

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 12:33 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 5**

/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

Adam Paul Laxalt

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:

Jemar Matthews

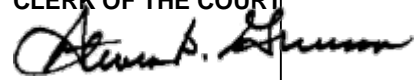
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An Employee of Leventhal and Associates



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

WEDNESDAY, NOVEMBER 10, 2021

TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL – DAY 5

(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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1 **LAS VEGAS, NEVADA, WEDNESDAY, NOVEMBER 10, 2021**

2 [Proceeding commenced at 9:13 a.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: Good morning. Okay. The record will
6 reflect that the hearing is taking place outside the presence of the
7 jury panel. I don't know who had something, but is it the State?

8 MR. TANASI: The defense, Judge.

9 THE COURT: Yeah, go ahead.

10 MR. TANASI: We do have an issue with respect to one of
11 the State's proposed witnesses that they intend to call, Nicholas
12 Owens.

13 THE COURT: Uh-huh.

14 MR. TANASI: In looking at the grand jury testimony I was
15 just provided -- I appreciate that --

16 THE COURT: He testified at the grand jury?

17 MR. TANASI: At one point.

18 MR. GIORDANI: No, he --

19 MS. BOTELHO: Not in this case.

20 MR. GIORDANI: Do you mind if I start --

21 MR. TANASI: Not in this case.

22 MR. GIORDANI: -- the record and I just give the disclosure
23 and then you respond? Is that okay?

24 MR. TANASI: That's fine. Sure.

25 MR. GIORDANI: So last night, Your Honor, we --

1 Ms. Botelho and I had a conversation with Detective Andre Carter
2 over the phone. He's been noticed, he's been in the documentation
3 since before the 2018 trial.

4 Detective Carter's the one that interviewed Nicholas
5 Owens --

6 THE COURT: Okay.

7 MR. GIORDANI: -- the in-custody witness way back when.
8 Detective Carter indicated that Nicholas Owens testified in the
9 murder trial of the individual who killed Marcus Williams --

10 THE COURT: Oh, the night before?

11 MR. GIORDANI: -- the preceding -- yes. He indicated he
12 testified in that case and he testified at the grand jury.

13 Apparently, that individual, Antwon Jones, ultimately pled
14 guilty, there wasn't a jury trial as to him. And so we looked in
15 Odyssey last night, public record, it's available. It's, like, six pages
16 of testimony. We don't feel like we had to, but to be kind, I guess,
17 we turned that over to the defense.

18 We then learned that in exchange for his testimony in that
19 murder trial, he received a benefit from the attorney general's
20 office. Essentially, what Detective Carter disclosed to us is there
21 wasn't a written agreement or anything like that. There was a
22 discussion with the sentencing judge, which he believed to be
23 Judge Barker, and the AG's office -- of course, not our office, but
24 the AG's office -- and the deputy, whoever handled that case.

25 In that discussion, there was an agreement that he would

1 receive probation on his multiple-count robbery case. So --

2 THE COURT: From the why was the AG even involved?

3 MR. GIORDANI: I don't really know why the AG was
4 involved.

5 THE COURT: Okay.

6 MR. GIORDANI: I believe that the AG handled a bunch of
7 these murders due to some form of conflict with our office.

8 THE COURT: Okay.

9 MR. GIORDANI: I mean, I don't really know. I, obviously,
10 wasn't around back then. But it sounds like there's no written
11 agreement.

12 So because we believe it's potentially, arguably --

13 THE COURT: A benefit.

14 MR. GIORDANI: -- Giglio material, we turned that over to
15 the defense, and that's kind of where we stand as of now.

16 THE COURT: Okay. But he's in prison.

17 MR. GIORDANI: He's --

18 THE COURT: So what happened? He -- did he violate
19 probation?

20 MS. BOTELHO: He was -- he ultimately violated probation
21 by picking up a new case, Your Honor. It was negotiated after that
22 to run concurrent and consecutive to the probation case. I turned
23 over -- we've turned over too the judgment of conviction from the
24 new case. And since then, these all occurred back in 2008, these
25 judgments of conviction. But he remained on parole and is in

1 custody currently on a parole hold.

2 THE COURT: Okay. For a parole violation?

3 MR. GIORDANI: So that's how we were -- I'm sorry?

4 THE COURT: He's currently in on a parole violation?

5 MS. BOTELHO: Yes. For these cases.

6 THE COURT: Okay. So -- and I guess the offer of proof is
7 he's going to testify that the defendant was present the night
8 before?

9 MR. GIORDANI: Oh, more than that. Not only was the
10 defendant present the night before -- and, actually, I haven't met
11 with him personally, so I'm going to let Ms. Botelho make this --

12 THE COURT: Okay.

13 MR. GIORDANI: -- offer of proof.

14 MS. BOTELHO: Yes, Your Honor.

15 Brief indulgence.

16 Your Honor, he is going to testify to knowing that
17 Mr. Matthews and Pierre Joshlin were present over at Doolittle, 900
18 Doolittle, on September 29th of 2006. He's going to say that after
19 Marty -- that's when Marty B was killed. He's -- oh, yeah, his real
20 name's Marcus Williams.

21 He's going to say shortly after Marty B -- Marcus Williams
22 was killed on September 29th, he talked to Pierre Joshlin and the
23 defendant and they were really amped up, they were looking to get
24 revenge, they said that they -- Pretty P, in particular, said they were
25 going to kill Lil Swole, who is Antwon Jones, for killing Marty. And

1 the defendant himself, Jemar Matthews, also participated in this
2 conversation, was also amped up, also indicated that he was going
3 to partake in this finding Lil Swole, who is Antwon Jones, for killing
4 their friend Marty.

5 He is going to also say that 1271 Balzar, which is the
6 homicide scene, is known to be a hangout for Antwon Jones and
7 his friends. And then, of course, for the record, Mersey Williams is
8 killed on the following day -- following night.

9 THE COURT: Okay. So he's basically going to testify as to
10 motive.

11 MS. BOTELHO: Yes.

12 MR. TANASI: Correct.

13 THE COURT: Okay. And Antwon Jones was prosecuted --

14 MS. BOTELHO: Yes.

15 THE COURT: -- for that murder?

16 MR. GIORDANI: Yes.

17 THE COURT: Okay.

18 MR. GIORDANI: Antwon, among other folks. And I think
19 there were co-defendants. But, again, the AG's office handled that
20 case.

21 THE COURT: Okay.

22 MR. TANASI: Three objections, Your Honor. One is any
23 testimony along those lines violates the Court's prohibition on any
24 discussion related to gangs in our estimation. Retaliation, and also
25 earlier with the use of the word warring, war, during opening

1 statements, those two and -- and hearing about the monikers
2 throughout the trial from another particular witness, I think Officer
3 Walter. If now we enter evidence that goes to retaliation, I think
4 we've now violated the order, Your Honor's order, precluding gang
5 mention. That's my first --

6 THE COURT: So only gangs can retaliate? I mean,
7 because you're telling me -- I mean, the State has a motive witness,
8 but they shouldn't be able to put their motive witness on?

9 MR. TANASI: I'm saying that motive, Your Honor, is
10 implicitly a gang-related motive based on the facts and
11 circumstances that are already in evidence in the case. The war
12 comment, number one, number two, the moniker discussion,
13 number three, the idea that these officers had knowledge or know
14 of Mr. Matthews and Mr. Pierre from the community. I think all
15 those implications take us right to the doorstep of gang. And so I
16 think letting this in is going to violate that order.

17 MR. GIORDANI: May I respond?

18 THE COURT: Well, he said he had three.

19 MR. TANASI: I have three.

20 THE COURT: That's only on.

21 MR. TANASI: I can one at a time, if that's --

22 THE COURT: No, you go -- keep going.

23 MR. TANASI: Okay. The second one, Your Honor, is just
24 with respect to what Mr. Owens is going to testify to, observing my
25 client being amped up. Again, I'm not sure what relevance that

1 particular observation has. It's pure speculation as to what it
2 means or what that observation is.

3 THE COURT: I don't know if that's exactly what he will
4 testify to or if those are the terms that he used.

5 MR. TANASI: That was the term that --

6 THE COURT: Exactly.

7 MR. TANASI: -- Ms. Botelho used. So -- and then the
8 third one, Your Honor, I think just to lay a timeline before I lay my
9 objection, it's hearsay is the objection. But the timeline, Your
10 Honor, is the murder in this case occurs in September of 2006.

11 THE COURT: Uh-huh.

12 MR. TANASI: Okay.

13 THE COURT: September 29th, correct?

14 MR. TANASI: Correct. And so the -- my understanding of
15 this conversation that Mr. Owens has in this case is in December
16 of 2006, when he's in juvenile lock-up, his grand jury testimony that
17 I was provided says:

18 Okay, going back to December 2006, while you were in the
19 juvenile facility, did you have a conversation with Lil Swole?

20 So this conversation takes place after the murder. After
21 the murder, while he's in 2006 lock-up in juvenile court.

22 THE COURT: So he's in juvenile court with Mr. Matthews
23 and Pretty Pink?

24 MR. TANASI: Purportedly, Your Honor, at least with Lil
25 Swole. That's the discussion.

1 THE COURT: And who's -- and Little -- who is Lil Swole?

2 MR. LEVENTHAL: Little Caesar.

3 MS. BOTELHO: That's Antwon Jones, Your Honor.

4 THE COURT: Okay.

5 MR. TANASI: All right. So that conversation -- and again,
6 I'm coming -- I'm reading directly also from the officer's report that
7 provided with respect to Officer Carter:

8 Owens stated he was in lock-up in the juvenile -- in
9 juvenile with Lil Swole back in December of 2006.

10 So this is when Lil Swole -- or, I'm sorry, this is when
11 Owens has this conversation. And this is when Owens purportedly
12 has this interview fast-forwarding to February of 2007, with Officer
13 Carter. Okay. And in that conversation, Owens states to Officer
14 Carter that when Marty was killed, Pretty P and Country Grammar,
15 who they identify is Jemar Matthews, was at 900 Doolittle. Owens
16 stated he had a conversation with Pretty P and he was told he was
17 going to knock off Lil Swole for killing Marty. So --

18 THE COURT: Okay. When did that conversation take
19 place? Was it after the September 29th murder and before the
20 incident --

21 MR. TANASI: That --

22 THE COURT: -- in this case? Because that is what would
23 make common sense.

24 MR. TANASI: That is it, is that this conversation took
25 place after.

1 THE COURT: Okay.

2 MR. TANASI: Right? So, again, at that point, since it
3 occurred after, the conspiracy is over. The only way that I see that
4 they potentially can get this in under hearsay exception would be as
5 a co-conspirator statement in furtherance of the conspiracy.

6 In 2006, the murder had already been accomplished. So
7 when these discussions are happening about what purportedly
8 Mr. Owens discussed or learned, all of this was first sent or first
9 discussed with Officer Carter after the alleged murder. So --

10 THE COURT: Right. But he's telling Officer Carter about a
11 conversation that happened after the murder September 29th, and
12 before September 30th, the incident in this case.

13 MR. TANASI: So, and again, Your Honor, I would
14 disagree in that, again, going to right to the jury --

15 THE COURT: Okay. That's why I'm asking.

16 MR. TANASI: Sure. Sure, and that's -- I'm trying to lay
17 that out, is that, again, in the grand jury transcript that we were
18 provided, the question is:

19 Again, going back to 2006, December 2006, while you
20 were in juvenile facility, did you have a conversation with Lil
21 Swole?

22 So, now, he has -- Owens has this conversation with Lil
23 Swole after the murder and the conversation that Owens learns
24 about Lil Swole is Little Swole's conversations that he purportedly
25 had before the murder, but at the end of the day, this conversation,

1 this discussion, this hearsay that's coming in is all after the murder
2 had taken place. After the conspiracy had ended.

3 THE COURT: But they're talking about a conversation that
4 happened prior. Because it doesn't make sense, because this
5 incident would have already occurred.

6 MR. TANASI: But again --

7 THE COURT: Right?

8 MR. TANASI: -- it's a conversation about a conversation
9 that took place before. So --

10 THE COURT: Okay.

11 MR. TANASI: -- I mean, that's the issue, the conspiracy is
12 over at that point. So now there's no live discussion that occurs
13 after that comes directly from Mr. Owens having a conversation or
14 being in a the room with Mr. Matthews. It's not as though this all
15 occurs before the murder; this all happens with Lil Swole after the
16 conspiracy, the object of the conspiracy has been carried out.

17 THE COURT: Okay.

18 MR. TANASI: So, again, Your Honor, since -- I don't see --
19 I -- the only other way that I could see that this would get in is being
20 in a conversation or statement in furtherance of the conspiracy.
21 And so except it's in furtherance of the conspiracy -- or not in
22 furtherance of the conspiracy, it's not under -- it's not admissible
23 under any of the hearsay exceptions.

24 THE COURT: Okay.

25 MR. TANASI: So I submit it, Your Honor, on those three

1 objections.

2 THE COURT: That was only two.

3 MR. TANASI: Except that --

4 THE COURT: But, okay --

5 MR. TANASI: -- the first one was --

6 THE COURT: -- the second one was --

7 MR. TANASI: -- the gang.

8 THE COURT: -- the gang --

9 MR. TANASI: Yep.

10 THE COURT: -- and then the --

11 MR. TANASI: Hearsay. And then the third was
12 speculation as to being amped up or anything along those lines.

13 THE COURT: Okay. Okay. Because I really don't
14 understand when this conversation took place.

15 MR. GIORDANI: There appears to be a whole bunch of
16 confusion about the timeline here.

17 THE COURT: Okay.

18 MR. GIORDANI: Can I clarify?

19 THE COURT: Absolutely.

20 MR. GIORDANI: Okay. There is a conversation that
21 occurs between the witness, Mr. Owens --

22 THE COURT: Okay.

23 MR. GIORDANI: -- Mr. Jemar Matthews, and Mr. Pierre
24 Joshlin, Pretty Pete. And Jemar Matthews' moniker back then was
25 Country Grammar.

1 THE COURT: Okay.

2 MR. GIORDANI: That discussion, where they're amped

3 up, they are talking about retaliation for Marty B's murder, occurs

4 between the murder of Marty B and the murder of Mersey Williams.

5 THE COURT: Okay. So that was what I was asking earlier.

6 MR. GIORDANI: Yes.

7 THE COURT: So between September 29th and then

8 September 30th when this happened.

9 MR. GIORDANI: Correct. The murder of Marcus Williams

10 occurred at 900 Doolittle.

11 THE COURT: Okay.

12 MR. GIORDANI: According to the witness, he was

13 present -- or, I'm sorry, Mr. Matthews and Mr. Joshlin were present

14 or knew who killed or they believed to have killed their friend,

15 Marcus Williams.

16 THE COURT: Okay. And was Owens present at Doolittle?

17 MR. GIORDANI: That I don't know, but I know he was, of

18 course, present when he had the conversation with --

19 THE COURT: With --

20 MR. GIORDANI: -- Mr. Matthews and Mr. Joshlin --

21 THE COURT: Right.

22 MR. GIORDANI: -- after that murder and before Mersey's

23 murder.

24 THE COURT: Okay.

25 MR. GIORDANI: So that's the timeline.

1 THE COURT: Okay.

2 MR. GIORDANI: What Mr. Tanasi is conflating,
3 respectfully, is testimony that Mr. Owens gave against the killer of
4 Marcus Williams.

5 THE COURT: Uh-huh.

6 MR. GIORDANI: That testimony had nothing to do with
7 Jemar Matthews and Pierre Joshlin. So when he's referencing two
8 different dates, December '06 and then the conversation that
9 occurred on February 27th, he's talking about two different things
10 and making them one thing.

11 On February 27th of 2007, and this is according to the
12 report that's been disclosed since 2018, that is when Detective
13 Carter has a conversation with Nicholas Owens. During that
14 conversation, he not only talks about the murder of Marcus
15 Williams, but he also has a corollary, I guess, gives the initial
16 statement which caused us to attempt to find him in 2018, and now
17 find him in 2021. And that's when he's discussing:

18 Owens stated when Marty was killed, Pretty P and Country
19 Grammar, Pierre Joshlin and Jemar Matthews, was at 900
20 Doolittle. Owens stated he had a conversation with Pretty P,
21 told him he was going to knock off Lil Swole for killing Marty.
22 Owens stated Pretty P told him there was a bitch in the car in
23 Bahoo [phonetic] and he was going to knock them off. Owens
24 was not sure who the driver of their car was, but he thought it
25 might have been D-Wood.

1 So understanding --

2 THE COURT: Thought it might have been who?

3 MR. GIORDANI: Might have been D-Wood, D-Wood.

4 THE COURT: Okay.

5 MR. GIORDANI: So to place it into context, Andre Carter
6 is not investigating the murder of Mersey Williams when this
7 conversation is had. This is about the murder of Marcus Williams,
8 who, by the way, the Williams' are unrelated and it just so happens
9 Mersey shares the last name of Marcus. So that's one thing.

10 There's also this discussion in '06, December, that is
11 referenced in the transcript of the grand jury. That discussion is not
12 the discussion that is documented in the report they've had all
13 along. That discussion is completely separate and has to do with
14 the investigation regarding --

15 THE COURT: And you're not seeking to bring that in.

16 MR. GIORDANI: No. So that --

17 THE COURT: So, basically, Owens, the State wants to call
18 Owens to testify about that conversation he had with the two
19 defendants in this matter after the killing of Mr. Williams and before
20 the incident in this case.

21 MR. GIORDANI: Correct. And so in that vein, it's clearly
22 not hearsay, it's a statement of future intent by Pierre, it's a
23 statement of future intent by Mr. Matthews, it's co-conspirator
24 statements during the course and furtherance of the conspiracy, it's
25 adoptive admissions on either or both sides we have if they're

1 standing in the same room.

2 THE COURT: I mean, as to Pretty Pink, I mean, he can
3 testify about statements made by Mr. Matthews, because it's an
4 admission by a party opponent.

5 MS. BOTELHO: Yes.

6 MR. GIORDANI: Sure.

7 THE COURT: So it's just the other one. And you -- if he's
8 called to testify, you want to talk about the other co-defendant
9 statements as well, correct?

10 MR. GIORDANI: Sure. Yes.

11 THE COURT: Okay.

12 MR. GIORDANI: In addition, with regard to this idea that
13 we're somehow crossing the line into prohibited gang testimony,
14 we -- for the record, the State -- came to an agreement and actually
15 proposed sanitizing this back in 2018. We don't believe we need to
16 mention anything about gangs whatsoever in order to get into the
17 retaliation and motive. If my buddy gets killed in front of me, I
18 might go after the guy who did it, that has nothing to do with
19 gangs. That's what we're trying to get into. Simply motive, simply
20 retaliation.

21 We have sanitized everything throughout this trial. And
22 Mr. Tanasi mentioned specifically a statement, and I want to
23 address it. He said monikers, as though it's a bad word, right? It
24 was them that elicited the testimony from Officer Walter implying
25 that he never mentioned anything about knowing Pierre Joshlin.

1 Well, he did. And I was rebutting that during redirect examination,
2 because he said specifically in a statement, Pretty Pete, and the
3 actual moniker --

4 THE COURT: Oh, Pretty Pete? Okay.

5 MR. GIORDANI: Yeah.

6 THE COURT: Sorry.

7 MR. GIORDANI: So the moniker is Pretty Pete.

8 THE COURT: And no one bothers to correct me?

9 MR. LEVENTHAL: We're just chuckling over here at Pretty
10 Pink.

11 MR. GIORDANI: So the only reason the word moniker
12 came out is because I was redirecting on a portion of his statement
13 where he actually says Pretty Pete, I believe is what the transcript
14 says.

15 As to Ms. Botelho's statement regarding war, she was
16 referring to them being armed for war. There was nothing that
17 implied gang affiliation or gang retaliation when it came to that
18 statement. And I believe Your Honor ruled that way when their --
19 the objection was made during opening.

20 MS. BOTELHO: Actually, it was made after opening.

21 MR. GIORDANI: After.

22 MS. BOTELHO: And at the end of his opening, as well.

23 THE COURT: But, again, this witness was present during
24 this conversation, so this witness would be able to testify about his
25 observations of how each were acting?

1 MS. BOTELHO: Yes.

2 MR. GIORDANI: Correct.

3 THE COURT: Okay.

4 MR. GIORDANI: And the words they were saying. And
5 one last thing is we will certainly do our best to instruct him on not
6 using monikers or referring to gangs as much as is humanly
7 possible. I believe Ms. Botelho said he knew their real names, so it
8 shouldn't be an issue. But we will certainly abide by the agreement
9 we made with the defense at the beginning of this and the 2018
10 trial.

11 And, of course, we will make Detective Carter available if
12 at any point he needs to come in to rebut anything or impeach
13 anything. But it sounds like the witness is going to testify
14 consistently with prior statements he made to Detective Carter.

15 THE COURT: Okay. Mr. Tanasi? Because then -- I mean,
16 based on the timeframe, it would appear as though it would be a
17 statement by a co-conspirator in furtherance of the conspiracy.

18 MR. TANASI: Understood, Your Honor.

19 THE COURT: As to the other one. I mean, to your client, it
20 would just be an admission by a party opponent.

21 MR. TANASI: Thank you, Your Honor. I've made my
22 record, I'll submit it.

23 THE COURT: Okay. So I am going to allow him to testify.
24 But, again, I do think that the State needs to be very careful that he
25 doesn't, you know, call people by monikers, that he calls them by

1 their first -- you know, their legal names, and that he doesn't talk
2 about any gang affiliations.

3 MR. GIORDANI: Okay. And, Your Honor, in the event
4 there is a player or a person he's describing that he doesn't know
5 the real name of, what would you like us to do? Do you want us --

6 THE COURT: As to --

7 MR. GIORDANI: I don't want to provide the witness with
8 any information.

9 THE COURT: Does he -- does the person have a
10 nickname?

11 MR. GIORDANI: Oh, okay. Use the word nickname as
12 opposed to moniker?

13 THE COURT: I would -- yeah. To me, that's better than
14 saying moniker.

15 MR. GIORDANI: Okay. Understood.

16 MS. BOTELHO: And, Your Honor, we would be asking to
17 potentially call him after the lunch break. We do have three
18 lengthier witnesses scheduled for this morning.

19 THE COURT: Okay.

20 MS. BOTELHO: We want the opportunity to refresh and
21 admonish him again about the names and gang references and
22 things like that.

23 THE COURT: Okay.

24 MS. BOTELHO: Please.

25 THE COURT: And, again, any benefits that were given to

1 this witness by the AG, that's all been turned over to the defense,
2 correct?

3 MR. GIORDANI: Correct. And another thing I forgot to
4 mention is very important: Absolutely no benefit whatsoever has
5 been conferred upon him in this case; absolutely no benefit will be
6 conferred upon him in this case in the event he testifies. There is
7 no agreement whatsoever and that will be made very clear, I'm
8 sure, during cross-examination when the defense questions him.

9 MR. TANASI: Your Honor, just with respect to this
10 chatting with my client, he's now identified potential rebuttal
11 witnesses that we may need to call in light of this development.
12 And the development, I'll say, is this: The report that we have does
13 say specifically that:

14 Owens stated he had a conversation with Pretty P and he
15 told him he was going to knock off Lil Swole for killing Marty.

16 That's the conversation between Owens and, specifically,
17 the words of Pretty P, not Mr. Matthews.

18 From what I believe I've heard, and they can correct me if
19 I'm wrong, is now, in addition, Owens will testify that Mr. Matthews
20 also said things that indicated he intended this retaliation and
21 revenge as well. So that's more than what we have in this report.
22 And it's even more than what's in the grand jury transcript that I
23 was provided.

24 So if his testimony is going to say specifically now that
25 Mr. Matthews said words that he was now going to retaliate, that's

1 potentially causing us not an issue in having to bring in rebuttal
2 witnesses.

3 THE COURT: Okay.

4 MR. GIORDANI: Two things. Again, because I know the
5 Supreme Court's going to look at this probably very closely, the
6 grand jury testimony had nothing to do with Pierre Joshlin and
7 Jemar Matthews, number one.

8 Number two, this report that documents the interview in
9 February of '07 between Andre Carter and Nicholas Owens has
10 been in discovery since before the 2018 trial. So this idea that there
11 is some other statement out there is false. This is the report. We
12 don't have a recorded statement from the witness, there's nothing
13 that we have that the defense doesn't have when it comes to this
14 witness.

15 MR. TANASI: And, Judge, to --

16 THE COURT: I don't think you were inferring that. I didn't
17 get that inference.

18 MR. TANASI: That wasn't my inference at all.

19 MR. GIORDANI: Okay.

20 THE COURT: Okay.

21 MR. TANASI: It was simply -- it sounded to me as though
22 he's now going to testify to more or to specific words that my client
23 has said, which is new.

24 THE COURT: Well, I asked. I said, was he present, you
25 know, when this conversation took place? And the State said yes.

1 I mean, have you offered this witness to the defense to
2 speak to him?

3 MR. GIORDANI: Absolutely. He's in the side room. I --

4 THE COURT: Okay. I just want to make sure.

5 MR. GIORDANI: We don't have control over that.

6 THE COURT: I know. But I just want to make sure that the
7 offer has been made.

8 MR. GIORDANI: Absolutely.

9 THE COURT: That if you all want to talk to him before he
10 testifies, obviously, we'll allow that.

11 MR. TANASI: Understood.

12 MR. GIORDANI: And Detective Carter was physically
13 present, I believe it was yesterday, Mr. Leventhal and him were
14 talking. I guess they might know each other from another case. So,
15 I mean, he's been present. He's not here now. But we will certainly
16 make him available if they need us to, if they don't already have his
17 contact information.

18 MS. BOTEHO: And he is a retired Metro detective.

19 MR. GIORDANI: Oh, that's right.

20 MS. BOTEHO: He is no longer with Metro. But since he
21 handled Nicholas Owens in this 2007 interview, he made himself
22 available to the State.

23 THE COURT: Okay. And he investigated the other
24 murder?

25 MR. GIORDANI: He wasn't eh lead investigator, but he

1 was one of the --

2 THE COURT: He was -- okay.

3 MR. GIORDANI: -- gang detectives and was heavily
4 involved in that area.

5 THE COURT: Okay.

6 MR. GIORDANI: There were multiple shootings and
7 murders around this time in that particular area and it all had to do
8 with two or three particular gangs, Squad Upwood, Gerson was
9 involved, there was a whole bunch of different gangs involved, so
10 they all kind of overlap in some way, shape, or form.

11 THE COURT: Okay. Who are we going to call first this
12 morning?

13 MS. BOTELHO: James Krylo, the read-in.

14 THE COURT: Oh, that's right. Because he's -- okay. All
15 right.

16 Can we bring the jury in? Is that -- is everybody ready?

17 MS. BOTELHO: Your Honor, would --

18 THE COURT: And who's going to read the testimony?

19 MS. BOTELHO: It'll be Mr. Palal.

20 THE COURT: Oh, okay.

21 MS. BOTELHO: And, Your Honor, may I approach with
22 your --

23 THE COURT: Sure. Thank you.

24 MS. BOTELHO: -- highlighted copy?

25 THE COURT: Thank you.

1 MS. BOTELHO: And, Your Honor, you would be orange in
2 the highlighting.

3 THE COURT: Thank you.

4 Okay. Mr. Tanasi?

5 MR. TANASI: Yes, Judge.

6 THE COURT: The clerk has an exhibit you asked her to
7 pull?

8 MR. TANASI: Yes, Your Honor. Thank you. I think that's
9 Exhibit C, the identification card.

10 THE CLERK: It's going to be D in this trial, not C.

11 MR. TANASI: It will be D this trial, Your Honor, not C.

12 THE COURT: Are you moving to admit it?

13 MR. TANASI: Yes, Your Honor.

14 THE COURT: What is Exhibit D?

15 MR. TANASI: It's --

16 THE CLERK: It is an ID.

17 THE COURT: It's a what?

18 MR. TANASI: Mr. Matthews' identification card.

19 THE COURT: Oh, it's -- okay.

20 MR. TANASI: Admitted by way of stipulation.

21 THE COURT: And so it's admitted.

22 MR. TANASI: Thank you, Judge.

23 THE CLERK: By stipulation?

24 THE COURT: By stipulation.

25 [Defendant's Exhibit Number D admitted.]

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[Pause in proceedings.]

THE COURT: Did James Krylo do the ballistics?

MR. GIORDANI: Yes, Your Honor.

MS. BOTELHO: Yes.

THE COURT: Okay.

[Pause in proceedings.]

[Jury reconvened at 9:43 a.m.]

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

MR. GIORDANI: Yes, Your Honor.

THE COURT: And the defense?

MR. TANASI: Yes, Your Honor.

THE COURT: Thank you.

You may call your next witness.

MS. BOTELHO: The State calls James Krylo.

THE COURT: Okay. Ladies and gentlemen, James Krylo
is not going to appear in person. We have taken his testimony
under oath and it has been preserved. And so at this time, we're
going to have the testimony read to you, but this is not Mr. Krylo,
he's just going to be reading the testimony of Mr. Krylo.

BINU PALAL,

[having been called as a reader and first duly sworn, read the
testimony of **JAMES KRYLO**, not transcribed.]

[Court recessed at 10:58 a.m., until 11:22 a.m.]

[In the presence of the jury.]

1 THE COURT: Does the State stipulate to the presence of
2 the jury panel?

3 MR. GIORDANI: Yes, Your Honor.

4 THE COURT: And the defense?

5 MR. TANASI: Yes, Your Honor. Thank you.

6 THE COURT: You may call your next witness.

7 MR. GIORDANI: Martin Wildemann.

8 **MARTIN WILDEMANN,**

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

11 THE CLERK: You may be seated.

12 THE WITNESS: Thank you.

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

15 THE WITNESS: Martin Wildemann, W-I-L-D-E-M-A-N-N.

16 THE CLERK: And the first, please?

17 THE WITNESS: M-A-R-T-I-N.

18 THE CLERK: Thank you.

19 **DIRECT EXAMINATION**

20 BY MR. GIORDANI:

21 Q Good morning, sir.

22 A Good morning.

23 Q Are you currently retired, sir?

24 A Yes.

25 Q From the Las Vegas Metropolitan Police Department?

1 A Yes.

2 Q How long were you with Metro?

3 A 29 years.

4 Q And during your 29 years with Metro, did you work in
5 various different jobs?

6 A I did.

7 Q Can you give a brief outline for the ladies and gentlemen
8 of the jury of your career?

9 A I started in patrol. From patrol, I went to the gang unit. I
10 worked in the gang unit 10 years. From the gang unit I went to
11 homicide and I worked in homicide 15 years.

12 Q At the time of this offense, September 30th, 2006, were
13 you a homicide detective with the Las Vegas Metro Police
14 Department?

15 A I was.

16 Q And were you the lead investigate involving the death of
17 Mersey Williams?

18 A Yes.

19 Q And did that crime occur at 1271 Balzar?

20 A Yes, I did.

21 Q I want to show you a map, sir, State's 21; you see Balzar
22 up here on the map?

23 A I do.

24 Q Did you respond to that particular scene yourself?

25 A I did.

1 Q Explain for the jury how it is that a homicide detective
2 gets called out to a particular homicide scene.

3 A Okay. Well, homicide consisted of a squad -- or, actually,
4 four squads, three teams in each squad. So it was a rotation basis
5 to share the workload. And it happened that that night my partner,
6 Jimmy Vaccaro and myself, were up for a murder. So when that
7 call came out, we responded.

8 Q Is it common for homicide detectives such as yourself to
9 respond to the scene after multiple patrol personnel and crime
10 scene analysts have already been there?

11 A Absolutely.

12 Q And in this particular case did that occur?

13 A Yes.

14 Q In addition to this scene at 1271 Balzar, were there
15 multiple related scenes, I guess, processed during the course of the
16 evening?

17 A Yes.

18 Q And are those depicted down here on the map?

19 A Yes.

20 Q You see a 1284 Lawry flagged on the map?

21 A Yes.

22 Q Do you know what that refers to?

23 A That refers to a residence where a car-jacking had taken
24 place and a vehicle theft.

25 Q Okay. And then there's, at the bottom of this map, a 1116

1 Jimmy; what does that refer to?

2 A That is the backyard where Jemar Matthews, a suspect,
3 was apprehended.

4 Q There's a 1200 Eleanor; what does that refer to?

5 A There's a piece of evidence, I believe a glove, found in
6 front of that residence.

7 Q And then there's a 1701 North J Street; what is that
8 referring to?

9 A That is where an additional suspect, Pierre Joshlin, was
10 found in a dumpster.

11 Q Okay. When you respond to a scene such as this, do you
12 receive what's referred to as a briefing?

13 A Yes.

14 Q And, in this particular case, did that happen?

15 A Yes.

16 Q Fair to say that this was a large crime scene?

17 A Yes. I mean, as it turns out, while I was en route there, I
18 was advised of the other scenes that there were in common. And
19 so, yes, it was very large.

20 Q Fair to say there were dozens and dozens of Metro
21 personnel of various capacities involved in this investigation?

22 A Absolutely.

23 Q I want to talk about a little bit of the information going in.
24 As you're responding or when you're being briefed at the scene
25 or -- do you become aware there are two suspects in custody and

1 some outstanding?

2 A Yes.

3 Q And are those two suspects in custody Jemar Matthews
4 and Pierre Joshlin?

5 A Yes.

6 Q Did you also learn that there were witnesses at the
7 homicide scene and witnesses at the car-jacking scene?

8 A Yes.

9 Q And, in addition, there were witnesses in the form of
10 officers at other scenes that we'll get to later?

11 A Yes.

12 Q Okay. I want to talk to you first about the scene at Balzar.

13 A Okay.

14 Q Were there crime scene analysts processing that particular
15 scene, sir?

16 A Absolutely.

17 Q And did you work with those crime scene analysts? Can
18 you describe that process for the jury?

19 A Yes. Well, when I arrived, several crime scene analysts
20 were there, taking overall photographs of the scene. Like I said
21 earlier, we have a briefing where we will decide whose job it what
22 at the scene. In this instance, my job was documenting the scene
23 with the crime scene analysts. So you work hand-in-hand with
24 them, looking at evidence, photographs, and whatnot.

25 Q Okay. I believe you mentioned this, but you were there

1 with a partner from homicide, as well?

2 A I was. And we had two additional homicide detectives
3 showed up due to the elaborate scene.

4 Q Okay. I want to show you just a couple photographs from
5 that scene at 1271 Balzar and ask you some questions.

6 A Okay.

7 Q Showing you 179, sir. Oops, help if it was right-side up.
8 Do you recognize that, sir?

9 A I do. That's the west-facing window at 1271 Balzar, and
10 it's facing Lexington Street.

11 Q Next, I'm showing you 91; do you recognize that, sir?

12 A I do. That's the side yard to that same residence, in
13 between Lexington and the house.

14 Q And then 97, recognize that?

15 A Yep. That point of view is taken from Lexington Street as
16 you overlook the sidewalk and that side yard, that same --

17 Q And that --

18 A -- window is shown.

19 Q Understood. At the time of this event, you've been in
20 homicide quite a while?

21 A Yes.

22 Q Had you responded to other homicide scenes?

23 A Yes.

24 Q You have experience at that time and, of course, now with
25 cartridge cases?

1 A Yes.

2 Q In this particular incident, did it appear to you that these
3 cartridge cases were focused in one particular area?

4 A Yes.

5 Q And, in addition, going back to 179, did it appear to you
6 that multiple rounds were focused on a particular area?

7 A Absolutely.

8 Q Did you logically deduce anything based upon the
9 appearance of this crime scene as it was?

10 A Well, it definitely looked like two particular areas were
11 targeted, to me. It looked like the house itself, through that
12 window, was definitely a point of interest to the people shooting.
13 And then due to the multiple rounds that were focused on the
14 people outside, that that was another target.

15 Q Okay. And I want to go back to 97 real quick; that group of
16 folks that were the targets of some of the shooting were up in this
17 yard area in front of the house, not on the west side of the house?

18 A Correct.

19 Q All right. So it appeared to you, based upon your training
20 and experience, that not only was the house a focus of the
21 shooting, but also that group of people out front?

22 A Yes.

23 Q I referenced witnesses, and I'm just going to put 21 back
24 up on the screen here. Witnesses at 1271 Balzar --

25 A Yes.

1 Q -- were there a total of four witnesses that were canvassed
2 at that scene?

3 A Yes.

4 Q And do you recall who those folks were?

5 A Yes. The 911 caller was Shauna Williams. You had an
6 additional victim that was struck by gunfire, Myniece Cook. And
7 Michel'le, I believe is the pronunciation of her name, Tolefree.

8 Q Was there also a Maurice Hickman?

9 A Yes, I'm sorry. Maurice Hickman too.

10 Q It's okay. So let's start with Shaunte Campbell [phonetic].
11 You indicated that that woman called 911?

12 A Yes.

13 Q Did you interview -- you or other homicide detectives
14 interview her?

15 A She was interviewed by detectives, yes.

16 Q Could she provide you anything of evidentiary value?

17 A No.

18 Q Did it -- based upon her statement, you believe she was
19 inside the home at the time of the whole thing?

20 A Yes.

21 MR. LEVENTHAL: Judge, I'm going to object to leading.
22 It's overly leading. I don't mind a little bit, but --

23 THE COURT: You are leading.

24 MR. GIORDANI: Okay.

25 ///

1 BY MR. GIORDANI:

2 Q Based --

3 MR. LEVENTHAL: Not -- do you want to approach? You
4 okay?

5 MR. GIORDANI: Oh, yeah.

6 MR. LEVENTHAL: Okay.

7 MR. GIORDANI: I'll re-ask the question.

8 THE COURT: Okay. Thank you.

9 MR. GIORDANI: I understand.

10 BY MR. GIORDANI:

11 Q Based upon your discussion with Ms. Campbell, was there
12 anything, in your opinion, of evidentiary value that she added to
13 your investigation?

14 A No.

15 Q You mentioned Myniece and Michel'le, were those folks
16 interviewed?

17 A Yes.

18 Q And were they cooperative?

19 A Yes.

20 Q I want to talk to you about Maurice Hickman.

21 A Okay.

22 Q Did you make contact with Mr. Hickman?

23 A Yes.

24 Q What was his demeanor like?

25 A He was standoffish and noncooperative.

1 Q Would he provide you with any statement?
2 A No.
3 Q Did he refuse a statement?
4 A Yes.
5 Q To this day, have you ever gotten a statement from
6 Maurice Hickman?
7 A No.
8 Q Has he ever cooperated, to your knowledge, in any way in
9 this investigation?
10 A No.
11 Q Now, I want to move down to this 1284 scene, 1284
12 Lawry.
13 A Okay.
14 Q Were there four witnesses or potential witnesses at that
15 scene as well?
16 A Yes.
17 Q Were those four individuals interviewed?
18 A They were.
19 Q Were any of those four individuals able to get a good look
20 at the suspects' faces?
21 A No.
22 Q Moving on down to the scenes at Lexington and Jimmy,
23 that area.
24 A Okay.
25 Q And I guess I kind of skipped over a scene when I was first

1 going through them, because there -- a bit of a scene over here at
2 the church on Lexington, right?

3 A Correct. That's where the vehicle crashed into a fire
4 hydrant.

5 Q Okay. Were there several firearms located and
6 impounded with relation to those scenes?

7 A Yes.

8 Q And when I say those scenes, I mean, Lexington and
9 Doolittle, as well as 1701 North J Street --

10 A Yes.

11 Q -- which you previously described as Pierre Joshlin's -- the
12 place where he was arrested?

13 A Yes.

14 Q Can you describe the -- kind of the layout of the firearms?

15 A Well, where the crash occurred, there's a grass area next
16 to the vehicle that had crashed. There was a Ruger -- I believe it
17 was a Model 10/22 semiautomatic 22-caliber rifle. Now, the stock of
18 that rifle had been cut off and then the barrel of that rifle had also
19 been shortened. It also was equipped with a very large capacity I
20 guess you could call it a banana clip that stores a significant
21 amount of rounds. That clip, I believe, was a 30-round capacity and
22 it was empty. There was one live cartridge in the barrel of the gun,
23 in the tube of the gun, ready for fire.

24 Q Before I move onto other weapons --

25 A Okay.

1 Q -- Detective, there is a particular question I want to ask you
2 with regard to Exhibit 5. Sir, at the time, 2006 and I guess still
3 today, was it illegal --

4 MR. GIORDANI: May I approach?

5 THE COURT: You may.

6 BY MR. GIORDANI:

7 Q Was it illegal to possess a rifle with a shortened barrel?

8 A Yes.

9 Q Do you recognize what's been marked as 5 and 5A?

10 A I do.

11 Q And what is that?

12 A That is a Ruger 10/22 semiautomatic 22-caliber rifle with a
13 altered stock and a shortened barrel.

14 Q Okay. So when you say stock and barrel, I want to make
15 sure the jury understands in case they don't know firearms. Can
16 you point to it --

17 A Sure.

18 Q -- if I lean this up --

19 A Sure.

20 Q -- can you point to it and show them what the stock is and
21 what the barrel is?

22 A The stock is this area here that would go back and rest
23 against your shoulder. The barrel would, obviously, go several
24 inches further, and it has been cut right there.

25 Q Okay. And at the time and now, is it -- was it illegal for the

1 barrel length to be less than 16 inches?

2 A Yes.

3 Q And, in this particular case, was this barrel measured?

4 A Yes.

5 Q And was it 10-3/4 inches?

6 A Yes.

7 Q Shorter than 16, obviously?

8 A Yes.

9 Q We were talking about other firearms. If you could go on
10 and kind of list those and --

11 A Okay.

12 Q -- describe their layout?

13 A Sure. At -- well, we'll stick to the car, and the car --

14 Q Okay.

15 A -- on the -- I believe it was the passenger floorboard, was a
16 Colt .45 semiautomatic handgun. It had rounds, so live cartridges,
17 in the magazine, and it also had a misfeed, so the slide of the
18 firearm was not locked, but jammed backwards so it couldn't load
19 another round and/or cartridge. So it was laying on the floor of that
20 vehicle in that condition.

21 At 1701 J, in the same dumpster that Pierre Joshlin was
22 taken out of, there was a Glock Model 21 45-caliber handgun.
23 That's a semiautomatic. It's -- had a large-capacity magazine in it
24 that was capable of holding, I believe, 28 rounds. That magazine
25 was partially loaded and there was a live round in the barrel of that

1 weapon also.

2 Q In addition to those suspect weapons that you just
3 described, was there a Kimber duty weapon impounded and
4 counted down from Officer Cupp?

5 A Yes, there was.

6 Q Is there, during the course of your investigation into the
7 homicide, is there a concurrent investigation going on?

8 A Yes.

9 Q And what was that into?

10 A The officer-involved shooting.

11 Q Okay. Fair to say that that investigation is independent of
12 the homicide investigation?

13 A Yes.

14 Q Okay. So the goal of that investigation is a little bit
15 different than your goal as the homicide detective, correct?

16 A Correct.

17 Q Oh, and I guess I should ask: You didn't run the
18 officer-involved shooting investigation?

19 A I did not. A different team handled that.

20 Q We talked about kind of the scenes as they were that
21 night, and I want to jump ahead a moment. At some point
22 approximately 11 days later, did you and other Metro personnel
23 return to the scene?

24 A Yes. But 11 days later, I think it was October 11th, my
25 partner, Jimmy Vaccaro, and myself were in the area. We stopped

1 by that scene at 1271 Balzar and just kind of walked the area.

2 Q I apologize. I'm going to try to find you an exhibit here.
3 What was the purpose of your return visit, if you haven't already
4 stated?

5 A Well, we kind of -- we were in the area, actually. We were
6 talking to Myniece Cook, who lived close by. And while we were
7 there, we decided to swing by the Balzar residence. As you could
8 see from the pictures earlier, that side yard was extremely rocky,
9 making it very hard to find casings, especially at nighttime. We
10 walked the area looking and happened to find two
11 additional 22-caliber casings.

12 Q And I'm going to show you already-admitted 233; does
13 that appear to be the scene as it appeared when you returned?

14 A Yes.

15 Q Did you call out a crime scene analyst to join you?

16 A We did, yeah --

17 Q At that crime --

18 A -- to collect the evidence.

19 Q I'm sorry?

20 A To collect the evidence.

21 Q And did he also document with these photographs?

22 A He did.

23 Q Was that Mark Washington?

24 A It was.

25 Q Okay. I'm going to start with 241 now; do you see 1271

1 Balzar in that photo?

2 A I do.

3 Q And then there's another home next door to it?

4 A Correct.

5 Q And there appears to be a gate?

6 A Yes, a fence.

7 Q I'm sorry fence. Okay. I'll show you a different photo, I

8 apologize. 242. Now, in this photo, can you see the west window

9 of 1271 Balzar?

10 A I can.

11 Q And then the house directly behind it also has a fence,

12 correct?

13 A Yes.

14 Q And is this street in the foreground Lexington?

15 A It is.

16 Q Can you see that there in the right-hand portion of the

17 photo?

18 A I can.

19 Q What is that?

20 A It looks like an evidence marker, Number 2.

21 Q And does Number 2 represent the second cartridge case?

22 A It does.

23 Q Do you remember what caliber that was?

24 A 22 caliber.

25 Q So another 22 caliber?

1 A Yes, sir.

2 Q States 248, is that that small-caliber 22?

3 A It is.

4 Q This is what I was looking for. Now, going back to 251, do
5 you see that?

6 A I do.

7 Q What are we looking at here?

8 A We're looking at an evidence marker numbered 1.

9 Q Do you remember what that was?

10 A It was another additional 22-caliber sell casing.

11 Q 253, is that just a closer view of that 22-caliber --

12 A It is.

13 Q -- case?

14 A It is.

15 Q And that would be in the path towards the car-jacking
16 scene, correct?

17 A Yes.

18 Q Sir, did you attend the autopsy of Mersey Williams?

19 A I did.

20 Q And were you present when her body was examined?

21 A I was.

22 Q Were you present when a 22 -- or a small-caliber bullet
23 was taken from her head and impounded into evidence?

24 A I was.

25 Q I want to ask you some general questions about the two

1 in-custody suspects, Jemar Matthews and Pierre Joshlin.

2 A Okay.

3 Q At the time of this offense, how old were those two
4 individuals?

5 A I believe that Mr. Matthews was 19 and Mr. Joshlin
6 was 18.

7 Q Okay. And were their heights documented at the time?

8 A Yes. Not by myself, but yes.

9 Q Okay. And based upon that record, what was Jemar
10 Matthews documented as back then?

11 A 5-foot-9, I believe.

12 Q And was what Pierre Joshlin documented as height-wise
13 back then?

14 A 5-foot-5.

15 Q Okay. Did you have addresses associated with both
16 Jemar Matthews and Pierre Joshlin?

17 A We did.

18 Q Do you recall those off the top of your head?

19 A Off the top of my head, Mr. Matthews was at 1701 North
20 J -- and I might have these backwards, if I do, I apologize -- and
21 Mr. Joshlin was at 911 Silverman.

22 Q Okay. If I were to represent to you that Jemar Matthews'
23 address was actually --

24 MR. LEVENTHAL: Judge, I'm going to object to the
25 representing. It's --

1 MR. GIORDANI: Okay.
2 THE COURT: Yeah.
3 MR. LEVENTHAL: I just --
4 THE COURT: It's leading.
5 MR. GIORDANI: Sure. I'll refresh his recollection, if I may.
6 THE COURT: Okay.
7 MR. LEVENTHAL: Judge, can we approach real quick, just
8 real quick?
9 THE COURT: Sure. No problem.
10 [Bench conference transcribed as follows.]
11 MR. LEVENTHAL: Judge, I guess I'm -- there's been a lot
12 of leading here. And I sort of stand back, because, you know I know
13 that Mr. Giordani is trying to be careful with the gangs, although
14 he's already mentioned he was with the gang unit and all of these
15 other things. So I'm not sure -- none of these topics --
16 THE COURT: He didn't testify having been a gang unit
17 when this occurred.
18 MR. LEVENTHAL: No, I understand. He's --
19 THE COURT: He didn't testify that was --
20 MR. LEVENTHAL: -- he said it was in his background.
21 THE COURT: -- part of his career.
22 MR. LEVENTHAL: I totally understand. My point is this: I
23 don't have a problem with -- obviously, he's leading when it gets
24 into that touchy. But this part, it seems to be like this whole thing
25 seems to be very leading and suggested. And I don't know what

1 independent recollection this witness has. I just want to put that
2 out there, because I don't want to stop him from leading if we get
3 into those touchy subjects. That's all.

4 MR. GIORDANI: Judge --

5 THE COURT: Okay.

6 MR. GIORDANI: -- this particular question is special. I'm
7 leading because -- and we had this discussion outside --

8 MR. LEVENTHAL: Right.

9 MR. GIORDANI: I'm leading because the information I'm
10 asking him about --

11 THE COURT: Okay. Why don't we --

12 MR. GIORDANI: -- is on an info and booking sheet that
13 also talks a lot about --

14 THE COURT: Okay.

15 MR. GIORDANI: -- field interviewing and forwarding any
16 context to the gang unit. So I'm trying to lead.

17 THE COURT: Because you were really leading, but I'm
18 going to give you some leeway, so you just make sure you don't
19 get into anything that's [indiscernible].

20 MR. GIORDANI: Okay. Understood, Your Honor.
21 Understood.

22 MR. LEVENTHAL: And that's what I don't want to -- I don't
23 want to touch that --

24 THE COURT: I get it.

25 MR. LEVENTHAL: -- but I wanted to --

1 MR. GIORDANI: That's fair. I'll --

2 THE COURT: Uh-huh.

3 MR. LEVENTHAL: Thank you.

4 MR. GIORDANI: -- try to limit it.

5 [End of bench conference.]

6 THE COURT: Okay. You may proceed.

7 MR. GIORDANI: May I approach?

8 THE COURT: You may.

9 BY MR. GIORDANI:

10 Q I'm showing you a record.

11 A Okay.

12 Q Does that refresh your recollection as to Jemar Matthews'
13 address?

14 A Yes, it does.

15 Q What was it?

16 A 1801 J Street, Apartment 217.

17 Q And you indicated, I believe, Pierre Joshlin was 911
18 Silverman, correct?

19 A Yes.

20 Q Sir, as the lead investigator on the homicide case -- oh, I
21 apologize, I forgot to ask you a question.

22 That evening, while Mr. Matthews and Mr. Joshlin were
23 still at the scene, did you witness some work by Crime Scene
24 Analysts Randall McPhail and William Spees?

25 A I did.

1 Q Are both of those men now retired?

2 A Yes.

3 Q Were gunshot residue kits taken from Mr. Matthews,
4 Mr. Joshlin, and a third individual?

5 A Yes.

6 Q Where was that third individual located?

7 A I believe he was located at one of the two residences. I
8 think it was 911 Silverman.

9 Q Okay. And as a -- as the lead detective on at least the
10 homicide portion, were you involved with follow-up submissions to
11 the forensic lab?

12 A Yes.

13 Q In this particular case, did you submit items of evidence to
14 the DNA lab for DNA testing?

15 A Yes.

16 Q Based upon the results, was there anything informative as
17 to your investigation?

18 A No.

19 Q Was there anything of any evidentiary value with regard
20 to the DNA submission you requested?

21 A No.

22 Q Did you also request or submit for fingerprints?

23 A I did.

24 Q Were those done on -- were the prints taken from not only
25 the officers' Chrysler Sebring, but also the Lincoln?

1 A Yes.

2 Q Was there anything of evidentiary value that you received
3 based upon your submission to the fingerprint lab?

4 A No.

5 Q Did you also or were you responsible for submitting for
6 ballistics and firearms?

7 A Yes.

8 Q And do you know who did the testing on that?

9 A Forensic analyst James Krylo, I believe.

10 Q Is he also retired at this point?

11 A Yes, sir.

12 Q And then I had mentioned now the gunshot residue kits,
13 did you also have those submitted to a lab?

14 A Yes.

15 Q And is that a lab out of Bexar County?

16 A It is, yes.

17 Q And did you receive results on that test?

18 A Yes.

19 Q Were you aware that Mr. -- or I should say Officer Cupp
20 and Officer Walter had identified Mr. Matthews and Mr. Joshlin?

21 MR. LEVENTHAL: Judge, I'm going to object again.

22 THE COURT: And --

23 MR. LEVENTHAL: He's basically telling him what to say.

24 Were you aware that --

25 MR. GIORDANI: Well, that's ridiculous.

1 THE COURT: I'm sorry, is the objection leading?
2 MR. LEVENTHAL: Leading.
3 MR. GIORDANI: Again.
4 THE COURT: Okay. Again, I'm going to give you some
5 leeway.
6 MR. GIORDANI: Your Honor, if I may respond?
7 THE COURT: I mean, the objection's overruled. Let's just
8 keep going.
9 MR. GIORDANI: Thank you.
10 BY MR. GIORDANI:
11 Q Okay. Do you know what a show-up is?
12 A Yes.
13 Q What is a show-up?
14 A It's a form of a witness identification on a suspect where
15 we would actually take the witness to a scene and look at a possible
16 suspect that was in custody to see if there's a positive or a negative
17 identity made.
18 Q Are there instructions associated with a show-up
19 identification procedure?
20 A There is, yes.
21 Q Do you recall those off the top of your head?
22 A I don't, no. They're lengthy.
23 MR. GIORDANI: Your Honor, if I may approach, I have
24 the --
25 THE COURT: You may.

1 MR. GIORDANI: -- sheet of paper here.

2 BY MR. GIORDANI:

3 Q Sir, I'm folding this paper up just to show you a
4 typewritten paragraph; do you see that?

5 A I sure do.

6 Q Does that appear to be those show-up instructions you
7 just referenced?

8 A Yes.

9 MR. GIORDANI: And with the Court's permission, I would
10 ask that the detective -- retired detective be permitted to read that
11 into the record.

12 THE COURT: You may.

13 THE WITNESS: In a moment I'm going to show you a
14 person who is being detained. The person may or may not be a
15 person who committed the crime now being investigated. The
16 fact that this person is detained should not cause you to believe
17 or guess that he/she is guilty. You do not have to identify
18 anyone. It is just as important to free innocent persons from
19 suspicion as it is to identify those who are guilty. Please keep in
20 mind that clothing can easily be changed. Please do not talk to
21 anyone other than police officers while viewing this person.
22 You must make up your own mind and not be influenced by
23 other witnesses, if any.

24 When you have viewed the person, please tell me whether
25 or not you can make identification. If you can, tell me in your

1 own words how sure you are of your identification. Please do
2 not indicate in any way to other witnesses that you have
3 made -- that you have or have not made an identification.

4 Thank you.

5 BY MR. GIORDANI:

6 Q Thank you.

7 A You bet.

8 Q Sir, based upon all of the evidence that we just discussed,
9 the evidence from the crime scene, the follow-up investigation, and
10 the identifications, did you make the decision to arrest
11 Mr. Matthews and Mr. Joshlin for conspiracy to commit murder and
12 murder with use of a deadly weapon?

13 A Yes.

14 Q In addition to other associated crimes that follow?

15 A Yes.

16 MR. GIORDANI: I'll pass the witness at this time.

17 Thank you, sir.

18 THE WITNESS: Thank you.

19 THE COURT: Cross-examination?

20 MR. LEVENTHAL: Thank you.

21 **CROSS-EXAMINATION**

22 BY MR. LEVENTHAL:

23 Q Good morning, Detective.

24 A Good morning.

25 Q My name is Todd Leventhal, I represent Jemar Matthews.

1 You're a homicide detective with -- you were with Metro
2 for many years, correct?

3 A Yes.

4 Q Okay. And part of your job responsibilities was to
5 conduct, amongst other -- conduct initial interviews, right?

6 A Yes.

7 Q As well as create lab reports is what we just heard,
8 correct?

9 A Yes.

10 Q As well as get the reports back and then put those in some
11 kind of organization, correct?

12 A Yes.

13 Q Okay. So those are your three sort of headings as a
14 homicide detective when you first go out on the scene, correct?

15 A Well, no.

16 Q Okay.

17 A I mean, the --

18 Q Amongst other things? I understand that you're out there
19 to do other things, but initial interviews, you want to get that done
20 pretty quick, right?

21 A Yes.

22 Q Okay. And the reason you want to get done these initial
23 interviews done pretty quick because you understand that, you
24 know, we're humans and the brain starts, over time, starts to forget
25 things, right?

1 A Yes.

2 Q So those initial interviews are done quickly and they're
3 done with eyewitnesses, right?

4 A Yes.

5 Q They're done with, say, family members, right?

6 A Yes.

7 Q Anybody that has any information regarding the crime
8 scene or the homicide that you're out investigating, right?

9 A Correct.

10 Q You want to get all the information you can so that you
11 can get the person that you think did the homicide into custody and
12 then, ultimately, whatever needs to be done, right?

13 A Right.

14 Q Okay. So -- and during that interview process, you, as an
15 interviewer, expect the interviewee to have complete full disclosure
16 of all the facts that is relevant to them at the time, right?

17 A We would absolutely like that. Sometimes that's not the
18 case.

19 Q Understood. But you would like that, right?

20 A Yes.

21 Q You'd expect that, right?

22 A Yes.

23 Q Because that forms and shapes how you, as the lead
24 detective of this, will conduct your ongoing investigation, right?

25 A It could influence --

1 Q Right. It could also take away resources from Metro to go
2 on a wild goose chase if it's not needed in terms of gathering
3 evidence, right?

4 A Correct.

5 Q It also, in terms of potential subjects, it could prolong that
6 as opposed to getting that person into custody immediately, if
7 your -- that person doesn't fully disclose all the relevant facts at the
8 time, right?

9 A Yes.

10 Q Okay. And included within those relevant facts, you want
11 to know how the events unfolded, correct?

12 A Yes.

13 Q You want to know from that interviewee if there's any
14 other potential witnesses out there, I would assume, right?

15 A Sure.

16 Q Okay. And any potential suspects, right?

17 A Sure.

18 Q Okay. And when we're talking about any potential
19 suspects, you also want to know from the interviewee whether or
20 not let's say they recognize someone but didn't know their name,
21 that would be important information for you, right?

22 A Yes.

23 Q Okay. So even though somebody -- let's say you walk up
24 to a witness and you ask them, and they just decide not to tell you
25 because they didn't know the name, but they knew of the person,

1 you would still want to know that information, right?

2 A Yes.

3 Q Now, I want to take you to, specifically, the Lexington
4 Street where Officer Cupp and Officer Walter had stopped a Lincoln;
5 you with me there?

6 A Yes.

7 Q Okay. Now, you were the lead detective here, right?

8 A Not at that scene, no.

9 Q Understood. But you had reviewed -- in order -- you're
10 retired, right?

11 A Yes.

12 Q And this happened in '06, right?

13 A Yes.

14 Q So you reviewed, in order to testify today, I assume you
15 reviewed your case file or parts of your case file?

16 A Yes.

17 Q Okay. So you're competent to testify as to all aspects of
18 the homicide, no matter what scene it would be, right?

19 A I will do my best to --

20 Q Thank you.

21 A -- recollect all that.

22 Q That's all I can ask for.

23 And my question is this: From the time that the Lincoln
24 stopped -- the Lincoln was stopped by Cupp and Walters -- to when
25 Jemar Matthews was in custody, that was approximately one hour

1 had elapsed in between those two events, correct?

2 A I'm not absolutely sure on that time, sir.

3 Q You're not?

4 A No. If there's a CAD I could look at, I would be glad to, but
5 I don't know exactly.

6 MR. LEVENTHAL: Court's indulgence.

7 Q Would it refresh your recollection if I showed you a copy
8 of the prior transcript that you had attended under oath?

9 A Sure.

10 Q Thank you.

11 MR. LEVENTHAL: May I approach?

12 THE COURT: You may.

13 MR. LEVENTHAL: Thank you.

14 BY MR. LEVENTHAL:

15 Q Just go ahead and look up when you're read, Detective.

16 A [Witness complies.]

17 Yes, sir.

18 Q Thank you.

19 MR. LEVENTHAL: May I approach?

20 THE COURT: You may.

21 MR. LEVENTHAL: Thank you.

22 BY MR. LEVENTHAL:

23 Q Does that refresh your recollection, sir, on the length of
24 time that it took from the time that the vehicle was pulled over by
25 Cupp and Walters and the time that Mr. Matthews was in custody?

1 A Yes.

2 Q One hour; is that correct?

3 A I --

4 Q Approximately?

5 A Yeah.

6 Q Okay.

7 A I haven't looked at the CAD, so I can't be precise on that.

8 Q Understood. But under oath at a prior proceeding, your

9 raised your hand, you said, approximately, yes, right?

10 A Yes.

11 Q Okay. So that was your answer, right?

12 A Yes.

13 Q Okay. And you're -- you -- I understand you haven't

14 looked at anything, but back then, you wouldn't have just answered

15 yes if that wasn't true, right?

16 A That's -- that was my recollection at the time, you bet.

17 Q Okay. So at least an hour, approximately an hour had

18 passed since the Lincoln was pulled over to the time that Mr. -- my

19 client, Mr. Matthews, was in custody, right?

20 A I believe so.

21 Q Okay. Now, the initial homicide reports, I understand you

22 were questioned by Mr. Giordani and he asked you about whether

23 or not you were involved in the officer-involved shooting, the OIS,

24 with Officer Cupp.

25 A Correct.

1 Q You were not?

2 A No.

3 Q Okay. So you were not at the initial investigation or
4 interview of Officer Cupp that occurred approximately four hours
5 after the event?

6 A I was not.

7 Q Okay. But you were aware that that officer-involved
8 shooting interview was not just a solely officer-involved shooting; it
9 was also a murder-slash-as well as officer-involved shooting, right?

10 A I don't know that. I don't know that they would have
11 questioned him regarding -- or asked about the murder to Officer
12 Cupp. I have no idea.

13 Q Okay. The interview that would have taken place with
14 Officer Walters, though, was not an officer-involved shooting,
15 correct?

16 A Well, he wasn't a participant -- or an officer that shot, but
17 yes, that was regarding that investigation. So I'm sure that that
18 interview is headed up officer-involved shooting.

19 Q Okay. So if I showed -- were you at Officer Walters -- you
20 were at neither one?

21 A Neither one.

22 Q Okay.

23 A No, sir.

24 Q But the same thing applies that we talked about earlier
25 you would expect, if you were -- and you've conducted these

1 before?

2 A Yes.

3 Q You would expect full disclosure of all the pertinent facts
4 that they had at the time?

5 A Yes.

6 Q Okay. Mr. Giordani asked you about 1271 Balzar, 1284
7 Lawry, 1116 Jimmy, and 1200 Eleanor?

8 A Yes.

9 Q You remember those questions, right?

10 A Yes.

11 Q Okay. Let's take each one. 1271 Balzar, you found, both
12 when you initially came on scene, as well as the 11 days later, a
13 multiple of cartridge cases, correct?

14 A Correct.

15 Q Okay. Do you remember, as you sit here today,
16 approximately how many?

17 A I remember that we found approximately 28 22-caliber
18 cartridge cases, and that we found approximately 15
19 or 16 45-caliber. I might be wrong on that number.

20 Q That's okay.

21 A Yeah.

22 Q Quite a bit for a scene, wouldn't you say?

23 A Yeah, large. Yes.

24 Q Okay. I mean, the number of casings at that house, was
25 that probably one of the largest number of casings you've seen on

1 one of your -- as you investigate?

2 A No, to be honest with you.

3 Q No?

4 A But it's a large number, I'll give you that.

5 Q Okay.

6 A But no.

7 Q It's a large number?

8 A Yes.

9 Q Okay. And you indicated that you had spoken -- or, I don't
10 know, I apologize. Did you speak to the witnesses or did you just
11 review what the witness had to say or didn't have to say?

12 A I reviewed with the detectives that did the interviews as
13 they go along, the detectives will come up and brief me.

14 Q Okay. And so you were briefed because you were asked
15 some questions about Michel'le, Ms. Tolefree?

16 A Yes.

17 Q Okay. And you were asked about Ms. Cook?

18 A Yes.

19 Q And you -- I mean, you knew about Ms. Cook?

20 A Yes.

21 Q And both of those witnesses were as cooperative as can
22 be, correct?

23 A I believe so.

24 Q Okay. And it wasn't just one time that you tried to talk to
25 them; it was, I would assume, over multiple times that you had

1 gotten information or --

2 A Just from Ms. Cook.

3 Q Okay. And Ms. Tolefree did not give you anymore
4 information?

5 A I don't recall interviewing her a second time.

6 Q Okay.

7 A But -- I don't.

8 Q Do you remember trying to interview her the second
9 time?

10 A I don't, I'm sorry.

11 Q No?

12 A No.

13 Q Okay. So it wasn't as if she was uncooperative, it's just
14 that you didn't interview her or you don't know?

15 A I don't believe we did.

16 Q Okay. But you did Ms. Cook?

17 A Yes.

18 Q And you did Ms. Cook on multiple occasions, you
19 indicated?

20 A Yes.

21 Q Okay. And she was cooperative, right?

22 A I believe so.

23 Q And at no time did she recognize or give you any
24 indication that Jemar Matthews was involved in this, correct?

25 A Correct.

1 Q Now, at the 1284 Lawry, that is where the Melvin Bolden
2 is and his -- well, his wife now, you know who I'm speaking of,
3 right?

4 A Yes.

5 Q And then they had two people that they were having
6 dinner with in the back, and so there were four witnesses there.
7 And, again, cooperation?

8 A Yes.

9 Q No problem in getting a hold of all of them?

10 A No.

11 Q Okay. They didn't seem frightened or scared to disclose
12 or never told you that they were nervous about any type of
13 disclosure or interviews with you?

14 A I never spoke with them, sir, so I don't know that.

15 Q Well, it would be in a report, wouldn't it?

16 A Yes.

17 Q Okay. A report that you would have reviewed, correct?

18 A I can't necessarily say that, but -- I never got any
19 impression that they were apprehensive to talk to detectives.

20 Q Very good. Okay. So there's nothing that you know of, as
21 you sit here today, to know whether or not Melvin and his wife and
22 the two people in back were ever uncooperative?

23 A Correct.

24 Q Okay. So they were cooperative to you. Again, looking
25 back, Melvin and his wife never described or anything regarding

1 Jemar Matthews, correct?

2 MR. GIORDANI: I would object to that.

3 THE COURT: What's your objection?

4 MR. GIORDANI: Misstates the testimony.

5 MR. LEVENTHAL: I'm asking.

6 THE COURT: I mean, well, he can ask --

7 MR. LEVENTHAL: That's what I'm doing.

8 THE COURT: He can ask Detective --

9 Can you answer that?

10 THE WITNESS: I cannot answer that, Your Honor.

11 THE COURT: Okay.

12 BY MR. LEVENTHAL:

13 Q You cannot answer whether or not Melvin -- you're the
14 lead detective and you don't know whether or not Melvin, a witness
15 at a car-jacking, ever described Mr. Matthews?

16 A They described --

17 MR. GIORDANI: Objection. Described [indiscernible].

18 MR. LEVENTHAL: Did they --

19 THE COURT: Okay. And what's the objection? I mean,
20 because this witness hasn't testified to it.

21 MR. GIORDANI: Right. So it's --

22 THE COURT: So --

23 MR. GIORDANI: -- confusing, I guess, is --

24 THE COURT: Well, I mean, he's indicating he can't
25 answer.

1 MR. LEVENTHAL: It's not an objection.

2 THE COURT: So I'll allow you to continue.

3 BY MR. LEVENTHAL:

4 Q Okay. Now, going to the -- where the Lincoln had crashed
5 into the fire hydrant.

6 A Yes.

7 Q Where Officer Cupp and Officer Walters vehicle -- did you
8 ever go -- you never went over to that scene, I assume, right, that
9 night?

10 A I believe I did.

11 Q You did?

12 A Briefly. Yes.

13 Q And when you went over there, did you remember seeing
14 Officer Cupp and Walters' vehicle or was it gone at that point?

15 A I don't even recall what they were driving, honestly.

16 Q Okay. But Mr. Giordani asked you a number of questions
17 regarding some of the guns that were found?

18 A Yes.

19 Q Were those guns still in the place -- or had they been
20 moved and you just read a report or were they in place at the time
21 you got there?

22 A They had been moved and I was shown photographs.

23 Q Okay. So you didn't actually see the positioning of them,
24 other than -- I mean, other than in a picture, correct?

25 A Other than in the picture --

1 Q Okay.

2 A -- that night, yes.

3 Q And, again, one of your roles as lead detective is to get
4 the lab reports back, correct?

5 A Yes.

6 Q I want to talk about the -- it's a Ruger?

7 A Yes.

8 Q Okay. That's the first gun you spoke about, that's with the
9 banana clip?

10 A Yes.

11 Q Okay. Now, you indicated that the gun had some kind
12 of -- it was sawed off or something?

13 A Yes.

14 Q Okay. At no time were you able, when you got the lab
15 results back, were you able to link that gun scientifically, DNA or
16 any type of fingerprints or anything like that, to Jemar Matthews,
17 right?

18 A Scientifically, no.

19 Q And then the Colt 45 that you found in the car, that was on
20 the floorboard, right?

21 A Yes, sir.

22 Q And that was Melvin Bolden's vehicle, the Lincoln,
23 correct?

24 A Yes.

25 Q Okay. Again, no DNA and no fingerprints were ever tied

1 that gun, scientifically, to Jemar Matthews, correct?

2 A Scientifically, no.

3 Q The Glock 45 that you found -- not you -- they found in the
4 dumpster where Mr. Pierre was, again, no DNA, no fingerprints,
5 nothing scientifically taken after it was examined to Jemar
6 Matthews, correct?

7 A Correct.

8 MR. LEVENTHAL: Judge, may I approach your --

9 THE COURT: Sure, of course.

10 MR. LEVENTHAL: Thank you.

11 BY MR. LEVENTHAL:

12 Q I'm going to show you what's --

13 MR. LEVENTHAL: It's already admitted by stipulation?

14 THE CLERK: D as in Dog?

15 MR. LEVENTHAL: I'm sorry?

16 THE CLERK: D as in Dog, it's already been admitted.

17 MR. LEVENTHAL: There you go.

18 BY MR. LEVENTHAL:

19 Q I'm going to show you what's already been admitted as
20 Defense D, sir.

21 A Okay.

22 Q Okay. You see this is a Nevada identification card?

23 A Yes.

24 Q Appears to have the picture of Jemar Matthews back
25 in '06? I don't really see an expiration date, I can tell you that it --

1 well, it expires in '08.

2 A Right.

3 Q I don't see a -- when it was issued date.

4 A Okay.

5 Q Okay.

6 A Well, I see a date above his head.

7 Q Okay. Since I can't read that -- it looks like 7/6/04?

8 A Correct.

9 Q Okay. You recognize that, it says male, correct?

10 A Yes.

11 Q And then it says height, 5-foot-11, correct?

12 A Correct.

13 Q Weight, 180 or 160?

14 A 160 it looks like to me.

15 Q Okay. Eyes brown, hair black. And he's an organ donor,

16 right?

17 A Yes.

18 Q Thank you.

19 MR. LEVENTHAL: May I approach your clerk?

20 THE COURT: Of course.

21 BY MR. LEVENTHAL:

22 Q You were asked some questions by the -- Mr. Giordani

23 regarding a show-up; remember those questions?

24 A A what?

25 Q The show-up that occurred --

1 A Oh, yes.

2 Q -- between Mr. Matthews and Officer Walters?

3 A Yes.

4 Q Yes?

5 A Yes.

6 Q Okay. And you were given a piece of paper to read to the
7 jury on how show-ups occur, right?

8 A Yeah. Well, the instructions given to the witness, yes.

9 Q Right. Okay. You don't know, as you sit here today,
10 whether that was actually read? There's no report that actually says
11 that somebody read that to Officer Walters, right?

12 A I don't know that, no.

13 Q You don't have a piece of paper -- now, oftentimes when
14 you Mirandize somebody -- you've Mirandized people, right?

15 A Yes.

16 Q You've read them the Miranda?

17 A Sure.

18 Q And a Miranda is just a warning to tell people that they
19 have a right to remain silent, anything they say -- and they have a
20 right to an attorney, right?

21 A Yep.

22 Q And oftentimes you have the person sign that and date
23 that, right?

24 A Occasionally, yes.

25 Q Occasionally?

1 A Yep.

2 Q Okay. It's not protocol to do that?

3 A No, not necessarily.

4 Q Okay. If you have the opportunity to do that, you have
5 them do that?

6 A Sometimes. Sometimes no, if it's a --

7 Q Probably better practice --

8 A -- that's a tactical decision that I make at the time.

9 Q Understood. Probably better practice is so that, you
10 know, they don't come back and say I was never Mirandized?

11 A Well, usually I'm rolling tape, so I don't worry about that
12 so much.

13 Q Gotcha. Okay. During this show-up, there was no rolling
14 tape with Mr. Matthews and Officer Walters, correct?

15 A I don't know of one.

16 Q You don't know of one?

17 A No.

18 Q Okay. And so you have not seen in your file, your
19 extensive file, is anything that was signed by Officer Walters that he
20 understood what the show-up was or what you just read to this
21 jury, right?

22 A I have not seen one, no.

23 Q Okay.

24 MR. LEVENTHAL: Court's indulgence.

25 Q Just one last question, Detective.

1 A Sure.

2 Q I know it's your report, I know you've heard from other

3 people. But do you, as you sit here today, know where

4 Mr. Matthews was later taken into custody?

5 A I do.

6 Q And where was that?

7 A It was at 1116 Jimmy.

8 Q Jimmy?

9 A Not Eleanor.

10 Q Okay. Do you realize that in a report that you authored,

11 you wrote a different address?

12 A I do. I got the -- I made a mistake on the street itself, yes.

13 Q Okay. Did you --

14 A Address is the same, street wrong.

15 Q Okay. And so did you correct this report?

16 A No.

17 Q No? Okay.

18 MR. LEVENTHAL: I have nothing further. Thank you.

19 THE COURT: Any redirect?

20 MR. GIORDANI: Yes, Your Honor.

21 **REDIRECT EXAMINATION**

22 BY MR. GIORDANI:

23 Q Sir, I want to just ask you a few follow-up questions.

24 A Sure.

25 Q I want to start with the line of questioning from

1 Mr. Leventhal about the show-up identification procedure.

2 A Yes.

3 Q And he asked you, you don't know if that was read to
4 Officers Cupp and Walter, right?

5 A Correct.

6 Q They were cops at the time, right?

7 A Yes.

8 Q This -- Metro's trained on the show-up instructions across
9 the board?

10 A Yes.

11 Q Not just homicide detectives?

12 A Yes.

13 Q Those guys, assuming they went through training, would
14 know about the instruction?

15 A Yes.

16 Q You were asked several questions about whether the
17 firearm, the long gun, was linked to Mr. Matthews and your
18 response was "scientifically, no."

19 A Correct.

20 Q Do you want to expound on that answer?

21 A Well, I mean, after reviewing everything and being made
22 aware of what was happening, I knew that Officer Cupp had seen
23 Mr. Matthews with that firearm -- actually, both officers saw him
24 with the firearm inside the vehicle. And I know that when he exited
25 the vehicle, that firearm was in his hand and it was discarded right

1 there on the grass next to the car, and then the foot pursuit ensued.

2 Q So was your priority, when you submitted for forensics,
3 more geared towards ballistics?

4 A My priority at that time was more towards ballistics.

5 Q Why is that?

6 A Because the ballistics would link that particular weapon to
7 the scene of the murder itself through analyzing cartridge cases and
8 linking them to that gun, which would further make me able to be
9 able to charge with the murder itself.

10 Q So -- and when you say link the gun to the scene, you're
11 talking about the scene way up on Balzar, the murder?

12 A Yes. Yeah, the murder scene.

13 MR. GIORDANI: Thank you, sir.

14 I'll pass the witness, Your Honor. Thank you.

15 THE COURT: Any recross?

16 MR. LEVENTHAL: Just briefly. Thank you.

17 **RECROSS-EXAMINATION**

18 BY MR. LEVENTHAL:

19 Q So are you saying that cops are above the procedure and
20 the law because they're cops and should not be read what exactly
21 you read to the jury?

22 MR. GIORDANI: I would object as to argumentative.

23 THE COURT: Right. The objection's sustained.

24 BY MR. LEVENTHAL:

25 Q Well, are cops different?

1 A Yes.

2 Q They are?

3 A Yes.

4 Q So they don't need any type of warnings that you just

5 read to the jury, or they do?

6 A They know that warning, sir.

7 Q Okay.

8 A So let me follow up on that.

9 Q I'm sorry --

10 A In my entire career --

11 Q Sir --

12 A -- in my entire career, I've never done that.

13 Q Sir, there's not a question.

14 My question was simply cops, police officers, detectives,

15 they don't -- you don't -- you -- that's procedure that you do when a

16 show-up occurs, correct?

17 A For a civilian witness, yes.

18 Q Oh, only for civilian witnesses?

19 A I've never, in my career, done one for a police officer.

20 Q So when Mr. Giordani got up here and had you read that,

21 what was the point? Was there any other witnesses that did a

22 show-up that night?

23 A You'd have to ask Mr. Giordani. I --

24 Q I'm asking you, were there any other witnesses that did a

25 show-up that night?

1 A I don't know of any, no, sir.

2 Q You don't know of any? Only an officer did it.

3 A Sir, I don't even know that a formal show-up, as you guys
4 call it, or as you're calling it, was done with that officer. My
5 understanding was, is that the officer identified Mr. Matthews.

6 Q Maybe I'm confused. When Mr. Giordani asked you on
7 direct did a show-up occur with Mr. Matthews and Mr. Walters, you
8 said yes. Now you're saying you don't know?

9 A I don't know.

10 Q You don't know? So what you told Mr. --

11 A If I --

12 THE COURT: Okay.

13 THE WITNESS: I might have misunderstood
14 Mr. Giordani's question.

15 THE COURT: Just take it down a notch.

16 BY MR. LEVENTHAL:

17 Q You misunderstood whether or not you knew whether or
18 not a show-up had occurred between Mr. Matthews and Officer
19 Walters?

20 A Correct.

21 Q You misunderstood that question?

22 A Yes.

23 Q Okay. And another question Mr. Giordani had was he
24 wanted you to, I guess, expound on the word scientifically. And
25 your response was that you had heard that Officer Walters and

1 Cupp saw Mr. Matthews, and so that's what you're basing on his
2 holding that gun or being in possession of that gun?

3 A Yes.

4 Q No other scientific proof whatsoever, just what you've
5 heard from them was enough for you, right?

6 A Yes.

7 Q Thank you.

8 MR. LEVENTHAL: I have nothing further.

9 MR. GIORDANI: May I?

10 THE COURT: You may.

11 MR. GIORDANI: I'll be brief.

12 THE COURT: Okay.

13 **FURTHER REDIRECT EXAMINATION**

14 BY MR. GIORDANI:

15 Q So I thought this was clear, but let me ask a few more
16 questions.

17 A Okay.

18 Q Any show-up procedure that may have been done was not
19 done by you?

20 A No, sir.

21 Q There is an officer-involved shooting investigation and a
22 homicide investigation?

23 A Correct.

24 Q You're the homicide side?

25 A Yes.

1 Q Okay. You indicated scientifically, none of the –
2 the 22-caliber rifle was not linked to Mr. Matthews?
3 A No.
4 Q Scientifically, it wasn't linked to anyone else, right?
5 A Correct.
6 Q Okay. There's no DNA on that weapon, so, scientifically,
7 there's no link?
8 A Correct.
9 Q Okay.
10 MR. GIORDANI: I'll pass the witness.
11 MR. LEVENTHAL: Nothing further.
12 THE COURT: Okay. Detective, thank you very much for
13 your testimony here today.
14 THE WITNESS: Thank you.
15 THE COURT: You may step down and you are excused
16 from your subpoena. Thank you very much for being here.
17 THE WITNESS: Thank you.
18 THE COURT: Do you have any other witnesses before we
19 go to lunch?
20 MR. GIORDANI: We do have one out there, but she's a bit
21 lengthy, so.
22 THE COURT: Okay.
23 MR. GIORDANI: Leave it up to the jury, I guess?
24 THE COURT: All right. So we'll break for lunch.
25 MR. GIORDANI: Okay.

1 THE COURT: And then we'll do the -- that witness when
2 we come back.

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

14 We'll be in recess till 1:30. Thank you.

15 [Jury recessed at 12:20 p.m.]

16 MS. BOTELHO: Your Honor, do you have time for a quick
17 record outside the presence?

18 THE COURT: Absolutely.

19 MS. BOTELHO: Okay.

20 THE COURT: Okay. The record will reflect that the
21 hearing is taking place outside the presence of the jury panel.

22 MS. BOTELHO: Yes, Your Honor.

23 And I just got some of this documentation during
24 Detective Wildemann's direct examination and cross-examination.
25 The defense asked us the last trial and also this trial to stipulate to

1 the admission of Defendant's Exhibit A, which were --

2 THE COURT: A?

3 MS. BOTELHO: -- the extended protective order or
4 extended order for protection against domestic violence with
5 Renonda R. Jones being the applicant and Jemar D. Matthews
6 being the adverse party.

7 The packet that I received that they were wanting to admit
8 contained two separate extended orders for protection against
9 domestic violence. And so there's one, the date issued 4/8/2005,
10 and it expires on 4/8 of 2006.

11 THE COURT: Okay.

12 MS. BOTELHO: The second sheet is an extended order for
13 protection against domestic violence for April 25th, 2006, to expire
14 April 25th, 2007.

15 And if you'll recall, Your Honor, the defense, at least, is
16 going to assert, using this TPO and the extended order for
17 protection, that Mr. Matthews was prohibited from being at an
18 address near that church, I believe it's a Jimmy address, 1301
19 Jimmy, if I'm not mistaken. And I can confirm that. Yes, it
20 was 1301 Jimmy Avenue, which would have been very close to
21 where he was apprehended, 1116 Jimmy Avenue, as shown by
22 Defendant's Exhibit B, which they used in their opening statement.

23 THE COURT: Okay. Because this says 9140 Jewel Crystal
24 Court.

25 MS. BOTELHO: Yes. And I believe they got the other

1 address, there's a Jimmy address located in this on page 3 of the
2 one that you're looking at. The one that expires 4/8 of 2006.

3 THE COURT: Okay.

4 MS. BOTELHO: It does say, on page 3, that Number 9,
5 that he was excluded --

6 THE COURT: Oh, it says -- yes.

7 MS. BOTELHO: -- uh-huh, to stay at least 100 yards away
8 from the following places.

9 THE COURT: From 1301 Jimmy.

10 MS. BOTELHO: Which shows 1301 Jimmy.

11 THE COURT: Okay.

12 MS. BOTELHO: So all's fine and well, right?

13 Well, yesterday, I asked Mr. Tanasi for the actual
14 application that was asserted with these protective orders, because
15 the extended protective order that would have been in effect during
16 the night of the shooting, September 30th of 2006 --

17 THE COURT: Okay.

18 MS. BOTELHO: -- shows confidential addresses.

19 So instead of showing the 9140 Jewel Crystal Court
20 address on Number 1 on page 2 of the extended one, it says:

21 Clark County confidential.

22 And that lists that as the applicant's residence being
23 confidential. And then --

24 THE COURT: What's the applicant's residence? What was
25 the applicant's address?

1 MS. BOTELHO: I asked our investigator to run her -- clear
2 her address record, Renonda Jones. And at that time, she had
3 moved and I also got a copy of the application for the extended TPO
4 and it indicates that she moved. And she didn't want the defendant
5 to know where she lives. And so --

6 THE COURT: Well, then how's he supposed to know
7 where to stay away?

8 MS. BOTELHO: Exactly. And so that's why I bring this up
9 now, because we are going to be objecting to the admission of the
10 TPOs because I show -- and I can show the Court --

11 THE COURT: Okay. The clerk's telling me you guys
12 already stipulated to this.

13 MR. TANASI: Your Honor, we have -- oh, go ahead.

14 THE COURT: Okay. But go ahead.

15 MS. BOTELHO: We're not stipulating to it anymore, that's
16 for sure.

17 THE COURT: Okay.

18 MR. TANASI: Your Honor, we have discussed -- I'm sorry,
19 may I?

20 THE COURT: I just wanted -- okay. So based on the fact
21 that the application did not state -- I guess I don't understand.

22 MS. BOTELHO: Okay. So --

23 THE COURT: She had moved from the Jimmy residence?

24 MS. BOTELHO: -- the application that was in effect, the
25 temporary restraining order that was in effect --

1 THE COURT: Uh-huh.

2 MS. BOTELHO: -- would be the one that says
3 confidential --

4 THE COURT: Got it.

5 MS. BOTELHO: -- residence, confidential Number 9,
6 which is where the children frequent. Okay?

7 THE COURT: Okay.

8 MS. BOTELHO: And so I, of course, wanted to look into,
9 and I asked Mr. Tanasi where is the application? Because that
10 would explain why it's confidential and what the address is that's
11 being --

12 THE COURT: Exactly.

13 MS. BOTELHO: -- held to be confidential. So I got that
14 application and I can show that to the Court.

15 She asks that it be confidential, because she had been
16 having all kinds of issues with the defendant visiting her, making
17 threats, abusing her and her child, things of that nature. And I look
18 up -- it doesn't say an address, but I have my investigator look up
19 her known address pursuant to Clear Records, and the last time that
20 she was registered at 9140 Jewel Crystal Court was March 19th
21 of 2006. She actually shows, at the time of this murder, an
22 address, 1705 McDonald Court, Apartment D in North Las Vegas,
23 which is an 89032 area -- or ZIP code.

24 And the application -- so Number 9 on the TPO actually
25 indicates where the applicant asks Mr. Matthews to stay away from

1 the minor children, where the minor children -- they do have a child
2 in common -- frequent, regularly listed as and describes -- and that
3 would have been the 13 -- or the -- yes, that would have been
4 the 1301 Jimmy Avenue address. Okay.

5 But, Your Honor, in the application that extended the
6 current and controlling extended order for protection against
7 domestic violence, he was no longer allowed visitation at that 1301
8 North Jimmy Street address. As a matter of fact, the Court granted,
9 as you can see on page 3, he's excluded and ordered to stay away
10 at least 100 yards from the following places, which the applicant
11 and/or her minor children frequent, regularly listed as -- and then,
12 you know, nothing. There -- nothing's listed there. The 1301 North
13 Jimmy no longer applies as of this extended protective order.

14 We were not provided with the application for the TPO
15 and I can show the Court that I just found out, when Mr. Tanasi
16 couldn't provide it to me, I asked my investigator to locate the
17 application and I received it during Detective Wildemann's
18 testimony.

19 THE COURT: Okay.

20 MS. BOTELHO: Basically, showing that Mr. Matthews has
21 no reason to be anywhere -- to be afraid of being found near 1301
22 Jimmy Avenue.

23 And so my objection is this, Your Honor: This particular
24 exhibit does not state any kind of accurate information. It actually
25 misleads the jury into thinking that this initial application addresses

1 still applied to the extended one, which was filed June 21st of 2006,
2 when, in truth and in fact, it does not.

3 THE COURT: Okay.

4 MR. TANASI: Your Honor --

5 THE COURT: Mr. Tanasi?

6 MR. TANASI: -- first of all, we have stipulated to this
7 already. And this stipulation predated even some of my
8 discussions with Ms. Botelho, if I'm pronouncing that right.
9 Mr. Giordani and I had these discussions in the past about the
10 prejudicial nature inherent to all of the applications [indiscernible].

11 THE COURT: I understand. I know why you wouldn't
12 want to put the application in.

13 MR. TANASI: And so that's the starting point.

14 The second, Your Honor, is the common thread here is
15 Ms. Jones and her child and the fact that my client is to be nowhere
16 Ms. Jones or her child --

17 THE COURT: Okay.

18 MR. TANASI: -- based on these two applications, one of
19 which contains the 1301 Jimmy Ave.

20 THE COURT: Okay.

21 MR. TANASI: So, Your Honor, again, I don't see any issue
22 at this point. I don't see how the State can undo a stipulation at this
23 point that they've agreed to. There's no new information that
24 would allow for that. So, Your Honor, I submit that this exhibit still
25 stands.

1 MS. BOTELHO: There actually is new information,
2 though. And I have every reason to believe that they had this
3 application, which would have shown that these addresses that
4 they're trying to purport to be addresses that he shouldn't have
5 been at were no longer in effect. In essence, the application would
6 have shown that he was not being ordered to stay away from the
7 Silver Dollar address and he was not ordered during the time of
8 Mersey's murder. He had not been ordered to stay away from 1301
9 Jimmy street.

10 I mean, this is -- this --

11 THE COURT: But can't you argue that still, based on the
12 documents? I mean, because it kind of speaks for itself, it doesn't
13 have the Jimmy address in it.

14 MS. BOTELHO: Not the -- not based on just how the
15 evidence is -- sits right now, what's been admitted. I would venture
16 to say if we are going to allow this to remain admitted, you know,
17 by way of stipulation, that we agree on a stipulation as well that not
18 only does -- the extent that not only does the TPO that actually in
19 effect not state those addresses, but that the defendant didn't even
20 know where this particular victim, Renonda Jones, he was ordered
21 not to know where she lives.

22 MR. TANASI: And, again, for the application or the order,
23 one of the two orders does specifically say the address that he
24 supposed to stay away from, an address that he is out on the street
25 knowing he shouldn't be near. There's -- nothing changes, in my

1 estimation, on the stipulations based on what the State is arguing
2 at this point.

3 And I think Your Honor is right, this is something,
4 certainly, they can argue if they would like in close. I didn't give
5 them one application and not the other. I gave them both
6 applications and we agreed that the --

7 MS. BOTELHO: Oh, no, I'm sorry --

8 MR. TANASI: I'm sorry --

9 THE COURT: I think --

10 MS. BOTELHO: -- that is a mischaracterization --

11 MR. TANASI: I'm sorry.

12 MS. BOTELHO: -- I never had the application.

13 THE COURT: The actual orders.

14 MR. TANASI: That's what I meant to say. I apologize. I
15 gave both orders to the State and we discussed the applications
16 and the prejudicial nature of those prior to the stipulation as well.

17 THE COURT: But you have the applications?

18 MR. TANASI: Yes. I have full applications, yes.

19 THE COURT: Okay. I mean, because you know the TPO
20 that was in place does not list the Jimmy Avenue. The one that has
21 the Jimmy address, it expired April 8th, right?

22 MR. GIORDANI: Of 2006.

23 THE COURT: Of '06.

24 MR. TANASI: Yes, Your Honor.

25 THE COURT: Okay.

1 MR. TANASI: But the victim -- or the person seeking the
2 application, the parent and the child is all the same --

3 THE COURT: Okay.

4 MR. TANASI: -- that is my client's understanding, that
5 address is where he is to stay away from.

6 MS. BOTELHO: I'm sorry, I didn't understand that.

7 THE COURT: Even though she doesn't live there?

8 MR. TANASI: Again, Your Honor, whether my client knew
9 that she lived there or didn't, that's not the state of the evidence.
10 What we have are the two orders in the case, one of which
11 indicating the 1301 Jimmy Avenue address.

12 THE COURT: But you understand the one that was in
13 place at the time, you can't argue to the jury that he was court
14 ordered to stay away from Jimmy.

15 MR. TANASI: Your Honor, I can --

16 THE COURT: But that's not what the order says.

17 MR. TANASI: Your Honor, that's my client's
18 understanding of the order. And I think we can argue that --

19 THE COURT: Okay.

20 MR. TANASI: -- circumstantially, based upon two orders
21 in this case, one of which has that address.

22 THE COURT: Okay. So then can the State have someone
23 testify that the application that went with the one that's in place did
24 not even mention the Jimmy Avenue address, that she had moved
25 from that address?

1 MR. TANASI: It mentioned a confidential address, and
2 that's fine if it didn't mention that address. But they can't then take
3 that argument to get into what my client's head was, what he knew
4 or --

5 THE COURT: That's true. No one can testify about what
6 was in his head. But, I mean --

7 MR. TANASI: So the fundamental fact remains that there
8 was a temporary restraining order keeping him, prior to this
9 murder, keeping him away --

10 THE COURT: Okay.

11 MR. TANASI: -- from that address. I don't think that fact
12 changes. So if they want to get into a confidential address that they
13 can't prove he knew or didn't know and they want to argue it that
14 way, then that's -- I don't see an issue with that, but that's what
15 cures it.

16 MS. BOTELHO: And, I'm sorry, I'm just misunderstanding.
17 If we want to get into a confidential address that he knew or did not
18 know, I mean, I don't get that. It's confidential. He wouldn't have
19 known about it.

20 MR. TANASI: Right. But what's not confidential is the
21 express address on the TPO that says 1301 Jimmy.

22 THE COURT: Okay.

23 MS. BOTELHO: Right. The one that's not in effect.

24 THE COURT: As long as it's made really clear that it was
25 not in place at the time of this incident.

1 MR. TANASI: It was --

2 THE COURT: I mean, because that's pretty clear, it was
3 not in place. There was no court order that said you can't be at
4 Jimmy Avenue.

5 MR. TANASI: There was in the -- Your Honor, there was --

6 THE COURT: On September 30th, 2006, there was not a
7 TPO that said you can't be at Jimmy Avenue. Whether you want to
8 argue that's what he thought that TPO said, that's not what it says.
9 Right?

10 MR. TANASI: Again, Your Honor, there -- the -- that is
11 correct, Your Honor.

12 THE COURT: Okay.

13 MR. TANASI: That part is correct, yes.

14 THE COURT: But, I mean, I guess if you wanted to argue
15 that was what he believed, you know, but then, I mean, the State's
16 going to be able to come back and say that's not what the order
17 said.

18 MR. TANASI: Understood.

19 MS. BOTELHO: And, Your Honor, is there -- I would be
20 asking -- I understand the entire, you know, I agree that the
21 application shouldn't come in. But in terms of fairness and truth,
22 really, the existing -- what was actually in effect, I would ask for at
23 least a stipulation that there were no addresses listed in the TPO
24 that was in effect, that there were no addresses listed --

25 THE COURT: I'm not sure you --

1 MS. BOTELHO: -- because I don't -- it's just the
2 confidential -- there still leaves that argument that while it's
3 confidential here, there was an address, you know, that he may
4 know about --

5 THE COURT: I see what you mean. I see what you mean,
6 because --

7 MS. BOTELHO: Yes.

8 THE COURT: -- I'm not sure you need a stipulation to tell
9 the jury what the document actually says.

10 MS. BOTELHO: Right.

11 THE COURT: I mean, the document says Clark County,
12 Nevada, confidential.

13 MS. BOTELHO: But it's really --

14 THE COURT: It does not list an address.

15 MS. BOTELHO: It does not list an address.

16 THE COURT: That's correct.

17 MS. BOTELHO: Because -- yes, thank you. Because at
18 some point, at -- let's say on closing, when they argue -- we're not
19 going to be able to get up and actually put a stipulation on the
20 record or put our investigator up to show that, you know, there was
21 no address listed, there was no address for him to know about, in
22 that she had actually moved and he didn't know where she lived or
23 where her child -- where his child was living or visiting.

24 THE COURT: Okay. I mean, if the parties want to enter
25 into a stipulation, you can. But the order does say confidential. It

1 does not have a specific address. So no, they cannot argue to this
2 jury that this order, on the date of the incident, prevented him from
3 being at the Jimmy address.

4 MS. BOTELHO: Okay.

5 THE COURT: I mean, if they want to argue that's what his
6 belief was, that's fine. But that's not what this order says.

7 MS. BOTELHO: Okay. Understood.

8 MR. TANASI: Understood, Your Honor.

9 THE COURT: Okay? All right.

10 [Court recessed at 12:38 p.m., until 1:42 p.m.]

11 [Outside the presence of the jury.]

12 THE COURT: The record will reflect that the hearing is
13 taking place outside the presence of the jury panel. Mr. Owens is
14 present in the courtroom and he's in the witness chair.

15 Okay. So, Mr. Owens, you know we're going to bring the
16 jury panel in and you're going to be questioned by the district
17 attorney and defense counsel.

18 MR. OWENS: [No audible response.]

19 THE COURT: Is that a yes?

20 MR. OWENS: Yes, ma'am.

21 THE COURT: Okay. And, you know, no one's going to ask
22 you any questions that would cause you to elicit any testimony
23 about gang or gang activity --

24 MR. OWENS: Okay.

25 THE COURT: Do you understand that?

1 MR. OWENS: Yes, ma'am.

2 THE COURT: Okay. So I don't want you to mention any of
3 that. Do you understand that?

4 MR. OWENS: Okay. Yeah.

5 THE COURT: And if you have a question about whether
6 you can respond to a question asked of you, I just ask that you
7 make that fact known to me and then I can have the jury panel leave
8 and I can ask the attorneys if they want you to answer. Okay?

9 MR. OWENS: Okay.

10 THE COURT: Do you have any questions, Mr. Owens?

11 MR. OWENS: What was that last thing you just said now?

12 THE COURT: Okay. If you get asked a question --

13 MR. OWENS: Okay.

14 THE COURT: -- and you're unsure if you think it's going to
15 cause you to say something about gang activity --

16 MR. OWENS: Okay.

17 THE COURT: -- then let me know and I can clear the
18 courtroom and I can ask the attorneys if they want you to respond.

19 MR. OWENS: Okay.

20 THE COURT: Okay? But under no circumstances are you
21 to say anything about gangs or people's monikers or anything like
22 that; do you understand that?

23 MR. OWENS: Yes, ma'am.

24 THE COURT: Okay. And the district attorney has told you
25 this, correct?

1 MR. OWENS: Yes, ma'am.

2 THE COURT: Okay. And I just want to make sure, you all

3 had an opportunity to speak to Mr. Owens too?

4 MR. TANASI: Yes, Judge.

5 MR. LEVENTHAL: Yes.

6 THE COURT: Okay.

7 MS. BOTELHO: And, Your Honor, just to clarify

8 concerning the monikers --

9 THE COURT: Okay.

10 MS. BOTELHO: -- when I spoke with Mr. Owens during

11 the break, I did indicate to him, as Your Honor previously told us,

12 that if he didn't know the person's formal name, he could say, you

13 know, a nickname.

14 THE COURT: Okay.

15 MS. BOTELHO: But if the nickname is questionable, you

16 know, where it would be -- where it would kind of point towards

17 some kind of gang activity or gang membership, I told him to just

18 look to us and see if we could clarify it.

19 THE COURT: Okay.

20 MS. BOTELHO: You know.

21 THE COURT: Do you got that, Mr. Owens? Okay. So if

22 there's someone you don't know their legal name and you're going

23 to have to refer to it, I mean, the DA or defense counsel may ask

24 you, well, how did you know him? Did they have a nickname?

25 What did you call them? Okay?

1 MR. OWENS: Yes, ma'am.
2 THE COURT: Any questions?
3 MR. OWENS: [No audible response.]
4 THE COURT: All right. We can --
5 MS. BOTELHO: And also, Your Honor, due to the nature
6 of this particular witness, I would ask for permission to lead to
7 some extent.
8 THE COURT: Sure. Sure.
9 MS. BOTELHO: If that's possible. Thank you.
10 THE COURT: Uh-huh.
11 Bring them in.
12 [Jury reconvened at 1:47 p.m.]
13 THE COURT: Does the State stipulate to the presence of
14 the jury panel?
15 MR. GIORDANI: Yes, Your Honor.
16 THE COURT: And the defense?
17 MR. LEVENTHAL: Yes, Your Honor. Thank you.
18 THE COURT: Okay. The State may call their next witness.
19 MR. GIORDANI: The State calls Nicholas Owen.
20 THE COURT: Okay. Mr. Owens, if you will please stand
21 and raise your right hand, face the clerk right here, so you can be
22 sworn. Thank you.
23 **NICHOLAS OWENS,**
24 [having been called as a witness and first duly sworn, testified as
25 follows:]

1 THE CLERK: Thank you. You may be seated. Can you
2 please state and spell your first and last name for the record.

3 THE WITNESS: Nicholas, N-I-C-H-O-L-A-S, Owens,
4 O-W-E-N-S.

5 MS. BOTELHO: May I?

6 THE COURT: You're going to have to speak up, you know,
7 because I just -- I want the jury to be able to hear you. So.

8 THE WITNESS: Nicholas, N-I-C-H-O-L-A-S, Owens,
9 O-W-E-N-S.

10 THE COURT: Okay. That was perfect.

11 THE WITNESS: All right.

12 THE COURT: Thank you.

13 MS. BOTELHO: Thank you.

14 **DIRECT EXAMINATION**

15 BY MS. BOTELHO:

16 Q Good afternoon, Mr. Owens.

17 A Good afternoon.

18 Q Mr. Owens, do you know an individual by the name of
19 Jemar Matthews?

20 A Yes, I do.

21 Q And do you know someone by the name of Pierre Joshlin?

22 A Yes, I do.

23 Q Do you see the individual you know as Mr. Matthews here
24 in court today?

25 A Yes, I do.

1 Q Could you point to him and describe something he's
2 wearing?

3 A That gentlemen right there with the blue tie on and the
4 dreads.

5 MS. BOTELHO: Your Honor, please let the record reflect
6 identification of the defendant.

7 THE COURT: So reflected.

8 MS. BOTELHO: Thank you.

9 BY MS. BOTELHO:

10 Q Mr. Owens, did you know Jemar Matthews back in 2006?

11 A Yes, ma'am.

12 Q Okay. Did you know Pierre Joshlin back in 2006?

13 A Yes, ma'am.

14 Q At some point, I'd like to call your attention to
15 September 29th of 2006; did you know of a murder that happened
16 over at 900 Doolittle?

17 A I heard of it.

18 Q Okay. So you yourself were not present at 900 Doolittle
19 on September 29th of 2006?

20 A No.

21 Q Okay.

22 A At least --

23 Q Okay. Did you come to find out at some point that an
24 individual by the name of Marcus Williams had been killed over
25 at 900 Doolittle?

1 A Yes.

2 Q Okay. At some point later in the night, September 29th
3 of 2006, did you have contact with Pierre Joshlin and Jemar
4 Matthews?

5 A Yes, ma'am.

6 Q Where is it that you had this contact with them?

7 A It was over in the square.

8 Q Where's the square located?

9 A On D Street.

10 Q Okay. And were there any other individuals present with
11 you, Pierre, and Jemar?

12 A There was a few other people from the neighborhood.

13 Q Okay. And so what, if anything, did you and Jemar and
14 Pierre talk about?

15 A It was just really -- it was pretty -- it was a heavy situation.
16 You know, I mean, you know, it was a heavy situation. You know, it
17 was -- like I said, it was a hostile situation. Like --

18 Q Did you all discuss the murder of --

19 MR. TANASI: Objection. Leading, Your Honor.

20 THE COURT: Overruled.

21 You may proceed.

22 MS. BOTELHO: Thank you.

23 BY MS. BOTELHO:

24 Q Did you all discuss the murder of Marcus Williams?

25 A Briefly.

1 Q Excuse me?

2 A Briefly.

3 Q Okay. And so tell us about that conversation.

4 A I mean, hearts was heavy, a life was lost. You know what
5 I mean.

6 Q Okay. And so that was the mood?

7 A Yeah.

8 Q Initially, when everyone was talking about Marcus's death,
9 yes?

10 A Yes, ma'am.

11 Q Okay. You knew Marcus as well; is that right?

12 A Yes, ma'am.

13 Q Okay. And was Marcus friends with Pierre and Jemar?

14 A Yes, ma'am.

15 Q Okay. At some point during your interaction or your
16 conversation with Pierre and Jemar, did the mood change from
17 being heavy heart to more of an angry --

18 MR. TANASI: Objection. Leading, Your Honor.

19 THE COURT: Overruled.

20 You may proceed.

21 BY MS. BOTELHO:

22 Q You can answer.

23 A Yes, ma'am.

24 Q Okay. And can you describe to us or tell us the
25 conversation surrounding, you know, that mood change?

1 A I mean, it was a lot of acrimony in everybody's vernacular.
2 And it was -- and Pierre, he wanted to know if I still could get my
3 hands on the choppas.

4 Q On the what?

5 A On the guns.

6 Q Guns. Okay. And so Pierre asked you if you could still get
7 your hands on guns; is that right?

8 A Yes.

9 Q Okay. Now, as this conversation -- or as Pierre said this,
10 was Jemar Matthews present?

11 A Yes, ma'am.

12 Q Okay. And during the course of this conversation, did you
13 come to find out why they were looking for guns?

14 A Yeah, because -- can I answer that?

15 MS. BOTELHO: Can we approach?

16 THE COURT: Sure.

17 [Bench conference transcribed as follows.]

18 MS. BOTELHO: I'm going to lead more.

19 THE COURT: Pardon?

20 MS. BOTELHO: I'm going to lead more if that's okay.

21 THE COURT: Okay. So this is why I'm [indiscernible].

22 MR. TANASI: Again, Your Honor, I guess it's kind of a fine
23 line, because we're not defining when, exactly, and how, exactly,
24 she's able to lead. And I think we get into the --

25 THE COURT: Because he's a hostile witness.

1 MR. TANASI: Well, I haven't heard him designated as a
2 hostile witness yet.

3 MS. BOTELHO: No. And I'm just -- we're afraid.

4 THE COURT: [Indiscernible] the rules about being --
5 raising shackles and the prison guards.

6 MR. TANASI: No, I understand. But I don't know if that
7 makes him necessarily hostile to the State.

8 THE COURT: Okay. I mean, I want them to lead, because I
9 do believe he's a hostile witness.

10 MR. TANASI: Okay.

11 THE COURT: And I don't want him to violate any of his
12 orders. Like [indiscernible], I don't want to be causing
13 [indiscernible].

14 MS. BOTELHO: Yeah.

15 MR. TANASI: Understood.

16 MS. BOTELHO: Okay.

17 [End of bench conference.]

18 THE COURT: The district attorney can ask the question
19 again.

20 BY MS. BOTELHO:

21 Q Okay. So let me back up.

22 Pierre asked you if you could still get your hands on guns,
23 yes?

24 A Yes, ma'am.

25 Q And you said Jemar was there when you all were

1 discussing this?

2 A Yes, ma'am.

3 Q Okay. And at some point, the mood changed when they
4 asked you for these -- to get these guns?

5 A Right.

6 Q Yes?

7 A Right.

8 Q Okay. Now, when Pierre asked you to get the guns, did
9 Jemar make the same request? Didn't -- did he also say, yeah, we
10 need guns now, we need it ASAP?

11 A Yeah, after I had told Pierre, you got to give me a couple
12 of days, you know, he was, like, no, he need it, like, ASAP. And I
13 was, like, you need it, like, tonight.

14 Q Okay. And what did Jemar say concerning, you know,
15 when they needed the guns?

16 A Like, tonight.

17 Q Okay. And that would have been what night? Still
18 September 29th of 2006, yes?

19 A Right.

20 Q Okay. And this is shortly after Marcus was killed, yes?

21 A Correct.

22 Q Okay. And at some point, do they tell you why they
23 needed these guns? Did they tell you that they needed this so that
24 they could go take care of and kill Antwon Jones?

25 MR. TANASI: Objection, Your Honor, as to they. Which,

1 specifically? Who specifically?

2 THE COURT: I agree.

3 MS. BOTELHO: Okay.

4 THE COURT: Objection sustained.

5 MS. BOTELHO: Okay.

6 BY MS. BOTELHO:

7 Q Did Pierre Joshlin, when he was asking for the guns, tell
8 you that it was to take out Antwon Jones, anyone else who may
9 have been -- who may have helped in killing Marcus Williams?

10 A Yes, ma'am.

11 Q And did Jemar Matthews, during that conversation, also
12 tell you that he needed the guns ASAP, like, tonight, so he could go
13 take care of Antwon Jones and anyone else who might have helped
14 him kill Marcus Williams?

15 A Yes, ma'am. It was more like a ad lib, you know. It was
16 just, like I say, it was, the mood was heavy, you know, and this -- it
17 was a unfortunate situation. So, you know, but, yeah, he -- it was
18 mostly -- like I say, I'm mostly -- I only dealt with him. It -- my
19 dealings with him was -- it was distant. You know, he really
20 wasn't -- like, we really went like that, you know, but --

21 Q Okay. When you say you weren't like that, you weren't
22 like that with Jemar?

23 A Correct.

24 Q You dealt mostly with Pierre?

25 A Correct.

1 Q Okay. But this particular incident, this conversation that
2 I'm talking to you about --

3 A Yes, ma'am.

4 Q -- Jemar was there?

5 A Correct.

6 Q Jemar also asked to get guns?

7 A Correct.

8 Q And Jemar also said he was going to use those guns to
9 take care of Antwon Jones and anyone who they believe to have
10 participated in the death of Marcus Williams?

11 A That was the topic of discussion.

12 Q Okay.

13 MR. TANASI: Objection, Your Honor. Nonresponsive.

14 THE COURT: Yeah. I'm sorry, what was your response?

15 THE WITNESS: I said that was the topic of discussion.

16 THE COURT: Okay.

17 MS. BOTELHO: Thank you.

18 BY MS. BOTELHO:

19 Q Sir, have I made you any promises in exchange for your
20 testimony today?

21 A No, ma'am.

22 Q And by promises, I mean have I offered to help -- you're in
23 custody, correct?

24 A Correct.

25 Q Okay. And my understanding is you're in custody on a

1 parole violation; is that right?

2 A Correct.

3 Q Okay. So that leads me to believe, Mr. Owens, that you
4 have some prior felony convictions; is that right?

5 A Correct.

6 Q Okay. Did you get these felony convictions
7 from 2008, 2007-ish?

8 A Correct.

9 Q And at some point in time, you violated your parole --

10 A Correct.

11 Q -- is that right? And now you're -- you find yourself back
12 in custody for a parole violation?

13 A In which I'll be going home in a couple of months.

14 Q Okay. But you find yourself home -- you find yourself
15 here in custody on a parole violation?

16 A Correct.

17 Q Okay. Now --

18 MS. BOTELHO: Brief indulgence, Your Honor.

19 Q Mr. Owens, turning your attention to February 27th
20 of 2007, did you meet with a detective by the name of Andre Carter?

21 A Yes, ma'am.

22 Q Okay. So on February 27th of 2007, did you tell Detective
23 Andre Carter about the statements made by Pierre Joshlin while
24 Jemar Matthews was present that you just told the jury about
25 today?

1 A Yes, ma'am.

2 Q Okay. Mr. Owens, remember the question that I asked
3 you about whether I made you any promises in exchange for your
4 testimony here today?

5 A Yes, ma'am.

6 Q Do you remember that? Yes?

7 A Yes, ma'am.

8 Q Okay. Did anyone from my team, Mr. Giordani, anyone
9 from the Clark County District Attorney's Office made you any
10 promises in exchange for your testimony today?

11 A No, ma'am.

12 Q And did anyone from the Las Vegas Metropolitan Police
13 Department make any kind of promises to you in exchange for your
14 testimony today?

15 A No, ma'am.

16 Q Okay. And outside of those two agencies, I'm going to
17 open it up: Did anyone, anyone make you any kind of promise to
18 help you with a case, to help get you out of custody, anything like
19 that?

20 A No, ma'am.

21 Q Showing you what's already been admitted as State's
22 Exhibit 16; do you recognize the individual depicted in this photo?

23 A Yes, ma'am.

24 Q Who is that?

25 A That's Jemar.

1 Q Jemar Matthews?

2 A Yes, ma'am.

3 Q Showing you State's Exhibit Number 17; is this Pierre
4 Joshlin?

5 A Yes, ma'am.

6 MS. BOTELHO: I have no more questions. Thank you.

7 THE COURT: Cross-examination?

8 MR. TANASI: Thank you, Your Honor.

9 May I proceed?

10 THE COURT: You may. Thank you.

11 MR. TANASI: Thank you.

12 **CROSS-EXAMINATION**

13 BY MR. TANASI:

14 Q Good afternoon, Mr. Owens.

15 A How you doing?

16 Q My name's Rich Tanasi, we met a few minutes ago over
17 there in lock-up, fair?

18 A Yep, that's fair.

19 Q Okay. I have some questions for you on cross, that okay?

20 A Most definitely.

21 Q Is that a yes?

22 A Yes.

23 Q All right. We talked about how you are coming up on
24 your parole being -- is it expired or will you get in front of the parole
25 board?

1 A It's expiration.

2 Q It's expiration, right?

3 A Uh-huh.

4 Q Okay. As you sit here today, you've testified that no one
5 has made you any promises of any kind, right?

6 A No, sir.

7 Q No, sir. But would you agree with me you don't want to
8 be here, correct?

9 A I don't ever want to be in court.

10 Q I gotcha. But when we met earlier, you told me you felt
11 like you had to be here, right?

12 A I mean, no.

13 Q That's not what you told me when we were meeting back
14 there? You didn't feel like you had to be here?

15 A I mean, I made the statement, so, I mean, I've got to back
16 it.

17 Q Yeah, because we want to back the truth here, right?
18 We're in a courtroom.

19 A Absolutely.

20 Q Right? So we're back in that room and you say, I feel like
21 I've got to be here. Correct?

22 A Correct.

23 Q All right. And that's because you got contacted from the
24 DA's office sometime prior to today, correct? Someone from the
25 district attorney's office contacted you about your testimony today,

1 right?

2 A What do you mean.

3 Q At some point, again, we're back in this room, you just
4 told me on this --

5 A Okay.

6 Q -- you made it -- had contact with somebody from the
7 district attorney's table.

8 A You said I made contact?

9 Q No, they made contact with you, Ms. Botelho, fair?

10 A Okay.

11 Q [Indiscernible], correct?

12 A Okay.

13 Q Okay. She contacted you about coming here today, right?

14 A She contacted me at -- she contacted me about the
15 statement that I made and asked me did I remember the statement
16 that I made to Andre Carter --

17 Q Sure.

18 A -- at that time.

19 Q Right. And then to come here and testify, correct?

20 A No, she just asked me about the statement.

21 Q Just about the statement? You had no discussions about
22 testifying today? That just came as a surprise to you?

23 A She -- like I say, she had asked me about it and, you know,
24 and she asked me about the statement and then, if I mean,
25 everything, it was from there.

1 Q Sure. All right. How many times have you had a chance
2 to meet with someone from the district attorney's office prior to
3 today's testimony, but after that contact, that first contact?

4 A This is the first --

5 MS. BOTELHO: And I'm sorry --

6 THE WITNESS: This is the first time.

7 MS. BOTELHO: Can we clarified the date of the first
8 contact that we were referring to?

9 MR. TANASI: Absolutely. I don't know the date.

10 BY MR. TANASI:

11 Q So I will ask you: Do you have any idea when --

12 A Date this --

13 Q -- Ms. Botelho's --

14 A This was the first --

15 Q -- or Ms. Botelho's office contacted you when you were in
16 prison?

17 A This was the -- the first time.

18 Q This -- today's the first time?

19 A I'm -- what you talking about, like, as far as me meeting
20 with them like right now?

21 Q Meeting with them, chatting with them, talking with them.
22 Today's not the first time, right?

23 A That she called -- like, when she reached out to me and
24 she asked me did I remember -- do I remember the statement that I
25 made to Andre Carter at that time? And I told her yeah.

1 Q Sure.

2 A And then after that --

3 Q So is that, like, a week ago?

4 A I can't remember how long ago that was.

5 Q Month ago?

6 A It was probably -- it was probably, like, when was it?

7 Probably, like, a week ago.

8 Q A week ago?

9 A Yeah.

10 Q Okay. Yesterday or the day before or even this week, did
11 you have an opportunity to chat with Ms. Botelho?

12 A Briefly. It was more like she came in and I was, like -- and
13 introduced herself and then was, like, that -- you know, I may have
14 to get up on the stand of the --

15 Q You testified earlier about a time in which you met with a
16 detective named Carter, last name Carter; do you remember that?

17 A Sure.

18 Q Okay. That meeting took place on February 27th, 2007,
19 correct?

20 A Correct.

21 Q All right. And when you gave that interview to Detective
22 Carter, you wanted to be as full and transparent as you possibly
23 could, right?

24 A Correct.

25 Q You want to answer all of his questions truthfully, right?

1 A Correct. It really wasn't --
2 Q Yes or no.
3 A Oh, my fault.
4 Q Did you answer his --
5 A My fault.
6 Q -- questions truthfully?
7 A Correct. Yeah.
8 Q All right. And it's because you're telling the truth today,
9 right?
10 A Yeah.
11 Q And you wanted to tell the truth then too, right?
12 A Right.
13 Q Equally as important, right?
14 A All the way around.
15 Q Truth is the truth, right?
16 A [Indiscernible.]
17 Q Doesn't change on different days, right?
18 A Uh-uh.
19 Q Okay. So, again, back in 2007, you gave a statement to
20 Detective Carter, correct?
21 A Correct.
22 Q And in that statement, you told him that you had a
23 conversation with Pierre, right?
24 A Correct.
25 Q Okay. And that he was going to knock off Lil Swole for

1 killing Marty, correct?

2 A Correct.

3 Q That he, Pierre, was going to do that, right?

4 A It was a few conversations that we had, so -- but at the
5 same time, like, it was I explained the whole story --

6 Q Yes or no, sir?

7 A -- to him as far as --

8 THE COURT: If you can answer yes or no, if you can't --

9 THE WITNESS: Oh. Okay. My bad.

10 THE COURT: -- answer --

11 THE WITNESS: Yep.

12 THE COURT: -- yes or no, then you can let me know and
13 I'll ask Mr. Tanasi if he wants you to respond.

14 THE WITNESS: Okay. Yes.

15 MR. TANASI: Thank you, Judge.

16 THE WITNESS: My bad.

17 MR. TANASI: May I proceed?

18 THE COURT: Yes. Thank you.

19 MR. TANASI: Thank you.

20 BY MR. TANASI:

21 Q In that conversation, you stated you had a conversation
22 with Pierre --

23 A Uh-huh.

24 Q -- and he told you he was going to knock off Lil Swole for
25 killing Marty, correct?

1 A Correct.

2 Q You also stated that Pierre told you that there was a bitch
3 in the car and Bahoo and he was going to knock them off, right?

4 A Correct.

5 Q Okay. Now, you also said that you don't know for sure
6 who the driver of the car was, but you thought it might have been
7 D-Wood, correct?

8 A I can't remember.

9 Q Would seeing a copy of a report of that statement help to
10 refresh your recollection?

11 A Yeah, please.

12 THE COURT: Is it --

13 MR. TANASI: May I approach, Your Honor?

14 THE COURT: I -- my understanding that's Detective
15 Carter's report.

16 MR. TANASI: It is, Your Honor. I'm refreshing his
17 recollection on this.

18 THE COURT: I know, but he didn't draft the report.

19 MR. TANASI: I understand. But I can refresh with any
20 document here.

21 THE COURT: Okay. Go ahead.

22 MR. TANASI: Thank you.

23 May I approach?

24 THE COURT: You may.

25 ///

1 BY MR. TANASI:

2 Q Go ahead and just read that last sentence for me and let
3 me know when it refreshes your recollection.

4 A All right. So the whole thing?

5 Q Just the bottom, right here.

6 A Where it say:

7 Owens was not sure who the driver of the car --

8 Q Don't read it out loud, just --

9 A Oh, my bad.

10 Q -- read it and let me know when it refreshes your
11 recollection.

12 A Okay. Okay. Yeah.

13 Q Okay? All right. So, again, my question was: Isn't it true
14 that you told Detective Carter you're not sure who the driver of the
15 car was, but you thought it might be D-wood?

16 A Correct.

17 Q Okay. So, again, would you agree with me that when you
18 met with Detective Carter, you made no mention of my client
19 saying anything about what he planned to do tonight, correct?

20 A He said when I met with him, what, like at that time?

21 Q Correct. When you met with Detective Carter on
22 February 27th, 2007, you made no mention to him about what it is
23 that my client planned to do tonight, as if you said today, though,
24 that Mr. Matthews had plans for the night, correct?

25 A Correct.

1 Q Mr. Pierre, he's the one who asked you about the guns,
2 correct?

3 A Correct.

4 Q And you dealt with Mr. Pierre, correct, with respect to the
5 guns, right?

6 A Correct.

7 Q In fact, as you said, you've primarily dealt with Mr. Pierre,
8 correct?

9 A Correct.

10 Q Sir, you have two prior felony convictions, correct?

11 A Correct.

12 Q One for burglary while in possession of a firearm, correct?

13 A Correct.

14 Q And you have another for robbery, correct?

15 A Correct.

16 Q How tall are you, sir?

17 A Something like 5-6.

18 Q I'm sorry, what's that?

19 A I'm like 5-6.

20 Q Thank you.

21 MR. TANASI: No further questions.

22 THE COURT: Any redirect?

23 MS. BOTELHO: Yes, Your Honor.

24 ///

25 ///

1 **REDIRECT EXAMINATION**

2 BY MS. BOTELHO:

3 Q Mr. Owens, 1271 Balzar Avenue, where Mersey Williams
4 was shot and killed, that's a known hangout for Antwon Jones and
5 his friends, correct?

6 A Correct.

7 Q And you knew both Pierre Joshlin and Jemar Matthews
8 in 2006; is that right?

9 A Correct.

10 Q Okay. Did you know them to be close friends?

11 A Yes, ma'am.

12 Q Okay. Often, when you would see one, you would see the
13 other; you know what I'm saying?

14 A Yes, ma'am.

15 Q Okay. And is that true?

16 A Yes, ma'am.

17 Q They would be in each other's company a lot?

18 A Yes, ma'am.

19 MS. BOTELHO: Nothing further. Thank you.

20 THE COURT: Recross?

21 MR. TANASI: No recross, Your Honor. Thank you.

22 THE COURT: Okay. All right. Mr. Owens, thank you very
23 much for your testimony.

24 Just a minute.

25 All right. We're going to take a short recess.

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

12 It'll be a short recess, and Officer Hawks will let you know
13 when we're ready to start again.

14 [Jury recessed at 2:13 p.m.]

15 THE COURT: Okay. Mr. Owens is excused now. You can
16 take Mr. Owens.

17 [Pause in proceedings.]

18 THE COURT: Okay. Everyone can have a seat. We're just
19 going to wait for the jury to come back.

20 [Pause in proceedings.]

21 MR. GIORDANI: Oh, before we bring the jury in -- sorry --
22 just want to confirm for the record I believe the defense has two
23 experts out in the hall. I spoke with Mr. -- I believe it was Tanasi
24 earlier. It's my understanding there's no reports that were authored
25 by either of those men, there's no raw data for me to have

1 reviewed, and there's no research articles or anything they relied
2 upon. I just haven't received anything relating to the experts, so I
3 wanted to mention that now in case I end up objecting in the
4 future --

5 THE COURT: Okay.

6 MR. GIORDANI: -- during their examination.

7 THE COURT: And is that accurate?

8 MR. TANASI: That's accurate, Your Honor.

9 THE COURT: Okay. Is this your last witness?

10 MR. GIORDANI: Ours? Yes.

11 THE COURT: Okay. Who is it? Who is your --

12 MS. BOTELHO: Our last witness is Crystina Vachon, she's
13 the gun residue expert.

14 THE COURT: Okay.

15 [Jury reconvened at 2:18 p.m.]

16 THE COURT: Does the State stipulate to the presence of
17 the jury panel?

18 MR. GIORDANI: We do, Your Honor.

19 THE COURT: And the defense?

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

21 THE COURT: Thank you.

22 And you may call your next witness.

23 MS. BOTELHO: The State calls Crystina Vachon.

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CRYSTINA VACHON,

[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 names for the record.

THE WITNESS: Crystina Vachon, C-R-Y-S-T-I-N-A, V-A-C-H-O-N.

DIRECT EXAMINATION

BY MS. BOTELHO:

Q Good afternoon, Ms. Vachon.

A Good afternoon.

Q Ms. Vachon, I see you rolled kind of a suitcase up to the witness stand. Did you bring some demonstrative aids that you might use during your testimony to assist the jury during your testimony?

A Yes, I did.

Q Okay.

MS. BOTELHO: Your Honor, I would ask for permission, if needed, for her to have the ability to use the demonstrative aids that she brought --

THE COURT: Okay.

MS. BOTELHO: -- when it comes time.

THE COURT: Okay.

MS. BOTELHO: Thank you.

///

1 BY MS. BOTELHO:

2 Q Ms. Vachon, how are you employed?

3 A I am the quality assurance manager at the Bexar County
4 Criminal Investigation Laboratory in San Antonio, Texas. Before
5 that, for 15 years, I was a forensic scientist in the trace evidence
6 section of the laboratory.

7 Q Okay. And so total, how long have you worked for Bexar
8 County?

9 A 17 years.

10 Q Okay. Were you working as a forensic scientist in the
11 trace evidence unit back in January of 2007?

12 A Yes, I was.

13 Q Okay. And you said forensic scientist in the trace
14 evidence section; is that right?

15 A Correct.

16 Q Okay. With that job title, what is that -- what was your
17 specific job with Bexar County?

18 A I examine many different types of evidence in the trace
19 evidence section. We could get samples that included fibers, hairs,
20 paints, gunshot residues, general unknowns. We did pretty much --
21 whatever the other sections of the lab didn't test came to trace
22 evidence for testing.

23 Q Okay. Can you briefly tell the jury about your education,
24 training, and experience such that you were qualified to work as a
25 forensic scientist at Bexar County and now the quality assurance

1 manager for the same place.

2 A Sure. I have a bachelor's degree in biochemistry and a
3 master's degree with a concentration in forensic science. And each
4 of those areas where I conducted testing, I received training inside
5 and outside the laboratory. The trainings inside the laboratory
6 would consist of journal readings, supervised casework, and then
7 written and oral exams before I was allowed to -- before I was
8 released to do my own casework.

9 Q Okay. And so you would receive on- and off-the-job
10 training?

11 A I would receive training both inside and outside the
12 laboratory.

13 Q Okay. And did you attend regular training seminars and
14 things like that while you were employed as a forensic scientist?

15 A Yes. And, actually, I still do receive training. It's actually a
16 requirement of my employment now.

17 Q Okay. Do you have to have and did you have to have
18 certain certifications or licenses back when you were employed as a
19 forensic scientist?

20 A I actually do have a license now. The state of Texas is
21 requiring all scientists to be licensed. So I am currently a licensed
22 forensic scientist in the state of Texas. And I also am certified by
23 the American Board of Criminalistics as well.

24 Q And so do you have to take a test to be licensed?

25 A Yes. There's a requirement that we take a test and we

1 also have to be involved in continuing education.

2 Q Okay. And how often do you have to get re-licensed?

3 A Every two years.

4 Q Okay. Have you testified as an expert before?

5 A Yes, I have.

6 Q Okay. In what jurisdictions?

7 A Many, and state courts in Texas, Florida, Arizona, Nevada,
8 South Dakota, and Oklahoma. And I've also testified in federal
9 courts in Texas and Nevada, I believe.

10 Q Thank you.

11 You mentioned a little while ago, you know, that you're a
12 trace evidence forensic scientist. Can you just tell the ladies and
13 gentlemen of the jury what is trace evidence?

14 A Trace evidence is items of evidence that are usually
15 microscopic in nature that can be transferred at a crime scene,
16 whether it's paint that's transferred between two vehicles that come
17 into contact during an accident or fibers that are transferred during
18 a fight, or gunshot residues that are deposited on surfaces
19 whenever a gun is fired. All of those are items that can be collected
20 and sent to a laboratory for testing and that happens in the trace
21 evidence section.

22 Q Okay. When you are conducting testing on trace
23 evidence, do you usually -- or do you use certain machines to aid in
24 the testing process?

25 A Yes.

1 Q Okay. In particular, I'd like to talk to you -- and you did
2 mention, as one of the trace evidence that you work with, gunshot
3 residue. So I'd like to turn your attention to that. Gunshot residue
4 is a type of trace evidence; is that right?

5 A Yes, it is.

6 Q Okay. And do you, in fact, have a demonstrative aid --
7 MS. BOTELHO: There was some feedback going on, I
8 apologize.

9 Q Okay. So gunshot residue is trace evidence; is that right?

10 A Yes, it is.

11 Q Okay. Can you explain to the ladies and gentlemen of the
12 jury what gunshot residue is?

13 A Yes. And I will use my demonstrative, if that's okay.

14 Q Yes.

15 MS. BOTELHO: Is that okay, Your Honor?

16 THE COURT: You may.

17 MS. BOTELHO: Thank you.

18 THE WITNESS: So this is a plastic model of a round of
19 ammunition. And what happens when the trigger is pulled on a
20 gun is it releases the firing pin of the gun, and that firing pin will
21 start the primer cap area, the silver area you see on my model here.
22 And that primer cap contains shock-sensitive chemicals. So
23 whenever it receives that strike from the firing pin, there will be an
24 explosion in this primer cap area that blows into the cartridge case.

25 The cartridge case contains gunpowder. That gunpowder

1 is ignited by the explosion and it will burn. And the gases that are
2 created from the burning of that gunpowder will expand inside the
3 cartridge case. And it's actually those gases that push the bullet out
4 of the cartridge case and down the barrel.

5 So whenever I'm doing testing for gunshot residue, I'm
6 looking for the components of the primer cap area, this silver area.
7 And it contains the metals lead, barium, and antimony. And they
8 are evaporated during that explosion and they'll condense back
9 together to form particles. Those particles can be all three of those
10 elements, lead, barium, and antimony, or they can be just two
11 elements. And they will have a very specific morphology, which is
12 the shape and size of the particle. And whenever those particles are
13 formed, they're forced out of any open areas of the weapon.

14 So the largest open area will be the end of the barrel. But
15 other open areas can be the ejection port where the cartridge case
16 is ejected, or even the back of the weapon, whenever we're talking
17 about a revolver.

18 Q Okay. Let's kind of flesh that out. You indicated that the
19 metals that would be located from the primer cap components,
20 lead, barium, and antimony, can be found all together, so all three;
21 is that right?

22 A Correct. Yes.

23 Q Or just two?

24 A Correct.

25 Q Okay. Would a particle with all three carry more weight, if

1 you understand my question, than just a particle with just the two?

2 A No. They could all be identified as gunshot residue based
3 on the elemental composition that makes it up and the shape and
4 size of the particle.

5 Q Okay. And you indicated that it's the morphology of the
6 particle that's important, meaning the shape and size; is that
7 correct?

8 A Yes.

9 Q Okay. What is the shape and size of a gunshot residue
10 particle?

11 A The shape is generally spherical. It can be -- also have a
12 molten metal appearance, which can look like melted candlewax. It
13 doesn't have any hard edges, usually. It's definitely not crystalline
14 in structure, so it won't look like a gem that you have in your ring.

15 As far as size, the particles are usually between 1 and 10
16 microns in size. And to give you an idea of what that actually looks
17 like, a piece of paper is 100 microns thick. So you would have to
18 stack 100 of these 1-micron gunshot residue particles on top of one
19 another to equal the thickness of a piece of paper. So they're very,
20 very small.

21 Q Okay. Now, lead, barium, and antimony, the three metals,
22 right, that you look for, they all exist separately, naturally in the
23 environment; is that right?

24 A Yes.

25 Q Okay. Now, as a forensic scientist, back when you were

1 working as a forensic scientist in the trace section of Bexar County,
2 would you receive tips and/or obtain samples to process for
3 gunshot residue?

4 A Yes.

5 Q Can you explain a gunshot residue kit? What is that?

6 A I have another visual aid, if I may use it?

7 MS. BOTELHO: Yes, Your Honor, could we --

8 THE COURT: You may.

9 THE WITNESS: So a kit is just an envelope that contains
10 sampling devices that are used to sample from surfaces of interest.
11 And this is what a sampling device looks like. It's just a clear vial
12 with this orange cap, and you can see here there is an aluminum
13 disc that's held into this cap with a post. And on that aluminum
14 disc is a double-sided carbon tape. And the sample is just dabbed
15 along the hands or, really, any surface that the scene officer wants
16 samples collected from.

17 The kits, generally, will have two to four samples in them.
18 And those are sampled at the scene and then submitted to the
19 laboratory for testing.

20 BY MS. BOTELHO:

21 Q Okay. And would your lab receive kits from the Las Vegas
22 Metropolitan Police Department?

23 A Yes.

24 Q Okay. When you -- when your lab, particularly in 2006,
25 would receive sample kits from the Las Vegas -- or kits from the Las

1 Vegas Metropolitan Police Department, would they have the two- or
2 four-sample kits?

3 A They had the four-sample kits.

4 Q Okay. And so, correct me if I'm wrong, but when your lab
5 would receive evidence to process for gunshot residue, you would
6 either receive a kit where a sample was taken, like you
7 demonstrated to the jury just now; is that right?

8 A Correct.

9 Q Or you could receive another item of evidence, say,
10 clothing, where you would have to take a sample yourself or
11 someone in your lab to test for gunshot residue?

12 A Correct. Sometimes we were sent items to be sampled
13 for gunshot residue.

14 Q Okay. And sometimes that's clothing or -- sometimes
15 that's clothing?

16 A Correct.

17 Q Okay. Now, with -- concerning the Las Vegas
18 Metropolitan Police Department, we talked about how they use the
19 four-sample kits; do you recall that?

20 A Yes.

21 Q Is it -- why is it four and how -- what do you use the
22 four-sample kits for?

23 A Inside the four-sample kits, there are four of these
24 sampling devices and they're each labeled with the area to be
25 sampled. In the four-stub kit -- four-sample kits, there is a sample

1 for the left back, left palm, and the right back and right palm.

2 Q Okay. And can you explain to the ladies and gentlemen of
3 the jury the process of obtaining a sample from, say, clothing or
4 gloves for gunshot residue?

5 A So we would have a clean table where -- and I sampled
6 these items that we're going to discuss. So I clean a table, I put out
7 a piece of clean butcher paper, and open the item to be sampled.
8 And I will use one of these sampling devices. And you can see this
9 one doesn't have anything written on it. It's like that so I can write
10 my own notes about where I'm collecting it from. And I will just
11 dab the sampling device along the areas of interest on the item
12 that's been submitted.

13 Q Okay. I ask you about gloves specifically just now. Do
14 you use a different sample kit -- do you use a four-sample kit for an
15 item like gloves?

16 A So we don't have kits in our lab, we just have individual
17 samples like this to sample with. As far as gloves, the number of
18 samples that I collect from each glove would depend on the type of
19 glove. If we're talking about a knit glove where you can't tell what
20 the back and the front of the glove are, then I will just collect one
21 sample from the whole outside of the glove. If we're talking about
22 work gloves where there's only one hand that you can put the glove
23 on, and I can tell the back from the palm area, then I will collect two
24 samples from that type of glove.

25 Q Okay. And earlier, you explained to the jury that at least

1 GSR particles are very, very, very small. And you gave an example
2 of that sheet of paper; do you remember that?

3 A Yes.

4 Q So is GSR visible to the naked eye?

5 A No, it's not.

6 Q Compared to, say, the size of, like, a speck of dust, how
7 does gunshot residue or the particles compare to that?

8 A They're even smaller. They're invisible to the naked eye.

9 Q Okay. Because sometimes you can see specks of dust,
10 depending on the light, correct?

11 A Correct.

12 Q Okay. Is there a machine that you use to test for gunshot
13 residue once you've done -- once you're done taking the samplings
14 or in the instances of kits, where you already have the samples, do
15 you -- what do you do then? Do you run it through a machine?

16 A Yes, I do.

17 Q Okay. And what machine would that be?

18 A I use a scanning electron microscope with an energy
19 dispersive x-ray detector.

20 Q Okay. What does that machine do?

21 A Would you like me to explain how it operates?

22 Q Sure.

23 A Okay. The scanning electron microscope is a
24 high-powered microscope where we can get a very high
25 magnification. And the way it works is that there's a filament at the

1 top of a column, and the filament just looks like the wire that you
2 can see inside an incandescent light bulb, the ones that are slowly
3 being phased out. There's a current applied to that filament. And,
4 basically, it creates a beam of light, which is actually made up of
5 electrons.

6 And those electrons are refined down into a very fine
7 beam. And the fine point from the beam will scan across the
8 surface of the sample. And any particles that are on the surface of
9 that sample, whenever the electrons come in contact with the
10 particles, they'll give off x-rays.

11 And every element on the periodic table has a different
12 x-ray energy. So the x-ray detector will collect those x-rays and
13 measure the energies and determine what elements make up that
14 particle. That is an automated process.

15 So I set up the instrument, I verify that all the settings are
16 correct, and then I let it go and scan across the whole surface of all
17 of the samples. And it gives me a list of every particle that it found
18 on the surface of the sample.

19 And I will go back into that list and sort through it to see if
20 any of the particles meet the criteria for gunshot residue. And then
21 I will actually go back to that particle on the sample, I will collect
22 more x-rays, and I will look at the morphology at that point, at the
23 shape and size, and take a picture of it and confirm is as gunshot
24 residue if it meets all of the requirements.

25 Q Okay. Thank you.

1 Going to ask a simpler question, I hope. Does gunshot
2 residue build? Meaning, is this statement true: The more shots
3 fired, the more gunshot residue you would expect to find on a
4 surface?

5 A Well, each of these primer caps has the same amount of
6 lead, barium, and antimony in it. So each firing of a gun would
7 create the same amount of gunshot residue over and over again.
8 So you could assume that 10 shots would have 10 times more
9 gunshot residue created than one shot.

10 Q Okay. Is gunshot residue a stable particle? Meaning is it
11 the type of particle that would form a bond with whatever surface it
12 would float onto?

13 A The gunshot residue particles are stable, they do not form
14 any bonds with the surfaces they land on.

15 Q Okay. Are they easy or difficult to remove from a surface?

16 A They're very easy to remove. Because they don't form
17 any bonds, they just sit on the surface, they can be removed from,
18 let's say skin, very easily. It stays around a little bit longer on
19 fabrics because they -- the gunshot residue particles can get stuck
20 in the weave of the fabric between the threads. And so they'll be a
21 little bit more persistent there. But, generally, gunshot residue is
22 very easy to lose from a surface.

23 Q Okay. I'd like to talk to you a little bit about gunshot
24 residue transfer. So say, for instance, as an example, I fire a gun,
25 like, in this room. And after I do that, I put the weapon down and I

1 shake Mr. Giordani's hand. Having fired the weapon myself, would
2 you expect to find gunshot residue on my hands?

3 A Most of the time, yes, I would expect to find gunshot
4 residue on your hands.

5 Q Okay. But it's not 100 percent of the time, obviously.

6 A Correct.

7 Q Okay. Would you, after I fired the weapon and shook
8 hands with Mr. Giordani, would you expect to find gunshot residue
9 on his hands?

10 A It would be less likely to find gunshot residue on his
11 hands, because that would require two transfers.

12 Q Okay.

13 A So that would be a transfer from the gun to your hands,
14 which will be the primary transfer, and then the transfer from your
15 hands to his hands would be a secondary transfer.

16 Q Okay. And let's kind of expound upon that. Let's say I
17 fired a weapon, put the weapon down, shook Mr. Giordani's hand,
18 Mr. Giordani then goes on to shake Mr. Leventhal's hand; would
19 you expect to find gunshot residue on Mr. Leventhal's hand?

20 A It is possible, but once again, it's even less likely than the
21 secondary transfer.

22 Q Okay. And so one more time over, if Mr. Leventhal,
23 having shaken Mr. Giordani's hand, now shakes Mr. Tanasi's hand,
24 would you expect to find gunshot residue on Mr. Tanasi's hand?

25 A That would be even less likely. That would be a

1 quaternary transfer and that would be even less likely than the
2 primary, secondary, or tertiary.

3 Q Okay. So fair to say that as the number of transfers
4 increase, the less likely you are to find gunshot residue?

5 A Correct.

6 Q What are the most common ways or sources of gunshot
7 residue being found on, let's say, a hand?

8 A The most likely reasons would be directly from the gun,
9 which would include a person actually firing the gun, handling the
10 gun after it's been fired, or being near the gun as it's being fired.

11 Q Okay. And so if I were to -- the same example -- fire a
12 weapon here, but I was standing right next to Mr. Giordani, would
13 you expect gunshot residue on Mr. Giordani?

14 A It would be possible. It would be likely, yes.

15 Q Okay. Are there other things that determine whether or
16 not gunshot residue will be found on any particular person?

17 A Yes.

18 Q Okay. Are one of those things the location of the
19 discharge?

20 A Yes.

21 Q Okay. And can you tell us a little bit about that and why it
22 matters?

23 A Sure. So the largest open area of a gun, as I said before,
24 is the end of the barrel. So whenever I get samples from victims of
25 a gunshot wound, I very often find gunshot residue on them,

1 because the largest open area of the gun is pointing directly at
2 them.

3 Whenever we're talking about someone standing next to
4 someone who's firing a gun, the next largest area that would be
5 open on the gun would be the ejection port. So the gunshot
6 residue would come out of one side of the gun, where the cartridge
7 case is being ejected. That means that there may not be as much
8 gunshot residue coming out of the other side of the gun. So the
9 gunshot residue is not expelled from the gun equally in all
10 directions, and so it's hard to determine where the gunshot residue
11 could deposit, just based on someone standing next to someone
12 who's firing a gun.

13 Q Okay. But as you indicated, location does matter?

14 A Yes.

15 Q Okay. So, for instance, if you were to compare an
16 enclosed area versus the outdoors, that would have an impact on
17 the presence of gunshot residue?

18 A Correct. If you're indoors, there's not as much space for
19 the gunshot residue to escape. And so it will stay more
20 concentrated as it slowly drops. Because it has weight, so it will
21 eventually land. Whenever you're outside, there is an infinite
22 amount of air and space for that gunshot residue to be caught on
23 wind currents and disperse even further away from the actual
24 shooting event.

25 Q Okay. So the location matters in that it determines kind of

1 where the particle will land and how much it is transferred?

2 A I would say where it would land and how much it
3 disperses.

4 Q Disperses. Thank you. Okay.

5 So let me give you an example, okay? Let's say
6 Mr. Tanasi, Mr. Leventhal, Mr. Giordani, and I are in a vehicle. And
7 I shoot a gun from that vehicle, I engage in a drive-by shooting.
8 And I shoot out of the vehicle or shoot from the vehicle, let's say.
9 The police stop us, because they have, you know, the description of
10 the car or whatever, and they stop us, and they test us for gunshot
11 residue, all of us, all of our hands. What sort of -- what can you tell
12 us about that kind of scenario? Would I -- would finding gunshot
13 residue on Mr. Giordani say he's the one that shot out -- that he's
14 the one that discharged the weapon? Do you understand what I'm
15 saying?

16 A Yes.

17 Q Okay. Can you kind of explain that?

18 A So there are two ways that this can go if someone is
19 shooting out of a vehicle as it's moving. First would be that the
20 movement of the vehicle could cause the gunshot residue to stay
21 behind and a lot of the gunshot residue would not be transferred
22 into the car. The particles that would be transferred into the car
23 would be subject to being in that small enclosed space. I think
24 we've all been in a car where someone has had a window down
25 and it's whipping everyone's hair and everybody can feel the

1 breeze. So that's the way the gunshot residue is going to be
2 dispersed as well. The gunshot residue that makes its way into the
3 car will make its way all around the vehicle anywhere that the wind
4 is blowing it.

5 Q Okay. And thank you for that.

6 Ms. Vachon, can you tell the ladies and gentlemen of the
7 jury the most likely scenarios to explain the presence of gunshot
8 residue on a surface or an item, let's say hands.

9 A On hands, it would be that a person has discharged a
10 firearm, handled a discharged firearm, or is in close proximity to a
11 discharging firearm.

12 Q Okay. And can you tell the ladies and gentlemen of the
13 jury the most likely scenarios to explain the presence of gunshot
14 residue on, say, an item of clothing, like a glove?

15 A The most likely reason for gunshot residue on an
16 inanimate object, such as a glove, would be that the item had come
17 in contact with a discharged firearm, or was in close proximity to a
18 discharging firearm.

19 Q Okay. At some point, for this particular case, did you test
20 items from the Las Vegas Metropolitan Police Department for
21 gunshot residue?

22 A Yes, I did.

23 Q And can you tell us what items you tested or obtained a
24 sampling from to test?

25 A Can I refer to my report, please?

1 MS. BOTELHO: Permission, Your Honor?

2 THE COURT: You may.

3 MS. BOTELHO: Thank you.

4 THE WITNESS: I received three separate gunshot residue
5 collection kits. I received one red knit glove and two black gloves.

6 BY MS. BOTELHO:

7 Q Okay. And would that have been characterized as a pair
8 of gloves?

9 A I believe so.

10 Q Okay. And so these particular items of evidence, were
11 they received by your office by way of mail?

12 A Yes, they were.

13 Q Okay. And was the mail system used equipped with, like,
14 a tracking unit?

15 A Yes, it was.

16 Q Okay. Can you tell us when it was that your office
17 received these items of evidence that we just talked about?

18 A The items were received on January 11th of 2007.

19 Q Okay. Now, you indicated that you received or your office
20 received three different GSR kits; is that right?

21 A Yes.

22 MS. BOTELHO: Permission to approach, Your Honor?

23 THE COURT: You may.

24 BY MS. BOTELHO:

25 Q This is State's admitted Exhibit 14. Ma'am, showing you

1 State's Exhibit 14; do you recognize what's depicted in this
2 particular exhibit?

3 A Yes, I do.

4 Q What do you recognize it to be?

5 A This is a brown paper bag containing three gunshot
6 residue collection kits that I examined in my laboratory.

7 Q Okay. And how do you know that this is a kit or this is an
8 envelope containing the three kits that you examined at your
9 laboratory?

10 A Every item of evidence that I examine, I will write the
11 Criminal Investigation Laboratory number that's assigned to it
12 whenever it comes into the lab, the date of examination and my
13 initials, and I see that on this package.

14 Q Okay. And so if we were to open this particular package,
15 what would we expect to find?

16 A There will be three white envelopes that are gunshot
17 residue collection kits, and each of those kits will contain four
18 sampling devices.

19 Q Okay. And these are, per your testimony, the three
20 gunshot residue kits that you processed and tested for Metro for
21 this case; is that right?

22 A Yes.

23 Q Okay. Let me just publish the outside of State's Exhibit
24 Number 14. Okay. So you indicated that you actually add a lab
25 number to this particular envelope; where is that located here?

1 A That's in the upper right-hand corner, it's a -- so those
2 markings are for whenever the item came into the laboratory.

3 Q Okay.

4 A And then if you go down right below that white sticker,
5 you can see that handwriting there and the initial at the bottom, it
6 looks a little bit like a W, but that's actually a CV.

7 Q Okay.

8 A Yeah, so that's me.

9 Q Okay. And so what's the lab number associated with the
10 three gunshot residue kits?

11 A It is 07-00220.

12 Q Okay. And what was the date that this particular -- or
13 these particular kits were processed?

14 A January 29th of 2007.

15 Q Okay. And does it say that on this particular envelope?

16 A Yes.

17 Q Okay. And would that be right here, right where that W is
18 that you were referencing to be your initials?

19 A Yes.

20 Q And so going to hand you some gloves. Ma'am, there's
21 staples in this open area here, if you could just use the staple
22 remover --

23 A Okay.

24 Q -- to remove the staples, and I'll get you some gloves.

25 Okay. Were you able to open that, ma'am?

1 A Yes, I was.

2 Q Okay. If you could please pull the contents out of the
3 envelope for State's Exhibit 14, I would really appreciate it.

4 A [Witness complies.]

5 Q Now, you processed these items of evidence back in
6 January of 2007; is that right?

7 A It looks like I processed them between the end of January
8 and the beginning of February of 2007.

9 Q Okay. After you processed them, did you seal them back
10 up in their original containers and then place them in the envelope
11 we referred to as State's Exhibit 14?

12 A Yes, I did.

13 Q And when you did so, did you seal it and place your initial
14 and date to seal the envelope?

15 A Yes, I did.

16 Q Okay. And you see that seal here in State's Exhibit 14?

17 A Yes. My tape is the pink tape that's along the bottom of
18 each of these items.

19 Q Okay. So the front sticker of State's Exhibit Number 4
20 says that if we opened it, this particular exhibit, it would contain
21 three gunshot residue kits; is that right?

22 A Yes.

23 Q And one belonging -- it's a gunshot residue kit for a Pierre
24 Joshlin?

25 A Correct.

1 Q And that was Item Number 1. Item Number 2 being a
2 gunshot residue kit for Jemar Matthews?

3 A Correct.

4 Q And Item Number 3 being a gunshot residue kit for Trevon
5 Jones [phonetic]?

6 A Correct.

7 Q Now, these items that I just referred to, Items 1, 2, and 3,
8 that's not your labeling; is that right?

9 A That's right.

10 Q Okay. So you would -- there would be a difference, for
11 lack of a better word, item number related to your lab?

12 A Correct.

13 Q Okay. And so when you opened this for processing back
14 in 2007, did you, in fact, find three gunshot residue kits?

15 A Yes, I did.

16 Q Okay. I'd like to call your attention to State's Exhibit 14A;
17 do you recognize this?

18 A Yes, I do.

19 Q What is it?

20 A This is a gunshot residue collection kit that is labeled as
21 having been collected from Pierre Joshlin.

22 Q Okay. And was there a separate lab item number you
23 associated with this?

24 A Yes, there is.

25 Q And what was that lab number?

1 A I labeled this item Exhibit 1A.

2 Q Okay. And calling your attention to State's Exhibit 14B,
3 which would be this right here, do you recognize State's
4 Exhibit 14B?

5 A Yes, I do.

6 Q And what is that?

7 A It is a gunshot residue collection kit labeled as having
8 been collected from Trevon Jones.

9 Q And finally calling your attention to State's Exhibit 14C, do
10 you recognize what's depicted there?

11 A Yes.

12 Q And what is it?

13 A This is a gunshot residue collection kit that is labeled as
14 having been collected from Jemar Matthews.

15 Q Okay. And would State's Exhibit Number 14C, the
16 gunshot residue belonging -- kit from Mr. Matthews, was that given
17 a lab number of 1B, like boy?

18 A Yes.

19 Q And, similarly, was State's Exhibit 14B, which was the
20 gunshot residue kit for Trevon Jones, was that given a lab item
21 number of 1C?

22 A Yes.

23 Q Okay. Now, we're not going to open these particular
24 exhibits, 14A, B, and C. But you opened them when you received
25 them and processed them, correct?

1 A Correct.

2 Q Okay. So if we were to open, say, State's Exhibit 14C,
3 which was the gunshot residue kit belonging to Jemar Matthews,
4 what would we find in this envelope?

5 A You would find four of the sampling devices that I showed
6 you earlier and they would be labeled right back, right palm, left
7 back, and left palm. And then on each of those sampling devices, I
8 write all of my information as well, so it would have the Criminal
9 Investigation Laboratory number, the name of the person who was
10 said to be collected from, the date, and my initials on each of the
11 sampling devices in each kit.

12 Q Okay. Now, did you run these gunshot residue kits
13 through your SEM microscope?

14 A Yes, I did.

15 Q And so I'd like to call your attention first to 14B, which is a
16 gun residue kit belonging to Trevon Jones, which I'm publishing to
17 the jury. It is admitted by way of stipulation.

18 Do you see that there, ma'am?

19 A Yes, I do.

20 Q Okay. After running this particular kit through your SEM
21 microscope, what, if any, conclusions could you draw?

22 A I found one particle containing lead, barium, and
23 antimony on the sample that was labeled left palm in the kits. And I
24 did not find any particles containing any combination of lead,
25 barium, or antimony on the samples that were labeled right back,

1 right palm, or left back.

2 Q Okay. So one particle containing lead, barium, and
3 antimony on the palm of the left hand?

4 A Correct.

5 Q Thank you. Calling your attention now to State's
6 Exhibit 14A, also admitted. This is the gunshot residue for Pierre
7 Joshlin; is that correct?

8 A Yes.

9 Q Okay. And did you run this through your SEM
10 microscope?

11 A Yes, I did.

12 Q And what, if any, conclusions could you draw after that?

13 A I found three particles containing lead, barium, and
14 antimony and one particle containing lead and barium on the
15 sample collected from the palm of the right hand. I found two
16 particles containing lead, barium, and antimony and one particle
17 containing lead and barium on the sample from the back of the left
18 hand. And I did not find any particles containing any combination
19 of lead, barium, or antimony on the sample from the back of the
20 right hand or the palm of the left hand.

21 Q Okay. And so it is safe to say that at least pertaining
22 to 14A, the gunshot residue kit from Pierre Joshlin, that it was
23 positive for gunshot residue concerning the palm of the right hand?

24 A Yes.

25 Q And is it also safe to say that gunshot residue was

1 detected or found on the back of the left hand?

2 A Yes.

3 Q And I forgot to ask that for State's Exhibit Number 14B,
4 which was the gunshot residue kit for Trevon Jones, but is it safe to
5 say that it was positive for gunshot residue towards the palm of the
6 left hand?

7 A Yes.

8 Q Now, concerning 14C, which would have been Lab
9 Item 1B for you, this was State's Exhibit 14C. This is the gunshot
10 residue belonging to Jemar Matthews; is that right? The kit?

11 A Yes.

12 Q Okay. Did you run this through the SEM microscope?

13 A Yes, I did.

14 Q And after doing so, what, if any, conclusions could you
15 draw?

16 A I found one particle containing lead, barium, and
17 antimony, and two particles containing lead and antimony on the
18 sample from the palm of the right hand. I found one particle
19 containing lead, barium, and antimony and one particle containing
20 barium and antimony on the sample collected from the back of the
21 left hand. And I found one particle containing lead and antimony
22 on the sample collected from the palm of the left hand.

23 Q Okay. And were there any particles found on the back of
24 the right hand?

25 A No.

1 Q Okay. So let's kind of flesh that out. Is it safe to say that
2 at least on the gunshot residue kit 14C, belonging to Jemar
3 Matthews, that it was positive for gunshot residue on the palm of
4 the right hand?

5 A Yes.

6 Q And is it also safe to say that it was positive, Jemar
7 Matthews gunshot residue kit, was positive for gunshot residue on
8 the back of the left hand?

9 A Yes.

10 Q And was it also positive for gunshot residue on the palm
11 of the left hand?

12 A Yes.

13 Q And so can you take us through, since this is the first time
14 that we have, you know, learned about gunshot residue, can you
15 take us through again the three most likely scenarios which would
16 have led to the finding of gunshot residue, say, on 14C,
17 Mr. Matthews' hands.

18 A Based on the morphology and elemental composition of
19 the particles I found, Mr. Matthews may have discharged a firearm,
20 handled a discharged firearm, or was in close proximity to a
21 discharging firearm.

22 Q Thank you.

23 I'd like to talk now about the clothing that you talked
24 about receiving from the Las Vegas Metropolitan Police
25 Department, specifically, I'd like to talk to you about what's been

1 marked and admitted as State's Exhibit 7. Just going to publish
2 this.

3 Ma'am, do you recognize what's depicted in State's
4 Exhibit 7?

5 A Can you scoot it down just a --

6 Q Oh, sure.

7 A Other way. Yeah, there we go.

8 Q Okay.

9 A Okay.

10 Q Do you recognize it?

11 A Yes, I do.

12 Q Okay. What is this?

13 A This is my Item 2, which is -- it contains a red knit glove.

14 Q Okay. And so showing you, again, State's Exhibit
15 Number 7, is this the correct evidence bag now --

16 A Yes, it is.

17 Q -- for the red knit glove?

18 A Yes. This is the way it would have been submitted to the
19 laboratory.

20 Q Okay. And that after you processed it or obtained a
21 sample and ran it through your microscope, you would have sealed
22 it and put your evidence tag and your W or C --

23 A CV.

24 Q -- CV initials --

25 A Yep.

1 Q -- at the bottom?

2 A Correct.

3 Q Okay. And so when we open this particular envelope, it's
4 supposed to contain one red knit glove with a large hole; is that
5 what you found when you opened it?

6 A Yes, I did.

7 Q Okay. Showing you and publishing State's Exhibit
8 Number 7A; do you recognize what this is?

9 A Yes, I do.

10 Q What is it?

11 A This is the red knit glove that I examined.

12 Q Okay. So is this the red knit glove marked and admitted
13 as 7A that you pulled from the envelope 7 -- Exhibit 7?

14 A Yes.

15 Q Now, this is a piece of clothing and you've already
16 testified that you typically will obtain a sample to sample for
17 gunshot residue particles and then run that through the
18 microscope, right?

19 A Yes.

20 Q Okay. Now, you indicated on the envelope or indicated on
21 the envelope is that it was a red knit glove with a large hole. Did
22 you find a large hole on this knit glove?

23 A Yes, I did.

24 Q Okay. And where was that hole located?

25 A I believe that it was on the outside area of the palm near

1 the pinkie finger area.

2 Q Okay. And just publishing State's Exhibit Number 7A, is
3 this one side of the glove as it's packaged?

4 A Yes.

5 Q And this has your initials and also your date and lab
6 number; is that right?

7 A Yes.

8 Q The same lab number that we placed on the record
9 earlier, 07-00220?

10 A Yes.

11 Q Okay. And this is your Lab Number 8?

12 A No.

13 Q Okay.

14 A It's my Item 2.

15 Q Okay. So that's LVMPD's Item Number 8?

16 A I believe so.

17 Q Okay. And so I'm going to turn it to the other way. Does
18 this side of the glove show the hole?

19 A Yes.

20 Q And you actually have a cursor right there on the table
21 where you're testifying. Can you point out the large hole that you
22 were talking about?

23 A Sure. It's this area here.

24 Q Okay. And so if this was worn on the right hand, it would
25 have been towards, like, the pinkie area -- below the pinkie area?

1 A Yes.

2 Q Okay. And now I notice there are other small holes with
3 circles located on this glove; what's that?

4 A Those are not my markings. I think that it was probably
5 subsequent testing after I examined the evidence.

6 Q Okay. And so what did you do to obtain a sample from
7 this glove?

8 A I took a sampling device and I just dabbed it along the
9 outside of the glove on both the -- both sides of it.

10 Q Okay. So you didn't do a separate sampling from the
11 front or the back?

12 A Correct. And I only sampled the outside, I did not sample
13 the inside.

14 Q Okay. And so could you tell from looking at this which
15 hand this would have been worn on?

16 A No.

17 Q Okay. And you indicated earlier that, you know, the
18 weave of a fabric affects, you know, whether or not gunshot residue
19 can be found on, you know, hands or whether it can travel from,
20 let's say, a glove to a hand; do you recall you saying that?

21 A Yes.

22 Q Okay. Now, what's the weave of this particular knit glove
23 and how would you expect or would you expect gunshot residue to
24 be able to make its way into someone's bare hand if someone were
25 wearing this glove?

1 A So I wouldn't be surprised for someone who's wearing
2 this glove to have gunshot residue on their hand if they have fired a
3 weapon, handled a weapon, or been near it when it's been
4 discharged, because of the large hole. But this weave is also a very
5 open weave and there could definitely be some areas where the
6 skin could be exposed between the weave if the person who puts it
7 on has a really big hand. So it would also be possible for the
8 gunshot residue particles to travel through the weave of this fabric
9 onto someone's hands if they were wearing it.

10 Q Okay. Thank you.

11 Now, did you run this sample, the sample that you
12 collected from State's Exhibit 7A through your microscope to try to
13 detect or to detect the presence of gunshot residue?

14 A Yes, I did.

15 Q And what, if any, conclusions could you draw after doing
16 so?

17 A I found six particles containing lead, barium, and
18 antimony, and one particle containing barium and antimony on the
19 sampling device that I collected from this glove.

20 Q Okay. So is it safe to say that this glove had gunshot
21 residue on it?

22 A Yes, it did.

23 Q Now, drawing your attention to State's Exhibit 7B, do you
24 recognize this?

25 A Yes, I do.

1 Q What is this?

2 A This is a manila envelope that I created that I placed the
3 sample that I collected from the red glove into, and then
4 repackaged with the evidence to return it back to the agency.

5 Q Okay. So if we were to open this, we would find one of
6 those sampling kits where you have the orange dabber?

7 A Correct.

8 Q Dobber?

9 A Yes.

10 Q Okay. All right. Now, can you remind us of the two
11 scenarios which would explain, or most likely explain, the presence
12 of gunshot residue on the red glove we've been talking about?

13 A Based on the morphology and elemental composition of
14 the particles that I found, the red knit glove may have come in
15 contact with the discharged firearm or was in close proximity to a
16 discharging firearm.

17 Q Thank you.

18 I'd like to now draw your attention to what's been marked
19 and admitted as State's Exhibit Number 12; do you recognize this?

20 A Yes, I do.

21 Q Okay. And what do you recognize it to be?

22 A This is an item of evidence that I examined in the
23 laboratory that is labeled as containing a pair of black baseball
24 gloves.

25 Q Okay. And, specifically, it's -- at least what the sticker says

1 is one pair of black Nike Louisville baseball gloves?

2 A Correct.

3 Q Okay. So when you opened State's Exhibit Number 12,
4 did you, in fact, find a pair of black Nike Louisville baseball gloves?

5 A Yes, I did.

6 Q Publishing what's been marked and admitted as
7 State's 12A; do you recognize what's shown here?

8 A Yes, I do.

9 Q What is this?

10 A This is the pair of gloves that I examined in the laboratory.

11 Q Okay. So 12A contains -- does it contain one glove or two
12 gloves?

13 A It should contain two.

14 Q Okay. And I'll just approach.

15 A Yes, I see two gloves.

16 Q Okay. So when you opened State's Exhibit Number 12,
17 did you find the pair of black gloves that we see here as 12A?

18 A Yes, I did.

19 Q Now, at some point, did you put together State's Exhibit --
20 how many sampling tips or devices did you use for the black
21 gloves?

22 A I would have collected one sample for each side of the
23 gloves, since I could tell what the palm of the glove was and what
24 the back of the glove was, because they're made to only fit onto
25 one hand. So in total, I collected four samples from the pair of

1 gloves.

2 Q Okay.

3 MS. BOTELHO: And, for the record, I just put 12A on the
4 ELMO.

5 Q So I'm going to show you State's Exhibit Number 12B
6 that's admitted; can you tell us what this is?

7 A That is a manila envelope that I created and put the
8 samples that I collected from the left black glove.

9 Q Okay. And State's Exhibit Number 12C; what is this?

10 A That is the manila envelope where I placed the samples
11 that I collected from the right back glove --

12 Q Uh-huh.

13 A -- black.

14 Q And so once you obtained the sample from State's
15 Exhibit 12A, you obtained 12B and 12C, which are the sample
16 devices; is that right?

17 A Yes.

18 Q Did you run that through your SEM microscope?

19 A Yes, I did.

20 Q And after doing so, what, if any, conclusions could you
21 draw?

22 A I found 10 particles containing lead, barium, and antimony
23 on the sample that I collected from the right back area of the right
24 glove. And I found 10 particles containing lead, barium, and
25 antimony on the sample that I collected from the palm area of the

1 right glove. I also found 10 particles containing lead, barium, and
2 antimony on the sample I collected from the back area of the left
3 glove, and I found 10 particles containing lead, barium, and
4 antimony on the sample I collected from the palm area of the left
5 glove.

6 Q Thank you.

7 So, fair to say, in the most rudimentary terms, both sides
8 of this glove, the left and the right side, tested positive for gunshot
9 residue?

10 A Correct.

11 Q And, again, what are the two likeliest scenarios which
12 would explain the presence of gunshot residue on a glove like this?

13 A That the gloves may have come in contact with a
14 discharged firearm or were in close proximity to a discharging
15 firearm.

16 Q Okay. Ms. Vachon, can the amount of time that's elapsed
17 between, let's say, the firing of the gun or exposure to some type of
18 gunshot residue affect the finding of gun residue say, on a piece of
19 skin or -- on skin?

20 A Yes. Studies have been conducted that show that
21 gunshot residue is lost from the hands after about four to six hours
22 of regular activity.

23 Q Okay. And so regular activity, what is that? Just going
24 about --

25 A Yeah, that would just be going about your business, you

1 know, I can't think of what --

2 Q Okay. Like going to the store, school, or --

3 A -- it's just whatever regular people do. Yeah.

4 Q Okay.

5 A Driving your car, watching TV. Yes.

6 Q Okay. And so four to six hours you can expect the loss of
7 gunshot residue from the hands of someone who's, say, fired a
8 weapon?

9 A Correct.

10 Q Okay. And so does the amount of movement also affect
11 the likelihood of finding gunshot residue on a person's skin, hands,
12 for instance?

13 A Yes, it does.

14 Q Okay. Because as you noted, just four to six hours is the
15 amount of time it would take for loss of gunshot residue from
16 someone just doing general movement; is that right?

17 A Yes.

18 Q Going about your day?

19 A Correct.

20 Q Okay. Would you expect the loss of gunshot residue to
21 be -- to occur, say, if -- or to occur sooner than the four to six hours
22 expected if, say, someone were running for several minutes and, in
23 that process, sweating profusely?

24 A It could. The act of running could cause gunshot residue
25 to be mechanically removed from someone's hands. If someone is

1 sweating profusely, that could also affect the ability to collect the
2 gunshot residue, because as I told you, that sampling device just
3 has double-sided tape on it. And we all know that whenever tape
4 gets wet, it's not as effective, it's not as sticky. And so if someone
5 has wet hands from sweating, it would be less likely that the
6 gunshot residue would be collected by that sampling device
7 whenever it's dabbed on their skin.

8 Q And so you said, at least pertaining to running, that it
9 could be lost, you know, mechanically; what did you mean by that?

10 A Sure. That would mean that it would be -- the rubbing of
11 the hands against the clothing, the act of the air moving briskly over
12 the hands, those would be mechanical removal of the gunshot
13 residue.

14 Q Okay. Would, say, someone jumping walls, would that
15 affect -- or would you expect some sort of loss of gunshot residue
16 on someone's hands?

17 A If their hands are coming in contact with their clothing as
18 they're trying to maneuver themselves over the wall, I could see
19 that happening, yes.

20 Q Okay. And also if they were using their hands to, you
21 know, get over the wall, certainly, there would be some kind of
22 contact between the wall and the hands.

23 A Correct. If the areas that are being sampled. In this
24 situation, we have a kit where the palm areas of the hands were
25 sampled.

1 Q Okay.

2 A So, yes, if their hands are coming in contact with the wall,
3 that could remove gunshot residue.

4 Q Okay. Would the environment that an individual is, you
5 know, found in or pulled out of also play a role in the loss or
6 potential loss of gunshot residue? For instance, let's say someone
7 is found hiding in mulch or grass and dirt; how would that affect
8 potential loss of gunshot residue?

9 A Whenever there's a lot of debris that's collected on the
10 sampling device, particularly dirt, it can cause some difficulties for
11 me to be able to see the gunshot residue in my scanning electron
12 microscope, because those types of materials, like dirt, have metals
13 in them. That's where the metals come from is from the earth. And
14 so whenever the instrument is trying to pick up individual particles
15 and identify what they're made out of, they may pick up that dirt
16 particle and miss the gunshot residue particle that's underneath it,
17 because it's being masked by the metals in that dirt particle.

18 So the environment that they're found in, what sort of
19 material is on their hands at that time could affect my ability to find
20 gunshot residue.

21 Q And what about the presence of blood on hands that are
22 tested by gunshot residue -- or for gunshot residue?

23 A Blood could be a twofold issue. First of all, it could make
24 the hands wet, and again, the tape may not be as effective if the
25 hands are wet. Also, blood has a lot of iron in it. That's how it

1 carries oxygen to our body. And so that iron can show up on the
2 instrument, because it's another metal, and make it hard for me to
3 identify gunshot residue particles.

4 Q Thank you.

5 I'd like to kind of shift gears, at least, to kind of talk about
6 the situations upon which gunshot residue is obtained. Would you
7 agree with me that what could be considered the ideal situation
8 would be similar to what you did with the glove -- the red glove or
9 the pair of black gloves, meaning you are sampling this particular
10 item in a -- in closed laboratory where you have control of the
11 situation or at least the circumstances?

12 A Absolutely.

13 Q Okay. Would you also agree with me that that ideal
14 situation isn't necessarily present in the real world in situations
15 where gunshot residue would be tested for or sampled for?

16 A Based on my experience, from hearing the stories about
17 how these samples are collected, it doesn't seem like someone
18 shoots a gun and then waits for the police officer to get there to
19 collect samples from their hands, which would be the ideal
20 situation at a crime scene, but, obviously, that doesn't happen. So
21 there are a lot of ways for this gunshot residue can be lost or
22 disturbed in some way or masked at a crime scene, because it's just
23 an uncontrolled situation.

24 Q Can you -- and I hope this isn't a silly question -- but can
25 you identify gunshot residue back to, like, a specific weapon or a

1 specific type of ammunition or match it back to a certain type of
2 bullet?

3 A No, I can't. The primer caps and the ammunition are
4 made by just a few different manufacturers and then sold to the
5 manufacturers of the ammunition. And so they're very
6 standardized across the board in all of the different types of
7 ammunition. There are some times where primes are used that
8 don't contain those lead, barium, and antimony metals, but those
9 are more unusual situations. Generally, these primer caps are
10 pretty standard and they cannot -- so then the gunshot residue
11 particles cannot be identified back to any sort of specific type of
12 ammunition.

13 Q Thank you.

14 You just testified to testing the items of evidence that
15 we've been discussing back in 2007. Has the science changed at
16 all -- we're now in 2021; has the science changed at all as it pertains
17 to gunshot residue?

18 A The science has not changed at all. The opinions that are
19 generally accepted in the gunshot residue community hasn't
20 changed. The way we do the testing has not changed. We've
21 gotten upgrades in equipment and software since then, just
22 because technology can do everything faster and better these days.
23 But the science is still exactly the same as it was in 2007.

24 Q Thank you.

25 MS. BOTELHO: I have no more questions. Pass the

1 witness.

2 THE COURT: Thank you.

3 At this time, we're going to take a recess.

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

15 And we'll be in recess for 15 minutes. Thank you.

16 [Court recessed at 3:28 p.m., until 3:50 p.m.]

17 [Outside the presence of the jury.]

18 MR. TANASI: Judge, can we be heard briefly outside the
19 presence?

20 THE COURT: Sure. Sure. The record will reflect that the
21 hearing's taking place outside the presence of the jury panel.

22 Do you want the witness to be excused?

23 MR. TANASI: I think she's fine, Judge. This was --

24 THE COURT: Okay.

25 MR. TANASI: -- respect to scheduling as we're coming to

1 the close of the day.

2 THE COURT: Okay.

3 MR. TANASI: So my understanding is this is the State's
4 last witness?

5 MR. GIORDANI: Correct.

6 MR. TANASI: Okay. We have our two experts who have
7 been waiting in a holding pattern outside the majority of the day, so
8 we were hoping that we'll be able to get to both of them today,
9 even if that were to mean we stay just a little bit past 5:00 in order
10 to accomplish that?

11 THE COURT: Well, sure.

12 MR. TANASI: Okay.

13 THE COURT: I mean, it can't be 7:00 or 8:00, but --

14 MR. TANASI: Understood. Understood.

15 THE COURT: You think you'd be able to get them done?

16 MR. TANASI: I think we should be able to do that. Yes.

17 THE COURT: Okay.

18 MR. LEVENTHAL: Just -- I know that my -- the --
19 Dr. Chambers is leaving for Europe tomorrow.

20 THE COURT: Okay.

21 MR. LEVENTHAL: So I will go first. And then Mr. Tanasi
22 has Mr. Scott --

23 MR. TANASI: Ballistics expert.

24 MR. LEVENTHAL: -- and so he has to come back on
25 Friday, then he will, because he just lives in Arizona, he can just

1 come over.

2 THE COURT: Okay.

3 MR. LEVENTHAL: But I will definitely get my guy first.

4 THE COURT: Okay.

5 MS. BOTELHO: And the only caveat to that, to Mr. Scott
6 coming on Friday, is Ms. Vachon could potentially be our rebuttal
7 witness, depending on if he says something completely, like, off the
8 wall during his testimony, Ms. Vachon is going to sit in and observe
9 his testimony and then, potentially, I'll recall her as a rebuttal
10 expert.

11 THE COURT: Okay.

12 MS. BOTELHO: So if push comes to shove and he were to
13 testify Friday, maybe we could do it by BlueJeans, where she
14 observes. I don't know. But I know that she can't stay -- she's
15 scheduled to fly out tomorrow morning.

16 THE COURT: Okay. Well, let's get going so we can try to
17 get these witnesses on today.

18 MR. TANASI: Yep, understood.

19 THE COURT: You can bring them in.

20 [Jury reconvened at 3:52 p.m.]

21 THE COURT: Does the State stipulate to the presence of
22 the jury panel?

23 MR. GIORDANI: We do, Your Honor.

24 THE COURT: And the defense?

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

1 THE COURT: Okay. Cross-examination?

2 MR. TANASI: Thank you, Judge.

3 **CROSS-EXAMINATION**

4 BY MR. TANASI:

5 Q Good afternoon, ma'am.

6 A Good afternoon.

7 Q I'm Rich Tanasi, I represent Mr. Matthews. Few questions
8 for you on cross, fair?

9 A Fair.

10 Q All right. You testified that gunshot residue, it's not
11 visible to the naked eye, correct?

12 A Correct.

13 Q It is smaller than a speck of dust, right?

14 A Yes, it is.

15 Q All right. And it's trace elements you've identified it as,
16 correct?

17 A Correct.

18 Q You talked a little bit on direct and I want to make sure
19 we're clear on it. One person can transfer gunshot residue to
20 another person, correct?

21 A That is possible.

22 Q Okay. That is possible. That's something that may
23 happen, fair?

24 A Yes.

25 Q Okay. Can't rule it out, can't say it cannot happen,

1 correct?

2 A Correct.

3 Q It may happen, fair?

4 A Correct.

5 Q All right. And prepared a report in this case, correct?

6 A Yes.

7 Q And you talked about some of the conclusions from that
8 report earlier, correct?

9 A Correct.

10 Q And you said based on the morphology and elemental
11 composition, you identified Jemar Matthews may have either
12 discharged a firearm, handled a discharged firearm, or was in close
13 proximity to a discharged firearm, correct?

14 A Correct.

15 Q All right. And again, the key word that's kind of baked in
16 there is may, right?

17 A Correct.

18 Q It's a possibility, right?

19 A Correct. Those are the most --

20 Q Just like transfer?

21 A -- likely reasons.

22 Q I understand. I'm not asking about likelihoods or most
23 likely or not, just with respect to possibilities. Transfer is one of
24 them, fair?

25 A Yes.

1 Q All right. And in this particular case, do you have any idea
2 as to the investigation leading up to your analysis of the gunshot
3 residue in this case?

4 A No.

5 Q So you have no idea whether or not Mr. Matthews was
6 handcuffed without bags on his hands, correct?

7 A Correct.

8 Q All right. Because that's something that could prevent
9 transfer?

10 A Yes, it could. It could also cause the loss of particles from
11 the hands, as well.

12 Q Okay. But again, bagging somebody's hands before
13 testing it for a gunshot residue sample could prevent transfer, fair?

14 A Yes, it could.

15 Q Okay.

16 A From someone to the hands of the person who's being
17 bagged --

18 Q Correct.

19 A -- is that what you're saying? Yes.

20 Q Right? So if you have -- if I have gunshot residue on my
21 hands after firing a weapon and you have bags on your hands, if I
22 were to touch those bags on your hands, I wouldn't be touching
23 your actual hand, correct?

24 A Correct.

25 Q And so I wouldn't be transferring gunshot residue from

1 my hand to yours, fair?

2 A Yes.

3 Q Okay. You testified earlier that the weave that we saw in
4 the red glove that you looked at earlier could travel through --
5 gunshot residue could -- or strike that.

6 Gunshot residue could travel through the weave in the red
7 glove, correct?

8 A It's possible.

9 Q Possible, right?

10 A Yes.

11 Q Okay. DNA, as far as you know, can that also transfer the
12 weave -- through the weave?

13 MS. BOTELHO: Objection.

14 THE COURT: Sustained. She has -- I mean, if you want to
15 try to lay a foundation, but has -- I don't think there's been a
16 foundation laid.

17 BY MR. TANASI:

18 Q Would you -- do you have any experience in respect to
19 DNA?

20 A No, I don't.

21 Q So you could offer no opinions on DNA?

22 A Correct.

23 Q All right. Thank you.

24 Testified earlier that the environment a person is found in
25 that could have an effect on whether or not you can get a good

1 sample for gunshot residue, correct?

2 A Correct.

3 Q Talked about how dirt or mulch, right, that could have an
4 impact on whether you could get a good sample for gunshot
5 residue, correct?

6 A Correct.

7 Q All right. Running and sweating, that could also impact
8 whether you can get a good sample for gunshot residue, correct?

9 A Correct.

10 Q All right. And so a person, possibly, after doing all of
11 those things, running and sweating and winding up in dirt and
12 mulch, they could have no gunshot residue that's traceable for you
13 to read on their hands, right?

14 A Yes.

15 Q Okay. It's possible that a person could be touched by
16 someone else who has gunshot residue on their hand and that
17 residue could then transfer, fair?

18 A It's possible. It's less likely than the conclusion I put in my
19 report, but it's possible.

20 Q Right. And again, the conclusion you put in your report,
21 though, is based upon morphology and elemental composition of
22 these particles. Mr. Matthews may have discharged a firearm,
23 handled a discharged firearm, or was in close proximity, correct?

24 A Correct.

25 Q So again, may, possible, right?

1 A Uh-huh.

2 Q And transfer is also possible, fair?

3 A Less likely, but possible. Yes.

4 Q Understood. Thank you.

5 MR. TANASI: No further questions.

6 THE COURT: Any redirect?

7 MS. BOTELHO: Very briefly, Your Honor.

8 **REDIRECT EXAMINATION**

9 BY MS. BOTELHO:

10 Q Mr. Tanasi asked you about bagging being a possibility,
11 bagging a suspects hands is preventing transfer; do you recall that
12 question?

13 A Yes.

14 Q You indicated it could also result in loss of gunshot
15 residue from the hands, correct?

16 A Correct.

17 Q Ms. Vachon, in your expert opinion, is bagging the hands
18 recommended?

19 A In the gunshot residue community, it is not recommended
20 because there's too much of an opportunity for the gunshot residue
21 to be removed mechanically by the bag rubbing against the hands.

22 Q Thank you.

23 MS. BOTELHO: I have nothing further.

24 THE COURT: Any recross?

25 MR. TANASI: No further questions, Your Honor.

1 THE COURT: Okay. Thank you very much for your
2 testimony here today. You may step down.

3 I know you don't want me to excuse this witness from her
4 subpoena, correct?

5 MR. GIORDANI: Correct.

6 MS. BOTELHO: Correct.

7 THE COURT: Okay. And does the State have any further
8 witnesses?

9 MR. GIORDANI: No, Your Honor. At this time the State
10 would rest.

11 THE COURT: Okay. The defense may call their first
12 witness.

13 MR. LEVENTHAL: Thank you, Your Honor.

14 Defense calls Dr. Mark Chambers.

15 **MARK CHAMBERS,**

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

18 THE CLERK: You may be seated.

19 THE WITNESS: Thank you.

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

22 THE WITNESS: Mark Chambers, M-A-R-K,
23 C-H-A-M-B-E-R-S.

24 MR. LEVENTHAL: May I proceed?

25 THE COURT: You may.

1 MR. LEVENTHAL: Thank you, Your Honor.

2 **DIRECT EXAMINATION**

3 BY MR. LEVENTHAL:

4 Q Mr. Chambers, you're a Ph.D.?

5 A Yes, sir.

6 Q So do we call you Dr. Mark Chambers?

7 A Yes. That would be fine.

8 Q Dr. Chambers, can you review the education and training
9 that you had over your career? First of all, what do you do for a
10 living?

11 A I'm a clinical and forensic psychologist.

12 Q Okay. And as a clinical and forensic psychologist, can you
13 review for the jury your education and training?

14 A I did my undergraduate studies at Stanford University,
15 where I majored in psychology with a minor in biology. I also
16 earned a master's degree at Stanford, and then I did my doctoral
17 studies at Northwestern University, where I earned a Ph.D. in
18 clinical psychology.

19 Q And did you go run through briefly your professional
20 experience?

21 A After graduating from Northwestern, I returned to
22 Stanford where I worked doing clinical work and research in a clinic
23 there at the Stanford Medical School. Did that for a few years, about
24 four years there. And then I relocated here to Nevada in 1993,
25 worked for a private clinic here for a number of years. And then

1 since 1999, I've been in private practice.

2 Q And, currently, is that your employment, private practice?

3 A Yes. So private practice in clinical and forensic
4 psychology.

5 Q Have you ever been certified as an expert in any court,
6 any jurisdiction?

7 A I have, many courts, many jurisdictions.

8 Q Could you just briefly go through those over your --

9 A I've been certified as an expert here in the district court of
10 Clark County in Nevada on many, many occasions. I've also been
11 certified as an expert in other jurisdictions, district courts in other
12 parts of the country here, several states, California, New Mexico,
13 Arizona, Michigan, to name a few. I can't remember all of them.
14 And I'm -- oh, I've also been an expert in federal courts, both locally
15 here in Las Vegas and around the country.

16 Q Very good. What is a forensic psychologist?

17 A Well, first, a psychologist or psychology is the science of
18 behavior. It's our way of understanding how people do what they
19 do. There are a few psychologists that are focused on animals, but
20 most psychologists, I think, are interested in human behavior. So
21 it's the study and science of behavior and then the application of
22 that science to various areas.

23 So I mention I'm also a clinical psychologist. A clinical
24 psychologist is someone who helps people with problems. So if
25 you have depression or anxiety or marital problems or family

1 issues, you typically would see a clinical psychologist.

2 A forensic psychologist is one who applies that same
3 research to court-related settings, such as this one. So as a
4 clinical -- as a forensic psychologist, excuse me, I may be asked to
5 provide my expertise in criminal proceedings such as this one, and
6 that expertise could either be consulting with attorneys that are
7 representing a client, doing evaluations on individuals that are
8 involved in court, providing testimony as required or requested by
9 the courts or attorneys, and doing evaluations for other situations
10 in which there might be a need for psychologist.

11 The forensic psychologist also does what I'm doing right
12 now, which is testify in court to provide information to the trier of
13 fact, whether it's a jury or a judge, on psychological issues that may
14 be relevant to the case.

15 Q Does forensic psychology include research and
16 knowledge about eyewitnesses' behavior and reliability?

17 A It certainly does. There's --

18 Q How does it?

19 A There's a pretty extensive body of research on that
20 subject.

21 Q And what has -- in your opinion, what has the research in
22 this area found about the reliability of recollections of an
23 eyewitness to a crime?

24 A Well, the primary finding of most of the research is that
25 the reliability of eyewitness identifications is lower than the average

1 person would think it to be. And that's because there are a lot of
2 factors that can affect the accuracy of eyewitness identifications,
3 factors that the average person wouldn't necessarily know about.

4 So, typically, people think that if somebody says, hey,
5 yeah, I recognize that guy, I saw him at that crime scene, then that
6 must be pretty accurate, and that's not always the case.

7 Q Okay. So what does the research show about the
8 relationship between eyewitness's confidence and certainty in the
9 eyewitness's accuracy?

10 A Generally, the research shows that there's a fairly poor
11 relationship between those two things. So, in other words, how
12 confident an individual is in their identification of a subject, and
13 when we're talking about identification, just to be clear for the jury,
14 we're talking about situations where somebody may have
15 witnessed a crime or witnessed some sort of event that's relevant
16 to a crime and they're asked to identify an individual that they saw
17 either perpetrating the crime or was involved with the incident
18 relative to -- relevant to the crime in some way or another. And that
19 identification might be done minutes, days, weeks, months, or even
20 years after the incident.

21 So what we found is that there are a lot of factors that can
22 influence that identification and make it somewhat unreliable and --
23 but most people, when they hear an identification, especially when
24 somebody says, oh, I'm absolutely sure that that's the person that I
25 saw, it turns out that that's not necessarily informative as to how

1 accurate that individual's identification is.

2 MR. GIORDANI: Your Honor, I would object at this point.
3 That would invade the providence of the jury.

4 THE COURT: No, overruled.

5 MR. LEVENTHAL: I don't --

6 THE COURT: You may proceed.

7 MR. GIORDANI: Understood.

8 MR. LEVENTHAL: Thank you.

9 BY MR. LEVENTHAL:

10 Q So you talked about whether or not somebody indicates
11 that they're 100 percent certain, what can be done to control these
12 problems that you just indicated during -- that have to do with
13 eyewitnesses?

14 A Well, there's actually -- well, first of all, we have to
15 understand a little bit about how eyewitness identifications are
16 typically carried out. And there are several methods that are used
17 by law enforcement to have a witness identify a suspect or an
18 individual that might be connected with a crime in some way. I
19 think most people are familiar with the in-person lineup where they
20 line up a bunch of people on a stage and then they have the person
21 look at all those people and see if they can identify the person that
22 they saw from the crime scene. But you don't see that done too
23 often anymore.

24 More often what we see is a photo lineup where the police
25 will present the witness with a series of six pictures on a piece of

1 paper and ask them to -- if the person that they saw at the crime
2 scene is one of the six that was seen on the piece of paper.

3 And then sometimes they do what are called show-ups,
4 which is -- and this is usually done the same day as the crime. If
5 police intervene in a criminal that has just taken place and they
6 capture somebody that they believe might be the suspect in the
7 crime, they might actually, then, bring that individual to the victim
8 or to the witness and say something to the effect of is this the guy
9 that just committed this crime or took your purse or drove away in
10 that care or whatever it might be. And then the person, essentially,
11 says yes or no.

12 So what's been learned from the research is that there are
13 right ways and wrong ways to do that kind of identification. And
14 the right ways based on the research that has be done help to at
15 least if not perfect those identifications, lower the number of errors
16 that are committed when those identifications are carried out.

17 Q Okay. So you've talked about three different types of
18 methods of identifying that law enforcement uses. You talked
19 about the in-person, the photo line-up, which is a sort of six-pack, if
20 you will, of pictures --

21 A Right.

22 Q -- and the show-up, right?

23 A Correct.

24 Q Okay. Have you reviewed any documents or proceedings
25 in this case to help testify today?

1 A Yes.

2 Q Okay. And in this case, you understand that a -- that
3 Mr. Matthews, my client here, was identified by one of the arresting
4 officers from what is called that show-up?

5 A That's my understanding, yes.

6 Q Okay. And that show-up is the one that you had just
7 indicated that was done -- that's done during -- generally during the
8 day or night, but it's the same day as the -- a crime was committed,
9 right?

10 A Again, that's my understanding, yes.

11 Q Okay. Are there any problems or research on how
12 suspect identification should be conducted to minimize and/or
13 maximize the reliability of a show-up?

14 A Of a show-up? Yes. Well, first of all, there's a fairly recent
15 paper published by the American Psychology Law Society in which
16 they offer recommendations as to how witness identification should
17 be conducted. And they have a list of different recommendations
18 as to the guidelines for how to do those. And I should mention that
19 one of the things that they state in those recommendations is that
20 show-ups should be avoided if at all possible.

21 MR. GIORDANI: Your Honor, I would object. I apologize --

22 THE COURT: Right.

23 MR. GIORDANI: -- I don't mean to interrupt you. I've not
24 been provided any research papers or anything this expert relied
25 upon at any point. So.

1 THE COURT: I think the response was nonresponsive to
2 your question. So I'll sustain the objection.

3 MR. LEVENTHAL: Okay.

4 THE COURT: And you may proceed.

5 MR. LEVENTHAL: Dr. Chambers --

6 MR. GIORDANI: I would also move to strike.

7 Sorry to interrupt.

8 I'd move to strike that testimony.

9 THE COURT: It's granted.

10 BY MR. LEVENTHAL:

11 Q Dr. Chambers, let's focus in on what you know and not
12 sort of what -- I understand that what you know is based on your
13 training and experience, right?

14 A Yes.

15 Q Your research, right?

16 A Yes.

17 Q And this is a culmination of why you come before us
18 today, correct?

19 A Correct.

20 Q So if we could focus on that and talk about some of those
21 reliability issues that might take place, during just, I guess, the
22 show-up.

23 A Certainly.

24 Q Thank you.

25 A Okay. So once a witness or potential witness has been

1 identified as somebody who might have seen the perpetrator or the
2 person of interest in the crime, the first thing that police need to do
3 is they need to conduct a somewhat extensive interview of the
4 witness to see what it was that they witnessed, first of all, what
5 transpired in the event that they viewed, and then for them to give a
6 description, a detailed description as -- with as much detail as they
7 can provide with what the suspect, the person that they observed,
8 looked like.

9 Q Okay. So you're talking about a pre -- sort of a pre-lineup
10 or pre-show-up interview which consists of the person who
11 eye-witnessed or identified does something before the suspect
12 actually shows up, correct?

13 A Correct, yes.

14 Q Okay. And that's in order to have their memory of what
15 transpired or who it was independent of the person being in front of
16 them, correct?

17 A Correct. And, well, there's several reasons for it, and that
18 is one of them. The other, obviously, is to make sure that they get
19 the right guy. They want to get somebody that fits with the
20 description that the individual provides. It also prevents later
21 contamination of their memory, because if they're then shown
22 somebody that is identified as a potential perpetrator in the case,
23 then now they have that -- the image of that new person in their
24 mind, and that may block out what they remember from the crime
25 scene itself.

1 And so then they may start to remember features of this
2 new person who might not be the perpetrator that they viewed
3 originally and that memory, especially, because they might look at
4 that person longer than they did during the crime -- crimes can be
5 very quick and fleeting and there's a lot of factors that influence a
6 person's attention, and so they might not always get a really good
7 look at the perpetrator in the crime.

8 But when they do a show-up, they sit there and they stare
9 right at him, usually in good lighting conditions and less stress than
10 occurs in a crime. And so they might actually, then, generate a
11 better memory of the suspect that's brought in for the ID than the
12 actual person that committed the crime. And that could then cause
13 problems later when they're asked to identify that person, for
14 instance, in court.

15 Q Gotcha. How does evidence-based suspicion affect
16 reliability? What is evidence-based suspicion?

17 A Well, evidence-based suspicion refers to the idea that
18 before police conduct an ID, especially a show-up ID with a
19 potential witness, they have to have a reasonable good-faith -- or
20 they should, I shouldn't say they have to -- they should have a
21 reasonable evidence-based basis for suspecting this individual to
22 be the perpetrator. Essentially, the reason for that is we just don't
23 want them bringing random people in for these show-ups for just
24 the reason that I suggested, that if they're looking at somebody that
25 police have brought in, part of the mindset that the typical citizen

1 will have is that if the police are bringing this person in, then they
2 must have good reason to think that he is the perpetrator, he is the
3 person that committed that crime. And, again, that can supersede
4 their original memories of the event and influence them into
5 believing that the person that now is standing in front of them is
6 actually the person that they saw.

7 Q Does this phenomenon affect both officers, police officers,
8 as well as, if you will, laypeople or just non officers, non --

9 A Human beings are human beings. And I'm not aware of
10 any data or research that indicates that that effect is any different
11 for police officers or law enforcement generally, and the general
12 public.

13 Q What are double-blind lineups; what does that mean?

14 A A double-blind lineup is really something that refers more
15 to lineups than it does to a show-up, but it could apply to a show-up
16 as well. And in a lineup, the double-blind refers to the fact that the
17 officer or law enforcement person who is conducting the lineup,
18 that is sits down with the victim or the witness, provides them with
19 the six-pack that you refer to, the matrix of six pictures that they are
20 to look at, research has shown that it is better to conduct that with --
21 to have that conducted by somebody who doesn't know which one
22 of those six is the suspect. Because as hard as they may try, the
23 person who does know the target, you know, picture of those six
24 might give unwitting subtle clues to the witness that might prompt
25 them to pick the person that he or she is aware is the identified

1 suspect.

2 Q We've sort of touched before on specific pre-lineup
3 instructions; are you aware of those instructions?

4 A I am, yes.

5 Q And how long have you been here in Las Vegas?

6 A I've been in Las Vegas nearly 30 years.

7 Q 30 years. Okay. Have you had -- going back to '06, were
8 you aware of the instructions that were given?

9 A I don't know exactly what instructions the -- that Metro
10 police were giving in lineups. I know that those instructions have
11 evolved over time. But for quite a while now, it has been
12 recommended that one of the things that witnesses be told before a
13 lineup or any kind of an ID is conducted is to tell them, you know, if
14 it's a lineup, if it's a six-pack, to say, hey, we got six pictures here
15 for you to look at, if you see the person in the picture, let us know,
16 but if you don't, that's okay. They may be there, they may not be
17 there. Don't assume that they're there. If you don't see them, that's
18 fine, just tell us that you don't see them.

19 And a modification of that same instruction is
20 recommended to be used in show-ups as well. In other words, you
21 don't just, you know, bring the guy over and say, you know, is this
22 the guy? You know, you should instruct them, we don't know for
23 sure if this is the guy or not. You know, it might be him, it might
24 not be him. If you identify him and you know who it is, great. If
25 you don't, that's okay too.

1 Q Okay. So prior to the show-up, you talked about the
2 instructions, you talked about the double-blind and different things
3 that could solidify reliability, if you will.

4 A Uh-huh.

5 Q What about immediately after a show? Are there any
6 procedures that would minimize the lack of reliability, if you will?

7 A Well, one of the things that is also recommended is that
8 the individual that's doing the identification give an estimate of
9 certainty regarding their identification. Now, I know of -- we've
10 already said that that's not particularly reliable, but it's more
11 reliable if it's done at the time of the original identification. Because
12 that can evolve over time, that certainty. So it's not uncommon to
13 see individuals who, when they first do the identification, are a little
14 wishy-washy on it, they'll say, yeah, I'm not 100 percent sure, it was
15 kind of dark and I was, you know, distracted, lot of stuff was going
16 on. I think that's the guy, but I can't say I'm 100 percent sure. And
17 it's not uncommon, then, for them to do several more
18 identifications in courts and maybe in other situations.

19 And, often, the confidence level goes up with each
20 identification. And that's one of the things that the research has
21 showed us consistently is that the more identifications that are
22 done of the same suspect, generally, the higher the confidence
23 levels go. And so it's important to get that first original confidence
24 level rating before all those processes occur.

25 Q Okay. So, in this case, and I know you've indicated you

1 reviewed the material in this case, there are actually a -- there was
2 an identification, if you will, of Mr. Matthews on Lexington; are you
3 aware of that?

4 A Yes.

5 Q Okay. There's also -- later on there was the show-up, and
6 you're familiar with that, right?

7 A Correct, yes.

8 Q Okay. So I want to sort of take you back to the Lexington
9 identification. What factors indicate or predict the reliability of an
10 eyewitness's identification of a suspect, and I think focusing -- well,
11 we can focus on both of them. Let's start with -- because I know
12 that factors will affect both of them, correct?

13 A Affect reliability --

14 Q Correct?

15 A -- and confidence?

16 Q Yes.

17 A Yes.

18 Q Okay. So let's start out with the Lexington, when Officer
19 Walters and Officer Cupp are chasing a vehicle and the driver is,
20 you know, veering off and trying to get out and rolls. What are
21 those factors that would affect the identification of that person in
22 the vehicle?

23 A One of the most obvious ones is lighting. And as I
24 understand it, this was occurring fairly late at night, somewhat
25 short of midnight, but not a lot short of midnight, if I recall

1 correctly. And lighting conditions are somewhat unreliable, even
2 on a lit street with street lamps and other sources of lighting, it's
3 hard to know exactly where the light sources will come from. And
4 so, of course, that's going to have an effect on a person's ability to
5 make eyewitness identification such as that.

6 Also, given that this was a car chase that the suspects
7 were being chased in -- by the officers in a police car and there was
8 a weapon involved, there's -- it's a fairly high-stress situation. And
9 we know from research that high-stress, high levels of stress during
10 an event that later needs to be recalled, tends to make those
11 recollections less accurate and reliable.

12 Thirdly, as I just mentioned, a weapon was involved, if I
13 recall, the police reported a weapon being pointed at them at some
14 juncture during these events. And for a long time we've known of
15 something called the weapon focus. And the weapon focus simply
16 refers to the idea that when a perpetrator has and brandishes a
17 weapon in an event or a crime, that the witnesses tend to focus
18 their attention on the weapon, not on the face. And so because of
19 that, crimes that involve -- the identification of perpetrators in
20 crimes involving weapons tends to be much less accurate than
21 when a weapon isn't involved.

22 The way our brain works is that memory relies on a
23 variety of things, but one of the first things that has to happen in
24 order for memory to function is there has to be a tension focused
25 on the piece of information or event or person or whatever it might

1 be that needs to be later remembered. So if there isn't good
2 attention on that aspect of a situation, then memory is likely to be
3 very poor, if it exists at all.

4 Q Okay. So you sort of talked about and you touch on
5 exposure time in your -- is one of those factors, right?

6 A Exposure time is also an issue. And exposure time, now,
7 brings into play confidence as well as accuracy. There are varying
8 findings in the research about how much exposure time matters
9 with respect to accuracy. There's some studies that show that it
10 does help, the longer you look at somebody's face, others that
11 don't. I think that part of the problem with that is that witnesses are
12 not always really good at remembering or reporting how long they
13 observed somebody in the course of a crime.

14 Again, high-stress situations, most of the time witnesses
15 tend to overestimate how long they looked at a person's face
16 during the commission of a crime or witnessing a crime. And then
17 that overestimate of the time spent looking at the other person also
18 then inflates that person's confidence in the accuracy of their
19 identification.

20 Q Okay. So we've talked about -- let's transition over -- back
21 over to the show-up that occurred here. As you know that
22 Mr. Matthews was in custody in the back of the police car. How
23 suggestive is that to somebody who's supposed to be making an
24 independent identification?

25 A Well, that's always going to be one of the problems with a

1 show-up, is that it's typically carried out in a way that already is
2 suggestive of guilt, whether the person's in handcuffs or the back of
3 a police car or he's got police officers holding his arms on either
4 side of him. You know, all of those things are suggestive of guilt.

5 And we know from thousands of studies on human
6 behavior that our brains are very suggestible. Even their
7 unconscious processes that we don't necessarily have full
8 awareness of, but they affect the way that we think about things.
9 And so when you subtly suggest to a witness, hey, you know, we're
10 the police, we got this guy, we know what we're doing, so this is
11 probably the guy, that can have a significant influence on a
12 person's identification of someone, because it's a subtle suggestion
13 to them that, yeah, this is the guy that I must have just seen, you
14 know, some time ago.

15 Q And you spoke about some of the safeguards against that,
16 correct?

17 A Yes.

18 Q Okay. I want to sort of switch gears and talk about -- have
19 you ever heard of the term cross-racial identification?

20 A Yes.

21 Q What is that?

22 A Cross-racial identification refers to the identification of a
23 suspect who is of a different race than you are.

24 Q Okay. Tell us about that?

25 A Cross-racial identification research has shown consistently

1 that people are less accurate, significantly less accurate in doing
2 identifications when the individual being identified is of a different
3 race than they are.

4 Q Okay. I mean, obviously, it can be done, right?

5 A Yes.

6 Q But all of the factors that you spoke about when you add
7 on cross-racial identification, becomes more or less reliable?

8 A Correct. Yes.

9 Q Right?

10 A It -- I think the figure is that there are about 50 percent
11 more errors in identification in cross-racial identifications than
12 same-race identifications.

13 Q Okay. So 50 percent more?

14 A 50 percent more errors, yes.

15 Q And you indicated why that is less accurate, correct?

16 Thank you for being here --

17 A Yes, but --

18 Q Yeah. Go ahead.

19 A Yeah. If I could talk about that a little bit. There's several
20 reasons why cross-racial identifications are less accurate.

21 Q Okay.

22 A First of all, when we observe something and then later try
23 to remember it, and it might not just be identifications, there's lots
24 of ways in which our memory works that way, but things that we
25 remember tend to be things that are more unusual, things that are

1 more significant to us, and things that have some meaning in our
2 lives that we can connect to it some way.

3 So when -- just as an example, so we can kind of
4 understand a little bit better what we're talking about, if a white
5 person observes a Black person committing any kind of an act,
6 whether it's a crime or something else, and then are later asked to
7 identify that person, it's very common for their focus to be on that
8 individual's race, because their race is what stands out to them as a
9 white person, as being the most significant thing, because it's
10 different than what they're used to.

11 Typically, white people hang around white people, Black
12 people probably have more experience with white people than
13 white people do with Black people. But that unusual aspect to the
14 person that they're observing is the thing that they focus on the
15 most. And they're less likely to then tune into the fine details of
16 that person's appearance, like the shape of their eyes or their nose
17 or how big their ears are or what their chin looks like, because that
18 one kind of overriding characteristic that they're of a different race
19 than I am, is the things that's the strongest focus for them.

20 Q Okay. Thank you very much, Dr. Chambers. I appreciate
21 you being here today.

22 A Okay. Thank you.

23 THE COURT: Thank you.

24 Cross-examination?

25 MR. GIORDANI: Thank you, Your Honor.

1 **CROSS-EXAMINATION**

2 BY MR. GIORDANI:

3 Q Good afternoon, sir.

4 A Afternoon.

5 Q I received a curriculum vitae from, I believe -- it says Mark
6 Chambers Ph.D., that would be you?

7 A That's me.

8 Q And, sir, in this CV, I'm going to call it, it appears there
9 are 12 areas of expertise that you included in the CV.

10 A Okay. I don't know what the number is. And I don't have
11 the document in front of me, so.

12 Q I have it here. If you would like me to refresh you at any
13 point, please let me know. I just want to ask you about a few of
14 them.

15 A Okay.

16 Q Fair to say that you are -- your areas of expertise include
17 counterintuitive victim behavior/tonic nobility/domestic violence.

18 A Yes.

19 Q Us that one of them?

20 A Yes.

21 Q Risk of sexual reoffending/rehabilitation potential,
22 including child porn possession.

23 A Yes.

24 Q What does that mean?

25 A Which part of that? That's -- there's more --

1 Q I mean, what are you an expert on when you list risk of
2 sexual reoffending/rehabilitation potential, including child porn
3 possession?

4 A Okay. So it's often the case that I am called upon to
5 render some sort of a conclusion for somebody who has been
6 convicted of a sexually-related offense as to the likelihood of them
7 reoffending.

8 Q Okay.

9 A And that -- here in Nevada, that's a pretty standard
10 evaluation, because it's relevant to their eligibility for probation.
11 But also, it's sometimes just helpful for the trier of fact to have that
12 information in terms of determining a sentence. So here are
13 instruments, assessment instruments that we have in the field that
14 we can apply to individuals to give some sort of a estimate as to the
15 likelihood of them reoffending in that way, you know, if they were
16 to be released into the public.

17 Q And based upon some of those evaluations, they may
18 receive probation?

19 A Correct.

20 Q Even guys who are convicted of child porn possession or
21 raping a child?

22 A That's nothing that I have any control over. That's
23 something that the court decides.

24 Q I -- yeah. I'm not inferring that.

25 A Okay.

1 Q Your next area of expertise says:
2 False sexual assault allegations.

3 What does that mean, sir?

4 A Just means that there -- we do know that not every
5 allegation of sexual assault is true. And there is research that
6 indicates -- mostly what I talk about are the factors that cause
7 somebody to make a false allegation of sexual abuse or sexual
8 assault.

9 Q Okay. There is other subject areas that you listed in your
10 CV as your areas of expertise called coerced confessions?

11 A Yes.

12 Q Suggestibility/child interview techniques?

13 A Yes.

14 Q Eyewitness unreliability/memory issues?

15 A Correct.

16 Q That would be the subject matter that we're here talking
17 about?

18 A That's right.

19 Q That and that alone, correct?

20 A I believe so, yes.

21 Q There's also competency to stand trial/criminal
22 responsibility?

23 A Right.

24 Q Child custody and parental fitness?

25 A Right.

1 Q Sleep disorders/effects of sleeping medications?
2 A Correct.
3 Q Drug/alcohol effects on judgment, decision making,
4 memory, perception?
5 A Right.
6 Q Sentencing mitigation/diminished capacity?
7 A Correct.
8 Q What is mitigation? What is that kind of area of expertise?
9 A Well, in a criminal proceeding, if somebody is found
10 guilty, then in the sentencing phase of the proceedings, the
11 defendant is given the opportunity to offer issues of mitigation,
12 perhaps if they have a history of mental health issues or disorder,
13 history of abuse, things that might be relevant, again, to the trier of
14 fact in determining a sentence.
15 Q Okay. And, again, that's not something you're here to talk
16 about today, right?
17 A Not today, no.
18 Q Fight-or-flight/behavior under duress is your -- I believe
19 the 12th area of expertise.
20 A Okay. Yes.
21 Q Is that accurate?
22 A That's one of the things I talk about, yes.
23 Q And you are paid to be here, correct?
24 A Of course.
25 Q And you're being paid here for your testimony today?

1 A For my time.

2 Q And also your preparation time previous to today?

3 A That is correct, yes.

4 Q You also, in your CV, indicate clinical experience,
5 essentially, like a resume, right?

6 A Correct.

7 Q And correct me if I'm wrong, in '93 through 1999, you
8 were the clinical director of the Sleep Clinic of Nevada?

9 A That's correct.

10 Q 2000 through 2004, you were the clinical director at the
11 American Sleep Diagnostics?

12 A Yes.

13 Q And then 1999 to present, you've been in private practice,
14 essentially?

15 A That's right.

16 Q With -- there are subsections of your private practice
17 from 1999 to now, and I'm going to ask to go through those with
18 you if you recall these being listed in your CV:

19 Evaluation and treatment of childhood behavior
20 disturbances.

21 A Yes.

22 Q Attention deficit hyperactivity disorder assessment and
23 management.

24 A Yes.

25 Q Parental skills, training/family therapy.

1 A Yes.

2 Q Evaluation and treatment of adult mood and anxiety

3 disorders.

4 A Correct.

5 Q Stress, management training.

6 A That's right.

7 Q Behavior medicine.

8 A Yes.

9 Q Psychological testing.

10 A That's correct.

11 Q To be clear, here there was no testing done on anyone --

12 A No.

13 Q -- right? You did not interview or test Sergeant Bradley

14 Cupp?

15 A I did not.

16 Q You did not interview or test Sergeant Brian Walter?

17 A I did not, no.

18 Q Okay. Nobody else?

19 A No, correct.

20 Q In this case?

21 A That's right.

22 Q And there was no report generated related to what you

23 are going to testify to here today for us?

24 A No.

25 Q Okay. I want to talk to you a little bit about some things

1 you testified to with Mr. Leventhal, okay? First, you started with --
2 or you discussed show-ups, and that's a common technique, you'd
3 agree with me?

4 A I don't know how often it's used, but it is a technique that
5 I'm aware of, yes.

6 Q Okay. Well, it's a common technique in law enforcement
7 service, right?

8 A I -- again, I don't know how often it's used.

9 Q Right.

10 A If it's used rarely --

11 Q You don't have any --

12 A -- or every day, I don't know.

13 Q Okay. You don't have any law enforcement training
14 whatsoever?

15 A No.

16 Q Never been trained in the identification procedures that
17 Las Vegas Metro employees are trained in?

18 A I've never gone through their training, if that's what you're
19 asking.

20 Q That's is exactly what I'm asking.

21 A No.

22 Q I'm going to read you a paragraph; can you tell me if you
23 recognize this paragraph.

24 In a moment, I'm going to show you a person who is
25 being detained. This person may or may not be a person who

1 committed the crime now being investigated. The fact that this
2 person is detained should not cause you to believe or guess that
3 he/she is guilty. You do not have to identify anyone. It is just as
4 important to free innocent persons from suspicion as it is to
5 identify those who are guilty. Please keep in mind that clothing
6 can be easily changed. Please do not talk to anyone other than
7 police officers while viewing this person. You must make up
8 your own mind and not be influenced by other witnesses, if any.

9 When you have viewed the person, please tell me whether
10 or not you can make an identification. If you can, tell me in your
11 own words how sure you are of your identification. Please do
12 not indicate in any way to other witnesses that you have or have
13 not made an identification. Thank you.

14 Do you recognize that paragraph?

15 A Not word for word, but I am aware of that as being the
16 pretty standard instructions that are given at identifications, yes.

17 Q At show-ups?

18 A Yes. Because it says person, not persons. So, clearly,
19 with the singular, it's indicating that only one person will be seen.

20 Q Understood.

21 A Yes.

22 Q And when you say fairly common, you mean amongst law
23 enforcement agencies, would you agree there?

24 A That the -- that instruction is used?

25 Q Yes.

1 A That is the standard instruction that is recommended and I
2 think is fairly universally used these days.

3 Q And you wouldn't dispute that this is a Las Vegas
4 Metropolitan Police Department form, would you?

5 A No. I don't know when that form was generated, but I
6 take your word for it --

7 Q Sure.

8 A -- that that's the instructions that they recommend.

9 Q And assuming someone has gone through the Metro
10 academy and become a sergeant eventually, they would have been
11 trained on this type of procedure?

12 A I would think so.

13 Q Okay. You talked a lot about identification reliability.
14 Right? I mean, that's your main area of expertise that you're talking
15 about here today.

16 A Yes.

17 Q You would agree with me that seeing someone from
18 close-up, like through a windshield four to five feet away would be
19 more reliable than seeing someone from 30 feet away, right?

20 A Of course.

21 Q Okay. You would agree with me that identifying someone
22 in a show-up an hour or an hour and a half after an event would be
23 more reliable than identifying someone in a show-up 10 hours
24 later?

25 A Generally, yes. Now, there's one exception to that.

1 Q Go ahead.

2 A Which is that as I talked about before, stress is a factor in
3 identification unreliability. So if the identification is done too close
4 to the incident, then the person may still be under a lot of stress,
5 and that stress could affect their focus and concentration. There is
6 some evidence that sometimes, with a little bit of time passed to
7 give the individual time to calm down, that memory and therefore
8 the identification that it relies upon, can improve somewhat.

9 Q Okay. So you're telling this jury that there's some kind of
10 sweet spot where an identification in a show-up can be reliable?

11 A There could be, yes.

12 Q Okay. So is that a number that you can give?

13 A I cannot, no.

14 Q You don't want to do a show-up within the first hour, you
15 don't want to do it after the sixth hour --

16 A Well, I didn't say either of those things.

17 Q Okay.

18 A I'm just saying that under certain circumstances, it could
19 be the case that a identification after three hours might be more
20 accurate than one after one hour.

21 Q Sure. And I'm not trying to argue with you over that. You
22 would agree with me, some of this that we're talking about is
23 common sense, right?

24 A I suppose.

25 Q I mean --

1 A Suppose I'm --

2 Q -- I'm demeaning your profession in any way.

3 A Uh-huh.

4 Q But seeing someone that you know, and then being asked
5 to identify them an hour later, two hours later, I mean, it all
6 depends on circumstances.

7 A Of course.

8 Q And the people involved, right?

9 A Yes. All kinds of factors.

10 Q Sure. You would agree with me that if you recognize
11 someone from prior interactions, your identification of them might
12 be more reliable than if you're identifying a complete stranger?

13 A Yes, and no.

14 Q Okay. I'm sure you want to expound on that answer, and
15 I'd be happy to give you that time, just bear with me for a moment,
16 okay.

17 A All right.

18 Q You have indicated previously that corroboration of an
19 identification is important; you would agree, right?

20 A I don't think I said it that way. I mean, that's a whole
21 different issue than what we're talking about here.

22 Q Okay. You testified in a prior proceeding in this case,
23 correct?

24 A Yes.

25 Q Question: You would agree with me that an ID close in

1 time to the interaction that is corroborated by another ID would
2 be more reliable than simply that ID standing on its own.

3 Do you remember me asking you that question in a prior
4 proceeding?

5 A I don't.

6 Q Okay. Your answer: Yes.

7 And then I say: Okay.

8 MR. LEVENTHAL: Judge, I -- this is an improper way to
9 refresh recollection.

10 MR. GIORDANI: I'm not refreshing, I'm impeaching. He's
11 just said he doesn't --

12 THE COURT: Right.

13 MR. GIORDANI: -- recall that statement.

14 MR. LEVENTHAL: That's --

15 THE COURT: Go ahead, you may proceed.

16 MR. LEVENTHAL: -- refreshing his memory.

17 BY MR. GIORDANI:

18 Q I'd mean, if you'd like to refresh your memory first, before
19 I go through this and impeach you, that's fine.

20 A It won't refresh my memory. I don't recall saying that. I
21 don't recall being asked that or saying that. That was quite a few
22 years ago.

23 Q Okay. Follow-up question:

24 Okay. Corroboration's important, right?

25 You say: It can be, yes.

1 And I say: Especially when it comes to identification?

2 You say: Yes.

3 Are you denying that you made these statements?

4 A No.

5 Q Okay. You're just saying you don't recall them?

6 A Correct.

7 Q Fair enough. What is corroboration, sir?

8 A Oh, it could be a lot of things. But, generally, law
9 enforcement would like to have other evidence to support an
10 identification in large part because we know identifications are not
11 that reliable. So -- but, I mean, that's not my area, that's law
12 enforcement's area to collect whatever other evidence they can get,
13 whether it's other people doing the same identification or
14 fingerprints or DNA or whatever it might be that helps support their
15 case against that suspect, then, obviously, all of that would be
16 corroboration of this being the individual that committed the crime
17 at issue.

18 Q Understood. So you would agree with me that multiple
19 people identifying the same person would lend credibility to each
20 and every one of those identifications?

21 A It could, yes.

22 Q Okay.

23 A If they were done properly.

24 Q Sure. I believe that concludes my questioning, if you'd
25 give me one moment to talk to my co-counsel.

1 Okay. Thank you very much.

2 A Okay. Thank you.

3 MR. GIORDANI: I'll pass the witness, Your Honor.

4 THE COURT: Any --

5 MR. LEVENTHAL: Nothing further. Thank you.

6 THE COURT: -- redirect?

7 Okay. Thank you very much for your testimony here

8 today.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: You may step down and you're excused.

11 And thank you for your patience on how you waited a while.

12 THE WITNESS: Yes, ma'am. Thank you.

13 THE COURT: So thank you very much.

14 You may call your next witness.

15 MR. TANASI: Thank you, Judge. The defense calls

16 Ronald Scott, if you'd just give me one moment, Court's

17 indulgence --

18 THE COURT: Sure.

19 MR. TANASI: -- to grab him from outside?

20 THE COURT: Absolutely.

21 [Pause in proceedings.]

22 **RONALD SCOTT,**

23 [having been called as a witness and first duly sworn, testified as

24 follows:]

25 THE CLERK: You may be seated. Please state and spell

1 your first and last name for the record.

2 THE WITNESS: My first name is Ronald, my last name is
3 Scott, S-C-O-T-T.

4 THE CLERK: Please spell your first as well.

5 THE WITNESS: Ronald, R-O-N-A-L-D.

6 THE CLERK: Thank you.

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

8 THE COURT: You may. Thank you.

9 MR. TANASI: Thank you.

10 **DIRECT EXAMINATION**

11 BY MR. TANASI:

12 Q Good afternoon, Mr. Scott.

13 A Good afternoon.

14 Q You've been waiting out there for a while today, correct?

15 A I'm sorry?

16 Q You've been waiting out there for a while today, correct?

17 A Well, I'm -- it's common to do that.

18 Q Understood. I appreciate that.

19 What do you do for a living? What do you do for a living?

20 A Right now I'm -- I retired from one job in 1998, police
21 officer, and I'm currently a independent forensic consultant, and I
22 investigate shooting incidents, police shootings and hunting and
23 anything that involves a firearm.

24 Q Generally, what training and experience do you have
25 related to forensic firearms and ballistics?

1 A Well, I spent three years in the Army. My training in the
2 Army dealt with firearms, ammunition, artillery, anything that was
3 what we call explosive ordinance. I was a qualified explosive
4 ordinance technician. Essentially, I dismantled bombs. I repaired
5 artillery pieces, tank barrels, basically anything that was -- except
6 for missiles.

7 Q How many years were you in law enforcement?

8 A 25 and a half years.

9 Q What rank did you achieve?

10 A I was a lieutenant.

11 Q All right. In the pecking order, where is that?

12 A Well, it's a little bit different than the -- than a local
13 agency. As a lieutenant in the Massachusetts State Police, I was
14 similar to a deputy chief in a local police department.

15 Q Is that a supervisory role?

16 A It's a management and policy-making role.

17 Q Understood. And so how many people -- how many other
18 officers, roughly, did you have working under you?

19 A It would depend on what my position was and what my
20 rank was.

21 Q At your highest rank.

22 A As a lieutenant, when I was in charge of what we call the
23 troop, I had five or six barracks under my command, and I had
24 about 250 to 300 police officers or state troopers. As a lieutenant in
25 charge of some of the other areas that I was in, I might only have

1 five or six people. And then in one position before I retired, I wasn't
2 in charge of anybody, I was a what they call an inspector. So I went
3 around inspecting other units in the state police and auditing their
4 administrative functions.

5 Q Thank you, sir.

6 Have you ever testified in any state court as a firearm,
7 forensic, and ballistics expert?

8 A I have.

9 Q How many times?

10 A I've testified about 450 times in the state and federal
11 courts. The only state I have not testify in is Hawaii.

12 Q Understood.

13 A I've testified outside of the country, as well.

14 Q That may be the unfortunate state not to actually have
15 reached.

16 A Sorry?

17 Q Disregard.

18 A Okay.

19 Q Bad attempt at a joke. We'll keep things moving.

20 So based on your training and experience, are you
21 familiar with gunshot residue?

22 A Yes.

23 Q All right. And so what specific training and experience do
24 you have with respect to gunshot residue?

25 A Well, I spent 13 years -- like I said, I spent time in the Army

1 and the gunshot residue was a little bit different when you're taking
2 bombs apart. But the explosive or the initiator to get the explosive
3 that's in a bomb or a firearm are, essentially, they're the same. The
4 composition's a little bit different. So about three years in the
5 Army.

6 And then in the forensic lab, which I became the
7 commanding officer of, I spent 13 years there. And I've attended,
8 well, quite a few training schools, been to the FBI laboratory, I've
9 trained with them. I'm also a graduate of the -- graduate of the
10 Alcohol, Tobacco, and Firearms National Firearms Examiners
11 Academy. And I've worked with the other sections that were in the
12 crime lab when we had shooting scenes. So I would work with the
13 chemists and people who did the gunshot residue testing. And
14 then I would take the results of that into a -- interpret the results in
15 comparison to the investigation that we were doing.

16 So I'd say in total, in all the time that I've been doing it
17 with the Army, with the state police, and for the last 20 years, we're
18 talking about 35 years worth of training.

19 Q Thank you, sir.

20 What is gunshot residue?

21 A Well, the two types of gunshot residue, there's the
22 gunshot residue that's used for determining the distance that a
23 firearm is from a person, that, basically, consists of thermal
24 damage, heat from a muzzle blast. It's stippling, which is the
25 propellant particles that strike a person or the skin, creates little

1 pockmarks. And then there's soot, which is part of the gaseous
2 plume at the end of the muzzle.

3 The second type of gunshot residue is the residue that is
4 used to ignite the propellant in a cartridge. And that is bit -- the
5 essential elements are barium, lead, and antimony. And so I think
6 that's really what we're talking about here today.

7 Q Understood. What are potential sources of gunshot
8 residue?

9 A Well, gunshot residue would come from any explosive or
10 initial -- what they call an initiator. An initiator is the spark or it's
11 the compound, like in an artillery piece. It's what gets that
12 propellant to begin burning. So, obviously, any device, fireworks,
13 firearms, there are elements that are in batteries, lead, cheap
14 jewelry, brake linings, there's elements in the environment that
15 contain -- they don't contain all three of those elements, the barium,
16 lead, and antimony, but there are elements in the environment that
17 might contain one or two, but they usually don't contain all three.

18 Q Understood. Are you familiar with the concept of gunshot
19 residue transfer?

20 A Absolutely.

21 Q All right. What is that?

22 A Gunshot residue transfer is where a person has -- or an
23 object could have gunshot residue on it from a previous person,
24 fire -- in other words, if I fire a firearm in this courtroom, there's
25 going to be gunshot residue in very close proximity to me, and then

1 that residue is going to float in the air and is going to contaminate
2 other surfaces. The further we get away from the firearm, the
3 smaller the population of particles will be. So that -- anyone
4 coming in after me that sat in this chair, touches the surface, if I
5 fired a gun in this courtroom, put their hands on this table or even
6 the judge was to touch something that, as these particles floated,
7 there would be transferred to the judge, transferred to the person
8 who's sitting here, and transferred to anybody else that touched the
9 surface that they were on. It's called contamination. That would be
10 the contamination part of it.

11 Q So let's talk specifically about law enforcement settings.
12 Are you familiar with gunshot residue transfer in law enforcement
13 settings based upon your training and experience?

14 A Yes.

15 Q What are they?

16 A Gunshot residue in the police environment is found -- has
17 been found to be police officers naturally handle their firearm, it's a
18 necessity. Unfortunately, one of the problems with police officers,
19 myself included, by the way, we tend not to clean the inside of our
20 holsters. We clean our gun after we go firing, we want it to be
21 pristine condition so that if we have to use it, it's operable. And
22 then we put the gun back into the dirty holster. This causes the gun
23 to become contaminated, even though we just cleaned it.

24 So when a police officer has an occasion to take his
25 firearm out, such as to apprehend somebody, and he touches that

1 gun or touches the surface of the gun and gets it on his hands from
2 the holster, then they handcuff somebody or they place him into a
3 holding cell where another prisoner who might have been involved
4 in a shooting has been in and there's been gunshot residue on that
5 prisoner and he's left it on various surfaces.

6 In addition to that, there's been a number of studies that
7 have shown that police departments -- it's common -- in vehicles,
8 I'm sorry, police department buildings and vehicles are
9 contaminated not only with gunshot residue, but there's traces of
10 blood and semen and drugs. So police environments, vehicles,
11 buildings, and police officers are a source of gunshot residue
12 transfer.

13 Q Based on your training and experience in law
14 enforcement, holding policymaking positions, holding supervisory
15 positions, and being a police officer for 25 years, are there steps law
16 enforcement can take to avoid transfer?

17 A The answer's yes, but it would be very difficult.

18 Q To avoid gunshot transfer?

19 A Yeah, it would be very -- I mean, you'd have to -- you'd
20 essentially -- if you had a prisoner in the back of a police vehicle
21 and you took him out, you'd have to, basically, sanitize the vehicle.
22 It just -- I mean, it --

23 Q Well, so the position --

24 A That would be one example, but it's not the reality of how
25 police operations work.

1 Q Understood. But are you familiar with the concept of
2 bagging?

3 A Yes.

4 Q Can you tell me what bagging is?

5 A Bagging, we're talking about bagging a person's hands.
6 And we have to use paper, paper bags, because plastic tends to --
7 when you put plastic on, if you put a zip tie or an elastic around the
8 wrist to protect the hands, what happens is the plastic can't
9 breathe, the hands will sweat, and that'll contaminate the gunshot
10 residue. So you use paper bags and they're placed over the hands,
11 usually up to about a little above the wrist, and then you can use
12 the -- there's actually bags that are made specifically for this, but if
13 you don't have them, you can use just a lunch bag. And you squish
14 the end of the bag up and put a rubber band around it or a zip tie.
15 But you basically close off the wrist so that whatever's on the hands
16 will fall into the bag.

17 Q Sure. And in your experience, 25 years in law
18 enforcement, did you come across instances where bagging was
19 used?

20 A Yes. It is still used today.

21 Q Okay. It's a safe, available law enforcement option, fair?

22 A It is.

23 Q Okay. And so what happens, though, if the gunshot
24 residue on a hand touches the inside of the bag and now it's no
25 longer on the hand; is there any way to deal with that?

1 A There's a method for that.

2 Q Could you explain it?

3 A Sure. When you take the bag off, let's say it's a deceased
4 person, you probably do this at the medical examiner's office, the
5 hands will be bagged. So someone from the crime lab or a crime
6 scene technician would come down to the medical examiner's
7 office and take the bags off and immediately use the gunshot
8 residue kit with the little adhesive stub on it, and do the -- follow the
9 correct methodology for each hand. Then they take the bag with
10 them, close the bag up, put it in an envelope, and bring the gunshot
11 residue kits and the bag back to the crime lab.

12 And then at the crime lab, you've got the bag -- it's
13 labeled, right hand, left hand, the normal methodology used where
14 you place it on a piece of, say, butcher paper, you cut the bag open,
15 and you can either leave what's in the bag there and take another
16 gunshot residue kit and now you dab the inside of the bag and you
17 collect what's in there. Or you could open the bag up and empty it
18 onto the butcher paper. But whatever's in that bag came from the
19 hand. So all you have to do is test the inside of the bag.

20 Q Thank you, sir.

21 MR. TANASI: I'll pass the witness.

22 THE COURT: Thank you.

23 Cross-examination?

24 MS. BOTELHO: Yes, Your Honor.

25 ///

1 **CROSS-EXAMINATION**

2 BY MS. BOTELHO:

3 Q Hello, Mr. Scott.

4 A Hello.

5 Q Thank you for your service. I heard your testimony
6 concerning --

7 A Thank you.

8 Q -- your military service. Thank you for that.

9 A Thank you.

10 Q Sir, you submitted a CV, a curriculum vitae for this case,
11 right?

12 A I believe I did, yes.

13 Q Okay. And your CV, as we'll call it, is about 12 pages long.

14 A How many pages?

15 Q 12.

16 A I believe that's correct, yes.

17 Q Okay. Thank you. I'm sorry if I'm mumbling.

18 Now, on pages 8 through 10 -- well, part of 10 -- you list --
19 or you have a section labeled expertise; do you recall that?

20 A I do.

21 Q Okay. And so it takes up kind of half of page 8, all of
22 page 9, and, like, the first four or five lines of page 10; does that
23 sound about right?

24 A I'm not sure. But, I mean, I don't disagree with you.

25 Q Okay.

1 A I -- certainly, you have a copy of it, so.

2 Q Thank you. Thank you, sir.

3 A Okay.

4 Q Would you agree with me that there are 75 items or areas
5 of expertise that you've listed?

6 A I'd agree with that, sure.

7 Q Okay. And so police shootings, you're an expert in that?

8 A Yes.

9 Q Police SWAT Team tactics?

10 A Yes.

11 Q Suicide case review?

12 A Yes.

13 Q Trajectory analysis?

14 A If it's listed, I'll represent to you that I have expertise and
15 have been qualified in them, yes.

16 Q Okay. Homicide and nonfatal shooting case review?

17 A Yes.

18 Q Extreme long-range shooting?

19 A Yes.

20 Q Sniper tactics?

21 A Yes.

22 Q Okay. Accidental discharges resulting from defective
23 design or medical defects?

24 A Yes, that's correct.

25 Q Inadvertent discharges?

1 A Correct.

2 Q Involuntary discharges?

3 A Yes.

4 Q Friendly fire incidents?

5 A Yes.

6 Q Projectile behavior in angled glass gunshots?

7 A Yes.

8 Q Pattern matching of impression evidence, burglary as

9 tools, et cetera?

10 A Yes.

11 Q Analysis of forged money bag or bank bag seals?

12 A Yes, that's correct.

13 Q Crime scenes, focus on firearms and ballistic evidence?

14 A Correct.

15 Q Daubert standards for ballistic analysis?

16 A Yes, and I'm talking -- in that, I'm talking about, you know,

17 methodology, the proper methodology to use under the rules of

18 evidence.

19 Q Okay. Tool mark microscopy?

20 A Microscopy, yes.

21 Q Shooting dynamics?

22 A Yes.

23 Q Reaction time in shooting incidents?

24 A Yes.

25 Q Firearm safety protocols?

1 A Yes.

2 Q Gunshot wounds?

3 A Yes.

4 Q Theory of identification testimony?

5 A Yes.

6 Q Do you know Dr. Chambers? He just left.

7 A I've heard of his name, but I've never met him.

8 Q Okay. Just curious.

9 A Okay.

10 Q Evidence collection protocols?

11 A I'm sorry, what was that?

12 Q Evidence collection protocols?

13 A Yes.

14 Q Drag model analysis?

15 A Yes.

16 Q Chamber pressure?

17 A Yes.

18 Q Hunting protocol?

19 A Yes.

20 Q Defective design?

21 A Yes.

22 Q Time, speed, distance?

23 A Yes.

24 Q That's all one. Catastrophic failures of firearm barrels and

25 chambers?

1 A Yes.

2 Q Kinetic energy calculations of projectiles?

3 A Yes.

4 Q Gyroscopic stability?

5 A Yes. Gyroscopic. Yes.

6 Q Okay. Macro measuring digital mechanical bullets

7 cartridge cases and firearms?

8 A Yes.

9 Q Photo micrographs?

10 A Yes.

11 Q Then just a line that says training?

12 A Well, yeah, forensic, like, firearms training for new

13 persons in a crime lab.

14 Q Okay. Bullet path analysis?

15 A Yes.

16 Q Calculation of the lead distance to strike moving targets?

17 A Yes.

18 Q Analysis of glass fracture pattern from gunshot?

19 A Yes.

20 Q Witness panel protocol and bullet fragmentation?

21 A Correct.

22 Q Penetration and preparation interpretation of gunshots in

23 metal, wood, glass, et cetera?

24 A Yes.

25 Q SmartDraw and PowerPoint?

1 A Yes.

2 Q Characteristics of gunshot impressions based upon the

3 angle of incidents?

4 A Yes.

5 Q Wind deflection and diagraming of fired projectiles?

6 A Yes.

7 Q Modified improvised full auto conversions?

8 A Yes.

9 Q Prison-made firearms?

10 A Yes.

11 Q Firearm discharge in a struggle?

12 A Yes.

13 Q Crime lab policy and procedure?

14 A Yes.

15 Q And I'm just skipping through now.

16 A Okay.

17 Q Police firearms training threat assessment?

18 A Yes.

19 Q Instrumentation calibration?

20 A Yes.

21 Q Police contagious firing syndrome?

22 A Yes.

23 Q Okay. Shotgun pellet pattern analysis?

24 A Correct.

25 Q Drive-by shootings from a moving vehicle?

1 A Yes.

2 Q Shooting incidents involving multiple moving vehicles?

3 A Yes.

4 Q Use of metal detectors in ground searches for fired
5 projectiles?

6 A Yes.

7 Q Effects of alcohol, drugs, and other substances on firearm
8 safety?

9 A Yes.

10 Q Fair to say, and I can take this up for you to look at, that
11 none of these 75 areas of expertise that you outlined in your CV
12 actually say gunshot residue, which is what you're testifying about
13 here today?

14 A That's correct. Doesn't specifically state gunshot residue.

15 Q Okay. But you're testifying as an expert in gunshot
16 residue today before this jury?

17 A Well, many of those items that you have just asked me
18 about include the aspects of gunshot residue.

19 Q Okay. Would you agree with me that you didn't list
20 gunshot residue as an area of expertise in your 12-page CV?

21 A I specifically did not list that term, correct.

22 Q Okay. And so you're saying you left it out because it's
23 covered by certain other topics?

24 A Yes.

25 Q Okay. Such as?

1 A Gunshot distance testing, witness panel testing, crime
2 scenes, training, I know you went through a whole --

3 Q Yes. I mean, I --

4 A -- list of them, but in my mind, I -- the gunshot residue is
5 included in many of those, because it's a aspect of ammunition.

6 Q Okay. And it seems as though, at least from your direct
7 examination, that you are very well-versed in firearms and ballistics
8 based on your testimony concerning, you know, your time in the
9 military, you know, deputy chief of the Massachusetts State Police,
10 all of the items that you listed on your areas of expertise have a lot
11 to do with firearms; would you agree with me?

12 A I agree.

13 Q Okay. I'd like it discuss, though, the specific credentials
14 that you would have such that you would be qualified to testify as a
15 gunshot residue expert now. Can we do that?

16 A Yes.

17 Q Okay. And so what specific training have you received in
18 the area of gunshot residue?

19 A Sure. Well, gunshot residue, I mentioned about the
20 distance determination, that's a separate area of gunshot residue.
21 But then there's the --

22 Q And let me -- I'm sorry. Let me just kind of limit this.

23 A Okay.

24 Q Because I just realized that that's a very general question.

25 A Okay.

1 Q What specific training do you have concerning gunshot
2 residue and transference, as you've testified about just minutes
3 ago?

4 A Sure. Well, transfer is actually something I have personal
5 experience with. In approximately 1985, a question was raised
6 about the crime lab that I was not the commanding officer at the
7 time. I think it was a sergeant at the time. A question was raised by
8 one of the other officers in the laboratory regarding the quality of
9 air, because we test fired guns. So I contacted the environmental
10 agency for the state of Massachusetts and we had the air quality
11 tested.

12 And we learned that our laboratory was just contaminated
13 to the high heavens with gunshot residue. And it's the gunshot
14 residue of barium, lead, and antimony, because we were test
15 firing -- we had a test firing room in the back of our lab, then we
16 had a microscope room, and then we had our office area in the
17 front. And we found out that the gunshot residue, barium, lead,
18 and antimony, had found its way out. In other words, when -- if I
19 went in and test fired a weapon, it would be all over me. And then I
20 would walk out through the microscope room and I'd go out to the
21 office and I'd sit at my desk and I'd work. And everybody did this,
22 we had seven firearms examiners.

23 Q Okay. And I don't mean to cut you off, Mr. Scott, but the
24 question was: What training do you have specific to gunshot
25 residue and transference? And I believe your answer is this

1 incident specific to your crime lab over in Massachusetts wherein
2 you had an issue with the quality of air.

3 A Well, that's actually the beginning of my knowledge of
4 transfer.

5 Q Okay.

6 A And so --

7 Q Is there anything else outside of that issue that you had --

8 A Sure.

9 Q -- with your crime lab?

10 A Well, in addition to the 13 years that I spent in the crime
11 lab, I also was a homicide investigator for many years. So gunshot
12 residue testing was a common test that we would do on suspects or
13 on surfaces or inside of a vehicle. I didn't conduct the actual testing
14 using the scanning electron microscope, I don't even know if we
15 had one at that time. So I would go downstairs to the chemical
16 laboratory and I would watch the chemist conduct the GSR testing
17 to find out what was on the swabs that we had. So that is one area.

18 I've also had a number of studies that I've discussed in the
19 past and I've given lectures on transfer of GSR. My last lecture was
20 at Arizona State University about a year and a half ago. And it
21 involved the study I was telling you about, the holsters, et cetera.

22 So the knowledge is based upon as a police officer and as
23 a supervisory officer, knowing that when we are investigating
24 shooting incidents or the arrest of a person, the police officers can
25 transfer from their firearm or from their hands to a prisoner --

1 Q Okay.

2 A -- gunshot residue --

3 Q And I'm sorry, I don't mean to cut you off. However --

4 MR. TANASI: Your Honor, he's trying to answer the
5 question and maybe not as quickly as the State would like, but he is
6 trying to answer the question.

7 MS. BOTELHO: Your Honor, I believe the pending
8 question is his training and --

9 THE COURT: And you may proceed.

10 MS. BOTELHO: Thank you.

11 BY MS. BOTELHO:

12 Q And so, sir, correct me if I'm wrong, but you have the
13 incident at the lab that you were in charge of, you were a homicide
14 detective who collected gunshot residue kits or who --

15 A I didn't collect them myself.

16 Q Okay.

17 A I called out a crime scene person from the laboratory.

18 Q Okay.

19 A Chemist.

20 Q So you watched someone collect gunshot or process
21 someone's hands or clothing for gunshot residue with that kit --

22 A Correct.

23 Q -- that you talked about? Okay.

24 And then you also gave lectures on gunshot residue?

25 A I've given lectures on it, yes.

1 Q Okay. And some other things that you've talked about in
2 other testimony, but you haven't talked about here?

3 A I don't -- I think --

4 Q You just said some other things that you've mentioned
5 previously.

6 A I lost my train of thought when you --

7 Q Oh. Okay.

8 A I -- so I'm not sure where I left off. But --

9 Q Okay. So my question was: What kind of training? And
10 so your response was: Lectures, you watched some people, crime
11 scene analysts process individuals and clothing for gunshot
12 residue, and you also watched chemists do the tests.

13 A Well, I think you forgot the first part of my testimony
14 when I told you that I've worked with the FBI. And I think the most
15 important aspect of it is the graduating from the Alcohol, Tobacco,
16 and Firearms Academy for Firearms Examiners. And gunshot
17 residue was a very significant part of that training. Now --

18 Q And when was that?

19 A I believe it was 1980.

20 Q Okay. So ATF training in 1980.

21 A Right.

22 Q Okay. And fair to say that that particular training didn't
23 focus entirely on gunshot residue?

24 A Not entirely on GSR, no.

25 Q Okay. Fair to say that it was probably a class on gunshot

1 residue?

2 A Oh, I'd say it was at least a full day.

3 Q Okay. In 1980?

4 A 1980.

5 Q Okay. This work with the FBI, what are you talking about
6 when you discuss that?

7 A Well, I've had several cases with the FBI as a police officer.
8 I've also had some with them as an independent consultant. I've
9 been down to the laboratory and worked on some very high-profile
10 cases. I -- mostly, I did --

11 Q And when you say you worked with them, how does that
12 relate to the question of your training and experience with gunshot
13 residue?

14 A I was in the laboratory, in the FBI laboratory working with
15 an agent.

16 Q Okay. And so you were watching chemists process
17 forensic scientists' tests?

18 A I was working with an actual FBI agent who was a
19 specialist in GSR. And at that time, the methodology was a little bit
20 different, but the results were essentially the same.

21 Q Okay. So fair to say you don't have, let's say, the
22 educational background, necessarily, absent the day-long course
23 from the ATF in 1980, concerning this particular topic, gunshot
24 residue?

25 A I would say you're wrong on that.

1 Q You didn't get it from the university or --

2 A You're wrong on that, I'm sorry to say.

3 Q Okay. Okay. Please. I mean --

4 A Is there a question?

5 Q Yes. What is it that I got wrong?

6 A I have several degrees. The degrees that are related to
7 this area, I have Master of Arts in Criminal Justice, Bachelor of
8 Science cum laude in Law Enforcement. Now, at the time I received
9 those degrees, which were in 1979 and 1980, forensic science, the
10 term forensic science was not normally used. The term was
11 criminalistics. So if you were --

12 Q And, sir, were any of the classes that you took in -- for
13 your bachelor's and your other degrees, does any of that focus on
14 gunshot residue?

15 A Yes. There would have been classes in criminalistics.

16 Q Okay. And focuses specifically on gunshot residue?

17 A No, focused on the -- like I said before, forensic science
18 wasn't the term used, it would have been focused on the area of
19 criminalistics.

20 Q Okay.

21 A In other words, the examination --

22 Q So my question is --

23 A -- of physical evidence.

24 Q -- specific to gunshot residue --

25 THE COURT: Okay. Just --

1 THE WITNESS: I'm sorry, can I finish, Your Honor? I
2 mean, she's talking over me.

3 THE COURT: Yeah, I know. And I was just going to say
4 we can only have one person speaking at a time.

5 MS. BOTELHO: Okay.

6 THE COURT: So you can ask the question.

7 MS. BOTELHO: Thank you.

8 BY MS. BOTELHO:

9 Q I'd like to just direct your attention to what you testified to
10 this jury about today.

11 A Okay.

12 Q Which is gunshot residue and transference. Okay. So
13 what I'm asking in terms of training, your experience, and things
14 like that, I'm asking for all of those times where you received
15 specific training experience concerning gunshot residue and
16 transference.

17 A Well, I don't think I can give you specific dates and times,
18 but I certainly would say that if you would ask me to provide you
19 with transcripts, I would have been more than happy to do so. But
20 you didn't ask me for that.

21 Q Okay.

22 A So you're asking me today and, unfortunately, my
23 memory from 40 years ago, I can't give you specific dates.

24 Q Okay.

25 A That's the best I can say.

1 Q Because that class that you talked about wasn't
2 somewhere in 1979 or -- through 1981; is that right?

3 A 1979 -- well, 1979 I received my Bachelor of Science
4 degree.

5 Q Okay.

6 A Which included criminalistics. And in 1980 I received my
7 Master of Arts degree in criminal justice, which included
8 criminalistics, as well.

9 Q And so, sir, are you -- would you characterize yourself as a
10 scientist?

11 A In some areas, I do scientific work. I would not --

12 Q But in terms of gun crime -- excuse me, gunshot residue
13 and transference, are you a scientist?

14 A Well, no. I'm like the doctor. I'm like the doctor that tells
15 the technician to take the blood. And then the technician runs the
16 blood through the computer and then I get the results back and I
17 interpret those results in relation to the shooting.

18 Q Okay.

19 A That would be my role in a case.

20 Q Okay. And your interpretation and that work would be
21 based on all of the experience that you have concerning gunshot
22 residue that we just discussed before this question?

23 A Yeah. I think if you're asking me do I do the actual
24 gunshot residue testing --

25 Q That was my next question, but --

1 A No, I don't actually do the testing in the instrument.

2 Q Okay. And so have you ever worked with a scanning
3 electron microscope?

4 A No, I have not.

5 Q Are you even qualified to talk about it or explain how it
6 works and what it does?

7 A I've seen it, I know generally how they work. But I
8 wouldn't be able to tell the workings or how it's calibrated.

9 Q Okay. You're being paid for your testimony today; is that
10 right?

11 A Sorry?

12 Q Are you being paid for your testimony today?

13 A Yes.

14 Q Okay.

15 A I'm being paid for my time.

16 Q Okay.

17 A Correct.

18 Q How much are you being paid?

19 A I'm paid \$350 per hour.

20 Q And including this particular court testimony, what's our
21 bill at -- or what's the bill at?

22 A Well, I know I've been -- I want to be careful about my
23 answer on this. There's \$7,000 has been provided for all of my
24 work, including my travel and expenses, hotel, air fare, everything.

25 Q Okay. You yourself have never, you know, actually

1 received items of evidence or worked in a crime lab in a forensic
2 scientist sense, correct? Meaning you're doing the testing as
3 opposed --

4 A Well, I've received --

5 Q -- to being the doctor and directing?

6 A I would say that I've received them, I've collected them,
7 but I've turned them over to somebody else that would be the
8 person that operates the machine.

9 Q Okay. Would you agree with me -- and you were provided
10 testimony and also various items of reports, pictures related to this
11 case to prepare you for your testimony today, correct?

12 A Yes, that's correct.

13 Q Okay. And were you provided a report written by Crystina
14 Vachon?

15 A Yes, I was.

16 Q Okay. She's the forensic scientist with the trace evidence
17 unit of Bexar County out of Texas, right?

18 A Correct.

19 Q And so you've reviewed her report?

20 A I've read her report.

21 Q Okay. Do you agree with her findings?

22 A I have no issue with the results that she has received on
23 that.

24 Q Okay.

25 A Correct.

1 Q So would you agree with me that the primary transfer,
2 meaning gunshot residue, coming from the gun to an -- to either a
3 hand or clothing, the primary transfer gives off the greatest
4 potential for gunshot residue?

5 A I agree partially with that.

6 Q Okay. Would you agree with me that the more transfers
7 there are, the less likely gunshot residue will be transferred?

8 A I think that's a fair statement.

9 Q Okay. So with, you know, primary transfer greatest
10 potential, as you get to the second transfer, the third transfer, the
11 fourth transfer, it gets less and less likely; do you agree with that?

12 A Yes, I would agree with that.

13 Q Okay. And you're not actually licensed in the forensic
14 scientist sense where -- particularly as it relates to gunshot residue,
15 are you?

16 A Well, I'm tested for it, proficiency tested.

17 Q My question was are you licensed?

18 A No. I don't think there is a license for that.

19 Q Okay. Would it surprise you to know that Crystina
20 Vachon, who has worked in Bexar County in their forensic lab as a
21 forensic scientist with the trace unit is licensed and has been so
22 for -- since 2019, I believe?

23 A Texas requires licensing. I think it's the only state that
24 does.

25 Q Okay. And so your answer is there is at least one --

1 A That she -- I know she's licensed.

2 Q There is at least one that licensed.

3 A Right.

4 Q You didn't know of anyone, right? Was your answer?

5 Okay. You talked about, on direct examination, bagging.

6 Do you remember those questions?

7 A I do.

8 Q Okay. And you said that bagging was important, you

9 know, to stave off any kind of contamination; do you remember

10 that?

11 A Yes.

12 Q Okay. And you indicated that the best practice really

13 would be to use paper bags, you know, on hands, suspects' hands?

14 A Yeah. And I meant that in a -- in other words, if the

15 person is going to be -- usually a deceased person is transported.

16 So, you know, you're going to place them in a body bag and --

17 Q How about a live suspect who --

18 A Well, you can --

19 Q -- just discharged --

20 A You can --

21 Q -- a firearm?

22 A You can bag a live person's hands.

23 Q Okay. You said -- I believe the question on direct was, you

24 know, that: Do you know about bagging? And you indicated that,

25 yes, paper bags, that's actually the safe alternative in terms of

1 preserving gunshot residue without contamination. Did I get that
2 wrong? Did you testify to that on direct?

3 A I think I gave an example and I started with a deceased
4 person, but it applies to a living person as well.

5 Q Okay. So your testimony today is bagging hands with
6 paper bags is the safe alternative to provide -- or to stave off any
7 kind of contamination?

8 A I don't know of any other methodology. That's the
9 accepted norm --

10 Q Okay.

11 A -- in collecting GSR.

12 Q And you indicated, right, that what you need to do if you
13 were to bag hands is you would have to sample the hands as well
14 as the bag?

15 A Yes.

16 Q Okay. And you said you don't know of -- what did you just
17 say before you said this? You don't -- this is the accepted way; is
18 that what you said?

19 A I don't know of other methods. Paper bags is the
20 generally accepted method.

21 Q Okay.

22 A In other words, I don't know of any other method that's
23 accepted in the science.

24 Q What jurisdictions do you know that actually implement
25 this where they actually test the hands -- or they bag, test the

1 hands, then test the bag?

2 A Well, that should be done -- that's a common thing. At
3 least, I know it's done in many crime labs. I know for a fact --

4 Q Could you give us an example, sir?

5 A -- it's done in Phoenix. I come from Arizona, so it's -- it is
6 done in Phoenix.

7 Q And when you say it, it was very specific --

8 A I --

9 Q -- bag the hands and then, you know, get the -- of course,
10 the samples that were taken from the actual hands are preserved,
11 but then you also have to swab the bags?

12 A You can either swab the bag with the sticky stub or you
13 can empty the bag and scrape it out --

14 Q Okay.

15 A -- onto butcher paper.

16 Q Right. Right.

17 A And then you can dab that.

18 Q And it's your testimony that that is widely done and
19 you've named Arizona as one jurisdiction?

20 A It is widely done. In Arizona for sure, and in many other
21 crime labs.

22 Q Any other jurisdictions that you can think of?

23 A No, I can't think of any specific one, but I can represent to
24 you that I'm aware that it's done in many crime labs.

25 Q Okay.

1 MS. BOTELHO: Brief indulgence, Your Honor.

2 Q You testified also that batteries, cheap jewelry will have
3 elements in the environment, not all three, not lead, barium, and
4 antimony, but that there are elements in the environment that have
5 some, but not all three, and that can be misinterpreted as gunshot
6 residue?

7 A It could be. Unless you have all three, and then there's a
8 certain shape to that particle --

9 Q Okay.

10 A -- that contains the three.

11 Q So is it your testimony that you have to have all three,
12 lead, barium, and antimony, to have the morphology, shape, and
13 size and particle composition for it to be gunshot residue?

14 A Well, the FBI set the standard on that before they start --

15 Q I'm sorry, sir, that was a yes-or-no question. Is it --

16 THE COURT: Well, if you can answer it yes or no. If you
17 can answer it yes or no, then you can answer it. If you cannot, let
18 me know --

19 THE WITNESS: Okay.

20 THE COURT: -- and then I'll ask the district attorney if she
21 wants you to answer.

22 THE WITNESS: Can I have the question once more?

23 BY MS. BOTELHO:

24 Q Yes. Is it your testimony here today that you have to have
25 all three metals, lead, barium, and antimony, for it to constitute

1 gunshot residue?

2 A I can't answer that yes or no.

3 THE COURT: Okay. Do you want him to answer?

4 MS. BOTELHO: Sure.

5 THE COURT: Okay.

6 THE WITNESS: Okay.

7 THE COURT: Go ahead.

8 THE WITNESS: Now, different crime labs have different
9 policies as to how they'll wear their testimony or their report. The
10 FBI uses the terminology if you have all three elements in one
11 particle, they call it characteristic of gunshot residue. If you have
12 only two of the elements, such as lead and antimony, that would be
13 considered as consistent with. And then if you only have one
14 element, such as lead or you only have the barium, that's -- they --
15 the term they use is indicative of. So it depends on how many
16 elements you have and what the policy of the lab is as to how they
17 classify -- how strong the scientific opinion would be.

18 BY MS. BOTELHO:

19 Q And when you mention, you said, at least based on the
20 FBI, is that when you took a class with the FBI? Is that the
21 apprenticeship?

22 A Well, I don't think they do that anymore, but I know that in
23 a lot of the labs that --

24 Q And, sir, I'm sorry --

25 A -- I have read --

1 Q -- when I'm asking you about when you speak of the FBI,
2 you said, you know, at least with the FBI, you need three; do you
3 remember that part of your response?

4 A Yes.

5 Q Okay. Are you referring to your experience with the FBI
6 from 1979 or through 1981?

7 A No, actually, I'm referring more to laboratories that I've
8 worked with recently, just within the last year.

9 Q Okay. And which laboratories would that be?

10 A The Phoenix Crime Lab, where you -- laboratory is the
11 only one that does it in Arizona.

12 Q Okay. And they're the only ones that do what, gunshot
13 residue testing?

14 A Gunshot residue with barium, lead, and antimony.

15 Q Okay. And just so I understand the number, whether you
16 have all three or two, just two, there's a difference in terms of
17 weight, according to your testimony?

18 A There's a difference in the weight or the certainty they
19 give to their opinion as to the origin of those elements.

20 Q Okay.

21 MS. BOTELHO: Brief indulgence, Your Honor.

22 I have no more questions. Thank you.

23 THE COURT: Thank you.

24 Any redirect?

25 MR. TANASI: No further questions, Your Honor. Thank

1 you.

2 THE COURT: Okay. Sir, thank you very much for your
3 testimony here today.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you for your patience. I know you
6 had to wait a while.

7 THE WITNESS: Thank you.

8 THE COURT: And I do appreciate it. You may step down
9 and you are excused from your subpoena.

10 Can I have the attorneys just approach for a moment?

11 [Bench conference transcribed as follows.]

12 THE COURT: Do you have more witnesses?

13 MR. TANASI: We do have at least one more witness. I
14 need to speak with Detective Carter. My plan is to chat with him
15 tonight had have a chance to do that because we've been here all
16 night.

17 THE COURT: Okay.

18 MR. TANASI: But we'll chat with him.

19 MR. LEVENTHAL: We're off tomorrow, right?

20 MR. TANASI: We're off tomorrow.

21 THE COURT: What? Yeah it's [indiscernible] day, so I
22 guess I'll tell him to come back at 9:00 if you still have witnesses?

23 MR. TANASI: Correct.

24 MR. GIORDANI: Correct.

25 THE COURT: At least one.

1 MR. TANASI: At least one.
2 THE COURT: Okay. All right.
3 MR. TANASI: And so we did make a decision on our
4 client.
5 THE COURT: Right. Yeah.
6 MR. TANASI: [Indiscernible] make a decision.
7 MR. LEVENTHAL: Yeah, based on what we heard just
8 now, earlier, we may.
9 THE COURT: Okay. So I'm going to tell 9:00 Friday, I just
10 want to make sure it's okay.
11 MR. LEVENTHAL: 9:00?
12 THE COURT: 9:00 Friday morning.
13 MR. GIORDANI: Well, sorry, Judge.
14 MS. BOTELHO: Okay. So we have an issue.
15 THE COURT: Okay.
16 MS. BOTELHO: I just consulted before I, you know,
17 passed the witness. I consulted with a gunshot residue expert,
18 Ms. Vachon. And she indicated that she disputes a majority of what
19 this witness testified to today. And that we will be wanting to
20 present some type of rebuttal evidence at some point. So.
21 THE COURT: Is she [indiscernible]?
22 MS. BOTELHO: We can do -- she can testify remotely, if
23 that's okay with the Court.
24 THE COURT: I don't care. I mean, is there any objection
25 to that?

1 MR. LEVENTHAL: For her? No.
2 THE COURT: Yeah. I know --
3 MR. LEVENTHAL: Totally understand she's not around
4 and she's an expert. That's fine.
5 MS. BOTELHO: Okay. Perfect.
6 MR. LEVENTHAL: No problem with that.
7 MS. BOTELHO: Yeah, that's great.
8 THE COURT: Okay.
9 MR. GIORDANI: So we can go home for tonight.
10 MS. BOTELHO: Yes.
11 THE COURT: Yeah. I can't keep this jury here.
12 MS. BOTELHO: Yes.
13 THE COURT: They're dying to get home.
14 MS. BOTELHO: Yes.
15 MR. GIORDANI: Okay.
16 MR. TANASI: Thank you, Judge.
17 THE COURT: All right. Thank you.
18 MR. LEVENTHAL: Thank you.
19 MS. BOTELHO: Thank you.
20 [End of bench conference.]
21 THE COURT: Okay. During this recess you're
22 admonished not to discuss or communicate with anyone, including
23 your fellow jurors, in any way regarding the case or its merits either
24 by voice, phone, e-mail, text, Internet, or other means of
25 communication or social media, read, watch, or listen to any news

1 or media accounts or commentary about the case, or do any
2 research, such as consulting dictionaries, using the Internet, or
3 using reference materials or make any investigation, test a theory of
4 the case, recreate any aspect of the case, or in any other way
5 investigate or learn about the case on your own or form or express
6 any opinion regarding the case until it's finally submitted to you.

7 Tomorrow is Veterans Day, so we'll be dark tomorrow.
8 And then we're going to resume again Friday morning at 9:00. So
9 enjoy Veterans Day and we will see you on Friday. Have a good
10 evening.

11 [Jury recessed at 5:38 p.m.]

12 THE COURT: Anything outside the presence?

13 MR. LEVENTHAL: No, Your Honor.

14 MS. BOTELHO: Not from the State.

15 THE COURT: Okay. Have a good night and we'll see you
16 Friday.

17 [Court recessed for the evening at 5:38 p.m.]

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21
22 ATTEST: I do hereby certify that I have truly and correctly
23 transcribed the audio/video proceedings in the above-entitled case
24 to the best of my ability.


25 Shawna Ortega, CET*562