

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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**No. 82886**

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**JOSHUA BACHARACH**

Appellant,

v.

**THE STATE OF NEVADA**

Respondent.

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Appeal from a Denial of Petition for Writ of Habeas Corpus (Post-Conviction)  
Eighth Judicial District Court, Clark County  
The Honorable Cristina D. Silva, District Court Judge  
District Court Case No. C-14-299425-1

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**APPELLANT'S APPENDIX  
VOLUME II**

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James A. Oronoz, Esq.  
Nevada Bar No. 6769  
Oronoz & Ericsson, LLC  
1050 Indigo, Suite 120  
Las Vegas, Nevada 89145  
Telephone: (702) 878-2889  
Facsimile: (702) 522-1542  
jim@oronozlawyers.com  
*Attorney for Appellant*

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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 20, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD  
Nevada Attorney General

STEVEN B. WOLFSON  
Clark County District Attorney

By /s/ Jan Ellison  
An Employee of Oronoz & Ericsson, LLC

1 PROSPECTIVE JUROR NUMBER 171: I'm self-employed. I'm a behavior  
2 analyst.

3 MS. THOMSON: And what do you do?

4 PROSPECTIVE JUROR NUMBER 171: I work with children with autism.

5 MS. THOMSON: And so is that helping to find treatments, helping to --

6 PROSPECTIVE JUROR NUMBER 171: We treat --

7 MS. THOMSON: -- minimize effect?

8 PROSPECTIVE JUROR NUMBER 171: We treat kids with autism.

9 MS. THOMSON: Okay. Do you own any firearms?

10 PROSPECTIVE JUROR NUMBER 171: Yes, I do.

11 MS. THOMSON: And do you -- have you ever used any of them?

12 PROSPECTIVE JUROR NUMBER 171: Yes, I have.

13 MS. THOMSON: Just at the range or --

14 PROSPECTIVE JUROR NUMBER 171: Just at the range.

15 THE COURT: You need to speak into the mic a little.

16 PROSPECTIVE JUROR NUMBER 171: Oh, sorry.

17 MS. THOMSON: Anything about that affect your ability to be a fair and  
18 impartial juror in this case?

19 PROSPECTIVE JUROR NUMBER 171: No.

20 MS. THOMSON: Okay. If you were picked as a juror and the Judge instructs  
21 on the law and there's something you disagree with, whether you think that that isn't  
22 the law or that it shouldn't be the law, would you be able to follow what the Judge  
23 said rather than your beliefs?

24 PROSPECTIVE JUROR NUMBER 171: Yes, I would.

25 MS. THOMSON: And if we prove the case beyond a reasonable doubt using

1 just one witness, you believe everything that witness says and that witness meets  
2 every element of the offenses, would you be able to find the Defendant guilty?

3 PROSPECTIVE JUROR NUMBER 171: Yes.

4 MS. THOMSON: Okay. You hesitated a little bit there.

5 PROSPECTIVE JUROR NUMBER 171: I did.

6 MS. THOMSON: Okay. Will you tell us about that?

7 PROSPECTIVE JUROR NUMBER 171: The just one witness part of it. But I  
8 guess if I believed him and I heard all the evidence, I could.

9 MS. THOMSON: Thank you. I'll pass for cause.

10 MS. NGUYEN: If you heard just one witness and they didn't provide you with  
11 all of the answers and you didn't feel the State had proven their case beyond a  
12 reasonable doubt, would you be able to come back with a not guilty verdict?

13 PROSPECTIVE JUROR NUMBER 171: Sorry. Will you repeat that?

14 MS. NGUYEN: If the State only had one witness --

15 PROSPECTIVE JUROR NUMBER 171: Right.

16 MS. NGUYEN: -- and you felt that they didn't meet their burden of proving  
17 beyond a reasonable doubt --

18 PROSPECTIVE JUROR NUMBER 171: Then I would not be bale --

19 MS. NGUYEN: -- would you be able to come back with a not guilty verdict?

20 PROSPECTIVE JUROR NUMBER 171: No.

21 MS. NGUYEN: You would not be able to?

22 PROSPECTIVE JUROR NUMBER 171: The not guilty verdict?

23 MS. NGUYEN: Yes.

24 PROSPECTIVE JUROR NUMBER 171: If they didn't prove their case --

25 MS. NGUYEN: Yes.

1 PROSPECTIVE JUROR NUMBER 171: -- with only witness --

2 MS. NGUYEN: Yes.

3 PROSPECTIVE JUROR NUMBER 171: -- I would be able to, yes.

4 MS. NGUYEN: Okay.

5 PROSPECTIVE JUROR NUMBER 171: Sorry.

6 MS. NGUYEN: If you went back right now to deliberate, how would you find  
7 my client?

8 PROSPECTIVE JUROR NUMBER 171: I don't know. I haven't heard  
9 anything, so I really couldn't come to a decision at this point.

10 MS. NGUYEN: Okay. So having heard no evidence and heard nothing you  
11 wouldn't -- do you not believe in the presumption of innocence?

12 PROSPECTIVE JUROR NUMBER 171: I do believe in the presumption of  
13 innocence.

14 MS. NGUYEN: So do you understand that as my client is sitting here, he's  
15 innocent today?

16 PROSPECTIVE JUROR NUMBER 171: Yes.

17 MS. NGUYEN: Okay. And if you hadn't heard anything and the State didn't  
18 prove anything, would -- he would still maintain that innocence. Do you agree with  
19 that --

20 PROSPECTIVE JUROR NUMBER 171: Yes.

21 MS. NGUYEN: -- tenant of your justice system?

22 PROSPECTIVE JUROR NUMBER 171: Yes, I do.

23 MS. NGUYEN: Okay. So if you were to go back having heard no evidence,  
24 would you have found him not guilty?

25 PROSPECTIVE JUROR NUMBER 171: Yes.



1 MS. NGUYEN: Thank you. You said you worked with children with autism.  
2 Do you -- have you ever worked in the course of being a behavior analyst with  
3 adults or any other --

4 PROSPECTIVE JUROR NUMBER 171: No, I haven't.

5 MS. NGUYEN: Have you always worked in that area with children and --

6 PROSPECTIVE JUROR NUMBER 171: Yes, I have.

7 MS. NGUYEN: -- specific with autism?

8 PROSPECTIVE JUROR NUMBER 171: With autism.

9 MS. NGUYEN: Okay. And I'm sorry, did you say that you are a gun owner or  
10 that you have shot guns before?

11 PROSPECTIVE JUROR NUMBER 171: I'm a gun owner.

12 MS. NGUYEN: Okay. How long have you been a gun owner?

13 PROSPECTIVE JUROR NUMBER 171: Probably 15 years.

14 MS. NGUYEN: Do you shoot your gun on a regular basis?

15 PROSPECTIVE JUROR NUMBER 171: I don't.

16 MS. NGUYEN: Okay. How frequently would you say that you do?

17 PROSPECTIVE JUROR NUMBER 171: Every once in a while we go to the  
18 range, but not very often.

19 MS. NGUYEN: I pass for cause.

20 THE COURT: All right.

21 After the rebuttal evidence is presented I will instruct you on the  
22 applicable law. You must not be concerned with the wisdom of any rule of law  
23 stated in these instructions or in the instructions which I will read to you after the  
24 evidence. Regardless of any opinion you may have to as what the law ought to be,  
25 it would be a violation of your oath to base a verdict upon any other view of the law

1 than that given to you by me.

2           After the instructions on the law are read to you, each party has the  
3 opportunity to present closing argument in support of their case. What is said in  
4 closing argument is not evidence, just as what is said in opening statements are not  
5 evidence. The arguments are designed to present to you the contentions of the  
6 parties as to what the evidence has shown and what the inferences may be drawn  
7 from the evidence.

8           You will be given the opportunity to ask written questions of any of the  
9 witnesses called to testify. You are not encouraged to ask a large number of  
10 questions. That is the primary responsibility of the attorneys

11           We would thank and excuse Carson Riland. Thank you for your time.

12           THE CLERK: Badge 172, Dustin Krause, Seat Number 11.

13           THE COURT: Mr. Krause, do you work?

14           PROSPECTIVE JUROR NUMBER 172: I do.

15           THE COURT: What do you do?

16           PROSPECTIVE JUROR NUMBER 172: I'm in competition with this guy right  
17 here. I have my own pool service business.

18           THE COURT: Are you married?

19           PROSPECTIVE JUROR NUMBER 172: No. Divorced.

20           THE COURT: Does your wife work? Ex-wife.

21           PROSPECTIVE JUROR NUMBER 172: She -- yeah, she works for Wells  
22 Fargo.

23           THE COURT: Have you ever sat as a juror before?

24           PROSPECTIVE JUROR NUMBER 172: I have.

25           THE COURT: Where?

1 PROSPECTIVE JUROR NUMBER 172: Federal Grand Jury.

2 THE COURT: When?

3 PROSPECTIVE JUROR NUMBER 172: I believe like 2005.

4 THE COURT: This is a little different, it's unanimous. Do you understand  
5 that?

6 PROSPECTIVE JUROR NUMBER 172: I do.

7 THE COURT: Okay. Do you have a background in law or law enforcement?

8 PROSPECTIVE JUROR NUMBER 172: No.

9 THE COURT: Can you think of any reason you wouldn't bot be fair and  
10 impartial both to the State of Nevada and the Defendant?

11 PROSPECTIVE JUROR NUMBER 172: No.

12 THE COURT: State.

13 MR. FATTIG: Sir, you indicated that you were a victim of a crime recently,  
14 correct?

15 PROSPECTIVE JUROR NUMBER 172: Correct.

16 MR. FATTIG: Is there anything about your experience so far regarding that  
17 that gives you pause in terms of being a fair and impartial juror in this case?

18 PROSPECTIVE JUROR NUMBER 172: No.

19 MR. FATTIG: You believe the police have handled it appropriately as far as  
20 you know at this point?

21 PROSPECTIVE JUROR NUMBER 172: Yes.

22 MR. FATTIG: If we prove our case beyond a reasonable doubt, can you find  
23 the Defendant guilty?

24 PROSPECTIVE JUROR NUMBER 172: Yes.

25 MR. FATTIG: If you received the jury instructions and you disagreed with

1 some of the law or a particular law that Judge Smith told you about, hypothetically,  
2 what would you do? Would you follow the law or go your own way?

3 PROSPECTIVE JUROR NUMBER 172: Follow the law.

4 MR. FATTIG: Thank you. We would pass for cause, Your Honor.

5 THE COURT: All right.

6 MS. NGUYEN: Dustin, you had mentioned you served on the Federal Grand  
7 Jury. I know that our juror up here, Ms. Carol, she also was on a Federal. Did you  
8 guys happen to be on the same Federal Grand Jury?

9 PROSPECTIVE JUROR NUMBER 172: I don't think so.

10 MS. NGUYEN: Okay. Do you know any of the other jurors that are in the  
11 room?

12 PROSPECTIVE JUROR NUMBER 172: No.

13 MS. NGUYEN: Okay. And how long was your service on the Federal Grand  
14 Jury?

15 PROSPECTIVE JUROR NUMBER 172: I started off as an alternate. I  
16 believe approximately every Tuesday for six months.

17 MS. NGUYEN: Okay. And that was back in 2005?

18 PROSPECTIVE JUROR NUMBER 172: Around that neighborhood, yeah.

19 MS. NGUYEN: Okay. Do you work for a company that does it or are you  
20 self-employed?

21 PROSPECTIVE JUROR NUMBER 172: Self-employed.

22 MS. NGUYEN: Okay. I pass for cause.

23 THE COURT: All right. You will be given the opportunity to ask questions.  
24 It'll happen this way. They -- the attorneys will ask the questions. When they're  
25 done I will turn to the jury and say does the jury have any questions of this witness.

1 And then you'll write your name and your seat number, not your badge number,  
2 where your seat is. And remember to write legibly because I have to read it and I'm  
3 not a schoolteacher, I don't -- I can't decipher some of the handwriting. You will not  
4 be allowed to become the third attorney. So you can't advocate a certain position  
5 with your questions. I have the discretion to preclude individual jurors from asking  
6 an excessive number of questions and I have done so.

7 Questions may be asked, again, after both lawyers have finished  
8 questioning the witnesses and only at that time. For example, the State calls a  
9 witness and conducts a direct examination. The Defense can cross-examine even  
10 though they don't want to present any evidence or they choose not to. They can ask  
11 questions and cross-examine. The process may go back and forth a couple times  
12 with direct and cross-examination.

13 We would thank and excuse Lisa Cronin-Leavitt. Thank you for your  
14 time. If you'll check in with the Jury Commissioner.

15 THE CLERK: Badge 173, Joseph Gambino, Seat Number 4.

16 THE COURT: All right. Mr. Gambino, do you work?

17 PROSPECTIVE JUROR NUMBER 173: Yes, I do.

18 THE COURT: What do you do?

19 PROSPECTIVE JUROR NUMBER 173: Project manager for a landscape  
20 construction company.

21 THE COURT: Are you married?

22 PROSPECTIVE JUROR NUMBER 173: Yes.

23 THE COURT: Does your spouse work?

24 PROSPECTIVE JUROR NUMBER 173: Yes.

25 THE COURT: What does your spouse do?

1 PROSPECTIVE JUROR NUMBER 173: Administrative, construction  
2 company.

3 THE COURT: Do you have children?

4 PROSPECTIVE JUROR NUMBER 173: Yes.

5 THE COURT: Ages?

6 PROSPECTIVE JUROR NUMBER 173: 22.

7 THE COURT: Law or law enforcement?

8 PROSPECTIVE JUROR NUMBER 173: Myself, no. My father was a CO for  
9 Metropolitan -- Las Vegas Metropolitan Department of 16.

10 THE COURT: What about your child?

11 PROSPECTIVE JUROR NUMBER 173: I'm sorry?

12 THE COURT: Your child?

13 PROSPECTIVE JUROR NUMBER 173: No.

14 THE COURT: Is there anything about your dad's employment that would  
15 impair your ability to be fair and impartial to both parties in this case?

16 PROSPECTIVE JUROR NUMBER 173: No.

17 THE COURT: Have you ever sat as a juror before?

18 PROSPECTIVE JUROR NUMBER 173: No.

19 THE COURT: State.

20 MS. THOMSON: Thank you, Your Honor.

21 If you're picked as a juror and the Judge instructs on the law and  
22 there's something you disagree with or think that it should be different, will you  
23 follow what the Judge instructs and not what your belief about the law is?

24 PROSPECTIVE JUROR NUMBER 173: I would follow the law.

25 MS. THOMSON: And if we proved the case beyond a reasonable doubt with

1 just one witness, who meets every element of the offense and who you believe  
2 completely, would you be able to find the Defendant guilty?

3 PROSPECTIVE JUROR NUMBER 173: Yes.

4 MS. THOMSON: Is there any question that any of the other jurors have been  
5 asked that you would have an answer that we need to know about or should know  
6 about?

7 PROSPECTIVE JUROR NUMBER 173: No.

8 MS. THOMSON: Would you be a good juror if -- would you want someone  
9 like yourself as a juror failure you were at the State's table or the Defense table?

10 PROSPECTIVE JUROR NUMBER 173: Sure.

11 MS. THOMSON: Thank you. Pass for cause.

12 MS. NGUYEN: Did you -- there was some, I guess, statements made about  
13 social justice, Black Lives Matter, jury nullification, not following the law. Did any of  
14 those -- did you have any reaction to anything your fellow jurors have said?

15 PROSPECTIVE JUROR NUMBER 173: No. Law is the law.

16 MS. NGUYEN: Okay. And do you watch the news or read the new on the  
17 internet or have any --

18 PROSPECTIVE JUROR NUMBER 173: Very little.

19 MS. NGUYEN: Okay. Are you familiar with any of those, I guess, social  
20 justice, I guess --

21 PROSPECTIVE JUROR NUMBER 173: I'm aware of it.

22 MS. NGUYEN: -- advocates or movements? And do you have any opinions  
23 about that?

24 PROSPECTIVE JUROR NUMBER 173: No, I do not.

25 MS. NGUYEN: Okay. With regard to excessive force or use of force by

1 police officers, do you have any opinions about any of those cases that have been in  
2 the media?

3 PROSPECTIVE JUROR NUMBER 173: No opinions.

4 MS. NGUYEN: No opinions?

5 PROSPECTIVE JUROR NUMBER 173: No.

6 MS. NGUYEN: Okay. Are you familiar with any of them?

7 PROSPECTIVE JUROR NUMBER 173: Very little.

8 MS. NGUYEN: Okay. Do -- you said that you had -- was your father that  
9 worked in -- as a correctional officer?

10 PROSPECTIVE JUROR NUMBER 173: Correct.

11 MS. NGUYEN: For 16 years?

12 PROSPECTIVE JUROR NUMBER 173: Yes.

13 MS. NGUYEN: Okay. And was that here locally, in Clark County?

14 PROSPECTIVE JUROR NUMBER 173: Yes.

15 MS. NGUYEN: Okay. Did he ever talk about his work?

16 PROSPECTIVE JUROR NUMBER 173: Yes.

17 MS. NGUYEN: Okay. Did you have any opinion based on his experiences  
18 about, I guess, criminal Defendants?

19 PROSPECTIVE JUROR NUMBER 173: Opinions that wouldn't change my  
20 law and my mind when it came to making a decision no what's right and, you know,  
21 is right.

22 MS. NGUYEN: I understand that, but do you have any opinions about the  
23 people that are incarcerated in the Clark County Detention Center?

24 PROSPECTIVE JUROR NUMBER 173: No.

25 MS. NGUYEN: I'm sorry, how far did you go in school?



1 PROSPECTIVE JUROR NUMBER 173: High School.  
2 MS. NGUYEN: Okay. And you said you're a project manager.  
3 PROSPECTIVE JUROR NUMBER 173: Correct.  
4 MS. NGUYEN: And how long have you been doing that?  
5 PROSPECTIVE JUROR NUMBER 173: 18 years.  
6 MS. NGUYEN: And you said you had one child, is that correct?  
7 PROSPECTIVE JUROR NUMBER 173: Correct.  
8 MS. NGUYEN: And how old?  
9 PROSPECTIVE JUROR NUMBER 173: 22.  
10 MS. NGUYEN: Okay. Does that child live here locally?  
11 PROSPECTIVE JUROR NUMBER 173: No.  
12 MS. NGUYEN: Okay. Are you from Las Vegas?  
13 PROSPECTIVE JUROR NUMBER 173: Yes I am.  
14 MS. NGUYEN: Nothing further. I pass for cause.  
15 THE COURT: All right. We have a jury. If you will all will go down and check  
16 with the Jury Commissioner, we appreciate your time and I truly believe if good  
17 citizens aren't willing to sit and do this -- and I've been called to jury duty, so I've  
18 been down there and watched those videos. I didn't get called, but I would have. I  
19 would have loved to have been on a jury.  
20 I appreciate your time. If you'll check in with the Jury Commissioner,  
21 she may just send you home. Thank you.  
22 All right. I'm going to read to you some more of this law. Again,  
23 questions may be asked after both lawyers have finished asking questions. Should  
24 you desire to ask a question, you should write your question down with your juror  
25 number on a full sheet of paper -- well you'll have a little notebook. On that

1 notebook put your name and your seat number and ask the question.

2 Just raise your hand and let me know. I move pretty fast, so if you have  
3 a question, even though you don't have write -- written down, make sure you get  
4 that hand up because I pass people up and I'm sorry.

5 Any questions that you pose must be factual in nature and designed to  
6 clarify information already presented. All questions must be directed to the witness  
7 and not to the lawyers or myself. After you have indicated you have a question, the  
8 marshal will pick up your question, give it to me, and then I'll go out in the hall and  
9 talk to the attorneys about it, to see if it is maybe going to be answered by a later  
10 witness or if it's an improper question and may not be asked.

11 Only questions permissible under the rules of evidence will be asked  
12 and jurors should not draw any inference or conclusions if a question is asked or is  
13 not asked. If I determine that your question may be properly asked, I will ask of it of  
14 the witness attorneys will be allowed follow-up as necessary.

15 Until the case is submitted to you, please don't discuss it with anyone,  
16 even with your fellow jurors, until after it is submitted to you. You must discuss it  
17 only in the jury room with your fellow jurors. It is important that you keep an open  
18 mind and not decide any issue in the case until the entire case has been submitted  
19 to you under instructions from me. If you need -- cannot hear a witness, please  
20 raise your hand as an indication.

21 Also, if you need to use the restroom or if you feel ill, please also raise  
22 your hand as an indication that -- and we will take intermittent breaks as the Court  
23 sees fit. Usually about every 90 minutes or so. Most important I have no obviously  
24 to jurors bringing drinks or snacks into the courtroom. Some people have low blood  
25 sugar and need that.

1           Your purpose as jurors is to find and determine the facts. Under our  
2 system of criminal procedure you are the sole judge of the facts. You determine the  
3 facts from the testimony you hear and other evidence, including exhibits introduced  
4 in court. It is up to you to determine the inferences that you feel may properly drawn  
5 from the evidence. It is especially important that you perform your duty and  
6 determine the facts diligently and conscientiously for ordinarily there is no means of  
7 correcting an erroneous determination of facts.

8           The parties may sometimes present objections to some of the  
9 testimony or other evidence. It is the duty of a lawyer to object to evidence which  
10 they believe may not be properly offered and you should not be prejudiced in any  
11 way against the lawyer who makes objections on behalf of the party they represent.  
12 At times I may sustain the objection or direct that you disregard certain testimony or  
13 exhibits. You must not consider any evidence to which an objection has been  
14 sustained or which I have instructed you to disregard.

15           Anything you may have seen or heard outside the courtroom is not  
16 evidence and must also be disregarded. Remember statements, arguments, and  
17 opinions of Counsel are not evidence in the case. However, if the attorneys  
18 stipulate to the evidence of a fact, you must accept the stipulation as evidence and  
19 regard the fact as proven. You must not speculate to be true any insinuations  
20 suggested by a question asked of a witness. A question is not evidence and may be  
21 considered only as it supplies meaning to the answer.

22           You must not be influenced in any degree by any personal feeling of  
23 sympathy or prejudice against the State or the Defendant. Both sides are entitled to  
24 the same fair and impartial considerations.

25           In considering the weight and value of the testimony of any witness you

1 may take into consideration the appearance, attitude, and behavior of the witness,  
2 the interest of the witness in the outcome of the case, if any, the relationship of the  
3 witness to the Defendant or the State, the inclination of the witness to speak  
4 truthfully or not, and the probability or the improbability of the witness' statements  
5 and all of the facts and circumstances in evidence. Thus you may give the  
6 testimony of any witness just such weight and value as you believe the testimony of  
7 the witness is entitled to receive.

8           There are two kinds of evidence, direct and circumstantial. Direct  
9 evidence is testimony by a witness about what that witness personally saw, or  
10 heard, or did. Circumstantial evidence is testimony or exhibits which are prove of a  
11 particular fact from which if proven you may infer the existence of a second fact.

12           For instance, we came in today, there was no snow on the ground and  
13 if we went out tonight and there's three feet of snow across the valley, you didn't see  
14 it snowed, but you can infer that it snowed. That's circumstantial evidence. But as  
15 we're coming in, if it's snowing and we have -- snowflakes fall on us, we have  
16 personal proof that it was snowing.

17           So you can use -- you can -- may consider both direct and  
18 circumstantial evidence in deciding this case. The law permits you to give equal  
19 weight to both. But it is for you to decide how much weight to give any evidence.  
20 No statement, ruling, remark, or comment which I make during the course of the trial  
21 is intended to indicate my opinion as to how you should decide the case or to  
22 influence you in any way in your determination of the facts.

23           At times I may even ask questions of witnesses. If I do so it's the  
24 purpose -- for the purpose of bringing out matters which I feel should be brought out  
25 and not in any way indicate my opinion about the facts or to indicate the weight I feel

1 should be given to the testimony of witnesses. I may also find it necessary to  
2 admonish the lawyers and if I do you should not show prejudice against a lawyer or  
3 their client because I have found it necessary to admonish the lawyer.

4           Until this case is submitted to you, you must not discuss it with anyone,  
5 even with your fellow jurors. After it is submitted to you, you must discuss it only in  
6 the jury room with your fellow jurors. It is important that you keep an open mind and  
7 not decide any issue until the case on -- in the case until the entire case has been  
8 submitted to you under instructions from me.

9           If you can't hear a witness, please raise your hand as an indication.  
10 Also, if you need to go to the restroom, again, if you feel ill just let me know.

11           I may, during the trial, take notes of witnesses' testimony. You are not  
12 to make any inference from that fact. I am required to be prepared for legal  
13 arguments of Counsel during the trial. For that reason I may take lots of notes or I  
14 may be making my grocery list. If you think, aw, he's writing this down, this must be  
15 important. Don't do that. Just listen to the evidence and you guys make the  
16 decision.

17           Again, let me remind you that until the case is submitted to you, do not  
18 talk to each other or anyone else about it or anyone who has anything to do with it  
19 until the end of the case when you go to the jury room to decide your verdict.  
20 Anyone else includes members of your family and your friends. You may tell them  
21 that you are a juror in a criminal case, but don't tell them anything else about it until  
22 you have been discharged as jurors by myself.

23           Do not let anyone talk to you about the case, or about anyone who has  
24 anything to do with it. If someone should try to talk to you, please report that to me  
25 through the marshal. Don't read any stories or articles or listen to any radio or

1 television reports about the case or anyone who has anything to do with it.

2 Do not jump on the information highway and try to *AskJeeves* or  
3 anybody or anything about this case. Don't do any personal research. Please don't  
4 communicate or publish anything about this case on any social media sites, like  
5 *Facebook* or *Instagram*, or *Twitter*.

6 Go to lunch. Tom will tell you -- if you'll meet just out there, Tom will tell  
7 about lunch sites and we'll see you back here at 1:30.

8 [Outside the presence of the prospective jury]

9 THE COURT: Jury's out. Okay. See you guys back at 1:30.

10 MR. FATTIG: Judge?

11 THE COURT: What?

12 MR. FATTIG: Regarding Mr. Krause, I got an update. He has the subpoena  
13 for tomorrow.

14 THE COURT: Oh.

15 MR. FATTIG: He's on a jury trial. He's a victim in a jury trial in Department  
16 IX, but it sounds like it's going to be a short trial. And he's supposed to report at  
17 some point tomorrow. So I'm guessing at some point we're going to need to take a  
18 break --

19 THE COURT: Oh, I forgot about that.

20 MR. FATTIG: -- so him can go -- so he can go testify.

21 THE COURT: All right.

22 MR. FATTIG: I don't know how long it's going to be. We'll talk to the DA. It's  
23 Eric Bauman is the DA.

24 THE COURT: All right. We'll work --

25 MR. FATTIG: But I've been in touch with --

1 THE COURT: -- around that.  
2 MR. FATTIG: -- the investigator.  
3 THE COURT: All right.  
4 MR. FATTIG: So just as a heads up.  
5 THE COURT: Thanks. I think we're ready. Make sure you get back early  
6 enough to test your --  
7 MR. FATTIG: Yes.  
8 MS. THOMSON: Yes.  
9 MR. FATTIG: We will test it, make sure everything's operating.  
10 [Recess taken at 12:36 p.m.]  
11 [Trial resumed at 1:36 p.m.]  
12 [Outside the presence of the prospective jury]  
13 MS. NGUYEN: Do we need -- they filed an amended --  
14 MR. FATTIG: We had -- we didn't --  
15 THE COURT: Yeah.  
16 MR. FATTIG: -- make a record about it.  
17 THE COURT: Yeah, we can make --  
18 MS. NGUYEN: Yeah.  
19 THE COURT: -- a record right --  
20 MS. NGUYEN: We didn't want to do right now?  
21 THE COURT: Before Tom comes in.  
22 MR. FATTIG: Yeah, we can do it right now.  
23 THE COURT: Go ahead.  
24 MR. FATTIG: WE -- Your Honor, this morning we filed an amended  
25 indictment. We're just -- the only in -- amended nature to the document was in

1 Count 12, which is the felony evading count. We clarified that the streets regarding  
2 the evading were between Walnut and Dolly on Carey. Basically added Walnut.  
3 That's been part of the discovery all along, so there's no obvious prejudice to the  
4 Defense. They've known exactly the pursuit in terms of where it started and where it  
5 ended all along. But that was just a clarification.

6 MS. NGUYEN: I'll submit to it to the Court.

7 THE COURT: Okay. You've reviewed this well what's could be read to the  
8 jury?

9 MS. NGUYEN: Your Honor, they have a witness that we don't want her to  
10 cause a mistrial. And they were hope -- I think you -- do you want the Judge to  
11 admonish her or --

12 MS. THOMSON: Yeah.

13 MS. NGUYEN: -- what did you --

14 MR. FATTIG: Yes. Go ahead. Do you want to make a brief record about it,  
15 Megan?

16 MS. THOMSON: Yes.

17 MR. FATTIG: So at least he knows.

18 MS. THOMSON: First of all, we'll have you answer, did you review the  
19 amended?

20 MS. NGUYEN: Yes, yes.

21 THE COURT: Did you review their --

22 MS. NGUYEN: Yes.

23 THE COURT: -- amended --

24 MS. NGUYEN: Yes, I did.

25 THE COURT: No. Did you review this, the one that's going to be read and



1 make sure everything is marked off correctly?

2 MS. THOMSON: I did the marking.

3 THE COURT: Okay.

4 MS. THOMSON: We have a witness, Eufrosia Nazaroff. She is the mother of  
5 the Defendant's children. She obviously has knowledge about all kinds of things  
6 that she's not allowed to talk about. She declined to come meet with us for pretrial,  
7 so we have not had that conversation with her about all the things she can't talk  
8 about. And because I expect that she probably won't be what I would call  
9 cooperative, I'd ask that the Court admonish her because my admonishing her is  
10 going to not have as much effect.

11 MS. NGUYEN: I would say --

12 MS. THOMSON: Please.

13 MS. NGUYEN: -- mostly my concerns are that have to do with actually my  
14 client's rights. I don't know what she would have to say. She has -- she hasn't been  
15 in contact with me and I know my investigators attempted to contact her as well. But  
16 I know that there's references at some point to Little Locos gang. I just want her to  
17 be admonished not to make reference to that, him being on probation, parole --

18 THE COURT: Right. What --

19 MS. NGUYEN: -- prior convicted felon, his moniker. I think there were  
20 admissions -- references to drugs or weed.

21 THE COURT: What do you have her coming in for?

22 MS. THOMSON: It is her car that he is driving on the night of the incident.  
23 She'll identify the vehicle, she will indicate that he was wearing the bullet-proof vest  
24 when he came to pick up the car from her. She will indicate that he had -- she had  
25 seen him with the firearms that were ultimately recovered in this case previously;

1 that those were not firearms that she had in the vehicle and did not allow in her  
2 house.

3 THE COURT: Is she the first witness?

4 MR. FATTIG: No, not the first witness.

5 MS. THOMSON: But since we're on break it made sense to admonish her  
6 now, instead of having to --

7 THE COURT: Okay.

8 MS. THOMSON: -- take a break before she testifies.

9 THE COURT: You want to have her come in?

10 MS. THOMSON: That would make sense to me.

11 THE COURT: Have her come in, Tom, first.

12 MR. FATTIG: And those are the statements she gave Metro. We don't know  
13 exactly what she's going to say because she wouldn't pretrial with us.

14 THE COURT: Oh that was the lady that walked in.

15 I need you to come up and be sworn in.

16 **EUFRASIA NAZAROFF**

17 [having been called as a witness and being first duly sworn, testified as follows:]

18 THE COURT: State your name and spell your first and last name for the  
19 record.

20 THE WITNESS: Eufrasia Nazarovff, E-U-F-R-A-S-I-A, N-A-Z-A-R-O-F-F.

21 **EXAMINATION BY THE COURT**

22 BY THE COURT:

23 Q You're going to be called to testify today about the incident. You  
24 weren't there for the incident.

25 A No.

1           Q     You're not to talk about any gang affiliation, any moniker, or nickname.  
2 They're going to lead you through along, you wouldn't come in pretrial with them and  
3 so they couldn't tell you all this stuff. But I can tell you I've had people violate my  
4 order and if you do you'll go to jail today and I'll have to get somebody to come get  
5 your child.

6           A     Okay.

7           Q     So you're to answer their questions.

8           A     Okay.

9           Q     You're not say anything -- well, it's my understanding you're going to  
10 testify that the car was yours.

11          A     Yes.

12          Q     That you saw Mr. Bacharach come get the car, he had a bullet-proof  
13 vest on, and you seen him --

14          A     No. He didn't have no bullet vest -- bullet -- he didn't have no bullet  
15 vest on.

16          Q     Did you tell somebody that he did?

17          A     No. I said I -- he came and got my car, he had my keys. He did. But  
18 he never had a bullet vest on.

19          MS. THOMSON: That's fine.

20          THE COURT: All right.

21          MR. FATTIG: And --

22          MS. THOMSON: We've got the statement, so.

23          THE COURT: We're going to have them lead her through. But if she blurts it  
24 out, I got no alternative but to put you in custody, you understand?

25          THE WITNESS: What are you talking about?

1 THE COURT: If you blurt out something about trying to get him off, say  
2 something you're not supposed to say --

3 THE WITNESS: No.

4 THE COURT: Tell them --

5 MR. FATTIG: In other words, about gang affiliation.

6 THE COURT: Gang affiliation --

7 MS. NGUYEN: I --

8 MR. FATTIG: Or drug use.

9 THE COURT: Drug use.

10 MS. NGUYEN: Probation.

11 MR. FATTIG: Drug possession.

12 MS. NGUYEN: Parole.

13 THE COURT: Smoke and dope or anything.

14 MR. FATTIG: Or the Defendant was on probation or supervision.

15 THE COURT: Or parole or probation. You're not to say that. She's going to  
16 lead you through a lot of that stuff to keep you away from it. But don't blurt anything  
17 out, you understand?

18 THE WITNESS: Okay.

19 THE COURT: Okay. Anything else, State?

20 MS. THOMSON: No, Your Honor.

21 MR. FATTIG: No.

22 THE COURT: Okay. Thank you. You'll be called in just a few minutes.

23 All right. Are you guys ready for the jury, State?

24 MS. THOMSON: Yes, Your Honor.

25 THE COURT: Defense ready for the jury?

1 MS. NGUYEN: Yeah.

2 THE COURT: All right. Bring them in.

3 [In the presence of the prospective jury]

4 THE MARSHAL: All rise, please.

5 And be seated.

6 THE COURT: Stipulate to the presence of the jury.

7 MS. NGUYEN: Yes, Your Honor.

8 MR. FATTIG: Yes.

9 THE COURT: All right. Thanks for being prompt. If you'll stand and raise  
10 your right hand to be sworn in as a jury.

11 [The Clerk swears in the jury]

12 THE COURT: Thanks. The Clerk will now read the indictment to the jury.

13 [The Clerk read the Indictment aloud]

14 THE COURT: Thank you. State ready?

15 MR. FATTIG: Yes.

16 THE COURT: All right. Go ahead.

17 **OPENING STATEMENT BY THE STATE**

18 BY MR. FATTIG:

19 Counsel, Your Honor, Ladies and Gentleman of the Jury, the events  
20 began for Officer Ryan McNabb on June 26<sup>th</sup> of last year at approximately 10:45 in  
21 the evening near the area of Walnut and Lake Mead. Officer McNabb was in a  
22 uniform, marked patrol car protecting our community that evening. At the corner of  
23 Walnut and Lake Mead Officer McNabb, this is how he's dressed, his uniform. He's  
24 attending to a car on the northwest corner of Walnut and Lake Mead. It's an  
25 abandoned car, appears to have some sort of operating difficulty. He's out there

1 just inspecting what's going on.

2           Then he sees a maroon Dodge Intrepid. The vehicle is on Lake Mead,  
3 at a stop light, stopped, heading north through the intersection at Walnut. When he  
4 first sees it it's stopped at the stop sign -- or the stop light. And he notices that the  
5 Dodge Intrepid has four headlights on or in other words, the high beams are on.  
6 And this is a populated area with other cars and people in the area, so Officer  
7 McNabb notes that it's a traffic infraction. So as the vehicle continues with the high  
8 beams on, proceeds north through the intersection, Officer McNabb, observing this,  
9 pulls a U-turn behind the Dodge Intrepid.

10           Officer McNabb's intent is to stop the Intrepid. The map on the screen  
11 shows generally where we're talking about. The white vehicle that Officer McNabb  
12 was at was in this area on Lake Mead and Walnut. Officer McNabb pulled a U-turn  
13 behind the Dodge Intrepid as it went northbound towards Judson. Judson runs  
14 here. As he did that the Dodge Intrepid didn't stop when Officer McNabb put on his  
15 lights. The Dodge Intrepid continued northbound and Officer McNabb noted that  
16 there was one occupant inside and the vehicle continued to in fact speed up as it  
17 head towards Carey. Carey is the street that runs east west along the top of this  
18 particular diagram.

19           As it drove northbound up Judson towards Carey, Officer McNabb  
20 observed that the lone occupant and driver of the Dodge Intrepid took out a firearm  
21 and fired it into the air and then sped up. Officer McNabb with lights on obviously  
22 realized this wasn't going to be just another traffic stop. This wasn't going to be just  
23 another night as a patrolman in Las Vegas. On the corner of Carey and Walnut  
24 there's a stop sign. In this area here you will see and you will hear testimony about  
25 the Dodge Intrepid going through the stop sign. It then takes a right or heads

1 eastbound on Carey. Patrol Officer McNabb continues to follow the vehicle.

2           He goes around the corner. When he goes around the corner, a  
3 gunshot rings out. Officer McNabb -- it's the summertime. As a patrol officer he's  
4 going to tell you he was trained to have your windows down for a better feel --  
5 observe -- be able to observe your surroundings. And Officer McNabb is expected  
6 to testify for you that when he -- that second shot occurred coming from the Dodge  
7 Intrepid who he was following. That bullet whizzed past his left ear, thankfully  
8 missing Officer McNabb and the patrol vehicle.

9           He continued following it and the Dodge Intrepid sped up as it  
10 proceeded eastbound on Carey and boom, there was another gunshot, third  
11 gunshot, again towards Officer McNabb in his patrol car. The speeds at this point of  
12 the Dodge Intrepid are going upwards of 80 miles an hour as it heads down Carey  
13 towards Lamb Boulevard, normally a quite busy area, Lamb and Carey. Perhaps a  
14 little less busy this time of night. He proceeds to follow this vehicle that's shooting at  
15 him and he notices that as they approach Lamb there is a solid red light.

16           The Dodge Intrepid flies through that intersection; doesn't stop, doesn't  
17 slow down. He approaches the red light, puts on his sirens at this point, as his  
18 light's going, has to slow down in order for traffic to be safe for him to go through this  
19 red light at Carey and Lamb safely. And that's what he does. So he loses a little bit  
20 of distance on the Dodge Intrepid as it proceeds past Lamb on Carey, down this  
21 way. As that's occurring he hears two more gunshots, back down the street towards  
22 where he's at.

23           He continues following the Dodge Intrepid trying to catch up and he  
24 notes that at a certain point in time as they reach the area of Carey and Dolly, east  
25 of Lamb, he notes that the vehicle he's been pursuing, this person shooting at him

1 has -- something's happened; that vehicle has stopped on the side. He notes it kind  
2 of goes up on the curb, it pulls into that intersection. You're going to hear that he  
3 ended up in that intersection. The Dodge Intrepid pulled over to this section on the  
4 left side of this particular photo. Officer McNabb ended up pulling up where you see  
5 the patrol car on the right side.

6           Officer McNabb, as he approached, saw the occupant of that Dodge  
7 Intrepid get out of the vehicle, go to the rear of the vehicle, hold a gun towards the  
8 side, pointed at Officer McNabb. As Officer McNabb pulled up, the same man, the  
9 lone occupant of that vehicle fired one shot at Officer McNabb. Officer McNabb  
10 proceeded to see that individual go from the side of that red Dodge -- maroon  
11 Dodge Intrepid, go towards the corner behind where the street lamp is. That's the  
12 corner of Dolly and Carey.

13           This was Officer McNabb's viewpoint as he got out of the driver's seat  
14 with his handgun, aimed towards that corner and began firing at the person who had  
15 fired at least six shots at him by this point -- by the time Officer McNabb fires once.  
16 You're going to hear that Officer McNabb fired a number of times and as he did so,  
17 the individual took off southbound on that street.

18           Officer McNabb then began following on foot at this point.

19           JUROR NUMBER 3: Can I ask a question?

20           THE COURT: No. No questions --

21           JUROR NUMBER 3: Oh, okay.

22           THE COURT: -- until I ask you --

23           JUROR NUMBER 3: Okay.

24           THE COURT: -- okay?

25 BY MR. FATTIG:



1           He began following on foot at this point. Officer McNabb ran to the  
2 corner and this was the viewpoint he had as he saw the individual down a block  
3 away on the next street down, which is called El Tovar. Officer McNabb fired again  
4 from this location and you'll hear about that. This is an aerial that you will hear was  
5 taken the very next morning when the vehicles were still in the same position.  
6 Officer McNabb's vehicle is here on Carey. There's a Dodge maroon Intrepid right  
7 here. And here's the next street, El Tovar, the next block down.

8           This was the viewpoint as Officer McNabb pursued the gunman down  
9 to El Tovar. He got to the street and he looked down the street. This is obviously  
10 taken after crime scene analysts and police had been out there and marked off the  
11 scene. But this is the viewpoint he had. And to the right, on the north side of El  
12 Tovar, the second home in, was 4586 El Tovar, a little green house.

13           The testimony is going to be that Officer McNabb has obviously  
14 summoned other officers to his aid. As soon as this Dodge Intrepid refused to stop,  
15 started shooting initially in the air, and then at him, he is obviously radioing for help.  
16 So Officer McNabb is by himself initially on that street, on foot, chasing the gunman.  
17 At a certain point in time, it seemed like forever to Officer McNabb, but it was fairly  
18 quick, other units begin arriving on El Tovar.

19           One of the units is a K9 Unit that has a specially trained dog. Other  
20 units were patrol officers. Within minutes you're going to see that the K9 officer kind  
21 of took over. He had Officer McNabb whose adrenaline was obviously rushing at  
22 this point step back. He had the dog and a female occupant of this home came out  
23 and said there's a man who I don't know in my backyard. Officer Ernie Morgan,  
24 who's the K9 Officer will tell you that he and other officers then went into this home,  
25 go in the backyard to get this man.

1           Officer Morgan will tell you that he had his dog, his dog came into the  
2 backyard with him and other officers; that when they peeked around the corner they  
3 saw a man lying on his stomach on the side of the yard as they came outside. They  
4 didn't see the man's hands, they yelled at him show me your hands. They yelled  
5 commands. They obviously knew that this was an armed man that had been  
6 shooting at a police officer. The man didn't comply with multiple demands.

7           Officer Morgan released his specially trained K9 and the K9 bit that  
8 man. And that man was Joshua Bacharach. You're going to hear that that man was  
9 taken into custody and he was brought outside, outside the green home to the front.  
10 He was brought in the front where Officer McNabb was and Officer McNabb saw  
11 him and said yes, that's the man. That's the man that was shooting at me.

12           In front of the green home there is a white truck just to the east. As  
13 officers are doing what they need to do, an officer notices under the front of this  
14 white truck is some evidence. And when they looked under there they saw two  
15 things. They saw a handgun and they saw a white bullet-proof vest. They  
16 confiscated that gun. You're going to find out that it's a .45 caliber. You're going to  
17 find out that it's a semi-automatic. Many of you are familiar with firearms, some of  
18 you aren't.

19           Semi-automatics, when they are discharged, leave behind evidence.  
20 They leave behind cartridge casings. And they mark cartridge casings with tool  
21 marks, with indentations that are unique to different guns. And so when they  
22 collected this particular firearm, they also went around and scoured the crime  
23 scenes. And we're talking about that streets where this pursuit occurred, as well as  
24 the immediate area of Dolly, Carey, El Tovar.

25           And you're going to hear that the police were able -- these are small

1 little cartridge casings, but they were still able to find three of them. And you're  
2 going to hear that one of them was located in front of this church on the northbound  
3 lanes of Walnut. A second was located on East Carey, approximately in this  
4 location on the eastbound lanes of Carey. And there was a third located on the  
5 north side of the street by the gutter just past Gateway on Carey. When they  
6 compared those casings to the gun that they found, it matched. That gun fired those  
7 casings.

8 Ladies and gentlemen, you're going to hear that evidence and you're  
9 going to hear additional evidence. And when you do that, at the end of the case,  
10 you're going to be given the instructions from Judge Smith which tells you what the  
11 law is. And then after you have the -- a chance to look at the law and you've heard  
12 all of the evidence -- and the evidence is going to be what you hear from the  
13 witnesses on the stand, it's going to be any exhibits that you hear, see in the  
14 photographs, hear in 9-1-1 calls or videos, any stipulations of the party.

15 When you consider the evidence, weigh it against the law that you're  
16 given, we're going to ask you at that point -- we believe we're going to prove beyond  
17 a reasonable doubt that Joshua Bacharach did several things; that he attempted to  
18 murder Ryan McNabb by shooting at him a number of times, that he discharged a  
19 firearm outside of a vehicle five different times, that he committed assault with a  
20 deadly weapon five different times against Officer McNabb, that he was in  
21 possession of a firearm with an obliterated serial number, that he evaded Officer  
22 McNabb to the extent that it was a felony by putting other people's lives and/or  
23 property in danger when he sped down Carey, and that he resisted Officer McNabb  
24 once he got out of the car.

25 Officer McNabb had a duty to arrest him at the point, had the right to do

1 so, and Joshua Bacharach resisted with a firearm against him to delay and obstruct  
2 him. Based upon that evidence, we're going to ask that you find him guilty of all of  
3 those counts. Thank you.

4 **OPENING STATEMENT BY THE DEFENSE**

5 BY MS. NGUYEN:

6 Good afternoon, everyone. I think this whole process is made to make  
7 everyone feel kind of uncomfortable and it starts with jury selection. We ask  
8 everyone to publicly speak, which a lot of people that's not -- doesn't come naturally  
9 to them. We ask you to speak in front of strangers. We ask you personal questions  
10 about your family, and your spouse, and your ex-spouse, and your children, and  
11 what you do for a living, and how far you went into school. We talk to you about  
12 politics. We talk to you about social issues. We talk to you about pretty much  
13 everything. So we appreciate the information that you provide, but I do know that it  
14 makes every feel uncomfortable.

15 I know during jury selection one of the big topics that not only the Judge  
16 hit on, but the District Attorney asked you and I asked you some questions as well,  
17 and that was about the presumption of innocence. The Judge told you from the  
18 beginning that the opening statements, they're not evidence. And even as my client  
19 sits there today, sits there right now, after only having heard from myself here for a  
20 limited period and Mr. Fattig speak for the State, he is still innocent. They still have  
21 to prove everything that they just outlined to you.

22 I think of opening statements kind of like a movie trailer or an  
23 advertisement that you would see on TV. And just like a movie trailer and just like  
24 an advertisement, we've all seen that movie trailer and then we're like yeah, I'm  
25 going to go see that, I'm going to see that. I'm going to see that Nicholas Cage

1 movie and I'm not going to be tricked into thinking it's a bad movie. And then you go  
2 and see it and guess what, it's a bad movie. Or you see a trailer for a movie and  
3 you go see the movie and it has nothing to do with what the trailer advertised for  
4 you.

5 Likewise, hopefully I'm not the only one that's been suckered into  
6 purchasing something that they saw advertised as *Seen on TV*, only to find out that  
7 it is not as wonderful or easy to use as it was portrayed. And that's the way opening  
8 statements are and that's what I would want you to like pay attention when you hear  
9 the evidence presented. This was just a trailer and the actual movie that you're  
10 about to see, that's what you're going to hear, and that's what you're going to listen  
11 to, and that's what you're going to evaluate.

12 And you're going to hear that testimony, you're going to see some  
13 videos, you're going to see some photographs, you're going to hear testimony from  
14 various police officers or witnesses. And you'll be able to see that, use your  
15 common sense, and determine what it is that you saw. What it is that you saw and  
16 what you think a reasonable person in that circumstance would see themselves.

17 I think at the end of the day, I want you to pay attention to the testimony  
18 that's presented, their perspective, any testimony that's not presented. Forensic  
19 data that's presented and that that is not presented to you because I think that's  
20 very important in determining whether the State has proved their case beyond a  
21 reasonable doubt.

22 And at the end of the testimony and at the end of the presentation of  
23 the State's case, I believe that you will find that they have not met that burden. They  
24 have not established every single element of the crimes that they are charging and  
25 that they are seeking to conviction on against my client, Joshua. And you will come

1 back with not guilty verdicts. Thanks.

2 THE COURT: Thanks. Call your first witness, State.

3 MR. FATTIG: Maurine Palmer.

4 **MAURINE PALMER**

5 [having been called as a witness and being first duly sworn, testified as follows:]

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

8 THE WITNESS: Maurine Palmer. M-A-U-R-I-N-E, P-A-L-M-E-R.

9 JUROR NUMBER 8: Excuse me, Your Honor. I know her.

10 THE COURT: Okay. Just write it down.

11 JUROR NUMBER 8: Okay. Sorry.

12 THE COURT: If you need to communicate, we'll communicate at a break.  
13 Just -- the jury has a couple times spoken out. Just write it down and we'll --

14 **DIRECT EXAMINATION**

15 BY MR. FATTIG:

16 Q Ma'am, back on June 26<sup>th</sup> of 2014, did you live at 2409 North Walnut?

17 A Yes, sir.

18 Q And that's here in Las Vegas, Clark County, Nevada?

19 A Yes, it is.

20 MR. FATTIG: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 BY MR. FATTIG:

23 Q Ma'am, I'm going to show what's been marked as State's Proposed  
24 Exhibit Number 5, which is an aerial photograph, do you agree?

25 A Yes.

1 Q Do you recognize what's shown in this photograph?

2 A Yes.

3 Q What is shown here?

4 A There's the neighborhood and the church across the street, my house,  
5 apartments across the street, and my friend's house.

6 Q Okay.

7 A Yeah.

8 Q So this shows your neighborhood?

9 A Yes.

10 Q Is that a fair and accurate copy from the air of your neighborhood?

11 A Yes, it is.

12 MR. FATTIG: Okay. Move to admit --

13 MS. NGUYEN: No objection.

14 MR. FATTIG: -- Proposed 5.

15 MS. NGUYEN: No objection.

16 THE COURT: It'll be admitted.

17 **[STATE'S EXHIBIT 5 ADMITTED]**

18 BY MR. FATTIG:

19 Q Ma'am, if you -- the screen in front of you is kind of like a telestrator, like  
20 John Madden used to have on Monday Night Football.

21 A Okay.

22 Q So if you could do me a favor and point out on the telestrator there on  
23 your screen your residence as of June 26<sup>th</sup> of 2014.

24 A Okay. Right here.

25 Q Okay. So you --

1 A A little farther.

2 Q So you're the first house north of Carey on Walnut.

3 A Correct.

4 Q And that would be the west side, correct?

5 A Yes.

6 Q Okay. And just to the south on the other side of Carey, also on Walnut,

7 what is this over here?

8 A That's the LDS Church.

9 Q Directing your attention to that evening on June 26<sup>th</sup>, was there a point

10 in time when you arrived home?

11 A Yes.

12 Q And when you arrive home, is -- do you go into your garage?

13 A Yes.

14 Q And is your garage just in front of the driveway here on this portion of

15 Grand -- of State's Exhibit 5?

16 A Yes it is. Uh-huh.

17 Q On that particular evening were you in your garage when something

18 unusual happened?

19 A Yes.

20 Q About what time of the evening of you believe that was?

21 A It was approximately 10:45. I had just come home from work.

22 Q And when did you get off of work normally?

23 A Usually between 10:00 and 10:30. And I -- 10:#0 that night.

24 Q Okay. You got off at 10:30.

25 A Yes.



1 Q You got home about 10:45.

2 A Uh-huh.

3 Q You were in your garage.

4 A Right.

5 Q Okay. What did you hear or see?

6 A I heard some what sounded like arguing. It was in Spanish. And I

7 heard it -- I was inside the garage. I didn't look out or anything to see, but I heard

8 what sounded like arguing.

9 Q Loud voices.

10 A Uh-huh.

11 Q In Spanish.

12 A Yes. Uh-huh.

13 Q Okay. Then what?

14 A Then I heard a pop, which I thought maybe was firework's because

15 being close -- getting close to the 4<sup>th</sup> of July I thought maybe it was a firework,

16 but --

17 Q Can you describe the pop? Was it loud?

18 A It was just like, yeah, real loud. Pop. You know, real pop.

19 Q Okay.

20 A And then a few seconds later I heard another one. And I thought okay,

21 that's probably not fireworks.

22 Q What did you think it was?

23 A Then I thought then it might be a gunshot.

24 Q Okay.

25 A Yeah.

1 Q Could you tell generally where those gunshots were coming from?  
2 A It sounded like it was coming to the right of me, which would be on  
3 Carey.  
4 Q Okay.  
5 A Or in that area there.  
6 Q To the right of you is south --  
7 A This would be south.  
8 Q -- of the house.  
9 A Yes. Correct. Uh-huh.  
10 Q Okay. So either on Carey or near there.  
11 A Near there. Uh-huh.  
12 Q Okay. So you heard -- was the second equally as loud as the first?  
13 A Yes it was.  
14 Q And then what?  
15 A And then I was -- I finished putting my things away and I heard -- a few  
16 seconds later I heard a car -- it sounded like it sped off and I looked out from where I  
17 could see inside my garage and I saw taillights going down -- east down Carey.  
18 Q Okay. When you see -- when you say it sped off, there -- did it sound  
19 like a car was fast --  
20 A Yes.  
21 Q -- on Carey?  
22 A Yes.  
23 Q Okay. And so you were looking out towards this direction --  
24 A Correct.  
25 Q -- down Carey? And you saw just taillights, you didn't notice any other

1 lights?

2 A Right.

3 Q Okay. And then what happened?

4 A Well then I heard another shot or whatever it was, pop, it was softer.  
5 So it sounded like it might have been down the street farther.

6 Q Okay. Did it sound like it was farther down Carey?

7 A Yes, down Carey.

8 Q So that would be East Carey.

9 A Correct.

10 Q And you said it was softer.

11 A Yes.

12 Q Were you able to sort of estimate about how far Carey you think you  
13 heard that?

14 A I would estimate it was probably my -- my sister lives down Carey and  
15 so I was estimating it was probably like down the area of her house.

16 Q And what address is that?

17 A It's 4080 East Carey.

18 Q 4080?

19 A Uh-huh.

20 Q So you believed it was in that area?

21 A In that area. That's --

22 Q Okay.

23 A -- my estimate.

24 Q So the next street down from Walnut is, what, is that Gateway?

25 A Yes.

1 Q Okay. So was it maybe perhaps past Gateway?  
2 A Past Gateway.  
3 Q Okay. What's the next street after Gateway? Remember?  
4 A I -- Moonlight I believe is in there.  
5 Q Okay.  
6 A And then Lincoln.  
7 Q You take --  
8 A Or -- Lincoln.  
9 Q Okay. Lincoln is one of those streets.  
10 A Yeah.  
11 Q And then it's a little bit 'til -- before you hit Lamb, correct?  
12 A Yes. Uh-huh.  
13 Q Okay. Now -- so you heard three different pops, two of which were loud  
14 and the third was quieter.  
15 A Yes.  
16 Q After that happened, what did you do?  
17 A Well I closed the garage door and I went in the house because I  
18 assumed then that it was shots being fired.  
19 Q Okay.  
20 A And  
21 Q And then what happened?  
22 A And then I went in and then I was telling my uncle who lives with me  
23 what was going on and then I started hearing sirens. So I kind of looked out, then I  
24 debated whether or not I should go out. I saw the police out there and they were  
25 cordoning off the street.

1 Q When you say out there, where?  
2 A Out --  
3 Q In front of your home and --  
4 A In front of the house -- well, in the intersection there.  
5 Q Okay.  
6 A They cordoned off the intersection.  
7 Q At Carey and Walnut area.  
8 A Carey and Walnut area.  
9 Q Okay.  
10 A And so I debated on whether or not I should go out, if anything I had to  
11 say would be of any use. And so I finally decided to go out and talk to the officer.  
12 Q Did it appear that the police arrived in that area fairly quickly --  
13 A Yes.  
14 Q -- after you went inside and talked to your relative?  
15 A Yes.  
16 Q Okay. And so when you went outside you told the officer what you had  
17 heard?  
18 A Yes.  
19 Q And what you had saw?  
20 A Yes.  
21 Q And then what did they do? Did they give you a statement to fill out?  
22 A He gave me the statement.  
23 Q And did you in fact fill out a statement?  
24 A Yes, I did.  
25 Q And that statement was done within -- do you remember about what

1 time that was?

2 A It was probably around 11:15.

3 Q Okay.

4 A 11 -- somewhere --

5 Q About --

6 A 11:20.

7 Q About a half hour after the events.

8 A Yeah, within a half hour after the events.

9 Q So they were very fresh in your mind --

10 A Yes.

11 Q -- when you wrote them down.

12 A Uh-huh. Yes.

13 Q Okay.

14 MR. FATTIG: I have no other questions of this witness.

15 THE COURT: Cross.

16 **CROSS-EXAMINATION**

17 BY MS. NGUYEN:

18 Q Ms. Palmer, you said initially you heard Spanish or loud talking.

19 A Uh-huh.

20 Q Was that unrelated? Was that a neighbor? Or did you ever  
21 determine --

22 A I really couldn't --

23 Q -- what that was?

24 A -- tell you if it was related to what I -- you know, everything else I heard  
25 or not. I couldn't tell.

1 Q Okay. Did you ever see any people?

2 A No.

3 Q Okay. And that road that is right out front where you saw the car

4 whizzing past, did you hear it like come from a stop and then start going or was it

5 moving fast all along?

6 A It sounded like it was started up and it was revving its engine and just

7 zooming along. It was like when an engine starts up and goes.

8 Q Okay.

9 A Yeah.

10 Q So it felt like it was --

11 A That's what it --

12 Q -- from a stop to a start.

13 A From somewhere in the -- yeah, in that area.

14 Q Okay. But you never saw the vehicle start I guess I should say?

15 A No. I just saw the taillights as it was going.

16 Q Okay. Were you able to get a license plate or anything?

17 A No. Uh-uh.

18 Q Was the car moving too fast at that point

19 A Yes, it was.

20 Q Okay. So you weren't able to see inside the vehicle?

21 A No.

22 Q Or you didn't see the make and model of the vehicle?

23 A No.

24 Q And this is kind of a big road here. Were there other cars on that road

25 as well?

1           A     At that time there weren't any.

2           Q     Okay. But you were able to see the taillights and then you said that  
3 you -- did you see any police cars at that point?

4           A     At that point, no.

5           Q     Okay. So you heard the two loud pop noises and then you heard one  
6 that was seemed like it was more in the distance?

7           A     Yes.

8           Q     Okay. And it kind of came from that general direction but you didn't see  
9 any flashes of light or anything --

10          A     Correct.

11          Q     -- from that particular vehicle that you saw speed away?

12          A     Right.

13          Q     And then you went back into your house and then that's when you  
14 heard the police cars?

15          A     Yes. Uh-huh.

16          Q     Okay. And that's when you exited your vehicle? Or exited your home?

17          A     Yes. That's when I went out of the front door then.

18          Q     Was this -- I know it was within a half an hour that you probably made  
19 your statement to the police officers --

20          A     Uh-huh.

21          Q     -- when you decided to exit, but do you recall how much time it was  
22 between the time that the officers came to the area -- you heard the sirens and you  
23 saw the police officers there?

24          A     It was just a matter of few minutes; five to ten minutes at the max.

25          Q     Okay.



1 A Yeah. I don't think it was even that long because --

2 Q But when you saw the --

3 A -- I debated for a while before I went out.

4 Q And how long did you watch the car that sped away that you saw the  
5 taillights go?

6 A Well he was out of sight within just a few seconds. And you know when  
7 I heard that and then -- when I heard the shots and then heard the -- saw the car  
8 sped off, I decided something was going on and so I was going to go inside and  
9 that's when I heard the third one.

10 Q Okay. So immediately when you heard and you saw the car speeding  
11 off, you didn't see any police cars at that point --

12 A No, not at that point.

13 Q -- in pursuit of that car?

14 A Right.

15 Q Okay.

16 MS. NGUYEN: No further questions.

17 MR. FATTIG: Nothing further.

18 THE COURT: The jury have any questions of this witness?

19 Ma'am, thank you, you're free to go.

20 THE WITNESS: Thank you.

21 THE COURT: Call your next witness, State.

22 MS. NGUYEN: Objection. Not objection. May we approach?

23 [Bench Conference Begins]

24 MS. NGUYEN: I believe Juror Number 8 said that she was familiar with the  
25 witness.

1 THE COURT: She knew her from Walgreens or somewhere. We'll go  
2 through with this and then we'll talk it over.

3 MS. NGUYEN: Okay.

4 THE COURT: We have the [indiscernible].

5 MS. NGUYEN: Okay.

6 MR. FATTIG: Okay.

7 THE COURT: But we'll -- when we take our break we'll have her stay.

8 MS. THOMSON: Okay.

9 MR. FATTIG: Okay.

10 MS. NGUYEN: Okay.

11 THE COURT: Thank you.

12 [Bench Conference Concludes]

13 THE COURT: Call them, Tom.

14 MR. FATTIG: Norayma Gonzalez.

15 **NORAYMA GONZALEZ**

16 [having been called as a witness and being first duly sworn, testified as follows:]

17 THE CLERK: Thank you. Please be seated. State your full name, spelling  
18 your first and last name for the record, please.

19 THE WITNESS: Norayma Gonzalez. N-O --

20 THE COURT: Scoot closer to the mic, please.

21 THE WITNESS: N-O-R-A-Y-M-A. Last name is Gonzalez, G-O-N-Z-A-L-E-Z.

22 **DIRECT EXAMINATION**

23 BY MR. FATTIG:

24 Q Good afternoon, ma'am.

25 A Good afternoon.

1 Q Directing your attention to June 26<sup>th</sup> of 2014, did you reside on Dolly  
2 Lane here in Las Vegas, Clark County, Nevada?

3 A Yes, I did.

4 Q And was there an occasion -- an event that occurred that particular  
5 evening that caused you to call 9-1-1?

6 A Yes.

7 Q I'm going to show you a couple of photographs.

8 MR. FATTIG: May I approach the witness?

9 THE COURT: Yes.

10 MS. NGUYEN: And Your Honor, I'd stipulate to the admittance of those  
11 maps.

12 MR. FATTIG: For the record --

13 THE COURT: All right.

14 MR. FATTIG: -- they are Exhibits 12, 13, and 15; aerial maps.

15 THE COURT: All right. They'll be admitted by stipulation.

16 **[STATE'S EXHIBIT 12, 13, and 15 ADMITTED]**

17 BY MR. FATTIG:

18 Q Let me show you these maps. State's Exhibit 12, do you recognize that  
19 aerial map?

20 A Yes, I do.

21 Q And how do you recognize it? What does it show?

22 A It shows the vacant lot right over here which is on Dolly Lane, the  
23 corner of Dolly Lane and Carey Avenue.

24 Q Okay. And this is right near where you were leaving as of June 26<sup>th</sup> of  
25 2014?

1           A     That is correct. I was living in the second -- in the second apartment  
2 complex that was there.

3           Q     Okay.

4           A     That is there.

5           Q     And State's Exhibit 13. Is this just a different viewpoint of the same  
6 area?

7           A     Yes, it is.

8           Q     Okay. And 15 is kind of another viewpoint of the same local area?

9           A     Yes.

10          Q     And the street to the north and to the immediate west of where you  
11 resided, is that El Tovar Lane?

12          A     Yes, it is.

13          Q     I'm going to put those on the ELMO and you'll be able to look to your  
14 screen to the right to see. This is State's Exhibit Number 12 for the record. The  
15 screen there in front of your right acts as a telestrator. So if you touch an area it will  
16 mark on the screen for the jurors. Can you indicate where you -- your residence  
17 was as of June 26<sup>th</sup>, if you see it in that particular -- on that screen?

18          A     Right over here.

19          Q     Can you mark that with your finger?

20          THE COURT: Circle it.

21          BY MR. FATTIG:

22          A     [No audible response - marking on monitor].

23          Q     So the bottom left corner that appears to be an apartment building,  
24 correct?

25          A     That's correct.

1 Q And you lived in that apartment as of June 26<sup>th</sup>?  
2 A Yes, I did.  
3 Q Okay. Were you on the first floor or the second floor?  
4 A I was on the first floor.  
5 Q And were on this side towards Dolly or the other side more inside?  
6 A I was on the outside towards Dolly.  
7 Q Towards Dolly. So this corner, on the first floor?  
8 A Yes.  
9 Q Okay. And I'm going to show Grand -- State's Exhibit 13, which is the  
10 same area, you would agree with me, except from a different viewpoint, correct?  
11 A Yes.  
12 Q Okay. And is this the building where you were living in?  
13 A Yes, it is.  
14 Q Okay. And the unit that you stayed in, is that --  
15 THE COURT: It's kind of out of the picture.  
16 MR. FATTIG: Oh, I'm -- I apologize. Thank you.  
17 BY MR. FATTIG:  
18 Q Okay. Do you see your apartment and the patio area there on that  
19 screen?  
20 A Yeah. Yes, I do.  
21 Q Okay. Can you mark on -- with your finger on the screen where that is?  
22 A It's in the bottom I can't --  
23 Q Okay. It's right in this area?  
24 A Yes.  
25 Q Okay. So do you remember about what time it was that the event

1 began for you?

2 A About 10:30.

3 Q Okay. Sometime before 11:00 p.m. that evening?

4 A Yes.

5 Q Okay. And what were you doing?

6 A I was barely putting in all my kids and my next door neighbor kids  
7 because they were outside playing in the parking lot.

8 Q Okay.

9 A And I had barely put them inside the house and I went towards my patio  
10 to turn on a cigarette -- to smoke a cigarette.

11 Q And then what happened?

12 A I heard a loud crash.

13 Q All right. Where was the crash coming from?

14 A From Carey Avenue.

15 Q Okay. And that's north of where your apartment was?

16 A Yes.

17 Q Okay. And what did you do after you heard the loud crash?

18 A I opened up the gate and I went running towards the street over on  
19 Dolly, at the sidewalk.

20 Q Okay.

21 A And --

22 Q So are you talking about the parking lot area over here, just to the west  
23 of your apartment building?

24 A Yes.

25 Q Okay. When you went out there, did you see anything?

1 A Yes, I did.

2 Q What did you see?

3 A I saw a gentleman about right in the middle -- can I go ahead and circle

4 it?

5 Q Yes, please do.

6 A About --

7 Q Where you first saw him.

8 THE COURT: With an X.

9 BY MR. FATTIG:

10 A About right here.

11 Q Okay.

12 A Running towards El Tovar.

13 Q Okay.

14 A And --

15 Q Was he -- where was he in terms of the street? Was he on a sidewalk?

16 Was he in the street?

17 A He was on the sidewalk on that side.

18 Q Okay. And when you say that side that would be the west side of

19 Dolly?

20 A Yes.

21 Q Okay. And you said he was running towards El Tovar?

22 A Yes. He was running down --

23 Q So --

24 A -- Dolly. So he was running --

25 Q Towards this way.

1           A     Yes.

2           Q     So sort of towards where you were?

3           A     Yes, I was right there. Actually I'm where -- how it is right now, where

4 the police car is at, I was standing -- that's where exactly where I was standing at

5 when I saw it.

6           Q     Okay. And are you talking about which car? This one?

7           A     This one right here. This one right here.

8           Q     Okay. The far one?

9           A     Yes.

10          Q     Here?

11          A     Yes.

12          Q     Okay. How many people did you see, just the one man?

13          A     Just one man, yes.

14          Q     And you could tell it was a man?

15          A     Yes.

16          Q     Okay. Can you describe what he looked like at all?

17          A     It was very dark, but I did distinguish that he did -- which I thought was

18 a white shirt on.

19          Q     Okay. And you saw him running on that side of the sidewalk?

20          A     Correct.

21          Q     And then what happened? Did you continue watching him?

22          A     I did. He was running and he turned to El Tovar. When he turned to El

23 Tovar I saw when he pulled out his hand had a gun in his hand and started shooting.

24 I heard, I don't remember if it was two or three gunshots when -- that I heard.

25          Q     Yeah. And when you --



1           A     But I did not --

2           Q     When you say he ran towards El Tovar, was he on the corner of El  
3 Tovar and Dolly, in that area?

4           A     Yes.

5           Q     Okay.

6           A     He was right at the corner when he pulled out the gun.

7           Q     And where was he aiming the gun?

8           A     He was aiming it towards -- down towards Carey. I mean, towards  
9 Dolly, going towards Carey.

10          Q     Okay.

11          A     That --

12          Q     Towards Carey, bring this direction, this is Carey?

13          A     Yes.

14          Q     And I've done it again in terms of -- so Carey is here, correct?

15          A     Yes.

16          Q     So he was aiming the gun this way?

17          A     Yes.

18          Q     Can you describe what the gun looked like? Was it a handgun or was it  
19 like a long gun?

20          A     It was a handgun.

21          Q     And remember hearing two or three shots.

22          A     Correct.

23          Q     Okay. Then what happened?

24          A     I did not see who he was aiming at when I heard the -- when I saw the  
25 gun and he -- and I heard the gunshots, I ran back inside my -- where my apartment

1 is at.

2 Q Okay.

3 A And when I turned around I saw him getting in front of the white truck.

4 Now he's in -- he turned into El Tovar and got right in front of the white truck that

5 is -- that -- it's right there on the picture actually.

6 Q Let's see. So you see the white truck in this particular photograph on El  
7 Tovar?

8 A Yes, I do.

9 Q Can you point to it and mark it on the screen?

10 A [No audible response - marking on monitor].

11 Q Right there. Okay. He was in -- and that's sort of in front of the little  
12 green house?

13 A Yes.

14 Q Okay. He was in front of that truck?

15 A Yes, he was right in front of -- he got right in front of the white truck.

16 Q And when you say he, was it the same man that you saw with the gun,  
17 shooting?

18 A Correct.

19 Q The white shirt?

20 A The white shirt man, yes.

21 Q Okay. And what was he doing in front of that white truck?

22 A He went into the white truck and he started getting down -- ducking  
23 down. By this time I was on my 9-1-1 call and I was telling the dispatcher that he  
24 was right in front of the white truck, that he had just gotten down, and that he was  
25 right there on the street.

1 Q He was bending in front of the truck?

2 A Yes, he was bending down, kind of like hiding.

3 Q When you say got in, you don't mean he got into the truck?

4 A No, he didn't get in the truck, no.

5 Q He was leaning down in front of the truck.

6 A In front of the truck, correct.

7 Q And about that time is when you called 9-1-1.

8 A Yes.

9 Q You had occasion to listen to that 9-1-1 call a little while ago in my  
10 office, correct?

11 A Correct.

12 Q Was that a fair and accurate copy of the 9-1-1 call that you placed to  
13 Metro that evening?

14 A It is.

15 Q I'm going to play State's Proposed 184 at this point.

16 MS. NGUYEN: And Your Honor, I would just that it's redundant and it's  
17 bolstering. She's testified today.

18 THE COURT: Overruled. I'm going to allow it to come in.

19 **[STATE'S EXHIBIT 184 ADMITTED]**

20 [9-1-1 Call Playing]

21 BY MR. FATTIG:

22 Q So it sounded like while you were on the phone with 9-1-1 that officers  
23 were arriving at that point.

24 A Correct.

25 Q You saw the patrol cars on El Tovar?

1           A     Yes.

2           Q     Okay. And at that time that you made that call you weren't quite sure  
3 what the name of the street was?

4           A     Correct.

5           Q     But now you've had the chance since this happened to go look at the  
6 street and it is El Tovar?

7           A     That's right.

8           Q     Okay. Now going back to the man, you said he was ducked down  
9 behind -- in front of the white truck.

10          A     Correct.

11          Q     What else, if anything, did you see him do while he was in that area?

12          A     Like I said, he went right up front of the truck. That's when he did some  
13 more -- he fired again his gun towards -- at this time then I could tell it was an officer  
14 that he was shooting at.

15          Q     Okay. Now --

16          A     And --

17          Q     Now where was he pointing the gun at this time, if you could tell?

18          A     He was pointing the gun towards Dolly Lane from El Tovar.

19          Q     Okay. Back where he had run from?

20          A     Correct.

21          Q     And you said towards an officer. Did you see an officer in the area at  
22 that time?

23          A     Yes, I did.

24          Q     Where was the officer?

25          A     The officer was standing like right at the corner of care -- of Dolly Lane

1 and El Tovar. Right at the corner of the house.

2 Q And you believed you heard shots at that point?

3 A Yes, I did.

4 Q Okay. Now what happened after that? Did the man stay in front of the  
5 white truck?

6 A No, he ducked down and took off the white shirt, which I thought  
7 was -- the white shirt and took off running in to El Tovar, towards the other houses.

8 Q Okay. So would that be west down El Tovar?

9 A Yes.

10 Q Okay. Rather than east towards Dolly, right?

11 A Right.

12 Q And you obviously called 9-1-1, correct, and we just heard that?

13 A Correct.

14 Q Did you see that same man in the white shirt later that evening?

15 A Yes, I did.

16 Q About how much later?

17 A It was very quick. It happened within 20, 25 minutes, maybe.

18 Q Okay. About 20 to 25 minutes later.

19 A Right. After my 9-1-1 call they had him already arrested under custody.

20 Q Okay.

21 A And I could tell it was the same gentleman because of the same body  
22 complex that I -- which I saw that was far, you know, from where I was standing at.

23 Q Okay. So where did you -- you said they had him in custody. What did  
24 you see exactly?

25 A That they had the gentleman arrested.

1 Q He was in handcuffs?

2 A He was in handcuffs.

3 Q Okay. And there was a bunch of police officers around?

4 A Correct.

5 Q And you looked at the same man and when you -- you indicated the

6 same body complex and you made the indication with your hands, both hands along

7 your body, correct?

8 A Correct.

9 Q Do you mean the same type of build?

10 A The same building -- I mean, the same build of, you know, the whole

11 body from the head and everything. It was very dark. I couldn't take a look at the

12 face or recognize the face or anything like that, but it was the same body complex

13 that there was.

14 Q The same height?

15 A The same height, the same --

16 Q Same type --

17 A -- structure.

18 Q Same structure, same build, et cetera.

19 A Right. Except for the difference that he didn't have the white shirt on.

20 Q Okay. The next time you saw him in handcuffs.

21 A Correct.

22 Q Okay. So you believed it was the same man that you saw with the gun

23 and the white shirt?

24 A Correct.

25 Q And when you saw him the second time, where was he?

1 A He was in custody about right -- maybe right there. Oh God.

2 Q Okay.

3 A Right there where it's pointing.

4 Q Oh. Okay. Let's try it now.

5 A About right here.

6 Q Okay.

7 A I mean, right in the middle of the street.

8 Q Out on Dolly Lane.

9 A Yes.

10 Q And were you back at your apartment by the patio area at that point?

11 A No, I was talking to an officer right on the sidewalk of Dolly.

12 Q Okay. You saw him at a bit of a distance --

13 A Correct.

14 Q -- that next time.

15 A Uh-huh.

16 Q But how sure were you that it was the same man that you saw in the  
17 white shirt with the gun?

18 A Oh, I was certain that it was him because I even told the officer, I said  
19 oh, you guys got him, that's him.

20 MR. FATTIG: I have no other questions at this time.

21 MS. NGUYEN: Oh, I hate this thing.

22 **CROSS-EXAMINATION**

23 BY MS. NGUYEN:

24 Q Ms. Gonzalez, when you're looking at this, this is the apartment  
25 complex that you were at, is that correct?

1           A     That is correct.

2           Q     Okay. And this was in the middle of night or this is around 10:30 at  
3 night, is that correct?

4           A     Correct.

5           Q     And so this area is dark except for like this traffic light here and this  
6 traffic light here, is that correct?

7           A     That is correct.

8           Q     Okay. Your apartment complex, it doesn't appear it's -- has it's own like  
9 street light, is that correct?

10          A     That is correct.

11          Q     Okay. So it's pretty dark in here as well?

12          A     Regardless of the light that's outside, yes.

13          Q     Okay. And you were in this patio area. To get out of this patio is there  
14 like a, I don't know, a gate or is it just open?

15          A     There is a gate.

16          Q     Okay. And you said you heard a crash.

17          A     Correct.

18          Q     Could you tell what direction that crash noise came from? Did it come  
19 from up here, down here, over here?

20          A     It come from down here, from --

21          Q     Down here?

22          A     Yes, from Carey.

23          Q     Okay. And you were out smoking a cigarette.

24          A     Yes.

25          Q     Okay. You said that you had just had -- you were -- were you watching



1 some kids in the neighborhood or --

2 A I was watching my kids. They were outside playing.

3 Q Okay. And how old are your kids?

4 A At the current time they were 13, 11, and 7.

5 Q Okay. Was everyone playing, was there music, or is it just --

6 A No. It was quiet. They were all outside playing.

7 Q Okay. But you had had them -- had you gone inside too?

8 A No. I never went inside my house.

9 Q When you made the 9-1-1 call, where were you making that call from?

10 A I was making it from the middle -- from --

11 Q Can you point on the -- I think this is State's Exhibit 13. Okay. There

12 we go.

13 THE COURT: I think you need to bring it down.

14 MS. NGUYEN: Down.

15 THE COURT: [Indiscernible].

16 BY MS. NGUYEN:

17 A There you go. I was right there where that cop car is at.

18 THE COURT: Draw it on there.

19 BY MS. NGUYEN:

20 Q Yeah, can you please --

21 A [No audible response - marking on monitor].

22 Q So you were right --

23 A About right there. Yes.

24 Q Okay. And did you stay outside the entire time?

25 A No. When I heard the crash I ran towards right there so I can see --

1 have a clear --

2 Q You ran to this area right here.

3 A Yes, I ran towards that area right on -- you know, standing on Dolly  
4 Lane, the sidewalk -- my sidewalk. And that's when I saw the gentleman --

5 Q And we're at this area, I think you pointed out.

6 A Right there, yes. I saw him right there. I was still standing right there  
7 when he turned into El Tovar.

8 Q So he came down here.

9 A When he turned into El Tovar, that's when I saw him pulling out the  
10 handgun.

11 Q Okay.

12 A And he started shooting.

13 Q So was he on El Tovar or was he on Dolly?

14 A When he started shooting he was on Dolly, turning into El Tovar.

15 Q Okay. So on this corner here?

16 A Like by the corner, uh-huh.

17 Q IS this correct?

18 A Yes. When I saw him shooting --

19 Q And you were standing right here?

20 A Yes.

21 Q Okay. Were there any other cars here in this area at that time?

22 A Gosh, I don't remember. I don't -- you know what, no, not at the corner  
23 because the top apartment was vacant. And those are the two parking --

24 Q Were you alone smoking your cigarette out here?

25 A Yes, I was.

1 Q Okay. Was there anyone else in the apartment complex that was  
2 outside of their --

3 A No.

4 Q Okay. And did you know any of your neighbors? Did you see anyone  
5 in these top like apartment complex?

6 A Not at the apartment --

7 Q Apartments here?

8 A -- complex, but yes, the -- my neighbor, the one that lives on that  
9 corn -- on this house right here, which I'll mark --

10 Q You saw this neighbor?

11 A Yes. They were outside.

12 Q Okay. You didn't see anyone get out of this vehicle down here though.

13 A No.

14 Q The first time you saw someone they were running down this -- at about  
15 this location --

16 A Correct.

17 Q -- is that correct?

18 A Yes.

19 Q Okay. And you said initially you saw a person with their arm out like  
20 this, is that correct?

21 A I saw when he pulled out his gun.

22 Q Okay. And that was near this corner here. And at first you just didn't  
23 know what he was shooting at. That's what you testified to?

24 A Yeah. I didn't see who he was shooting at, correct.

25 Q When you first heard those shots, did you just stay out in this area or

1 did you --

2 A No. I ran back inside.

3 Q Okay. So you ran back inside --

4 A I ran back inside --

5 Q -- as soon as you heard his shots.

6 A Correct.

7 Q And then you testified that this individual came by and was hiding -- is

8 this the truck?

9 A Yes.

10 Q Okay. I'm going to attempt to zoom in here.

11 This is the truck that you referred to --

12 A Correct.

13 Q -- is that correct?

14 A Yes.

15 Q Is this the same truck?

16 A Yes.

17 Q Okay. It hadn't been moved or anything?

18 A No.

19 Q Okay. And you said -- you also said that you saw someone hide behind

20 this area.

21 A Right in front of the truck, yes.

22 Q Right in the front part of the truck.

23 A Correct.

24 Q Not the back part of the truck --

25 A No.

1 Q -- the front part of the truck.  
2 A Correct.  
3 Q And you were still over here in this area?  
4 A Yes. I was right at the entrance of my -- of the gate.  
5 Q Okay. So you were over here?  
6 A Uh-huh.  
7 Q Okay. So at that point you're --  
8 THE COURT: Wait. Is that a yes?  
9 THE WITNESS: I'm sorry.  
10 THE COURT: You said uh-huh.  
11 THE WITNESS: Oh, yes.  
12 THE COURT: IS that a yes?  
13 THE WITNESS: Yes.  
14 BY MS. NGUYEN:  
15 Q Okay. So you heard the gunshots and then at that point you started  
16 walking back towards your gate?  
17 A Correct.  
18 Q Okay. So when you said that you saw someone hiding or ducking  
19 behind this truck over here that is something that you viewed from your patio.  
20 A Not from my patio. IT was outside of the gate.  
21 Q Okay. Outside of the gate.  
22 A Correct.  
23 Q Okay. When the person was ducking behind this truck, could you see  
24 them?  
25 A Yes.

1 Q Okay.

2 A Because I have a clear view from where I was standing at right in  
3 front -- it's like sitting here diagonal-wise from the courthouse.

4 Q Okay.

5 A It's right at the corner.

6 Q Okay. And then did you continue to make your 9-1-1 call from the  
7 gate?

8 A Yes.

9 Q Did you ever come back into the street?

10 A I did after they already had him in custody.

11 Q Okay. And did you come out or did they come and get you?

12 A No, I came out.

13 Q Okay. So you came out and at that point did you speak with an officer  
14 or did you -- how did you identify yourself?

15 A No. I was right there at the corner, right at the sidewalk right there and  
16 that's when they came out when -- with the gentleman in custody which I knew it  
17 was the same person that had a -- fired the gunshot and I told them -- and I told the  
18 officer that was right there. I said oh good -- I said -- I told them, I said, they got him.

19 Q But you were never able to see the person's face.

20 A No.

21 Q Is that correct?

22 A That is correct.

23 Q And the person that you identified wasn't wearing the white shirt.

24 A That's correct.

25 Q Did you ever --

1 A But had the same body complex.

2 Q Okay. Did you ever -- did you see the officer that -- when he was  
3 shooting?

4 A I saw the officer. I did not see him shooting.

5 Q Okay. Did you hear the gunshots?

6 A I did hear gunshots.

7 Q Okay. Do you remember how many gunshots you heard?

8 A It was roughly about five gunshots that I heard. I'm not quite certain  
9 though.

10 Q And when you heard those gunshots you were standing here by the  
11 gate still?

12 A Yes.

13 Q Okay. And could you tell where the gunshots were coming from?

14 A They were coming from right there -- from the corner of Dolly and El  
15 Tovar.

16 Q So over here or over here?

17 A No. Over here.

18 MS. NGUYEN: No further questions.

19 **REDIRECT EXAMINATION**

20 BY MR. FATTIG:

21 Q Ma'am, just real briefly. When the -- when you saw the man with the  
22 white shirt and he ran down to the corner you indicated that he turned and pointed  
23 the gun back north towards, correct?

24 A That is correct.

25 Q How did he do that? Was it one arm? Two arms?

1           A     It was one arm.

2           Q     Okay. And when he was -- you saw him by the truck you saw him also  
3 point the gun?

4           A     Correct.

5           Q     And was he pointing in the same way with one arm?

6           A     Yes. He was ducking from the side of the truck like this and pointing  
7 the gun and firing.

8           Q     And that was back towards Dolly --

9           A     Correct.

10          Q     -- at that point?

11          A     Yes.

12          Q     Okay.

13          MR. FATTIG: Court's indulgence.

14          BY MR. FATTIG:

15          Q     Do you remember -- when you saw him ducking behind the truck -- the  
16 front of the truck, was it in the street side of the truck or the sidewalk side of the  
17 truck?

18          A     It was in the street side of the truck.

19          Q     Okay. So this side of the truck --

20          A     I can't see.

21          Q     I'm sorry. I got to get better at that. Looking at Grand Jury Exhibit 13.  
22 You're saying this -- the street side --

23          THE COURT: Not Grand Jury.

24          MS. NGUYEN: Not Grand Jury.

25          MR. FATTIG: Sorry. I apologize. State's Exhibit 13.



1 BY MR. FATTIG:

2 Q The street side of the front of the white truck, correct?

3 A Correct.

4 Q Okay.

5 MR. FATTIG: I have no other questions.

6 THE COURT: Defendant.

7 MS. NGUYEN: Nothing further.

8 THE COURT: Jury have any questions of this witness? Okay. Write your  
9 name and your seat number. I think you're 10.

10 All right. Approach the bench.

11 [Bench Conference Begins]

12 THE COURT: She doesn't know the directions --

13 MR. FATTIG: She doesn't know, no.

14 THE COURT: So she would have to know it. If she knows, ask her to clarify.

15 MR. FATTIG: Yeah, I doubt she does.

16 MS. NGUYEN: I don't have a problem with you leading and ask questions --

17 THE COURT: You can back off and show where --

18 MS. NGUYEN: -- to get the answers.

19 THE COURT: -- Carey is.

20 MR. FATTIG: Okay. Carey's north.

21 THE COURT: I think you should do that back way down.

22 MS. NGUYEN: I don't care if you lead just to clarify.

23 MR. FATTIG: Okay.

24 THE COURT: Just back down and --

25 MR. FATTIG: Okay.

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[Bench Conference Concludes]

**EXAMINATION BY THE COURT [JURY QUESTIONS]**

BY THE COURT:

Q Oh can you please give the street direction and if you can't we're going to show you some more pictures.

MS. NGUYEN: Your Honor, I can make this a lot easier. I'd stipulate if you want to put what the street directions are on the map.

THE COURT: Well we can't write on it, but.

**FOLLOW-UP EXAMINATION**

BY MR. FATTIG:

Q And for the record, I'm showing State's Exhibit 13. And ma'am, your residence is south of Carey, correct?

A Yes.

Q So this is north of your location and Carey runs east west, correct?

A Correct.

Q And Dolly runs north south, correct?

A Correct.

Q And El Tovar is over here running east west.

A Correct.

MR. FATTIG: Hopefully that clarifies.

THE COURT: Anything further by the State?

MR. FATTIG: No.

MS. NGUYEN: No.

THE COURT: You're free to go. Thank you.

THE WITNESS: Thank you.

1 THE COURT: Do you guys need a break or you want your next witness?

2 Next witness, please.

3 MS. THOMSON: The State calls Jose Quezada Robles.

4 [Ricardo Pico was sworn by the Clerk to interpret

5 English into Spanish and Spanish into English.]

6 **JOSE QUEZADA CHAVEZ**

7 [having been called as a witness and being first duly sworn, testified through

8 the interpreter as follows:]

9 THE CLERK: Thank you. Please be seated. State your full name, spelling  
10 your first and last name for the record, please.

11 THE WITNESS: My name is Jose Quezada Chavez.

12 THE CLERK: Spell it.

13 THE WITNESS: J-O-S-E, Q-U-E-Z-A-D-A, C-H-A-V, as in Victor, E-Z.

14 MS. THOMSON: May I proceed?

15 THE COURT: Yes.

16 MS. THOMSON: Thank you, Your Honor.

17 **DIRECT EXAMINATION**

18 BY MS. THOMSON:

19 Q Good afternoon, sir.

20 A Good afternoon.

21 Q I'm going to direct your attention back to June 26<sup>th</sup> of 2014. At that time  
22 were you living at 4595 El Tovar?

23 A Correct.

24 Q And showing you what's been marked as State's Exhibit 13 up on the  
25 map. Do you see your house on the exhibit?

1 A Yes, correct.

2 Q And if you can mark on the screen where that is.

3 A [No audible response - marking on monitor].

4 Q Okay. So your house is the corner house at the corner of El Tovar and

5 Dolly?

6 A Correct.

7 Q And the main street in the front of State's Exhibit 13, is that Carey?

8 A Correct.

9 Q And in the evening hours of June 26<sup>th</sup> of 2014, did you have your family

10 at home with you?

11 A Yes, correct.

12 Q And who was in the home?

13 A Me and my two sons.

14 Q Your two children, what are their names?

15 A Ricardo and Alanda [phonetic].

16 Q Okay. And so Alanda, how old is she?

17 A Ten years old.

18 Q Okay. That's now, correct?

19 A Now.

20 Q And how old is Ricardo now?

21 A Ricardo is 12 years old.

22 Q And as you were at home that night, what were you doing when your

23 children came into your room?

24 A I was watching TV.

25 Q Okay.

1 MS. THOMSON: And may I approach?

2 THE COURT: Yes.

3 BY MS. THOMSON:

4 Q Showing you these three photographs. Do you recognize what's  
5 depicted in each of the three?

6 A Yes, I recognize it.

7 Q And they are State's Proposed Exhibits 117, 119, and 121. Are they  
8 each accurate depictions of what they represent themselves to be?

9 A Yes, correct.

10 MS. THOMSON: I'd move for admission.

11 MS. NGUYEN: No objection.

12 THE COURT: Okay. They'll be admitted.

13 **[STATE'S EXHIBITS 117, 119, AND 121 ADMITTED]**

14 MS. THOMSON: Permission to publish.

15 THE COURT: Yes.

16 BY MS. THOMSON:

17 Q Showing you State's Exhibit 117. Is that your home?

18 A Yes.

19 Q Okay. And in this photograph we can see parts of two windows. The  
20 window on the left, what room is behind that?

21 A That's a living room.

22 Q Okay. And is the kitchen behind the living room?

23 A Yes.

24 Q And the window that we see part of on the right, what is that room?

25 A That's a room.

1 Q Okay. Like a bedroom.

2 A It's a bedroom.

3 Q Whose bedroom was that?

4 A Back then it was empty.

5 Q On that night, as you were laying in bed, did something catch your

6 attention?

7 A Yes, gunshots.

8 Q And from where did the gunshots come, did you hear?

9 A From Karen and Dory -- Dory? Dolly.

10 Q Is that Karen or Carey?

11 A Carey.

12 Q And how many did you hear?

13 A Two to three.

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

15 A Well my children came to where I was?

16 Q And when they came in the room, what did you do?

17 A They told me that they heard some gunshots.

18 Q When they came into your room telling you that, what did you do?

19 A Well I got out of bed and I opened the window.

20 Q And when you did so, could you see outside?

21 A I didn't really see much because it was dark.

22 Q When you said you opened the window, but did you actually open the

23 physical glass part of the window or just the curtains?

24 A No, the curtains.

25 Q Okay. And showing you what's been marked as State's Exhibit 119. Is

1 this basically what you saw when you looked out the window?

2 A Yes.

3 Q And obviously it's a little different having a picture versus humanized, is

4 that fair?

5 A Yes.

6 Q When you looked out the window, was your son with you?

7 A Yes, us three.

8 Q And did you see anything of note when you looked out the window?

9 A I saw a person shooting forward.

10 Q Okay. When you say shooting forward, let me ask, can you mark in this

11 picture where that person was standing when you saw him when you looked out the

12 window initially?

13 A Where there was a white truck over by this side.

14 Q So is where the man was standing visible on this picture?

15 THE COURT: If he touches the screen, he can circle.

16 BY MS. THOMSON:

17 Q He was towards this side.

18 THE COURT: Okay. You got to touch the screen and circle it.

19 MS. THOMSON: And Judge, may I approach. I think he's saying that it's not

20 on the photograph.

21 THE COURT: It's okay. Yes.

22 MS. THOMSON: Thank you.

23 BY MS. THOMSON:

24 Q Showing you what's been marked as State's Exhibit 99, 100, and 101.

25 Is this the area that you observed the individual?

1 A Yes.

2 Q And do these photographs look like it looked that night?

3 A Yes.

4 MS. THOMSON: Move for admission of 99 through 101.

5 THE COURT: Yes, admitted. Any objection?

6 MS. NGUYEN: No objection.

7 THE COURT: Admitted.

8 **[STATE'S EXHIBITS 99 THROUGH 101 ADMITTED]**

9 MS. THOMSON: Permission to publish.

10 THE COURT: Yes.

11 BY MS. THOMSON:

12 Q So you indicated that the individual was by a white truck more to the left  
13 of this photograph, is that correct?

14 A Yes, more to this side.

15 Q And showing you what's been marked as State's Exhibit 99. Is that the  
16 white truck?

17 A Yes.

18 Q Can you mark on this photograph where the individual was when you  
19 first saw him?

20 A He was walking this way and he stopped here.

21 Q So he stopped by the engine of the white truck?

22 A Yes.

23 Q And when you saw him, can you describe how he appeared?

24 A Well it was dark and all I could see was like a shadow.

25 Q Okay. Were you able to tell what color shirt he was wearing?



1           A     White.

2           Q     And could you tell anything about his hair?

3           A     Well he had long hair combed to the back.

4           Q     When he stopped in front of the white truck, did you see what he did

5 there?

6           A     He shot from here to here.

7           Q     So back towards Dolly?

8           A     Yes.

9           Q     And how was he shooting?

10          A     He was doing this in front of the truck.

11          Q     What you've demonstrated is your right hand pointed out and left arm

12 sort of supporting at the elbow?

13          A     Yes, something like this.

14          Q     Was that still in front of the engine of the truck?

15          A     Yes.

16          Q     And was he on the sidewalk side or on the street side?

17          A     In front of the truck. I don't know if he was on the sidewalk or on the

18 street.

19          Q     Could you estimate looking at State's Exhibit 101 where you saw his

20 body as he was pointing back towards Dolly with the gun?

21          A     Here.

22          Q     And were you able to see the gun enough to be able to describe it?

23          A     I didn't see it all that well.

24          Q     Could you tell if it was a handgun or a rifle?

25          A     It was a short one.

1 Q And you said that you saw him firing back towards Dolly, correct?

2 A Yes.

3 Q Were you also able to hear that?

4 A Yes.

5 Q And how many shots did you hear fired at that time?

6 A I remember two or three.

7 Q And as he was doing that, were you able to see if there was anyone at  
8 the corner of El Tovar and Dolly?

9 A An officer.

10 Q Showing you again what's been marked as State's Exhibit 119. Will  
11 you mark on that photograph where you saw the officer?

12 A Right here.

13 Q And when you saw the officer at that corner as he's shooting back at  
14 the corner, what, if anything, did you see the officer do?

15 A He went back like so.

16 Q Did you see where the officer's hands were?

17 A He had them like this.

18 Q And what you've shown us is your left hand across, basically meeting  
19 your breastbone in the middle of your chest?

20 A Yes.

21 Q And what did you think when you saw that?

22 A I thought that he got shot.

23 Q When you heard the shots and saw the officer, what, if anything, did  
24 you do or tell your children to do?

25 A To hit the floor and get out of that room.

1 Q And did you stay at the window or did you also go to the floor?

2 A Yes, us three, we hit the floor.

3 Q Fair to say you weren't able to see anything out of the window after you  
4 got on the floor?

5 A No, I did not.

6 Q Do you know where the man in the white shirt went after he was at the  
7 front of the truck?

8 A I didn't see anything else.

9 Q Are you aware whether or not police arrived out there?

10 A Well at that time it was just that one officer.

11 Q Did more come later?

12 A Yes.

13 Q And about how long after you got on the ground with your children did  
14 other officers arrived, if you know?

15 A Two, three minutes.

16 Q After the other officers arrived, did you ever see the individual that you  
17 had seen at the front of the white truck again?

18 A Yes when I went out to the street.

19 Q And on what street was it that you saw that individual again?

20 A Dolly and Carey.

21 Q Showing what's been marked as State's Exhibit 15. Zooming in a little  
22 bit with your house in the bottom left-hand corner. Can you mark for us  
23 approximately where that individual was when you saw him again?

24 A Here. That's where the police had him.

25 Q So fair to say he was in police custody at that time?

1           A     Yes. I don't remember but he was already detained but that -- this is  
2 where he -- they had him.

3           Q     And was that the same individual you had seen in front of the white  
4 truck?

5           A     Yes.

6           Q     Did you speak with police that night or a different time?

7           A     The police came to talk to us and we were around this area.

8           Q     And you just said this area. I wasn't looking up. I'm sorry.

9           A     Here.

10          Q     You're marking on Dolly just sort of behind your home.

11          A     Yes.

12          Q     And did they come back the next day or did they have all their  
13 conversations with you that night?

14          A     Next day around 5:00 a.m. they came back.

15          Q     At that time did they take statements from you and take photographs  
16 from inside your house?

17          A     Yes.

18          Q     And showing you what's been marked as State's Exhibit 121. Is that a  
19 photo from your living room window?

20          A     Yes.

21          Q     And it was similar darkness as to when you had been looking out the  
22 window, is that fair to say?

23          A     Yes, yes.

24          MS. THOMSON: Court's indulgence.

25                Pass the witness.

1 **CROSS-EXAMINATION**

2 BY MS. NGUYEN:

3 Q This picture taken here, is this taken from the outside or the inside of  
4 your home?

5 A Inside my home.

6 Q Okay. So there was someone that came into your home and took a  
7 picture from the outside, is that correct?

8 A Yes from the inside to the outside.

9 Q Okay. And is this taken from -- we had looked at a picture -- got taken  
10 from this room?

11 A Yes took a picture from this room and --

12 THE COURT: Mark the windows.

13 BY MS. NGUYEN:

14 A [No audible response - marking on monitor].

15 Q Okay. And did they take a picture from another room?

16 A Yes from my room that's -- this one.

17 Q And when you are looking out of the window of your house, is -- are you  
18 able to see the truck from this angle?

19 A Yes, this one.

20 Q Okay. And so you had said earlier that this room, no one was in this  
21 room, is that correct?

22 A No, my two children were here in the kitchen. In this room.

23 Q What window were you looking out of?

24 A Another window that's to this side.

25 Q Can you point to what side?

1           A     My room is this direction.

2           Q     Okay. So you weren't looking out of this window.

3           A     No.

4           Q     There's another window that's --

5           A     Different window.

6           Q     -- I guess down this way?

7           A     Yes.

8           Q     Okay.

9           A     Down that way.

10          Q     Now we looked at this picture several times. Was this taken out of --

11 what vantage point is this picture taken from?

12          A     Well from in front of my house.

13          Q     Okay. And this truck is not the truck that you originally identified. You

14 said the truck that you saw the individual was over here further, is that correct?

15          A     Yes.

16          Q     Not in this picture.

17          A     Okay.

18          Q     So when you saw the individual you had indicated that they were

19 standing right here?

20          A     Right there.

21          Q     And you said on the front picture of the vehicle that they were standing

22 closer to the sidewalk, is that correct?

23          A     Yes.

24          Q     Okay. So I think the State showed you this picture and she said was it

25 closer to the street or closer to the sidewalk and you indicated the sidewalk, is that

1 correct?

2 A Correct.

3 Q And you said it was dark out?

4 A Dark.

5 Q And you indicated that you couldn't see the person's face, you could

6 only see shadows?

7 A Shadow.

8 Q Okay. When you first went out to look outside it's because you heard

9 like what you thought was like gunshots, is that correct?

10 A Yes, correct.

11 Q Could you tell anything about where those gunshots were or how many

12 there were?

13 A Two to three.

14 Q And when you heard those shots you went to the window.

15 A Yes.

16 Q You pulled back -- were they curtains or were they blinds?

17 A Curtains.

18 Q Did you have lights on in your house?

19 A Lights were off inside my bedroom. The only thing that was on was the

20 TV. The kitchen, we had lights on the kitchen.

21 Q Okay. So the kitchen is -- but you weren't in the kitchen, is that correct?

22 A No, I was not.

23 Q You were in your bedroom.

24 A Yes and --

25 Q The only --

1           A     But my children were in the kitchen.

2           Q     So the only light was the television in your room?

3           A     Well maybe you couldn't see from the outside the lighting because the  
4 curtains were drawn.

5           Q     When you opened the curtains did you open them all the way?

6           A     Well I opened the curtains like this. My bedroom -- from my bedroom.

7           Q     Okay. And approximately how big is that window in your bedroom you  
8 were looking out.

9           A     From here to here.

10          Q     Did you open it the complete way -- all the way open?

11          A     Not all of them. Just like this.

12          Q     Okay. So about your arm's width. Is that about right?

13          A     Yes.

14          Q     And you said you were at the window and your two sons were both at  
15 the window?

16          A     Yes, right beside me, you know, peeping out.

17          Q     Okay. And then you had indicated that you saw an individual -- when  
18 you heard the shots, what was the first thing that you saw when you opened those  
19 curtains and you looked out?

20          A     I saw a person walking from here and he stopped here. And he shot in  
21 this direction.

22          Q     So the initial shots that brought you to the window, you didn't witness  
23 those?

24          A     Well I saw a man shooting like so.

25          Q     No I meant the first -- when you heard the shots inside your home, you



1 didn't witness those shots.

2 A No, I did not.

3 Q When you opened the curtains you saw someone walking from here to  
4 over here, is that correct?

5 A Correct.

6 Q And you said over here closer to the sidewalk you saw someone shoot.

7 A Correct.

8 Q And is that when you ducked down to the floor with your kids?

9 A Correct.

10 Q And then at that point were you -- could you see anything at that point  
11 or were you on the ground?

12 A I was on the ground.

13 Q Okay. So the window was up high, it's not like a floor to ceiling window  
14 or anything or a sliding glass door?

15 A No, from here.

16 Q Okay. So after you saw the two shots fired that was the last that you  
17 witnessed of this, is that correct?

18 A I did not see anything else.

19 Q When you later went down the street, did you walk down the street or  
20 did police officers come to get you?

21 A No, we went outside through the backyard.

22 Q You went to your backyard?

23 A Yes, my backyard. We crossed the kitchen and we went to the  
24 backyard.

25 Q And who -- was it an officer that escorted you to identify a person?

1 A No, they just said that he was arrested.

2 Q Okay. So they told you they had arrested a suspect?

3 A Yes, they said that they didn't catch him themselves that it was a dog

4 that did it. And the dog had bit him and they were going to take him to the hospital.

5 Q Okay. And then did you ever see him after at any point?

6 A No, just at that time when he was being arrested.

7 Q Okay. So you saw this individual being arrested?

8 A Yes, from afar. But there was lots of officers, I couldn't really tell that

9 well.

10 Q But the officers told you that that was the person who was the suspect?

11 A Yes, the one they found there.

12 MS. NGUYEN: Nothing further.

13 **REDIRECT EXAMINATION**

14 BY MS. THOMSON:

15 Q The person that you saw on Dolly from your backyard, did you

16 recognize that individual?

17 A Yes, because of the white shirt.

18 Q And was that apart from what officer's said?

19 A Yes, but that's what they said.

20 Q Not taking into account what they said, based solely on your own

21 observations, did you recognize that individual?

22 A Not all that well. I just saw a shadow figure.

23 MS. THOMSON: Move for admission of State's Proposed Exhibit 98.

24 MS. NGUYEN: No objection.

25 THE COURT: It'll be admitted.

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**[STATE'S EXHIBIT 98 ADMITTED]**

MS. THOMSON: Permission to publish?

THE COURT: Yes.

BY MS. THOMSON:

Q Showing you what's been marked as State's Exhibit 98. Is that your house on the corner of El Tovar and Dolly?

A Yes.

Q And are you able to see your bedroom window in this photograph?

A This one.

Q So the one on the far right of the home?

A Yes, the last one.

Q And that's where you were when your children came in?

A Yes.

MS. THOMSON: Pass the witness.

MS. NGUYEN: Just a couple follow-up.

THE COURT: Okay.

**RECROSS-EXAMINATION**

BY MS. NGUYEN:

Q It was dark and you said that you couldn't identify the person that was in handcuffs.

A No.

Q Because you never saw that person's face, correct?

A No.

Q But you were told by officers that that was the suspect?

A Yes, that he was arrested.

1 Q And you also indicated that that person that was in handcuffs was  
2 wearing a white shirt, is that correct?

3 A Yes.

4 MS. NGUYEN: Nothing further.

5 THE COURT: State?

6 MS. THOMSON: Nothing further.

7 THE COURT: The jury have any questions of this witness? Okay.

8 **EXAMINATION BY THE COURT [JURY QUESTIONS]**

9 BY THE COURT:

10 Q What color shirt did the man have after the arrest?

11 A White.

12 THE COURT: State?

13 MS. THOMSON: No follow-up.

14 THE COURT: Defense?

15 MS. NGUYEN: Nothing.

16 BY THE COURT:

17 Q What type of TV show were you watching?

18 A A show. I don't remember what show.

19 THE COURT: State?

20 MS. THOMSON: I have no follow-up.

21 THE COURT: Defense?

22 MS. NGUYEN: What -- what -- just a couple questions.

23 **FOLLOW-UP EXAMINATION**

24 BY MS. NGUYEN:

25 Q I think you had indicated that you were sleeping?

1           A     No.

2           Q     Okay. So you were -- you were just in your bedroom watching the  
3 television programs?

4           A     Yes.

5           Q     Okay.

6           MS. NGUYEN: Nothing further.

7           THE COURT: Thank you. You're free to go.

8           THE WITNESS: Thank you. Thank you very much.

9           THE COURT: We're going to take a five-minute recess.

10                During the recess you're admonished not to talk or converse among  
11 yourselves or with anyone else on any subject connected with this trial. Or read or  
12 watch or listen to any -- you can go.

13                Or read or watch or listen to any report of or commentary on the trial or  
14 any person connected to this trial by any medium of information including, without  
15 limitation, newspapers, television, the radio, or the internet. Or form or express an  
16 opinion on any subject connected with the trial until the case is finally submitted to  
17 you. Remember no *Twitter*, *Instagram*, or social media.

18                Everybody but Ms. Andrews go. I need you to stay just a second.

19                [Outside the presence of the jury, minus Juror Number 8]

20           THE COURT: The jury is out. Ms. Andrews, you had mentioned that you  
21 recognized the -- I think it was the first witness, Maurine Palmer from Walgreens on  
22 Lake Mead.

23           JUROR NUMBER 8: Yes.

24           THE COURT: Do you have a personal relationship with here?

25           JUROR NUMBER 8: Not at all.

1 THE COURT: You just recognized her from the store?

2 JUROR NUMBER 8: I just -- yes.

3 THE COURT: Do you feel any bias towards the State or the Defendant for  
4 calling her as a witness?

5 JUROR NUMBER 8: Not at all.

6 THE COURT: Do you feel like you can render a fair decision absenting your  
7 relationship with Ms. Palmer?

8 JUROR NUMBER 8: Yes.

9 THE COURT: You won't go into Walmart -- or Walgreens until this trial is  
10 over, is that fair?

11 JUROR NUMBER 8: That's fair.

12 THE COURT: All right. State, did you have any questions?

13 MR. FATTIG: So you don't know her, she's just an employee at the drug  
14 store.

15 JUROR NUMBER 8: She's an employee at the drugstore. I market the  
16 hospital near the drugstore and so when I'm at the hospital they have certain  
17 products that I use and so I just go there maybe once a month, but she's always in  
18 the cosmetic, you know, section.

19 THE COURT: Okay.

20 JUROR NUMBER 8: But I don't -- I just know her from the store.

21 THE COURT: Do you have any questions?

22 MS. NGUYEN: No.

23 THE COURT: All right. Thank you. Just don't tell the other jurors what we  
24 talked about and just keep that to yourself, please.

25 JUROR NUMBER 8: Okay. Thank you.

1 THE COURT: You can go to use the restroom.  
2 JUROR NUMBER 8: Thank you.  
3 THE COURT: Thanks for speaking up though.  
4 JUROR NUMBER 8: You're welcome.  
5 [Outside the presence of the jury]  
6 MS. NGUYEN: Why is it so cold in here?  
7 THE COURT: Well some of us like it -- when we're wearing a black dress, we  
8 enjoy it being cooler.  
9 MS. NGUYEN: You'd enjoy my house.  
10 THE COURT: All right. Take five minutes, use the restrooms, get the  
11 Defendant in if he needs to use the restroom.  
12 How many more witnesses you got?  
13 MR. FATTIG: We have --  
14 MS. THOMSON: Four.  
15 MR. FATTIG: -- four.  
16 THE COURT: All right.  
17 [Recess taken at 3:31 p.m.]  
18 [Trial resumed at 3:41 p.m.]  
19 [Outside the presence of the jury]  
20 THE COURT: All right. Bring the jury in.  
21 [In the presence of the jury]  
22 THE MARSHAL: All rise, please.  
23 And be seated.  
24 THE COURT: Stipulate to the presence of the jury.  
25 MS. THOMSON: Yes, Your Honor.

1 MS. NGUYEN: Yes, Your Honor.

2 THE COURT: Call your next witness, State.

3 MS. THOMSON: The State calls Eufrasia Nazaroff.

4 And while she's coming in I'd move for admission of State's Proposed  
5 Exhibits 107 --

6 MS. NGUYEN: Your Honor, we stipulate to the exhibit --

7 THE COURT: Well --

8 MS. NGUYEN: -- to the admission of --

9 THE COURT: You better look at them.

10 MS. THOMSON: 10 --

11 MS. NGUYEN: I've seen them.

12 MS. THOMSON: 107, 125, 126 through 128, 133, 136, 137, 141, 153, 120,  
13 and 118.

14 MS. NGUYEN: That's correct, Your Honor.

15 THE COURT: They'll be admitted.

16 **[STATE'S EXHIBITS 107, 118, 120, 125 to 128, 133,**  
17 **136 to 137, 141, and 153 ADMITTED ]**

18 THE COURT: Yes. Swear her in.

19 **EUFRASIA NAZAROFF**

20 [having been called as a witness and being first duly sworn, testified as follows:]

21 THE CLERK: Thank you.

22 THE WITNESS: You're welcome.

23 THE CLERK: State your full name, spelling your first and last name for the  
24 record, please.

25 THE WITNESS: Eufrasia, E-U-F-R-A-S-I-A. Nazaroff, N-A-Z-A-R-O-F-F.



1 THE COURT: Go ahead.

2 MS. THOMSON: Thank you, Your Honor.

3 **DIRECT EXAMINATION**

4 BY MS. THOMSON:

5 Q Good afternoon, ma'am, I'm going to direct your attention back to June  
6 of 2014. At that time was your phone number 702-502-2369?

7 A Yes.

8 Q Okay. And at that time you owned a maroon Dodge Intrepid, is that fair  
9 to say?

10 A Yes.

11 Q Okay. Showing you what's been marked as Grand Jury Exhibit 150 --  
12 or I'm -- State's Exhibit 153. Is that the DMV registration associated to that vehicle?

13 A Yes.

14 Q Okay. And that has your name on it?

15 A Yes.

16 Q Okay. And showing you what's been marked as State's Exhibit 126. Is  
17 that your vehicle?

18 A Yes.

19 Q Okay. And the last time you saw it, it did not have those orange  
20 stickers on it, is that fair?

21 A No.

22 Q That was a bad question. Did it have the orange stickers the last time  
23 you saw it?

24 A No. The last time I saw it, no.

25 Q State's Exhibit 125. That's the other side of your vehicle?

1 A No. Yeah, that's my vehicle, yeah. But no, they -- okay.

2 Q And the orange stickers weren't on it.

3 A No.

4 Q Okay.

5 THE COURT: Wait, that's -- those are two odd questions. Last time you saw  
6 it or --

7 BY MS. THOMSON:

8 Q On June 26<sup>th</sup> the orange stickers weren't on it?

9 A No.

10 Q Have you gotten that vehicle back?

11 A No.

12 Q Do you know anyone present in the courtroom today?

13 A Yes.

14 Q Will you please point to the individual and describe something they're  
15 wearing today?

16 A What he's wearing today?

17 Q Yes, please.

18 A A green top. A green suit.

19 THE COURT: The record will reflect she's identified the Defendant.

20 MS. THOMSON: Thank you, Your Honor.

21 BY MS. THOMSON:

22 Q And how is it that you know him?

23 A He's my kids' father.

24 Q Okay. How many children do you have together?

25 A We have three and he took care of my other two since they were

1 babies.

2 Q And how long were you together?

3 A Eight years.

4 Q Okay. But you knew each other for nine, is that fair?

5 A Yeah, nine years.

6 Q Okay. And just before June 26<sup>th</sup> -- or a short time before June 26<sup>th</sup>  
7 would it be fair to say that you had broken up?

8 A Yeah.

9 Q And I'm talking about 2014, not 2015, obviously.

10 A Yes.

11 Q Okay. At that time just a few days before June 26<sup>th</sup> of 2014, did he  
12 come to stay with you?

13 A Yes.

14 Q Okay. And you indicated you have three kids with him and two others.  
15 Were they all in the home at that time?

16 A I was pregnant with my last child, Jillian. And then the other two --  
17 other four, yeah, they were with me.

18 Q And what were -- or what are their ages now?

19 A Ten, nine, six, two, and one.

20 Q Did you, with the little kids around, allow firearms in the house?

21 A No.

22 Q And fair to say you didn't own any firearms?

23 A No. I don't like firearms.

24 Q Okay. On the evening of June 26<sup>th</sup>, did he come to your house at about  
25 8:30?

1 A To tell you the truth I don't know what time he came to my house.  
2 Q But he did come to your house?  
3 A Yeah.  
4 Q And was that to borrow your car?  
5 A He came for a while and then after yeah, he asked to use my car.  
6 Q Okay. And you allowed him to use it?  
7 A Yeah. Because he didn't have gas in his truck.  
8 Q And did you call him after he left with your vehicle?  
9 A I called him like around 11:00, 12:00, I think it was.  
10 Q Do you remember telling police that you called him between 8:45 and  
11 8:50 to remind him that you -- he needed to bring the car back to you?  
12 A No, I think because -- I think it was around like 10:00 or 11:00,  
13 somewhere around there. I'm not quite sure. Around -- somewhere around that  
14 time to tell you the truth because the phone was --  
15 THE COURT: Listen to her question --  
16 THE WITNESS: Okay.  
17 THE COURT: -- and answer to what she asked.  
18 THE WITNESS: Okay.  
19 BY MS. THOMSON:  
20 Q So you don't remember.  
21 A I don't remember --  
22 Q Okay.  
23 A -- to tell you the truth.  
24 Q When you called, did you talk to him or did you leave a message?  
25 A I left a message.

1 Q Okay. And when he came to your home, you said he was there for a  
2 little while?

3 A Yeah.

4 Q Do you recall what he was wearing?

5 A To tell you the truth I don't remember what he was wearing. He had  
6 took a shower, but I don't remember what he was wearing.

7 Q Okay. When he left your home, do you remember what he was  
8 wearing?

9 A Yeah, a yellow shirt.

10 Q And is that like a yield yellow or a highlighter yellow or do you  
11 remember?

12 A A bumblebee.

13 Q Okay. And you said you don't own any guns. Did you ever see him  
14 with any guns?

15 A I mean, a long, long, long time ago. Like a long time ago when we first  
16 met. But no.

17 Q Do you remember telling police that before he came back to stay at  
18 your house he was trying to put them somewhere and you said that you -- they  
19 could not be in your home?

20 A No, I said I would never -- I hope I would never see any of those in my  
21 house.

22 Q The guns that you described seeing him with, did you describe those for  
23 the police?

24 A No, she the police had shown me on his *Facebook* because -- I mean,  
25 they can get into *Facebooks*, you know, and that's what the police was showing me,

1 the gang unit. So.

2 MS. NGUYEN: Objection, Your Honor. May we approach?

3 THE WITNESS: Sorry about that.

4 THE COURT: Yeah.

5 [Bench Conference Begins]

6 MS. NGUYEN: Your Honor, I'd move –

7 MS. THOMSON: Unwanted claim.

8 MS. NGUYEN: -- for a mistrial.

9 MS. THOMSON: And actually, he wasn't even a gang unit detective, so. It  
10 was a firearms detective who talked to her.

11 MR. FATTIG: She --

12 THE COURT: I'm sorry. I was putting my calendar for tomorrow together. So  
13 what was the question?

14 MS. NGUYEN: She said that gang unit detectives came over and were on  
15 her *Facebook* pictures -- guns.

16 MS. THOMSON: And it's an unsolicited statement. It's not –

17 THE COURT: I know. I'm going to let you make the motion outside the  
18 presence of the jury.

19 MS. NGUYEN: Okay.

20 THE COURT: I'm not going to grant it. We can make the motion.

21 MS. NGUYEN: Okay.

22 THE COURT: It's the proper thing to do.

23 MS. THOMSON: Of course.

24 MS. NGUYEN: Yeah.

25 [Bench Conference Concludes]

1 BY MS. THOMSON:

2 Q You, in talking to police described one of the guns that you had seen as  
3 being long with a scope on it, is that correct?

4 A Yeah.

5 Q And then you also described two other guns that he had sent a picture  
6 to you of, bring a black and a silver gun?

7 A No, those were on his *Facebook*.

8 Q Okay.

9 MS. THOMSON: May I approach?

10 THE COURT: Yes.

11 BY MS. THOMSON:

12 Q I'm going to show you a page out of the statement that you gave to  
13 police. Read quietly to yourself. I'm just going to have you start on that line.

14 MS. NGUYEN: Megan, what page was that on?

15 MS. THOMSON: Five.

16 BY MS. THOMSON:

17 A Yeah, on his *Facebook*.

18 Q Okay. And you agree that you said yeah, he sent the picture to your  
19 phone?

20 A No, he never sent a picture to my phone. It's on *Facebook*. Those are  
21 on *Facebook*. They showed me pictures of them on *Facebook*.

22 Q Do you agree that you told the police that he sent the picture to your  
23 phone?

24 A No, I don't because I didn't say yeah.

25 Q Okay. You didn't say yeah, he sent it to my phone?

1           A     No.

2           Q     And that was not in response to -- or was -- did they ask you specifically  
3 about a .45 and a .22?

4           A     Yeah, because they showed it to me on their phone from their  
5 *Facebook* -- from his *Facebook*.

6           Q     And you said when he was leaving your house he was wearing the  
7 bumblebee yellow shirt, correct?

8           A     Yes.

9           Q     Did he have anything on over that?

10          A     No.

11          Q     Okay. Do you remember them asking if you saw him wearing a ballistic  
12 or bullet-proof vest?

13          A     No. They just came to my house and I was getting ready for work at  
14 the time. So --

15          Q     Do you remember telling them that you saw the bullet-proof the night  
16 before the statement or the night of the 26<sup>th</sup>?

17          A     No.

18          Q     Okay. Do you remember telling them that they, being the police, had  
19 probably seen the same bullet-proof vest?

20          A     No.

21          Q     Okay. And do you remember telling the police that he left your house  
22 with it on?

23          A     No.

24          Q     Do you remember telling the police that when he left the house he had  
25 it on over his clothing?



1 A No.

2 Q Okay.

3 MS. THOMSON: Court's indulgence.

4 BY MS. THOMSON:

5 Q Now at that time, being June 26<sup>th</sup>, 2014, the only vehicle that you  
6 personally owned was that maroon Intrepid, correct?

7 A Yes.

8 Q And that's the one that he left in?

9 A Yes.

10 MS. THOMSON: Pass the witness.

11 THE COURT: Cross?

12 **CROSS-EXAMINATION**

13 BY MS. NGUYEN:

14 Q So Joshua never sent you pictures on your phone --

15 A No.

16 Q -- of any weapons?

17 A No.

18 Q Okay. And you never saw any weapons inside your home?

19 A No.

20 Q And you never saw Joshua with any weapons?

21 A No.

22 Q Okay. This Dodge Intrepid that we saw the pictures of that was your  
23 only vehicle --

24 A Yes.

25 Q -- is that correct?

1           A     Yes.

2           Q     Okay. Did anyone else have -- did anyone -- did you ever let anyone

3 else use that vehicle?

4           A     No.

5           Q     Were there times where Joshua had access to the vehicle?

6           A     No.

7           Q     Okay. He never had access to the vehicle?

8           A     Nope.

9           Q     Okay. Unless you gave it to him?

10          A     Unless I gave it to him.

11          Q     Okay. Were you aware of him giving the vehicle to anyone else?

12          A     No.

13          Q     There were times where you weren't with him and he had your vehicle,

14 is that correct?

15          A     Yeah.

16          Q     Okay. And Joshua had other friends, other than you?

17          A     Yes, he did.

18          Q     Okay. And you said that you never saw Joshua with a bullet-proof

19 vest --

20          A     No.

21          Q     -- is that correct?

22          A     No.

23          Q     Okay. You never saw pictures of him with a bullet-proof vest on?

24          A     No.

25          Q     Never saw *Facebook* pictures of a bullet-proof vest?

1 A No.

2 Q And in fact the only guns that you saw you indicated that an officer had  
3 showed you those pictures?

4 A Yes.

5 Q Okay. On their phone?

6 A Yes.

7 Q Okay. And they weren't on your phone.

8 A No.

9 Q Do you use *Facebook*?

10 A Yes.

11 Q Do you use it regularly?

12 A Yes.

13 MS. NGUYEN: Nothing further.

14 **REDIRECT EXAMINATION**

15 BY MS. THOMSON:

16 Q Did you ever keep any firearms in your car?

17 A No.

18 MS. THOMSON: I have no further questions.

19 MS. NGUYEN: Nothing.

20 THE COURT: Does the jury have any questions of this witness? Seeing no  
21 hands. You're free to go, ma'am.

22 Call your next witness, State.

23 MS. THOMSON: The State calls Ricardo Robles.

24 **RICARDO QUESADA**

25 [having been called as a witness and being first duly sworn, testified as follows:]

1 THE CLERK: Thank you. Please be seated.

2 MS. NGUYEN: And Your Honor --

3 THE CLERK: State your full name --

4 MS. NGUYEN: Oh, I'm sorry.

5 THE CLERK: -- spelling your first and last name for the record, please.

6 THE WITNESS: My name is Ricardo Quesada. R-I-C-A-R-D-O,  
7 Q-U-E-S-A-D-A.

8 MS. NGUYEN: And Your Honor, for the record, we didn't have any objection  
9 to his father sitting in here while he testified.

10 THE COURT: That's fine.

11 MS. NGUYEN: I think they were going to get him.

12 THE COURT: How old are you?

13 THE WITNESS: 13.

14 THE COURT: You understand telling the truth, what that means?

15 THE WITNESS: Yes.

16 THE COURT: Go ahead.

17 MS. THOMSON: Thank you, Your Honor.

18 **DIRECT EXAMINATION**

19 BY MS. THOMSON:

20 Q Good afternoon. I want to talk to you about June 26<sup>th</sup> of 2014. AT that  
21 time were you living with your father and sister at 4995 El Tovar?

22 A Yes.

23 Q And showing you State's Exhibit 98, is that your home on the corner?

24 A Yes.

25 Q Okay. And that's on the corner of Dolly and El Tovar, correct?

1           A     Yes.

2           Q     And in that house -- okay, let me just zoom in here. Can you explain for  
3 us what room are behind each of the windows?

4           A     My parent's room is all the way at the end.

5           Q     If you touch the screen, sorry, it'll make a mark. Go ahead and make a  
6 line underneath or circle around the window.

7           A     My parent's room is right here and this was a room that was abandoned  
8 at that time or we just -- no one really was there in this one. And this right here is  
9 the living room. That's where I was in the kitchen at that time.

10          Q     And is the kitchen sort of towards the back of the house from the living  
11 room?

12          A     Yes.

13          Q     And while you were in the kitchen, was your sister with you?

14          A     Yes.

15          Q     While you were in the kitchen did something catch your attention?

16          A     Yes, three shots. At first I thought they were fireworks, but they didn't  
17 sound like fireworks. So it sounded kind of like gunshots to me.

18          Q     When you heard those, what did you do?

19          A     My sister, she was in the living room, sitting on the sofa watching TV,  
20 but when she heard that she wanted to go to the window, but I told her to get down  
21 and so we went to our parent's room. And my dad was on the bed and then when  
22 we went to my dad's room, we looked out the window and then we saw a person  
23 running in the sidewalk and --

24          Q     When -- sorry. Go ahead.

25          A     And when he got -- when he stopped he went in front of a truck and he

1 pointed something that looked like a gun back.

2 Q When you saw the person running, and I'm showing you State's Exhibit  
3 99, did you see them along any area that we can see in this photograph?

4 A I saw him running this way.

5 Q So is that on El Tovar away from Dolly?

6 A Yes.

7 Q Okay. And did you see if he stopped anywhere?

8 A He stopped right around here and he turned around and went in front of  
9 the truck where the hood is and then he pointed a gun backwards.

10 Q And showing you what's been marked as State's Exhibit 101. Can you  
11 mark on this photograph where, generally, he was standing by the truck when he  
12 pointed the gun?

13 A Right here, pointing backwards -- the gun, backwards.

14 Q So back towards Dolly?

15 A Yes.

16 Q And when you saw him pointing back towards Dolly, what did you do?

17 A That's -- when he pointed the gun my Dad told me to get down because  
18 he didn't want nothing to happen because he thought he was going to start shooting  
19 again.

20 Q And did you get down?

21 A Yes, we left the window.

22 Q The man that you saw pointing the gun, was he using one hand or two  
23 hands?

24 A Two hands.

25 Q And do you recall what he was wearing?

1           A     I really can't remember, but I was pretty sure he was wearing a white.  
2           Q     While you were at the window, did you see him move from the front of  
3 that truck?  
4           A     When my dad told us to get down, that's when he turned around and  
5 started running again.  
6           Q     And he is the man who was by the truck?  
7           A     Yes.  
8           Q     Okay. Showing you State's Exhibit 99. In what direction did he start  
9 running just before you got down?  
10          A     This way.  
11          Q     Okay. So further along El Tovar?  
12          A     Yes.  
13          Q     Was he running -- as you got down, was he running away from the front  
14 of the truck or was behind the truck, by the rear?  
15          A     He was starting to run again. Yeah.  
16          Q     So he started moving from this area, that direction?  
17          A     Yes.  
18          Q     Okay. And that direction is to the left of the photograph?  
19          A     Yes.  
20          Q     Okay. After you got down, do you know if police came to the  
21 neighborhood?  
22          A     Yeah, there was a ton of police officers outside.  
23          Q     And did you see any of your neighbors come outside?  
24          A     No, I didn't see them come outside.  
25          Q     Do you recall the description of the individual who was in front of the

1 white truck?

2 A He was -- he had long hair. I remember he had long hair and I  
3 remember he was wearing a white jacket.

4 Q And that night, after you got down on the floor, did you ever see that  
5 individual again?

6 A No.

7 Q On that evening, were the street lights working?

8 A Yes.

9 MS. THOMSON: Court's indulgence.

10 BY MS. THOMSON:

11 Q At some point after you got down on the floor in your dad's room you  
12 obviously got back up and were moving around the house.

13 A Yes.

14 Q Okay. Did you at any time go into your backyard with your father?

15 A Yes, I did.

16 Q And when you were in the backyard, did you see police around?

17 A A lot of police officers outside, yes.

18 Q And during that time, did you see the person who had been in front of  
19 the truck anywhere around?

20 A Yes, I saw him getting arrested far -- well, kind of far away, yeah. And I  
21 saw a police officer handcuffing him and putting him in a car.

22 Q And how did you know that it was the same individual?

23 A Because I remember he had the exact same hair that I saw at first.

24 Q Okay. Showing you an overhead picture, State's Exhibit 15. That's  
25 your house down in sort of the bottom left corner, El Tovar, Dolly, and Carey.



1 A Yes.

2 Q Can you mark on the photograph, in the general area, where you saw  
3 him with the police?

4 A Right here.

5 Q Up towards the corner of Carey and Dolly?

6 A Yes.

7 Q And you said you recognized his hair, is that correct?

8 A Yes.

9 MS. THOMSON: Pass the witness.

10 **CROSS-EXAMINATION**

11 BY MS. NGUYEN:

12 Q When you heard the first shots, did you go get your dad right away?

13 A I told my sister to get down first and then that's when we went to my  
14 dad.

15 Q Had you ever heard a noise like that before?

16 A No, not really.

17 Q Okay. Did you know what it was?

18 A At first, like I said, I thought they were fireworks, but then as I heard the  
19 second and the third shot, I knew that they didn't sound like that.

20 Q Okay. And when you heard -- you heard those, you didn't see anyone  
21 shooting at that time?

22 A No.

23 Q And then you said it was dark outside?

24 A Yes.

25 Q And you were inside your house?

1 A Uh-huh.

2 Q And you were looking through a window?

3 A Yes. Sorry.

4 Q You were looking through a window?

5 A Yes.

6 Q And you were there with your dad and your sister?

7 A Yes.

8 Q Okay. Who was holding the curtains back or did you just move them

9 over?

10 A The curtains were open when I went to my dad's room.

11 Q Okay. And was it dark inside your house?

12 A Yes, my dad's room was dark when I looked out the window.

13 Q Okay. Were there any lights on in his room?

14 A The TV.

15 Q The TV. Do you remember what he was watching?

16 A No, I really don't remember.

17 Q Was he sleeping and did you wake him up or did -- was he awake?

18 A He was awake watching TV.

19 Q Hold on one second. There's a pile of pictures here. I got to find it.

20 When you said you saw a person and you thought they were wearing

21 all white, is that correct?

22 A Yes.

23 Q Okay. Like white shorts or white pants?

24 A Pants, I believe.

25 Q And a white shirt?

1 A Yes.

2 Q And you thought like a white jacket?

3 A Yes.

4 Q Okay. But you couldn't see the person's face?

5 A No.

6 Q Okay. You said you saw some long hair?

7 A Yes.

8 Q Okay. But you couldn't get a description about what he -- he or she

9 looked like --

10 A No.

11 Q -- is that right? Okay. Have you ever seen guns before?

12 A Yes, I have.

13 Q Okay. On TV or in person?

14 A In person.

15 Q Okay. And could you see a gun?

16 A When he was pointing the gun backwards, yeah, I could see a

17 handgun.

18 Q Okay. Could you see anything about it, like a color or anything?

19 A The gun, it just looked black.

20 Q And did you ever see any police officers?

21 A When he pointed the gun backwards I didn't see any police officers.

22 And when we left the window and we went outside, that's when a lot of police

23 officers came.

24 Q Okay. Did you ever hear anyone shooting at -- towards the person --

25 A No.

1 Q -- or the truck?

2 A I -- no, I didn't.

3 Q Okay. So you didn't hear any other gunshots --

4 A No, only --

5 Q -- other than the two I think you said you heard then?

6 A Three.

7 Q Three?

8 A Uh-huh. Yes.

9 Q But you didn't hear any other gunshots?

10 A No.

11 Q When you went into your backyard of your house, you said that you

12 looked down the street and you could see someone being arrested?

13 A Yes.

14 Q Okay. And was that quite a ways down the street?

15 A It was kind of far, but enough -- because there was a light pointing

16 when he was getting arrested.

17 Q Okay. So you saw an individual getting arrested that had long hair too?

18 A Yes.

19 Q Okay. And what was that person wearing?

20 A I think I told the officer because an officer came up to me and he told

21 me what I have seen -- what I saw and he said --

22 THE COURT: Told you or he asked you?

23 BY MS. NGUYEN:

24 A Yes, the officer asked me what did I see and if it was the same

25 individual who was arrested -- was getting arrested and I told him yes.

1 Q Okay. So an officer said, is that person down there getting arrested the  
2 same person you saw?

3 A Yes.

4 Q Okay. And that was still from down the street?

5 A Yes.

6 Q You couldn't see the person's face, is that correct?

7 A No, I -- no.

8 Q And the person was in handcuffs at that time?

9 A Yes.

10 Q Okay. Were they still wearing the white pants and white shirt?

11 A Yes.

12 MS. NGUYEN: Nothing further.

13 MS. THOMSON: I have no follow-up.

14 THE COURT: The jury have any questions of this witness? You're free to go.  
15 Thank you.

16 Call your next witness, State.

17 MR. FATTIG: Marcia Wagner.

18 **MARCIA WAGNER**

19 [having been called as a witness and being first duly sworn, testified as follows:]

20 THE CLERK: Thank you. Please be seated. State your full name, spelling  
21 your first and last name for the record, please.

22 THE WITNESS: Marcia Wagner.

23 THE CLERK: Spell it.

24 THE WITNESS: Oh, I'm sorry. M-A-R-C-I-A, W-A-G-N-E-R.

25 THE COURT: Speak into the mic. They're going to ask you questions.

1 THE WITNESS: So you hear me better.

2 THE COURT: Go ahead.

3 **DIRECT EXAMINATION**

4 BY MR. FATTIG:

5 Q Ma'am, back on June 26<sup>th</sup> of 2014, were you living at 4585 East  
6 Carey --

7 A Yes.

8 Q -- here in Las Vegas, Clark County, Nevada?

9 A Yes.

10 Q And is that just two houses away from the intersection of Dolly and  
11 Carey?

12 A Yes, it is.

13 Q That particular evening, was there something that you heard and/or saw  
14 that was a bit unusual?

15 A Well first my husband saw something in the camera which was a police  
16 officer in front of our house --

17 Q When you say a camera, what camera are you talking about?

18 A We have surveillance cameras around the house. So he was at the  
19 computer and I think I was in the kitchen, but I'm not really sure. And --

20 Q Do you remember what -- about what time in the evening this was?

21 A 11:00.

22 Q Okay. P.M., correct?

23 A Yes

24 Q Okay.

25 A It was nighttime.

1 Q And your husband said something about seeing something in the  
2 surveillance system?

3 A He said I wonder what's going on because he could see in the -- from  
4 the camera that the policeman stopped in front of the house --

5 Q Okay.

6 A -- which was upper Carey. Carey is two levels. The house is on one  
7 level and he was on the upper level, but in front of our house --

8 Q Yes.

9 A -- with all the lights flashing.

10 Q Okay. Let me stop you there.

11 [Colloquy between Counsel]

12 BY MR. FATTIG:

13 Q I'm going to show you State's Exhibit Number 13, which is an aerial  
14 photograph. Do you recognize this street here --

15 A Yes.

16 Q -- running across as Carey?

17 A Yes.

18 Q And this would be Dolly.

19 A Yes.

20 Q Can you point out which house is yours? Or was yours as of June of  
21 '14?

22 A It would be this one.

23 Q Circle it --

24 THE COURT: Circle it. Touch the screen.

25 BY MR. FATTIG:

1 Q If you touch the screen, it will show up.

2 A Oh.

3 Q It's like a telestrator.

4 A [No audible response - marking on monitor].

5 Q Right there. Okay. You're the second house on the south side of the

6 street.

7 A Correct.

8 Q Okay. What -- so when you're talking about there's a street and then

9 there's Carey, correct? Are you talking about this street is a little lower than this

10 street?

11 A Exactly.

12 Q Okay. All right. So -- and this is the front of your house -- the front

13 door. And you have cameras on the front of your house?

14 A Yes, we do.

15 Q Okay. So your husband indicated that he saw something. Did you

16 come over to where your husband was? Did you look at the camera system?

17 A Well actually I did. We both saw the -- in the projector we saw that the

18 policeman had stopped. But he went to the front door, I walked behind him, and

19 when he opened the door that's when we both heard gunfire.

20 Q Okay. How many gunshots did you think you hear -- heard?

21 A Four or five, it sounded like to me that were very light. And then four or

22 five that were very loud.

23 Q Okay. So the first volley of shots that you hear were softer or lighter

24 than the second volley?

25 A Exactly.



1 Q Could you tell where it generally the first shots were coming from?

2 A I don't know where they were coming from, other than the right side of

3 the -- where the car was because it was --

4 Q Okay.

5 A -- centering right in there.

6 Q So did you see the police car in approximately this position on State's

7 Exhibit --

8 A Correct.

9 Q -- 13? Is that correct?

10 A That's correct.

11 Q Okay. So you indicated that the shots were coming to the right of that

12 area?

13 A Yes. From -- like from Dolly.

14 Q From near Dolly, okay. And your -- and my question went to the softer

15 shots, the first set of shots.

16 A Exactly.

17 Q Okay. Now the louder set of shots, was -- did that happen pretty

18 quickly right after the first?

19 A Pretty quickly.

20 Q Okay. Could you tell where those were coming from?

21 A That sounded like maybe from the car or from somebody near the car.

22 Q Okay. When you say the car, which car are talking about?

23 A The police officer's car.

24 Q Okay. And that's closer to the front of your home.

25 A Correct.

1 Q Okay. Now, you indicated that your husband opened the door. Would  
2 that be the front door of your home or are there different doors?

3 A The front door.

4 Q How many doors do you have? Do you have a security door?

5 A I have a security door. He didn't open that --

6 Q Okay.

7 A -- because when we heard the shooting I told him to shut the door.

8 Q So is it fair to say there's an interior door that's like a metal door.

9 A Exactly.

10 Q And then outside of that is a security door?

11 A A security door, yes.

12 Q Can you describe what the security door looks like?

13 A Well the security door is like a metal screen where we can see out  
14 clearly, but you can't see in at night.

15 Q Okay. So your husband was standing in that doorway able to view out  
16 the security door?

17 A Absolutely,

18 Q And did you actually get to look out the security door? You said you  
19 went up to the door behind him. Did you see anything?

20 A And then when I heard the shooting and he told me, go call 9-1-1, I  
21 turned around and went to the phone.

22 Q Okay. And that's when you called 9-1-1.

23 A Yes.

24 Q You came to my office a week or so ago, correct?

25 A Yes.

1 Q And you listened to a 9-1-1 call?

2 A Yes.

3 Q Was that a fair and accurate copy of the 9-1-1 call that you play --

4 A Yes.

5 Q That you made on June 26<sup>th</sup> of 2014?

6 A Yes, it was.

7 MR. FATTIG: We would move to admit State's 185.

8 MS. NGUYEN: Your Honor, I'd make the same objection that it's redundant  
9 and bolstering.

10 THE COURT: Overruled. Let it be admitted.

11 **[STATE'S EXHIBIT 185 ADMITTED]**

12 MR. FATTIG: Ask that you listen to it.

13 [9-1-1 Call Played]

14 BY MR. FATTIG:

15 Q That's the call you made that night, ma'am?

16 A Yes.

17 Q Now in the call you describe a boy or a young man in lighter clothing,  
18 lighter pants?

19 A I realize it was a police officer now.

20 Q Okay.

21 A It was tan clothes.

22 Q Okay. You had the chance to view the surveillance video as well?

23 A I did.

24 Q Okay. Now can you describe where you saw the police officer moving?

25 A Well from when I saw him, whoever it was, at the time I didn't know it

1 was a policeman, was running from like from the car towards Dolly.

2 Q Okay. So on State's Exhibit 13, he's moving from here towards Dolly?

3 A Correct.

4 Q To the east.

5 A Now I don't know how far he went because I can't -- my camera doesn't  
6 go that far.

7 Q Yes. Okay. So you were at the door and you heard -- excuse me.  
8 Before the door you heard two sets of shots, correct?

9 A No. When we were at the door when we heard the shots.

10 Q You were at the door when you heard the shots.

11 A Yeah.

12 Q One coming more closer to Dolly and one coming by the car.

13 A Exactly.

14 Q Okay. When did you see the police officer moving? The young man in  
15 the lighter pants? Was that --

16 A It kind --

17 Q -- after the second volley of shots?

18 A It could have possibly been with the second shots because I didn't  
19 know if he was running because he had shot somebody and he was running,  
20 shooting. I didn't know what he was doing. And I obvi -- I guess he was running,  
21 shooting.

22 Q Okay. Did you ever see anyone else out there?

23 A No.

24 Q Just the person who you believe was the police officer?

25 A Exactly.

1 Q Is it fair to say the police got there fairly quickly after you called 9-1-1?

2 A Yes.

3 Q They were arriving.

4 A Yes.

5 Q And they cordoned off the area?

6 A They did.

7 MR. FATTIG: Court's indulgence

8 I have no other questions at this time.

9 THE COURT: Cross.

10 **CROSS-EXAMINATION**

11 BY MS. NGUYEN:

12 Q SO the only individual that you saw from your doorway was the person  
13 that you later realized was the police officer, is that correct?

14 A That's correct.

15 Q Okay. And you heard shots. Did you see that same police officer  
16 actually shooting?

17 A No, I couldn't tell. No.

18 Q Okay. Could you not tell because you didn't have a vantage point  
19 or -- from where you were in your home or could you not see that far from where it  
20 was?

21 A I could see him running. I didn't -- couldn't tell he was a police officer  
22 and I -- no, I couldn't see anything in his hand.

23 Q Okay. But you heard the shots?

24 A Yes, we did.

25 Q Did you hear any -- did you see any flashes from his muzzle when he

1 was shooting?

2 A Not that I remember, no. I was behind my husband too. So he may  
3 have seen that. I didn't.

4 Q Okay. So it's fair to say that you were obviously scared?

5 A Yes, I was.

6 Q And you were hiding kind of behind your husband?

7 A I was.

8 Q And you were behind that security door as well.

9 A Correct.

10 Q Okay. When you were calling 9-1-1, were -- was the door shut at that  
11 time or did you leave it open?

12 A I'm not sure because I was in the kitchen and I really wasn't watching  
13 him. I know I told him to shut the door. So he could have shut it.

14 Q Okay. And you said this is your house, is that correct? Or is this your  
15 house?

16 A The second one on the street. This one --

17 Q This one right here?

18 A -- is my house.

19 Q Okay. And this is the door that you were looking out?

20 A Correct.

21 Q Okay. From inside your house behind that security door, how far could  
22 you see out in any direction here?

23 A At nighttime I can clearly see the house across the street.

24 Q Okay. Can you kind of mark with your finger kind of where the --

25 A Well I can see --

1 Q -- your viewpoint would be?  
2 A I can see this, I can see here, and I can see this driveway.  
3 Q Okay. Can you see over to here?  
4 A No.  
5 Q Okay. Can you see past this van that's right here on the street?  
6 A No, I cannot.  
7 Q So you can see this car right in front of you?  
8 A Correct.  
9 Q The police officer that was right in front of you.  
10 MS. NGUYEN: Nothing further.  
11 MR. FATTIG: Nothing further.  
12 THE COURT: The jury have any questions of this witness? Okay. Write it  
13 down.  
14 You guys can approach the bench.  
15 [Bench Conference Begins]  
16 MS. NGUYEN: Your Honor, I'd also -- in addition to my objection for  
17 redundancy and bolstering, I would say that --  
18 THE COURT: Yeah. I will -- what do you want?  
19 MS. NGUYEN: I know. I think the 9-1-1 call was also prejudicial. There's  
20 references to in light of the other incidents that occurred.  
21 THE COURT: All right.  
22 MS. NGUYEN: Okay.  
23 MS. THOMSON: I don't know that she can answer it, and --  
24 MR. FATTIG: Did Defendant have employment? If not, when his last what  
25 she may have?

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[Bench Conference Concludes]

THE COURT: Thank you, ma'am, you're free to go.

THE WITNESS: Thank you.

THE COURT: Call your next witness, State.

MR. FATTIG: David Wagner.

THE COURT: Remember, direct your questions to the witness that's there. If your question is not read or it is read don't give any undue influence. Another witness will answer it. We may ask it then.

**DAVID WAGNER**

[having been called as a witness and being first duly sworn, testified as follows:]

THE CLERK: Thank you. Please be seated.

THE COURT: Is that a yes?

THE WITNESS: Yes.

THE CLERK: Please state your name, spelling your first and last name for the record.

THE WITNESS: David Wagner. D-A-V-I-D, W-A-G-N-E-R.

**DIRECT EXAMINATION**

BY MR. FATTIG:

Q Sir, back on June 26<sup>th</sup> of 2014, were you living at 4585 East Carey here in Las Vegas?

A Yes, I was.

Q I'm showing you what has already been admitted as State's Exhibit 13. Do you recognize that aerial of being your neighborhood?

A Yes, that's --

Q Do you see your house in that picture?



1 A Yes. I'm the second house from the corner.

2 THE COURT: Circle it, please.

3 BY MR. FATTIG:

4 Q Can you circle it?

5 A [No audible response - marking on monitor].

6 Q South side of the street, second house from Dolly, is that correct?

7 A Yes.

8 Q I'm going to show you a couple other photos. These have been  
9 admitted via stipulation of the parties. State's Exhibits 122, 123, and 124.

10 MS. NGUYEN: That's correct, Your Honor.

11 THE COURT: They'll be admitted.

12 **[STATE'S EXHIBIT 122 to 124 ADMITTED]**

13 BY MR. FATTIG:

14 Q 122, sir, is that the front of your house?

15 A Yes, it is.

16 Q Okay. 123, what are we looking at there?

17 A You're looking at a camera that's facing east.

18 Q Okay. Is that towards the front and towards the east on Carey?

19 A Yes.

20 Q In other words, the front of your house --

21 A It's on the front of the house but it's on the west side of the house,  
22 facing east.

23 Q Okay. But still on Carey.

24 A Yes.

25 Q Facing towards Carey to the north --

1           A     Yes.

2           Q     -- and east. Okay. And State's Exhibit 124, you recognize that?

3           A     That's the other camera facing west on Carey.

4           Q     Okay. So fair to say that you have a surveillance system on the front of

5 your home with two cameras that kind of point --

6           A     Crisscross.

7           Q     -- across or --

8           A     They crisscross.

9           Q     Crisscross, okay. And that system was working the evening of June

10 26<sup>th</sup> of 2014?

11          A     Yes.

12          Q     Towards the evening hours, did something unusual happen while you

13 were at home?

14          A     Well I heard a siren at one point and I turned to my monitor to check my

15 monitor because we noticed that all -- emergency vehicles that go by as to which

16 one it is; whether it's a police, fire, or rescue.

17          Q     And where were you when you heard that?

18          A     I was sitting at my computer.

19          Q     Okay.

20          A     My monitors to the right and --

21          Q     And when you say monitors, is that the monitors for your surveillance

22 system?

23          A     Yes.

24          Q     Okay. So you are sitting right next to it when you hear the sirens?

25          A     Yes.

1 Q And did that cause you to look at the surveillance system?

2 A Yes.

3 Q And it has a live picture of the front of your home on Carey?

4 A No, it has everything in front of the home because it doesn't have a

5 picture of the home itself.

6 Q No, I mean the area in front of your home --

7 A Yes.

8 Q -- on Carey.

9 A Yes.

10 Q It has a live picture for you to observe.

11 A Yes.

12 Q Okay. And it's also recording it.

13 A Yes.

14 Q And you heard a siren, you looked at the system, and did you see

15 anything?

16 A No. The siren -- we heard the siren coming and then the siren stopped

17 and I continued to watch it because the siren had stopped at that point. I noticed a

18 vehicle went by and then a police officer -- a police car came into vision at that point.

19 And he slowed down to almost a stop like he was going to stop in front of my

20 neighbor's house and then proceeded to the front of my house.

21 By that time I had already got up from where I was sitting, walked

22 across the room, opened my door, and started to open my second door, which is a

23 security screen when the police car properly came to a stop, his door popped open,

24 and then gunfire erupted at that point.

25 Q When you say the door popped open, the door of what?

1           A     The patrol car.

2           Q     Okay. And then gunfire erupted. Could you tell where the gunfire was  
3 coming from?

4           A     The first four shots came from the east of me at that point because I  
5 was facing the front of my property.

6           Q     Excuse me. I'm going to go back to State's Exhibit 13.

7           A     Okay. Where the police car is at that --

8           Q     Is that about where the police car ended up in front of your home?

9           A     I believe the police car was back a little further.

10          Q     Okay. It was back a little further.

11          A     The police car was more in front of my house.

12          Q     Okay.

13          A     When I opened my door the police car was right straight in front of my  
14 door.

15          Q     Okay. Could you tell where -- can you show on this map where you  
16 heard the first shots?

17          A     The first shots came from the east of me at that point.

18          Q     Okay. Could you mark -- use your finger to mark that area?

19          A     [No audible response - marking on monitor].

20          Q     Okay. You're marking, for the record, near the corner of Dolly and  
21 Carey.

22          A     Right.

23          Q     How many of the first shots did you hear?

24          A     I heard four the first time. That was from a smaller caliber because  
25 when the officer returned fire he fired three rounds that I heard at that point of a

1 larger caliber.

2 Q All right. And where was the officer at, if you could tell, when he fired?

3 A The officer was at his patrol car in front of my house.

4 Q So you say lighter caliber. Are you in fact a gun owner, sir?

5 A Yes, I am.

6 Q So you're familiar with the use of guns and different calibers of guns?

7 A Yes, I am.

8 Q And it sounded like two different guns?

9 A Yes.

10 Q And it sounded like they were coming from two different areas.

11 A Definitely.

12 Q And you believed you heard approximately three shots coming from the  
13 area of the patrol car?

14 A Yes. Four prior to that.

15 Q And was the patrol car shots, they were louder?

16 A Yes.

17 Q Now when you looked out the window did you see anyone, either a  
18 patrol officer or any other people?

19 A I was only looking at the patrol officer at the time of the first four rounds.  
20 And then as soon as they went off I looked at direction but I didn't see anything. I  
21 was getting ready to at the time, I opened my inside door which is a solid metal door  
22 with a window in it, and as I went to open my security screen door that's when the  
23 shots happened and --

24 Q The first shots?

25 A All seven of them at that point.

1 Q Okay.

2 A It all happened in a matter of seconds.

3 Q Okay.

4 A And I never went out the second door.

5 Q But you were able to view what you saw through your security door?

6 A Yes.

7 Q Were you able to see pretty clearly through the security door?

8 A Oh, yes. I paid dearly for this security door so that you can visibly see

9 anything that's on the other side of the door but they cannot see inside the house.

10 Q Did you see -- after the second volley of shots, the louder ones that

11 appeared to be coming near the patrol car, did you see the patrol officer or did you

12 leave that area of your front door?

13 A Well, no, I -- just prior to leaving the front door, as soon as the seven

14 shots were exchanged between the two pair at that point, the officer left the security

15 of the patrol car and proceeded to go after the suspect at that point. So I assumed

16 he was running down Dolly at that point. At that point --

17 Q Did you -- I don't want you to assume anything. Did you see where the

18 patrol officer went?

19 A Yes, he went --

20 Q The direction?

21 A He went east to Dolly.

22 Q Okay. You saw him run on Carey, east towards Dolly?

23 A Right.

24 Q After all of the shots?

25 A Yes.

1 Q Or the seven shots you described?

2 A Yes.

3 Q Okay. But then is it fair to say once he got near Dolly you lose track of  
4 him, you can't see over there.

5 A At that point I closed the door, pushed the door closed at that point and  
6 I went and retrieved my gun.

7 Q Okay. And then what did you do?

8 A I cocked the gun to make sure I was ready to go.

9 Q Okay. And then what did you do?

10 A Then I went back to the front, looked outside, did not see anything  
11 outside, did not hear any more shots, and then returned to my sliding glass door in  
12 my kitchen which is in the backyard and I lit up my backyard in case he tried to  
13 come over the fence or anything at that point.

14 Q Okay. Then what did you do?

15 A Then I tried to go back out front. By that time all the police officers in  
16 the whole department I think were arriving at that point.

17 Q Okay. And is it fair to say there was a lot of police that arrived in the  
18 area?

19 A Oh yes.

20 Q And fair to say they came out there and cordoned off the area in front of  
21 your home?

22 A Yes.

23 Q As well as other areas?

24 A For almost nine hours.

25 Q They were out there all night?

1           A     Yes.

2           Q     And you -- did you contact the police and let them know you had a  
3 surveillance system?

4           A     No. I contacted them the next day.

5           Q     Okay. And did they come out and in fact interview you and your wife?

6           A     Yes. I called the police department at that point and asked to speak to  
7 the detective that was investigating the situation and wanted to let him know that I  
8 did have camera surveillance. I had News 3 bugging me that they wanted to see it  
9 at that point.

10          Q     Okay. But you spoke to the police, fair to say?

11          A     Yes, I spoke to the --

12          Q     And then --

13          A     -- and then he set up a time to come out to my house and view it  
14 himself.

15          Q     And you gave him a copy of the video?

16          A     No. He then asked if I would take and allow them to come back at  
17 11:00 that night and take a copy of it and take a written statement from me and my  
18 wife at that point as to what we saw and everything that transpired.

19          Q     And they did that?

20          A     Yes.

21          Q     Okay.

22          MR. FATTIG: Could I get the system switched over for surveillance video on  
23 the computer?

24                 Thank you. And this will be State's Proposed 86.

25          THE COURT: Has it been admitted?



1 MS. NGUYEN: No.

2 MR. FATTIG: No, I'll ask them --

3 [Colloquy between Counsel]

4 BY MR. FATTIG:

5 Q Sir, do you recognize what's shown on the screen here?

6 A Yes. It's my vehicle in my driveway and the camera on the east side of  
7 my house pointing west.

8 Q And this is towards the northwest of your home?

9 A Yes.

10 Q So this would be Carey, is the far street, correct?

11 A Yes.

12 Q And is this a fair and accurate depiction of that particular view of that  
13 previously camera on the front of your home?

14 A Yes, it is.

15 Q And do you recognize this as video taken on June 26<sup>th</sup> of 2014? This is  
16 a still of it?

17 A I would assume it is. That's what it says at the top.

18 Q It's what it says at the top, correct, it terms of the date?

19 A Yes.

20 Q The time --

21 A And the time is off because I didn't change my times for that --

22 Q For daylight savings time?

23 A I didn't keep up with daylight savings and all that.

24 Q Okay. Do you remember --

25 A I am doing --

1 Q Do you remember that this --

2 A -- that now.

3 Q Do you remember that this event occurred around 10:45 in the  
4 evening? Does that sound about right?

5 A Around there, yes.

6 Q Okay. I'm going to play a snippet.

7 [Citizen video starts playing]

8 BY MR. FATTIG:

9 Q So this captures cars as they go back and forth on Carey?

10 A Yes, it does.

11 Q And that was a car heading from the east -- excuse me, from the west  
12 to the east in front of your residence?

13 A Yes.

14 Q Okay.

15 [Citizen video continues playing]

16 BY MR. FATTIG:

17 Q And we just saw a car going from the east to the west, correct?

18 A Yes.

19 [Citizen video continues playing]

20 BY MR. FATTIG:

21 Q Did you see what just crossed at 21:53 and approximately 21 seconds?

22 A Yes.

23 Q And that was a vehicle traveling from the west to the east?

24 A Yes.

25 Q Did it appear to have very bright headlights on?

1           A     Yes, it did.

2           Q     And did it appear to be travelling a little fast than normal?

3           A     Actually they were stepping on their brakes to hang a right turn at Dolly.

4           Q     Okay.

5                               [Citizen video continues playing]

6 BY MR. FATTIG:

7           A     This is where the police officer comes into scene the first time right  
8 after.

9           Q     Okay.

10                           [Citizen video continues playing]

11 BY MR. FATTIG:

12           A     That's the police car. As you see he came up and abruptly -- almost  
13 stopped there. That got my attention, I went straight to the door and the next  
14 clipping -- the second camera will show where I opened the door at that point.

15           Q     Okay. So this view, the rest of the activities from that night, other than  
16 the police arriving and cordoning off the scene, that will only show that, correct?  
17 From this particular angle?

18           A     Right.

19           Q     Does this appear to be a fair and accurate depiction of this particular  
20 camera from the front of your home from June 26<sup>th</sup> of 2014?

21           A     Yes.

22           MR. FATTIG: Move to admit 186.

23           MS. NGUYEN: No objection.

24           THE COURT: It'll be admitted.

25                           **[STATE'S EXHIBIT 186 ADMITTED]**

1 [Citizen video starts playing]

2 BY MR. FATTIG:

3 Q Now I'll fast forward, sir, to the same point in time now that -- this is a  
4 different view, fair to say?

5 A Yes. This is the camera on the west side of the house, pointing east.

6 Q Okay. So this is sort of to the north and east across Carey in front of  
7 your home?

8 A Yes.

9 [Citizen video continues playing]

10 BY MR. FATTIG:

11 Q Now the timestamp on the video is the same between the two cameras,  
12 correct?

13 A Yes.

14 Q Okay.

15 [Citizen video continues playing]

16 BY MR. FATTIG:

17 A That's where he was slowing down to go around the corner.

18 MS. NGUYEN: Objection, Your Honor, speculation.

19 THE COURT: Overruled.

20 BY MR. FATTIG:

21 Q For the record that was 21:53 and approximately 25 seconds, correct?

22 A Yes.

23 Q Okay. And you observed the car on the far right side or south side of  
24 Carey, correct, traveling from west to east across the camera?

25 A Yes.

1 Q And it appeared to be slowing down as it got closer to Dolly?  
2 A Yes.  
3 Q And then did you see the car being to turn towards Dolly in that view or  
4 no?  
5 A Yes, just slightly.  
6 Q Slightly, okay. Let's watch it again.  
7 [Citizen video playing]  
8 BY MR. FATTIG:  
9 Q Does -- can you tell if the car has brake lights on?  
10 A Yes, brake lights light up. That's how you know that they're turning  
11 there.  
12 [Citizen video continues playing]  
13 BY MR. FATTIG:  
14 Q Now we'll continue with the video.  
15 [Citizen video continues playing]  
16 BY MR. FATTIG:  
17 A There's the police car.  
18 [Citizen video continues playing]  
19 BY MR. FATTIG:  
20 Q And did it appear the police officer was moving out of the car towards  
21 Dolly?  
22 A Yes. The police officer got out of the car and it showed him running in  
23 front of the car towards Dolly at that point.  
24 [Citizen video continues playing]  
25 BY MR. FATTIG:

1 Q And now at this point the car remains in front of your home, correct?

2 A Correct.

3 Q With the lights on?

4 A Yes.

5 Q For an extended period of time.

6 A Until 8:00 a.m. the next morning.

7 Q Okay. They left the car where it was.

8 A Left it in the street for --

9 [Citizen video continues playing]

10 BY MR. FATTIG:

11 Q And it's fair to say Carey is fairly busy in terms of cars going back and  
12 forth?

13 A It wasn't that day.

14 Q Well we just saw a semi, for instance, travelling from --

15 A That's because it had just happened at that point.

16 Q -- east to west.

17 A And I was surprised that the semi even attempted to slow down like  
18 that.

19 Q Now we see another car 21:54 and 45 seconds travelling from --  
20 several cars, correct?

21 A Yes.

22 [Citizen video continues playing]

23 BY MR. FATTIG:

24 Q So -- I mean, until the area got cordoned off, cars were moving through  
25 there?

1 A Yes.

2 Q Okay. Eventually within a number of minutes and the camera system,  
3 you kept running, correct?

4 A Yes. It runs 24 hours a day.

5 Q So all of this -- all of that, in terms of when the officers came out and  
6 they cordoned it off, will all be on the surveillance system?

7 A Yes.

8 Q Okay.

9 MR. FATTIG: I have no other questions at this time.

10 **CROSS-EXAMINATION**

11 BY MS. NGUYEN:

12 Q Mr. Wagner, is it -- what initially brought your attention to go out to your  
13 door?

14 A The police car stopping in front of my house.

15 Q Okay. And did you hear the police car, like were the sirens on or the  
16 lights on?

17 A I heard a siren I would assume at that point I heard the siren as they  
18 came across Lamb Boulevard and then the sirens stopped, which is very unusual.  
19 And as the police car proceeded down the street, once the police car arrived in front  
20 of the ones camera at that point -- the first one, it appeared he was going to stop  
21 there in front of my neighbor's house. So I immediately jumped up and ran to the  
22 door to see at that point.

23 By that time he rolled it in front of my house -- excuse me. And as I  
24 opened my solid metal door he jammed on the brakes, his door popped open, the  
25 gunshots came from the east of me at that point and then he returned fire -- I was

1 getting ready to go outside to see why he was stopping.

2 Q So it wasn't gunshots that drew -- brought you outside -- or outside -- to  
3 open your metal door, it was the police officer.

4 A Right.

5 Q The siren.

6 A Right.

7 Q Okay. The security system that you have in your house, does it alert  
8 you when there's movement, or is it a bit like -- is it one of those things where you're  
9 watching TV and you can switch on to your cameras, or is it a separate system?

10 A Actually it's situated in such a way, my computer is here, my monitor is  
11 there. So all movement on the -- his -- basically draws your attention to it. If there's  
12 sirens, then you automatically look to see who it is; whether it's an ambulance, fire,  
13 or police.

14 Q And were you sitting at your computer --

15 A Yes, I was.

16 Q -- when you noticed that there were sirens there?

17 A When I heard the siren --

18 Q Okay. And then --

19 A -- to start with, yes.

20 Q -- did it pop up on the security screen or were you able to look at the  
21 security screen and see the police officer there at that time?

22 A Yes.

23 Q Okay.

24 A Well not immediately, no.

25 Q Not immediately?



1           A     No.

2           Q     Why not immediately?

3           A     Because the police officer hadn't arrived to where they -- I heard the

4 siren to where --

5           Q     Okay. So you heard the sirens and then as you were sitting there the

6 image popped up of the police officer driving --

7           A     Right.

8           Q     -- into your frame, I guess. Is that fair to say?

9           A     Yes.

10          Q     Okay. And once you saw the police officer that's when you left your

11 computer and you left the monitors and walked out to see with your own eyes, is

12 that correct?

13          A     Well I crossed the room.

14          Q     Okay. From the door where you're standing looking out, can you also

15 see the monitors?

16          A     Yes.

17          Q     So they're in close proximity to each other?

18          A     No. It'd be like that monitor that's on your desk there and my front door

19 would be here.

20          Q     Okay. So it would be facing --

21          A     I could still see --

22          Q     -- against you?

23          A     -- the monitor because it faces this direction.

24          Q     Okay. So when you looked out, did you -- the only individual you saw

25 was the police officer, is that correct?

1 A Yes.

2 Q Okay. Did you see any other individuals at that time?

3 A No.

4 Q And it's fair to say that you were able to go back and review this video,  
5 probably several times before coming to court today?

6 A No.

7 Q You've never reviewed this video?

8 A Actually no, I'm sorry to say.

9 Q Okay.

10 A I only saw -- looked at the video after the incident at that point that night  
11 and then I notified the police officer and then I had to point out what I had noticed at  
12 that point to him. And then after that everybody else took their -- my monitor only  
13 holds month to month.

14 Q Okay.

15 A So after the first of the month it's gone. It's -- I don't know where it  
16 goes.

17 Q So you viewed it that night, you viewed it the next day when the police  
18 officers came to retrieve it, and then you're viewing it now. Is that correct?

19 A Right.

20 Q Okay. When you viewed it with the officers, did you have it queued up  
21 to the time period that they were looking at because you had looked at it already?

22 A No. I had to explain to them that I did not change it due to the time  
23 change at that point.

24 Q Okay. So you had to go back to the time that was listed on your  
25 system?

1 A Correct.

2 Q Okay.

3 A Now I keep it updated, but at the time --

4 Q Okay.

5 A -- I could care less whether it was an hour, you know, one way or the

6 other.

7 Q Okay.

8 A I only got it for the sole purpose of catching the perpetrators that were

9 committing crimes in the neighborhood.

10 Q Okay. And then once you heard the shots being fired, that's when you

11 shut -- decided to shut the door and come into the house.

12 A My wife sitting next to the door and she's saying shut the door. Yes.

13 Q I believe she testified she was hiding behind you, is that a -- is that a --

14 is that correct?

15 A Yeah. For a second, but that was about it.

16 Q And then you shut the door and did the police come to your door or did

17 you get in contact with them later?

18 A No. The police never once contacted me.

19 Q Okay.

20 A I had to call the next day.

21 Q So you were the one inquiring and letting them know that you had

22 potential information for them?

23 A Yes.

24 Q Okay. You had indicated that you heard what you heard as two

25 different calibers of guns, is that correct?

1           A     Yes.

2           Q     Okay. And you said that you are a gun owner so you're familiar with  
3 that, is that correct?

4           A     Yes. Because I have a 9 millimeter, I have a .45 caliber, and two if you  
5 fire them, the sounds are differently at that point.

6           Q     Okay. And you also testified that the sounds also sounded -- you know,  
7 one sounded more close up front, closer to your house and one sounded in the  
8 distance, I think you said east, is that correct?

9           A     It didn't sound in the distance. They both sounded like they were right  
10 in front of my house --

11          Q     Okay. So both of them --

12          A     -- at that point, but --

13          Q     -- sounded like they were right in front of your house?

14          A     Yes.

15          Q     Okay. And -- but they sounded like two different calibers to you?

16          A     Definitely, yes.

17          Q     Did you see the police officer shooting his gun?

18          A     At that point I'd have to say yes, seeing as how I heard three shots from  
19 him.

20          Q     Okay. Did you see like the flash of the muzzle or anything like that?

21          A     No.

22          Q     Okay.

23          A     At the time that the four shots were fired, I started to turn to see where  
24 the shots were coming from --

25          Q     Okay.

1 A -- and then the officer returned fire.

2 Q Okay.

3 A And then of course that's when I went back to him and he left the  
4 security of the car, proceeded to chase.

5 Q Okay. And that's when you lost sight of him?

6 A That's when I went to retrieve my gun.

7 Q Okay. And that's when you lost sight of him.

8 A Definitely.

9 Q Okay.

10 MS. NGUYEN: Nothing further.

11 MR. FATTIG: Nothing further.

12 THE COURT: Jury have any questions of this witness? Seeing no hands.  
13 Sir, you're free to go. Call your next witness, State.

14 MR. FATTIG: I think that's it for the day.

15 THE COURT: That's it for the evening?

16 MR. FATTIG: That was the seven, yeah.

17 THE COURT: All right. Ladies and gentlemen, we'll take our evening recess.  
18 During the recess you're admonished not to talk or converse among yourselves or  
19 with anyone else on any subject connected with the trial. Or read or watch or listen  
20 to any report of or commentary on the trial or any person connected with this trial by  
21 any medium of information including, without limitation, newspapers, television, the  
22 radio, or the internet. Or form or express an opinion on any subject connected with  
23 the trial until the case is finally submitted to you. Remember no *Twitter, Instagram,*  
24 or social media, *Facebook*, anything, please.

25 See you in the morning at 9:00.

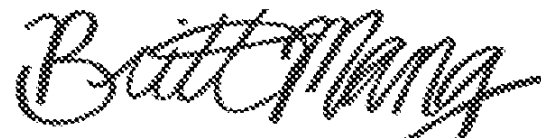
1 [Outside the presence of the jury]  
2 THE COURT: All right. The jury is gone. The door is closed.  
3 See you guys in the morning at 9:00. Okay. Here's what I want you to  
4 do with jury instructions. You two are to get together -- you three are to get  
5 together. Jury instructions, the ones that you agree on I want a clean copy of those.  
6 The ones you want to fight about you can put jury -- or the cite to, and you'll provide  
7 those -- and then we'll talk about those. But the ones you agree on, we don't need  
8 to. And I want those by Wednesday morning.  
9 MS. THOMSON: Yes, Your Honor.  
10 THE COURT: How many witnesses do you have tomorrow?  
11 MS. THOMSON: Thirteen.  
12 MR. FATTIG: Depends how many we get through.  
13 THE COURT: Fast or slow.  
14 MS. THOMSON: Yes.  
15 MR. FATTIG: I think we'll get through ten or so.  
16 THE COURT: All right. Just have what you have and then --  
17 MR. FATTIG: We might get through them all.  
18 THE COURT: We might. I'm willing to go until 5:00.  
19 MR. FATTIG: Okay.  
20 THE COURT: And I don't take long breaks. See you guys in the morning.  
21 ...  
22 ...  
23 ...  
24 ...  
25 MS. THOMSON: Thank you, Judge.

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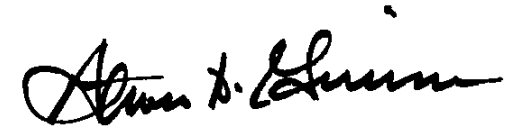
THE COURT: Okay.

[Evening recess at 4:54 p.m.]

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.



\_\_\_\_\_  
Brittany Mangelson  
Independent Transcriber



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

VS.

JOSHUA W. BACHARACH,

Defendant.

CASE NO. C299425

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

TUESDAY, NOVEMBER 3, 2015  
**TRANSCRIPT OF PROCEEDINGS**  
**JURY TRIAL - DAY 2**  
**VOLUME II**

APPEARANCES:

For the State:

JOHN FATTIG, ESQ.  
MEGAN S. THOMSON, ESQ.  
Chief Deputy District Attorneys

For the Defendant:

ROCHELLE T. NGUYEN, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

TRANSCRIBED BY: BRITTANY MANGELSON, INDEPENDENT TRANSCRIBER



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TUESDAY, NOVEMBER 3, 2015 AT 8:56 A.M.

[Outside the presence of the jury]

THE COURT: All right. We're on the record. Are you --

THE COURT RECORDER: Yes.

THE COURT: -- recording?

By stipulation Dustin -- Juror Number 11, Dustin Krause is a witness in a case and they need him this morning. So there -- we're -- there's a stipulation between the two parties to release him as a juror, is that correct?

MR. FATTIG: That is correct. It's a felony jury trial out of Department IX that is currently ongoing.

THE COURT: Okay. I was led to believe it was a preliminary hearing. I think you were too as well --

MR. FATTIG: Yeah.

THE COURT: -- Ms. Nguyen?

MS. NGUYEN: That's correct.

MR. FATTIG: I think we didn't know very many details at the time --

THE COURT: Right.

MR. FATTIG: -- but we learned them subsequently.

THE COURT: All right. So the DA is -- here, you can take him. Take him and we'll explain it to the jury. Or not.

MR. FATTIG: So Number -- Juror Number 13 --

THE COURT: Number 11 --

MR. FATTIG: -- will now be --

THE COURT: What -- no -- yeah. We'll put Trevor Yanke in the 11<sup>th</sup> spot,

1 which will leave us with just one alternate, right?

2 MR. FATTIG: Yes.

3 MS. NGUYEN: Your Honor, can I make a record regarding --

4 THE COURT: And you can take him.

5 THE DEFENSE ATTORNEY: Thank you.

6 THE COURT: You can find him in the hall. You know who he is.

7 Okay. Go ahead, you wanted to make a record.

8 MS. NGUYEN: Yeah. Yesterday, during the testimony of Eufrasia Nazaroff, I  
9 had made a contemporaneous objection and a motion for a mistrial. During her  
10 testimony, despite being admonished by this Court to not make any reference to  
11 gangs or probation, she indicated that she had spoke with gang detectives regarding  
12 my client's case. I think that that information we have previously admonished her,  
13 it's prejudicial.

14 I think she was very loud and deliberate, and specific when she  
15 mentioned it. I don't know if that was intentional but I think it came across and I  
16 think that's something the jury was aware of.

17 THE COURT: All right.

18 MR. FATTIG: I don't remember it being any louder when she mentioned the  
19 word gang than any other word she testified to. It wasn't like she exclaimed it, it  
20 wasn't like she yelled it out. But it was certainly unsolicited -- it was an unsolicited  
21 response by her on her own. It certainly wasn't something that the State was trying  
22 to get out.

23 I would note that she is very much in line with Mr. Bacharach. She is  
24 his longtime girlfriend, mother of his children, which is -- certainly explains some of  
25 her motivations, both in what she did perhaps, as well as the fact that she refused to

1 meet with us for a pretrial conference before the trial, which was fine. So we never  
2 spoke to her which is why we asked the Court to speak with her because we were  
3 aware that she had certain information that certainly could be problematic if she  
4 mentioned it during the trial.

5 Your Honor specifically admonished her not to talk about certain  
6 information, including any information around gangs. And yet she, on her own  
7 volition, decided to mention that a gang detective came and spoke with her. Now I  
8 would also note that that is actually factually inaccurate. Gang detectives, to our  
9 knowledge, did not speak with here. They were firearms detectives. But again, that  
10 was her own un-elicited response to an innocuous question.

11 THE COURT: And my recollection of the event too -- as well is she is an  
12 adverse witness to the State and it was clear to me that she didn't want to answer  
13 some of the questions or she was hesitant in answering some. In fact she even said  
14 she never said anything about the bullet-proof vest which -- at this point sounds  
15 untrue because she has made statements to detectives about it.

16 And it was quick enough said that no one went into it, no one  
17 highlighted it, no one talked about it. And based upon that I think it is -- I think -- the  
18 motion to -- for a mistrial is denied. But you preserved that issue in case you need  
19 that.

20 MS. NGUYEN: Thank you.

21 THE COURT: Thank you.

22 Is the jury here, Tom?

23 THE MARSHAL: I was still missing one.

24 [Pause in proceedings]

25 THE COURT: Bring them in, Tom.

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THE MARSHAL: Yep.

[In the presence of the jury]

THE MARSHAL: All rise, please.

And be seated.

THE COURT: All right. Stipulate to the presence of the jury.

MS. THOMSON: Yes, Your Honor.

MS. NGUYEN: Yes, we would.

THE COURT: All right. Because of issues that Mr. Krause has we had to release him as a juror. And Mr. Yanke you'll move into Seat 11. And Ms. Sankovich you will move up to Seat 13. Thank you for being prompt.

Call your next witness, State.

MS. THOMSON: The State calls Officer McNabb

**RYAN McNABB**

[having been called as a witness and being first duly sworn, testified as follows:]

THE CLERK: Thank you. Please be seated. State your full name, spelling your first and last name for the record, please.

THE WITNESS: My name is Ryan, R-Y-A-N, McNabb, M-C-N-A-B-B.

THE COURT: Go ahead.

MS. THOMSON: Thank you, Your Honor.

**DIRECT EXAMINATION**

BY MS. THOMSON:

Q Good morning, Officer, how are you employed?

A As a police officer with Metro Police Department.

Q And for how long have you been with Metro?

A About ten years.

1 Q And what is your -- was your job description back in June of 2014?

2 A I was a patrol officer in the Northeast Area Command.

3 Q As a patrol officer, were you in uniform in a marked unit?

4 A Yes, ma'am

5 Q Okay. And can you describe for us what your uniform looked like?

6 A It was a tan Metro shirt with a badge on the chest, and tannish pants  
7 with a stripe, gun belt, boots.

8 Q And on the gun belt what did you carry?

9 A I carried my handgun, pepper spray, handcuffs, a baton, a Taser, and a  
10 radio.

11 Q Okay.

12 MS. THOMSON: I'd move for admission of State's Proposed Exhibits 179  
13 through 181.

14 MS. NGUYEN: No objection.

15 THE COURT: They'll be admitted.

16 **[STATE'S EXHIBITS 179 through 181 ADMITTED]**

17 MS. THOMSON: Permission to publish.

18 THE COURT: Yes.

19 BY MS. THOMSON:

20 Q Showing you what's been marked as State's Exhibit 179. Is that how  
21 you appeared on June 26<sup>th</sup> of 2014?

22 A Yes.

23 Q Okay. And you said that you carry a firearm in your belt, is that correct?

24 A Yes.

25 Q What kind of firearm?



1           A     It's a Glock 17, it's a 9 mm, full-size, semi-automatic.

2           Q     Showing you what's been marked as State's Exhibit 180. Is this the  
3 firearm that you carried on that date?

4           A     Yes, it is.

5           Q     And is that your P-Number written underneath your name?

6           A     Yes.

7           Q     What is a P-Number?

8           A     That's my personnel number. It's issued to me when I'm hired by the  
9 department.

10          Q     So each officer has an individual or unique one?

11          A     Yes.

12          Q     And you indicated that the firearm was obviously loaded. Showing you  
13 what's been marked as State's Exhibit 181. Is that the magazine to the firearm?

14          A     Yes, it is.

15          Q     And when you load that magazine, did you load it with your own  
16 ammunition or ammunition provided by the department?

17          A     Department ammunition.

18          Q     On that date were you wearing any kind of recording devices?

19          A     Yes, I had a body camera on me.

20          Q     Showing you again State's Exhibit 179. I'm going to zoom into your  
21 head and shoulders area. Can you point for us on the screen, make a mark, where  
22 the body camera is?

23          A     This is the magnet on my lapel -- on my left lapel where the camera  
24 was. It's not in this photo because they had taken it by the time they -- they had  
25 removed the camera from me by the time they took this photo, but that's where it

1 was, on my left lapel.

2 Q All right. And can you explain for us generally how the body camera  
3 works?

4 A It's -- has a wire that goes under my shirt and down to a battery pack  
5 which I had on underneath my shirt on my ballistic vest. And it has a round,  
6 rubberized circle in the middle and you tap it twice to activate it and then push and  
7 hold it for about two seconds to turn it off.

8 Q And when you activate it, does it begin recording at that moment?

9 A It's -- it does begin recording with audio at that moment, but it's always  
10 processing approximately 30 seconds. So even when it's off it's still processing, but  
11 it's not recording until I hit the button twice, then it goes back approximately 30  
12 seconds with video only and once it -- and only does audio from the moment I  
13 activate it.

14 Q and when would you use the body camera? I mean, activate it.

15 A On calls for service, on traffic stops, on person stops. Anything that --  
16 any situation where it would be useful.

17 Q And as of June 2014, how long had you had the body camera?

18 A It was approximately seven weeks. Maybe eight weeks.

19 Q So it was still relatively new to you?

20 A Yes.

21 Q On June 26<sup>th</sup> of 2014 you said that you were operating as a patrol  
22 officer. Were you alone in your vehicle?

23 A Yes, I was.

24 Q And can you describe for us what are the general duties of a patrol  
25 officer?

1           A     Mainly respond to calls for service from citizens, traffic accidents,  
2 domestic violence calls, some violent calls like robberies. Also doing traffic  
3 enforcement, car stops, person stops.

4           Q     And in a marked unit fair to say that it has lights and sirens?

5           A     Yes.

6           Q     And those lights are flashing red and blue?

7           A     Yes.

8           Q     And when you were driving on June 24<sup>th</sup>, 2014 did you keep your  
9 windows rolled up -- or I'm -- sorry, June 26<sup>th</sup> -- June 16<sup>th</sup>, 2014. Windows rolled up,  
10 down, or somewhere in between?

11          A     I kept them usually about halfway down so that I could hear what was  
12 going on, if something happened around me.

13          Q     And at that time what shift did you work?

14          A     Swing shift. It was 2:30 in the afternoon to midnight-thirty.

15          Q     And what area of the city did you patrol?

16          A     The northeast part of town, in the Northeast Area Command.

17          Q     And can you tell us what are the basic boundaries of that?

18          A     Sure. On the north end it's Craig and then it's basically Pecos is the  
19 west boundary, all the way down to Sahara. And then the west -- the east boundary  
20 is like Hollywood up to the mountain.

21          Q     On June 26<sup>th</sup> of 2014 at about 10:45 were you investigating a  
22 suspicious vehicle?

23          A     Yes.

24          Q     And was that at the corner of Walnut and Lake Mead?

25          A     Yes.

1 MS. THOMSON: Move for admission of State's Exhibit 18 and 19.

2 MS. NGUYEN: No objection.

3 THE COURT: They'll be admitted.

4 **[STATE'S EXHIBIT 18 AND 19 ADMITTED]**

5 MS. THOMSON: Permission to publish.

6 THE COURT: Yes.

7 BY MS. THOMSON:

8 Q Showing you what's been marked as State's Exhibit 18. Do you  
9 recognize this intersection?

10 A Yes.

11 Q And is that Lake Mead and Walnut?

12 A Yes, it is. That vehicle's on Walnut.

13 Q Okay. And so Lake Mead is the street that we see crossing on the left  
14 side of the photograph?

15 A Yes.

16 Q A little hard to see because of the light. Okay. And is that the vehicle  
17 that you were investigating?

18 A Yes.

19 Q Okay. Showing you what's been marked as State's Exhibit 19. When  
20 you are initially with the vehicle, what was your reason for stopping to investigate it?

21 A Because it was a Honda, which is one of the most common stolen  
22 vehicles in that area. And I noticed that front left tire looked like there was damage  
23 possibly to the axle, so I thought it might have been a stolen vehicle. It didn't look  
24 like anybody was in it, but that's why I stopped to check it out and run the VIN. And  
25 it turned out to not be a stolen vehicle.

1 Q As you were finishing that -- would you call it a call or --

2 A It was a suspicious vehicle that I just came across. Nobody called it in.

3 Q So as you're finishing that investigation, did another vehicle catch your  
4 attention?

5 A Yes.

6 Q And where was the vehicle that caught your attention?

7 A It was directly in front of me on Walnut, but it was facing north where I  
8 was facing south and I noticed that -- and it was stopped at the stoplight at Lake  
9 Mead, facing north on Walnut. And I noticed that its high beams or brights were on.

10 Q Showing you again State's Exhibit 18. If you could make a mark on the  
11 screen generally where that vehicle was.

12 A I can't quite see. It would have been right over here is where Lake  
13 Mead goes this way and I'm on Walnut. So it would have been there and facing  
14 north.

15 Q And you said the high beams were on, correct?

16 A That's right.

17 Q As a result of that did you make a decision to do something?

18 A Yes. I decided to do a car stop on the vehicle for that minor traffic  
19 infraction.

20 Q And how did you go about doing that?

21 A I waited for the light to turn green and then the car with its high beams  
22 on came across and there was another car behind it. Then I signaled, then I did --  
23 made a U-turn, and so now I'm going north on Walnut following. I activated my  
24 lights -- my emergency lights. I wanted to get that vehicle, the one in between us, to  
25 pull over, which they did about a half a block or a block ahead, they pulled over.

1 And then I grabbed my radio as I caught up to the vehicle with its high beams, I  
2 started to call it out over the air that I was going to do a car stop.

3 Q Okay. As the vehicle was facing you when you're stopped behind the  
4 white Honda, with the high beams on are you able to see into the vehicle?

5 A Yes, but not very well.

6 Q At between the time that you were looking straight on and the time, as it  
7 passed you before you made the U-turn, were you able to determine how many  
8 occupants in the vehicle?

9 A Yes. There was just one male in the vehicle. That's all I saw.

10 Q Okay. And being the only person, he was the driver?

11 A Yes.

12 Q Okay. Showing you --

13 MS. THOMSON: Move for admission of State's Proposed Exhibit 52.

14 MS. NGUYEN: No objection.

15 THE COURT: It'll be admitted.

16 **[STATE'S EXHIBIT 52 ADMITTED]**

17 BY MS. THOMSON:

18 Q Showing you what's been marked as State's Exhibit 52. Did you  
19 ultimately determine that this was the vehicle that you were about to perform the  
20 stop on?

21 A Yes.

22 Q Okay. And you said that you followed it along that the vehicle behind it  
23 got out of the way, is that correct?

24 A Yes.

25 MS. THOMSON: Move for admission of State's Exhibit 1.

1 MS. NGUYEN: No objection.

2 THE COURT: It'll be admitted.

3 **[STATE'S EXHIBIT 1 ADMITTED]**

4 BY MS. THOMSON:

5 Q Showing you a map of the area, this being Lake Mead. That's Judson,  
6 that's Gateway, that's Lamb, and that's Carey. Can you show us generally where  
7 you were -- oh, and that's Walnut -- with a mark on the screen when you first saw  
8 the vehicle?

9 A Yes. I was at -- right at Lake Mead and Walnut right here.

10 Q And then you said --

11 A Yeah. Where the -- it's not doing the mark where I -- right where I put  
12 my finger, it's further on the north side of Lake Mead.

13 Q Okay. So the computer is registering a little bit off

14 A Yes.

15 Q Okay. When you made the U-turn and put on your lights for the other  
16 vehicle between yourself and the vehicle you were trying to stop, the maroon  
17 vehicle, got out of the way, can you make a mark where that vehicle got out of the  
18 way generally?

19 A Yes. Approximately here.

20 Q And when the other vehicle got out of the way, what did you do?

21 A Then I accelerated around the vehicle that had pulled over and caught  
22 up tot eh Dodge Intrepid. I still had my lights on and that's when I grabbed my radio  
23 to tell the dispatcher I was going to do a vehicle stop.

24 Q When you did that, were you also preparing to read out the license  
25 plate of that vehicle?

1           A     Yes.

2           Q     And what is the reason that you informed dispatch of that information?

3           A     We have protocol we follow. We tell her we're going to do a car stop  
4 and then we give the license plate and our location in case there was an emergency  
5 that would occur, everybody would know where we are.

6           Q     And as you got close enough to read the license plate were you able to  
7 actually inform the dispatcher of what the plate was?

8           A     No. Right as I was about to read it out, the driver reached out of the  
9 driver door and fired a gun up in the air.

10          Q     Okay.

11          A     And I didn't -- wasn't able to read out the plate. I -- instead I said he  
12 just fired a shot out of the air and then I gave our location.

13          Q     And was that in about the same location as the other vehicle had gotten  
14 out of the way or was that further up Walnut?

15          A     It was further north on Walnut.

16          Q     If you could make a mark for us generally where that occurred.

17          A     Like about right there.

18          Q     So just a little before or right in the beginning of the dirt lot to the left --  
19 or what appears to be a dirt lot?

20          A     Yes.

21          Q     And when the shot went up into the air, how did you know that it was a  
22 shot?

23          A     I saw -- I heard the shot and then I saw the muzzle flash -- you know,  
24 like the light and it's fire literally up -- straight up in the air. So I knew that the fire --  
25 the shot had been fired up.



1 Q When you saw that, what did you think, what did you do?

2 A I was pretty shocked that a gun had just been fired. I'm trying to just do  
3 a routine car stop. It quickly upgraded the situation in my mind that this is a very  
4 dangerous situation if a person's willing to fire a gun during this car stop.

5 Q At that time did -- you said you informed dispatch that they had  
6 discharged their weapon?

7 A Yes.

8 Q Okay. Did you also turn on your body cam at that point?

9 A Yes. I'm not sure at the exact moment but it was right around that time  
10 that I activated it.

11 Q And did you continue to follow the vehicle?

12 A Yes, I did.

13 Q Where did the vehicle go? You can make a line if that would help.

14 A He -- the vehicle accelerated right after the shot and it went -- continued  
15 north on Walnut and then it turned right on Carey, it ran through the stop sign right  
16 here, turned east on Carey and I followed it.

17 Q As it was approaching Carey on Walnut, about how fast did that vehicle  
18 go, if you can estimate?

19 A I would say 35 to 40 miles an hour, as it made the turn.

20 Q Okay. And you said you've been a patrol officer for several years. A lot  
21 of that time was it spent on patrol?

22 A Yes.

23 Q Or I'm sorry, you've been a police officer. A lot of that time was spent  
24 on patrol?

25 A Yes.

1 Q And you said part of patrol is judging traffic infractions that would  
2 include speeding?

3 A Yes.

4 Q Okay. And so you're familiar with sort of the speed vehicles are going  
5 just by looking at them?

6 A Yes.

7 Q And you were also following behind this vehicle so you know what  
8 speed you were going?

9 A I didn't look at my speedometer but I knew approximately how fast I  
10 was going, yes.

11 Q Do you know the speed limit on Walnut in that area?

12 A I believe it's 35 miles per hour.

13 Q And would you describe Walnut between Lake Mead and Carey as  
14 being a residential area?

15 A Yes, there are homes on one side and then a couple of churches on the  
16 opposite side.

17 Q You said that the vehicle you were following, the maroon vehicle, ran  
18 the stop light at the -- or I'm sorry -- the stop sign at the corner of Carey and Walnut.  
19 When it did that, what did you do?

20 A I followed -- I continued to follow and I turned right on Carey as well.

21 Q As you turned Carey -- turned on to Carey, did anything notable occur?

22 A Yes. As soon as I made the right turn and my car was straightened out  
23 to face east, the driver fired two more shots and one of them I heard it and one of  
24 them went right by left ear like zing -- I heard a zing sound, just one time. I thought  
25 it hit my car or possibly the ground right outside of my window.

1 Q So when you say the driver fired two more shots and you heard it, are  
2 you talking about the sort of pop or boom that comes from the actual bullet being  
3 expelled?

4 Ayes. I heard two more gunshots and then heard it -- heard one whiz by my  
5 ear.

6 Q And later on did you determine that that did not hit your vehicle?

7 A I didn't determine that, but I was told they didn't find any marks on the  
8 vehicle.

9 Q But you heard it goes past the window.

10 A Yes.

11 Q And at that time did you update dispatch again that you'd been shot at?

12 A Yes. I -- that there were two more shots fired and I gave an update that  
13 we were now heading eastbound on Carey from Walnut.

14 Q As those two shots are fired, is there a significant period of time  
15 between those two or are they in pretty quick succession?

16 A Very quick succession, just one after the other.

17 Q And you continue after this vehicle?

18 A Yes.

19 Q And why is that?

20 A Because he had just tried to kill me. It was --

21 MS. NGUYEN: Objection, Your Honor. Speculation.

22 MS. THOMSON: He's --

23 THE COURT: Overruled.

24 MS. THOMSON: Thank you.

25 BY MS. THOMSON:

1           A     Shot that had just been -- the situation just escalated further where he  
2 was no longer firing in the air the person fired at me. And so I -- it was a -- more of a  
3 danger to me and to the community, so I followed.

4           Q     And to where did you follow him?

5           A     We continued eastbound on Carey. He accelerated, I estimate 70 to 80  
6 miles an hour. I remember seeing my speedometer as I very quickly went up above  
7 60 and then I stopped looking at it as we continued to accelerate it. And I saw that  
8 he was -- he passed through Lamb where there was a solid or stale red light and I  
9 didn't see any brake lights, he just accelerated straight through Lamb on a red light.

10               And I followed. I had to stop and clear my lanes so that I didn't cause a  
11 traffic collision and then I -- there was a car that had to stop for me. Then I  
12 continued through Lamb and as I passed through the intersection I heard two more  
13 shots being fired but he had gained a bunch of distance on me so I couldn't tell if he  
14 was firing in the air or at me, but I heard two more shots.

15           Q     And as you approached Lamb, did you put on your sirens?

16           A     I did.

17           Q     You said that there was a vehicle that stopped for you as you crossed  
18 Lamb. Do you recall seeing any other vehicles on Lamb, either before he went  
19 through the intersection or -- other than that vehicle that stopped for you?

20           A     There were cars before but I didn't see any like try to avoid a crash or  
21 anything like that. But yes, there were -- there was traffic.

22           Q     At that time about how long had you worked in that area?

23           A     That had only been about two months, though I had previously worked  
24 that area.

25           Q     And in those two months did you work the same shift?

1           A     Yes.

2           Q     At that time of night about how busy is that area?

3           A     It's not very busy, but Lamb is one of the major arteries there so there is  
4 usually traffic.

5           Q     And Carey, is that another main street in the area?

6           A     Yes, just not as busy as Lamb.

7           Q     So as you go through Lamb you get shot at two more times?

8           A     I don't -- I couldn't tell if he fired at me or in the air because he had  
9 gotten that distance because I had to stop at the light. I just know two more shots  
10 were fired.

11          Q     And can you mark for us generally on Carey where it is that those two  
12 shots were fired past Lamb?

13          A     I'm estimating it's approximately here, as I was a little bit further left of  
14 where that mark just showed up. I was here at Lamb and approximately there.

15          Q     And as those shots were fired or shortly after what did you see happen  
16 with the maroon vehicle?

17          A     As I passed through Lamb and tried to catch up I saw up ahead that the  
18 vehicle crashed over something. It had turned to the right so it's facing south and I  
19 saw it go over something. I didn't know what it was at first. I later saw that it was a  
20 curb. But he went over and I saw some dust fly up and then I continued to  
21 approach.

22          Q     And was that turn and the dust at the corner, basically, of Carey and  
23 Dolly?

24          A     Yes.

25          Q     Okay. As you approached did you see whether the vehicle had

1 stopped?

2 A Yes, I saw that it had stopped.

3 Q And describe for us what you observed as you approached.

4 A I saw the vehicle was just south of Carey and it had stopped facing  
5 south. And as I'm approaching I'm still moving -- my car's still moving. I see the  
6 drive jump out of the driver door and run to the -- around the trunk. So he runs north  
7 around the trunk and as he turns towards me at the trunk I see that he has a  
8 handgun in his right hand and he walks past the trunk out into the street towards me  
9 and he raises the gun at me like this but further up in the air.

10 And I'm thinking is he going to fire in the air again? And then he fires  
11 and I realized that there was no muzzle flash going up in the air; that it was just like  
12 a circle and it -- I realized he was shooting gangster style and fired at me as I was  
13 still moving in my car like this.

14 Q Okay. And so what you just described as gangster style is sort of how  
15 we see in the movies with one hand up and the weapon, instead of at a right angle  
16 to the ground, parallel to the ground?

17 A Right.

18 Q And you were using your right hand?

19 A Yes.

20 Q Okay. And he was using his right hand?

21 A Yes.

22 Q Okay.

23 MS. THOMSON: Move for admission of State's Proposed Exhibit 43.

24 MS. NGUYEN: No objection.

25 THE COURT: It'll be admitted.

1                                   **[STATE'S EXHIBIT 43 ADMITTED]**

2 BY MS. THOMSON:

3           Q     Showing you what's been marked as State's Exhibit 43. Can you show  
4 us on this photograph where your vehicle was?

5           A     Yes, it's right here.

6           Q     And is that where you left it when you ultimately got out of your vehicle?

7           A     Yes.

8           Q     Okay. And is the maroon vehicle visible in this photograph?

9           A     It is.

10          Q     If you'll mark that.

11          A     Right here.

12          Q     And as you observed him shooting a bullet at you, what did you do?

13          A     I realized I needed to get my car stopped because I was still rolling so I  
14 rolled up a little further, I put it in park, and I think I gave some radio traffic saying  
15 that he was pointing the gun at me and I saw right after he fired, he started  
16 walking -- he started walking to my right. It would be in a southwest direction  
17 towards that corner where the street light is.

18          Q     If you could make a mark in the direction that he was walking.

19          A     Towards this corner. It's either southwest or west direction. And he's  
20 manipulating the gun as I'm throwing it into park. And I don't -- I can't tell if he's  
21 reloading or clearing a malfunction, I just knew that he was doing something with it.  
22 And then as I'm getting out, starts to point it out like this.

23          Q     And what you've demonstrated for us is right hand holding the gun, left  
24 hand underneath where the magazine would go in, and extending out from the  
25 body?

1           A     Yes. And at me. He started point it back out at me. So I knew -- he  
2 had already demonstrated a willingness to fire in the air, to fire at my car, to fire at  
3 me on foot and while I'm in my car, and now going to point at me again. I knew I  
4 need to stop that threat and so I opened my door and jumped out and across my  
5 hood I fired approximately five rounds at him to try to stop or incapacitate him.

6           Q     And as he was extending the firearm out from his body with the two  
7 hands, was he directly underneath that street light?

8           A     It was I think just behind the street light by that -- there's a chain-link  
9 fence and I believe it was just behind that street light pole.

10          Q     Would it be fair to describe the location he was in as being well-  
11 illuminated?

12          A     Yes.

13          Q     And were you able to see him at that time?

14          A     Yes.

15          Q     Can you describe for us the individual you saw get out of the maroon  
16 car?

17          A     It appeared to be a Hispanic male, heavyset, 20 to 40 years old, and he  
18 was wearing a white shirt.

19          Q     And were you able to tell the color of the gun he was pointing at you?

20          A     It was black.

21          Q     As you shot at him, were you making any evaluations as to whether or  
22 not it was safe to shoot?

23          A     Yes. I saw that there was an open field behind -- my backdrop was  
24 clear.

25          Q     Okay. And obviously it's not an open field forever. Is it fair to say that a



1 bullet, when expelled will eventually just sort of drop to the ground? It doesn't go  
2 flying forever?

3 A Yes.

4 Q Okay. And so you're making an estimate about how far away buildings  
5 are and whether there's any individuals out on foot?

6 A I don't -- yes. I don't know about all those evaluations. I just knew  
7 there was nobody over there.

8 Q Okay. And when you shot your weapon what, if anything, did you see  
9 him do?

10 A Right as I fired he fell backwards and a little bit to my right, kind of  
11 made himself smaller, and kind of into that -- he may have gone into the fence and  
12 then he turned and took off running and -- southbound on Dolly, around the corner  
13 from me.

14 Q So the photograph, we are on Carey looking at Dolly, is that fair to say?

15 A Yes.

16 Q Okay. And when you say he fell backwards is that like tripped fell or  
17 moved backwards?

18 A Moved backwards and kind of -- it seemed like had a shock and then  
19 made himself smaller because -- which makes sense as I'm shooting at him and  
20 then took off running.

21 Q At that time did you know whether or not you had hit him?

22 A No, I didn't.

23 Q As he ran down Dolly what were you thinking?

24 A I was thinking that he's running into a residential area. He had just tried  
25 to kill me and I was worried that he may become a threat, do a home invasion, or go

1 into one of these homes.

2 Q And so what did you do?

3 A I ran from my vehicle to the corner -- or I ran east to the crosswalk at  
4 Dolly and I peeked down the sidewalk and saw him running. I saw his silhouette  
5 and I fired three more rounds at him.

6 Q As you're running to the corner, do you run directly from your door to  
7 the street lamp or a different path?

8 A It's a different path. More directly east in the travel lane to the  
9 crosswalk, which runs north and south. And that's where I peeked and fired from.

10 Q And so the crosswalk north and south, can you make that line on the  
11 map -- on the photograph for us?

12 A Sure. Approximately right here or a little bit further that way from there.

13 Q Okay. So am I correct in understanding that you are into Dolly a little  
14 bit?

15 A Yes.

16 Q And why not go to the corner? Why go sort of into the street?

17 A I'm sorry. I'm not sure what you're --

18 Q Instead of running directly to the corner, why are you moving so you  
19 have more of a street view?

20 A Because I'm -- I don't know if he's hiding behind that -- this turns into a  
21 cinder block wall. I don't know if he was hiding behind the wall, so I was more  
22 cautious, taking a wider angle as I'm -- call it slicing the pie, as I'm peeking around.  
23 Not just running straight to the corner where he could still be there.

24 Q So that gives you a bigger view with a quicker ability to get out of sight?

25 A Yes.

1 Q As you saw the silhouette down the street, what did you do?

2 A As I saw the silhouette I knew it was the same person, the same build,  
3 the same color shirt that I had just seen, and I knew that I needed to stop that threat  
4 and so I fired three more rounds.

5 MS. THOMSON: Move for admission of State's Exhibit 45.

6 MS. NGUYEN: No objection.

7 THE COURT: It'll be admitted.

8 **[STATE'S EXHIBIT 45 ADMITTED]**

9 MS. THOMSON: Permission to publish.

10 THE COURT: Yes.

11 BY MS. THOMSON:

12 Q Showing you what's been marked as State's Exhibit 45. Can you mark  
13 for us on here generally where you saw that silhouette.

14 A It's a little bit off, but.

15 Q And is that near the intersection of Dolly and El Tovar?

16 A Yes.

17 Q When you fired the further rounds what, if anything, did you see the  
18 silhouette do?

19 A As I fired -- right after I fired my three shots I saw it -- the silhouette go  
20 to the right, which would be El Tovar. He turned the corner.

21 Q And when he did that, what did you do?

22 A I followed. I gave radio traffic of what was going on and like a further  
23 description of him; where we were.

24 Q When you got to El Tovar, did you run around the corner?

25 A No. It got very dark. I'm not sure if the street light was out, but it got

1 very dark compared to where I was at this corner. So I slowed down and there was  
2 a sidewalk and then a line of cars and so I peeked around the corner. I didn't want  
3 to just run in case he was hiding, laying in wait. So I peeked around the sidewalk  
4 and then slowly around the line of cars.

5 Q And where I had you mark here on this photograph where you saw the  
6 silhouette, that's pretty much the intersection of El Tovar is where you're trying to  
7 mark. The computer is just not allowing it. Is that fair?

8 A Yeah. It was between Carey and El Tovar, but closer to El Tovar.  
9 That's right. So I'm --

10 Q Let's do this. Showing you what's been marked as State's Exhibit 1.  
11 Zooming in to the area of Carey, Dolly, and El Tovar. Can you mark on there,  
12 generally, where you believe you saw him? Or I'm sorry. Not El Tovar. That's El  
13 Tovar. I should go in further.

14 A I think it was approximately even with the house. Right here, just  
15 before the corner.

16 Q Okay. And is that on the dirt side or on the sidewalk side?

17 A It's on the sidewalk side. This is not calibrated, it's making a mark not  
18 right where I'm pointing.

19 Q Yeah, that's why I'm clarifying. It's a little bit off.

20 You said as you came up to El Tovar you came sort of slowly around  
21 the corner, is that correct?

22 A Yes.

23 Q And showing you what's been marked as State's Exhibit 96. IS this the  
24 view that you had from Dolly on to El Tovar?

25 A Yes, that's correct.

1 Q And as you came around the corner, what did you observe?

2 A I saw -- at first I didn't see anything, but as I continued to look, I had my  
3 gun pointed down that corner, I saw a shadow go to my right across the sidewalk. It  
4 was a couple of houses down. I didn't get a very good look, I just saw a shadow of  
5 to the right.

6 Q Showing you what's been --

7 MS. THOMSON: Or move for admission of State's Proposed Exhibit 97?

8 MS. NGUYEN: No objection.

9 THE COURT: It'll be admitted.

10 **[STATE'S EXHIBIT 97 ADMITTED]**

11 BY MS. THOMSON:

12 Q Showing you what's been marked as State's Exhibit 97. You were  
13 further over to the right side of this photograph on the sidewalk, is that correct?

14 A Yes.

15 Q Okay. Can you show us generally in this photograph where you saw  
16 that silhouette move?

17 A It would be --

18 Q Or the shadow I think you called it.

19 A The shadow, yes. It was over-- it would be on the other side of these  
20 trucks on the sidewalk, but approximately here. But on the other side of the truck.

21 Q So in front of the white truck?

22 A To the right.

23 Q Okay.

24 A And -- yes, a little bit in front of, but on the right side of the truck,

25 Q So on the sidewalk side.

1           A     On the sidewalk.

2           Q     As you came around the corner, did you follow into El Tovar?

3           A     I did. I go into El Tovar. Not very far. I heard the -- I heard the sirens  
4 coming that I was very happy to hear. And I didn't -- I couldn't tell where he was; if  
5 that was the shadow I saw or if he was laying in wait and I needed back-up and I  
6 was pretty shocked at that point with the adrenaline and I decided to hold up there  
7 as my back-up was arriving.

8           Q     And would it be fair to say that while it may not have felt like it, back-up  
9 did arrive very quickly?

10          A     Yes.

11          Q     When back-up arrived walk us through what happened?

12          A     One -- I remember one patrol car pulled up and I just told him all I knew  
13 is that he had gone that direction, towards my right. I didn't know from there and I  
14 just remember directing them that. And then a K9 officer quickly arrived and another  
15 patrol officer and I remember them telling me to stay back. And they -- I remember  
16 hearing over the air somebody had reported someone in their backyard and then I  
17 Think some people came out of their house saying someone was in their backyard.

18                 And I didn't go in. I was taken back at that point and they put me with  
19 someone else. But I know from hearing the radio that the K9 officer and other  
20 officer captured the suspect in the backyard of the house.

21          Q     Did you see the K9 officer or another officer come out with an individual  
22 from the area of that house?

23          A     Yes.

24          Q     Okay. And when you observed that individual, did you recognize the  
25 individual?

1 A Yes.

2 Q And how did you recognize the person?

3 A It matched the person that I had been chasing, though he didn't have a  
4 white shirt on that I -- that he did have when I -- when he was -- when we were in the  
5 gun fight. But I knew it was him.

6 Q Showing you --

7 MS. THOMSON: Move for admission of State's Exhibit 46 and 89.

8 MS. NGUYEN: No objection.

9 THE COURT: They'll be admitted.

10 **[STATE'S EXHIBIT 46 & 89 ADMITTED]**

11 BY MS. THOMSON:

12 Q Showing you first what's been marked as State's Exhibit 89. Is this the  
13 view from your vehicle as you were shooting?

14 A Yes.

15 Q Okay. And obviously this photograph's not taken while you're standing  
16 there shooting.

17 A Right.

18 Q It was taken later by a CSA?

19 A Yes.

20 Q And showing you what's been marked as State's Exhibit 46. A little bit  
21 better photograph. If you could mark on here generally where it was that you had  
22 seen the silhouette as you came up to the corner of Carey and Dolly and then fired  
23 your second volley of shots.

24 A Okay. He was further down here, almost at El Tovar, when I saw his  
25 silhouette. I couldn't tell if he was facing me or facing away from me, but I knew it

1 was him.

2 Q After the other officers arrived, do you know if there was a perimeter set  
3 up?

4 A Yes, there was.

5 Q But once the first officer -- canine officer arrived you sort of ceased to  
6 be part of that active investigation, is that fair?

7 A Yes, I came back to that corner of Dolly and El Tovar and they held me  
8 back there.

9 Q How did you feel as the suspect was pointing the firearm and aiming it  
10 at you?

11 A I felt scared that I was going to get shot and killed.

12 Q And same when he was shooting at you?

13 A Yes.

14 Q You indicated that you were wearing a body camera that night. Have  
15 you had an opportunity to review that video?

16 A Yes.

17 Q Okay. And does it match with your recollection of that evening?

18 A Yes.

19 MS. THOMSON: Move for admission of State's Exhibit 187.

20 MS. NGUYEN: No objection.

21 THE COURT: It'll be admitted.

22 **[STATE'S EXHIBIT 187 ADMITTED]**

23 MS. THOMSON: And permission to publish.

24 THE COURT: Yes.

25 BY MS. THOMSON:



1 Q And as we go through this I'm going to pause it and ask you some  
2 questions.

3 A Okay.

4 Q And it's a pretty lengthy video, is that fair?

5 A Yes.

6 Q And we won't go through the whole thing. But there was a point at the  
7 end of -- when the situation became static where you realized you couldn't hear, is  
8 that correct?

9 A Yes. I couldn't hear that -- the body camera beeps every couple of  
10 minutes to let you know that it's still on and my ears were ringing. I didn't hear it at  
11 all.

12 Q And do you know why it was you couldn't hear it?

13 A Because of having fired my shots, my ears were ringing from that.

14 [Body cam video starts playing]

15 BY MS. THOMSON:

16 Q I'm going to start that back up because we were having a little trouble  
17 there. You had described after you pushed the start button that it records 30  
18 seconds of video but no audio, is that fair?

19 A Yes.

20 Q And is that what we're watching now?

21 A Yes.

22 MS. NGUYEN: And Your Honor -- can you pause it just for a second?

23 MS. THOMSON: Yeah.

24 MS. NGUYEN: The State had mentioned that they were going to play this in  
25 clips. I actually would prefer if the whole thing was played in its --

1 THE COURT: Well --

2 MS. NGUYEN: -- complete nature.

3 THE COURT: -- I appreciate that. They can present their evidence the way  
4 [indiscernible].

5 MS. NGUYEN: Okay.

6 [Body cam video continues playing]

7 BY MS. THOMSON:

8 Q All right. So as the video starts, where are you?

9 A We're on Walnut heading north. And I think we're just passing Judson  
10 coming up on -- towards Carey.

11 Q Okay. And there is a vehicle in the left side of your windshield. Is that  
12 the vehicle that ultimately was involved in everything you've testified?

13 A Yes.

14 [Body cam video continues playing]

15 BY MS. THOMSON:

16 Q And the vehicle just turned through the stop sign. Is that -- or what  
17 street is that?

18 A That's at Carey. So when the video starts it would -- he had already  
19 fired the shot in the air. I don't think it was captured on here. And then that's the  
20 turning right on Carey.

21 Q As we're watching the video looking at the screen, for example, in this  
22 shot, we can see sort of the globes of the street lights. Is it fair to say that this  
23 doesn't capture exactly what you're seeing in the sense that your eyes better  
24 equipped to record what it is you're seeing?

25 A Yes.

1 Q Okay. So you don't have the glare of street lights in the way it shows  
2 on the video?

3 A That's correct.

4 [Body cam video continues playing]

5 BY MS. THOMSON:

6 Q So you're now turned onto Carey, correct?

7 A Yes.

8 Q And where are the second set of shots fired?

9 A As soon as I turned right onto Carey and my car being straight that's --  
10 two shots were fired right then.

11 Q And we just saw the car sort of leave what is notably visible. Is that  
12 where it sped up?

13 A Yes.

14 Q And we also had sound just start. That was about 30 seconds in?

15 A Yes.

16 [Body cam video continues playing]

17 BY MS. THOMSON:

18 Q We just saw something go across the screen. What was it that we were  
19 seeing?

20 A Oh, that was my seatbelt that I realized I didn't have on.

21 Q And you didn't have it on because you had planned on performing a  
22 simple traffic stop where you're going to be getting out of the car immediately.

23 A That's right.

24 [Body cam video continues playing]

25 BY MS. THOMSON:

1 Q Where -- what street did we just pass, do you know?

2 A I know we went through Lamb where the light was. I don't know what  
3 those smaller streets were after Lamb.

4 [Body cam video continues playing]

5 BY MS. THOMSON:

6 Q So this is as you've just come up to the corner of Carey and Dolly?

7 A Yes.

8 Q And are you able to see on the screen where that vehicle is located  
9 now?

10 A Yes.

11 Q Can you touch the screen and see if it makes a mark?

12 A Sure.

13 Q Oh, it does. And so that's where the vehicle is located?

14 A Yes.

15 Q Is this where you stopped?

16 A It was either right here or just a little bit further. Not very many feet  
17 further when I actually come to a stop.

18 Q And fair to say that you indicated that you could see the individual  
19 pointing the firearm at you, correct?

20 A Yes.

21 Q Is this generally where he was -- where you were when he was at the  
22 back of the vehicle? Or has he already started to move across the street?

23 A I'm not sure at this point. If you can play it again. I'm not sure if he's  
24 already coming around or not at this point.

25 Q So we'll scoot back a little bit?

1           A     Yeah.

2                               [Body cam video continues playing]

3 BY MS. THOMSON:

4           Q     Was that where he was out and at the back of the trunk?

5           A     Yes. When I'm seeing that he'd already passed the back of the trunk  
6 and walked across and fired the one round, was manipulating it, and then pointed  
7 out again.

8           Q     And as we talked about before, obviously the camera doesn't have the  
9 same capabilities your eyes do.

10          A     Correct.

11          Q     We can't see the suspect in the video, is that fair to say at this point?

12          A     It's pretty hard to see him, yes.

13          Q     Okay. But you could see him clearly as you were pulling up?

14          A     Yes.

15                            [Body cam video continues playing]

16 BY MS. THOMSON:

17          Q     Here is where you got out of the vehicle, fair to say?

18          A     Yes.

19          Q     And what was it that caused you to get out and pull your weapon?

20          A     He had -- he was starting to point out again -- punch out and point the  
21 gun toward me because he walked to that corner behind the stoplight and I knew  
22 that he already fired at me several and I needed to stop him from doing it again.

23          Q     And that moves pretty quickly from the time that you announced that he  
24 has it pointed at you to the time that you are shooting. Can you see in the video in  
25 this spot -- and we can move it around a little bit if necessary -- where you see the

1 individual in the white shirt?

2 A Yes. A little bit further to my right. Right there.

3 Q So you sort of underlined that person now?

4 A Yeah. Yes. The mark on the right is right below where he is.

5 Q And when you first saw him he was left towards -- or not first, but --  
6 when you stopped the vehicle to shoot he was left towards the street light and has  
7 moved across as you start firing, is that fair?

8 A Yes.

9 [Body cam video continues playing]

10 BY MS. THOMSON:

11 Q At this point as you're running, he has already proceeded down Dolly?

12 A Yes.

13 [Body cam video continues playing]

14 BY MS. THOMSON:

15 Q And that's where you described having seen the silhouette down Dolly?

16 A Yes.

17 Q In the camera, obviously we can't see that silhouette. Same thing,  
18 camera not as good as your eyes?

19 A Correct.

20 [Body cam video continues playing]

21 BY MS. THOMSON:

22 Q We just saw your cheek sort of as you turned your head across the  
23 camera's view. Were you looking into the red vehicle?

24 A Yes, I was.

25 Q And why?

1 A To make sure there was nobody else in the car.

2 Q And did you see anyone else in the car?

3 A No, I didn't.

4 Q And was there anyone else in the area that you observed?

5 A No, nobody.

6 [Body cam video continues playing]

7 BY MS. THOMSON:

8 Q Is that where you indicated you came around the corner and saw the  
9 individual by the truck?

10 A Yes. Not right at that moment. I think it's after I peek around the other  
11 side and then go back. I saw a shadow go across the sidewalk to my right.

12 Q At this point you had expelled several projectiles, fair?

13 A Yes.

14 Q Did you do anything to ensure that you would be ready if the individual  
15 was at this corner waiting for you?

16 A Yes. Just a moment ago when you talked about me looking to my left  
17 in the car, at the same time I had put in a full magazine of ammunition in my gun  
18 before I went down to the corner.

19 Q And what did you do with the old magazine?

20 A I dropped it on the ground.

21 Q And why drop it instead of put it in your belt?

22 A I probably would have preferred, in hindsight, to put it in my belt but I  
23 thought I -- I felt like I had shot a lot more rounds than I did, so I just wanted to get a  
24 full one in there. So I left that one on the ground, full one in there, and kept going.

25 Q Is there a term for that?

1           A     That would be a speed reload.

2           Q     Okay. And that's something that you learn in training and going through  
3 qualification and such?

4           A     That's right.

5                     [Body cam video continues playing]

6 BY MS. THOMSON:

7           Q     So you said about this point is where you saw the shadow, is that fair?

8           A     Yes, that's right.

9                     [Body cam video continues playing]

10 BY MS. THOMSON:

11          Q     And we're seeing lights approach and hear sirens. Those are sirens  
12 not associated to your vehicle, correct?

13          A     Right.

14                     [Body cam video continues playing]

15 BY MS. THOMSON:

16          Q     And so that's the first patrol officer who is arriving on scene as backup  
17 and you're conveying what you've seen?

18          A     That's correct.

19                     [Body cam video continues playing]

20 BY MS. THOMSON:

21          Q     And that's the set-up of the perimeter occurring through sergeant  
22 direction?

23          A     Yes, that's what you hear.

24                     [Body cam video continues playing]

25 BY MS. THOMSON:



1 Q And describe for us -- we've just used the term perimeter. What is a  
2 perimeter?

3 A It's us setting up officers like in a -- either in a circle or a square around  
4 the area where we're chasing a suspect so that to better our chances of  
5 apprehending him, so he doesn't get outside of the perimeter and escape.

6 Q Okay. So those officers are at a reasonable distance, but can generally  
7 see each other so that you have an area covered by officer sight?

8 A Yes.

9 Q Did the Air Unit come out also?

10 A Yes, I believe they did.

11 Q And I think you already indicated a K9 Officer came out?

12 A Yes.

13 Q Okay.

14 [Body cam video continues playing]

15 BY MS. THOMSON:

16 Q And you just made a reference, if you didn't copy, there were shots fired  
17 by me. What gave you the idea that they may not have heard you?

18 A There were some problems with our radio system at the time and it  
19 didn't appear like she was -- she wasn't acknowledging me -- some of what I was  
20 saying -- a lot of what I was saying over the air. So I was repeating myself in case  
21 she hadn't heard.

22 Q Okay. And the see we're talking about is the dispatcher?

23 A Yes.

24 Q Okay. Now other units are arriving on scene. Is it fair to say that the  
25 other units could hear you, it was just the dispatcher who could not?

1           A     From what I understand it of the other unit couldn't hear me as well on a  
2 lot of what I was saying.

3           Q     Okay.

4           A     It was broadcast at all. Some of what I was saying.

5                               [Body cam video continues playing]

6 BY MS. THOMSON:

7           Q     And is that Officer Morgan with his dog?

8           A     Yes.

9           Q     And that's an officer, the dog? Not just his dog?

10          A     Correct.

11          Q     Okay.

12                            [Body cam video continues playing]

13 BY MS. THOMSON:

14          Q     You seem to be looking into this yard with the flashlight on your gun.  
15 What are you looking for?

16          A     I thought that perhaps, based on previous experience that the suspect  
17 may have tossed the gun in that front yard as rounding the corner. So that's what I  
18 was looking for.

19          Q     Okay. And as you looked in, you didn't see anything notable, is that  
20 fair?

21          A     NO, I didn't.

22                            [Body cam video continues playing]

23 BY MS. THOMSON:

24          Q     Do you recognize the voice of the individual who just spoke?

25          A     I believe that was Lieutenant Pelletier.

1 [Body cam video continues playing]

2 BY MS. THOMSON:

3 Q Is it common for lieutenants to respond to calls?

4 A To the major incidents, yes.

5 Q Okay. And would it be fair to say that a large number of officers  
6 responded to this call?

7 A Yes.

8 [Body cam video continues playing]

9 BY MS. THOMSON:

10 Q So we've just heard other officers securing the scenes of where shots  
11 were fired as quickly as possible and also the announcement of a suspect in a  
12 backyard, is that correct?

13 A Yes.

14 [Body cam video continues playing]

15 BY MS. THOMSON:

16 Q Who was that?

17 A That was Sergeant -- his name is escaping me at that moment.

18 Q Okay. And who is the individual in the yellow jacket?

19 A That's Detective Turcaz. That was Sergeant Briggs before.

20 Q And Detective Turcaz is in plain clothes with a jacket over to signify he's  
21 an officer?

22 A Yes.

23 Q Okay. Do you know if he was working as an undercover officer at that  
24 time?

25 A I think he was on something else. This was in the area and heard what

1 happened, and responded.

2 Q So the nature of the call, you're drawing all kinds of patrol, sergeants,  
3 lieutenants, undercover officers?

4 A Yes.

5 [Body cam video continues playing]

6 BY MS. THOMSON:

7 Q So you just made a statement, I think I stopped out on Carey, I might be  
8 wrong, I can't remember. Is that a correct repetition of what you just said on the  
9 video?

10 A Yes.

11 Q Okay. And you obviously just left your car. What's the basis of I can't  
12 remember?

13 A I'd just been in one of the most traumatic experiences of my life.  
14 Having been in this shootout and my life being threatened. And I had a big  
15 adrenaline dump and it was all slowing down at that point and I couldn't really think  
16 straight and remember things as accurately.

17 [Body cam video continues playing]

18 BY MS. THOMSON:

19 Q Okay. We see an individual through the front window of this truck. Is  
20 that a neighbor that has come out?

21 A I think so, yes.

22 [Body cam video continues playing]

23 BY MS. THOMSON:

24 Q And you said that the beeps every minute or two to remind you it's on.  
25 Is that what we just heard?

1           A     Yes. The body camera does that.

2                               [Body cam video continues playing]

3 BY MS. THOMSON:

4           A     I probably would have already turned it off, but I didn't even think that it  
5 was -- I didn't even think about it because I wasn't hearing the beeping.

6                               [Body cam video continues playing]

7 BY MS. THOMSON:

8           Q     And that's an awful pause location but in between the door and the  
9 truck, is that the individual that you were just asked, is this him?

10          A     Yes.

11          Q     And is that the same individual you'd seen earlier under the street lamp  
12 at the corner of Carrey and Dolly?

13          A     Yes, it is.

14                               [Body cam video continues playing]

15 BY MS. THOMSON:

16          Q     Now you had told -- or at least stated several times that you only saw  
17 one person. Did they continue to look in case there was a second individual?

18          A     Yes.

19          Q     Okay. And that was just to ensure that there was no possibility there  
20 were any other suspects outstanding?

21          A     Yes. And I think some neighbor called in and said someone was  
22 banging on their door. So that's why we kept looking just -- we don't know who that  
23 was.

24          Q     That's part of having the Air Unit to ensure that there's no one else on  
25 the street who could possibly be related to this.

1 A Correct.

2 [Body cam video continues playing]

3 BY MS. THOMSON:

4 Q And that's the individual that we had in the really bad pause before --

5 A Yes.

6 Q -- that you -- that they brought out from the backyard?

7 A Yes, that's correct.

8 Q And the same individual you saw on the corner?

9 A Yes.

10 Q And the only individual that you saw get out of the maroon vehicle?

11 A Yes.

12 Q The only individual you ever saw in the maroon vehicle?

13 A Correct.

14 Q And the same one who was shooting at you?

15 A Yes.

16 [Body cam video continues playing]

17 BY MS. THOMSON:

18 Q And there you just said you didn't look in the car. We know from  
19 watching the video you actually did, is that fair?

20 A Yes, I was grateful for -- that my training kicked because I didn't even  
21 remember looking in the car, but I did.

22 [Body cam video continues playing]

23 BY MS. THOMSON:

24 Q And the rest of what goes on is just sort of the administrative is there  
25 doing investigation and you're winding down and then realizing that you have the

1 body camera still on?

2 A Yes, that's correct.

3 [Colloquy between Counsel]

4 MS. THOMSON: And I'd move for admission of State's Exhibit 92.

5 MS. NGUYEN: I stipulated. That's fine.

6 THE COURT: It'll be admitted.

7 **[STATE'S EXHIBIT 92 ADMITTED]**

8 BY MS. THOMSON:

9 Q You described previously -- and I finally found the picture that was the  
10 best one -- having stood on Carey and looking down Dolly, seeing the silhouette. Is  
11 this where you were standing -- the area and what you could see when you shot at  
12 the silhouette?

13 A Yes.

14 Q And the area that we were looking at on the map, which is State's  
15 Exhibit 1. The area of Carey and Dolly, the main entrance into where you were on  
16 El Tovar and Dolly, what would you -- what would the main direction of entrance be?

17 A On to El Tovar?

18 Q The most common -- the most highly travelled, put it that way.

19 A It would be on Carey.

20 Q So that would be along this route?

21 A Yes.

22 Q And on to Dolly?

23 A That's right.

24 Q Okay. And the majority of the streets, the other direction on to Dolly,  
25 are most residential and smaller?

1           A     Yes.

2           Q     As you were standing at your patrol car looking over at the suspect as  
3 he's underneath the street lamp, about what distance were you, if you could  
4 estimate?

5           A     35 to 40 yards.

6           Q     And do you see the individual who was underneath that street lamp,  
7 pointing the firearm at you, in court today?

8           A     Yes, I do.

9           Q     Will you please point to the individual and describe something they're  
10 wearing today?

11          A     Yes. That's him right there with the greenish shirt and yellow tie.

12          Q     Let the record --

13          THE COURT: The record will reflect he's identified the Defendant, Mr.  
14 Bacharach.

15          MS. THOMSON: Thank you, Your Honor.

16          BY MS. THOMSON:

17          Q     And everything that you've talked about here today, did that all occur  
18 here in Las Vegas, Clark County, Nevada?

19          A     Yes.

20          Q     When you saw the individual underneath the street lamp -- the  
21 Defendant underneath the street lamp you described him as wearing a white shirt.  
22 Later on when we're looking at the camera, the body camera, we see as he comes  
23 out that he's in a yellow shirt, is that fair?

24          A     Down on El Tovar?

25          Q     Yes.



1 A Yes and yes, it was a green shirt.

2 Q And that was a different shirt than you'd seen him in previously?

3 A Yes.

4 Q Did you later find out why the color was different?

5 A Yes, I did.

6 Q Was it a failure in your memory or a change of his appearance?

7 A A change in appearance.

8 MS. THOMSON: I'll pass the witness.

9 MS. NGUYEN: Your Honor, is it possible to have just a quick five-minute  
10 break?

11 THE COURT: Yeah.

12 MS. NGUYEN: Thank you.

13 THE COURT: We'll take a five-minute recess. During this recess you're  
14 admonished not to talk or converse among yourselves or with anyone else on any  
15 subject connected with the trial. Or read or watch or listen to any report of or  
16 commentary on the trial or any person connected with this trial, without limitation,  
17 newspapers, television, the radio, or the internet. Or form or express an opinion on  
18 any subject connected with the trial until the case is finally submitted to you.

19 Take five minutes, please.

20 [Outside the presence of the jury]

21 THE COURT: All right. Jury is gone. Door's closed. Go ahead.

22 MS. NGUYEN: Thank you.

23 [Recess taken at 10:14 a.m.]

24 [Trial resumed at 10:23 a.m.]

25 [In the presence of the jury]

1 THE MARSHAL: All rise, please.

2 And be seated.

3 THE COURT: All right. I'd just remind you Officer, you're still under oath to  
4 tell the truth.

5 Cross.

6 MS. NGUYEN: Your Honor, I believe there was one exhibit that didn't get  
7 admitted. It had been stipulated to, so we have no objection to it being admitted.

8 MS. THOMSON: That's correct. It's Number 96.

9 THE COURT: It'll be admitted.

10 MS. THOMSON: Thank you.

11 **[STATE'S EXHIBIT 96 ADMITTED]**

12 MS. NGUYEN: Can everyone see that?

13 **CROSS-EXAMINATION**

14 BY MS. NGUYEN:

15 Q Can you see that Officer McNabb?

16 A Yes.

17 Q Okay. I'm hoping that it's somewhat aligned. I think we tried to do it.  
18 But can you just kind of -- I know before we had done some dots. Can you kind of  
19 just make a line of where initially this call occurred and where it ultimately let up?  
20 Can you just kind of draw that in?

21 A Sure. So it started here at Lake Mead and Walnut and then -- well, it's  
22 on the north side of Lake Mead, on the way up to Carey, and then east on Carey,  
23 through Lamb, and then to Dolly -- well it goes up -- it's not calibrated right here but  
24 it goes down.

25 Q Okay. So down. This is Dolly, so --

1 A Right there.

2 Q -- down Dolly here.

3 A Yeah, right, Dolly.

4 Q Okay.

5 A And then to -- that's El Tovar right where it -- I ended it.

6 Q Right here.

7 A Yes.

8 Q Is that correct?

9 A Yes.

10 Q Okay. Can't clear it up here. Thanks. Okay.

11 And along that route can you -- initially when you were -- were you

12 outside of your patrol car when you were investigating that -- what you thought was

13 perhaps an abandoned car?

14 A Yes, I did get out to investigate that.

15 Q Okay. And when you saw the car with the high beams on, were you in

16 your car at that time or were out -- still outside of your car investigating that Honda?

17 A I was back in my car and I had just put in notes that the car wasn't

18 stolen and I was just about to clear from that call -- hit the button that I was free

19 when I noticed the vehicle with the high beams on.

20 Q Okay. And at that road is there a stoplight or is there a stop sign, or is it

21 just a two-way stop?

22 A At Lake Mead and Walnut?

23 Q Yes.

24 A There is a four-way stoplight.

25 Q So this is a four-way stoplight?

1           A     Yes.

2           Q     Okay. And that's right here, is that correct?

3           A     Correct.

4           Q     Okay. And that vehicle that you saw was -- what direction was it  
5 coming from; this direction or this direction?

6           A     It was on Walnut, facing north. So it was -- it's not going to be cal -- it  
7 was right --

8           Q     On Walnut right here?

9           A     No, it's not putting it where I want it to. It's --

10          Q     Closer to Lake Mead?

11          A     Yeah. Where the arrow is. Do you see the arrow? It's just north of the  
12 arrow, stopped at the stoplight there. It was the first car, facing north, stopped at the  
13 red light.

14          Q     Okay. Were there other vehicles at that stop?

15          A     Yes. There was a car behind it.

16          Q     And you noticed when it stopped it was -- was it perpendicular to you,  
17 parallel, kitty-corner from where you were located?

18          A     It was facing towards me and I was a little bit off the side of the road.  
19 So we were a little bit offset. It was like this and I was like this across the  
20 intersection, if that makes sense.

21          Q     Yes, that makes sense. And that's why you noticed the high beams, is  
22 that correct?

23          A     Yes.

24          Q     Because they were kind of flashing in your face --

25          A     Right.

1 Q -- for lack of a better term. Okay. And that's when you decided to get  
2 into your car -- or you were in your car?

3 A I was in my car when I observed that.

4 Q And you called out that you were going to make a traffic stop?

5 A Not at that point. It was after I did the U-turn and flipped on my lights,  
6 that's when I started to call out over the radio. But I decided while I was still parked  
7 that I was going to try to do a traffic stop.

8 Q And when did you start your lights?

9 A After I'd done a U-turn, the car that had its high beams on it passed me  
10 north -- heading north and the car behind it had passed me. I did a U-turn and that's  
11 when I flipped on my lights.

12 Q Can you indicate where you did that U-turn?

13 A Right at that intersection of Walnut and Lake Mead?

14 Q Okay. So right here is where you did that U-turn --

15 A That's right.

16 Q -- is that correct?

17 A Uh-huh.

18 Q Okay. And you -- after you did the U-turn, you turned on your lights?

19 A Right. I did a U-turn and then I caught up to the car that was in  
20 between us.

21 Q Okay.

22 A The car that was behind the car with the -- that I wanted to stop and  
23 that's when I flipped on my lights.

24 Q Does that car pull over?

25 A Yes.

1 Q How did that car -- did that car know that -- did they think they were  
2 being pulled over?

3 A I don't know what they thought but when I turned on my lights they  
4 started to pull over to the side of the road and then I went around them to the car  
5 that had the high beams on.

6 Q Okay. And that car was still travelling northbound, is that correct?

7 A Yes. Uh-huh.

8 Q Okay. And was that car driving at, I think you said about 35 miles per  
9 hour?

10 A yes, approximately 30 to 35.

11 Q Okay. And that's the speed limit for this road, is that--

12 A I believe so, yes.

13 Q So at about what time did you catch up the car that you intended to pull  
14 over?

15 A It was right around Judson which is --

16 Q Right here?

17 A -- right here. Yeah.

18 Q Okay.

19 A That's --

20 Q So this is Judson right here --

21 A Right.

22 Q -- where I'm indicating with this line here?

23 A I think it was a little bit before Judson when I actually got up to it and  
24 started to call out over the air that it -- that I'm doing a car stop.

25 Q Okay. And were your lights still active at this time?

1 A Yes.

2 Q Okay. Did you have a siren on at all?

3 A No, I didn't turn the siren on.

4 Q Did the car pull over?

5 A No, it didn't.

6 Q And what happened at that point?

7 A That's when the driver reached out and fired a round in the door out of

8 the driver door and then accelerated north on Walnut.

9 Q Okay. And were you shocked by that action?

10 A Yes.

11 Q Okay. Were you just driving behind the person thinking you were going

12 to pull them over for a traffic violation?

13 A Correct.

14 Q Did you even see the arm go out or --

15 A Yes, I did.

16 Q -- the gun go out?

17 A I did.

18 Q Okay. So you saw the arm go out. It's dark outside, is that correct?

19 A Yes.

20 Q Okay. You have your lights on?

21 A Yes.

22 Q Do you have your spotlight on at that time?

23 A No.

24 Q Okay. And do you see a gun immediately or do you just an arm out of

25 the car?

1           A     I was focused on the license plate and then when the shot went off I  
2 saw the muzzle flash go up and I could see that it was a gun, heard it, and saw  
3 boom, out the window.

4           Q     So you -- at that time you're looking at the license plate, intending to  
5 call it in so people know who ye calling in.

6           A     Yes.

7           Q     And your location. And that's when -- do you hear it first or do you see  
8 the hand in muzzle shot?

9           A     I heard it first.

10          Q     Okay. And then -- so your eyes are immediately drawn up, is that  
11 correct?

12          A     Yes.

13          Q     Okay. I see you're wearing glasses today. Do you wear glasses?

14          A     Yes.

15          Q     Okay. And I saw that you were wearing glasses in the picture, were  
16 you wearing glasses that night as well?

17          A     Yes.

18          Q     Are you near-sighted or far-sighted?

19          A     Near-sighted.

20          Q     Do you have to have your glasses?

21          A     Yes.

22          Q     Okay. And where was it -- where did you see that first shot up into the  
23 air?

24          A     It was right at approximately Judson -- I think it was right there, right  
25 around Judson.



1 Q Okay. And at this time the occupant of the vehicle is still driving, is that  
2 correct?

3 A Yes.

4 Q Okay. So the shooting up into the air is occurring at the same time that  
5 they're driving?

6 A Yes.

7 Q No one's stopped?

8 A No.

9 Q When is that you received the second -- when you hear the second or  
10 you feel the second shots you -- I think you said go by on your left side?

11 A That's after we'd continued north on Walnut and the suspect vehicle  
12 turned right on Carey.

13 Q Okay. So this is Carey right there, is that correct?

14 A Uh-huh. There -- that's right. There was a stop sign there. He didn't  
15 stop for the stop sign. He turned right and as soon as I made the right turn and my  
16 car was straightened out, that's when I heard two shots and then one zing right past  
17 my left ear.

18 Q Okay. And what point did you turn on your body camera?

19 A You know I'm not really exactly sure at what point I did. I remember  
20 thinking I got to activate this. So I don't know exactly what point I did? Probably  
21 right when the audio kicks in is when it would be.

22 Q When would your training and experience have indicated for you to --  
23 you had indicated before that you had relied on some of your training and  
24 experience and you automatically did certain things like looking into the vehicle, is  
25 that correct?

1           A     Yes.

2           Q     Is that something you're trained to do as well when you were issued a  
3 body camera, as to when to turn it on?

4           A     Yes. And it was very new to me. It had only been seven or eight  
5 weeks. So there were some calls I went on that I didn't -- I forgot to turn it on at all.  
6 So I was getting -- still getting used to turning it on on every stop.

7           Q     And some calls where you forgot to turn it off, is that correct?

8           A     Yes.

9           Q     Okay. Is it likely that you turned it on after you heard the first shots?

10          A     Yes.

11          Q     Into the air?

12          A     Yes.

13          Q     Okay.

14          A     I don't know at what point after, but yes.

15          Q     And approximately here at the turn, this is where you felt and -- you felt,  
16 I guess bullets whizzing by you, is that correct?

17          A     Yes, just one. I heard two shots, but I only felt one go zing like it had hit  
18 my car or the ground.

19          Q     Okay. At that time could you see any guns outside of windows or did  
20 you just hear --

21          A     Heard and --

22          Q     Felt, I guess.

23          A     -- felt only. I didn't see it.

24          Q     Okay. So you heard what you thought was possibly two shots but you  
25 only --

1           A     It was --

2           Q     -- felt, I guess, one.

3           A     It was more than a possible. I knew they were gunshots that I had

4 heard.

5           Q     No, I'm saying the number of them.

6           A     Yeah, there were two.

7           Q     Two.

8           A     Yes.

9           Q     Okay. So you heard two, but you felt one?

10          A     Yes.

11          Q     Is that correct?

12          A     Uh-huh.

13          Q     And at that time you weren't sure whether or not your car had been hit

14 or if anything had been hit, is that correct?

15          A     Correct. I don't know what that round hit that would make the sound.

16          Q     Do you recall any other vehicles on Carey?

17          A     Other than the one that had pulled over that was between us, no.

18          Q     Okay. And that car had pulled over here off of Walnut, before Judson,

19 is that correct?

20          A     I think it was right near Judson where it actually pulled over and I went

21 around.

22          Q     Okay.

23          A     When the road widens out a little bit.

24          Q     And this car had pulled over before the shots had been fired into the

25 air?

1           A     Yes.

2           Q     Okay. So you believe there was two shots here, you felt one or what  
3 you thought was one, is that correct?

4           A     Yes, there were definitely two shots fired.

5           Q     And then the car -- is it on Carey that you indicated that the car really  
6 decided to speed up, is that correct?

7           A     Yes.

8           Q     Okay. Because up until then, kind of the speed limit.

9           A     After the fire -- the first shot was fired in the air, he accelerated. I don't  
10 know what speed it -- it was above the speed limit, but it was at the corner when he  
11 ran the stop sign when it seemed to be 35 or 40 miles an hour to me estimating  
12 when he made the turn. But I don't know what the speed was.

13          Q     Once you realize you had been -- you, you know, felt the shot; that you  
14 thought you had been shot at right here --

15          A     Yes.

16          Q     -- did you stop your car at all or slow down at all?

17          A     No.

18          Q     Was there any kind of instinctual reactions to stop or did you  
19 automatically just continue in pursuit east?

20          A     I may have slowed slightly or at least let off the gas, but I didn't stop.

21          Q     Okay. And then is there any point where you -- I saw in the video -- we  
22 see that you kind of lose sight of the car that's in front of you. Where did that take  
23 place, that you recall?

24          A     That was at Lamb because I had to stop for the red light and he had  
25 gone through, so it created quite a bit of distance between us at that point.

1 Q So right here to here you have to slow down, he just blast through.

2 A Yes.

3 Q Okay. And so this car goes through and you kind of lose -- do you lose  
4 sight of the car at that point?

5 A No, I could still see it but it was off in the distance.

6 Q When the car kind of pulls over here, are you -- do you see the like I  
7 guess you'd describe it as a crash or a bump onto the curb. Could you see that  
8 from your vehicle?

9 A Yes.

10 Q Okay. Could you -- at this point you said that you saw -- did you hear  
11 shots again?

12 A As I passed through Lamb --

13 Q From the individual you said was on foot, yeah, at this point.

14 A I'm sorry, can you repeat your question?

15 Q When you're over here at Dolly --

16 A Uh-huh.

17 Q -- and Carey and the -- you said that a person exited that vehicle, is that  
18 correct?

19 A Yes.

20 Q And you could see that person exiting the vehicle.

21 A Yes.

22 Q And where are you located when you see that at first?

23 A I'm on Carey and approaching Dolly, but I'm still a ways away from  
24 Dolly.

25 Q And where are you? Can you point on the map? Let me zoom it in a

1 little here.

2 A Approximately here. Not where the mark is showing up, but --

3 Q A little bit before that.

4 A If you can see where -- if anybody else can see, yes, it's --

5 Q Okay.

6 A I would say about 50 yards west of Dolly on Carey.

7 Q Okay. And this is red writing here and it says Dolly. This is Dolly, is

8 that correct?

9 A Yes.

10 Q Okay. And so are you indicating -- I'm going to put my pen there. Right

11 about here?

12 A A little further to the left.

13 Q Right here?

14 A Yeah right --

15 Q Where your arrow is?

16 A Right where the lowest mark is.

17 Q Okay.

18 A That's approximately where I saw the vehicle. I don't know what it had

19 gone over. Later I saw it was a curb. But where it had gone over and I saw some

20 dust or dirt kick up.

21 Q Okay. And then where was it that you heard shot -- did you hear shots?

22 A Yes.

23 Q Okay. And this time over here -- so we have the shot up into the air, is

24 that correct?

25 A Yes. As he ran around the --

1 Q Before Judson or around Judson --  
2 A Well no he didn't --  
3 Q -- and Walnut.  
4 A he didn't shoot up into the air at that point. He was -- ran around the  
5 trunk and then held the gun up. I thought what is he going to shoot in the air again,  
6 but he actually shot at me because --  
7 Q Oh, you're talking about over here. I'm sorry about that.  
8 A When you say shot in the air. There was only one shot in the air and it  
9 was way back on Walnut.  
10 Q That's what I'm saying. On Walnut and Judson, the shot in the air,  
11 okay?  
12 A Yes.  
13 Q These two shots over here --  
14 A I'm sorry what are you --  
15 Q -- off of Walnut --  
16 A I can't see you --  
17 Q Oh, I'm not on the thing. Look at that. Okay. I apologize.  
18 A No problem.  
19 Q Okay. So let me start over. This is Walnut?  
20 A Yes.  
21 Q Judson, shot in the air, is that correct?  
22 A Yes. One shot.  
23 Q Okay. The two shots over here, you didn't actually see the gun, is that  
24 correct?  
25 A Correct.

1 Q And you heard what you thought was a bullet and two shots, is that  
2 correct?

3 A Yes.

4 Q Okay. And that was right here.

5 A Correct.

6 Q But no witnessing of any firearm?

7 A I didn't see it.

8 Q And cars are still moving at all of these locations?

9 A Yes.

10 Q Okay. And then the next time that you hear a shot and see a shot is  
11 over here, is that correct?

12 A No. We skipped one. As I passed through Lamb I heard two more  
13 shots, but there was quite a bit of distance and I didn't see if they were shot at me or  
14 in the air because it was -- he was so far away from me. But I heard two more shots  
15 as I passed through Lamb.

16 Q Okay. So at Lamb and Carey -- and this is the intersection where you  
17 had to kind of slow down, is that correct?

18 A That's right. Uh-huh.

19 Q Okay. Where -- did you hear these shots in the distance before Lamb  
20 or after Lamb?

21 A Right as I'm passing through the intersection.

22 Q Okay. So right at this area. But you don't see any guns at that point?

23 A No.

24 Q Okay. And you don't know where it's coming from, is that correct?

25 A I believed it was coming from the suspect, but I didn't -- I couldn't tell --



1 Q Okay.

2 A -- if it was --

3 Q You didn't see any muzzle --

4 A Yeah.

5 Q -- like muzzle sparks or --

6 A No.

7 Q -- anything?

8 A No.

9 Q Okay.

10 A Just heard.

11 Q And you don't know if the shots were up into the air or were in your

12 direction at that time?

13 A That's correct.

14 Q And then when you get here to Dolly and Carey, that's where you

15 indicated that you saw a suspect holding a gun, is that correct?

16 A Yes.

17 Q Okay. And they weren't holding it like this, is that correct, in front of

18 them? They were holding it, I think you said gangster style?

19 A He was holding it in his right hand only --

20 Q Okay.

21 A -- and raised it up towards me, but like up in the air, as I'm still rolling in

22 my car. And I was thinking is he going to shoot in the air. And that's when he fired.

23 I heard it and saw the muzzle flash. But I was expecting it to go up in the air

24 because it looked like he was pointing in the air. But it didn't go in the air, it came

25 towards me. And I realized he just fired gangster style with his wrist bent --

1 Q Okay.

2 A -- at me.

3 Q And then that is when you shot back, is that correct?

4 A Yes. I had stopped my car shortly after and jumped and returned fire.

5 Q You had indicated several times on that -- I'm sure you had the

6 opportunity to review the body cam video, is that correct?

7 A Yes, ma'am.

8 Q Okay. This isn't the first time that you've seen that?

9 A No, ma'am

10 Q Probably not the second time either.

11 A I've seen it about ten times.

12 Q Okay. And you recall that multiple times that you indicated that you

13 couldn't really get a good look at the individual. You just knew they were heavy-set

14 and wearing a white t-shirt, is that correct?

15 A No. I got a good look at him at the corner.

16 Q Okay. Do you remember hearing on the body camera video that you

17 said that you didn't get a good look at him and that you just a white shirt?

18 A I remember giving out his -- hearing that I gave out his description and

19 then a white shirt -- I think I may have said I didn't get a good look at him. That's

20 overall like from beginning to end. But I definitely saw him pointing a gun at me, at

21 the corner under the light, and I recognize him here today.

22 Q Okay. And a part of your training is to give out as much detailed

23 descriptions of suspects as possible, is that correct, Officer?

24 A Yes, ma'am.

25 Q Okay. And you do that so your fellow officers can respond and help try

1 to locate any potential suspects, is that correct?

2 A Yes.

3 Q Okay. And you're trained to give as much description as possible, is  
4 that correct?

5 A Yes.

6 Q Okay. You just kind of heard some of the body cam audio, is that  
7 correct?

8 A Yes.

9 Q Okay. Were you listening to yourself on that as well?

10 A Yes.

11 Q Okay. Do you -- you didn't ever give any description of the individuals  
12 hair, is that correct?

13 A No, I did not.

14 Q Okay. You didn't indicate that he had dark hair?

15 A No, I didn't.

16 Q You didn't indicate that he had long hair?

17 A No, I didn't.

18 Q You didn't indicate that -- you did indicate that he had a white shirt on,  
19 is that correct?

20 A Yes.

21 Q Okay. You indicated that you believed that he was Hispanic, is that  
22 correct?

23 A Yes.

24 Q Okay. Did you give any description of his eye color?

25 A No.

1 Q Okay. Did you give any description of facial hair?  
2 A No.  
3 Q Okay. Did you give any description of height?  
4 A No.  
5 Q Okay. Did you indicate if he was six-feet tall?  
6 A No.  
7 Q Did you indicate if he was five-feet tall?  
8 A No.  
9 Q Okay. Did you give any general descriptions? Short, tall, medium  
10 build?  
11 A I said heavy build.  
12 Q Okay. Did you give any descriptions generally of his height?  
13 A No.  
14 Q Okay. And then you indicated that the person that ultimately they -- you  
15 saw being arrested that person was in handcuffs at that time, is that correct?  
16 A Yes.  
17 Q Okay. And you could hear on the, I guess, the callouts from the other  
18 officers that they had apprehended a suspect, is that correct?  
19 A Yes.  
20 Q Okay. And you were aware of that because your radio was on, is that  
21 correct?  
22 A Yes.  
23 Q Okay. And there were officers that were coming and talking with you?  
24 A Yes.  
25 Q Okay. And so you knew that they had apprehended a suspect, is that

1 correct?

2 A Yes.

3 Q Okay. And were there any other potential suspects that you saw in  
4 handcuffs that night?

5 A No, there were no other suspects at all.

6 Q Okay. But you are aware that they were looking for a potential second  
7 suspect, is that correct?

8 A No. There was no second suspect to look for.

9 Q Okay.

10 A I only saw one suspect that night.

11 Q Were your fellow officers looking for another potential suspect?

12 A They set up a perimeter to make sure that there wasn't someone else,  
13 yes.

14 Q Okay. And that's standard, is that correct?

15 A Yes.

16 Q Okay. And they had in fact received a call that there was potentially  
17 another person banging on a backyard door on Carey I believe it was.

18 A Yes.

19 Q Okay. They didn't make any arrests that you're aware of --

20 A No. ma'am.

21 Q -- with respect to that --

22 A No.

23 Q -- that knocking on the backyard?

24 A No.

25 Q Okay. Is it fair to say that your adrenaline was rushing at that time?

1 A Definitely, yes.

2 Q Okay. And that was pretty eventful evening, is that correct?

3 A Yeah, it was very dynamic.

4 Q Okay. And in fact I think you testified on direct that some things you  
5 couldn't remember accurately because your adrenaline was rushing at that time, is  
6 that correct?

7 A Right. Right after the incident, yes, as you -- on video. Yes.

8 Q Okay. With respect to the body camera, back in 2014 you had  
9 indicated you had only had it for about seven or eight months, is that correct?

10 A Seven or eight weeks.

11 Q Weeks, I'm sorry. Seven or eight weeks./ And you had indicated on  
12 direct that you turned it on and turned it off as you were making stops or you were  
13 approaching scenes. Were you given any training as to when you should use that  
14 discretion?

15 A I wasn't actually provided any training, no.

16 Q Okay. So you were just given a body camera?

17 A Yes.

18 Q Okay. But no --

19 A Well --

20 Q -- training as to how to use it?

21 A There -- no, I did get training on how to turn it on and off.

22 Q Okay. Did you receive any additional training regarding the body  
23 camera?

24 A No, I didn't.

25 Q Okay. Were you told if you were supposed to include it in police

1 reports?

2 A Yes, there is policy on it, but I didn't receive like a formal class on it.

3 Q How did you learn of the policy regarding body cameras?

4 A I was told that it had come out, it was new policy, and it was  
5 changing -- constantly in flux and adding things to it, because it was all new to  
6 everybody.

7 Q Okay. So at the time on this day, it was discretionary as to when you  
8 turned on the body camera, is that correct?

9 A No. It was still -- it was clear from -- if I recall correctly that you turn it  
10 on for calls for service -- you know, as you're arriving on a call for service or a  
11 vehicle stop, a person stop, you turn it on as you're initiating those.

12 Q When you were investigating the abandoned Honda, did you turn on the  
13 body camera as a part of that investigation?

14 A I don't remember.

15 Q Okay. Would that have been your policy at the time to do so?

16 A Yes, I probably did, but I really don't remember.

17 Q And when was it your policy to turn off that body camera?

18 A After the -- after it's over and taken care of. Or in that case there's --  
19 once I see that there's no person there -- like there's no occupant of the vehicle,  
20 there's no reason to have it on any longer.

21 Q Okay. So doesn't running 24-hours a day or --

22 A No.

23 Q -- throughout your entire shift?

24 A No.

25 Q Okay. Do you have to do anything with that body camera to download

1 it or preserve any of the information that's included on it?

2 A Yes. At the end of the shift you take the actual camera and the battery  
3 and you put them on the docking station that are at each Area Command and it  
4 recharges the battery and it uploads all of the video to *evidence.com*.

5 Q Okay. And --

6 A But prior to doing that I flag things. Like if you make an arrest or issue  
7 a citation, you flag it so it's saved for a certain number of years.

8 Q Do you -- were you given any instruction on where you're supposed to  
9 wear that body camera on your body?

10 A I was given the choice of either lapel -- either one of my lapels or on  
11 glasses.

12 Q Okay. And you chose the lapel?

13 A Yes.

14 Q Okay. When you had those pictures taken after this incident -- those  
15 pictures that we showed you of yourself, were those taken on the date of this  
16 incident?

17 A Yes

18 Q Okay. And you had --

19 A Well it was later --

20 Q -- indicated that the --

21 A -- that night.

22 Q -- body camera had been removed. Did you remove it?

23 A Yes, I believe I did.

24 Q Okay.

25 A And I turned it over to a sergeant who was on the scene.



1 Q And that was the last time you saw the actual physical device?

2 A Yes, that night.

3 Q Was the device returned to you when you came back to work?

4 A Yes, it was.

5 Q Okay.

6 MS. NGUYEN: Court's indulgence, just for a moment.

7 [Colloquy between Counsel and the Defendant]

8 BY MS. NGUYEN:

9 Q You had indicated on direct that you were about 30 to 40 yards from the  
10 suspect, is that correct?

11 A I believe I said 35 to 40.

12 Q 35 to 40?

13 A At what point are you referring to?

14 Q I believe -- is that when you said you saw the shadowy figure?

15 A No.

16 Q When was that that you --

17 A That was at --

18 Q -- or approximately --

19 A I was at the corner of Carey and Dolly when I actually fired my first  
20 volley of shots, it was approximately 35 to 40 yards is what I estimate he was away  
21 from he.

22 Q Okay. We watched and heard the body camera video. The first 30  
23 seconds of it there is no sounds, is that correct?

24 A Yes.

25 Q Okay. And so you aren't able to hear any of the initial sounds, either

1 that you're making or that you're possibly hearing, is that correct?

2 A Yes.

3 Q And you had indicated that your window was rolled halfway down?

4 A Yes, both of my front windows.

5 Q And that was for you to be able to hear, is that correct?

6 A Yes.

7 Q Okay. And in fact, once the sound did turn on, you could hear activity

8 and things on the outside, is that correct?

9 A Yes.

10 Q including your own siren?

11 A Yes.

12 Q Okay. And is it fair to say that you can't hear the shots that were shot

13 at you on that body camera?

14 A On the video, no, I didn't hear the shots, as I reviewed the video.

15 Q Okay. And in reviewing that video, is it fair to say --

16 A Well, I heard my shots, but I --

17 Q You heard your shots.

18 A -- didn't hear his shots, yes.

19 Q Okay. But you couldn't hear the other shots.

20 A No.

21 Q And it's fair to say you couldn't see anything whizzing by the left side of

22 your car, is that correct?

23 A The bullet?

24 Q Yes.

25 A No, I didn't see the bullet.

1 Q Okay. And nothing struck your car, is that correct?

2 A It -- I thought it may have but they examined my car later and they said  
3 they didn't find that it had made contact with the car. The bullet.

4 Q When you initially got out, was your car -- you were rolling to a stop  
5 here towards Dolly off of Carey, is that correct?

6 A Yes.

7 Q Okay. Did you put your car in park?

8 A When I stopped, yes.

9 Q And then you opened your door, is that correct?

10 A Yes.

11 Q And at that point how -- approximately how far away do you think your  
12 car was in relation to the suspect that you saw pointing the gun at you?

13 A 35 to 40 yards.

14 Q 35 to 40 yards. Okay. When that individual you said you could see the  
15 individual also kind of underneath the street light there?

16 A Yes.

17 Q At that same corner. When did you lose sight of that individual?

18 A After I fired my rounds, I saw that he ran south on Dolly and that was  
19 around the fence there so I couldn't see any longer because there was a -- I couldn't  
20 see him. I lost sight because of the cinder block fence.

21 Q Did you see the suspect turn on to El Tovar?

22 A Yes.

23 Q Okay. And then once the suspect went down El Tovar, could you see  
24 anything at that point?

25 A No, not until I was down on the corner and all I saw was a shadow

1 crossing over to my right, over the sidewalk.

2 Q Okay. And that area off of El Tovar and Dolly, is that a residential  
3 area?

4 A Yes.

5 Q Okay. So there are multiple homes, is that correct?

6 A Yes.

7 Q Okay. And in fact just down the street, kind of kitty-corner from that  
8 corner, there's an apartment complex, is that correct?

9 A Yes.

10 Q Okay. Did you see any other cars or any other individuals at that time?

11 A At what time?

12 Q When you were down at the corner of Dolly and El Tovar?

13 A When I was at Dolly and El Tovar? Are you talking about for -- I saw a  
14 line of cars on El Tovar going west --

15 Q Did you see any people?

16 A No.

17 Q Okay. Did you see any cars that were driving?

18 A No.

19 Q Throughout the course of that video you saw -- I guess there was one  
20 neighbor that came out. Did you see that individual?

21 A I saw three or four neighbors that had walked out right together on the  
22 video.

23 Q From your independent recollection, do you recall any neighbors or  
24 people leaving their homes and coming out to the street to see what was going on?

25 A Just at the corner of -- yes. Yes, I do.

1 Q Okay. Did you see other officers trying to like make that area secure  
2 and telling people to go back into their homes at that point?

3 A I saw a bunch of officers, I didn't hear what they were saying to citizens.

4 Q Would that have been part of your training and experience to have  
5 citizens go back into their homes in a situation like this?

6 A Sometimes, yes.

7 Q You had indicated when you first shot down here -- when you  
8 discharged your weapon that this area was kind of empty, so you felt it was a safe  
9 place to shoot into, is that correct?

10 A Yes.

11 Q Okay. Did you have those same feelings as you turn the corner  
12 towards El Tovar and Dolly?

13 A Yes. It wasn't as obvious to me, but I didn't see any people or vehicles  
14 beyond where the suspect was when I fired at him, the second volley.

15 Q And at that point the only thing you could see was a shadowy figure, is  
16 that correct?

17 A No, I saw his silhouette.

18 Q Okay. His silhouette.

19 A Yes.

20 Q Okay. Was he facing you or was he behind -- turned around?

21 A I couldn't tell.

22 Q You just saw the silhouette of a person, is that correct?

23 A Right. And I wasn't going to wait for more shots to be fired at me.

24 Q Okay.

25 MS. NGUYEN: Nothing further.

**REDIRECT EXAMINATION**

BY MS. THOMSON:

Q You were asked some questions about what you can hear and what you could see on the video. Fair to say that the camera and the microphone from the body camera are not nearly as good as your ears and eyes?

A Absolutely.

Q And that is to be expected because unless one's spending several thousand dollars on a piece of equipment, our bodies, we respond better in the moment than a piece of equipment, is that fair?

A Yes.

Q Now, do you know the speed limit on Carey?

A I believe --

Q And specifically between Walnut and Dolly.

A I think it's 35. It might be 40.

Q During the car pursuit there were five shots fired out of the maroon vehicle by the Defendant, correct?

A Yes.

Q And there was one shot at the end of the car pursuit fired outside of the vehicle at you, correct?

A Yes.

Q That's a total of six?

A Yes.

Q You were asked some questions about how many suspects there were and if you knew if other officers were looking for another individual. Do you recall those questions?

1           A     Yes.

2           Q     Okay. Now to your knowledge, was there anyone else located within  
3 that perimeter?

4           A     Yes, there was not anyone else located.

5           Q     Okay. You do know that there was not anyone else located, is that  
6 what you're saying?

7           A     Correct.

8           Q     Okay. And that perimeter was set up virtually immediately, is that fair?

9           A     Yes

10          Q     Okay. You indicated that you turned over the body camera, I believe to  
11 a sergeant?

12          A     Yes.

13          Q     Did you turn over any other equipment to anyone else on scene or  
14 shortly thereafter at station?

15          A     Yes, they took my handgun and my magazines later on and I was  
16 interviewed at headquarters.

17          Q     And do you recall who it was who physically took those from you?

18          A     I believe it was Detective Jaeger.

19          Q     And that was maybe not the best phrase. You voluntarily give it to them  
20 when they ask for it. It's not that they're physically taking it from you, right?

21          A     Right.

22          Q     Okay. And did those get impounded and you didn't get them back for  
23 several months?

24          A     Correct.

25          MS. THOMSON: Pass the witness.

1 MS. NGUYEN: Court's indulgence just for a moment.

2 **RECROSS-EXAMINATION**

3 BY MS. NGUYEN:

4 Q You had indicated that it was very dark. You thought possibly one of  
5 the street lights was out. Where was that location that it was dark?

6 A At Dolly and El Tovar. I remember feeling that it got really dark really  
7 quick at that corner.

8 Q Okay.

9 MS. NGUYEN: Nothing further.

10 MS. THOMSON: Nothing further.

11 THE COURT: The jury have any questions of this officer?

12 **EXAMINATION BY THE COURT (JURY QUESTIONS)**

13 BY THE COURT:

14 Q When the suspect was on El Tovar, do you recall if he pointed a gun at  
15 you?

16 A No, I could not tell if he was facing me or -- faced at me or away from  
17 me when he was at the corner of El Tovar and Dolly. So, no, at that point I didn't  
18 see the gun pointed at me again.

19 THE COURT: Questions --

20 MS. THOMSON: Thank you.

21 **FOLLOW-UP EXAMINATION**

22 BY MS. THOMSON:

23 Q And then when you were on the corner of El Tovar and Dolly and you  
24 saw the shadow on El Tovar, could you see where that shadow was facing?

25 A No.



1 MS. THOMSON: Okay.

2 THE COURT: Defense?

3 MS. NGUYEN: Nothing further.

4 THE COURT: Thank you, Detective -- or Officer. You can go.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Call your next witness, State.

7 MR. FATTIG: Peter Ferranti.

8 **PETER FERRANTI**

9 [having been called as a witness and being first duly sworn, testified as follows:]

10 THE CLERK: Thank you. Please be seated. State your full name, spelling  
11 your first and last name for the record, please.

12 THE WITNESS: Sure. My name is Peter Ferranti. P-E-T-E-R,  
13 F-E-R-R-A-N-T-I.

14 **DIRECT EXAMINATION**

15 BY MR. FATTIG:

16 Q Sir, how are you employed?

17 A I'm a sergeant with the Las Vegas Metropolitan Police Department.

18 Q And what is your current assignment?

19 A I am the sergeant in charge of the body-worn camera detail.

20 Q And these would be body cameras that patrol officers, Metro employees  
21 wear, correct?

22 A Yes, sir.

23 Q And how long have you been in charge of that detail?

24 A I started the program 20 months ago.

25 Q So the program started -- I went to law school so I'm not good with

1 numbers. 20 months would be early of '14?

2 A Yes, March of '14 is when we issued out our first cameras.

3 Q Okay. And initially in the spring of 2014, approximately how many  
4 officers got body cameras?

5 A Our initial deployment was 200 cameras.

6 Q And are you aware of an incident involving Ryan -- Officer Ryan  
7 McNabb on June 26<sup>th</sup> of 2014?

8 A Yes, I am.

9 Q Officer McNabb received his camera during the spring rollout that year  
10 of 2014, fair to say?

11 A Yes, I believe it was --

12 Q Some --

13 A -- April.

14 Q Okay. At some point before June.

15 A Yes.

16 Q Okay. And can you describe the body camera system and how it's  
17 designed to be worn by the officer?

18 A Sure. And I brought one with me.

19 Q You did, okay.

20 A If you want me to demonstrate it.

21 Q Yes. For demonstrative purposes.

22 A Of course.

23 Q Would this be the same system that Officer McNabb would have used?

24 A Exactly.

25 Q Okay.

1           A     Yes. We only have one system and we only have one camera.  
2 Basically it's a three-part system. It has the camera and DVR recorder and  
3 everything is in here. It records the video and the audio on this device. This is  
4 connected by a cord through -- to the battery controller. And then the controller also  
5 acts as a start/stop with this round button that is lit up with the green.

6                     So when it's all connected the officers wear them on their uniform. The  
7 controller device can be put in a pocket or on a uniform, anywhere on the belt if they  
8 have room. And then it's wired up anywhere they have it in their uniform, comes  
9 out -- primarily almost all officers are wearing them on collar mounts, but we also  
10 have optional glasses mounts and optional head mounts so that the camera sits  
11 here.

12                    And then when they want to utilize it and make recordings they press on  
13 that round button to start and stop the camera for making recordings.

14           Q     And the start/stop button, is that kept on their belts or where, normally?

15           A     We give the officer choices in the training, wherever they want to wear  
16 it. Some drop it in the pocket, I wear mine on my inside strap of my bullet-proof  
17 vest, other officers wear it on their exterior on the belt and they just can -- they can  
18 see and press it. It has a nice raised feature so you can feel it. So even though it's  
19 inside a piece of clothing you can feel it and realize where it is and press the button  
20 and turn it on. So it's up to the officer.

21           Q     And how do you turn it on? Is it just one press?

22           A     The start button is -- it's a double press. So you press it two times and  
23 you can feel it and then hear it. And then it also audio-activates in your ear that it's  
24 turning on. And then when you're done with the recording of whatever the incident  
25 is you're recording, you press and hold for three seconds. A loud, long tone in your