IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Sep 24 2021 09:21 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

NARCUS WESLEY,

Appellant,

Vs.

THE STATE OF NEVADA,

Respondent

Case No.: 82690

APPELLANT'S APPENDIX VOL. 4

(Appeal from Judgment of Conviction)

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Docket 82690 Document 2021-27705

APPENDIX VOL. 4

2020-04-11 Jury Trial Transcript Day 3.....000751-000894

2020-04-14 Jury Trial Day 4.....000895-000977

2008-04-15 Jury Trial Day 5.....000978-001000

DATED this 24th day of September, 2021.

/s/ BRET O. WHIPPLE, ESQ.
Bar No. 6168

Q. Have you had a lot of those kinds of experiences?

A. No.

Q. What is the most stressful, scared situation that you have had?

A. I don't know, my car accident.

Q. Okay. Was it a real serious one?

A. No.

Q. It was one of those, you both kind of pull over to the side, and exchange information, and the police come kind of deal?

A. No, I was driving with my mom, and we had an accident.

Q. Okay.

So it was actually maybe a stressful situation that you were able to, I don't want to say be on the sidelines, but at least be there and not have to be the one feeling, the first person dealing with the situation?

A. Right.

Q. Okay. Sometimes there are situations, stressful ones, that like it would be your first rodeo, so to speak. Would you agree with that?

A. Yes.

Q. What do you think when you heard of the charges?

A. I thought that they were serious.

Q. Did it freak you out at all or --

A. No.

Q. No, okay.

Anything beyond thinking that it was a big deal, that things started running through your mind, or anything?

A. Flashes.

Q. Okay. What kind of flashes?

A. I don't know, the situation. I would want to think about it.

Q. All right. Do you want to serve on the jury?

A. A little bit.

Q. You can take it or leave it kind of a thing/?

A. Not like that, but it just looks like -- I kind of.

Q. Remember what Mr. Baird said that he wants to be part of the process, and part of the judicial process.

Do you have those kinds of feelings about it, or do you see it as a duty, as a citizen kind of thing?

A. I would like to do it kind of a thing.

MR. BANKS: Okay, okay. I appreciate your honesty, thank you.

Pass for cause, Your Honor.

THE COURT: Okay.

VOIR DIRE EXAMINATION OF JUROR CARNEY

BY THE COURT:

Q. Mr. Everett Carney, is that right?

A. Yes, sir.

Q. Everett, we finally got to you. How long have you been in Las Vegas?

A. 40 years.

Q. Excellent. What do you do for a living?

A. I'm a security guard.

Q. For who?

A. For Security Unlimited. I work at the Sand Creek Mobile Home, mostly senior citizens. I work graveyard. I am pretty much responsible for the entire property around there.

Q. Okay. Sand Creek is located?

A. Las Vegas and Lamb, or no, Sahara and Lamb, excuse me.

Q. Okay. On the east side?

A. Yes, right by the side of the Jerome V. Mack Middle School, which we stare at that wall every night.

Q. Did you get security type training?

A. No, sir, just -- the security in this town

is not quite what it sums up to be. They just grab you and put you to work. I was a little surprised they even accepted me when I went over there.

Q. Do you have a gun?

A. No, we don't. Don't like them.

Q. How long have you been in this line of work?

A. Oh, about two years. I guess I retired, and I wanted to do something so I figured I probably knew more about that than anything so --

Q. Well, what did you do before you retired?

A. Gee, I had my own pets to go business. I have done so many things, kind of a Jack of all trades in my life.

Q. Did any of those involve any kind of law enforcement?

A. Just the security job. I work security at the place called Santa Fe Hotel in Lincoln City, Oregon for about a year and a half. Actually it was a job, I was just grabbed, I was inbetween, and I wanted something to do. It was a very easy, very simple, and I did that, I didn't do something wrong, and so I did that job.

Q. But you never received any specific --

A. No, sir.

Q. -- law enforcement training?

A. No, sir.

Q. Okay. Are you married?

A. Yes, sir.

Q. Does your wife work?

A. She works in the Emergency Room at Valley Hospital as a maid.

Q. And is she --

A. For the Culinary Union.

Q. Okay, all right.

A. She has been there 14 years that she has worked there.

Q. Okay. So has anybody -- are you close to anybody in your family, or close friends, that are employed in the law enforcement field?

A. I have a son who has been on Metro, and he now is with NHP.

Q. Okay. Your son was on Metro?

A. My other son has been security and now works for Coca Cola.

Q. Okay. What did you say about NHP?

A. The Nevada Highway Patrol.

Q. Which one is that?

A. The same son. He was with Metro. He was with the Metro School Police.

Q. Okay.

A. Went from that to NHP.

Q. Okay. And that's your son, and so you are pretty close to him?

A. No, we are not close at all. I have never been close to people in my life because of my background. I have kind of a cold streak in me. I tend to be very analytical about things, and we don't talk a whole lot.

Q. So the fact that you have a son that's in law enforcement would not cause you any difficulty?

A. None at all. I am proud of him. I'm very proud of him. I worked hard to get over it.

Q. Good, good for you. It wouldn't bother you being on a jury in a case like this and listen to the testimony of police officers?

A. No, sir, because I have foster sons also. I have 21 foster sons. They were locked up at one time or another ion their lives, and I feel equally strong about them the same as my own sons.

Q. So you were a foster parent over the years?

A. Yes, sir.

Q. And you had like, you say over the course of years you have had about 21?

A. In lower California, in Sacramento. They were patrolled -- patrolled, they were paroled to me

while I was on parole actually in the California Youth Authority, and they were the worst cases they had. That's part of my I D., I figured take the risk, you know, and they all made out, they all did quite good.

One was a crap dealer here at the Golden Nugget for years. They are all retired now. And I had a very lively contact with them. That was my purpose.

Q. So is there anything about all of those relationships that would cause you difficulty in sitting as a juror in a criminal case like this?

A. No, sir.

Q. Anything about that background being a responsible parent for these kids that were in youth parole status, anything about that that would cause you difficulty in sitting on a case like this?

A. No, for the same reason, my own blood sons and my foster sons are all friends and live together. All as equals. It didn't matter. Their backgrounds don't matter.

Q. Okay.

A. And that's it.

Q. All right. Have you ever been on a jury before?

A. Yes, sir.

Q. When was this?

A. I think it was in 1982. It's hard to remember the dates.

Q. Was it here in Nevada or was it --

A. Yeah, it was here.

Q. Here in Nevada?

A. Yes.

Q. The State of Nevada?

A. Yeah.

Q. Was it a criminal or a civil case?

A. It was a criminal case.

Q. And were you actually on the jury, or were you just in the jury pool?

A. No, I was the jury foreman, yes.

Q. You were the foreman?

A. Yes.

Q. All right. So you were in charge of that deliberation?

A. Yes, sir.

Q. All right. Without telling me what happened, did that jury deliberate?

A. Yes, sir.

Q. Did that jury return a verdict?

A. Yes, sir.

Q. Is there anything about that experience of being a juror, and especially being the foreman, being

in charge of deliverations.

Anything about that entire experience that would cause you difficulty in being on this criminal jury at this time?

A. No, I have been -- there were difficulties in the jury itself, but it would not affect me on other juries.

Q. That's really kind of what we are getting at. I am going to ask you to, and I am going to ask you if you can do this?

Can you set aside that experience, that whole scenario of being on jury duty, and that process of going through your deliberation, everything that you have been instructed that goes for that case, at that time.

Can you set all of that aside, and obviously, you are not going to be able to forget it, but for the purposes of this case, you have to leave that completely out of --

A. Not a problem.

Q. -- this whole process of being a jury before. If you are going to be a juror on this case, you have got to forget about that, listen to the evidence in this case, pay attention to the instructions I give you on the law in this case, and render a verdict strictly upon that information?

A. Yes, sir.

Q. Can you do that?

A. Certainly.

Q. Can you think of anything else that I haven't asked you about that might bear upon your ability to be a fair and impartial juror here?

A. No, sir.

Q. Can you withhold forming an opinion about any aspect of this case until you have heard all the evidence, and I instruct you on the law?

A. Definitely.

Q. Okay.

If you were sitting over here as the Defendant or as the prosecutor, would you be comfortable with a juror on the jury that has the frame of mind that you have?

A. Yes, sir.

THE COURT: All right. Ms. Kollins, I think that you are up.

MS. KOLLINS: Your Honor, the State is going to pass for cause.

THE COURT: Mr. Landis?

VOIR DIRE EXAMINATION OF JUROR

BY MR. LANDIS:

Q. Good afternoon.

You have probably got about as much experience with the criminal system as anybody in this room?

A. Not really. Maybe the wrong side for part of that but not that way.

Q. Do you think it's fair? Do you think it's fair?

A. Do I think what is fair?

Q. The criminal system.

A. Well, the system is fair, yes. It has been set up to be fair, and that's what it is for.

Q. I know.

A. If it always works out to be a fair situation for some people's lives, you know, but I think the idea is fair.

Q. Based on your experience, what do you think are some of the problems??

A. Do you have a couple of hours?

Q. I do.

A. I wouldn't do that to you.

Q. Give me the top two?

A. Well, I am a firm believer that we ought to have juries made up of people that are seniors so that they are retired, and you don't have the problem of having to ick more all the time, more of a special jury type.

Q. Yeah?

A. They'd love to work, it would give them something to do, you give them 20 bucks or 40 bucks. That adds to their retirement money. Those that get paid retirement money wouldn't care. We would save money, you know, I have got some ideas for this.

Q. Are you saying someone would sit on a jury let's say 180 days a year just different juries, and go from jury to jury?

A. Yeah, you could mix them up, you know, you can kind of scramble them up a little bit, you know, come in together, and all know each other.

You get what I'm saying. We have a biggest senior population of anywhere. It would fix your big problem. You've got wisdom, experience. You have got every peer group that's come along.

Q. I think you see that.

A. Yeah.

Q. Seniors tend to be more eager to be on juries. Do you think if we actually did that it would benefit the State or the defendants?

A. I think everybody would benefit.

Q. Yeah?

A. Everyone would, that's what we do. Because we have a lot of experience, I mean, I was on one about 10 years ago because I had experience then, but still, I

am a little smarter today than I was 20 years ago.

Q. Sure, sure. I have to give you one more?

A. Sure.

Q. I like you a whole lot.

A. Do you? Good.

Q. Another one?

A. We will work on it later.

Q. You said you don't like guns?

A. No, they are out. I'm a bit shy. You know, they bother me.

Q. Just because they are dangerous?

A. No, as right as you are, police shooting at me really damn well scared me, you know. I don't like guns. I don't have any objection to maybe having one, taking it home, or something like that, but I am not a gun person.

I have shotguns, I have used guns, but I am not in some manic fear of something like that. I wish we didn't have that.

Q. You think they do more harm than good, or more good than harm?

A. I think the gun laws are a problem, if you want my opinion on that.

I think in my background, period, I used to use a plug. To use a gun, I would rather have a bullet, not

a plug, you know, if you have a choice, if we all had guns, that would be a great equalizer.

Q. I agree with that. I agree with that.

You talked a little bit about your lack of experience.

Correct me if I am wrong, it kind of sounded like it was a tough jury deliberation?

A. Sounded like what?

Q. Your last jury experience, it sounded like it might have been a tough jury deliberation?

A. Yeah, kind of a back and forth thing, and, well, a lot of the questions that are asked now weren't asked of the jury when we are being polled, and these are good questions that you guys are asking now, you covered everything that I consider problematic then. It feels much better our system today than it was in '82.

Q. So you are saying that some people that were back there that maybe should not have been back there?

A. No, a lot of people said they had, like the Judge's question, your frame of mind, how you are thinking. Is there any reason why you wouldn't want to be here today.

People dig up and say, well, gee, I have a babysitting problem, or I have got a meeting, or birthdays.

Back then people would say anything. The Judge would ask them. He is guilty, wait a minute. We are supposed to discuss this, you know, oh no, he's guilty, and I said wait, man, we are supposed to discuss this, you know.

Q. How long did you --

A. And finally we did, and we got through it but it --

Q. How long did you deliberate, and I am not asking you what was the verdict.

A. I believe it was about a week and a half.

We was going pretty late at night, and we were ordered by the Judge to come to a decision. He got a little pushy after a while. A lot of things happened, you know, and they were uncomfortable.

Q. Yeah.

A. The situation was one where one of the questions asked earlier about, how would you feel if you felt in your heart the person was guilty, but they don't believe him. That was that kind of a problem.

They get out on that capacity because I thought, gee, this person is guilty but --

Q. I am going to stop you before I get in trouble. You are going somewhere where you are not supposed to.

A. Oh, I'm sorry.

Q. I think I am wrong so we are starting to scare these people about being on this jury.

I will pass for cause, Judge.

THE COURT: All right. Approach the bench.

(Whereupon, a brief, informal discussion was had at the bench between the Court and counsel.)

THE COURT: Okay.

We are going to excuse the following two jurors, and ask them to report back down to the third floor Jury Commissioner's office, Everett Carney and Wayne Daley.

THE COURT: We are going to replace Mr. Carney with Kelly Russo-Winn, and Wayne Daley with Bonnie Huerta.

And I appreciate your participation. Thank you very much.

JUROR CARNEY: Thank you, Your Honor. Appreciate it.

(Juror Carney and Juror Daley excused at this time.)

THE COURT: And Kelly?

JUROR CARNEY: Are we getting recycled?

THE COURT: Yes, you will be getting recycled down on the third floor, okay?

Kelly Russo-Winn, you will need to take the second chair down on the middle row, and second row in

the second chair, and then Bonnie Huerta, you will be in the top row, second chair.

VOIR DIRE EXAMINATION OF JUROR RUSSO-WINN

BY THE COURT:

Q. Kelly, Russo-Winn, is that right?

A. Yes.

Q. How long have you been in Las Vegas?

A. 45 years.

Q. Oh boy. What do you do for a living?

A. I am an administrative assistant for USA today, circulation office.

Q. Oh, how long have you been there?

A. I have been there eight years.

Q. Are you married?

A. Yes, I am.

Q. What does your husband do?

A. He is a home builder.

Q. What kind of an outfit does he work for?

A. He is a senior construction superintendent for American Homes.

Q. Okay. Do you have grown children?

A. 19 and a half year old daughter.

Q. Does she work or go to school?

A. Both, she is a the full-time student at UNLV, and also works part-time for an attorney's office,

but does it after school.

Q. Okay. Have you ever been trained in any kind of law enforcement activities?

A. No.

Q. Anybody close to you?

A. Friends from high school, but -- and we stay friends, but we see each other maybe once or twice a year.

Q. Okay.

That is the extent of your family or friends that are actually involved in law enforcement?

A. Yes.

Q. And have you, or anyone close to you, ever been accused of or the victim of any kind of sexual offense?

A. No.

Q. Have you, or anybody close to you, ever been the victim of or accused of any other crime?

A. I was the victim of like a credit card fraud, but it --

Q. How long ago was that?

A. About three years ago.

Q. Did that result in some kind of criminal action on somebody?

A. Possibly, once the bank had me sign

everything off, they released me and said we really can't answer any questions.

Q. Oh, okay.

A. So they took care of it.

Q. They took care of it, and whatever happened didn't involve you?

A. It took six months but --

Q. Well, all right. Is that the only thing that you know of that has ever happened?

A. I mean, I had my purse stolen like 15 years ago.

Q. Did you ever recover it?

A. Some of the stuff, yes. Somebody found parts of it, and I got some of it back.

I did identify -- Metro was involved with it.

I did identify the person that came into my place of business, and what happened after that I don't know.

Q. Okay.

A. I didn't look for it, or anything.

Q. You never went to court?

A. No.

Q. And you never were informed of any kind of prosecution?

A. No.

Q. I think she was wanted for a lot of stuff, and a lot of other people with her.

Q. When you think about that, is there anything about that would cause you difficulty in being a juror in a criminal case like this?

A. No.

Q. Would that or any other experience that you can think of affect your ability to sit as a juror and listen to the testimony of a police officer and give the testimony of -- the police officer's testimony greater weight or lesser weight than with any other witness?

A. No, sir.

Q. Can you listen to the testimony of a police officer and treat it just the same as anybody else? No greater weight, no lesser weight than anybody else.

Can you do that?

A. Yes, I can.

Q. Okay. And have you ever been on a jury before?

A. No.

Q. Can you think of anything that I haven't touched upon directly that may bear upon your ability to be a juror in a criminal case like this?

A. No.

Q. Can you withhold forming an opinion about anything having to do with this case until you have heard all the evidence and been instructed on the law?

A. Yes.

Q. Do you believe that you have an neutral kind of frame of mind that you would approach your jury service so that you would be comfortable if you were one of the litigants in this case?

A. Yes.

Q. A juror that has your frame of mind?

A. Yes, I do.

THE COURT: Okay. You are up.

VOIR DIRE EXAMINATION OF JUROR RUSSO-WINN

BY MS. LUZAICH:

Q. Good afternoon. Are you having fun yet?

A. Oh, joy?

Q. Would you consider yourself to be the kind of person that listened to absolutely everything and weighs everything before making up your mind?

A. I can, yes.

Q. Or do you jump to conclusions a little bit more in your daily life?

A. Sometimes in daily life I have to, but no, I believe that I could look at all options.

Q. Okay. Because that is what you are going to be asked to do. Wait until you hear and see absolutely everything before making up your mind.

A. Yes.

Q. You can do that?

A. Yes.

Q. And you have common sense?

A. Yes.

Q. You will bring it in the courtroom? You won't leave it outside?

A. No.

Q. And having raised a daughter, I expect you have used your common sense quite often?

A. I will do my best.

Q. You said she works for an attorney's as a runner. Do you know what kind of law that attorney practices?

A. I think they do a little bit of everything.

Q. Any criminal?

A. No, I don't know. We don't discuss it.

Actually, she was out about two months ago, so she works nights, the good life.

Q. Does she come over and get her laundry washed?

A. No, she is good at that. She doesn't.

I trained her well.

Q. All right. So if you do sit as a juror in this case, you are back in the deliberation room, and 11 of the jurors feel one way, and you feel a different way. What are you going to do?

A. I am going to stick to my guns, and I need to hear -- I need to go over, I guess, the evidence and it's --

Q. (Interposing) And try to persuade them?

A. Yeah, I am going to try to persuade them my way.

Q. Try to persuade them of your point of view?

A. Yes.

Q. Will you be --

A. (Interposing) Try to listen to it again.

Q. Okay. Listen to what they have to say?

A. Yes.

Q. Now, if they are able to point out that maybe there is something that you missed, or whatever, is it possible that you could change your mind?

A. It is possible if there is sufficient evidence.

Q. Right, if they really pointed out that you missed something --

A. Uh-huh.

Q. -- or what not, but if you are sure, I mean,

if you are confident in your position, will you stick to your guns?

A. Yes.

Q. Okay, good.

If the Judge reads to you the instructions at the end, and there is an instruction or two that you do not agree with, what are you going to do?

A. I will go with what I have been told, and I will write my letter to Congress later on.

Q. Everybody here is going to be writing letters to their Congressmen.

A. Yes.

Q. But you will. You will follow the law that the Court reads, because that was -- that's what the law is, right, even if you don't agree with it?

A. Yes.

Q. Okay.

Having sat here for the last day, or so, is there any question that you have a burning desire to answer?

A. No.

Q. Is there any reason you -- there's one?

A. I will ask, sure. When, I mean, this is all kept in your mind, you don't write anything down.

Q. You do actually. You are going to get, if you serve, you are going to get a notepad. You get

to take as many or litle notes that you choose.

A. Okay, thank you.

Q. And then you get to bring it back in the deliberation room with you.

A. Absolutely.

Q. No, we actually expect you to remember absolutely everything?

A. It's hard to remember what I did yesterday.

Q. One of the jurors don't even know their kid's age.

A. Exactly.

Q. Is there any reason that you could not serve in a case like this?

A. No.

Q. Knowing what you know about yourself, is there any reason that you could not sit in judgment of someone?

A. No.

Q. And if you do sit as a juror, after listening to all the testimony, seeing any evidence, if you are convinced beyond a reasonable doubt that the Defendant committed the crimes he is charged with, would you be able to say, guilty?

A. Absolutely.

MS. LUZAICH: Thank you. Pass for cause.

THE COURT: Mr. Banks, your turn?

MR. BANKS: Yes, sir, thank you.

THE COURT: Okay.

VOIR DIRE EXAMINATION OF JUROR RUSSO-WINN

BY MR. BANKS:

Q. Hello.

A. How are you today.

Q. I'm fine, thanks.

And I ask you, you probably heard me ask this question of a few of the folks here:

Would you happen to walk into the courtroom yesterday, and say, oh, my God, they have got another innocent guy sitting at the Defense table that they've charged with a crime?

A. I didn't make any judgments when I walked in.

Q. Okay.

A. He had a suit on. He looked like one of your staff.

Q. Do you think some people might make those kind of judgments?

A. Yes.

Q. Okay.

Let me ask you this this. Something has popped into my head with that answer about he looked like one of

the staff.

A. Uh-huh.

Q. My client is African American. There is a female accuser in this case, who is white.

Do you think that might be an issue for some people?

A. It might be. Not for me.

Q. Okay.

Would you agree that there are certain stereotypes in this day and age still about African American males in society?

A. I believe there is.

Q. Okay.

A. I grew up in this town, and, I mean, you get stereotypes and --

Q. And this town --

A. I went to high school here.

Q. Okay. And this town has a west side?

A. Yes.

Q. Okay. And you know what some of the stereotypes probably are, right?

A. Yes.

Q. I mean, let's say you pull up to a red light, and you look over, and you see a young black guy driving in an 80,000 BMW, I mean, what's the first thing that pops into

your mind?

A. Rapper, but that's funny, i don't know.

Q. Do you remember the Susan Smith case, that lady that drowned her kids and killed her kids in --

A. Attacked did you say?

Q. -- in South Carolina maybe?

A. I -- part of it, yeah.

Q. Okay. You remember her saying that a black guy did it?

A. That's true, yes.

Q. Okay. Why do you think she said that?

A. She had to blame it on someone. She wouldn't accept it herself.

Q. But why specifically do you think she blamed it on some black guy?

A. Maybe because of where she is from.

Q. Okay. I am going to ask you Mr. Landis's question because I think it's a good one.

What, where do you -- what side of the fence are you on? Is it worse to see somebody who is guilty not be held accountable or worse to see someone who is innocent be wrongfully convicted?

A. Someone who is innocent be wrongfully convicted, and I agree because the guilty, there is something wrong with him.

Q. It's kind of a karma thing?

A. Unfortunately.

MR. BANKS: Okay. All right. Thank you so much for your honest answers today.

JUROR RUSSO-WINN: You're welcome.

MR. BANKS: Pass for cause, Your Honor.

THE COURT: Thank you. All right, approach the bench.

MS. LUZAICH: Well, one more.

THE COURT: Oh, excuse me, I'm sorry, you are absolutely right.

VOIR DIRE EXAMINATION OF JUROR HUERTA

BY THE COURT:

Q. Bonnie Huerta. Sorry, Bonnie. Bonnie?

A. Yes.

Q. How long have you been in Las Vegas?

A. 11 years.

Q. What do you do for a living?

A. I am a medical records clerk.

Q. Who for?

A. Desert Radiology.

Q. Okay, I am familiar with them. How long have you done that?

A. Four years.

Q. Okay. Are you married?

A. Yes.

Q. What does your husband do?

A. He works at Walgreen's.

Q. He works where?

A. At Walgreen's.

Q. Oh, okay. Do you have grown children?

A. I have two.

Q. How old?

A. My oldest son is 24, and my youngest one is 18.

Q. Do they work?

A. Yes.

Q. What do they do?

A. My youngest one works at Walgreen's, and my oldest one works at the Mirage.

Q. Okay. Have you ever been trained in any type of law enforcement activity?

A. No.

Q. Any relatives or close -- people close to you ever been trained or are they employed in law enforcement activities?

A. I have a nephew.

Q. That's a police officer?

A. Yes, with K-9.

Q. Where does he work?

A. In Arizona.

Q. Oh, okay. Do you talk to him quite often?

A. Not ever.

Q. Okay. And so you really haven't ever discussed his work with him?

A. No.

Q. Anything about having a nephew in law enforcement that would cause you difficulty being a juror in a case like there?

A. Not at all.

Q. Okay. Have you, or anyone close to you, ever been the victim of or accused of a sexual related offense?

A. I have two nieces. One has passed away, but two nieces, and a friend.

Q. Two nieces and --

A. And a friend.

Q. And a friend that were the victims?

A. Yes.

Q. Of a sexual what, sexual assault?

A. Yes.

Q. Do they live here in Las Vegas or --

A. No.

Q. Where do they live?

A. One, I lost -- my friend, I've lost contact.

I think she is still in Texas, and one moved that passed away just recently.

Q. How long ago was it that the incident you are referring to occurred?

A. Oh, years ago.

One, the niece, this was probably 40 years ago, and the other one, the friend, was five -- four or five years ago.

Q. Did these incidents result in any criminal prosecutions that you are aware of?

A. The friend did.

Q. The friend did?

A. Yes.

Q. Were you pretty close to that incident at the time when it happened?

A. No, it had already been over with and done.

Q. Okay.

And as far as your nieces were concerned, there was no criminal prosecution?

A. No.

Q. Were you pretty close to what had happened, or did you find out way after the fact?

A. This was way after the fact.

Q. Okay. So you didn't even know about it at the time?

A. No, not for a long time.

Q. Okay. Anything about knowing about those incidents now, years later, that would cause you difficulty in sitting on this jury, this criminal jury, in this kind of a case?

A. Not at all.

Q. Would you have any trouble setting aside any information or on any impressions that you got from any of those experiences?

A. No.

Q. Can you set those aside and be a fair and impartial juror in a case like this?

Is that a "yes"?

A. Yes.

Q. Okay. Have you ever been on a jury?

A. No.

Q. Okay. Can you -- is there anything that I haven't touched upon that would cause you difficulty in being fair and impartial to both sides?

A. No.

Q. Do you have any reason to treat the testimony of a police officer any differently than any other witness?

A. No.

Q. Okay. Can you withhold forming an opinion

about anything to do with this case until you have heard all the evidence, and I have instructed you on the law?

A. Yes.

Q. Do you have a fair, open-minded mind, neutral approach to your service as a juror in this case so that if you were one of -- on either one of the sides, the defense or the prosecution, you would be comfortable with a juror that has your frame of mind being on the jury?

A. Yes.

THE COURT: Okay. Ms. Kollins?

MS. KOLLINS; Thank you, Judge.

VOIR DIRE EXAMINATION OF JUROR HUERTA

BY MS. KOLLINS:

Q. Ms. Huerta, where did you live before you moved to Las Vegas?

A. I lived in Arizona.

Q. In Arizona.

And is that where you spent most of your adult life?

A. No, I have lived kind of all over.

Q. Kind of all over?

A. Yes.

Q. Okay. What have you done as an adult other than medical records?

A. I used to work at a mall, form medical records.

Q. Okay. As a programmer?

A. I did day care, for 15 years.

Q. That's what you did in Arizona then?

A. Yes.

Q. And what brought you to Nevada?

A. My husband's work.

Q. Anything, any obligations at work, anything over the next few days that would cause you to be distracted from your service?

A. No.

Q. I know the Judge asked you if you had known anyone that had been sexual assault victim or accused of any kind of sexual crime.

How about, have you been the victim of any other kind of crime?

A. Credit card theft.

Q. Credit card theft. Was that resolved to your satisfaction?

A. It was just with the bank.

Q. Nobody else close to you been the victim of any kind of a violent crime?

A. No.

MS. KOLLINS: Pass for cause, Judge.

THE COURT: Mr. Landis?

VOIR DIRE EXAMINATION OF JUROR HUERTA

BY MR. LANDIS:

Q. Do you want to be on the jury?

A. I used to think not, but I think it would be a good experience.

Q. What did you used to think that?

A. When I was younger.

Q. Okay.

A. When I got the jury summons. This would be a good experience.

Q. Things have changed?

A. Yes.

Q. Do you think it's just time that changed you?

A. Yes.

Q. How do you feel about Mr. Carney's senior citizens jury idea?

A. Actually, that's something I had talked to my husband about because there are a lot of people who retire, and, you know, could do it, and would be a compliment to work or retiired.

Q. How do you feel our system deals with -- irrespective of, I doubt if you state -- let me rephrase.

How do you feel about the burden of proof, too

high, too low, just right?

A. I think it is fine.

Q. How about the presumption of innocence?

A. Where you are innocent until you are proven guilty, yes.

Q. What about -- I talked about this before.

Do you think you are a person, who would want to hear from a criminal Defendant in the case?

A. Do I want to hear direct evidence?

Q. No, hear them testify.

A. Oh, either way. Like I said, you pick up on that.

Q. Do you think you could sit in the middle, and listen to what they say once they get on the stand?

To be honest with you, there is no right or wrong answer. I don't think that's --

A. I don't think that I would go either way, they shouldn't start from that position, the way they are telling you.

Q. Thank you.

A. You're welcome.

MR. LANDIS: Pass for cause, Judge.

THE COURT: Very good.

Okay, now approach the bench.

(Whereupon, a brief, informal discussion was

had at the bench between the Court and counsel.)

THE COURT: All right. We are going to ask the following two jurors to go ahead and go back to the third floor to the Jury Commissioner's floor in the Jury Commissioner's office, Mr. Howard Kenieutubbe and Ms. Elizabeth Martin.

(Juror Kenieutubbe and Juror Martin excused at this time.)

THE COURT: We are going to replace Mr. Kenieutubbe with Juror Becky Hansen, and replace Elizabeth Martin with Susan Gregg, okay?

Becky Hansen, I am going to ask you to have that middle seat in the back row, and, let's see, Susan, you are going to take that end chair. There you go.

VOIR DIRE EXAMINATION OF JUROR HANSEN

BY THE COURT:

Q. Becky Hansen, how long have you been in Las Vegas?

A. About 10 years.

Q. And what do you do for a living?

A. I am a paralegal with the Federal Public Defender's office.

Q. Oh really. How long have you done that?

A. About 10 years.

Q. About 10 years?

A. About 11 and a half.

Q. What exactly do you do over there?

A. I work in the capital appeals unit.

Q. Post conviction?

A. Federal appeals.

Q. Okay, interesting.

Do you think it is going to cause you a problem working in the Federal Public Defender's office to be sitting here on a jury on a criminal case over here?

A. I don't think, I mean, it's a fair system.

Q. You probably have a fair amount of experience with it, too.

What kind of training and background did you go through to become a parallel?

A. First of all, I wanted to teach Latin so I went to graduate school, and then I got into the -- I left graduate school and went into -- then started working as a paralegal in the civil legal aid area, and in civil practice, I did that for about seven years, and then I got into the Federal Public Defender.

Q. Did you go through any specific training, legal and background type training?

A. I went through a paralegal program.

Q. That was outside of work?

A. That's right.

Q. An actual school?

A. Yes, that's right.

Q. How long was that education program?

A. It was about two years.

Q. Really.

A. It was night school.

Q. Why didn't you just go to law school?

A. I would not want to be involved with all the legal writing.

Q. Really? That's all you do, isn't it?

A. No, actually, it's fact finding investigations, and that's what I like.

Q. Oh, so you actually go out in the field?

A. Sometimes.

Q. Okay. You guys only represent criminal defendants?

A. That's correct.

Q. You don't think that's going to be a problem to be on a jury in a criminal case?

A. You know I thought about --

Q. What's your director's name, Fran --

MS. LUZAICH: Fran Forsum (phonetically)?

THE COURT: Fran Forsum.

Q. Does she know you are over here?

A. I think so. I would have to talk to her.

Q. Well, I didn't mean to interrupt you, you were about to tell me something.

What, what was it that --

A. Well, I think you asked because this is a criminal case.

Q. Right.

A. Could I serve? And I guess I would like to think I could. But that's entirely up to you, but that's my --

Q. Well, I mean, you are right, I mean, these guys are the ones that are going to be able to say whether they actually want you to sit on the jury or not.

But even before the question gets to them, it is kind of up to you.

You have got to, you know, tell us in all, you know, honesty, considering what you do for a living, and who you work for, if you think that you are so inundated with the process of working on criminal defense cases, that it would cause you, you know, if that's something that you are just, plain and simple, not going to be able to leave out in the hallway, sometimes, some things that go on in our lives, such as being an employee day in and day out in a particular line of work, might just become just so much of us that it is virtually impossible to say I am leaving that stuff out in the hall, and I am

going to sit here and be a fair and impartial juror, and I am not going to let anything that I do for a living come and enter into my -- this process of me being a juror. Sometimes it is just not possible.

So the first person I ask is you. Do you think it is possible or not?

A. Well, I mean, I think it's an interesting question because I think the life experience, for example, I worked with a private firm,, and I did large civil litigation cases.

Certainly, that person sitting here is different than me sitting here now with the more life experiences working now as I do in the capital unit.

And I don't think that, you know, there is an absorption of life experience that I think, you know, there are facts to, as you say, put out in the hallway some way what I am working on now, but as far as the absorption of that, I think that's a more, you know, difficult question to answer.

I mean, I think it would be, I mean, it's usually just black and white to say, that's, you know, that's a clean separation.

Q. Well, and actually, to a more pointed question.

When you go back into that jury deliberation

room to deliberate, and I have instructed you on the law, and they may ask questions of the instructions, and you give a simple definition.

What's defined as beyond a reasonable doubt, and you probably will have seen in your work many of the instructions and the statements of law as in your work as a pair legal.

Are you going to be able to take the instructions I give you and apply those instructions to the facts as you find them to be a juror and pay no attention to the information that you work with on a daily basis in terms of statements of different aspects of the law that you might do that?

A. Well, I believe in the jury system, and that means applying specific facts of this case to the instructions that you specifically give, and those are the parameters within which to --

Q. You understand exactly how it works, I mean, I just want you to be able to give us information to let you know that you can apply, you know, the law that I am telling you, and sit there as an impartial juror and be fair to both sides.

Would you be comfortable if you were the prosecution, primarily in this case, the prosecution, but the defense or the prosecution?

Would you be comfortable with somebody with your frame of mind being on the jury?

A. Well, I guess my answer is if I was sitting where the Defendant was sitting, and knowing my life experiences are quite different, I don't know that as a female white person sitting there where he is sitting if this was a jury pool of African American jurors, I don't know that I -- how I would feel.

Q. Well, I mean, I guess the basic question is:

Are you fair and impartial?

A. Well, I would like to think I am.

Q. Okay. I mean, I'm not going to just off the top, because of what you do for a living, say that you can't sit as a juror.

If somebody is willing to try, and then they can say with an honest, clear conscience that they can be fair and impartial, then I am not going to exclude you off the jury is what it comes down to.

Can you think of any other reason that I haven't really touched upon?

Have you ever been on a jury?

A. I have never been a juror.

Q. Have you ever been associated with or been the victim of, or accused of a sexual crime?

A. Nop.

Q. How about any other kind of crime?

A. I was -- this is about 20 years ago -- my house was burglarized a couple of times.

Q. Anybody ever prosecuted as a result of it?

A. No.

Q. Okay. Is that going to cause you problems?

A. I don't think so.

Q. Okay. Any friends in law enforcement?

A. No.

Q. Okay.

I guess you know all the rest of this.

Can you withhold forming any kind of opinions or judgments about any aspect of the case until you have heard all of the evidence and I instruct you on the law?

A. I would like to think so.

THE COURT: Okay. You guys are up.

MS. LUZAICH: The State is going to pass for cause.

Thank you.

THE COURT: Okay.

VOIR DIRE EXAMINATION OF JUROR HANSEN

BY MR. BANKS:

Q. Hi, Ms. Hansen, nice to meet you.

You heard me asking some of the stereotype questions earlier.

And would you agree, I guess, maybe you can draw, I mean, we all all draw from our experiences, life experiences, and I guess part of those life experiences may be employment experiences and, you know, just kind of leave yours.

Do you -- would you agree that those kinds of stereotypes are still kind of out there, based on your life experience, or your work experience, or kind of the whole picture.

Would you agree that those stereotypes we discussed are out there?

A. Yes, I think they are, to a certain degree.

Q. Okay.

Knowing that those are out there, well, what -- I mean, just off the top of your head, what are some of those stereotypes if you don't mind?

I mean, we talked about on that maybe somebody had an expensive car, an African American fellow at a red light. Somebody might think that that's a rapper.

Or what are some other stereotypes if you can think of any?

A. Well, I guess I think of it in terms of some of my African American friends, who I have talked

to, you know, they talk about their experiences of getting on an elevator, and having women clutch their -- more tightly to their purse, being followed in a store, and that kind of thing.

Q. Okay.

A. So I just don't know what that -- I've never had that experience.

Q. Okay. And I guess maybe for some people there -- it's more of an overt thing, and for some it may be subtle, or they may know of the existence of the stereotypes but maybe not put a lot of stock into it, or not put any stock into it.

Would you agree that some people might subconsciously put some stock into it?

A. Yes.

Q. Yeah, okay.

You know, everybody on both sides of the table, we all are just looking for a fair trial.

How -- do you have any thoughts one way or the other, with those stereotypes that are out there, do you think it makes it more difficult for a guy like Narcus Wesley to get a fair trial even in this day and age?

A. Well, I just think the jury of your peers, of the true peers, is not always so true.

Q. Okay.

And I think that's -- if I -- if I understood what you were saying earlier that if you -- I guess you were just kind of reversing the roles, as far as if you were in Mr. Wesley's shoes, and it was a jury not of your peers that you might -- that might cause you some concerns, and I guess this kind of a process that we are doing is how we kind of get these issues out and decide who is going to make the most -- the fairest juror, and I appreciate your honest answers today.

Thank you, Judge. Pass for cause.

THE COURT: Okay.

VOIR DIRE EXAMINATION OF JUROR GREGG

BY THE COURT:

Q. Then we have Susan Gregg, is that correct?

A. Yes.

Q. Susan, how long have you been in Las Vegas?

A. 30 years.

Q. What do you do for a living?

A. I'm a librarian.

Q. For?

A. College of Southern Nevada.

Q. Are you married?

A. Yes.

Q. What does your husband do?

A. He has a small business.

Q. In what field?

A. He sells dietary supplements to health food stores.

Q. Okay. Do you have children?

A. Yes.

Q. Grown and employed?

A. Yes.

Q. What do they do?

A. One 28 year old, and he works for Cox Communications.

Q. Okay. And that's it?

A. Yes.

Q. Okay. Have you ever been trained in law enforcement?

A. No.

Q. Anybody close to you?

A. No.

Q. Anybody, a relative, or anybody close to you, employed in any aspect of law enforcement?

A. No.

Q. Can you think of any reason why you would treat the testimony of a police officer any better or worse than the testimony of anybody else?

A. No.

Q. Not a police officer?

A. No.

Q. You would treat him just the same as anybody else?

A. Yes.

Q. Okay. Have you, or anybody close to you, ever been the victim of or accused of a sexual related offense?

A. No.

Q. Have you or anybody close to you ever been the victim of or accused of any other kind of criminal offense?

A. My husband was arrested. He was working in a direct sales company and --

Q. Was that in telemarketing?

A. Yes.

Q. Okay.

A. And this was at the time when there was a lot of focus on the telemarketing companies, and there was a bit of a tweak. They took everybody out of the company and arrested them.

Q. Who did he work for?

A. I can't -- I can't remember. It was over 10 years ago. I can't remember the company.

Q. Anything then result in terms of criminal prosecution as a result of this?

A. He pled, I would have to say under duress, because he was so upset and, you know, I have a lot of faith in his ethics.

That he was even arrested, and his lawyer advised him to plead guilty to a misdemeanor.

He didn't want to, but the stress was so much, and he had to spend a weekend in jail because he couldn't get a lawyer that quickly, and they didn't give him his medications, and so to pursue it and uphold his character, it just seemed the thing would be too stressful for him so he pled to a misdemeanor.

Q. Was this in the Federal system or was it in the State system?

A. It was in District Court.

Q. Federal District Court or here in the State District Court?

A. State.

Q. Okay. And this was about 10 years ago, or so?

A. Yeah.

Q. Obviously, it's your husband, so you were pretty intimately familiar with the whole proceedings?

A. Yes.

Q. Okay. So what was your impression?

A. Well, we went and watched the other Defendants

in court, and I think some of them said, guilty.

I don't think they all did, and like I said, his lawyer advised him that in this type of situation where there was so much focus on telemarketing, and cleaning up that industry, that he really didn't -- he wouldn't be listened to when he would protest or state his innocence in that situation.

Q. Well, it sounds like you didn't -- you weren't really impressed with the way the process worked?

A. I think it was just bad timing, I mean, if there was a bust of a company now, it would be a singular event, whereas, at that time there was so much focus.

Q. It was the whole industry that was being questioned?

A. Right, and, you know, telemarketing in itself is not a bad industry, but there can be bad people involved.

Q. Let me ask you this:

Can you disassociate that whole experience, what your husband and you went through, and sit as a juror in a criminal case like this?

A. I can, I can.

Q. I mean, this is a considerably different kind of case than what he went through in regards to

telemarketing 10 years ago, is that correct?

A. Yes.

Q. Anything about your experience that you think would make it difficult if not impossible for you to be a fair and impartial juror in this case?

A. No.

Q. Can you set that all aside and just concentrate on being a juror in this case?

A. Yes, I can.

Q. And not let any of that interfere?

A. Yes.

Q. Okay. Have you ever been on a jury before?

A. No.

Q. Okay.

Do you think that you can withhold forming an opinion about any aspect of this case until you have heard all the evidence and been instructed on the law?

A. Yes.

Q. Okay.

Do you think, considering your husband's experience, yours and your husband's experience, do you think that you have a neutral, healthy perspective as you approach jury service so that if you were the defense or the prosecution, you would be comfortable being a juror on the jury that has your frame of mind?

A. Yes.

THE COURT: Okay. All right, that's fine.

Ms. Kollins?

VOIR DIRE EXAMINATION OF JUROR GREGG

BY MS. KOLLINS:

Q. Ms. Gregg, do you know what prosecution office handled your husband's case? Was it the D. A.'s office or the Attorney General?

A. I think it was the Attorney General. It was big. I think there was a task force.

Q. That would be the Attorney General.

How did -- what did you think about how they handled the case?

A. I think that they wanted to make some headlines, and let the public know that, yes, they are attacking this problem.

There was news media there, and they took everybody out in handcuffs, and, you know, I think when it got into the courts, it was handled fairly, but I just think the mindset, it could have been just his lawyer saying, hey, you know, you are not going to get a fair shot here.

We didn't know. We don't know anything about, you know, never having been in that situation.

We have always just honorably, and it just --

it was a sad thing, you know, it took its toll on my husband.

Q. I understand.

Obviously, as a prosecutor's office, are you going to be able to -- I mean, it was difficult for your family, it was a difficult time.

Obviously, you feel a little bit politically targeted, if you will. This case has nothing to do with that, would you agree?

A. Oh I totally understand.

Q. Okay.

And so any feeling, you know, any unpleasant feelings you have towards that prosecutor's office, is it going to bleed over to the State's case?

A. No, no.

Q. You would give the State and these victims a fair trial?

A. Yes.

Q. As well as the Defendant?

A. Yes.

Q. The Judge gives you some instructions, and you swear under oath to follow those instructions.

Are you going to follow them even if you disagree with one or more of them?

A. Yes.

Q. Any obligations you have going on personally that would distract you for service to the end of this week and to the beginning of next?

A. No, no, otherwise -- I happen to be in a job that I love right now, you know, I have always wanted to be on a jury when I was working retail, you know. That would be nice but, you know.

Q. Just set me free here.

A. Yeah.

Q. You are clear? You won't have any problems with being here a few days?

A. No.

MS. KOLLINS: Pass for cause.

THE COURT: Mr. Landis?

MR. LANDIS: Thank you, Judge.

VOIR DIRE EXAMINATION OF JUROR GREGG

BY MR. LANDIS:

Q. I am sensing a little regret in that decision you guys or your husband made to plead guilty?

A. It was a hard decision.

Q. Is there some regret?

A. Regret in that there didn't seem to be a better choice.

Q. There is always one of these.

A. One of these what?

Q. Trials.

A. That's true.

But I -- it would have been harmful to my husband to go through that again.

Q. What do you mean harmful to your husband?

A. Harmful to his health. Too much stress.

Q. Okay.

A. But he is a real fighter, and if he at if he didn't think that he was being understood and having an opportunity to be heard, it would really upset him.

Q. And you guys, and I think you mentioned this, you had a lot of discussions with an attorney that you had in the case?

A. Yes.

Q. Regarding that decision?

A. Yes.

Q. Are you saying there is a risk associated with deciding to go to trial?

A. I think so. Based on this, yeah, you make a decision as to what is going to be best for a person.

Q. And kind of sometimes cutting your losses or reducing your risks, is that something that motivated his and your decision?

A. I think it -- no, it -- he never had a doubt about his innocence but it was more forcused on

his health.

Q. Okay.

If he would have been in better health, do you think the decision might have been different?

A. Yes.

Q. What part of the system do you think was the greatest cause for that in being put in a position where pleading guilty seemed to be in his best interests?

A. I think it was the politics of the time, the timing of it, and he didn't even work there that long.

He didn't make any of those big bucks, you know, harming innocent people. It's in our past, and, you know, and we are going along.

Q. Does -- is your view of the system different now as a result of what happened then?

Do you have any less faith in the system than you did before that?

A. I don't have any less faith. I have a little more insight.

Q. Do you think there might just be some wrinkles where it doesn't work quite fairly if you wouldn't have one of those wrinkles?

A. Yes.

MR. LANDIS: Thank you.

Pass for cause, Judge.

THE COURT: All right. Approach the bench.

(Whereupon, a brief, informal discussion was had at the bench between the Court and counsel.)

THE COURT: Okay.

We are going to ask the following two jurors to go ahead and step down, and report back to the third floor Jury Commissioner's office. That would be Becky Hansen and Robert Franklin.

(Juror Hansen and Juror Franklin excused at this time.)

THE COURT: We will replace Becky Hansen with Aminne Menghisteab, how do you say it, Menghisteab?

JUROR MENGHISTEAB: Yes.

THE COURT: And we will replace Robert Franklin with Barbara Wagner.

And then as soon as we get all situated here, we are going to take a break.

We are getting very close.

Ms. Menghisteab, in the middle seat in the back row, and Barbara Wagner, okay.

We are going to take a 10 minute break.

Everybody will get a chance during this 10 minute break to go to the bathroom.

Within the next 10 minutes, just relax.

In the next 10 minutes, we have got to go through

this.

During the next 10 minutes, you are admonished that you can't talk or discuss not with anyone, or amongst yourselves anything having to do with this trial.

You are not to watch, listen to, or read any reports or commentaries on any aspect of this trial through the medium of information including radio, newspapers, television, internet, or form any opinion until such time as this case is being submitted to you.

You have got 10 minutes, and you will meet Joe outside.

*****

(Whereupon, a brief recess was had.

After recess, all parties present, the following proceedings were had in open court in the presence of the jury pool:)

*****

THE COURT: Bring them in? Is everybody all right?

All right. Okay. Have a seat there. Be seated.

Anyone in the empty seats? We have one here.

Great, all right.

All right. Now we have got all of the blank spots filled in?

Okay. Do the parties want to stipulate to the

presence of the jury pool?

MS. LUZAICH: Sure.

MR. BANKS: Yes, sir.

THE COURT: Let's see, I believe it's -- okay.

VOIR DIRE EXAMINATION OF JUROR MENGHISTEAB

BY THE COURT:

Q. It's Aminne -- and help me out here. It's Menghisteab?

A. Menghisteab.

Q. Menghisteab. Tell us about herself. How long have you been here in Las Vegas?

A. 14 years.

Q. What do you do for a living?

A. I am a taxi driver.

Q. Okay. And where are you from?

A. Originally from the jungle.

Q. From the jungle where?

A. A country called Atrios (phonetically). It's in Africa.

Q. Okay. And how long have you been away from there?

A. Most of my life, 35 years.

Q. 35 years. What do you do for a living?

A. Taxi driver.

Q. Taxi driver is what you said? That's

what you have done all the time that you have been here?

A. In Las Vegas.

Q. Okay. Are you married?

A. Yes.

Q. And does your wife work?

A. Yes.

Q. What does she do?

A. Housekeeping at the Riviera.

Q. At the Rivera. Who do you drive for?

A. Whittlesea Cab.

Q. Whittlesea Cab? Okay. Do you have any grown children that are employed?

A. Yeah, I have a 10 year old boy.

Q. A 10 year old. Okay, and that's the only child you guys have?

A. Yes.

Q. Okay. Have you ever been trained in any type of law enforcement?

A. Old family was.

Q. Did you give you any special training?

A. What?

Q. Did they give you any special kind of training?

A. 30 hours of training.

Q. 30 hours of training?

A. Yes.

Q. Security, law enforcement type training?

A. No, just the Spanish on the roads, if you have a problem to work with it.

Q. Okay. How many years ago was this?

A. It was 1977.

Q. So almost 30 years ago?

A. Yes.

Q. Okay. Anybody close to you, relatives or close friends that are employed in law enforcement?

A. No.

Q. Okay.

Have you, or anyone close to you, ever been the victim of or accused of any kind of sexual related offense?

A. 1982, my brother was killed in Europe.

Q. He was killed, was murdered?

A. Yes.

Q. Okay. Did that result in some prosecution?

A. No.

Q. No one was ever caught or prosecuted for that?

A. No.

Q. And that was just -- was it just a random, how did -- what were the circumstances?

A. He was working for Rateece (phonetically)

at that time, and he was assaulted at that time, and the Spanish, he was killed in New York when he was trying to esacpe, and they never find any body, and that was the end of it.

Q. That was the end of it. You just never heard anything else about it.

A. As far as leave Europe for the rest of my life.

Q. Do you think that you would harbor some animosity towards police or the prosecution because of the fact that no one was ever caught or prosecuted for that?

A. Not killed? Whatever it would be.

Q. It is a completely different case, nothing to do with this.

A. Yes.

Q. So the fact that that happened 26 years ago in where, New York you said?

A. Yes.

Q. You would not hold that against the Henderson Police Department or the District Attorney's office because no one was caught or prosecuted?

A. Not yet, but I have recently heard some reports of Henderson police.

Q. You have been recently hearing bad things

about the Henderson police?

A. Yeah, but as to molesting some kids with the Henderson police. Help with the families, and they learn a lesson.

Q. Are you by any chance referring to the --

MS. LUZAICH: The inquest that's going on upstairs?

THE COURT: Yes.

Q. There is an inquest going on upstairs right now in regards to a --

A. Yes, I know.

Q. Is that one of the things you were referring to?

A. Yes.

Q. Do you understand that that doesn't involve any of the police officers in this case.

A. I don't know any of the police officers that were involved. I don't know.

Q. Okay. Well, I am just making a statement that none of the police officers in this case are involved in that particular incident that is going on right now at the inquest.

Would that cause you some kind of problem about sitting on a jury?

A. No.

Q. In a criminal case and seeing a police

officer from the Henderson Police Department testifying?

A. No.

Q. Would you hold anything against a police officer from the Henderson Police Department from the things that you may have heard?

A. No.

Q. Can you be fair and impartial to both the State and the Defense?

A. Yes.

Q. And set aside anything that you may have heard about some particular officer?

A. Yes.

Q. Okay. Any other incidents where anybody close to you has been the victim of a crime of any sort?

A. No.

Q. Okay. Have you ever been on a jury before?

A. I was called, but I was excused.

Q. Okay. So you were in a jury pool, but you never actually sat on the jury?

A. No.

Q. Okay. Can you think of any reason that I haven't touched upon that may bear upon your ability to sit as a juror in this case, and be fair and impartial to both sides?

A. Yeah, I have some problems in California,

and some of these from my ability listen to the medical issue.

Q. You said medical?

A. Yeah.

Q. What kind of medical issue are you referring to?

A. Well, my prostate, I'm having it corrected, and I have neck and back injuries from the car accident.

Q. Can you sit for like an hour, an hour and 15, 20 minutes?

A. I can sit, but it is very painful unless I take some pain pills.

Q. I haven't really explained this, but any time that you are sitting there, and you start to get stiff or sore, if you need to stand up and stretch, or whatever, that's certainly permissible. You don't have to sit there. You can stand up and stretch, and if you need to go to the restroom, or if you need to actually have a break, you can raise your hand, you let the bailiff know, and then we will take a break.

Would that help you out?

A. Yeah, definitely.

Q. Would you be able to sit as a juror under those circumstances?

A. I can do but my second thing, after an hour

or two, my ability to listen and to grasp the material in discussing because I cannot understand everything.

Q. You lose your ability to focus after an hour or two?

A. Yeah.

Q. Me, too.

A. That's why I was excused from the last jury pool.

Q. Well, I mean, I am serious. If you really have difficulty focusing, and being able to pay attention for a period of time, I mean, you really need to be able to focus on something for more than an hour.

If you really aren't able to do that, if you have a problem, either a medical problem or some other kind of an issue that prohibits you from being able to do that, I don't mean to make fun of it, I am not making fun of it. I am serious.

If you have a problem doing this, that's why I am asking you these questions because you should be able to do that even if we try to make arrangements so that you can stand up and take breaks, and we try to take breaks every hour, 15, 20, 30 minutes. I haven't been very good about it. But, I mean, if you have a problem, now is the time to say so.

A. Well, primarily for me, it is not with me,

and I don't discuss things I don't get in discussions if I miss several points, I cannot tell you or discuss.

Q. Well, once again, you will have the ability. You are going to have notepads, and you can take notes during the course of the trial if you want to make little notes on something, you will have a chance to do that?

A. Okay.

Q. And I will give you all kinds of instructions on that. Would that help you out?

A. Maybe.

Q. Okay. Would you be comfortable if you were the Defendant or the prosecution with somebody in your state of mind sitting on the jury? Would you be comfortable with that?

A. Yes.

THE COURT: Okay. Good enough

VOIR DIRE EXAMINATION OF JUROR MENGHISTEAB

BY MS. LUZAICH:

Q. Sir, when you talked about your brother, it appeared that you were getting a tad upset.

Is that something that you are going to relive through the course of the trial?

A. That doesn't have any relationship with the trial, just my watching it on tape.

Q. Okay?

A. That is a special person for me.

Q. Of course, of course.

A. It was my brother. With my family. But I have nothing to do with trial.

Q. Well, of course, that has nothing to do with the trial, but like the gentleman this morning, his mother was murdered. You know, that's a very traumatic event.

It's a traumatic event for you as well.

So is -- are you sure that you would be able to sit through the trial with that in the back of your mind?

A. Yes.

Q. Okay. You talked about not being able to focus and grasp things. What do you mean by that?

A. Well, the law, and I don't know if I can understand this.

Q. Okay. I mean, we are going to have 20 some witnesses come in here and tell you about events that happened one weekend in February?

A. Yes, that is what I was telling you.

I don't know about this. Perhaps I don't understand the terms and make a decision. From my viewpoint it would not be fair, and I want to be fair.

MS. LUZAICH: I would challenge.

MR. LANDIS: The Court's indulgence.

MR. LANDIS: We will submit it, Judge.

THE COURT: All right. I think under the circumstances, Aminne, we are going to go ahead and have you step down and go down to the third floor.

There are some other matters that are going on here that probably wouldn't be quite as taxing as this. So why don't you go down to the third floor. You go back to the Jury Commissioner's office, and they will work with you and reassign you, okay?

JUROR MENGHISTEAB: Thank you.

THE COURT: I appreciate it. Thank you very much.

(Juror Menghisteab excused at this time.)

THE COURT: We are going to replace Aminne Menghisteab with --

THE CLERK: Robbie Holley, badge 281.

THE COURT: Robbie Holley.

THE CLERK: R-o-b-b-i-e.

VOIR DIRE EXAMINATION OF JUROR HOLLEY

BY THE COURT:

Q. Mr. Holley?

A. Yes, sir.

Q. How long have you been here in Las Vegas?

A. 36 years.

Q. What do you do for a living?

A. I am a county dispatcher. I was with Whittlesea, and now I work with with Sierra Health.

Q. Do you know him?

A. Yes, sir.

Q. Really?

A. Yes.

Q. Not too long ago we had a wife and then five minutes later, we called her husband on the same jury panel. Okay. That didn't last long. How long have you worked for Whittlesea?

A. Whittlesea, I have worked for eight years.

Q. Okay.

A. And I have been with Sierra now for going on 10 years.

Q. That's fine. Are you married?

A. Yes, sir.

Q. And does your wife work?

A. Yes, sir.

Q. What does she do?

A. She works for Bank of America, something to do with computers.

Q. Okay. Do you have children?

A. Yes, sir, two.

Q. Grown?

A. Yes, they are both grown. One is assistant manager at Wal-Mart. The other one is in real estate, and he also rents his office for taes for Hewitt Jackson, is that right, Hewitt?

Q. Right, good. Have you ever had any training in law enforcement?

A. No, sir.

Q. Has anybody, any close family or relatives, or friends, been employed or trained in law enforcement?

A. Well, I have two uncles in New York City, that retired, police officers.

Q. New York police?

A. Yes.

Q. Are you close to them?

A. Well, they are my uncles, yeah. Not really, real close. I don't talk to them maybe once a year when I go back and visit my mother.

Q. Okay. You don't discuss their work as police officers?

A. Not really.

Q. Anything about that relationship that would affect your ability to be on a criminal jury in a case like this, and be fair and impartial to both sides?

A. No.

Q. That or anything else you can think of in

your background that would cause you to give the testimony of a police officer any different weight, any greater or lesser weight than any other non police officer witness?

A. No.

Q. Have you, or anybody close to you, ever been accused of or the victim of any kind of a sexual related offense?

A. No.

Q. Have you, or anyone close to you, ever been the victim or accused of any other kind of criminal activity?

A. No.

Q. Okay. Have you ever been on a jury?

A. 18 months ago.

Q. Really.

A. Yes, sir, five day trial, criminal trial.

Q. Five day criminal trial?

A. Yes, and I was the alternate on the jury.

Q. And you were an alternate on the jury?

A. Yes, right.

Q. Okay. So I take it then that as a juror, they deliberated, and they held you in reserve?

A. Yes, exactly right.

Q. Did you -- you didn't actually participate then in the actual deliberation, or did you?

A. No, I didn't.

Q. Okay. You weren't called upon as the alternate to go, to help deliberate, okay.

Did you come in when the jury came back in? Did you come --

A. No, they called my.

Q. And they told you that the jury had reached a verdict?

A. Yes.

Q. Okay. And that wasn't very long ago either.

A. Five days was it.

Q. No, I mean, it was only a year and a half ago?

A. Yeah. For some reason, every 18 months I get called for jury duty. You know, for some reason, I don't know what it is, but, you know, I have been questioning this, because I work with 250 people, and two of us get called every 18 months for jury duty, and the others never get called so, I mean, I don't understand how that system works.

Q. Actually, I don't know enough even to give you an answer. I would love to but I don't know. I don't even know how it comes to pass.

So you actually have been called to jury duty on more than one occasion?

A. Oh yes, definitely, sir.

Q. But you only got in the box to hear a trial just the one time and then it was as an alternate.

Okay. Well, is there anything about that experience of being on that jury, or any of the vast experiences of being in the jury pool that would make it difficult for you to be on this jury, and sit as a juror in this case, and be fair and impartial to both sides?

A. No.

Q. Okay. Because it is important that whatever went on, even as a juror, as an alternate juror, you heard all the instructions. You heard everything.

So it's important that you set aside anything that you have in your mind about that experience, and any of those instructions. I don't know what kind of a case it was, and a lot of it may not apply here so you need to set aside all of that information, leave it outside. Don't think about it. Don't consider it and pay attention to just the evidence that you hear in this case, and the instruction that I give you about this case.

Can you do that?

A. Yes, Your Honor.

Q. Okay, that's all I wanted to know.

So can you think of anything else that I haven't touched upon that might bear upon your ability to be fair and impartial to both sides of this case?

A. No, but there is one thing you didn't mention that I wanted to.

Q. Go ahead.

A. I am an honorable discharged veteran, and I am very proud of that.

Q. You are an Army --

A. No, honorable.

Q. You are an honorable --

A. Discharged veteran.

Q. Discharged veteran?

A. Right.

Q. Okay.

A. Of the United States Air Force.

(Applause.)

Q. Congratulations. Good for you.

A. Thank you.

Q. Okay.

So, now listen, do you think that it you have -- well two things.

First of all, can you withhold forming any opinion about anything having to do with this case until all of the evidence has been presented, and I instruct you on the law.

Can you do that?

A. Yes.

Q. That is real important.

A. Yes, sir.

Q. Okay. If you were the Defendant or the prosecution in this case, would you be happy, satisfied with a juror sitting on the jury that has the frame of mind you have?

A. Yes, sir, I would.

THE COURT: Okay. Go ahead.

VOIR DIRE EXAMINATION OF JUROR HOLLEY

BY MS. LUZAICH:

Q. Mr. Holley, how long did you serve in the Air Force?

A. Four years.

Q. And in your time, well, what did you do with the Air Force?

A. I was a crew chief, which was basically I supervised work done on the jet aircraft.

Q. Okay. And in all your time with the service, did you ever have occasion to participate in a court martial, Article 15,, or anything like that?

A. No.

Q. Not as a witness even?

A. No.

Q. You know, it's funny, once you serve, you are not supposed to get called for two more years. So you should complain to someone about that. But with all your

experience, you are getting better at this than I am.

When you sat as an alternate in the criminal jury, did that frustrate you, having to listen to sit there and listen for five days and not deliberate?

A. No.

Q. Are you worried that that might happen again now?

A. No.

Q. Okay. What were the nature of the charges in the case that you heard. Do you remember?

A. Yes, do you want me to tell you what the charges were?

Q. The charges. What was the person charged with?

A. Attempted murder, two counts.

Q. With a weapon?

A. Yes.

Q. Okay.

So you would have in that case heard a lot of evidence about, you know, weapons, and what not, and probably some medical evidence.

You know, you are going to be asked to listen to the witnesses, and the expert testimony, if there is any in this case, and kind of forget about what you learned in that case. Is that possible?

A. Yes.

Q. Okay.

There was no sexual assault, no sexual allegations, or anything like that, so no sexual assault instructions, or anything?

A. No.

Q. Okay. Additionially, the law in the State of Nevada -- well, the law everywhere, but especially in the State of Nevada is very fluid. It's ever changing. So it is possible that instructions that you received then may not be good law now, do you know what I mean?

A. Yes, I do.

Q. So when you hear the instructions from the Judge at the end of this trial, can you only rely on those instructions and not go back there, and say, well, you know, in the last trial I was in, they said, this and this instead?

A. Yes, I can. That's the backbone of the whole system.

Q. Absolutely.

A. In the instructions.

Q. Absolutely.

So when the Judge just read to you the instructions, if there are any instructions that you don't agree with, what are you going to do?

A. Well, whether I agree with them or not doesn't matter. That's the law.

Q. And you will follow it?

A. Always.

Q. Whether or not you agree?

A. Yes.

Q. Write to the legislature if you have to?

A. Well, I mean, this -- we got the best system in the world in my opinion so --

Q. Okay.

As a dispatcher for like 18 years, you have dealt with many --

A. I did it a lot longer than that.

Q. In your experience of any of the cabbies that have worked for and with you, been victims of robbery?

A. Oh yes.

Q. And did you in any way participate in any of those investigations?

A. No.

Q. Any of them investigated, as far as you know, by the Henderson Police Department?

A. No.

Q. You mention that your wife does something with computers at Bank of America?

A. Yes.

Q. She is a computer person?

A. Right.

Q. Has she always worked with computers?

A. Yes.

Q. Okay.

If you served as a juror in this case, and you go back in the deliberation room, something you didn't get to do before, if 11 of your fellow jurors feel one way, and you feel the other way, what are you going to do?

A. Well, I will give my point, and you want me to elaborate and tell you why?

Q. Sure, sure.

A. Okay. One thing I do, I'm a devout Christian, and I believe that we all are going to be held accountable to a higher power one day, so whatever -- what I do is, I will -- I take things right down the middle because if I think that you guys proved your case, then that's the way it is going to go.

If I think you didn't prove your case, then it's going to go to the Defendant, and, you know, I am going to try to take myself out of it because I know one day someone is going to ask me, you know, why did you put yourself into this, and put your own personal opinion into it.

Do you understand what I am trying to say here?

In other words, I know the law is the law so we have to follow it. Otherwise the whole thing falls apart.

Q. Okay.

So if you feel differently, you are going to argue to them why you believe what you believe?

A. Right.

Q. Try to persuade them of your point of view?

A. Right.

Q. Now, if they are able to point out to you something that maybe you missed or misheard, is it possible that you could change your mind?

A. Yes, that's what it is all about, right?

Q. Uh-huh, well, yeah. But if you are sure about your position, you will stick to your guns?

A. Oh yes.

Q. Okay. Do you have any problem sitting in judgment of someone?

A. No, not because that is our system and, you know, it works.

Q. Okay.

So, if at the end of the trial, after you hear all the testimony and see the evidence, if you are convinced beyond a reasonable doubt the Defendant is guilty of the crimes he is charged with, would you be able to say, guilty?

A. Yes.

MS. LUZAICH: Thank you.

Pass for cause, Judge.

THE COURT: Who is next?

VOIR DIRE EXAMINATION OF JUROR HOLLEY

BY MR. BANKS:

Q. Hi, Mr. Holley.

A. Hi.

Q. Is it the Air Force that brought you to Las Vegas?

A. Yes.

Q. Okay.

What was your gut feeling when you heard this was a sex assault case?

A. Basically, when I hear sexual assault, a rape case, you know, but I didn't form an opinion guilty or not guilty, you know, of this.

Q. Okay.

A. It is what it is.

Q. Okay.

Do you think that whole presumption of innocence thing is maybe a little harder to implement than, say, you know, a case where somebody steals a candy bar, or something like that, in a case like this?

A. Well, yeah. It is just like earlier I heard you guys talking about the life experiences, and, you know,

the things that each and everyone of us have been through. You know we form certain opinions on different things, but you know the whole point of this is to set off on the other side.

Q. Okay.

A. And listen to just the evidence and go to that.

Q. Okay. I mean, it's a pretty explosive charge, I mean, you hear it, and it's like, you know, it hits you?

A. Yes.

Q. Is it harder in a case like this to do what you just said chair, which is set all of that stuff aside. It almost kind of defies common sense?

A. Yes.

Q. I mean, for part of our, I guess if in the end, we are just -- we are all made up of our experiences, and that's partially how we arrive at how we perceive things, isn't it hard to set that stuff aside?

A. Well, me, we are talking about me.

Like I said, I put my faith on a higher power, and my higher power says, do things the right way. Just do the right thing, and if you do the right thing, you won't have any problem.

See, this way I won't -- I take myself out of

it as much as possible.

Q. Okay.

A. And just go with the evidence --

Q. Okay. And --

A. -- or lack of evidence, or whatever.

Q. Okay.

And for you the right thing is whatever comes from the witness stand, look at the evidence, and that's what we've got to base it on?

A. Exactly.

Q. Okay.

Do you think that an accuser in a sex assault case needs to act a certain way?

A. Well, just like I heard someone say earlier, everyone is different.

Q. Okay.

A. And no, I don't think they have to act a certain way.

Q. Okay. So no preconceived notions about something like that?

A. No.

MR. BANKS: Okay. I think that's all I have. Thank you for your answers, sir.

JUROR HOLLEY: Sure.

MR. BANKS: Pass for cause, Your Honor.

VOIR DIRE EXAMINATION OF JUROR WAGNER

BY THE COURT:

Q. And then we have Barbara Wagner?

A. Correct.

Q. Barbara, how long have you been in Las Vegas?

A. Since I was two months old.

Q. Okay, good for you. What do you do for a living?

A. I am a high school registrar.

Q. At which high school?

A. Centenniel. Way out on the north side.

Q. Is Janice Roland the principal?

A. No. She is at Cimarron.

Q. Cimmaron, right. Carolyn Leavitt was the first principal.

Q. Okay, I know who that is. And how long have you worked there?

A. At Centenniel, since the fall of 2000.

Q. Okay. How long have you been with the school?

A. 13 years.

Q. Excellent. Are you married?

A. Yes.

Q. And your husband does what?

A. We have an embroidery store, and he does custom embroidery on businesses, you know, their shirts, the left chest.

Q. Logos, and that kind of stuff?

A. Yes.

Q. Does he have one of those big computerized machines that does all that?

A. He has three.

Q. He has three?

A. Yes.

Q. He doesn't sit at a sewing machine doing that?

A. No.

Q. Okay. That's how I do it. And you have any grown children.

A. I have four boys grown.

Q. What do they do? Start with the oldest one down.

A. The oldest is 25, and he works in the store with my husband.

My second oldest is married and lives in Frado, Texas and is attending school there and working full-time.

And my third son, who is -- well, my second son is 24, the third son is 23, and he is at UNLV. He

works -- he goes to school full-time, and he works for Wright Engineering, and my youngest son is 21, and he attends UNLV, and he works part-time for Sierra there.

Q. Excellent. Have you ever been trained in any kind of law enforcement?

A. No.

Q. Have you, your close relatives, anybody close to you, employed in law enforcement?

A. My brother works, now he works for LAPD. He is a documents examiner. He retired from Metro here.

Q. He retired from Metro here after how many years?

A. 29.

Q. What's his name?

A. William Lieber (phonetically).

Q. Okay.

And then he moved into the L. A. area and works as a document examiner?

A. He did the same thing here as he does there.

Q. Oh, okay. Anything about that -- your brother, you are close to him, I believe?

A. Yes.

Q. Anything about that that your brother has been a police officer for Metro that would cause

you any difficulty with being on the jury and listening to a police officer's testimony?

A. No, I don't believe so..

Q. As a documents examiner, your brother probably spent a lot of time going to court?

A. Yes, he does.

Q. I take it you would be able to treat the testimony of a police officer witness the same as any other witness?

A. Sure, yes.

Q. Would you give their testimony any greater weight than anybody else?

A. No.

Q. Now, have you, or anyone close to you, ever been the victim of or accused of a sexual related offense?

A. I have a cousin, a cousin that's not very close to me, who was raped by an employer when she was about 16, but I didn't even know about it until probably 20 years after it happened 10 years ago. I'm not -- I haven't talked to her for 10 years.

Q. Is there anything about that incident involving your cousin that would cause you any difficulty in being a juror on a case like this?

A. I don't believe so, you know, I wasn't

involved and --

Q. You weren't involved with it at all at the time because you didn't know about it until 10 years after it happeend?

A. Right.

Q. And can you set that all aside?

A. Yes.

Q. And just in a case like this, base it strictly on the evidnece that you hear?

A. Yes.

Q. Okay. Have you ever been on a jury before?

A. No.

Q. Have you, or anybody close to you, ever been the victim of or accused of any other kind of a crime?

A. One of my sons was arrested for possession of drug paraphernalia.

Q. A misdemeanor?

A. Yes.

Q. I assume that he was young or was he over --

A. He was young. He wasn't super young. He was 18.

Q. So he was treated as an adult?

A. Yeah.

Q. Okay. Did you follow along what happened to him as a result of that?

A. You mean as far as letting him sit in jail before I bailed him out?

Q. Well --

A. Yes.

Q. I didn't think anybody did that.

Well, in the actual prosecution of the case, did you follow along?

A. You know, we had an attorney that went in there, you know, and he --

Q. And made a deal?

A. Yes.

Q. Okay.

Was there anything about the way the case was handled that gave you a problem?

A. No, I don't think so.

Q. Do you think everybody was treated fairly?

A. Yes, I believe so.

Q. Did you see anything about the way the system works that you thought was out of line?

A. No.

Q. You wouldn't hold against the Police Department, or the prosecution, the fact that your son was charged with, and I presume you made some kind of an arrangement?

A. Yes.

Q. Or negotiated?

A. Yes, we did.

Q. As a resolution?

A. Yes, we did.

Q. Anything about any of that that would cause you to hold any animosity towards the Police Department or the District Attorney's office?

A. No.

Q. Okay. Did I ask you already if you have been on a jury?

A. Yes, you did ask, and no, I have not.

Q. I have asked that a couple of times.

Is there any reason why you would be unable to withhold forming an opinion until after you have heard all of the evidence and been instructed on the law?

A. No.

Q. Do you think that you have a healthy, neutral frame of mind approach to your job as a prospective juror in this case?

A. Yes, having the boys that close, you again try to listen to both stories.

Q. You listen to disputes amongst your boys?

A. Yes.

Q. And you pay attention, and you listen to everybody, and then figure out who is telling the truth

and who is not?

A. Right.

Q. Good for you. Are you pretty good at it?

A. Well, you can't always be absolute with your children because, you know, they fib, and things like that, but, you know, you try to do your best to --

Q. Sort it out?

A. Reason it out so that you can sort it out.

Q. All right. If you were the Defendant or the prosecution in this case, would you be comfortable with a juror being on the jury that has your frame of mind?

A. I believe so.

THE COURT: Okay.

MS. KOLLINS: Thank you, Judge.

VOIR DIRE EXAMINATION OF JUROR WAGNER

BY MS. KOLLINS:

Q. Good afternoon. How are you?

A. Good.

Q. Ready to get out of here?

A. I am sure everybody is.

Q. Let's cut right to the chase. You are -- you know Brian Murray?

A. I -- he worked at Western High School when I worked there.

Q. Were you a registrar?

A. I was a secretary, curriculum secretary.

Q. So what kind of interaction do you have with Mr. Murray?

A. Not very much interaction with him other than, you know, the students always want to know what their schedule is going to be ahead of time, you know, and who the instructor is going to be, if it is going to work better for them, or, you know, that kind of stuff, but generally, I get a lot of that with them.

Q. Did you socialize with him outside of school, unrelated school related?

A. No, I did not.

Q. If Mr. Murray comes in here and testifies, are you going to accept his testimony as you would would any other witness or hold him in a higher regard just because you know him professionallly?

A. No, he would be the same as anyone else.

Q. So you weren't the kind of associates where you got to have coffee or lunch?

A. No.

Q. Or anything like that?

A. No.

Q. You just know him?

A. Yes.

MS. KOLLINS: Okay, thank you. Pass for cause, Judge.

VOIR DIRE EXAMINATION OF JUROR WAGNER

BY MR. LANDIS:

Q. I want to talk just briefly about your son's arrest. I am guessing, and correct me if I'm wrong, you found out about it when he called from jail?

A. Correct.

Q. What did he say?

A. I don't like it here. Can you bail me out?

Q. Was the first thing he said, mom, I got arrested? Well, I assume from the --

A. Probably something to that effect.

Q. Probably from the recording, you knew where he was phoning from?

A. Yes, right.

Q. He said something like, mom, I got arrested. Was your first thought, how dare they arrest my son, or what did you do?

A. My first question to him was what were you arrested for?

Q. And his answer was drug paraphernalia?

A. Yes.

Q. What was the next question?

A. What did you do?

Q. And did he admit to it?

A. Yes.

Q. How long did you make him sit in jail?

A. Well, it was overnight night.

Q. You talked a little bit about settling a little bit about settling disputes amongst the kids and how sometimes kids like to fib?

A. Correct.

Q. What do you think motivates them to do that, at least with some of the reasons that kids use today?

A. Well, my two oldest are very competitive, and sometimes it's just their competitiveness.

The second oldest was bigger and older by my definition, so, I mean, you know, they are boys and like for many, many times earlier, boys will be boys, you should have little girls, and yeah, I know the difference, I mean, all of my boys are very different, and they different things, they express themselves differently, and, you know, you have to take that into account when they are trying to make their way through the mud.

MR. LANDIS: That's right. Thank you.

I will pass for cause.

THE COURT: All right. Folks, come on up.

(Whereupon, a brief, informal discussion was

had at the bench between the Court and counsel.)

THE COURT: All right.

We are going to ask the following two jurors to go ahead and step down, please, and that would be Susan Gregg and Mark Snelling.

We will replace them Susan Gregg with Stephanie Abernathy, and we will replace Mr. Mark Snelling with Bonnie Brunson.

(Juror Gregg and Snelling were excused at this time.)

THE COURT: And Stephanie, you will the chair in the back row to the left, and Bonnie, you will be taking the chair on the lower right.

VOIR DIRE EXAMINATION OF JUROR ABERNATHY

BY THE COURT:

Q. Okay. So it is Stephanie Abernathy, right?

A. Yes.

Q. Stephanie, and he, how long have you been in Las Vegas?

A. 22 years.

Q. Is that how old you are?

A. Yeah, but I wasn't born here.

Q. Okay. Where were you born?

A. In New Jersey.

Q. Okay. Do you work or do you go to school right now?

A. I am a free lance makeup artist. I work for myself, and I do showgirls, I do makeup, and I also work for a couple of real estate companies, but not right now because it's so bad.

Q. Okay. Real estate is pretty bad. All right, and are you married?

A. No.

Q. No children?

A. No.

Q. Okay. Have you ever been trained in law enforcement?

A. No.

Q. Have you, or anybody close to you employed in law enforcement?

A. No.

Q. Have you ever had any kind of experience with law enforcement that would have some effect upon your sitting as a juror in this kind of a case?

A. I have had experience with law enforcement, but not that way but not in that way as far as compared to judgment.

Q. Nothing that would make you give the testimony of a police officer any greater or lesser weight than non

police officer would have?

A. If you asked me a year ago, I would have said yes, but I was young and stupid, and I wouldn't choose them over anyone else.

Q. Okay. Have you ever been called for jury duty before?

A. No.

Q. Have you, or anybody close to you, ever been the victim of, or accused of any type of sexual related offense?

A. No.

Q. Okay. Have you, or anybody close to you, ever been the victim of or accused of any kind of a -- any other kind of criminal offense?

A. I was actually arrested in 2006, in Henderson, but it wasn't anything particularly formal arrest connected with that.

Q. Did anything happen as a result of the arrest?

A. I had to go to court, but it was amended to a lower -- a lesser charge.

Q. What was the charge?

A. It was assault and battery, but it got amended to a gross misdemeanor because it was with a roommate, from a relationship.

Q. Okay. You and a roommate got into a beef?

A. Yes.

Q. Okay. And were you the only one who got arrested?

A. Yes, I was, and I was also the one who called the police.

Q. You were the one who called the police, and you were the one that was arrested? Did that cause you any problems?

A. That is not funny. There is a reason. It is serious.

Q. No, I am sure of that. Did that cause you a problem?

A. No, it's always been good after, it was a year ago. I used to have the whole outlook about police not really doing their job, but I think I can now admit that I was drunk, and I did give up something, and I did what I had to do.

Q. But it wasn't like domestic violence?

A. Yes, it was. It wasn't an assault and battery. It was domestic violence.

Q. Okay. That's what it would normally be if they showed up in the room that you were having a -- but you pled guilty to disorderly conduct?

A. Actually, I was really distraught over

it, but then my attorney just gave me -- just told me to to take the deal, but I didn't like that.

Q. But you didn't plead guilty to domestic violence?

A. No.

Q. You only pled guilty to disorderly conduct? It was disorderly?

A. Disorderly, yes.

Q. Okay.

Anything about that entire scenario of events that is going to cause you any kind of difficulty sitting on the jury in a case like this?

A. No, this is a totally different situation.

Q. Well, it is totally different, but, again, it's going to be the Henderson Police Department who came out and arrested you, you know what I mean?

A. I would have arrested me, too, the way I was acting. So I don't hold it against them, the cops.

Q. Okay. You haven't been on a jury? I asked you already?

A. No, I haven't.

Q. Can you think of any other reason that would possibly cause you difficulty in being fair and impartial to both sides in a case like this that I haven't specifically asked you?

A. I'm sorry, what was the question?

Q. Well, I mean, is there anything else that I haven't specifically touched upon, anything that might affect your ability to be a juror in a case like that?

A. Yeah, I believe that I am pretty fair, and I am pretty open-minded.

That's why I don't hold the police responsible for what happened to me.

It was my fault.

Q. You wouldn't be a -- you won't go to the deliberation room --

A. I'm not biased at all.

Q. You won't go to the deliberation room and remember all of the things that were going through your mind when you got arrested, and let that interfere with your ability to just be a juror on this case and not bring in anything else from that other instance?

A. Not at all. I was just embarrassed for myself. So I am over that.

Q. You realize that there is going to be quite a few witnesses in this case that are going to be around your age?

A. What's the question?

Q. Is that going to cause you any problem?

A. No, not at all.

Q. You will still be able to listen to them and weigh their testimony, and weigh the credibility even if you weren't somebody that looks just like you, same age, and everything?

A. I don't think that age will have --

Q. It isn't going to have any effect on you?

A. No.

Q. All right. Can you withhold forming an opinion about this case -- this is pretty important -- until you have heard all of the evidence, and I have instructed you on the law?

Can you do that?

A. Absolutely.

Q. Do you think you would be comfortable if you were the prosecutor in this case or if you were the Defendant in this case if somebody that was sitting on the jury would have your frame of mind?

A. Yes, I would be.

THE COURT: Who is next?

MS. KOLLINS: Thank you, Judge.

VOIR DIRE EXAMINATION OF JUROR ABERNATHY

BY MS. KOLLINS:

Q. Good afternoon, Ms. Abernathy. How are you?

A. Good. How are you?

Q. Good. Who do you do freelance makeup work for, for like salons or --

A. Um, actually, showgirls, I have done a lot of showgirls, and stuff.

Q. Okay. So you go to each party, and you do their makeup?

A. Whatever calls me, once again, whatever it is.

Q. How long have you been doing this?

A. I have been doing makeup since I was 19 years old, and I have been working for myself for the last couple of years.

Q. Judge went through with you a lot of the stuff about the Henderson police, and I don't want to go on a drill on it, but I just want to ask you:

There is going to be some cops in this case, okay? Are you good with that?

A. Yeah, I don't have any problem with cops. Not all cops are the same. It doesn't matter. I don't feel there is anything about that.

Q. That situation, what happened happened, we will leave it alone?

A. Yeah.

Q. For our purposes here?

A. Yeah.

Q. The Judge is going to instruct you that the State's burden is prove our case beyond a reasonable doubt.

If you believe the victim and believe that we have proved our case beyond a reasonable doubt, according to the law, but you don't like the cops, you just don't like them on a personal level, can you still come back with a guilty?

A. Yes, I would, but I wouldn't hold that against the Henderson cops, or anybody. I can be fair to everyone, you know.

Q. I mean, and the victims just happened to be victimied in Henderson, and we didn't have any control over what happened, right, you know, whatever law enforcement, it was just --

A. (Interposing) As long as the evidence is there, there is no problem with finding him guilty.

Q. Where did you go to school?

A. El Dorado.

Q. And did you go to graduate school?

A. Yes.

Q. Any plans for further education?

A. Yes, I actually do have. I want to be a nurse so much.

MS. KOLLINS: Thank you. Pass for cause.

THE COURT: All right, Defense?

MR. BANKS: Yes, sir, thank you.

VOIR DIRE EXAMINATION OF JUROR ABERNATHY

BY MR. BANKS:

Q. Hi, Ms. Abernathy.

That situation in Henderson, now that you have had that experience, we will get back on it. Would you have done anything differently?

A. Well, because of my situation, would I do anything if I had not called the cops?

I would have just said it was my fault. I don't think that there is anything that I would have done different. If I had not done what I had done, I would have been in my car and out of there.

Q. Okay. So your emotions were running high?

A. Yes.

Q. Okay.

A. It was the most traumatic thing that ever happened to me, that would be it.

Q. Okay.

Looking back on it, and your emotions were running high, and you said that maybe if you had it to do all over again, you would tried not to act so erratic?

A. I would have tried nicely, but I was in a bad situation, and I just kind of freaked out, and my emotions came out. But if I had to do it again, I'm not

sure that it would have gone any different.

Q. Okay. A stressful situation. It's not like you had a training for that situation?

A. Exactly.

Q. Okay. You did the best you could with what you had?

A. Yes.

MR. BANKS: I think that's all I have, thank you. Pass for cause, Your Honor.

VOIR DIRE EXAMINATION OF JUROR BRUNSON

BY THE COURT:

Q. We have Bonnie Brunson. Bonnie?

A. Yes.

Q. How long have you been in Las Vegas?

A. I was born and raised here.

Q. Wonderful. All right. What do you do for a living?

A. Pardon?

Q. What do you do for a living?

A. I am a realtor, and thank God, I have an event planning business, too.

Q. Not much going on with the real estate business right now these days.

A. Oh, it's doing godd. It's picking up.

Q. It's getting back. We will be fine.

Are you married?

A. No, not for quite a few years.

Q. Do you have adult children?

A. I do have adult children.

Q. Where do they live?

A. My son is 38, and he has his own business, he has got his own grader, and he is close to the name of this other company, but they changed it. He has got a service retention business from the builders, and my daughter works for another group. They are architects?

Q. Okay.

A. Is that right? All right.

Q. So nobody -- nobody close to you is involved in or employed in law enforcement?

A. No.

Q. Okay. And you have never been trained in law enforce?

A. No, absolutely not.

Q. Have you, or anybody close to you, ever been accused of or the victim of any sexual related offenses?

A. No.

Q. Have you, or anybody close to you, ever been charged with or the victim of any other types of criminal offenses?

A. No.

The only thing I can relate back to at all was my brother, who was a bit wild, and he was shot, he was with some friends in California,, and they had marijuana on them.

Q. That was how long ago?

A. Oh my gosh, I've got my years. That was a long time ago, and I think he was about, well, I guess he was about 17 or 18. I'm three years older than him.

Q. So there was nothing about that incident that would affect your ability to be a juror in this case?

A. No, it was a misdemeanor, and my mother made him pay the price, but other than that.

Q. Have you ever been called to jury duty?

A. I have, many times.

Q. And have you served?

A. Yes, I have.

Q. The last time, have you served on more than one jury?

A. Yes, I have.

Q. When was the last one? Let's start with that. How long ago did you serve?

A. The last one was probably 12, 14 years ago, and it was so nondescript. I think it was a civil case.

Q. It was a civil case?

A. No, it was criminal cases.

Q. Both of them were criminal cases?

A. Yes.

Q. The one, you didn't actually deliberate?

A. No, we didn't really get that far.

Q. They made some kind of resolution before they had you deliberate?

A. Yes.

Q. What about the trial before that, previously?

A. That one, my kids were small. That was a long time ago.

Q. Was it also a criminal trial?

A. It was a criminal trial.

Q. And do you remember if you deliberated?

A. Oh, yes, quite a while. It was frustrating.

Q. Okay. Now, we have something to talk about. Were you the foreman?

A. I was.

Q. You were?

A. Yes, sir.

Q. Okay. So you were not only on the jury, and you deliberated, but you were in charge of deliberation?

A. Yes.

Q. Without telling us what happened, did the jury reach a verdict?

A. Yes.

Q. Okay.

So you said that a couple of times. It sounds like you deliberated a long time.

A. Yes, we did, and we didn't seem to hear the same things, and we called the reporter back in, and have things reread from the transcript.

Q. Okay. Do you remember how long it was that you deliberated/?

A. It was between five and six days.

Q. Between five and six days?

A. Yes.

Q. Okay. Now, and this was a long time ago?

A. This was a long time ago. My kids were -- my son was probably four -- well, I was still married so it was really a long time ago. He was under 16, and that was about it.

Q. So can you take that experience and keep it from interfering with your jury service here in this case?

A. Absolutely.

Q. Can you -- I know it was a long time ago so probably you are not letting any of the instructions on the law, or anything interfere with this case, just they tell you you remember?

A. Yes.

Q. Okay. But what we will ask you to do is to forget about anything that you might remember in regards to that jury service, and forget about it, and pay attention in this case, just to the evidence that you hear in this case, and the instructions that I give you on the law in this case and render a verdict on that, and nothing else.

Can you do that?

A. Of course.

Q. Okay, all right.

Can you think of anything that I haven't specifically touched upon, or asked you about, that might cause you difficulty in being a juror in a case like this?

A. No.

Q. Can you withhold forming an opinion about any aspect of this case until you have heard all of the evidence?

A. That's what we are supposed to do, and I would do that myself.

Q. I will tell you about 500 times before we get done. Can you follow that instruction?

A. Absolutely.

Q. Okay. If you were the Defendant or the prosecution in this case, would you be comfortable with somebody that had your frame of mind being on the jury?

A. Absolutely.

THE COURT: Ms. Luzaich, it is your turn.

VOIR DIRE EXAMINATION OF JUROR BRUNSON

BY MS. LUZAICH:

Q. Can you be fair to both sides?

A. Absolutely.

Q. Keep an open mind until all of the evidence is in?

A. That's what it has to be.

Q. And not scare the jurors into thinking they are going to have to stay four or five days to deliberate?

A. Well, if it needs to be done, it needs to be done, you know.

Q. That's very rare these days?

A. Yes.

Q. Is there any reason you can't sit as a juror?

A. No.

Q. Sit as a juror in this particular case?

A. No.

Q. Knowing what you know about yourself, you don't have a problem of sitting -- bless you -- in judgment of someone?

A. No.

Q. So if you aren't convinced beyond a reasonable doubt that the Defendant committed this crime as charged,

would you be able to say, guilty?

A. Yes.

Q. Okay. And just so say again, back when you served as a juror two times before, the law has changed a lot sicne then, so any instructions that you would have heard back then, you would forget and only follow the instructions that this Court reads to you?

A. Yes.

MS. LUZAICH: Okay, thank you.

Pass for cause, Judge.

VOIR DIRE EXAMINATION OF JUROR BRUNSON

BY MR. LANDIS:

Q. Yes, she's right, that's the second long deliberation we've heard of today, and I think people are getting lazy because you never hear of deliberations that long anymore.

Did the Defendant testify in either of those trials, do you remember?

A. One.

Q. And one, they did it?

A. In one, they did not.

Q. They didn't get far enough for him or her to have an opportunity?

A. Right.

Q. Were you expecting the Defendant to testify

in the case where they did?

A. It doesn't matter.

Q. It doesn't matter?

A. Well, it didn't matter in that case, I suppose. Do you want to know why?

Q. No, again, I am going to get in trouble. I am going to stop you.

Do you want that in this case?

A. What?

Q. The Defendant to testify?

A. I think that's up to the Defendant.

Q. Okay. Let me ask you this:

What has been your favorite question you've heard from one of the four of us so far?

A. My favorite one is the one you asked.

MR. LANDIS: Pass for cause, Judge.

THE COURT: All right. Counsel, approach the bench, please.

(Whereupon, a brief, informal discussion was had at the bench between the Court and counsel.)

THE COURT: Okay.

We are going to ask the following jurors to go ahead and step down and report to the third floor, Jury Commissioner's office, call the office tomorrow.

Bonnie Huerta, and we will replace Bonnie Huerta

with Joann Czerwinski.

Thank you again very much for your service.

(Juror Huerta excused at this time.)

THE COURT: And, Joann, you will be in that second chair in the back row.

VOIR DIRE EXAMINATION OF JUROR CZERWINSKI

BY THE COURT:

Q. By this time, Joann, I suspect that there aren't too many surprises.

A. No.

Q. How long have you been in Las Vegas?

A. I have been in Las Vegas for 12 years.

Q. Okay. What do you do for a living?

A. I am an auditor with the Internal Revenue Service.

Q. Oh, my.

A. Still friends?

Q. Are you guys real busy right before the 15th, or it probably wouldn't have any effect on you guys?

A. I am not actually because I'm the auditor when we do those years like three years back, and so we are not dealing with the current year.

Q. How long have you worked for the IRS?

A. 31 years.

Q. So you worked for them way before you came

to Las Vegas?

A. Yes.

Q. Okay. And is it true that the actual number of IRS auditors in Las Vegas is about three times the number for income tax in the United States?

A. I used to work in Baltimore, and I think that there was a fair number each -- either place.

Q. So that's just a -- that's just an old wive's tail?

A. Yeah, it is a misconception.

Q. Okay. So what -- are you married?

A. I was. My husband died.

Q. Okay. And what did your husband do?

A. He was an auto mechanic.

Q. Okay. Do you have grown children?

A. No children. One dog.

Q. One dog? The dog is not employed?

A. No.

Q. All right. So have you ever been trained, being an auditor is not considered with the IRS, it is not considered in any fashion or form of law enforcement?

A. No.

Q. Have you ever had any training in law enforcement?

A. No.

Q. Has anybody, have you any other family members or persons close to you employed or trained in law enforcement?

A. No.

Q. Have you, or anybody close to you been the victim of, or accused of any type of sexually related offense?

A. No.

Q. Have you, or anybody close to you ever been accused of or the victim of any other type of criminal offense?

A. My house was burglarized back in 2001.

Q. Here, obviously, in Las Vegas?

A. Yes.

Q. Was anybody -- was a police report made?

A. Yes.

Q. To your knowledge, was anybody ever arrested or prosecuted?

A. Yes.

Q. And were they prosecuted for it?

A. I am thinking that they did.

What happened is they got to Oregon, and the police up there found the car with our belongings in it, and some got returned back to Las Vegas through the detectives, and we recovered most of our belongings.

Q. So it was an auto theft?

A. No, it was actually a -- these two guys were terrorizing the neighborhood. One of them was a neighbor, and they were watching peoples' houses, and they were stealing cars, or they were stealing stuff right in the people's houses and robbing them.

Q. So they did prosecute as far as you know?

A. As far as I know, but we were apprised of the date, but I don't know what happened. I never did find anything out.

Q. Is there anything about that incident that would cause you difficulty in dealing and being a juror on a case like this?

A. Not at all.

Q. Could you set that aside and not let it interfere with your jury duty?

A. Yes.

Q. You wouldn't hold that against the Police Department, or the other prosecution?

A. No.

Q. Or even the Defendant because of anything that happened with respect to that other criminal activity?

A. Not at all.

Q. Okay. You can sit as a juror in this case and render a verdict based strictly upon the evidence you

hear and the instructions on the law, and that's it, nothing else?

A. Yes.

Q. Okay. Have you ever been on jury duty before?

A. No.

Q. Can you think of any reason that I haven't specifically asked you about that would bear upon your ability to be a juror in this case?

A. No.

Q. Can you withhold forming an opinion about anything having to do with this case until you have heard all the evidence and my instructions on the law?

A. Yes.

Q. Do you think that you have a neutral, healthy, mental state of mind in regards to your jury duties in a case like this?

A. Yes.

Q. Would you be comfortable if you were the Defendant or the prosecution with a juror that has your frame of mind?

A. Yes.

THE COURT: I don't know, I can't think of anything else.

MS. KOLLINS: I'm sorry.

THE COURT: I'm done. I can't go any faster.

MS. KOLLINS: I will try to as well.

VOIR DIRE EXAMINATION OF JUROR CZERWINSKI

BY MS. KOLLINS:

Q. Ms. Czerwinski, is that how you pronounce your name?

A. Yes.

Q. Do you have brothers and sisters?

A. I have one brother and one sister.

Q. Do they have kids?

A. My brother has his dog.

Q. Any other relatives?

A. Well, they mostly live on the East Coast so I don't really see them that much. I have to see them before they see me. They don't come to the West Coast too much.

Q. What did you think when you got your jury summons?

A. I was pretty excited.

Q. And why?

A. I just want to do it.

Q. Not like you're an auditor?

A. It's a different field.

Q. The Judge is going to give you some instructions.

Do you think that you can follow those instructions even if you disagree with them?

A. Yes.

Q. Hold the State to our burden?

A. Yes.

Q. Give a fair trial to the victims?

A. Yes.

Q. And can you be fair to the Defendant?

A. Yes.

MS. KOLLINS: Thank you, pass for cause.

THE COURT: Counsel?

VOIR DIRE EXAMINATION OF JUROR CZERWINSKI

BY MR. BANKS:

Q. Is it Czerwinski? That's the --

A. You are correct.

Q. All right. In your years as an auditor, do you find a lot of honest mistakes?

A. Yes.

Q. Okay. Some are a lot softer.

Q. Okay.

A. A lot of times people are their own preparers, and they are not knowledgeable of tax law.

Q. Okay.

A. And as an auditor, I have to be aware of tax law. So I have to kind of educate them as to tell them where

the error was made, and to try to keep them more aware of what -- they should be more aware of the law.

Q. Okay. So you don't have repeat the same --

A. Yeah.

Q. So they don't repeat the same mistakes?

A. Yeah, yes, we try to stop it.

Q. Okay. I imagine some issues you see, and it's like oh, this again, and you kind of know what's going on?

A. Oh yeah, I have been doing it for 22 years now.

Q. Okay.

And I imagine some of the things you see are a lot more technical?

A. Yes.

Q. Is that fair?

A. Yes.

Q. Okay. Are you still learning new things everyday as the Tax Code code changes?

A. Oh yes.

Q. Okay.

A. The Code changes.

Q. Okay. I mean, you have got a lot of training in that area?

A. Yes.

Q. Okay. It could be daunting for somebody else who maybe not -- doesn't know what's going on?

A. Sure.

Q. Okay.

How did you feel about the charge when you heard what it was, the charges?

A. I didn't feel one way or the other. It's -- I am just wondering what precipitated what happened.

Q. Okay. It didn't scare you?

A. No.

Q. Or turn you off?

A. No.

Q. Or anything like that?

A. No.

Q. Make you sick?

A. No.

Q. Nothing like that?

A. No.

Q. Okay. How do you feel about this whole presumption of innocence thing? Is that something that you are comfortable with?

A. Yes, I am.

Q. Okay. Do you want to serve?

A. Very much.

MR. BANKS: Okay. Thank you so much for your

answers.

Pass for cause, Your Honor.

THE COURT: All right. Will you approach the bench? We are real close.

(Whereupon, a brief, informal discussion was had at the bench between the Court and counsel.)

THE COURT: Okay. We are going to ask Stephanie Abernathy to step down, please, and she will be replaced by Juaneta Gibson.

Stephanie, we thank you very much for your participation, and Juaneta, you will be in the last chair in the back row.

We are almost done here.

(Juror Abernathy excused.)

VOIR DIRE EXAMINATION OF JUROR GIBSON

BY THE COURT:

Q. Juaneta?

A. Yes.

Q. Can I start asking you questions while you are still moving?

A. Yes, you can.

Q. All right. We will start at the top. How long have you been in Las Vegas?

A. I was born here. I am a native.

Q. Good for you. Do you live in Henderson?

A. No, I was born in Henderson actually, but then I came to Las Vegas.

Q. Okay. What do you do for a living?

A. I'm a homemaker.

Q. Okay. Have you ever worked outside the home?

A. Yes, I have been in retail for a time after high school, and pat-time, but mostly I have been a homemaker for most of the time.

Q. Okay. Your husband?

A. He's a contractor, a commercial contractor.

Q. His own company?

A. Yes.

Q. What's the name of his company?

A. Gibson Construction.

Q. Okay. Do you have grown children?

A. Yes, I have one of three children, one of three children, two are adults, one a child. Both adults are working. My son, my only child is 27. He is an accountant..

Q. Okay. And what did you say the oldest one does?

A. Well, he is an accountant.

Q. Okay, all right. Anybody involved in law enforcement?

A. No.

Q. Have you ever been trained in law enforcement?

A. No.

Q. No close friends or relatives in law enforcement?

A. Not close. My husband has a cousin who is with Metro, we haven't seen him in years, so we see him very rarely, like every few years, very rare.

Q. Okay. Nothing about that relationship that would cause you difficulty in being a juror in a case like this?

A. No.

Q. It was Metro, not in Henderson?

A. No, it was Metro.

Q. Okay.

Have you, or anyone close to you, ever been the victim of, or accused of, any type of sexual related offense?

A. No.

Q. Have you, or anyonne close to you, ever been the victim of, or accused of of any criminal offense?

A. No.

Q. Have you ever been on a jury?

A. I have never served on a jury. I have been called before, but usually was turned away.

Q. You never made it to --

A. I never made it this far.

Q. Okay, okay. Can you think of any reason that I haven't specifically touched broadly upon that may bear upon your ability to sit as a juror in a criminal case like this?

A. No.

Q. Do you understand the importance of not forming any type of an opinion?

A. Yes.

Q. About any aspect of the case until you have heard all the evidence, and I instruct you on the law. Do you understand how important that is?

A. Yes, I understand.

Q. And can you do that?

A. Yes, I can do that.

Q. Okay. Do you believe that you have a neutral, frame of mind in terms of your jury service today, and your duty as a juror?

A. Yes.

Q. As you approach this kind of a case, if you would be a juror in a case like this, you understand how important it is that you don't come with any leaning toward the prosecution or the defense?

A. Right.

Q. You have to keep a down the middle --

A. Open mind.

Q. Down the middle, neutral frame of mind, and listen to the evidence before you start making -- forming any opinions. Do you understand?

A. Yes, Your Honor.

Q. Can you do that?

A. Yes.

Q. If you were the Defendant or the prosecution in this case, would you be comfortable with somebody on the jury that has your frame of mind?

A. Yes, I would.

MS. LUZAICH: Pass for cause.

MR. LANDIS: The Court's indulgence. We will pass.

THE COURT: Okay. Then approach the bench here.

(Whereupon, a brief, informal discussion was had at the bench between the Court and counsel.)

THE COURT: Okay.

All right. We are going to ask Justin -- is it Gries?

JUROR GRIES: Gries.

THE COURT: Justin Gries, we are going to ask you to step down, and thank you very much for your participation.

(Juror Gries excused at this time.)

THE COURT: We are going to replace Justin with Brenda Medeiros. Brenda?

Thank you, Justin.

And Brenda, you are going to take the only open chair there.

VOIR DIRE EXAMINATION OF JUROR MEDEIROS

BY THE COURT:

Q. Now, Brenda, let me ask you something before you get even going you too from. You are from Sandy Valley, right?

A. Yes.

Q. How far is that?

A. From here to my work is 24 miles, and I work on the Strip, at Planet Hollywood, so probably another 10 miles maybe probably 10 miles maybe from where I live from here.

Q. All right. Here is how this works. There is a distance, and I am not positive what it is, if it's 50 miles or 60 miles, but I am pretty sure that it is one or the other, and you are going to be right on that borderline, and the borderline is this:

We pay to have you spend the night here if you want to stay in town.

But you might be five miles under the limit for

all I know. All I can tell you is, is this going to be a big problem commuting, and being here on time, and stuff?

A. No.

Q. Are you, if you had any the option, would you like to spend the night in town instead of going back and forth. You don't get to spend the weekend.

A. If I had to stay the night. Otherwise I would prefer just to go back home.

Q. Okay, and they pay -- I think they pay the mileage. They have a different arrangement, it's either spend the night or pay the mileage, something like that. But that wouldn't be a problem?

A. No.

Q. Okay. All right. So how long have you been in Las Vegas or in Sandy Valley? Have you always lived in Sandy Valley?

A. No, I just moved there a year ago.

Q. Okay and where did you live before then right here?

A. Vegas, for 17 years.

Q. Okay. And you work at --

A. Planet Hollywood.

Q. Planet Hollywood, doing what?

A. Waitress.

Q. Okay. Are you married?

A. I'm divorced.

Q. Do you have children?

A. I have two. My daughter is 18 and my son is 12.

Q. Does your 18 year old work?

A. No, she doesn't. They live in Florida with their father.

Q. Oh, okay.

A. Yeah, she is going to school. She graduates in May.

Q. And you you said in May? Okay. Have you ever been in law enforcement or trained in law enforcement?

A. No.

Q. Anybody close to you been trained or engaged in law enforcement?

A. My two cousins,, they live in Massachusetts. They are police officers, but I don't really talk to them too much.

Q. You don't talk to them too much?

A. No.

Q. Is there anything about the fact that you have got cousins that are police officers that would affect your ability to be a juror in a case like this?

A. No.

Q. Have you ever, you, or anyone close to you, ever been the victim of, or accused of any type of sexually related crimes?

A. My brother told me one time that an aunt, when he was a kid, did something to him, but he just mentioned it, and we never really talked about it.

Q. There was no criminal case?

A. No.

Q. As a result, or anything like that?

A. No.

Q. Anything -- well, how long ago was that?

A. Maybe 35 years ago.

Q. Okay. Is there anything about that incident that was involving your brother that would have any effect or bearing upon your jury duty here in this case?

A. No.

Q. You can set that all aside, and pay attention to this case, and render a verdict based upon this case?

A. Yes.

Q. The evidence and my instructions, is that right?

A. Yes.

Q. Okay. Can you think of anything that -- did I say -- did I ask you if you have been on a jury before?

A. No, you didn't.

Q. Have you?

A. And I haven't, no.

Q. Okay. Is there anything that you can think of that I haven't touched upon in a broad perspective here that would affect your ability to sit as a juror in a criminal case of this type?

A. No.

Q. Okay. Nothing that you can think of in your background that would cause you to give the testimony of a police officer any greater or lesser weight/?

A. No.

Q. Than any other witness?

A. No.

Q. You would treat them all the same?

A. Treat them all the same.

Q. Okay.

Do you understand the importance and the necessity of not forming any kind of an opinion about anything that has to do with this case until you have heard all of the evidence?

A. Yes.

Q. Can you do that?

A. Yes.

Q. Okay. Do you think that you have a healthy

mindset, a healthy, neutral mindset so that if you were one of the litigants, you would be comfortable with somebody that has your mindset being on the jury?

A. Yes, I do.

THE COURT: Okay, Ms. Kollins?

MS. LUZAICH: Pass for cause, Your Honor.

THE COURT: Okay.

THE COURT: Fellows?

MR. LANDIS: We will pass, Judge, thank you.

THE COURT: Okay.

Now, we have a jury, and I am going to discharge the rest of you so here is how this works. Be real careful.

I want to thank you very much for your jury service. As you can see, we started off with 80 people, we went through over two-thirds of them so we needed way more than the number of people that we end up with, and so just because you didn't get picked, I really and truly appreciated your participation because we couldn't do this if you guys weren't here.

So thank you all very much.

And I think it's too late to go to the third floor, check in. You can just check in tomorrow. Give them a call and let them know that you were discharged, and that you weren't picked.

Hopefully, that will be the end.

Okay? And thank you all very much for your participation.

All right. While they are going down to the Jury Commissioner's office, I am going to tell you guys, I have a bunch of instructions for you, but I am not going to do them until tomorrow. We are going to do that the first thing in the morning.

Tomorrow, we are proposing to start at nine. I told you all we wouldn't start until 10. Is there anybody that can't be here at nine?

Can everybody be here at nine?

We want to get as full a day in tomorrow as we can. We will probably bring them in, and we want to get as full a day in as we possibly can.

I have some instructions to read to you about generally what you do as a juror and what to expec.t.

The first thing that is going to happen -- where did Joe go?

THE CLERK: Take the jury outside.

THE COURT: Oh, okay.

The first thing that is going to happen, Joe is going to give you actual juror badges instead of the badges that came from the Jury Comissioner's office, okay?

It is real important that you keep those juror badges on any time that you are close to the Courthouse,

I mean, and there is a reason for it because it identifies you as a juror in a case that is sitting in trial.

That's different than a prospective juror. It is from being in a jury pool.

It tends -- it is supposed to isolate you and keep you apart from everybody else.

Don't talk to anybody around here because you never know who you are talking to about anything having to do with this case, in fact, just don't talk to anybody about anything to do with this case period, which includes with each other.

From now on, you won't be going in and out that front door. From now on, you are going to go with Joe out the back door, and it is the jury deliberation room right back here, and if something happens, we have a conflict with the courtroom next door, we will find another spot. But for now, this is going to be your room.

So when you guys meet, you will meet outside the double doors over here, on the side. You will go in and out those doors so stay away from the front out here, because that's where all the witnesses are going to be, and that's where the people are going to be that we don't want you to be around, okay?

So you go running out those middle doors here.

When I tell you to congregate at a certain time,

you will as a group congregate over there, and meet with Joe, until he brings you back to the deliberation room. You will have a place to leave your purses, and stuff, they will be safe there. You shouldn't have to worry about anything.

At night, you leave your notebooks such over here in the jury deliberation room.

And next time we are going to do it right now, you need to give them their badges through Joe.

THE BAILIFF: Okay.

THE COURT: This is different than the jury pool. Being the real jury, there is a different oath that you have to take so the very next thing thing we do is everybody stand, and raise your right hand. We need to swear you all in.

(Jury and alternates duly sworn.)

THE CLERK: Okay. You may be seated.

THE COURT: Okay.

Overnight, here is what is going to happen in the morning.

You are going to meet at five till nine outside of the double doors, okay?

Make sure you keep your jury badges on, have them on at lunch, have them on in the evening, have them on when you are anywhere close to theCourthouse. Keep your juror

badges out and keep them visible.

During this next however many hours until we meet again, I am going to admonish all of you:

Do not talk or discuss this case with anyone, including each other.

Do not watch, listen or listen to any reports or commentaries about anything having to do with this case or any person having to do with this case until such time as the case has been finally submitted to you.

Don't watch, listen or read any reports or commentaries from newspapers, radios, internet.

Don't look anything up. For those of you who have computers, which should be just about every single one of you, don't get curious and start looking stuff up on the internet to see if you can find something out.

Don't do anything that would constitute some kind of an investigation on your own about anything having to do with this trial.

Everything that you should consider when you retire as a juror on this case should come right from this witness stand or the evidence that has been admitted into this case and no place else.

Okay?

When you converse with your family, your husband, your wives, or whatever, that I am on a jury, it's a criminal

trial, that's it.

Say, I have been instructed by the Judge not to discuss anything else about this trial until it is over with, okay?

You guys are in recess. See you tomorrow morning at nine o'clock. We will have all day long.

(Jury and alternates excused at this time. Thereafter, the following proceedings were had outside their presence:)

THE COURT: Would you make sure that door closes when you go out? Thank you very much.

Back on the record.

All right. We need to be on the record for just a second.

All right. Counsel, you wish to make a Batson challenge to the State's striking, challenging juror number five by the name of Stephanie Abernathy.

MR. BANKS: Yes, Judge, Stephanie Abernathy, badge number 284.

Defense's position is that Ms. Abernathy was part of a protected class that being that she was African American, coincidentally, the same protective class as my client.

Based on the answers that she gave in response to the Court's questions as well as answers from the prosecution as well as the Defense, my perception is that

she say anything out of the ordinary in fact, when pressed without any prior incidents with the Henderson police, she indicated that she was out of place where she was over that, that she completely set it aside, it wouldn't affect how she approaches this case at all.

And not only that, I believe she indicated that she was a freelance makeup artist, and that she does makeup for strippers, something like that. I don't know what a -- how the Court or how the State feels about that.

I know that I have clients prosecuted where strippers are accusers, and the State in those cases put a lot of stock in what strippers say.

So I don't think the fact that she does makeup for strippers is really a reason that, you know, what I am saying, Judge, is I don't see any reason besides the fact that she is African American, and I believe once we make that claim that the State is now in a position where they have to put forth a race neutral reason for this -- for the challenge.

MS. LUZAICH: Well, first of all, I wasn't convinced that she was actually African American when she sat down.

I thought is she Mexican or black? But she is 22, and as he said, she works with strippers. It only has to be a race neutral reason.

She talked about an arrest for domestic violence. That alone is enough. She talked bout how she doesn't, or

at least at one point didn't like the Henderson Police Department.

That alone is also enough.

The fact that she has said that she has gotten over that. So what, you know, I call bullshit on that.

But those are just a series of race neutral reasons, and that's why we kicked her.

THE COURT: I think that the State has identified a sufficient race neutral reason, and that I think that they have and responded appropriately to the Baston challenge, and identified they have designated a race neutral reason.

So you have made your record, she's gone, we've got our jury.

MR. BANKS: Thank you.

THE COURT: And gentlemen, see you at nine o'clock.

MR. BANKS: Thank you.

THE COURT: And I will read through the jury instructions.

We can go off the record, Lee.

(Discussioni off the record.)

*****

(End of proceedings.)

*****

CERTIFICATE

STATE OF NEVADA)

) ss.

CLARK COUNTY)

I, LEE M. BAHR, CP, CCR 173, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place before the Hon. James M. Bixler, District Judge, presiding.

Dated at Las Vegas, Nevada, this
5th of December, 2008.

LEE M. BAHR, CP, CCR 173

30

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IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, vs. NARCUS S. WESLEY, Defendant.	Case No. C232494 Dept. No. 24

JURY TRIAL

Before the Honorable James M. Bixler
Monday, April 14, 2008, 10:00 a.m.

Reporter's Transcript of Proceedings

APPEARANCES:

For the State: Lisa Luzaich, Esq.
Stacy Kollins, Esq.
Deputies District Attorney
Las Vegas, Nevada

For the Defendant: Jeffrey Banks, Esq.
Casey Landis, Esq.
Deputies Public Defender
Las Vegas, Nevada

REPORTED BY: BILL NELSON, RMR, CCR No. 191

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TRAN

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CLARK COUNTY, NEVADA

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vs.
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Las Vegas, Nevada, Monday, April 14, 2008

* * * * *

(Thereupon, the following proceedings were had out of the presence of the jury.):

THE COURT: We're back on the record in the matter of the State of Nevada versus Narcus Wesley.

Are there any issues that we haven't -- or we need to cover on the record?

MS. KOLLINS: I don't believe so, Your Honor. Nothing from the State.

MR. LANDIS: Nothing from the Defense, Judge.

THE COURT: All right. Bring them in.

(Thereupon, the following proceedings were had in open court and in the presence of the jury.):

THE COURT: Do the parties stipulate to the presence of the jury?

MR. LANDIS: Yes, Your Honor.

MS. LUZAICH: Yes, Judge.

THE COURT: All right. Good morning.

I hope you all had a wonderful weekend away from the trial.

The State's next witness will be?

MS. LUZAICH: Tyan Tognotti.

RYAN TOGNOTTI,

who, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE CLERK: Please be seated.

Please state your full name, and spell both your first and last name for the record.

THE WITNESS: Ryan Tognotti, R-y-a-n T-o-g-n-o-t-t-i.

- - - -

DIRECT EXAMINATION OF RYAN TOGNOTTI

BY MS. LUZAICH:

Q. Good morning, Ryan.
A. Good morning.
Q. Do you live here in Las Vegas?
A. Yes, I do.
Q. Do you go to school?
A. Yes, I do.
Q. Where do you go?
A. UNLV.
Q. What year are you in?
A. I'm in my fourth year.
Q. Fourth year.
Are you going to graduate?

A. No, I got a couple more semesters.
Q. Okay. So fourth year.
Are you over 21 now?
A. Yes.
Q. Okay. I'm going to -- Do you work right now?
A. No, I don't.
Q. Did you work before?
A. Yes, I did.
Q. What did you do?
A. I was a porter at Pure Nightclub.
Q. Okay. I'm going to take you specifically back to February of 2007, last February.
Were you living here in February of 2007?
A. Yes.
Q. Specifically where were you living then?
A. 690 Great Dane Court.
Q. In Henderson, Clark County, Nevada?
A. Henderson.
Q. And when you lived at 690 Great Dane Court, was that a house or apartment?
A. It was a house.
Q. Who did you live with, if anybody?
A. I lived with four roommates, Justin Richardson, Justin Foucault and Dave Motschenbacher.
Sorry.

Q. Okay. For our Court Reporter, who was not here the other day, how do you spell Motschenbacher?
A. M-o-t-s-c-h-e-n-b-a-c-h-e-r.
Q. Okay. And when you say you lived with four roommates, were there four total?
A. Yes.
Q. Did each of you have your own bedrooms?
A. Yes.
Q. Was it a one-storey house or two-storey?
A. Two-storey.
Q. Specifically, on February 18th of 2007 were you living there then?
A. What date?
Q. February 18th, 2007.
A. Yes.
Q. With those roommates?
A. Yes.
Q. And do you remember that weekend being like the NBA All-star Weekend?
A. Yes.
Q. While you were living there last February, were you also going to UNLV?
A. Yes.
Q. Working at that time?
A. Yes.

Q. What did you do then?
A. I was a porter at Pure Nightclub.
Q. Okay. And that Sunday night of the All-star Weekend were you home with friends?
A. Yes, with roommates.
Q. Roommates and somebody else?
A. And my little brother and our friend Aitor.
Q. As you were home that night, what were you guys doing?
A. We just sat down to watch a movie.
Q. Who was there specifically?
A. Me, Justin Foucault, my little brother Clint, and Aitor Eskandon, our friend.
Q. Okay. And when you say you were just sitting down to watch a movie, had you actually turned a movie on before something happened?
A. Yes.
Q. Was anybody else in the house that was not watching the movie with you guys?
A. Justin Richardson and Danielle were there, Danielle Browning.
Q. Who is Justin's girlfriend?
A. Yes.
Q. Were they in Justin's bedroom?
A. Yes.

Q. His bedroom on the first floor of the house?
A. Yes.
Q. Is your bedroom upstairs?
A. Yes.
Q. And as you guys were turning on the movie to watch the movie, tell me about what happened.
A. We sat down to watch the movie.
We heard a knock on the door, and usually we just say, come in, so I said, come in.
Nothing happened, so I went up to go get the door.
Right as I grabbed the door handle I kind of felt it push in. I grabbed the door handle, looked outside, and I saw two black gentlemen standing outside.
Q. Had you ever seen those individuals before?
A. No.
Q. What happened when you saw them standing there?
A. I asked them if I could help them, and they asked for an individual that had previously lived at the house.
Q. Do you remember the name of the individual they asked for?
A. Grant.
Q. How did you know that that individual previously lived at the house?

A. Because the landlord told us that that gentlemen lived there previously to us.
Q. Okay. Had you gotten anything also that came to the house?
A. Yeah, mail.
Q. In the name of Grant?
A. Yes.
Q. Okay. So the guys at the door asked you about Grant.
Can you describe the two guys that were at the door.
A. One was a tall slender black male, and the other one was a short stocky black male with -- They had hats.
Q. Both had hats on?
A. Yes.
Q. What kind of hats?
A. Both like regular baseball caps.
Q. The shorter stockier one, was there anything on his hat?
A. Just a plain black hat.
Q. The taller thinner one, was there anything on his hat?
A. A plain black hat.
Q. A black hat on the taller thinner one?
A. Yeah, I believe so, or dark, darker colored.

Q. Okay. How about, could you tell about how old they were?
A. Mid-twenties.
Q. Somewhere around your age?
A. Yeah.
Q. How about what they were wearing?
A. The shorter stockier one was wearing a black T-shirt with A in Old English on it.
Q. What does that mean?
A. Like a capital A on it that looks Old English, like Old English.
Q. Kind of like script cursive?
A. Yeah.
Q. What what color was the Old English A?
A. White.
Q. What else was he wearing, a black T-shirt, white A, and what?
A. Dark pants and dark shoes.
Q. What about the other guy?
A. Dark pants and dark shoes also.
Q. Who was it that asked for Grant?
A. The shorter stockier one.
Q. What did you tell him?
A. I told him we didn't know a Grant, the only thing we knew was he previously lived here, we had mail.

I didn't tell him that, but that's the only thing I knew about Grant, but I told him we didn't know him specifically.
Q. And you told him Grant didn't live there?
A. Yeah, we told him he didn't live there anymore.
Q. What happened when you told him that?
A. He told me that I was lying to him, and that he knew Grant lived there, and kept asking for Grant.
Q. Where is this conversation taking place?
A. Right at the door.
Q. Are you inside the house?
A. I'm inside, and they are standing outside the door.
Q. What was his demeanor like while you are having this interchange?
A. Pretty stern.
Q. Okay. So what happened?
A. Then they kept asking for Grant.
We told them we didn't know where Grant was.
So then they proceeded to pull up their shirts, pull out two handguns, pointed it the -- guns at us and told us to get on the floor.
Q. Now, a second ago you said you are having this interchange. You are inside, and they are outside.
Did they come inside?

A. Yeah, when they pulled their handguns, they stepped inside, told us to get on the floor, so we all kind of hit the deck and got on the floor.
Q. When you say, we all, would that be the four of you?
A. Yeah.
Q. When you say, they pulled handguns, did both of the guys at the door pull out handguns?
A. Yes.
Q. And were they still physically standing outside the door when they reached for their handguns?
A. When they pulled up their shirts and pulled the guns out, they stepped inside the door.
Q. Kind of as they --
A. As they were doing it, yes.
Q. Okay. Did you say they both pulled up shirts and reached for guns in their waistbands?
A. Yes, the guns were tucked in their waistbands, and they pulled up their shirts, pulled out the guns, and stepped inside.
Q. Do you know much about guns?
A. Yeah, I've hunted all my life, so I kind of am familiar with guns.
Q. Okay. So you know the difference between a revolver and an automatic, or semi-automatic type guns?

A. Yes.
Q. What type of guns did these guys have?
A. Semi-automatic.
Q. Could you describe the two guns the guys had?
A. My best description was Glock nine millimeters because when the shorter stockier one stepped inside, he cocked back the chamber and a bullet flew out, and later we saw the bullet on the floor, and it was a nine millimeter bullet, so I assumed it was a Glock nine millimeter.
Q. Okay. Now, for those not familiar with guns, when you say, he cocked back the chamber, what did that mean?
A. He had the gun in his hand, he pulled the chamber back like this. It cocked a bullet out -- or ejected a bullet, and then it forced one back in.
Q. And since you are familiar with guns, at least a semi-automatic gun is a gun that has the clip like in the handle?
A. Yes.
Q. Obviously I'm not good with guns.
And the magazine of that handle the bullets puts one into the chamber, is that it?
A. Yes.
Q. And you said it was the shorter stockier one that

cocked it, correct?
A. Yes.
Q. And the color of the shorter stockier guy's gun?
A. Black.
Q. Okay. And then the taller thinner guy, you said he also had a gun, and I'm sorry, did you say his also looked like a Glock?
A. His was dark black either or dark gray.
Q. But he did not cock his?
A. No.
Q. As they came in and told you to get on the ground, as they are coming in, and you are backing up, can you still see them, the guys and their guns?
A. Yeah, I could see the guns.
As soon as I hit the deck I couldn't see pretty much anything past their waist because they were telling us to look down, they didn't want us to look at their faces.
Q. Okay. Now, in the house you said you had been watching a movie. So was the TV still on when they came in?
A. Yes.
Q. And therefore was the TV still giving off lights?
A. Yes.
Q. Were there lights on when you answered the door?

A. The high ceiling lights were on.
Q. And did they stay on?
A. No, they were turned off shortly after.
Q. Okay. The two high ceiling lights that you just described, where are they?
A. They are in the living room.
Q. In the actual living room?
A. Yes.
Q. And when they had you lay down on the ground, where in the home did they have you lay down?
A. Right in the living room.
Q. Okay. I'm going to show you what has been admitted as State's Exhibit 3.
Is this showing the living room?
A. Yes.
Q. And this carpeted area here, is that showing where you were laying down?
A. Yes.
Q. The lights that you have just described, granted you can't see the ceiling in this photo, but is that about where the high ceiling lights were?
A. Yes.
Q. And who is it that turned those lights off?
A. I'm not sure which one turned them off.
Q. But it was one of them, not you?

A. It was one of them, yeah.
Q. And while you were laying down, that is the very light there that was on?
A. Yes.
Q. Or standing up and laying down, that's the TV on, correct?
A. Yes.
Q. So they have you lay down with your heads down.
What, if anything, did either one of them say while the four of you were laying down?
A. They told us to keep our heads down, asked if there was anybody else in the house.
We told them that Justin and Danielle were in the house.
And they also asked for like any money or ATM cards, anything of that sort.
Q. Did they ask you for money before or after they asked about Justin and Danielle?
A. They asked for money before.
Q. While they were having you lay down immediately and asking for money, were they talking about Grant still?
A. Yeah, they were still asking where Grant was, and we told them he didn't live there anymore.
Q. Did they say anything else about Grant, other

than where is he?
A. Not after that.
Q. Okay. While you are laying down, and they are asking you guys about money, or -- I'm sorry -- you said they were asking, was one of them doing the talking at this point, or both of them?
A. Mostly the shorter stockier one.
Q. Okay. When he, the shorter stockier one, was asking you for money, what, if anything, did the four of you do?
A. We got out our wallets, and I think between four of us we only had like 20 bucks on us, and they said that wasn't enough.
Q. What did they say when they indicated that wasn't enough?
A. They needed more money or they were going to shoot us.
Q. Now, you said that they had asked about anyone else in the house, and you said, Justin and Danielle.
When you told them that, what if anything did either of them do?
A. They were asking which room they were in, and they went, and we told them downstairs bedroom, which is located next to the dining room, and they went and checked the bedroom and got Justin and Danielle up and

brought them out to the living room.
Q. When you said they went and checked, could you see who it was that physically went and checked?
A. The shorter stockier one.
The taller skinnier one kept an eye on us.
Q. Where in relationship to you guys was the taller skinnier one standing while the shorter stockier one went to Justin and Danielle's room?
A. In between the living room and the dining room next to the stairs.
Q. You can't see that in that picture, correct?
A. No.
Q. So when you say, in between the living room and dining room, would that be closer to Justin's room than the front door on the other side of the stairs --
A. It's closer to the living room.
Q. -- okay. Showing you State's Exhibit 1?
A. Yeah, he was standing right where that wall is, kind of like where the stairs are.
Q. Okay. If you look at the screen in front of you, if you touch it, it will show up, can you put an X where he was standing.
Okay. And then if you continued to the right, is that how you get to Justin's room?
A. If you go this way, that is where Justin's room

is.
Q. Okay. So the four of you are laying down, face down, the taller thinner one is standing where that X is, and the shorter stockier one goes to Justin's room.
Does it take a little bit before Justin and Danielle come out?
A. Yes, because Justin didn't have his glasses on and didn't know what was going on.
Q. Could you hear what was happening in Justin's bedroom?
A. He was, the shorter stockier one was, asking for Justin, calling his name like, Justin get up, Justin get up, and it took Justin a minute to realize what was going on.
Q. Okay. Did you eventually hear Justin and Danielle coming down the hallway?
A. Yeah, they eventually got up and came out to the living room.
Q. When they came out to the living room, could you tell what they did?
A. They got down on the floor, and they told them to keep their heads down too.
Q. Okay. Did the two individuals with the guns ask again about money?
A. Yeah, they asked Justin and Danielle if they had

any money on them.
Q. And did Justin and Danielle cough up any money?
A. I'm not sure on that one.
Q. Okay. What about cell phones?
A. Yeah, we all had cell phones.
Q. Did the other individuals ask about cell phones?
A. Yeah, they asked for cell phones, if any of us had cell phones on us.
Q. And did you guys give up your cell phones?
A. Yes.
Q. Did you have them like on your person, or did the two guys with guns have to go anywhere to get the phones?
A. We took our phones out of our pockets, I think most of us had them in our pockets, and kind of laid them out on the floor, and they came by and picked them up.
Q. So at least you personally, did you take your wallet and a cell phone out of your pocket and hand it to them, or at least put it in their vicinity?
A. I put it out on the floor.
Q. While the six of you are laying on the floor, and while the cell phones have been given up, what happened?
A. Can you repeat that?
Q. While the six of you are lying on the floor face

down, and you have given up wallets and cell phones, what happened next, what did the other two guys do?

A. Next they were asking us what we should do about the money situation, and we told them we had debit cards and all that, so me and Justin Foucault gave up our debit cards, and they were asking us who could drive, and I volunteered myself, so me and the shorter stockier guy went upstairs, got my keys, came back down.

The shorter stockier guy told the tall slender guy, if any of them moved, shoot them, and then the shorter stockier guy and I proceeded outside to my car.

We got in my car and went to the bank.

Q. Okay. I'm going to take you back for a second.

They had asked about other money, and you had debit cards?

A. Yes.

Q. So you said you yourself had a debit card?

A. Yes.

Q. Did you personally pull it out of your wallet?

A. I pulled it out of my wallet and put it on the floor.

Q. You did not hand it to them personally?

A. No.

Q. Do you know -- or did you see, did one of them take it?

A. Yes, the shorter stockier one took it.

Q. Okay. And did you hear whether Justin Foucault took his debit card out as well?

A. He took it out and laid his on the floor also.

Q. Could you see who took his debit card?

A. The shorter stockier one.

Q. And when he took the debit cards, and you said asked about driving, did he make any efforts to get the PIN numbers for the debit cards?

A. He told us that -- told Justin to give his PIN number to me, and if the PIN numbers are wrong, he was going to shoot me.

Q. And did he have you write it down, or how did you --

A. No, Justin just told me his PIN number, and I remembered it.

Q. Did the shorter stockier one give you the debit cards, or did he take them in his possession as you went to the bank?

A. He took them in his possession.

Q. You said that you went up to your bedroom?

A. Uh-huh.

Q. Did he go up to your bedroom with you?

A. Yes.

Q. Showing you what has previously been shown to

defense, and marked as State's Proposed Exhibit 23, do you recognize that photograph?

A. Yes, that's my bedroom.

Q. Does it fairly, accurately depict your bedroom as it looked that night?

A. Yes.

MS. LUZAICH: Move it to in evidence.

MR. LANDIS: No objection.

THE COURT: Admitted.

What number?

MS. LUZAICH: 23.

THE COURT: 23 is admitted.

MS. LUZAICH: Thank you.

BY MS. LUZAICH:

Q. Showing you State's Exhibit 23 -- -or you know what, if you touch the bottom right-hand corner of the screen -- that's right -- showing you State's Exhibit 23, you said that's your bedroom?

A. Yeah.

Q. And where in here are -- was the keys?

A. Right there on the desk.

Q. You just circled something?

A. On the desk right here.

Q. And you said the shorter stockier one followed you up to your bedroom to get your keys?

A. Yes.

Q. And then he went downstairs with you?

A. Yes.

Q. Now, you said at that point he, the shorter stockier one, told the taller thinner one, if anyone moves, shoot them?

A. Yes.

Q. When he said that, was he making any gestures, the shorter stockier one?

A. Not that I can remember.

Q. Okay. You said that if you got the PIN number wrong, or Justin gave you the wrong one, he would shoot you?

A. Yes.

Q. He said that in front of everybody?

A. Yes.

Q. As he is saying this, the taller slender one is standing there, can you still see the gun in the taller slender one's hand?

A. No.

Q. Where was he standing, the taller slender one, when you and the shorter stockier one went upstairs?

A. Pretty much in the same spot right next to the stairs by that wall.

Q. Okay. Now, before you went up the stairs with

the shorter stockier one, had the taller slender one been doing any talking?
A. I don't think so.
Q. When the short stocky one and you went to the bank, did you walk out the front door?
A. Yes.
Q. And could you see what if anything the taller slender one was doing?
A. No.
He was behind me at that point.
Q. Okay. On the -- I assume you took your keys with you?
A. Yes.
Q. On the key chain is there a house key as well?
A. Yes.
Q. Did you lock the door when you left?
A. No.
Q. Do you know, did the shorter stockier one lock the door when you left?
A. I don't remember.
I don't think so though.
Q. You got in the car?
A. Uh-huh.
Q. Is that, yes?
A. Yes.

Q. Remember, you always have to answer yes or no.
A. Yes.
Q. Thank you.
When you guys went to the car, did he indicate to you whether you should drive, or he should drive, or where you should sit in the car I should say?
A. He opened the door and made me get into the passenger side -- into the driver's seat, and I drove.
Q. And I'm sorry, did you say, through the passenger's side into the driver's seat?
A. Yeah, he made me crawl over the passenger's seat into the driver's seat.
Q. Where did he sit?
A. He sat in the passenger seat.
Q. Showing you what has been marked as State's Proposed Exhibits 24 and 25, I have shown them to Defense counsel earlier, do you recognize these?
A. Yes, yes, that's my car.
Q. Both 24 and 25?
A. Yes.
Q. And 25, is that a view with your license plate?
A. Yes.
Q. And 24 is a side view?
A. Yes.
Q. And do they fairly, accurately depict how your

car looked that night?
A. Yes.
MS. LUZAICH: Move them into evidence.
MR. LANDIS: No objection.
THE COURT: 24 and 25 are admitted.
MS. LUZAICH: Thank you.
BY MS. LUZAICH:
Q. For the record, what kind of car is it?
A. Honda Civic.
Q. What is the plate?
A. 920PYX, Nevada.
Q. Thank you.
Did he tell you, the shorter stockier one, where to go specifically?
A. He told me to drive to a bank.
Q. To a bank.
He didn't tell you which bank.
A. He didn't tell me specifically which bank.
Q. Was it your intention to drive to a bank?
A. Yes.
Q. Why is that?
A. Because he had a gun pointed in my hip.
Q. So he had the gun with him in the car?
A. Yes.
Q. Pointed at your hip?

A. Yes.
Q. While you were driving?
A. Yeah.
Q. Pointed at your hip the whole time you were in the vehicle?
A. Yes.
Q. Was it your intention to go to just the closest bank?
A. Yes.
Q. Where did you go?
A. I tried to go to Nevada State Bank on Siena Heights and Eastern I believe it is, and that is a walk-in bank, like a store bank, and he didn't like that idea, so --
Q. When you say, he didn't like that idea, how do you know that?
A. Because he told me he didn't want to go to a bank you had to walk into.
He wanted to go to a drive-thru.
Q. So what did you do?
A. We went to a different bank, Bank of Nevada.
Q. Where is that?
A. That is on -- just down the street on Eastern.
Q. Still in Henderson, right?
A. Yeah.

Q. What happened when you went to that bank?
A. That bank, the cards didn't work at that bank, so we drove to another bank.
Q. Which bank did you drive to?
A. St. Rose and Eastern, a Wells Fargo.
Q. Did you go up to that drive-thru as well?
A. Yes.
Q. What happened when you went to the drive-thru?
A. We put the cards in and withdrew money.
Q. When you say, we put the cards in --
A. I put the cards in and withdrew money.
Q. Do you know which one you did first?
A. I believe I did mine first.
Q. How much did you withdraw?
A. 400.
Q. How can remember you withdraw 400 -- or withdrew 400?
A. Because I wasn't sure how much I had in my bank, so I just withdrew $400.
Q. What did you do with the money when you withdrew it?
A. I handed it to him.
Q. Do you know what he did with it?
A. Put it in his pocket.
Q. And then what did you do?

A. I took the other card, put it in the machine and withdrew $500.
Q. Would that be from Justin's card?
A. Justin's bank.
Q. What did you do with the money when you took it out?
A. Gave it to him.
Q. And he put it?
A. In his pocket.
Q. When you were done, was he saying anything while this is going on?
A. He was asking me if I had played any sports, and just trying to make small talk.
Q. So the shorter stockier guy in the car is making small talk with you?
A. Yeah.
Q. Did you have a conversation about playing sports?
A. Yes, we did.
Q. What did that entail?
A. Just asking me what sports I played, and where did I grow up, and stuff of that sort.
Q. Did you tell him you grew up up north in a small town?
A. Yes.
Q. Did he talk to you about like where he grew up

and stuff?
A. No.
Q. Did he talk to you about sports?
A. Not really.
Q. While you are driving, and the gun is in your side -- I mean, did he point, you know, poke you with it, or do anything, or just being obvious it was there?
A. Yes, it was firmly pointed in my hip.
Q. How did you feel about that?
A. A little nerve racking.
Q. When you were done withdrawing the money, did you go from the bank right home?
A. Yes.
Q. Why is that?
A. Because that's where he wanted to go, back to the house.
Q. When you got back to the house, did you two go inside the house?
A. Yes.
Q. When you got inside the house, where -- or could you see where the taller thinner one was?
A. He was sitting on the stairs.
Q. Showing you State's Exhibit 1, now that is the door that you walked in or out of with the shorter stockier guy, and back into with the shorter stockier

guy?
A. Yes.
Q. Are those the stairs you mentioned the taller thinner one was sitting on?
A. Yes.
Q. Where on the stairs, can you give me a little X?
A. There.
Q. As he was sitting on the stairs when you came in, could you see whether he had anything in his hands?
A. He had the gun in his hand, in his right hand, closer to the door.
Q. What position was he in, like how was he holding the gun when you walked in the door?
A. He had his knees up, and had the gun up like this resting in between his legs, but I could see the butt of the gun.
Q. For the record, with your right hand it was bent at the elbow so that your hand was inside?
A. His arms are resting on his legs.
Q. Both arms were resting on the inner thighs?
A. I could see the arm, the right arm closest to the door, resting on his leg.
And the gun was in between his legs, and you could see the butt of the gun.
Q. And the TV is still on at this point giving off a

glow?
A. Yes.
Q. Where are the other five kids?
A. Laying in the center of the living room.
Q. Where they were when you left them?
A. Yes.
Q. Did the shorter stockier one tell you what to do when you got back?
A. Get back down on the ground.
Q. Did you do that?
A. Yes.
Q. Did the taller thinner one say anything when you got back?
A. No.
Q. Okay. So after you laid back down on the ground with your friends, what happened?
A. They said we were 90 percent done, and then they proceeded to ask Danielle and Justin to perform sexual acts on each other.
Q. When you said, they asked, who specifically did the asking?
A. The shorter stockier one.
Q. When you say, he asked them to perform sexual acts on each other, I assume those are your words and not his?

A. Yes.
Q. What kind of words did he use?
A. Like, give just the head, and then he asked Justin to give her head or oral.
Q. Do you remember what word he used for it?
A. Not exactly.
Q. Could you see what was going on after he told them to do these things?
A. No, I couldn't see anything.
Q. Why is that?
A. Because my head was pointed at the floor.
Q. Why was your head pointed at the floor?
A. Because they told us to keep our heads down.
Q. When they had guns in their hands?
A. Yes.
Q. Could you hear what was going on after he told Danielle and Justin to do those things?
A. Yes.
Q. What did it sound like?
A. Like a sucking sound.
Q. Did there come a time that one or both of them got up, Danielle and Justin?
A. Justin got up.
Q. For what, do you know, could you hear what was going on?

A. To go get a condom.
Q. At whose request?
A. The shorter stockier one.
Q. Did he go with the shorter stockier one?
A. Yeah, Justin went with the shorter stockier one into his room.
Q. And did you hear him come back from his room?
A. Yes.
Q. And did he lay down again?
A. Yes.
Q. And when he laid back down again, what did you hear?
A. I heard a wrapper open and Justin put on the condom, and then --
Q. Or at least that's what it sounded like?
A. A wrapper opening.
And then Justin and Danielle trying to have intercourse.
Q. Was the shorter stockier one still talking while this is going on?
A. Yes.
Q. What was he saying?
A. Asking him if -- Justin to get hard, and if Justin didn't get hard, then he was going to have one of us other roommates and friends get hard.

Q. Was the taller thinner one talking at all while this was going on?
A. No.
Q. Not yet?
A. Not yet.
Q. Can you tell how long that went on for?
A. Probably about 15 minutes.
Q. Like did it seem like a while?
A. Yeah, it seemed like.
Q. And did it appear to you that Justin wasn't able to do what they wanted?
A. Yes, that's what it sounded like.
Q. What happened when they seemed to discover Justin wasn't able to do what they wanted?
A. They started asking the rest of us if we could get hard, and everybody was saying, no, no, they didn't want to do that, and for some reason I got picked out again.
Q. At that point had the taller thinner one said anything?
A. No.
Q. When you say, you got picked out, what if anything did they tell you to do?
A. The shorter stockier one told me to pull down my pants, and he put a pillow over my face, and then he

proceeded to tell me to masturbate?
Q. Did he have you turn over?
A. Yes.
Q. So what position were you in?
A. I was on my back looking face up.
Q. You said there was a pillow on your face.
Could you tell where the gun was?
A. It was being held down, that is what I assumed it was, was the gun holding the pillow on my face.
Q. Is that what it felt like?
A. That's what it felt like.
Q. You said he told you to pull down your pants and masturbate?
A. Yes.
Q. Did you do that?
A. Yes.
Q. Why did you do that?
A. Because there was a gun to my head I assumed.
Q. Did he tell you what would happen if you didn't do that?
A. He told me he was going to shoot me if I couldn't get hard.
Q. Did he give you anything to help you?
A. Lotion.
Q. How did he do that?

A. He told me to reach out my hand, and he squirted some lotion in my hand.
Q. And did you do what he told you to do?
A. Yes.
Q. Were you able to comply with his wishes entirely?
A. No.
Q. Why is that?
A. Because I was scared and couldn't -- not the right circumstances.
Q. What happened when you weren't able to?
A. He after a couple minutes told me to pull my pants up.
Q. Did you do what he said?
A. Yes.
Q. And then what happened?
A. Then he told me to turn over and lie face down again.
Q. Did you do that?
A. Yes.
Q. What is the next thing you heard that you can remember?
A. I remember them telling Danielle to move up onto a chair, and Danielle moved up onto the chair, and --
Q. Do you know, did she go somewhere before the chair?

A. Not that I --
Q. Could you tell?
A. No, I couldn't see anything really.
Q. Okay. Was your head down, face down, the entire time, except while he told you to turn over?
A. Yes.
Q. And who is it that told Danielle to move?
A. The shorter stockier one.
Q. Do you know, did Danielle have her clothes on?
A. I couldn't see anything.
I assumed her pants were off because of what happened her and Justin earlier.
Q. Okay. Did you hear them tell her to do anything about her clothes?
A. No, not that I can remember.
Q. Could you tell, like could you feel or sense whether she went where they told her to go?
A. Yes, you could hear her walk over there.
Q. Okay. And what happened next?
A. The shorter stockier one asked the taller skinnier one if he wanted to do anything with Danielle, and he said, yeah.
And then after a little bit I could hear the taller skinnier one ask Danielle if that felt good.
Q. Could you tell that it was the taller skinnier

one talking because the voice was different?
A. Yes.
Q. And could you hear what was being done, I mean, was there a noise distinct enough that you could tell what was happening?
A. All I could hear him was asking her if it felt good.
Q. And was the sound coming from the direction of the chair?
A. Yes.
Q. I'm showing you for now State's Exhibit 2.
Is that the chair you are talking about?
A. Yes.
Q. Are you guys still on the carpet in the center?
A. Yes.
Q. So is she behind you?
A. Yes.
Q. So you couldn't even, if you were face up, you really couldn't have seen her?
A. No.
Q. Could you hear -- Well, do you remember him saying anything other than, how does this feel?
A. No, I don't remember anything else.
Q. Do you remember telling the police if he asked if he could stick his finger in her?

MR. BANKS: Objection, Judge.
THE WITNESS: No.
MS. LUZAICH: That's fine.
He said, no.
THE COURT: All right.
BY MS. LUZAICH:
Q. Could you hear what if anything the taller thinner one was saying after that?
A. I just remember him asking her if it felt good.
Q. Okay. Could you tell how long Danielle was away from you guys in the chair?
A. Five, ten minutes.
Q. Did that stop?
A. Yes.
Q. Did you hear what it was that caused that to stop?
A. I don't remember.
Q. Did the shorter stockier one say something?
A. He told Danielle to get back down on the ground.
Q. But it was the shorter stockier one that did that, not the taller thinner one?
A. Huh-uh -- Yes, the shorter stockier one told Danielle to get back down.
Q. Always yes or no.
Did she do what he told her to do?

A. Yes.
Q. What happened when all six of you were back together on the ground?
A. We were laying in a circle.
Q. Did they do anything?
A. They told us that they were going to leave, and that not to lift our heads up, and they were just going to leave.
Q. Who was telling you that?
A. The shorter stockier one.
Q. Did he tell you what to do?
A. He told us to lay our heads down, don't look up, and they were going to leave, and then my little brother asked for our cell phones back.
Q. Did they mention what they were going to do with -- about the cell phones?
A. They told us they were going to throw our cell phones out in the bushes outside.
Q. Was it still the shorter stockier one saying that?
A. Yes.
Q. Did he tell you anything about how long to wait?
A. Two minutes before we all got up.
Q. And did they leave?
A. Yes.

Q. When they left, did they shut the door, or left it open?
A. They left it open.
Q. What did you guys do when they left?
A. We waited for about thirty seconds, and then the shorter stockier one popped his head back in and said, hey, don't move.
And then he said, all right, we're done.
And then he left.
Q. And what did you guys do when he left the second time?
A. We waited, counted out loud for two minutes, and then --
Q. Why did you do that?
A. Just to make sure we waited two minutes.
Q. Because that's what they told you to do?
A. They told us to wait two minutes, and told us not the call the cops, or else they would have somebody come back and shoot up our house.
Q. Did you believe them?
A. Yeah.
Q. Did there come a time you guys actually got up?
A. Yes.
Q. What did you do?
A. We got up, went outside, got our cell phones,

came back inside and locked the doors.
Q. Now, did you guys have a land line in the house?
A. No.
Q. Each one of you had cell phones though?
A. Yes.
Q. When you went out, got the cell phones and came back in, were there six of them?
A. No, there was five.
Q. Whose was missing?
A. Danielle's.
Q. Did you ever, as far as you know, ever find Danielle's?
A. No, not that I know of.
Q. When you guys came back in and locked the doors, then what did you do?
A. We decided we were all going to move over to my brother's apartment on Warm --
Q. When you say, move over to your brother's apartment?
A. Go over to my brother's apartment for the night.
Q. Why is that?
A. Because we didn't feel safe at our house, just in case they had somebody come back to the house.
Q. Did all of you go to your brother's?
A. Yes.

Q. Where is your brother's apartment?
A. On -- It was on Warm Springs and Green Valley, I believe.
Q. Do you remember what it was called?
A. No.
Q. Did you all go together, or in separate vehicles?
A. We went in two vehicles.
Q. Did somebody call the police?
A. I did.
Q. Where did you call the police from?
A. From my brother's apartment.
Q. So you waited until you actually got there to call?
A. Yes.
Q. From your cell phone?
A. Yes.
Q. And did you give them all the information that you could remember from what had happened?
A. Yes.
Q. Did you actually listen to a recording of the call that you made?
A. Yes.
Q. And did it -- or did you recognize your voice?
A. Yes.
MS. LUZAICH: I have State's Proposed Exhibit 21

that has been shown to counsel.
I move it into evidence and ask to play it.
MR. BANKS: Judge, we have no objection.
THE COURT: State's 21 will with be admitted.
(State's Exhibit 21 now played for the jury.)
BY MS. LUZAICH:
Q. Ryan, you had mentioned that one of the guys was shorter and stockier, and the other was taller an thinner.
Did you actually get a good look at either one of their faces?
A. No.
Q. Why not?
A. Because they had hats on pulled down low.
Q. And as you were in the vehicle with the shorter stockier one, did you have an opportunity to get a look at his face?
A. No.
Q. If you turned in his direction, what if anything happened?
A. He told me to look straightforward.
Q. Okay. Do you see anybody here in the courtroom that at least fits the physical description of either one of those guys?
A. Yes.

Q. Can you describe who and where the person is sitting?
A. The taller slender one sitting right there.
Q. Wearing what?
A. Wearing a brown jacket and white colored shirt.
MS. LUZAICH: May the record reflect the identification of the Defendant, at least as far as a physical description?
MS. LUZAICH: The record will so show.
BY MS. LUZAICH:
Q. While we were in the house, did you ever hear one of them refer to the other by a name?
A. I heard, Narcus.
Q. Narcus, or --
A. From the shorter stockier one.
We at the time thought he said, Marcus, because I never heard the name Narcus before, so I thought it was Marcus.
Q. So you heard the shorter stockier one call the taller thinner one that fits the Defendant sitting here's description Narcus or Marcus?
A. Yes.
Q. Okay. Ryan, did you want any of those things to happen?
A. No.

MS. LUZAICH: Thank you.
I pass the witness.
THE COURT: Cross?
MR. BANKS: Thank you, Judge.
Can we approach before we get started?
THE COURT: Sure.
(Thereupon, a discussion was had between Court and Counsel at sidebar.)
THE COURT: Before we continue to cross-examine the witness, we're going to take a ten-minute break.
So it's 25 after -- or 25 until.
So in the next ten minute recess I'll admonish you.
(Jury admonished by the Court.)
THE COURT: You are in recess.
You got ten minutes. Okay.
(Thereupon, the following proceedings were had out of the presence of the jury.):
THE COURT: Okay. Ten minutes.
(Thereupon, a recess was had.)
(Thereupon, the following proceedings were had out of the presence of the jury.):
THE COURT: Okay. We're back on the record in State of Nevada versus Narcus Wesley.
It was number 1, and it is Molly Nagurry

(Phonetic). I wanted to make sure everybody knew that.
For the record, Juror Number 1, Molly Nagurry, had taken ill, has become nauseous, and we excused her.
For the record, the jury will consist of 1 through 13.
MS. LUZAICH: 2 through 13 actually.
THE COURT: 2 through 13, with 14 being the alternate -- or no, no, let them sit exactly where they are used to sitting, but we'll make the adjustments here.
Bring them in.
For us, we're going to finish the cross-examination of the witness and then take a lunch break.
(Thereupon, the following proceedings were had in open court and in the presence of the jury.):
THE COURT: Do the parties stipulate to the presence of the jury?
MR. LANDIS: Yes, Judge.
MS. LUZAICH: Yes, Judge.
THE COURT: All right. Just for benefit of the jurors, Molly has become ill, is nauseous, so we have excused her. That's why we have as many jurors as we do.
You are still under oath.

Go ahead and have a seat.
Go ahead.

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CROSS-EXAMINATION OF RYAN TOGNOTTI

BY MR. LANDIS:

Q. Good morning, Ryan.
A. Good morning.
Q. I want to start kind of where we left off with that 911 call.
A. Okay.
Q. When you made that call, you guys had already arrived at Clint's apartment, correct?
A. Yes.
Q. And you were all present?
A. Yeah.
Q. And you were in the main room when you made that call?
A. Yes.
Q. The main room of the apartment?
A. Yes.
Q. And I think during that call we actually heard you talking to somebody, asked if it was Crystal Creek's Apartment 1 or 2?
A. Yes.
Q. And that was Clint you asked that?

A. Client and Aitor.
Q. Because they both lived at that apartment?
A. Yeah.
Q. All right. You referred throughout your direct testimony to the shorter stockier one, and to the taller slender one.
A. Uh-huh.
Q. When the police did arrive that night, they asked you the heights that you could approximate as to both of them?
A. Uh-huh.
Q. And as to the shorter stockier one you said, somewhere around 5'8" or 5'9"?
A. Yes.
Q. And as to the taller slender one you said, somewhere around 6 foot, maybe 6'1"?
A. Yes.
Q. And this one here is obviously the taller slender of the two, correct?
A. Yes.
Q. And you now know him to be Narcus Wesley?
A. Yes.
Q. The shorter stockier one, he's not in the courtroom today, is he?
A. No.

Q. You do know him now to be Delarian Wilson though, right?
A. Yes.
Q. And showing you State's 1, you testified that you approached the door, but you didn't open it, it kind of was pushed open as you got to it, is that fair?
A. Yes.
Q. How far did the door eventually open, and I'm talking before anyone entered or exited?
A. Before anyone entered?
Q. Yes.
A. About halfway.
Q. Halfway open?
A. Yes.
Q. Where were you standing as the conversation began between you and the two men?
A. Standing just inside the door.
Q. If you would, mark on the diagram.
A. There.
Q. How many feet did you think it would have been from where you were standing to the door entry?
A. It's -- Explain the question further.
Q. How far do you think it would have been from where your feet were to the entry of the doorway?
A. Two feet.

Q. Two feet.
You have described one of the men, the leader of -- the one running the show?
A. Yes.
Q. And he was the one who was first at the door?
A. Yes.
Q. Could you mark to the best of your ability roughly where he would have been?
I know -- I don't know if it's going to show, it's going to be bright.
And the second one, the follower, where would he have been in that picture?
A. Kind of right behind, like just right behind the shorter stockier one.
Q. To the left of the shorter stockier one though?
A. Yes.
Q. To your right?
A. Yes.
Q. And soon after you opened the door you guys had a conversation, you kind of testified about this on direct, and the conversation was with the leader, the one in control, right?
A. Yes.
Q. That was the one primarily in front of door?
A. Yes.

Q. And first thing you said was, what can I help you with?
A. Yes.
Q. And his response was asking for this individual named Grant?
A. Yes.
Q. You told him that no one by the name of Grant lived at that house anymore, and you don't know anybody by the name of Grant?
A. Yes.
Q. He told you that he needed to talk to that Grant though because Grant owed him some money?
A. Yes.
Q. You again told him that you don't know this Grant guy?
A. Yes.
Q. Then he said, I know Grant lives here because that's his TV?
A. Yes.
Q. And again you told him, we moved in here about six months ago, sir, and I don't know anybody named Grant?
A. Yes.
Q. And throughout this conversation, that conversation we just went over, they are still outside

the door?
A. Yeah.
Q. And you are still obviously inside the door?
A. Yes.
Q. During that conversation, you are primarily focused on the person you are talking to?
A. Yes.
Q. And that's Delarian Wilson?
A. Yes.
Q. The person who was primarily in front of the door?
A. Yes.
Q. It was dark outside, wasn't like this picture we are looking at, right?
A. No, it was dark outside, wasn't like the picture.
Q. All right. Despite that conversation and the amount of time that passed, when the police asked you to describe his facial features, that being Delarian's, you weren't able the give him much?
A. No.
Q. You gave him the body build we talked about?
A. Yes.
Q. And told him about his clothing?
A. Yes.
Q. But when it came to facial features, there wasn't

much you could give him?
A. No.
Q. No facial hair?
A. No, not really.
Q. All right. Do you remember that following day somewhere about 12 hours after you left the Great Dane address the police came and showed you a photo lineup?
A. Yes.
Q. And that photo lineup was one piece of paper?
A. Yes.
Q. Had six pictures on it?
A. Yeah, I believe so.
Q. And they asked if you recognized anybody obviously from that picture?
A. Yes.
Q. And were they asking you to I.D. Delarian or Narcus, if you remember the shorter stockier one or slender?
A. I believe they asked us to I.D. both of them.
Q. From one photo lineup?
A. From I don't remember if it was one or two photo lineups.
Q. At least one of the photo lineups though they wanted you to try to identify the shorter stockier guy?
A. Yes.

Q. Did you pick anybody out of that lineup?
A. Yes.
Q. And isn't it true you picked out the wrong guy?
A. I don't know.
They never revealed who it was to us.
Q. Okay. During this conversation, pretty much throughout the whole process, as for Narcus, you never really got a look at his face at all?
A. No.
Q. And obviously because of that you couldn't give the police much to go on, as far as his facial features?
A. No.
Q. And when that conversation ended that occurred at the doorway about Grant, that is when they entered, right?
A. Yes.
Q. And the first to enter was Delarian?
A. They -- Yes, Delarian entered, and Narcus entered right after.
Q. He was behind him, naturally he entered after Delarian, right?
A. Pretty much side-by-side as they entered through the door.
Q. They are both grown men?
A. Yes.

Q. Is it your testimony that Narcus somehow got next to Delarian, or in front of Delarian, at the time they entered the door?
A. As Delarian came in first, then Narcus came in after and was parallel with him.
Q. That's my question though.
As they crossed the doorway, it was Delarian first, Narcus second?
A. Yes.
Q. And it's at that point when Delarian's crossing over the doorway, entering the house, he lifts up his waistband and pulls out a gun?
A. They lifted up their shirts before they entered the house.
Q. They lifted up their shirts before they entered the house?
A. Yes.
And as they were entering the house, they reached in their waistbands to pull out the guns.
Q. So as Delarian -- Talking about Delarian now, we'll get to Narcus, crosses the doorway, he already lifted his waistband and is in the process of pulling a gun out of his waistband?
A. Yes.
Q. Moments later he cocks that gun?

A. Delarian does, yes.
Q. Right.
That makes a sound?
A. Yes.
Q. And being familiar with guns, you know that sound?
A. Yes.
Q. That gun was in his right hand?
A. Yes.
Q. When he cocked that gun and made that sound that you are familiar with, it drew your attention?
A. Yes.
Q. Frightened you?
A. Yes.
Q. You looked at the gun as a result?
A. Yes.
Water?
Q. Sure, go ahead.
Take your time.
A. Thanks.
Q. Moments after that gun cocked, you heard it cock, and you looked at it, you were ordered to the ground?
A. Yes.
Q. We're talking a matter of seconds from when the threshold of the door was crossed, until you're face

down on the carpet?
A. Yes.
Q. You told the police when you were talking to them that next morning that both guns looked the exact same?
A. Yes.
Q. And kind of like they did with Delarian, they asked you was Narcus right-handed or left-handed, do you remember that?
A. Yes.
Q. What they were asking you is what hand his gun was in, correct?
A. Yes.
Q. And you couldn't tell them?
A. Yeah, I couldn't -- or didn't remember.
Q. As soon as now they entered the house they made -- by they I mean, Delarian made it clear he did not want any of you guys to look up?
A. Yes.
Q. Didn't want anyone to look at them?
A. Yes.
Q. And kept telling you to keep your head down?
A. Yes.
Q. Kept telling all of you to keep your heads down?
A. Yes.
Q. At one point he said, and I do quote, keep your

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eyes pointed to the ground?
A. Yes.
Q. And you touched on this on direct, but I want to go over it again, during that trip to the ATM he also made it very clear you were not to look at him?
A. Yes.
Q. And he did that verbally?
A. Yes.
Q. And he also did it by pointing his gun more into your hip every time you did glance in his direction?
A. Yes.
Q. This might be a silly question, but obviously you didn't look at him?
A. No.
Q. Because you were scared of what he might do?
A. Yes.
Q. I want to talk to you a little about the trip back from the ATM?
A. Okay.
Q. Where did you park the car?
A. Back in the driveway.
Q. And how did you exit the car, the same way you entered it?
A. Yes.
Q. He got out first?

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A. Yes.
Q. You got out after him?
A. Yes.
Q. He -- or you lead to the house, he was behind you?
A. Yes.
Q. His gun was drawn?
A. Yes.
Q. Was his gun actually touching you, or just pointed in your direction?
A. It was in my back.
Q. It was touching your back?
A. Yes.
Q. The small of your back, or the further close?
A. Like middle of my back.
Q. The door was closed when you got it to --
A. Yes.
Q. Who opened the door?
A. I did.
Q. Gun still to your back?
A. Yes.
Q. When you re-entered the house, Delarian again orders you back to the ground?
A. Yes.
Q. And as it had been from the moment they entered,

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it was real clear you were to keep your head down?
A. Yes.
Q. And after you went back to the carpet that second time after you returned from the ATM, you really didn't look up again until they left?
A. Not really.
Q. The only exception might be the time when he forced you, he being Delarian, to turn around?
A. Yes.
Q. But that was at best a glance because he put a pillow over your head soon thereafter?
A. Yes.
MR. LANDIS: Court's indulgence.
THE COURT: Sure.
MR. LANDIS: Just a couple more questions.
BY MR. LANDIS:
Q. When you re-entered that house returning from the ATM, it was just as dark as it had been throughout the entire night?
A. Not at first, not when the ceiling lights were on.
Q. When they first came in, the TV was on, correct?
A. Yes.
Q. The ceiling lights were on?
A. Yes.

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Q. Soon thereafter the ceiling lights got turned off?
A. Yes.
Q. They never got turned back on?
A. No.
Q. When you re-entered that house from the ATM, the only light was from the TV?
A. Yes.
Q. That next morning at Crystal Creek Apartments the first wave of officers, for lack of a better term, had you make a written statement?
A. Yes.
Q. Then a little later some detectives came?
A. Yes.
Q. And you actually gave an oral statement?
A. Yes.
Q. And they recorded that oral statement?
A. Yes.
Q. They asked you to be as thorough as you could when you made that statement?
A. Yes.
Q. And you wanted to be as thorough as you could obviously?
A. Yes.
Q. You wanted to help them catch these people?

A. Yes.
Q. At first during that statement you kind of gave them a narrative as to what you remembered happening?
A. Yes.
Q. Then they gave you a lot of detailed questions?
A. Yes.
Q. Trying to get information from you?
A. Yes.
Q. Roughly how long do you think that interview was, to the best of your memory?
A. 45 minutes.
Q. It covered pretty much everything?
A. Pretty much.
Q. And you would agree with me that your memory at the time you gave that statement was pretty fresh?
A. Yes.
Q. Somewhere around five to six hours after you left the Great Dane residence?
A. I believe so.
Q. Since that day, since you gave that statement, you have talked to a lot of people about this case?
A. Yeah.
Q. You have talked to your friends obviously?
A. Yeah.
Q. You have talked to the State?

A. Yes.
Q. You testified one prior time?
A. Yes.
Q. And you talked to the State in preparation for today?
A. Yes.
Q. When you made that audio statement to the police that night, the one they recorded, you didn't mention anything about seeing Narcus with a gun on that stairwell, did you?
A. Not in the 911 call, no.
Q. I'm not talking about the 911 call.
Let me be more clear.
The first was a 911 call, you are correct, and the second was the written statement you made.
A. Okay.
Q. The third one, the one I want to talk about, is the one you actually made with the detectives.
A. The oral statement?
Q. The oral statement he recorded, yes.
A. Okay.
Q. In that statement you didn't mention anything about seeing Narcus on the stairway with the gun?
A. I don't remember exactly.
Q. Would reviewing your statement refresh your

recollection?
A. Sure.
MR. LANDIS: I'm showing opposing counsel.
May I approach, Judge?
THE COURT: Sure.
BY MR. LANDIS:
Q. Okay.
A. You are talking about me saying something about him holding a gun on the stairwell?
Q. When you returned from the ATM, yes.
A. No, I don't believe I included that in the statement.
MR. LANDIS: I have nothing further.
Thank you.
THE COURT: Redirect?

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REDIRECT EXAMINATION OF RYAN TOGNOTTI

BY MS. LUZAICH:
Q. In truth and in fact, the police never asked you about what the taller thinner was doing when you got back from the ATM, is that right?
A. No.
Q. Mr. Landis mentioned that you testified at a prior hearing.
Do you remember that being called a preliminary

hearing?
A. Yes.
Q. And would that have been in April of 2007?
A. Yes.
Q. And did I ask you about what the taller thinner one was doing when you got back from the ATM at the preliminary hearing?
A. Yes, I believe so.
Q. And did you testify what he was doing at the preliminary hearing?
A. Yes.
Q. And did you testify he was sitting on the stairs with a gun at the preliminary hearing?
A. Yes.
MS. LUZAICH: Thank you.
Nothing further.
MR. LANDIS: Court's indulgence.

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RECROSS-EXAMINATION OF RYAN TOGNOTTI

BY MR. LANDIS:
Q. At the time you gave the statement that you just reviewed, the one that occurred six hours after the crimes, were you as thorough and accurate as you could be under those circumstances?
A. I believe so.

MR. LANDIS: Nothing further, Judge.
THE COURT: Okay. Ryan, thank you very much for your testimony. I appreciate it.
You can go ahead and step down.
You are excused.
If it's necessary to have you come back, we'll make some arrangements, but again I don't think that is going to be necessary.
THE WITNESS: Thank you.
THE COURT: Okay. Thanks.
All right. It's five after 12. I think we kind of discussed after the cross-examination we would break for lunch.
MS. LUZAICH: Court's pleasure.
We have a witness. We can call him or wait.
THE COURT: How long is this next witness?
Didn't I understand you to say they are going to start getting shorter as we go?
MS. LUZAICH: Yes.
THE COURT: I don't care. Let's call another witness.
Who is next?
Or let me ask, do you guys want to hear another witness?
ALL JURORS: All right.

MS. LUZAICH: Okay.
MS. KOLLINS: The State calls Clinton Tognotti.

CLINTON TOGNOTTI,

who, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:
THE CLERK: Please be seated.
Please state your full name, and spell both your first and last name for the record.
THE WITNESS: Clint Tognotti C-l-i-n-t T-o-g-n-o-t-t-i.

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DIRECT EXAMINATION OF CLINT TOGNOTTI

BY MS. KOLLINS:
Q. Good afternoon, Clint.
How old are you?
A. I just turned 20.
Q. Is that your brother Ryan that just left the courtroom?
A. Yes, it is.
Q. Do you live here in Las Vegas?
A. Yes, I do.
Q. And do you work?

A. No, I do not currently.
Q. Do you go to school?
A. Yes, I do.
Q. And where do you go to school?
A. College of Southern Nevada.
Q. Back in February of 2007 where did you live?
A. I lived at Warm Springs and Green Valley, called Crystal Creek Apartments.
Q. And who did you live at the Crystal Creek Apartments with?
A. My friend Aitor.
Q. What is Aitor's last name?
A. Eskandon.
Q. Can you spell that for the Court Reporter?
A. E-s-k-a-n-d-o-n.
Q. Okay. And where was Ryan your brother living back then?
A. 690 Great Dane Court.
Q. Is that in Henderson, Clark County, Nevada?
A. Henderson, yes.
Q. Who did he live with at Great Dane Court?
A. Justin Foucault, Justin Richardson, and Dave Motschenbacher.
Q. Back in the weekend of February 18th, 2007 do you recall whether or not that was All-star Weekend here in

Las Vegas?
A. Yes, that was.
Q. Did you have occasion to go over your brother's home that weekend to visit?
A. Yes, I did.
Q. What night did you go over there?
A. The night of the All-star game.
Q. That Sunday night?
A. Yes.
Q. Who was there?
A. Myself, my roommate Aitor Eskandon, my brother, Justin Foucault, Justin Richardson, his girlfriend Danielle Browning, and that was it.
Q. I'm going to turn your attention to about 10:00 at night.
Where were Justin Richardson and Danielle?
A. In their bedroom sleeping.
Q. And where was the rest of the group?
A. Out in the living room about to watch a movie.
Q. Showing you what has been marked and admitted as State's 3, is this the living room at your brother Ryan's house?
A. Yes, it is.
Q. And that is the TV you guys were watching that night?

A. Yep.
Q. Did there come a time around 10:00 there was a knock on the door?
A. Yes, there was.
Q. Tell me what happened.
A. There was a knock on the door.
My brother Ryan said, come in.
No one came in.
He got up, went to the door, looked through the peephole, and right about then I looked over, and the door got pushed open a little bit, Ryan peeked around the door, and the door was pushed open more, and he asked if he could help them.
There was nothing said, and that --
Q. Clint -- I'm sorry.
Go ahead.
A. That was when Ryan didn't know who it was.
I didn't really know what was going on at that time, like who these people were, and --
Q. I'm going to ask you another question.
In the living room there, if you touch that screen, it will actually make a mark on there, can you tell us where you were seated in the living room, if you remember?
A. Right there on the floor, far edge of the couch,

right on the right-hand side of this blue couch, right there.
Q. So farthest away from the front door towards the windows?
A. Yes.
Q. When the door was pushed open a little, could you see who was at the front door?
A. Yes, I could see two gentlemen.
Q. Could you tell what ethnicity they were?
A. They were black.
Q. Anybody you had ever seen before, either at your residence or at Ryan's residence?
A. No.
Q. What is the next thing that happened?
A. Both men came in, and one gentlemen came through the living room and came right through here, and I was sitting right here, and my friend Aitor was right here, and he --
Q. I'm sorry.
You said, Aitor's right here?
A. Right here on the left-hand side of the couch, the closest to the door.
THE COURT: What happens is, if you touch the lower right-hand corner of the screen, it clears the screen.

THE WITNESS: Okay.
THE COURT: Just so you understand why it all went away.
THE WITNESS: Okay. Thanks.
And the one gentlemen came through the living room right here, cocked his gun from behind this table, and pointed it at me and my friend.
A bullet came out of the chamber, landed right on this table, fell off, and he said, get the fuck on the ground.
BY MS. KOLLINS:
Q. He said what on the ground?
A. Get the fuck on the ground.
That was the stockier gentlemen.
Q. Okay. Now, I'm going to stop you for a second.
Was there a second gentlemen with the stockier gentlemen?
A. Yes, there was.
Q. Did you see that person as they came in the door?
A. Yes, I did.
Q. Okay. Can you describe that person in relationship to the one you call the stockier one?
A. The taller more slender man.
Q. Okay. African American?
A. Yes.

Q. Did he have anything in his hand?
A. Yes, he had a gun.
Q. Do you know guns at all?
A. Yes, yes, I do.
Q. Can we call the stockier one number one?
A. Yes.
Q. Okay. What kind of gun, if you know, did the stockier one have?
A. He had a black Glock nine millimeter.
Q. And what about number two?
A. I do not know for certain what kind of gun he had.
I just saw the gun.
Q. When number one came in and went to chamber a round, it fell on the table and on the floor, where was number two?
A. Right behind him closer to the door and by the stairs.
The stairs would be more right by the front door.
Q. Showing you what is admitted as State's 2, if you touch the bottom right, it will erase that white line --
A. Okay. He was standing more in this area by the stairs.
Q. Okay. Did you listen to number one and get up off the couch and get to the floor?

A. Yes, I did.
Q. Could you see number two as you got up and got on the couch and went to lay on the floor?
A. Yes, I could.
Q. Is that when you would have seen the gun in his hands?
A. Yes.
Q. And his being number two?
A. Yes.
Q. Okay. What happened after you got down on the floor?
A. They told the stockier gentlemen, number one, told us put our face in the carpet, don't look up, and touch hands.

It was more like a circle, and everybody had their hands out like this.

The stockier one told us not to get up, and don't pick our heads up, and he kept asking where a man named Grant was.
Q. And Aitor and Justin Foucault and your brother Ryan all joined you on the floor?
A. Yes.
Q. And do you know Grant?
A. No, I do not.
Q. Now, where were Justin and Danielle, Justin

Richardson and Danielle?
A. Still in the bedroom sleeping.
Q. After you guys get down on the floor, and you are all touching hands, what happened next?
A. He was just asking where Grant is, and he said, don't lie, we know Grant's here, threatening our lives, saying, you better tell us where Grant is, or we'll kill you, like he owes us money, that's what they told us.
Q. Is this number one saying this?
A. Yes.
Q. What if anything is number two saying while number one is saying this?
A. The most at that time he was saying, the number one, was asking where Grant was at, and where the hell is Grant, and all he was saying is, I don't know, and the first gentlemen just couldn't believe that Grant wasn't there, he wasn't believing us, and he began to get more mad at that point, thinking we were lying to him.
Q. Once he figures out Grant's not there, what does he do?
A. He asks if anybody else was in the house, and we told him our -- or Ryan told him our friend Justin was in his bedroom sleeping.
Q. What did number one do when he learned that

Justin and Danielle were in the other room?
A. He went into the room, and Ryan told the guy -- or number one his name, Justin, and all I could hear from the living room was, Justin, Justin, and Justin must have just woke up and said, what, and he said, get up, and all I know from them is that he took Dani and Justin out of the room and made them get down by us on the floor.
Q. And Dani is Danielle?
A. Yeah, Danielle Browning.
Q. Okay. Did you have a cell phone that night?
A. Yes, I did.
Q. And did you keep that cell phone in your possession, or did you lose possession of it for a while?
A. I lost possession of it.
Q. How did that happen?
A. They asked who all had cell phones, and they told us to get them out and give them our cell phones.
Q. Did that happen before or after Justin and Danielle came out of the room?
A. I don't recall for certain.
Q. Had your cell phone been in your pocket or somewhere else?
A. It was in my pocket -- I don't have pockets.

I just had it in between my shorts, and I had an elastic waistband, so I had a flip phone, I flipped it over my shorts.
Q. Did you take it out off your waistband and put it somewhere?
A. Yes, put it on the floor.
Q. Did it stay on the floor?
A. No, number one picked it up.
Q. Do you know what he did with it after he picked it up?
A. He had them in his pocket, and every once in a while someone would call one of the phones, and he would pick it up and ask who the certain person was calling that he could see calling, and that was about it, and we would have to tell him.
Q. So he wasn't answering the phone, just looking at the caller ID on the phone?
A. I think he was thinking about someone coming over, just asking who this was, who was trying to call you.
Q. Was it always number one doing the asking about who was on the phone?
A. Yes.
Q. How did number one and number two react when they know Grant's not there, and they are not going to get

any money from Grant?
A. They said, number one said, we are not leaving here, we are at least getting a grand out of you guys, and they told us to get our wallets out, asking if we had money.
Both of them were doing this at this time.
I had no wallet at the time, so I had no money to give. My wallet was in my car.
They asked who had debit cards.
Ryan and Justin Foucault handed their debit cards.
And I think Aitor had like $2, and they said they were getting money out of this though before they left.
Q. So there wasn't much cash flying around between you guys?
A. No.
Q. Who did Justin and Ryan give the ATM cards to?
A. Number one.
Q. What happened after Justin and Ryan turned over their ATM cards to number one?
A. He asked for the PIN number for Justin's because he was just going to take Ryan to the ATM.
Justin revealed his PIN number, and he told Ryan that he was going to take him to the bank.
Q. Okay. At some point did Ryan leave with number

one?
A. Yes, he did.
Q. Did you watch Ryan leave, or could you just hear him leave?
A. I could barely see him just get up right by me because he was to my left in the circle, so I could just see him like get up, but I wasn't looking out so I could see him.
Q. You know how you have peripheral vision?
A. It was peripheral, that was the most I had.
Q. So your eyes were open, and could you see him get up and leave?
A. Yeah.
Q. Do you recall whether or not Ryan had his car keys on him, or had to go someplace else to get them?
A. I believe Ryan had to go upstairs to get his car keys.
Q. Okay. When Ryan went upstairs to get his car keys, did anyone go with him?
A. Yes, I believe it was number one.
Q. Okay. Do you know what number two was doing while number one took Ryan upstairs to get his car keys?
A. One was always holding us down, making sure nobody got up, they never left all of us alone.
If somebody had to do something, one would go

with them, and one would stay with us, tell us to keep our head down.
If somebody moved, they would tell them to stop moving.
Q. Okay. So just so I'm clear, number one would go with someone, what would number two be doing?
A. Stay behind and just make sure no one was moving, nobody could get up or do anything.
Q. So we're talking about the taller thinner one would stay behind, make sure no one got up or no one moved?
A. Yes.
Q. Ryan eventually leaves with number one?
A. Uh-huh.
Q. Is that, yes?
A. Yes.
Sorry.
Q. That's fine.
What does number -- Does number one say anything when he says, I need to leave with Ryan?
A. He tells number -- Number one tells number two to make sure we keep our heads down, if anybody moves, to shoot us.
Q. And does number two respond to that from number one?

A. He just acknowledges saying something to the effect of, yes, I got you, or something -- just he understood what number one was telling him.
Q. Okay. How long are number one and Ryan gone?
A. I'd have to say, at least 30 minutes.
Q. What is number two doing while number one and Ryan are gone?
A. He was mostly sitting in front of these stairs right here pacing back and forth, keeping quiet.
Q. Showing you number one, there is a bigger picture of the stairs, can you show me on that picture?
A. He was standing the carpet starts right almost right here as the screen cuts it off, he's standing right in front of the stairs almost by the carpet, making sure nobody could get out the front I think, if anybody tried to leave, and he just had his gun out, and the only thing I heard number two say was while number one and my brother were gone was, how far away is the bank, and someone told him, and that was about it for conversation wise.
Q. How do you know that number two had his gun out while he was standing there?
A. He -- Every once in a while my arms would get sore, and I would pick my head up, he would tell me to put my head back down, don't move, in a more explicit

words than that, but --
Q. Okay. I'm sorry, Clint. I don't mean to nitpick here.
When you say -- Are we still talking about the period of time when Ryan and number one are gone?
A. Yes.
Q. So you were stretching your arms out, and you were lifting your head up while number two was the only one there?
A. Yes.
Q. So was number two the one telling you to put your head back down?
A. He told me maybe twice. I was told during the whole time -- he told me once I think when Ryan and number one were gone just to put my head down.
Q. So this time while Ryan and number one were gone, you lifted your head up, did you see number two with the gun, because that was kind of my original question?
A. Yes.
Q. What happens when Ryan and number one get back?
A. He tells Ryan to get back on the floor, and Ryan got back down by me, and he asked if we were good, number one asked number two if we were good while he was gone, he said, they were fine, there was no problem, and that's the time when they started doing the things with

Dani and Justin, they started ordering them.
Q. Do you recall any conversations between number one and number two about percentages?
A. Can you elaborate?
Q. I'll move on.
That is withdrawn.
You said that they started doing stuff with Dani and Justin.
What is the first thing you heard or saw that had to do with Dani or Justin?
A. They kept saying Dani was a pretty girl, she was pretty hot, and they were telling Justin he had a hot girlfriend, and that at some point they told him to get naked.
Q. Who was saying Dani was pretty hot, number one, or number two, or both?
A. Both of them.
Q. Both of them?
A. Yeah.
Q. And who is it that directed Justin that he needed to get naked?
A. I don't remember exactly who started the telling them to get naked.
I just know at some point they told both of them to get unclothed and then to start -- They wanted Justin

to have sex with Dani, Danielle.
Q. Could you hear what was being directed to Justin and Dani to do?
A. Yes, I could.
I was about only two feet away.
Q. Okay. Then in their words, if you can, you don't need to sanitize it, in any words you hear can you tell me first the command that was given to Justin and Dani?
A. They told them to perform sexual acts, to fuck each other.
They wanted Justin and Dani to orally have sex.
And Justin could not get up because I'm pretty sure he was scared, and they said, you better like get up, and like you better do her, or I'll do her, I'll take her in your room, and they just for more than 30 minutes they kept telling Justin to have sex with Dani, and he couldn't.
And they ordered them many different times to do different sexual things.
Q. Would this be just number one talking, or number one and number two?
A. This is where number two did most of his talking.
Q. Most of his talking in relation to the rest of the incident?
A. Yes.

Q. When Justin couldn't perform, was there discussion about, if you don't do her, somebody else here's going to do her?
A. Yes, it was number two saying -- or asking number one, let me take her back to his room, let me have sex with her, if he can't do it, I will.
Q. Was number two using the words, let me have sex with her?
A. Let me fuck her.
Q. What did number one have to say about number two having sex with Danielle?
A. He was giving Justin more of a chance.
He still wanted to see Justin and Dani have sex.
He was not the one pushing himself upon Dani. It was more number two saying, he's almost asking permission to do sexual things to Dani.
Q. From number one?
A. Yeah.
Q. Does there come a point where number one or number two are both trying to involve one of the rest in your group to having sex with Dani?
A. Yes.
Q. What happened?
A. Number one asked my brother if he could get hard.
After about five minutes of trying, Ryan said,

no, he could not.

He later asked me if I could, and I just simply stated right off the bat, no, I can't.

Q. Do you know whether Ryan had removed her clothing?

A. I don't recall.

I believe they might -- made him take off his shorts.

Q. Do you recall any discussion about a lotion bottle?

A. Yes, number one handed Ryan lotion to try help him.

Q. At some point right in this period of time did somebody direct Dani to move off the floor?

A. Yes, it was number two, and then I believe number one took Justin to the -- Justin had to go to the bathroom and kept asking, just let me go to the bathroom, and then I'll try.

They were just getting more disgusted and impatient with Justin not being able to perform, and that's when number two kept getting more anxious to asking number one to let him do her, let me do this.

Q. When they moved Dani or Danielle, do you know where they moved her to?

A. The stairs right here, I believe.

Q. And again, you are still face down on the ground?

A. Yes.

This is -- I could see more at this point because they were more involved with Dani and Justin with what they were doing, and I looked up one time and saw Justin had gone to the bathroom, and Dani was on the stairs right here with number two.

Q. Could you hear any discussion between number two and Dani?

A. Yes, I could.

Q. What was number two saying to Dani?

A. I believe he was touching her, and he kept asking, does that feel good, do you like that.

She responded by saying, yes, but I would feel better if Justin was doing it.

Dani was obviously scared. You could hear her voice tremble, and you could see the gun pointed in her direction.

Q. The gun in the hand of number two?

A. Number two.

Q. Did Dani stay on the stairs?

A. During that time, I believe for most of that time she was on the stairs.

Q. Did there come a time soon after that that she moved to a chair that was in the living room?

A. I do not recall where she moved after the stairs, after they were done touching her.

Q. You didn't see anything else, you didn't see her move anywhere else after that?

A. No, I didn't.

Q. Okay. By the time -- By the time number one had come back in from the bathroom with Justin?

A. Yes.

Q. Was it easier for you to look up while number one was out of the room?

A. Yes.

Q. Did there come a point where they had Danielle and Justin rejoin everyone else back on the floor?

A. Yes.

Q. What happened after everyone else was back down on the floor?

A. I remember them saying, we were cooperating, we were doing a good job, and that they were about -- number one stated they are about to leave, and everybody cooperated, and if everybody cooperates -- or he told us to not call the cops, don't call the cops.

Q. He who?

A. Number one.

He said, when we leave, you better not call the cops, we'll come back, we know where you live, we'll

kill you.

So that he tried to scare us to not call the cops after they did leave.

I asked right before they left for our cell phones back, and that was kind of a bad move on my part.

Q. Why is that?

A. He got mad, number one got mad, asked if I was serious, and he actually ended up giving us back almost all of our cell phones. I got mine back, I know that.

He threw them out in the rocks outside the house.

Q. Did number one or number two tell you what would happen if you called the police?

A. Yes, they would come back and kill us.

Q. Who said that?

A. Number one.

Q. After this warning, did number one and number two leave?

A. They said they were going to count -- or for us to count to some number, almost a minute, or over a minute, out loud, loud so he could hear while he was leaving, and no one better move until -- or no one better get up until they are gone, or we get to that number.

And he tried to pull another joke, came back in saying, who the fuck moved, I saw you guys, and then it

was some kind of a joke, and he started laughing, saying ha, ha, I got you, and everybody was all just wanting them to leave pretty much, but he kept --

Q. Did you eventually get your cell phone back?

A. Yes, I did.

Q. How did you get that back?

A. He said he was going to put them in the rocks right outside the door, and after they left we -- or I retrieved mine from the rocks.

Q. How many cell phones were out there?

A. I believe my brothers, mine, Aitor's, Justin, almost all of us had a cell phone.

I believe they took one.

Q. Do you know whose they took?

A. Dani's.

Q. Dani's?

A. Danielle's.

Q. You described number one as the stockier one?

A. Uh-huh.

Q. Is that a, yes?

A. Yes.

Q. Was he shorter or taller than number two?

A. Shorter.

Q. Number two, the taller one, was he thinner or as stocky as number one?

A. Thinner.

Q. Do you see anyone in the courtroom today that you recognize from the evening back in February of 2007?

A. Yes, I do.

Q. Can you tell me where that individual is seated and what he's wearing today?

A. He's wearing a brown suit right there with the tie, the white shirt and the tie on.

MS. KOLLINS: May the record reflect the identification of the Defendant?

THE COURT: The record will so show.

BY MS. KOLLINS:

Q. Is he the one that you have described as number two?

A. Yes.

Q. Clint, it may be an obvious question.

Did you want any of this to happen?

A. No, I did not.

Q. How would you describe your reaction during this whole incident?

MR. BANKS: Objection.

Relevance.

THE COURT: Overruled.

THE WITNESS: I couldn't believe this was happening, and I was only about to turn 19, and I was

just telling myself the whole time, I can't believe I'm going to die at 18 years old.

BY MS. KOLLINS:

Q. And --

MS. KOLLINS: I will pass the witness, Judge.

THE COURT: Cross.

- - - -

CROSS-EXAMINATION OF CLINT TOGNOTTI

BY MR. BANKS:

Q. Clint, your brother answered the door?

A. Yes, he did.

Q. Did you say that he looked through a peephole or something like that?

A. Yes.

Q. Okay. This incident, the fellows left probably about 1 in the morning?

A. Sometime around midnight at least, yeah.

Q. Give or take?

A. Yes.

Q. Not like you were looking at your watch?

A. Yeah.

Q. But give or take maybe 1 -- around midnight, 1 in the morning, is that a fair characterization?

A. Somewhere in there, yeah.

Q. Okay. You guys all go over to your apartment

that you go to, Aitor's apartment?

A. Myself and Aitor were living in a different apartment down the road from my brother's house.

Q. But that is not apartment you went to?

A. No, that's the one we went to after we got robbed.

Q. You went to your and Aitor's apartment?

A. Yes.

Q. Okay. All of you?

A. Yes.

Q. Okay. And there is actually somebody else there at your and Aitor's apartment when you get there?

A. Yes.

Q. Who was that?

A. It's my roommate Mike that I was letting stay at my house for a while while he could get another job.

Q. Okay. A scary situation?

A. Yes, it was.

Q. Traumatic?

A. Yes.

Q. Horrifying?

A. Yep.

Q. You guys get back to your apartment.

There is some debate as to whether you are even going to call the police, is that fair?

A. Yes.
Q. You tell Mike what happened?
A. Yes.
Q. Okay. You guys I imagine weigh the pros and cons as to whether to even call the police, is that fair?
A. Yes.
Q. You discuss the pros and cons amongst yourselves?
A. Yes.
Q. You discuss what happened in that house?
A. Yes.
Q. With each other?
A. Yes.
Q. Because everybody's probably scared?
A. Yes.
Q. Okay. Fair to say it was a group decision to call the police?
A. Yeah, yes, I believe so, it was a group decision.
Q. Okay. Fair to say that that decision was based on everybody's input?
A. Yes.
Q. Fair to say that that decision was based on everybody's perception and discussion of what had just gone on in that house?
A. Yes.
Q. Okay. The police finally are called?

A. Yes.
Q. Some police officers come out to the scene?
A. Yes.
Q. More than one in fact?
A. Two police officers, I believe, they came to my apartment door, just thinking this was simply a robbery, and Justin was in no shape to tell them what happened, so he asked if I could tell them the rest of the story that happened with Danielle, then more special detectives showed up, numerous police through the night showed up from different units.
Q. So many it was probably hard to even keep how many -- or keep it straight how many police officers were there, is that fair?
A. There was around five.
Q. So it wasn't like 25, but was more than one or two?
A. Yes.
Q. Okay. Justin is traumatized?
A. Yes.
Q. Dani or Danielle is traumatized?
A. Yes.
Q. You talked to the police?
A. Yes, I did.
Q. A couple times?

A. Yes.
Q. Okay. At one point they actually record what -- record an interview with you, right?
A. Yes.
Q. But you talked to a couple police officers before they recorded your interview?
A. Yes.
Q. Okay. And because Justin and Danielle were so traumatized, you actually told the police officers what had happened to them, is that fair?
A. Yes, I pretty much just told more of the sexual assault part so Justin wouldn't have to do that.
Q. Okay.
A. And that's when they said, okay, hold on, we're going to have to get different people over here.
Q. It becomes kind of a different investigation?
A. Yes.
Q. But the information you did share with the police was based on the information that you guys had discussed prior to even calling the police, is that fair?
A. More of what I knew what happened.
Q. Well, maybe a combination of the two, mostly what you knew, but at least in part that conversation that you guys had before even deciding to call the police?
A. Somewhat, yes.

Some of the things they explained that happened to me, so I could get a more detailed like to tell what happened correctly.
Q. Okay. There was -- Would you like some water?
A. Yeah, I'll get some.
Q. Okay.
A. Okay.
Q. All right.
Somebody was clearly in charge in that house, one of the two gentlemen?
A. Yes.
Q. And it wasn't this fellow, is that fair?
A. He wasn't the main vocal person you could say.
Q. Okay. You have testified today that you heard some words or some comments from this gentleman while the stockier guy, the number one guy, is off at the bank?
A. Yes.
Q. With your brother?
A. Brother.
Q. I believe some of the things that you have testified to is that you were very specifically told -- you talked about your arms getting sore?
A. Yes.
Q. And I guess too maybe they were fatigued or

whatever, and you would kind of stretch them out, kind of a mental picture I'm getting, is that fair?
A. Or like I would try to push myself up a little bit.
Am I bad?
And just this would get sore from putting your head down.
More than two hours, you start to get sore.
Q. And it was during that window while your brother's at the bank that you heard this fellow tell you to put your head down?
A. Yes.
Q. And you very specifically recall that as you sit here today?
A. Yes.
Q. Page 82, counsel.
You testified at a prior preliminary hearing in this matter back in I think it was April of 2007?
A. Yes, I believe so, somewhere around there.
Q. Okay. You took an oath?
A. Yes.
Q. At that proceeding, kind of like the one today?
A. Yes.
Q. You swore to tell the truth?
A. Yes.

Q. Okay. And you were actually asked about that window of time while your brother is at the bank, right?
A. Yes.
Q. You were actually asked this very specific question at lines 21 through 25, counsel, what did he do while your brother and the stockier one were gone?
Your answer was, he was silent for about 15 minutes, and then the only thing I heard him say, he asked us how far away the bank was, that's all I heard him say.
You remember that being your answer?
A. That was over a year ago, so I don't exactly remember my answer, so if that's your question, then not vividly, no, I don't see that as my answer.
Q. Do you remember being asked that question?
A. No, I do not.
MR. BANKS: May I approach this witness, Judge?
THE COURT: Certainly.
BY MR. BANKS:
Q. You did give some testimony on Tuesday, April 17, 2007, approximately 1 p.m. in Henderson, Clark County, Nevada?
A. Uh-huh, yes.
Q. You have to say, yes, so he can take down the answer.

A. I understand that.
Q. Okay. And does that look like a transcript of that proceeding from that day?
A. Yes, it does.
Q. Okay. And you're Clint Tognotti?
A. Yes.
Q. And Miss Luzaich was there?
A. Yes.
Q. And this looks like a transcript of the questions that were asked by the parties, and then where it says A, it gives a transcript of your answer, right?
A. Yes, I have a copy of this.
Q. And we can agree that on page 82, lines 21 to 25, you are asked, what did he do while your brother and the stockier were gone, right?
A. Yes.
Q. And what is your answer?
A. He was silent for about 15 minutes, and then the only thing I heard him say, he asked us how far away the bank was, and that's all I heard him say.
Q. Okay. Thank you.
Those police officers, not only the one that recorded your statement, but the other ones that you talked to before your statement was recorded, you wanted to be as thorough and accurate and complete as you

positively could?
A. At that time?
Q. Yes.
A. Yes.
Q. At any time?
A. At any time.
It was more of the first two police I talked to was more trying to just tell them what happened to Dani, so Justin didn't have to.
Q. Okay.
A. But yes, I was trying to be as on point as I could about the story.
Q. And they told you that that was important, that you be as forthright as possible?
A. Yes.
Q. And I just a couple minutes ago -- I sympathize with you, and you know that's why we have transcripts like this because as our memory -- or as time goes on, sometimes our memories kind of fade?
A. Yes.
Q. And that being said, I think that's what you meant when you said, it's about however long, that being said, we can agree that generally the closer in time that you are telling what happened, that it's probably fresher in your mind, is that fair?

A. Sometimes, yes.
Q. Okay. Most of the time, would you agree with that?
A. Yeah, I agree.
MR. BANKS: May the record reflect I just tripped over the outlet.
I was apologizing to the witness for my --
THE COURT: Did you break anything?
MR. BANKS: No, sir, I hope not.
BY MR. BANKS:
Q. Now, Clint, in addition to talking to some of the other folks in the house before the police got there, and talking to some police officers when the police did show up, and talking to I believe it was a detective and actually giving a recorded statement --
A. Yes.
Q. -- and testifying at that hearing in April of 2007, just so we are clear, you did speak to the prosecutors before you testified in April --
MS. KOLLINS: I'm going to object.
There is like six components to this question.
MR. BANKS: One question per --
THE COURT: Narrow it down a little.
Go ahead.

BY MR. BANKS:
Q. You did talk to the prosecutors before that April 17 hearing?
A. Yes.
Q. You reviewed your statements that you gave to the police?
A. I don't recollect.
Q. Okay. If you don't remember, you don't remember.
A. Yes.
Q. You talked to the prosecutors before your testimony today?
A. Yes.
Q. And I believe that you said that you actually did have a chance to review what I showed you just about five minutes ago?
A. Yeah.
Q. Okay. Clint, this is the first time that you have testified that anybody told you to get your head down while your brother was at the bank, isn't that true?
A. I don't believe so, not the first time.
Q. You testified today, he had his gun out, and we're talking about Mr. Wesley?
A. Yes.
Q. You testified that while something was going on

with Danielle, you could see a gun pointed in her direction by Mr. Wesley?
A. Yes.
Q. Is that what you said today?
A. Yes.
Q. I think you also said, I'm not sure what kind of a gun, I just know he had a gun, that's what you said today, right?
A. Yes.
Q. Page 86, counsel.
I want to take you back to that same April 17 hearing.
Are you with me?
A. Yes.
Q. You were asked some similar questions at that hearing about a gun?
A. Yes.
Q. Okay. We can agree that you were actually asked, so as you sit here today, you are not positive that Mr. Wesley even had a gun, are you, and your answer was, not a hundred percent positive, right?
A. Yes, I said that.
Q. And as you sit here today, just like you sat on the stand in April, you are not a hundred percent positive he had a gun, are you?

A. You are leaving out most of what was in that.
They asked me how sure I was if I saw a gun.
You are only putting in the hundred.
Q. I believe you said you were 75 percent sure?
A. Somewhere around there.
Q. And are you 75 percent sure that you heard this guy say anything during that?
MS. KOLLINS: Objection.
Argumentative.
THE COURT: I'm going to overrule the objection, but I thought you were talking about something else.
MS. KOLLINS: He said, are you 75 percent sure you overheard this gentleman say something.
That doesn't refer to previous testimony. That is argumentative.
MR. BANKS: How about this --
BY MR. BANKS:
Q. Are you at least 75 percent sure that you heard anything come out of my client's mouth after you said that you didn't hear anything previously under oath as you sit here today, are you sure?
A. Well, if you make that question as complex as that, so I can't follow it, I don't know -- Just ask me a simpler question, please.
Q. Are you sure that you heard anything come out of

my client's mouth during the incident as you sit here today?
A. Yes, I am positive he said something.
Q. Did you testify at a prior hearing under oath that you did not hear him say anything?
MS. KOLLINS: Objection.
Asked and answered.
THE COURT: Overruled.
THE WITNESS: Can you re-ask that, please?
MR. BANKS: May we have a read back, Mr. Court Reporter, please.
(Last question read back by the Court Reporter.)
THE WITNESS: I said he said something while my brother went to the bank and during the whole thing.
I never said he was never talking.
I said he said he wanted -- how far is the bank, so that does not mean he was not talking.
BY MR. BANKS:
Q. Just so we are very clear, he was silent for about 15 minutes, the only thing I heard him say, he asked us how far away the bank was, that's all I heard him say?
A. That's fair to say that, yes.
Q. Okay. So as you sit here today, we can agree that you are not 100 percent sure if you heard him say

anything else besides that?
A. My brother was gone for over 30 minutes, so there was talking like different times.
This was a two-and-a-half hour period. I can't tell you everything that was said.
Q. Clint, let's see if you can answer my question.
A. Okay.
Q. You have testified today that you heard something to the effect of, get your head down, by this gentleman while your brother was at the bank?
A. Did I hear that?
Q. You testified to that today in court.
A. That's what I'm asking you, is that what you are asking me?
Q. I'm asking you, did you say that on the stand?
A. Yes, I did.
Q. Okay. Did you say another time on the stand the only thing he said, was how far away is the bank?
A. I don't recall like that far away, that was a year ago, so I don't recall everything I said up there on that stand, as I will not be able to recall everything I've said up here.
Q. Just so we are clear, you have no independent recollection today of anything said, besides, the bank --

MS. KOLLINS: Objection.
That mischaracterizes the testimony.
THE COURT: Well, go ahead and ask your question.
We're getting a recollection.
Go ahead, ask the question.
BY MR. BANKS:
Q. Your memory is worse now than it was then?
A. Yes.
Q. This is the first time that you have said that Mr. Wesley said, get your head down, while your brother was at the bank, right?
A. I -- If you want to put it like that, up on the stand, or any time?
Q. Under oath where you have been sworn to tell the truth.
A. I don't recall when I said it, or how many times I've been interviewed or asked questions by different people, so I can't recall everything you are asking me.
Q. Okay. Would you agree that it is not in that written transcript that you do have that you have reviewed?
A. Can you ask that again?
I'm sorry.
Q. Do you have a copy of that transcript from April?
A. Yes.

Q. Would you agree that there is nothing in there about him saying anything besides, where is the bank, would you agree with that?
A. During that time period?
Yes.
MR. BANKS: Pass the witness.

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REDIRECT EXAMINATION OF CLINT TOGNOTTI

BY MS. KOLLINS:
Q. Clint, you spoke to us about your testimony, is that correct, myself and Miss Luzaich?
A. Yes.
Q. Have we ever told you what to say?
A. No.
Q. Have we ever told you to embellish or add anything to your testimony?
A. You just said to tell the truth as much as you can remember, and if you don't know, then say you can't.
Q. As you sit there today, do you recall number two, Mr. Wesley, during the time period Ryan was gone to the bank telling you to keep your head down?
A. Yes.
Q. Did that happen?
A. Yes.
Q. Are you doing your best to tell the truth today?

A. Yes, I am.
Q. Okay. You saw number two, Mr. Wesley, come in the front door, correct?
A. Yes.
Q. Did you see anything in his hand?
A. Yes.
Q. What did you see in his hand?
A. A gun.
Q. Did you ever get to touch that gun?
A. No, I did not.
Q. Did you ever get to look at it real up close?
A. Probably the closest look I got was five feet away.
Q. You also testified that you saw him sitting on the stairs?
A. Yes, or around the stairs.
Like Dani was sitting on the stairs, I know that.
Q. And the stairs are depicted in State's 1, correct?
A. Yes.
Q. And you saw what you believe to be a gun in the hand of number two while he was at the stairs with Dani?
A. Yes.
Q. Could you see his silhouette?
A. Yes.

Q. The shape?
A. Yes.
Q. Could you see the color?
A. It was dark.
It looked more black or more of a darker color.
I saw number one gun probably this far away from my face, but his, it was a little bit more of like five feet, but I couldn't get as clear a description as I could -- I could actually tell the other gun exactly what it is, but I couldn't tell what his gun exactly was.
Q. Okay. Just so I'm clear, number one's gun you could tell was a Glock nine millimeter?
A. Yes.
Q. Because you saw it up close enough?
A. Yes.
Q. But you did not see number two's gun up close enough, is that correct?
A. Yes.
Q. You testified previously that you were 75 percent sure it was a gun?
A. Yes.
Q. Okay. But again, you didn't get to hold it?
A. That was -- yeah, exactly what you are saying, that is with taking in I didn't feel the gun, I didn't

shoot the gun.
Q. And you also didn't have it five inches from your face like number one's gun?
A. I'm not positive anything is a gun.
I've seen many things that look like guns that aren't guns.
Q. And did number two give you any reason to believe it wasn't a gun?
A. No, he did not.
Q. Did number two ever tell you it wasn't a real gun, go ahead and get up and move around?
A. No, he didn't.
Q. Did number two make any effort to leave the house while number one was gone?
A. No, ma'am, and he had plenty of chance to do it if he wanted to.
MS. KOLLINS: Thank you.
No more questions.
THE COURT: Anything else?

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RECROSS-EXAMINATION OF CLINT TOGNOTTI

BY MR. BANKS:
Q. Did you guys sit around and talk about who had a gun and when?
MS. KOLLINS: Objection.

Beyond the scope of redirect.
BY MR. BANKS:
Q. Did you guys sit and talk about how he had a chance to leave and who didn't?
A. Which people are you talking about, the victims or --
Q. I'm talking about from the time you left that house, until you sit here today.
A. Have we talked about who had a gun?
Q. Yes.
A. Yes.
Q. And you talked about it before you put the 75 percent number on it, didn't you?
A. Yes.
MR. BANKS: Pass the witness.
THE COURT: Is that it?
MS. LUZAICH: Nothing further from the State, Your Honor.
THE COURT: All right. Thank you, Clint, very much for your testimony. I appreciate it.
You will be excused.
I don't believe we need you back, but if we do, we'll make arrangements.
THE WITNESS: Thank you. I appreciate it.
THE COURT: All right. Can we get away with a

one hour lunch break?
MS. KOLLINS: Court's pleasure.
THE COURT: Okay. One hour.
We'll say five after 2.
(Jury admonished by the Court.)
THE COURT: You got one hour.
We're in recess.
(Thereupon, a luncheon recess was had.)
- - - -
(Thereupon, the following proceedings were had out of the presence of the jury.):
THE COURT: Back on the record in the matter of State of Nevada versus Narcus Wesley.
We're not quite ready. We'll wait for Mr. Banks to come back.
Are there any matters we need to address before, or any scheduling issues?
MS. KOLLINS: This afternoon we planned on getting through all the kids. That is still our goal.
We have a sexual assault nurse examiner we need to get on today, and need to I guess in some regard call her out of order. We told everybody we would call her this afternoon, but because it's getting late, I think we might call her first because she's leaving the jurisdiction tomorrow.

THE COURT: That's fine.
This one I don't think is --
MS. KOLLINS: I'm just telling you so you know what is going on.
THE COURT: Normally if somebody was so far out of whack in the order, we probably would give a little explanation about somebody being call out of order, but this is fine.
MR. LANDIS: That's fine.
(Thereupon, the following proceedings were had in open court and in the presence of the jury.):
THE COURT: Do the parties stipulate to the presence of the jury?
MR. LANDIS: Yes, Judge.
MS. LUZAICH: Yes, Your Honor.
THE COURT: All right. The State's next witness is?
MS. LUZAICH: Linda Ebbert.

LINDA EBBERT,

who, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE CLERK: Please be seated.
Please state your full name, and spell your full name for the record.
THE WITNESS: My name is Linda Ebbert, L-i-n-d-a E-b-b-e-r-t..
- - - -

DIRECT EXAMINATION OF LINDA EBBERT

BY MS. LUZAICH:
Q. Good afternoon, ma'am.
Miss Ebbert, what do you do for a living?
A. I'm a sexual assault nurse examiner.
Q. What is a sexual assault nurse examiner?
A. A sexual assault nurse examiner is a registered nurse, and who has special training to go to take care of victims of sexual assault.
Q. In order to be a sexual assault nurse examiner, can you describe for us the training and education that you have had?
A. There is a week-long classroom portion of it, and then there is a preceptorship where you are watched by either a physician or a nurse practitioner, also spending time with the crisis center, with the court system, and with the police departments, in order to know how to work together with these -- or each of the agencies, and gather the evidence effectively and

efficiently.
Q. How long have you personally been a sexual assault nurse examiner?
A. 13 years.
Q. Prior to actually going through that training and participating in that, were you a nurse at hospitals and things of that nature?
A. Yes, I was.
I was a registered nurse, and I worked in most all fields of nursing, including intensive care, emergency room, and also in administrative positions.
Q. How long have you been a nurse?
A. I've been a nurse for 45 years.
Q. Can you just briefly tell us what training and education you have that qualifies you to be a nurse?
A. I went through a three-year diploma program in Pennsylvania and took state boards in Pennsylvania.
I am registered both in Pennsylvania, Ohio and Nevada.
Q. In your 40 plus years that you have been a nurse, where have you worked?
A. I have worked --The most current I worked at University Medical Center in the emergency room for 13 years.
I worked at Lake Hospital System in Ohio for five

years.
And I worked at another hospital called Northeastern Ohio General Hospital for 25 years.
Q. In that hospital where you worked for 25 years what kind of things did you do?
A. I was night supervisor, and I worked the emergency room.
I also for a period of time was charge nurse in the emergency room.
Q. And you mentioned that while you were at UMC you also worked the emergency room?
A. Yes, ma'am.
Q. In your many, many, many years as a emergency room nurse what kinds of things did you have to do?
A. Take care of cardiac emergencies, lacerations, all the different things that would come through the emergency room.
I did do sexual assault examinations, and at that time there was not a sexual assault nurse examiner program, so what we would do would be part of the kit, and then the physician would complete the kit for us.
Q. Now that there is a program that trains, specifically trains nurses to do these things, and that you have participated in that, are you able to do all of that without a doctor being physically present?

A. That's correct.
Q. Now, you mentioned when you went through the program, it was a week-long program, then you have to do a preceptorship under I assume the guidance of a physician?
A. That's correct.
Q. And in order to successfully complete all that did you have to pass some kind of board or test?
A. Actually, when I first went through this program, there was not a testing, but then they came up with a testing, and the testing certifies you to be a sexual assault nurse examiner throughout the United States and actually internationally.
Q. So you are certified in that you have passed a test?
A. Yes, I am.
Q. Okay. Now, you mentioned that you have been doing this for 13 years.
Do you in fact now teach others to become sexual assault nurse examiners as well?
A. Yes, I do.
Twice a year myself and my partner present a program to teach people how to become sexual assault nurse examiners.
Q. In the 13 years that you have been doing this

approximately how many examinations have you participated in?
A. Approximately 4,000.
Q. Can you just describe for us how you conduct a sexual assault evaluation or examination?
A. When a patient comes to University Medical Center, the nurse who is on call for sexual assault cases is called.
We immediately go to the hospital.
We go to a room called the quiet room.
When the patient's signed in, they are put in a room that is called the quiet room, so that everybody in the waiting area doesn't know what is going on with them. It gives them a little bit of privacy.
We go there, and we introduce ourselves, and then we take the patient to our examination room.
When we get the patient in the examination room, we get permission for us to do the examination and to release the information to the agencies involved with their care.
After we have permission, we have them get undressed, and we perform what is called a sexual assault kit, which entails a head to toe examination, gathering from their underwear, if they have underwear, gathering of oral swabs, buccal swabs for their DNA.

All the other things we gather are in case we can get any DNA of the assailant.
We also gather pubic hair.
We do vaginal swabs, rectal swabs.
Anyplace they have been kissed or licked, we swab those areas.
We also do fingernail scrapings.
We did a urine specimen for a pregnancy test and for a urine toxicology.
And after we have done the -- completed the examination, to start with we do a medical history, which helps us get through the rest of it and know that we are treating the patient appropriately if they have anything we need to specially consider.
When we are finished with the examination, we offer them medication to prevent sexually transmitted diseases, and the morning after pill if they desire to have that.
We give them home-going instructions, and that gives them a chance to follow-up with the rape crisis center and also with the health department for further testing.
Q. When you say you do the physical examination and collect swabs, is that a regular gynecological examination where something's inserted in the vaginal

area?
A. There is a spectrum, and it looks sort of like a duck bill, and it has a little spring that you open a little bit wider, so that it stretches that material in the vaginal canal, and you are able to see better than you normally would.
We also use blue dye on the outside, and that is a dye that adheres to red blood cells, and if it wipes off, there are no injuries there. If it adheres, then it outlines an injury that you would see.
Q. Are there a series of questions that you ask specifically pertaining to the actual assault?
A. Yes, there are.
Q. What is the purpose behind that?
A. The purpose is to know -- For example, one of the questions is, were you kissed or licked anywhere, and then be would know where to swab specifically, or look to see if there were injuries from somebody biting or kissing or licking on them.
Q. Additionally, for penetration purposes does that give you an indication of where specifically to swab or at least focus on?
A. Yes.
Q. And when you conduct a sexual assault examination, do you do it the same way in every case,

regardless of what the victim has told you about whether or not penetration has occurred, or where they've been touched?
A. We when we get the history, that's what we consider.
We do all of the steps in the sexual assault kit and the examination, but we may do one thing before we do another, I mean out of sequence, because of consideration of different things that the patient has told us.
Q. But for example if a patient, a victim, does not describe the penetration occurs, do you still swab the vaginal area and still do an exam with a speculum?
A. Yes, and I also always do anal swabs, and the anal swabs are done because the way females are built everything kind of runs towards the back, and we may get better evidence from the anal area than we do anywhere else.
Q. Okay. And Miss Ebbert, have you had the occasion to testify as an expert in the Eighth Judicial District Court?
A. Yes, I have.
Q. Do you know on how many occasions?
A. Approximately sixty times.
Q. Thank you.

Now, specifically were you called to conduct a sexual assault examination on a young lady known to you as Danielle Browning?
A. Yes, I was.
Q. Was that on February 19th of 2007?
A. Yes, it was.
Q. Was it around 7 in the morning?
A. Yes.
Q. And I'm sorry, generally when victims come to you, or you are called to victims I should say, is there a detective either there, or at least involved?
A. There is always police are always notified when we have a case, and in the Metro area we always have somebody respond.
Q. Now, specifically when Danielle came to you, was there a detective as well?
A. I believe there was.
I don't recall who the detective was, but I believe there was, yes.
Q. So you did not personally have a conversation with a detective in this instance?
A. I did not.
Q. So did you meet with Danielle and bring her back to the quiet room?
A. She was in the quiet room when I came.

Q. Sorry.
A. And then I did take her to my exam room.
Q. When you met Danielle, can you describe what her appearance or demeanor was like?
A. She was nervous.
She actually said she was nervous.
She was somewhat quiet, kept her head down quite a bit.
Q. Did you explain to her what you were going to be doing and the purpose behind it?
A. Yes, I did.
Q. And did you ask her the series of questions that you ask all patients?
A. Yes, I did.
Q. Specifically, what did she tell you about the actual assault?
A. She said that she and her boyfriend were in bed, that somebody came through the door, and one of her roommates let two males into the house.
She said that they were looking for a person who used to live there, and that none of the people that were there at that time knew that person, that apparently the assailants asked if there was anybody else in the house, and the roommate have let them in said that she was in the bedroom with her boyfriend.

She said that the males were in the living room were made to lay on their stomach with their hands extended, and then there were -- they came and got her and her boyfriend, and they were put on the floor.

She explained that one of the people that were there was asked -- or took two credit cards, and then they were made to go to the bank and take out money.

When they returned, the patient told me that one of the males started to put his fingers into her vagina, and the other male told him to stop, and that's when they left.

Q. When you say that she told you he started to put his finger into her vagina, I mean, did she indicate his finger did actually enter her vagina?

A. Yes, she did.

Q. Okay. And pursuant to her description of what had occurred, what did you do?

A. I examined her vaginal area very closely to see if there were any divots, which is a crescent-shaped cut from fingernails.

I did not find any trauma.

I didn't find any trauma on the cervix, which is not really unusual in a case of finger penetration.

Q. That was going to be my next question.

Why is that not unusual?

A. It depends on the amount of force and the length of the fingernails.

I would say probably at least 75 percent of our cases of finger penetration do not have any trauma.

Q. Did you also do the full sexual assault kit in that you -- sorry -- that you got swabs from the vaginal area, the anus, and any body parts?

A. I did.

Q. And fingernail clippings, things of that nature?

A. Fingernail scrapings.

Q. That's what I meant.

Sorry.

And did you collect underwear?

A. Yes, I did.

Q. Is that something that you always do?

A. I do if the victim has underwear with her.

Oftentimes they are either not wearing underwear, or the underwear is missing, but any time they have underwear I do collect it.

Q. And do you put all of that -- well, the swabs and clippings and things of that nature, do they go in a box?

A. They go into the -- Each one has a separate envelope, and then the envelope is put into a larger envelope and sealed.

Q. And that is all for potentially in the future seeking evidence and comparing it with something else, is that correct?

A. Yes, it is.

Q. And do you put all of it into an envelope?

A. I do.

Q. And do you mark on the envelope whose it is and give it an event number the police give you?

A. Yes, I do.

MS. LUZAICH: May I approach the witness?

THE COURT: Yes.

BY MS. LUZAICH:

Q. Showing you what has been marked as State's Proposed Exhibit 26, do you recognize that?

A. Yes, I do.

Q. What is it?

A. It's the kit that I did on Danielle Browning.

Q. How can you tell it's the kit you did on Danielle?

A. It has her name, the date, the time I did it, where it was done, the police department, and their number, and it has my name and the date that I sealed it.

Q. And is all that information in your handwriting?

A. Yes, it is.

Q. And if you opened it up, what would you expect to find inside?

A. I would find, or expect to find, all of the things that I gathered, sealed it in an envelope with tape across it with her name and my initials and date and time it was collected.

Q. And is State's Proposed Exhibit 26 in your hands in substantially the same condition as it was when it left your hands the last time you saw it?

A. Except for the identification, it would be the same, yes.

MS. LUZAICH: Thank you.

Move it into evidence.

MR. BANKS: May I look at that for just a brief second, Judge?

THE COURT: Yes.

MR. BANKS: May I approach?

THE COURT: Yes.

MR. BANKS: Are you going to have her open this?

MS. LUZAICH: No.

MR. BANKS: No objection.

THE COURT: State's Proposed 26 is admitted.

MS. LUZAICH: Thank you.

I pass the witness.

THE COURT: Cross.

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CROSS-EXAMINATION OF LINDA EBBERT

BY MR. BANKS:

Q. Miss Ebbert, that envelope you have in front of you that is State's -- is there a number on it?

A. Number 26.

Q. State's 26, has that been opened at all since you sealed it, can you tell?

A. It doesn't appear to have been opened.

The tape is broken at the corner, but it doesn't appear to have been opened.

Q. Okay. And those vaginal and anal swabs that you take, that is for potentially in the future for further testing to be done, is that a fair characterization?

A. That's correct, yes.

Q. No trauma in this case?

A. I did not find trauma, no.

Q. Okay.

MR. BANKS: Pass the witness.

THE COURT: Anything else?

- - - -

REDIRECT EXAMINATION OF LINDA EBBERT

BY MS. LUZAICH:

Q. Is the testing more for purposes if there were ejaculation, then you can compare it with the person who potentially ejaculated?

A. That's correct.

Q. And what you observed on Danielle, and -- sorry -- but in Danielle was that consistent with what she described for you?

A. Yes, it was.

MS. LUZAICH: Thank you.

THE COURT: Is that it?

- - - -

RECROSS-EXAMINATION OF LINDA EBBERT

BY MR. BANKS:

Q. Miss Ebbert, you don't make the decision as far as further testing, right?

A. No, I do not.

Q. You are just trying to gather as much information as you can to pass on to whomever does make that call?

A. That's correct.

MR. BANKS: Pass the witness.

Thank you.

THE COURT: Thanks.

You are excused.

I appreciate it.

You will be excused, and I'm sure you are finished.

THE WITNESS: Thank you.

MS. KOLLINS: The State calls Aitor Eskandon.

AITOR ESKANDON,

who, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE CLERK: Please be seated.

Please state your full name, and spell your first and last name for the record.

THE WITNESS: Aitor Eskandon, A-i-t-o-r E-s-k-a-n-d-o-n.

- - - -

DIRECT EXAMINATION OF AITOR ESKANDON

BY MS. KOLLINS:

Q. Good afternoon, Aitor.

How are you today?

A. Good.

How are you?

Q. Fine.

I'm going to move through this pretty quickly.

Do you have a roommate by the name of Clint Tognotti?

A. Yes.

Q. Are you guys still roommates?

A. Yes.

Q. Were you in fact roommates in February of 2007?

A. Yes.

Q. Did you have a group of friends that lived over on Great Dane, one of which was Clint's brother?

A. Yes.

Q. Who was that group of friends?

A. Clint, my roommate, Justin Richardson, Danielle was there, Ryan, and Dave lived there.

Q. Okay. So Justin Richardson lived there?

A. Yes.

Q. Was there another Justin that lived there?

A. Yes, Foucault.

Q. And Ryan Tognotti?

A. Yes.

Q. Were you visiting that house over All-star weekend, February of 2007?

A. Yes.

Q. I'm going to direct your attention to Sunday evening of that weekend.

Can you tell me who was home at the Great Dane

residence?
A. It was me, Ryan, Clint, Justin Richardson and Justin Foucault and Danielle.
Q. Okay. Turning your attention to about 10:00 at night, were you in the living room?
A. Yes.
Q. Who was in the living room?
A. It was me, Ryan, Clint and Justin.
Q. Which Justin?
A. Justin Foucault.
Q. And was Justin Richardson at home?
A. Yes, he was.
Q. Where was he?
A. In the bedroom.
Q. Anybody else in his bedroom with him?
A. Yes, his girlfriend, Danielle.
Q. Was there a knock at the door around 10:00?
A. Yes.
Q. Tell me what happened after that.
A. Ryan was about to get up and answer the door, and then two gentlemen walked in, and one pulled a gun and told us to get on our faces, so we hit the ground.
Q. Can you describe the gentleman for me, just generally?
A. The first one was shorter and bigger built.

Q. Okay. Can we call him number one?
A. Yes.
Q. Okay. What about the second one?
A. Taller, skinnier.
Q. Okay. As to ethnicity, did you notice what their ethnic background was?
A. Yes, they were both black.
Q. Was there any discussion between Ryan and these two individuals as they came in the door?
A. Yes, they were asking for a gentleman named Grant, and Ryan informed them that we didn't know Grant, or know Grant lived there.
Q. You said, number one came through the door and had a gun?
A. Yeah.
Q. Is that correct?
A. Yes.
Q. What about number two?
A. He went for his waistband, and I was hitting the ground at that point, so I didn't see what he did.
Q. But you didn't see it in his hand at that point?
A. No actually.
Q. Where did you get down on the ground?
A. In the middle of the floor.
Q. In what room?

A. The living room.
Q. Anybody else get down on the floor in the living room with you?
A. Yeah, all the individuals that were in the living room got on the floor.
Q. Aitor, showing you what has been admitted as State's 3, is that what we are talking about?
A. Yes.
Q. And is that the carpeted area?
A. Yes.
Q. Where you got on the floor?
A. Yes.
Q. When the individuals came to the front door, were you sitting down in the living room, laying down, or something different?
A. Yes, I was sitting in the recliner.
Q. The recliner with the white pillow on it?
A. No, the brown recliner in the corner.
Q. Okay. The top right corner of that photograph?
A. Yes, ma'am.
Q. After you got down on the floor, what happened next?
A. They asked if anyone else was in the house, and we said, yes.
Q. Okay. When you say, they, did both of them ask,

or just one of them ask?
A. Just one of them.
I couldn't see who was asking who, so I thought it was the stockier one.
Q. But you weren't sure who was asking?
A. No.
Q. And Aitor, I'm going to ask you to scoot up just a little bit and speak into the microphone because you are kind of fading out a little bit.
After one of them asked, is anybody else in the house, did anybody answer them?
A. Yes.
Q. Who answered them?
A. Ryan.
Q. Ryan Tognotti?
A. Yes, I believe so.
Q. And what did Ryan tell them?
A. That Justin Richardson and his girlfriend Danielle were in their room.
Q. Okay. And what if anything happened after they learned information there was someone else in the house?
A. They went and woke Danielle and Justin up and brought them into the living room.
Q. When you say, they, are you referring to one or both of them?

A. The stockier one went and got Danielle and Justin.
Q. Went and got Danielle and Justin?
A. Yes.
Q. Okay. And what happened after he went and got Danielle and Justin?
A. They came out into the living room and laid on the floor with the rest of us.
Q. And at whose direction did they lay on the floor with the rest of you?
A. The stockier one.
Q. And while the stockier one was getting Justin and Danielle out of the room, what was the other one doing, the one you described as taller, thinner, and I think you said it was okay if we called him number two?
A. Number two was standing in the living room making sure we stayed down.
Q. After Danielle and Justin got onto the floor, what happened after that?
A. They asked if anybody had money or debit card, ATM cards.
Q. You say, they asked.
Did one or both of them ask?
A. Number one asked.
Q. Okay. Did you have any cash on you?

A. I had like $2.
Q. Okay. Where was that cash?
A. In my wallet.
Q. And what did you do with it when they were looking for money?
A. They took it.
Q. Okay.
A. I gave it to them.
Q. Did you take it out of your pocket and give it to them, or did they take it?
A. I got my wallet out of my pocket and gave it to them.
Q. You got your entire wallet out?
A. Yes.
Q. Where did you put your wallet when you got it out?
A. I think I laid it down next to me.
Q. How did you feel when that was happening?
A. I was pretty scared.
Q. Did they take your whole wallet, or just the cash that was in it?
A. Just the cash that was in it.
Q. At some point was there a request or demand made for cell phones?
A. Yes.

Q. Did you have a cell phone?
A. Yes.
Q. Where was your cell phone?
A. In my pocket.
Q. And did your cell phone stay in your pocket?
A. No, I gave it to number one.
Q. I'm sorry?
A. I gave it to number one after he asked for them.
Q. Did you put it in Number one's hand, or on the floor, or what did you do with it?
A. I believe I put it on the floor.
Q. Do you recall prior to giving up your cell phone or the cash a bullet being ejected from one of the weapons?
A. Yes.
Q. When did that happen, and in relation to what we're speaking about?
A. It was right when they walked in the door and told everyone to get on the ground, number one cocked his pistol, and one round ejected.
Q. Okay. Did you get a look at that gun?
A. Yeah.
Q. Do you know what kind of firearm it was?
A. Yes, a Glock nine millimeter.
Q. And where was number two when that round hit the

ground?
A. Behind number one.
Q. Now, you have given up your cell phones, and everybody has given up whatever cash they had.
What happens next?
A. They took Ryan Tognotti to -- or number one took Ryan Tognotti to the bank.
Q. Okay. Do you know why number one was taking Ryan Tognotti to the bank?
A. Because Ryan said he had a car.
Q. What kind of car?
A. A Honda Civic.
Q. Okay. What -- Do you know what number one was taking Ryan to do at the bank?
A. Withdraw money from his and Justin Foucault's ATM cards.
Q. Okay. Did number one take Ryan out of the front door of the residence?
A. Yes.
Q. What if anything did number one say before he left the residence with Ryan?
A. He told number two to watch us, and if we got up, to shoot us.
Q. What did number two say if anything in response to that?

A. He says, okay, I got it.
Q. How long was Ryan gone with number one?
A. I'd say 30 to 45 minutes.
Q. Okay. What was number two doing while number one was gone with Ryan?
A. He was sitting on the staircase.
Q. Do you know what he was doing when he was sitting on the staircase?
A. Watching us.
Q. Could you see anything in his possession while he was on the staircase?
A. I had my head on the floor, so I didn't look up.
Q. Did he talk do you remember?
A. He asked how far the bank was.
Q. Okay. Did he ask that once, or more than once?
A. I believe once.
Q. Does number one eventually get back with Ryan?
A. Yes.
Q. What happens when number one gets back with Ryan?
A. They told Danielle to get up, Danielle and Justin, and they made them perform sexual acts.
Q. I'm going to ask you a few questions about that. Okay?
A. Yep.
Q. You said, they made Danielle and Justin get up

and perform sexual acts.
Who initiated that contact with Danielle and Justin?
A. Number one.
Q. Okay. What did number one tell them to do?
A. He told them to get up and remove their clothes.
Q. Did -- Are you still on the floor with your face down?
A. Yes.
Q. As far as you know, did Justin and Danielle comply with that?
A. Yes.
Q. Okay. Was number two talking during this part?
A. No.
Q. Did -- What specific sexual acts was number one telling them to do?
A. He told them to get in the 69 position.
Q. What else if anything did number one want Justin to do to Danielle?
A. He wanted her -- or wanted him to eat her out.
Q. Did he talk to Justin about getting an erection or getting hard?
A. Yeah.
Q. Okay. What did he say to Justin about getting hard?

A. He told him, if he couldn't get hard, then someone else was going to have sex with his girlfriend.
Q. Okay. Did number two talk then about having sex with Danielle if Justin couldn't do it?
A. He stated he was hard.
Q. Number two stated that he was hard?
A. Yeah, and he could do it.
Q. He could do it?
A. Yeah.
Q. Were those his words, he could do it, or --
A. I believe so.
Q. Okay. Do you need some water?
A. No, I'm fine.
Q. Was Justin able to get an erection such that he could have intercourse with Danielle?
A. No.
Q. What was number one's reaction to that?
A. He asked everyone else if they could get hard.
Q. Did he kind of go around the room?
A. Yeah.
Q. Did he land on somebody else that he thought he would ask them to get an erection?
A. Yes, Ryan Tognotti.
Q. Ryan Tognotti?
A. Yes.

Q. Do you know what if anything he gave Ryan Tognotti to help him get hard?
A. Yes, he gave him lotion.
Q. Was number one happy with Ryan's performance so to speak?
A. No.
Q. Once Ryan couldn't get an erection, what was number two saying at that time?
A. That he was hard, and he could perform sexual acts.
Q. Were those his words, perform sexual acts?
A. No.
Q. Can you tell me what his words were?
A. I can do it, I'll do it.
Q. After Ryan couldn't do what number one wanted, what happened next?
A. He told Ryan to turn back over.
Q. He who?
A. On his stomach, number one.
Q. Okay. And after he told Ryan to turn back over on his stomach, what happened next?
A. They told Danielle and Justin -- Number one told Danielle and Justin to put their clothes back on.
Q. Did Danielle always stay in the floor?
A. They brought a chair over, so I heard the chair

come across the floor.
Q. Okay. Do you know whether or not Danielle stayed on the floor the whole time?
A. I don't believe she did.
Q. Is that because of what you could hear, not because of what you could see?
A. Yes.
Q. During the time that you heard the chair moving, and you thought Danielle might have been up off the floor, was there any conversation between one and two?
A. I don't know if there was conversation between one and two, but number two said -- or told Danielle to, keep your legs up.
Q. Told Danielle -- I'm sorry?
A. To keep her legs up.
Q. What if anything did you hear number two say after he told Danielle to keep her legs up?
A. I believe she dropped them because he told her again to keep her legs up, or he was going to shoot her.
Q. What is -- I'm sorry.
Strike that, Aitor.
Do you recall any conversation about whether or not she liked it?
A. Yes, he asked her -- Number two asked Danielle if she like it, and she said, no.

Q. And you couldn't see what was happening, you could just hear?
A. Yes.
Q. What was number one doing, if you know, when number two was asking Danielle if she liked it?
A. Number one was in Justin Richardson's room with Justin.
Q. For what reason, do you know?
A. To get condoms.
Q. And how is it they got back there to get condoms?
A. He asked Justin if he had any condoms, and he said, yes.
Q. He, who?
A. Number one.
Q. Okay. Did they come back from Justin's room with the condoms?
A. Yes.
Q. And was there any conversation at that point between number one and number two?
A. No.
Q. Did Danielle stay off the floor at that point, or do you know?
A. I believe she was still in the chair.
Q. Okay. Did there come a time when number one or number two are -- both told Danielle to get down on the

floor?
A. Yes.
Q. Okay. Who directed that, do you know?
A. I can't remember.
Q. Did Justin get back down on the floor as well?
A. Yes.
Q. What happened next?
A. We were all back on the floor, and Justin and Danielle had their clothes back on, and they just kind of screamed at us a little bit.
Q. What do you mean, they screamed at you a little bit?
A. They asked us how old we are, and when we responded, they told us we were all going to die before we were 21.
Q. When you say, they told us, did number one tell you that, number two, or both of them?
A. Number one.
Q. After he had that conversation with you, what happened?
A. They proceeded to leave.
Q. Which way did they leave?
A. Out the front door.
Q. Did they close the door behind them, or leave it open?

A. They closed it.
Q. Did you have your cell phone with you at that point?
A. No, they took it.
Q. Did you later find your cell phone?
A. Yes.
Q. Before you found your cell phone, did you see number one or number two again?
A. Yeah, number one.
Q. How did that happen?
A. He told us to stay on the ground for two minutes after they left, and then like a minute later he came back in to make sure we were still on the ground, and then he left.
Q. He came back in to make sure you were still laying down, and then what?
A. Then he just left.
Q. And after he left, what did you guys do?
A. Waited two minutes and then went outside and got our cell phones.
Q. Where outside did you go to get your cell phone?
A. Right next to the door.
Q. Okay. You described number one as being stockier, is that right?
A. Yes.

Q. Was he shorter or taller than number two?
A. Shorter.
Q. Okay. About -- Bad question.
Was number two thinner than number one?
A. Yes.
Q. Do you see either one of those individuals in the courtroom today, at least as a physical description goes, that was at the Great Dane residence back in February of 2007?
A. Yes.
Q. Where is that person seated, and what are they wearing today?
A. Right there with the brown suit, white shirt.
MS. KOLLINS: May the record reflect the identification of the Defendant?
THE COURT: The record will so show.
BY MS. KOLLINS:
Q. Is the person that you just identified the person that we've been discussing as number two today?
A. Yes.
Q. Taller and thinner, the slighter build than number one?
A. Yes.
Q. After you guys retrieved your cell phones from the bushes outside, what did you do?

A. We drove to my house.
Q. Would that be on Warm Springs?
A. Yes.
Q. Who went with you?
A. Everyone that was involved.
Q. And what happened when you got to your Warm Springs apartment?
A. We contacted the police.
Q. Who called the police?
A. Ryan.
Q. Ryan Tognotti?
A. Yes.
Q. Who was your roommate at the Warm Springs residence?
A. Clint Tognotti.
Q. Ryan's little brother?
A. Yes.
Q. After you called the police, did a bunch of officers in uniform come out and then some detectives come out and speak to you?
A. Yes.
MS. KOLLINS: I will pass the witness.
THE COURT: Cross.

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CROSS-EXAMINATION OF AITOR ESKANDON

BY MR. BANKS:
Q. Was it pretty clear that one of those two fellows was in charge of this whole episode?
A. Yes.
Q. And that was the fellow that you described as number one of the two?
A. Yes.
Q. Not the gentleman sitting to my left?
A. Yes.
Q. Everybody's in that room --
A. Yes.
Q. -- except for when Ryan goes to the bank?
A. Yes.
Q. Okay. I want to talk to you about the time frame from when Ryan gets back from the bank.
Do you understand?
A. Yes.
Q. Everybody's in that room?
A. Uh-huh.
Q. The number one gentlemen starts making some sexual demands at Danielle and Justin Richardson?
A. After he got back from the bank, yes.
Q. Okay. That got a lot scarier in that room when he started making those demands?

A. Yes.
Q. There is something else that that number one said when Justin and Danielle were unable to have sex, right?
A. Yes.
Q. And what number one said was, if somebody doesn't have sex with Danielle, he's going to start killing people in that room?
A. No, he didn't say that.
Q. Tell me something to that effect, I don't know that's the direct quote, but to the best of your recollection can you please tell us what it was that number one said to that effect?
A. He told us, somebody, if they can't get hard and have sex with Danielle, that he's going to shoot somebody.
Q. Okay. After he said that, if somebody couldn't get hard, that he was going to shoot somebody, it probably had gotten a lot scarier in that room after that statement, is that fair?
A. Yes.
Q. As you sit here today, we can agree that you are not sure in your heart of hearts that this gentleman had a gun, is that fair?
A. No, I'm not positive he didn't have a gun.
MR. BANKS: Pass the witness.

MS. KOLLINS: No redirect, Judge.
THE COURT: Thank you very much for your testimony. I appreciate it.
You can go ahead and step down.
You are excused, and I doubt seriously we'll have to recall you.
THE WITNESS: Okay.
MS. LUZAICH: Justin Foucault.

JUSTIN FOUCAULT,

who, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:
THE CLERK: Please be seated.
Please state your full name, and spell both your first and last name for the record.
THE WITNESS: The first name is Justin, J-u-s-t-i-n, last name Foucault, F-o-u-c-a-u-l-t.

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DIRECT EXAMINATION OF JUSTIN FOUCAULT

BY MS. LUZAICH:

Q. Hi, Justin.
A. Hi.
Q. You live here in Las Vegas?
A. I do.
Q. Do you work?
A. Yes.
Q. What do you do?
A. I work at Polo Towers.
Q. Do you go to school?
A. I do.
Q. Where do you go to school?
A. The University of Nevada Las Vegas.
Q. How long have you been at UNLV?
A. It's my fourth year.
Q. Okay. In fact, back in February of 2007 were you going to UNLV?
A. Yes.
Q. Working as well?
A. Yes.
Q. And in February of 2007, specifically where were you living?
A. I was living at 690 Great Dane Court, Henderson.
Q. When you were living at that house -- or well

that is a house, as opposed to an apartment?
A. Yes.
Q. Who was living there with you?
A. I was living with Ryan Tognotti, Justin Richardson and Dave Motschenbacher.
Q. Justin has a girlfriend, right?
A. Yes.
Q. What is her name?
A. Danielle.
Q. Still together?
A. Yes.
Q. Still your friends, right?
A. Yep.
Q. And Ryan's got a brother?
A. Yep.
Q. Named?
A. Clint Tognotti.
Q. Now, the weekend of February 17th/18th, remember that being All-star Weekend?
A. Yes, it was.
Q. Were you guys home that weekend?
A. Yep.
Q. And was Danielle in town visiting Justin?
A. Yes.
Q. That would be Justin Richardson, as opposed to

you?
A. Yeah.
Q. All right. That Sunday night were you guys hanging out at your house?
A. Yes.
Q. Who specifically was hanging out at your house that Sunday night?
A. It was Clint's Tognotti, Ryan Tognotti, Danielle Browning, Justin Richardson, and myself.
Q. Aitor would be the one who just left, right?
A. Yes.
Q. And later in the night -- or well at some point that night did Danielle and Justin go to bed, and you guys remained up?
A. Yeah.
When I got home, they were already in bed.
Q. Okay. And when you guys were up, what was it that you Ryan, Clint and Aitor were doing?
A. We were watching a movie.
Q. Were you expecting some people as well?
A. We thought somebody might come over, yeah.
Q. Somewhere around 10:00 was there a knock at the door?
A. Yes.
Q. What happened?

A. We heard a knock at the door.
I told Ryan to check make sure who it is real quick, but just as he's walking to the door the door was opening, and two black adult males entered.
Q. Now, when the knock on the door came about, where in the room were you sitting?
A. I was sitting on the couch on the very left-hand side closest to the door.
Q. Closest to the door?
A. Yeah.
Q. Were you when there was a knock at the door, and Ryan went that way, were you watching the door, or the movie?
A. I was watching the door.
Q. You said that two men came in?
A. Uh-huh.
Q. Can you describe them for me?
A. One was a little taller than me, but shorter and stockier, bigger built to him, and the other was around six feet tall, skinny.
Q. When you say, a little taller than me, how tall are you?
A. 5'9".
Q. And the first one that you mentioned, the one that is shorter than the other and stockier, ethnicity?

A. Black.
Q. Do you remember what he was wearing?
A. Just dark jeans and a T-shirt, dark colored.
Q. Dark clothing?
A. Yes.
Q. What about the second guy, you said he was taller than the first one?
A. Yeah.
Q. And was he also thinner?
A. Thinner, yes.
Q. What was he wearing?
A. Just the same, dark jeans and T-shirt, and both had baseball caps on also.
Q. What if anything was said either before or as they were coming in?
A. When they came in, they asked for Grant, and we told them we don't know who Grant is, don't know who you are talking about.
They said, Grant lives there, that's his TV right there, we know he lives there.
We said, we don't know what you are talking about.
And then they both pulled out pistols.
Q. Now, you said they said that Grant lived there, we know Grant lives there, that's his TV.

Was both of them speaking, or just one of them speaking?
A. No, they were both saying like, where is Grant, we know he lives here.
Q. You said they pulled out pistols.
Did you see both of them pull out pistols?
A. Yes.
Q. Where did they pull them out from?
A. Just from their hip, under their shirt.
Q. Now, you said, hip, and with your right hand you are pointing to the center of your waist?
A. Yes.
Q. Is that about where they pulled them from?
A. Yeah.
Q. And did you see both of them do that?
A. Yeah.
Q. Can you describe what the guns looked like?
A. Just semi-automatic pistols, I would say dark pistols.
Q. Both dark?
A. Yes.
Q. Both semi-automatic?
A. Yes.
Q. And you are familiar with the difference?
A. Not a revolver, yeah.

Q. Not revolvers.
When they pulled out these guns, what if anything did they do?
A. Pointed it at us and told us to get on the floor.
Q. When they pulled out the guns and told you to get on the floor, were they standing together, or standing in separate parts of the room?
A. Standing together.
Q. Did one of them do anything specifically with the gun?
A. They just told us to get on the floor and circle around and put our hands together.
Q. Did you hear anything happen with one of the guns?
A. Yeah, one cocked the gun.
Q. Which one cocked the gun?
A. The stockier one.
Q. And when you say, cocked the gun, what does that mean?
A. Chambered -- pull it back, and a bullet came out.
Q. So a bullet actually kind of flew out of the gun?
A. Yes.
Q. And you said they told you to get onto the ground?
A. Uh-huh.

Q. Where in the room did you get on the ground?
A. Just in the center of the living room, so in front of the TV and the couch in between.
Q. Okay. I'm showing you what is People's Exhibit 3.

Is this your living room with the Great Dane house?
A. Yes.
Q. Is that the TV they were saying Grant owns and that was in your living room?
A. Yes.
Q. Now, at the time they came in the front door the TV was on because you were watching a movie, right?
A. Yeah.
Q. Were there lights on in the house as well?
A. No, I don't know if the lights were on.
Q. When you laid down, that carpet right there, the middle of the room where you were laying down --
A. Yep.
Q. Did they tell you what to do when you were lying down?
A. To get in a circle and put our hands on top of each other's hands.
Q. And what about your heads?
A. Keep our heads down, don't look.

Q. And when they told you to do that, did you do exactly what they told you to do?
A. Yes.
Q. Why is that?
A. Because I was scared.
Q. Okay. Other than asking about Grant, did they ask you for anything while you were laying in the circle?
A. Yeah, they said Grant owed them $10,000, but since he was not here, we would have to come up with the money.

We told them there was no way you can have 10,000, so they said, we need at least a thousand or we kill you.
Q. Did they ask you specifically for money on your person?
A. Yeah.

They also asked how much we had on us, collected our wallets and cell phones.
Q. Okay. So while you're laying on the floor, shortly after they came in they collected wallets and cell phones from you?
A. Yes.
Q. Did you have any money cash?
A. I had $4.

Q. Okay. Between the four of you do you know how much you were able to get together?
A. Less than 20.
Q. And did you take your wallet out of your pocket and put it somewhere?
A. Yeah.
Q. Where did you put it?
A. Put it on the ground.
Q. Did you take your cell phone out of your pocket and put it with your wallet?
A. Just handed it to him.
Q. Did one or both of them collect your cell phone and your wallet?
A. I'm not sure which one collected it.

I just reached up and hand it to him.
Q. You need to speak up because everybody got to hear you.
A. I'm not sure which one.
Q. But one of them collected the wallet and cell phone?
A. Yes.
Q. And what about Danielle and Justin, did one of them ask about anyone else in the house?
A. Yeah, they asked if there was anyone else in the house, and then the short stocky one went to check while

the other one stayed with us in the room.
Q. Do you know who it was who asked if there was anyone else in the house?
A. No, I don't remember.
Q. And is this partially because your head's down, and you are scared?
A. Yes.
Q. And are you -- I mean, you were aware the short stockier one walked down the hall, got Danielle and Justin?
A. Yes.
Q. Could you hear him saying anything to -- or towards Danielle and Justin?
A. No.
Q. Did there -- or did Danielle and Justin actually come out of the room shortly after?
A. Yeah, they came out of the room and got down on the ground with us.
Q. Did they do that at the direction of the short stockier one?
A. Yeah.
Q. While they were on the ground, do you know what, Justin, you need to say, yes or say no, yeah, uh-huh, all that doesn't translate very well on paper --
A. Okay.

Q. -- did they ask Justin -- not Justin -- or Justin and Danielle about money or cell phones?
A. Yes.
Q. Did Danielle or Justin have money?
A. I'm not sure what they had on them.
Q. Do you know if they gave up cell phones?
A. They gave their cell phones to them, yes.
Q. Well, they had gotten not much money, and they have gotten cell phones.
How did they react to that to you guys?
A. They said, this is not enough money, we need more.
When we couldn't come up with anymore, they said, well, don't you guys have checking cards or anything like that?
Q. Who was asking that question?
A. The stockier one.
Q. What did you do when they asked that question?
A. So Ryan and myself, we said, we have money in our banking account, that he could have the ATM card, so the short stockier one collected the ATM cards from Ryan and myself.
Q. Did you personally take it out of the wallet, or the short stocky one?
A. I took it out of the wallet and handed it to him.

Q. The short stockier one?
A. Yeah.
Q. Could you see whether Ryan did the same thing?
A. No.
Q. Could you tell whether Ryan also gave up his?
A. Yeah.
Q. So once you both had given up your ATM cards, what happens?
A. He told me I -- how much money was in there, and if it's not the right amount, he will kill me, and also give him the PIN number, and if it's not the right PIN number, he's going to kill me, and I'll never see Ryan again.
Q. Did somebody go to the bank to get the money from the ATM?
A. Yeah.
So Ryan and the short stocky one left to go to the bank.
Q. When Ryan and the shorter stockier one left, did the taller thin one remain behind?
A. Yes.
Q. Could you see what he was doing while he remained behind?
A. I couldn't see exactly.
I was closest -- My feet were facing the door, so

I was laying directly away from it, but I heard them talking behind me, so I knew he was behind me when he asked the question.
Q. Before we get to the question, before the shorter stockier one left with Ryan, did he say anything to the taller thinner one?
A. Yeah, he said, make sure they don't move, if they move, kill them, and I thought he said, you got this, Marcus, but the other one answered, yeah, I got it.
Q. So when you say the other one answered, yeah, I got it, was that the taller thinner one?
A. Yeah.
Q. That's what you heard him say in response?
A. That's what I thought he said, yes.
Q. And when you said, while the short stocky one and Ryan are gone, you could feel the other guy behind you, and then you heard something, what did you hear while Ryan and the short stocky one was gone?
A. Shortly after he left he said, be cool, and nothing will happen, and during while he's gone he asked, where is the nearest store, and we told him, and he's like, all right, and that's about it.
Q. Did it feel like it was taking a long time?
A. Yeah.
It took a while.

Q. Did you hear him say anything else while they were gone?
A. No.
Q. Did there come a time when they actually came back?
A. Yes.
Q. Was Ryan then directed to lay back down on the ground with you guys?
A. Yes.
Q. Was that at the direction of the stockier one?
A. Yes.
Q. Once all six of you are back on the ground, what if anything did the guy say to you?
A. The short stockier one said, we were 90 percent done, we just have to do a little more, and then ordered Danielle to take off her clothes.
Q. The short stockier one did?
A. Yeah.
Q. And could you tell, did it sound like she did that?
A. Yeah.
Q. What else did he order people to do?
A. After that, he said, we need to get hard, and if you are not able to have sex with Danielle, then one of them will have to.

Q. Before he said that, did one or both of them say anything to Danielle and Justin specifically?
A. No.
Q. Did they tell them what to do?
A. Well, he made Danielle and Justin perform oral sex on each other.
Q. Now, your words -- or oral sex, did those guys use different words?
A. Yeah, suck his dick or something.
Q. Who said, suck his dick?
A. The short stocky one.
Q. So he told Danielle to do that obviously?
A. Yeah.
Q. Did he tell Justin to do anything in particular to Danielle?
A. Told him get in a 69 position.
Q. Okay. Did he also give Justin anything to help him?
A. He gave him lubrication.
Q. What kind of lubrication?
A. I don't know, a bottle of lotion.
Q. That was in the house?
A. Yeah.
Q. Did it sound like Justin was able to do what they wanted him to do?

A. No.
Q. And how could you tell?
A. Because they said, what's wrong with you, if you can't have sex with her, I know we could.
Q. Who said that?
A. The short stockier one.
Q. Now, while this early stuff is going on, was the taller thinner one saying anything?
A. Yeah, he was saying, I'm hard, I can have sex with her.
Q. Did Justin continue to try did it sound like?
A. Yes.
Q. Can you tell how long that went on for?
A. I'd say fifteen, twenty minutes.
Q. So it felt like a while?
A. Yeah.
Q. And when the taller thinner one is saying, I'm hard, I can do it, did that cause Justin to try harder?
A. Yeah.
He was nervous.
Q. Did there come a time that they the guys realized Justin wasn't going to be able to do what they wanted?
A. Yes.
Q. And how could you tell?
A. At that point they came, told each one of us and

said, can't you get hard, can't you have sex with her, and we said, no, and then they had made Ryan turn over and start masturbating.
Q. And did they give Ryan anything to help him?
A. They gave him a bottle of lotion also.
Q. All right. Now, could you see anything that was going on?
A. No.
Q. Was your head down the whole time?
A. Yes.
Q. Could you tell that they were not happy that Ryan was unable to do what they wanted?
A. Yes.
Q. And how could you tell that?
A. Put your small dick away is what they said.
Q. Okay. Did there come a time that Justin, the other Justin obviously, was asked to get up and get something?
A. Yes.
Q. Do you know what he was asked to get up and get?
A. They told him to go to his room and get some condoms for him, the short stockier one.
Q. Did he go by himself?
A. No, the short stockier said, I'm going to take you to your room, I'm going to go with you.

Q. While the short stockier one was with Justin at Justin's room, was Danielle in the circle or somewhere else?
A. Danielle was in the circle with us still.
Q. Was she asked -- or told to move away from the circle?
A. Yes.
Q. Where was she moved to?
A. Just closer to the stairs, I guess to the left of me.
Q. Somewhere behind you?
A. Yeah.
Q. And just showing you State's Exhibit 2, so are your feet kind of like here?
A. Yeah.
Q. So behind you would be the stairs and the chair?
A. Yeah.
Q. And when you heard Danielle behind you, could you tell who was with her?
A. There was the tall skinnier one.
Q. Could you -- or was he saying anything that you could hear?
A. I heard him ask, do you like how it feels?
Q. Could you tell where Danielle was when you heard him say that?

A. Just behind me, that's all.
Q. Could you hear what if anything Danielle said in response?
A. I thought she said, yeah, but I prefer Justin Richardson.
Q. Could you tell what the taller thinner one was doing to Danielle at that time?
A. I wasn't sure.
Q. Could you hear him say anything else to Danielle?
A. That's all I heard.
Q. Did that come to an end?
A. Yeah.
Q. Could you hear what caused that to come to an end?
A. I'm not sure.
Q. Did Danielle come back to the circle?
A. Yeah.
Q. And as far as you can tell, when Danielle came back to the circle, was she clothed?
A. I'm not sure.
Q. You couldn't tell?
A. No.
Q. Okay. Did the whole incident come to an end?
A. Yes.
Q. How did that happen?

A. The tall skinnier one said, he's hard, he could do it, but then the short stockier one said, no, they've been cool, let's let them go, and the tall skinnier one said, are you sure, and he said, yeah, they've been cool.
So he said, we're going to leave now.
Q. Who said, we're going to leave now?
A. The short stockier one.
Q. What else did he say about leaving?
A. He said -- Clint asked if we could get our phones back, and he said, yeah, we're going to leave your phones outside, and in two minutes go pick them up.
If we're not sure if we are around the corner, don't move, we'll come back and shoot you, and they said, don't call the cops or we'll have our friends come back and shoot you, and then they left.
Q. I'm sorry.
I thought you said at some point you heard the short stockier one say to the other a name?
A. Yeah, I thought he called him Marcus is what I thought.
Q. Marcus.
And when they left, did they leave the door open or closed?
A. I don't remember.

Q. Your feet were to the door --
I'm sorry.
What did you guys do when they left.
A. We waited two minutes, counted it out, and then we went and picked up your phones.
Q. Before you picked up your phones, did you see one or both of them again?
A. No.
Q. When you went to pick up your phone --
A. Well, actually yeah, he came back in once before the two minutes was up.
Q. Who came back in?
A. The short stockier one.
Q. And what if anything did he say?
A. He said, all right, you guys are not moving, that's cool, all right count it out again, repeated himself.
Q. And then did he leave?
A. Then he left.
Q. When you guys got up to get your phones, did you find them?
A. Yeah.
Q. Where were they?
A. They were in the bushes right outside the door.
Q. Were they all there?

A. Everyone's but Danielle's was there.
Q. So you got yours back?
A. Yes.
Q. After you got your phones, what did you do?
A. We talked for a bit and decided that it wasn't best to call the cops at the place we were at because we didn't want the traffic in the area, and didn't know if they were there or still left, and we figured Clint didn't live there, so go to his apartment and call the police there.
Q. So did all of you go to Clint's?
A. We all left.
Q. The police came, and you talked to the police?
A. Yes.
Q. Did you get your card back eventually?
A. Yes.
Q. And was there actually $500 taken from your bank account?
A. Yes.
Q. Did you want any of these things to happen?
A. No.
Q. You described two guys, a shorter stockier one, and a taller thinner one.
Do you see anybody here in court that fits the description of either one of them?

A. Yes.
Q. Can you describe where that person is sitting, and what that person is wearing?
A. Yes.
The black male wearing the brown sweater in the middle of these two gentlemen.
MS. LUZAICH: May the reflect the identification of the Defendant, fitting the description?
THE COURT: The record will so show.
BY MS. LUZAICH:
Q. Does he fit this description of the shorter stockier one or the tall skinnier one?
A. The tall skinnier one.
MS. LUZAICH: Thank you.
I pass the witness.
THE COURT: Cross.
MR. LANDIS: Thank you, Judge.

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CROSS-EXAMINATION OF JUSTIN FOUCAULT

BY MR. LANDIS:
Q. Hi, Justin.
A. Hi.
Q. What time do you think it was that they left the Great Dane address?
A. Close to midnight I would say.

Q. And I think you touched on this.
After they left, you guys talked a little bit.
A. Yes.
Q. Talked about what you should do?
A. Yes.
Q. Talked about whether or not you would call the cops from the Great Dane address?
A. Yes.
Q. During that conversation, I'm sure you talked about some of the things that transpired?
A. Yeah.
Q. And --
A. I'm not sure actually.
Q. You don't have the clearest memory?
A. Yeah.
Q. How long do you think you guys stayed at that Great Dane address before you went to the Crystal Creek Apartments?
A. I'm not sure exactly.
Q. Under an hour or over an hour?
A. Less than an hour.
Q. It's pretty close, Crystal Creek and Great Dane, yeah?
A. Yep.
Q. Once you got to the Crystal Creek Apartments, how

long did you wait before you called the cops?
I know you didn't call them yourself, but before the cops were called.
A. I'm not sure how long we were there before the cops were called.
Q. Over an hour, or under an hour?
A. It was under an hour.
Q. Did they respond pretty quick?
A. Yes.
Q. Two uniform officers arrived first, right?
A. Yes.
Q. One or maybe two of you gave them an oral statement, is that a, yes?
A. Yes.
Q. And then they asked each and every one of you to give a written statement?
A. Yes.
Q. And you did that?
A. Yes.
Q. Do you remember giving that written statement?
A. Yeah.
Q. One of the things that was wrote in that written statement was that they entered Justin Richardson's bedroom, or the shorter stockier one entered Justin Richardson's bedroom with his gun drawn, correct?

A. Correct.
Q. You weren't in Justin Richardson's bedroom, right?
A. Right.
Q. You knew that because Justin, and/or Danielle told you that, right?
A. I --
Q. Did you say, no?
A. I'm not sure.
I suppose that would be the only way I would know, yeah.
Q. And that same written statement you made, you told them that Ryan withdrew $900 from your two accounts?
A. Yeah.
Q. You weren't with him at the ATM?
A. Nope.
Q. Ryan told you that before he made that statement?
A. No, actually the short stockier one, when he was with us, said, how much do you have in it, he said, 500, and he said, how much do you have in it, and he said, 400, so I put two and two together.
Q. So you believe that Ryan told him he had $400 before he left for the bank?
A. Yes.

Q. Do you remember giving an oral recorded statement to the officers that same morning?
A. Yes.
Q. So that was about 7:35 in the morning, does that sound about right?
A. I'm not sure.
It was early in the morning.
Q. Did you have any reason to dispute that?
A. No.
Q. And like you testified today, in that oral statement you told the detectives that two individuals entered the house and drew handguns?
A. Yes.
Q. Today you said they were, and correct me if I misstate you, they were semi-automatics and not revolvers?
A. Yes.
Q. So what is the difference in your mind between a semi-automatic and a revolver?
A. The circle in the middle.
Q. Like an old wild west gun?
A. That's what I'm thinking, yes.
Q. Are you familiar with handguns?
A. A little bit, yes.
Q. Did you grow up hunting like maybe the Tognotti

boys did?
A. No.
Q. Have you ever owned a gun?
A. No.
Q. Do you regularly shoot guns?
A. No.
Q. In that recorded statement you told the police that they both pulled out nine millimeter handguns, do you remember that?
A. Yeah.
Q. What is a nine millimeter handgun?
A. That's just the closest thing I could think of.
I have seen them before, so --
Q. Do you know the difference between a nine millimeter and a .45?
A. Not exactly.
Q. Or a .35 or a .38?
A. No.
Q. But you do remember that when the shorter stockier one entered the house, he cocked his gun?
A. Yes.
Q. And that caused a bullet to discharge from the chamber?
A. Yes.
Q. After they left, did you guys find that bullet?

A. Yes.
Q. Do you remember who found it?
A. I'm not sure which one originally found it, no.
Q. Did you all see it before you talked to the police that night?
A. Yes.
Q. Was one of the people who were present at the house able to determine what kind of bullet that was?
A. I'm not sure.
Q. Isn't it true that it was a nine millimeter bullet?
A. I'm not sure.
Q. When they entered the house, the shorter stockier one entered first, right?
A. I'm not sure.
They both entered at the same time pretty much.
Q. You got a pretty good look at his gun, right, the shorter stockier one?
A. I saw them both when they first entered.
Q. When you were talking to the police on the morning of the 19th, they asked you a lot of detailed questions, right?
A. They asked me a few questions.
Q. They asked you to describe both individuals to the best of your ability?

A. Yes.
Q. They asked you about each article of clothing they were wearing?
A. Yes.
Q. And they asked you to describe their guns?
A. Okay.
Q. Is that, yes?
A. I don't remember.
Q. They asked you what color the shirt the individual they labeled number two was wearing, and you said, a black T-shirt, correct?
A. Yes.
Q. They asked you about number two's gun, yes?
A. I don't remember that.
MR. LANDIS: May I approach?
THE COURT: Yes.
MR. LANDIS: Page 8 and 9.
BY MR. LANDIS:
Q. Would you read page 8 and into page 9 to yourself?
A. From where, right here?
Q. That is page 8, and that is page 9?
A. Yeah.
Q. Does that help jog your memory a little bit about your conversation with the police that night?

A. Yes.
Q. They asked you about the gun that number two may have had, correct?
A. Yeah.
Q. Your response was, I didn't, I didn't look at it, he never held his gun to me or anything, just number one?
A. I don't think I said I didn't look at it.
I didn't see it too clearly is what I put, I think.
MR. LANDIS: May I approach again, Judge?
THE COURT: Sure.
BY MR. LANDIS:
Q. Okay. When they asked you about the gun, you said, and I do quote, I didn't, I didn't look at it, he never held his gun to me or anything, just number one?
A. Yes.
Q. When they got back from the ATM, it was number one who said, 90 percent done, a little bit left, or ten percent left, right?
A. Yes.
Q. Before that, before they returned from the ATM, Narcus here was pretty quiet, right?
A. Yes.
Q. Never ordered you guys to do anything?

A. No.
Q. After number one started ordering?
A. Sorry.
Not to order us to do anything besides, don't move, keep your head down.
Q. That occurred right after number one said -- as he left?
A. Yeah, after he left, so I guess that would be an order.
Q. Number one started ordering that Justin and Danielle perform sex on one another, right?
A. Yes.
Q. At this point Narcus here is quiet?
A. Yes.
Q. After he's frustrated that Justin can't get hard, he starts asking, he starts to circle, says, who can get hard, who can get hard, right?
A. Yes.
Q. Then he says in no uncertain terms, if one of you can't have sex with her, one of us will have to?
A. Yes.
Q. And that's number one?
A. Yes.
Q. Number one also says, if one of you doesn't get hard, I'm going to have to kill somebody?

A. Yes.
Q. After those statements, you testified to this on direct I believe, Narcus said, I'm hard, I'm hard?
A. Yes.
MR. BANKS: Nothing further.
MR. LANDIS: Nothing further, Judge.
THE COURT: Redirect?

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REDIRECT EXAMINATION OF JUSTIN FOUCAULT

BY MS. LUZAICH:
Q. Do you think there is a difference between looking at a gun because it's pointed at you, and just kind of seeing a gun because it's walking by you in somebody's hands kind of thing?
A. Yeah, yes.
Q. You know, you are not familiar with guns, you said you have ever seen movies with guns in them?
A. Yes.
Q. See TV shows with guns in them?
A. Yes.
Q. Okay. Did both guns look similar to each other?
A. Yes.
Q. When the shorter stockier one and Ryan were gone, is that when number two, the taller thinner one, said, he actually spoke and said, don't move, and keep your

head down?
A. Don't move, keep your head down, and everything will be cool.
Q. I didn't hear the last part.
A. Don't move, and keep your head down, and everything will be fine.
Q. But he never left?
A. No.
Q. Didn't call the police while the stockier one was gone?
A. No.
Q. When the stockier one comes back with Ryan, and they start getting Danielle and Justin to do those things, you just now on cross said that the stockier one said something like, if one of you don't get hard, I'm going to have to kill somebody, is that what he said?
A. Yes.
Q. He said that to you guys, is that right?
A. Yes.
MR. BANKS: Speculation.
THE COURT: Overruled.
Go ahead.

BY MS. LUZAICH:
Q. He said that to you guys?
A. Right.
Q. Not to the Defendant?
A. Yes.
MS. LUZAICH: Thank you.
MR. LANDIS: Court's indulgence.
THE COURT: Was that it?
MS. LUZAICH: Yes.
Sorry.

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RECROSS-EXAMINATION OF JUSTIN FOUCAULT

BY MR. LANDIS:
Q. When number one said, if one of you doesn't get hard, someone is going to die, you were still lying on the ground?
A. Yes.
Q. Your head was still down?
A. Yes.
Q. And you weren't looking around because you were worried if you did, you would be shot?
A. Yes.
Q. Did he go around and whisper that in each one of your ears?
A. I don't remember if he circled us saying, don't

move, keep your head down.
Q. He definitely said it once aloud, right?
A. Yeah.
Q. Did he say names in front of it?
A. What do you mean?
Q. Did he say, Justin, if you don't get hard, someone is going to die?
A. I don't think so.
Q. He said, if someone doesn't get hard, someone is going to die?
A. He said -- After he said that, he went around to each of us, can you, can you, pointing the gun at each one of us.
Q. Uh-huh.
MR. BANKS: Nothing further.
THE COURT: Anything else?
MS. LUZAICH: Just one more.

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REDIRECT EXAMINATION OF JUSTIN FOUCAULT

BY MS. LUZAICH:
Q. When the Defendant sitting here said, I can get hard, I can do her, how did he sound?
A. Confident.
Q. Excited?
A. Yeah.

Q. Nervous?
A. No.
MS. LUZAICH: Thanks.
Nothing further.
MR. LANDIS: Nothing further, Judge.
THE COURT: Thanks for your testimony. I appreciate it.
You can go ahead and step down.
I don't expect we're going to have to recall you.
You should be done.
THE WITNESS: Thanks.
THE COURT: Okay.
Do you guys want to take a break?
Let's take ten minutes.
It's 3:30.
Let's say ten minutes, 20 till.
(Jury admonished by the Court.)
THE COURT: We're in recess.
You got ten minutes.
(Thereupon, the following proceedings were had out of the presence of the jury.):
THE COURT: Anything we need to discuss?
MS. LUZAICH: You know, they are still -- smirking going on back there.
THE COURT: I haven't seen or heard anything.

I'll reiterate my earlier admonishment, but I haven't been able to detect anything, but I'll repeat what I said earlier.
What about schedules, what are we looking at the rest of this day, when are we going to start looking at instructions?
MS. LUZAICH: I think well rest tomorrow.
The lunch break was shorter, so I didn't get it together, but in the morning I'll have instructions to the Defense, we'll have the instructions to the Defense tomorrow.
THE COURT: What is the rest of your lineup looking like?
MS. LUZAICH: We have this afternoon a street cop, crime scene, and a detective, and then detectives tomorrow.
THE COURT: We're done with the kids?
MS. LUZAICH: The kids are done.
THE COURT: That was it?
MS. LUZAICH: And Grant.
I'm sorry, we would have Grant tomorrow.
THE COURT: You are going to put on Grant tomorrow?
MS. LUZAICH: Yes.
THE COURT: Who are you calling this afternoon,

finishing up with?
MS. LUZAICH: A street cop, crime scene, and a detective, if there is time.
THE COURT: Okay. I really haven't had a chance to look at tomorrow's calendar, but do you want 10:00?
MS. LUZAICH: Sure.
(Thereupon, a discussion was had off the record.)
THE COURT: We got a break.
Take some time.
(Thereupon, a recess was had.)
(Thereupon, the following proceedings were had out of the presence of the jury.):
THE COURT: Are we ready?
MS. LUZAICH: Yes.
THE COURT: Bring them in.
Thereupon, the following proceedings were had in open court and in the presence of the jury.):
THE COURT: Do the parties stipulate to the presence of the jury?
MR. LANDIS: Yes, Your Honor.
MS. LUZAICH: Yes, Judge.
THE COURT: All right. Who is the State's next witness?
MS. LUZAICH: Officer Slattery.

KYLE SLATTERY,

who, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:
THE CLERK: Please be seated.
Please state your full name, and spell your first and last name for the record.
THE WITNESS: First name is Kyle, last name Slattery, S-l-a-t-t-e-r-y.

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DIRECT EXAMINATION OF KYLE SLATTERY

BY MS. LUZAICH:
Q. Sir, what do you do for a living?
A. I'm police officer with the Henderson Police Department.
Q. How long have you been with the Henderson Police Department?
A. Three years.
Q. What is your assignment over there?
A. Patrol officer.
Q. What do patrol officers do at the City of Henderson?
A. We handle numerous different calls, traffic stops, domestic batteries, robberies, burglaries,

etcetera.
Q. So if somebody calls 911 to report a crime, you would be sent to the persons who reported the crime?
A. That's correct.
Q. Okay. As a patrol officer, do you continue on with investigations, or do you do kind of the initial --
A. I do the initial investigation, and from there if I determine it's the need for detectives or further assistance, I contact my sergeant.
Q. What might cause you to determine the need for further assistance for example?
A. Just a robbery with a lot of different victims, suspects, sexual assaults, stuff like that, that's where we contact the detective bureau to have them respond because they have trained detectives in the area.
Q. Okay. And were you on duty specifically on Sunday night, February 18th of 2007?
A. Yes, I was.
Q. And as a patrol officer, are you generally kind of driving the area to see whether or not crime is occurring?
A. On that time we are on a proactive basis -- or sometimes we're busy call to call.
Q. Specifically on February 18th, into Monday morning, February 19th, were you sent to an apartment on

Warm Springs dealing with six young kids?
A. Yes, I was.
Q. Where was that apartment you were sent to?
A. 2101 West Warm Springs, Apartment Number 4322.
Q. Do you know the name of those apartments?
A. Crystal Creek.
Q. What was the nature of the call that sent you there?
A. I was dispatched to a robbery, and n my case notes over the call they dispatched advise me that the actual robbery had occurred at 690 Great Dane, and that the victims were at this apartment.
Q. Okay. And when you went to the apartment, were you alone, or with anybody?
A. I had a ride along with me, and then I had an assisting officer.
Q. And would that be the normal course of things to send two officers to something like a robbery?
A. Yes, ma'am.
Q. Who was the assisting officer?
A. Officer Tillman.
Q. And when you went to the apartment, who if anyone did you contact?
A. I contacted six individuals inside the apartment. Their names were Justin, Aitor, Ryan, I don't recall the

female's name, Danielle, and there were two other males inside, I don't recall their names.

Q. Another Justin and a Clint?

A. That's correct.

Q. And two of them were brothers?

A. Correct.

Q. When you went in, did you have one of them explain things for you, did you have all of them, who did that work?

A. Basically they were all sitting in the living room of the apartment, and I just -- one of those individuals, Ryan, told me he would explain the events, and from there he explained what happened.

Q. Okay. How did they appear when you got there, how did they look?

A. All of the individuals appeared to be very shaken up.

Most of the guys were looking down at the ground, looked very frightened.

The female had tears in her eyes like something had happened.

And that's basically it.

Q. And did Ryan explain to you what had occurred previously?

A. Yes, he did.

Q. And did he describe it had happened over a period of time?

A. Yes, he did.

Q. Based on what he told you, what did you do?

A. Throughout the course of my investigation I determined this was going to be something where I needed to contact my sergeant, have further detectives respond, so that is what I did.

Q. While your sergeant was getting other detectives, and I assume that would be like robbery detectives and sexual assault detectives --

A. That's correct.

Q. While your sergeant was getting those detectives contacted, and having them come to your location, did you have the kids do anything?

A. Yes, I had all of the individuals fill out witness statements, so they could put their stories down on a piece of paper, and so they wouldn't forget.

Q. When you say you had them fill out witness statements, did you have like a piece of paper you call voluntary statement and has a like name, address, stuff like that, and then have them write in their own words things that occurred?

A. That's correct.

Q. And then do you review them after they write

them?

A. The only review process on the statements is to make sure all of their appropriate information is on there, if we need to contact them at a later date, and their signature is on there.

Q. And you sign the statement afterwards?

A. Yeah.

Q. And that's just as a witness you know they wrote the statement?

A. That's correct.

Q. And when you have them write their statements, do you tell them sit separately and write -- would you know personally, as opposed to all six of them sitting together and writing the same things?

A. I had all the individuals separated, all had their own pens, clip boards and papers, and each one wrote their own stories of what occurred.

Q. Did you remain at the Warm Springs apartment until a sergeant and detective got there?

A. Yes, I did.

Q. And did you explain to the sergeant and detectives what you knew, and kind of introduced them to the kids?

A. Yes, I did.

MS. LUZAICH: Thank you.

I pass the witness.

THE COURT: Cross.

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CROSS-EXAMINATION OF KYLE SLATTERY

BY MR. BANKS:

Q. Officer Slattery, what specific detail were you working in February of '07?

A. Patrol officer, sir.

Q. All right. Now, in Henderson is there a separate robbery detail?

A. I believe it's just split into like a specific crime unit and crimes against person unit.

I don't think we specifically have a robbery unit.

I know there is robbery detectives, but we don't have a robbery unit.

Q. Okay. But there is a unit or a section, I don't want to misquote you, a section that handles robbery types of charges that is different from patrol?

A. Correct.

Q. And the same with sexual assault?

A. Yes.

Q. And the detectives that are in those separate -- what do you call them, separate details?

A. Yeah, just different details, bureaus.

Q. Okay. Let's call it a detail.
A. Okay.
Q. Are those detective that are in a separate detail, they may have some training above and beyond patrol officer?
A. Correct.
Q. Okay. But you do have some training?
A. Uh-huh.
Q. Yes?
A. Yes.
Q. And that's the stuff you learn at the academy?
A. Correct.
Q. And other classes may be above and beyond the academy?
A. Correct.
Q. One of the things you learned at the academy was kind of the foundation for how to conduct a criminal investigation, is that fair?
A. That's correct.
Q. One of the things that you learned at the academy is that sometimes the police officers only as good as the information that he has, is that fair?
A. I don't understand your question.
Q. Sometimes the officer is only as good as the information that is available, or as good as the

information that you have at the time?
A. I mean, we're going to investigate -- I am going to investigate the situation, and that's the facts of the case.
Q. Okay. You want to preserve the integrity of the investigation as much as you can?
A. Correct.
Q. Okay. And one of the major, major steps that you took was to separate everybody?
A. Correct.
Q. And to give everybody separate paper and pen to write down their recollection of the events, right?
A. That's correct.
Q. Officer, I think there is water up there if you want to help yourself.
A. Thank you, sir.
Q. Okay. I don't think I asked you because the integrity of the investigation is of paramount concern, is that right?
A. Yes, sir.
Q. Another thing that you learned at the academy as far as investigation is, you want whoever it is that is being interviewed to tell the most complete and accurate version of what happened as best they can?
A. Correct.

Q. And you explained to them that you want them to be as thorough and as accurate and complete as they possibly can?
A. That's correct.
Q. You separated these folks?
A. Correct.
Q. And that is to avoid any of these folks talking to one another about the events that transpired, right?
A. Correct.
Q. Because different people see different things?
A. Correct.
Q. Different people based on their life experiences may perceive events differently than others?
A. Correct.
Q. And the last thing that you want because you are trying to preserve the integrity of the investigation is contamination back and forth between witnesses, is that a fair characterization?
A. That's correct.
Q. And you took steps to avoid that as best you can?
A. As best as I could.
Q. We can agree that sometimes that well has already been poisoned so to speak, is that fair?
A. That's fair.
Q. Because the officer may be only as good as the

information that is available at the time?
MS. LUZAICH: You know, asked and answered like four times.
THE COURT: Well --
MS. LUZAICH: He's not getting anywhere with it.
THE COURT: Just clarify that what you are asking there.
I'm not quite sure he follows -- or I follow exactly what you mean.
BY MR. BANKS:
Q. You play the hand you are dealt, you got the information you have?
A. When I get to a scene, and dealing with six individuals, I'm going to do what my best is to make sure that those individuals, don't talk about what is going on, and that's what I did, separated them, they weren't allowed to talk as best as I could in a one-bedroom apartment.
Q. Okay. Not an ideal situation, one-bedroom apartment?
A. Correct.
Q. Six people?
A. Correct.
Q. And you have come in a little ways after the incident has occurred?

A. I would have to say that I came in as soon as possible as they had the ability to call the police.
Q. Okay. But there was a window between -- you know, sometimes it's a large window, sometimes it's small, but there was a window between the time that those folks left that Great Dane address and you separated them, is that fair?
A. Yes, there was.
Q. Okay. And for better or for worse, Officer Slattery, quite frankly any police officer in America when you go into that kind of a situation, you don't know what has gone on in that window, right?
A. Right.
Q. You can only try to preserve the integrity of the investigation as best you can from the point you get there, is that fair?
A. Correct.
Q. Okay. Is that fair?
A. Correct.
Q. Okay. You obtained handwritten statements?
A. That's correct.
Q. And then you had conversations -- Did you have conversations with each of the six -- or was there a partner, and you kind of separated the six?
A. Initially I spoke with Ryan who related the story

to me, and then I spoke with Justin and Danielle, that was it out of the six.
Q. Okay. And after you spoke to Ryan, he told you that there may have been some sexual things that had gone on involving Justin and Danielle?
A. Correct.
Q. And you talked to Justin and Danielle?
A. Correct.
Q. But did you record those conversations?
A. No, I did not.
Q. It was after you had the conversations with Justin and Danielle that you decided to call in somebody with more training as far as sexual assault goes, is that fair?
A. I did my initial investigation.
After I determined there was a sexual assault that occurred, I didn't go down for all the related questions because I know there are detectives that have more experience, so that's when I contacted my sergeant.
Q. Okay. And that is a step that you took at that time to best preserve the integrity of the investigation?
A. That's correct.
Q. Okay. But you did have at least a conversation about generally what occurred with Justin?

A. That's correct.
Q. And you did have a conversation at least generally what occurred with Danielle?
A. That's correct.
Q. Okay. I believe you testified that Ryan told you that he would explain the events?
A. That's correct.
Q. How did Ryan get into the mix to be the one to explain the events?
Did you ask the group, does somebody want to be the spokes person, how did that happen?
A. I don't actually recall, but I think he initially spoke up and said that he will -- First I established this crime had been committed to all of them, and then I said, you know, is there one person that wants to speak, I believe that's what I said, and I believe he was the one that spoke up and said he will tell the story.
Q. Okay. You determined that a crime happened to everyone.
Was that before the handwritten statements?
A. Yes, sir.
Q. Is that still while everybody's in the one-bedroom apartment that you made that determination?
A. Correct.
Q. I'm just trying to get into my mind, so we are

perfectly clear, how did you solicit that information, did you ask the group, okay, what happened while they are sitting there, how did you get to, okay, something happened to everybody?
A. Basically because of my notes that I received from the dispatchers that were on my MBT in my car right there, it determined it happened to all of them.
I believe, if you don't mind me looking at my report, I believe I quoted what was in my MBT from the dispatch, which I'm not exactly sure who the 911 caller was, but whoever it was they relayed that information which made me have an understanding it occurred to all these individuals.
Q. So you are getting information that sounds like on the car ride over?
A. Uh-huh.
Q. So you kind of go in there with maybe a thumbnail sketch of what has occurred?
A. That's correct.
Q. Okay. So it's not like you got all six of them there, and you are having a free-for-all session, and everybody's talking?
A. Correct.
Q. That is something you certainly want to avoid?
A. Correct.

Q. And you did your best to do that by separating them?
A. Correct.
MR. BANKS: Pass the witness.
Thank you.
THE COURT: Redirect?
MS. LUZAICH: Just briefly.

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REDIRECT EXAMINATION OF KYLE SLATTERY

BY MS. LUZAICH:

Q. When somebody calls 911 to the Henderson Police Department, the dispatcher's typing information into a computer, right?
A. That's correct.
Q. And whatever information she hears on -- or sorry, he or she, hears on the phone in theory they are typing all of that into the computer?
A. Correct.
Q. And then that is transmitted to you in your vehicle?
A. Correct.
Q. And now I'm sorry, did you go to the 690 Great Dane house?
A. No, I do not.
Q. Did you cause somebody to go to the 690 Great

Dane house?
A. Once my sergeant arrived on the scene, I believe he sent a patrol officer there to secure the residence.
Q. To preserve the scene, so crime scene could come out there and collect evidence?
A. That's correct.
MS. LUZAICH: Thanks.
Nothing further.
THE COURT: Anything else?
MR. BANKS: No, Your Honor.
Thank you.
THE COURT: Thank you, officer. I appreciate it.
THE WITNESS: Thank you.
MS. KOLLINS: Jennie Ayers.

JENNIFER AYERS,

who, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE CLERK: Please be seated.
Please state your full name, and spell your first and last name for the record.
THE WITNESS: Jennie Ayers, J-e-n-n-i-e A-y-e-r-s.

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DIRECT EXAMINATION OF JENNIFER AYERS

BY MS. KOLLINS:

Q. Good afternoon, Ms. Ayers.
How are you employed?
A. With the City of Henderson, at the police department, I'm employed as a crime scene analyst.
Q. How long had you been employed with the City of Henderson as a crime scene analyst?
A. I've been with the Henderson Police Department for two years.
Q. Prior to your employment with the Henderson Police Department as an analyst, have you been employed in that same field in another jurisdiction?
A. I did.
I was employed, worked for two different agencies there for a total of five years.
I've been in the field for seven years total.
Q. What specific education qualifies you to perform as a crime scene analyst?
A. I have a Bachelor's Degree in biology from the College of Idaho in Caldwell, Idaho.
In addition, I'm certified as a crime scene investigator through the International Association of Identification.

Toward getting that certification, one of the requirements is ongoing education, and I have a total of 95 hours in additional education, and one fourth of that is fingerprints.
The other areas are death and homicide investigation, shooting reconstruction, and blood stain interpretation, and other courses related to forensics.
Q. And have you participated in those courses over the course of your career as a crime scene analyst?
A. Yes, I have.
Q. Were you employed as a crime scene analyst with the City of Henderson in February of 2007?
A. Yes, I was.
Q. And did you have occasion to be called in off duty late on February 18th, '07 into the early morning hours of February 19th, 2007?
A. I was called out early in the morning on February 19th.
Q. About what time?
A. I got called shortly before 5:00 in the morning.
Q. Who called you?
A. My supervisor at the time, Rick Workman (Phonetic).
Q. Did you know -- or were you briefed on what the need was for you to respond to buy Mr. Workman?

A. I was given very little information until I actually responded to the first location.
Q. Okay. What is the first location that you responded to?
A. The first location I responded to is on Warm Springs Avenue, 2101 Warm Springs, an apartment complex, and Crystal Creek Apartments, I believe.
Q. What time did you arrive there, do you know?
A. I arrived there approximately 5:30 in the morning.
Q. Who was there upon your arrival?
A. A number of detectives were present, as well as members of patrol.
Q. Okay. And were the residents of -- or guests of the apartment also present?
A. There were a number of individuals present in the apartment.
I don't know who lived there and who didn't.
Q. What did you learn when you arrived at the Warm Springs address?
A. I learned that the incident had not taken place at Warm Springs, that the people involved had gone to the Warm Springs apartments and from an original address which was on Great Dane.
Q. And by involved do you mean the victims had gone

to the Great Dane residence to the Warm Springs apartment?
A. Yes.
Q. And what if anything did you do at the Warm Springs apartment?
A. I spoke with a detective while I was there.
I also examined a Honda Civic, which had been driven to the apartment complex and made arrangements for that vehicle to be towed back to our processing garage for further examination later.
Q. Was that vehicle, that Honda Civic, then sealed and towed back to the garage?
A. It was escorted by one of our patrol officers.
Q. After you made sure the Honda was secured and transported, what do you do next?
A. I received a key to the house on Great Dane from the detectives.
They had gotten that from one of the people who lived there.
I then went to the Great Dane address.
Q. There were multiple detectives present at the Warm Springs address, correct?
A. Yes, there were.
Q. When you traveled to the Great Dane address, were there patrol officers present there?

A. Yes, there was patrol officers at the house, and I was also met there by a number of detectives.
Q. So that house was sealed and ready for you to come in and document the scene?
A. Yes, I had two or three of the detectives go in and clear the house before I made entry into the house, since I had not known if there had been any opportunity for anybody else to have entered that house.
Q. And I didn't ask you previously, I will now, what is your responsibility when you go out to a scene, what is your goal or objective?
A. When I respond the -- a scene, the first thing that I'm going to do is document the scene as I find it. I do that first and foremost with photography.
I also make notes about the scene, possibly do any sketches or diagrams.
I then go through the scene, and based on information I've been given by any of the detectives or any of the people involved, might mark items of particular evidence, things that are things that I either want to be able to see more clearly in photographs, or might collect and take back to the lab for photo processing.
So when I go there, I do the first round of photographs without any markers in place, and then I

also do another round of photography with little plastic placards that have numbers or letters on them, so the items can be easily identified.
Q. So documentation at a scene, as well as collection of any items of physical evidence essentially?
A. That's correct.
Q. Okay. Did you follow that protocol at Great Dane that evening?
A. Yes, I did.
Q. What was the first thing you did when you got there?
A. The first thing I did was, take photos of the house exterior and interior.
Q. And I'm just going to show you a few photographs that have been marked and admitted.
Showing you what has been marked and admitted as State's 3, do you recognize the area depicted in that photograph?
A. Yes, I do.
Q. What is that?
A. This is the living room area.
This is looking from approximately the area of the front door.
Q. Fair and accurately depict how it looked that

morning when you arrived?
A. Yes.
Q. What time was that that you arrived at Great Dane?
A. Yes, around 6:30 that morning.
I was at the Warm Springs address for approximately an hour.
Q. And showing you what has been marked as exhibit State's 1, do you recognize what is depicted in that photograph?
A. Yes.
Q. What is that?
A. This is standing in the living room looking towards the front door and the stairway that goes to the second floor.
Q. What had you learned from either patrol officers, or detective, or sergeant's about the living room area of this residence, vis-a-vis the crime scene or crime that had occurred?
A. The majority of the incidents took place in the living room area.
Q. Okay. Was there also a bedroom area that was involved with one of the assailants?
A. I photographed all of the bedrooms, but there were particular areas that were pointed out to me after

my arrival, after I had gone through and done the general photography, Ryan Tognotti pointed those areas out to me.
Q. Did he actually, Ryan Tognotti, actually do a walk through of the residence with you?
A. He did came back to the Great Dane address and walked through the residence and showed me different areas of interest.
Q. Did he indicate to you a downstairs bedroom area that was on the first floor of that residence?
A. Yes, he did.
Q. Showing you what has been marked and admitted as State's 10, do you recognize that photograph?
A. Yes, this is the downstairs bedroom in the residence at Great Dane.
Q. Fairly and accurately depict as you saw it that morning?
A. Yes, it is.
Q. And what if anything did you know about what transpired in this portion of the home?
A. The information that I had was that there had been possible entry into that bedroom by one or both of the suspects, specifically the doors of that room may have been touched by one or both of the suspects.
Q. And what was the proximity of that bedroom to the

living room?
A. It was just down a short hallway.
The hallway went from the living room and lead down to the kitchen and then to this bedroom and further lead down to the garage.
Q. Showing you what has been marked and admitted as State's 5, do you recognize what is depicted in State's 5?
A. Yes, I do.
Q. What is that?
A. This is the hallway area that leads from the living room into the kitchen and the downstairs bedroom.
This is standing from the living room, and the door that is open in the photograph is that downstairs bedroom door.
Q. So just for positioning purposes, out of the view of this photo to the left would be the stairs and the front door that we saw back in State's 1?
A. That's correct.
Q. So the same hallway, correct?
A. Yes.
Q. Now, when you did this walk through of the residence with Ryan Tognotti, were there any specific items of interest he pointed out to you that the assailants may have made contact with?

A. He did.
He pointed to a number of areas in the home, doors, light switch plates, stairway, the refrigerator, the front door, and also there was one item of evidence that was not a wall or floor type surface, and that was a lotion bottle.
Q. Okay. What was of significance with the lotion bottle?
A. It was indicated to me that that had been involved in the evening, had been touched by one of the suspects.
Q. And where did you locate that in the residence?
A. That was in the living room.
The television had a unit next to it, had a number of electronic devices, and it was sitting on top of the top most electronic device.
Q. And showing you, analyst, what has been marked and admitted as State's Proposed 4, do you see a bottle depicted -- or State's Admitted 4, you see the bottle of lotion in that photo?
A. I do.
Q. Could you just touch the screen and circle it, and it will put it up on the screen for us?
A. Yes.
Q. Thank you.

Now, based on the information that you had been given about that bottle, what did you decide to do with it?

A. After I photographed it, I collected it so I could process it back at the lab.

Q. And did you -- Showing you what has been admitted as State's 15, if you tap the right hand of that screen, the circle will go away -- or actually closer to the bottom, there you go, a close-up photograph of the same lotion bottle with your marker in it?

A. Yes.

Q. And you said you processed that bottle.

What did you do to process that bottle?

A. I did two things to that bottle to enhance any prints that may have been on that bottle.

The term, latent print, refers to a print that is hidden or unseen. It's also used commonly to refer to any prints found at a crime scene. But because there weren't any visible prints, I was going to use some processes to try to make prints visible.

The first process I used is super glue fuming, and what that does is, I take the item, put it in a tank with heat, and humidity, and the super glue liquid turns into a vapor, and the vapor actually is attached to any moisture on any object from a person touching it either

from on their hands or from any other substance they may have on their hands, oil, grease, anything else that would affect their hands, the super glue attaches to the moisture from that fingerprint and makes it, number one, more fixed, and number two, more visible.

After I did that, I then processed the bottle with fingerprint powder. What that does, it was a black powder, and I brushed that onto the surface of it, the black powder adheres to the super glue residue and makes those prints more visible.

After that I can either photograph them or lift them, depending on the nature of the prints.

Q. And this processing that you did took place away from the Great Dane address, correct?

A. Yes, I do that back at the HPD crime scene unit lab.

Q. And you discussed a process you used the super glue fumes and put the black powder on, and you can either photograph what was visible, or you could use something to lift any of the powder back off the bottle.

Which one did you choose in this regard?

A. I did the lift because the bottle had words printed on it, and I thought that might make it a little bit harder to see the prints if I did a photograph, so I used a vinyl lift, which there are several different

ways we could lift it, there is specifically made fingerprint tape that is made for lifting fingerprints, and it's a clear tape. The problem with this was, there was a larger item than some of our tapes would allow, and also because it was -- had different levels, different contours on the bottle, that could also pose a problem with some of the fingerprint tape because it's a little bit stiff kind of, doesn't go around edges very well, so I chose instead to use a vinyl lift which is white instead of clear.

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

THE COURT: Yes.

BY MS. KOLLINS:

Q. State's Proposed 27 and 28 have been shown to Defense counsel prior to just that short viewing.

Showing you what has been marked for purposes of identification as State's 28, do you recognize the package that is State's 28?

A. Yes, I do.

Q. How is it that you recognize that specific package?

A. I recognize it based on the evidence seals that bear my initials and also by the label I created and affixed to this package.

Q. When was the last time you saw it?

A. It was the day that I put it into the evidence vault.

I don't recall the date.

Q. Okay. What is contained within State's 28?

A. This is the lotion bottle that is at marker G from the house on Great Dane.

Q. The same one depicted in the photo up on the monitor?

A. Yes.

Q. And is that evidence bag, does it appear to be in the same or similar condition as last time you saw it?

A. Yes, it is.

My seals are still intact.

Q. Okay.

MS. KOLLINS: The State asks for admission of 28.

MR. BANKS: No objection.

THE COURT: 28 is admitted.

BY MS. KOLLINS:

Q. You discussed some vinyl lift tape that you took off this particular lotion bottle, correct?

A. Yes.

Q. I'm showing you what has been marked as State's Proposed 27.

Do you recognize State's 27?

A. Yes, I do.
Q. And what is State's Proposed 27?
A. These are the lifts of the fingerprints that I took off of the lotion bottle.
Q. And it's your practice and protocol to secure those separately from the items of evidence from witnesses lifted?
A. Yes, that's for ease of the latent print examiners to check out the latent prints without having to check out the items as well.
Q. Does that envelope containing those lifts off the lotion bottle appear to be in substantially the same condition as the last time you saw it?
A. It is.
The only difference is, it's been opened and resealed. When we open an item and reseal it, we use blue evidence tape instead of red we use when we originally seal it, so I can see another person has opened this and resealed it.
Q. Save and except the blue tape at the top of the envelope, it appears to be in substantially the same condition?
A. Yes.
MS. KOLLINS: Move for the admission of 27.
MR. LANDIS: No objection, Judge.

THE COURT: 27 is admitted.
BY MS. KOLLINS:
Q. Now, it threw you off course because we went into the print examination, but what else did you process at the Great Dane residence?
A. There was a vehicle that was parked in the driveway that I processed for latent prints.
I processed the exterior of that.
I also processed several areas in the house, specifically some of the items that had been pointed out to me by Ryan Tognotti for latent prints.
Q. What are some of the things inside the house that had been pointed out to you by Ryan Tognotti that perhaps would contain some fingerprint information of one or more of the assailants?
A. The front door, the banister, rungs of the stairway, light switch plates, the refrigerator -- I didn't process the refrigerator.
I had assistance from another crime scene investigator, but there was several areas on the surfaces of the house that were processed.
Q. Okay. Did you go in the kitchen where the refrigerator was processed?
A. I did.
Q. Showing you State's Admitted 20, is that the

refrigerator at the Great Dane residence?
A. That is.
I photographed it after processing had been completed on it.
Q. Showing you State's Admitted 19, the light switch outside of the living room, is that something you would have been responsible for processing?
A. I believe so, yes.
Q. And who was assigned to assist you in part at the Great Dane residence?
A. I called on another crime scene investigator, Joy Self, J-o-y S-e-l-f.
Q. Did you actually do a walk through of the upstairs of the Great Dane address as well?
A. I did.
Q. And why was that?
A. I went through it with Ryan, also was looking for potential evidence as well as the photography I had done.
Q. And what if anything did you learn about any of the assailants being upstairs at the Great Dane residence?
A. There was information given to me about looking for condoms in one of the upstairs bedrooms.
Q. Did you photograph some condoms upstairs?

A. I did.
Q. And in whose room was that, do you know?
A. That was in Ryan's room.
Q. Showing you what has been admitted as State's 17, are those the photos you took in Ryan's room?
A. Yes, they are.
Q. Did you learn that one of the perpetrators had also taken Ryan upstairs to gather car keys?
A. I don't recall specifically.
Q. What is the next thing you did in terms of processing and documenting the Great Dane address as a crime scene?
A. After we had processed, I took the photos of the processing we had done as far as fingerprints, which were the photos of the fridge and the light switch covers, I processed the car in the driveway in the residence, and after I collected the evidence that I needed to at the scene, I left the residence.
Q. Did you later learn that some cell phones were collected by the assailants and then given back to the victims in the case?
A. I had learned that that morning, yes?
Q. Okay. Did you after learning that information, did you take any steps to have those cell phones collected such that they could be processed?

A. I did.
I asked that one of the detectives collect those so that I could process those back at the lab at a later date.
Q. So that would have been something immediately done on the scene those were transferred to your possession back in Henderson crime lab?
A. Yes, I had the detective collected those items, turned those into the evidence vault, and then I check them out from the vault to do my processing?
Q. Similar to how you checked out the lotion bottle we discussed earlier.
A. The lotion bottle never left my care, custody and control from the time I collected it at the scene. It remained in a locked locker, and then I transferred it to the evidence vault.
Q. So you collected it, kept it in a locked locker, processed it, and then deposited it into the evidence vault?
A. That's correct.
Q. Okay. What was your next involvement with the processing of this crime scene, if you will?
A. The Honda Civic we had had towed back to the processing garage from the Warm Springs apartment complex was the next thing that I processed.

Q. And that was again done at Henderson garage?
A. In our processing garage.
Q. And, analyst, my next couple questions are kind of in the negative.
You were not directed to UMC where the sexual assault victim was being treated, correct?
A. I was not.
Q. And you were not requested to go to Circus Circus where a search warrant was being executed?
A. No, I was not.
Q. And you were not directed to an address on Gay Lane to document anything that transpired on Gay Lane?
A. No, I was not.
MS. KOLLINS: I'll pass the witness.
THE COURT: Cross.
MR. LANDIS: Judge, we have no questions for this witness.
THE COURT: Thank you very much for your testimony. I appreciate it.
You will be excused.
THE WITNESS: Thank you, Judge.
THE COURT: Thank you.
MS. LUZAICH: Could we approach?
THE COURT: Sure.
(Thereupon, a discussion was had between Court and

Counsel at sidebar.)
THE COURT: Okay. It's about 4:30, 435.
This looks like a convenient spot to break for the day.
We have made substantial progress, and I think the State's indicated they only have a few more witnesses, four maybe.
Just to kind of give you a preview, we will we wrapping up possibly tomorrow night, Wednesday morning at the latest.
Are we all in agreement with that?
MR. BANKS: Tentatively, yes.
MS. KOLLINS: With testimony, yes, tomorrow.
THE COURT: With testimony.
Okay. So you kind of can plan accordingly.
So we'll go ahead and take a break overnight.
I want you to meet Joe out there at the double doors at 5 until 10. We may be a minute or two passed that, but pretty hopefully right on the money.
(The jury is admonished by the Court.)
THE COURT: See you guys tomorrow.
(Thereupon, the following proceedings were had out of the presence of the jury.):
THE COURT: Okay. We're outside the presence of the jury.

Anything we need to address or discuss before we break for the night?
MS. KOLLINS: No, just scheduling.
We told you we have four detectives, a fingerprint analyst, and then we have Grant Heib.
THE COURT: You actually have six then?
MS. KOLLINS: We have six witnesses.
THE COURT: I'm sure it's going to take us into the afternoon.
You guys will know by tomorrow I'm sure in the afternoon as we close the State's case what your program will look like.
No matter what happens, we will be finished with your case by tomorrow afternoon?
MS. KOLLINS: Right.
The only thing we're looking for is if we rest at 3, and these guys aren't going to put anything up, we are still looking to close on Wednesday.
THE COURT: That's absolutely correct, we will give you as much time as you need to do whatever you choose to do.
In the event you choose not to do anything, we will still even if were done at 3:00, still break until Wednesday morning.
All right. Then that's it.

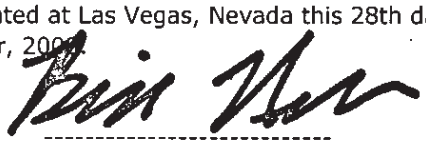
I'll see you all tomorrow morning at 10:00.
(Proceedings concluded for the evening.)

CERTIFICATE

STATE OF NEVADA)
) ss.
CLARK COUNTY)

I, Bill Nelson, RMR, CCR 191, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place before the Hon. James M. Bixler, District Court Judge, presiding.

Dated at Las Vegas, Nevada this 28th day of October, 2004.



Bill Nelson, RMR, CCR 191,
Certified Court Reporter
Las Vegas, Nevada

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ORIGINAL

TRAN

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff,	)	
vs.	)	Case No. C232494
NARCUS WESLEY, Defendant.	)	Dept. No. 24

JURY TRIAL

Before the Honorable James M. Bixler
Tuesday, April 15, 2008, 10:00 a.m.

Reporter's Transcript of Proceedings

APPEARANCES:

For the State: Lisa Luzaich, Esq.
Stacy Kollins, Esq.
Deputies District Attorney
Las Vegas, Nevada

For the Defendant: Jeff Banks, Esq.
Casey Landis, Esq.
Deputies Public Defender
Las Vegas, Nevada

REPORTED BY: BILL NELSON, RMR, CCR No. 191

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CLERK OF THE COURT

TRAN

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CLARK COUNTY, NEVADA

STATE OF NEVADA,)
Plaintiff,)
vs.) Case No. C232494
) Dept. No. 24
NARCUS WESLEY,)
Defendant.)

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Deputies District Attorney
Las Vegas, Nevada

For the Defendant: Jeff Banks, Esq.
Casey Landis, Esq.
Deputies Public Defender
Las Vegas, Nevada

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Grant Hieb	6	15		
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Bryan Hartshorn	110	126	131	133
Curtis Weske	136			

Las Vegas, Nevada, Tuesday, April 15, 2008

* * * * *

(Thereupon, the following proceedings were had out of the presence of the jury.):

THE COURT: We're back on the record in State of Nevada versus Narcus Wesley.

I have the State's set of instructions.

We'll need to set aside some time during this day to iron these out.

I would suspect we should probably do that before we break this afternoon.

MS. KOLLINS: That would be our preference, Judge.

We have not received any from Defense counsel. I assume they are going to have some they want to add to this.

MR. LANDIS: We know we have some not going to be in there, Judge.

There might be more we want to add, depending upon what they included, but I have some proposed right now.

THE COURT: Do you have a copy of theirs?

MR. LANDIS: Yes.

MS. KOLLINS: Do you have a copy of your proposed

for us?

MR. LANDIS: Yes.

MS. KOLLINS: Depending upon what the Court decides, we will put these in the master set and change the font because theirs is just a little different than ours in terms of what they look like.

THE COURT: You can can probably do it like that.

MS. KOLLINS: We just need to get them first and see what we're going to agree to and object to.

THE COURT: Let's plan on going through these instructions and settling them before we leave today.

Let's not leave them out until tomorrow.

MS. LUZAICH: Settle and number them, yes.

MS. KOLLINS: We didn't really get a clear understanding of what was going to transpire yesterday.

Does the Defense know how many witnesses you have lined up for today, or if you have witnesses lined up?

We received a witness notice from you about 8:00 last night. So we just need to know what we're doing so we can plan our schedules accordingly.

THE COURT: You got four or six witnesses?

MS. KOLLINS: We have six left.

THE COURT: And many of those probably are going to be fairly quick?

MS. LUZAICH: There should only be one long one.

THE COURT: Is that going to be the first one or the last one?
MS. LUZAICH: The last one.
THE COURT: Is that Grant?
MS. LUZAICH: No, Grant is next.
The long one will be Weske.
THE COURT: What do you guys got on the agenda?
MR. LANDIS: I'm not sandbagging the State or the Court, but I'm not sure.
If we do choose to call witnesses, we'll have them ready this afternoon.
We're going back to look.
THE COURT: Okay. Are we ready for our jury?
MS. KOLLINS: Sure.
THE COURT: Anything else?
Bring them in.
MS. KOLLINS: There is no additional -- no additional discovery regarding any of the witnesses, other than the letters?
MR. LANDIS: No, correct.
(Thereupon, the following proceedings were had in open court and in the presence of the jury.):
THE COURT: Do the parties stipulate to the presence of the jury?
MR. LANDIS: Yes, Your Honor.

MS. LUZAICH: Yes, Judge.
THE COURT: All right. The next witness for the State is?
MS. KOLLINS: Grant Hieb, Your Honor.

GRANT Hieb,

who, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:
THE CLERK: Please be seated.
Please state your full name, and spell both your first and last name for the record.
THE WITNESS: Grant Hieb, H-i-e-b.

- - - -

DIRECT EXAMINATION OF GRANT Hieb

BY MS. KOLLINS:
Q. Good morning, Grant.
How are you employed?
A. I work at Body English at the Hard Rock Hotel.
Q. How long have you been so employed?
A. About 13 months, just over 13 months.
Q. How long have you lived in Las Vegas?
A. About three-and-a-half years, three years.
Q. I'm sorry?

A. Three years, three-and-a-half.
Q. Okay. If you want to, just lean up and speak into that microphone so everybody can hear you.
A. Sorry.
Q. That's okay.
Did you use to reside on Great Dane Court prior to August of 2007.
A. Correct.
Q. And what was the address on Great Dane Court?
A. 690 Great Dane Court.
Q. Okay. How long did you live there?
A. One year.
Q. I'm sorry?
A. One year.
Q. Did you have roommates at that address?
A. Did I have what?
Roommates, yes.
Q. How many roommates did you have?
A. I had three at one point, four for a few months, and then back to three.
Q. Okay. And you lived there for a full year?
A. Correct.
Q. That was in Henderson, Clark County, Nevada?
A. Correct.
Q. Back when you lived on Great Dane Court, did you

know a UNLV football player by the name of Kameron Delarian Wilson?
A. Yes, I did.
Q. How did you know him?
A. I worked at 24-Hour Fitness when I first moved to Vegas, and he was a football player always working out in the gym, and I didn't have a lot of clients, so I would be flooring, walking around the floor making my rounds, and he was always in there and always in good spirits, and so I talked to him a lot, and we became friends.
Q. Okay. Did you become friends with him at the time you lived at the Great Dane residence?
A. This is actually before I moved to the Great Dane residence. I actually lived a few blocks from the gym, became friends with him then.
Q. Did you socialize with Kameron Delarian Wilson outside the gym?
A. Yeah, a few times he would give me a ride home or go chill for a little bit.
He liked to go to the casino and beat sometimes, but nothing more than that a few hours after work.
We never went out at night or nothing like that.
Q. What did you call him, I mean, by the first name, what did you call him?

A. Kam.
Q. Kam?
A. Yeah, that's what he mostly went by.
I don't think most people called him Delarian.
Q. Did you come to know a time when Delarian or Kameron left Las Vegas?
A. Yeah, I helped him move to Alamosa, Colorado.
Q. Why did you know was he moving to Alamosa, Colorado?
A. I don't think he was getting along with the head football coach and wanted to get a chance to play more, so he knew some coaches in Colorado, ended up transferring back there to a Division II school where he could get more playing time.
Q. After Delarian moved to Colorado, did you have as much contact with him as you did when he lived here in Las Vegas?
A. No, no.
I talked to him once every two or three weeks whenever one of us would call.
Neither of us were good at keeping in touch that well.
Q. Turning your attention to -- and I'm sorry, I think I asked you if August of 2007 you lived in that house.

Wouldn't it be closer to August 2006 you left that house?
A. Left that house?
Yes.
Q. And I apologize. That was my error.
Turning your attention to February 2007, where did you live?
A. I lived at on Stephanie Arroyo Grande Apartments, Stephanie and Horizon Ridge.
Q. Did there come a time in February of 2007 right after All-star Weekend where some police officers were knocking on your door?
A. Well, yeah.
I don't know if they were knocking because I woke up with them in the hallway with their guns pulled, yelling, police, and I woke up, and this was like 10:30 in the morning, 9:30 in the morning, it was my first weekend at the nightclub, so I got off work at about six in the morning, came home, and just went to sleep, and I guess they were looking for somebody or whatever, a robbery, and so they asked -- they were in my house looking for me because they said the people were looking for me supposedly, and yeah, that's what happened, so then I answered whatever, I talked to them.
Q. Who is your roommate at that apartment?

A. Brandon Preston.
Q. And anybody else?
A. No, just us two.
Q. Was Brandon Preston your roommate prior to this apartment that we're talking about?
A. Yeah.
He lives in another house too.
Q. The Great Dane house?
A. I have lived in three places. He lived in all of them with me.
Q. So he's been your roommate since you have been in Vegas almost?
A. Yes.
Q. When you woke up, and the police were in your apartment, what is the next thing that happened?
A. They questioned me, asked me -- said, this place had been -- somebody had broken into this place or whatever, my old house, asked if I had any idea who could have done it, and immediately I thought probably Kam.
Q. Kameron Wilson?
A. Kameron Wilson, yeah.
Q. Did you then go down to Henderson Police Department and speak with those police officers for a while?

A. Yeah.
Q. Did you -- Were the officers able to give you a description of the individuals that had gone to the Great Dane house?
A. Not too much, just said that -- I mean, they didn't really have a good description, just they said it was some black males that supposedly knew me, and said I owed them money or something like that.
Q. That said you owed them money?
A. Yeah.
Q. Did you owe money to Delarian Kameron Wilson?
A. No, far from.
Q. Once -- Did you know at that time whether or not the people at the Great Dane residence were asking for you by name?
A. Yeah, they -- What the police informed me, they had said, that's how they got in the house or whatever, they told them, is Grant here, Grant owes me money, or something like that.
Q. Once they gave you a description of the individuals, and told you they knew you by name, knew you as Grant, is that when you came up with the name Delarian Wilson, or Delarian Kameron Wilson?
A. From knowing Kam in the past, I knew he had a little bit of history of that, so when they told me it

was some black males looking for you, said you owed them money, I only been here for a few years, and I didn't have that much close friends that were black that even knew where I lived, so I pretty much knew who it was. I had a pretty good idea it was him.

Q. Did you have any idea who the second person would be?

A. No idea.

Q. In fact, do you know Marcus Wesley?

A. Never heard of them until this came up.

Q. After you went to the Henderson Police Department and spoke to the police, did they ask you to identify a photograph of Delarian Wilson?

A. Yes.

Q. Were you able to do that?

A. Yeah.

Q. And did you return home after that?

A. Yeah.

Q. And after you gave them a statement and looked at a picture of Kameron, you were free to go?

A. They took me home, yep.

Q. Back when you lived at Great Dane, did you engage in some recreational sale of marijuana?

A. Yes.

Q. Did you do that for a period of time?

A. Yeah, for a little bit.

I mean, I don't know, a little under a year, until they came in the second time, until they came to my apartment.

Q. Okay. That was a cash type business?

A. Yeah.

Q. You didn't take checks and debit cards, did you?

A. No, no.

Q. Okay. When in fact when the cops came to your a apartment, you had some marijuana there?

A. Yeah.

Q. And they took that pot?

A. Yep.

Q. And they took some of your cash?

A. Yep.

Q. Never got that back?

A. No.

I mean, I got a lawyer, got a little bit of cash back, but that's it.

Q. About $7,000?

A. Correct.

MS. KOLLINS: I will pass the witness.

- - - -

CROSS-EXAMINATION OF GRANT Hieb

BY MR. LANDIS:

Q. Before Kam moved to Colorado, you guys were pretty good friends?

A. Kam is pretty independent, so he probably would consider me one of his better friends, yeah.

Q. You guys spent a fair amount of time together?

A. I don't know.

He was pretty independent, would hang out a couple hours, maybe like a week or two, we hung out once in a while, but I never went out with with him or anything, and he had his own football group he was friends with, so he was doing his own thing.

Q. You guys would gamble occasionally?

A. I never gambled.

I never went with him to watch him gamble craps, none of that stuff never once.

Q. You guys would hang out after the gym sometimes?

A. Yeah.

Q. One of the things you would do when you guys hung out was get high?

A. We would smoke sometimes.

Q. And he bought weed off of you from time to time?

A. Well, originally he sold it.

When I moved here, I didn't know anything about

selling, and then he introduced me to a couple guys before he left, but that was about it, I mean, so I never -- he never bought it from me, no.

Q. Is it fair to say though, he introduced you to the business a little bit?

A. I mean, I knew a lot, but he introduced me to a whole different side of it, yeah, a side that I realized you don't want to be on.

Q. Some big buyers and big sellers?

A. Not necessarily that, just having -- losing your money, to buy more with, and finding a way to get more, that's what his deal was.

Q. Would it be fair to say that through Kam you met some individuals who ripped you off in the drug business?

A. Not really.

I mean, yeah, one dude ripped me off, but nothing -- that is from what I learned that was part of the business, so if you liked that, and you got to deal with it, but I don't know, I wasn't into that.

Q. So would you agree that you were a pretty good friend to Kam during the time he was here in Las Vegas?

A. If he needed help, he asked me, I'd help him.

He wanted help to move to Colorado. We helped him load the U-Haul and drive it out there.

He never was asking for somebody to hang out all the time, but if he needed something small, I would help him, that's how it was brought up, if you got a friend, they want help, you help them.

Q. You personally along with I think one of your other roommates helped this man move from Las Vegas to Colorado?

A. Yeah.

Q. You loaded the truck?

A. Yep, we drove my roommates truck, we drove, and drove the U-Haul -- or I think we pulled the U-Haul a couple years ago, but we drove a car down there with him and followed him all the way out there, helped him move.

Q. You touched on this on direct, but you stated that you had a fair amount of contact with Kam after he moved to Colorado?

A. Yeah, we talked probably like once a month until a little while before that all star break, we would talk once a month or so.

Q. He came back to Las Vegas one time after he moved, right?

A. Yeah.

Q. And he actually stayed with you?

A. Yep.

Q. And you opened your doors to him?

A. Yep.

Q. Did you charge him anything to stay with you that week?

A. No.

I mean, I let him use my car if he needed anything.

Q. During the week he was here, you let him use your car?

A. Yeah.

Q. When the police came and wanted to talk to you about the Great Dane residence, they described you what happened there, right?

A. Yeah, yeah.

Q. They told you about the robberies?

A. Yep.

Q. You knew it was Kam right away, didn't you?

A. Yeah, I pretty much -- The only person I thought it would be.

Q. Why did you know that?

A. Because --

MS. KOLLINS: Judge, I'm going to object.

And may we approach?

THE COURT: Sure.

(Thereupon, a discussion was had between Court and Counsel at sidebar.)

THE COURT: We're going to have to have you guys take a few minute break.

We need to have a legal argument that needs to be put on the record, so I'm going to take a ten-minute break.

We'll take a break until 11:00.

During the next ten minutes, you can go to the bathroom or do whatever you need to do.

(Jury admonished by the Court.)

You got ten minutes.

(Thereupon, the following proceedings were had out of the presence of the jury.):

THE COURT: We're out of the presence of jury.

MS. KOLLINS: Judge, the State objects.

MR. BANKS: Should we excuse the witness, Judge?

THE COURT: No, it doesn't make any difference.

You can sit down if you want to.

This is no secret from him.

MR. BANKS: It may -- I prefer he wait outside.

THE COURT: That's fine.

Go ahead, wait outside.

(Witness excused from the courtroom.)

THE COURT: Okay. Your objection is the fact the witness may be aware of other illegal robbery type activities that the Co-Defendant Wilson engaged in is

irrelevant and has no business being introduced to the jury.

MS. KOLLINS: It's irrelevant, Judge, and for this reason:

The cross-examination in this case has gone down the lines of somewhat of a duress defense.

Up until the point that there is some offer of proof, or some inkling Mr. Wesley knows about these prior acts committed by Wilson, those acts are irrelevant for purposes of this trial.

He cannot claim fright and fear and coercion and not have any personal knowledge of these instances.

So up until the point there is some personal knowledge imputed to Mr. Wesley regarding these prior robberies, or this actually single robbery, then at this point it's irrelevant and not appropriate for here.

Mr. Wilson's not on trial here.

We are not here to make him look like the bad guy. He's owned up, plead guilty. We know what he's done. The jury knows what he's done. But it's not relevant until it goes to Mr. Wesley's state of mind, and there is nothing that made that. It's premature at this point.

If Narcus wants to take the stand or elicit it through other witnesses that somehow he knew of Wilson's

past and Wilson's history, vis-a-vis Mr. Hieb, then I would agree with the Defense it becomes relevant, but up until that point it's not.

It's bad act --

THE COURT: Hold it.

Let me comment real quickly.

You would probably want to address this theory.

So the theory is not so much he was under duress, until he got to the front door he thought they were going to go over and buy some pot or whatever, borrow some money, buy some pot.

The fact they go to the door, and unbeknownst to this Defendant the Co-Defendant pulls out a gun and starts to commit a robbery, tricking this Defendant into participating or whatever, if that's the way -- if they have evidence to the effect that Wilson has done that in the past, he's done something similar where he committed a robbery unbeknownst to the people who he was with, why is that irrelevant?

MS. LUZAICH: Those aren't the facts in the prior robberies.

THE COURT: I don't know.

MS. KOLLINS: First of all, you don't have the predicate basis for relevance just because they say that is their theory of defense. It doesn't entitle them to

the evidence, unless appropriately admitted.

There is no evidence in this case heretofore that Mr. Wesley believed he was going there just to hang out, or just to go watch a basketball game or movie with a bunch of guys.

There is no evidence in that regard in this case yet, so as a predicate matter it's still irrelevant under the same kind of analysis, and second of all those are not the facts of the robbery against Grant Hieb that some other person was duped into committing that robbery.

We can't just make that jump in logic because Mr. Banks says that's the way it is.

MS. LUZAICH: I'm not saying that, Judge.

I'm letting Miss Kollins have her turn.

We're not saying the prior robbery by Delarian Wilson against Grant Hieb involved duping somebody else into participating, we're not saying that.

THE COURT: I'm thinking out -- I don't know. We got to hear them first.

Tell me --

MR. LANDIS: The person who was duped was Grant himself, Judge.

Delarian, who was his good friend as you heard, was in town a second time after that spring break he

testified to, came into his garage when Grant was arriving home, hey, it's Delarian, what are you doing at my house, and then began to rob him.

He didn't even believe he was robbing him until he was five or ten minutes into taking his things. He started grabbing his weed, grabbing his money. Both Grant and the roommates are almost laughing, saying, hey, what are you doing here, Kam, and it wasn't until he was pretty much out the door with their property that Grant runs down the street after him realizing this was actually a robbery, and again an armed robbery much like this, and this is again directly relevant to our theory in this case, which is, he began the robbery through deceipt.

Now, once the door's entered in this case, it's not deceipt, it's duress, but up until that point when they are at the door, and the guns pulled out, it's an argument of deceipt.

MR. BANKS: Judge, I appreciate the State's argument as far as the Petty (Phonetic) case.

I've had Petty problems before when I'm trying a self-defense case and going -- sitting there, darn it, in frustration.

THE COURT: In reference to the Defendant's knowledge?

MR. BANKS: Yes, sir.

THE COURT: Showing he had prior knowledge of this propensity, blah, blah, blah?

MR. BANKS: Yes, sir.

And I get frustrated in those cases when my defense would be so much better for my client just knew about all the bad stuff that he was defending himself against of the other person.

That is not this case.

To the contrary.

If Narcus does know about the prior robbery of Grant, then it essentially establishes --

THE COURT: Wouldn't it be to your advantage?

MR. BANKS: Right, it's a separate issue.

It's not, A, what is the state of mind of the guy defending himself when some guy he knows is violent, is coming at him with a knife or whatever, and that is what we're dealing with in the Petty case.

This is completely --

THE COURT: You want me too rule?

MR. BANKS: Yes, please.

THE COURT: It comes in.

MR. BANKS: Thank you, Judge.

THE COURT: Take a short break.

Go to the bathroom real fast.

(Thereupon, a recess was had.)
(Thereupon, the following proceedings were had out of the presence of the jury.):
THE COURT: Bring them in.
(Thereupon, the following proceedings were had in open court and in the presence of the jury.):
THE COURT: Do the parties stipulate to the presence of jury?
MR. LANDIS: Yes, Judge.
MS. LUZAICH: Yes, Judge.
THE COURT: All right. Go ahead and bring Grant back.
Grant, go ahead and take the witness chair.
You have been sworn in.
You are still under oath. Okay?
THE WITNESS: Okay.
THE COURT: Go ahead.

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CONTINUING CROSS-EXAMINATION OF GRANT Hieb

BY MR. LANDIS:

Q. The police came to you, and they explained to you what happened at the Great Dane residence?
A. Correct.
Q. Told you about those robberies?
A. Yep.

Q. They asked you if you knew who it might have been?
A. Yep.
Q. You didn't give them five names, you didn't give them three names?
A. No.
Q. You gave them one name, and that name was Kam Wilson?
A. Yeah.
Q. And you knew it was Kam Wilson the second they started telling that you story, didn't you?
A. I had a good idea.
MS. KOLLINS: I'm sorry.
Could Mr. Landis move one way or the other to see the witness?
THE COURT: Okay.

BY MR. LANDIS:

Q. Why did you know it was Kam?
A. I knew he had a history of robbing drug dealers to try to get his money back if he lost it on the tables or whatever he's doing.
Q. You knew he robbed you before?
A. Yeah, he robbed me once.
Q. I want to talk a little bit about that robbery.
A. No problem.

Q. This was after that he moved to Colorado?
A. Yep.
Q. This was after he visited you and stayed at your house during that spring break?
A. Yep.
Q. He was in town again I think for Thanksgiving?
A. Sounds about right, yep.
Q. And you knew he was in town. You talked to him a couple times?
A. Yep.
Q. I believe you were coming home from work?
A. Yep.
Q. What happened?
A. He was calling me, said he wanted to pick up a sack and was in town, and he had other people he was staying with or something, had other friends he was going to stay with, and that was fine, and he called me a bunch of time in the afternoon.
I was working for a construction company. I was on my way home. I said, I'm ten minutes away, meet me at my house, or I'll come meet up with you or whatever, and like five minutes went by, he called me again, and I said, I'm right around the corner, I'll be there in a minute.
I pulled in, went into my garage, went inside,

hit the garage door, and he must have snuck in the garage when I was going in, and one of my buddies back in the mid-west had some friends out there, and so I went and sat my lunch bucket on the table, made a turn around, and saw somebody's shoes going in the bathroom, but it looked like the same shoes my buddy -- I didn't think anything of it. His room was right across the hall from the bathroom. I thought it was somebody walking out of the hall going to the bathroom.
I went upstairs to my room and got my little -- going to get him some stuff, and next thing I guess it was him went in the bathroom.
Q. Him, being Kam?
A. Kam, yeah.
And he came out, went over by the computer where one of my roommates was sitting, Brandon, and had a mask on and a gun, and Brandon turned around and saw him, said, hey, what up, Kam, knowing exactly it was him.
Q. Your roommates knew who Kam was?
A. Brandon knew him because he helped him move.
The other kid on the couch was from South Dakota, didn't know Kam that well, but I guess it kind of startled Kam from what Brandon told me, was like, man, these guys know who I am.
It wasn't hard, you know.

So he went up the stairs and came up to my room and walked in and still had the mask on and the gun, and I saw him and didn't think -- I knew him pretty well. I thought he may be messing around or something, but I was kind of sketchy, and so I was, hey, check it out, I'm going to give you some of this, and he was like, oh, yeah, didn't say anything.

Q. Let me stop you right there.

When Kam came into your room, he had a pistol in his hand?

A. Yeah.

Q. And you knew it was Kam?

A. Yeah.

Q. And you didn't think he was there to rob you?

A. No, because I just talked to him 15 minutes ago, and I don't know a buddy -- I didn't think he would ever do that to me, so he just didn't say anything, and he grabbed my safe, and next thing I know I look my -- both of my roommates are in the door, and they are kind of like eyes wide open, and then I thought something is going on, Kam's not right, and before I knew it he was already headed down to get out of the house, and I took off sprinting after him, met him in the driveway, and we had a little, you know, like, man, Kam, are you okay.

He took his mask off when he got outside and was

putting it in the safe, and I had some pictures in my -- there of my girlfriend from South Dakota sent me, I just wanted to get the pictures out, didn't care about the money or marijuana, and I said, if you lost some money, I'll help you out, I've been there for you, what is going on with you, and he wouldn't look me in the eyes, was like, give me that, Grant, give me that, and kept shaking, and we argued for about a half a block, and I had neighbors outside, so I was trying to be quiet, like trying to figure out what was going on with him, if he was in trouble with the law, what was going on, and he wouldn't talk to me.

And finally he got to the getaway car where he had a buddy waiting, and they took off.

I grabbed the pictures out, and that was last I ever saw of him.

Q. When he was in your room with this gun and grabbed your safe --

A. He didn't grab it. It was sitting -- He kind of was over looking at it, my roommate showed up, and this ain't no joke.

Q. And even when he was in your room with the gun and taking -- or at least handling your property, you still didn't think it was serious, did you?

A. Not like that, no.

I mean, even in the driveway I knew he wouldn't hurt me, he wouldn't look me in the eyes.

He knew he was doing something wrong, you know what I mean.

Q. When you spoke to the Henderson Police in February of last year, they were asking you, who do you think this was, you told them this story about that robbery, correct?

A. Yeah.

MR. LANDIS: Court's indulgence.

Thank you, Judge.

I'll pass the witness.

THE COURT: Redirect?

MS. KOLLINS: Yes, Judge.

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REDIRECT EXAMINATION OF GRANT Hieb

BY MS. KOLLINS:

Q. Grant, did you have any doubt in your mind that gun Kam had with him was real?

A. I figured it was real.

I don't know.

I didn't -- I don't know. I didn't have any doubt it was even real, but I didn't think he was going to use it on me either, so I wasn't like scared for my life, no.

Q. And how far away was the car parked that he had?

A. About three quarters of a block, a block.

Q. And there was a second individual in that car?

A. There were two. I mean, they had a boy around back who after we argued was walking back to the house came sprinting by me, and they had another drive away car or drive away guy.

Q. You mean around back of your house?

A. Yeah, yeah, like he must have been watching out or something, I don't know.

Q. Were they in Kameron's car?

A. No, he drove like a blazer and was like a small four-door, I think.

Q. Did you recognize either of the other two individuals?

A. They were kids he ran around with a little bit, but like two younger white kids that I think pretty much would do whatever he said, I don't know.

Q. And he did wear a mask when he came in?

A. Yeah.

Q. And was it like a bandana, or scarf, or what?

A. Like a ski mask. I think, I'm not a hundred percent sure, but I'm pretty sure it was a ski mask.

Q. Did he talk to you at all when he came in?

A. No, he was pretty, you know, didn't say much at

all, even when we were arguing in the driveway he wouldn't say much.

Q. And you worked at a construction job, so you were coming home at what, 3 or 4 in the afternoon?

A. Depending on the day 2, 3, 4.

Q. It was broad daylight?

A. Yeah, broad daylight.

Q. Okay. Did you call the police on Kameron?

A. No, I did not.

I figured that from what I heard that he was -- if you go around rob people, you are going to end up -- somebody is going to do something to you, or the police are going to to catch you, and I was hoping I would never have to see him again, he would go back to Colorado and stay away from me.

Q. And kind of what goes around comes around?

A. Yeah, that's basically it.

Q. Prior to the police contacting you regarding the Great Dane robbery, had you gotten word that Kam was back in town?

A. No, I didn't -- I don't have any relationship with anybody that really knew Kam anymore, or was still friends with Kam.

He only had a few friends as it was from what -- the way he talked because he never really hung out with

the football team too much or anything, was mostly doing stuff pretty independent, gambling or whatever he wanted to do, I don't know.

Q. And I'm not talking about the robbery of your robbery. I'm talking about the last one the police contacted you about.

A. Did I know?

No, I didn't know.

Q. You didn't know he was back in town?

A. No idea.

MS. KOLLINS: No more questions.

THE COURT: Anything else?

MR. BANKS: Nothing further, Judge.

THE COURT: All right. Thank you very much for your testimony. I appreciate it.

You will be excused.

If we need you back, we'll make arrangements.

THE WITNESS: Thank you.

MS. LUZAICH: Detective Pena.

RODRIGO PENA,

who, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE CLERK: Please be seated.

Please state your full name, and spell both your first an last name for the record.

THE WITNESS: My name is Rodrigo Pena.

The first is R-o-d-r-i-g-o.

Last Pena, P-e-n-a.

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DIRECT EXAMINATION OF RODRIGO PENA

BY MS. LUZAICH:

Q. Sir, are you a police officer with the Henderson Police Department?

A. Yes, ma'am, I am.

Q. How long have you been with Henderson Police Department?

A. I've been with Henderson approximately eleven years now.

Q. What have you done with the Henderson Police Department?

A. I've worked everything from patrol, bike patrol, worked in the detective bureau, burglary division,

sexual assault division, child abuse, elderly abuse, and I've also worked a couple homicide cases.

Q. And are you currently assigned to the detective bureau?

A. Yes, ma'am, I am.

Q. What area of the detective bureau are you presently assigned to?

A. To special victims unit currently.

Q. And directing your attention back to February of 2007, were you a police officer at the Henderson Police Department in the detective bureau working the sexual assault unit?

A. Yes, ma'am, I was -- or am -- was.

Q. Did you get called like February 18th, Sunday night into Monday morning, February 19th, did you get called to participate in an investigation of what you had heard was a robbery and some other offenses?

A. Yes, ma'am, I was.

Q. About what time was it that you personally got called in?

A. I was called at approximately 0300, 3 a.m. in the morning.

Q. When you got called, were you -- is it your sergeant generally that will call you in like that?

A. Yes, ma'am.

Q. When you got called on the phone, did you get any information about what had occurred?
A. I was just advised there was a robbery involving a sex crime, and I would meet at the station.
Q. Did you actually go meet at the station?
A. Yes, ma'am, I did.
Q. Were there a bunch of detectives there?
A. Yes, ma'am, there were.
Q. And did you have what would be called a briefing?
A. Yes, ma'am.
Q. Tell us about that.
A. We were given a synopsis of the information we had learned up to that point.

We were told that the crime had actually occurred in one location, and then the victims had gone to another location, and all the victims were currently at 2101 West Warm Springs in an apartment there.

And we were basically told different directions as to who might be handling what part of the investigation and what process.

Q. And had you heard there were two suspects involved?
A. Yes, ma'am.
Q. And that they essentially at that point had no idea who the suspects were?

A. That's correct.
Q. And were there a lot of different detectives brought in because it looked like it was going to be such a big investigation?
A. Yes, ma'am.
Q. When you were briefed, do you know about how many detectives that were there?
A. I --
Q. More than five?
A. Yes, ma'am, I would say we had detectives from the robbery section, we had detectives from the narcotics section, we had detectives from the special victims unit, plus we had sergeants who were responsible for certain units as well.
Q. Was that on all the bodies that you could find to help at that point?
A. Pretty much.
Q. Okay. And after the briefing, where did you go?
A. I responded to 2101 West Warm Springs, the apartment complex where the victims were located.
Q. When you went to that apartment, were the victims there?
A. Yes, ma'am, they were.
Q. Six of them?
A. Yes, ma'am, there was.

Q. Was there patrol officers there with them?
A. Yes, ma'am, there was.
Q. And did you at that time pretty much participate in interviewing the kids about what had occurred?
A. I was responsible.

I had a new detective with me.

I assisted Detective Niswonger on a couple of interviews, and then I had Detective Henn (Phonetic), who was learning with me on another interview, yes, ma'am.
Q. Is Detective Henn the one you said was the new detective with you?
A. Yes, ma'am.
Q. When you say, you assisted Detective Niswonger, so the two of you did some interviews together, and some you did just with Detective Henn?
A. Yes, ma'am, I did two interviews with Detective Niswonger, then I had Detective Henn with me on another interview.
Q. And as you are interviewing these kids, you are trying to get obviously as much information as you can about the crimes that occurred, but as well the suspects?
A. Yes, ma'am.
Q. Did you stay at the Warm Springs apartment until

all the kids were interviewed?
A. Yes, ma'am.
Q. And then what did you do?
A. Then I was -- I responded with a gentleman, last name Tognotti, I had taken him to the 690 Great Dane address so he could actually provide directions to our crime scene analyst as to what had taken place, where somebody may have moved within the house, so that appropriate processing could be done.
Q. And that would be Ryan Tognotti?
A. Yes, ma'am, I believe so.
Q. Okay. And did you stay with Ryan at the Great Dane house while he walked through with crime scene?
A. Yes, ma'am, I did.
Q. And is that one for safety of him, and two so that you too would be familiar with what occurred and where?
A. Yes, ma'am, that's correct.
Q. And when you were done with Ryan at the Great Dane address, what did you do?
A. Then I took Mr. Tognotti back to the apartment to 2101 West Warm Springs.
Q. Okay. Now, while you are -- or do you have any idea what time about it was that you went to Great Dane with Ryan?

A. I would say, approximately maybe 7.
I would have to look at my notes.
Q. Sun already up?
A. Yes, ma'am.
Q. Okay. And when you went back to -- or when you brought Ryan back to his friends, was the interview pretty much winding down?
A. Yes, ma'am.
Q. When you were done there, where did you go?
A. Then I went back to the station.
Q. Had you heard as part of the interviews that they may have heard a name of one of the suspects?
A. Yes, ma'am.
Q. And that they had also heard the suspects were looking for a certain individual?
A. Yes, ma'am.
Q. And is it your understanding that other detectives were assigned to work up that angle, the name they heard about who the suspects were looking for?
A. Yes, ma'am.
Q. And as you are interviewing these kids, and going back the Great Dane with Ryan, are you also sharing information with the other detectives, you are telling them what you learn, and they are telling you what they learned?

A. Yes, ma'am, that was the reason for the briefing after dropping off Mr. Tognotti.
Q. So when you went back to the station, there was a second briefing?
A. Yes, ma'am.
Q. And everybody shared all the information?
A. Yes, ma'am.
Q. Do you know about what time of day it was then?
A. Again, without looking at my notes, I'd say, approximately maybe 8:30, 9:00 in the morning.
Q. Okay. At what did you do after the briefing?
A. After the briefing, we had also learned that there was possible identification of the suspect involved, at which time photo lineups were created.
Q. Okay. Now, were you aware that in addition to following up -- was the other name you heard about Grant?
A. Yes, ma'am.
Q. In addition to following up the Grant angle, had you heard that one of the kids at the house, their phone was taken?
A. Yes, ma'am.
Q. And were one of the detectives contacting the phone company to see if they could figure out whether or not that phone was being used by the suspect?

A. Yes, ma'am.
Q. And probably either at or around the time of the briefing did you learn the phone was being used in a particular area?
A. At that point we just knew the phone was still active.
Q. Did there come a time you learned the phone was used in a particular area?
A. Yes, ma'am.
Q. Where was that?
A. Much later in the afternoon, it was approximately 3 p.m., I was advised, contact via cell phone, and told that the investigation had narrowed it down, it was still in use, and actually located a vicinity around Circus Circus the phone was being used, or was on.
Q. So the photo line-up you found a name for one of the suspects before you got that information?
A. Correct.
Q. What was the name of one of the suspects that you guys had learned?
A. It was Delarian Wilson.
Q. And was it your understanding a photograph was shown to somebody, and he identified a photograph of Delarian Wilson?
A. That's correct.

Q. Okay. So with the information about the identification of Delarian Wilson, and with the information that the phone was active in the area of Circus Circus, did detectives head over to Circus Circus?
A. Yes, ma'am, the detectives started checking different hotels, yes, ma'am.
Q. Now, you were not one of the ones that went to Circus Circus, correct?
A. No, ma'am, I was somewhere else.
Q. Did you participate in showing photo line-ups to some of the kids?
A. Yes, ma'am, I did.
Q. Did you actually have to travel somewhere to show one to Danielle?
A. Yes, ma'am, I did.
Q. Where did you have to go to show it to Danielle?
A. I had to go to the Santa Fe Hotel in Las Vegas.
Q. Why is that?
A. Because she had already left and was on her way back to where she was going to reside.
Q. Up north?
A. Yes, ma'am.
Q. And she turned around with her parents and came back?

A. Yes, ma'am, she was already out approximately an hour.
Q. And you met them at the Santa Fe?
A. Yes, ma'am.
Q. And when you were at the Santa Fe with Danielle, is that when you discovered what was going on at Circus Circus?
A. I was notified shortly thereafter.
Q. Okay. And had you heard that somebody named Delarian Wilson was actually taken into custody at Circus Circus?
A. I don't know if he had been taken into custody at that point or had been notified we had determined that he was staying at Circus Circus.
Q. Okay. You did determine he was staying there?
A. Yes, ma'am.
Q. I have State's Proposed Exhibit 40, a certified copy of the records at Circus Circus showing Delarian Wilson stayed there. I have shown it to defense counsel. I move it into evidence.
MR. BANKS: No objection.
THE COURT: That was 40?
40 is admitted.
MS. LUZAICH: Yes.

BY MS. LUZAICH:
Q. And showing you State's Exhibit 40, can you tell on State's Exhibit 40 the dates that Delarian Wilson was staying at the Circus Circus?
A. According to the dates that is showing, February 16th of '07 through February 19th of '07.
Q. And the date we are talking about by now is February 19th of '07, correct?
A. Yes, ma'am.
Q. Okay. With the information that somebody named Delarian Wilson, who has been identified as a suspect in that robbery, was staying at Circus Circus, what did you do?
A. I was advised I would need to get a search warrant for room 8744 of Circus Circus.
Q. Did you in fact write a search warrant for the room Delarian Wilson was registered in?
A. Yes, ma'am, I did.
Q. Did you get it signed by a Judge?
A. Yes, ma'am, I did.
Q. Did you then participate in serving the search warrant at the Santa Fe?
A. At the Circus Circus.
Q. Sorry.
Yes, Circus Circus.

A. Yes, ma'am.
Q. And now when you guys collective, you, Henderson PD, serves a search warrant, you know that there are weapons involved in the offense, do you do something different?
A. Yes, ma'am.
Q. What do you do?
A. We allow our SWAT team to go ahead and actually execute the search warrant called, clearing the house, clearing the area.
They are actually the ones go in first to make the area safe for us to go ahead and conduct our investigation.
Q. And did you let SWAT know you actually had a search warrant signed by a Judge?
A. Yes, ma'am, I did.
Q. Is your understanding that SWAT went and cleared that room?
A. Yes, ma'am.
Q. And when you say, cleared the room, what do you mean?
A. I mean, they follow their procedures, line up and ready to go, and make entry into the door, and go into the room, the house, or whatever that area may be, and check for any suspects, make sure there is nobody armed,

make sure we are safe when we go in, make sure there is nobody injured inside that may require assistance.
Q. And is it your -- You have seen SWAT serve search warrants before, right? Yes, ma'am.
Q. Is it your understanding if SWAT finds anybody in the evidence, they will collect them, at least detain them, put them in some sort of zip ties, until they are sure everything is safe?
A. That's correct.
Q. And that is for their safety as well as yours, correct?
A. Yes, ma'am.
Q. And especially in a hotel any surrounding rooms?
A. Yes, ma'am.
Q. Was it your understanding they did, Circus Circus did something to help you guys serve the search warrant?
A. I believe we went ahead and made sure the adjacent rooms were cleared and coordinated off to make sure nobody else was brought into any area that would endanger them.
Q. And once SWAT entered, and cleared, and made sure everything was safe, did you and other detectives go into actually serve the search warrant?
A. Yes, ma'am.
Q. When you went into the room, what exactly was it

that you were looking for?
A. We had in the search warrant were looking for specific clothing, specifically jeans, hats, firearms, we were looking for other items that would have been related that had been discussed during the interviews of the victims.
We wanted paperwork that would show if there was the responsible person for the room aside from those registered.
I think without looking that's it.
Q. That is a pretty good description.
Showing you what has been marked as State's Proposed Exhibits 30 to 39, which for the record have been shown to counsel earlier, do you recognize these?
A. Yes, ma'am.
Q. Can you look through them, make sure?
A. Yes.
Q. Are they photographs that were taken at or during the service of the search warrant?
A. They were photographs that I took during -- First we document the area we're going to search by photographing it, then we go ahead and execute the search itself.
Q. So you searched the whole area -- or photographed the whole area?

A. Yes, ma'am.
Q. Before you searched?
A. Yes, ma'am.
Q. And then if you find anything in particular, you zoom in and photograph that?
A. Yes, ma'am.
Q. Okay. And do these photos fairly, accurately depict what you saw in the room 8744 on the February 19th, 2007?
A. Yes, ma'am.
MS. LUZAICH: Move them into evidence.
MR. LANDIS: No objection, Judge.
THE COURT: 32 through 39 are admitted.
MS. LUZAICH: 30 through 39.
THE COURT: I thought you said 32.
30 through 39 are admitted.
MS. LUZAICH: Thank you.
BY MS. LUZAICH:
Q. So you said you were the one who took the photographs?
A. Yes, ma'am.
Q. And then when you find items that you believe could be related to the crime, do you mark them, tag them, and actually place them into evidence?
A. They are not marked, but upon finding them I get

them, and then they are put into a bag after they of are photographed, and normally it's a crime scene analyst who will handle that, but for whatever reason we didn't have one available that day.
Q. The crime scene analysts could have been at the Great Dane house?
A. I have no idea.
It was a long day that day.
Q. Okay. So showing you State's Exhibit 31, is this a photograph that is taken from the doorway?
A. Yes, ma'am, it is.
Q. And if you touch the bottom right-hand corner of the screen, it will clear whatever is on there.
Thank you.
Number 31, does that show black tennis shoes?
A. Yes, ma'am.
Q. In fact, did you find more than one pair of black tennis shoes?
A. There was more than one pair of tennis shoes, and I believe more than one pair of dark tennis shoes, yes, ma'am.
Q. Okay. Were you aware they were looking -- you said they were looking for hats, or you were looking for hats, correct?
A. Yes, ma'am.

Q. Because both individuals wore hats, and specifically one black hat one white hat?
A. That's correct, I know they were wearing hats.
Q. Showing you State's Exhibit 33, several hats were found in the room?
A. Yes, ma'am.
Q. Were there also several suitcases found in the room?
A. Yes, ma'am.
I don't know they were carrying cases, suitcases, and then some were like duffle bags. We would call it a suitcase, I guess.
Q. Items that can carry clothing and toiletries and things of that nature, how is that?
A. Yes, ma'am.
Q. State's Exhibit 32, are there a couple of bags there?
A. Yes, ma'am.
Q. And did you find anything particular in the bags that related to the crime?
A. Yes, ma'am.
Q. What did you find?
A. The black shirt with the A on it.
Q. State's Exhibit 39.
Now, in the top right-hand corner, would that be

fingers holding up like the top of the shirt?
A. Yes, ma'am.
Q. And is this a shirt with a white kind of cursive or old English A on it?
A. Yes, ma'am.
Q. Additionally, had you heard about some condoms that were taken from the Great Dane address?
A. Yes, ma'am.
Q. And State's Exhibit 35, does that depict some condoms consistent with some found at the Great Dane house?
A. A condom, yes, ma'am.
Q. Sorry, a condom.
And where did you locate that condom?
A. That was on top of the TV entertainment unit, on top of it.
Q. And did you also find items that would demonstrate that Delarian Wilson actually had taken room?
A. Yes, ma'am.
Q. And for example State's Exhibit 36?
A. Yes, ma'am.
Q. And is this like a travel itinerary from Expedia.com?
A. I'm not sure which internet site it is.

This one is blurry over here.
Q. Okay.
A. Yes, ma'am, up on the top, yes.
Q. Can you see on there it actually says Delarian Wilson under traveler, and cost summary, or is that small --
A. It's blurred on mine, ma'am.
I'm sorry.
Q. But does it say it on there?
A. Yes, ma'am.
Q. You can see a traveling summary, and it has Delarian Wilson, says adult?
Q. And were there in fact two cash receipts indicating that Delarian Wilson obtained cash at the hotel?
A. Yes, ma'am.
Q. When you or while you were at the Circus Circus, is that when you learned that Delarian Wilson was actually taken into custody?
A. Yes, ma'am.
Q. And did you do anything relating to Delarian Wilson?
A. Yes, ma'am.
Q. What did you do?
A. I responded down to the security office where he

was being detained.
Part of the search warrant I narrated was to obtain DNA or biological fluids called a Buccal swab, and I went down and obtained DNA from Mr. Wilson.
Q. And when you did that, that is that kind of putting a Q-Tip in their mouth and rubbing it, that type of thing?
A. Yes, ma'am.
Q. Okay.
MS. LUZAICH: Thank you.
I pass the witness.
THE COURT: Cross.

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CROSS-EXAMINATION OF RODRIGO PENA

BY MR. LANDIS:
Q. You found a lot of, for lack of a better word, evidence in that hotel room?
A. We found matching items that, yes, were described during the investigation.
Q. You seized quite a few things?
A. Yes, sir, we did.
Q. You looked at a lot of stuff you chose not to seize?
A. Yes, sir.
Q. Left it in the hotel room?

A. Yes, sir.
Q. During your search of that room, did you find anything that ties Narcus Wesley to that room?
A. No, sir, I did not.
Q. Did you find anything that lead you to conclude he had ever been in that room?
A. No, I did not.
Q. One thing you didn't talk about on direct, you found a couple Greyhound receipts, correct?
A. Yes, sir, I did.
Q. Was Delarian Wilson's name on any of those receipts?
A. At this point I believe there was.
I know there was another one with Quindara (Phonetic), I believe there was --
I would have to look at what I took.
Q. Isn't it true the actual name on the Greyhound receipt was Wilson, Kameron?
A. That could be correct.
Q. Would looking at --
A. Absolutely.
MR. LANDIS: Court's indulgence.
THE COURT: Certainly.
MR. LANDIS: May I approach, Judge?
THE COURT: Yes.

BY MR. LANDIS:
Q. That is one of the items you seized during that search, correct?
A. This is actually two that are on one that were photographed together.
Q. Two Greyhound tickets, right?
A. Yes sir.
Q. And I want to first talk about the one whose name we haven't heard about yet in this court trial.
What is the name on that Greyhound receipt?
A. One is Wilson, Kameron.
Q. How about the other one?
A. The other one is a Harrison Quindara.
Q. Did you ever determine who that was?
A. No, sir, I did not.
Q. As for the other receipt, what is the name on it, say it again?
A. Wilson, Kameron.
Q. Based on your training and experience, and based on your search, did you conclude that that was actually Delarian Wilson's Greyhound ticket?
A. I'm sorry.
Can you repeat the question?
Q. Based on your training and experience as a detective for Henderson, and based on your search of

that room, did you conclude that actually was a ticket used by one Delarian Wilson?
A. I did not do a portion of the investigation that would have determined that, if it was determined.
Q. Based on your training and experience, would you conclude that was a ticket used by Delarian Wilson?
A. I would conclude it would be something that would require further investigation.
MR. LANDIS: May I approach?
THE COURT: Sure.
MR. LANDIS: Thank you.
BY MR. LANDIS:
Q. You also found a few ATM receipts or cash withdrawal receipts?
A. They were global receipts, yes, sir.
Q. There were two receipts that were global cash access receipts?
A. Yes, sir.
Q. And those were ATM withdrawals?
A. I know they were global receipts for cash.
Q. And there was another one a little different from those two.
Do you remember what that was?
A. Not without look at paperwork again.
Q. Those are the two global cash receipts that

recovered from the room, correct?
A. Yes, sir.
Q. Those were both in the name of Delarian Wilson?
A. Yes, sir.
Q. Those were actually Visa withdrawals, correct?
A. I couldn't tell you right now, sir.
MR. LANDIS: May I approach again, Judge?
THE COURT: Sure.
BY MR. LANDIS:
Q. Okay.
A. Yes, correct.
Q. On both of them they say Visa credit?
A. Yes, sir.
Q. Which means they were cash advances on credit cards?
A. Yes, sir.
MR. LANDIS: Court's indulgence.
THE COURT: Certainly.
BY MR. LANDIS:
Q. A couple brief questions about the walk through you did at Great Dane.
A. Yes, sir.
Q. Mr. Tognotti was instructed to point out everything that could have been touched by one of the suspects, correct?

A. That's correct.
Q. And he did so?
A. That's correct.
Q. There was quite a few items, was there not?
A. I'm sure there was various items.
I'm sure they were directed for the CSA people.
Q. And to the best of your knowledge each of the items was later dusted for prints, correct?
A. I cannot verify that.
I do not know.
MR. LANDIS: Can I approach the witness, Judge?
THE COURT: Yes.
BY MR. LANDIS:
Q. Just for the record I'm showing you Defense Proposed D.
Those are the global cash receipts.
A. Yes, sir, that's correct.
Q. I'm showing you Defense Proposed E.
Those are the Greyhound tickets we discussed?
A. Yes, sir, that's correct.
MR. LANDIS: I move for the admission of D and E.
MS. LUZAICH: No objection to E.
D is not necessary because there is photos of them already, but that's fine, whatever.
THE COURT: We'll admit them. D and E are

admitted.
MR. LANDIS: I have no further questions, Judge.
THE COURT: Any redirect?
MS. LUZAICH: Sure.

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REDIRECT EXAMINATION OF RODRIGO PENA

BY MS. LUZAICH:

Q. As you served the search warrant in the Circus Circus room, did it appear to you that there were several people staying in the room, not just Delarian Wilson?

A. Yes, ma'am.

Q. And it appears that he at least came with a friend, and I'm looking at Exhibit E, which is -- Sorry, Defense Exhibit E, which is the Greyhound ticket things, that shows that Delarian Wilson and somebody named Quindara Harrison came together, correct?

A. Correct, yes, ma'am.

Q. And in fact -- Well, how many pairs of tennis shoes did you find in the room?

A. How many did I remove with a search warrant, or how many did we find?

Q. How many did you find?

A. There was a lot.

I removed eight different pairs of shoes with a

search warrant, but I didn't take all the shoes.

Q. So you removed eight pairs of shoes, and there were even more than that?

A. Yes, ma'am.

Q. Okay. And then he asked you about the global cash receipts, Mr. Landis, and he asked you if another receipt that looked -- there were no other receipts, right just those two cash receipts that you have already identified?

A. That's correct.

Q. Do you know, was Quindara Harrison in the room, or near the room, or at least in any way contacted when the search warrant was served?

A. Not to my knowledge.

Q. Did you have any reason to believe he was implicated in the crime?

A. Not to my knowledge, no.

Q. Quindara Harrison was never arrested, correct?

A. No, ma'am.

MS. LUZAICH: Thank you.
Nothing further.
MR. LANDIS: One question Judge.

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RECROSS-EXAMINATION OF RODRIGO PENA

BY MR. LANDIS:

Q. Do you remember where the Greyhound tickets were from?

I knew they were to Las Vegas.
Do you remember where the city was leaving from?

A. Albuquerque, New Mexico.

MR. LANDIS: Nothing further Judge.
THE COURT: That's it.
You are excused.
You can step down.
Thank you.
THE WITNESS: Thank you, sir.
THE COURT: Okay.
MS. LUZAICH: Can I peek outside?
THE COURT: Sure.
MS. LUZAICH: I'm sorry. I forgot to ask detective Pena a question.
Can we recall detective Pena?
THE COURT: Sure.
Bring him back.
Detective, just go ahead and retake the witness chair again.
You are still under out.
THE WITNESS: Yes, sir.

THE COURT: If you haven't forgot, it's only been thirty seconds.
Go ahead.

BY MS. LUZAICH:

Q. Did you also have contact with the front desk at Circus Circus?

A. Yes, ma'am, I did.

Q. Were there other individuals also registered in the room with Delarian Wilson?

A. Yes, ma'am, there were other people listed as guests.

Q. How many?

A. I believe two.

Q. So three people total registered or listed at least in that room?

A. Yes, ma'am.

MS. LUZAICH: Thank you.
Nothing further.
THE COURT: Anything else?
MR. LANDIS: No.
THE COURT: Okay. Now we are done.
THE WITNESS: Yes, sir.
MS. LUZAICH: I do have another witness outside.
It's the Court's pleasure.
THE COURT: Relatively short, or real long,

medium?
Do you think you can do it in the next 40, 45 minutes?
MS. LUZAICH: In the next 45 minutes?
Yeah.
THE COURT: Go ahead. Let's go.
We'll get the next witness in, and it will be 12:30. We'll take a lunch break.
Is that all right with everybody?
ALL JURORS: Yes.
MS. LUZAICH: Detective Niswonger.
Sorry.

ANTHONY NISWONGER,

who, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:
THE CLERK: Please be seated.
Please state your full name, and spell both your first and last name for the record.
THE WITNESS: My name is Anthony Niswonger.
Last name is spelled N-i-s-w-o-n-g-e-r.

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DIRECT EXAMINATION OF ANTHONY NISWONGER

BY MS. LUZAICH:

Q. Sir, are you a police officer with the Henderson Police Department?
A. Yes, I am.
Q. How long have you been a police officer with Henderson?
A. Eight years.
Q. And in your eight years at Henderson what things have you done?
A. I started out in patrol, doing patrol investigations, and then I moved into the investigations bureau where I investigated property crimes, and then moved into the robbery section.
Q. Were you assigned as a police officer in Henderson on February 18th, 19th, 2007?
A. Yes, I was.
Q. And at that time what was your actual assignment?
A. Robbery.
Q. Were you called out to participate in an investigation involving something that occurred at 690 Great Dane?
A. Yes, I was.
Q. About what time were you called?
A. I was called approximately 3:30 in the morning.

Q. And where did you respond to?
A. I responded to Crystal Creek Apartments, 2101 West Warm Springs.
Q. Did you participate in a briefing as well?
A. Yes.
Q. At the Henderson Police Department?
A. Yes, just prior to that.
Q. And were there numerous police detectives, or at least detectives, involved in that briefing?
A. Yes.
Q. And is that because it was everybody's understanding there was a lot of investigation to be done?
A. That's correct.
Q. So when you went to the Crystal Creek Apartments, were there patrol officer there already?
A. Yes.
Q. And did a whole bunch of detectives go there?
A. Yes.
Q. Did you participate in interviewing the kids that had been the victims of the crime at 690 Great Dane?
A. Yes, I did.
Q. And did you do that in part with Detective Pena who just left?
A. Yes.

Q. And when you -- or now did you also go to Great Dane with Ryan Tognotti to walk through, or did you remain at Crystal Creek?
A. I did go to the Great Dane address, but I did not walk through with Ryan Tognotti.
Q. At what point did you go to the Great Dane address?
A. At the same time he was there, but I was not involved in the walk through portion of the residence.
Q. Just the detective went, only one walked through?
A. Correct.
Q. What did you do after that?
A. At that point I was notified by my sergeant that Detective Weske had contacted the previous resident of that house at Great Dane, and that he had him at the police station, and he was interviewing him.
Q. Would that be Grant?
A. Yes.
Q. And that is because y'all had heard that the suspects who went to the Great Dane address went there looking for Grant?
A. Correct.
Q. When you got to the police station, you said Grant either had been or was being interviewed.
Did you obtain a -- Well, was it your

understanding he had given a name Delarian Kameron Wilson?
A. Yes.
Q. Did you obtain a photograph of Delarian Kameron Wilson?
A. Yes.
Q. And did you show it to Grant Hieb to confirm whether or not that was the individual you guys were looking for?
A. Yes, I did.
Q. And is it your understanding that Grant Hieb knew nothing about the other suspect?
A. That's my understanding.
Q. After Mr. Hieb identified the photograph of Delarian Wilson, did you do something with that photograph?
A. Yes, I did.
Q. What did you do?
A. I created a photo line-up with it.
Q. When you create a photo line-up, how do you go about doing that, you take a picture of the person you are trying to identify, and what do you do?
A. What I did was, I took that booking photo of Delarian Wilson, went through our booking photos and picked out individuals that had similar qualities, same

race, same type of build, and I placed them on an Excel document in a photo line-up document and print that out.
Q. When you are going through photos to create a photo line-up, what are you trying to do?
A. I'm trying to find individuals that have similar characteristics of Delarian Wilson.
Q. So for example if your suspect has a mustache, you are looking for five other photographs of somebody with a mustache, right?
A. Right.
Q. If your suspect is African American, you are looking for five other African Americans?
A. Correct.
Q. If your suspect in a photo has an earring, you would want five other people with earrings if possible?
A. If possible, yes.
Q. But you are doing your best, so they all at least look relatively similar so your suspect does not stand out, correct?
A. Correct.
Q. And when you say you had gotten a booking photo of Delarian Wilson, that was from actually a traffic warrant, is that correct?
A. Correct.
Q. And when you put together a photo line-up, do you

do it in color?
A. Yes.
Q. And then did you participate in actually showing the photo line-up to some of the kids?
A. Yes.
Q. Now, when you show a photo line-up to somebody, I assume you don't just say, hey, one of these, the guy who robbed you, is one of these six, tell me which one, right?
A. No, we actually explain to them the person that robbed them might not actually be in that photo line-up, and that if that person that robbed them -- if they don't recognize anybody in that line-up, not to be the person that robbed them, we want to protect the innocent also, so not to pick out somebody that they don't believe conducted the crime.
Q. Okay. By now it's Monday the 19th, correct?
A. Yes.
Q. But it's later in the day, not real early in the morning when you get that information for the photo line-up putting it together, right?
A. Right.
Q. Now, did you also discover that there was a vehicle used by the person that you came to be known as Delarian Wilson and the other suspect that went to the

location?
A. Yes.
Q. And what kind of vehicle was it?
A. A black 2007 Dodge Charger.
Q. And was that black Dodge Charger located at Circus Circus?
A. From what I was told, yes.
Q. And was it brought to the Henderson Police Department?
A. Yes.
Q. And did you look in that black Charger to see if you could find information pertaining to who owns it --
Let me rephrase that.
Did you look at -- or in it to see if you could figure out whose vehicle it was?
A. Yes.
Q. And what did you come up with?
A. I conducted a records check of the registration, and it came back to a rental car.
So I contacted that rental company who gave me the person that had rented that vehicle.
Q. Okay. That person was not Delarian Kameron Wilson, correct?
A. That's correct.
Q. Did you contact the person who had rented the

vehicle?
A. Yes.
Q. And did you ultimately personally talk to the person who rented the vehicle?
A. Yes, I did.
Q. Was that a woman?
A. Yes, it was.
Q. Do you recall her name?
A. Vincente (Phonetic).
Q. And did you ask her for permission to search the vehicle?
A. Yes, I did.
Q. Did you in fact search the black Dodge Charger?
A. Yes, I did.
Q. And did you find anything in it pertaining to Delarian Kameron Wilson?
A. Yes, I did.
Q. What did you find?
A. A wallet that had Delarian Wilson's identification in it.
I found two global access cards or tickets from a casino that had the name Delarian Wilson printed on it.
MS. LUZAICH: Thank you.
I pass the witness.
THE COURT: Cross?

MR. BANKS: Court's indulgence, please.
THE COURT: Yes.

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CROSS-EXAMINATION OF ANTHONY NISWONGER

BY MR. BANKS:
A. Detective Niswonger, the rental car, the photo line-ups, the stuff found at Circus Circus, the fingerprints at the Great Dane residence, the permission for who can use the rental car, all that stuff lead you and your co-workers at the Henderson Police Department back to Delarian Wilson, is that a fair characterization?
A. Yes.
Q. You were the primary reporting officer in this case?
A. No, I was not.
My -- The case was actually submitted under my name, but I wasn't the primary reporting officer, no.
Q. Okay. There are so many different bureaus, I'm just trying to figure out where the buck stops in Henderson.
MR. BANKS: May I approach?
THE COURT: Yes.

BY MR. BANKS:
Q. Who does the buck stop with in this case?
A. What are you referring to as, the buck stopping?
Q. Who makes the final call as to what goes on as far as the investigation goes in this case?
A. There were two sergeants that were in charge of this case.
Q. Okay. And who are they?
A. Sergeant Johnston and Sergeant Dunway.
Q. Johnston and Dunway.
Okay. As a detective, you have I guess more training on the street, more experience on the street, than maybe a patrol officer, is that fair?
A. Yes.
Q. At least usually more years on the force, is that fair?
A. I can't say there is not patrol officers that don't have more experience than me. Obviously there is patrol officers that have 20 plus years.
Q. Understood.
As a detective you have some additional training above and beyond patrol officer, is that fair?
A. Yes.
Q. Okay. And I just want to make sure that as cases and investigations go up the chain in the Henderson

Police Department say from the patrol officer or the beat cop, up to the detectives, and up to the sergeants, let me ask you a few questions, as an investigating detective, you are of course trying to build the best case you can?
A. Yes.
Q. You want it to be as solid a foundation as you can possibly have to build your case on, is that fair?
A. Yes.
Q. You interview witnesses to build a case oftentimes?
A. Yes.
Q. Part of this case was interviewing witnesses?
A. Yes.
Q. Okay. Part of the foundation of this case were those witness interviews, is that fair?
A. Yes.
Q. You want those witness interviews to be as reliable as possible?
A. Yes.
Q. You do what you can in the situation that you were in to insure that they are as reliable as possible?
A. Yes.
Q. You would never want to talk to witnesses in front of another witness, is that fair?

A. For the most part, yes.
Q. Okay. You certainly don't want witnesses together talking about the case, is that a fair characterization?
A. Yes.
Q. Okay. And there is reasons for that, and one of those reasons are that witnesses may perceive things differently, is that fair?
A. Correct.
Q. Okay. One witness might see something that another witness may not have seen?
A. Correct.
Q. One witness might think that they saw something that perhaps another witness didn't see?
A. True.
Q. You don't want those people talking about that stuff because you don't want to contaminate somebody's perception of of an event, is that fair?
A. Yes.
Q. And contamination can impact the reliability of an interview, is that fair?
A. Yes.
Q. Whether the contamination is intentional or unintentional?
A. Yes.

Q. Witnesses bring -- Witnesses who have lived through or perceived an event, they bring their life experiences to the situation just like everybody else, right?
A. Yes.
Q. They sometimes -- they bring human nature, they bring their own, their human nature to the incident as they perceive it, right?
A. Yes.
Q. Sometimes they bring their fears, is that fair?
A. Yes.
Q. Sometimes they bring biases, whether it's intended or not, is that fair?
A. Sometimes, yes.
Q. Okay. And that's the kind of thing -- those kinds of things, like I say, whether it's intended or not on the part of the witness, those are the kind of things that you want to try and limit as best you can in your investigations?
A. Yes.
Q. That's why you separate everybody, don't let them talk, right?
A. We attempt to, yes.
Q. As best you can?
A. Yes.

Q. But some of those biases, some of those fears, some of those perceptions, maybe even some preconceived notions, is that fair that somebody may bring a preconceived notion as to how they perceive an event?
A. It's possible, yes.
Q. Those kinds of things are sometimes beyond the police officer's control?
A. Yes.
Q. Just a couple of quick questions.
There are certain aspects of an investigation that are under a police officers control, and I want to ask you about a few of those.
There was some dusting for fingerprints, if you know, did you know that?
A. Yes.
Q. Okay. And somebody decided to send those fingerprints off to a lab maybe for some further testing?
A. I'm assuming so, yes.
Q. Okay. And that's one of those things that is under the police officer's control, or the department's control that you have got some potential physical evidence, and it gets sent off for some further testing, right?
A. Yes.

Q. And you folks in Henderson do that sort of thing because you want it to be as thorough of an investigation as possible to build that foundation upon, right?
A. Yes.
Q. Any idea if the vaginal swabs taken by Nurse Ebbert were sent out for further testing?
A. I would not know.
Q. Who would make that call in your department?
A. Probably one of the sergeants, or maybe the detective that handled the examination.
Q. Okay. So we would have to ask those officers whether that decision was made and what went into making that decision?
A. I did not handle that portion of the investigation to answer your question.
Q. Okay. But you would agree that the more testing of things that the department does have under its control, the more solid the foundation, is that fair?
A. We try to, if we can.
There is constraints on a lot of those type of issues.
Q. Okay. This case was submitted by Henderson to the District Attorneys office?
A. Yes.

Q. And it was submitted against Narcus Wesley?
A. Yes.
Q. And it was submitted against Delarian Wilson?
A. Yes.
Q. Okay. If you know, where is Delarian Wilson this --

MS. LUZAICH: Objection.

THE COURT: Come here.

(Thereupon, a discussion was had between Court and Counsel at sidebar.)

THE COURT: Just for the record, we're going to actually argue this issue outside the presence of the jury on the record, so the record is clear.

Go ahead, and don't ask these questions yet.

MR. BANKS: Yes.

THE COURT: Okay.

BY MR. BANKS:

Q. Did you talk to Delarian Wilson at all on this investigation?
A. No, I did not.
Q. That would be somebody else's responsibility in the investigation?
A. Yes.

MR. BANKS: Pass the witness.

THE COURT: Redirect?

MS. LUZAICH: Yes.

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REDIRECT EXAMINATION OF ANTHONY NISWONGER

BY MS. LUZAICH:

Q. Would it surprise you to know it would be the DAs office who requests any DNA analysis of the vaginal swabs or anything like that?
A. It wouldn't surprise me, no.
Q. Now, when you said earlier that there were two sergeants in charge, because the sergeants are the supervisors, are they the ones who often direct either the patrol officers or particular detectives what to do and then what to do next?
A. In this case, yes.
Q. So it's not as much they were in charge of the investigation. They were just sending people in different directions because there was so much to do?
A. It was a very dynamic investigation. There was a lot of investigative leads being followed up on.
Q. And they all lead in kind of different directions, not to different people, but just different -- barking up different trees kind of?
A. Yes.
Q. But there was not really one detective that was in charge of this whole case, everybody had their own

responsibility and put it together?
A. That's correct.

MS. LUZAICH: Nothing further.

Thank you.

THE COURT: Can I ask you a question?

Did I see anybody had a question?

Anything else?

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RECROSS-EXAMINATION OF ANTHONY NISWONGER

BY MR. BANKS:

Q. But the buck does stop with the two sergeants that you mentioned earlier?
A. I still don't understand your term, the buck stops here.
Q. Have you ever heard the phrase, the buck stops here?
A. No, I have never used it.
Q. Who are those two sergeants that you mentioned earlier?
A. Sergeant Johnston and Dunway.

MR. BANKS: Pass the witness.

THE COURT: Thanks for your testimony. I appreciate it.

You might want to stay in contact with the deputy district attorney. It might be necessary to have you

back for a few minutes.

THE WITNESS: Yes, sir.

THE COURT: Okay. It's 12:15.

Break until 1:30.

We're going to have an hour and 15 minute lunch recess.

I want you to meet Joe at the double doors at about 25 after 1.

(Jury admonished by the Court.)

(Thereupon, the following proceedings were had out of the presence of the jury.):

THE COURT: We're outside the presence of jury.

All right. Let's iron this out.

MS. LUZAICH: Can we have a few minutes to do that?

Could be do it closer --

THE COURT: Before we start?

MS. LUZAICH: Yes, because I want to look at some stuff.

THE COURT: That's fine.

Let's try to be back say maybe between 20 and 25 after, give us a few minutes to make a record.

MS. LUZAICH: Fine.

THE COURT: We're in recess.

(Thereupon, a luncheon recess was had.)

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(Thereupon, the following proceedings were had out of the presence of the jury.):

THE COURT: Okay. Let's go back and address this last matter for the record.

We're back on the record in the State of Nevada versus Narcus Wesley.

Let's go back and address this last issue about the conviction relative to Defendant Wilson.

You want to present before this jury evidence that Delarian Wilson has plead guilty to the charges he plead guilty to last week?

MR. LANDIS: Correct.

THE COURT: Which he's plead guilty to what exactly?

MS. LUZAICH: One count of sexual assault and two counts of robbery with use.

THE COURT: Now, the State's position is, if you introduce evidence relative to his plea, then you have to -- or you can't pick and choose that which you want to present to the jury.

If you are going to introduce evidence in regards to his plea, you have to introduce the whole thing, his entire plea, is that correct so far?

MS. LUZAICH: Not as much his entire plea, but the factual basis on which it was presented, and because their there is -- and the reason they are bringing it in is saying he is stepping up to the plate and accepting responsibility, he did this bad thing, and he's the one wrong, not this guy.

That is actually a -- I mean, they would be misleading the jury.

So I think that if the fact he comes in, that the plea comes in, his statement to the police would also come in where he admitted, yeah, I was there, yeah, I committed the robbery, but it was him, Narcus Wesley, who had the gun.

That is what happened is, I agreed to sever initially because each one of them said, yeah, I was there, yeah, I did this, but the other guy had the gun.

So if they are trying to say he's accepting responsibility, that is not entirely true, it's slightly true.

So the entire truth would need to come in and that he's accepting responsibility only insofar as saying he was there as an aider and abettor, and that he committed the sexual assault, and that he Narcus Wesley had the gun.

THE COURT: I'm not quite sure how you can

separate this because if I remember correctly at the time we took the plea from Defendant Wilson --

MS. LUZAICH: Which coincidentally I have here in front of me.

THE COURT: -- I think the Court Reporter did a transcript of the plea already, and I think it should be in the file.

Does everybody have a copy of it?

MR. LANDIS: Yeah, I'm the one that ordered it.

THE COURT: I think if I remember correctly, I specifically had to ask Defendant Wilson in regards to the sexual assault charge upon what basis he was entering a plea in the sexual assault, and he specifically described it as an aider and abettor to Co-Defendant Wesley.

MS. LUZAICH: Correct.

MR. LANDIS: I think he actually said, aiding and abiding, but --

THE COURT: Okay. Aiding and abiding, correct, I think you are probably right.

The point is, if you are going to get into this, you got to be able to get into it all the way. You really are not going to be allowed to pick and choose that information that you want the jury to hear and exclude any of the other relevant information.

I think that that is something you are going to have to decide.

I don't -- or I do think that if you guys think strategically that is the right thing to do, I think you should be allowed to do it.

Again, you have to decide if you want to have all of that information presented.

But I think the full picture of his plea is going to have to be presented in order to make it fair.

MR. LANDIS: Okay. We can live with that ruling, Judge.

That would include a redacted copy of the guilty plea agreement?

THE COURT: The guilty plea agreement.

MS. LUZAICH: I don't know they need the plea agreement.

The Amended Information.

MR. LANDIS: It's one and the same.

His canvas is coming in. I don't see why his guilty plea wouldn't.

MS. KOLLINS: The canvas --

MS. LUZAICH: The whole canvas doesn't come in, just his words describing his acceptance of responsibility.

THE COURT: Anything, whether it's in the guilty