

In the Supreme Court of the State of Nevada

Jemar Matthews,

Appellant

v.

State of Nevada,

Respondent

Electronically Filed
Supreme Court Case No. 84339
Jul 13 2022 12:31 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Appeal from Judgment of
Conviction of Eighth Judicial
District Court, Clark County, in
Case No.: 06C228460-2

**Appellant's Appendix
Volume 3**

/s/ Todd M Leventhal

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CERTIFICATE OF SERVICE

The undersigned, an employee of Leventhal and Associates, hereby certifies that she served the foregoing on the State by delivering a true and correct copy of it on July 13, 2022, to the following persons via electronic service through the Nevada Supreme Court electronic filing system.

Steven S. Owens

Chief Deputy District Attorney

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Attorney General / Carson City

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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/s/ Maribel Godinez

An Employee of Leventhal and Associates

1 their sixth peremptory challenge.

2 [Counsel confer.]

3 THE COURT: The State and the defense may exercise
4 their seventh peremptory challenge.

5 [Counsel confer.]

6 THE COURT: The State and the defense may exercise
7 their eighth peremptory challenge.

8 [Counsel confer.]

9 THE COURT: Okay. At this time, the State and the
10 defense may exercise their ninth and final peremptory challenge,
11 and it's available as to 25 through 32, with the exception of those
12 that have been exercised.

13 MR. GIORDANI: Understood. Thank you, Your Honor.

14 [Counsel confer.]

15 THE COURT: Okay. At this time, ladies and gentlemen,
16 we're going to take a short recess. There's just a few things I need
17 to do outside your presence. If you could stay close by, because
18 this will really only take us a few minutes, and when we're done,
19 Officer Hawks will call you to come back in. When you do come
20 back in, I just ask that you don't sit in the jury box, you can sit out in
21 the gallery or you can stand, because it'll be really quick. The clerk
22 will call the names of our jurors, if your name is called, you'll be
23 empaneled on the jury panel. Otherwise, everyone else will be
24 excused.

25 So we are in recess for the next few minutes. Thank you.

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[Prospective jury panel recessed at 3:44 p.m.]

THE COURT: Okay. The record reflect the hearing's taking place outside the presence of the jury panel. Our jury panel will be as follows:

Juror Number 1, Pena-Franco; Number 2, Brown; 3, Zimmer; 4, Maria Luisa Burgos; 5, Watts; 6, Follmer, 7, Dam; 8, Jennifer Nieves; 9, Harbison; 10, Minami; 11, Gourley; 12, Francine Schartz; and Number 13, our first alternate is Monica Takashima; the second alternate, Number 14, Jeannie Schlotter.

Any objection from the state?

MR. GIORDANI: No, Your Honor.

THE COURT: From the defense?

MR. LEVENTHAL: Yes, Your Honor.

We're going to be lodging a Batson challenge at this point.

THE COURT: Okay. You need to make a Batson challenge when you have it. But go ahead.

MR. LEVENTHAL: Well --

THE COURT: Yeah, you generally, in my experience, you make a Batson challenge when you have it to give the Court the opportunity to rule upon it.

MR. LEVENTHAL: I apologize, Your Honor. That's not how I've done it in the past.

THE COURT: Okay.

MR. LEVENTHAL: Usually, we wait till the jury leaves to

1 make that Batson challenge, so we can --

2 THE COURT: Well, I excuse them. So you can make the
3 challenge. That's okay.

4 MR. LEVENTHAL: I apologize. I didn't know that that was
5 your -- I don't believe we did -- anyway, it's going to be against
6 Christina Rene Hughes, the African-American that was brought in.
7 We discussed her battery DV that she did not disclose to the Court
8 immediately, but did so when she came back into the court and was
9 very truthful and honest. Even the Court indicated that she said she
10 could be fair and impartial. She never made any statements to the
11 contrary. She's said that there's no reason not to be fair. She said
12 she'd be fair here. And I believe that that was based on race.

13 And if you look at the number of African-Americans that
14 we have, there are only four --

15 THE COURT: There are five.

16 MR. LEVENTHAL: Five. Four in and so far the State has
17 peremptory challenged two of them, Christina Rene Hughes, as well
18 as -- what was her name?

19 MR. TANASI: Your Honor, 360 and 344 were the two
20 African-Americans that --

21 THE COURT: So Karen Collins --

22 MR. GIORDANI: According to who?

23 THE COURT: I just want to make --

24 MR. GIORDANI: According to who?

25 THE COURT: Yeah. I just want to make sure, did Karen

1 Collins indicate on her -- let me look.

2 MR. LEVENTHAL: Yes, Your Honor.

3 THE COURT: She identifies as African-American?

4 MR. LEVENTHAL: She does.

5 MR. TANASI: She does, Your Honor. On the random list.

6 MR. LEVENTHAL: Yes. Karen Collins, Black,
7 African-American.

8 THE COURT: On this list?

9 MR. TANASI: Yes, Your Honor.

10 MR. LEVENTHAL: Yes.

11 THE COURT: Okay. Let me just --

12 MR. LEVENTHAL: She was with P&P.

13 THE COURT: Yeah, I know who she is.

14 MR. LEVENTHAL: Okay.

15 THE COURT: I just didn't know what she identified on.
16 Okay.

17 MR. LEVENTHAL: And so that would be out of the five,
18 four were the only two seated in the first 32, that would be 50
19 percent. And that's a very high number. So that's my challenge on
20 those two.

21 And, again, if the Court wants, in terms of Ms. Collins,
22 she's a law enforcement officer. She's with Parole and Probation.
23 She never indicated she couldn't be fair and impartial. Both her
24 and her husband are, they've been there for many years. So with
25 that, I would submit it that -- she's also been a victim, her house

1 was burglarized, she's been a victim, she had a good experience
2 with law enforcement and she said she could be fair and impartial.

3 THE COURT: Basically, you're contending that because
4 they exercised two of their challenges towards African-Americans,
5 that there is an inference of discrimination?

6 MR. LEVENTHAL: That's correct.

7 THE COURT: Okay. Does the State want to respond as to
8 the first set only?

9 MS. BOTELHO: Thank you, Your Honor.

10 THE COURT: Whether they have met their burden of
11 proof?

12 MS. BOTELHO: Your Honor, they have not met their
13 burden of proof in terms of establishing a prima facie showing that
14 the challenges we exercised were based on race.

15 THE COURT: Okay. Any response, Mr. Leventhal?
16 Because, I mean, the opponent of the challenge, I mean, you have
17 to provide sufficient evidence to present the Court to draw an
18 inference that discrimination has occurred.

19 And so, I mean, all the things that they have said, I mean,
20 unless they're important as to discrimination, I mean, I have to be
21 able to make an inference that the State is exercising these
22 challenges purposely and intentionally to get rid of
23 African-Americans.

24 MR. TANASI: Understood, Your Honor. May I chime in
25 just for a moment?

1 THE COURT: Absolutely.

2 MR. TANASI: Okay. So three-part Batson challenge that
3 everybody I know is fully aware of. But just for the record, defense
4 has to make a prima facie case of discrimination. I believe we've
5 done that so far with the percentages that we've outlined.

6 THE COURT: Well, you have to show that the totality of
7 the relevant facts gives rise to an inference of discriminatory
8 purpose. I just want to make sure everyone's clear, because we're
9 just on the first step. If you don't meet your burden on the first
10 step, we don't even move on. So I just want to know what is the
11 totality of your evidence that would indicate the State has an
12 intentional purposeful discriminatory intent?

13 MR. TANASI: Again, Your Honor, I think as Mr. Leventhal
14 pointed out, two of the four seated African-Americans were struck.
15 The first strike that the State exercised was for an African-American.
16 And the second -- or -- and then, ultimately, they struck two of the
17 four. So that's 50 percent of the four that were sitting in the 32. So
18 I think based on that, we've made a prima facie showing of
19 discrimination, which shifts to the second burden requiring the
20 State to provide a race-neutral explanation to our challenge.

21 THE COURT: And the State waived three of the -- you
22 waived three of the -- 5, 6, and 7?

23 MS. BOTELHO: As well as the [indiscernible].

24 THE COURT: So, number one was as to Ms. Hughes.

25 MR. TANASI: And, Your Honor, I'd also --

1 THE COURT: And then Ms. Collins was the eighth one.
2 So you exercised five and two of them -- okay. Go ahead.

3 MR. TANASI: So, Your Honor, just on the percentages,
4 and as a backdrop, our entire panel that was here today is 9 percent
5 African-American. So we're already starting with a very small
6 number.

7 THE COURT: Well, isn't the African-American population
8 of Clark County 10 percent?

9 MR. TANASI: Understood, Your Honor.

10 THE COURT: Okay. I just wanted to make sure.

11 MR. TANASI: Understood. But, again, the first challenge
12 of 50 percent of their challenges was African-Americans.

13 THE COURT: Anything else? I mean, I'm concerned
14 because you only -- you waived three of our challenges, so you only
15 actually used five of them, and two of them were to strike
16 African-Americans from the panel.

17 MR. GIORDANI: The other two were Hispanic.

18 THE COURT: So whether I think there's an inference, I
19 believe the Supreme Court will find that there is an inference. So
20 I'm going to ask the State to state your race-neutral reason and let's
21 just start with Ms. Hughes first.

22 MS. BOTELHO: Yes, Your Honor.

23 Your Honor, I would like to incorporate a lot of our
24 argument when we challenged her for cause. Then I'd also like to
25 point out that the State also struck Mr. Becenti --

1 THE COURT: Uh-huh. I saw that.

2 MS. BOTELHO: -- Clayval Becenti, who we also tried to
3 strike for cause based on the nondisclosure of their criminal history.

4 As I indicated earlier, the lack of disclosure gives rise, at
5 least to us, an inference that they're not necessarily going to be
6 truthful or that they're not going to follow instructions. As I
7 indicated previously, these two jurors have sat through all of jury
8 selection yesterday and part of today, as we continued our
9 questioning, the State's questioning. At no time did they volunteer
10 this information, even as they saw other individuals in the jury
11 venire being questioned and raising this very issue.

12 Again, at some point, I clarified during my questioning of
13 the potential jurors 10 through -- 11 through 20, when we ask you --
14 when we're -- we say -- you need to tell us and we will decide. And
15 so the very nature of the nondisclosure gives the State concern,
16 because, as I indicated, they also earlier, the Court is going to
17 instruct these jurors on many things. As a matter of fact, if they
18 make it onto the jury, the first set of instructions, if you recognize
19 someone, don't do this, don't do that. So if they can't even during
20 the process, as although nosy -- as innocuous as jury selection,
21 where the very definition of voir dire is to tell the truth, I question
22 the motivation for keeping that information.

23 And so -- and Your Honor, during the course of jury
24 selection, you've -- you also told them, we're not trying to
25 embarrass you, we're -- we just need to know these things.

1 Mr. Giordani said the same thing.

2 And so, particularly with Mr. Becenti as well -- or -- well,
3 with both of them, when the Court brought them in and confronted
4 them about these convictions, you know, Mr. Leventhal was the one
5 who indicated, and I agree, Ms. Hughes actually hesitated. And I
6 think it was more of a, hey, I got caught, as opposed to, you know,
7 a, oops, that was just my mistake. Okay. I'm sorry, I don't believe
8 that it was just a innocent mistake not disclosing that you were
9 arrested. The police were called, you were arrested for battering
10 your mother, you spent two to three days in jail, showed up in
11 court, pled guilty and was, you know, sentence to do requirements.
12 And you just forgot about it? It didn't look to me as if she forgot it --
13 forgot about it.

14 She hesitated and then she immediately said, well, yeah,
15 when I battered my mother or when I was, you know -- a battery
16 domestic violence on my mother in 2014. She was able to recall
17 those instances.

18 The same with Mr. Becenti. He -- when you brought him
19 in, he hesitated, kind of chuckled. I didn't believe -- I don't give
20 much credibility to, oh, I was just trying to focus on one story at a
21 time. And so I disclosed about my friend that I don't know anything
22 about, but I just, you know, I conveniently forgot about the DUI that
23 your office prosecuted two years ago that I come to this courtroom
24 and sometimes appear remotely because it was COVID, that she --
25 that they -- that he just forgot.

1 And it gives us great concern in terms of their ability to
2 follow the instructions that will be given by the Court in terms of
3 conduct as well as the instructions of law.

4 And I don't know at this point, and I have to -- this is what
5 sticks out in my mind, I don't know what else they're going to keep
6 from us. I don't know. If a witness takes the stand and they
7 recognize this person, are they going to tell us? If they are familiar
8 with this crime scene and this case or they see something in the
9 news, are they going to tell us? And we're left to speculate as to
10 whether or not -- or to guess as to whether or not they're going to
11 do that. And that's not fair to the State of Nevada. We're both
12 entitled to a fair and impartial jury.

13 And so our striking of Ms. Hughes has absolutely nothing
14 to do with race. As a matter of fact, if you look at our jury make-up,
15 we have two African-Americans who made it on the jury, we have
16 a -- two -- one person from Hawaii who, you know, characterizes
17 himself as Asian, I believe we have some Asian females. We have
18 another Asian male, Mr. Dam. And we have a variety of Hispanics
19 as well as, you know, white female adults, mostly because the
20 defense struck pretty much every white male that would have made
21 it onto the jury.

22 And so the jury makeup is about as diverse as the
23 Constitution mandates.

24 THE COURT: They struck all white men? No, Linda Clark
25 is not a man. Okay.

1 MR. LEVENTHAL: No.

2 MR. GIORDANI: Oh, so they missed one.

3 MS. BOTELHO: Mostly.

4 THE COURT: Okay.

5 MS. BOTELHO: Mostly. A majority of white men. White

6 man after white man after white man, and maybe there was a -- you

7 know, a break. And so we have a very diverse jury, given even the

8 circumstances.

9 I have nothing more on her, but I am also read to address

10 Ms. Collins, I believe.

11 THE COURT: Okay. Well, I just want to take them one at a

12 time.

13 MS. BOTELHO: Yes, Your Honor.

14 THE COURT: So the State has made their race-neutral

15 reason to the Court, and now the burden shifts back to you,

16 Mr. Leventhal. And it's your burden to show that the State

17 exercised it with -- in a purposeful, discriminatory -- they have a

18 purposeful discrimination.

19 MR. LEVENTHAL: Your Honor, I'll start out with the fact

20 that what Mr. Tanasi and I did or did not do is not a race-neutral

21 reason for what they did. So by saying what we --

22 THE COURT: Yeah, but the State has stated a race-neutral

23 reason.

24 MR. LEVENTHAL: But, no -- but --

25 THE COURT: The fact that she didn't disclose --

1 MR. LEVENTHAL: No, I understand.

2 THE COURT: -- a criminal conviction. Now it's your turn --

3 MR. LEVENTHAL: Understood. But one of the reasons
4 they said was, like, well, we got rid of a bunch of white males.
5 That's not race-neutral.

6 But I would have the Court look at Mr. Willer, the
7 gentleman that had continuously -- the white gentleman that had
8 continuously had issues, that lied to the Court, that went over to
9 Mr. Giordani, that didn't follow the rules, Mr. Willer, the gentleman
10 that we brought back in, the white gentleman --

11 THE COURT: He had no hope of getting on this panel.

12 MS. BOTELHO: Yeah.

13 MR. GIORDANI: Not the medically impossible --

14 THE COURT: He was literally at the end.

15 MR. LEVENTHAL: Under -- well, hold on. Understood.

16 But --

17 MR. GIORDANI: Impossible.

18 MR. LEVENTHAL: But we did strike him. Understood, but
19 we did. They chose not to --

20 THE COURT: You didn't even have to strike him.

21 MR. LEVENTHAL: They chose not to. That's not the point.
22 The point is that the excuse of -- this excuse of not disclosing to
23 Your Honor of something that happened eight years ago, where she
24 was on a video camera and when she did come in, the takeaway is
25 either -- and I'll disagree, maybe it was more like I remember now,

1 and was very honest and straightforward when she hesitated.
2 We're talking about Ms. Hughes. I said that there might have been
3 two reasons, either she got her hand caught in the cookie jar or she
4 hesitated because she thought back. It was eight years ago, she
5 never went back to court, she was -- she did her time on the video
6 and did her classes and was done and was with her mother.

7 So there could have -- I, mean, purposeful lying I think is a
8 stretch for her. And therefore, I think that the State exercised their
9 peremptory challenge just based on race alone with her.

10 THE COURT: Okay. Based on what you've just told me,
11 based on the fact that they didn't strike Mr. Willer, I mean, I just
12 want to make sure that this is the basis of your argument, that they
13 used it for a discriminatory purpose and not because she wasn't
14 truthful during voir dire.

15 MR. LEVENTHAL: Absolutely.

16 THE COURT: Pardon?

17 MR. LEVENTHAL: Yes. Absolutely.

18 THE COURT: Okay.

19 MR. LEVENTHAL: I think that based upon the fact that,
20 again, we -- the pattern would be 50 percent. I know we're not
21 talking about the next one, the pattern would be 50 percent, and --

22 THE COURT: So can the State ever strike
23 African-American?

24 MR. LEVENTHAL: Of course.

25 THE COURT: Well, it doesn't sound like it.

1 MR. LEVENTHAL: But they need cause. They need an
2 African-American to say I can't be fair and impartial.

3 THE COURT: Well, actually, they -- you're -- they don't --
4 they have to -- if there's a Batson challenge, then they have to meet
5 their burden. They don't have to show cause. That's a cause
6 challenge.

7 MR. LEVENTHAL: Understood. But they have to point to
8 something other than what the Court has already said when
9 Ms. Hughes came in and spoke to the Court, has already said, well,
10 it's for cause. I guess she go over that hurt and went back. Court
11 said she said she could be fair and impartial. So she was -- her --
12 any taint that was on her, I guess, was cleaned up when she came
13 into court.

14 THE COURT: So are you suggesting if they move to strike
15 somebody for cause and they're African-American, and then they
16 exercise -- and I don't grant the challenge for cause, and then they
17 use a peremptory challenge, then it's automatic it was
18 discriminatory?

19 MR. LEVENTHAL: No, I'm not saying that at all.

20 THE COURT: Okay.

21 MR. LEVENTHAL: I'm saying that in this case, I believe
22 that this was a discriminatory act against Ms. Hughes. Not so much
23 Ms. Collins, but definitely Ms. Hughes. I believe that in my heart
24 that that's what that was done, and I don't think that they can point
25 to any nondiscriminatory factor that the Court has not cured by

1 bringing her back in.

2 THE COURT: Okay. Anything else from either side?

3 MS. BOTELHO: No, Your Honor.

4 THE COURT: Okay. So the Court is going to make the
5 finding -- I mean, I paid close attention to the questioning of all of
6 these jurors. I did not see that the State, Mr. Giordani, questioned
7 her differently than anybody. I know you seem to indicate that he
8 was longer with her. I don't believe that that's true and I don't think
9 that the record will bear that out.

10 The State's questions to each of these jurors were the
11 same. There were not different questions asked to jurors based on
12 their, you know, based on their ethnicity or their background. I
13 believe the State asked all of these jurors the same questions.

14 I don't think there was anybody targeted or questions
15 specifically asked someone to try to get rid of them. I mean, the
16 State -- we did ask these people, if you have -- if they had any --
17 they'd ever been accused of a crime.

18 Also, the State struck both of the jurors that came in and
19 said, oh, yeah, I remember. I mean, it would be one thing if they
20 struck Ms. Hughes and then left Mr. Becenti on, that may be a
21 problem. But that's not what they did. They used both of their
22 peremptory challenges to strike the two jurors that, you know,
23 failed or omitted to inform the Court regarding their criminal
24 background.

25 So I'm going to deny the challenge, make a finding that

1 the State has stated a race-neutral basis. And so now we'll go onto
2 Collins, right? The Parole and Probation person, correct?

3 MR. LEVENTHAL: Yes, correct.

4 THE COURT: Okay. You can go ahead and you can make
5 your challenge as to Ms. Collins.

6 MR. LEVENTHAL: First, the -- oh, sorry.

7 MS. BOTELHO: I'm sorry, were you -- okay.

8 THE COURT: Oh, that's right, you already made your
9 challenge. Okay.

10 MR. LEVENTHAL: Correct.

11 MS. BOTELHO: Okay. As to Ms. Collins, Your Honor,
12 Mr. Leventhal said himself, you know, not so much towards
13 Ms. Collins as Ms. Hughes, but let me just put this on the record.

14 Karen Collins is a Parole and Probation officer. So is her
15 husband. These individuals receive files. She was a PSI writer, her
16 specifically. She was a PSI writer who talked and discussed how
17 she received DA files, full DA files to include memos, notes, and
18 things like that. And she actually went to great lengths to kind of
19 say, hey, I might have, you know, run into maybe a codefendant,
20 maybe not, I don't know. But I have access to all of this information
21 that's located in the DA's files.

22 She did say during questioning -- and we did -- we really
23 gave this one a lot of deliberation, because as you can see, in
24 between all of these, we waived a lot of our challenges. We struck
25 the individuals that we tried to get stricken for cause first. And then

1 we waived, and we thought this one through, and here's what it
2 ultimately boils down to.

3 My notes say she feels the criminal justice system is not
4 fair at times while working at P&P. She says she's seen files where
5 the defendant has already been to trial or has already pled guilty.
6 The decision has already been made, and looking at everything, it
7 looks like -- it looks one way versus what the verdict was. Okay. So
8 that to me questions, you know, a jury verdict? This is an individual
9 who's writing a presentence investigation report, scrutinizing a jury
10 verdict -- a jury verdict where they heard all of the evidence and
11 made a finding beyond a reasonable doubt of this person's guilt.

12 Then she says, yes, the State has the burden and he's
13 been found guilty, but looking at everything, she wonders if a
14 defendant was actually guilty. I mean, those were her words. And
15 as much as, you know, she's law enforcement, she was the victim
16 of a crime, she was, you know, her -- she's Parole and Probation
17 along with her husband, you know, great kids, you know, has her
18 degree, that is not enough to overcome this doubt that the State
19 has based on what she said during questioning.

20 I can't emphasize enough how much this juror has the
21 ability to see in a DA file. These are things that are not discoverable
22 oftentimes. They're attorney work product, which is in the file that
23 she has access to. And she specifically mentioned memos, notes
24 and things like that, and that gives us concern. Because while, you
25 know, she may have said yes, I can be fair, I can put all this aside,

1 that's a lot of information that the average person going into that
2 deliberation room would not have.

3 And -- brief indulgence, one moment.

4 I'll submit on that, Your Honor.

5 THE COURT: Okay.

6 MR. TANASI: Thank you, Your Honor.

7 Briefly, the one concern was with respect to her maybe
8 coming across, potentially, one of the codefendants or the
9 codefendant in this case, maybe coming across his file and maybe
10 that tainting her ability to be fair and impartial. If I remember
11 correctly, and the record will speak for itself, Your Honor did ask her
12 that question point blank, and she indicated that she had no idea --

13 THE COURT: Well, I think one of the attorneys did. One of
14 you stated the specific name.

15 MR. TANASI: Again, I could be misremembering it. But
16 my understanding and my recollection of it was that the question
17 was posed to her directly whether or not she had any
18 understanding or any knowledge of any of the parties in this case,
19 and she said no.

20 And then, with respect to the fact that she is a P&P officer
21 who disagrees with the verdict in particular cases, she didn't say
22 that that would cause her to be fair and impartial, because she's
23 had that thought before in the past. She just did voice that concern.
24 However, when I went through questioning with her, she did say
25 she could be, without any problem, fair and impartial in this case.

1 And, ultimately, she did say fair and impartial when she reaches
2 recommendations to the Court, when she's doing
3 recommendations, when that used to be a thing for Parole and
4 Probation.

5 So I think as a law enforcement agent, she had some
6 reservations, but she did indicate how fair and impartial she could
7 be. I just -- and not giving a lot of credit to the race-neutral
8 explanation from the State, respectfully.

9 THE COURT: You mean, and those are all -- that's all nice,
10 but you still have to show that based on the totality of the
11 questioning and everything that has happened today, that they did
12 not strike her for the reason they just told me that they struck her,
13 because she was African-American. Right?

14 MR. TANASI: I understand, Your Honor. And I guess
15 when we're looking at the totality, the one last piece that I would
16 put in there was they're striking of the one Native American who
17 was in the room, the one Native American was in the room. And,
18 now, I understand, my client is not Native American. However, it
19 doesn't have to be a Native American with a defendant being also a
20 Native American. The target --

21 THE COURT: I agree.

22 MR. TANASI: So, again, when we're talking about
23 patterns --

24 THE COURT: No matter what it is --

25 MR. TANASI: Correct.

1 THE COURT: -- neither side should be striking people
2 based on their background.

3 MR. TANASI: Understood. So I would just put that into
4 the equation.

5 THE COURT: For the color of their skin.

6 MR. TANASI: Understood, Your Honor. With that, I'll
7 submit it.

8 THE COURT: Okay. Do you think that there was
9 questioning different of Ms. Collins than there was of other jurors?

10 MR. TANASI: No, Your Honor. I can't say that they asked
11 any questions that were different than other jurors.

12 THE COURT: Okay. Do you think they, you know, were
13 questioning her to get her to say something so that they could
14 bump her based on her race? I mean, that's what I'm trying to get
15 at. There has to be something more than the juror's
16 African-American, and they made it all the way to this point.
17 Because you're allowed to exercise peremptory challenges for
18 whatever reason, just not a bad reason, because they're, you know,
19 because they're African-American.

20 MR. TANASI: I do understand that, Your Honor.
21 However, again, back to the numbers discussion that we had early
22 on. That's why this is being scrutinized in the way that it's being
23 scrutinized from our side of the table. So, yes, I don't think any of
24 the questioning of her was any different. However, I do think her
25 background, certainly, is different. And it just doesn't square up

1 that someone in law enforcement is all of a sudden not going to be
2 a good prospective juror for them.

3 THE COURT: Okay. And, generally, I would agree with
4 that. But I can tell you when that questioning, when she said -- in
5 fact, I even intervened on that question, because I did think it was
6 offensive for someone from P&P, with all these jurors here, in law
7 enforcement, to say I really know, I mean, because I get the whole
8 file, I look at everything. And then I asked her, you don't even know
9 what was in evidence. I mean, she was making that statement
10 without even knowing whether stuck in that file was evidence. And
11 I know that stuff in that file that goes to P&P is not evidence. I
12 mean, I've been reading PSIs for 20-plus years.

13 And so it was kind of, you know, I always get offended
14 when someone from law enforcement or that type of a background
15 says something like that in front of a bunch of jurors. Like, you
16 know, they know, they have more information, her knowledge is
17 superior. And she basically did say that, that her knowledge was
18 superior to what a jury had determined, because she looked at
19 everything.

20 And I'll guarantee you, if there was evidence in there,
21 there might have been some photos in there that were introduced
22 into evidence, but she certainly did not review all the evidence and
23 then determining that a jury verdict was wrong. I mean, I did find
24 that offensive.

25 So -- and, I mean, the record will reflect that I did

1 intervene and ask her specifically about that, and she said, oh, well,
2 yeah, you're right, I didn't really look at the evidence.

3 So I don't think there was any different questioning of her.
4 I don't know -- I mean, do you think that this case is sensitive to
5 racial bias? I mean, I don't think it is. I'm just asking you.

6 MR. TANASI: I mean, I think -- that's a tough one to
7 answer, Your Honor. I think that that sounds like a sociology
8 question, right? And I apologize, I don't mean to --

9 THE COURT: No, but some cases you know they're -- race
10 is going to be a sensitive issue. I mean --

11 MR. TANASI: I would argue --

12 THE COURT: -- I don't know that this is one.

13 MR. TANASI: I would argue that my client is a young
14 African-American male who would think that a case here, where
15 predominantly, the folks in the room are white and he's
16 African-American, that race is always an issue, yes.

17 MS. BOTELHO: But for the facts that the other parties in
18 this case, the decedent Mersey Williams, is African-American. But
19 for the fact that Michel'le Tolefree, who is one of the attempted
20 murder victims, is African-American. But for the fact that Myniece
21 Cook, who is also the other victim to the attempt murder, is also
22 African-American. And how about Maurice Hickman, the individual
23 who was the fourth person outside that was shot at that day, he's
24 African-American.

25 MR. LEVENTHAL: All of which -- none of them identified

1 Mr. Matthews. It was a white officer within seconds who says I saw
2 him. A white officer. So yes.

3 THE COURT: Well, it sounds like you think that race is a
4 sensitive issue in this case.

5 MR. LEVENTHAL: I do.

6 MR. TANASI: I should have given --

7 MR. LEVENTHAL: I do, because each one of those
8 witnesses --

9 THE COURT: Okay. I understand.

10 MR. LEVENTHAL: -- that she just said had never
11 identified -- and Mr. -- I mean, you'll -- I mean -- none of them.
12 None of them.

13 THE COURT: I understand.

14 MR. LEVENTHAL: Only a white officer.

15 THE COURT: I understand.

16 MR. LEVENTHAL: So yes, I do.

17 THE COURT: Mr. Tanasi, do you have anything else?

18 MR. TANASI: No, Your Honor. I was going to submit.
19 Thank you.

20 THE COURT: Okay. So based on the totality of the
21 circumstances again, I don't think that the questioning of
22 Ms. Collins was any different than any of the other jurors, or the
23 State was not questioning her and just waiting to perempt her. I
24 think the questioning of all these jurors was similar. And I don't
25 think there was different treatment of jurors in the questioning

1 based on their race or the color of their skin.

2 I didn't necessarily think that we told the jury that this was
3 going to be a -- I mean, I understand you think that race is a
4 sensitive issue in this case. And I'm just going to take your word
5 for it. But I do not believe that based on the totality of the
6 circumstances, that the State had discriminatory intent in exercising
7 Ms. Collins. She clearly made indications that I thought probably
8 should have been made both sides nervous, that regardless of what
9 the jury had seen, regardless of what all the evidence was, when
10 she got the file in her review was superior to what a jury had
11 rendered.

12 She also made statements that she did not think that the
13 system was fair. You know, working in the system, that she doesn't
14 think was fair. So with that, I'm going to make a finding the State
15 did state a race-neutral reason. So I'm going to deny the Batson
16 challenge.

17 Anything else?

18 MS. BOTELHO: Nothing from the State.

19 MR. LEVENTHAL: No, Your Honor.

20 THE COURT: I told the jury it was going to be really short,
21 and it's been like, 30 minutes.

22 Anything before I bring them in?

23 MR. TANASI: Nothing from the defense, Your Honor.

24 Are we going into openings or are we --

25 THE COURT: Well, I wanted to, but it's, like, 4:20. Can you

1 get them done by 5:00?

2 MS. BOTELHO: I don't think so. I don't know how long
3 mine was last time. I'll defer to the Court.

4 THE COURT: I mean, I could go --

5 MS. BOTELHO: I don't know --

6 THE COURT: I can go a little bit longer, but I just don't
7 want to go till 7:00 on a --

8 MS. BOTELHO: Maybe 15, 20 minutes for me.

9 THE COURT: Oh, okay. Then let's --

10 MR. TANASI: And mine, Your Honor, should be about
11 that length as well.

12 THE COURT: Okay. Well, then that --

13 [Court recessed at 4:19 p.m., until 4:25 p.m.]

14 [In the presence of the prospective jury panel.]

15 THE COURT: Juror Number 1, Merari Pena-Franco, you're
16 Juror Number 1.

17 THE CLERK: Juror Number 2 is going to be John Brown.
18 Juror Number 2 is going to be John Brown. Juror Number 2 is
19 going to be John Brown.

20 THE MARSHAL: Mr. Brown hasn't come in yet. There's
21 Mr. Brown.

22 THE CLERK: Juror Number 2 is going to be John Brown.
23 Juror Number 3, Jaiden Zimmer.

24 Juror Number 4, Maria Luisa-Burgos.

25 Juror Number 5, Annie Watts.

1 Juror Number 6, Robin Follmer.
2 Juror Number 7, Clifford Dam.
3 Juror Number 8, Jennifer Nieves.
4 Juror Number 9, Amy Harbison.
5 Juror Number 10, Mark Minami.
6 Juror Number 11, Lori Gourley.
7 Juror Number 12, Francine Schartz.
8 Juror Number 13, Monica Takashima.
9 Juror Number 14, Jeannie Schlotter.

10 THE COURT: Okay. At this time, ladies and gentlemen,
11 we do have our empaneled jury. If your name was not called, you
12 are excused. Before I do excuse you, I just want to extend my
13 thanks to you for your willingness to be here for the last two days
14 and for answering all of our questions. You were very professional
15 and courteous and I thank you for that. And you are excused. Have
16 a good weekend.

17 [Balance of prospective jury panel excused at 4:28 p.m.]

18 MR. LEVENTHAL: Can we approach, Judge? Judge, can
19 we approach?

20 THE COURT: Yeah. Can I keep letting them go?

21 MS. BOTELHO: No.

22 THE COURT: No?

23 Hawks, will you stop the jury panel.

24 [Bench conference transcribed as follows.]

25 MR. LEVENTHAL: We need to take a look at who we

1 struck, because we thought we struck Mr. Minami.

2 THE COURT: You want to see them --

3 MR. TANASI: We just want to double --

4 MR. LEVENTHAL: Yeah, we just want to double-check.

5 We thought we --

6 THE COURT: That's why I asked you guys if you have any
7 objection. Who do you think you struck?

8 MR. TANASI: Mark Minami.

9 We had it wrong. It's correct. It's correct.

10 THE COURT: Are we all good?

11 MR. LEVENTHAL: Yes.

12 THE COURT: Well, you know what I mean. Okay.

13 MR. TANASI: Yes.

14 [End of bench conference.]

15 THE COURT: All right. I appreciate you coming back. It
16 was a false alarm, though. So thank you very much and you are
17 excused. Have a wonderful weekend.

18 UNIDENTIFIED SPEAKER: That was it?

19 THE COURT: Yeah, you are excused. It was a false alarm.

20 Okay. Does the State stipulate to the presence of the
21 panel as now empaneled?

22 MR. GIORDANI: We do, Your Honor.

23 THE COURT: The defense?

24 MR. LEVENTHAL: Yes, Your Honor.

25 THE COURT: Okay. Since it is late in the date and we --

1 it's been kind of a long day, I am -- we're not going to start today.
2 So when you come back on Monday, you'll be sworn, be given
3 instructions. Both sides will have an opportunity to speak to you in
4 their opening statement and then the State of Nevada will begin
5 calling witnesses.

6 Before you go home, though, I just want to give you a few
7 instructions. You'll be given blue badges that identify you as a
8 juror in Department 12. I -- oh, you've already got them. I ask that
9 when you are in the courthouse, that you wear those badges at all
10 times so that people that work and are in the courthouse know that
11 you are a juror in this department.

12 I know you've heard me say over and over again don't talk
13 about this case, don't let anybody else talk to you about this case, it
14 lets witnesses and officers and other people that are involved in this
15 case, that badge identifies you as a juror so they know, if you're in
16 the elevator, don't talk about the case or if they're walking by you,
17 not to talk about the case. So it's really important that you wear
18 that badge at all times.

19 When you leave the courthouse, you can take it off, that's
20 fine. Just when you're in the courthouse, if you wear it at all times.

21 You've also been given juror notebooks. Those are your
22 notebooks, however, they must remain in the courthouse at all
23 times until you go back to deliberate upon your verdict. When you
24 go back to deliberate upon your verdict, you will be able to take
25 those notebooks with you.

1 In the back, there are blank sheets of paper for notes. So
2 if you want to take notes, you will be able to take notes, and then
3 those notes will go with you when you go back to deliberate.

4 On the inside cover, there's a sheet of paper, you can take
5 that out. That just tells you what department you're in. You're in
6 Department 12 of the Eighth Judicial District Court. It has the
7 phone numbers for chambers, so that if, for whatever reason, when
8 we're not in session, you need to contact me for any reasons. The
9 phone numbers are on there, so you can take that out and keep
10 those with your personal records.

11 Again, I want to remind you, you know, you can't talk
12 about this case or about anyone who has anything to do with it. So
13 when you go home, you can tell your coworkers, your family, your
14 friends that you are a juror in a criminal case. But you cannot tell
15 them anything else, can't tell them what it's about, you can't tell
16 them what it's called. You can only tell them I'm a juror in a
17 criminal case. And when I'm discharged by the Court, that's when I
18 can talk about it. Okay.

19 And also the stuff I told you about social media, that's also
20 really important too. You know, as long as when you're on social
21 media, you don't post anything, say anything about the case or post
22 anything that would cause somebody else to talk about the case, or
23 if you come across something about the case that you obviously
24 comply with the Court's order and that you don't read it, that you
25 put it down and put it to the side.

1 So at this time I'm going to excuse you. Monday morning
2 at 9:00, and it's the same thing, you can come to the 14th floor.
3 Officer Hawks will greet you, he'll bring you in, and we will start the
4 trial.

5 So anything before I read the admonishment? Excellent.
6 Okay.

7 During this recess you're admonished not to discuss or
8 communicate with anyone, including your fellow jurors, in any way
9 regarding the case or its merits either by voice, phone, e-mail, text,
10 Internet, or other means of communication or social media, or read,
11 watch, or listen to any news or media accounts or commentary
12 about the case, or do any research, such as consulting dictionaries,
13 using the Internet, or using reference materials or make any
14 investigation, test a theory of the case, recreate any aspect of the
15 case, or in any other way investigate or learn about the case on
16 your own or form or express any opinion regarding the case until
17 it's finally submitted to you.

18 Which way are you going to exit? Okay. All right.

19 Officer Hawks is going to take you out the back hallway.
20 He's going to give you further instructions, like where you park,
21 how to validate your parking. And then he's going to give you
22 instructions on where to meet him on Monday morning. So thank
23 you very much, have a good weekend. And, again, thank you for
24 your willingness to be here to serve.

25 [Jury recessed at 4:35 p.m.]

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THE COURT: Anything outside the presence?

MR. TANASI: Not for the defense, Your Honor.

THE COURT: Okay. Thank you. See you Monday morning.

MR. TANASI: 9:00 a.m., right, Judge?

THE COURT: Yeah. That's what I said, right?

MR. TANASI: Yes. Thank you.

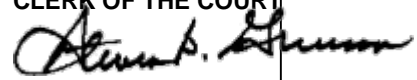
THE COURT: Okay. Because Hailey asked me if said it, I just wanted to make sure.

[Court recessed for the evening at 4:36 p.m.]

///

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


Shawna Ortega, CET*562



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff(s),

vs.

JEMAR MATTHEWS
(AKA) JEMAR DEMON MATTHEWS,

Defendant(s).

Case No. 06C228460-2

DEPT. XII

BEFORE THE HONORABLE MICHELLE LEAVITT,
DISTRICT COURT JUDGE

MONDAY, NOVEMBER 8, 2021

TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL – DAY 3

(Appearances on page 2.)

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 APPEARANCES:

2 For the State: JOHN L. GIORDANI, III, ESQ.
3 (Chief Deputy District Attorney)
4 AGNES M. BOTELHO, ESQ.
(Chief Deputy District Attorney)

5 For the Defendant(s): TODD M. LEVENTHAL, ESQ.
6 RICHARD E. TANASI, ESQ.

7 Also Present:
8 Samantha Goett, State's intern
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For the State:

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1 **LAS VEGAS, NEVADA, MONDAY, NOVEMBER 8, 2021**

2 [Proceeding commenced at 9:18 a.m.]

3
4 [In the presence of the jury.]

5 THE COURT: Good morning. We'll be -- ladies and
6 gentlemen of the jury, please raise your right hand so the clerk can
7 administer the oath of service.

8 [Jury sworn.]

9 THE COURT: Does the State stipulate to the presence of
10 the jury panel?

11 MR. GIORDANI: We do, Your Honor.

12 THE COURT: And the defense?

13 MR. LEVENTHAL: Yes, Your Honor. Thank you.

14 THE COURT: Okay. Thank you.

15 Ladies and gentlemen, good morning. Thank you very
16 much for coming back today.

17 Ladies and gentlemen, you are admonished that no juror
18 may declare to a fellow juror any fact relating to this case of his or
19 her own knowledge, and if any juror discovers during the trial or
20 after the jury has retired, that he or she or any other juror has
21 personal knowledge of any fact in controversy in this case, he or
22 she shall disclose that situation myself in the absence of the other
23 jurors.

24 This means that if you learn during the course of this trial
25 that you are acquainted with the facts of this case or the witnesses

1 and you've not previously told me of this relationship, you must
2 then declare that fact to me. Again, I want to remind you that if
3 there's anything you need to communicate to the Court, you do so
4 in the courtroom in the presence of both sides. If it's outside of the
5 courtroom, the only person that's permitted to have any
6 communication with you is Officer Hawks. You can tell him
7 whatever issue it is and then he will make that known to me.

8 Ladies and gentlemen, what I will now say is intended to
9 serve as an introduction to the trial in this case. This is not a
10 substitute for the detailed instructions on the law which I will give
11 you at the close of the case and before you retire to consider your
12 verdict.

13 This is a criminal case commenced by the State of
14 Nevada, which I may sometimes refer to as the State, against the
15 defendant, Mr. Matthews. The case is based on an information.
16 And the clerk will now read the information to the ladies and
17 gentlemen of the jury and state the plea of the defendant to that
18 information.

19 [Information read.]

20 THE COURT: Thank you.

21 This case is based on the information, which has just been
22 read to you by the clerk of the court. You should distinctly
23 understand that the information is simply a charge and that it is not
24 in any sense evidence of the allegations it contains.

25 The defendant has entered a plea of not guilty to the

1 information. The State, therefore, has the burden of proving each
2 of the elements as alleged in their charging document by proof
3 beyond a reasonable doubt. As the defendant sits here today, he is
4 presumed innocent.

5 The purpose of this trial is to determine whether the State
6 of Nevada will meet their burden of proof. It is your primary
7 responsibility as jurors to find and determine the facts. Under our
8 system of criminal procedure, you are the sole judge of the facts.
9 You are to determine the facts from the testimony you hear and the
10 other evidence, including Exhibits introduced in court. It is up to
11 you to determine the inferences which you feel may be properly
12 drawn from the evidence.

13 The parties may sometimes present objections to some of
14 the testimony or other evidence. It is the duty of a lawyer to object
15 to evidence which he or she believes may not properly be offered
16 and you should not be prejudiced in any way against the lawyer
17 who makes objections on behalf of the party he or she represents.

18 At times, I may sustain objections or direct that you
19 disregard certain testimony or exhibits. You must not consider any
20 evidence to which an objection has been sustained or which I have
21 instructed you to disregard. Anything you may have seen or heard
22 outside the courtroom is not evidence and must also be
23 disregarded.

24 Remember, statements, arguments, and opinions of
25 counsel are not evidence in the case. However, if the attorneys

1 stipulate as to the existence of a fact, you must accept the
2 stipulation as evidence and regard that fact as proved.

3 You must not speculate to be true any insinuation
4 suggested by a question asked a witness. A question is not
5 evidence and may be considered only as it supplies meaning to the
6 answer. You must not be influenced in any degree by any personal
7 feeling of sympathy for or prejudice against the State of Nevada or
8 the defendant. Both sides are entitled to the same fair and impartial
9 consideration.

10 In considering the weight and value of the testimony of
11 any witness, you may take into consideration the appearance,
12 attitude, and behavior of the witness, the interest of the witness in
13 the outcome of the case if any, the relation of the witness to the
14 Defendant or to the State, the inclination of the witness to speak
15 truthfully or not, and the probability or improbability of the
16 witness's statements, and all of the facts and circumstances in
17 evidence.

18 Thus, you may give the testimony of any witness just such
19 weight and value as you believe the testimony of that witness is
20 entitled to receive.

21 There are two kinds of evidence, direct and circumstantial.
22 Direct evidence is testimony by a witness about what that witness
23 personally saw or heard or did. Circumstantial evidence is
24 testimony or exhibits which are proof of a particular fact from
25 which, if proven, you may infer the existence of a second fact.

1 You may consider both direct and circumstantial evidence
2 in deciding this case. The law permits you to give equal weight to
3 both, but it is for you to decide how much weight to give to any
4 evidence.

5 Opening statements and closing arguments of the
6 attorneys are intended to help you in understanding the evidence
7 and applying the law, but they are not evidence.

8 No statement, ruling, remark or comment which I make
9 during the course of this trial is intended to indicate my opinion as
10 to how you should decide this case or to influence you in any way
11 in your determination of the facts. At times, I may even ask
12 questions of witnesses. If I do so, it is for the purpose of bringing
13 out matters which I feel should be brought out and not in any way
14 to indicate my opinion about the facts or to indicate the weight I
15 feel you should give to the testimony of the witness.

16 I may also find it necessary to admonish the attorneys,
17 and if I do, you should not show prejudice against a lawyer or his or
18 her client because I have found it necessary to admonish him or
19 her.

20 Until this case is submitted to you, you must not discuss it
21 with anyone, even with your fellow jurors. After it is submitted to
22 you, you must discuss it only in the jury room with your fellow
23 jurors. It is important that you keep an open mind and not decide
24 any issue in the case until the entire case has been submitted to
25 you under instructions from the Court.

1 The trial will proceed in the following manner: The
2 Deputy District Attorney will make an opening statement, which is
3 an outline to help you in understanding what the State expects to
4 prove. Next, the defense attorney may, but does not have to make
5 an opening statement. Opening statements serve as an
6 introduction to the evidence which the party making the statement
7 intends to prove. The State will then present its evidence and
8 counsel for the defendant may cross-examine the witnesses.

9 Following the State's case, the defendant may present
10 evidence and the deputy district attorney may cross-examine the
11 witnesses. However, as I have said, the defendant is not obligated
12 to present any evidence.

13 After all the evidence has been presented to you, I will
14 instruct you on the law. After the instructions on the law have been
15 read to you, each side will have the opportunity to present oral
16 argument. What is said in closing argument is not evidence. The
17 arguments are designed to summarize and interpret the evidence.
18 Since the State has the burden of proving the defendant guilty by
19 proof beyond a reasonable doubt, the State has the right to open
20 and close the arguments. After the arguments have been
21 completed, you will then retire to deliberate upon your verdict.

22 Again, let me remind you that until this case is submitted
23 to you, do not talk to each other about it or about anyone who has
24 anything to do with it until the end of the case when you go to the
25 jury room to decide upon your verdict. Do not talk with anyone else

1 about this case or about anyone who has anything to do with it
2 until the trial has ended and you have been discharged as jurors.
3 Anyone else includes members of your family and your friends.
4 You may tell them that you are a juror in a criminal case, but don't
5 tell them anything else about it until after you have been
6 discharged by myself.

7 Do not let anyone talk to you about the case or about
8 anyone who has anything to do with it. If someone should try to
9 talk to you, please report that to me immediately by contacting the
10 court marshal.

11 Do not read any news stories or articles or listen to any
12 radio or television reports about this case or about anyone who has
13 anything to do with it.

14 As jurors you will be given the opportunity to ask written
15 questions of any of the witnesses called to testify in this case. You
16 are not encouraged to ask large numbers of questions, because that
17 is the primary responsibility of counsel. Questions may be asked,
18 but only in the following manner.

19 After both lawyers have finished questioning the witness,
20 and only at this time, if there are additional questions that you
21 would like to ask the witness, you may then seek permission to ask
22 that witness a written question. Should you desire to ask a
23 question, write your question down with your juror number on a
24 full sheet of clean paper and raise your hand.

25 All questions from jurors must be factual in nature and

1 designed to clarify information already presented. In addition,
2 jurors must not place undue weight on the responses to their
3 questions. The court marshal will pick up your question and
4 present it to the Court. All questions must be directed to the
5 witness and not to the lawyers or to the Court.

6 After consulting with counsel, I will then determine if your
7 question is legally proper. If I determine that your question may
8 properly be asked, I will ask the question. No adverse inference
9 should be drawn if the Court does not allow a particular question.

10 When the witnesses get called, the State will call their
11 witnesses, they'll have an opportunity to do direct, defense can do
12 cross if there's cross, the State can do redirect if there's redirect, the
13 defense can do recross. So both sides have two opportunities to
14 speak to each witness.

15 When both sides are done, I'm going to turn to the
16 witness, I'm going to thank them for being here, And I'm also going
17 to excuse them from their subpoena. If you have a question to ask
18 that witness, I just ask that you get my attention, can raise your
19 hand, get the attention of the court marshal, so that I can have the
20 witness stay here.

21 Once I excuse the witness from their subpoena, I will not
22 require them to come back to the courthouse to answer a question
23 from the jury panel. So it is important that you have -- if you have
24 any questions, you get my attention, I'll wait as long as you need
25 for your to write your question down. But, again, you need to ask it

1 before I do excuse that witness from their subpoena.

2 Also, I know I told you on Friday you have those juror
3 notebooks. You do have blank paper in the back. That paper is
4 there in case you want to take notes. When you go back to
5 deliberate upon your verdict, you will not have a transcript of the
6 proceedings. So during your deliberations, it will be your
7 memories, collectively, as well as any notes. So you'll be able to
8 take your notes, all of your notes when you go back to deliberate
9 upon your verdict. And in that notebook are all the instructions I've
10 given you here today.

11 The procedure for asking a question of -- if a juror wants
12 to ask a question, the procedure is also in there. The
13 admonishment that I'm required to read to you by law every time
14 we recess is in there too. So if you want to go back and refer to it,
15 you may. But, again, remember to leave those notebooks in the
16 courtroom at all times until you are excused to deliberate upon
17 your verdict.

18 At this time the State of Nevada may address the jury
19 panel in their opening statement.

20 **OPENING STATEMENT FOR THE STATE**

21 MS. BOTELHO: Yes, Your Honor.

22 Good morning, ladies and gentlemen of the jury.

23 Over 15 years ago, on September 30th of 2006, shots rang
24 out on the corner of Balzar Avenue and Lexington Street. That's the
25 location right there, 1271 Balzar Avenue.

1 Those shots rang out when the defendant, Jemar
2 Matthews, his co-conspirator and friend, Pierre Joshlin, and two
3 other unidentified men convened upon that intersection, dressed
4 similarly in black tops with blue jeans bottoms, armed like they
5 were going to war, and under the cover of darkness, ambushed the
6 individuals who were at the front of that house on 1271 Balzar
7 Avenue.

8 You're going to see a lot of evidence concerning this
9 particular location. So Lexington is going up and down, Balzar is
10 going left to right.

11 The actual shooting occurs in the front porch of this 1271
12 Balzar, facing Balzar Avenue. And the defendant and his friends
13 actually snuck up on the side of Lexington, right where that arrow
14 is, where they ambushed the four individuals who were standing at
15 the porch of this particular home.

16 So the first set of photos or the first slides that I showed
17 you showed a map. These are actual crime scene photos of the
18 porch, the front area of Balzar, as well as the routes and where the
19 defendant and his friends stood when they fired 39 shots. 39 shots
20 from semiautomatic weapons.

21 You'll see evidence, you'll hear from crime scene analysts,
22 detectives, police, concerning where it was that the defendant and
23 his friends fired those rounds. Those placards that you see in this
24 particular slide in this photo indicate the cartridge cases that were
25 recovered at the scene.

1 You're going to hear from multiple witnesses about what
2 those cartridge cases are and what it means to find those cartridge
3 cases at the corner of this crime scene.

4 You're also going to hear testimony concerning the
5 firearms that were used during this war, during these -- during this
6 particular event where the shots rang out. You're going to hear
7 testimony that there were four individuals at the front of 1271
8 Balzar, kind of in between that car, that blue car, and the porch.
9 This particular slide shows it just a little bit better.

10 The evidence will show that the intended target on
11 September 20th of 2006 was an individual by the name of Maurice
12 Hickman. Maurice Hickman lived at 1271 Balzar Avenue.
13 Maurice, 18 years old. Maurice did not give any type of interview
14 with the police and you will not be hearing from him today or
15 during the course of this trial.

16 The evidence will also show that there were three young
17 women at the front of 1271 Balzar Avenue, Mersey Williams, 22
18 years old, Myniece Cook, 27 years old, and Michel'le Tolefree, who
19 was 16 years old. These girls will tell you -- at least the two that
20 survived will tell you that these girls had nothing to do with what
21 occurred at 1271 Balzar. These girls will tell you, the two that
22 survived, will tell you the reason that they were at that particular
23 location. The evidence is going to show, ladies and gentlemen of
24 the jury, that these girls were at the wrong place at the wrong time
25 on September 30th of 2006.

1 Myniece and Michel'le will tell you that they had actually
2 been, earlier that night, at their grandmother's house. They had a
3 family get-together. They were celebrating Mersey's early birthday.
4 Mersey's birthday is October 3rd. And September 30th of 2006 just
5 happened to fall on a Saturday, so it was a good time for their
6 family, this close-knit family, to meet and celebrate early.

7 These girls, cousins related through their mothers who
8 are sisters, were together at their grandmother's house earlier that
9 evening. Michel'le, all 16 years old of her, wanted to go out with
10 her cousins. You see, Myniece and Mersey were going to go out
11 after their family get-together, and Michel'le, the 16-year-old, kind
12 of interrupted those plans by asking if she could join her older
13 cousins. And not only that, Michel'le told -- asked her cousins if
14 they could, on the way to going out, give her a ride to go see a
15 friend at 1271 Balzar Avenue. A friend, meaning a friend -- a boy
16 that she knew from school.

17 Myniece will tell you -- she's the oldest of the three
18 cousins -- will tell you that she didn't want to do that. She didn't
19 want to take her over there. She and Mersey had made plans, they
20 were going to do, you know, their celebration, they were going to
21 go out. These are young, vibrant women, and they were going to
22 go out that night.

23 But Michel'le begged and Mersey, the middle cousin, the
24 cooler cousin, helped her convince Myniece to stop over to allow
25 Michel'le to join them for the celebration and to have Myniece

1 driver her to 1271 Balzar Avenue before they all went out.

2 What the girls didn't know when they made their way and
3 when they made this decision to take Michel'le to 1271 Balzar
4 Avenue, what they didn't know was that the defendant and his
5 friends had other plans for what was going to occur at that location
6 on that day. These girls were at the wrong place at the wrong time.
7 They didn't know, and the evidence will show that the defendant
8 and his friends, armed like they were going to war, converged upon
9 that location, intending to kill anyone who was at the front of that
10 location. They didn't care if Maurice Hickman was the intended
11 victim. The evidence will show that they sprayed that location, not
12 caring who they took out along the way.

13 At the end of the 39 shots that were fired, Mersey
14 Williams laid dead at the front of that porch. Myniece Cook
15 suffered a gunshot wound to her wrist. Myniece will tell you and so
16 will Michel'le, that when they arrived at 1271 Balzar Avenue,
17 Myniece and Mersey didn't come out of the vehicle. Myniece was
18 driving her mom's Tahoe. The older cousins didn't get out. They
19 were just going to let Michel'le talk to Maurice. But after a few
20 minutes, the girls came out, actually stood in front of the porch area
21 with Michel'le and Maurice, and said their hellos. Those girls were
22 there less than five minutes before the shots rang out.

23 Myniece will tell you, so will Michel'le, that as they're
24 standing in front of that porch area, Myniece and Mersey are kind of
25 standing side by side, and Michel'le and Maurice are kind of

1 facing -- they're in a circle, but they're -- Maurice and Michel'le are
2 facing towards them with their back towards that intersection
3 where the defendant and his friends came up and fired those shots.

4 So while they're talking in the front porch area, 1271
5 Balzar Avenue, Myniece will tell you that Mersey actually said
6 something to the effect of: Who's that? And that statement caused
7 them all to turn towards that corner of Lexington and Balzar to see
8 what Mersey was asking about. At that point in time, each of those
9 people had the opportunity to see who it was that was at that
10 corner where all of those cartridge cases were found, where the
11 evidence will show the 39 shots were fired.

12 And Maurice Hickman, the girls will tell you, Maurice
13 Hickman, upon turning and looking over at that intersection,
14 immediately said, Run. And he grabbed Michel'le and they made
15 their way across the street. Meanwhile, Myniece turned to Mersey.
16 And Myniece will tell you that she heard Mersey say, I'm scared.

17 And Myniece will tell you that she told her cousin, we
18 need to run. And as they took a couple of steps in that patio area,
19 Myniece will tell you that she felt Mersey go down, get heavy, and
20 she heard Mersey say, Oh. And the weight of Mersey -- they were
21 either holding hands or they had their arms locked as they were
22 running away from the barrage of gunfire that had now occurred,
23 the weight of Mersey falling to the ground caused Myniece to also
24 fall to the ground.

25 Myniece will tell you that as the shots rang out, she didn't

1 feel it was safe for her to run, you know, to the side of the house or
2 away from the gunfire. So Myniece will tell you that as the
3 gunshots rang in their direction towards them, intended to kill
4 them, Myniece will tell you that she lay next to her cousin, and she
5 pretended to be dead.

6 She'll tell you that as she sat or laid next to her cousin,
7 who she did not know had passed away, who she did not know had
8 suffered the fatal shot, she heard walking and movement as these
9 men fired away from them towards Balzar Avenue. She'll tell you
10 that once the gunfire stopped, Myniece heard the men with the gun
11 walk past them back towards Lexington, the opposite way towards
12 Lawry Avenue.

13 Michel'le will tell you that when she looked over at, you
14 know, the area where Mersey said, Hey, who's that? She'll tell you
15 that she saw someone dressed in dark clothing and blue jeans or
16 blue shorts with his hand towards -- just behind his back. And she
17 thought that was strange, but not overly suspicious until Maurice
18 turned around and said, Run, in the manner that he did. And she, in
19 turn, did as he -- did as Maurice said. She ran across the street.
20 She ran so fast and in such fear for her life that she actually came
21 out of her shoe and she fell. She fell in this roadway as the shots
22 were coming out and she'll tell you she heard bullets striking the
23 street as they're running.

24 And she will tell you -- Michel'le will tell you that these
25 armed men followed the direction that she and Maurice ran looking

1 for them. She'll tell you that Maurice was armed with a firearm, a
2 firearm that they did not know he had when they decided, on
3 happenstance, to visit him that particular night.

4 Maurice fired two rounds back towards the individuals
5 who were shooting, the defendant and his friends, before Maurice
6 and Michel'le were able to find cover in one of the backyards, in a
7 shed across the street, one of those houses across Balzar.

8 Michel'le will tell you that she stayed hidden in that
9 particular shed until the gunfire stopped for several minutes and
10 until she heard her aunt screaming.

11 Now, Michel'le and Myniece and Mersey's grandparents
12 lived very close to this particular location. Grandmother lived at
13 the -- close to this particular location, so it didn't take long for them
14 to get out to the scene and actually see Myniece -- to see Mersey in
15 front of that patio and realize that she had passed away.

16 Myniece will also tell you that after the gunfire stopped,
17 she made her way to the inside of the home, 1271 Balzar, where
18 Maurice Hickman's mother and family were actually located.
19 Maurice's mom was already on the phone with 911 and at some
20 point Myniece asked to be able to call her aunt's -- Mersey's mom --
21 over to her grandmother's house to let them know what had
22 happened.

23 After she realized that Maurice's mom had already been
24 on the phone with 911, Myniece will tell you that she came out --
25 back out towards that porch area where she saw that her cousin

1 had suffered a gunshot wound to the forehead.

2 So this particular slide shows Michel'le's shoe, which she
3 stepped out of. Michel'le will tell you that she did get a look, a
4 quick look at the individuals who were on the corner of Lexington
5 and Balzar before the gunshots rang out. She'll also tell you that as
6 she fell, running for her life on Balzar Avenue across the street to
7 hide, she'll tell you that she had an opportunity to look back and
8 she saw multiple individuals, at least four, firing in their direction.

9 So this shows kind of the path that Michel'le took to get to
10 safety. They crossed Balzar, she fell, dropped her shoe and they hid
11 in a shed in one of the houses on the houses on the opposite side
12 of Balzar Avenue.

13 So Myniece, as I indicated earlier, will tell you that she
14 heard some of the armed men walk past her as she played dead
15 next to Mersey, go back down towards Lexington. Okay. The
16 evidence will show that these armed men, to include the defendant,
17 his friend, Pierre Joshlin, and the unidentified coconspirators that
18 they're with -- that they were with -- actually made their way to 1284
19 Lawry Avenue, which is at the corner of Lexington and Lawry
20 Avenue, as indicated by the circle there. That's 1284 Lawry Avenue.

21 At 1284 Lawry Avenue, two individuals lived there in 2006,
22 Geishe Orduno, now Bolden, and also Melvin Bolden. They were
23 with their friends, Steven and Betty, in Melvin's gray Lincoln Town
24 Car.

25 When they were making their way back to their home

1 at 1284 Lawry Avenue, Geishe and Melvin will tell you that they
2 heard gunshots. Melvin was driving, Geishe was in front, on the
3 front passenger seat, and Betty and Steve were in the back, back
4 passenger seats.

5 When they heard the gunshots, Geishe told her
6 now-husband, Melvin, no, no, no, no, no, just keep driving, don't
7 park the car, don't park the car. Melvin decided no, with gunfire,
8 what I'm going to do real quick is I'm going to park the car, we're all
9 going to run inside our house for safety. Okay. As Melvin was
10 attempting to park this particular -- their vehicle, four young Black
11 males approached their car. The evidence will show that -- or
12 Geishe and Melvin will testify that the four Black males were
13 dressed in black shirts and gloves. In particular, Geishe and Melvin
14 will tell you that one of those Black males had on red gloves, that
15 during this whole interaction, one of the things that they specifically
16 remembered -- or at least Melvin remembered -- was that one of the
17 individuals had red gloves. Okay. And that individual that had the
18 red glove kept saying, Get out of the car, get out of the car.

19 He'll also tell you that one of those individuals had a
20 short-barrel rifle, which they described as a sawed-off shotgun.
21 And they'll tell you that one of the other men was armed with a
22 handgun.

23 The man with the handgun, armed robber who had the
24 handgun, actually fired two shots in the air during this car-jacking
25 to show them that they were serious and that they needed to

1 comply and get out of the vehicle. Well, of course, Geishe, Melvin,
2 Steve, and Betty, all afraid for their life, all knowing that it was not
3 worth getting killed over for a vehicle, complied with the demands
4 of these armed men. These armed men got into the vehicle and
5 sped off.

6 What the defendant and his friends didn't know is that
7 there were two officers very nearby 1271 Balzar Avenue. These
8 officers, Bradley Cupp and Brian Walter, just happened to be in an
9 unmarked patrol vehicle, as you see in this particular slide. While
10 they were in an unmarked vehicle, the evidence will show that this
11 vehicle was equipped with sirens and also emergency lights, which
12 they activated. They had it on the dash as well as the headlights, so
13 when they turned it on to activate, it activated like a police car and it
14 also sounded sirens similar to a police car, such that, the evidence
15 will show, that while this was not a marked patrol vehicle, any
16 reasonable person would have known that this was a police vehicle
17 with the lights and sirens activated.

18 So this is Bradley Cupp, who is one of the officers
19 near 1271 Balzar Avenue. He and his partner at that -- on that date
20 were actually so close to 1271 Balzar Avenue that they heard the
21 gunshots go off. They heard the gunshots ring out. And so here
22 they were on West Bartlett Avenue, kind of shown by that arrow,
23 aligned with the arrow, near the Johnson Park. And so as they're
24 making their way around this also known as the circle park, they
25 hear gunshots.

1 And they go -- they drive in the direction towards the
2 gunshots. Bradley Cupp is driving, the individual, the officer that
3 you saw a picture of, and his partner, Brian Walter, is sitting in the
4 front passenger seat of the unmarked police vehicle.

5 So they head towards where they believe they heard the
6 sounds of the gunfire, and they actually pass through Balzar
7 Avenue, and not seeing anything at that home, because now
8 gunfire had stopped, everything was quiet, Myniece was still
9 hiding, Michel'le and Maurice were still hiding, nothing else was
10 going on there, because the defendant and his friends had already
11 made their way down towards 1284 Lawry Avenue.

12 So the officers will tell you that they actually roll past
13 Balzar, not really seeing anything out of the ordinary, because, as
14 you can remember from the previous clips, Mersey laid dead in
15 between close to the blue car and the front porch. So she was not
16 as visible to a car what would be looking through or driving
17 through.

18 So when they see nothing really out of the ordinary over
19 at Balzar, they decide to turn left down Lexington Street. And the
20 officers will tell you that as they are looking down Lexington, they
21 see what appears to be an altercation going on surrounding this
22 blue or gray Lincoln Town Car. They describe -- or they'll describe
23 it as four Black male adults and one Black female adult are engaged
24 in some kind of excited conversation, altercation, such that their
25 attention turned towards that grouping of people at 1284 Lawry

1 Avenue.

2 And the officers will tell you that as they're getting closer
3 to 1284 Lawry Avenue, driving their unmarked patrol vehicle or
4 unmarked police vehicle, they roll down the window, because their
5 window's tinted, as you saw, roll down the window, they look down
6 and they can actually hear a more excited tone, there's screaming
7 and yelling going on. Okay.

8 Before they can really make out what's happening and
9 before they can get to that intersection, the Lincoln Town Car takes
10 off at a high rate of speed. Left, in the front, next to that Lincoln
11 Town Car, is Geishe Bolden and Melvin Bolden. So at this point,
12 they are summarizing and they're, you know, putting two and two
13 together that, hey, there was actually three Black male adults who
14 had gotten into the vehicle, and Officer Bradley Cupp will tell you
15 that. He saw three of the Black male adults getting into the vehicle
16 and taking off in the vehicle, leaving one Black male adult,
17 Mr. Bolden, and one Black female adult, Ms. Geishe Bolden,
18 standing front of the vehicle.

19 During this time, they're also hearing radio noise or radio
20 dispatch indicating that other officers had located a crime scene
21 at 1271 Balzar Avenue. This is all happening very quickly, this is a
22 very dynamic scene. So multiple things are happened. But as you
23 know, police officers are equipped with radios in their vehicles and
24 they're able to speak to each other about what's happening.

25 So while Officers Cupp and Officer Brian Walter are

1 making their way down, they're getting radio traffic indicating, hey,
2 there's actually one deceased female at 1271 Balzar Avenue. Now
3 we've located one that was shot in the wrist. There appears to be
4 one outstanding victim, potential victim, and we're locating here.

5 So they surmise, hey, Balzar's up there, Balzar and
6 Lexington, and now we see this altercation at 1284 Lawry Avenue.
7 So when they see the Lincoln Town Car book it, they book it after
8 the Lincoln Town Car. And they'll tell you that they saw the Lincoln
9 Town Car now that had been stolen, car-jacked from the Boldens
10 run the red light, or the red -- the stop sign over at Balzar and
11 Lexington -- or, I'm sorry, Lawry and Lexington.

12 And so they see the vehicle, the stolen vehicle take off at a
13 high rate of speed, and they engage in a vehicle pursuit. So run the
14 red light over on Lawry and Lexington, the stolen vehicle then
15 continues straight through before it makes a turn onto North Martin
16 Luther King Boulevard, running the red light again or running a red
17 light over on West Lake Mead Boulevard as well -- on the
18 intersection of West Lake Mead Boulevard and North MLK
19 Boulevard.

20 The officers will tell you that as they are pursuing this
21 particular vehicle, they are -- they have to maintain some sort of
22 distance because unlike the individuals who were running from
23 them in the vehicle, the stolen vehicle, the officers still had to heed,
24 you know, traffic signals and things like that, because they were not
25 authorized to drive in the same manner as the individuals, the

1 defendant and his friends, who had just committed the car-jacking
2 of the Boldens. But they maintained as short of a distance as they
3 could, all the while maintaining eye contact on this vehicle.

4 Officers Cupp and Walter will tell you that at some point
5 the defendant and his friends, who are in the stolen vehicle that
6 they had just car-jacked, make a turn onto Jimmy Avenue. And at
7 this point, the defendant, who later will be identified as the
8 individual driving the stolen vehicle, Officer Cupp will tell you that
9 the car basically gets onto the sidewalk at Jimmy Avenue, because
10 the defendant is so concerned with the police officers, with their
11 lights and sirens activated, that are behind him that he looks back
12 as he's driving, continually looks back as he is driving this vehicle.
13 He gets onto the sidewalk over at Jimmy. He starts to -- he corrects
14 himself, makes a right turn on -- back onto Lexington, and stops the
15 car shortly in front of a church. And when I say stopped, he kind of
16 coasts and then at some point his attention is focused so much on
17 the officers that he's looking back, he's on the driver's seat now of
18 the stolen car, he's looking back, looking back at the officers, okay,
19 who are now coming down the road, making -- ready to make
20 contact with him.

21 Officers Cupp and Walter will tell you that the driver side
22 door of the stolen car swings open and when it swings open, they
23 see an individual, later identified as the defendant, wearing a red
24 glove. The red glove on his left hand pushes the door open. He
25 has it on the door, pushes it open as the vehicle is coasting down

1 this sidewalk before it hits that fire hydrant. And they see this -- the
2 defendant looking back at them still, looking back at them still.

3 But what was more concerning than the red glove and the
4 defendant crashing the vehicle and the defendant looking back at
5 them is they saw the defendant with a short-barreled rifle in his
6 right hand. And at some point, the defendant comes out of the
7 stolen vehicle, red glove, sawed-off or short-barrel rifle, and walks
8 in their direction. Officers Cupp and Walter will tell you that at that
9 point, they feared for their life, because they -- and as they'll tell
10 you, were sitting ducks in their patrol vehicle, in their unmarked
11 patrol vehicle.

12 They didn't know when they were coming down
13 Lexington towards the Boldens' residence, that they were going to
14 be engaged in a high-speed pursuit, let alone a face-to-face
15 confrontation with armed men. So they didn't -- they, at that time,
16 when they were rolling onto this area behind the defendant's
17 vehicle, they were not expecting to be confronted by the defendant
18 with this short-barreled rifle. They were still seat-belted in, they
19 had not had the opportunity to pull their guns out so they could
20 defend themselves.

21 Officer Cupp will tell you that he actually, to save his life
22 and his partner's life, struck the defendant, who came out of that
23 driver side vehicle, struck him with the front passenger side of their
24 patrol vehicle.

25 He'll also tell you that at some point, they were able to

1 see -- well, they see the defendant come out of the vehicle, they
2 strike him. He falls. He rolls onto the front hood of the unmarked
3 patrol vehicle and then rolls off towards the side, the front
4 passenger side of the unmarked patrol vehicle with Brian Walter,
5 Officer Brian Walter there. Okay.

6 I'll talk about what happens with Officer Walter and the
7 defendant in a minute. Let me tell you first what happens with the
8 passengers of the vehicle, the stolen vehicle, over at 1915 Lexington
9 Avenue.

10 So you see that sign right there? That's for the Evergreen
11 Church that's located in that 1915 Lexington Avenue. Officers Cupp
12 and Walter will tell you that two individuals come out of the
13 passenger side of that stolen vehicle. One comes out and runs
14 towards or past the parking lot of this church. Okay. They both, as
15 quickly as they can assess the situation, see that that individual
16 does not have a firearm with him and they allow him to run across
17 the church and he remains not having been found to this day.

18 What concerned them more was the individual who came
19 out of the front passenger seat, according to Officer Cupp's
20 testimony, the front passenger seat of the stolen vehicle. That
21 individual comes out of the car armed with a black handgun. So
22 Officer Cupp, seeing this, now the defendant is on his partner's
23 side, Officer Walter's side, sees this armed individual come out of
24 the front passenger side of the stolen vehicle. Officer Cupp
25 assesses the situation with his partner real quick, sees that now his

1 partner is engaged in a foot pursuit with the person identified later
2 as Jemar Matthews, the defendant, decides he is going to follow
3 the individual who comes out of the front passenger side of the
4 stolen car with the handgun, this person later identified as the
5 defendant's friend, Pierre Joshlin.

6 So Officer Cupp chases after this individual. His car, the
7 unmarked patrol car or unmarked police vehicle is behind the stolen
8 car and they book it up towards Doolittle. And he will testify that he
9 engaged in a high-speed -- or in a foot pursuit with the person later
10 identified as Pierre Joshlin. He will tell you that at some point while
11 is he on Doolittle, Pierre Joshlin, the defendant's friend, is running,
12 running, running, running, it was a dark area. Officer Bradley Cupp
13 is chasing after him and he'll you -- Officer Cupp will tell you that at
14 some point, he sees Pierre Joshlin turn around as he's running,
15 raise that black semiautomatic firearm in his direction, and he was
16 in such fear for his life that he actually fired multiple times, three
17 times, at Pierre Joshlin. And then he took cover behind a vehicle
18 and assessed the situation.

19 Before he actually fired those rounds and as Pierre Joshlin
20 was turning and looking, Officer Cupp will tell you that he had the
21 opportunity to look at Pierre Joshlin, not only during the pursuit,
22 but particularly at that moment, he saw Pierre Joshlin when he
23 turned his face, that memory that's forever engrained in his mind,
24 he saw the individual identified as Pierre Joshlin turn to him,
25 brandish and point the firearm towards him, such that he fired three

1 rounds in self-defense.

2 Realizing that he had not struck Pierre Joshlin during this
3 altercation on Doolittle, realizing that the -- he had not struck Pierre
4 Joshlin over on Doolittle, Officer Cupp took note of the direction
5 that Pierre Joshlin was traveling, took note of his last known
6 location, took note whether he still had the firearm in his hand, and
7 at that point in time, of course, he broadcast as soon as he fired the
8 three rounds, he broadcast shots fired, shots fired.

9 And when I said earlier that this was an event and a face
10 that was forever engrained in his memory, Officer Cupp will tell you
11 that he remembers this incident like it was yesterday, because it
12 was the first time in his career that he had ever had to fire his
13 firearm. And it was the first time in his career that he truly felt his
14 life was in danger, immediate danger.

15 Officer Cupp, seeing that he had not struck Pierre Joshlin,
16 knowing that his partner was in a high -- in a foot pursuit with the
17 defendant, Jemar Matthews, the individual who was armed with
18 that short-barrel rifle, knowing that they had one coconspirator still
19 out and about, decided he was going to stop chase. He noted the
20 location, he noted whether he still had a firearm, he noted what he
21 was wearing. And he advised the rest of, you know, Metro that was
22 in that area, and he made his way back towards the church to see
23 what was going on with his partner.

24 He will tell you he trusted in the fact that Metro was going
25 to put together a perimeter and that they had backup on their way,

1 if not already there.

2 So this was Officer Cupp's firearm, which he fired three
3 times towards Pierre Joshlin.

4 And so Officer Cupp will tell you that he saw Pierre
5 Joshlin going towards the area of 1701 North J Street. He'll
6 actually tell you when he testifies that he saw the defendant hop a
7 wall at another church located in this area, and he saw him go into
8 a residential area known as 1701 North J Street. And he told the
9 other police officers that, shared that information.

10 The evidence will show that Pierre Joshlin was located in
11 a dumpster, hiding in a dumpster at 1701 North J Street. Pierre
12 Joshlin was found in that dumpster with some black baseball-type
13 gloves. Pierre Joshlin was also found in that dumpster with a
14 firearm, a black semiautomatic firearm.

15 Officer Cupp will tell you that the individual they pulled
16 from that dumpster at 1701 North J Street, in the direction where he
17 last saw the codefendant -- or Pierre Joshlin running towards, was
18 the same individual he saw come out of the front passenger seat of
19 the stolen vehicle, the same individual who turned to him,
20 brandished that black firearm, causing him to discharge his firearm
21 three times, and he'll identify him as the individual he chased that
22 particular night.

23 You're going to hear testimony regarding gunshot
24 residue. Okay. And the testing that was done on Pierre Joshlin's
25 hands. Well, gunshot residue, the evidence will show, was found

1 on the palm of the right hand of Pierre Joshlin, the palm of the right
2 hand, and the back of the left hand on Pierre Joshlin.

3 What does that mean? Well, this is what you're going to
4 hear during the expert testimony. It'll mean -- it means that Pierre
5 Joshlin may have discharged a firearm, handled a discharged
6 firearm, or was in close proximity to a discharged firearm.

7 Gunshot residue testing was also conducted on the black
8 gloves in the dumpster with Pierre Joshlin. And the evidence will
9 show that gunshot residue was found on the right back area of the
10 right hand, the right palm area of the right hand, and the left back
11 area of the left hand of those black baseball-style gloves.

12 What does that mean? Well, the expert is going to tell
13 you. That means the black gloves may have come into contact with
14 a discharged firearm or was in close proximity to a discharged
15 firearm. There's a picture of the firearm that was recovered in the
16 same dumpster as Pierre Joshlin.

17 You are going to hear testimony that that particular
18 firearm was a Glock Model 21, 45 caliber semiautomatic handgun
19 with a 28-round magazine. The evidence will show that 11 of the
20 cartridge cases that were fired at 1271 Balzar Avenue, where
21 Mersey Williams was killed and her cousins almost killed, were
22 linked to this gun, the Glock .45.

23 So let me take you back to 1915 Lexington Avenue to
24 discuss what the defendant did. Here's -- this is exactly how the
25 vehicle was found. It was left undisturbed by responding patrol

1 officers and crime scene analysts. So remember when I told you
2 that he coasted onto the sidewalk, because the defendant was, you
3 know, trying to open the door with the hand with the red glove,
4 opening the door, looking back, looking back, crashed into the fire
5 hydrant. And the defendant will come out towards this -- towards
6 the front passenger seat or the front driver seat, excuse me, and
7 he'll make contact with the officers. Okay.

8 I'm sorry this is out of order, but -- I indicated to you
9 earlier that there was one individual who came out of the vehicle
10 without a firearm. The stolen vehicle, the vehicle that was taken
11 from Melvin and Geishe Bolden was searched after this incident,
12 after it was safe to do so. And there was a firearm, a Colt Model
13 Officer's attorney-client privilege 45-caliber semiautomatic pistol
14 found on the front passenger floorboard of this particular vehicle.
15 And the evidence will show that one cartridge case found at 1271
16 Balzar Avenue was fired from this gun. Okay. So I told you
17 earlier, 39 -- the evidence will show that 39 shots were fired. So
18 only one from this particular gun.

19 The evidence is going to show that this gun actually
20 jammed and that's why there was only one shot fired from this
21 particular gun. And there's a photo that you'll see during the
22 course of testimony, and evidence that you'll receive showing the
23 gun jammed.

24 All right. Officer Brian Walter was in the front passenger
25 seat of the unmarked patrol vehicle -- or unmarked police vehicle.

1 Jemar Matthews, identified as having been in the driver seat of the
2 stolen car. Both he and Officer Cupp will tell you they see the red
3 glove, they see Jemar Matthews advance towards them with the
4 short-barreled -- or, excuse me, the short-barreled rifle coming
5 towards them in this direction. Because their car is coming up right
6 behind the stolen vehicle.

7 So they'll both testify that, as I told you earlier, they made
8 the decision, because they were sitting ducks in this unmarked
9 police vehicle, to hit Jemar Matthews, who was coming towards
10 them, with the front passenger side of that unmarked police vehicle.

11 The evidence will show the officers will tell you that that
12 bump to Jemar Matthews caused him to fall onto the hood of this
13 car where he was less than 3 feet away from both officers. Clear
14 windshield area, up close and personal, and it was at that point,
15 both officers, Cupp and Officer Walter, had the ability to see his
16 face, to observe his face, to observe his -- what was in his hands, to
17 observe how he was dressed. Okay.

18 The evidence will also show that that particular church
19 area, right where the car, the stolen car stopped, right where the
20 officers stopped their vehicle, after they struck Jemar Matthews,
21 there was a big sign, the church sign, which lit up the area that they
22 were in, along with some street signs. And so they had, at that
23 point in time, when Jemar Matthews ended up on the hood of their
24 police vehicle, they had an unobstructed view of his face. And at
25 that point, they were able to positively identify him as the individual

1 who Officer Walter would engage in a pursuit with. O.

2 And so this is the area where he was struck, he landed on
3 the hood of that police vehicle. They did do some fingerprint
4 analysis there, but as the testimony will bear out, this individual
5 was wearing -- the defendant was wearing gloves when this
6 occurred, particularly a red glove.

7 And so Officer Brian Walter will tell you he sees Jemar
8 Matthews roll, you know, roll onto the hood of the car and Jemar
9 Matthews actually falls at such a point on the floor next to the door
10 that he's unable to open it. Okay. And so it takes him a minute,
11 unbuckle, get his gun out. And at that point, Jemar Matthews gets
12 up, still with the firearm, with that short-barrel rifle in his hand, and
13 takes off running. And Officer Walter is able to take off running
14 after him.

15 Jemar Matthews, the evidence will show, goes in the
16 opposite direction of Pierre Joshlin.

17 There's the sign that I was talking to you about, right in
18 front of that church. I'll go back to, you know, where the church
19 sign is in relation to the stolen vehicle.

20 And Officer Brian Walter will tell you that as he -- or the
21 evidence will show that as the defendant is running in this area, in
22 this sidewalk area, he drops the gun that he was holding. And what
23 you see next to the gun that I circled or next to the rifle that I
24 circled, is actually a cup -- one of those cup holders from the stolen
25 vehicle.

1 And so the defendant runs towards this direction at the
2 sidewalk. And there's the gun with the cup holder.

3 So Officer Walter will tell you the defendant ran up
4 towards Jimmy or towards Eleanor. The defendant made a sharp
5 right towards Eleanor Avenue, and Officer Walter sees him going in
6 the direction of Jimmy Avenue before he stops pursuit because he
7 had heard on the radio from his partner that shots were fired, shots
8 were fired. Now it's an officer-involved shooting. They know help
9 is coming, they're going to go back -- they also realize that they left
10 their patrol vehicle unsupervised with a suspect outstanding. So
11 they -- he decides, after hearing that his partner had fired his
12 weapon, to stop following Mr. Matthews. He noted the direction of
13 travel of Mr. Matthews. He noted his clothing such that he could
14 tell his fellow police officers the direction to go, the direction to set
15 up a perimeter, the direction to be on the lookout.

16 So when the officers, Officers Cupp and Walter, make
17 their way back towards their vehicle, towards that church, other
18 officers were setting up a large perimeter. The evidence will show
19 you that K-9 units had been called to this location. They had one air
20 unit up for support and multiple patrol officers in marked and
21 unmarked vehicles surrounding this particular area.

22 They also know at this point this involved a homicide, an
23 officer-involved shooting, so they were putting a lot of resources
24 towards this particular crime scene.

25 Well, the evidence will show, ladies and gentlemen of the

1 jury, that in the direction that the defendant was seen traveling, so
2 he was seen going towards the area of Jimmy, right at 1200 Eleanor
3 Avenue, police and crime scene analysts find a red glove. Right
4 here, this is 1200 Eleanor. And the glove is found right there, right
5 where that traffic cone shows. The glove is torn. Right in front of
6 that fence area of 1116 -- or, excuse me, 1200 Eleanor Avenue.

7 The evidence will show that the defendant was found just
8 where that arrow was located, at 1116 Jimmy Avenue. And it
9 wasn't -- the defendant wasn't just found by regular patrol officers;
10 the evidence will show that the defendant was located by a K-9
11 named Lasko, and his handler, Officer Overson.

12 The defendant was found by the K-9 hiding in this back
13 wall area of 1116 Jimmy Avenue, up against the fence, hiding in
14 some mulch. And when Officer Lasko -- or, excuse me, when
15 Officer Overson made contact with the defendant, after the K-9 had
16 made contact with the defendant, the defendant said, Okay, I give
17 up, don't let him bite me again.

18 The evidence will show that the defendant was hiding in
19 this mulch area. And you'll see photos and actually hear testimony
20 that the defendant was hiding in that area covered in mulch, and
21 that Officer Lasko, the K-9, actually bit the defendant on his
22 shoulder and also on his hand.

23 So this is how the defendant looked after he was taken
24 into custody, hiding in that mulch up against that wall at 1116
25 Jimmy Avenue. And as I indicated, he was bit by Officer Lasko in

1 his shoulder and in his hand.

2 So once Jemar Matthews, the defendant, was taken into
3 custody at 1116 Jimmy Avenue, officers Cupp and Officer Walter
4 had the opportunity to observe him, and they both positively
5 identified him as the individual they saw get out of that vehicle over
6 at the church. Officer Walter indicated that he was the individual
7 that he pursued on Eleanor, that he saw going in the direction of
8 Eleanor towards Jimmy.

9 They will also identify him as the individual they saw at
10 the front -- front-front hood area of their vehicle when they hit him
11 and he landed on their hood.

12 They will identify, Officers Cupp and Walter, will identify
13 that red glove that was found outside of 1200 Eleanor Avenue as
14 the same red glove they saw the defendant wearing when he
15 opened the door with his left hand, with the short-barrel rifle on his
16 right hand coming out of the stolen vehicle towards them.

17 Officers Cupp and Walter will identify this short-barrel rifle
18 with the extended clip as the same firearm they saw the defendant
19 holding in his right hand as he was coming out of that stolen car
20 and as he landed on the hood of their car.

21 You'll also hear testimony concerning gunshot residue
22 involving the defendant, Jemar Matthews. Now, his hands were
23 tested for gunshot residue, you'll hear testimony about that. And
24 the evidence will show that gunshot residue was found on the palm
25 of the right hand of Mr. Matthews, the back of the left hand of

1 Mr. Matthews, and the palm of the left hand of Mr. Matthews.

2 The evidence will show, well, that shows me may have
3 discharged a firearm, handled a discharged firearm, or was in close
4 proximity to a discharged firearm.

5 Gunshot residue testing was also done on the red knit
6 glove found in front of 1200 Eleanor in the direction the defendant
7 was running. And the evidence will show that, since there was
8 gunshot residue there, what does that mean? The red knit glove
9 may have come into contact with a discharged firearm or was in
10 close proximity to a discharged firearm. You'll hear testimony
11 about this.

12 You'll also hear testimony that the Ruger Model 22-caliber
13 short-barreled rifle with the 30-round extended magazine attached
14 to it was the firearm that Jemar Matthews had in his hand as he
15 came out of that vehicle that they had just car-jacked the Boldens
16 of. Well, that particular gun, guess what? 25 of the cartridge cases
17 from 1271 Balzar Avenue were fired from this short-barreled
18 rifle. 11, 1, and 25.

19 You're going to hear testimony, and this diagram will be
20 admitted into evidence showing the clustering and location of the
21 cartridge cases that were located at the 1271 Balzar Avenue
22 homicide scene.

23 You're also going to hear testimony that the bullet that
24 killed Mersey Williams is consistent with a 22-caliber.

25 Ladies and gentlemen of the jury, at the end of this trial,

1 Mr. Giordani and I are going to ask you to find the defendant guilty
2 of all of the charges in this case, including first-degree murder with
3 use of a deadly weapon. The evidence will show beyond a
4 reasonable doubt that Jemar Matthews was one of those armed
5 men, armed like he was going to war, dressed in similar clothing as
6 his friends, when they convened upon 1271 Balzar Avenue, dressed
7 similarly, multiple semiautomatic weapons with extended clips; the
8 evidence is going to show he was one of those men. The evidence
9 is going to show he was the man with that short-barrel rifle.

10 The evidence is also going to show that Jemar Matthews
11 wasn't the individual who just happened to be in this area, 1271
12 Balzar, 1200 Eleanor, 1116 Jimmy Avenue, where he was found
13 hiding in mulch. The evidence is going to show beyond a
14 reasonable doubt that he was not the person who was there, who
15 just happened to be in the wrong place at the wrong time. The
16 evidence is going to show that the people who really were
17 innocent, there for no reason other than cousin wanted to visit a
18 boy, the true people who were there at the wrong place at the
19 wrong time were Mersey Williams, Michel'le Tolefree, and Myniece
20 Cook. And it was Mersey Williams who suffered the most tragic
21 consequence.

22 Thank you, Your Honor.

23 THE COURT: Okay. Mr. Leventhal? Or Mr. Tanasi?

24 MR. LEVENTHAL: Mr. Tanasi will be --

25 MR. TANASI: Thank you, Your Honor.

1 Court's brief indulgence.

2 THE COURT: Of course.

3 [Pause in proceedings; technology set-up.]

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

5 THE COURT: You may. Thank you.

6 **OPENING STATEMENT FOR THE DEFENDANT**

7 MR. TANASI: Good morning, ladies and gentlemen.

8 Tragically, Mersey Williams lost her life. My heart goes
9 out to her family for that loss. Jemar, he's not responsible for her
10 death simply because the State says so. It's the State's job, ladies
11 and gentlemen, that we have talked about throughout the course of
12 this trial, from the very beginning, to rule out all reasonable doubt
13 over whether Jemar Matthews is guilty of murder.

14 You were picked to be on this jury, each one of you,
15 because you promised you'd wait and you'd see what the evidence
16 showed and you would make the decision on your own.

17 THE COURT: Okay. Mr. Tanasi --

18 MR. TANASI: Yes.

19 THE COURT: You need to stop immediately.

20 Okay. So, apparently, we're supposed to evacuate the
21 building. So I'm sorry.

22 [Court recessed at 10:39 a.m., until 2:07 p.m.]

23 [In the presence of the jury.]

24 THE COURT: Does the State stipulate to the presence of
25 the jury panel?

1 MR. GIORDANI: We do, Your Honor.
2 THE COURT: And the defense?
3 MR. TANASI: Yes, Your Honor. Thank you.
4 THE COURT: Okay. Mr. Tanasi, sorry --
5 MR. TANASI: That little --
6 THE COURT: -- for that interruption.
7 MR. TANASI: No worries. I'm just glad we're all back
8 safe.
9 THE COURT: If you want to start over, you can.
10 MR. TANASI: Okay. Thank you, Judge.
11 THE COURT: One good afternoon.

12 **OPENING STATEMENT FOR THE DEFENDANT (CONT.)**

13 MR. TANASI: Good afternoon again, ladies and
14 gentlemen.

15 Prior to our unexpected scare, we heard a lot about what
16 the State says the evidence will show. I'd like to talk to you about a
17 few things the evidence won't show.

18 Not one witness, ladies and gentlemen, without a law
19 enforcement badge, will identify Jemar in this case. And how
20 reliable will that identification be given all the circumstances in this
21 case? No DNA, no fingerprint evidence will link Jemar to a single
22 firearm, bullet, or casing in this case. No DNA fingerprint evidence
23 either will tie Jemar to a single vehicle in this case, the Lincoln or
24 the Sebring. There is no video in this case capturing Mr. Matthews
25 during the car-jacking or the shooting. None.

1 Now, you've heard about it already and you'll hear about
2 it a lot, this red glove. The State says that Mr. Matthews wore this
3 gun -- or wore this glove in the car-jacking and the shooting. But
4 ask yourself, how does the State connect this glove to
5 Mr. Matthews? Was he wearing the glove when he was arrested?
6 No. That's what the evidence will show.

7 How tall was this person that the State says was wearing
8 this glove during the shooting and the car-jacking? You'll
9 learn 5-5, 5-7, 6-feet. You'll learn that no witness really know for
10 sure. But yet they'll expect you to know for sure.

11 Will any witness without a badge tie that glove to
12 Mr. Matthews? You'll see the answer is no. In looking at that
13 glove, as it was recovered, you'll notice there's a hole on the side
14 exposing a palm, exposing a potential print, exposing potential
15 DNA. Does any of that exist in this case tying Jemar Matthews to
16 any of the crimes alleged in this case? You'll learn the answer is
17 no.

18 You'll also learn that there were two gloves, you've heard
19 about it already. Where's the second glove? Ask yourself that
20 throughout the course of the trial, ladies and gentlemen.

21 You'll learn that Jemar -- he was attacked. Attacked by a
22 police officer. But the evidence will show no visible signs of a car
23 accident, because you'll also learn that Officer Cupp's vehicle
24 crashed into him. You'll hear from Officer Cupp, he'll tell you. His
25 vehicle struck the suspect in the leg, he'll testify. The suspect

1 folded over onto the hood and then rolled off onto the passenger
2 side. But do any of the pictures you've seen so far and will any of
3 the pictures you see throughout the course of the trial show that
4 Mr. Matthews was hit by a vehicle? Will any evidence be presented
5 to you? I submit it will not.

6 And how fast was Officer Cupp's vehicle traveling at the
7 point of impact? You'll learn that he's not sure if it was 10, 15, or 20
8 miles an hour.

9 Now, you're going to learn from K-9 Officer Overson,
10 through his testimony, that Mr. Matthews was found in a brush, the
11 northeast corner of 1116 Jimmy Ave. That's just top right of the
12 visual in front of you. Yet, you'll learn that Detective Wildemann,
13 he'll testify that Jemar was taken into custody at 1116 Eleanor Ave.,
14 that's directly below the Jimmy Ave. address. Which is it, ladies
15 and gentlemen? Where was Jemar found? Where was Jemar
16 arrested? If they don't know or if they're mistaken, how can they
17 expect you to be sure in this case beyond a reasonable doubt?

18 You'll also learn that Mr. Matthews had a TPO keeping
19 him from 1301 Jimmy Ave. Top left of the visual in front of you.
20 Mr. Matthews was simply not supposed to be in that neighborhood
21 on the night law enforcement stormed it.

22 You heard already a little bit and you'll hear a lot more
23 about gunshot residue. You'll learn that Mr. Matthews had gunshot
24 residue on his hands. You'll also learn that gunshot residue can
25 transfer from one person's hand to another person's hand like

1 water or dust.

2 Police officers, you'll learn, handled Mr. Matthews
3 multiple times, cuffed Mr. Matthews, put Mr. Matthews in the back
4 of a police cruiser, all the while before he's tested for gunshot
5 residue; all the while without bagging his hands, covering his
6 hands, transporting him without covering his hands to prevent
7 residue transfer.

8 Ladies and gentlemen, what you've seen and what you've
9 heard so far, it's not evidence. You heard from the lawyers. The
10 evidence comes from the witness stand for each and every one of
11 you to evaluate on your own. And I submit at the end of this case,
12 you're going to have more questions, unanswered questions, than
13 evidence. And there's a legal term for unanswered questions:
14 Reasonable doubt. And what reasonable doubt --

15 MS. BOTELHO: I would object, Your Honor, to that
16 characterization.

17 THE COURT: The objection is sustained and the Court will
18 give the jury panel the definition of reasonable doubt.

19 MS. BOTELHO: And, Your Honor, I would move to strike.

20 THE COURT: Yeah. Granted.

21 MR. TANASI: At the end of the case, ladies and
22 gentlemen, you will have unanswered questions. Her Honor will
23 instruct you what to do with those unanswered questions when
24 you're instructed on the formal definition of reasonable. But I'll
25 submit to you that you will have an abundance of doubt in this case

1 and your only verdict will be not guilty.

2 Thank you.

3 THE COURT: Thank you very much.

4 And the State, you may call your first witness.

5 MS. BOTELHO: Your Honor, the State calls Myniece Cook.

6 And, Your Honor, before the witness comes in, I would
7 like to place on the record that the defense and the State have
8 spoken concerning exhibits.

9 THE COURT: Okay.

10 MS. BOTELHO: And we have reached a stipulation for the
11 admission of State's Exhibits 1 through 458, and 461 through 465.

12 MR. TANASI: Your Honor, that's correct. And if we can
13 approach just for a moment?

14 THE COURT: Sure.

15 Okay. So they will be admitted by stipulation.

16 [State's Exhibit Numbers 1 through 458, and 461 through 465
17 admitted.]

18 [Bench conference transcribed as follows.]

19 MR. TANASI: Thank you.

20 So, Your Honor, I failed to do this before you had come in.
21 I wanted to do this before the jury, before the opening and I failed
22 to do so. So I want to just run it by you now.

23 I actually have already spoken to the State about it as well.
24 But I would move for a mistrial based upon the State's opening in
25 the case. Three times they referenced the word war. And I would

1 say that a war implies two parties, two sides, a battle of some kind.
2 We've talked already at length about the gang preclusion in this
3 case, and I think that the reference to war takes us right to that gang
4 preclusion.

5 So based on that, Your Honor, I would move for a mistrial.

6 MS. BOTELHO: Agnes Botelho for the State.

7 Your Honor, the exact words with the references to the
8 war were: Armed like they were going to war. Specifically, what
9 was on my PowerPoint slide at that time were the three firearms
10 recovered from the car, from the grassy area that Mr. Matthews
11 dropped, and also the black semiautomatic found at the dumpster
12 with Mr. Joshlin.

13 At no point did the State mention any kind of gang
14 reference or that these individuals were at war with anyone. It was
15 just a reference to the semiautomatic firearms, as well as the
16 extended clips found in each of the firearms and how they
17 descended upon these individuals who were at the front of 1271
18 Balzar, and this way, dressed similarly, things like that.

19 What is lacking, as Mr. Tanasi indicated, he failed to bring
20 this to the Court's attention, which is he did not object as I was
21 going through my opening. He said I mentioned it three times, at
22 no time during each of those times did he lodge an objection.

23 And so the State's argument or our take on this is it was
24 not improper and certainly it does not rise to the level of mistrial
25 such that it requires, you know, a new trial based on manifest

1 necessity.

2 MR. TANASI: Just procedurally, Your Honor, I don't
3 believe I'm bound to raise the objection during the opening
4 statement. The trial hasn't concluded and I can still raise the
5 objection now to preserve the record.

6 THE COURT: Okay. So the objection was noted and a
7 Motion for Mistrial has been heard.

8 MR. TANASI: Thank you.

9 THE COURT: We will proceed.

10 MS. BOTELHO: Thank you.

11 [End of bench conference.]

12 **MYNIECE COOK,**

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

15 THE CLERK: Please be seated. Please state and spell your
16 first and last name for the record.

17 THE WITNESS: Myniece Cook, M-Y-N-I-E-C-E, C-O-O-K.

18 MS. BOTELHO: Thank you.

19 And, Your Honor, I'm going to just switch over to the
20 overhead.

21 THE COURT: Okay.

22 [Pause in proceedings; technical set-up.]

23 MS. BOTELHO: Thank you.

24 May I, Your Honor?

25 THE COURT: You may.

1 **DIRECT EXAMINATION**

2 BY MS. BOTELHO:

3 Q Good afternoon, Ms. Cook.

4 A Hello.

5 Q Ms. Cook, I'm going to need you, especially since you're
6 using a mask, I'm going to need you to step up closest to the
7 microphone when you're speaking. Okay?

8 A Okay.

9 Q So that the jury right here can hear you. Is that okay?

10 A Uh-huh.

11 Q All right. Ms. Cook, I'd like to turn your attention to
12 September 30th of 2006, during the early evening hours. Do you
13 recall what you were doing at that time?

14 A Around what time?

15 Q Early evening, let's 5:00 or 6:00 p.m.

16 A That day we went -- I went to take pictures with my kid.
17 And then after that, we went to my grandmother house for Mersey
18 birthday.

19 Q Okay. Your grandmother's house --

20 A Yeah.

21 Q -- where is that located?

22 A On Balzar.

23 Q Okay. Is that Balzar Avenue, located here in Las Vegas,
24 Clark County, Nevada?

25 A Yes.

1 Q How long had your grandmother lived at the Balzar
2 address?
3 A For a long time.
4 Q Okay.
5 A Long time.
6 Q And you said you were at the Balzar address, your
7 grandmother's house, for --
8 A Uh-huh.
9 Q -- Mersey's birthday?
10 A Yes. We were celebrating for the weekend, over the
11 weekend. My grandma had cooked, we were over there.
12 Q Okay. Who is Mersey?
13 A That's my cousin.
14 Q How old were you in 2006?
15 A I believe I was 27.
16 Q And how old was Mersey turning?
17 A 22, 23.
18 Q Okay. So September 30th, do you remember that being a
19 Saturday?
20 A Yes.
21 Q And so you indicated that you all were celebrating for the
22 weekend?
23 A Yes.
24 Q Do you know when Mersey's birthday actually is?
25 A October 3rd.

1 Q Okay. How much or how many of your family members
2 were at your grandmother's house?

3 A It's quite a few.

4 Q How --

5 A Was a lot of us.

6 Q How are you related to Mersey?

7 A She's my first cousin.

8 Q And so through your mother or father's side?

9 A My mother's sister's daughter.

10 Q Okay. And so both of your mothers are sisters?

11 A Yes.

12 Q Okay. And so was Mersey's mom at your grandmother's
13 house?

14 A Yes.

15 Q Was your mother at your grandmother's house?

16 A Yes.

17 Q Yes?

18 A Yes.

19 Q Do you know an individual by the name of Michel'le?

20 A Yes.

21 Q And who is Michel'le to you?

22 A That's my cousin as well.

23 Q Okay. And how are you related to Michel'le?

24 A She's my first cousin, my mother's sister's daughter --
25 other sister.

1 Q Okay.

2 A Yeah.

3 Q Okay. So your mom has two sisters, and so Michel'le is
4 the other sister's --

5 A Correct.

6 Q -- child?

7 A Yes.

8 Q Okay. Do you recall how old Michel'le was on
9 September 30th of 2006?

10 A She was 16, I believe.

11 Q Okay.

12 A 16? Yeah.

13 Q After the celebration at your grandmother's house, was it
14 dinner?

15 A Yes.

16 Q At some point in time, did you and Mersey have plans to
17 go out?

18 A Yes. We were going to go out for the night --

19 Q Okay.

20 A -- and celebrate her birthday.

21 Q Okay. Did Mersey have a car at that time?

22 A Did she have a car?

23 Q Yes.

24 A Yes, she had a car. But we were in my vehicle.

25 Q Okay.

1 A Yeah.

2 Q And so what vehicle did you have at that time?

3 A It was a '96 Tahoe -- '97 Tahoe.

4 Q Did that vehicle belong to you?

5 A Well, yeah, my mother.

6 Q Okay.

7 A Yeah.

8 Q And what color was this Tahoe?

9 A White.

10 Q And you indicated that you all were in your vehicle, so

11 were you kind of the person designated to drive?

12 A Yes.

13 Q Was it supposed to just be you and Mersey going out that

14 night?

15 A Yes.

16 Q Both of you were over 21?

17 A Correct.

18 Q Okay. At some point, did your other cousin, Michel'le, ask

19 you to join?

20 A Yes. Well, we were going to drop her off to her mother's

21 over our cousin's house before we head out.

22 Q Okay.

23 A Yeah.

24 Q And so on the way over or in the vehicle -- well, first of all,

25 do you recall what time all three of you left your grandmother's

1 house?

2 A It was probably 8:00-ish, little bit after 8:00 that we left to
3 head out.

4 Q Okay. And so while you all were in the vehicle -- or let me
5 ask: When is it that Michel'le asked to kind of change the plans a
6 little bit?

7 A When we were on our way to drop her off, she wanted to
8 stop by her friend house and say hi.

9 Q Okay. Do you know where this friend's house was
10 located?

11 A On Balzar, like, up the street from my grandmother's
12 house.

13 Q Okay. So literally right down the street?

14 A Right down the street.

15 Q Okay. Did you know the individual that Michel'le wanted
16 to see?

17 A I didn't know him at the time, no.

18 Q Okay. And you said him; so it was a male?

19 A Correct.

20 Q And do you recall where his house was located on Balzar?

21 A The corner of Lexington and Balzar.

22 Q Okay.

23 MS. BOTELHO: Your Honor, permission to publish what's
24 been marked and admitted as State's Exhibit 26.

25 THE COURT: You may.

1 BY MS. BOTELHO:

2 Q So you have a screen right in front of you, Ms. Cook. Give
3 you a moment to kind of familiarize yourself with this exhibit.

4 Do you see the house that you describe as the corner of
5 Balzar and Lexington Street in this exhibit?

6 A Yes, I do.

7 Q Okay. And if you could, I believe there's a mouse in front
8 of your screen. You can actually -- can you just use that mouse to
9 point -- okay.

10 A These here.

11 Q All right.

12 MS. BOTELHO: And for the record, Your Honor, she
13 placed the mouse over a red pin drop of 1271 Balzar Avenue, it's
14 the corner house on Balzar and Lexington.

15 Q And so had you been to this particular house before?

16 A Never.

17 Q And at some point did you agree to take Michel'le to this --
18 by this house?

19 A I did.

20 Q Okay. Did Mersey have anything to do with helping to
21 convince you to let her see her friend?

22 A Yeah. I initially said no, but she was, like, just let her say
23 hi to a friend.

24 Q Okay. So when you all get to, you know, 1271 Balzar
25 Avenue, do you all three girls come out of your vehicle?

1 A Well, at first, Mich got out, and then we got out.
2 Q And when you say Mich, is that --
3 A Michel'le, yes.
4 Q -- Michel'le's -- is that her nickname?
5 A Yes. That's what I call her.
6 Q So she got out?
7 A Yes.
8 Q And could you all see her from where you were in the
9 vehicle?
10 A Yeah.
11 Q And at some point, did her friend come out to speak with
12 her?
13 A Yeah. They were standing in front of the house by our
14 car.
15 Q Okay. And at any point in time while you were at 1271
16 Balzar Avenue, did you or Mersey come out of your vehicle?
17 A Yes.
18 Q At -- how much time had gone by between, you know,
19 when Michel'le left your car to talk to her friend --
20 A Probably two minutes.
21 Q Okay.
22 A If that. Two and a half.
23 Q And why did you and Mersey come out of the car?
24 A Because she wanted me to meet him.
25 Q Who wanted you?

1 A Mersey wanted me to meet him.

2 Q Okay. And so did you agree?

3 A I did.

4 Q All right. And when you and Mersey come out of your
5 vehicle, where do you go?

6 A We walked up to where they were standing.

7 Q And when you say they, are you talking about Michel'le
8 and the male friend?

9 A Correct.

10 Q At some point, did you come to learn the name of this
11 male friend?

12 A Yes.

13 Q Okay. Is his name Maurice Hickman?

14 A That's correct.

15 Q Okay. And to the -- to your knowledge, did he reside at
16 this address?

17 A Yeah.

18 Q Okay. And so do you and Mersey join Michel'le and
19 Maurice near that car that you just told the jury about a little while
20 ago?

21 A Yes.

22 Q Okay. I'm going to show you, with the Court's
23 permission, what's been marked and admitted by stipulation as
24 State's Exhibit 28.

25 Ms. Cook, I'm going to ask you to look at your screen; do

1 you recognize what's depicted in this exhibit?

2 A I do.

3 Q Okay. And what is it?

4 A I see my vehicle and I see the house we were standing
5 near.

6 Q Okay. And when you say your vehicle, can you use the
7 mouse to identify your vehicle?

8 A This one.

9 Q Okay. So for the record, there are two white SUV-looking
10 vehicles towards the center of the photo; is that right?

11 A That's correct.

12 Q And yours is the one that's in the back?

13 A Yes.

14 Q Okay. And this is the Tahoe that you drove to get to this
15 location?

16 A Correct.

17 Q Okay. Does this particular exhibit show the car or the area
18 of the yard where you, Michel'le, Mersey, and Maurice were
19 talking?

20 A Yes.

21 Q Okay. And could you use your mouse to show us where
22 that is?

23 A We were standing over here on this side of the car.

24 Q Okay. So there's a car there; is that right?

25 A Yes.

1 Q Kind of in the yard towards the front --
2 A Door.
3 Q -- porch area?
4 A Yes. It was close to the door.
5 Q Okay.
6 A To the house.
7 Q And so you were indicating with the mouse cursor
8 standing kind of in front of the front passenger area of the car?
9 A Correct.
10 Q Okay. And as you and the three other individuals, your
11 cousin and -- your cousins and Maurice are standing around, how
12 are you situated as you're talking to each other?
13 A Me and Mersey was facing that street. Mich and Maurice
14 back was facing that street.
15 Q Okay. And when you say that street, are you talking
16 about --
17 A Lexington.
18 Q -- Balzar? Oh, Lexington?
19 A Lexington. Yeah.
20 Q Okay. And so you and Mersey are facing --
21 A The street.
22 Q -- the street, Lexington?
23 A Uh-huh.
24 Q So that side, actual corner area of Lexington and Balzar,
25 as shown in this exhibit?

1 A Yes.

2 Q Okay. And Maurice and Michel'le are facing you and
3 Mersey?

4 A Yes.

5 Q Such that their backs are to Lexington?

6 A To the -- correct.

7 Q Okay. And as you're standing there talking, did
8 something happen that caused you to look in the direction of the
9 corner of Lexington and Balzar?

10 A Yes. Mersey made a comment saying, Who is that? And
11 when everybody looked up, it was a guy standing there with his
12 hands behind his back. And then two or three other ones
13 proceeded and came around the corner, the guy told us to run and
14 shots rang out.

15 Q Okay. Let me kind of flesh that out a little bit. So Mersey
16 actually --

17 A Sees.

18 Q -- calls you all's attention to that --

19 A To them.

20 Q Okay.

21 A Yep.

22 Q And when you say, We all look up, did you look in that
23 direction?

24 A Yeah.

25 Q Okay. And did you see Michel'le and also Maurice look in

1 that direction as well?

2 A Correct.

3 Q Okay. And what did you -- who, if anything, or how many
4 individuals did you see in that corner?

5 A About four, maybe five.

6 Q Okay.

7 A Four, five.

8 Q Now, initially, when Mersey first said, Hey, look over
9 there, or Hey, who's that?

10 A Well, she looked up and she was, like, Who is that? And
11 everybody turned and looked and we was, like, damn.

12 Q Okay. When you first looked, right after Mersey said that,
13 how many individuals did you see standing on the corner?

14 A I'm going to say about four.

15 Q Okay. And you said he or the person said run?

16 A Right.

17 Q Who was that person who said that?

18 A The guy who house we were at.

19 Q Okay.

20 A Maurice.

21 Q Maurice?

22 A Yes.

23 Q And so hearing Maurice say that, what did you do?

24 A I mean, I was in shock, because I'm, like -- we was, like,
25 what? Run? For what? You know. And Mersey, she stood there,

1 she was in shock, and when I finally came to, I'm, like, we got to
2 run, you know. And --

3 Q And when you say you finally came to, had you heard
4 gunshots or had gunshots --

5 A Yeah. They had started shooting. And at first it wasn't
6 at -- I just heard the gunshots. And she was standing there, she
7 froze up, and I'm, like, Mersey, we have to run, you know. And --

8 Q Did she say anything to you in response?

9 A Well, yeah, she was scared. She was, like, Niecy, I'm
10 scared. I'm, like, I know, but we got to try to run, you know. And I
11 grabbed her arm and we proceeded to run. And she got real heavy
12 on my arm. We took about probably six steps. She got real heavy
13 on my arm and she fells, which brought me down to the ground
14 and I was going to get back up and try to run, but something just
15 told me to just lay there.

16 Q And so did --

17 A So I just, like --

18 Q Did you just lay there?

19 A Yeah.

20 Q And as you're laying there, what, if anything, do you see
21 or hear?

22 A I just hear a bunch of gunshots. Then after the shots, I
23 heard somebody walking up in the rocks, and I'm thinking, he -- you
24 know, they about to kill me. And then it got silent.

25 Q So when you're in the rocks, laying there --

1 A Uh-huh.

2 Q -- are you close to Mersey?

3 A She fell and then I kind of fell on my stomach. So we like
4 this.

5 Q Okay.

6 A So she over here and I'm like this.

7 Q And so your heads are kind of closer than your bodies?

8 A Right.

9 Q Okay. And was she on her stomach as well?

10 A Yeah.

11 Q Were you facing --

12 THE COURT: Was that a yes?

13 THE WITNESS: Yes. Yes.

14 BY MS. BOTELHO:

15 Q Were you both facing each other or how were you
16 situated?

17 A I was laying like this. After I didn't hear anymore
18 gunshots, I kind of looked around to see if it was safe to get up.
19 And when I jumped up, I ran to the side of the wall and put my back
20 against the wall. And I looked, she was still laying there. And then
21 some lady came outside the -- who lived in the house and I ran to
22 the door. And I'm, like, oh, my God, you know, let me use your
23 phone. So -- but she was on the phone with the police. So I ran
24 back outside to check on Mersey, I'm, like, Mersey, get up, we can
25 get up now. And when I turned her over, then I seen the bullet hold

1 in her head.

2 MS. BOTELHO: And for the record, Your Honor, the
3 witness did point towards the center of her forehead when she
4 referenced the bullet wound to Ms. Mersey.

5 Q So I'm -- let's kind of just flesh all that out. Okay?

6 And so you say you're laying kind of next to Mersey. And
7 I apologize, and I would like to just give notice that this particular
8 photo is going to be a little bit graphic. And I apologize, Ms. Cook.

9 MS. BOTELHO: Permission to publish State's Exhibit
10 Number 49, which has been stipulated into evidence.

11 THE COURT: You may.

12 BY MS. BOTELHO:

13 Q Okay. Ms. Cook, I'm sorry. I'm going to draw your
14 attention to this exhibit.

15 MS. BOTELHO: May I?

16 THE COURT: You may.

17 BY MS. BOTELHO:

18 Q I'm sorry, Ms. Cook, but I have to publish this Exhibit 49.
19 Does this exhibit show where you and Myniece and Michel'le were
20 standing with Maurice?

21 A Yes.

22 Q It does? Yes, you're nodding yes?

23 A Yes.

24 Q And I'm sorry, do you need a moment.

25 A No, just supposed to get it -- let's go.

1 Q Okay. And so this exhibit shows where Mersey ended up;
2 is that right?

3 A Correct. Yeah.

4 Q Okay. Does it show where you were in relation to her?

5 A Yeah. Yeah.

6 Q Okay. And can you use the mouse to kind of show where
7 that is?

8 A I fell, like, somewhere -- I fell a little over here.

9 Q Okay. Kind of to the right of the cone, that orange cone?

10 A Yeah.

11 Q Okay. And when you said -- when you told the jury that
12 you heard someone coming, you know, through the rocks, can you
13 explain that and does this exhibit show that rocky area that you
14 were trying to describe?

15 A Well, yeah, it was rocks all out there.

16 Q Okay.

17 A Yeah. It was, like, you know, it was, like, sporadically.

18 Q Okay.

19 A So.

20 Q Okay. And the picture shows that?

21 A Yeah.

22 Q Okay. And when you said you -- did you say you heard
23 someone or felt someone kind of walk through the rocks?

24 A Yeah.

25 Q Okay. Was that before or after the gunfire had stopped?

1 A It was kind of after.

2 Q Okay. And could you tell, based on what you heard or
3 saw, which way that person who crossed you in the rocky area,
4 which way that person was going?

5 A They ran that way -- like, this way.

6 Q Okay. So Lexington?

7 A Yeah.

8 Q Okay. Which side of Lexington? So I'm going to publish
9 State's Exhibit 28 again, calling your attention to the very corner,
10 middle corner of this exhibit.

11 A All right.

12 Q Where my finger is, is that Lexington?

13 A Yes.

14 Q Okay. Did the individual that you heard or -- first of all,
15 did you hear or see this individual cross you in the rocks?

16 A I didn't see, I just -- I tried to lay there with my eyes
17 closed.

18 Q Okay. And so you heard --

19 A Yeah.

20 Q -- this individual cross your path?

21 A Yes.

22 Q Did -- could you tell from the sound whether the
23 individual, you know, went down Lexington or up Lexington?

24 A They went back that way, toward Doolittle Way.

25 Q Okay. So let me publish State's Exhibit Number 26 again

1 and let me --

2 A I need some tissue.

3 Q All right. Now, you said the individual who crossed you
4 went down towards the Doolittle Way. I zoomed into this exhibit,
5 which shows 1271 Balzar at the top. Which way did the person go
6 pursuant to this map?

7 A Toward Lawry Way.

8 Q Okay. So down towards Lawry?

9 A Correct.

10 Q Okay. Now, you indicated at some point, when the
11 gunfire stopped, you were able to hear the door open or something
12 like that and make contact with a woman who was inside the
13 home?

14 A Correct.

15 Q Okay. Let me kind of back up just a little before that.
16 While the gunfire -- first of all, how many shots do you recall
17 hearing?

18 A It was a -- it's too many to count.

19 Q Okay. And so when the gunfire stopped or prior to it,
20 even, did you see where Michel'le went and where Maurice went?

21 A They ran up Balzar toward the circle parkway.

22 Q Okay.

23 A Somewhere that way.

24 Q Okay. And so State's Exhibit Number 26 again, is -- does
25 this show the circle park that you're talking about?

1 A Yes.

2 Q Okay. And is it labeled Lubertha Johnson Park?

3 A Yes.

4 Q Okay. And so 1271 Balzar, you indicated they ran towards

5 the park area?

6 A Yes.

7 Q Okay.

8 A Somewhere that way.

9 Q Okay.

10 A I'm not sure.

11 Q But you aren't able to see for sure?

12 A No.

13 Q Okay. And so once the gunfire stopped, what did you do?

14 A After the lady opened the door and I ran to the house and

15 after she got off the phone with the police, I asked her if I could use

16 her phone. I called down to my grandma house and Mersey mom

17 answered the phone. And I had to tell her that her daughter laying

18 there not moving, with a gunshot wound in her head.

19 Q Okay. And at some point after that, what did you do?

20 A I was just freaking out. Just crying and just trying to, you

21 know, make sure the ambulance get her, just trying to help save

22 her, you know.

23 Q Okay. And so you were there that entire time?

24 A Yes.

25 Q At some point, did you actually go up to Mersey's body?

1 A Oh, yes. Oh, yeah.

2 Q Okay.

3 A Oh, yeah.

4 Q And did you see the injury that she suffered --

5 A I did.

6 Q -- the one that you referenced?

7 A Yes.

8 Q Okay. In the middle of her forehead?

9 A Yes.

10 Q Did it appear to be a gunshot wound?

11 A Yes.

12 Q And at any point in time, did you try to get Mersey to get
13 up?

14 A Yes.

15 Q At any point in time, did she get up?

16 A No.

17 Q Okay. Before the woman opened the door from inside the
18 house, had you made your way to, like, the side of the house?

19 A I had -- I'd -- initially, when I first got up, I went to the side
20 of the house, because I didn't know where -- what was -- you know,
21 where anybody was. So I was trying to see was it safe to run or
22 what -- you know, what was my next move. So by the time I'm at --
23 on the side of the house and I hear her open the door, I just took off
24 running to the door. And I'm, like -- because I was so -- it was crazy.

25 Q Okay.

1 MS. BOTELHO: Your Honor, permission to publish State's
2 Exhibit 34, admitted by way of stipulation.

3 THE COURT: You may.

4 BY MS. BOTELHO:

5 Q Showing you State's Exhibit Number 34; does this show
6 the side of the house and also the front door that you've been
7 referencing in your testimony?

8 A Yes.

9 Q Okay. And where did you make it to the side of the
10 house?

11 A Like, right here. Not all the way in the side, just, like, right
12 here. I leaned up against this wall right here.

13 Q Okay. And, for the record, that's the wall of the house
14 that's parallel to, like, the chain link fence. And you said not all the
15 way in, but just kind of --

16 A To the --

17 Q -- using that wall to brace yourself?

18 A Yes.

19 Q Okay. And the front door that opened, that you heard
20 open, can you see it in this exhibit?

21 A Yes.

22 Q And where is that located, ma'am?

23 A Right here.

24 Q Okay. And it's towards the left of the picture. It looks like
25 there's a gate and then kind of a metal outside door?

1 A Yes.

2 Q Okay. So did you have to go around the porch -- I mean,

3 the main pillar entrance --

4 A Yes.

5 Q -- to get to the front door?

6 A Yes.

7 Q Okay. When you got inside the house, did you see -- you

8 saw the woman who was on the phone with 911?

9 A Yes.

10 Q Okay. Did she reside there?

11 A I'm going to say yes.

12 Q Okay.

13 A I believe that was his mother.

14 Q Okay. Were there other individuals in the home?

15 A I didn't see anybody else in the house.

16 Q Okay. And you could tell that she was on the phone

17 with 911?

18 A Oh, yeah. I heard her.

19 Q Okay. And you indicated you came out at that point,

20 checked on --

21 A Mersey.

22 Q -- Mersey?

23 A Yes.

24 Q And then did you return back into the house?

25 A I did not go back to the house. I stayed out there with

1 Mersey.

2 Q Okay.

3 A Yeah. And then -- because her mom came right away.

4 Q Okay.

5 A Like, because it's clearly two minutes up the street.

6 Q Okay.

7 A So her mom, and my brother-in-law, and my twin babies,
8 at the time, they was little, they arrived.

9 Q Okay.

10 A From the phone call, from my call.

11 Q Okay. And so when did -- when were you able to call
12 Mersey's mom; was it before you came out and checked on her or
13 after?

14 A No, it was after I checked on her, because the lady was on
15 the phone with 911. So I'm, like, okay, let me go tell Mersey we can
16 get up. You know, and that's when --

17 Q Okay.

18 A -- I went out there.

19 Q Okay. At some point, did you hear or see Michel'le come
20 out of wherever she was?

21 A No. I didn't see her at the scene --

22 Q Okay.

23 A -- no more. Yeah.

24 Q After that?

25 A No.

1 Q Okay.

2 MS. BOTELHO: Brief indulgence, please.

3 Q I'm going to take you back to when you first saw people

4 kind of on that corner of Lexington and Balzar --

5 A Uh-huh.

6 Q -- that you've testified about. I'm going to show, again,

7 State's Exhibit Number 28. Does this exhibit show where the

8 individuals were standing right before Maurice told you all to run?

9 A Yes.

10 Q Okay. And can you please use your --

11 A They were --

12 Q -- the mouse --

13 A They came up right here. They came from around this

14 house right here.

15 Q Okay. So for the record, they came up around the

16 Lexington side of 1271 Balzar?

17 A Correct.

18 Q And where did they ultimately stop?

19 A Like, right here.

20 Q Okay. And, for the record, it's just a little bit before the

21 first orange-and-white traffic cone that's there?

22 A Yeah. Just like --

23 Q Kind of by that tree --

24 A Yeah.

25 Q -- but further out towards the street?

1 A Correct.

2 Q Okay.

3 A So, like, up in here.

4 Q Okay.

5 A To where you can -- you know, when they came from
6 around the house and they was standing here, we were standing
7 there. So we seen -- we could see them standing there.

8 Q Okay. And so, literally, the intersection, but in the dirt --

9 A Yeah.

10 Q -- rocky area --

11 A Yes.

12 Q -- of that intersection?

13 A Yeah.

14 Q And so when you were hearing the gunshots or the
15 gunfire, Ms. Cook, could you tell which way the bullets were hitting
16 or striking?

17 A Wait, repeat that. I'm sorry.

18 Q Yes. Did you see -- let me ask it a different way.

19 Did you see the individuals that you saw on that corner,
20 did you see them firing at you all or pointing the gun or guns at you
21 all?

22 A Did I see them pointing them?

23 Q Yes.

24 A I heard the gunshots.

25 Q Okay.

1 A I was trying to --

2 Q Okay.

3 A Everything happened so fast.

4 Q Okay.

5 A I heard the gunshots.

6 Q Could you tell which direction the gunshots were being
7 directed towards?

8 A Toward, like, at first, this way, and then eventually to the
9 yard. It was like we was ambushed. We couldn't even really run
10 anywhere.

11 Q Okay.

12 A It was like ambush. We was ambushed.

13 Q Okay. So you said initially towards the yard?

14 A The street. I'm thinking what --

15 Q The street?

16 A Yeah.

17 Q And then, eventually, did it get redirected? Did the gunfire
18 redirect back towards --

19 A Toward us.

20 Q -- you all?

21 A Yes.

22 Q Right by that blue car?

23 A Yes.

24 Q Okay. Now, again, I want to take you back to the
25 individuals that you first saw in the intersection that you've been --

1 or in that sidewalk, walking area of State's Exhibit Number 28.

2 When Mersey first said, Look -- or Who's that?, do you recall telling
3 the police that, in initially, you saw one person standing there --

4 A Yes.

5 Q -- with his --

6 A Hands --

7 Q Okay. Tell us about that person that you first saw, right
8 when Mersey said, Who's that?

9 A It was the guy standing there, all black on, with his hands
10 behind his back.

11 Q Okay. And when you said you looked up and saw and
12 looked in that area, is that who you saw, just that one guy with his
13 hand behind his back?

14 A At first, yes.

15 Q Okay.

16 A Yes.

17 Q And so tell us about did you see the other individuals that
18 you now described coming up?

19 A Yes. They walked --

20 Q Okay.

21 A They walked up shortly after.

22 Q Okay. And when you say shortly, are we talking minutes?

23 A Seconds.

24 Q Seconds? Okay.

25 A Yeah. Because we wasn't even over there seven, five

1 minutes.

2 Q Okay.

3 A All of this happened.

4 Q Okay.

5 A It was crazy.

6 Q And so by the time that Maurice said run --

7 A Uh-huh.

8 Q -- did -- when you looked over -- or did you look over back

9 at where that -- those men were?

10 A Yeah, we -- yes.

11 Q Okay. At the time that Maurice said run, was it just one

12 person there or now had the others joined?

13 A All of them joined.

14 Q Okay. And then you hear gunfire erupt?

15 A Yes.

16 Q Okay. Could you see anything other than, you know, all

17 black?

18 A Just the black silhouette, little afro, black silhouette. They

19 had on all black, I just remember that and I was, like, [indiscernible]

20 did it.

21 Q Okay. And approximately how many people total would

22 you say were at that corner before the shots rang out?

23 A What do you mean?

24 Q How --

25 A You mean --

1 Q How many people, total, were at this corner --
2 A Oh. Okay.
3 Q -- where you described --
4 A It was about four. It was about four.
5 Q Okay.
6 A Maybe five. Four, maybe five.
7 Q Okay. At any point during that night, had you seen
8 Maurice with a gun?
9 A Did I see Maurice with a gun?
10 Q Yes.
11 A What do you mean?
12 Q Did you --
13 A Not what do you mean, but did I see Maurice with a gun?
14 Q Yes.
15 A No.
16 Q Okay. Did you know him to have a gun before this
17 erupted? Did you see him with a gun --
18 A No.
19 Q -- before you all were shot at?
20 A Yes.
21 Q Okay.
22 A Yes. I did.
23 Q Okay.
24 A Yes.
25 Q And -- okay. While you all were standing there talking?

1 A Right. Right.

2 Q Okay.

3 MS. BOTELHO: Brief indulgence, Your Honor.

4 Brief indulgence.

5 Your Honor, I'll pass the witness.

6 THE COURT: Thank you.

7 Cross?

8 MR. TANASI: Thank you, Your Honor.

9 **CROSS-EXAMINATION**

10 BY MR. TANASI:

11 Q Good afternoon, Ms. Cook.

12 A Hello.

13 Q My name is Rich Tanasi, and I represent Mr. Matthews.

14 I've got a few questions for you on cross. Fair?

15 A Fair.

16 Q All right. So you started out the night on
17 September 30th, 2006, heading to your grandma's house, right?

18 A Correct.

19 Q It was you, Michel'le, and Mersey, heading that way, fair?

20 A Correct.

21 Q All right. And you were celebrating Mersey's birthday,
22 right?

23 A Correct.

24 Q And the plan was to go out after, right?

25 A Correct.

1 Q Okay. And on your way to going out, though, you
2 stopped at the Balzar and Lexington home --
3 A Correct.
4 Q -- we just looked at, fair?
5 A Yes.
6 Q Is that yes?
7 A Correct.
8 Q Thank you.
9 So you got there about 9:00-ish?
10 A Yes. About 9:00-ish.
11 Q Okay. So p.m.?
12 A Yes.
13 Q It was dark out, fair?
14 A Correct.
15 Q Just the streetlights, correct?
16 A Correct.
17 Q You started talking with Maurice Hickman, fair?
18 A Correct.
19 Q All right. You didn't actually go in the house at any point,
20 right?
21 A No.
22 Q You stood kind of outside the house the whole time, fair?
23 A Outside, yes.
24 Q Near that blue car?
25 A Correct.

1 Q Correct? You saw a group of guys, fair?
2 A Correct.
3 Q All right. Within five minutes of getting there, right?
4 A Correct.
5 Q All right. One guy walked up first?
6 A Correct.
7 Q Is that a yes?
8 A Yes.
9 Q And that person was dressed in all black --
10 A Correct.
11 Q -- right?
12 A Yes.
13 Q Head to toe, all black, fair?
14 A Dark colors, yes.
15 Q Okay.
16 A Black.
17 Q Dark? Black?
18 A Yeah, black.
19 Q Okay.
20 A I seen black.
21 Q Okay. And you only saw that person's silhouette, fair?
22 A Correct.
23 Q All right. Hands behind their back, fair?
24 A Correct.
25 Q You dropped to the ground when you heard the gunshots,

1 right?

2 A No.

3 Q No?

4 A I didn't drop to the ground.

5 Q I apologize. Take me through that. What happened when
6 you heard the gunshots?

7 A We tried to run.

8 Q Okay.

9 A And when Mersey got shot, she fell to the ground and I
10 fell with her.

11 Q I understand.

12 A Yeah.

13 Q I didn't mean to oversimplify that, but the point is
14 gunshots occurred --

15 A Right.

16 Q -- and then you were on the ground?

17 A I was on the ground. Yes.

18 Q So you didn't actually see anybody in the group shooting,
19 you just heard, fair?

20 A No, I seen it -- well, I didn't -- I seen four people, black
21 silhouette, I didn't -- no, I didn't see their faces, but yes, there were
22 people there shooting.

23 Q Right. But you didn't actually see the shooting, you didn't
24 see the kind of flashes that would come from the weapons, didn't
25 see the shooting, you heard it, fair?

1 A I heard it and I felt it, yeah.

2 Q All right. And as you noted, you didn't see anybody in the

3 group who was shooting --

4 A Well, I was trying to run for my life.

5 Q I get it. I --

6 A I wasn't trying to look at nobody.

7 Q Okay. I understand.

8 A Yeah.

9 Q You did hear one set of footsteps, though, when you were

10 on the ground, right?

11 A Absolutely.

12 Q All right. You indicated that person was kind of walking

13 past you, fair?

14 A Walking, running. Yeah.

15 Q Did you see their feet?

16 A My eyes was closed, I was playing dead.

17 Q I understand. And I'm not --

18 A So, no, I didn't see any feet, no.

19 Q Okay.

20 A I just heard.

21 Q Just heard them on the rocks, right?

22 A Correct.

23 Q Correct. You described one of the individuals on direct

24 exam as having a afro?

25 A Correct.

1 Q And put your hands kind of over your head?
2 A Wasn't that big, it was a little afro.
3 Q I understand.
4 A Yeah.
5 Q And I'm not trying to put words in your mouth.
6 A Yeah.
7 Q You put your hands over your head?
8 A Correct.
9 Q So you would take me through kind of how the size of the
10 afro, based on the hands over your head --
11 A It was like a little afro.
12 Q All right. So for the record --
13 A Uh-huh.
14 Q -- I would say that's 4 to 5 inches over your head, would
15 you agree with me?
16 A Okay.
17 Q Is that yes?
18 A 4 to 5 inches? Do I agree with you?
19 Q Yes.
20 A I mean, if you say 4 to 5 inches, it could be [indiscernible]
21 and I can't recall that. But yeah, we can say that.
22 Q I understand.
23 A Yeah, we could say that.
24 Q I -- again, I'm trying to measure the distance between your
25 hands and your head.

1 A Right.
2 Q But I think the jury can judge that for themselves.
3 A Okay.
4 Q All right. Ma'am, thank you for your time.
5 MR. TANASI: I'll pass the witness. No further questions.
6 THE WITNESS: All right.
7 THE COURT: Thank you.
8 Any redirect?
9 MS. BOTELHO: Yes, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MS. BOTELHO:

12 Q Ms. Cook, you indicated you also felt the gunfire?

13 A Correct.

14 Q Is that right?

15 A Yeah.

16 MS. BOTELHO: Permission to publish, Your Honor,
17 State's Exhibits 448 through 451, admitted by way of stipulation.

18 Q Ms. Cook, were you struck by gunfire?

19 A Yes, I was.

20 Q Showing Exhibit 448; does this show you with your
21 injury?

22 A That's correct.

23 Q Where were you shot?

24 A In my left wrist.

25 Q Okay. Showing State's Exhibit Number 449; what does

1 this show?

2 A The gunshot wound.

3 Q Okay. Same to your left wrist, just closer view?

4 A Correct.

5 Q And State's Exhibit Number 450; is that an even closer
6 view of your wound?

7 A Correct.

8 Q Yes?

9 A Correct, yes.

10 Q And State's Exhibit Number 451, does that show your
11 wound with, like, a ruler surrounding the wound?

12 A Yes.

13 Q Okay. Did you have any scarring related to this wound?

14 A I do still to this day.

15 Q Okay.

16 A Yeah.

17 Q So you have the scars on your left wrist?

18 A I do. Yes.

19 Q Yes?

20 A Yes.

21 Q Were they able to recover any type of bullet or anything
22 from your wound?

23 A No.

24 Q Okay.

25 A I think it went straight through --

1 Q Okay.

2 A -- in and out.

3 MS. BOTELHO: Brief indulgence.

4 Q Did you -- when you were at the scene, when did you -- or
5 strike that.

6 When did you realize that you had been struck by a
7 gunshot?

8 A After my brother-in-law, he was, like, Niecy, you bleeding.
9 And when I looked, it was just, like, blood all over my jacket.

10 Q Okay. Now, were you wearing a sweater or something at
11 that time?

12 A Yes.

13 Q Okay. And did you have to remove the sweater to see
14 your injuries?

15 A Yes.

16 Q Now, by the time that you realized you had been shot,
17 were the police already there?

18 A Yes.

19 Q Okay.

20 A They were there.

21 Q Okay.

22 A Yes.

23 Q When you took off your sweater, do you recall whether
24 you picked it up and brought it with you when you left the scene?

25 A I don't even know where that sweater is to -- I've never

1 seen it again once I took it off.

2 Q Okay. Now, State's Exhibit Number 448, you're not
3 wearing a sweater there; is that right?

4 A Yes. No.

5 Q Okay. Just the green shirt?

6 A Yeah.

7 Q Okay.

8 A That was a short I had on under my sweater.

9 Q Okay.

10 MS. BOTELHO: I have no more questions. Thank you,
11 Your Honor.

12 THE COURT: Thank you.

13 Any recross?

14 MR. TANASI: No further questions, Your Honor. Thank
15 you.

16 THE COURT: Okay. Ms. Cook, thank you very much for
17 your testimony here today. You may step down and you are
18 excused from your subpoena.

19 And you may call your next witness.

20 MS. BOTELHO: The State calls Michel'le Tolefree.

21 **MICHEL'LE TOLEFREE,**

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

24 THE CLERK: You may be seated. Please state and spell
25 your first and last name for the record.

1 THE WITNESS: Michel'le Tolefree, M-I-C-H-E-L-L-E,
2 T-O-L-E-F-R-E-E.

3 MS. BOTELHO: May I?

4 THE COURT: Yes, you may.

5 **DIRECT EXAMINATION**

6 BY MS. BOTELHO:

7 Q Ms. Tolefree, I'd like to turn your attention to
8 September 30th of 2006, about 5:00 or 6:00 p.m.; do you remember
9 where you were?

10 A Yes.

11 Q Where were you?

12 A At a friend house.

13 Q At whose house?

14 A At Maurice house.

15 Q And who's that to you?

16 A It was a friend from school.

17 Q Oh, okay. Do you know someone named Mersey?

18 A Yes, my cousin.

19 Q Okay. And do you know someone named Myniece?

20 A Yes.

21 Q Okay. And who is Myniece to you?

22 A My cousin.

23 Q Okay. Was Myniece the individual who just walked out of
24 the courtroom right now?

25 A Yes.

1 Q As you were coming in?

2 A Yes.

3 Q Okay. Were you with Mersey and also Myniece earlier in
4 the night at your grandmother's house?

5 A Yes.

6 Q And that's when I'd like to call your attention to about the
7 time that you were at your grandmother's house; do you remember
8 what time you all were there together?

9 A It would have had to have been, like, 6:30 or 7:00.

10 Q Okay. P.m.?

11 A Yes.

12 Q Okay. Were you all there to celebrate Mersey's birthday a
13 little bit early?

14 A Yes.

15 Q Okay. And so were other family members there with you
16 all?

17 A Yes. They left to go my aunt house.

18 Q Okay.

19 A So we were still in the area.

20 Q Okay. So were you all at your grandmother's house?

21 A Uh-huh.

22 Q For the celebration -- is that a yes?

23 A Yes.

24 Q Okay. And where is your grandmother's house located?

25 A 881 Balzar.

1 Q Okay. And that's here in Las Vegas, Clark County,
2 Nevada?
3 A Yes.
4 Q Okay. And your aunt's house that everyone left to go to --
5 A Close by.
6 Q -- it was close by?
7 A Uh-huh.
8 Q Is that a yes?
9 A Yes.
10 Q Okay. Kind of in that same neighborhood, right?
11 A Yes.
12 Q Okay. At some point, did you, Mersey, and Myniece get
13 into Myniece's car?
14 A Yes.
15 Q And do you remember that being, like, a white Tahoe?
16 A Yes.
17 Q Do you remember at some point asking Myniece and
18 Mersey -- more so Myniece -- to stop over at a friend's house for
19 you?
20 A Yes.
21 Q Yes?
22 A Yes.
23 Q Okay. Do you recall where that house was located?
24 A Down Balzar.
25 Q Okay. I'm going to show you State's Exhibit Number 26,

1 already admitted, and publish by way of stipulation. And I'm going
2 to kind of zoom in here. You said it was down Balzar, right?

3 A Yes.

4 Q Do you remember it being on the corner of Balzar and
5 Lexington?

6 A Yes.

7 Q Okay. Now, was it your friend that lived at Balzar?

8 A Yes.

9 Q Okay. Was this friend a male or a female?

10 A A male.

11 Q And what is his name?

12 A Maurice.

13 Q Okay. Did you know Maurice from school?

14 A Yes.

15 Q Okay. Around what time did you all -- I mean, at some
16 point you asked your cousins to bring you there, right?

17 A Uh-huh. Yes.

18 Q Is that a yes? Okay. And did they?

19 A Yes.

20 Q Do you recall what time you all arrived at 1271 Balzar
21 Avenue?

22 A Like, around 7:30-ish.

23 Q Okay. And what happened when you all got there?

24 A When we got there, I got out the car first. Mersey and
25 Niecy were still in the car talking. I was outside with Maurice

1 talking. And then Myniece and Mersey got out the car and we was
2 all just talking. And then Mersey looked up, and she was, like, she
3 seen someone. And when she looked up, she was, like, who is
4 that? Or whatever, because they were just standing there looking at
5 us. And when Maurice turned around, he's just say, Run.

6 So we all ran. Mersey fell, Niecy fell. And me and
7 Maurice ran across the street, but I fell -- fell out of my shoes.
8 When I was on the ground, it was, like, a lot of bullets coming
9 towards me, so I was scared to get up. But I eventually end up
10 getting up and then hid in the shed. But it was someone following
11 us, so -- but they didn't see us after that.

12 We came out the shed and that's when I heard Myniece
13 screaming and my mom and then that's when I heard the
14 ambulance -- well, not the ambulance, the police. So it was --

15 Q Okay. So let's kind of flesh this out. Okay. You are
16 standing outside in, like, the yard area, front yard area of 1271
17 Balzar Avenue; is that right?

18 A Yes.

19 Q Okay. And where are you in that front yard area when
20 you're talking to Maurice and Myniece?

21 A Like, kind of by the door. It was like a fence in front of the
22 door, so we was right there in front of a car that was already parked
23 in the yard.

24 Q Okay. So there was a car parked in the yard?

25 A Yes.

1 Q I'm going to publish State's Exhibit Number 49, okay?

2 A Okay.

3 Q Does this exhibit show where you and Myniece and your
4 cousin Mersey were standing --

5 A Yes.

6 Q And can you take your mouse and kind of just point to the
7 area?

8 A Right there.

9 Q So, for the record, there's kind of an area between, like,
10 the front gated -- front porch area and a vehicle that's in that yard?

11 A Yes.

12 Q Okay. And as you are standing, where are you facing?
13 Because this house, as you've testified, is on the corner of
14 Lexington and Balzar; is that right?

15 A Yes.

16 Q Okay. So where are you facing or what direction are you
17 facing?

18 A So I'm facing, like, towards the house. As we, like, in a
19 circle talking.

20 Q Okay.

21 A Mersey and Niecy, like, right here.

22 Q Okay.

23 A So Mersey was the first one that seen someone this way.

24 Q Okay. Towards kind of that --

25 A The street.

1 Q The street?

2 A Yes.

3 Q Off of Lexington towards Balzar?

4 A Yes.

5 Q Okay. And so when Niecy -- when you heard Niecy say
6 who's that --

7 A Mersey.

8 Q I'm sorry. When you heard Mersey say, Who's that?, did
9 you physically turn your head to look towards the direction that she
10 was looking at?

11 A Yes.

12 Q Okay. And was that -- where was that location that you
13 drew your attention to?

14 A Right there on the sidewalk of Lexington.

15 Q Showing you State's Exhibit Number 28, already admitted
16 and published as State's Exhibit 28, does this show the area where
17 you looked towards when Mersey said who's that?

18 A Yes. It was over here.

19 Q Okay.

20 MS. BOTELHO: And so, for the record, she pointed kind of
21 towards, like, this dirt area between the beginning of the sidewalk
22 on Lexington and the orange traffic cones?

23 THE WITNESS: Yes.

24 BY MS. BOTELHO:

25 Q Okay. And so when you looked in that area, Ms. Tolefree,

1 what, if anything, did you see? Right when Mersey said, Who's
2 that?

3 A I seen a guy -- I seen one guy standing --

4 Q Okay.

5 A -- just staring at us.

6 Q Could you tell the race of this individual?

7 A African-American.

8 Q Okay. And you said a guy, so was he male?

9 A Yes.

10 Q Okay. And what, if anything, could you see in terms of
11 clothing?

12 A I seen a black hoodie and blue shorts.

13 Q Okay. And right as you looked over in that area and you
14 saw this individual, this male, what, if anything, did Maurice or
15 Myniece or Mersey say?

16 A Well, after he said run, wasn't no -- we just ran.

17 Q When you said he said ran, who is he?

18 A Maurice said ran.

19 Q Okay. When Maurice said run, did Maurice run?

20 A Yes.

21 Q And did you run?

22 A Yes.

23 Q What direction did you run?

24 A Out the yard, so, like, right here.

25 Q Okay. So across Balzar?

1 A Yes. Over here.

2 Q Okay. And let me see if I can get a better photo, okay?

3 A Uh-huh.

4 Q So showing you what has been marked and admitted as

5 State's Exhibits 38 and 39. What does State's Exhibit 38 show? Is

6 this Balzar Avenue? Drawing your attention to this traffic cone

7 and --

8 A Oh, yeah.

9 Q -- let me zoom in here.

10 A I see now. Yeah.

11 Q Okay.

12 A That's my shoe.

13 Q That's your shoe?

14 A Yes.

15 Q Okay. Now, you previously indicated to the jury that you

16 fell as you were running?

17 A Yes.

18 Q Okay. Was that when you were running across Balzar?

19 A Yes.

20 Q Okay. And did you lose a shoe while you ran?

21 A Yes, I lost the both of them.

22 Q Okay. Showing you State's Exhibit Number 39; does this

23 show the shoe that you left in the roadway?

24 A Yes.

25 Q Okay. Now, you said you feel; is that right?

1 A Yes.

2 Q And you indicated to the jury that you heard or saw strikes
3 on the ground near you --

4 A Yes.

5 Q -- is that right?

6 A Yes.

7 Q And were those gun strikes?

8 A Yes.

9 Q Okay. Did you see those gun strikes on the floor or on the
10 ground when you fell or as you were running?

11 A When I fell. So I was scared to get up.

12 Q Okay. Could you see where Maurice was at the time that
13 you fell?

14 A He was already across the street.

15 Q Okay. And at some point, did you get the courage to
16 stand up and run again?

17 A Yes.

18 Q Okay. Did you run towards Maurice?

19 A I ran towards -- I didn't see him no more. I just ran
20 towards, like, someone's back yard where it was open.

21 Q Okay. When you had fallen right on Balzar, okay?

22 A Uh-huh.

23 Q And you saw the strikes, did you ever look back towards
24 the house?

25 A I did.

1 Q And what, if anything, did you see?
2 A I seen, like, four or five guys.
3 Q Okay. And where were those four or five guys at?
4 Do I need to publish -- for the record, this is State's
5 Exhibit 28; can you use this exhibit to show us where the four or
6 five guys were standing?
7 A They were standing right here.
8 Q Okay. Right behind the car?
9 A Like, on the street towards --
10 Q Okay. So more on the street, directly, like, on the
11 intersection of Balzar and Lexington?
12 A Yes.
13 Q And there's the -- kind of that step up towards the
14 sidewalk; is that right?
15 A Yes.
16 Q Okay. So are you talking about that area right there?
17 A Yes.
18 Q Okay. And do they have anything in their hands?
19 A Yes.
20 Q What do they have?
21 A Guns.
22 Q Okay. Did you actually see those guns being fired when
23 you looked back?
24 A Yes.
25 Q Okay. And how many people did you see at the

1 intersection with the guns?

2 A Like, four or five guys.

3 Q Okay. And as you are, you know, running, once you got
4 up and crossed Balzar, did you ever look back to see if any of those
5 men were following you or coming towards your direction?

6 A No.

7 Q Okay. At some point in time, as you and Maurice were
8 kind of headed across Balzar, did you see Maurice fire a gun
9 towards these individuals?

10 A Yes. When I fell, that's when he fired back or -- yes.

11 Q Okay.

12 A Shot that one time.

13 Q You recall him shooting one time?

14 A Yes.

15 Q Okay. Did you know, prior to Maurice shooting that one
16 time, after -- while you fell, that Maurice had a gun that night?

17 A I didn't.

18 Q Okay. So you hadn't seen it up until that point?

19 A Yes.

20 Q Okay. And he fired it as you were on Balzar, after you had
21 fallen?

22 A Yes.

23 Q Okay. And so you indicated, then, that you crossed the
24 street and you found somewhere to hide; is that right?

25 A Yes.

1 Q Okay. And that place where you hid, was it -- I'm sorry if I
2 misheard it, but was it a shed, you said?

3 A Yeah.

4 Q Okay. And was it -- where was that shed located?

5 A Like, it was someone backyard over here -- this way.

6 Q Okay. So let me see if I can show a better photo. State's
7 Exhibit Number 87, does this show the backyard where you hid?

8 A So this house, like, back here.

9 Q Okay. And, for the record, it's the house right behind the
10 back end of this red looks like SUV shown in the picture?

11 A Yes.

12 Q But it was in the backyard of this house?

13 A Yes.

14 Q And in a shed?

15 A Yes.

16 Q Did this shed have a door?

17 A Yes.

18 Q And was it just you or did Maurice also end up in that
19 shed with you?

20 A It was me and Maurice.

21 Q Okay. So at some point you found each other again and --

22 A Yes.

23 Q -- ended up in the same shed?

24 A Yes.

25 Q Okay. And at any point in time while you both were in the

1 shed, did you have an opportunity to look out, you know, into that
2 yard area?

3 A Yes. So when we peeked out, I seen a guy, so he must
4 have -- was following us to try to see where we went.

5 Q Did this guy have a gun?

6 A I just seen a black shirt.

7 Q Okay. Do you recall the bottoms that this person was
8 wearing?

9 A No.

10 Q Okay. Could you tell enough about this person to
11 determine whether or not he was the same individual that you
12 initially saw in the corner, the first Black male adult with the hands
13 behind his back?

14 A They all had on black hoodies. So I knew it was, like, one
15 of them.

16 Q Okay.

17 A So when I peeked out, I seen him, and then that's when I
18 backed up.

19 Q Okay. But you couldn't tell whether that was the same
20 person that you saw initially or a different person in the group?

21 A It was one of the guys in the group.

22 Q Okay. How long would you say -- okay, so I'm sorry.

23 As you saw this person, where was this person that you
24 saw when you peeked out from the shed?

25 A Like, coming -- the same way we came.

1 Q Okay.

2 A So, like, that way.

3 Q Okay. So coming, you know, past that tree, kind of like by

4 a mailbox into the yard area?

5 A Yes.

6 Q Okay. Did this person -- was it a male or a female?

7 A A male.

8 Q Did this male stay in that area very long?

9 A After I just glanced at him, I didn't look back out --

10 Q Okay.

11 A -- until I heard the police or, you know.

12 Q Okay. And so you said, when you told us initially what

13 happened, that you heard Niecy screaming -- or Myniece

14 screaming?

15 A Yes.

16 Q Okay. Could you tell, you know, based on her screaming,

17 where she was as she was screaming?

18 A I could tell she was still at Maurice house.

19 Q Okay.

20 A It sound like it was close by.

21 Q Okay. And you indicated then that you then heard

22 someone else from your family screaming, as well.

23 A Yes. My mom.

24 Q Your mom?

25 A Yes.

1 Q Okay. Could you tell, you know, based on the screaming,
2 where your mom was directionwise?

3 A No. When I got out the shed and I went on that other back
4 street and I came this way and I made it to the circle park, I seen her
5 with the officer.

6 Q You saw who?

7 A I saw my mom with a police officer.

8 Q Okay. So let me publish State's Exhibit Number 26 again.
9 Now, this is 1271 Balzar, right, where my pen is at --

10 A Yes.

11 Q -- is that right?

12 A Yes.

13 Q Okay. And this particular exhibit, can you show us the
14 house that you ran to and hid in the backyard of?

15 A So is this Maurice house?

16 Q Yes. That's 1271 Balzar.

17 A So this house.

18 Q Okay. So, for the record, it's, like, the third house across
19 the street on Balzar; is that right?

20 A Yes.

21 Q Okay. And so you're hiding in the backyard in a shed?

22 A Yes.

23 Q Okay. At this location. And you indicated that when you
24 came out of the shed, you went towards Lubertha Johnson Park?
25 The circle park?

1 A Yes.

2 Q And that's where you saw your mom with a police officer?

3 A Yes.

4 Q And you were led to that location kind of because you

5 heard your mom screaming?

6 A Yes.

7 Q Okay. Did you return to the scene, 1271 Balzar Avenue,

8 that particular night?

9 A No.

10 Q Okay.

11 MS. BOTELHO: Brief indulgence, please.

12 Q Now, at some point --

13 MS. BOTELHO: Brief indulgence.

14 Q Showing you State's Exhibit Number 17, which is going to

15 be admitted by way of stipulation, publishing.

16 THE COURT: You may.

17 BY MS. BOTELHO:

18 Q Do you recognize this individual shown in State's Exhibit

19 Number 17?

20 A Yes.

21 Q And who do you recognize this individual to be?

22 A That's the first guy I seen when Mersey said, Who is that?

23 Q And was this the individual who had his -- when you

24 looked over, after Mersey said that, who had his hands behind his

25 back?

1	A	Yes.
---	---	------

2 Q Okay. When you looked up at the four or five people who
3 were at that corner with this individual shown in Exhibit
4 Number 17, could you tell how the other individuals were dressed?

5 | A They was all dressed in black shirts.

6	Q	Okay.
---	---	-------

7 MS. BOTELHO: Brief indulgence.

8 I have no more questions, thank you. I'll pass the witness.

9 THE COURT: Cross-examination?

10 MR. LEVENTHAL: Thank you.

11 **CROSS-EXAMINATION**

12 BY MR. LEVENTHAL:

13 Q Good afternoon, Ms. Tolefree.

14	A	Good afternoon.
----	---	-----------------

15 Q My name's Todd Leventhal, I represent Mr. Matthews.

16 On September 30th of 2006, you said that before you went
17 over to Maurice's house, you were at your grandmother's?

18	A	Yes.
----	---	------

19 Q And how far is the drive from your grandmother's to
20 Maurice's house?

21	A	Like, a two, three-minute drive.
----	---	----------------------------------

22 Q Okay. All in the same area?

23	A	Yes.
----	---	------

24 Q And you indicated that you had known Maurice for quite a
25 while, you were in school together?

1 A From school, yes.

2 Q You were in the same grade, same classes?

3 A We went to the same school, we wasn't in the same

4 grade.

5 Q Okay. And you knew Maurice pretty well?

6 A Not for years.

7 Q Okay. For at least a year?

8 A Yeah.

9 Q Okay. And you guys went to school together, right?

10 A Yes.

11 Q All right. And in that area around Balzar and Lexington,

12 you knew a lot of the people around there, right?

13 A Yes.

14 Q You indicated that you guys hung out together as your

15 peer groups, teenagers, right?

16 A Yes.

17 Q High schoolers, correct?

18 A Yes.

19 Q Okay. Now, you were shown a picture of this individual

20 and you indicated you had identified this individual as the person

21 that came around the corner?

22 A Yes.

23 Q Okay. He had his hands behind his back, right?

24 A Yes.

25 Q Okay. Now, you've never been able to identify

1 Mr. Matthews, have you?

2 A No.

3 Q You've never said that he was there, you never saw him
4 there, correct?

5 A Correct.

6 Q Okay. As a matter of fact, you indicated that the people
7 that were there were -- you thought were teenagers, they
8 were 15, 16 years old, 17 years old --

9 A Yes.

10 Q -- is what you said, right? Teenagers.

11 A Yes.

12 Q You indicated that they were all 5-6, 5-7 --

13 A Yes.

14 Q -- in height, correct?

15 A Yes.

16 Q Okay. And wearing, as you said today, black hoodies?

17 A Yes.

18 Q Okay. And, now, you indicated that you fell out of your
19 shoes --

20 A Yes.

21 Q -- correct?

22 A Yes.

23 Q Okay. And you were shown State's Exhibit Number 39,
24 that being your shoe?

25 A Yes.

1 Q When you say you fell out of your shoe, was that while
2 you were running, if you remember, or did you -- you said you
3 tripped, correct?

4 A While I was running, I fell out of my shoes and I fell.

5 Q You fell?

6 A Yes.

7 Q You fell on the concrete?

8 A Yes.

9 Q Did you -- you sustained some injuries, some scraping
10 from that fall?

11 A Yes.

12 Q Where did you sustain those injuries?

13 A My knee.

14 Q On your knees?

15 A And my hands.

16 Q I'm sorry?

17 A My knee and my hands.

18 Q And your hands?

19 A Yes.

20 Q So when you fell, your hands hit the cement or asphalt?

21 A Yes.

22 Q Okay. And your knees came down as well?

23 A Yes.

24 Q Do you remember what you were wearing that evening? I
25 know it's a long time ago.

1 A I don't.

2 Q Okay. Do you think it would have been in pants or maybe
3 a dress or shorts?

4 A Probably some shorts.

5 Q Shorts? Okay. And so you -- while you were running, you
6 tripped and your shoe fell out and you then injured your knee and
7 your hands. Then you ran -- you continued on running and left the
8 shoe, I would assume, right?

9 A Yes.

10 Q Okay. Now, I think you said on direct that you lost both
11 shoes?

12 A Yes.

13 Q Okay. Now, this is one shoe here; did you eventually get
14 your shoes back?

15 A No.

16 Q They were held for evidence?

17 A Yes.

18 Q Okay. Now, after all this had occurred, you stuck around
19 there in the area to give statements, correct?

20 A Yes.

21 Q Okay. And in your estimation, how many Metro police
22 officers, crime scene analysts, were there a lot of people saturating
23 that area?

24 A Yes.

25 Q Okay. When I say a lot, I don't want to put on -- don't

1 want you to put a number on it, but I say a lot, were there more
2 than, say, 20 people, 20 Metro officers?

3 A After I -- when I went to the circle park, I seen, like, three
4 [indiscernible] circle park, and I think it was more down Balzar. I
5 wasn't paying attention. I was just in shock.

6 Q I understand. But you remember a lot of officers in the
7 area?

8 A Yeah. Even before the shooting, they was in the area.

9 Q Okay. But I'm referring to after the shooting, when they
10 were -- do you remember them searching around for evidence?

11 A No. I don't recall. I --

12 Q You weren't there for that?

13 A No.

14 Q Okay. Now, you were shown State's Number 28, and you
15 recognize that corner house to be Maurice's house, correct?

16 A Yes.

17 Q Okay. And this is how you remember it, it's a picture of
18 that evening, correct?

19 A Yes.

20 Q And you indicated that the gentleman that you saw, the
21 people that you saw that did the shooting, they were -- they came
22 around where this yellow tape is on the right-hand side of the
23 picture and they came around where the cones are, correct?

24 A Yes.

25 Q And I think you've testified before that you saw them sort

1 of up on this area, correct?

2 A Yes.

3 Q Okay. So this area up in here, were you familiar with
4 Maurice's house before going there that evening?

5 A Yes.

6 Q Okay. And it was considered a very rocky -- almost
7 rocky -- this area is almost rocky and sandy in there, dirty?

8 A Yes.

9 Q Okay. Almost as if, looking at State's Exhibit 87 -- now,
10 you indicated you were hiding on this side in a shed, correct?

11 A Yes.

12 Q But these rocks down here, that was sort of like what
13 we're looking at -- would you know if these are the rocky area that
14 we're looking at here, the same sort of rocks?

15 A No. That's on two different sides.

16 Q I understand. But this area -- because we don't have a
17 close-up of this; is this just dusty, do you know? You were there,
18 right?

19 A It's rocks [indiscernible].

20 Q Okay. So it's rocky, like this area here? And I'm showing
21 you two different pictures.

22 A Yes, it was.

23 Q Okay.

24 A That, actually.

25 Q So just to clarify for the record, so I'm going to look at

1 State's 28, and I'm looking at the front of the house, this sort of
2 corner area, you're indicating was rocky and it would be an
3 example, like on State's 87, to the right-hand side, that sort of
4 rockiness, is --

5 A Yes.

6 Q Okay. Now, when you were able to look at the individuals
7 that were approaching you, you never saw anybody with a red
8 glove, did you?

9 A No, I didn't pay attention.

10 Q Okay. And when you looked down at their -- if you looked
11 at their feet, did you see anybody with no shoes on?

12 A I can't recall.

13 Q Okay. I appreciate your time. Thank you, Ms. Tolefree.

14 MR. LEVENTHAL: I have no further questions, Your
15 Honor.

16 THE COURT: Thank you.

17 Any redirect?

18 MS. BOTELHO: No, Your Honor. Thank you.

19 THE COURT: Okay. Thank you very much for your
20 testimony here today.

21 THE WITNESS: Thank you.

22 THE COURT: You may step down and you are excused.

23 And you may call your next witness.

24 MR. GIORDANI: Melvin Bolden.

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MELVIN BOLDEN,

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

THE CLERK: You may be seated. Please state and spell your first and last name for the record.

THE WITNESS: Melvin Bolden, M-E-L-V-I-N, B-O-L-D-E-N.

MR. GIORDANI: May I, Judge?

THE COURT: You may.

DIRECT EXAMINATION

BY MR. GIORDANI:

Q Good afternoon, sir.

A Hi.

Q I want to bring you way back to September 30th of 2006. On that date, who did you live with?

A Geishe Bolden.

Q And is that your now-wife?

A Yes.

Q Where did you live at the time, sir?

A 1284 Lawry Avenue.

Q Showing you now State's 26; can you see anything up on your screen, sir?

A Yes.

Q Zoom in here; do you see your home at --

A Yes.

Q -- 1284 Lawry?

1 A Yes.

2 Q That evening, sir, did you leave your home to go out to

3 dinner?

4 A Yes, sir.

5 Q And who did you go with?

6 A I went with Geishe, Steve, and Betty.

7 Q Who are Steve and Betty?

8 A They're friends of ours.

9 Q And did you drive in one vehicle or multiple vehicles?

10 A Just one.

11 Q All together?

12 A Yes.

13 Q In what vehicle, sir?

14 A It was my Lincoln Town Car.

15 Q Yours?

16 A Yes.

17 Q I want to show a couple of photographs here, tell me if

18 you recognize them.

19 Showing you State's 276; you recognize that, sir?

20 A Yes.

21 Q What is that?

22 A That's my Lincoln Town Car.

23 Q With the Nevada plate Nevada 723TLZ?

24 A Yes.

25 Q Showing you now State's 301; is that another view of your

1 Lincoln?

2 A Yes.

3 Q You didn't crash into that fire hydrant, I presume?

4 A No.

5 Q Did you at some point return home from dinner in that
6 Lincoln Town Car?

7 A Yes.

8 Q And were the same folks still with you, Geishe and Betty
9 and Steve?

10 A Yes.

11 Q Where were Betty and Steve sitting when you returned
12 home, sir?

13 A In the back seat.

14 Q And where was Geishe sitting and where were you
15 sitting?

16 A I was sitting in the front and Geishe was sitting in the
17 front.

18 Q Okay. Was there something unique about your vehicle
19 and the power steering?

20 A Yes.

21 Q Go ahead.

22 A The power steering wouldn't work. So once we got on
23 Lawry, I switched with Geishe so I can pull up into the driveway and
24 back in.

25 Q Okay. So once you get onto Lawry, you switched from the

1 front --

2 A Permission.

3 Q -- passenger seat into the driver's seat?

4 A To the driver seat, yes.

5 Q Okay. And your wife, then, moved over to the
6 passenger --

7 A Right. Right.

8 Q -- front passenger seat?

9 A Yes.

10 Q Did something of note draw your attention as you arrived
11 on Lawry or got out of the car?

12 A Yes. I heard some gunshots.

13 Q Could you tell where they were coming from?

14 A I just heard gunshots, seemed like it was, like, on the other
15 street.

16 Q Okay.

17 A Yeah.

18 Q On the other street where? Can you see it on this map or
19 what direction it was coming from on this map?

20 A Yeah. Like, Balzar.

21 Q Okay. So you heard the gunshots from up there; can you I
22 presume you didn't see the shooting?

23 A No.

24 Q Okay. What did you do when you heard the gunshots?

25 A I pulled in front of the house, I pulled up and I was backing

1 up, and I heard -- I seen someone running down the street. And
2 they came up to the car and told me to get out the car.

3 Q All right. I'll get to that in a moment. Let me show you
4 some more photographs, okay?

5 A Uh-huh.

6 Q I want to show you now State's 261; do you recognize
7 your home in this photograph?

8 A Yes.

9 Q And is this it here on the right?

10 A Yes.

11 Q From the way we're looking, is Balzar up --

12 A Yes.

13 Q -- the street --

14 A Yes.

15 Q -- in the center of the photo? Okay.

16 Now, I want to get a little closer to your home and show
17 you 260. Is that still your home?

18 A Yes.

19 Q Okay. Where is it that you would have been parking --
20 well, let me stop for a second.

21 There are other vehicles in your driveway, sir, correct?

22 A Uh-huh.

23 Q Is that a yes?

24 A Yes.

25 Q And those are clearly not the Lincoln that's crashed into

1 the fire hydrant, right?

2 A No.

3 Q Okay. And there's a gate that blocks your driveway?

4 A Yes.

5 Q Where is it that you were going to park when you heard
6 the gunshots?

7 A Right in the front of the house.

8 Q Shown in this photo?

9 A Yes.

10 Q Okay. And are all four of you back in the car when you
11 hear the gunshots?

12 A Yes.

13 Q And you've already switched seats with your wife?

14 A Yes.

15 Q Okay. Tell the jury what you recall happening after -- as
16 you begin to park your vehicle.

17 A Back in, as I'm getting out, back in -- I mean, back
18 backwards, on the right-hand side on the corner, coming down
19 Lexington, I see some guys running from this area where the
20 gunshots that I heard earlier. And they came to the car and told me
21 to get out the car.

22 Q Okay. So when you say you're backing in, are you going
23 back in towards this Mustang --

24 A Yes.

25 Q -- on the right?

1 A Yes. I'm backing -- yes.

2 Q So your --

3 A Yes.

4 Q -- your front would have been facing Lexington?

5 A Yes.

6 Q And the men that you saw were coming down Lexington?

7 A Yes.

8 Q And do they hook this corner?

9 A Yes.

10 Q And come toward you and your wife --

11 A Yes.

12 Q -- and your friends?

13 A Yes.

14 Q Okay. Describe what you recall happening from that
15 point, sir.

16 A They run up to the car. One guy came up to me on my
17 side, told me to leave the keys in the car and get out the car.

18 Q Did you comply?

19 A Yes.

20 Q Do you remember anything about what that guy was
21 wearing?

22 A Yes. They was wearing dark t-shirts, dark-color pants, and
23 I remember they had some red-and-black gloves on.

24 Q Okay. And you said they, sir. Are you referring to
25 multiple different guys had dark t-shirts and --

1 A Yeah, it's, like, four guys.

2 Q As you sit here today, obviously 15 years later, do you
3 recall it being four guys that approached you in a group?

4 A Yes.

5 Q Okay. And do you recall all of them wearing dark
6 clothing?

7 A Yes.

8 Q Okay. The man that approached you, did he have
9 anything in his hands?

10 A Yes. A gun.

11 Q Okay. Can you describe that to the best of your ability?

12 A Yes. It was, like, a 9mm.

13 Q Okay.

14 A Handgun.

15 Q For maybe the jurors who might not know about guns, are
16 you talking about a pistol or --

17 A Pistol.

18 Q -- a long gun?

19 A Yeah, pistol.

20 Q Okay.

21 A Uh-huh.

22 Q And did he approach you on the driver side?

23 A Yes. And, as a matter of fact, he shot the gun one time
24 before he approached me.

25 Q Okay.

1 A Yeah.

2 Q Shot it how?

3 A Just shot in the air.

4 Q All right. Didn't point it at you, just shot it straight up in
5 the air?

6 A Just shot it straight up before he came to me.

7 Q Okay.

8 A Yeah.

9 Q So that man's making a demand for your car?

10 A Yes.

11 Q Did you comply with his demands?

12 A Yes.

13 Q Where are the other four guys -- or the other three guys, I
14 apologize -- that were with him?

15 A They was getting in the back, back seat.

16 Q Did you see other men with guns?

17 A Yes. One on the right-hand side, when I got out the car.
18 When I got out the car and everybody had left the car, he had, like,
19 a big gun, like a sawed-off shotgun, something like that --

20 Q Okay.

21 A -- get into the back seat.

22 Q Okay. And that -- was that on your side of the vehicle?

23 A That was on the other side.

24 Q The other side?

25 A Yes.

1 Q Okay. And you indicated previously there were four guys.
2 So you've described seeing two guns; did you see any other guns --

3 A No.

4 Q -- at that point?

5 A At that point I didn't.

6 Q Do you recall anything else descriptive about the men that
7 you saw, their approximate age, their approximate heights,
8 anything like that?

9 A Yes. They was around about -- they was in the, maybe,
10 late teens, 17, 18, somewhere in there.

11 Q Okay.

12 A And that was about my height.

13 Q Okay.

14 A Yeah.

15 Q How tall were you back then, 15 years ago?

16 A About 5-7.

17 Q Okay. Do you recall mentioning -- you've testified
18 multiple times in this case; is that right?

19 A Yes.

20 Q Do you recall mentioning previously that you were
21 wearing boots that night?

22 A Yes, I think I did.

23 Q Okay. And if you want me to show you in your prior
24 statements, I can show you. Do you recall, though, specifically
25 mentioning that --

1 MR. LEVENTHAL: Judge, I'm going to object as to
2 leading.

3 THE COURT: Yeah, you are leading.

4 MR. GIORDANI: Okay. Let me rephrase that.

5 BY MR. GIORDANI:

6 Q Have you previously described having been wearing
7 boots that evening?

8 MR. LEVENTHAL: Objection. Leading. He can ask him
9 what he wore.

10 THE COURT: That's still leading.

11 MR. GIORDANI: Okay.

12 BY MR. GIORDANI:

13 Q Do you remember what you wore on your feet that night?

14 A It's been -- I had on -- I think I did have some black boots
15 on, though.

16 MR. LEVENTHAL: Judge, I'm going to ask that that be
17 stricken. He says he thinks. I think he's speculating. If he doesn't
18 remember, he can refresh his recollection.

19 THE COURT: Well, overruled.

20 MR. GIORDANI: Okay.

21 THE COURT: You can proceed.

22 BY MR. GIORDANI:

23 Q Regardless, sir, have you attempted to give your best
24 recollection of the size of the individuals --

25 A Yes.

1 Q -- who car-jacked you?

2 A Yes.

3 Q Okay. Now, do you recall where your wife and your two
4 friends from the back seat went as this is all happening?

5 A I know I seen Betty and Steve running through the gate.

6 Q Okay.

7 A And Geishe did too, but I didn't notice. She was in the,
8 you know, I thought she was in the car with them when they took
9 off. But, no, Betty and Steve was in the front. Then as I looked
10 farther, I seen Geishe was on the front too, in front of the Cadillac.

11 Q Okay.

12 A Uh-huh.

13 Q How quickly would you estimate this car-jacking
14 happened from start to finish?

15 A About four minutes. Four or five minutes.

16 Q Minutes?

17 A Yeah. Not even minutes. It was, like, maybe seconds. To
18 me, it seemed like it was, like, about 30 seconds, somewhere in
19 there.

20 Q Okay. And I understand it was a long time ago.

21 A Yeah.

22 Q Do you recall when you got out of the car, anyone putting
23 a gun to your head?

24 A Yes.

25 Q Okay.

1 A The guy that took the car, told me to leave the keys in the
2 car.

3 Q Okay.

4 A Yes.

5 Q And was that a short gun or a long gun?

6 A That's a short gun.

7 Q Okay.

8 A Uh-huh.

9 Q Did you then turn your back and go around to that --

10 A Yes.

11 Q -- I guess around the vehicle to your home?

12 A Around to -- yes.

13 Q Okay. When you went around -- turned your back and
14 went around to your home, you thought Geishe was still in the car?

15 A Was in the car, yes.

16 MR. LEVENTHAL: Judge, objection. Leading again.

17 THE WITNESS: Yes, I thought she was in the car.

18 THE COURT: And if we could just have one person at a
19 time, because the court recorder at some point is going to have to
20 prepare a transcript, and you're -- just wait for the district attorney
21 to ask the question --

22 THE WITNESS: Okay.

23 THE COURT: -- before you respond.

24 You may proceed.

25 MR. GIORDANI: Thank you, Your Honor.

1 BY MR. GIORDANI:

2 Q When you turned your back and went towards your home,
3 do you recall where Geishe was or if you knew where she was at
4 that point?

5 A At that time, I thought she was in the car.

6 Q Okay. Understood.

7 Eventually, do the men get inside your vehicle?

8 A Yes.

9 Q Juveniles or men or whatever you want to refer to them.

10 A Juvenile. Yeah.

11 Q Did you see all four of them get in?

12 A Yeah, I seen two for sure.

13 Q Okay.

14 A One that got me out the car in the front, and I seen one go
15 to the back.

16 Q Okay.

17 A Uh-huh.

18 Q Did you see anybody not get in the car, is what I'm
19 asking?

20 A No, I didn't see nobody not get in the car.

21 Q Okay. And then what happened from there?

22 A Well, I went up to -- because Geishe was calling 911 and
23 Betty was having, like, a seizure or something like that. We finally
24 got into the house and called the police -- I mean, when the police
25 started, you know, waiting for the police to come. And after that,

1 when the police came, they had us fill out reports and everything.
2 And ambulance came.

3 Q Okay. And you said Betty was having a seizure?

4 A Yeah, she was having, like, a --

5 Q Was that happening out here?

6 A Yeah. She had, like, a seizure. She was going through
7 something, you know, when all that was going on. I got it -- I guess
8 it made her really scared, you know, whatever.

9 Q Sure. All right.

10 Thank you very much, sir.

11 MR. GIORDANI: I'll pass the witness, Your Honor.

12 THE WITNESS: Okay.

13 THE COURT: Cross-examination?

14 **CROSS-EXAMINATION**

15 BY MR. LEVENTHAL:

16 Q Good afternoon, Mr. Bolden.

17 A Hi.

18 Q My name is Todd Leventhal. I represent Mr. Matthews.

19 How are you today?

20 A I'm fine.

21 Q Very good. So, Mr. Bolden, you indicated that on the
22 September 30th, you were coming back from dinner, correct?

23 A Yes.

24 Q Okay. And you were driving with your friends and your --
25 now she's your wife?

1 A Yes.

2 Q Okay. She was your girlfriend at the time?

3 A Yes.

4 Q Okay. And you had some problems with the car, so you
5 switched, right?

6 A We switched, Your Honor.

7 Q And you backed it in where we saw that you had backed
8 in your vehicle, right?

9 A Yes.

10 Q And so when you backed in your vehicle, I'm going to
11 show you State's -- it's marked 260. When you backed in your
12 vehicle, you just were shown this picture by the State, correct?

13 A Yes.

14 Q Okay. So when you backed in your vehicle, the driver's --
15 your driver-side door would be adjacent more into the -- not next to
16 the curb, but away from the curb, right?

17 A Yes. Yes.

18 Q Okay. So when you exited the vehicle, you actually exited
19 on the street, correct?

20 A Yes.

21 Q Okay. So you weren't up on a curb, right? And then that
22 curb is about, what, three inches there?

23 A Yes. Somewhere -- yeah.

24 Q Okay. Now, I want to talk to you about -- if you can
25 remember exactly how this person came -- I want to talk to you

1 about how this person came up to you; is that okay?

2 A Yes, that's fine.

3 Q Okay. So you were -- were you actually exiting the -- had
4 you already parked and put the car in park when these -- the person
5 came up to you?

6 A Yes. I'd already put the car in park.

7 Q Okay. Was it --

8 A The car was still running.

9 Q Still running but in park?

10 A Yes.

11 Q Had your door been opened yet?

12 A No, not yet.

13 Q Okay. So when the people -- when the person came over
14 to you, you saw somebody shoot a pistol into the air --

15 A In the air.

16 Q -- right?

17 A Yes.

18 Q How far away were you, if you can remember, did that
19 person shoot the pistol into the air?

20 A He was in front of the hood.

21 Q In front of it. So within four feet?

22 A Somewhere in there, yeah.

23 Q Okay. And so he was in front of your hood, and then he
24 kept continuing around to where you were --

25 A Yeah, to my side.

1 Q -- right?

2 A To my side. Yes.

3 Q Okay. And then at some point, you opened the door or
4 did he open the door?

5 A No, I opened it.

6 Q You opened it?

7 A Yes.

8 Q And was he standing sort of in front of you when you
9 opened the door?

10 A Yeah, he was standing with the gun on me like this.

11 Q Okay. So when you got out of the car, you became almost
12 face to face with him, right?

13 A Yes.

14 Q Okay. And you were able to determine that he was -- and
15 you indicated this several times, and you're 5-foot -- I'm sorry, how
16 old?

17 A I'm 5-foot-7.

18 Q You're 5-foot-7. You've indicated on multiple times that
19 the person that came to you was either 5-foot-7 or shorter, correct?

20 A Or shorter, uh-huh.

21 Q So you're face to face, almost eye-level with him as you're
22 getting out of the car and moving aside so that he can get in?

23 A Yeah, with my hands like this.

24 Q Your hands were like this?

25 A Yeah. Uh-huh.

1 Q Okay. And you never once looked up to him, right?

2 A No.

3 Q Okay. You were looking either eye to eye, or a little bit

4 down, you said?

5 A Yeah, trying to get out the car.

6 Q Okay.

7 A Just trying to get out the car.

8 Q I understand.

9 A I wasn't trying to look at nobody, just trying to get out the

10 way.

11 Q Okay. You've lived in this area for how long back in '06?

12 A 20-some years.

13 Q 20 years you'd been in that area?

14 A Well, back and forth.

15 Q Okay. When you say back and forth, what do you mean?

16 A I moved out before. I lived with previous, you know, girls

17 and, you know. But the majority of the time, I lived there.

18 Q Okay. That house -- do you own that house?

19 A No, no, no. That's my father's house.

20 Q Oh, it's your father's house? Okay.

21 A Yes.

22 Q So prior to in '06, this September date, prior to that,

23 you've been in that area -- you didn't grow up there, though, did

24 you?

25 A Yes.

1 Q Oh, you did grow up there?

2 A Yes.

3 Q You went to high school there?

4 A Yes.

5 Q Okay. So you know a lot of people in the area?

6 A Yes.

7 Q Okay. Now, I want to talk about -- you indicated that

8 they -- the person that came to you was wearing a dark t-shirt and

9 dark-color pants --

10 A Yes.

11 Q -- is what I wrote down, right?

12 A Yes.

13 Q That's what you remember, right?

14 A Yes.

15 Q And, again, you were within a foot of this person, right?

16 A Yes.

17 Q Subway. You getting out of the vehicle, then getting in,

18 right?

19 A Yes.

20 Q Okay. And, now, you indicated that there was red and --

21 and you say and black gloves --

22 A Yes.

23 Q -- and I want to break that down. Are you indicating that

24 the gloves were -- one glove was red and black? Or was a --

25 A No, no. No.

1 Q -- he had the red one and a black one or --
2 A Red on one side and black on the other side.
3 Q Red -- when you say red on -- red on the palm or red on
4 the back?
5 A Red on the top.
6 Q Top? So the top was red?
7 A I do believe the red was on the top or the bottom. I think
8 it was on the top.
9 Q Take your time, this is important. So red was on the top,
10 you remember, black was on the bottom?
11 A I do believe, yes.
12 Q Do believe. Because you said red and black.
13 A Yes.
14 Q So I'm just trying to figure out if it's red and black, or like I
15 said, one glove that had two separate colors.
16 A Yes.
17 Q That's what it was, one glove that had two separate
18 colors?
19 A Yes.
20 Q And you're sure that the person that got into the car had a
21 black, on the palm, red on the back of his glove?
22 A I know with red and black. I'm not sure which side was
23 the red and which side was the black.
24 Q Okay. So you're sure that it was a multi-colored glove,
25 red-and-black, but you're not sure which one it was --

1 A Yeah, which side.

2 Q -- either red on the back -- right?

3 A Right. Right.

4 Q Am I getting that correct?

5 A Right.

6 Q Okay. But you're sure that -- now, did he have two gloves

7 on or just one?

8 A I guess he had to have on two. It was two. It was two

9 gloves. It was two gloves.

10 Q Two gloves?

11 A Yeah.

12 Q Both colored multi -- two different colors --

13 A Yes, yes.

14 Q -- on both of them. Not sure which one?

15 A Yes. Yes.

16 Q Do you remember if these were sort of like baseball

17 gloves or do you have -- I know it's been a while and I apologize.

18 But do you remember if they were, like, more like baseball -- batting

19 gloves or you don't remember?

20 A I don't remember.

21 Q Okay. That's okay. But you do remember each glove, two

22 gloves --

23 A Yeah.

24 Q -- [indiscernible].

25 A Yeah.

1 Q Okay. Now, this individual that you -- he didn't have --
2 you never -- you were questioned by the police, correct?

3 A Yes.

4 Q As a matter of fact, that evening, you were wearing -- I
5 think you were wearing a black shirt, correct?

6 A Yes, I had a black shirt on.

7 Q You had a black shirt on that night --

8 A Yes.

9 Q -- right?

10 A Yes.

11 Q Okay. And so you were questioned by the police as to
12 that evening as to what you saw and to the best of your ability to
13 identify this person, right?

14 A Yes. Yes.

15 Q And you indicated that we sort of went through a couple
16 of things, just that he was 5-foot-7 or shorter. Did you see this
17 person have -- you know what cornrows are?

18 A Yeah, braids?

19 Q Yeah. You never indicated this person ever had
20 cornrows?

21 A No.

22 Q Right? No.

23 A No.

24 Q You didn't see that --

25 A I didn't see that.

1 Q -- in the person that got into the -- no. Okay.
2 And you talked about this sawed-off shotgun, right?
3 A Yes.
4 Q The person who got into the car, into the driver side --
5 A Uh-huh.
6 Q -- this person that was your height with a multi-color
7 glove, he had -- he didn't have a sawed-off shotgun, did he?
8 A Yes, the one in the back seat.
9 Q No, no, the person that got into the driver seat?
10 A Oh, no, no, no, no. No, no.
11 Q Okay. It was the person that was on the passenger side --
12 A Yes. Yes.
13 Q -- got into the back seat --
14 A Yes.
15 Q -- or front; do you remember?
16 A He got in the back.
17 Q Back seat, he had a sawed-off shotgun?
18 A Yes.
19 Q But the person, the driver, did not have a sawed-off
20 shotgun then?
21 A No.
22 Q He had the gun and he fired it in the air --
23 A Yes.
24 Q -- correct?
25 A Yes. Yes.

1 Q And I think you were -- you've already indicated that you
2 approximated their age at 16, 17 years old, teenagers, right?

3 A Yeah.

4 Q Right?

5 A Yes.

6 Q Okay. And again, you've been in this area all your life, so
7 you -- and it was 15 years ago, you were able to identify at least that
8 and their height and the gloves and all of that, correct?

9 A Yes.

10 Q Okay. Thank you very much, Mr. Bolden. I have nothing
11 further.

12 A Okay.

13 THE COURT: Any redirect?

14 MR. GIORDANI: Very briefly.

15 **REDIRECT EXAMINATION**

16 BY MR. GIORDANI:

17 Q So everyone's clear here, you didn't provide a description
18 of anyone's hair?

19 A No.

20 Q Back then, didn't see --

21 A No.

22 Q -- anyone's hair, right?

23 A No.

24 Q So when Mr. Leventhal says, well, the guy -- the driver
25 didn't have braids in his hair, did he?

1 A No.

2 Q That's actually --

3 A Not --

4 Q -- not accurate, right?

5 A No.

6 MR. LEVENTHAL: Objection. He's leading the witness
7 again, Your Honor.

8 THE WITNESS: No, it's not --

9 THE COURT: Yeah.

10 THE WITNESS: It's not.

11 THE COURT: You are leading --

12 MR. LEVENTHAL: He is.

13 THE COURT: -- the witness.

14 MR. GIORDANI: Okay.

15 BY MR. GIORDANI:

16 Q Did you see or could you give a description of the hair of
17 any of these guys?

18 A No, no.

19 Q Thank you.

20 MR. GIORDANI: I'll pass the witness.

21 THE COURT: Any recross?

22 MR. LEVENTHAL: Nothing further, Your Honor. Thank
23 you.

24 THE COURT: Okay. Thank you very much for your
25 testimony here today.

1 THE WITNESS: Okay.

2 THE COURT: You may step down and you are excused
3 from your subpoena.

4 And you may call your next witness.

5 MR. GIORDANI: Geishe Bolden.

6 **GEISHE BOLDEN,**

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

9 THE CLERK: You may be seated. Please state and spell
10 your first and last name for the record.

11 THE WITNESS: Geishe Bolden, G-E-I-S-H-E, B-O-L-D-E-N.

12 MR. GIORDANI: May I?

13 THE COURT: You may.

14 **DIRECT EXAMINATION**

15 BY MR. GIORDANI:

16 Q Ms. Bolden, did you have a former last name of Orduno?

17 A Yes.

18 Q Is that O-R-D-U-N-O?

19 A Yes.

20 Q And are you now married to Mr. Melvin Bolden?

21 A Yes.

22 Q I want to bring you back to September 30th of 2006.

23 Where were you living at that time?

24 A On Lawry, 1284 Lawry.

25 Q And who were you living there with?

1 A Melvin Bolden.

2 Q That evening, September 30th, did you go out to dinner
3 with some folks?

4 A Yes.

5 Q Who did you go out to dinner with?

6 A Me, Melvin, and Betty, and Steve.

7 Q Betty and Steve, are they still with us?

8 A No, they passed on.

9 Q Both of them passed?

10 A Both of them, uh-huh.

11 Q I want to talk to you about what happened when you
12 arrived home. What vehicle were you in when you arrived at your
13 home that evening after dinner?

14 A We were in our Lincoln Town Car.

15 Q And were you driving?

16 A I drove from Main Street Casino, that's where we had
17 dinner, and then the power steering was hard to drive, so me and
18 Melvin switched, and he continued to drive to the house.

19 Q Okay. Do you remember where you were when you
20 switched?

21 A Like, on Lawry.

22 Q Okay. Relatively close to your home?

23 A Yes.

24 Q Let me show you 360.

25 A Okay.

1 Q Is that your home back then?

2 A Yes, it was.

3 Q Describe what happened when you -- after you switched.

4 A So we switched halfway down the street.

5 Q Okay.

6 A Then he drove up, so on the way driving, we heard
7 gunshots. And I told Melvin to keep driving, but he started to park
8 in front of the Mustang, in front of the house. So he backed, like,
9 up. And he went up and then he backed that, and that's when we
10 saw them running around the corner. We was right here parked,
11 right here. And then said get out the car, get out the car. So I was
12 on the passenger side, Melvin was driver's side, and Betty and
13 Steve were in the back seat.

14 Q Okay. Let me stop you for a moment now.

15 A Uh-huh.

16 Q You indicated that Melvin parked and kind of backed in
17 here. Was the back end of your vehicle --

18 A Yes.

19 Q -- up against the front of --

20 A Uh-huh. And --

21 Q -- this Mustang?

22 A Yes.

23 Q And you said those -- there were some people running;
24 did the come down off Lexington?

25 A Yes.

1 Q And at that point in time, are you backed in and pretty
2 much parked at that point?

3 A Pretty much, yeah. Yeah.

4 Q Describe what you remember seeing from there?

5 A So from there, from the corner to the car, they're get out
6 the car, get out the car. And I was on the passenger side. And he
7 had a gun, red gloves on, dark clothes, and kind of like slumped
8 over. I got out the car, ran into the yard, and the car that's parked in
9 the driveway, I hid in front of it.

10 Q Okay. So let me break that down a little bit, okay. First
11 you said they were running; how many people were running in that
12 group?

13 A I saw four.

14 Q Okay. So four folks in a group?

15 A Uh-huh. Yes.

16 Q And do you recall their race or racial --

17 A They're African-American.

18 Q Okay. Do you recall their approximate ages?

19 A We could say maybe teenagers, maybe early 20s.

20 Q Okay. And you -- then you said he had a gun, a black
21 shirt, and red gloves, and he was slouched or slumped over?

22 A Yeah, like, slumped over kind of right here.

23 Q When you say right here, are you referring to this
24 sidewalk there?

25 A Yeah. Like, if the car's there, so, like, on my side, the

1 passenger side. So I got out and the in went into the yard and I hid
2 behind the Cadillac.

3 Q Okay.

4 A And I called 911.

5 Q Okay. So just back up for a moment here.

6 A Uh-huh.

7 Q Did the person that you saw that was slumped over with
8 the black shirt and the red gloves have a gun?

9 A Yes.

10 Q Can you describe that gun to the best of your ability as
11 you sit here?

12 A To my ability, it was, like, this long.

13 Q Okay. You're holding your fingers about a foot --

14 A Yeah.

15 Q -- maybe foot and a half apart?

16 A Yeah.

17 Q Can you I ask you, do you know the difference -- well, do
18 you know what a pistol is, a handgun?

19 A Yeah.

20 Q Was it a handgun or something larger?

21 A Larger.

22 Q Okay. And he approached you and you're getting out of
23 the passenger side of the vehicle?

24 A Yes.

25 Q When you get out, do you turn your back and head up to

1 where you just described?

2 A Yeah, I got out and ran -- yeah. So my back --

3 Q And then did you see where Melvin and your friends from
4 the back seat, what happened with them, or did you just have your
5 back turned?

6 A Well, Betty was with me.

7 Q Okay.

8 A I think -- as soon as I got out, Betty got out and we both
9 ended up in the front. Melvin and Steve, I didn't see which way
10 they all went.

11 Q Okay. And so the four men that approached you all, did
12 they shoot a gun?

13 A I heard one gunshot after I hid in the driveway.

14 Q All right. When you hid in the driveway, ma'am, do you
15 recall, were you able to see if any of those four men got in the car?
16 And if so, how many?

17 A No, I didn't.

18 Q Did you see anyone from that group run in any other
19 direction after you turned your back?

20 A No, I did not.

21 Q And were those men there after your car took off?

22 A No.

23 Q Did something happen with Betty that evening?

24 A Yeah. After we went to the house, Betty started to have a
25 seizure.

1 Q Okay.

2 A So I was already on the phone with 911.

3 Q Okay. And did police ultimately arrive, ma'am?

4 A Yeah. At first, they kept passing us by. And I told the 911
5 operator, and then he told me something had happened in the
6 house behind us, and then they'll be there shortly. And I told them
7 that Betty was having a seizure. So the paramedics did come to our
8 house.

9 Q Okay. And did the police also arrive eventually --

10 A Yes.

11 Q -- and interview you, et cetera?

12 A Yes.

13 Q Do you recall them looking for cartridge cases?

14 A Yes.

15 Q Did you see them recover that cartridge case from the
16 gunshot?

17 A No, I did not. But I was still in the -- I went -- I was in the
18 house.

19 Q Okay. So, to your knowledge, you don't know?

20 A No, if they recovered? No.

21 Q Understood.

22 MR. GIORDANI: Court's indulgence.

23 Thank you very much, ma'am.

24 And I'll pass the witness, Your Honor.

25 THE COURT: Cross-examination?

1 MR. TANASI: Thank you, Your Honor.

2 May I proceed, Your Honor?

3 THE COURT: You may.

4 MR. TANASI: Thank you.

5 **CROSS-EXAMINATION**

6 BY MR. TANASI:

7 Q Good afternoon, Ms. Bolden.

8 A Good afternoon.

9 Q I'm Rich Tanasi, I represent Mr. Matthews. I have a few
10 questions for you on cross, fair?

11 A Uh-huh.

12 Q All right. So on September 30th, 2006, you were sitting in
13 your Lincoln Town Car, fair?

14 A Yes.

15 Q Okay. And that four-door, right?

16 A Yes.

17 Q All right. And it's kind of like a silver or a gray, fair?

18 A Yes.

19 Q And you're with your boyfriend at the time, Melvin, right?

20 A Right.

21 Q You guys have since married, right?

22 A Yes.

23 Q Congratulations.

24 A Thank you.

25 Q He was in the driver seat, right --

1 A Yes.

2 Q -- to start? And that was at the time rather to park the car,

3 correct?

4 A Yes.

5 Q So he took over kind of parking duties, right?

6 A Yeah, because the power steering doesn't work.

7 Q Understood. Originally, you -- and then you were seated

8 in the passenger seat, fair?

9 A Yes.

10 Q Okay. Front side, right?

11 A Yes.

12 Q And then you heard shots, correct?

13 A Correct.

14 Q All right. You saw one person with a sawed-off-shotgun,

15 right?

16 A Yes.

17 Q Okay. He came to your side of the car, fair?

18 A Yes.

19 Q Okay. Did not see that person's face though, right?

20 A No.

21 Q Okay. Just recall that they were wearing dark clothing,

22 fair?

23 A And red gloves.

24 Q Dark clothing and red gloves, correct?

25 A Uh-huh.

1 Q Two gloves, right?
2 A Yes.
3 Q Okay. The gentleman was slender, fair?
4 A Yeah, you could say that.
5 Q Okay. And African-American, correct?
6 A Yes.
7 Q All right. But again, two gloves, right?
8 A I'm sorry?
9 Q Two red gloves, correct?
10 A Yes.
11 Q All right. One on each hand, right?
12 A Correct.
13 Q All right. All the individuals you saw had long pants on,
14 correct?
15 A Yes.
16 Q All right. And they were dark pants, right?
17 A Yes.
18 Q Now, you are 5-foot-5, correct?
19 A Correct.
20 Q All right. And the person that you saw with the shotgun --
21 A Uh-huh.
22 Q -- was either your height or shorter, fair?
23 A Correct.
24 MR. TANASI: Court's indulgence.
25 Pass the witness, Your Honor.

1 THE COURT: Thank you.

2 Redirect?

3 MR. GIORDANI: No. Thank you, Your Honor.

4 THE COURT: Okay.

5 MR. GIORDANI: Oh, I'm sorry. One -- brief indulgence. I
6 might have about two questions. I apologize.

7 **REDIRECT EXAMINATION**

8 BY MR. GIORDANI:

9 Q Ma'am, do you -- previously -- and this is page 8 of the
10 voluntary statement -- recall saying that the man that approached
11 you might be a little bit taller than you?

12 A Yes.

13 Q Not shorter than you?

14 A Yes.

15 Q Okay. And you've indicated here in front of the jury that
16 the man that approached you with the long gun was --

17 A Yeah.

18 Q -- slouching, right?

19 A Uh-huh.

20 Q Is that a yes?

21 A Yes.

22 Q Okay. So you -- is it fair to say that you're providing the
23 best estimate you can of --

24 MR. TANASI: Objection, the --

25 ///

1 BY MR. GIORDANI:

2 Q -- the person's height?

3 MR. TANASI: Overruled. You can proceed.

4 THE WITNESS: Yes.

5 MR. GIORDANI: I'll pass the witness.

6 THE COURT: Any recross?

7 MR. TANASI: Briefly, Your Honor.

8 **RECROSS-EXAMINATION**

9 BY MR. TANASI:

10 Q Ma'am, we just want to get the height down here for a
11 second, okay? Again, you're 5-5, fair?

12 A Yes.

13 Q And you testified just a moment ago before Mr. Giordani
14 asked you questions that the individual you described with the red
15 gloves was shorter than you, fair?

16 A I mean, so --

17 Q Yes -- yes or no, ma'am.

18 A -- if you're --

19 Q Today's testimony, you testified that the man with the red
20 gloves was shorter than you, fair?

21 A Shorter or a little taller than me.

22 Q Well, those are two totally different things, right? So I just
23 want to get to the bottom of which one it is. Was he either shorter
24 than you or taller than you?

25 A Like, when he slumped over, shorter than me.

1 Q Today you testified he's shorter, fair?

2 A Fair.

3 Q Okay. You also testified in a prior proceeding, 2006, you
4 were asked:

5 And would you say that the person on your side of the
6 car, sawed-off shotgun, was shorter than you or taller than you?

7 And you said:

8 Probably the same height or a little shorter.

9 Fair?

10 A Fair.

11 Q Okay. And that was in 2006, right?

12 A Right.

13 Q When the events in question were fresher in your mind,
14 fair?

15 A Fair.

16 Q Fresher than today, right? Fair?

17 A Fair.

18 Q All right.

19 MR. TANASI: Pass the witness. Thank you, Your Honor.

20 THE COURT: Anything else from this witness?

21 MR. GIORDANI: Not on behalf of the State.

22 THE COURT: Okay. Thank you very much for your
23 testimony here today and you may step down and you are excused
24 from your subpoena.

25 You may call your next witness.

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MR. GIORDANI: Brad Cupp.

BRADLEY CUPP,

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

THE CLERK: You may be seated. Can you please state and spell your first and last name for the record.

THE WITNESS: Yes. It's Bradley, B-R-A-D-L-E-Y, Cupp, C-U-P-P.

MR. GIORDANI: May I, Your Honor?

THE COURT: You may.

DIRECT EXAMINATION

BY MR. GIORDANI:

Q Good afternoon, sir.

A Good afternoon.

Q How are you employed?

A I'm currently employed as a police sergeant with the Las Vegas Metropolitan Police Department.

Q And in what unit are you currently assigned?

A I currently supervise our technical and surveillance squad.

Q How long have you been with Metro, sir?

A About 18 years.

Q And in your 18 years with Metro, have you done various, I guess, jobs or roles?

A Yes, sir.

Q Back in 2006, what were you doing?

1 A In 2006, I was in patrol at Bolden Area Command. I was
2 assigned to our problem-solving unit, or PSE squad.

3 Q I want you to describe, first off, what a patrol officer is?

4 A So a patrol officer is generally an officer that's assigned to
5 an area command that answers, generally, calls for service.
6 However, within that area command, there are specialized squads
7 that target specific problems within a -- within that area, in a
8 plainclothes capacity.

9 Q Okay. So let's break that down a little bit. First, you
10 indicated you were assigned to Bolden Area Command.

11 A Yes, sir.

12 Q What geographic area does that entail?

13 A It's -- at the time, it was the was the area from I-15 to west
14 to Jones, and then south to I believe it went down to Desert Inn,
15 and then north to Cheyenne.

16 Q Okay. And did that area include Balzar and Lexington?

17 A Yes, sir, it did.

18 Q And how long did you say you were assigned to that area
19 command?

20 A I was there for approximately three years as an officer.

21 Q Okay. So you're there for approximately three years as an
22 officer, and then a portion of that time, you're in this
23 problem-solving unit?

24 A Yes, sir, that's correct.

25 Q And as an officer with Bolden Area Command, before you

1 were -- with the problem solving unit, did you patrol those streets?

2 A Yes, sir, I did.

3 Q Do you believe that you were familiar with that area at
4 that --

5 A Yes, sir.

6 Q Were you familiar with a person by the name of Jemar
7 Matthews?

8 A Yes, sir, I was.

9 Q Can you look around this courtroom and tell me do you
10 see Mr. Matthews in court today?

11 A Yes, sir. He's sitting right there. He looks a little different
12 than he did in 2006. He had shorter dreads at the time.

13 MR. GIORDANI: Would the record reflect identification --

14 MR. LEVENTHAL: I'm going to object to the ongoing
15 answer. The question was do you recognize him? Yes. That
16 should --

17 THE COURT: Well, I mean, I agree.

18 Now, what is your -- you want the record to reflect?

19 MR. GIORDANI: I would ask the record to reflect
20 identification of the defendant --

21 THE COURT: So reflected.

22 MR. GIORDANI: -- Jemar Matthews.

23 BY MR. GIORDANI:

24 Q Were you also familiar with a person by the name of
25 Pierre Joshlin?

1 A Yes, sir, I was.

2 Q And had you interacted with them or made these two men
3 and made contact with them previously?

4 A Yes, sir.

5 Q Did you know those two, Pierre Joshlin and Jemar
6 Matthews, to be friends?

7 A Yes, sir, I did.

8 MR. LEVENTHAL: Objection. Foundation.

9 MR. GIORDANI: I'm happy to lay foundation.

10 THE COURT: Okay. The objection's foundation, go ahead.

11 MR. GIORDANI: Okay.

12 BY MR. GIORDANI:

13 Q Sir, how is it that you're familiar with Jemar Matthews
14 and Pierre --

15 THE COURT: You know what, can I just have the
16 attorneys approach.

17 [Bench conference transcribed as follows.]

18 THE COURT: I don't -- I'm not sure why you're objecting
19 on foundation --

20 MR. LEVENTHAL: No, I'm not --

21 THE COURT: -- because I'm worried that he's going to say
22 I know him because he's [indiscernible].

23 MR. LEVENTHAL: Totally understood. I understand. And
24 that was not my foundational type. I mean, it's all over the board.
25 How did you know him? When did you know him? We don't -- my

1 foundation is at what point in time. It's not, like, because I know
2 we're trying to keep -- you know, I don't appreciate it. What is he
3 laughing at? He's laughing over here.

4 THE COURT: Okay. And I can just tell you my concern is
5 when you made that objection, and then he's got to go into that, I
6 don't want him to say anything that's prejudicial.

7 MR. LEVENTHAL: Totally understood. What I'm asking is
8 a time. That's all. Was the timeframe. Because I -- he's all over the
9 place, because when he's testifying now, he's saying what do you
10 do now? We're going back to '06, so then he goes back and then
11 he -- we don't know when, he was only there --

12 THE COURT: Okay.

13 MR. LEVENTHAL: -- for three years. So that's what I was
14 asking for. Not whether or not --

15 THE COURT: Like, how he believed they were friends.

16 MR. LEVENTHAL: Correct.

17 THE COURT: Okay. Because I thought it was pretty clear
18 it was 2006, but if you can clarify that.

19 MR. GIORDANI: Okay. Can I make the record, though?

20 THE COURT: Sure.

21 MR. GIORDANI: So before the trial in 2018, before this
22 trial in 2021, the parties agreed, there was a motion filed by the
23 defense and the parties agreed that we were not going to reference
24 gang --

25 THE COURT: That part.

1 MR. GIORDANI: -- affiliation. This now sergeant knew
2 Jemar Matthews and Pierre Joshlin to be gang members in the
3 same gang, affiliated via the same gang, they had been briefed on
4 multiple occasions of these two problem defendants, I guess, for
5 lack of a better term, problem individuals in the neighborhood.
6 He's told me outside of court, when I admonished him to not say
7 anything about that, he said multiple times, we had their pictures
8 up, I mean, I'd seen them in multiple briefings, I'd seen them --
9 they've been field interviewed together, everything --

10 THE COURT: Okay.

11 MR. GIORDANI: -- that the defense filed --

12 MR. LEVENTHAL: We've gotten through two trials --

13 MR. GIORDANI: Can I finish? Everything that the defense
14 filed on Motion to Preclude is the foundation.

15 So the reason I'm a little confused about the objections is
16 now Mr. Leventhal has made us approach and made a big scene
17 about foundation, and I'm going to have to go back --

18 THE COURT: Actually, I need you [indiscernible].

19 MR. LEVENTHAL: Well, we've got --

20 MR. GIORDANI: I don't know if he's trying to elicit a
21 mistrial or what. We had to approach at that point, but --

22 MR. LEVENTHAL: And we've gone through two trials
23 without any gang reference, and all of a sudden it becomes
24 problematic, this officer's testifying --

25 THE COURT: Well, you objected to foundation.

1 MR. GIORDANI: That's --

2 THE COURT: That was really [indiscernible].

3 MR. LEVENTHAL: My foundation was a time foundation,
4 not --

5 THE COURT: Okay. All right. Got it. But I was afraid you
6 were going to elicit or the sergeant was going to -- well, okay, I can
7 testify to this now. That's why I asked you to approach. Just make
8 sure you're clear on the time and not 2006.

9 MR. GIORDANI: Okay. And, Your Honor, just one more
10 thing. There continues to be objections as to leading. The nature
11 of this case is that's a high gang neighborhood. They knew lots of
12 gangs frequented that home and frequented that street. So when
13 we ask even our lay witnesses leading questions, it's because we're
14 trying to avoid a mistrial here. So if they want to keep objecting to
15 leading, I'm going to have to ask open-ended questions and who
16 knows what's going to come out.

17 MR. LEVENTHAL: Okay. Your --

18 MR. GIORDANI: We've admonished our witnesses to the
19 best of our ability.

20 MR. LEVENTHAL: So far not one person has identified
21 Mr. Matthews. They're all lay witnesses. So why the leading? If
22 it's leading because he needs to touch around this person, fine.

23 THE COURT: Okay. Let's keep going.

24 MR. GIORDANI: Okay.

25 [End of bench conference.]

1 BY MR. GIORDANI:

2 Q Sergeant, did you know Jemar Matthews and Pierre
3 Joshlin to be friends?

4 A Yes, sir, I did.

5 Q Had you interacted with both of those young men at the
6 time on at least one occasion?

7 A Yes, sir, I did.

8 Q You're describing the area command that you patrolled
9 and then you mentioned PSU, the Problem Solving Unit. Were
10 you -- once you were with the Problem Solving Unit, were you a
11 plainclothes capacity?

12 A Yes, sir, I was.

13 Q Can you describe what that means for the jury?

14 A So when you're working in a plainclothes capacity, you're
15 not -- you can be readily identifiable as a police officer if you're not
16 wearing a Metro uniform. On this particular night, I was wearing a
17 black tactical vest with a police emblem front and back, and a
18 badge. And I was wearing jeans and a t-shirt. So it's not what a
19 marked patrol unit wears, but working in the PC squad, that was
20 attire for us. That allowed us to get in and out of a marked capacity
21 or being identifiable as a police officer very quickly.

22 Q Okay. With the PSU team or PSU unit, did you also used
23 an unmarked vehicle?

24 A Yes, sir, I did.

25 Q And on this particular evening, September 30th, 2006,

1 were you patrolling in the area of Balzar and Lexington?

2 A Yes, sir, I was.

3 Q Were you in an unmarked vehicle?

4 A Yes, sir.

5 Q I want to ask you were you in that particular area near the

6 circle park when something drew your attention?

7 A Yes, sir, I was.

8 Q And were you in that area with anyone else?

9 A Yes, sir. I was there with my entire PSU squad, a couple

10 of other marked patrol units, and my sergeant, as well.

11 Q So there was a police presence in the neighborhood?

12 A Yes, sir.

13 Q Were you yourself with someone in a vehicle?

14 A Yes, sir. I was riding with my partner, Officer Brian

15 Walter, that night.

16 Q Okay. What is it that drew your attention when you were

17 riding with Officer Walter?

18 A I heard approximately five or six gunshots to the

19 southwest of my location.

20 Q Okay. Showing you State's 26; do you recognize that

21 area, sir?

22 A Yes, sir, I do.

23 Q Is that the area that you were patrolling that evening?

24 A Yes, sir.

25 Q Do you recall exactly or approximately where you were

1 when you heard the gunshots?

2 A Yes, sir.

3 Q Where?

4 A I was up here just north of circle park to the west on
5 Bartlett.

6 Q Okay. There is a little mouse in front of you, sir, where
7 you can point to the exhibit. So when you say north, you mean up
8 on this map, correct?

9 A Yes, sir.

10 Q Okay. And to the west on Bartlett?

11 A Yes, sir.

12 Q When you heard those shots, what did you do?

13 A I believe the shots came to the southwest of us. So my
14 partner and I got into our vehicle. I was driving a maroon Chrysler
15 Sebring. I was the driver. Officer Walter was in the front passenger
16 seat. And we came down to circle park and headed west on Balzar.
17 And then I turned southbound on Lexington before I came to a stop
18 here at this intersection of Lawry and Lexington.

19 Q Okay. So just let me back up momentarily. It appears,
20 based upon what you've just traced on that map, that you drove
21 right by 1271 Balzar?

22 A Yes, sir.

23 Q Do you remember anything out of sorts of anything that
24 caught your attention at 1271 Balzar at that point in time?

25 A No, not at that time. What I do remember is that it was

1 very quiet, uncharacteristically quiet, considering I just heard
2 gunshots.

3 Q Okay. And then you proceeded down Lexington to the
4 intersection of Lawry and Lexington; is that right?

5 A That is correct.

6 Q Did you observe anything when you got to that
7 intersection?

8 A Yes, sir. I was parked facing southbound on Lexington at
9 Lawry when I heard a commotion off to the left side of my vehicle,
10 which would have been in this area in front of 1284 Lawry. I saw
11 three African-American males, I would estimate that they were in
12 their -- they were teenagers, early 20s. And they appeared to be in
13 an argument with an elderly male outside of a vehicle that I
14 described as a blue or silver like a Lincoln Town Car-type vehicle.

15 Q Okay. When this drew your attention were your windows
16 up or down; do you recall?

17 A Originally, they were up. But I lowered them to try to
18 better hear what was going on across the street from me.

19 Q Okay. What did you observe when you looked in that
20 direction and you see these three males in an argument with the
21 elderly male?

22 A It was one of those things that just didn't look right to me,
23 considering the close proximity to where I thought the gunshots
24 were coming from, as well as the short time lapse that it took my
25 partner and I to get into the area. So it definitely drew my attention,

1 because it was suspicious to me.

2 Q Okay. Go ahead, what did you observe from there, sir?

3 A So while we were sitting there watching, some of my
4 squadmates started arriving in the area and I started to hear radio
5 traffic of them arriving at 1271 Balzar.

6 Q Okay. Let me stop you. When you say you started to hear
7 radio traffic, how are you hearing that and how is that coming
8 through to you?

9 A So I had an earpiece in my ear connected to our police
10 radio, and there was also a police radio in the -- in our car.

11 Q Okay. Did Officer Walter, to your knowledge, also have a
12 police radio?

13 A Yes, sir, he did.

14 Q And an earpiece?

15 A I don't recall if he was wearing an earpiece or not.

16 Q Okay. Fair enough. So you're hearing radio chatter and
17 you're also seeing this -- something that doesn't seem right to you
18 at this point?

19 A Yes, sir.

20 Q What do you do then?

21 A So I continued to observe the three males and the
22 argument that was going on outside of the vehicle when the radio
23 chatter started reporting that they had found possible multiple
24 victims that had been shot at 1271 Balzar.

25 Q And does that cause you to do anything else?

1 A Yes, sir. It caused me to pay closer attention to what was
2 going on. There was a lot of radio traffic, as a bunch of units
3 started responding to the area based off of the report from my
4 squadmates.

5 Q Okay. Go ahead, what happened next?

6 A A short time later, I observed the three juveniles. The
7 male that got into the driver seat was later identified as Jemar
8 Matthews. And the other two juveniles, one of them which was
9 identified as Pierre Joshlin and a third unidentified male got into
10 the Lincoln. And they took off at a high rate of speed. They failed
11 to stop at the stop sign at -- you can't see if you're on the map, but
12 at Lawry and Martin Luther King.

13 Q Okay.

14 A At which time I activated my emergency lights and sirens
15 and attempted to initiate a vehicle stop on that vehicle.

16 Q Let me ask you a couple of questions before I move on.
17 At this point in time, when you see the altercation, you're not
18 saying you can identify Mr. Matthews and Mr. Joshlin at that point,
19 are you?

20 A Correct. At that time I did not know who was in the
21 vehicle.

22 Q Okay. I want to show you a different map, so bear with
23 me here. So you have indicated that you see the vehicle, then take
24 off, and those occupants drive in a particular direction. Which way
25 do they go at this point?

1 A So from Lawry and Martin Luther King, like I said, they ran
2 the -- they failed to yield at the stop sign.

3 Q Okay.

4 A And they blew across the northbound lanes of Martin
5 Luther King and then made a southbound turn on Martin Luther
6 King headed toward Lake Mead.

7 Q All right. And do you go lights and sirens at this point?

8 A Yes. I had activated my lights and sirens as soon as I saw
9 them run the stop sign. It took me a second, because I had to make
10 sure that I didn't endanger any of the public that was coming
11 northbound on Martin Luther King, because it is a fairly busy street.

12 Q Okay.

13 A And then I made the southbound turn onto Martin Luther
14 King. At that time, I saw Mr. Matthews driving the vehicle run the
15 light -- the red light at Lake Mead and Martin Luther King and
16 continued southbound. Again, I had to clear that intersection to
17 make sure I did not cause an accident or injure any citizens, and
18 continued my pursuit southbound. Officer Walter was relaying the
19 radio traffic for me so I could concentrate on the driving.

20 Q Okay. And, sir, let me show you 465. All right. Sir, can
21 you see Balzar at the very top of this map?

22 A Yes, sir.

23 Q And so the jury understands, on this map, is up north?

24 A Yes, sir, it is.

25 Q Right east, down south --

1 A Yes.

2 Q -- left west? Okay. So can you please trace your initial
3 path as you're following this Lincoln?

4 A Yes, sir. So here's Lawry. This is where I saw them
5 originally below the stop sign headed southbound on Martin Luther
6 King to Lake Mead Boulevard. Again, ran the red light at this
7 intersection. Continued southbound, and then made this
8 eastbound turn onto Jimmy Avenue.

9 Q All right. At this time of evening -- well, did you describe
10 around what time of day this was?

11 A No, sir, I didn't.

12 Q Is it around 10:00 p.m.?

13 A Yes, sir, it was.

14 Q On a Saturday night?

15 A I believe so, yes.

16 Q So you cross over Lake Mead -- the vehicle crosses over
17 Lake Mead, you stop and then pass through Lake Mead, as well?

18 A Yes. But I still had a visual of the vehicle Mr. Matthews
19 was driving at the time.

20 Q Okay. So did you ever lose sight of it up until that point?

21 A No, sir, I didn't.

22 Q Now, I'm going to zoom in on this lower left portion of the
23 map here. Once you pass through Lake Mead, what happens?

24 A Once I pass through Lake Mead and I can safely continue
25 the vehicle pursuit, I saw the vehicle Mr. Matthews was driving

1 make this eastbound turn onto Jimmy Avenue. And it appeared to
2 me that he took the turn too quickly, because the vehicle actually
3 left the roadway and was driving up on the sidewalk.

4 Q Okay. And it was driving up on the sidewalk there on
5 Jimmy Ave?

6 A Yes, sir.

7 Q Okay. Describe what happens then?

8 A As I made the turn onto Jimmy Avenue, I saw
9 Mr. Matthews --

10 MR. LEVENTHAL: Judge, I'm going to object that it
11 assumes facts not in evidence at this point. He keeps indicating
12 that Mr. Matthews was the driver.

13 THE COURT: Well, he has testified to that.

14 So you may proceed.

15 MR. GIORDANI: Thank you, Your Honor.

16 BY MR. GIORDANI:

17 Q Go ahead, sir.

18 A As I made that eastbound turn onto Jimmy, I saw
19 Mr. Matthews was able to regain control of the vehicle and get it off
20 the sidewalk and back onto Jimmy Avenue. It was around this time
21 that I began to see the driver's door open. This was the first time I
22 got a look at Mr. Matthews. He was wearing a black shirt and red
23 gloves. It appeared to me that he wasn't paying attention to driving
24 the vehicle anymore, he was more paying attention to my partner
25 and I that were in pursuit. And he was holding the door open with

1 his left hand and was kind of leaning out the driver's door to look
2 back at us.

3 That caused me to become a little concerned based on the
4 totality of the circumstances, where we had heard the gunshots in
5 close vicinity to the suspicious activity I saw with the three males
6 getting into the silver Lincoln. And I believe that there is a strong
7 likelihood that the occupants of this vehicle could be armed and
8 dangerous.

9 As I continued the pursuit, I tried to balance being able to
10 see what was going on with the driver while not letting him have a
11 clear line of sight with me in case he was armed and wanted to take
12 a shot at my partner and I as we were pursuing him.

13 As the pursuit continued, Mr. Matthews made this
14 southbound turn on Lexington. During this whole time, we were
15 kind of playing this cat-and-mouse game where he'd be peeking out
16 the door, I'd swing over for a quick peek, I'd come back behind so
17 he can't get a shot at me, I go back and take a quick peek again, and
18 this kind of continued until the termination of the pursuit.

19 Q Okay. When you say he's taking a peek at you and you're
20 taking a peek at him, is he turning his whole face back towards you?

21 A Yes, sir. He was holding the door open and kind of
22 peeking back. I could never see what was in his right hand, which
23 was of concern to me.

24 Q Okay. When he turns onto Lexington Street, he is now
25 heading southbound, for the record?

1 A Yes, sir.

2 Q Southbound on Lexington?

3 A Yes.

4 Q I'm going to zoom in a little further here. When he turns
5 southbound on Lexington, do you follow?

6 A Yes, sir.

7 Q At that point in time, once you've made that turn onto
8 Lexington, how fast would you estimate you were going and how
9 fast was Mr. Matthews going in the --

10 A We had slowed down pretty significantly. I would
11 estimate that probably 15 to 20 miles an hour.

12 Q Okay.

13 A I was about a car length behind Mr. Matthews' vehicle at
14 the time.

15 Q Okay. And then on the left of Lexington Street here with
16 the red flag, do you recognize what that is?

17 A Yes, sir. There's a church there.

18 Q Okay. Describe for the ladies and gentlemen of the jury
19 what happens at that point.

20 A Around that time, I saw Mr. Matthews exit the driver side
21 door. I couldn't tell if he intentionally jumped out or fell out. But
22 when he got to his feet, I saw a -- that he was holding a firearm in
23 his hands. I described it at the time as being shorter than a rifle, but
24 larger than a handgun. I was very concerned for the safety of my
25 partner at this time, because we were, essentially, sitting ducks if he

1 decided to shoot at us. Both of us had our seatbelts on, it would
2 have been very difficult for us to draw our firearm at that point. So
3 the only means that I had to protect my partner and I was to -- I
4 swerved my vehicle into Mr. Matthews.

5 This caused Mr. Matthews to fall across the hood and then
6 roll off to the passenger side of the vehicle over the front, which is
7 where my partner was sitting in the passenger seat.

8 Q And you had previously indicated you'd slowed down
9 significantly at that point in time?

10 A Yes.

11 Q Do you recall when he's facing you --

12 A Uh-huh.

13 Q -- with the firearm, which hand he had the firearm in?

14 A Yes, sir. He had the firearm in his right hand.

15 Q And how -- I mean, the distance between you and him
16 when he pops out of the vehicle with the firearm is -- can you
17 estimate?

18 A He was at the front of my hood pretty quickly. So --

19 Q Okay.

20 A -- 6, 7 feet.

21 Q Okay. And did you strike him with the front of the vehicle,
22 the left or the right?

23 A I struck him with the front driver side quarter panel and he
24 fell over the hood, like I said, and rolled off to the passenger side of
25 the vehicle, where Officer Walter was sitting.

1 Q Okay. In that time, when you struck him with the vehicle,
2 how far away was his face from your face, if you would estimate?

3 A On the hood, so probably 3 feet.

4 Q And his face was facing your face?

5 A Yes, sir. He was on the hood.

6 Q Did you get --

7 A I hit him facing the vehicle.

8 Q Okay. Did you get a good look at his face?

9 A Yes, sir, I did.

10 Q And then when he kind of rolled off the right side of your
11 vehicle, did he go to the ground or stay on his feet?

12 A He fell to the ground. I actually lost visual of him very
13 quickly. I was trying to stop my vehicle, because the vehicle that I
14 had been pursuing was now still rolling without a driver. I saw that
15 vehicle continue southbound, where it jumped up on the sidewalk
16 by the church and came to rest. I saw my partner trying to get out
17 of the passenger door, but it appeared that something was blocking
18 it. And then I saw the suspect -- or Mr. Matthews that I hit -- Officer
19 Walter tried to grab him as he got his door open and took off
20 chasing him northbound.

21 Q Okay. So I want to -- before I move on to the vehicle, I
22 want to show you a --

23 MR. GIORDANI: May I approach?

24 THE COURT: You may.

25 ///

1 BY MR. GIORDANI:

2 Q Showing you -- I thought it was State's 5 -- it is Sate's 5.

3 Officer Hawks, do I have permission to open this --

4 THE MARSHAL: Yeah, I've already checked it out.

5 MR. GIORDANI: You checked it?

6 THE MARSHAL: Yes.

7 MR. GIORDANI: Thanks.

8 BY MR. GIORDANI:

9 Q Actually, I'm going to give that to you, sir.

10 THE CLERK: Mr. Giordani, can you just make a record of
11 the subexhibit on the inside, as well?

12 MR. GIORDANI: I sure will.

13 THE CLERK: Thank you.

14 BY MR. GIORDANI:

15 Q So I'm showing you a very large box, it's marked as
16 State's Exhibit 5; do you see that, sir?

17 A Yes, sir.

18 Q Want to go ahead and open that box.

19 A [Witness complies.]

20 Q It's been re-taped, so I'm just going to yank this tape up.
21 Do you recognize that, sir?

22 A Yes, sir.

23 Q What do you recognize that to be?

24 A So this is the firearm that Mr. Matthews had in his hand
25 when I saw him exit the vehicle and I subsequently struck him with

1 my vehicle.

2 Q Okay. Sorry, should be secure -- appears to be secure.

3 That firearm is the firearm that Mr. Matthews had when
4 he popped out of the vehicle?

5 A Yes, sir. It's a very distinctive-looking firearm, which is
6 why I originally had a issue classifying it, because it doesn't look
7 like a normal rifle; it's larger than a handgun, but smaller than rifle.
8 And in the quick look that I got of it, it was very hard for me to
9 identify exactly what type of gun it was. But it was very distinctive
10 looking.

11 Q Okay. When Mr. Matthews was in front of your vehicle
12 with that firearm, did that cause you fear, sir?

13 A Yes, sir, it did.

14 Q What was going through your mind when Mr. Matthews
15 was in front of your vehicle with that firearm?

16 A Like I said, I was concerned for the safety of myself and
17 my partner. If he decided to shoot at us, we, essentially, would
18 have been sitting ducks in that car, being the fact that we're
19 seat-belted with our firearm holstered on our waists, it would have
20 been very difficult for us to draw and deploy our firearm to defend
21 ourself.

22 Q Based upon that fear, did you make the decision to bump
23 Mr. Matthews with your vehicle?

24 A Yes, sir, I did.

25 Q So you indicated he went down over the hood and then

1 you focused your attention on the vehicle in front of you now?

2 A I was focusing on a lot of things at the time. Number one,
3 my partner to see what he was doing, because I knew Mr. Matthews
4 was now on that side of the car where my partner was. I saw my
5 partner trying to get out, and I saw him take off in foot pursuit after
6 Mr. Matthews northbound. I saw the vehicle that I was pursuing
7 continue to roll down the street without a driver. I saw it jump up
8 on the curb, and then I saw the two passenger doors of the vehicle
9 open. And I couldn't tell if the two other suspects jumped out or
10 were ejected out, but they came to rest on the grass by the church.

11 Q So those two other suspects, what did you -- what do you
12 recall observing about them as they exited or after they exited the
13 vehicle?

14 A So, when I saw both suspects get up in the grass. One of
15 them I recognize was unarmed. It didn't appear that he had a
16 firearm in his hand. And he took off running in a northwesterly
17 direction. I immediately turned my attention to the second suspect,
18 who was later identified as Pierre Joshlin. What drew my attention
19 to Mr. Joshlin was the fact that he had a -- what appeared to be a
20 block handgun with a extended magazine that hung out quite a
21 ways past the bottom of the gun.

22 I was pretty confident that Mr. Matthews was no longer
23 armed and my partner was in foot pursuit. So I made the decision
24 to engage in a foot pursuit with Mr. Joshlin.

25 Q So let me make sure I heard that correctly. The one

1 individual that you let run from the scene, you did not see a firearm
2 in his hand?

3 A That is correct.

4 Q And the other individual who you later identify as Joshlin,
5 you do see a firearm in his hand?

6 A Yes, sir.

7 Q I'm going to show you some photographs, sir. I'm going
8 to start with 268; do you recognize this area --

9 A Yes, sir, that's the --

10 Q -- what we're looking at?

11 A -- church I described.

12 Q Okay. Just for the record's sake, it appears that the
13 Lincoln is up on the curb and crashed into the hydrant in this
14 photograph?

15 A Yes, sir. That's where it came to rest.

16 Q And then on the right side of the screen, it looks like a
17 very brightly lit sign; where is that?

18 A Sir, that's in the church parking lot.

19 Q Okay. And so when that interaction you described, where
20 Matthews is on your hood, is that before the sign or around the
21 sign?

22 A It was before the sign.

23 Q Okay. The -- 273, does that show a little closer-up view of
24 that sign, as well as the vehicle?

25 A Yes, sir.

1 Q All right. Well, let's try this. Going to 269, are you
2 oriented, sir? Do you see the sign on the right as well as the
3 crashed vehicle?

4 A Yes, sir.

5 Q Okay. You indicated previously that you made the
6 decision to chase the armed Pierre Joshlin; is that right?

7 A Yes, sir.

8 Q Which direction did you chase him, if you can see it on
9 this map -- on this photo?

10 A So we continued running southbound on Lexington.

11 Q And let me stop you, Sergeant. There's a mouse there --

12 A Oops, sorry.

13 Q -- you can use just to direct the jury. Thank you.

14 A So we continued running southbound on Lexington, and
15 then made the eastbound turn here onto Doolittle.

16 Q Okay. Going back to our map, 465, can you point to
17 where -- what you just described on this map?

18 A Yes, sir. So this is where the church and the sign were in
19 the last picture. This is where the vehicle came to rest. They either
20 jumped out or were ejected kind of back here by the grass area.
21 And then I started my foot pursuit with Joshlin eastbound here on
22 Doolittle.

23 Q As you pursued Mr. Joshlin, you were, obviously, on foot;
24 is that right?

25 A Yes, sir.

1 Q And you said your partner chased Mr. Matthews?

2 A Yes.

3 Q While you're chasing Mr. Joshlin, do you send updates
4 over your radio?

5 A Yes, sir. I put out over the radio that I was in foot pursuit
6 and gave Mr. Joshlin's description. He was wearing a black shirt,
7 black gloves, and jeans.

8 Q Did you chase him down Doolittle?

9 A Yes, sir, I did.

10 Q Describe what happens as you chase him down Doolittle.

11 A As we were making our way eastbound on Doolittle, I was
12 identifying myself as a police officer. Like I mentioned previously,
13 that night I was wearing a black tactical vest that said Police in
14 yellow letters front and back. I also had a Metro badge on. I told
15 him to stop or I'd shoot, stop or I'd shoot. I said it multiple times.

16 At about halfway down the block, Mr. Joshlin took the
17 Glock that he had in his hand and reached over his shoulder and
18 pointed the firearm back at me while I was in foot pursuit. I thought
19 he was going to start shooting at me, so I was running with my
20 firearm out at this point. I fired three rounds at Mr. Joshlin and
21 took cover behind a car that was parked on the street. I saw
22 Mr. Joshlin keep running southbound through this church parking
23 lot here.

24 Q Okay. So as you're running down Doolittle, that's when
25 he turns back and he points the gun at you?

1 A Yes, sir.

2 Q To be fair, he didn't fire rounds, he pointed it?

3 A No, sir.

4 Q And then you indicated that you made a decision at that

5 point?

6 A Yes, sir.

7 Q And you fired your duty weapon?

8 A Yes, sir.

9 Q I want to show you now State's 367. If I can actually zoom

10 here. Do you see that? Are those three placards in the middle of

11 the road there, sir?

12 A Yes, sir.

13 Q Are you able to tell from this exhibit where that is?

14 A This picture's a little grainy.

15 Q Yeah. Let me find a different one for you.

16 And as I do that, Sergeant, you indicated that you fired

17 three rounds from your duty weapon?

18 A Yes, sir.

19 Q What was your -- the caliber of your duty weapon?

20 A It was a 45 caliber.

21 Q And the make?

22 A It was a Kimber Ultra Carry 1911.

23 Q When you took cover behind the vehicle, was it still on

24 Doolittle?

25 A Yes, sir. The vehicle was parked on the shoulder off to my

1 left. And I took cover behind the front of the vehicle.

2 Q Okay. And did you see where Mr. Joshlin went as you
3 were taking cover?

4 A Yes, sir. I continued to see him run southbound through
5 the church parking lot. I gave that update over the radio. I decided
6 not to fire again, because he was no longer posing an immediate
7 threat to me, because he took off running again. But he continued
8 southbound through the lot and over the wall.

9 Q When you say southbound through the lot and over the
10 wall, which lot and which wall? I'm zooming in.

11 A So it's this lot here, which is a church parking lot. And he
12 ran all the way down to the south -- it's kind of off on that. And he
13 jumped this wall into this residential area, is where I lost sight of
14 him initially.

15 Q Okay. And because the record won't reflect what you just
16 showed on the map, you mentioned a church. You're not talking
17 about the church on Lexington, you're talking about another church
18 down on Doolittle?

19 A Yes, sir. It's a -- this parking lot here, this is a church and
20 this is the church parking lot.

21 Q Okay. So he cuts south through the parking lot heading
22 towards Wyatt Avenue?

23 A Yes, sir. I saw him jump the wall down here on the south
24 side of the parking lot.

25 Q Okay. Heading toward Wyatt and, I guess, 1701 North J

1 Street?

2 A Yes, sir. In that direction.

3 Q Okay. And then do you follow him over the wall?

4 A No. At this time I was listening to -- there was a whole lot
5 of police activity in the area that -- as you can imagine. I was giving
6 out my location on the vehicle pursuit. I could hear units to my
7 south come in off of Owens from the south. I could hear, basically,
8 units all around where I was. And I knew that the protocol at the
9 time was when an officer's in foot pursuit, that the other -- my
10 teammates and squadmates would start setting up a perimeter to
11 try to trap the suspect inside.

12 Q Okay. And so did anyone pull up to your location or did
13 you make contact with other officers around that time?

14 A Yes, sir. As I -- when I lost sight of Mr. Joshlin, I started to
15 go westbound on Doolittle to try to retrace my steps, and was
16 thinking originally about trying to link back up with Officer Walters,
17 who was in -- last I saw, in foot pursuit with Mr. Matthews.

18 Q Okay.

19 A At that time, I saw the vehicle that I was driving, the
20 maroon Sebring, driving eastbound on Doolittle, which kind of
21 caught me by surprise. So I took a peek in the vehicle and I recall
22 the driver to be another officer of Bolden Area Command who had
23 decided to leave his trainee -- he was a field training officer. He left
24 his trainee to help Officer Walter and made the decision to get into
25 the vehicle that I had got out of for the foot pursuit, and he came to

1 meet up with me.

2 Q Then, obviously, at this point, you've put out over the
3 radio that shots have been fired?

4 A Yes, sir.

5 Q Okay. So who is that officer that approached you in the
6 vehicle?

7 A That was Officer Petrucci.

8 Q And did he come in your -- the vehicle that you had been
9 driving previously or a different vehicle?

10 A Yes, sir, it was the -- he was driving the maroon Sebring
11 that I had previously been driving.

12 Q Okay. And so you two meet up and then where do you go
13 from there?

14 A I jumped into the front passenger seat, and he said, Where
15 to? And I said I think he's headed to 1701 J.

16 Q Okay. So that address come out of nowhere or did you
17 have a reason to provide that 1701 J address?

18 A Like I said, I was familiar with the area and was also
19 familiar with a lot of the people in the area.

20 Q Where did you go once Petrucci picks you up in the red
21 Sebring?

22 A So we continued eastbound onto Doolittle -- or eastbound
23 on Doolittle, and then made the southbound turn and then
24 entered 1701 J Street. There's a vehicle gate there and there was
25 actually a couple of other marked black-and-white patrol units that

1 beat Officer Petrucci and I to the gate. So we were, like, second or
2 third in line.

3 Q And having been familiar with 1701 J, is there more than
4 one entrance and exit for a vehicle to go into that complex?

5 A There's only one vehicle entrance, but there are several
6 areas where the kids that live in the complex or the residents have
7 taken -- the entire apartment complex is surrounded by metal bars,
8 but there's parts where the residents have taken off bars so people
9 can squeeze through and get in and out of that apartment complex.

10 Q Okay. And then did you proceed into 1701 J with fellow
11 officers?

12 A Yes.

13 Q What did you do from there?

14 A What -- during my -- I saw a couple of other officers start
15 giving verbal commands at a dumpster. They were yelling at
16 somebody inside to put their hands up. I moved in that location or
17 toward that location, at which point we pulled Mr. Joshlin out of the
18 dumpster and took him into custody.

19 Q Okay.

20 A It was right in the entrance, to the right of the vehicle
21 entrance of 1701 J.

22 Q Big old dumpster, like anyone would picture?

23 A Yeah, for, like, a commercial apartment complex-size
24 dumpster.

25 Q Showing you now State's 17. Who is that?

1 A That's Pierre Joshlin.

2 Q Is that how he appeared after he was taken into custody
3 that evening?

4 A Yes, it was.

5 Q Once Mr. Joshlin is in custody, do officer -- your fellow
6 officers search that dumpster?

7 A Yes, sir, they did.

8 Q Do you recall what was found within that dumpster where
9 Mr. Joshlin was located?

10 A Yes. They found a Glock firearm, as well as the black
11 gloves.

12 Q So I want you to describe kind of big picture for the jury,
13 of course they weren't there --

14 A Uh-huh.

15 Q -- what's going on with this crime scene as this is
16 occurring? Mr. Joshlin's being commanded out of the dumpster,
17 what else is going on?

18 A It's a very dynamic crime scene. There were a lot of
19 officers in the area. Some were at the original crime location
20 at 1271 Balzar trying to render aid to the victim there and preserve
21 that crime scene. Units were coming to help Officer Walter and I,
22 who were originally in a vehicle pursuit and then it broke off into
23 two different foot pursuits. So there was a K-9 and air units. I
24 mean, just about every unit that was available in Bolden Area
25 Command was responding to help Officer Walter and I at this point.

1 Like I said, it was kind of a controlled chaos. Everybody
2 was doing what they were trained to do. And I could literally hear
3 the entire area that I was at with the foot pursuit and where I fired
4 my shots, I was completely surrounded from lights and sirens from
5 what I could hear. And they set up a perimeter relatively quickly.
6 All of this stuff from start to finish happened within a matter of just
7 a few minutes.

8 Q Eventually, is K-9 brought in?

9 A Yes, sir. I heard K-9 come on channel and said they were
10 responding.

11 Q Okay. And was a search conducted for Mr. Matthews?

12 A Yes.

13 Q Ultimately, do homicide detectives and other investigative
14 units respond to this scene?

15 A Yes.

16 Q During the course of that, do you learn that a suspect has
17 been apprehended by K-9 in a backyard?

18 A Yes.

19 Q And did you respond to that location?

20 A Not immediately, but during my walkthrough of the scene,
21 I did have an opportunity to see that individual again.

22 Q Okay. So let me back up, in case the jury doesn't know
23 what a walkthrough is.

24 A Uh-huh.

25 Q It's a big deal when you discharge your duty weapon; is

1 that fair?

2 A Yes, sir.

3 Q In the line of duty?

4 A Yes, sir.

5 Q Is there an investigation that ensues any time an officer
6 uses deadly force?

7 A Yes, sir. There -- so because of the complexity of the
8 scene, there was actually two investigations that were running.
9 One was for the shooting that occurred at 1271 Balzar, and the
10 other was the investigation for me discharging my firearm, to make
11 sure that my use of force was justified in accordance with the law.

12 Q During the course of that investigation, and I'm going to
13 refer to it as the officer-involved shooting investigation or OIS --

14 A Yes.

15 Q -- during the course of the OIS investigation, do you
16 respond to where there's a subject in custody?

17 A Yes.

18 Q And during the course of your walkthrough of everything
19 that occurred, do you have an opportunity to observe State's 16?

20 A Yes.

21 Q Who is that?

22 A That is Mr. Jemar Matthews.

23 Q And is that how he appeared that evening when you
24 viewed him?

25 A Yes, sir.

1 Q And is that how he appeared, at least shirt and very long
2 shorts, when he was holding that large firearm that you've
3 identified previously?

4 A Yes. Also with the red gloves.

5 Q To your knowledge, did he have the red gloves on him
6 when he was arrested?

7 A I don't remember seeing him with it.

8 Q Okay.

9 A So.

10 Q And when you respond to this scene -- I mean, to this
11 location where Mr. Matthews is, do you identify him as the person
12 who you had bumped with your vehicle after he jumped out of his
13 vehicle?

14 A Yes, sir.

15 Q Did you, Sergeant, ever go back and investigate or have
16 anything to do with the actual homicide scene?

17 A No, sir. It's protocol when an officer is involved in the
18 officer-involved shooting; they basically become the involved
19 officer. And all of my testimony in interviews were geared toward
20 the use of force.

21 Q And subsequent to that date, you've testified in this case?

22 A Yes.

23 Q On multiple occasions?

24 A Yes.

25 MR. GIORDANI: I will pass the witness at this time, Your

1 Honor.

2 THE COURT: Okay. At this time, we are going to
3 conclude for the evening.

4 So, Sergeant, you can come back tomorrow, correct?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: For cross-examination, because we're going
7 to start tomorrow at 10:00 a.m.

8 THE WITNESS: 10:00 a.m.? Okay.

9 THE COURT: Okay? And when you come back, obviously,
10 be subject to cross-examination by the defense. But you are free to
11 go, you can step down now and we'll see you tomorrow morning
12 at 10:00 a.m.

13 During this recess you're admonished not to discuss or
14 communicate with anyone, including your fellow jurors, in any way
15 regarding the case or its merits either by voice, phone, e-mail, text,
16 Internet, or other means of communication or social media, read,
17 watch, or listen to any news or media accounts or commentary
18 about the case, or do any research, such as consulting dictionaries,
19 using the Internet, or using reference materials or make any
20 investigation, test a theory of the case, recreate any aspect of the
21 case, or in any other way investigate or learn about the case on
22 your own or form or express any opinion regarding the case until
23 it's finally submitted to you.

24 ///


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1 And, again, we'll be in recess till tomorrow morning
2 at 10:00 a.m. Thank you very much. Have a good evening.

3 [Court recessed for the evening at 5:02 p.m.]

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17 ATTEST: I do hereby certify that I have truly and correctly
18 transcribed the audio/video proceedings in the above-entitled case
19 to the best of my ability.


Shawna Ortega, CET*562