.

22 Q -- to another?

23 A Yes.

24 Q Okay. And by happenstance it was the holiday season, so you got
25 to spend it together?

1 A Yes.

2 Q Now, Mr. Glover wasn't there -- and I don't know why I'm making
3 that noise, so I'm going to stand back. But Mr. Glover wasn't there when you
4 moved in, right?

5 A Right.

6 Q Mr. Glover moved in on Christmas Eve?

7 A Right. About that, yes.

8 Q And between Christmas Eve and New Year's Day, roughly seven to
9 eight days, he had been in and out of the townhouse, right?

10 A Yes.

11 Q Staying away from Angela?

12 A He had been -- yes. At first, it was like he was in and out and then
13 he came and stayed.

14 Q And then he stayed?

15 A Yeah.

16 Q Okay. And obviously we've heard about this townhome, and I
17 don't think it's -- you would agree it's not designed for I don't know how many
18 people in that apartment, 11 or 12 of you, right?

19 A Actually, him and Angela had her bedroom.

20 Q Right.

21 A Me and my husband, we had blowup beds. So, we had a blowup
22 bed that was very comfortable. And all the kids were on the video games all
23 night, so they were --

24 Q I don't mean to criticize the mode of living. I'm just saying it's
25 close quarters for 11 people?

1 A It was close, yes. Yes.

2 Q Okay. And so, by that nature it would be -- you would agree
3 that Shawn and Patrick would have interactions with one another over those
4 seven to eight days?

5 A Daily, yes.

6 Q And, in fact, on New Year's Eve Patrick had driven Shawn to work?

7 A Yes.

8 Q Now, I want to direct your attention to that day. You called -- well,
9 Akira called 911, right?

10 A I believe so, yes.

11 Q And handed you the phone?

12 A Yes.

13 Q And you're on the phone with the operator, correct?

14 A Yes.

15 Q And you -- the call is made right after the suspect leaves, right?

16 A Right.

17 Q There's no delay, right?

18 A No, I don't know. I -- I was standing down there, and he was trying
19 to get out the door. I knew I felt Akira behind me, but I don't know -- I don't
20 even know when she called 911.

21 Q It would be fair to say it was in a matter of seconds after the
22 suspect --

23 A It wasn't that long after that, no, it wasn't.

24 Q Right. You weren't waiting 20, 30, 40 minutes --

25 A No.

1 Q -- to call 911?

2 A No.

3 Q You wanted to get your husband some help?

4 A Right.

5 Q As soon as possible?

6 A Exactly.

7 Q And I would think it would be safe to assume Akira would want the

8 same thing?

9 A Yes.

10 Q When you're on the 911 call -- would it be fair to say that call

11 occurred around 12:05?

12 A It could, yes, about that time.

13 Q Okay. And you're in shock?

14 A Yes.

15 Q And you're hysterical?

16 A Yes.

17 Q You're crying?

18 A Yes.

19 Q You want to do whatever you can to help your husband?

20 A Yes.

21 Q And the 911 operator wants to know what kind of services are

22 needed, right?

23 A Yes.

24 Q And you indicate that someone had shot your husband?

25 A Yes.

1 Q And you had stated that your husband had answered the door and
2 he had been shot, correct?

3 A Yes, I think I did state that.

4 Q And when asked if you knew who shot your husband, you stated I
5 don't know, I don't know?

6 A I did say that.

7 Q When asked if you saw anything at all, you indicated that no,
8 correct?

9 A That I had just been threatened, and I see my husband laying there.
10 Yes, I did say that.

11 Q Okay. And that you stated all you knew he was on the phone, and
12 someone was supposed to come over, I don't know who it was?

13 A Yes, I did say that. Now --

14 MR. BASHOR: I have no idea why -- my cell phone is in the bag.

15 [Court recorder and counsel confer]

16 MR. BASHOR:

17 Q Let's talk about -- obviously, the first responders come in, right?

18 A Yes.

19 Q They secure the scene, right?

20 A Yes.

21 Q You are -- because of where Patrick's located, you're upstairs?

22 A Yes.

23 Q And eventually detectives come?

24 A Yes.

25 Q And the first responders and the detectives -- the first responders

1 are in their uniforms, right?

2 A Yes.

3 Q And they have their guns, and their tasers, and that sort of thing,
4 right?

5 A Yes, they do.

6 Q And the detectives are there. They're armed with different things,
7 right? They're usually in civilian clothes, correct?

8 A Right. Right.

9 Q And they're armed with like a recording device?

10 A Yes.

11 Q That's kind of like their weapon, right?

12 A Yes.

13 Q And at this point you have a discussion with the detectives,
14 correct?

15 A Yes.

16 Q And at some point, a recorder is put in front of you, right?

17 A I believe so. I know that they asked me to write a statement out or
18 they wanted to record what was going on, yes.

19 Q Okay. And so as far as you knew, the conversation was going to
20 be recorded?

21 A I -- I really don't - don't even remember that part.

22 Q Okay. Now, you had stated that you were obviously in fear for
23 your life, right?

24 A Yeah.

25 Q The suspect had pointed a weapon at you, right?

1 A Yes.

2 Q And so you have, you would agree, three options at this point,
3 right?

4 A Uh-huh.

5 Q You can tell them exactly what happened, right?

6 A Yeah.

7 Q You can tell them nothing?

8 A Right.

9 Q Or you can tell them something that wasn't the truth?

10 A Right.

11 Q And when they asked what happened that day, you begin to
12 describe that your husband, Patrick Fleming, sold marijuana?

13 A I do say -- they said something like that, and I do recall something
14 to that effect.

15 Q I'm not talking about they said it. I'm saying you said that your
16 husband was --

17 A You know, I really could not tell you word for word -- verbatim
18 what I said, because I was sitting there in tears --

19 Q That's okay. I understand.

20 A -- crying that whole time. I do recall them saying something about
21 a recording and asking me -- but I do remember telling them also that -- that
22 he couldn't have gotten that far. There's only desert around us and that he
23 had just shot my husband, and I know of him having a 50- round gun, that he
24 couldn't have been that far. He had to be in that - in that same townhouses.

25 Q Okay. And we'll get to that, okay?

1 A Okay.

2 Q What I'm asking you is at the beginning of the interview you had
3 told the officers that your husband, Patrick, was looking for a re-up?

4 A I may have said that.

5 Q Would looking at your statement to the police on September 1st
6 refresh your recollection?

7 A No, it wouldn't, really.

8 Q It would not?

9 A No, because I was so out of it that day that it happened that I
10 never, ever, made a statement to -- well, I never signed a statement or did a
11 written statement because I was still in fear. And I asked the officers that day if
12 they could stay with me and my kids, and they said that they did not have
13 enough manpower to do that.

14 MR. BASHOR: The Court's indulgence.

15 [Pause]

16 BY MR. BASHOR:

17 Q You don't recall telling the detectives that the deal didn't go
18 through, I know this morning he kept saying he had to recop or get some
19 weed?

20 A I do believe I said that after they stated that no, they could not stay
21 there with me and provide safety for me and my -- my kids. I do believe that
22 that was said after that.

23 Q The answer to my question, ma'am --

24 A At the beginning, I did not know what to say to the officers or the
25 policemen there because I felt like I was still in danger.

1 Q The answer is yes?

2 A And I did not -- I'm sorry.

3 Q The answer is yes, correct?

4 A Say it again. What was the question?

5 Q Do you -- you don't recall?

6 A I don't recall.

7 Q You don't recall --

8 A I don't.

9 Q -- saying to the police that the deal didn't go through --

10 A I could have said that, yes.

11 Q Ma'am, I'm not done with my question.

12 A I'm sorry.

13 Q That the deal didn't go through, and I know this morning he kept
14 saying that he had to recop or get some weed; you don't recall saying that?

15 A I could have said that to the police officers. I'm not sure what I said
16 after that. I was still distraught, I was still shaking, and I was still asking for
17 services that they could not provide. So, I'm not exactly sure. I didn't even
18 want to give out his name because I was so scared.

19 Q Okay. Maybe because it's a lie, right?

20 A No, it couldn't have been a lie.

21 MR. FLINN: Objection. Argumentative.

22 THE COURT: Sustained.

23 BY MR. BASHOR:

24 Q Now --

25 A I stayed there, Shawn did not. I'm sorry, sir.

1 THE COURT: It's okay. I'm sorry, one second. If I sustain the
2 objection, that means that the question is not proper, I'm not allowing it --

3 THE WITNESS: Oh, I'm sorry.

4 THE COURT: -- and he has to move on, so don't answer, okay?

5 THE WITNESS: Okay.

6 THE COURT: Thank you.

7 MR. BASHOR: The Court's indulgence.

8 [Pause]

9 BY MR. BASHOR:

10 Q Do you recall telling the detectives that your husband had to make
11 a run, and it was something to do with weed, and he kept talking about it the
12 night before?

13 A You keep asking me these questions, but I'm not familiar with
14 them. I'm not exactly sure what I told them. I do know that I said can you
15 guys stay here with us. And when they told us there was no additional
16 protection, I'm not sure what I said because the police couldn't help me at that
17 time, and I knew that he was still in the vicinity. There was nothing that no
18 one could do. The only thing that I wanted to do was get my kids and get out
19 of there.

20 Q Okay. Let's talk about the argument.

21 A Okay.

22 Q Do you have a recollection of that?

23 A Yes, I do.

24 Q Okay. Do you recall telling -- so, as I understand it, Patrick was
25 arguing with Akira, right?

1 A Yes. He was --

2 Q And the argument with --

3 A -- actually, he was arguing with me and Akira.

4 Q Okay, good. We'll get to that.

5 A Okay.

6 Q The argument started with Akira, correct?

7 A Yes.

8 Q Okay. And that was because Patrick had her followed the night
9 before?

10 A Yes. Yes.

11 Q Because he didn't want a boy in his car, right?

12 A Something to that. We -- I never exactly knew exactly what it was.
13 All I knew we were arguing about her age and her being responsible and not
14 the typical average 21-year-old.

15 Q Patrick had someone following her and spying on her, right?

16 A One of his friends. One of his so-called friends had videotaped or
17 something of the -- the event from that night before.

18 Q So, Patrick had his friend videotape his daughter on a date?

19 A Yes.

20 Q That was upsetting to Akira?

21 A It was upsetting to us all. That's why we were discussing it and
22 there was an argument. And it turned from a simple hold on, she's 21 years
23 old, you know, and she's being responsible. You told her you wanted her back
24 by 11:30, and it was a decent time because of his traditions of New Year's Eve,
25 and she did that. So, he had her followed to say that no, she wasn't with a boy

1 in her -- in his vehicle.

2 Q It would be fair to say that Akira was screaming, right?

3 A It was safe to say we were all screaming.

4 Q Was Akira screaming?

5 A Yes.

6 Q Were you screaming?

7 A I was screaming.

8 Q Was Patrick screaming?

9 A He was talking loud. Patrick -- Patrick's voice carries loudly.

10 Q At about 11:35 you go downstairs and let him know that
11 you want to get going, right?

12 A To tell him that -- we had previous things to do. We had --

13 Q That you wanted to go look for an apartment?

14 A Well, we had an apartment. We had to go put the money down on
15 the apartment and get going that day to transfer all of our things over there to
16 that apartment.

17 Q And that's what you -- you took note of the time that it was 11:35,
18 right?

19 A Well, I said it was 11:35, because I looked at the time. Instead of
20 you arguing with Akira, we have things to do.

21 Q Okay. So, that part of your statement to the police on January 1
22 you have a perfect recollection of, right?

23 A I'm not exactly sure if that was the exact time. It could have been
24 around that time because I know that it -- about the time that she got off, and I
25 thought I was looking at the time because of the situation that we were in

1 going to get started with our day.

2 Q In your statement to police on January 1st, you indicated to them
3 that you didn't get a good look at the suspect; is that correct?

4 A I'm not exactly sure.

5 Q All right.

6 A Like I told you previously, we just -- and I just stated that, that
7 when the officers told me that there was no one that could stay there with me
8 and my kids, that I feared -- I was in fear. All I could see was the gun pointed
9 up at me. And I'm not sure why he didn't shoot me that day myself.

10 Q And, again, there'd be no point to show you the transcript?

11 A No.

12 Q All right. Now, do you remember telling the police that your
13 memory was off since your last surgery?

14 A No. I told them that I had a lot of things going on since my last
15 surgery, but my memory wasn't off that -- not to know what had had
16 happened to my husband. Me and my husband had been together for all
17 these years. I would know exactly what happened to him.

18 Q And that's why you told the police you didn't know who shot your
19 husband on January 1st?

20 A No. I told the police that when they told me that they could not
21 stay there with me and my kids in the house that my husband was laying on
22 the floor of that had just been shot and murdered.

23 Q Okay.

24 THE COURT: Ms. Sutton, because the recording equipment can't
25 get two people talking at once, I need you to let him finish his question before

1 you start your answer, okay?

2 THE WITNESS: Okay.

3 THE COURT: Thank you.

4 BY MR. BASHOR:

5 Q So when asked if you could describe the individual on that day,
6 you don't recall telling the police no, my memory is kind of off since my last
7 surgery?

8 A I can tell you this right here. I could describe him pointing that gun
9 up at me. That's the only thing I could see. When the officers was talking to
10 me, that's the only thing I could see. That since they could not stay with me,
11 that he was going to run back up, and he'll shoot us all up.

12 Q Okay. So, it's fair you're really adamant today, right?

13 A I'm sorry?

14 Q You're really adamant about what happened today, right?

15 A Yes.

16 Q Yeah. You can't answer a yes or no question. So when -- you
17 want the killer of your husband brought to justice, right?

18 A Yes.

19 Q And so then you decide on January 1st, to lie to the police?

20 A No. What I did was on January 1st, not tell the exact same story
21 that they wanted to know and hear, because I was in fear of my -- my life and
22 then my kids were still there, and my husband's body had not even gotten up
23 off the floor yet. But he had been killed and murdered. That's the only thing I
24 was thinking of that day. Now, when my family got to me that night and took
25 me out of that, like the surrounding that it had happened in, I calmed down,

1 and we went to the police station the next morning to tell them exactly who it
2 was, what had happened, everything.

3 Q Do you recall stating that the individual came into the front door on
4 January 1st?

5 A I'm not sure. What I -- that -- that's my whole point to you. I'm not
6 exactly sure what I said to the officers January 1st, because I was scared and
7 alone with my husband still laying down there and my kids in a room
8 somewhere that I don't even know about.

9 Q You were alone, yes?

10 A Alone in that situation, yes.

11 Q Right. And there were how many responding officers with
12 handguns?

13 A But how many stayed with me and my kids is the question.

14 Q Okay. I'm asking you a question, ma'am. How many responding
15 officers were in the apartment when you were home alone?

16 A I'm not exactly sure. All I know is they were there. I'm not -- I'm
17 not even sure if I looked up at them that day.

18 Q How many detectives? How many detectives?

19 A There could have -- there was quite a few detectives that day, but
20 then they didn't threaten me with their gun that day, either.

21 Q You'd agree that their guns were protecting you?

22 A They was protecting me, yes, as long as they were there in
23 that -- in that townhouse with us --

24 Q And when you were in the --

25 A -- but when they told me that they could not stay with us, there

1 was nothing that they could do.

2 Q When you were talking to them, they were in the townhouse, right?

3 A Yes.

4 Q Protecting you, right?

5 A Yes.

6 Q And then you lied to?

7 A I'm not sure if I lied to them. I didn't write out a statement that
8 day.

9 Q And the statement --

10 A And as I -- I'm sorry.

11 Q -- that the police recorded, you have no recollection of, right?

12 A I'm sorry?

13 Q And the statement the police recorded you have no recollection of?

14 A No, not today because I never signed anything that day. And like I
15 told the investigator, give me time to get me and my kids together, and you
16 will know everything that you need to know. Get us out of this right here place
17 where my husband is dead at, please. I begged them that day to stay with us.

18 Q Going back to the argument, you testified on direct examination
19 that Shawn had come down at one point and returned back upstairs, correct?

20 A Yes. He came downstairs with the phone and said that Angela was
21 on the phone and returned back upstairs.

22 Q And then came down a second time and asked if he could speak
23 with you?

24 A Yes.

25 Q While that was happening, the argument between Akira and Patrick

1 ends?

2 A No. They were finishing up. It was -- it wasn't -- the argument in
3 the ending was not between Patrick and Akira. He looked at her and said
4 something -- it was directed to me and him. Me and him was arguing,
5 because I was telling him of her age and as I was doing it, I was like this and as
6 you see, I have had surgeries on my ears, so I'm louder than what I really think
7 I am. I think I'm loud -- not loud now, but I'm louder than what I really think I
8 am. So, downstairs in the garage it was amplified and we're down there
9 screaming, and my voice is getting loud, and I'm clapping, this is nothing
10 unusual. This is a conversation I'm having with my husband.

11 Q Okay.

12 A This is an argument conversation that we all -- that, you know, that
13 I'm having with my husband concerning my daughter just standing right there.

14 Q You testified on direct examination that when Akira and Patrick
15 came out from the garage and started heading upstairs, the argument between
16 the two of them seemed to be over; is that fair?

17 A Yes.

18 Q And that they were smiling?

19 A Yes.

20 Q And talking?

21 A I think that Patrick's whole thing that day was to scare Akira
22 and -- and that was it. Her being her age, just turning 21 almost, you know,
23 and being with a new boyfriend and everything, it was a scare tactic for her. It
24 wasn't for anyone else. And I was trying to tell him to calm down. And that's
25 all it was. It wasn't anything serious that, you know --

1 Q So the argument wasn't all that serious?

2 A No, not to --

3 Q It was normal?

4 A It wasn't -- it was not normal, but it wasn't anything to, you know,
5 get your feathers ruffled about.

6 Q Uh-huh. Nothing to kill over, right?

7 A I'm sorry?

8 Q Nothing to kill over?

9 A Not that my -- no, not that I could see.

10 MR. BASHOR: The Court's indulgence.

11 [Defense counsel confer]

12 BY MR. BASHOR:

13 Q Towards the end of the interview you don't remember -- do you
14 recall telling the police that they should go and check the facility for cameras?

15 A The facility for cameras, yes.

16 Q You remember that part?

17 A That they should have cameras outside of the townhouses.

18 Q And that you give them an approximate time, 11:45, for them to go
19 and look at the cameras?

20 A It had not happened that long before that. An approximate time,
21 yes.

22 Q Okay. An approximate time, you recall that part?

23 A No. I recall me telling them that he did -- I know of him having a 50
24 round drum, that my husband was there on the ground, and that he could not
25 have gotten out of the townhouses not by foot, and he did not have a vehicle.

1 So, where is he? He has to still be here in the vicinity.

2 Q Okay.

3 MR. BASHOR: Your Honor, may I approach? First of all, I have no
4 further questions, and can I approach?

5 THE COURT: Sure. Can I see counsel in the hallway? Can you
6 remain seated and not talk to anyone again?

7 THE WITNESS: Yes.

8 THE COURT: Thank you.

9 [Court and Counsel exit the courtroom at 11:17 a.m., not recorded]

10 [Court and Counsel return to courtroom at 11:21 a.m.]

11 THE COURT: Okay. Ladies and gentlemen of the jury, we're going
12 to take a short restroom break. During this recess you are -- and you're going
13 to follow my Marshal. During this recess you are admonished not to talk or
14 converse among yourselves or with anyone else on any subject connected
15 with the trial, not to read, watch, or listen to any report of, or commentary on
16 the trial by any person connected with this case or any medium of information
17 including, without limitation, newspaper, television, the internet, or radio. Do
18 not to form or express any opinion on any subject connected with this trial
19 until the case is finally submitted to you. No social media, no tweeting, no
20 Facebooking, no twitting, no snapchatting, none of that. See you in a few.

21 THE MARSHAL: All rise. Jury exiting.

22 [Outside the presence of the jury.]

23 THE COURT: The record should reflect we're outside the presence
24 of the jury. In the back hallway there I discussed with you a scheduling
25 problem that the Court has that has nothing to do with this case, but that

1 Justice Hardesty would like my attendance tomorrow at the meeting that we
2 talked about at the calendar call. I told you about the email I sent to him. I
3 think I can get out of the meeting early, but I can't take a pass on the whole
4 meeting. I mean he wants me to attend, it's his commission, I committed to it,
5 so we're going to rediscuss the schedule for tomorrow. And so, I just want to
6 put you on notice to the extent you have to make plans or whatever, you can
7 do that.

8 Okay. You wished -- the witness needed to use the restroom, so it
9 seemed like a good time to give the jury a break, and we can make a record of
10 whatever you want to make. You can sit down. Thank you. Whatever you
11 want to make a record of. I would note that no one asked me to give any
12 admonishment and --

13 MR. BASHOR: Well, I don't think it would have been appropriate at
14 that time anyway because the logical -- excuse me -- the logical progression
15 would be yes, I lied. And then on redirect examination it would be let's
16 explore those reasons.

17 THE COURT: Right. Which they haven't done.

18 MR. BASHOR: Right. And my point is, since she won't admit or
19 doesn't recall lying, then there's no need to explain under the statute.

20 THE COURT: Well, here's the thing. There's two witnesses, right?

21 MR. BASHOR: Right.

22 THE COURT: And so, so far there's this witness who's very clear
23 about everything, and I don't know that it needs to be redirected. I don't quite
24 frankly -- well, I think she's very clear on her feelings. And so, for this witness I
25 don't necessarily disagree, but I'll hear from the State.

1 MR. STANTON: Well, first of all, she doesn't -- first of all, the way
2 counsel phrased her testimony the State will disagree. Number one, that she
3 -- her statement is that she doesn't remember lying. No. She remembers the
4 statement, she remembers that she gave it, she remembers that she didn't
5 give complete accurate details. Whether or not you want to say it's a lie, I
6 don't think she's going to concede it is or at least to the extent that it's a
7 conditional lie. She just doesn't remember -- because counsel's asking the
8 question, do you remember telling the detectives this?

9 THE COURT: Right.

10 MR. STANTON: So, she's not denying that the statement was
11 made and that the statement has things that are different from her current
12 testimony or version the next day. So, is it --

13 THE COURT: Yeah, but she already testified why didn't you
14 tell -- why didn't you tell. I mean that's already been covered, and she
15 answered the question with all kinds of things that didn't have anything to do
16 with past violent history. And so, I don't know that there's something to go
17 back on in redirect. I don't -- I mean I get from the Defense perspective you
18 want to call it a lie. She's explained her statement. And so, I guess I don't
19 know what we're pre-arguing about.

20 MR. BASHOR: Okay. That's fair.

21 THE COURT: She couldn't be any more clearer like, you know.

22 MR. STANTON: But that answer is not -- is in response to, do you
23 remember saying this to the detectives. It's, I believe, a substantively and
24 qualitative different concept to ask her what -- and as we planned to do, in a
25 leading fashion, were you also concerned about information that you knew

1 that the Defendant had committed other acts of violence. In a leading question
2 specifically within the framework of the instruction and that would be the sole
3 question to her to explain what occurred.

4 And just so the record is abundantly clear, that the strategy of the
5 State as it relates to this issue is, as I stated before, we were not going to touch
6 the inconsistent statements. So, that it is abundantly clear that that is a
7 strategic choice by the Defense to do that under the law in the State of Nevada
8 at the cost to the State's case of not eliciting obviously an inconsistent
9 statement, which I think there is a cost for us to bear in that regard, but
10 pursuant to the Court's directive, and I believe consistent with what the law
11 permits, she is entitled to explain the differences in her inconsistent
12 statements, and I believe within the parameters of the Court's ruling she's
13 entitled to fully explain.

14 THE COURT: Which I just listened to for 20 minutes, but. So, I
15 understand the nature of your objection. I heard her testimony prior to the
16 hearing. I'm relying on that testimony, I'm standing by my previous ruling, but
17 I'm not allowing gang membership, I'm not allowing any specifics, and that's
18 it. Anything else?

19 MR. BASHOR: No, Your Honor.

20 MR. STANTON: No, Your Honor.

21 THE COURT: Okay. So, is she out there? Can we -- can we --

22 [Plaintiff and Defense counsel confer]

23 MR. BASHOR: Your Honor, how do I go about ordering a JAVS of
24 her testimony?

25 THE COURT: Ask her, and she'll give it to you. You don't have to

1 order it.

2 MR. BASHOR: Okay.

3 THE COURT: She'll burn a copy of it.

4 MR. BASHOR: Thank you.

5 THE COURT: By lunch or like right before you leave, can you,
6 please?

7 MR. BASHOR: Thank you.

8 [Court and Marshal confer]

9 THE COURT: Okay. Are they ready?

10 THE MARSHAL: In about one minute they'll be ready.

11 THE COURT: Okay. I don't know -- hey, State, can you go look for
12 your witness? She just went to the bathroom and --

13 MR. STANTON: Yeah, she came back and went back in the side
14 room, I believe.

15 THE COURT: Okay.

16 MR. STANTON: She came back.

17 THE COURT: Okay. Will you bring them in when they're ready?

18 THE MARSHAL: Yes.

19 MR. STANTON: And just a reminder to the Court and counsel, I
20 have Dr. Corneal coming here as the first witness in the afternoon session.

21 THE COURT: Okay.

22 MR. STANTON: I told her to be here at 1.

23 THE COURT: Okay.

24 MR. STANTON: I could use a couple minutes for her to review the
25 specific autopsy photographs.

1 THE COURT: I'm going to have the jury come at 1:15.

2 MR. STANTON: Okay.

3 THE COURT: Because I might not be able to take a break until
4 12:15, depending on how you guys go.

5 MR. STANTON: And then my guess is, is that once we're done
6 with this witness, it might be better -- because the next witness is Ms. Veasley,
7 and we wouldn't be able to complete her testimony, so we'd have to either
8 stop hers or just break and then come back to a witness out of order.

9 THE COURT: Okay.

10 [Court and Clerk confer]

11 THE COURT: Do you want to get the witness, so we can bring the
12 jury in when she's already sitting in the seat?

13 THE BAILIFF: Sure.

14 THE COURT: Thank you.

15 THE MARSHAL: Watch your step. All rise. The jury is entering.
16 The jury's all present, ma'am.

17 [In the presence of the jury.]

18 THE COURT: Counsel, will you stipulate to the presence of the
19 jury?

20 COUNSEL: Yes, Your Honor.

21 THE COURT: Okay. Ma'am, before we continue with your
22 examination, do you understand you're still under oath?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: All right. Redirect.

25 MR. FLINN: Thank you, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. FLINN:

3 Q Miranda, when you talked to the police on January 1st, 2016, right
4 after Patrick had been shot --

5 A Uh-huh.

6 Q -- and you told them what happened --

7 THE COURT: One second. All I can hear is around you talking.
8 One second.

9 MR. BASHOR: And just while we're doing that, I apologize. Can
10 we approach really quickly?

11 THE COURT: Yes.

12 [Sidebar begins at 11:34 a.m.]

13 THE COURT: I'm sorry, but everybody is like just full on talking on
14 the way in here. The people, I can't even blame the people. It's my staff, as
15 well.

16 MR. BASHOR: I don't think this has been a problem so far, but I
17 neglected to invoke the exclusionary rule at the beginning of the witnesses
18 being called. Like I said, I don't think it's been a problem. And I think the other
19 witnesses have been outside, it's just --

20 THE COURT: But they cannot be for (indiscernible).

21 MR. BASHOR: And I don't know who these people are, either, and
22 that's the reason why --

23 THE COURT: Can you tell Mr. Stanton, please?

24 MR. FLINN: I can tell you none of these people are witnesses. The
25 only other lay witness we are calling at this point is Akira, who's already been

1 in the courtroom, so the Court knows.

2 THE COURT: Okay. I can accept that.

3 MR. FLINN: And anybody else --

4 THE COURT: Will you accept that? I'll make a record that you
5 invoked it up here at the bench.

6 MR. BASHOR: And I've already been in the courtroom. She was in
7 the courtroom earlier. She's not in the courtroom.

8 MR. FLINN: Correct. For the evidentiary.

9 MR. BASHOR: Right.

10 THE COURT: Okay.

11 MR. BASHOR: Thank you.

12 THE COURT: Okay.

13 [Sidebar ending at 11:35 a.m.]

14 THE COURT: Okay. Now that we can hear you, State, go ahead.

15 MR. FLINN: Thank you, Your Honor.

16 BY MR. FLINN:

17 Q Okay. I'm just going to repeat that. Miranda, when you, on
18 January 1st, after -- right after Patrick had been shot, and you told police what
19 was going on and left out that it was the Defendant who shot Patrick, did you
20 believe -- did you believe that the Defendant had committed other acts of
21 violence against other people in the past?

22 A I know he had, yes.

23 MR. FLINN: Nothing further, Your Honor.

24 THE COURT: Anything else? Ladies and gentlemen, I'm going to
25 caution you now, ladies and gentlemen of the jury, that the testimony that the

1 witness believed the Defendant had a history of violence against persons is
2 being offered and may only be considered by you solely for the purpose of
3 explaining the state of mind of the witness at the time she made her statement
4 to police on January 1st, 2016. This testimony, if believed, is not to be
5 considered as substantive evidence that the Defendant has a history of
6 violence against persons or that he is a person of bad character.

7 Now, do any of the ladies and gentlemen of the jury have any
8 questions you wish the Court to ask the witness? There being no questions,
9 thank you very much, ma'am, for your testimony. You're excused. State, call
10 your next witness.

11 MR. FLINN: The State calls Akira Veasley, Your Honor.

12 THE MARSHAL: Watch your step.

13 THE COURT: If you could when you're ready, face the Clerk, raise
14 your right hand and be sworn.

15 AKIRA VEASLEY, STATE'S WITNESS, SWORN

16 THE CLERK: Please be seated. State and spell your name for the
17 record.

18 THE WITNESS: It's Akira Veasley, A-K-I-R-A V, as in Victor,
19 E-A-S-L-E-Y.

20 MR. FLINN: Thank you, Your Honor.

21 THE COURT: Yes.

22 DIRECT EXAMINATION

23 BY MR. FLINN:

24 Q Ms. Veasley, is it okay if I call you Akira?

25 A Uh-huh.

1 Q So, I want to talk to you about January 1st, 2016 specifically, okay?
2 At that time where were you living?

3 A We were living with Angela in the townhouse. We were staying
4 with them.

5 Q Do you remember the street the house was on, the townhouse?

6 A It was Lamb, and I think it was Tropical or Centennial.

7 Q In North Las Vegas, right?

8 A Yeah, in North Las Vegas.

9 Q And you said Angela; who is Angela to you?

10 A Godsister.

11 Q Who else did you live with at that time at that house?

12 A It was me, my mom, my brother and sister, Angela and her three
13 kids, and Patrick.

14 Q And your mom is Miranda?

15 A Yes.

16 Q And Patrick is your dad or stepdad?

17 A Yes.

18 Q Were there -- when it came to January 1st, were there any other
19 adults staying at the house?

20 A Yeah. Shawn.

21 Q When you say Shawn, do you know Shawn's last name?

22 A Glover.

23 Q And is that person that you know as Shawn Glover present in
24 Court today?

25 A Yes.

1 Q Could you please tell the jury where that person is sitting and the
2 clothing he's wearing?

3 A A suit, sitting right there. He has a tie on with a white shirt, the
4 long dreads.

5 MR. FLINN: Would the record reflect she identified the Defendant,
6 Your Honor?

7 THE COURT: The record shall so reflect.

8 BY MR. FLINN:

9 Q So, the Defendant was also staying there at the time, right?

10 A Correct.

11 Q So, on the morning of January 1st, what were you doing?

12 A We had got up. Everything was okay. And that's when Patrick, he
13 was talking on the phone with, I don't know, I think one of his friends or
14 something, and he started getting mad at me because I went out the prior
15 night, and I wasn't supposed to have my boyfriend in the car. So, he was
16 saying like he was mad at me over that. And he was mad at my mom's friend
17 over gift presents. So, we started to argue in the garage, like we went
18 downstairs to the garage area and started to argue.

19 Q Just you and Patrick?

20 A Just me and Patrick.

21 Q Was anyone else in there at the time?

22 A Not at the time.

23 Q And those were the primary things you were arguing about?

24 A Yeah.

25 Q While you were arguing about that did anyone else come to the

1 garage?

2 A Yeah. So, my mom came to the garage. She came to the garage
3 first, and she joined the argument, and then that's when Shawn came down
4 there and gave my mom the phone.

5 Q So while you, your mom, and Patrick are arguing, at some point
6 the Defendant comes in and hands your mom the phone?

7 A That's correct.

8 Q Did the Defendant stay for the rest of the argument or did he leave
9 the room?

10 A No. He gave my mom the phone real quick. She talked on the
11 phone for about like a minute or two, and then he left. And then we continued
12 to argue, and then he came back down.

13 Q What happened when the Defendant came back down to the
14 garage?

15 A So, that's when he told my mom that he wanted to talk to her, and
16 they went out of the garage up the stairs.

17 Q So, at that point it's just you and Patrick in the garage?

18 A Correct.

19 Q Miranda, your mom, and the Defendant are now --

20 A Gone upstairs.

21 Q -- have gone in towards the stairway?

22 A Uh-huh. Uh-huh.

23 THE COURT: Is that a yes?

24 THE WITNESS: Yes. Sorry.

25 THE COURT: Thank you.

1 BY MR. FLINN:

2 Q At some point, do you and Patrick stop arguing?

3 A Yeah. So, shortly after Shawn and my mom go upstairs, we stop
4 arguing. He was like I'm sorry, you know, you're grown, blah, blah, blah. And
5 we exited out the garage and started going upstairs.

6 Q So, you said he said he was sorry --

7 A Yeah.

8 Q -- you're grown. So, would it be fair to describe the argument at
9 that point as it's now calm?

10 A Yeah. So, everything -- it was okay. Everything was done.
11 Everything is fine at this point.

12 Q So, you two started to walk up the stairs. Where did you go when
13 you got up the stairs?

14 A I went and sat on the couch. And Shawn and Patrick they were
15 standing up arguing. And then my mom, she was like kind of close to
16 the -- the -- to Angela's door -- to Angela's bedroom door.

17 Q So, when you're sitting on the couch --

18 A Uh-huh.

19 Q -- can you hear this argument between Patrick and the Defendant?

20 A Yes. They're right there in front of me.

21 Q What did you hear them arguing about?

22 A Basically, Shawn was saying something like Patrick was trying to
23 beat on me and my mom. He heard us crying. And this is his house. And
24 Patrick was like I'm not beating on them, you know, I'm just having a
25 conversation. And I think that's when it was like Shawn got even more mad,

1 and then Patrick like grabbed him by his elbows, and he was like, you know,
2 it's not like that, I'm just trying to have a conversation, you know. And then
3 Shawn's like no, get off me. So, at that point, I'm not sure -- I don't recall who
4 said, you know, let's go downstairs, but someone said let's go downstairs and
5 let's talk. So, at that point, Patrick starts going down the stairs, and then
6 Shawn, and then that's when I heard the -- the gunshots.

7 Q So, from -- just sort of backing up. From where you're sitting on
8 the couch you heard all this happen. And then did you personally see Patrick
9 start going toward the stairs?

10 A Yes.

11 Q And you saw him walking down the stairs?

12 A Yeah. I seen him going down the stairs first.

13 Q You say first, meaning ahead of the Defendant?

14 A Correct.

15 Q So, the Defendant is behind Patrick. And does he also go down the
16 stairs?

17 A Yes.

18 Q Based on where you're sitting at some point they now are out of
19 your line of sight?

20 A Yeah. So, where I'm sitting, as soon as they start going down the
21 stairs, they are out of sight.

22 Q Approximately how -- you said you heard -- well, after they started
23 going down the stairs, what exactly did you hear?

24 A So, I heard the footsteps at first because there's stairs right here
25 and then there's some more stairs going this way. So, you can hear them

1 going down these stairs, but once they're turning, you hear about like one or
2 two more steps, and then you hear the three gunshots.

3 Q So, you heard three gunshots?

4 A Yes.

5 Q Could you describe hearing those three gunshots? You know,
6 were they -- was it, you know, one right after the other, was there any timing
7 lapse? Can you just describe that?

8 A So, the first one went, and then there was a pause, and then the
9 other two let off. So, it was like the first one, pause, boom, boom.

10 Q When you heard those gunshots, approximately how much time
11 had gone by since you -- since you had -- since you watched the Defendant
12 follow Patrick down the stairs; if you could estimate?

13 A About like ten to 15 seconds. It was real -- it was really quick.

14 Q When you heard those gunshots, what did you do?

15 A I looked up at my mom, and then we ran to the stairs.

16 Q When you got to the stairs, did you start going down the stairs?

17 A No. So, my mom started to go down the stairs first, and then I was
18 right behind her.

19 Q So, you stayed behind your mom?

20 A Uh-huh.

21 Q What did you hear or see as the two of you went down the stairs?

22 A So, I seen Patrick laying on the floor, and I seen Shawn there. And
23 he was just yelling out threats. And my mom's just like why did you do this,
24 why did you do this? And I was just behind her, you know, just scared. And
25 then at that point I started to run back up the stairs.

1 Q What, specifically, do you recall the Defendant saying at that time?

2 A I know he stated something about us not telling on him and that
3 we -- he told us that he wasn't a joke. He's like I'm not a joke, I told you guys I
4 wasn't a joke. And something about not snitching on him. And that's all I
5 could remember. And then that's when he started to leave.

6 Q When he started to leave, did you see -- did you see where he
7 went?

8 A Yes. He went outside of the garage door.

9 Q Through the door of the landing to the garage?

10 A Yeah.

11 Q That direction? Can you describe what Patrick looked like at the
12 bottom of the stairs? I mean was he talking, moving? Any -- something of that
13 nature?

14 A No. I think at that point he was -- he was gone, because he was
15 just laying there.

16 MR. FLINN: No further questions, Your Honor.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. BASHOR:

20 Q Are you okay? Do you need a break?

21 A No, I'm good. I'm good.

22 Q There's tissues right there.

23 A Okay.

24 Q It's still morning barely, so I'm going to say good morning.

25 A Good morning.

1 Q All right. I'm going to talk to you about the couple weeks leading
2 up to when this happened, okay. It's my understanding that you, Patrick, and
3 Miranda were kind of in between houses, right?

4 A Correct.

5 Q And you were in the townhouse that your sister owned or leased?

6 A Yes.

7 Q And your sister being Angela?

8 A Yes.

9 Q And so -- and when you moved in, Shawn wasn't there already,
10 right?

11 A Correct.

12 Q He moved in approximately Christmas Eve?

13 A Yeah, about like two days before Christmas.

14 Q Okay. And so, over those seven or eight days you were able to
15 observe Shawn's interactions with Patrick, right?

16 A Yeah. He -- he didn't come over. He only came over one time
17 before he actually came the two days prior. So, I seen him one time, he came
18 over for about ten minutes, and then he left.

19 Q So, during that eight days was Shawn in that townhouse or not?

20 A No. So, during -- during the time that we first moved in, he was
21 not there.

22 Q Okay. Exactly. And I apologize if I -- I don't mean to be confusing.
23 So, you move in --

24 A Uh-huh.

25 Q -- you're there for a little while, ten days, a couple weeks, right?

1 A Exactly.

2 Q And then Shawn moves in approximately two days before

3 Christmas, right?

4 A Yes.

5 Q And so during that seven or eight days between Christmas

6 Eve-ish and New Year's Day, Shawn's around a lot?

7 A Yes, that's correct. Yeah.

8 Q Okay. All right. And so, you, during that period of time, obviously,

9 given it's a two bedroom townhouse and there are 11 or 12 of you, you're

10 going to interact with one another, right?

11 A Yeah. Yeah.

12 Q And in your observations of Patrick and Shawn, they seemed to be

13 getting along?

14 A Exactly.

15 Q Okay. And, you know, during that time it happened to be -- the

16 family got to be together around the holidays, right?

17 A Yes.

18 Q Is that fair? Yes?

19 A Yes.

20 Q Because in addition to Angela, one of the children in the home was

21 the daughter of Shawn and Angela?

22 A Correct.

23 Q Now, I'm going to draw your attention to the argument in the

24 garage, okay?

25 A Uh-huh.

1 Q Is that a yes?

2 A Yes.

3 Q Okay. You were arguing with Patrick about what he perceived that

4 you lied to him, right?

5 A Yes.

6 Q And that you were instructed not to have a boy in his car, right?

7 A Yes.

8 Q And in fact, at least at some point, there was a boy in his car?

9 A Yes.

10 Q And he knew this because he had you followed?

11 A Yes.

12 Q And so he -- this was upsetting to him?

13 A Uh-huh.

14 Q Yes?

15 A Yes.

16 Q And he wanted to confront you with that, right?

17 A Yes.

18 Q So, you're in the garage, and it would be fair to describe the

19 argument as pretty loud, right?

20 A Yes.

21 Q You're -- you're yelling and shouting, right?

22 A Yes.

23 Q He's yelling and shouting, right?

24 A Yes.

25 Q You're 21 years old, right?

1 A Yes.

2 Q You're an adult?

3 A Yes.

4 Q You don't want to be followed?

5 A Yes.

6 Q Right. You want to be able to interact with your friend -- your

7 boyfriend, however you wish?

8 A Yes.

9 Q It's not like you're 14, right?

10 A Yes.

11 Q Okay. And because the argument is so loud, Miranda comes down

12 and enters into the argument, as well, right?

13 A Yes.

14 Q And she kind of comes to your defense, right?

15 A Yes.

16 Q For that very reason we just discussed, that -- that you're a woman,

17 right?

18 A Yes.

19 Q And at age 21 you should be able to do whatever you want without

20 being followed?

21 A Yes.

22 Q But at the end of the -- the time -- at some point Miranda goes

23 upstairs, right?

24 A Correct.

25 Q And you and Patrick are left alone in the garage?

1 A Uh-huh. Yes.

2 Q Yes? And you wrap up the argument, right?

3 A Yes.

4 Q And as you exit the garage and enter the residence, again, as

5 you're heading up the stairs, the argument is over?

6 A Yes, that's correct.

7 Q Okay. You had -- I think you stated on direct examination that

8 Patrick had apologized where he kind of came to your senses like you're right,

9 you're 21 years old?

10 A Yes.

11 Q Now, I'm going to ask you questions specifically about the

12 statement you gave to police on January 1st, 2016, okay?

13 A Okay.

14 Q And you would agree that that's the day of the incident, correct?

15 A Yes.

16 Q And that your statement to police occurred a couple hours after

17 this had happened?

18 A Yes.

19 Q Just to set the scene, obviously, you had called 911, right?

20 A No.

21 Q You didn't call and then hand the phone to your mother?

22 A Yes, I dialed. Sorry. Yes.

23 Q Yeah, sorry. If I'm confusing, please correct me if it's confusing,

24 okay? All right. So, you actually physically dialed 911, yes?

25 A Yes.

1 Q And you hand the phone to your mom, right?

2 A Yes.

3 Q And you do that right away?

4 A Yes.

5 Q As soon as it's -- as soon as the suspect has left the residence, you
6 called?

7 A Yeah. So, he left, we locked the garage door, and we ran back
8 upstairs. And that's when we -- I'm sorry. My mom ran back upstairs and
9 that's when we had called 911.

10 Q So, about a matter of seconds after the suspect had fled?

11 A Yeah. About like ten, 30 seconds.

12 Q Right. Because you want to get medical attention to your dad as
13 soon as possible?

14 A Yes.

15 Q All right. Now, just talking about your statement to police on
16 January 1st, 2016, they ask you what happened that day, right?

17 A Yes.

18 Q And you tell them that there was a man named Hatch in the house?

19 A Yes.

20 Q And that Hatch was a customer of your father, Patrick?

21 A Yes.

22 Q And that Patrick would average two to three customers a day
23 selling marijuana?

24 A Yes.

25 Q That Hatch was one of those customers?

1 A Yes.

2 Q You weren't sure how Hatch had arrived?

3 A Yes.

4 Q You knew that during the argument Hatch was waiting upstairs?

5 A Yes.

6 Q At some point during the argument Hatch comes down the stairs,
7 interrupts, and asks to speak with your mom?

8 A Yes.

9 Q And so, your mom follows?

10 A Uh-huh.

11 Q Is that a yes?

12 A Yes.

13 Q And then that's -- Patrick and you leave the garage a few moments
14 later?

15 A Yes.

16 Q And Patrick is upset with Hatch for talking to Miranda?

17 A Yes.

18 Q Okay. And that Hatch shouldn't be being nosey into what was a
19 family argument?

20 A Exactly.

21 Q Now, in that statement you told the police you'd never seen Hatch
22 before, right?

23 A Yes.

24 Q And that you told the police as far as you knew, your mom didn't
25 know Hatch?

1 A Yes.

2 Q You were asked if Hatch went by any other names. You said you
3 didn't think so?

4 A Right. Correct.

5 Q That you didn't know whether or not Hatch had any tattoos?

6 A No.

7 Q And towards the end of the statement with police on January 1st,
8 2016, the subject of your dad's car comes up, right?

9 A Yes.

10 Q The Dodge Durango?

11 A Yes.

12 Q And the people that are allowed to drive the Dodge Durango, are
13 you?

14 A Yes.

15 Q Miranda?

16 A Yes.

17 Q Patrick?

18 A Yes.

19 Q And probably Angela, right?

20 A Yeah.

21 Q Okay. And Patrick had a habit of leaving the keys to that car on the
22 countertop?

23 A Correct.

24 Q And you had noticed sometime between after 911 was called and
25 when you spoke to the police that the keys were missing?

1 A Yes.

2 Q And because you noticed this, you told the police?

3 A Yes.

4 Q Okay. Now, I'm going to ask you questions about your second
5 statement, okay, the next day; do you understand?

6 A Yes.

7 Q All right. At that point you tell the police Hatch --

8 A Yes.

9 Q -- is Shawn Glover?

10 A Yes.

11 Q Now, on the day in question this was very shocking, right?

12 A Yes.

13 Q It was very emotional I would assume?

14 A Yes.

15 Q That you were scared?

16 A Yes.

17 Q Based on what you said on direct examination you were afraid?

18 A Yes.

19 Q Okay. And for those reasons you told the police that the individual
20 was Hatch?

21 A Yes.

22 Q And it was your statement the next day and your testimony today
23 that Hatch is Shawn Glover?

24 A Yes, that's correct.

25 Q So, before on January 1, when you told the police you had never

1 seen Hatch before, that wasn't true, correct?

2 A Yeah, that was not true.

3 Q And because he was living with you?

4 A Yes.

5 Q And you had obviously interacted with him in the past?

6 A Yes.

7 Q That again when you told the police that your mom doesn't know
8 Hatch, or at least as far as you knew she didn't know Hatch, that wasn't true?

9 A Correct.

10 Q And that you're not sure -- you told the police you weren't sure that
11 even if Patrick had seen Hatch before?

12 A Correct.

13 Q You told the police that you did not know whether Hatch went by
14 any other name as we've covered, right?

15 A Correct.

16 Q And the next day and today you're saying the other name is Shawn
17 Glover?

18 A Yes.

19 Q You described at the top of the stairs that during the argument
20 with Hatch and Patrick that Patrick had reached out his hands to tell Hatch it's
21 not like that?

22 A Yes, correct.

23 Q It wasn't a violent lunge or anything like that, right?

24 A No. It was just like, you know, like hey.

25 Q Hey, listen to me?

1 A Yeah, exactly.

2 Q You've got it all wrong?

3 A Exactly.

4 Q All right. Now, when you called 911, would it be fair to say that the
5 police arrived fairly quickly?

6 A Yes.

7 Q It probably felt like an eternity, right?

8 A Yeah.

9 Q But upon reflection you would agree it was only a matter of a
10 couple of minutes?

11 A Yeah.

12 MR. BASHOR: The Court's indulgence.

13 [Defense counsel confer]

14 BY MR. BASHOR:

15 Q My co-counsel reminded me about the Dodge Durango. In
16 addition to noticing the keys weren't there --

17 A Uh-huh.

18 Q -- where Patrick had routinely parked the vehicle, the vehicle wasn't
19 there, right?

20 A Correct.

21 Q We'll hear later that the vehicle was recovered, but as far as you
22 knew, the regular spot where Patrick, you, and Miranda would park, the Dodge
23 Durango was missing?

24 A Exactly.

25 Q Along with the keys?

1 A Yes.

2 MR. BASHOR: Nothing further.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BY MR. FLINN:

6 Q Akira, when you told the police that it was -- that it was Hatch and
7 didn't use the Defendant's real name at that time, did you personally believe
8 that the Defendant had been violent toward other people in the past?

9 A Yes.

10 MR. FLINN: Nothing further, Your Honor.

11 THE COURT: Okay. Again, Ladies and Gentlemen of the jury, the
12 testimony that the witness believed the Defendant has a history of violence
13 against persons is being offered and may only be considered by you solely for
14 the purpose of explaining the state of mind of the witness at the time she
15 made her statement to police on January 1st, 2016. The testimony, if believed,
16 is not to be considered as substantive evidence that the Defendant has a
17 history of violence against persons or that he is a person of bad character.
18 With that, thank you very much.

19 I'm sorry, do any of the ladies and gentlemen of the jury have any
20 questions you wish the Court to ask the witness? There being no questions,
21 thank you very much for your testimony. You're excused. Can I see counsel
22 about scheduling?

23 [Sidebar begins at 12:02 a.m.]

24 THE COURT: So, we break now, and I tell them 1:15?

25 MR. FLINN: Yeah.

1 THE COURT: Okay. Ramsey?
2 THE MARSHAL: Yes, Your Honor?
3 THE COURT: When you're done can you come up here?
4 THE MARSHAL: Okay.
5 THE COURT: Okay.
6 MR. STANTON: If I could just have Ramsey or someone here at 1.
7 THE COURT: Yeah.
8 MR. STANTON: So, I can get the doctor in here, and then we
9 could --
10 THE COURT: How about 1:05, so I can give them at least an hour?
11 MR. STANTON: Yeah, sure.
12 THE COURT: You know we had an entire lawsuit with the
13 Marshals.
14 MR. STANTON: Really?
15 THE COURT: Yes. So, I wanted to take them out the back, and
16 then take them either down the back door just to the ground floor in the back
17 elevator.
18 THE MARSHAL: Okay.
19 THE COURT: Okay. Cool.
20 MR. STANTON: Thanks.
21 [Sidebar ends at 12:03 p.m.]
22 THE COURT: Okay. Ladies and gentlemen, we are going to recess.
23 It's 12:03. We're going to recess until 1:15 for lunch. My Marshal is going to
24 give you a meeting location to meet with him where he'll bring you back
25 upstairs after lunch.

1 So, during this recess you're admonished not to talk or converse
2 among yourselves or with anyone else on any subject connected with the trial.
3 Do not to read, watch, or listen to an report of, or commentary on, the trial by
4 any person connected with this case or any medium of information, including
5 without limitation, newspaper, television, the internet or radio. You're not to
6 form or express any opinion on any subject connected with this trial until the
7 case is finally submitted to you. You've got about an hour and 12 minutes.

8 THE MARSHAL: All rise. The jury is exiting.

9 [Outside the presence of the jury.]

10 THE COURT: Is that door shut? I can't see. Is that door shut?

11 UNIDENTIFIED SPEAKER: Yes.

12 THE COURT: Okay. The record -- thank you. The record should
13 reflect we're outside the presence of the jury. So, I just wanted to make a
14 record that there was one time when the Defense asked to approach. In the
15 record it was at 11:35 a.m. And we had a bench conference where the Defense
16 brought to the Court's attention that while the exclusionary rule had not been
17 previously invoked that the Defense wished to invoke it at that time. The State
18 made it clear that other than the two female witnesses who just testified today,
19 there have been no witnesses present in the courtroom for today's
20 proceedings whatsoever and that besides these two ladies, everyone else is a
21 non-related witness, correct?

22 MR. STANTON: Correct, Your Honor. Yes.

23 THE COURT: So even though it hadn't been invoked before, it was
24 of no import because no one was here.

25 MR. STANTON: I assumed that they -- it had been invoked. I don't

1 recall that it was, but I assume in every case it has, so that's where the State
2 rolls.

3 THE COURT: Okay. So, the way the State rolls. Good to know.
4 So, anything else on that exclusionary rule being invoked at 11:35 a.m.?

5 MR. BASHOR: No, Your Honor.

6 THE COURT: Okay. So, Defendant gets his lunch break. You all
7 get your lunch break. Can you tell Ramsey that -- to ask him to meet the D.A.
8 here at 1:05?

9 UNIDENTIFIED MALE: I will.

10 THE COURT: Okay. You don't have to tell him right now, just, you
11 know, when he's done with those people.

12 UNIDENTIFIED SPEAKER: Okay.

13 THE COURT: Okay, thanks. Okay.

14 MR. STANTON: Thank you, Your Honor.

15 MR. BASHOR: Thank you.

16 [Recess at 12:06 p.m., recommencing at 1:15 p.m.]

17 THE COURT: We're back on the record in State v. Shawn Glover.
18 Outside the presence of the jury. All attorneys and the Defendant are present.

19 [Outside the presence of the jury.]

20 MR. STANTON: Your Honor, the next witness is Dr. Corneal. Mr.
21 Bashor informed me that -- there are two areas of concern from the State. Mr.
22 Bashor informed me that he is going to seek to inquire as to one of those areas
23 of concern. So ,the first area is at autopsy, a projectile was removed from Mr.
24 Fleming that was unrelated to this case. It was from an obvious and apparent
25 older injury. It was noted both in photograph form and in Dr. Dutra's autopsy

1 report. Both Dr. Dutra and Dr. Corneal would, I believe, testify that that
2 implement, and the injury, and artifact had nothing to do with the cause and
3 manner of death. And as such I believe the inquiry in that is wholly irrelevant.

4 THE COURT: Okay. Is that it?

5 MR. STANTON: Yes.

6 THE COURT: What's the relevance?

7 MR. BASHOR: Judge, I would just submit that the old projectile
8 could go to prior enemies, alternate suspects. I don't plan to harp too terribly
9 into it, it's just that the fact that it exists. And I think that that's --

10 THE COURT: Prior enemies and alternate suspects.

11 MR. BASHOR: Correct.

12 THE COURT: Okay. So, what, if any, additional information do you
13 have about the time or evidence would you be able to -- because if this
14 becomes an issue, even though you might not have noticed witnesses, I might
15 allow you to get into it if I allow it. I'm not saying I'm allowing it, I'm just
16 curious. Do you have a witness that says that was 30 years ago, two years
17 ago, six minutes ago; how -- what do you know?

18 MR. STANTON: For me?

19 THE COURT: Yes.

20 MR. STANTON: I have -- other than it is a completely healed injury
21 with no evidence of its tracking and no signs of that it be of recent vintage. As
22 far as --

23 THE COURT: So, have you asked his family, hey -- I mean usually
24 when someone gets shot, someone besides that person knows or has an idea
25 of when that happened.

1 MR. STANTON: I personally did not. I'm not aware of anything in
2 the investigative file that would answer that question.

3 THE COURT: I'm sure you have a high -- I'm going to go with two
4 rows of potential witnesses behind you. So, do you want to talk to one of
5 them, since one of them is raising their hand?

6 MR. STANTON: 1993.

7 THE COURT: Thank you. So, if he -- could you call that witness
8 forward, please?

9 MR. STANTON: Certainly.

10 THE COURT: We're going to have a little hearing.

11 MR. STANTON: Okay. Can you come forward?

12 MR. GIVENS: I'm his dad.

13 MR. STANTON: Okay. Come on up.

14 THE COURT: Sir, if you could approach the witness stand, please.

15 MR. BASHOR: I think you're fine, Doctor.

16 DR. CORNEAL: Okay.

17 THE COURT: Sorry. Real quick.

18 DR. CORNEAL: No, I just wanted to make sure I didn't need to
19 leave the room.

20 THE COURT: Sir, could you face my Clerk while you're still
21 standing, raise your right hand, and be sworn.

22 MELVIN A. GIVENS, III, PLAINTIFF'S WITNESS, SWORN

23 THE CLERK: Please be seated. please state and spell your name
24 for the record.

25 THE WITNESS: Melvin A. Givens, III. G-I-V-E-N-S.

1 THE COURT: And can you move your chair up a little? Okay. The
2 District Attorney is going to ask you about your relationship with the named
3 victim in this case and some other questions about the topic that we've been
4 discussing, okay?

5 THE WITNESS: Yes.

6 DIRECT EXAMINATION

7 BY MR. STANTON:

8 Q Sir, how are you related to Patrick Fleming?

9 A I'm his father.

10 Q And do you have personal knowledge of when Patrick suffered the
11 injury that you heard raised in court that is some sort of a projectile, some part
12 or portion of a bullet that was inside his body?

13 A Yes, I do.

14 Q And when did that event occur?

15 A November 11, 1993, right after his birthday.

16 Q And was that here in Las Vegas or some other location?

17 A Yes. Yes.

18 Q Okay. And did it have anything to do with either the Defendant or
19 the case that we're here on trial this week for?

20 A No.

21 Q Do you know anything about who the author of the injury to your
22 son was?

23 A Well, he was walking down the street off of McWilliams [phonetic],
24 and he was over in the project area off of Washington. And he was walking
25 with another guy and some guy came around the corner and asked him a

1 question. It was like a drive-by shooting. And they asked him a question, do
2 he know such and such and such, and he said, no. So, he turned to walk away,
3 and they shot him in the back three times.

4 Q Okay.

5 A And they shot his friend, also.

6 Q Thank you very much. I have no further questions.

7 MR. BASHOR: I don't have any questions, Your Honor.

8 THE COURT: Okay. Thank you very much, sir, for your testimony.

9 THE WITNESS: All right.

10 THE COURT: Okay. Is there anything else?

11 MR. BASHOR: No, Your Honor.

12 THE COURT: Anything else?

13 MR. STANTON: Not any other evidence or argument from me on
14 this issue.

15 THE COURT: All right. Based upon the only reliable evidence,
16 which is testimony under oath of the named victim's father that this projectile
17 was at or around 25 years ago, I won't allow the inquiry. It is significantly
18 more prejudicial than probative to somehow paint him as I don't know what
19 and the idea that somehow retribution is happening 25 hour -- 25 years later is
20 a stretch, at best. Anything else?

21 MR. STANTON: And, Your Honor, the other -- just for the record,
22 the other matter was the toxicology report of Mr. Fleming, as well.

23 THE COURT: One second, one second.

24 [Court and Marshal confer]

25 THE COURT: Okay.

1 MR. STANTON: Mr. Bashor indicated to me that they are not going
2 to go into that area of inquiry. I would have had the same objection for the
3 same reasons, but since he's not going into it, I appreciate that, so that's not
4 an issue, but I just wanted to put it on the record that that issue was discussed
5 between me and Defense counsel prior to this.

6 MR. BASHOR: And, Judge, if we were pursuing a different line of
7 defense, obviously, I would have a different position, but I don't think that a
8 small amount of marijuana in Mr. Fleming's system has anything to do with
9 this case.

10 THE COURT: Okay. Thank you.

11 MR. STANTON: That's it. Nothing further on behalf of the State.

12 THE COURT: Okay. Bring in the jury. Doctor? By the way, do you
13 have any objection to the named victim's father remaining in the courtroom?

14 MR. BASHOR: No.

15 THE COURT: Okay.

16 MR. BASHOR: He's not on our witness list.

17 THE COURT: No. Okay.

18 MR. BASHOR: That's fine.

19 THE COURT: But technically he testified.

20 MR. BASHOR: Oh, I understand, but, no, that's fine, Your Honor.

21 THE COURT: Okay.

22 [State counsel and Court Recorder confer]

23 THE MARSHAL: All rise. The jury is entering. The jury is all
24 present, ma'am.

25 [In the presence of the jury.]

1 THE COURT: Counsel, will you stipulate to the presence of the
2 jury?

3 MR. STANTON: Yes, Your Honor.

4 MR. BASHOR: Yes, Your Honor.

5 THE COURT: Doctor, if you could please face my Clerk, raise your
6 right hand, and be sworn.

7 DR. JENNIFER CORNEAL, PLAINTIFF'S WITNESS, SWORN

8 THE CLERK: Please be seated. Would you state and spell your
9 name for the record?

10 THE WITNESS: Jennifer Corneal, J-E-N-N-I-F-E-R C-O-R-N-E-A-L.

11 MR. STANTON: May I proceed, Your Honor?

12 THE COURT: Yes. Thank you.

13 DIRECT EXAMINATION

14 BY MR. STANTON:

15 Q Ma'am, how are you employed?

16 A I'm a medical examiner at the Clark County Office of the Coroner
17 Medical Examiner.

18 Q And I'd like to talk to you about, in kind of general terms, your
19 background both from an educational perspective, as well as your professional
20 experience. Do you have an educational background that allows you and
21 assists you in performing your functions at the Coroner's office?

22 A I do.

23 Q And what is your educational background?

24 A I'm a doctor. I completed medical school. I then completed four
25 years of a pathology residency. I'm a board certified anatomic pathologist. I

1 then completed a year of subspecialty training in forensic pathology, and I'm a
2 board certified forensic pathologist.

3 Q And the -- I'll get into the area of pathology and the subcategories
4 that you just mentioned, but you are a licensed physician here in the State of
5 Nevada?

6 A I am.

7 Q And you perform functions to include a medical procedure as part
8 of your duties called an autopsy?

9 A Correct.

10 Q How many autopsies have you been involved in as -- either as the
11 primary physician or an assisting capacity in your career?

12 A Over 1,000.

13 Q And does that also include injuries involving gunshot wounds?

14 A Yes.

15 Q Is there a significant number of those thousands that gunshot
16 wounds are part of your examination?

17 A Yes.

18 Q Doctor, let me ask you some questions about the area of
19 pathology. And once again in general terms can you explain what pathology
20 means?

21 A Pathology is a study of disease processes. They consider the
22 pathologist the doctor's doctor. So, if you have a biopsy or specimens taken
23 from you, the pathologist looks at that and gives a diagnosis.

24 Q So, that could be say skin tissue involving some sort of suspected
25 disease, and they're looking for a specialized assessment from a physician

1 focused in that field?

2 A Yes.

3 Q And then you mentioned there's something called anatomical
4 pathology; what is that?

5 A Pathology is divided into anatomical pathology and clinical
6 pathology. Anatomical pathology includes forensic pathology, which is what I
7 do. Surgical pathology, which is what I was talking about when you get a
8 biopsy, or an organ taken out, and they look at it and give a diagnosis to the
9 doctor. Clinical pathology, on the other hand, has to do with microbiology,
10 chemistry. Pathologists are the ones who run the labs in the hospitals, so
11 clinical pathologists tend to do that.

12 Q And the final field is forensic pathology. Can you explain what that
13 sub-specialization is in?

14 A Forensic pathology is the subspecialty of anatomic pathology that
15 looks at medical legal death. And my job, as part of that, is to perform
16 autopsies and determine cause and manner of death.

17 Q And could you describe what cause of death means to you in the
18 medical legal context?

19 A Cause of death is the immediate reason somebody has died.

20 Q And how many categorizations are used in your field as coroners
21 both here and across the country?

22 A For manner of death?

23 Q Well, cause of death can be a wide range. Manner of death.

24 A For manner of death, there are five categories; there's natural,
25 accident, suicide, homicide, and then when the death doesn't fit into either of

1 those categories there's an undetermined category, as well.

2 Q And, Doctor, did I ask you to review an autopsy report and the
3 investigative file to include photographs contained within the Clark County
4 Coroner's Office as it relates to an ultimate autopsy report of Patrick Fleming,
5 dated January 2nd, 2016?

6 A You did.

7 Q And based upon your review, you were asked by me and your
8 office to come in and testify to the cause, and manner, and findings as a result
9 of that autopsy, correct?

10 A Yes.

11 Q Now, let me just begin. You were not the attending physician on
12 January 2nd, 2016 here; is that correct?

13 A That's correct.

14 Q It would have been Dr. Dutra?

15 A Yes.

16 Q And he is retired from the Coroner's office?

17 A Yes.

18 Q Doctor, were you able to review a series of photographs about the
19 findings and the conclusions in the autopsy report?

20 A I was.

21 MR. STANTON: Your Honor, prior to Dr. Corneal's testimony this
22 afternoon, she has reviewed what has been marked by your Clerk as State's
23 Exhibits 36 through 48. I'd move for their admission at this time.

24 MR. BASHOR: Your Honor, we have a stipulation. No objection.

25 THE COURT: 36 through 48 are admitted by stipulation.

1 [STATE'S EXHIBITS 36 THROUGH 48 RECEIVED]

2 BY MR. STANTON:

3 Q In addition, Dr. Corneal, I asked you prior to your testimony to
4 select via file numbers out of a large number of photographs, photographs
5 that you believe might assist the jury in understanding your testimony and the
6 findings in this case; is that accurate?

7 A Yes.

8 Q And they are depicted in the photographs that I just mentioned?

9 A Yes.

10 Q Doctor, let me first ask some background questions about the
11 autopsy proceeding and that medical procedure. Could you explain kind of
12 what the examination entails, in particular, the external and internal exam?

13 A Yes. The autopsy, as he stated, consists of an external
14 examination, which is just looking at the outside of the body, documenting
15 hair color, eye color, tattoos, scars, and any injuries that might be seen. And
16 then we open the body, we examine the organs, we examine the inside tissues
17 to look for again more injuries and also any natural disease processes which
18 might contribute or cause death.

19 Q And during that process there are a number of items of evidence
20 that are memorialized, both by the physician, as well as a photographer?

21 A Yes.

22 Q So, let me begin now in addressing your assessment of the injuries
23 that were noted on Mr. Fleming. And if -- I plan on going through the order
24 that they're listed in the autopsy report. Are you comfortable with that order?

25 A Yes.

1 Q Okay. So, how many gunshot wounds were observed and
2 documented on Mr. Fleming?

3 A Three.

4 Q And I'd like to begin with gunshot number one. Could you tell us
5 anatomically where that gunshot wound was located?

6 A The gunshot wound was on the back of the head on the left side.

7 Q And could you tell whether or not that wound was an entrance or
8 exit gunshot wound?

9 A It was an entrance gunshot wound.

10 Q I'd like to show Exhibit 39 to you. Let me ask you a couple
11 questions first. Obviously, anatomically, we're looking at Mr. Fleming's back
12 of his head?

13 A Yes.

14 Q And the condition around the wound in his hair, is that something
15 that's done as part of the autopsy procedure?

16 A It is.

17 Q And why is that?

18 A Prior to shaving the head we photograph the wound as it is. But
19 then in order to better visualize the wound, we shave around it, so we can see
20 the wound edges, determine if there's abrasions, determine if there's soot in
21 that area.

22 Q Okay. And we'll get into a little bit of each one of those, but I want
23 to go to Exhibit 40. Is that a close-up photograph of the same anatomical area
24 and wound that we saw in the previous photograph?

25 A It is.

1 Q Dr. Corneal, how do you determine that that is an entrance
2 gunshot wound?

3 A Entrance wounds seem to be punched out. In other words, you
4 cannot re-approximate them. They also tend to have a rim of abrasion. And --

5 THE COURT: I'm sorry, what?

6 THE WITNESS: I was trying to like show them the rim of abrasion
7 on this one.

8 THE COURT: And what's the problem?

9 MR. STANTON: We're no longer on the touch screen. So, I think --

10 THE WITNESS: Oh, I'm sorry. I'm used to --

11 THE COURT: Yeah. Well, hold on.

12 THE WITNESS: -- the touch screen.

13 MR. STANTON: We've graduated to a mouse, so if you could
14 just wait one second. Oh, there you go.

15 THE WITNESS: Okay.

16 THE COURT: Wait.

17 MR. STANTON: If you click on the pencil.

18 THE WITNESS: Then I just point?

19 MR. STANTON: Yes.

20 THE WITNESS: Technology. Okay. So, this area here is a rim of
21 abrasion. That just occurs when the projectile enters the skin; it rubs this area
22 off.

23 THE COURT: We solved it.

24 UNIDENTIFIED MALE: Okay.

25 BY MR. STANTON:

1 Q And could you kind of contrast what an exit wound would look like
2 versus what we see here?

3 A Sure. So, an exit wound on the other hand is more of a tearing of
4 the skin. It actually can be pushed back together. We call it a laceration. And
5 there can be abrasion, but usually there's not abrasion and there's no soot or
6 stippling around the wound.

7 Q So, now what I'd like to do, Doctor, is go back to the previous
8 photograph and ask you some questions about the internal assessment of the
9 injuries of that wound. Is it -- what do you do or what is normal about
10 determining, from an internal examination, where --

11 MR. STANTON: -- that's still frozen on the previous photograph.
12 Oh, I think you have to --

13 THE WITNESS: What did I do?

14 THE COURT: Wait. Just go ahead and say it.

15 THE CLERK: You click the other arrow down.

16 MR. STANTON: I think if she -- oh, no, there you go. You got it.
17 Sorry.

18 BY MR. STANTON:

19 Q So, let me go back to Exhibit 39. Doctor, what is done to determine
20 the path or trajectory of that bullet?

21 A The scalp is reflected, and a portion of the skull was removed. The
22 brain is also removed and dissected. And as we radiograph everyone, we
23 knew the projectile was in his right jaw area, so that was dissected out from
24 below.

25 Q And could you tell me what path, anatomically, to your frame of

1 reference that you use in all wounds that this bullet -- gunshot injury, took
2 inside his head?

3 A Sure. First, just to explain anatomic paths, when we're talking
4 about the body, front is the front of your body with your hands, with your
5 palms, facing forward. The tops of your feet would be forward. The soles
6 would be back. Top, bottom, just like you would think. So, this went back to
7 front, left to right, and downward.

8 Q So, the trajectory as we see it is left to right and downward?

9 A Yes.

10 Q You indicated that through x-rays you determined that there was a
11 bullet still in Mr. Fleming associated with this entrance gunshot wound?

12 A Yes.

13 Q Before we get to where the bullet came to rest, where did it go
14 through anatomically before it came to rest?

15 A It went through his brain. It transected his brain stem. And then it
16 went down into his oral cavity fracturing his jaw.

17 Q So, the skull is fractured?

18 A Yes.

19 Q And then you said it dissected the brain stem. Is that an important
20 organ when you're examining injuries in that region of the body to note?

21 A Yes.

22 Q We'll get back to that in just a second, but let me go to the
23 mandible; what was the condition of the mandible?

24 A The mandible was fractured.

25 Q As a result of the bullet striking that bone?

1 A Yes.

2 Q And so for those not familiar, the mandible is part of the jaw area
3 of our bodies?

4 A Yes. It's your jaw on the bottom here.

5 Q The lower jaw?

6 A The lower jaw.

7 Q So, let me talk to you about your assessment from a medical
8 perspective, Dr. Corneal, as to whether or not this wound, number one, was
9 instantaneously incapacitating in your opinion?

10 A Yes.

11 Q Does that have something to do with the transection of the brain
12 stem?

13 A Yes.

14 Q Can you explain that?

15 A Within your brain stem and the mid-brain is an area that controls
16 respiration. So, if you transect the brain stem, you no longer can cause your
17 lungs and diaphragm to work, and you instantaneously die.

18 Q Now, there is another part of gunshot wounds that you look at
19 from a forensic pathology perspective and that is whether or not you can tell
20 or see signs of evidence of the range that the weapon was from the person or
21 the injury at the time it was inflicted?

22 A Yes.

23 Q Are you familiar with that process?

24 A Yes.

25 Q And that process leaves physical evidence that you see on a

1 regular basis with some -- certain gunshot wounds?

2 A Correct.

3 Q What is that that you're looking for?

4 A What we're looking for is either soot or stippling around the wound
5 and in the wound edges. So, soot is the gray material that will be deposited
6 around the wound edges. Stippling, on the other hand, is an injury that is
7 caused by unburnt gun powder striking the skin.

8 Q And so you can have, based upon what you observe, a range of
9 distances approximately based upon your visual observation of the wound?

10 A Yes.

11 Q And in this particular case there -- were there any signs?

12 A No.

13 Q Are there factors that affect, especially in this region and with what
14 you see with Mr. Fleming's hair, that affect your ability to see that?

15 A Yes.

16 Q Can you explain that?

17 A Anything in between the gun when it's fired and the decedent, the
18 body, can cause the stippling or soot not to appear; in this case his thick hair.

19 Q And since there's no evidence, what is the determination if you're
20 not certain of the distance?

21 A Indeterminate.

22 Q And is that the conclusion that you draw to the gunshot wound
23 we've just been discussing?

24 A Yes.

25 Q Doctor, let me ask you now about wound number two. Can you

1 describe the general area where wound number two was involved?

2 A Wound number two it was in the right upper arm.

3 Q And I'm going to show you State's Exhibit 38. And could, number
4 one, you orient us anatomically on Mr. Fleming where we're looking at now?

5 A His back is up in the photo. This is the gunshot entrance wound on
6 his inner right upper arm.

7 Q And is that an entrance or exit gunshot wound?

8 A An entrance wound.

9 Q And let me show you Exhibit Number 43. Is that a closer up
10 photograph of that same wound?

11 A It is.

12 Q Now, let me go to Exhibit 44. It, I believe, is self-explanatory in that
13 photograph anatomically, but is there a corresponding exit wound depicted in
14 that photograph?

15 A Yes. The exit wound on the outer right upper arm.

16 Q Now, Doctor, let me talk to you about this wound. Let me ask you
17 about the track that was observed by the internal examination in this area.
18 What were you able to determine?

19 A The bullet entered the inner upper arm. It broke his humerus,
20 which is the bone in your upper arm, and then exited the outer upper arm.

21 Q So this had a corresponding entrance and an exit with no bullet
22 found associated with this gunshot wound?

23 A There were fragments of a bullet, but the fragments broke off in
24 the broken arm, and then the later exited, yes.

25 Q Now, Doctor, let me ask you a couple questions about that wound.

1 Was it, in your opinion, from a medical degree of certainty, an incapacitating
2 one?

3 A No.

4 Q Was it a fatal one?

5 A No.

6 Q And the final wound -- gunshot wound number three,
7 anatomically, where was that wound observed?

8 A That was in the right groin area.

9 Q I'm going to show you Exhibit Number 45. Is this the upper right
10 thigh area?

11 A Yes.

12 Q And is that rod there for a reason?

13 A It's -- yes.

14 Q And what is that reason?

15 A It's showing trajectory.

16 Q So, the same thing about a location or the trajectory path that you
17 previously described from an internal, this wound can be shown by an
18 external demonstration which is depicted in this photograph?

19 A Yes.

20 Q Doctor, was this wound incapacitating?

21 A No.

22 Q Was this wound in and of itself fatal?

23 A No.

24 Q There was no bullet or projectile associated with this wound?

25 A Correct.

1 Q And the track pattern was what, anatomically, to the description of
2 Mr. Fleming's body as you describe wounds?

3 A Right to left, front to back, and downward.

4 Q Doctor, what was the cause of Mr. Fleming's death?

5 A Gunshot wound to the head.

6 Q And what is the manner of death?

7 A Homicide.

8 Q At the hands of another?

9 A Yes.

10 MR. STANTON: Pass the witness.

11 THE COURT: Cross-examination.

12 MR. BASHOR: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BASHOR:

15 Q Good afternoon, Doctor.

16 A Good afternoon.

17 Q I'm going to start where Mr. Stanton left off. We heard that you
18 have classifications for the manner of death, correct?

19 A Yes.

20 Q And part of your responsibility as a forensic pathologist,
21 particularly when you are working for the county, is that you report your data
22 to the Bureau of Vital Statistics?

23 A Yes.

24 Q And we do that because we want to know how our populations are
25 passing away, right?

1 A Correct.

2 Q So if it's -- you know, there's a -- we could discover that a disease
3 that has an oddly large population in a small area, the powers at be could
4 figure out how to take care of something like that, right?

5 A Right.

6 Q Okay. So, when you use your classifications it's something that
7 you use in your profession, correct?

8 A Yes.

9 Q And it's something that the Bureau of Vital Statistics understands
10 and utilizes?

11 A Correct.

12 Q So, the way you would use the word homicide doesn't necessarily
13 mean whether something's a murder, a manslaughter, or an involuntary
14 manslaughter, right?

15 A Correct. It's not a legal definition.

16 Q Correct. Exactly. So, the definitions that we use are different than
17 the definitions you use?

18 A Correct.

19 Q Okay. Now, we've heard that the ranges of the wounds in all three
20 of the wounds is an intermediate range, correct?

21 A Indeterminate.

22 Q I'm sorry, indeterminate range. Can you describe to the ladies and
23 gentlemen of the jury what a contact wound is?

24 A A contact wound occurs when the gun is pressed against the skin.
25 There's usually charring, soot, sometime an abrasion ring, sometimes you can

1 see the muzzle imprint.

2 Q Okay. And the reason for that is because it's pressed right against
3 the skin, you understand when a firearm ejects or fires a projectile, a flame
4 comes out of the end of the muzzle, right?

5 A Yes.

6 Q Causing the end of the muzzle to then heat up dramatically and
7 quickly?

8 A Yes.

9 Q And so, if a wound you observed had that kind of characteristic,
10 you would make a determination that it was right up against the skin?

11 A Yes.

12 Q And for these three are we able to eliminate contact wound?

13 A With the hair and the clothing, not completely, but most likely, yes.

14 Q Okay. Fair enough.

15 MR. BASHOR: Thank you, Your Honor.

16 THE COURT: Redirect?

17 MR. STANTON: No questions.

18 THE COURT: Do any of the ladies and gentlemen of the jury have
19 any questions you wish the Court to ask the witness? There being no
20 questions, thank you very much for your testimony. You're excused.

21 THE WITNESS: Thank you.

22 THE COURT: State, call your next witness.

23 MR. STANTON: Renee Harder.

24 THE MARSHAL: Follow me. Watch your step.

25 RENEE HARDER, PLAINTIFF'S WITNESS, SWORN

1 THE CLERK: Please be seated. Will you state and spell your name
2 for the record.

3 THE WITNESS: Renee Harder, R-E-N-E-E H-A-R-D-E-R.

4 MR. STANTON: May I proceed, Your Honor?

5 THE COURT: Yes. Thank you.

6 DIRECT EXAMINATION

7 BY MR. STANTON:

8 Q Ma'am, how are you employed?

9 A I am a crime scene analyst for the City of North Las Vegas.

10 Q Can you tell me about what job responsibilities you have in that
11 capacity?

12 A Yes. It is my job to respond to crime scenes and document the
13 crime scene, including all evidence, properly collecting and impounding all
14 evidence located.

15 Q How long have you been a crime scene analyst?

16 A Just shy of 14 years.

17 Q And is there some training and experience that you have with you
18 both educationally and then kind of in the course of your employment?

19 A Yes.

20 Q Could you describe that?

21 A I have an associate's degree in criminal justice. Once hired I
22 attended the Las Vegas Metropolitan Police Department's Crime Scene
23 Investigations Academy. After successfully completing the academy, I went
24 through the North Las Vegas Police Department's field training program,
25 which I successfully completed. Since then, over the last 14 years, I have

1 completed hundreds of hours of different forensic discipline classes.

2 Q And I know this might be for you a difficult figure to come up with
3 some degree of precision, but I'm looking to an area of what you are
4 comfortable in approximating. How many crime scenes have you been
5 involved in in a professional capacity either as the principal crime scene
6 analyst assigned to that scene or in an assistant capacity?

7 A All kinds of crimes?

8 Q Yes.

9 A Thousands.

10 Q And there is a crime scene analyst in your department, as well as
11 the Metropolitan Police Department, kind of a seniority aspect when you have
12 a more serious scene; is that true?

13 A Yes.

14 Q And could you describe kind of how that works if you're brand new
15 versus someone with your experience about what type of scenes you would
16 go to?

17 A Entry level crime scene investigators will not be primary on things
18 like homicides or officer involved shootings. The senior or level two CSI's
19 would take primary on those kinds of calls.

20 Q Okay. There are a group of crime scene analysts that respond to
21 some scenes?

22 A Yes.

23 Q Can you describe how -- and my first part of my question is, within
24 crime scene analysts themselves and then I'll get to detectives as a byproduct
25 of your answer, but could you describe to the jury how in a scene such as this,

1 a serious scene, crime scene analysts work together and how those
2 responsibilities are broken down?

3 A In a scene such as this, usually at least two crime scene analysts
4 would arrive -- would go to the scene. We would then discuss the scene and
5 we would split up the duties so that one person isn't in charge of the entire
6 investigation.

7 Q And is there kind of a communication process that exists between
8 the analysts about their jobs and functions as you go through scenes?

9 A Yes.

10 Q Can you kind of once again, in a general fashion, kind of explain
11 how that works?

12 A Usually one CSI will be in charge of photographs and collecting
13 evidence. Another CSI might handle the diagram portion. If there are other
14 scenes associated, like search warrants or vehicles, someone -- we would split
15 those up, so that one person doesn't have to handle all aspects of the scene.

16 Q And now I'd ask you about how that works in the interaction with
17 law enforcement and, in this particular case, at a homicide scene how you
18 interact and what that interaction is with homicide detectives.

19 A When the detectives arrive on scene, they let us know what they
20 need from us above and beyond what we might already have decided to
21 complete. And like I said, that would have to do with search warrants and
22 what they might be looking for on warrants and situations like that.

23 Q And then prior to your testimony today I had you review Exhibits 1
24 through 35 marked for this trial. Are you familiar with those photographs and
25 crime scene diagram that are marked accordingly?

1 A Yes.

2 Q And do they accurately depict the crime scene document diagram
3 prepared in this case, as well as photographs at various different stages at this
4 primary scene as the scene was processed?

5 A Yes.

6 MR. STANTON: Your Honor, I move for 1 through 35 into
7 evidence.

8 THE COURT: Stipulated?

9 MR. BASHOR: We stipulate.

10 THE COURT: 1 through 35 are admitted by stipulation.

11 [STATE'S EXHIBIT 1-35 RECEIVED]

12 MR. STANTON: Thank you, counsel.

13 BY MR. STANTON:

14 Q So, let me talk to you about kind of when you arrive at a scene
15 after you've been briefed some kind of -- in this case involving a structure;
16 what is kind of the first step in photographing or documenting the location that
17 you're at?

18 A We would first document the exterior of the residence showing the
19 address, showing the basic condition of the exterior.

20 Q I'm showing you State's Exhibit 4. Is this the exterior photograph
21 of the scene that you responded to on January 1st, 2016?

22 A Yes.

23 Q Let me go to Exhibit Number 5. Is that kind of a reference with a
24 number that's important to you; why is that photograph --

25 A Correct. This shows the front door of the specific unit involved in

1 this incident.

2 Q Now, there's been previous testimony that I won't belabor about
3 certain aspects inside the garage, but fair to say that that is a photograph taken
4 by crime scene analysts upon their arrival and processing of the scene?

5 A Correct.

6 Q Then let me go to State's Exhibit 1 and what is that?

7 A This is a diagram of the residence.

8 Q Commonly referred to as a crime scene diagram?

9 A Correct.

10 Q And there's a couple things that I want to talk to you about.
11 Number one here is a staircase?

12 A Yes.

13 Q And then a figure of a body here?

14 A Correct.

15 Q And that's once again to demonstrate -- kind of to orient us, with
16 some of the pictures that are also used to document these areas?

17 A Yes.

18 Q We have a reference of north and the physical address and the
19 apartment number?

20 A Correct.

21 Q Now, in the next document I'm going to show you, Grand Jury
22 Exhibit Number 2, or not Grand Jury, Trial Exhibit Number 2, there's a series
23 of numbers that are depicted. And I'll focus first around the body figure. Can
24 you tell me what those are designed to depict?

25 A Yes. The numbers that you see here all are associated with pieces

1 of evidence that were -- that were collected at the scene.

2 Q And then is there an index that's associated with that?

3 A Yes.

4 Q And let me show you Exhibit Number 3. Is that the index for the
5 numbers that are depicted on the crime scene?

6 A Yes.

7 Q So, the description is by the crime scene analyst of the item that
8 we see here, and those numbers reference the diagram itself?

9 A Correct.

10 Q I gotcha. So, now let me go to Exhibit Number 8. Can you tell us
11 where inside the home that is and what we're looking at?

12 A This is at the top of the first set of stairs looking down into the
13 entryway. The doorway straight in front of you is that front door. And then
14 the doorway to your left is the garage.

15 Q Now, Ms. Harder, in this photograph we do not see any yellow
16 evidence tents. Does that tell you something about when this photograph was
17 taken in comparison to some others?

18 A This would be taken prior to any investigation, any locating of
19 evidence. This was our initial photographs.

20 Q Okay. Now, let me go with Exhibit 9. Can you tell us what that is
21 and how it compares and contrasts with the previous photo?

22 A Right. This is the same view, except in this photo you can see
23 evidence tents in the middle under his arm showing where some evidence had
24 been located.

25 Q And so if I could, going back to Exhibit Number 1, this is the raw

1 diagram without any evidence depicted on it, and this Exhibit 2 is the same
2 diagram, but with it processed and memorialized as to specific evidentiary
3 items?

4 A Correct.

5 Q I want to now ask you about Grand Jury Exhibit Number 12. And
6 can you tell us where we are in this photograph?

7 A This is at the bottom of that same stairway, a closer photo of the
8 deceased in that entryway.

9 Q And the doors that are around his person, is one of those the
10 garage door?

11 A Correct. The door near his right hand would be the door to the
12 garage. The door near his head is the door to -- that's the front door.

13 Q Now, I want to draw your attention to a couple of items here.
14 Number one is this area under Mr. Fleming's head, this carpeting I'm pointing
15 to. Do you recall that in some subsequent photos we have closer up
16 photographs of that area?

17 A Yes.

18 Q Can you describe kind of how the processing works from the
19 overall photographs here to when evidence tents are applied and then when
20 Mr. Fleming is removed from the scene? Can you explain how that process
21 works?

22 A When we arrive on the scene, we take overall photos before
23 anything is disturbed, or touched, or moved. It's just to show the condition
24 when we first arrived. We will then locate any evidence, photograph it. We
25 will then place those evidence markers down and re-photograph the scene

1 again showing all those evidence markers. Once the victim was removed, we
2 then continue to look for evidence under where his body was. And in this
3 case, we did locate additional evidence on and under that carpet.

4 Q And there is a particular agency within Clark County that has a very
5 prominent role when it comes to a deceased person at the scene; is that
6 correct?

7 A Yes.

8 Q Who is that?

9 A The Clark County Coroner's Office.

10 Q And is there a kind of a mandated procedure about how the
11 processing of the body and areas around the body work in conjunction with
12 the Coroner's office?

13 A Yes. The Coroner's office has jurisdiction over the body. We are
14 not to touch it or move it until they are on scene, and they are able to do their
15 concurrent investigation.

16 Q And there's actually an investigator from the Coroner's office that
17 comes to the scene working with you and the detectives?

18 A Correct.

19 Q So, I want to go to Exhibit 13. Do you recognize that as you got a
20 closer picture of Mr. Fleming?

21 A Yes.

22 Q I want to point in kind of an orientation fashion in this broader
23 photograph to a couple items that aren't as well seen in it. For the record,
24 above Mr. Fleming's left arm against the wall, do you see the item that I'm
25 pointing to there?

1 A Yes, sir.

2 Q Is that item something that is photographed, tagged, and
3 impounded in the closer set of photographs in this case?

4 A Yes, it is.

5 Q And what was that item?

6 A That's a .40 caliber cartridge case.

7 Q And let me direct your attention to Mr. Fleming's right elbow here,
8 almost in the middle bottom third of the photograph; are there a number of
9 evidentiary items located against, near, and underneath his body in that area?

10 A Yes.

11 Q And, finally, in the waistband area that I'm pointing to now on Mr.
12 Fleming's front stomach area, do you recognize that item?

13 A Yes.

14 Q And what was it?

15 A Later to be determined a nine millimeter Glock, Model 19 handgun.

16 Q Going to Exhibit 16, is that something we've seen before in the
17 photographs that I presented to you?

18 A Yes. That's the .40 caliber cartridge case.

19 Q And that's now a closer picture?

20 A Correct.

21 Q And this is prior to the processing from tagging and identifying
22 evidentiary items by number?

23 A Correct.

24 Q Okay. Now, let me go to Exhibit 17. What has happened from a
25 crime scene analyst's processing perspective that you now clearly see in this

1 photograph?

2 A This is that second round of photos that I described where we now
3 go through and mark our items of evidence and then re-photograph
4 everything with its numerical marker.

5 Q So, let me go to the index, Exhibit Number 3, and if I go to this
6 index and go to number one, let me zoom in. What is the description of item
7 number one?

8 A One Winchester Smith & Wesson 40 cartridge casing.

9 Q So, the item numbers once again here correspond to the visual
10 yellow tags we would see in any photograph?

11 A Correct.

12 Q Let me go to Exhibit 18. What is that a photograph of?

13 A This is that same cartridge case, now numerically marked and a
14 close-up of it.

15 Q Why is that particular type of evidence tag put next to this item, the
16 ruler aspects of it?

17 A To show size.

18 Q So, there's kind of an identification, as well as a scale, that's
19 inserted for size?

20 A Correct.

21 Q Exhibit 20, what are we looking at there?

22 A This is the deceased's midsection showing again item number two
23 and three and then the firearm in his waistband.

24 Q Exhibit 19?

25 A This shows item number two and three closer, item number two

1 being a bullet and item number three being a red Bic lighter.

2 Q Exhibit 22. I'd like you to focus on item number eight at the open
3 area in the middle -- or at the bottom of the door to the top of the photograph.

4 A That's an additional cartridge case, .40 caliber, that was located,
5 and marked, and re-photographed.

6 Q And Exhibit 21?

7 A And that's a close-up of that same cartridge case.

8 Q I'd like to go to Exhibit 26 and now ask you about evidence tag
9 number nine; what is that?

10 A Evidence tag number nine I believe is a defect that's found in the
11 carpet. It's bullet fragments in the carpet.

12 Q And let me show you a close-up in 23.

13 A Oh, it's a cartridge.

14 Q Was there something close to the defect in the carpet also at or
15 near tag number nine?

16 A Yes. Number nine's actually the cartridge case. It's another .40
17 caliber cartridge case.

18 Q Exhibit 24. Obviously, Mr. Fleming is no longer there.

19 A Correct.

20 Q There's now item number ten. Can you tell me what item number
21 ten is?

22 A Item ten should be the defect in the bullet fragments.

23 Q And Exhibit 25?

24 A That's a close-up photo of those fragments.

25 Q Now, was there a process in which this area, the area I've just

1 shown depicted by tag number ten and that matte type carpeting adjacent to
2 the garage door that it's processed further. Can you explain what you do and
3 how it was done in this case?

4 A In this case, these fragments were collected after being
5 photographed. The carpet is then removed and we're photographing the
6 underside of the carpet, as well as the tile floor underneath.

7 Q I'm showing you Exhibit Number 28. Is that kind of the process
8 that you just described in the photograph as we're going through them.

9 A Yes.

10 Q And Exhibit 29, what are we looking at there?

11 A That's the underside of that mat, showing the defect on the
12 underside of the mat.

13 Q And on the top side of that would have been the bullet fragment
14 that was impounded?

15 A Correct.

16 Q And let me go to Exhibit 30 and tag 11. What are we looking at
17 there?

18 A This is additional bullet fragments and the broken tile underneath
19 that defect in the carpet.

20 Q Exhibit 32, what is that?

21 A That's a photograph, stepped back just a little bit so you can see
22 the entire defect in the tile.

23 Q And once again, 31, is that a sequential photograph now up close
24 of the previous?

25 A Correct.

1 Q That was tile underneath the carpeting?

2 A Yes.

3 Q Now, I want to show you Exhibit 33. Can you tell us what we're
4 looking at there and where is that in the scene?

5 A This is the handgun in a leather holster that is in the waistband of
6 the victim.

7 Q Now, is there a procedure, kind of a strict line about how handguns
8 such as this found in a scene is processed?

9 A Yes.

10 Q Can you describe that for me?

11 A The handgun was removed from the holster, then you drop the
12 magazine out and lock the slide back to make it safe, noting whether or not
13 any live ammunition or cartridge cases come out of the slide when we rack it
14 back. We then count all the live ammunition that's in the magazine,
15 photograph the gun and all of its make, model, serial number, all of its
16 designators.

17 Q And this particular gun was processed in that fashion?

18 A Yes.

19 Q I would like to show you next in order State's Exhibit 34. What are
20 we looking at there and where in the process are, we seeing this weapon?

21 A This would be the first photograph taken after removing it off of
22 this person. It's still in the holster.

23 Q And Exhibit 35?

24 A This would be after it's removed from the holster, the magazine
25 has been dropped and the slide has been locked back. The ammunition is still

1 in the magazine.

2 Q What was the condition of this weapon at the time that it was
3 processed, as you just described?

4 A There are 15 live 9 millimeter cartridges in the magazine and there
5 was nothing in the chamber.

6 Q Are you familiar with semi-automatic handguns?

7 A Yes.

8 Q Do you also qualify, in your capacity as a Crime Scene Analyst, to
9 carry a firearm with the North Las Vegas Police Department?

10 A Yes, I do.

11 Q How often do you qualify with a weapon?

12 A Four times a year.

13 Q And that's every year since you've been employed in that capacity?

14 A Correct.

15 Q What kind of weapon, revolver or semi-automatic do you carry?

16 A I carry a 9 millimeter Glock Model 26.

17 Q Semi-automatic handgun?

18 A Correct.

19 Q So, would it be fair to say that you're familiar with how to load it,
20 operate, and fire that weapon?

21 A Yes.

22 Q So, let me ask you this question, in the condition that the gun was
23 in, that is, as you testified, the magazine had live rounds in it, but none in the
24 pipe or in the barrel end. If I pulled out that Glock and squeezed the trigger
25 would the gun go off?

1 A No.

2 Q What would be required in order to make this Glock operational so
3 that if I pulled the trigger the gun would fire?

4 A The slide would have had to have been racked back to put a round
5 into the chamber.

6 Q Thank you.

7 MR. STANTON: Your Honor, I don't believe I have any further
8 questions. I pass the witness.

9 CROSS-EXAMINATION

10 BY MR. O'BRIEN:

11 Q Good afternoon, Ms. Harder.

12 A Good afternoon.

13 Q I want to start with a few general questions. I know you talked a
14 little bit about your background and your training to become a CSA.

15 A Uh-huh.

16 Q Let's talk a little bit about the responsibilities of a CSA. You just
17 basically respond to crime scenes to document the crime?

18 A Document and collect evidence, yes.

19 Q And by collecting evidence, recovering physical evidence and
20 fingerprints?

21 A Correct.

22 Q And also performing a variety of investigative tasks, potentially?

23 A Yes.

24 Q Okay. And to accomplish that, you carry test kits and evidence
25 collection materials with you?

1 A Yes.

2 Q Okay. Obviously, you're in North Las Vegas official uniform right

3 now?

4 A Yes.

5 Q You're not driving around in your personal vehicle?

6 A No.

7 Q Okay. When you're on the job, you're on the job?

8 A Correct.

9 Q Okay. So, you're using a North Las Vegas police vehicle?

10 A Yes.

11 Q And I assume the vehicle is stocked with those kits?

12 A Yes.

13 Q Okay. Do you personally stock the vehicle when you begin your

14 shift?

15 A Yes.

16 Q Okay. And the test kits, just some of the materials that you could

17 collect include DNA?

18 A Yes.

19 Q Fingerprints?

20 A Yes.

21 Q Gunshot residue?

22 A Yes.

23 Q Blood?

24 A Yes.

25 Q And there's a kit to actually test if something is blood?

1 A Presumptively, yes.

2 Q Okay. And, also, a collection of firearms, as in this case, you did?

3 A Yes.

4 Q Okay. And then part of your job -- an important part of your job is
5 also protecting the integrity of the evidence?

6 A Yes.

7 Q Specifically, part of your training, I imagine, with the Metro
8 Academy, was making sure there's no pollution?

9 A Yes.

10 Q And by -- or by pollution, I guess, a better phrase might be
11 contamination?

12 A Yes.

13 Q Okay. And that, in part, that's why you wear gloves?

14 A Yes.

15 Q When you're on the scene?

16 A Correct.

17 Q Okay. So -- and you talked a little bit about when you arrive on the
18 scene talking to detectives about what they might want investigated?

19 A Correct.

20 Q All right. And when we say detectives, essentially the lead officer
21 on the case; is that correct?

22 A In this case, it's -- I mean the detectives. There are patrol officers
23 there, but when detectives and CSI are called out, they become the lead
24 investigators.

25 Q Okay. And I think you also said you would ask the detective what

1 he or she might want investigated, but that's on top of what you, in your
2 training, see should be investigated, correct?

3 A Correct.

4 Q All right. And then once evidence is collected, you send the
5 evidence to the lab for testing?

6 A No.

7 Q Okay. How does -- the detective chooses what goes to the lab for
8 testing?

9 A Correct.

10 Q Okay. And does the detective have your office send --

11 A No.

12 Q -- that for testing, or the detective handles that themselves?

13 A The detectives handle those requests themselves.

14 Q Okay. So, you're more on the collection side, and then once, after
15 that point, the detectives are making the calls?

16 A Correct.

17 Q Okay. Ask you a few questions about -- did you have a chance to
18 review the reports from -- for this case?

19 A Yes.

20 Q Okay. Specifically, you authored a report in this case?

21 A I did.

22 Q And there was a second CSA on the scene; is that correct?

23 A Yes, the CSI official was actually primary on this case.

24 Q Okay. So, the CSI official also collected some evidence?

25 A The CSI official collected all scene evidence at the residence.

1 Q And by the residence, we're referring to the townhome at 4032
2 Smokey Fog?

3 A Yes.

4 Q Okay. Smokey Fog Avenue in North Las Vegas?

5 A Yes.

6 Q Okay. Just to give a sense to the jury of what we're talking about,
7 you're familiar with this area of North Las Vegas?

8 A Yes.

9 Q Okay. I'm showing you what's been marked as Defendant's
10 Proposed Exhibit I. And --

11 MR. STANTON: Well, Judge, just for the record, counsel showed
12 me Defense A through K. I have no objection to them being admitted. I think
13 that needs to be on the record before they publish it.

14 THE COURT: Okay.

15 MR. STANTON: Thank you.

16 THE COURT: I didn't pay attention to that part. Sorry about that.

17 MR. O'BRIEN: My apologies. Thank you, counsel.

18 THE COURT: So, do you move to admit by stipulation?

19 MR. STANTON: Yes.

20 THE COURT: A through K?

21 MR. STANTON: Those are the ones I've reviewed, Your Honor.

22 MR. O'BRIEN: I believe that's all I have.

23 THE COURT: Okay. A through K are admitted by stipulation.

24 [DEFENDANT'S EXHIBIT A-K RECEIVED]

25 MR. O'BRIEN: Thank you again, counsel.

1 BY MR. O'BRIEN:

2 Q We're looking at Defense Exhibit I. Do you recognize the area
3 depicted in this?

4 A Yes.

5 Q And, specifically, what are we looking at?

6 A We're looking at a bird's eye view of the northern area of North Las
7 Vegas, the Lamb and Centennial area.

8 Q And down towards the bottom right, is that Interstate 15 crossing
9 through the photo?

10 A Yes, it is.

11 Q Okay. And along the top edge is the northern edge of the
12 Woodbury Beltway of 215?

13 A 215, correct.

14 Q Okay. I'm showing you what's been marked as Defense Exhibit J.
15 Do you recognize this area?

16 A Yes. This is the neighborhood that the incident took place.

17 Q Okay. Specifically, the area around Smokey Fog Avenue?

18 A Correct.

19 Q And Smokey Fog is pictured on the -- say the top --

20 A Top right.

21 Q -- the upper part of the photo?

22 A The top right, yeah.

23 Q Thank you. I'll come back to that photo, but to give a sense of
24 where -- let me show you Defense Exhibit K. What are we looking at in
25 Defense Exhibit K?

1 A This is a closer look of Smokey Fog Avenue and showing the
2 specific townhome that we're talking about.

3 Q And that's the address again, 4032 Smokey Fog Avenue?

4 A I believe so. I would have to doublecheck. I didn't respond to the
5 actual house, so.

6 Q But that is the address marked on the photo of this?

7 A That is, yes, 4032.

8 Q Okay.

9 A Yeah.

10 Q Going back to Exhibit J. We talked a little bit about CSI Fischer
11 being primary when --

12 A Yes.

13 Q -- the two of you were at the scene?

14 A Yes.

15 Q I would like to talk to you a little bit about fingerprint collection.

16 A Okay.

17 Q Okay. Part of your job is -- and your expertise, is processing
18 evidence for fingerprints?

19 A Yes.

20 Q And obtaining both suspect and elimination prints?

21 A If requested, yes, we will collect suspect and elimination prints.

22 Q So, if the detective essentially asked you for that, that's something
23 that you could take care of?

24 A Yes.

25 Q All right. And in taking fingerprints, you use various methods, very

1 different scientific methods of collecting those, correct?

2 A Yes.

3 Q Sometimes powder, sometimes chemicals?

4 A Correct.

5 Q All right. And in this case, I believe -- and there's one method that
6 is magnetic powder and a magnetic wand?

7 A Yes.

8 Q You're familiar with that -- with that technique?

9 A Yes.

10 Q Specifically, just explain it to the jury. Essentially, it non-
11 scientifically is a stick with a plunger in it, and you depress the plunger, which
12 brings up a magnet towards a collection of iron dust, essentially?

13 A The fingerprint powder has a magnetic component to it so that it
14 adheres to the wand.

15 Q Okay. And then you then brush that wand lightly against the
16 surface?

17 A Correct.

18 Q To determine if there are any fingerprints?

19 A Right.

20 Q Okay. And then once that's done -- let me ask you a few questions
21 about what's often called lifting a print. Once -- if a print is uncovered by that
22 powder, do you then use tape to collect that fingerprint?

23 A Correct.

24 Q Okay. Putting the tape over the magnetic powder image of the
25 fingerprint --

1 A Uh-huh.

2 Q -- and the tape then is removed to collect the fingerprint?

3 A Correct.

4 Q So that it can later be tested?

5 A It can later be compared, yes.

6 Q Okay. And in this case, there were some fingerprints taken from
7 4032 Smokey Fog; is that correct?

8 A By CSI Fischer, yes.

9 Q Yes. In fact, there were two lifts that CSI Fischer did?

10 A Yes.

11 Q The first one --

12 MR. O'BRIEN: The Court's indulgence.

13 BY MR. O'BRIEN:

14 Q The first lift CSI Fischer took for was from the front door of the
15 property?

16 A I believe both of them were from the exterior of the front door.

17 Q Okay. Exterior, essentially outside, the outside section?

18 A Yes.

19 Q Okay. And Lift 1, CSI Fischer refers to as good comparable quality?

20 A Yes.

21 Q And to explain that a little bit to the jury, there's a comparison
22 phase once a fingerprint's collected?

23 A Yes.

24 Q And if it's of comparison quality, essentially the fingerprint can be
25 compared to an elimination print?

1 A Yes, it can be compared to other fingerprints. No known prints of
2 either suspects, or victims, or whomever.

3 Q Thank you. Much more eloquently worded. And that comparison
4 is, in part, to determine the existence of any similarities between the two
5 prints?

6 A Yes.

7 Q And, of course, dissimilarities between the two prints?

8 A Correct.

9 Q But it's worth noting that CSI Fischer noted that this is not AFIS
10 quality print?

11 A Correct.

12 Q Can you explain AFIS quality to the jury?

13 A Correct. If a fingerprint is of AFIS quality that means that it's clear
14 enough to put into the computer, where the computer can then run it against
15 the Western Identification Network first to see if it matches anyone who's ever
16 been put in the system before, but it has to be of a sufficient quality to do so.

17 Q And from your knowledge of the investigation, was Lift Number 1
18 ever compared with the Defendant, Shawn Glover?

19 A I don't believe so.

20 Q Okay. There was a second lift we talked about from the front door,
21 correct?

22 A Yes.

23 Q And this one, in particular, was a poor candidate for comparison?

24 A Correct.

25 Q Which also means automatically it's also not of AFIS quality?

1 A Correct.

2 Q Okay. And from your review of CSI Fischer's work, do you have
3 any knowledge of fingerprints taken from a counter inside 4032 Smokey Fog?

4 A I do not have knowledge of that, no.

5 Q Okay. Do you have any knowledge of fingerprints taken from car
6 keys?

7 A Car keys?

8 Q Car keys.

9 A No.

10 Q Do you have any knowledge of fingerprints taken from the railing
11 leading down the stairs at 4032?

12 A No.

13 Q And none were taken -- as far as you know, none were taken from
14 the wall leading down the stairs?

15 A No.

16 Q And no fingerprints were taken near the couch on the second
17 floor?

18 A Not to my knowledge.

19 Q Okay. And none were taken from the .40 caliber shells that were
20 found; is that correct?

21 A Correct.

22 Q And we talked a little bit about CSI Fischer's investigation. Before I
23 move on, when you responded to the property, you were not asked to work
24 inside the residence, correct?

25 A Correct.

1 Q The detective asked you to go to a vehicle that was located on the
2 property?

3 A Yes.

4 Q Okay. And do you recall where the vehicle was located?

5 A It was in the parking lot, and it was off of Pepper Thorn, but I -- I'm
6 sorry, I don't remember the cross street.

7 Q If I show you Defense Exhibit B, is this a photo that you took?

8 A Yes, sir. Thank you.

9 Q And did you take this photo probably just for this reason?

10 A Yes, sir.

11 Q Okay. And it looks like it's the intersection of Pepper Thorn and
12 Beige Bluff; is that correct?

13 A Yes.

14 Q All right. And that is where the vehicle was located?

15 A Correct.

16 Q All right. On the map, do you see the intersection of Pepper Thorn
17 and Beige Bluff?

18 A Yes.

19 Q Would you please mark that for the jury? It looks like now we have
20 to use the mouse rather than the touch screen.

21 A Oh, sorry.

22 Q The little red crayon, and if you could circle it, please? Thank you
23 very much. I'm showing you what's been marked as Defense Exhibit A. Do
24 you see a vehicle that you investigated in this photo?

25 A I don't see a picture. I'm sorry. Do I have to --

1 MR. STANTON: You have to get rid of the --

2 MR. O'BRIEN: Oh, I apologize.

3 BY MR. O'BRIEN:

4 Q If you could use the mouse again and go to the arrow, click on
5 the arrow. Thank you so much. Again, sorry, this is Defense Exhibit A. Do
6 you see a vehicle that you investigated on January 1st, 2016?

7 A Yes.

8 Q That's specifically the Dodge Durango towards the left side of the
9 photo?

10 A Yes, sir.

11 Q All right. And showing you Defense Exhibit C, this is a closer view
12 of the Dodge Durango?

13 A Yes.

14 Q And you did -- you did some investigation inside of the vehicle, as
15 well?

16 A Correct.

17 Q When you arrived at the scene, detectives were already there?

18 A Yes.

19 Q And specifically, Detective Wilson was present?

20 A Yes.

21 Q And did Detective -- you noted in your report Detective Wilson had
22 the keys to the vehicle at that time?

23 A Correct.

24 Q This was around -- do you recall what time you left?

25 A Around 3:30.

1 Q 3:30 p.m.?

2 A Yes.

3 Q Okay. I'm showing you Defense Exhibit D. This is a photo that you
4 took?

5 A Yes.

6 Q And it's essentially just the interior, front interior of the Durango?

7 A Correct.

8 Q Okay. Going back to Defense Exhibit C. When you arrived at the
9 scene, does the detective -- does the detective tell you the importance of the
10 vehicle?

11 A I usually get a small briefing, yes.

12 Q Okay. And in this case, there was concern that the suspect had
13 stolen this vehicle?

14 MR. STANTON: Object to any answer that deals with Detective
15 Wilson or any other person's opinion. That's hearsay.

16 THE COURT: Counsel, you want to rephrase?

17 MR. O'BRIEN: Yes, Your Honor.

18 BY MR. O'BRIEN:

19 Q In this instance, you were asked to investigate this vehicle -- well,
20 let's just leave it there. You were asked to investigate the vehicle, correct?

21 A Yes.

22 Q Okay. The detective did not ask you to take fingerprints of the
23 vehicle?

24 A No.

25 Q Okay. And you ultimately did not take fingerprints of the vehicle?

1 A No.

2 Q Okay. Did not take fingerprints of the door exterior?

3 A No.

4 Q Okay. And obviously going along with that, there were no
5 fingerprints in the interior of the vehicle, as well?

6 A No, sir.

7 Q Okay. I would like to take a step back from fingerprints for a
8 second and talk to you a little bit about gunshot residue.

9 A Okay.

10 Q One of the kits that your -- that you carry with you when you're
11 working is a gunshot residue test?

12 A Yes.

13 Q Essentially, it's a kit?

14 A Yes.

15 Q Okay. And the testing involves, in this particular gunshot residue
16 testing is testing for lead, barium, and antimony, always difficult to say?

17 A Yes.

18 Q And the reason, the reason those particles in particular are being
19 tested is that those are in the residue produced from the firing of a weapon?

20 A Correct.

21 Q A handgun, essentially. Once a handgun is fired, that -- those
22 particles are in the residue produced?

23 A Yes.

24 Q And part of the reason for that is that they are present in the primer
25 of a cartridge?

1 A Yes.

2 Q So, the primer of essentially the bullet or the cartridge inside the
3 gun contains these particles?

4 A Yes.

5 Q And then when fired, that's why they are present?

6 A Yes.

7 Q All right. To -- and this -- part of the science behind it is that these
8 particles are ejected from the barrel of the gun when fired?

9 A Yes.

10 Q And it leaves a residue in the area around the gun at the time of
11 the firing?

12 A Correct.

13 Q And that residue can be tested?

14 A Yes.

15 Q If requested, a person's hands can be swabbed?

16 A Yes.

17 Q And a gun residue test run off of that swab?

18 A Correct.

19 Q And part of the reason we might test hands, or we might be
20 requested to test hands is the residue -- if a gun was in someone's hand and
21 that gun was fired, the residue would fall onto that hand?

22 A Correct.

23 Q All right. You could also swab clothing, correct?

24 A Yes.

25 Q And in this case, while you did not go to the property, are you

1 aware of any gunshot residue testing that was done?

2 A I did respond to the property, I just wasn't dispatched there. So, I
3 wanted to correct myself on that one. I did later respond to the property, I was
4 dispatched to the vehicle. Sorry.

5 Q Okay.

6 A But not to my knowledge, no.

7 Q And I want to talk to you a little bit about DNA collection and
8 testing. I'm showing you Defense Exhibit E. I know we're bouncing back and
9 forth, but what is pictured in Defense Exhibit E?

10 A This is the driver's side of the Durango, where I've marked with
11 evidence markers the areas that I want to swab for DNA.

12 Q Okay. And we talked a little bit -- the Prosecution talked to you a
13 little bit about markers. Essentially, it is marking the, as you just said, the
14 spots in a photo where you're going to test?

15 A Correct.

16 Q I'm showing Defense Exhibit F. Are we looking at your hand in the
17 bottom left corner?

18 A Yes, sir.

19 Q Okay. And that is you swabbing an area for DNA?

20 A Yes.

21 Q All right. And I'm showing you Defense Exhibit G. Similarly, this is
22 your hand swabbing the steering wheel for DNA?

23 A Correct.

24 Q And Defense Exhibit H, you're hand swabbing the, I assume the
25 gear shift?

1 A Yes.

2 Q Okay. I want to talk to you a little bit about DNA and why you
3 would swab an area.

4 A Okay.

5 Q Touch DNA, in particular, it's a forensic method for analyzing DNA
6 that might be left at the scene of a crime?

7 A Correct.

8 Q And it's called, specifically, touch DNA because the testing requires
9 very small samples in order to be tested?

10 A Yes, it's an area where someone has touched and left epithelial
11 DNA.

12 Q Okay. And when you're swabbing these areas, you're looking for
13 touch DNA?

14 A Yes.

15 Q Okay. In this instance, the detectives did not ask you to test this
16 DNA?

17 A I don't test DNA.

18 Q Okay. I thought that. As far as you know, the detective did not
19 send the DNA to be tested?

20 A I wouldn't know.

21 Q Okay. All right. So, as we said earlier, you did your job of
22 collecting?

23 A Correct.

24 Q At that point, it's the lead investigator's job to decide what to do?

25 A Yes, sir.

1 Q Thank you.

2 MR. O'BRIEN: The Court's indulgence.

3 BY MR. O'BRIEN:

4 Q And Ms. Harder, just -- you mentioned epithelial DNA, just so the
5 jury knows, epithelial DNA is essentially skin cells?

6 A Skin cells, yes.

7 Q Okay. And that was part of when we were discussing touch DNA
8 and what might be collected and ultimately tested?

9 A Correct.

10 Q Okay. A few more questions about the investigation inside of the --
11 inside of the property at 4032 Smokey Fog. We talked a little bit about
12 fingerprints, and to the best of your knowledge, there was no DNA taken inside
13 of 4032 Smokey Fog?

14 A Not to my knowledge.

15 Q Okay. And by taken, essentially collected with the swab method as
16 we saw in the photos?

17 A Right.

18 Q All right. But -- actually, let me be more particular. There was a
19 swab taken of Mr. Fleming's mouth, a buccal swab?

20 A That was probably done at the autopsy.

21 Q Okay. Okay. So not done inside the house, as far as you know?

22 A I wouldn't assume so.

23 Q Okay. So, in that vein, there was no DNA taken from the -- any
24 counter in the property?

25 A Not to my knowledge, no.

1 Q Okay. And no DNA taken from the couch?

2 MR. STANTON: Objection, asked and answered. The bannister
3 going down the stairs, the couch, the counter, all have been asked and
4 answered.

5 THE COURT: Is this the last area?

6 MR. O'BRIEN: This is the last area and, Your Honor, I did ask about
7 fingerprints, but not about DNA. This is the very last area.

8 THE COURT: Okay.

9 BY MR. O'BRIEN:

10 Q So, no DNA was collected from the couch, as far as you know?

11 A Not to my knowledge.

12 Q And no DNA was collected from the railing on the way down the
13 stairs?

14 A Not to my knowledge.

15 Q Or from the wall along the way down the stairs?

16 A Not to my knowledge.

17 Q And no DNA was collected from the .40 caliber shells that were
18 found?

19 A Not to my knowledge, no.

20 Q Okay. Thank you very much.

21 THE COURT: Redirect?

22 MR. STANTON: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. STANTON:

25 Q And counsel just asked you about three areas of forensic items that

1 you are certified and trained to collect, gunshot residue, fingerprints, and DNA
2 as well I want to focus on. You're familiar with all those?

3 A Yes.

4 Q Okay. So, let me ask you this question. Let me give you a good
5 surface for prints to be left, start off with fingerprints. Glass, non-porous
6 surface, and I'm not moving when I grab -- grasp it, and I'm a secretor, and I
7 have oils coming out of my hands. Probably a pretty good candidate that a
8 latent of comparison quality will be left under those circumstances?

9 A Yes.

10 Q All things being. Will it tell you when I left that print?

11 A No.

12 Q It won't tell you the date, times, circumstances of when I put that
13 print on there?

14 A No.

15 Q What happens if I move it when I touch that glass?

16 A It will most likely be smudged.

17 Q And in smudged prints, it greatly affects the quality of the print for
18 comparison purposes?

19 A Yes.

20 Q Let me shift to DNA. I'm walking down the stairwell and I put my
21 hand on the railing inside this home. Would I leave DNA, generally speaking?

22 A Probably.

23 Q Possibly. Will it tell you when I left the DNA?

24 A No.

25 Q Will it tell you what circumstances I left the DNA, at least touch

1 DNA as opposed to blood or some other DNA rich fluid?

2 A No.

3 Q Let me talk about gunshot residue. You, on several questions
4 asked by Defense counsel, asked about the collection of gunshot residue. Are
5 you familiar with the limitations on gunshot residue as far as what it will tell
6 you?

7 A It will basically tell you whether someone was around a gun being
8 fired.

9 Q Okay. Will it tell you whether or not I held a gun in my hand and
10 fired it?

11 A No.

12 Q So, if we had four people in a room and let's assume this is a
13 normal size bedroom, 10 by 13, or thereabouts, and a gun is fired. Would you
14 expect, if you were to take a gunshot residue test soon in time without
15 anybody putting their hands in clothing, washing their hands, or an
16 appreciable lapse of time, would you expect all four people to test positive?

17 A It's very possible, yes.

18 Q And there's no gradation of the testing of gunshot residue. In other
19 words, you can't tell by the results of it that you're the shooter, you're three
20 feet, you're closer than person number two or three, or anybody else in the
21 room. Is that accurate?

22 A I don't know exactly how it measures. From what I understand, it's
23 just it's either present or it's not.

24 Q Okay. Are you --

25 THE COURT: And you said -- I'm sorry to interrupt. You said

1 gradiation.

2 MR. STANTON: I did.

3 THE COURT: Spell that for the record.

4 MR. STANTON: Okay. Thank you, Your Honor.

5 THE COURT: G-R-A --

6 BY MR. STANTON:

7 Q Do you know where --

8 THE COURT: It's the first time I ever heard it, so I wanted to make
9 sure I got it right.

10 BY MR. STANTON:

11 Q Are you familiar where gunshot residue testing is performed?

12 A It's sent off to a lab somewhere back east, I believe.

13 Q How about Bear County, Texas? Does that sound familiar?

14 A East of here.

15 Q Okay, but it's not by the way -- right, it's not by the crime lab?

16 A No, sir.

17 Q And, in fact, North Las Vegas, getting back to DNA and
18 fingerprints, doesn't have their own crime lab, you ship it to Metro. Is that --

19 A We do our own fingerprints.

20 Q But the DNA --

21 A But we -- DNA, we do not, it gets sent to Metro, the County Lab.

22 Q Okay. Thank you, ma'am.

23 MR. STANTON: Nothing further.

24 THE COURT: Re-cross?

25 MR. O'BRIEN: No, thank you.

1 THE COURT: Do any of the ladies and gentlemen of the jury have
2 any questions you wish the Court to ask the witness? There being no
3 questions, thank you very much for your testimony. You are excused. We're
4 going to take a restroom break after --

5 MR. O'BRIEN: Your Honor, may we approach?

6 THE COURT: Sure.

7 [Sidebar at 2:36 p.m.)

8 MR. STANTON: We're done for the day.

9 THE COURT: Really?

10 MR. STANTON: Yeah.

11 THE COURT: All right.

12 MR. STANTON: I only have one more witness.

13 THE COURT: Who is it?

14 MR. STANTON: Detective Wilson, who's unavailable today. She's
15 out of State on another case, and then we have the --

16 THE COURT: I could do the claims admonishment.

17 MR. O'BRIEN: Uh-huh.

18 THE COURT: Right.

19 MR. O'BRIEN: Sure.

20 MR. STANTON: And we have to settle the jury instructions. That
21 won't be too long according to our brief discussion outside your presence.

22 THE COURT: Okay. So, you're going to close this Friday, is that
23 what you're thinking?

24 MR. O'BRIEN: That's be plan, because Thursday being tomorrow, I
25 would expect the detective to be a couple hours, and my person would be five

1 minutes, from my perspective.

2 THE COURT: Okay. So, if I went ahead (indiscernible) it would be
3 2:20, I was asking to be excused.

4 MR. O'BRIEN: Okay.

5 THE COURT: We had a full discussion of whether he's the boss,
6 but I feel like he's possibly self-fulfilling.

7 MR. STANTON: So, whenever you want to, to tomorrow, and then
8 we'll argue your thing Friday morning.

9 MR. O'BRIEN: That seems to be the plan.

10 THE COURT: I have a hearing on an in capita without probability,
11 blah, blah, blah. I might just move it so that we can finish this on time.

12 MR. O'BRIEN: That would be great, Your Honor.

13 THE COURT: Okay. I have to move it. I have to move it. Thanks.
14 So, I'm going to give them this thrill about being done a little early today.

15 MR. STANTON: Right. And then I'll send -- I have two specials on
16 the other murder counts that I'll send over.

17 THE COURT: Okay.

18 MR. STANTON: Okay?

19 [Sidebar ends at 2:38 p.m.]

20 THE COURT: Well, ladies and gentlemen, the testimony that we
21 had anticipated would take the rest of the day is done, and so we're done a
22 little early. And so, we do our best to plan and schedule. We have some
23 witnesses that are out of State that are not available until tomorrow. So, you
24 are done for today.

25 So, we're going to break now. I have a Nevada Supreme Court

1 Commission that I am appointed to, with a particular Justice who would like
2 my attendance tomorrow. I'm being excused early from the Commission, but
3 we're not -- and the lawyers knew this in advance and there's at least one of
4 you that understands that when the Supreme Court speaks, those of us in the
5 business listen, including me. So, I have to do that, and we're not going to
6 start this trial until 2:30. So, we're just going to compress, 2:30 to 5. Okay?
7 And so, we'll take a break in there and we're going to -- the way things are
8 going along, we are still on time, no problem.

9 So, during this overnight recess until 2:30, you can work tomorrow,
10 you can go about your business as long as you're at the meeting place that my
11 Marshall designates to you at 2:30 tomorrow afternoon, okay? As long as you
12 don't talk about the case and you follow my admonishment. Okay. Just put it
13 out of your mind and come back at 2:30 tomorrow.

14 So, during this recess, you're admonished not to talk or converse
15 among yourselves or anyone else on any subject connected with the trial. You
16 are not to read, watch or listen to any report of or commentary on the trial by
17 any person connected with this case, or any media of information, including,
18 without limitation, newspaper, television, the internet or radio. You're not to
19 form or express any opinion on any subject connected with the trial until the
20 case is finally submitted to you. Tomorrow at 2:30.

21 THE MARSHAL: All rise. The jury is exiting.

22 [Outside the presence of the jury.]

23 THE COURT: The record shall reflect we're outside the presence of
24 the jury. I would like to take a short restroom break, come back and admonish
25 your client, because I have to do that when the State rests, and I hear that

1 you're resting soon tomorrow, right?

2 MR. STANTON: Correct.

3 THE COURT: Shortly after we, you know, we have what, one more
4 witness?

5 MR. STANTON: One witness.

6 THE COURT: Okay. So, I'm going to do the client admonishment,
7 and I would like to look at the jury instructions, and at least have you flag for
8 me what you're objecting to. Are you prepared to do that or --

9 MR. STANTON: I think if we -- if you give us a little bit of time
10 through tonight, we can focus that to be more efficient.

11 THE COURT: Okay. And do you have any proposed that I --

12 MR. O'BRIEN: I emailed an entire packet. I think that Mr. Stanton
13 anticipated the possibility of self-defense, and so there's -- when he first put
14 his packet together, and so --

15 THE COURT: All right. Do this, do me a favor, send me a new one.

16 MR. STANTON: Okay.

17 THE COURT: Otherwise, I have everything woven in and I won't
18 have to pull it out and be in a different order. Just send me a new one unless
19 you accept their version of yours and theirs.

20 MR. STANTON: I think we can send you a new one, and also
21 highlight the ones that are contested.

22 MR. O'BRIEN: Correct. That's my plan for this evening, Your
23 Honor.

24 THE COURT: Okay, then that's fine. Give me just two minutes and
25 then I'll admonish your client, and you can all be about your day. Okay? Two

1 minutes.

2 MR. O'BRIEN: Very good.

3 [Recess at 2:42 p.m., recommencing at 2:45 p.m.]

4 THE COURT: Are you ready?

5 MR. O'BRIEN: We're ready, Your Honor. I believe Mr. Stanton has
6 left responsibility to Mr. Flinn.

7 [Outside the presence of the jury.]

8 THE COURT: Okay. We're back on the record in State v. Shawn
9 Glover outside the presence of the jury. Both Defense counsel are present, Mr.
10 Flinn for the State.

11 Mr. Glover, in every criminal trial, the Judge has to read an
12 admonishment that is important, and I read it verbatim to make sure I don't,
13 you know, screw it up. So, I'm going to read it to you verbatim here. If you
14 have any -- I usually read it at or around when the District Attorney is going to
15 rest, but since you're going to, at some point, start a case tomorrow, I'll read it
16 to you tonight so that you have been admonished, and you can certainly
17 discuss it to the extent you need to with your attorneys.

18 THE DEFENDANT: Okay.

19 THE COURT: So, under the Constitution of the United States and
20 under the Constitution of the State of Nevada, you cannot be compelled to
21 testify in this case. Do you understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: You may, at your own request, give up this right and
24 take the witness stand and testify. If you do, you will be the subject to cross-
25 examination by one of the Deputy District Attorneys, and anything that you

1 may say, be it on direct or cross-examination, will be the subject of fair
2 comment when the Deputy District Attorneys speak to the jury in their final
3 arguments. Do you understand that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: If you choose not to testify, the Court will not permit
6 the Deputy District Attorneys, either of them, to make any comments to the
7 jury because you have not testified. Do you understand that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: If you elect not to testify, the Court will instruct the
10 jury, but only if your attorney requests, specifically as follows:

11 The law does not compel a Defendant in a criminal case to take the
12 stand and testify, and no presumption may be raised, and no inference of any
13 kind may be drawn from the failure of a Defendant to testify. Do you have any
14 questions about these rights?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: You are further advised if you have a felony
17 conviction more than ten years that has not elapsed from the date that you
18 have been convicted or discharged from prison, parole, or probation,
19 whichever is later, and the Defense has not sought to preclude that coming
20 before the jury, and you take the stand and testify, the Deputy District
21 Attorneys, one of them, in the presence of the jury, would be permitted to ask
22 you the following: One, have you been convicted of a felony; two, what was
23 the felony; and, three, when did it happen? However, no other details could be
24 gone into. You discussed these rights with your client?

25 THE DEFENDANT: Yes, ma'am.

1 MR. O'BRIEN: Yes, ma'am.

2 THE COURT: And did you answer any questions he had, if he had
3 any?

4 MR. O'BRIEN: Absolutely.

5 THE COURT: Okay. And so, if there's nothing else, I'll see you
6 tomorrow at, what time did we say? I'm going to say 2:20, and then, you
7 know, sit in the back.

8 MR. O'BRIEN: If I have those instructions to you, say 9 or 9:30 in
9 the morning, that's plenty of time?

10 THE COURT: Yeah.

11 MR. O'BRIEN: Okay.

12 THE COURT: Well, I'm going to be sitting at that meeting with
13 time.

14 MR. O'BRIEN: Okay. So, I'll make sure you have them to fill your
15 time.

16 THE COURT: Thank you. You may understand that I'm -- my -- it's
17 not formal, but my ADHD requires me to do more than one thing. I can't do
18 one thing.

19 MR. O'BRIEN: I'm not very good at idle either, Your Honor.

20 THE COURT: So, I would be happy to be looking at the
21 instructions.

22 MR. O'BRIEN: I'll make sure you have them.

23 /////

24 /////

25 /////

1 THE COURT: Thanks.

2 MR. O'BRIEN: Yep.

3 [Proceedings concluded at 2:49 p.m.]
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16 ATTEST: I do hereby certify that I have truly and correctly transcribed the
17 audio/visual proceedings in the above-entitled case to the
18 best of my ability.
19

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23 Maukele Transcribers, LLC
24 Jessica B. Cahill, Transcriber, CER/CET-708
25

Defendant.

DEPT. IX

Case Number: C-16-312448-1

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MARKED

RECEIVED

None

FOR THE DEFENDANT:

MARKED

RECEIVED

None

1 Las Vegas, Nevada, Tuesday, August 14, 2018

2
3 [Case called at 2:38 p.m.]

4 THE COURT: Okay. We're back on the record in State of Nevada v.
5 Glover. The record shall reflect the Defendant is present and dressed for trial
6 with all attorneys present. State, you were saying that at the Court's request
7 you submitted to the Court Clerk a copy of your opening PowerPoint.

8 MR. STANTON: Yes, Your Honor.

9 THE COURT: That will be marked Court's exhibit next in order
10 number

11 THE CLERK: 2.

12 THE COURT: And, obviously, does not go back with the ladies and
13 gentlemen of the jury. I believe we're waiting on one juror. So, it was -- I will
14 say this, and you may or may not know this, but it was pelting rain as I am
15 sprinting back from the Commission meeting, so maybe that held the person
16 up. I mean like big, fat not fast enough windshield wiper type rain. So,
17 hopefully, that's all it is and nothing serious. Are we calling -- we're calling
18 your person, right?

19 MR. O'BRIEN: Yes, Your Honor.

20 THE COURT: And remind me your witness' name, I'm sorry?

21 MR. O'BRIEN: Michael Reyes.

22 THE MARSHAL: All rise. The jury is entering. The jurors are all
23 present, ma'am.

24 THE COURT: Thank you. Counsel, will you stipulate to the
25 presence of the jury?

1 MR. STANTON: Yes, Your Honor.

2 MR. O'BRIEN: Yes, Your Honor.

3 [In the presence of the jury.]

4 THE COURT: Okay. Please be seated. At this time, ladies and
5 gentlemen, due to witness availability issues, the State has agreed, and the
6 Defense have agreed, that the State take a break from its case in chief to allow
7 the Defense to call a witness out of order that's here from out of State. So, at
8 this time, we're going to take a break from the State's case and we're going to
9 hear from a Defense witness.

10 MR. O'BRIEN: Your Honor, the Defense will call Michael Reyes to
11 the stand.

12 THE MARSHAL: Follow me, sir.

13 THE COURT: Sir, if you could while you're still standing, face my
14 Clerk, raise your right hand and be sworn.

15 MICHAEL REYES, DEFENDANT'S WITNESS, SWORN

16 THE CLERK: Thank you. Please be seated and state and spell your
17 first and last name for the record.

18 THE WITNESS: Michael Angelo Padua Reyes.

19 THE COURT: Definitely spell that.

20 THE WITNESS: M-I-C-H-A-E-L, Angelo, A-N-G-E-L-O, middle name
21 P-A-D-U-A, last name R-E-Y-E-S.

22 THE COURT: Thank you.

23 DIRECT EXAMINATION

24 BY MR. O'BRIEN:

25 Q Good afternoon, Mr. Reyes. Thank you for being here.

1 A Good afternoon.

2 Q Mr. Reyes, where do you live?

3 A I live in Los Angeles, California.

4 Q Okay. And I'll ask you a couple of questions about an event a couple
5 years ago; is that okay?

6 A Yes.

7 Q Where -- do you recall where you were January 1st -- we'll start with
8 December 31st, 2015?

9 A December 31st, 2015, my family, together with my brother's and sister's
10 family, we were here for New Year. We stayed at my sister's house --
11 townhouse and, you know, to celebrate New Year.

12 Q Okay. So, the family got together for New Year's?

13 A Correct.

14 Q All right. And you said your sister's townhouse, is that in North Las
15 Vegas?

16 A That's in North Las Vegas.

17 Q At specifically 4032 Smokey Fog?

18 A That is correct.

19 Q Okay. And so, you're here to celebrate New Year's Eve. What did you
20 do for New Year's Eve, what did you and the family do?

21 A Well, we waited until 12:00. We watched firework out at the back, and
22 then we ate, we drank a little bit, and, you know, have a family gathering and
23 went to sleep.

24 Q Do you recall what time you went to bed?

25 A Around 2 or 3:00 in the morning.

1 Q Okay. Big celebration?

2 A Big celebration.

3 Q Okay. And so, the next day is New Year's Day?

4 A Yes.

5 Q January 1st, 2016?

6 A Yes.

7 Q And what are your plans for that day?

8 A That day, we were just going to go around. Before -- usually, when we

9 go to Las Vegas, we stop by at their outlet store and shop, and then go back to

10 California.

11 Q Okay. So, you went to bed around 2 to 3 in the morning --

12 A Correct.

13 Q -- the night before. Around what time did you get up?

14 A Between 10:30 -- before 11 a.m.

15 Q Okay. And how do you recall what time you woke up?

16 A Well, they were, my wife and my sister were preparing brunch

17 downstairs, so we were getting ready for breakfast and lunch.

18 Q Okay. While you were getting ready for brunch, did anything happen?

19 A Yes. We heard somebody is arguing from the other side of the place

20 where we're living in.

21 Q Okay. Let me slow you down just a little bit.

22 A Sure.

23 Q You said you were at 4032 Smokey Fog, it's a townhome; is that correct?

24 A It's a townhome.

25 Q And are there other townhomes in the same building?

1 A Correct.

2 Q Okay. And is your townhome -- you sister's townhome, one floor or two
3 floors?

4 A Two floors.

5 Q Okay. What's on the ground floor?

6 A The ground floor is the living room, kitchen, and garage, and a bathroom
7 there.

8 Q Okay. And then what's on the second floor?

9 A All the bedrooms.

10 Q All right. And you were saying you were preparing brunch.

11 A Well, my sister and -- the girls were preparing brunch downstairs.

12 Q Okay. And so, you said you heard something from the other side?

13 A Correct.

14 Q What do you mean by the other side?

15 A The neighbor.

16 Q So, through the wall?

17 A Through the wall, correct.

18 Q Okay. What do you -- what did you hear?

19 A Just an argument. You know, there was an argument, and somebody
20 said I don't give a -- F word, you know, and there's some other arguments that
21 we really couldn't understand.

22 Q Okay. And then what happened after that?

23 A And then we heard two loud noises. You know, we didn't know what it
24 was. You know, just two loud noises and then that was about it.

25 Q Okay. Do you recall around what time this was?

1 A I would say anywhere from 11:15 to 11:30.

2 Q Okay. And eventually did the -- did you -- the police come and contact
3 you?

4 A Yes. After a few minutes, police came, knocked on our door, and they
5 started asking us questions, if we heard anything.

6 Q Okay. And you talked to the police?

7 A We did.

8 Q And you eventually gave them a statement; is that right?

9 A I did.

10 Q Okay. Let's talk a little bit about -- you said after a few minutes the police
11 knocked on your door; is that right?

12 A They did.

13 Q Okay. It wasn't right after the loud noise?

14 A No.

15 Q When you say a few minutes, was it more like five minutes or more like
16 45 minutes?

17 A I would say anywhere from 20 to 30, 35 minutes.

18 Q Okay.

19 A In that neighborhood.

20 Q So, somewhere between 20 and 35 minutes, you remember? And you
21 said you heard the noise around 11:35?

22 A 11:15, 11:30.

23 Q Okay. So, the police are arriving. Let's say we go to 11:30, I just want to
24 get the math right.

25 A Correct.

1 Q Twenty minutes later, would be 11:50. And you said 20 to 35 minutes
2 later?

3 A Yes.

4 Q Okay. So, 35 minutes later, doing the math in my head, it would be
5 around 12:05?

6 A Close.

7 Q Okay. Somewhere in that range the police arrived?

8 A Correct.

9 Q Okay. All right. Thank you very much, sir.

10 MR. STANTON: I have no questions of Mr. Reyes. And thank him
11 for appearing.

12 THE COURT: Do any of the ladies and gentlemen of the jury, have
13 any questions you wish the Court to ask the witness? There being no
14 questions, thank you very much, sir, for your testimony. You're excused.

15 THE WITNESS: Thank you.

16 THE MARSHAL: Follow me, please.

17 THE COURT: So, we're going to go back to the State's case. Yes?

18 MR. O'BRIEN: Yes, Your Honor.

19 THE COURT: Okay. So, we're going back to the State's case, and
20 they're going to call their next witness.

21 MR. STANTON: Thank you, Your Honor. The State would call
22 Detective Ben Owens.

23 THE MARSHAL: Watch your step.

24 BENJAMIN OWENS, PLAINTIFF'S WITNESS, SWORN

25 THE CLERK: Thank you. Please be seated. State and spell your

1 first and last name for the record.

2 THE WITNESS: My name is Benjamin Owens, B-E-N-J-A-M-I-N O-
3 W-E-N-S.

4 MR. STANTON: May I proceed, Your Honor?

5 THE COURT: Yes. Thank you.

6 DIRECT EXAMINATION

7 BY MR. STANTON:

8 Q Sir, how are you employed?

9 A I'm a detective with the North Las Vegas Police Department.

10 Q How long have you been a police officer?

11 A Twenty-one years.

12 Q And can you describe what your current assignment is?

13 A I'm a detective assigned to the robbery/homicide detail.

14 Q And how long have you been in that particular detective assignment?

15 A Twelve years.

16 Q In those 12 years, and including your years in other detective
17 assignments and patrol, how many violent either death scenes or violent crime
18 scenes have you ever been the primary investigating detective or in an
19 assistant capacity?

20 A Close to a hundred.

21 Q And does a number of those involve wounds that are inflicted by
22 gunshots?

23 A Yes.

24 Q Now, Detective Owens, I would like to go back to January of 2016.

25 Clearly by your previous answers, you are assigned to the Homicide/Robbery

1 Division of the North Las Vegas Police Department. How is it that detectives
2 are assigned to a particular case when a homicide takes place?

3 A If a homicide occurs during normal business hours, which for me would
4 be day shift, we would respond to the scene to assist the first responders,
5 which would be patrol. If it occurs during after hours, we would be called out
6 to the scene.

7 Q And is there a rotational basis among detectives who are kind of up for
8 the next homicide?

9 A Yes. We're usually on call for a period of time, which we would handle
10 basically any homicides that occur, or any crimes that we would investigate
11 during that time we were on call.

12 Q Directing your attention now specifically to January 1st, 2016, did you
13 and other members of your unit, or the on call detectives for homicide
14 investigations that responded to a case ultimately involving the homicide of
15 Patrick Fleming?

16 A Yes.

17 Q Can you describe kind of what your role is and how those roles within
18 the Detective Unit, or the Detective Division, are split up when you respond to
19 a scene?

20 A Yes. We always work with a partner. Each team will be assigned -- one
21 detective will be assigned as the lead investigator, the other detective will be
22 assigned as the co-lead. Generally, you switch it off and determine -- based on
23 whoever the lead is, will determine whether or not -- how the duties are going
24 to get delegated out.

25 Q And so, at this time in this case involving Patrick Fleming, were you one

1 of the two, what is referred to in your line of work, primary homicide
2 detectives responsible for this investigation?

3 A Yes.

4 Q Who is your partner?

5 A At the time, my partner was Detective Sayoko Wilson.

6 Q So, do you respond to the scene?

7 A Yes.

8 Q Were you familiar with the general area and the address of the scene
9 that you responded to?

10 A Yes.

11 Q Where is that?

12 A I believe it's off of Centennial, the northwest portion of our city.

13 Q And I'm going to show you a photograph that has been admitted as
14 State's Exhibit 4, and do you recognize the location that's depicted in that
15 photograph?

16 A Yes. So, this is the building of the scene, 4032 Smokey Fog. You can
17 see the numbers there, 4032, posted on the building.

18 Q Now, prior or soon after your arrival, is there a briefing process that
19 occurs involving you, the crime scene analyst, and first responders?

20 A Yes.

21 Q Can you kind of describe how that occurred in this case?

22 A So, we basically were briefed in by the patrol, first responders that
23 responded to the initial 9-1-1 calls at the scene. They gave us the basics of the
24 incident, the who, where, what, when and why, and what occurred.

25 Q Okay. And you were aware after that briefing, that there were two

1 individuals still inside the home, adults, by the name of Miranda Sutton and
2 Akira Veasley?

3 A Yes.

4 Q As part of the assignments, once that briefing takes place, interviewing
5 those two individuals becomes a priority and kind of divvied up between you
6 and the other primary; is that accurate?

7 A That's correct.

8 Q What was your responsibility compared to your partner's about the
9 scene kind of from the initial processing timeframe?

10 A My responsibility was for the scene inside the apartment and the vehicle.
11 I was tasked with obtaining telephonic search warrants.

12 Q So, let me talk to you about some aspects of the scene to begin with and
13 from this protective -- perspective in my next questions, Detective Owens, I'm
14 not asking kind of chronologically, but an overall assessment of your
15 investigation from the entirety of the time you were there and in days going
16 forward, okay?

17 A Yes.

18 Q So, is this photograph and the areas of entrance and exit, windows,
19 doors, garage doors, important for you as a crime scene analyst to examine
20 closely?

21 A Yes.

22 Q And I'm going to show you Exhibit 5. Do you recall that portion of this
23 residence?

24 A I do.

25 Q And that's the front door?

1 A Yes.

2 Q Let me ask you, Detective, in your investigation, did you see anywhere in
3 any part of the structure, windows, doors, garage doors, anything else, signs
4 of forced entry?

5 A No.

6 Q In your field, that is as a homicide detective, is investigating for signs of
7 forced entry an important thing to do?

8 A Yes.

9 Q I'm going to now talk to you about what I'll refer to as the bottom of the
10 stairs inside the apartment. Are you kind of familiar with that whole portion of
11 the scene, itself?

12 A Yes.

13 Q Let me show you State's Exhibit 20. Do you recognize what's depicted in
14 that photograph?

15 A I do.

16 Q Now as you're investigating the scene from -- now, I want to jump back
17 to an earlier perspective in the processing of the scene. Is there kind of a
18 concern and a strict protocol about how -- and the limitations of the
19 investigation of Mr. Fleming's physical body?

20 A Yes.

21 Q What is the limitation, what's kind of the protocol about you, as a
22 homicide detective investigating this aspect of the scene?

23 A Basically, we want to protect the integrity of the crime scene once it's
24 determined that he is deceased and that, you know, there's -- medical aid is
25 not going to be -- wouldn't -- you know, once it's determined that he is

1 deceased, then basically his body, itself, becomes part of our -- the evidence
2 for the crime scene.

3 Q And there is another investigative agency that has primary -- a priority
4 above yours, at least initially, about his body at the scene?

5 A Yes. That would be the Clark County Coroner's Office.

6 Q So, kind of tell me about what happens in the scene. Can you go up, go
7 through his pockets, look at wounds, anything, when you first get there?

8 A No.

9 Q And is that because of that process?

10 A That's correct.

11 Q Now, let -- I want to, in this photograph, direct your attention to the
12 waistband of Mr. Fleming. Do you recall what that item I just pointed to is?

13 A Yes. It is the grip portion of a Glock pistol, semi-automatic pistol.

14 Q Now, the condition of that pistol and its caliber, was that important to
15 you?

16 A Yes.

17 Q Now, initially when you're here, based upon what you just testified, you
18 didn't, and you couldn't, pursuant to the protocol, retrieve that, look at it, find
19 out what caliber it is and what condition it is; is that correct?

20 A No, because it is -- basically, it's tucked into his waistband on his person,
21 on his body.

22 Q Let me ask you some questions about what you are -- now, I'm going to
23 go through asking you globally in your investigation. So, Detective Owens,
24 here, feel free to address any part of your investigation, either that day or the
25 next day, when you, along with your partner, attended the autopsy of Mr.

1 Fleming, okay?

2 A Yes.

3 Q Now, once that weapon is fully examined, both at the scene, at the crime
4 lab, or back at the North Las Vegas Police Department, were you able to
5 determine the condition of that weapon in the holster about how it was
6 oriented for a shooter?

7 A Yes. The weapon is tucked into his waistband, in what's referred to as
8 an inside the waistband holster. So, what that is, there's a metal clip that
9 hooks over the belt. The holster and the firearm, itself, are tucked into the
10 pants waistband, and the way that that pistol is oriented just to the right of the
11 center line, is what's referred to as an appendix carry inside the waistband,
12 and it's oriented for what would be a right-handed shooter.

13 Q And you, to state the obvious, as a detective, as a police officer, carry a
14 firearm?

15 A I do.

16 Q What kind of firearm do you carry?

17 A I carry a Glock 19, 9 by 19 millimeter handgun.

18 Q And do you have to qualify with that weapon?

19 A Yes.

20 Q How often?

21 A I have to qualify with it at least twice a year, but I usually qualify four
22 times a year.

23 Q And you have done with that weapon that you just mentioned, or a
24 weapon similar to that, every year since you've been a police officer?

25 A Correct.

1 Q While you were at the scene, and let me just focus now here at the
2 scene, did you, knowing what you observed about the position and oriented to
3 a right-hand shooter, did you notice any concern about damage to Mr.
4 Fleming's right arm at the scene?

5 A Yes. We noticed that he had more than one apparent gunshot wound,
6 and one of those wounds was to his right arm.

7 Q And did you attend the autopsy the next day?

8 A Yes.

9 Q As part of the autopsy procedure -- well, let me back up a question. I
10 apologize. How many autopsies in cases that you've investigated have you
11 attended?

12 A Just a ballpark, it's got to be at least a couple hundred.

13 Q And during those procedures, is it frequently where an x-ray is taken or
14 multiple x-rays?

15 A Yes.

16 Q Did you see those in this case about Mr. Fleming?

17 A Yes, I did.

18 Q What did you notice about Mr. Fleming's right arm?

19 A That the right humerus, which is his upper arm bone, was fractured
20 completely.

21 Q Let me go back now to the condition of the weapon. As it's being
22 processed, were you aware of and observed the condition of that firearm as to
23 what it contained and whether there was a round in the chamber?

24 A Referring to the weapon that's tucked into the decedent's waistband still?

25 Q Yes, sir.

1 A Yes. So that's a semi-automatic pistol. We determined later that it was a
2 Glock 19, 9 by 19 millimeter caliber, and there was a magazine loaded with
3 light cartridges, however, the chamber was empty, meaning it was not -- it did
4 not have a round in the chamber ready to fire.

5 Q So, if I pulled that trigger, based upon your knowledge of this firearm,
6 would it have gone off?

7 A No.

8 Q It would have required what for it to have been ready to actually fire
9 when pulled the trigger?

10 A You would have to cycle the slide to the rear to the first chamber round
11 in order to make it ready to fire.

12 Q The next series of questions I want to transition to, Detective, are how
13 you kind of coordinate your activities with crime scene analysts. There's been
14 testimony in this trial about this particular case. You are aware that crime
15 scene analysts from the North Las Vegas Police Department can conduct
16 certain forensic sampling at scenes?

17 A Yes.

18 Q DNA, fingerprints, gunshot residue, several others, but just to name
19 some relevant ones here; is that correct?

20 A That is correct.

21 Q Now, when that decision is made about where to take samples and what
22 type of samples to make, what information do you go from to make those
23 decisions?

24 A We look at the totality of the circumstances, and that information can
25 change as the investigation progresses.

1 Q And that information changing as it progresses, does that also include
2 the progression of time, and in some cases, the progression of significant
3 amounts of time?

4 A Yes. If it's not contemporaneous with the time -- with the crime, itself,
5 then that may alter our decision whether or not to do certain types of testing,
6 like if we recover evidence later on, days or even weeks after the crime, itself.

7 Q Now what is the difference between -- or what is the process, if you
8 could describe once again in a general fashion, your role and submitting
9 forensic samples that are taken for further testing in a crime laboratory
10 setting?

11 A So, in general, if we believe something has evidentiary value that would
12 require further forensic testing at the lab, for example, to compare a sample of
13 potential DNA to a known person, then we would send it off and make that
14 request.

15 Q And that -- those requests can be made days, weeks, sometimes even
16 months later in the cases you investigate?

17 A Oh, yes.

18 Q At the end of your day and in processing this scene on January 1st, 2016,
19 would it be fair to say that you had one suspect described, that is, an African
20 American male adult with the name of Hatch?

21 A Yes.

22 Q Were you aware of requests made by Ms. Sutton and Ms. Veasley about
23 concerns for their safety?

24 A Yes. They were interviewed by detectives where they directly made
25 those concerns about this.

1 MR. O'BRIEN: I'm going to object as to hearsay.

2 THE COURT: Counsel?

3 MR. STANTON: Wait. Your Honor, it's not being offered for truth
4 of the matter through this witness, but simply that those requests were made
5 through law enforcement, and that he was aware of it.

6 THE COURT: Just the request?

7 MR. STANTON: Yes.

8 THE COURT: And that's it?

9 MR. STANTON: Yes.

10 MR. O'BRIEN: Your Honor, can we approach briefly?

11 THE COURT: Sure. I'll see you in the hallway, how about that,
12 because it's hard to talk up here. Sir, if you could remain seated and not talk
13 to anyone, I'll be right back.

14 THE WITNESS: Yes, Your Honor.

15 [Court and counsel exit courtroom at 3:12 p.m., not recorded]

16 THE COURT: Okay. So, based upon conversations at sidebar, it's
17 my understanding you're withdrawing the question at this time, for now?

18 MR. STANTON: At this time, Your Honor, yes.

19 THE COURT: All right. And ladies and gentlemen, you're
20 instructed to disregard the last testimony in response to the last question
21 because it's been withdrawn. And please continue.

22 MR. STANTON: Thank you, Your Honor.

23 BY MR. STANTON:

24 Q Detective, at some point, were you advised that there was a Dodge
25 Durango affiliated with the Sutton/Veasley/Fleming side of the family, or

1 people that lived at that home?

2 A Yes.

3 Q Did you request that that -- I think you stated in your answer to a
4 previous question that you were the Affiant to a search warrant for that
5 vehicle; is that correct?

6 A Yes.

7 Q At the time that you made that request that it be processed, did you
8 know physically where that vehicle was?

9 A All I knew that it was nearby, and that -- I did not know the exact location,
10 no.

11 Q Detective, on what date was the Defendant, Shawn Glover, arrested?

12 A January the 4th, 2016.

13 Q As you testify today, has the .40 caliber semi-automatic handgun
14 involved in this case ever been recovered?

15 A No.

16 Q Based upon your investigation, I believe you answered previously that
17 there was no signs of forced entry?

18 A That's correct.

19 Q Based upon your investigation, were you able to determine that there
20 was any property loss within the Sutton/Veasley/Fleming home?

21 A No.

22 Q Detective, I want to show you State's Exhibit 28. Let me turn off this
23 light. Do you recall the condition of the tile where the evidence tag is
24 underneath that carpet?

25 A Yes.

1 Q Based upon your training and experience, and your knowledge of the
2 wounds -- the gunshot wounds of Mr. Fleming the next day at autopsy, do you
3 have an opinion about where the shooter would have been to cause a bullet
4 strike where you see it in that photograph?

5 A Basically standing directly overhead.

6 MR. STANTON: Pass the witness.

7 MR. O'BRIEN: The Court's indulgence.

8 CROSS-EXAMINATION

9 BY MR. O'BRIEN:

10 Q Good afternoon, Detective.

11 A Good afternoon, counsel.

12 Q Do you recall what time the North Las Vegas police were dispatched to
13 4032 Smokey Fog?

14 A I believe it was a morning call. I want to say approximately 7:45 a.m.

15 Q Okay. Are you sure of that time?

16 A No.

17 Q Okay. Would it assist you to be more specific if you were able to look at
18 your own report?

19 A Sure.

20 Q And to be clear, you did write a report in this case; is that correct?

21 A Yes, I did.

22 Q And that was -- the report was written closer in time than obviously
23 today?

24 A Yes.

25 Q Okay.

1 MR. O'BRIEN: Your Honor, if I can approach?

2 THE COURT: Yes.

3 MR. O'BRIEN: The Court's indulgence to find the report.

4 BY MR. O'BRIEN:

5 Q Detective, did you bring a copy of your report with you, by any chance?

6 A I did.

7 Q You did?

8 A Yes.

9 Q If I could ask you to take a look at it?

10 MR. O'BRIEN: Your Honor, if I can approach, please?

11 THE COURT: Yes.

12 THE WITNESS: So, I was mistaken. It was actually just in the
13 afternoon, about 12:06 is when the patrol officers were first dispatched.

14 BY MR. O'BRIEN:

15 Q At 12:06 p.m.?

16 A 12:06, yes, p.m.

17 Q All right. Thank you, Detective.

18 MR. O'BRIEN: No further questions.

19 MR. STANTON: Nothing further.

20 THE COURT: Do any of the ladies and gentlemen of the jury have
21 any questions you wish the Court to ask the witness? There being no
22 questions, thank you very much for your testimony. You're excused.

23 THE WITNESS: Thank you.

24 MR. STANTON: Your Honor, the State rests.

25 [STATE RESTS]

1 THE COURT: All right. Can I see counsel at the bench?

2 [Sidebar begins at 3:19 p.m.]

3 THE COURT: What's next? Do you need a recess for anything?

4 MR. STANTON: No.

5 THE COURT: Are you done?

6 MR. STANTON: We're done.

7 MR. BASHOR: We've -- the admonition to the Defendant about
8 testifying and his answer to the Court?

9 MR. STANTON: He actually never answered the question whether
10 or not you asked him --

11 THE COURT: We'll take a quick break.

12 MR. STANTON: Right. Right.

13 THE COURT: Okay.

14 MR. STANTON: Okay.

15 [Sidebar ends at 3:19 p.m.]

16 THE COURT: Okay. Well, we were going to take the afternoon
17 recess after the two witnesses were done, and it's time for the afternoon
18 recess. So, we're just talking like a quick restroom break.

19 During this recess, you are admonished not to talk or converse
20 among yourselves or with anyone else on any subject connected with this trial.
21 You are not to read, watch or listen to any report of, or commentary on the
22 trial by any person connected with this case or any medium of information,
23 including, without limitation, newspaper, television, the internet or radio. You
24 are not to form or express any opinion on any subject connected with this trial
25 until the case is finally submitted to you. Ten minutes.

1 THE MARSHAL: All rise. The jury is exiting.

2 THE COURT: By the way, that's real time. I know I have court time,
3 which means it's, you know, ish.

4 [Outside the presence of the jury]

5 THE COURT: Okay. It's closed, right? I can't see.

6 MR. STANTON: It is, Your Honor.

7 THE COURT: Okay. The record shall reflect we're outside the
8 presence of the jury. I wanted to make a record about a bench -- a sidebar
9 conference right now and then let you fill in the blanks if I leave anything out.

10 Basically, there was an objection to a question related to what
11 other detectives did or didn't request as far as the investigation goes. In the
12 hallway, the Defense counsel objected as to calls for hearsay, et cetera. The
13 District Attorney decided to withdraw the question and decide whether they
14 wish to pursue that line of questioning on redirect, and as a result, I ordered
15 the jury to disregard the answer to the question and documented that the
16 District Attorney withdrew the question at that time. Is there anything else on
17 that sidebar?

18 MR. STANTON: Not from the State.

19 MR. BASHOR: And the question was referencing what the
20 detective had heard from other detectives about requests for protection and
21 safety, and that was the grounds for the objection. So, the question and the
22 answer were struck pending cross-examination, which would make it more
23 relevant.

24 MR. STANTON: I just want to modify something slightly. It's not
25 what -- it is, in part, what he heard from other detectives, but a secondary, and

1 the more primary source is the transcript of the recorded interviews on both
2 the 1st and the 2nd of both Ms. Veasley and Ms. Sutton, where those concerns
3 are expressed in the recording and this detective's review of the transcript as
4 part of his investigation back in the time and not in preparation of trial.

5 THE COURT: Well, you could have gotten into all of that had I
6 made a ruling on redirect and gone through all of that, but you withdrew the
7 question. It seems moot at this point.

8 MR. BASHOR: It is.

9 THE COURT: You got the relief you requested, I granted the
10 Defense motion. I ordered them to disregard it. Anything else?

11 MR. BASHOR: No.

12 MR. STANTON: No.

13 THE COURT: Okay. So, quick question then. We -- State, you
14 brought to my attention at the bench, and I wasn't paying attention to that
15 exact issue. So, at this time, I'm going to -- you spoke to the Defendant about
16 his right to take the stand and testify?

17 MR. BASHOR: On several occasions, including today.

18 THE COURT: And I gave you your rights yesterday, and I told you
19 that the State and the Court can't consider comment, and the jury can't if you
20 choose not to testify, and you went through all of that with your lawyers?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And they answered your questions?

23 THE DEFENDANT: I don't want to testify.

24 THE COURT: Okay, but did they answer your questions?

25 THE DEFENDANT: Yeah.

1 THE COURT: Okay. And no questions for your attorneys or for the
2 Court before your lawyers rest?

3 THE DEFENDANT: No.

4 THE COURT: Okay. And it's my understanding you are going to
5 rest, yes?

6 MR. BASHOR: That's correct.

7 THE COURT: Okay. So, as far as scheduling and what to tell the
8 jury when they come back in, I believe we can settle jury instructions this
9 afternoon, giving you the overnight period to be able to incorporate, you
10 know, actually numbered instructions into your arguments. I'm looking right
11 now at the competency calendar, which is only a mild 41 pages. I can usually
12 move through that -- that's 40 people. Give me -- I'll do it in an hour or an
13 hour and five minutes.

14 So, there's no challenge hearings, it's just you're either competent
15 or you're not. There might be some allegations of NSA and some other -- I'm
16 the queen of the Samaritans. Once I get through those things, I'll finish. From
17 the competency folks, perhaps a physical or verbal outburst, which might
18 delay me another three to four minutes, but otherwise, I'm going to get this
19 done in an hour and five minutes. So, I moved my challenge hearing, we're
20 not having a challenge hearing. I can start your trial at 10:15.

21 MR. BASHOR: Sounds great.

22 MR. STANTON: Sounds great.

23 THE COURT: How long do you need for closings?

24 MR. STANTON: Thirty to 40 minutes on behalf of the State.

25 MR. BASHOR: Same.

1 THE COURT: And then what, a ten minute rebuttal?

2 MR. STANTON: In this case, it's probably going to be --

3 THE COURT: Fifteen?

4 MR. STANTON: -- ten, 15 minutes.

5 THE COURT: Okay. I'm just trying to determine, you know, if I
6 have to order the jury lunch tomorrow, which I apparently need to do so that
7 they can have a working lunch and deliberate.

8 So, if there's nothing else, I'll bring the jury in, I'll excuse them.
9 You can take a short restroom break. The Defendant has to stay because we're
10 settling jury instructions, and when we're done with that he can go back.

11 MR. BASHOR: Would you like me to formally rest in front of the
12 jury?

13 THE COURT: Yes.

14 THE MARSHAL: All rise. The jury is entering. The jury is all present, ma'am.

15

16 THE COURT: Counsel, may you stipulate the presence of the jury?

17 [In the presence of the jury.]

18 MR. STANTON: For the State, yes, Your Honor.

19 MR. BASHOR: Yes, Your Honor.

20 THE COURT: All right. At this time, does the Defense have any
21 additional evidence or witnesses to present?

22 MR. BASHOR: No, Your Honor. The Defense rests.

23 [DEFENDANT RESTS]

24 THE COURT: Is there any rebuttal evidence?

25 MR. STANTON: No, Your Honor.

1 THE COURT: All right. Ladies and gentlemen, that concludes the
2 evidence portion of the trial. The way the settling of the jury instructions work,
3 the Court has to settle jury instructions after the conclusion of the evidence.
4 So, the lawyers and I are going to stay and work on our settling of the jury
5 instructions, and when you come back tomorrow morning at 10:15, as soon
6 thereafter as I can start, I will read to you the jury instructions, and you will
7 hear final closing arguments in this case. And then you will retire to deliberate
8 on your verdict.

9 During this overnight -- and I'm sorry I gave you the recess, but I
10 have to discuss scheduling with the attorneys and whatnot. So, during this
11 overnight recess, you are admonished not to talk or converse among
12 yourselves or with anyone else on any subject connected with this trial. You
13 are not to read, watch or listen to any report of, or commentary on the trial by
14 any person connected with this case or any medium of information, including,
15 without limitation, newspaper, television, the internet or radio. You are not to
16 form or express any opinion on any subject connected with this trial until the
17 case is finally submitted to you. 10:15 tomorrow morning.

18 THE MARSHAL: All rise. The jury is exiting.

19 [Outside the presence of the jury.]

20 THE COURT: Is it closed?

21 MR. STANTON: Yes, Your Honor.

22 MR. BASHOR: Yes, Your Honor.

23 MR. O'BRIEN: Yes, Your Honor.

24 THE COURT: Okay. Let's give them a minute. Let's start -- first of
25 all, we're outside the presence of the jury. Before we take a short break

1 ourselves to dig into the jury instructions, I thought I could just cover the
2 verdict form while they are clearing out of the hallway.

3 So, I've reviewed a verdict form that appears to have been
4 attached to an email. I just want Mr. Bashor to come up here and tell me this
5 is the one -- a hard copy of the one that everybody's agreed to.

6 MR. BASHOR: Yes, Judge. If I could just run it by Mr. Stanton
7 really quickly.

8 [State and Defense confer]

9 MR. BASHOR: We're okay, Your Honor.

10 THE COURT: Okay. Thank you. Okay. So, this is the verdict form
11 the parties have stipulated -- you can have a seat. Thank you.

12 The parties have stipulated to the use of that verdict form. Let me
13 just poke my head into the back hallway and make sure the jurors have cleared
14 out, and then I will give you all a short break, and then we can get into the
15 packet.

16 MR. STANTON: Thank you.

17 THE COURT: And if the Defendant needs a break now.

18 [Recess at 3:33, recommencing at 3:42 p.m.]

19 THE COURT: Okay. We're back on the record in State v. Shawn Glover
20 outside the presence of the jury to settle jury instructions.

21 Unfortunately, during that meeting, I told you I was planted front
22 and center in the Legislative Council Bureau, testimony, Grant Sawyer
23 Building. I'm thinking they could see my pores in Reno, and I couldn't really
24 study the jury instructions, even though I thought if I was in my usual seat in
25 the back, I could have done it. So, you will have to bear with me as we go

1 through, and you tell me -- I did notice that there was Defense -- I read the
2 email, I just couldn't read the minutia of each instruction.

3 So, as we go through this grouping that I have here, you can tell
4 me what you agree on, what you don't, and then I'll go back to what you don't.

5 MR. BASHOR: Sounds good.

6 THE COURT: So, Instruction Number 1, members of the jury, any
7 objection? Stock?

8 MR. BASHOR: No, Your Honor.

9 THE COURT: I'm just going to go through them. I'm not
10 numbering them. I just want to hear no objection, no objection.

11 MR. BASHOR: No objection.

12 THE COURT: Okay. If in these instructions any rule, direction or
13 idea. Any objection?

14 MR. BASHOR: No objection.

15 THE COURT: An amended indictment is what a formal method of
16 accusing a person, and it obviously takes out the count that the District
17 Attorney didn't include in the -- to be read by the Clerk.

18 MR. BASHOR: Correct.

19 THE COURT: Any objection?

20 MR. BASHOR: No, Your Honor.

21 THE COURT: Murder is the unlawful killing of a human being. Any
22 objection?

23 MR. BASHOR: No, Your Honor.

24 THE COURT: Am I in a different order than you, you think?

25 MR. BASHOR: I have accused of an indictment, alleging an open

1 charge of murder.

2 THE COURT: Well, that's Page 2 of the previous instruction. That's
3 a two-page instruction. Usually --

4 MR. BASHOR: The information?

5 THE COURT: Yeah.

6 MR. BASHOR: Oh.

7 THE COURT: Usually -- I noticed the State put a separate
8 instruction number on the top, but usually it's the end of the first page.

9 MR. BASHOR: Oh, okay.

10 MR. FLINN: Correct. It just ran over based upon the multiple
11 counts, so.

12 MR. BASHOR: Okay.

13 MR. FLINN: That's just a formatting issue.

14 THE COURT: So, I'll call it a separate instruction if you want or I'll
15 white it out. Usually, it's the same instruction.

16 MR. BASHOR: That's fine. White out is fine, Your Honor.

17 THE COURT: You see what I'm saying?

18 MR. BASHOR: Yes, Your Honor.

19 THE COURT: It's the end of the previous page.

20 MR. BASHOR: I understand.

21 THE COURT: Having done this, I don't know, a couple hundred
22 times.

23 MR. BASHOR: I'm going to take your word for it.

24 THE COURT: I feel like I could instruct, you know -- I wish I could
25 instruct you orally without having to read to you, but I probably could.

1 Murder is the unlawful killing of a human being, no objection.
2 Malice and forethought means the intentional doing of a wrongful act without
3 legal cause or excuse or what the law considers adequate provocation, and it
4 goes on. Any objection?

5 MR. BASHOR: No, Honor.

6 THE COURT: Express malice is that deliberate intention unlawfully
7 to take away the life of a fellow creature.

8 MR. BASHOR: No, Your Honor.

9 THE COURT: I wish we just would say fellow person or another
10 person instead of a creature, but some of these are so old.

11 Murder of the first degree is murder which is perpetrated by means
12 of any kind of willful, deliberate and premeditated killing. Any objection?

13 MR. BASHOR: No, Your Honor.

14 THE COURT: Willfulness is the intent to kill, and it goes on. Any
15 objection?

16 MR. BASHOR: No, Your Honor.

17 THE COURT: Deliberation is the process of determining upon a
18 course of action, and it goes on. Any objection?

19 MR. BASHOR: No, Your Honor.

20 THE COURT: A deliberate determination may be arrived at in a
21 short period of time, but in all cases, and it goes on.

22 MR. BASHOR: No, Your Honor.

23 THE COURT: Premeditation is a design, a determination, and it
24 goes on. Any objection?

25 MR. BASHOR: No, Your Honor.

1 THE COURT: Premeditation need not be for a day, an hour, or
2 even a minute. It may be as --

3 MR. BASHOR: No, Your Honor.

4 THE COURT: Okay. The law does not undertake to measure in
5 units the length of time -- or the length of the period during which, and it goes
6 on. Any objection?

7 MR. BASHOR: No, Your Honor.

8 THE COURT: All murder which is not murder of the first degree is
9 murder of the second degree, and it goes on. Any objection?

10 MR. BASHOR: No, Your Honor.

11 THE COURT: A deadly weapon is any instrument -- okay. I have --
12 I don't know if your -- apparently, your office hasn't caught this because I've
13 brought it up before. On the next instruction, the deadly weapon instruction, I
14 have an unpublished opinion in a case of mine where the last sentence was
15 included because it was a firearm case, and the Supreme Court commented on
16 it with disfavor because it was a question of fact. So, I'm inclined to take out
17 the last sentence.

18 MR. STANTON: That's fine.

19 THE COURT: I haven't -- I can --

20 MR. FLINN: The firearm is a deadly weapon?

21 THE COURT: Yes. I have an unpublished opinion in --

22 MR. STANTON: I read it.

23 THE COURT: Okay. So, you know, I don't -- it's never been a
24 subject of discussion in your office, I don't think, because --

25 MR. STANTON: Well, yeah, and look, my office is like a cargo ship

1 in the ocean, it takes quite a bit to change it one degree, but I agree with you
2 both by statutory definition, but I guess from the Supreme Court in your
3 opinion, the unpublished one, their comment is that it's a factual finding in
4 each case, and there's probably extreme hypotheticals where you wouldn't
5 have, as a mandatory presumption, so I don't have any problem with it.

6 MR. BASHOR: That's fine with me, Your Honor.

7 THE COURT: Isn't it refreshing to hear the cargo ship to move a
8 degree to take -- I mean I know that, and you know that, but they rarely admit
9 that.

10 MR. STANTON: Well, we had 20 years that we charged an ex-felon
11 in possession of a firearm. There is no crime of ex-felon in -- in fact, the
12 element is the exact opposite, but you think somebody might catch that or do
13 something about it. So, I bring it up when I come down to this office and say
14 why do you do it that way, and I think it took five years before they changed it,
15 so.

16 THE COURT: Because we always have. Okay. So, you don't have
17 a problem with me taking out the sentence that a firearm is a deadly weapon?

18 MR. BASHOR: No, Your Honor.

19 THE COURT: A deadly weapon is any instrument which, if used in
20 the ordinary manner, contemplated by its -- oh, I'm sorry, that's the same one.
21 Excuse me. The State is not required to have recovered the deadly weapon,
22 and it goes on. Any objection?

23 MR. BASHOR: No, Your Honor.

24 THE COURT: An assault means intentionally placing another
25 person in reasonable apprehension of immediate bodily harm, and it goes on.

1 Any objection?

2 MR. BASHOR: No, Your Honor.

3 THE COURT: Okay. You're not going to like this, but Line 6 and 7
4 goes right with the firearm is a deadly weapon, in my opinion, to draw an
5 analogy.

6 MR. BASHOR: And then here's the problem. The statute reads
7 that the area must be designated by a city or county ordinance as a populated
8 area, and we haven't had any evidence of that. It's not like, oh, it's a populated
9 area, and you can use your common sense to fulfill that element. The statute
10 requires that it be an element, that it's pursuant to an ordinance or county
11 code.

12 MR. STANTON: Well, is there a reasonable dispute that this area is
13 not within the definition of the North Las Vegas area of congested -- for
14 purposes of destruction?

15 THE COURT: Well, the question is, is that a question of law or a
16 question of fact, because if it's pursuant to a county code, they don't have to
17 go -- you don't have to -- I mean -- right?

18 MR. FLINN: It is the county code defines all of the areas that are --
19 and it's basically all of Clark County, unless you're out in a -- where we all
20 would say this is an empty place.

21 THE COURT: If he asks a witness did that happen here in Clark
22 County, State of Nevada, and the witness says yes, then I'm legally
23 determining that, you know, the area -- I mean there are certain, certain legal
24 determinations. So, the question is, is this something that he would have to
25 present a statute or a code for?

1 MR. BASHOR: In my opinion.

2 THE COURT: Well, let me look at the statute. Do you have it
3 handy?

4 MR. BASHOR: Yes, Your Honor. Can I approach?

5 MR. STANTON: What's the -- oh, the statute.

6 MR. BASHOR: It's 202.287.

7 THE COURT: State, are you looking at this? I assume you're
8 familiar with it.

9 MR. FLINN: The NRS yes, absolutely.

10 THE COURT: Okay. So --

11 MR. FLINN: I do know what -- I mean it says exactly what's in the
12 instruction, correct?

13 MR. BASHOR: With the exception of -- the first paragraph to the
14 instruction --

15 MR. FLYNN: Right.

16 MR. BASHOR: -- isn't the problem, it's the finding of the element,
17 similar to the deadly weapon. Your Honor, in all due candor, I've never tried a
18 case with this count. For -- if I can give you a for instance, like in New Jersey,
19 where I used to practice? It was thousand foot map. If you were dealing
20 drugs within a thousand feet of a school, you would actually have to bring in a
21 map and have this circle go around the school a thousand feet in all directions
22 in order to prove up that element. So, I guess in my -- what I'm saying is that's
23 kind of analogous to here. Like because the code or the ordinance defines
24 what is and what is not a populated area, while I agree that common says it's,
25 in all likelihood, a populated area, and here's the houses, and cars, and stuff

1 like that. I don't think that's sufficient to meet that element.

2 THE COURT: So, you're saying they have to prove beyond a
3 reasonable doubt that the county or the city has designated this as a popular
4 area -- a populated area?

5 MR. BASHOR: Correct.

6 THE COURT: As opposed to the Court finding that as a matter of
7 law and giving the instruction in that regard?

8 MR. BASHOR: Correct.

9 MR. STANTON: And the State disagrees with that. Number one, I
10 would like to use the analogy that counsel did, because the distinction
11 between that is that there's actually a factual element that might be in dispute.
12 That is, what is the distance --

13 THE COURT: Sure.

14 MR. STANTON: -- between a particular event, and what is the
15 event, and whether that falls within the thousand foot rule. Here --

16 THE COURT: What is -- what is --

17 MR. STANTON: I'm sorry.

18 THE COURT: -- the city or county ordinance that designates North
19 Las Vegas, that the city of North Las Vegas is a populated area?

20 MR. FLINN: I didn't bring it.

21 THE COURT: Can you find that, please? Because if you want me to
22 determine that as a matter of law, you better give it to me.

23 MR. FLINN: No, I understand, Your Honor. I apologize, I didn't
24 bring it because Mr. Bashor said he didn't have an objection to my email, so.

25 MR. BASHOR: Right, because -- I didn't mean to interrupt. Yeah, I

1 didn't have an objection because, again, I thought that, like the deadly -- I
2 wasn't aware of the unpublished case you're talking about with the deadly
3 weapon. I thought that is was something that -- and my other concern, just to
4 make the record clear, Judge, is that this element dramatically changes the
5 penalty. If it's an unpopulated area, it's a misdemeanor. If it's a populated
6 area, it's two to 15 years. And so, I would think that something of that
7 significance, and the fact that is it an element of the crime, would have to be
8 something that the jury would determine as a matter of fact, not law.

9 THE COURT: Could you find the ordinance for me? Like not right
10 this second, but you can be working on it while we're doing this?

11 MR. FLINN: Absolutely, Your Honor, yes.

12 THE COURT: Sure. Okay.

13 MR. STANTON: So, can we mark that one and then move on or --

14 THE COURT: Yeah. Put a question mark on it. To constitute the
15 crime charged, there must exist a union or joint operation of an act forbidden
16 by law and an attempt to do the act. Any objection?

17 MR. BASHOR: No, Your Honor.

18 THE COURT: The Defendant is presumed innocent. I assume you
19 have no objection to the only beyond a reasonable doubt standard instruction
20 that the Supreme Court has approved?

21 MR. BASHOR: No objection.

22 THE COURT: The evidence which you are to consider in this case
23 consists of the testimony of the witnesses, the exhibits, and any fact admitted
24 and agreed to by counsel, and it goes on. Any objection?

25 MR. BASHOR: No, Your Honor.

1 THE COURT: The flight of a person after the commission of a
2 crime is not sufficient in itself to establish his guilt. However, if flight is
3 proved, blah, blah, blah.

4 MR. BASHOR: No, Your Honor.

5 THE COURT: No objection. Credibility or believability of a witness.
6 This is a stock instruction.

7 MR. BASHOR: No objection.

8 THE COURT: All right. The witness -- the commonly known as the
9 expert witness instruction, a witness who has special knowledge, skill,
10 experience, training or education, and it goes on. Any objection?

11 MR. BASHOR: No, Your Honor. We withdraw the next one, before
12 you may rely on circumstantial evidence, Judge.

13 THE COURT: Withdrawn?

14 MR. BASHOR: Withdrawn.

15 THE COURT: Okay. The next is in arriving at a verdict in this case
16 as to whether Defendant's guilty or not guilty, the subject of penalty or
17 punishment is not to be discussed or considered and in no way influence your
18 verdict.

19 MR. BASHOR: No objection.

20 THE COURT: It is the constitutional right of a Defendant in a
21 criminal trial that he may not be compelled to testify, and it goes on. I assume
22 you requested this?

23 MR. BASHOR: We do.

24 THE COURT: All right. And so, that will be given. Although you
25 are to consider only the evidence in the case in reaching a verdict, you must

1 bring to the consideration, and it goes on. Any objection?

2 MR. BASHOR: No, Your Honor.

3 THE COURT: When you retire to consider your verdict, your
4 verdict must be unanimous. Stock instruction. Any objection? I don't know,
5 mine are not in an order I would normally do, but that's okay.

6 MR. BASHOR: I have -- yes, Your Honor, I have that. No objection.

7 THE COURT: Okay. Playback instruction, any objection?

8 MR. BASHOR: No, Your Honor.

9 MR. STANTON: And, Judge, based upon your comment, the State
10 has no objection to the Court ordering these instructions in any manner, in any
11 order that you believe --

12 THE COURT: Well, the order in which the instructions are given
13 has no relevant -- no -- what is the language? Something of their relative
14 importance.

15 MR. BASHOR: Uh-huh.

16 MR. STANTON: I understand that, but I think courts have an
17 assessment of a logical flow, and so, at least from the State, I have no
18 objection.

19 MR. BASHOR: I join. Whatever order is fine with me, Your Honor.

20 THE COURT: Okay. So, during this trial and your deliberations,
21 you are not to communicate with each other, and it goes on.

22 MR. BASHOR: No objection.

23 MR. STANTON: That was not offered by me, I don't believe; was
24 it?

25 MR. BASHOR: No, I don't remember if this was an instruction I

1 stole from *Coleman Vaoga*, which we tried in here about a year ago, or from
2 Judge Herndon's, but I don't know if this is -- I just added it in there. I don't
3 have a position either way.

4 MR. STANTON: I think I had a case within the past year or two, I
5 think within the past year, where somehow this was considered by District
6 Court Judges, or at least the Court, for -- that this was something that was
7 encouraged to include. Do you know anything about that, Judge, because --

8 THE COURT: Yes.

9 MR. STANTON: -- I don't have this as a predicate --

10 THE COURT: Yeah, I want to say it's Herndon.

11 MR. STANTON: Yeah, because I think it's probably --

12 MR. BASHOR: Uh-huh.

13 THE COURT: I have an email from Herndon.

14 MR. STANTON: -- a pretty good thing to do, and I want to
15 incorporate it in all mine, if that's what the Court's feeling is as well, that it's
16 going to be a stock.

17 THE COURT: The only thing is, you know, once they go to the jury
18 deliberation room, I think, you know, this instruction, where it says during the
19 course of the trial, I tell them that in the introduction. So, I don't have any
20 problem that they shouldn't be communicating with anyone by text, phone or
21 internet, or other means, and I think it's wise to give it. And if you don't care,
22 I'll put it before now you will listen to the arguments of counsel. It's just kind
23 of my second to last instruction before I get -- obviously weave the
24 manslaughter in there somewhere.

25 MR. BASHOR: Very good, Your Honor.

1 THE COURT: Okay. So, if nobody objects to it, I like it, so let's give
2 it.

3 MR. BASHOR: Great.

4 THE COURT: Now, you will listen to the arguments of counsel,
5 who will endeavor to aid you. I assume you have no objection since that's
6 stock?

7 MR. BASHOR: No objection.

8 THE COURT: Okay. Now, these are the -- let me just look real
9 quick here. Okay. So, I have two instructions from the State. One is funky to
10 me. It starts, it is a killing. Is that the second page of something or -- it just
11 starts oddly.

12 MR. STANTON: Yeah, that's just a typographical error of a
13 combination of two instructions, so.

14 THE COURT: So, can you redact it and give it back to me in the
15 way you would like it to look, so I could look -- compare that to what the
16 Defense is proposing?

17 MR. STANTON: Sure.

18 THE COURT: Because the Defense -- I don't know, let's see.

19 MR. STANTON: It should read manslaughter is a killing upon, or
20 probably more precisely --

21 THE COURT: Voluntary manslaughter?

22 MR. STANTON: Yeah. The Lines 8 and 9 should be at the
23 beginning of the instruction, and then it contextually reads, I think, the way it is
24 written. So, the first line would be --

25 THE COURT: So, it would say voluntary manslaughter is the

1 unlawful killing of a human being without malice, forethought, or without
2 deliberation, or premeditation. It is a killing upon a sudden quarrel or heat of
3 passion, and so on?

4 MR. STANTON: Yes.

5 THE COURT: Okay. And then you have a heat of passion
6 instruction. So, there's only two total instructions, as opposed to kind of a
7 broken down -- so let me ask you this, is there a reason why the Defense has
8 manslaughter is the unlawful killing of a human being without malice,
9 expressed or implied, and without any mixture of deliberation, and then the
10 next -- very next page says voluntary manslaughter is the unlawful killing of a
11 human being without malice, forethought, and without deliberation or
12 premeditation. It's the same thing, except for the expressed or implied. Why
13 are we --

14 MR. BASHOR: Judge, I pulled these four instructions right from
15 *Vaoga*. I didn't -- because it was the most recent trial, I had that we actually
16 have the jury charged with the law on manslaughter was *Vaoga*.

17 THE COURT: So, what's your difference between your heat of
18 passion and the State's heat of passion? Okay, because yours says the basic
19 injury is whether or not at Line 8, and that's not right. So, I'm just curious. I
20 mean I'm not picking on you; a typo is not a big deal. I'm just saying --

21 MR. BASHOR: You know, Judge, this is not of --

22 THE COURT: All right. Well, let's go back to the State's first.

23 MR. BASHOR: Right, let's use theirs.

24 THE COURT: Okay. What's the beef with the first one, when the
25 State asks to move lines 8 and 9 to lines 1 and 2, and then it goes on. You

1 don't think it's an inaccurate statement of the law; do you?

2 MR. BASHOR: No.

3 THE COURT: Okay.

4 MR. BASHOR: No.

5 THE COURT: So --

6 MR. BASHOR: I have no objection to using the State's two
7 instructions as modified.

8 THE COURT: Okay. So, can you take your Lines 8 and 9 then --

9 MR. STANTON: Yes. I'm sorry, Your Honor.

10 THE COURT: -- and move them to Lines 1 and 2.

11 MR. STANTON: Yes.

12 THE COURT: And then just bump everything else down so that we
13 could -- you could email it to my law clerk. Or does he have -- he must have it.
14 Is he -- he's here, isn't he?

15 MR. STANTON: I've been sending it to Diane; is that okay?

16 MR. BASHOR: I've been sending -- I sent it to him yesterday.

17 THE COURT: Yeah, either one.

18 MR. BASHOR: I did. I sent it to him.

19 THE COURT: But, you know, she's going to make him do it, so.

20 MR. STANTON: Yeah. I'll send it to Diana. I don't have the law
21 clerk's.

22 THE COURT: That's the benefit of 29.5 years of experience. Okay.
23 So, you don't have a problem with the two -- let me get -- let me get somebody
24 on fixing this real quick --

25 MR. STANTON: Okay.

1 THE COURT: -- and I'll be right back.

2 [Judge exits the courtroom at 4:02 p.m. and re-enters at 4:03 p.m.]

3 THE COURT: Okay. As we speak, my law clerk is doing your work
4 for you. Excellent. Next. So, the State has no more manslaughter
5 instructions, correct?

6 MR. STANTON: Correct.

7 THE COURT: Okay. So, moving to the -- I was going to go to the
8 Defense and see if there's anything they're withdrawing in light of that or want
9 to add on top of it.

10 MR. STANTON: Okay. The only comment that I would like to
11 make, Your Honor, I think it's important when the settling instructions record is
12 developed is, I'm aware of the law about when lesser includeds in an open
13 murder are permitted. It's important, I think, for the record, that I submitted
14 these instructions under the -- better to submit them than to have them in the
15 same font and paginated, as opposed to the State's belief that they can or
16 should be given.

17 So, number one, it is, in my opinion, the lesser includeds being
18 inconsistent with the theory of the Defense. I'm also aware that the Nevada
19 Supreme Court, in addressing this issue, says that it's not to be determined
20 based upon the theory of the Defense, but whether or not there's the slightest
21 whiff of evidence that could be argued about these.

22 So, with that, I just want the record to state the State's perspective
23 of the lesser includeds while they're in here and that -- I'm assuming that the
24 Defense, from a strategic perspective, is requesting that the lesser includeds
25 be given.

1 MR. BASHOR: Yes.

2 THE COURT: Okay. So, I was waiting when you were -- waiting to
3 see when you were going to bring that up. That's not my --

4 MR. BASHOR: Did you want to go to the Defense unsettled?

5 THE COURT: Yes. Just give me one second. So, starting with
6 your manslaughter, the unlawful killing of a human being without malice,
7 expressed or implied, and without any mixture of deliberation, and then
8 your --

9 MR. BASHOR: I withdraw all four, Judge.

10 THE COURT: Okay. So, you believe they're covered here?

11 MR. BASHOR: Yes, Your Honor.

12 THE COURT: Okay. All right. Can you approach and get a copy of
13 the, you know, corrected version?

14 MR. FLINN: I do have that municipal code, as well, Your Honor,
15 whenever the Court's ready to listen to that.

16 THE COURT: Okay. Right now, we have the Prosecution is not
17 required to present direct evidence of a Defendant's state of mind as it existed
18 during the commission of a crime, and the jury may infer the existence of a
19 particular state of mind from the circumstances disclosed by the evidence.
20 The State has offered that instruction with authority cited as *Miranda v. State*,
21 101 Nevada 562, a 1985 case, and it's in a pile marked objected to by the
22 Defense.

23 MR. BASHOR: That's correct, Judge.

24 THE COURT: So, at this time if you would like to make a record
25 about what your objection is so the District Attorney can respond, and then I'll

1 make a decision.

2 MR. BASHOR: Sure. I mean, Judge, in its plain reading, first of all
3 I think it's cumulative to the other explanations of how circumstantial evidence
4 can be used. It is, as Your Honor explains in the opening instructions, and it's
5 repeated here, circumstantial evidence can be just as powerful, if not more
6 powerful, as direct evidence of the state of mind.

7 And so, my opinion, when we go out of our way to say -- and
8 remind them that the circumstantial evidence is state of mind, it's something
9 that can be considered. It kind of lowers, in my mind, their burden, especially
10 since the cumulative nature exists. I also read *Miranda*. It's kind of a
11 *McConnell* issue in *Miranda* because the argument by the, I guess the
12 Appellant and *Miranda* was that there was kind of a double counting, that the
13 felony murder got them to the penalty phase, and then the only aggravated
14 they had was the felony.

15 And so, they went into great length to explain that there was
16 circumstantial evidence of a robbery separate and apart from the murder. And
17 so, I think in that context, I could understand it's applicable -- excuse me,
18 applicability, but I would ask that it not be given, given the other instructions.

19 MR. STANTON: Well, I think I agree that that's the context is what
20 it is, but the Supreme Court in the *McConnell* analysis, I think delves precisely
21 to why this is a correct statement of the law and speaks directly to that issue.
22 Once again, I don't think it highlights anything because they're instructed that
23 none of the instructions have more importance than one another, and the well-
24 worn phrase that they're dutybound to follow their instructions, and we
25 assume that they will.

1 THE COURT: This is not an inaccurate statement of the law, in the
2 Court's opinion. I've given this instruction probably 50 times, and I'm going to
3 give it in this case over the Defense's objection. So, I appreciate the argument,
4 understand it, and it's overruled. I'll give that instruction and --

5 [Judge and Clerk confer.]

6 THE COURT: So other than that instruction, which you made a
7 very good record on, were there any other State proffered instructions that I
8 haven't covered that were objected to by the Defense, because that's the only
9 one that was presented to me.

10 MR. BASHOR: No, Your Honor.

11 THE COURT: Okay. Let me get a copy of that, because I took off
12 the cite from the bottom, and I'll give that to you. If we go to the Defense
13 proffered instructions now, please.

14 Starting with you are instructed, and if you find the State has
15 established the Defendant has committed first degree murder, you shall select
16 first degree as your verdict. The crime of first degree murder includes the
17 crime of second degree murder. You may find the Defendant guilty of second
18 degree murder if -- thank you. I'm sure Mr. Stanton needs that.

19 MR. BASHOR: That's no problem. I need to burn the calories.

20 THE COURT: So, I'm sorry. You may find the Defendant guilty of
21 second degree murder if you have not found beyond a reasonable doubt that
22 the Defendant is guilty of murder in the first degree, and all 12 of you are
23 convinced beyond a reasonable doubt the Defendant is guilty of the crime of
24 second degree murder. If you are convinced beyond a reasonable doubt that
25 the crime of murder has been committed by the Defendant, but you have

1 reasonable doubt as to whether the murder is in first or second degree, you
2 must give the Defendant the benefit of that doubt and return the verdict of
3 murder in the second degree. I'm just going to read all the second degree
4 related because that's -- then we can have one discussion.

5 The next says, when it is impossible to commit a particular crime
6 without committing it, at the same time and by the same conduct, another
7 offense of less or greater degree, the latter is with respect to the former or
8 lesser included offense. If you're not satisfied beyond a reasonable doubt the
9 Defendant is guilty of the offense charged, he may, however, be found guilty
10 of any lesser included offense if the evidence is sufficient to establish his guilt
11 of such lesser offense beyond a reasonable doubt.

12 The offense of murder, which actually charges the Defendant with
13 first degree murder, necessarily includes the lesser offense of second degree
14 murder. Voluntary manslaughter is a lesser included offense of both first and
15 second degree murder. Thus, you may return a verdict of voluntary
16 manslaughter if you first rule out both first and second degree murder.

17 You're instructed if you find the State has established the
18 Defendant's committed second degree murder, you shall select second degree
19 murder as your verdict. The crime of second degree murder can include the
20 crime of voluntary manslaughter. You may find the Defendant guilty of
21 voluntary manslaughter if you have not found beyond a reasonable doubt the
22 Defendant is guilty of murder in the first degree or second degree; and, two, all
23 12 of you are convinced beyond a reasonable doubt that the Defendant is
24 guilty of the crime of voluntary manslaughter.

25 If you are convinced beyond a reasonable doubt that the crime of

1 murder has been committed by the Defendant, but you have reasonable doubt
2 as to whether such murder was a second degree or voluntary manslaughter,
3 you must give the Defendant the benefit of that doubt and return a verdict of
4 voluntary manslaughter.

5 Next, if you do not find beyond a reasonable doubt the Defendant
6 committed first degree murder or second degree murder, and after
7 consideration of all the evidence you have reasonable doubt as to whether
8 Defendant enacted in the heat of passion caused by adequate legal
9 provocation, you must return a verdict of either voluntary manslaughter or not
10 guilty. This is because the State has the burden of proving beyond a
11 reasonable doubt the Defendant did not act in a heat of passion caused by
12 adequate legal provocation.

13 Next, the term passion, as used in the definition of -- well, I guess
14 we can talk about that one separately. That's more -- let's talk about the first
15 one, two, three, four instructions that I just read into the record. You don't
16 have to talk about them first because you're offering them, and the State has
17 an objection. So, I'll hear the objection, then I can --

18 MR. STANTON: Your Honor, as to the first instruction, you are
19 instructed that you find. I believe, and for purposes of my argument, that's a
20 transition instruction. I have no objection to the Lines 1 through 10 of the
21 instructions. The portions I object to are the last paragraph of that instruction.

22 THE COURT: Okay.

23 MR. STANTON: And I can lay my foundation about the basis of
24 why I object to that portion of the instruction.

25 THE COURT: Sure.

1 MR. STANTON: Number one, I'm aware that there is case law
2 where courts have said that it's not error to give this instruction, but it's a
3 circuitous argument because no one has ever, in my experience, been able to
4 cite to the authority of that portion of the instruction.

5 Number one, I believe it's absolutely nonsensical.

6 THE COURT: Murder.

7 MR. STANTON: Number two, it violates what I think the other
8 instructions are about the jury's duty and method in which they deliberate in a
9 case.

10 THE COURT: Specifically meaning?

11 MR. STANTON: That there is no way, without doing violence to
12 their obligation to apply the elements and instructions of law to the facts,
13 where someone gives the benefit of the doubt if there's a tie. Number one, I
14 can't envision a tie. I don't know how that comes about, but to -- what I read
15 this to be is a very subtle request for compromise, and there is absolutely no
16 authority in any state or federal jurisdiction that I've found remotely that
17 supports this proposition.

18 MR. BASHOR: First, Your Honor, you have given this instruction.
19 It came from *Coleman Vaoga*. Second, I would assert to the authority, it
20 probably rests in *Crawford*, in which it's just an inverse statement that if they
21 haven't reached -- or they have a reasonable doubt, that they should, as to
22 premeditation, deliberation, et cetera, that they should return a verdict of
23 second degree.

24 THE COURT: Well, you're the first DA to ever make this argument.
25 I don't know that I necessarily disagree with it, but I'm going to give this

1 instruction. One, because based upon the facts of this case and the evidence
2 that I heard, I can't even wrap my mind around this being really prejudicial to
3 you. So, we might make law, but it won't be in this, it won't be on that
4 instruction in this case. Next.

5 MR. STANTON: The next one, Judge, is when it's impossible. I
6 think --

7 THE COURT: A lot of its repetitive of what I just read, except for
8 that last part --

9 MR. STANTON: Right.

10 THE COURT: -- voluntary manslaughter.

11 MR. STANTON: And I think to the next one is this second to
12 manslaughter, which I presume, based upon your previous ruling, you're
13 going to give. I have my same objections for the record to that. And with that,
14 I think it's not only cumulative, but --

15 THE COURT: Yeah. I mean if I give, you -- if I give the instruction
16 you were instructed if you find that the State has established the Defendant
17 has committed second degree murder, you shall select second degree murder
18 as your verdict. The crime of second degree murder can include the crime of
19 voluntary manslaughter. And I include Lines 12 through 15, because I've
20 already done that in your other transition instruction, how is --

21 MR. STANTON: Then I agree.

22 THE COURT: -- the middle one not cumulative?

23 MR. BASHOR: Then I agree. When it is impossible to --

24 THE COURT: So, it's withdrawn?

25 MR. BASHOR: Yes.

1 THE COURT: Okay. I'll give the one you -- I'll give the one that
2 Stanton doesn't like, the first objection I've ever heard, that I don't necessarily
3 disagree with, but I'm just going to give it in this case. Next.

4 MR. STANTON: What's the next one that you have in your order,
5 Your Honor. I might have -- is it if you do not find?

6 THE COURT: Yes.

7 MR. STANTON: I think this is --

8 THE COURT: How is this not covered by everything else? I'm just
9 curious.

10 MR. BASHOR: I believe it is, it's withdrawn.

11 THE COURT: Okay. He's withdrawing it. Next is the term passion.
12 I didn't really look at this one yet, so if you give me just a minute. Does this
13 come from a case?

14 MR. BASHOR: We crafted this after a long --

15 THE COURT: It looks crafted.

16 MR. BASHOR: It has a lot of Your Honor's language in it because
17 again, we stole it from *Vaoga*. We -- because the passion definition is used
18 twice, we -- I believe Ms. Craig, in that case, had like 18 different versions and
19 the State had a couple versions, and we --

20 THE COURT: Okay. *Vaoga* beat someone to death with a rock --

21 MR. BASHOR: Right.

22 THE COURT: -- in the desert after some kind of, you know,
23 alleged --

24 MR. BASHOR: A chicken was stolen.

25 THE COURT: Yes.

1 MR. BASHOR: Yeah.

2 THE COURT: There was a theft of chicken.

3 MR. BASHOR: Yes, there was.

4 THE COURT: Hot fresh chicken.

5 MR. BASHOR: Yes.

6 THE COURT: Okay, I'm just -- I'm just putting it out there that the
7 facts are he didn't do it --

8 MR. BASHOR: Well --

9 THE COURT: -- and I haven't heard any other arguments other
10 than there was yelling, yelling by three different other people. Okay. So, you
11 want this?

12 MR. BASHOR: Yes.

13 THE COURT: And the State, I --

14 MR. STANTON: Well, first of all, starting with the first paragraph, I
15 have an objection because I don't think it's --

16 THE COURT: Is there more than one paragraph? What are you
17 looking at?

18 MR. STANTON: No, just one paragraph.

19 THE COURT: Oh, okay.

20 MR. STANTON: In the first paragraph, first sentence of the
21 instruction --

22 THE COURT: Okay.

23 MR. STANTON: -- is a complete misstatement, I think, of the law.

24 The term passion, as used in the Defense definition of deliberation -- I'm
25 unaware that passion is an operative element within deliberations of the

1 instructions in this case or any --

2 THE COURT: Well, did I -- is there a passion and first degree
3 murder in these instructions and I -- that like needs to be clarified for them?
4 Did I miss --

5 MR. BASHOR: It's just that it, that deliberate must be found in the
6 absence of passion. It's a delivered determination may be arrived in a short
7 period of time, but in all cases, the determination must not be formed in
8 passion, or if formed in passion, it must be carried out after there has been
9 time for the passion to subside and deliberation to occur. A mere
10 unconsidered and rash impulse is not deliberate even though it includes the
11 intent to kill.

12 I don't necessarily disagree with what Mr. Stanton is saying as to,
13 like, how it's phrased.

14 THE COURT: Yeah, that first sentence.

15 MR. BASHOR: Right.

16 THE COURT: If I gave that to you that's because nobody objected
17 to it.

18 MR. BASHOR: Right.

19 MR. STANTON: Who was the DA on this case, the rock and
20 chicken case?

21 MR. FLYNN: Pam Weckerly and Nick Ports [Phonetic].

22 THE COURT: Can I tell you something?

23 MR. STANTON: Yeah.

24 THE COURT: Sometimes you can be a DA and agree to everything
25 the Defense wants in an instruction and still win your case. Do you

1 understand what I'm saying?

2 MR. STANTON: I take that exactly as it was intended, Your Honor.

3 THE COURT: So, I agree about the first sentence. It's confusing,
4 and so I --

5 MR. STANTON: And I think the rest of it is duplicative. I think it's
6 already contained in other instructions, either manslaughter or --

7 THE COURT: Can we look at that instruction that it's in?

8 MR. STANTON: Sure. Well, the second sentence is, as applied to
9 first degree murder, a deliberate determination must be formed, and that's the
10 standard --

11 THE COURT: Isn't that in the first degree murder instruction?

12 MR. STANTON: Yes. It's --

13 MR. BASHOR: Yes. It's what I just read.

14 MR. STANTON: -- actually the Defense's instruction is broken
15 down. I think it's the *Runyon* premeditation deliberation. I just put it all in
16 one, but it's in a series of about four or five instructions that break down --

17 MR. BASHOR: That's the one I just read.

18 MR. STANTON: -- premeditation deliberation.

19 THE COURT: You still want what?

20 MR. BASHOR: I said that was the one I just read, that he's referring
21 to.

22 THE COURT: Oh, so it's covered?

23 MR. BASHOR: That is covered.

24 THE COURT: Okay. So, I'll mark this as Defense -- this is going to
25 be marked as a Court's exhibit --

1 MR. BASHOR: Okay.

2 THE COURT: -- next in order number --

3 THE CLERK: 3.

4 THE COURT: -- 3, proffered by the Defense, and the Court declines
5 to give it for two reasons. Number one, the first sentence is confusing,
6 whether I gave it in *Vaoga* -- *Coleman Vaoga* or not; and, number two, the
7 remainder of the instruction is covered in the other instructions.

8 MR. BASHOR: Fair enough, Your Honor.

9 THE COURT: Okay. So, do you have any other proposed
10 instructions that you would proffer, you know, to me to give?

11 MR. BASHOR: Yes, Judge. It's the modified -- I sent this as a
12 separate email around noon today. It's one instruction. It's a limine -- it's a
13 version of the limine instruction that Your Honor had given.

14 MR. STANTON: It's a Tog instruction, Your Honor.

15 THE COURT: Oh, yeah, yeah, yeah. Where is it? Yes, yes, yes. I
16 like this. So, we're going to put it -- do you care where it goes?

17 MR. STANTON: No.

18 MR. BASHOR: No.

19 THE COURT: Okay. This is a good instruction, and I'm going to
20 give that.

21 MR. STANTON: You created it.

22 THE COURT: Yeah.

23 MR. BASHOR: Well, that one I slightly modified.

24 MR. STANTON: It's the tog instruction.

25 THE COURT: That's right.

1 MR. BASHOR: It is slightly modified, Your Honor, because of the
2 concerns you gave the, ladies and gentlemen, now I'm going to caution you. I
3 took --

4 THE COURT: Yeah.

5 MR. BASHOR: -- that part out.

6 THE COURT: Right. Well, that would explain why I like it, because
7 I helped write it.

8 MR. BASHOR: Right.

9 THE COURT: I was a contributing author.

10 MR. BASHOR: Very good. So, that just leaves us with the
11 discharging.

12 THE COURT: Right. But first, I just need to get -- if you don't
13 mind, what I was going to do was get a little order together here.

14 MR. BASHOR: Great.

15 THE COURT: Then listen to the argument, decide if I'm going to
16 give it, then copy them and give them to you in the same order, and then
17 number them.

18 MR. BASHOR: That's perfect.

19 MR. STANTON: That's perfect.

20 THE COURT: So, just give me a minute. Okay. Okay. I've made a
21 proposed order, which I will give you a copy of, and then if you -- I won't
22 number it, obviously, and we'll go through it, and if there's something you
23 prefer moved around, we can do it.

24 So, the final issue then is related to the instructions proposed by
25 the State, that reads any person who willfully, unlawfully, maliciously

1 discharges a firearm within an occupied structure is guilty of discharging a
2 firearm within a structure. That structure must be within an area designated
3 by the city or county in a populated area for purpose of prohibiting the
4 discharge of weapons. The city of North Las Vegas is designated as a
5 populated area for the purpose of prohibiting the discharge of weapons.

6 It's that last sentence that the Defense takes issue with, and I asked
7 you to give me what you were relying on to say that as a matter of law, the
8 Court could take judicial notice and instruct the jury accordingly.

9 MR. FLINN: Yes, Your Honor, and I just emailed -- I did a
10 screenshot of my phone, but to Defense counsel and to the Court's law Clerk.
11 The Municipal Code for the city of North Las Vegas, 9.32.110, entitled Firing of
12 Weapon, states: It is unlawful for any person to explode or fire any pistol,
13 revolver, rifle, shotgun, or any other firearm within the limits of the city of
14 North Las Vegas.

15 So, as a matter of law, you cannot shoot a gun. It's a designated
16 place that you cannot discharge a firearm under its own code, which the
17 statute, the NRS, says the county or city designates it accordingly. Any other
18 issue about whether, there's a question for the jury, whether the gun was fired,
19 whether it was fired in a building, of course, all of those things are, but this is a
20 matter of law. It's a municipal code that it's a prohibited place.

21 MR. STANTON: And, Judge, could I just add one thing? In the
22 Defense exhibits, the aerials, at the bottom in their Google maps index, it says
23 City of North Las Vegas, 4032 Smokey Fog Avenue. So, I think that -- well,
24 that's it.

25 MR. BASHOR: Judge, I would just rest on the previous objection. I

1 think that since it is an element of the offense, it's not something that should
2 be taken judicial notice of. I don't think there's a dispute that this occurred in
3 North Las Vegas. And I know that this might be considered splitting hairs, but
4 since it is an element, I would submit that they would have had to present
5 some evidence which would support the element that it was pursuant to a
6 county ordinance, that this was designated a populated area.

7 THE COURT: Well, I'm going to -- interesting argument, like it,
8 overrule your objection to this instruction. Honestly, I don't want to start
9 having them question -- I guess I could give them an instruction that says
10 Municipal Code 932.110. Why can't that be an instruction then if that's the
11 issue? Why does it have to be in evidence? I mean they're instructed on what
12 the law is. I guess what you're saying is -- that's different than saying a
13 firearm is a deadly weapon, which is a question of fact. So, I'm going to ask
14 you to prepare -- because you understand what I'm saying?

15 MR. STANTON: Yes.

16 THE COURT: What we would be doing in response to that
17 objection is taking out Line 6 and 7, and telling them Municipal Code of North
18 Las Vegas, 932.110 permits the firearm -- firing of a firearm in the city of Las
19 Vegas.

20 MR. FLINN: And quote the -- yes, Your Honor.

21 THE COURT: Because it's almost the same as a firearm in that
22 unpublished opinion --

23 MR. FLINN: Yes, Your Honor.

24 THE COURT: -- type scenario. See what I'm saying?

25 MR. BASHOR: I understand what you're saying.

1 THE COURT: So, can you cut and paste something right now and
2 email it to my law clerk with an instruction number at the top?

3 MR. FLINN: I can as soon as I get to my office. I don't think I can
4 do it on my phone.

5 THE COURT: On your phone? Why not?

6 MR. STANTON: I don't know who, other than Mark Dejakavo
7 [Phonetic] , I'm not sure who could do that and he would do it on his --

8 MR. FLYNN: I don't know if I'm --

9 THE COURT: Stanton, you need to go --

10 MR. FLYNN: -- skilled.

11 THE COURT: -- to a class, seriously.

12 MR. STANTON: I got to do a lot of things.

13 THE COURT: You don't have a Google Docs or nothing on your
14 phone? What's happening?

15 MR. STANTON: We work for the Clark County District Attorney's
16 Office, Your Honor.

17 THE COURT: This is like Circa 1972. What's happening with you?

18 MR. STANTON: We don't have Word apps.

19 THE COURT: And Flinn, you got must more hair, so you should be
20 able to do this.

21 MR. FLINN: That doesn't -- I wish it equated to not as many years,
22 but.

23 MR. BASHOR: Judge, maybe we could, Mr. Flinn and I, if your law
24 clerk --

25 MR. FLINN: I'm working on it.

1 MR. BASHOR: -- doesn't matter, we could just stand over him
2 and --

3 THE COURT: He's used to that. Go lord over him and get this
4 done.

5 MR. BASHOR: Okay.

6 THE COURT: Can you just get it done, because I need to get -- we
7 need to get a -- he lives to be lorded over.

8 UNIDENTIFIED MALE: Oh, that's my life.

9 THE COURT: That is your life, only usually it's me.

10 MR. STANTON: So, tomorrow 10:15 is when the --

11 THE COURT: Oh, wait, gentlemen. You also have to redact the city
12 of North Las Vegas as designated. So, take this instruction and take that last
13 sentence out, in addition to typing up North Las Vegas, blah, blah, blah.

14 MR. FLINN: Very good.

15 THE COURT: Okay? You see what I'm saying?

16 MR. FLINN: Yes, I do.

17 THE COURT: Okay. I don't need to give it, do you, because then I'll
18 forget.

19 MR. STANTON: Ryan, I'm going to address the Count 4.

20 MR. BASHOR: Okay. I believe I can trust Mr. O'Brien.

21 MR. STANTON: Okay. Your Honor --

22 THE COURT: Okay, so wait a minute. Hold on.

23 MR. STANTON: Okay.

24 THE COURT: The record shall reflect that two of the attorneys have
25 gone to work on the instructions, Mr. Bashor and Mr. Flinn, and that you two,

1 in the presence of the Defendant, outside the presence of the jury, have
2 something else you want to address. Go ahead.

3 MR. STANTON: Yes, Your Honor. Mr. Bashor and myself have
4 been in discussions over the past couple days about Count IV, the one of the
5 prohibited person count. And so, to be honest, this is the first time I've ever
6 had to formally do the bifurcation of this particular count. It's Dave Stanton's
7 belief that if the Defendant is convicted, then we have no intent of, even the
8 brief time that I hear it takes to present it, deliberate it, to go forward on that.

9 So -- but there's a condition too, that Mr. Bashor, I believe, is in
10 agreement, and that is this, if the Defendant is convicted of first degree
11 murder, or even something else, there's a high degree of likelihood that the
12 State is not going to seek to go to that second issue, and, therefore, we would
13 conditionally dismiss it on this ground, that we can agree to dismiss it at this
14 time, but if for whatever reason this matter were to come back for a retrial, the
15 State would then have the opportunity to reinvigorate that count.

16 THE COURT: So, the State would -- if your client's convicted --
17 here's what I'm hearing in greater Togliatti detail: First degree murder with
18 use of a deadly weapon, first degree murder, second degree murder with use
19 of a deadly weapon, second degree murder, voluntary manslaughter with use
20 of a deadly weapon, voluntary manslaughter with use of a deadly weapon,
21 voluntary manslaughter. Is that it? Meaning and/or, and/or, and/or, or are you
22 throwing in the if it's just assault with a deadly weapon, which I can't even
23 wrap my mind around, or discharging a firearm because --

24 MR. STANTON: Right.

25 THE COURT: -- the facts are --

1 MR. STANTON: If it's --

2 THE COURT: -- it's either all or nothing, right?

3 MR. STANTON: Right. If it's first or second degree murder, I don't
4 have any intention of what I --

5 THE COURT: What about voluntary manslaughter?

6 MR. STANTON: Maybe.

7 THE COURT: So, what I'm hearing is, if your client is convicted of
8 first or second degree murder with use of a deadly weapon or without, the
9 State will dismiss that count conditionally, meaning if you're -- and the
10 condition being if the Defendant is ever in a position, whether it's as the result
11 of an appeal or a result of a successful writ of habeas, post-conviction, to be
12 able to have another trial, that the State reserves the right to charge him with
13 that offense and have it go forward?

14 MR. O'BRIEN: Understood.

15 THE COURT: And as to whether he's convicted of voluntary
16 manslaughter with the use of a deadly weapon, which would surprise
17 everyone, but nothing surprises me anymore, the State -- is that undecided,
18 and we'll make that determination presumably at the time, yes?

19 MR. STANTON: Yes.

20 MR. O'BRIEN: Understood.

21 THE COURT: Okay. So, win, win for your client. I mean, you
22 know, on a minor scale.

23 MR. O'BRIEN: Understood. Once we put into the perspective of
24 chicken and a rock, everything kind of -- it seems fine.

25 THE COURT: Yep. So, let's wait just a -- we'll get these last two --

1 we'll get this instruction fixed and get the new one, and then I can copy them,
2 give them to you, number them really quick, and you're on your way. Wow,
3 Google Docs.

4 MR. FLINN: This is awesome.

5 THE COURT: Google Docs.

6 MR. BASHOR: Is that okay? Is this what you wanted?

7 THE COURT: Yeah, that's exactly what I want. Perfect. Okay. So,
8 could you -- will you do me a favor? How many copies do you need? Two for
9 now, right?

10 MR. FLINN: I just need one copy.

11 THE COURT: Right. You each get one, so two.

12 MR. FLINN: Right.

13 MR. BASHOR: Yeah, that's fine.

14 THE COURT: Make a copy of this for them, one each, and then we
15 can go through them.

16 [Pause]

17 THE COURT: Okay. So, let's go through this. Instructions to the
18 jury, instruction number 1.

19 Two is, if in the instructions, any rule direction ideas, two.

20 Three is an amended indictment is but a formal method of
21 accusing a person, and it's two pages long. And by the way, if I don't state
22 there was an objection, there wasn't an objection, right?

23 So, four, murder is the unlawful killing of a human being. There
24 was no objection.

25 Malice or forethought means the intentional doing of a wrongful

1 act is five. No objection.

2 Express malice is six, and it goes on. No objection.

3 Murder in the first degree, which is murder -- excuse me, is murder
4 which is perpetrated by means of any kind of, and that is seven. No objection.

5 Willfulness is the intent to kill is eight. No objection.

6 Deliberation is a process of determining is nine. No objection.

7 Deliberate determination may be arrived at is ten. No objection.

8 Premeditation is a design, 11. No objection.

9 Premeditation need not be for a day, an hour, or even a minute is
10 12. No objection.

11 The law does not undertake the measure in units of time is 13. No
12 objection.

13 All murder which is not murder in the first degree, murder in the
14 second degree, 14. No objection.

15 You are instructed that if you find the State has established is 15.
16 The record should reflect, that as to instruction number 15 proposed by the
17 Defense, that Lines 12, 13, 14 and 15 were objected to by the State of Nevada.

18 You are instructed that if the State has established that the
19 Defendant has committed second degree murder, you shall select second
20 degree murder as your verdict was Instruction Number 16. The record shall
21 reflect this was proposed by the Defense and the State of Nevada objects to
22 Lines 12, 13, 14 and 15.

23 Voluntary manslaughter is the unlawful killing of a human being
24 without malice or forethought and without deliberation or premeditation is 17,
25 and there was no objection.

1 The heat of passion will reduce a homicide to voluntary
2 manslaughter -- excuse me, which will reduce is 18.

3 There was no objection. The Prosecution is not required to present
4 direct evidence is 19. The Defense made an objection, which I incorporate
5 here and by reference that I overruled, and I'm giving the instruction.

6 Assault means an intentional placing of another person in
7 reasonable apprehension is 20. There was no objection.

8 A deadly weapon is any instrument which, is 21. No objection.

9 The State is not required to have recovered is 22. No objection.

10 Any person who willfully, unlawfully, and maliciously discharges a
11 firearm is 23. There was no objection.

12 The city of North Las Vegas Municipal Code 9.32.110 is 24. The
13 record shall reflect that the Defense's position is that rather than this
14 instruction being given to the jury, the State should have had to present
15 evidence of the city of North Las Vegas Municipal Code or evidence that it was
16 a populated area pursuant to Nevada law, and giving the jury the law and the
17 evidence in the State's case in chief. Does that --

18 MR. BASHOR: Yes.

19 THE COURT: -- accurately state your position?

20 MR. BASHOR: It does.

21 THE COURT: So, while Instruction Number 24, from your point of
22 view, is not an inaccurate statement of the law, it's simply your view that
23 procedurally, the Court should have handled this in a different manner and
24 required the State to prove it in their case in chief?

25 MR. BASHOR: Correct.

1 THE COURT: Okay. Instruction Number 25, to constitute the crime
2 charged. There was no objection.

3 The Defendant is presumed innocent is 26. No objection.

4 The evidence which you are to consider is 27. No objection.

5 The flight of a person after the commission of a crime is 28. No
6 objection.

7 The credibility or believability is 29. No objection.

8 Any testimony that a witness believed that the Defendant had a
9 history of violence is being requested by the Defense based upon a previous
10 court ruling that is already in the record, and there was no objection to this
11 instruction.

12 Any witness who has special knowledge, skill, experience, training,
13 or education is 31. No objection.

14 In arriving at a verdict in this case as to whether Defendant is guilty
15 or not guilty, the subject of penalty or punishment is 32. No objection.

16 It is the constitutional right of a Defendant in a criminal trial that he
17 may not be compelled to testify is 33. And requested by the Defense,
18 therefore, no objection.

19 Although you are to consider only the evidence in the case is 34,
20 and there was no objection.

21 When you retire to consider your verdict is 35. No objection.

22 If, during your deliberations, commonly known as the playback
23 instruction, is 36. No objection.

24 During the course of this trial, you are not to communicate with
25 anyone in any way regarding blah, blah, blah, commonly known as the social

1 media instruction, is 37.

2 Over to the left, is anyone bothered by that because I am not?

3 MR. BASHOR: No.

4 MR. FLYNN: No.

5 THE COURT: All right. Now you will listen to the arguments.
6 Counsel, will endeavor to aid to reach a proper verdict is 38. Any objection?

7 MR. BASHOR: No, Your Honor.

8 THE COURT: Okay. Is there anything else regarding the jury
9 instructions that you would like to address? I've marked as a Court's Exhibit 1,
10 that you proposed that I didn't give. I made a record and incorporate all
11 arguments into the objections that you've made. Is there anything else?

12 MR. STANTON: Just that all parties agree that the verdict forms
13 are in proper order.

14 MR. BASHOR: That's correct.

15 THE COURT: Okay. Then I will see you tomorrow at 10:15. Thank
16 you very much.

17 MR. STANTON: Thank you, Your Honor.

18 MR. BASHOR: Thank you, Your Honor.

19 [Proceedings concluded at 4:58 p.m.]

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

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Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

AUG 03 2018 3:53pm

DISTRICT COURT
CLARK COUNTY, NEVADA

By *A. Trujillo*
ATHENA TRUJILLO, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

v.

SHAWN GLOVER,

Defendant.

CASE NO. C-16-312448-1

DEPT. NO. IX

INSTRUCTIONS TO THE JURY
(INSTRUCTION NO. 1)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies in this case. It is your duty as jurors to follow these instructions and to apply the rules of the law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

C-16-312448-1

J1

Jury Instructions
4768461



AA 707

1
2 If, in these instructions, any rule, direction or idea is repeated or stated in different
3 ways, no emphasis thereon is intended by me and none may be inferred by you. For that
4 reason, you are not to single out any certain sentence or any individual point or instruction
5 and ignore the others, but you are to consider all the instructions as a whole and regard
6 each in light of all the others.

7 The order in which the instructions are given has no significance as to their relative
8 importance.
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1 An Amended Indictment is but a formal method of accusing a person of a crime and
2 is not of itself any evidence of his guilt.

3 In this case, it is charged in an Indictment that on or about the 1st day of January,
4 2016 the Defendant committed the offenses of MURDER WITH USE OF A DEADLY
5 WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001);
6 ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC
7 50201); and DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR
8 VEHICLE (Category B Felony - NRS 202.287 - NOC 51445). It is the duty of the jury to
9 apply the rules of law contained in these instructions to the facts of the case and determine
10 whether or not the Defendant is guilty of the offense charged.

11 COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

12 did willfully, unlawfully, feloniously and with malice aforethought, kill PATRICK
13 FLEMING, a human being, with use of a deadly weapon, to-wit: a handgun, by shooting at
14 and into the body of the said PATRICK FLEMING, the said killing having been willful,
15 deliberate and premeditated.

16 COUNT 2 - ASSAULT WITH A DEADLY WEAPON

17 did willfully, unlawfully, feloniously and intentionally place another person in
18 reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully
19 attempt to use physical force against another person, to-wit: MIRANDA SUTTON, with
20 use of a deadly weapon, to-wit: a handgun, by pointing said handgun at the said
21 MIRANDA SUTTON.

22 COUNT 3 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR
23 VEHICLE

24 did willfully, unlawfully, maliciously, and feloniously, while in, on or under a
25 structure, located at 4032 Smokey Fogg, Apartment No. 201, North Las Vegas, discharge a
26 firearm within or from the structure, while being within an area designated by a City or
27 County Ordinance as a populated area for the purpose of prohibiting the discharge of
28 weapons.

1
2 In this case the defendant is accused in an Indictment alleging an open charge of
3 murder. This charge includes and encompasses murder of the first degree, murder of the
4 second degree, and voluntary manslaughter.

5 The jury must decide if the defendant is guilty of any offense and, if so, of which
6 offense.
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2 Murder is the unlawful killing of a human being, with malice aforethought, whether
3 express or implied. The unlawful killing may be effected by any of the various means by
4 which death may be occasioned.
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Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, not alone from anger, hatred, revenge or from particular ill will, spite or grudge toward the person killed, but may result from any unjustifiable or unlawful motive or purpose to injure another, which proceeds from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes rather an unlawful purpose and design in contradistinction to accident and mischance.

Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

1
2 Murder of the first degree is murder which is perpetrated by means of any kind of
3 wilful, deliberate, and premeditated killing. All three (3) elements -- willfulness,
4 deliberation, and premeditation -- must be proven beyond a reasonable doubt before an
5 accused can be convicted of first-degree murder.
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Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the actions.

1
2 A deliberate determination may be arrived at in a short period of time. But in all
3 cases the determination must not be formed in passion, or if formed in passion, it must
4 be carried out after there has been time for the passion to subside and deliberation to
5 occur. A mere unconsidered and rash impulse is not deliberate, even though it
6 includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

1
2 Premeditation need not be for a day, an hour, or even a minute. It may be as
3 instantaneous as successive thoughts of the mind. For if the jury believes from the
4 evidence that the act constituting the killing has been preceded by and has been the
5 result of premeditation, no matter how rapidly the act follows the premeditation, it is
6 premeditated.
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2 The law does not undertake to measure in units of time the length of the period
3 during which the thought must be pondered before it can ripen into an intent to kill
4 which is truly deliberate and premeditated. The time will vary with different
5 individuals and under varying circumstances.

6 The true test is ^{not} ~~no~~ the duration of time, but rather the extent of reflection. A
7 cold, calculated judgment and decision may be arrived at in a short period of time, but
8 a mere unconsidered and rash impulse, even though it includes the intent to kill, is not
9 the deliberation and premeditation as will fix an unlawful killing as murder in the first
10 degree.
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All murder which is not Murder of the First Degree is Murder of the Second Degree.
Murder of the Second Degree is murder with malice aforethought, but without the
admixture of premeditation and deliberation.

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2 You are instructed that if you find that the State has established that the
3 defendant has committed First Degree Murder, you shall select First Degree Murder as
4 your verdict. The crime of First Degree Murder includes the crime of Second Degree
5 Murder. You may find the defendant guilty of Second Degree Murder if:

- 6 1. You have not found beyond a reasonable doubt, that the defendant is guilty of
7 murder of the first degree, and
8
9 2. All twelve of you are convinced beyond a reasonable doubt the defendant is
10 guilty of the crime of second degree murder.

11
12 If you are convinced beyond a reasonable doubt that the crime of murder has
13 been committed by the defendant, but you have a reasonable doubt whether such
14 murder was of the first or second degree, you must give the defendant the benefit of
15 that doubt and return a verdict of murder of the second degree.

1
2 You are instructed that if you find that the State has established that the
3 defendant has committed Second Degree Murder you shall select Second Degree
4 Murder as your verdict. The crime of Second Degree Murder can include the crime of
5 Voluntary Manslaughter. You may find the defendant guilty of Voluntary
6 Manslaughter if:

7 1. You have not found, beyond a reasonable doubt, that the defendant is guilty
8 of murder of the first degree or second degree, and

9
10 2. All twelve of you are convinced beyond a reasonable doubt that the
11 defendant is guilty of the crime of Voluntary Manslaughter.

12 If you ^{are} convinced beyond a reasonable doubt that the crime of murder has been
13 committed by the defendant, but you have a reasonable doubt whether such murder
14 was of the second degree or Voluntary Manslaughter, you must give the defendant the
15 benefit of that doubt and return a verdict of Voluntary Manslaughter.

1
2 Voluntary Manslaughter is the unlawful killing of a human being, without malice
3 aforethought and without deliberation or premeditation. It is a killing upon a sudden
4 quarrel or heat of passion, caused by a provocation sufficient to make the passion
5 irresistible.

6 The provocation required for Voluntary Manslaughter must either consist of a
7 serious and highly provoking injury inflicted upon the person killing, sufficient to excite an
8 irresistible passion in a reasonable person, or an attempt by the person killed to commit a
9 serious personal injury on the person killing.

10 For the sudden, violent impulse of passion to be irresistible resulting in a killing,
11 which is Voluntary Manslaughter, there must not have been an interval between the assault
12 or provocation and the killing sufficient for the voice of reason and humanity to be heard;
13 for, if there should appear to have been sufficient time for a cool head to prevail and the
14 voice of reason to be heard, the killing shall be attributed to deliberate revenge and
15 determined by you to be murder. The law assigns no fixed period of time for such an
16 interval but leaves its determination to the jury under the facts and circumstances of the
17 case.

1 The heat of passion which will reduce a homicide to Voluntary Manslaughter must
2 be such an irresistible passion as naturally would be aroused in the mind of an ordinarily
3 reasonable person in the same circumstances. A defendant is not permitted to set up his
4 own standard of conduct and to justify or excuse himself because his passions were
5 aroused unless the circumstances in which he was placed and the facts that confronted him
6 were such as also would have aroused the irresistible passion of the ordinarily reasonable
7 man if likewise situated. The basic inquiry is whether or not, at the time of the killing, the
8 reason of the accused was obscured or disturbed by passion to such an extent as would
9 cause the ordinarily reasonable person of average disposition to act rashly and without
10 deliberation and reflection and from such passion rather than from judgment.
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INSTRUCTION NO. 19

The prosecution is not required to present direct evidence of a defendant's state of mind as it existed during the commission of a crime, and the jury may infer the existence of a particular state of mind from the circumstances disclosed by the evidence.

Assault means intentionally placing another person in reasonable apprehension of immediate bodily harm. As used in this instruction, "reasonable apprehension" is defined by the objective standard.

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2 A deadly weapon is any instrument which, if used in the ordinary manner
3 contemplated by its design and construction, will or is likely to cause substantial bodily
4 harm or death; or any weapon or device, instrument, material or substance which, under the
5 circumstances in which it is used, attempted to be used or threatened to be used, is readily
6 capable of causing substantial bodily harm or death.
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The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

Any person who willfully, unlawfully and maliciously discharges a firearm within an occupied structure is guilty of Discharging Firearm within a Structure. Said structure must be within an area designated by a City or County as a populated area for purposes of prohibiting the discharge of weapons.

City of North Las Vegas Municipal Code 9.32.110 states that it is unlawful for any person to explode or fire any pistol, revolver, rifle, shotgun, or any other firearm within the limits of the city of North Las Vegas.

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two (2) types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

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2 The flight of a person after the commission of a crime is not sufficient in itself to
3 establish guilt; however, if flight is proved, it is circumstantial evidence in determining
4 guilt or innocence.

5 The essence of flight embodies the idea of deliberately going away with
6 consciousness of guilt and for the purpose of avoiding apprehension or prosecution. The
7 weight to which such circumstance is entitled is a matter for the jury to determine.
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2 The credibility or believability of a witness should be determined by his manner
3 upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his
4 opportunity to have observed the matter to which he testified, the reasonableness of his
5 statements and the strength or weakness of his recollections.

6 If you believe that a witness has lied about any material fact in the case, you may
7 disregard the entire testimony of that witness or any portion of his testimony which is not
8 proved by other evidence.
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1 Any testimony that a witness believed that the defendant has a history of violence
2 against persons is offered solely for the purpose of explaining the state of mind of the
3 witness at the time she made her statement to police on January 1, 2016. This testimony, if
4 believed, is not to be considered as substantive evidence that the defendant has a history of
5 violence against persons, or that he is a person of bad character.
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2 A witness who has special knowledge, skill, experience, training or education in a
3 particular science, profession or occupation is an expert witness. An expert witness may
4 give his opinion as to any matter in which he is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it.
6 You are not bound, however, by such an opinion. Give it the weight to which you deem it
7 entitled, whether that be great or slight, and you may reject it, if, in your judgment, the
8 reasons given for it are unsound.

In arriving at a verdict in this case as to whether the defendant is guilty or not guilty, the subject of penalty or punishment is not to be discussed or considered by you and should in no way influence your verdict.

1
2 It is a constitutional right of a defendant in a criminal trial that he may not be
3 compelled to testify. Thus, a decision as to whether he should testify is left to the
4 defendant on the advice ^{and} of counsel of his attorney. You must not draw any inference of
5 guilt from the fact that he does not testify, nor should this fact be discussed by you or ether
6 into your deliberations in any way.
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2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and
4 judgment as reasonable men and women. Thus, you are not limited solely to what you see
5 and hear as the witnesses testify. You may draw reasonable inferences from the evidence
6 which you feel are justified in the light of common experience, keeping in mind that such
7 inferences should not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance
10 with these rules of law.
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2 When you retire to consider your verdict, you must select one of your number to act
3 as foreperson who will preside over your deliberation and will be your spokesman here in
4 court.

5 During your deliberation, you will have all the exhibits which were admitted into
6 evidence, these written instructions and forms of verdict which have been prepared for
7 your convenience.

8 Your verdict must be unanimous. As soon as you have agreed upon a verdict, have
9 it signed and dated by your foreperson and then return with it to this room.
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2 If, during your deliberation, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you must reduce your request to writing signed
4 by the foreperson. The officer will then return you to court where the information sought
5 will be given to you in the presence of, and after notice to, the district attorney and the
6 Defendant and his counsel.

7 Playbacks of testimony are time-consuming and are not encouraged unless you
8 deem it necessary. Should you require a playback, you must carefully describe the
9 testimony to be played back so that the court recorder can arrange her notes. Remember,
10 the court is not at liberty to supplement the evidence.
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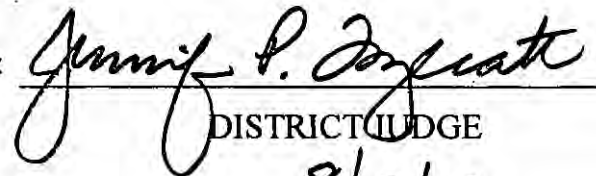
INSTRUCTION NO. 37

During the course of this trial, and your deliberations, you are not to:

1. communicate with anyone in any way regarding this case or its merits – either by phone, text, internet, or other means;
2. read, watch, listen to any news or media accounts or commentary about the case;
3. do any research, such as consulting dictionaries, using the internet, or using reference materials;
4. make any investigation, test a theory of the case, re-create any aspect of the case, or in any other way investigate or learn about the case on your own.

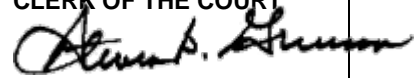
Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:



DISTRICT JUDGE

8/3/18



1 RTRAN
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7)
8 STATE OF NEVADA,)

9 Plaintiff,)

10 vs.)

11 SHAWN GLOVER, aka SHAWN LYNN)
12 GLOVER, JR.,)

13 Defendant.)
14)

CASE NO. C-16-312448-1

DEPT. IX

15 BEFORE THE HONORABLE JENNIFER P. TOGLIATTI, DISTRICT COURT JUDGE
16 FRIDAY, AUGUST 3, 2018

17 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 5**

18 APPEARANCES:
19

20 For Plaintiff:

DAVID STANTON, ESQ.
WILLIAM FLINN, ESQ.

21
22 For Defendant:

ROBERT E. O'BRIEN, ESQ.
RYAN J. BASHOR, ESQ.

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25 RECORDED BY YVETTE G. SISON, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, August 14, 2018

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3 [Case called at 10:19 a.m.]

4 THE COURT: -- presented in -- is it one or two?

5 MR. FLINN: I'm sorry.

6 THE COURT: Does the State have two or one PowerPoint?

7 MR. FLINN: One.

8 THE COURT: Okay. The State's PowerPoint that Mr. Flinn is going
9 to use in closing?

10 MR. FLINN: Yes, Your Honor.

11 THE COURT: Will be marked as Court's Exhibit, next in order,
12 number --

13 THE CLERK: 4.

14 THE COURT: And obviously, it doesn't go back to ladies and
15 gentlemen of the jury. Then the Defense, according to my clerk, has presented
16 a PowerPoint for closing, that will be marked Court's Exhibit, next in order,
17 number --

18 THE CLERK: 5.

19 THE COURT: And that will not go back to the ladies and gentlemen
20 of the jury.

21 MR. BASHOR: Can I see the Court Exhibit 5 real quick? I'm going
22 to -- I just believe there's a line I want to cross out.

23 THE COURT: So, are we ready?

24 THE MARSHAL: Yes, ma'am.

25 THE COURT: Bring them in. Let's go.

1 THE MARSHAL: Okay. Judge, are we ready for the jury?

2 THE COURT: Oh, I'm sorry. Yes.

3 THE MARSHAL: All rise. The jury is entering. The jury is all
4 present, ma'am.

5 [In the presence of the jury.]

6 THE COURT: Counsel, will you stipulate to the presence of the
7 jury?

8 MR. STANTON: Yes, Your Honor.

9 MR. BASHOR: Yes, Your Honor.

10 THE COURT: All right. Ladies and gentlemen of the jury, I'm now
11 about to instruct you on the laws as it applies in this case. I would like to
12 instruct you orally without having to read to you these instructions, but they're
13 of such importance that I have to read them to you verbatim.

14 The instructions are long, and some might seem complicated. If
15 they're not especially clear to you when I first read them, please keep in mind
16 that you're going to have a copy of the jury instructions with you in the
17 deliberation room where you can there read and consider them carefully.
18 Instructions to the jury.

19 Instruction number 1. It is now my duty as judge to instruct you in
20 the law that applies to this case. It is your duty as jurors to follow these
21 instructions and to apply the rules of law to the facts as you find them from the
22 evidence. You must not be concerned with the wisdom of any rule of law
23 stated in these instructions regardless of any opinion you may have as to what
24 the law ought to be. It would be a violation of your oath to base a verdict on
25 any other view of the law than that given in the instructions of the Court.

1 Instruction number 2. If in these instructions any rule, direction, or
2 idea is repeated or stated in different ways, no emphasis thereon is intended
3 by me and none may be inferred by you. For that reason, you are not to single
4 out any certain sentence or any individual point or instruction and ignore the
5 others, but you are to consider all the instructions as a whole and regard each
6 in the light of all the others. The order in which the instructions are given has
7 no significance as to their relative importance.

8 Instruction number 3. An amended indictment is but a formal
9 method of accusing a person of a crime and is not of itself any evidence of his
10 guilt. In this case, it is charged, in an indictment, that on or about the 1st day
11 of January 2016, the Defendant committed the offenses of murder with use of
12 a deadly weapon, a category A Felony, NRS 200.010, 200.030, 193.165 assault
13 with a deadly weapon, a category B Felony, NRS 200.471, and discharge of a
14 firearm from or within a structure or vehicle, a category B felony, NRS 202.287.
15 It is the duty of the jury to apply the rules of law contained in these
16 instructions to the facts of the case and determine whether or not the
17 Defendant is guilty of the offense charged.

18 Count 1. Murder with use of a deadly weapon, did willfully,
19 unlawfully, feloniously, and with malice aforethought kill Patrick Fleming, a
20 human being with the use of a deadly weapon, to wit: a handgun, by shooting
21 at and into the body of said Patrick Fleming, the said killing having been
22 willful, deliberate, and premeditated.

23 Count 2. Assault with a deadly weapon, did willfully, unlawfully,
24 feloniously, and intentionally place another person in reasonable
25 apprehension of immediate bodily harm and/or did willfully and unlawfully

1 attempt to use physical force against another person, to wit: Miranda Sutton,
2 with use of a deadly weapon, to wit: a handgun, by pointing said handgun at
3 the said Miranda Sutton.

4 Count 3. Discharge of firearm from or within a structure or vehicle,
5 did willfully, unlawfully, maliciously, and feloniously while in, on, or under a
6 structure located at 4032 Smokey Fog, apartment number 201, North Las
7 Vegas, discharge a firearm within or from the structure, while being within an
8 area -- excuse me -- an area designated by a City or County Ordinance as a
9 populated area for the purpose of prohibiting the discharge of weapons.

10 In this case, the Defendant is accused in the indictment alleging an
11 open charge of murder. This charge includes and encompasses murder of the
12 first degree, murder of the second degree, and voluntary manslaughter. The
13 jury must decide if the Defendant is guilty of any offense and if so, of which
14 offense.

15 Instruction number 4. Murder is the unlawful killing of a human
16 being with malice aforethought whether express or implied. The unlawful
17 killing may be affected by any of the various means by which death may be
18 occasioned.

19 Instruction number 5. Malice aforethought means the intentional
20 doing of a wrongful act without legal cause, or excuse, or what the law
21 considers adequate provocation. The condition of mind described as malice
22 aforethought may arise not alone from anger, hatred, revenge or some
23 particular ill will, spite, or a grudge toward the person killed, but may result
24 from any unjustifiable or unlawful motive or purpose to injure another, which
25 proceeds from a heart fatally bent on mischief or with reckless disregard of