

# IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown  
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TED MICHAEL DONKO,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Case No: C-19-345584-1  
*Related Case A-22-852928-W*  
Docket No: 85261

# RECORD ON APPEAL VOLUME 4

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1           A     Well, after I was laying there?

2           Q     Yes.

3           A     From underneath the truck, I could see Fernando fall in the  
4 back of the truck.

5           Q     Okay. Now, did you get a good look at the shooter?

6           A     No.

7           Q     Why is that?

8           A     His gun was in front of his face.

9           Q     Okay. How many rounds did you hear?

10          A     About 10.

11          Q     Okay. Did you see the car after that?

12          A     No.

13          Q     All right. What did you do after you were on the ground?

14          A     Well, when I first got shot, I pulled my phone out, called  
15 my uncle to tell him what happened.

16          Q     Okay.

17          A     After that, just in and out of conscious.

18          Q     Okay. And your uncle lives with you up the street?

19          A     Yes.

20          Q     Okay. And the next thing you remember, is it waking up  
21 in the hospital?

22          A     I remember here and there, like, in the ambulance and  
23 stuff. But, yeah, waking up in the hospital.

24          Q     Okay. And where, exactly, were you shot?

25          A     In my right thigh, exit my right thigh, hit my left thigh.



1 Bullet's still lodged in my left leg.

2 Q Okay. So you've still got a bullet in you?

3 A Right.

4 Q All right. And I notice that you walk with a cane?

5 A Yes.

6 Q Is that a result of this shooting?

7 A Yes.

8 Q Okay. Now, how long were you in the house before?

9 A Six days.

10 Q Okay. Did you have surgery --

11 A Yes.

12 Q -- for your legs? Okay.

13 A One leg.

14 Q And you still are suffering here today?

15 A Yes.

16 Q And do you have scars?

17 A Yes.

18 Q Not to mention the bullet's still in your other leg?

19 A Yes.

20 Q Okay. I'm going to ask you to kind of step up, and as long  
21 as you could -- or you have the ability to do so, can you come and --

22 THE COURT: And, Your Honor, may I have permission to  
23 have the witness just step down to have the jury see those injuries?

24 Q And, Mr. Sanchez, if you could just step down. And do  
25 you need help? Okay.

1           Again, I know it might be a little uncomfortable, but could  
2 you please unbutton your pants and kind of show where your  
3 injuries are?

4           THE COURT: Can we approach?

5           MS. GOODMAN: Oh, I'm sorry. Yes.

6           [Bench conference transcribed as follows.]

7           MR. SHAYGAN-FATEMI: We stipulated to a --

8           THE COURT: Yeah, I'm just going --

9           MR. SHAYGAN-FATEMI: -- ton of hospital photos. I don't  
10 know why he needs to unbutton his pants.

11          THE COURT: He is literally shaking.

12          MS. GOODMAN: Yeah.

13          THE COURT: And I do not want him -- [indiscernible] to  
14 pull down his pants. I thought he was going to [indiscernible]. I  
15 thought he was going down. And he's walking with a cane. I think  
16 SBH has probably been --

17          MS. GOODMAN: That's fine, Your Honor.

18          THE COURT: I mean, I just-- first of all, I don't think  
19 anybody's arguing that it's not SBH, right?

20          MR. HAUSER: I can promise Your Honor I will never say  
21 that. I'm closing and I'm not doing that.

22          MS. GOODMAN: No, that's fine, Your Honor. Just --

23          MR. SHAYGAN-FATEMI: We were going to object in a  
24 moment. Your Honor got out in front of it. So.

25          MR. HAUSER: Yeah, I appreciate it.

1 THE COURT: All right. Great. Thanks.

2 [End of bench conference.]

3 THE COURT: You can come back up, sir.

4 BY MS. GOODMAN:

5 Q Mr. Sanchez, I know that you're nervous. So we're just  
6 going to move on, okay?

7 A Okay.

8 Q All right. Now, when you looked back, did you see -- did  
9 you see -- you said you saw a Toyota?

10 A Yes.

11 Q What did it look like?

12 A Older model.

13 Q Okay. And did you see the person come out of the  
14 passenger side?

15 A No, I didn't see him.

16 Q Okay. Did you believe that it was the passenger who  
17 shot?

18 A Yes.

19 Q And how did you know that? Or why did you think that?

20 A The passenger door was open.

21 Q Okay.

22 MS. GOODMAN: And, Your Honor, I'll pass the witness.

23 THE COURT: Mr. Shaygan.

24 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

25 ///

1 **CROSS-EXAMINATION**

2 BY MR. SHAYGAN-FATEMI:

3 Q Good afternoon, sir.

4 A Hello.

5 Q Just to be clear, you just testified that you do know  
6 Fernando?

7 A Yes.

8 Q And you said Fernando was a friend from around the  
9 block, correct?

10 A Correct.

11 Q And, actually, called you on that -- on the day you were  
12 shot, correct?

13 A Yes.

14 Q Just so no one is confused, you did not get a good look at  
15 the shooter, correct?

16 A No, I didn't.

17 Q So you have no idea who it was that shot you, correct?

18 A No.

19 THE COURT: Correct?

20 MR. SHAYGAN-FATEMI: Thank you, Your Honor. I could  
21 rephrase it.

22 THE COURT: Yeah, rephrase it. It's so tricky with that.

23 BY MR. SHAYGAN-FATEMI:

24 Q You don't know who -- yes or no, you don't know who  
25 shot you?

1           A     No, I don't.

2           Q     Thank you.

3                     And outside of a court date of December 18th, you've  
4 never seen that man before in your life, correct?

5           A     Correct.

6           Q     Thank you for your time.

7                     MR. SHAYGAN-FATEMI: Your Honor, I have nothing  
8 further.

9                     THE COURT: Okay. State?

10                    MS. GOODMAN: No, Your Honor. I have no redirect.  
11 Thank you.

12                    THE COURT: Ladies and gentlemen, any questions?  
13 Okay.

14                    Parties approach.

15                             [Bench conference transcribed as follows.]

16                    MR. HAUSER: It's one of those I think we don't tell  
17 anybody.

18                             [End of bench conference.]

19                    THE COURT: Sir, do you remember anything regarding  
20 what the shooter was wearing?

21                    THE WITNESS: No, I don't.

22                    THE COURT: The answer was: No, I don't.

23                    Any follow-up?

24                    MS. GOODMAN: No, Your Honor.

25                    MR. SHAYGAN-FATEMI: No, Your Honor.

1 THE COURT: All right. Sir, thank you so much for coming  
2 in today. You are excused from your subpoena. Please don't share  
3 your testimony with anyone else involved in the case.

4 THE WITNESS: Okay. Thank you.

5 THE COURT: Thank you.

6 MR. LEXIS: Could we approach, Judge?

7 THE COURT: Yep.

8 [Bench conference transcribed as follows.]

9 MR. LEXIS: So we're going to need a break, because we  
10 have definitely -- one's on his way. We're -- problems with the  
11 other, like, I'm going to get you somebody here. He should have  
12 been here. He assured me. That's who I've been going back and  
13 forth with. And then the other one should be on the way to --

14 THE COURT: So how long do you need?

15 MR. LEXIS: What time is it now?

16 THE COURT: 2:20.

17 MR. LEXIS: Maybe come back at 3:20.

18 THE COURT: So long?

19 MR. LEXIS: I know, Judge. I'm trying to move them.

20 THE COURT: Who are these people?

21 MR. LEXIS: [Indiscernible.]

22 THE COURT: All -- both of them?

23 MR. LEXIS: Uh-huh.

24 THE COURT: Oh, my gosh.

25 MR. LEXIS: But we're going to be done tomorrow. I can

1 assure you, we can go with the jury instructions.

2 THE COURT: I'm a bad -- don't worry.

3 MR. LEXIS: And I can assure you, we're going to be all  
4 done tomorrow. We're going to have our lead detective tomorrow,  
5 but we should have it -- we're trying to get another witness for  
6 tomorrow. But we're going to be done. But if we could please start  
7 at 9:00, we're going to be -- we're going to rest it by noon.

8 MR. HAUSER: If Mr. Shaygan, and I are still the attorneys,  
9 I believe that's correct. But I can't promise that.

10 THE COURT: Okay. All right. So -- okay. Okay. Got it.

11 [End of bench conference.]

12 THE COURT: All right. So we're having some  
13 transportation issues. I promise you we're still ahead of schedule,  
14 so don't stress out about that. But we're going to take a pretty  
15 good afternoon recess. And then we won't break again for the rest  
16 of the day. So feel free to go down and get a snack or get  
17 something to drink, because we're not going to come back  
18 until 3:20.

19 During the recess you're admonished not to talk or  
20 converse among yourselves or with anyone else on any subject  
21 connected to this trial or read, watch, or listen to any report of or  
22 commentary on the trial of any person connected with this trial by  
23 any medium of information, including, without limitation to  
24 newspapers, television, the Internet, and radio, or form or express  
25 any opinion on any subject connected with the trial until the case is

1 finally submitted to you.

2 I will see you at 3:20.

3 [Jury recessed at 2:41 p.m.]

4 THE COURT: All right. So we will be in recess then  
5 until 3:20. We can go off.

6 [Court recessed at 2:42 p.m., until 3:27 p.m.]

7 [Outside the presence of the jury.]

8 THE COURT: All right. We're back on the record is  
9 C-345584-1, State of Nevada versus Ted Michael Donko. Mr. Donko  
10 is present with Mr. Hauser and Mr. Shaygan on his behalf. Both  
11 deputy district attorneys, Ms. Rose Goodman as well as Mr. Lexis,  
12 are present.

13 Are we ready to go?

14 MR. LEXIS: We have a witness for the occasion.

15 THE COURT: Well, that's a start.

16 MR. HAUSER: Sounds good.

17 THE COURT: All right. Let's bring them in.

18 [Jury reconvened at 3:28 p.m.]

19 THE COURT: Welcome back, ladies and gentlemen.  
20 Thank you for your patience. We are back on the record. Do both  
21 parties stipulate to the presence of the jury?

22 MS. GOODMAN: Yes, Your Honor.

23 MR. LEXIS: Yes, Your Honor.

24 MR. HAUSER: Yes, Your Honor.

25 THE COURT: All right. State, next witness.



1 MR. LEXIS: State calls Genaro Ramos.

2 **GENARO RAMOS,**

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

5 THE CLERK: Thank you. You may be seated. Please state  
6 your complete name, spelling both your first and last name for the  
7 record.

8 THE WITNESS: It's Genaro Ramos. My name?

9 THE CLERK: Yes. Can you spell that for us, please?

10 THE WITNESS: It's G-E-N-A-R-O --

11 THE COURT: I'm sorry. Start over, please.

12 THE WITNESS: My name?

13 THE COURT: Yeah.

14 THE WITNESS: Is -- spelling?

15 THE COURT: Yes, please.

16 THE WITNESS: Is G-E-N-A-R-O, R-A-M-O-S.

17 THE CLERK: Thank you.

18 THE COURT: Thank you.

19 THE WITNESS: Welcome.

20 **DIRECT EXAMINATION**

21 BY MR. LEXIS:

22 Q Sir, around October 1st, 2019, what were you doing?

23 A I was working on my mom's car.

24 Q Okay. And where at?

25 A 5617 White Cap Street.

1 Q That was at around noon?

2 A Yes.

3 Q Showing you State's 7; do you see White Cap Street here  
4 in the middle?

5 A Yeah.

6 Q The middle of --

7 A I see it.

8 Q Is that true?

9 A Yes.

10 Q Is that true and correct representation of that  
11 neighborhood?

12 A Yeah.

13 Q Okay. That blue mark right there, the White Cap, is that  
14 approximately your mom's house?

15 A Yes, that was my mom's.

16 Q That's your mom's house, sir?

17 A Yeah.

18 Q Okay. What, if anything, did you hear around 12:15?

19 A Gunshots.

20 Q Around how many, sir?

21 A Between 8 to 10.

22 Q Okay. What, if anything, did you notice after that?

23 A Fast car coming on the street --

24 Q Okay.

25 A -- that caught my attention.

1 Q How long after?

2 A A couple minutes.

3 Q Okay. So a couple minutes after the gunshots, the car and  
4 the way it was speeding --

5 A Yeah.

6 Q -- caught your attention?

7 A Yeah.

8 Q Okay. Can you describe that in detail?

9 A It was a Toyota Corolla, gold, sand color, between '93  
10 or '98.

11 Q Okay. So older model?

12 A Yeah.

13 Q And, particularly, what caught your attention, you said,  
14 was the speed, so were you -- did you hear it coming?

15 A Yeah, I hear the car on the corner of the street.

16 Q Okay. What did the car eventually do, sir?

17 A He was driving fast and then he got dropped by a couple  
18 houses on Linn Street.

19 THE COURT: If you want to use that -- the mouse, you  
20 can --

21 THE WITNESS: Oh, I so I can scoot them --

22 THE COURT: Yeah. Hit the red -- use the mouse and then  
23 the that red pencil.

24 THE WITNESS: Okay.

25 THE COURT: All right.

1 THE WITNESS: There. Yeah, this is Linn Street, and then  
2 this is where the car drove off, right in this area.

3 THE COURT: Where it says Toyota Corolla?

4 THE WITNESS: Yeah.

5 BY MR. LEXIS:

6 Q Okay. What, if anything, did you see after that car  
7 stopped?

8 A I see a guy in the guy, one person.

9 Q One person? And what did that person do?

10 A He looked suspicious.

11 Q Why did he look suspicious, sir?

12 A He was looking around and then searching off his waist  
13 and then his buckets.

14 MR. LEXIS: Okay. Let the record reflect the witness is  
15 grabbing his waist, pocket area.

16 THE WITNESS: Uh-huh. Yeah, like --

17 BY MR. LEXIS:

18 Q Repeatedly? Did he do that repeatedly, sir?

19 A Yeah, a couple, several times. Yeah.

20 Q Okay. Did he go -- ever go back to the car?

21 A He tried to come back, yeah. And then after that he start  
22 running or walking on Surf Lane.

23 Q Okay. So --

24 A North --

25 Q -- you said --

1       A     North on Surf Lane.

2       Q     -- on Surf Lane?

3       A     Yeah.

4       Q     So could you go ahead and draw -- okay. And what

5 direction was he going on Surf Lane?

6       A     Going north.

7       Q     Okay.

8       A     Yeah, because -- hold on. This is north. Yeah. He start --

9       Q     Okay. So you've seen --

10      A     It's okay.

11      Q     -- initially see him at the vehicle marked Toyota Corolla,

12 and then you see him going north where that next red dot is,

13 correct?

14      A     Yeah. Yeah, the Surf Lane street, yeah.

15      Q     Okay. What, if anything else, was he doing suspicious?

16      A     That's all I see after that. Then I -- but I see that, like, he

17 was wearing a red shirt.

18      Q     Okay.

19      A     Uh-huh.

20      Q     Can you describe the person?

21      A     He's white male in his 30s.

22      Q     Okay. And you said he was wearing a red shirt?

23      A     Red shirt, yeah.

24      Q     Was he looking around at all?

25      A     When he got off of the car, yeah, he start -- he was looking

1 around. But I didn't see him after that when I see when -- the -- he  
2 was on Surf Lane, I didn't see him after that.

3 Q As he's looking around, is he -- that's as -- that's while  
4 he's grabbing his pockets and everything?

5 A Uh-huh.

6 Q Okay.

7 THE COURT: Is that a yes?

8 THE WITNESS: Yeah.

9 THE COURT: Okay.

10 BY MR. LEXIS:

11 Q Did a detective -- you eventually talked to police in the  
12 area --

13 A Yeah.

14 Q -- is that true? Did you go to them?

15 A To the officers.

16 Q Yes.

17 A To the police? Yeah, I did.

18 Q Okay. And is that due to the suspicious nature that you  
19 saw?

20 A Yes.

21 Q Did they eventually take you to a vehicle?

22 A Yes.

23 Q And was it that Toyota Corolla?

24 A Yes, it was the same car that I saw.

25 Q Showing you State's 209; is that a true and accurate

1 representation of the Toyota Corolla you saw that day?

2 A Yeah, that's the car.

3 Q Okay.

4 MR. LEXIS: Nothing further, Your Honor.

5 THE COURT: Does --

6 MR. HAUSER: Brief indulgence, Judge.

7 THE COURT: Sure.

8 **CROSS-EXAMINATION**

9 BY MR. HAUSER:

10 Q Good afternoon, sir.

11 A Good afternoon, how are you.

12 Q Oh, I'm well. Thank you for asking.

13 A Thank you.

14 Q The police never asked you to look at a series of pictures  
15 in this case, did they?

16 A No, they didn't.

17 Q When you talked about the car coming up Linn Lane; is  
18 that right?

19 A Yeah.

20 Q Which direction was the car coming up Linn?

21 A Can we go back to the map or --

22 Q No, yeah, let's see if we can pull it back up.

23 He's a lot better at this than me, so go ahead.

24 A Yeah --

25 THE COURT: Do you what to -- sorry.

1 MR. HAUSER: Oh, I get -- you're right, Judge. My  
2 apologies.

3 That's State's Exhibit 7.

4 THE COURT: And could you zoom in?

5 MR. HAUSER: I can try.

6 THE COURT: There should be some arrows.

7 MR. HAUSER: Sure are.

8 THE COURT: There you go.

9 MR. HAUSER: Look at all that. All right. Let's try and do  
10 that.

11 BY MR. HAUSER:

12 Q Okay. So you showed us the car coming toward the top  
13 of that picture, right?

14 A Is it okay if I use this?

15 Q Up Linn Lane?

16 THE COURT: Yeah, of course. Just hit the red button.  
17 There you go.

18 THE WITNESS: Yeah, you see the car when he was  
19 coming in this corner, because I was over here at my mom's house  
20 working.

21 BY MR. HAUSER:

22 Q So you didn't see a car on Linn at all?

23 A No, the car was dropped of on -- close to Linn Street over  
24 here, where the car is --

25 Q The car was close --



1       A     -- over here. Yeah.

2       Q     -- to Linn.

3       A     To Linn.

4       Q     Okay. You didn't see the car drive up Linn Street?

5       A     Oh, Linn Street? No, I didn't. But he was driving on White

6     Cap Street.

7       Q     Got it.

8       A     And the car was --

9       Q     And the car was speeding?

10      A     Yes.

11      Q     You described the man that got out as a white man in

12     his 30s?

13      A     Uh-huh.

14      Q     Is that a yes?

15      A     Yes.

16      Q     I'm sorry, we record everything here, it's very natural to

17     say uh-huh. We always have to say yes or no.

18      A     Okay.

19      Q     Happens all the time.

20      A     I got it.

21      Q     Was there anyone else in the car?

22      A     No, he was only there, the guy -- the male person.

23      Q     Okay. Did you see any firearms?

24      A     No, I didn't.

25      Q     I appreciate your time, sir. Thank you very much?

1           A     No problem.

2           THE COURT: State?

3           MR. LEXIS: Sure.

4                               **REDIRECT EXAMINATION**

5   BY MR. LEXIS:

6           Q     I know Defense counsel asked you, but I just want to be  
7   clear.

8           A     Yeah.

9           Q     When you saw him going north on Surf Lane --

10          A     Yes.

11          Q     -- is that when you lost track of him?

12          A     Yeah.

13          Q     Okay.

14               MR. LEXIS: Court's indulgence.

15               Nothing further, Judge.

16               THE COURT: Anything based on that?

17               MR. HAUSER: No, Your Honor.

18               THE COURT: Ladies and gentlemen, any questions from  
19   the jury?

20                       [Bench conference transcribed as follows.]

21               MR. HAUSER: Yep. It's all clear.

22                       [End of bench conference.]

23               THE COURT: Sir, did the person you saw leaving the  
24   vehicle have any tattoos?

25               THE WITNESS: I didn't pay attention to that, no.

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THE COURT: Okay. State?

**FURTHER EXAMINATION**

BY MR. LEXIS:

Q But do you know if he had his red shirt on, sir?

A A red shirt on? Yeah. He did.

MR. LEXIS: Nothing further.

THE COURT: Mr. Hauser?

MR. HAUSER: I have no follow-up, Judge.

THE COURT: Any other following questions from the jury?

Sir thank you, so much for coming in today. You are released from your subpoena. But please do not discuss your testimony with anyone else involved in the case.

THE WITNESS: Okay.

THE COURT: All right? Thank you very much.

THE WITNESS: Yeah, you're welcome. Thank you.

THE COURT: State?

MS. GOODMAN: State's going to call DeAndre Woods.

**DeANDRE WOODS,**

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

THE CLERK: Thank you. Please have a seat. Could you please state your complete name, spelling your first and last name for the record.

THE WITNESS: My name's DeAndre Woods. It's

1 D-e-A-N-D-R-E, W-O-O-D-S.

2 THE CLERK: Thank you.

3 THE COURT: Mr. Woods, before we get started, can you  
4 do a few things? Would you mind putting your phone on silent or  
5 turning it off completely, and that way we won't have any  
6 disruptions.

7 THE WITNESS: Okay.

8 THE COURT: Thank you. And then also, you'll notice the  
9 microphone that is sitting in front of you. If you wouldn't mind  
10 scooting up a little bit closer and keeping your voice up, and that  
11 way we'll be able to hear you throughout the courtroom. Okay?

12 THE WITNESS: Okay.

13 THE COURT: Thank you so much. I appreciate that.

14 **DIRECT EXAMINATION**

15 BY MS. GOODMAN:

16 Q Did you get that on silent, DeAndre?

17 A No, I'm turning it off.

18 Q Okay. Good.

19 A Can you hear me now.

20 Q Yes, we're good. All right.

21 Good afternoon, Mr. Woods.

22 A Hi.

23 Q I'm going to bring you to a date of September 30th, 2019.  
24 Okay?

25 A Okay.

1 Q Do you recall that date?

2 A Yeah.

3 Q Okay. What happened on that date?

4 A Too young mens came up to me, one dude had a black  
5 shirt and one dude had a red shirt.

6 Q Okay. And did they ask you if you knew somebody  
7 named Shorty?

8 A Yes.

9 Q Okay. Where were you at?

10 A I was sitting in the front of my ex-girlfriend's house in a  
11 chair, a black chair.

12 Q Okay. And that was 56 Linn Lane?

13 A Yeah.

14 Q Okay. What happened after that?

15 A I told him I didn't know who Shorty was.

16 Q Okay. Now, the first -- you said there was two gentlemen,  
17 right?

18 A Yes.

19 Q Okay. What did the first one look like?

20 A The first one looked like a little short, you know, a little  
21 skinnier. And the second one was bigger. And he's in this room.

22 Q He's in this room?

23 A Yeah.

24 Q Okay. Can you please point that person out and identify  
25 an article of clothing he or she is wearing?

1           A     He got a blue tie, blue shirt, that's him.

2                   MS. GOODMAN: Okay. And, Your Honor, may the record  
3 reflect identification of Defendant.

4                   THE COURT: It will.

5 BY MS. GOODMAN:

6           Q     Okay. So they come and they -- and the -- who you  
7 identified as the defendant, they asked about Shorty, and then do  
8 they leave?

9           A     Yeah, they left right away.

10          Q     Okay. And you first described them at -- you described  
11 that individual as what?

12          A     A Mexican.

13          Q     Okay. And what -- do you remember the height that you  
14 gave?

15          A     Like, 5-8, 5-11, and the second one --

16                               [Ringing phone interruption.]

17                   THE WITNESS: My bad. My bad.

18 BY MS. GOODMAN:

19          Q     That's okay.

20          A     My bad.

21          Q     Is it off now?

22          A     No, it just turned right back on.

23          Q     Okay.

24          A     It will not ring, I hope.

25                   THE COURT: Did it just turn itself back on?

1 THE WITNESS: Yeah.

2 THE COURT: That's okay.

3 THE WITNESS: My bad, y'all. Don't --

4 THE MARSHAL: I'll put it in the side room.

5 THE COURT: He'll --

6 THE WITNESS: All right. Thank you.

7 THE COURT: He'll help you. You'll get them back, I

8 promise.

9 THE WITNESS: All right. Take --

10 THE COURT: Okay.

11 THE WITNESS: -- both of them, please. Because I don't

12 want nobody to be, like, doo, doo, doo, doo, doo.

13 MS. GOODMAN: No problem, DeAndre.

14 BY MS. GOODMAN:

15 Q Okay. So the first one you described still as a Mexican

16 and the first -- the first one you described is how tall? Short?

17 A 5-11, around that height, 5-11, 5-8, somewhere.

18 Q Okay. And you described the defendant as what?

19 A 5-8, 5-11, around that height.

20 Q Okay. So just approximately that height?

21 A Uh-huh.

22 Q All right. Did you see any tattoos on him at that time?

23 A No, I didn't see no tattoos because I tried to get up and get

24 in the house, because I was too scared.

25 Q Okay. Did you see any facial hair at that time?

1       A     No.

2       Q     Were you looking at them like that?

3       A     I was not looking at them like that.

4       Q     Okay.

5       A     I was trying to get up and get in the house.

6       Q     Okay. Now, on September 30th, did they -- what kind of

7 car did they pull up in?

8       A     A Toyota.

9       Q     Okay.

10      A     Like a 1996, a '95.

11      Q     So older Toyota?

12      A     Yeah.

13      Q     Okay. I'm going to go to October 1st, okay, the day after.

14 Were you at 56 Linn Lane here in Clark County?

15      A     Yeah. And I was taking out the stuff that my ex-girlfriend

16 asked me to take out of her house.

17      Q     Okay. So on October 1st, you were at that same location

18 and you were there because your ex-girlfriend?

19      A     Asked me to take out all the stuff that was in her house,

20 the old stuff that she have that she wanted to take out.

21      Q     Okay. So in -- now, when -- this is about maybe noonish

22 or so, right around that time?

23      A     Yeah.

24      Q     Okay. Who was inside of the home?

25      A     They kids, two grandkids, two grownups, two -- a girl and



1 a woman, a -- two grown women and one -- no, two children.

2 Q Okay. So there was people inside the home?

3 A Yeah.

4 Q All right. Now, outside the house, who was helping you  
5 move this -- these items?

6 A It was two young mens that was around the block that we  
7 barely know. And they was helping us, because one of the people  
8 that was in the house with me named Vink [phonetic], asked him to  
9 help us to clean -- do what we have to do for my ex. And that's --  
10 he's not in here --

11 Q Okay.

12 A -- the person that asked the person to help.

13 Q That's okay. So was -- do you know somebody by the  
14 name of Fernando?

15 A I don't know him by that name.

16 Q Okay. But you know him -- his name is Fernando now?

17 A Yeah.

18 Q Okay. Was he there?

19 A Yeah.

20 Q Okay. Do you know somebody named Johnny?

21 A Yeah.

22 Q Was he there?

23 A Yeah.

24 Q Okay. And do you know somebody named Gilbert?

25 A Yeah.

1 Q Okay. Was he there?

2 A Yeah.

3 Q Okay. And then the person that you had described at  
4 Binks [sic] --

5 A Yeah.

6 Q -- that's a -- that's the person that kind of had the house?

7 A Yeah.

8 Q Okay. Now, what, if anything -- now, where were you  
9 sitting?

10 A I was sitting in the chair, the same chair they walked up on  
11 me with when I was sitting down the first time.

12 Q Okay. So I'm going to show you this picture of him.

13 A That chair right there in the back.

14 Q Okay. Wait a minute, DeAndre. Okay. So there's a  
15 mouse. Do you see that mouse right there? Okay. What I want you  
16 to do is --

17 A Point to the chair?

18 Q -- go ahead and hit -- do you see that red spot on the  
19 bottom that looks like a pencil?

20 A Yeah.

21 Q Go ahead and click that for me.

22 A Okay. [Witness complies.]

23 THE COURT: Click on it.

24 THE WITNESS: I'm trying to.

25 THE COURT: Got it.

1 THE WITNESS: Yep.

2 BY MS. GOODMAN:

3 Q There you go. Okay. And then circle where you were  
4 sitting at around 12:15. Okay.

5 MS. GOODMAN: Your Honor, may I approach?

6 THE COURT: Yeah.

7 THE WITNESS: No, I don't know how to --

8 MS. GOODMAN: That's okay. Here, let me try to help you  
9 here.

10 BY MS. GOODMAN:

11 Q I'm just going to click this.

12 A Thank you, Judge --

13 Q And then click the red button here.

14 A -- for understanding.

15 THE COURT: Oh, yeah, no problem.

16 THE WITNESS: Because I don't know how to work these  
17 computers.

18 BY MS. GOODMAN:

19 Q All right. Now you can control the mouse. Go ahead and  
20 just circle where you were sitting around 12:15ish.

21 A Okay. Thank you.

22 Q Oh, click. You've got to click the mouse.

23 THE COURT: Click down.

24 BY MS. GOODMAN:

25 Q Let's just do this. Right where we made that red mark,

1 that's the chair you were sitting in?

2 A Yeah.

3 MS. GOODMAN: And, Your Honor, just for the record,  
4 that is the chair that is between the truck and the driveway to the  
5 left side of the picture.

6 THE COURT: Sounds good.

7 BY MS. GOODMAN:

8 Q So I'm just clear this for you. Okay?

9 A All right.

10 Q All right. Okay. Now, DeAndre, you were sitting there  
11 around 12:15 or so right before?

12 A Yeah.

13 Q Okay. Did you see that same Toyota pull up?

14 A Yeah, I saw it pulled up right here.

15 Q Oh --

16 A Can I put --

17 Q -- just hover it over -- hover over it.

18 A Okay. Right here.

19 MS. GOODMAN: Okay. And, Your Honor, let the record  
20 reflect the Toyota pulled up to the right side of the vehicle next to  
21 the -- kind of to the street of the blue shopping cart.

22 THE COURT: Okay.

23 BY MS. GOODMAN:

24 Q Okay. And what happened after that?

25 A I just remember shooting. And I saw a white dude come

1 out of the car, the same dude that asked me where Shorty was.

2 Q Okay. And did he point a gun at you?

3 A He pointed at the person in front of me, and that was Vink.

4 Q Okay. Did that individual start shooting?

5 A Yeah.

6 Q Okay. Towards your direction?

7 A Yeah.

8 Q Okay. Now, this is going to be a stupid question, but were  
9 you in fear of your life?

10 A Yeah.

11 Q Okay.

12 A I tried to get up and get the hell [indiscernible]. You see  
13 the chair. The chair got the -- all the bullets --

14 Q I gotcha.

15 A -- that were supposed to get me.

16 Q Okay. And did he say anything when he exited the  
17 vehicle?

18 A He said, Fuck Shorty, and he got started letting off.

19 Q Okay. And do you remember how many -- about how  
20 many shots?

21 A I don't remember. I was just trying to get out of the way.

22 Q I'm sorry?

23 A I tried to get out of the way.

24 Q Okay. You tried to get out of the way? Okay.

25 And to be fair, you -- and we'll get there -- you described

1 that individual as a Hispanic male to the police officers?

2 A Yes, I did.

3 Q Okay. Now, the driver of that vehicle, do you recall if you  
4 recognize that person?

5 A No.

6 Q Okay.

7 A I don't remember him.

8 Q Okay. All right.

9 THE COURT: I'm sorry, say it again, you what?

10 THE WITNESS: I don't really remember him.

11 THE COURT: Okay.

12 BY MS. GOODMAN:

13 Q Okay. Now, what was the person who shoot --the person  
14 who shot, which you identified as who?

15 A The person sitting in the back of you in the blue tie and  
16 blue shirt.

17 Q Okay. Who you identified as the defendant; what was he  
18 wearing?

19 A He was wearing a red shirt.

20 Q Okay. Now, where did you -- did you see the car leave?

21 A When it left, I saw it go towards --

22 Q Oh, hold on. I'm going to show you State's Exhibit 2.

23 A Towards Thompson.

24 Q Okay. Let me zoom out real quick. Hold on.

25 A Right here.

1 Q Okay. So you see where that red balloon is that says --  
2 A I know.  
3 Q -- 56 North Linn?  
4 A Yeah, I see it.  
5 Q Okay.  
6 A What you talking about.  
7 Q All right. And which direction, just move the mouse in the  
8 direction of where he left?  
9 A He left this way.  
10 Q I'm sorry, what was that?  
11 A You see where the mouse at?  
12 Q Yep.  
13 A That's right.  
14 Q Okay. So --  
15 A Towards Charleston.  
16 Q He headed south towards Charleston.  
17 A Yep.  
18 MS. GOODMAN: And, Your Honor, just let the record  
19 reflect he's moving the mouse from the red balloon south, in a  
20 southward direction towards Charleston.  
21 THE WITNESS: Sorry, it was Charleston.  
22 THE COURT: Okay.  
23 BY MS. GOODMAN:  
24 Q Okay. Now, you stayed there and you're familiar with that  
25 area, DeAndre?

1           A     Yeah, I know the area, not that well, but well enough to be  
2 around.

3           Q     Okay. So this is Charleston where I'm highlighting here  
4 where it says East Charleston?

5           A     Yeah.

6           Q     Okay. And I'm going to move my pen all the way down to  
7 where it says North Christie, right here; do you see that?

8           A     Yeah. And that's the way they went.

9           Q     Okay. So now when -- if you go up Christie, can you get  
10 back into your neighborhood?

11          A     Yeah, you can't go that way. That way you turning your  
12 pen at, that way.

13          Q     Uh-huh.

14          A     And then you -- go to the other way, towards the two-way,  
15 you can't go on that street. But that's the main street, you can't go  
16 in right there too.

17          Q     Okay. So you can go in any of these streets here off of  
18 this Christie Lane?

19          A     Uh-huh. Yeah.

20          Q     Okay. All right. DeAndre, do you remember -- oh, do you  
21 remember seeing the impacts to the house?

22          A     I only saw two holes in the garage.

23          Q     Okay.

24          A     And I didn't even check out the -- where the other bullets  
25 went.



1 Q Okay.

2 A I saw the truck got hit two times or three, I don't know.

3 Q Okay. So let's talk about the impacts to the house. Were  
4 those there before?

5 A No.

6 Q Okay. So those were caused by the --

7 A The bullets that --

8 Q -- bullets that day?

9 A -- came in the car.

10 Q Okay. All right. Now, do you recall on  
11 October 9th, 2019 --

12 MS. GOODMAN: And, I'm sorry, Your Honor. Court's  
13 brief indulgence.

14 Q On October 9th, 2019, you talking to a detective?

15 A Yeah.

16 Q Okay. And do you recall him doing something called a  
17 photo lineup?

18 A Yeah.

19 Q All right. I'm going to show you State's Exhibit 202, all  
20 right? Do you recall that photo lineup witness instruction?

21 A Yes.

22 Q Okay. And is that your name, DeAndre Woods?

23 A Yep.

24 Q Okay. And date and time, 10/9/2019?

25 A Yeah.

1 Q Okay. And where it says sign here --

2 A Yep.

3 Q -- is that your signature?

4 A Yep.

5 Q Okay. And in this photo lineup, witness instruction, I'm  
6 going to read it, okay? It says -- unless you want -- do you want  
7 to -- can you see it from up there? Do you want me to hold it for  
8 you? Or do you want me --

9 A I want you to read it.

10 Q What's that?

11 THE COURT: He wants you to read it.

12 BY MS. GOODMAN:

13 Q Okay. So it says:

14 In a moment, I am going to show you a group of  
15 photographs. This group of photographs may or may not  
16 contain a picture of the person who committed a crime now  
17 being investigated. The fact that the photos are being shown to  
18 you should not cause you to believe or guess that the guilty  
19 person has been caught. You do not have to identify anyone. It  
20 is just as important to free innocent person from suspicion as it  
21 is to identify those who are guilty. Please keep in mind that  
22 hairstyles, beards, and mustaches are easily changed. Also,  
23 those are --

24 I'm sorry.

25 -- also, photographs do not always depict the true

1 complexion of a person. It may be lighter or darker than shown  
2 in the photo. You should pay no attention to any markings or  
3 numbers that may appear on the photos. Also, pay no attention  
4 to whether the photos are in color or black and white, or any  
5 other differences in the type of style of the photographs. You  
6 should study only the person shown in each photograph.  
7 Please do not talk to anyone other than police officers while  
8 viewing the photos. You must make up your own mind and not  
9 be influenced by other witnesses, if any. When you have  
10 completed viewing all the photos, please tell me whether or not  
11 you can make an identification. If you can, tell me in your own  
12 words how you are of your identification. Please do not indicate  
13 in any way to other witnesses that you have or have not made  
14 an identification. Thank you.

15 Do you remember having that read to you or reading that?

16 A Yeah, I had somebody read it to me.

17 Q Okay. So somebody actually read that out loud --

18 A Yeah.

19 Q -- like I just did?

20 A Yeah.

21 Q Okay. And then you were showed State's Exhibit 203.

22 A And I picked the one right here in the middle of the  
23 second line.

24 Q Okay. So all that -- the circles that -- that is the person that  
25 you identified?

1           A     Yep.

2           Q     Okay. Is that Number 5?

3           A     Yep.

4           Q     Okay. And are those your initials that are underneath it?

5           A     Yep.

6           Q     Okay. And then back to that statement part of the photo

7 lineup witness instruction on State's Exhibit 202, you wrote there:

8                     By the person that shot at me and was asking for Shorty.

9           A     Yep.

10          Q     95 percent sure?

11          A     Yep.

12          Q     Okay. Now, DeAndre, how -- why were you only 95

13 percent sure?

14          A     Because the person on the picture --

15          Q     Let me -- hold on, let me show you 203.

16          A     -- had a -- his head was straight, a little bit down.

17          Q     So his -- so the person that you saw, the hair was shorter?

18          A     Uh-huh.

19          Q     Okay. So that's why you were 95 percent sure?

20          A     Yeah.

21          Q     Okay. DeAndre, you remember -- you remember

22 testifying at a preliminary hearing and at that time, you identified

23 the defendant as well as -- correct?

24          A     Yeah.

25          Q     So today you also identified the defendant?

1           A     Yeah.

2           Q     Correct? How sure are you now that you see him in  
3 person?

4           A     Like, right now, like, I know it's him.

5           Q     Okay. So you know it's this guy?

6           A     [No audible response.]

7           Q     Now, when you learn later on that you've described him  
8 as Hispanic, but you learned that he was actually white, did that  
9 change your identification of him?

10          A     No.

11          Q     Okay. Now, you said he had no tattoos at first. Seeing  
12 that he has tattoos, does that change your mind about his -- the  
13 person that shot?

14          A     I was not focused on tattoos. I was trying to get out of the  
15 way.

16          Q     Okay. If when -- the fact that he has hair now, does that  
17 make you any less sure that that is this individual who shot you?

18          A     It's not -- no. It don't make me feel like that at all.

19          Q     Okay.

20                MS. GOODMAN: Court's brief indulgence, Your Honor.  
21 Your Honor, I'll pass the witness.

22                THE COURT: Mr. Hauser, cross-examination.

23                MR. HAUSER: Judge, may I approach the clerk?

24                THE COURT: Yeah.

25                MR. HAUSER: Thank you.

1 [Pause in proceedings.]

2 **CROSS-EXAMINATION**

3 BY MR. HAUSER:

4 Q Good afternoon, Mr. Woods.

5 A Good afternoon.

6 Q Want to talk to you about the person that you saw on  
7 October 1st and on September 30th, okay? All right.

8 You were hanging out with your buddies on October 1st,  
9 right?

10 A That was not my buddies.

11 Q You don't know them?

12 A Uh-uh.

13 Q Okay.

14 A They were people on the streets.

15 Q Okay. How about Fernando?

16 A People on the streets.

17 Q Okay. But you know what they look like?

18 A Yeah.

19 Q All right. They look like Mexican guys, right?

20 A Yeah.

21 Q Okay. You described the shooter in this case as a Mexican  
22 guy?

23 A Yeah.

24 Q Okay. So somebody that looks like Fernando and  
25 Johnny?

1           A     Yeah.

2           Q     Let's chat a little bit about what happened during the  
3 shooting. So you said that somebody pulled up and started firing  
4 almost immediately, right?

5           A     Yeah.

6           Q     They said, Fuck Shorty, and then started shooting, right?

7           A     Start to shoot me.

8           Q     Apologize for the language.

9           A     After that he said, Fuck Shorty.

10          Q     And at that point, you did the reasonable thing and tried  
11 to get out of the way, right?

12          A     Yeah.

13          Q     Where did you go?

14          A     Ran towards almost the gate.

15          Q     Okay. What were you hoping to hide behind at the gate?  
16 Because you weren't hiding behind the gate, right? Like, that's  
17 pretty see-through.

18          A     I know that.

19          Q     But -- so you was just trying to get behind something  
20 else?

21          A     Yeah.

22          Q     Did you find anything?

23          A     Behind the house. The other house, the next-door  
24 neighbor.

25          Q     Got it. Did you get behind the house?

1 A No.

2 Q Okay. How far did you get?

3 A Half way --

4 Q Okay.

5 A -- towards that gate.

6 Q Okay. And that's when the car drove --

7 A And that's when the other dude fell in front of me.

8 Q What other dude?

9 A What's his name? I don't -- I can't --

10 Q One of the guys that got shot?

11 A Yeah.

12 Q Okay. Not the shooter, he didn't fall?

13 A No.

14 Q Got it. And then you said the car drove off, right?

15 A Uh-huh.

16 Q Car drove up to where Charleston --

17 THE COURT: One second, Mr. Hauser.

18 Is that a yes?

19 THE WITNESS: Yes.

20 THE COURT: Okay.

21 MR. HAUSER: Thanks, Judge.

22 BY MR. HAUSER:

23 Q All right. So to show you State's 2, we just looked at that

24 a little bit on direct. I'm just going to indicate with my pen a little

25 bit on here. You said the car went from Linn Lane toward



1 Charleston down here, right?

2 A Yep.

3 Q Okay. Now, you made a statement on the 1st when you  
4 spoke to the police, right?

5 A Yes.

6 Q You wanted to give them as much information as  
7 possible?

8 A Yeah.

9 Q Because you wanted them to catch the people who --

10 A Who came --

11 Q -- almost shot you?

12 A Yeah.

13 Q So you were trying to be as helpful as you could.

14 A Yeah.

15 Q And on that day, you told the police that when they got to  
16 Charleston, they turned left, right?

17 A If it was left or right.

18 Q Well, we got to know one way or the other, right? It can't  
19 be both.

20 A Because I tried to get out of the way and get out of the  
21 situation.

22 Q And I'm not blaming you for that at all. I'm just trying to  
23 hammer out some details. You did the right thing, you got out of  
24 there, you didn't get shot.

25 A I just know they left for on towards Charleston.

1 Q Okay?

2 A Which way, I thought they left on the left, like, look on the  
3 paper right here, where you got a pink thing, they went towards  
4 my -- if I was walking, it would have been on my right.

5 Q If you were walking?

6 A Yeah.

7 Q Okay. Now, what you told the police that day was that  
8 they turned towards your buddy's truck, right?

9 A Yeah.

10 Q Okay. Now, your buddy's truck is on this side of Linn  
11 Street?

12 A Yeah.

13 Q And if your buddy's truck's on this side of Linn Street, and  
14 they turn toward it, it meant they turned and went this way down  
15 Charleston, right?

16 A No.

17 Q No?

18 A This way.

19 Q Okay.

20 A On Charleston.

21 THE COURT: So when he says this way and you say this  
22 way, would you mind putting on the record --

23 MR. HAUSER: Absolutely.

24 THE COURT: Thank you.

25 BY MR. HAUSER:

1 Q So when I'm saying they turned towards your buddy's  
2 truck, that would mean they turned left?

3 A They went towards the -- Linn Lane towards Charleston,  
4 the -- towards Christie Land.

5 Q Remember, we know they went toward Charleston. I'm  
6 trying to determine where they went when they got to Charleston.  
7 You told the police --

8 A Towards Christie Lane.

9 Q Okay. Now, you told the police on October 1st, the day  
10 that it happened, that they turned in direction of your buddy's truck,  
11 right?

12 A Yeah. They turned that way, they turned towards the --  
13 Charleston.

14 Q Okay. Now, your buddy's truck is on the left side of the  
15 street if you're going south, isn't it?

16 A My buddy's car was going towards this way. The other  
17 car was going the other way.

18 Q All right. Let's talk a little bit about the person that you  
19 saw that day. You said that it was the same person you saw on  
20 both days, right?

21 A Yep.

22 Q All right. That person was 5-11 or 5-8?

23 A Yeah.

24 Q All right. Wear a red shirt?

25 A Yep.

1 Q Mexican guy?

2 A Yeah.

3 Q No facial hair?

4 A I didn't really try to look at him like that. I was looking in  
5 his eyes.

6 Q Okay. What color were his eyes?

7 A Blue.

8 Q All right. What color was his facial hair?

9 A I really was not looking at his facial hair and stuff like that.  
10 He was far for me to --

11 Q But, Mr. Wood --

12 A -- see his face.

13 Q We talked a little bit about the statement --

14 A No hair.

15 Q -- you made to the cops, right?

16 A Yeah.

17 Q Now, you didn't tell the cops that you didn't get a look at  
18 the guy, did you?

19 A I got a look at him a little bit, a glance.

20 Q Okay. And when the cops asked if you had -- if he had any  
21 facial hair, you didn't say I don't know, did you?

22 A I told them I didn't know, because I really didn't know.

23 Q Are you sure you told them you didn't know?

24 A No facial hair, he didn't have.

25 Q Say that again?

1 A He didn't have no facial hair.

2 Q That he didn't have any facial hair --

3 A He had --

4 Q -- that's what you told the police on October 1st?

5 A Shaved mustache.

6 Q He had a mustache?

7 A Shaved face.

8 THE COURT: A shaved face.

9 BY MR. HAUSER:

10 Q Okay. A shaved face. Right. No facial hair is what the  
11 shooter had?

12 A Uh-huh.

13 Q And they asked you -- is that a yes?

14 A Yes.

15 Q Okay. Sorry, it's a natural reaction to say uh-huh. Had the  
16 same problem with the last witness, not a big deal. We have to say  
17 yes just so it records.

18 A Okay.

19 Q They also asked you for other descriptive information,  
20 right?

21 A Yeah.

22 Q The police did?

23 A Yeah.

24 Q And you were trying to be as helpful as possible?

25 A Yeah.

1 Q So you told them he was a Mexican dude, right?

2 A Yeah.

3 Q Told them he was 5-11 or 5-8?

4 A Yeah.

5 Q No facial hair?

6 A Uh-huh.

7 Q Is that a yes?

8 A Yes.

9 Q No worries.

10 And no tattoos?

11 A No tattoos.

12 Q All right.

13 A I didn't really realize no tattoos.

14 Q Well, hold on. Now, you didn't say, I didn't see if there

15 were any tattoos. You told the police on October 1st that the

16 person who shot you had no tattoos, didn't you?

17 A I would see no tattoos, because I tried to get out of the

18 way.

19 Q So if the police asked you if you saw any tattoos and you

20 said no, that is what happened, right?

21 A Yeah. I say no, because I didn't really look at the tattoos

22 as I tried to get in the house.

23 Q All right. You remember giving that interview to the

24 police, don't you?

25 A Yeah.

1 Q All right. Where you were trying to be truthful?  
2 A Uh-huh.  
3 Q Is that a yes?  
4 A Yes.  
5 Q Sorry. I'm going to give you an -- apologize, nothing  
6 personal. You were trying to be accurate, right?  
7 A Yes.  
8 Q You were trying to be as helpful as you could?  
9 A Yes.  
10 Q Because you wanted the guys to get caught?  
11 A Yes.  
12 Q All right. And so you were certain about your answers  
13 when you gave them to --  
14 MR. HAUSER: Your Honor, may I approach?  
15 THE COURT: Yeah.  
16 BY MR. HAUSER:  
17 Q Mr. Woods, I'm going to show you the statement that you  
18 made to the police on that day. Okay?  
19 A Okay.  
20 Q All right. And I'm going to not stand over you like that,  
21 because that's weird.  
22 A Uh-huh.  
23 Q Okay. So this is your name at the top, right?  
24 A Uh-huh.  
25 Q Do you know -- is that a yes?

1           A     Yes.

2           Q     No worries, happens all the time.

3                   All right. So this is the statement you gave to the police,

4 right?

5           A     Yes.

6           Q     You were talking to Officer Marin?

7           A     Yeah.

8           Q     Okay. So read along silently with me as I read aloud, on

9 page 4.

10          A     I don't like to read.

11          Q     What's that?

12          A     I don't like to read.

13          Q     That's okay. I'll read it for you and you can just tell me

14 that I read it correctly, okay?

15          A     Okay.

16          Q     All right.

17          A     Or not.

18          Q     We're looking at page 4 on this statement.

19                   Question: Did they have any facial hair?

20                   Or, excuse me.

21                   Did he have any facial hair?

22                   Answer: No, they...

23                   Question: Did he have any tattoos?

24                   Answer: No.

25                   Did I read that correctly?



1           A     Yeah. No. Because I was not looking at that.

2           Q     All right. So you say no, because you weren't looking at  
3 that. But that's not what you told the police that day, right?

4           A     I was not sure I saw his tattoos or not.

5           Q     Let's talk about his tattoos.

6           A     I tried to get up and get out of the way.

7           Q     I understand.

8                   I'm going to show you what's already been admitted as  
9 Defense Exhibit D. I'll put it sideways, that's all right.

10                   You don't recognize that tattoos, do you?

11          A     No.

12          Q     No. But if you'd seen them, you would describe them,  
13 right?

14          A     I didn't really see no tattoos, because the person -- I didn't  
15 really see their arms, because I tried to get up and get out of the  
16 way. I only saw that gun.

17          Q     Mr. Woods, I understand. We know you were trying to get  
18 out of the way. I'm asking if you saw these tattoos on the person  
19 who shot you --

20          A     No.

21          Q     -- you would have told the police you saw them, right?

22          A     Yeah, if I saw them.

23          Q     All right. Let's look at Exhibit C. That's a lot of tattoos as  
24 well, right?

25          A     Yeah.

1 Q If you'd seen those tattoos, you would have told the police  
2 that you saw them, right?

3 A I really didn't look at nobody tattoos.

4 Q I understand, Mr. Woods. My question is just if you saw  
5 those tattoos --

6 A Yeah, I would saw them tattoos face to face, close-up, I  
7 was know what it was.

8 Q Right. You would tell the police, right?

9 A Yeah.

10 Q And it's pretty clear that this is not an arm with no tattoos  
11 on it, right?

12 A Yeah, you got it.

13 Q All right.

14 MR. HAUSER: Brief indulgence.

15 THE COURT: Sure.

16 BY MR. HAUSER:

17 Q All right. Mr. Woods, when you picked out that lineup,  
18 you said you were 95 percent sure, right?

19 A Yeah.

20 Q Not 100 percent sure?

21 A Yeah.

22 Q All right. So there was some room for doubt in your  
23 identification?

24 A Yeah.

25 Q So when you looked at that lineup, I'm going to show it to

1 you again, State's 203, not a lot of Mexican guys in that lineup, are  
2 there?

3 A No.

4 Q No. It's a lot of white guys, right?

5 A Yep.

6 Q All right.

7 A And the one I'd pick is the one in the --

8 Q Oh, hang tight, Mr. Woods. Don't worry, we're going to  
9 do more soon. And they're going to get to question you some  
10 more too. Okay?

11 All right. Mr. Woods, when the shooting occurred, you  
12 didn't call 911 right away, right?

13 A I didn't -- I was not the one calling 911.

14 Q Right. Someone else called 911?

15 A Yeah.

16 Q So you didn't give the initial description to the police of  
17 who did the shooting, right?

18 A The person that called the 911 was not outside.

19 Q Okay. Do you know who it was?

20 A But -- do I know who was the person that called 911?

21 Q Yeah.

22 A Yeah, I did.

23 Q Okay. Were they there?

24 A Yeah, they was there.

25 Q Okay.

1       A     They was not outside --

2       Q     Okay.

3       A     -- when the shooting was going on.

4       Q     Okay.

5       A     They was inside of the house.

6       Q     All right. You also described the shooter as bald that day,

7 right?

8       A     Yep.

9       Q     Shaved head?

10      A     Yep.

11      Q     No hair?

12      A     No hair.

13      Q     And when you say no hair, you're not talking short hair,

14 right?

15      A     I'm not --

16      Q     You're talking just no hair.

17      A     Shaved, like, a little shave, like the dude right there, a little

18 bit shaved off.

19      Q     Which dude right away?

20      A     Right there. A little bit off, more, a little bit.

21      Q     You looked at the officer in the corner?

22      A     Uh-huh.

23      Q     Okay. Little bit more off than that?

24      A     Uh-huh.

25      Q     Okay.

1 MR. HAUSER: Brief indulgence, Judge.

2 THE COURT: Yeah.

3 BY MR. HAUSER:

4 Q All right. Mr. Woods, you told us a few moments ago you  
5 were trying to get the color of the shooter's eyes, right?

6 A Uh-huh.

7 Q Is that a yes?

8 A Yes.

9 Q I promise I'm going to stop asking it as soon as I'm done  
10 asking questions. But just what I got to do. Okay?

11 So you were getting a good look at his face, right?

12 A No. His eyes I was looking at.

13 Q Well, the eyes are in the face, right?

14 A I was looking in the eyes only. I was not looking at facial  
15 and none of that other stuff.

16 Q That's pretty specific tunnel vision, Mr. Woods, to only see  
17 the eyes, right?

18 A If you was standing in front of a person by somebody that  
19 would -- that coming to you to do -- come up to you and ask you,  
20 Do you know any Shorty? Will you look at him around, look  
21 around, look at him like this and try to scope him out? No. I didn't  
22 try to scope him out.

23 Q Okay. But you got a good look at his eyes, right?

24 A Yeah.

25 Q Okay. So you didn't see any tattoos around his eyes,

1 then?

2 A No.

3 Q Okay. So if I show you --

4 A I didn't --

5 Q -- State's B --

6 A -- try to look at his face like that.

7 Q You didn't see any tattoos that looked like that on the

8 shooter's face, right?

9 A I didn't really look at him like that.

10 Q So that's a no, you didn't see any tattoos like that on the

11 shooter's face?

12 A No, I didn't really look at him like that.

13 Q Okay.

14 MR. HAUSER: One more brief indulgence, Judge.

15 THE COURT: Sure.

16 BY MR. HAUSER:

17 Q All right. Mr. Woods, you did see the gun that day, right?

18 A Yeah.

19 Q All right. What color was the gun?

20 A Silver.

21 Q Okay. So you saw the gun and the shooter's eyes, right?

22 A Uh-huh.

23 Q But nothing else?

24 A I really was trying to get out of the way, so.

25 Q I understand. So I'm just asking. Nothing else?

1           A     Nothing else.

2           Q     Okay. When the detective was questioning you, that was  
3 Detective Marin, right?

4           A     Uh-huh.

5           Q     Is that a yes?

6           A     Yes.

7           Q     You said that the shooter looks a little like Detective  
8 Marin?

9           A     To who?

10          Q     The questioning detective.

11          A     Who would look like him?

12          Q     Yeah.

13          A     No.

14                THE COURT: He's asking you to repeat the question.

15                MR. HAUSER: Oh, I'm sorry.

16                THE WITNESS: Repeat, please.

17 BY MR. HAUSER:

18          Q     You told the questioning detective that the shooter looked  
19 like the questioning detective, right?

20          A     No.

21          Q     Don't remember that?

22          A     No.

23                MR. HAUSER: One more brief indulgence, Judge.

24                You know what, Judge, I'm all set. Thank you.

25                THE COURT: Redirect?

1 MS. GOODMAN: Just briefly.

2 **REDIRECT EXAMINATION**

3 BY MS. GOODMAN:

4 Q Okay, DeAndre, you talked a lot about you initially thought  
5 that that man was Hispanic?

6 A Yeah.

7 Q Okay. That's what you told the cops?

8 A Yeah.

9 Q Okay. Let's talk about the 911 call. Would that 911 call,  
10 the information, that person that called, was that coming from you?

11 A The person was calling 911 was not me calling.

12 Q No, I know. But the information that she was getting, was  
13 that from you?

14 A Yeah.

15 Q Okay. So that's your description as well, right?

16 A Yeah.

17 Q No surprise that it was --

18 A Yeah.

19 Q -- Hispanic, because that's what you thought at the time?

20 A At that time.

21 Q Let's talk about the travel -- the direction of travel. Okay.  
22 So I scanned the voluntary statement. Okay. I scanned the  
23 voluntary statement just to ensure that I wasn't missing anything.  
24 And I don't think I was. Okay.

25 You told -- Mr. Hauser asked you a bunch of questions on



1 when you were describing that the car was facing the truck, the --  
2 okay --

3 A It was the opposite.

4 Q Do you recall that section of the -- Mr. Hauser's  
5 questioning, DeAndre?

6 A Like, it -- the car was facing towards Charleston, like,  
7 going towards Charleston.

8 Q Okay. So I'm going to --

9 MS. GOODMAN: And, Your Honor, permission to  
10 approach?

11 THE COURT: Yeah.

12 BY MS. GOODMAN:

13 Q Okay. I'm going to just show you, and you don't have to  
14 read it out loud, but just look at this statement here about this  
15 whole --

16 A [Witness complies.] Yeah.

17 Q Okay. And then just keep reading.

18 A [Witness complies.]

19 Q Okay. You good?

20 A Uh-huh.

21 Q Okay. DeAndre, you just read a little part of the voluntary  
22 statement that was talking about the car thief and the truck and it  
23 was going east. Okay. So what you were talking about in that  
24 statement, was it the direction of the car travel or how it was  
25 parked?

1       A     Like, the car was parked, like, the truck was like this, and  
2 the car was like this, parked like that.

3       Q     Okay. So it looks as though --

4       A     The parking was like this --

5       MS. GOODMAN: Your Honor, this -- oh, just one second.

6       It looks as though the witness is indicating his one hand --

7       THE WITNESS: In a car, and then a truck.

8       MS. GOODMAN: -- perpendicular with the Toyota --

9       THE WITNESS: The way that my sitting -- where I was  
10 sitting at, how I saw it, the way it was set up, like, you see where  
11 your little white thing that --

12       THE COURT: Where what?

13       THE WITNESS: That white thing, the white dot on  
14 computer.

15       THE COURT: On mine?

16       MS. GOODMAN: And your --

17       THE WITNESS: On your desk.

18 BY MS. GOODMAN:

19       Q     And, DeAndre, are we talking about this crystal thing?

20       A     Yeah, the crystal.

21       Q     Okay.

22       A     That's how the car was parked, like this.

23       THE COURT: Why don't --

24       MS. GOODMAN: Oh, and --

25       THE COURT: Okay. Why don't we just have him --

1 THE WITNESS: And the truck was like this.  
2 THE COURT: -- draw it, so we can --  
3 MS. GOODMAN: Okay.  
4 THE COURT: Can you draw it? Would that be easier?  
5 THE WITNESS: Yeah.  
6 THE COURT: All right. So --  
7 MS. GOODMAN: I have a yellow piece of paper.  
8 THE COURT: All right. So let's just have you draw it,  
9 because --  
10 THE WITNESS: Doing it --  
11 THE COURT: -- it'll be a little bit easier. Okay?  
12 THE WITNESS: Yeah. It's complicated saying it like that.  
13 THE COURT: Okay.  
14 MS. GOODMAN: All right.  
15 THE COURT: So why don't you draw it and help us  
16 explain it.  
17 THE WITNESS: Okay. This is the truck.  
18 MS. GOODMAN: I'm going to -- okay.  
19 THE WITNESS: This is the truck right here. The car was  
20 parked right there.  
21 MS. GOODMAN: Okay. I'm going to just publish this.  
22 Okay? Thank you. And, Your Honor, I'm just going to --  
23 THE WITNESS: And that's the front end of the car.  
24 MS. GOODMAN: I'm going to show Defense counsel.  
25 And the publish for the jury [indiscernible]. Okay.

1 BY MS. GOODMAN:

2 Q So I'm pointing at this, where you've described as the  
3 truck, the white truck that was in the driveway?

4 A Yeah. And the mailbox. I forgot to put the mailbox up  
5 there.

6 Q That's all right. And then this is the -- this is that Toyota?

7 A Yeah.

8 Q So that whole line of questioning that you were going  
9 through with the detectives was talking about how the car was  
10 parked?

11 A Yeah.

12 Q Is that correct? It's not the direction of where the car  
13 went?

14 A Yeah.

15 Q Okay. Now, when you told the detectives when they --  
16 they asked you what direction the car went, where did -- what did  
17 you say?

18 A Towards Charleston.

19 Q All right. Towards Charleston. So you said that it was  
20 going this way towards Charleston, correct?

21 A Yeah. And --

22 Q Okay. Did you ever recall telling the detectives at all in  
23 this voluntary statement that it turned one direction or the other?

24 A I didn't know which way it went. Like, I don't know these  
25 areas like that. So I told them towards Christie Lane.

1 Q Okay. So towards Christie, which is this direction here.

2 A Yeah.

3 MS. GOODMAN: And I'm pointing for the record on my  
4 hand -- my pen towards Christie.

5 THE COURT: So west.

6 MS. GOODMAN: West.

7 BY MS. GOODMAN:

8 Q Okay. DeAndre, so let's talk a little bit more about --

9 A But they passed Christie Lane, I don't know what they did.

10 Q Okay.

11 A They just turned on Charleston towards that way.

12 Q That's okay. When you first gave the statement to the  
13 detectives, that statement there, do you -- you don't recall saying  
14 anything about that the shooter looked like the detective; is that  
15 correct?

16 A No.

17 Q Is it because it's not in the voluntary statement?

18 A No.

19 Q Okay. DeAndre, we're clear that you didn't see tattoos at  
20 the time?

21 A No, I didn't see no tattoos at that time.

22 Q Okay.

23 A I was trying to get up and get out of the --

24 Q When you see this guy right here, defendant in this case,  
25 is that guy, you're sure, the shooter in this case?

1           A     Yeah, that's the dude.

2           Q     Okay. And you say that, okay, he's 95 percent sure on the  
3 photo lineup. Would there have been something -- showing you  
4 that picture again, State's Exhibit 203 -- would be -- would there be  
5 something that would make you 100 percent sure?

6           A     If his hair was shaved a little bit off.

7           Q     Okay.

8           A     Lighter, you know.

9           Q     So you see in that -- I'm sorry. You see in that picture that  
10 there's tattoos in that picture, correct?

11          A     Yeah.

12          Q     But you still identified him?

13          A     Yeah.

14          Q     Okay. So tattoos, no tattoos, you know that's the guy?

15          A     Yeah.

16          Q     Okay. Hispanic or not Hispanic, you know that's the guy?

17          A     Yeah.

18          Q     Okay.

19               MS. GOODMAN: No further questions, Your Honor.

20               THE COURT: Recross.

21               MR. HAUSER: Yes, Your Honor. Briefly.

22                               **RECROSS-EXAMINATION**

23           BY MR. HAUSER:

24           Q     Mr. Woods, I'm going to show you again State's 203,  
25 okay? All right. Number 5 there?

1 A Yeah.

2 Q Is the one you identified.

3 A Uh-huh.

4 Q That's the person you've identified in this shooting, right?

5 A Yeah.

6 Q The person you identified as Mexican, right?

7 A Yep.

8 Q The person you identified as having no tattoos, right?

9 A Yep.

10 Q The person you identified as being 19 or 20 years old?

11 A No.

12 Q You never said they were 19 or 20 years old?

13 A He was -- that's the second person.

14 Q Which second person?

15 A He came up to me the day before.

16 Q Okay. So he didn't come up to you the day before?

17 A He did too.

18 Q Okay. So the second person's 19 to 20?

19 A Yeah.

20 Q All right. The first person didn't give an age?

21 A The first person, he -- that's the one that came up to me.

22 He was the one that came right behind him. He was in back of him,

23 asking -- he was doing this, trying to say, Do you want me to kill

24 him?

25 Q Okay. So you were able to ascertain that he was in --

1 excuse me.

2 You were able to guess that he was about 19 or 20 years  
3 old --

4 A No.

5 Q -- in spite -- hold on. Let me finish the question.

6 You told the police that this guy was between 19 and 20  
7 years old, right? You're saying it's the second guy, right?

8 A The second guy was not 19 and 20 years old. The -- he  
9 was a little older and the first one was 19 and 20 years old.

10 Q Okay. Which one is Ted? You're saying he's one of these  
11 guys. Was he 19 or 20, or was he older?

12 A He looks older.

13 Q Okay. So you identified one of the gentlemen there as 19  
14 or 20 years old.

15 A Yeah.

16 Q And you were able to do that, despite not looking at him?

17 A Not really looking at him like that.

18 Q Okay. Because you're not giving us much of a range there  
19 with only a year, right?

20 A I told you that the second one looked like he was older.

21 Q Okay.

22 A And I really was not looking at him like that. I was looking  
23 in his eyes only.

24 Q Okay.

25 A Like I'm looking at yours.



1 Q Okay. Now, can you tell the age of a person by looking in  
2 their eyes?

3 A Not really.

4 Q Okay.

5 A You can't tell. But you would tell how his actions was.

6 Q Okay.

7 MR. HAUSER: Brief indulgence, Judge.

8 THE COURT: Yep.

9 MR. HAUSER: Nothing further at this time.

10 THE COURT: Recross -- or redirect?

11 MS. GOODMAN: I'm sorry, Your Honor. And it's just for  
12 clarification purposes.

13 **FURTHER REDIRECT EXAMINATION**

14 BY MS. GOODMAN:

15 Q Two people, correct?

16 A Yep.

17 Q Okay. First person --

18 A 19 and 20.

19 Q Okay. Not --

20 A Not that guy.

21 Q Not that guy.

22 MS. GOODMAN: And when I say it, Your Honor, that  
23 guy --

24 THE WITNESS: Not the --

25 MS. GOODMAN: -- was the defendant.

1 THE WITNESS: -- defendant right there, that's standing  
2 now with the blue tie.

3 BY MS. GOODMAN:

4 Q Okay. So we're talking about September 30th. Two  
5 males, including the defendant, came up to you. You described the  
6 first one differently than the second one, who is the defendant,  
7 correct?

8 A Yep.

9 Q Okay. The first one you described as 19 to 20?

10 A Yeah.

11 Q So younger?

12 A Yeah.

13 Q And you described him as shorter?

14 A Yeah, shorter and skinnier.

15 Q And skinnier. The second one, who you identified as the  
16 defendant --

17 A It was stocky --

18 Q -- you described --

19 A -- more stockier and taller.

20 Q Okay. So I just wanted to clarify the two people that we  
21 were talking about. Okay?

22 A You got different people.

23 MS. GOODMAN: Thank you, Your Honor.

24 THE WITNESS: Two different people.

25 THE COURT: Anything based on that?

1 MR. HAUSER: No follow-up, Judge. Thank you.

2 THE COURT: Ladies and gentlemen, any questions from  
3 the jury?

4 [Bench conference transcribed as follows.]

5 THE COURT: So you guys have got to tell him to  
6 [indiscernible] the jury.

7 MR. HAUSER: Two?

8 THE COURT: Yeah. Because he's going -- it's okay. He's  
9 going [indiscernible] like if a good point comes up, he looks over at  
10 them, and he's, like, if a bad thing happen, he shaves their head --  
11 he shaved his head.

12 MR. HAUSER: Pass them all.

13 THE COURT: Just let him know, like, he can't look -- no  
14 communicating like that.

15 MR. HAUSER: Right.

16 MR. SHAYGAN-FATEMI: I like that.

17 MR. HAUSER: Uh-huh.

18 MR. SHAYGAN-FATEMI: Yep. That's fine.

19 I'm sorry, could I see that last one?

20 THE COURT: Yep.

21 MS. GOODMAN: I don't know if --

22 MR. LEXIS: Judge, after this, I'm going to recall  
23 Mr. Ramos.

24 THE COURT: Okay. Is that it for today?

25 MR. LEXIS: Yes.

1 THE COURT: Okay.

2 MR. SHAYGAN-FATEMI: Okay.

3 THE COURT: Good on all?

4 MR. SHAYGAN-FATEMI: Yeah.

5 THE COURT: Okay.

6 [End of bench conference.]

7 THE COURT: All right. Mr. Woods, we have a few

8 questions for you. All right.

9 Did the man with the red shirt have a long-sleeve shirt on

10 under the red shirt or were his arms bare?

11 THE WITNESS: His arms was bare.

12 THE COURT: His arms were bare was the answer.

13 Was the white truck pointing towards Christie Lane while

14 parked in the driveway?

15 THE WITNESS: It was towards Linn Lane.

16 THE COURT: Towards what?

17 THE WITNESS: The truck was towards -- turning, like, in

18 the middle, like --

19 THE COURT: So towards the street?

20 THE WITNESS: Uh-huh.

21 THE COURT: Is that a yes?

22 THE WITNESS: Yes.

23 THE COURT: And did the car turn in that same direction

24 when it made it to Charleston?

25 THE WITNESS: It --

1 THE COURT: So did the car turn towards the Christie Lane  
2 direction?

3 THE WITNESS: Yeah.

4 THE COURT: Is that a yes?

5 THE WITNESS: Yes.

6 THE COURT: Yes. And then on September 30th, did the  
7 white man wear long sleeves or short sleeves to see the tattoos on  
8 the arms?

9 THE WITNESS: Short sleeve, and I didn't really look at his  
10 arms like that.

11 THE COURT: Short sleeves and he didn't really look at his  
12 arms like that, was the answer.

13 State, follow-up?

14 MS. GOODMAN: No, Your Honor.

15 THE COURT: Defense, follow-up?

16 MR. HAUSER: Yes, Your Honor.

17 **FURTHER EXAMINATION**

18 BY MR. HAUSER:

19 Q Mr. Woods, just to be clear, the question was about the  
20 white man on September 30th. At no time in this case did you ever  
21 describe the shooter as white?

22 A No.

23 MR. HAUSER: I have nothing further.

24 THE WITNESS: Do --

25 THE COURT: So no. The answer was no, he never did

1 that.

2 MR. HAUSER: No, he never did that. That was my  
3 understanding.

4 THE COURT: Right?

5 THE WITNESS: Like, okay, I did --

6 THE COURT: No, I'm sorry. I just have to --

7 THE WITNESS: Till now --

8 MR. HAUSER: I can clarify it if you want.

9 THE COURT: Okay.

10 THE WITNESS: You can, you'll clarify?

11 BY MR. HAUSER:

12 Q Let me clear that one up, Mr. Woods.

13 You never told the police the shooter was white in this  
14 case at any time?

15 A To -- I just found out.

16 Q Okay. So the --

17 A Just now, during the --

18 Q That's a no to my question.

19 A No.

20 Q At no point, at any time, did you tell the police the shooter  
21 was white?

22 A Like, no.

23 Q No. Okay. Thank you very much.

24 THE COURT: Any follow-up, jurors? All right.

25 Mr. Woods, thank you so much for your testimony. You

1 are excused from your subpoena. Please do not share any of your  
2 testimony with anyone else involved in the case. Okay, sir?

3 THE WITNESS: I won't.

4 THE COURT: All right. Thank you.

5 And then my marshal has your stuff. So he'll get those to  
6 you when you exit.

7 THE WITNESS: Bye.

8 THE COURT: Thank you.

9 State?

10 MR. LEXIS: The State recalls Bernardo Ramos.

11 **GENARO RAMOS,**

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

14 THE CLERK: Thank you. You may be seated. Please state  
15 your complete name, spelling both your first and last name for the  
16 record.

17 THE WITNESS: G-E-N-A-R-O, and then R-A-M-O-S.

18 THE CLERK: And your name?

19 THE WITNESS: Genaro Ramos.

20 THE CLERK: Thank you.

21 **DIRECT EXAMINATION**

22 BY MR. LEXIS:

23 Q Mr. Ramos, did you just testify a little bit ago?

24 A Yes.

25 Q Okay. When you walked out the door, did I follow you

1 and basically tell you you were released from your subpoena and  
2 you could go?

3 A You released me and then you say I can go, yeah.

4 Q Did you then indicate to me that you were nervous?

5 A Yes.

6 Q Why did you indicate that to me?

7 A Because this is my first time.

8 Q Okay. Particularly, why were you nervous and what made  
9 you tell me what you told me?

10 A The guy that I saw is the guy that I was going to point  
11 him, that that was the guy that I saw coming out of the car.

12 MR. SHAYGAN-FATEMI: Your Honor, we're going to  
13 object to that. May we approach?

14 THE COURT: Sure.

15 [Bench conference transcribed as follows.]

16 MR. SHAYGAN-FATEMI: It's highly improper. The guy  
17 takes the stand, is staring at the defendant for minutes on the stand.  
18 He doesn't identify him. He gets off the stand. Chad goes back  
19 outside, talks to him, and then comes back in side. Now there's a  
20 magical identification. We're going to ask the Court to strike the ID.  
21 We think it's highly improper that he gets recalled after staring at  
22 the defendant this entire time and then come and say, Oh, now I  
23 identify him.

24 MR. LEXIS: The nature of this case is a [indiscernible]  
25 case. We are well aware of the facts, Your Honor. You're well



1 aware of the previous testimony from other witnesses on what the  
2 nature of this is. There's nothing objectionable about it, it's highly  
3 relevant. If they want to cross him on -- if they think I did anything  
4 improper, go ahead. I did exactly what happened. I went outside, I  
5 released him, I said, You're good to go. He told me he was  
6 extremely nervous and he wanted to identify the man in court that  
7 he -- he got scared.

8 THE COURT: So, I mean, it's -- the issue here, as I  
9 understand why you objected. But legally, there's no reason why  
10 this can't come in now. Is it definite --

11 MR. SHAYGAN-FATEMI: Well, let's --

12 THE COURT: -- their cross-examination.

13 MR. SHAYGAN-FATEMI: Let's start with there's zero  
14 discovery given to the defense that says that he has identified him  
15 anywhere. So we have never even been given any information that  
16 this man is able to identify our client. He comes in here, he takes  
17 the stand the first time. He's still unable to identify him. He -- I  
18 mean, he doesn't even ask him, Oh, is this the guy?

19 And he gets off the stand, he's released, they go outside,  
20 and then he comes back inside and now I can identify him. I think  
21 it's highly improper.

22 THE COURT: I understand what you're saying, but that's  
23 not a legal objection. And the point is, is that's all great for  
24 cross-examination. I mean, right? It's, like, you've never pointed  
25 him out before he sat here for however long, looked at him, and

1 now magically you can appear and say it's him. I mean, that's all  
2 good for cross-examination.

3 But in regards to whether or not it's inadmissible, it's jut  
4 not.

5 MR. SHAYGAN-FATEMI: A moment of indulgence.

6 THE COURT: Sure.

7 MR. SHAYGAN-FATEMI: I think we're going to move for a  
8 mistrial and we can make a record about it and Your Honor can  
9 make a ruling.

10 THE COURT: Okay. Why?

11 MR. SHAYGAN-FATEMI: We think it's, you know,  
12 basically, it's going to repetitive as to what I said. But --

13 THE COURT: Okay. So for those same basic --

14 MR. SHAYGAN-FATEMI: For the same basic reasons,  
15 we're going to move for a mistrial.

16 THE COURT: Okay. State?

17 MR. LEXIS: Again, Judge, it's fair cross-examination. I'm  
18 telling the Court exactly what happened as far as what occurred in  
19 this case is I went out to release him from his subpoena. I said,  
20 You're good to go. He then told me he was extremely nervous. I  
21 said Why? He says, Because I saw the guy in court, that was the  
22 guy.

23 THE COURT: Okay. So I understand the objection, I  
24 understand the Motion for a Mistrial. The Motion for Mistrial is  
25 denied. I think everything is complete fair game for

1 cross-examination. But I don't see -- I don't think that the -- I don't  
2 think that Defense is saying and I don't think that the State did  
3 anything improper. I think what the defense is saying is, like, look,  
4 this guy went outside and now he's looked at the guy forever  
5 during court, and then he walks back in and can ID him.

6 That being said, I don't see where a mistrial is appropriate  
7 or whether this is inadmissible. So I'll allow the cross-examination  
8 to go the full gamut. But at this point in time, I'm letting the  
9 testimony proceed.

10 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

11 THE COURT: Thank you.

12 [End of bench conference.]

13 BY MR. LEXIS:

14 Q Sir, you pointed to a man earlier that we stated was the  
15 man that you saw on the day in question. Can you point to him  
16 again and identify for me a article of clothing he's wearing?

17 A [Witness points.]

18 Q Okay. What -- give me an article of clothing he's wearing,  
19 sir.

20 A Red shirt.

21 Q Not on the day of.

22 A Oh, okay.

23 Q Right now, what is he wearing?

24 A Tie and a blue shirt.

25 MR. LEXIS: Your Honor, let the record reflect the witness

1 has identified the defendant.

2 THE COURT: It shall.

3 BY MR. LEXIS:

4 Q Sir, just to clarify some things, the police never showed  
5 you a picture of the defendant?

6 A The police? No, they never did.

7 Q Okay. The prosecutors, myself, Ms. Rose, never showed  
8 you a picture of the defendant, correct?

9 A No.

10 Q Nobody showed you a picture of the defendant?

11 A No, nobody.

12 Q Have you ever met the defendant before?

13 A No.

14 Q Okay. And the person you're -- again, you're talking about  
15 as the defendant is the person you saw in that red shirt --

16 A Yes.

17 Q -- with your earlier testimony, park that Toyota Corolla  
18 and then walk up the street?

19 A Yeah.

20 MR. LEXIS: Nothing further, Your Honor.

21 THE COURT: Mr. Hauser?

22 MR. HAUSER: Yes, Your Honor.

23 **CROSS-EXAMINATION**

24 BY MR. HAUSER:

25 Q Afternoon again, sir.

1           A     Good afternoon.

2           Q     Did you speak to the district attorney before you testified  
3 today?

4           A     No.

5           THE COURT: Sorry, which time?

6           MR. HAUSER: The first time.

7           THE WITNESS: No.

8 BY MR. HAUSER:

9           Q     You didn't speak to anybody? How did you know what  
10 courtroom we were in?

11          A     I was just coming as a witness. I did -- I only speak about  
12 that.

13          Q     Okay. So you knew where to go, but you didn't talk to  
14 anybody beforehand?

15          A     No.

16          Q     Okay.

17          THE COURT: Okay. I apologize, Mr. Hauser. I need to  
18 interrupt.

19          MR. HAUSER: No, I'm all right.

20          THE COURT: Are we talking about did he speak to  
21 anybody today or just ever or can I just get a timeframe, so I  
22 understand what's going on?

23          MR. HAUSER: That's exactly where we're going, Judge.

24          THE COURT: Okay.

25 BY MR. HAUSER:

1 Q So you didn't speak to anybody today before you testified,  
2 right?

3 A Uh-huh.

4 Q Is that a yes?

5 A I didn't want to be here, honestly, you know.

6 Q Okay.

7 A So I was just here brought by -- as a witness.

8 Q Okay. So someone, obviously, came to your house with a  
9 subpoena, right?

10 A No.

11 Q No?

12 A Not to my house.

13 Q To your work?

14 A No.

15 Q How did you even know about court today?

16 A Because I got a citation.

17 Q You got a citation?

18 A Uh-huh.

19 Q What kind of citation?

20 A When the officer, when I spoke that day when the  
21 incident --

22 Q Okay.

23 A Uh-huh.

24 Q So you found out about today's court date the very first  
25 day that you spoke to the officers?

1           A     No.

2           Q     Okay. When did you find out you were supposed to be

3 here today?

4           A     Today.

5           Q     Okay. How did you find out?

6           A     They send me a -- the courtroom and everything, citation.

7           Q     Right. Right.

8           A     Uh-huh.

9           Q     How did you even know to come to this building today?

10          A     Because the officer.

11          Q     Okay. What officer, do you know?

12          A     No.

13          Q     When did you speak to that officer?

14          A     Last night.

15          Q     Last night? So an officer came to your house last night?

16          A     No. Nobody came to my house.

17          Q     Okay. Where did you speak to that officer?

18          A     My phone.

19          Q     By phone?

20          A     Uh-huh.

21          Q     Okay. Is that a yes?

22          A     Yes.

23          Q     Sorry. Again, it's natural, everybody does it.

24                When you spoke to that officer, did you say you

25 remembered the person?

1 A No, I never say that.

2 Q Okay. So you didn't give any indication --

3 A No.

4 Q -- you knew who this person was?

5 A Uh-uh.

6 Q Is that a no?

7 A No.

8 MR. HAUSER: Brief indulgence, Your Honor.

9 THE COURT: Sure.

10 BY MR. HAUSER:

11 Q Sir, you wouldn't mistake myself for Mr. Donko, would

12 you?

13 A No.

14 Q You wouldn't mistake Mr. Shaygan for Mr. Donko?

15 A Can I have a break?

16 THE COURT: We're -- I think we're almost done.

17 MR. HAUSER: We're almost done.

18 THE WITNESS: Okay.

19 MR. HAUSER: I don't have very many more questions.

20 BY MR. HAUSER:

21 Q You would never confuse the gentleman sitting here --

22 A Uh-huh.

23 Q -- for the gentleman sitting here, right?

24 A No, I would never.

25 Q He looks different than the two of us, right?



1           A     Yes. Yes, yes.

2           Q     So if you're looking at this table, looking for the guy who  
3 looks most like that guy, you're obviously going to pick the guy --

4           A     Point to him.

5           Q     -- all the way over here?

6           A     Yeah.

7           Q     Right. Did you approach Mr. Lexis or did he approach  
8 you?

9                   THE COURT: After?

10          BY MR. HAUSER:

11          Q     After you testified the first time, excuse me.

12          A     No, I approached to him.

13          Q     Okay.

14                  MR. HAUSER: I have nothing further, Judge.

15                  THE COURT: Okay. Mr. Lexis?

16                  MR. LEXIS: Nothing further, Judge.

17                  THE COURT: Ladies and gentlemen, anything from you?  
18 Parties approach.

19                         [Bench conference transcribed as follows.]

20                  MR. HAUSER: Technically outside the scope. But if it had  
21 been the first time, I wouldn't say that.

22                  THE COURT: So are you objecting?

23                  MR. HAUSER: Yeah, object to outside the scope. But  
24 that's -- you know, if they wanted to know that, they could have  
25 covered it the first time. But that's all.

1 MR. SHAYGAN-FATEMI: [Indiscernible.]  
2 MR. HAUSER: I don't know that I have a legal ground to  
3 stand on there, but I wanted to object.  
4 THE COURT: All right. Well, I'm going to put that you  
5 objected, but the objection is overruled.  
6 MR. HAUSER: There we go.  
7 THE COURT: And I'm going to ask it.  
8 MR. HAUSER: Thank you, Judge.  
9 [End of bench conference.]  
10 THE COURT: All right. Sir, question for you. When the  
11 car was speeding, did it drive past your house?  
12 THE WITNESS: Yeah, he was passing my mom's house.  
13 THE COURT: Past your mother's house.  
14 THE WITNESS: Yeah.  
15 THE COURT: Okay. Any follow-up to that?  
16 **FURTHER EXAMINATION**  
17 BY MR. LEXIS:  
18 Q State's 7, again, sir, your mom's house, 5675 Big Sea?  
19 A No.  
20 THE COURT: No.  
21 BY MR. LEXIS:  
22 Q Or, sorry. I'm sorry.  
23 A 5617 White Cap.  
24 MS. GOODMAN: Can't see it, Chad.  
25 THE COURT: Mr. Lexis, your head is in the way.

1 MR. LEXIS: I'm sorry.

2 THE COURT: It's okay.

3 MR. LEXIS: I'm sorry.

4 BY MR. LEXIS:

5 Q Tell me again your mom's address.

6 A 5617 White Cap Street.

7 Q All right. So --

8 A Right here.

9 Q That blue dot here, sir?

10 A Yeah.

11 Q Correct?

12 A Yes.

13 Q Okay. And tell me again with an arrow, go ahead and  
14 click on that red marker thing at the bottom, so you could draw, and  
15 point an arrow in the direction of where that car was driving?

16 A It was driving here, this corner, and then, like I say, he was  
17 drop off here.

18 Q Okay. So right past your mom's house --

19 A Yeah.

20 Q -- then stopped over there where the Toyota Corolla --

21 A Across to --

22 Q -- in any case [indiscernible] and north up the street?

23 A Yes.

24 MR. LEXIS: Nothing further.

25 THE COURT: Follow-up cross?

1 MR. HAUSER: No, thank you, Judge.  
2 THE COURT: Any other questions from the jurors?  
3 All right. Sir, thank you so much again for your  
4 testimony. You are excused.  
5 THE WITNESS: Thank you.  
6 MR. LEXIS: Judge, might we approach?  
7 THE COURT: Yep.  
8 [Bench conference transcribed as follows.]  
9 MR. LEXIS: Judge, that's it for today. We have potentially  
10 another witness and potentially another cop tomorrow. But we're  
11 going to be done by the morning.  
12 THE COURT: Okay.  
13 MR. HAUSER: Sounds good.  
14 THE COURT: All right. So --  
15 MR. HAUSER: I'm not --  
16 THE COURT: -- I have a [indiscernible] habeas corpus  
17 hearing at Room 9. They tell me it's only going to be an hour. But  
18 I'm going to give them a buffer, because I don't feel like anyone  
19 ever is right on the time.  
20 MR. HAUSER: Right.  
21 THE COURT: So we'll start up at 10:30.  
22 MR. HAUSER: Okay, cool.  
23 THE COURT: Okay?  
24 MR. HAUSER: Sounds good.  
25 MR. LEXIS: And when did you want to go over jury

1 instructions, Judge?

2 THE COURT: Do you guys think we'll close tomorrow?

3 MR. LEXIS: Oh, yeah.

4 MR. HAUSER: I don't see any reason we would -- I don't  
5 think we're calling anybody. I mean God forbid I have to put a  
6 witness up there at this point.

7 THE COURT: God forbid what?

8 MR. HAUSER: A witness that might testify is him, and I  
9 would like that to not happen.

10 MR. SHAYGAN-FATEMI: And it [indiscernible].

11 MR. HAUSER: We'd still --

12 MR. LEXIS: My rebuttal witness would be the -- a cop and  
13 the stolen vehicle [indiscernible].

14 THE COURT: So how long will it take on -- I haven't read  
15 through the instructions yet. Are -- is there going to be a lot of  
16 contention?

17 MR. SHAYGAN-FATEMI: I would imagine not. We just  
18 had a very basic proposed. Probably a few we'll anticipate them  
19 objecting to. And I think Your Honor makes a couple of quick  
20 rulings on them [indiscernible].

21 THE COURT: So why don't we come in at 10:30 and  
22 [indiscernible]?

23 MR. HAUSER: That's fine.

24 THE COURT: And then -- hold on. So I think -- okay.  
25 Here. We can do it [indiscernible]. I hate when [indiscernible] if

1 you only have a little bit to do, because then it's so awkward to  
2 break it late. Because if you only have two witnesses, then --

3 MR. HAUSER: Break at noon.

4 THE COURT: -- like, 11:45, right, then there has to be a  
5 witness for 45 minutes. So I'm thinking we've been running  
6 at 12:30, we have them eat lunch already, and then go --

7 MR. HAUSER: And just plow through it in the afternoon?

8 THE COURT: What do you guys think about that?

9 MR. HAUSER: And us meet early and do the instructions?

10 THE COURT: Yeah.

11 MR. HAUSER: Think that's bad?

12 MR. SHAYGAN-FATEMI: I don't care.

13 MR. HAUSER: And we can just get right through it.

14 THE COURT: Yeah.

15 MR. SHAYGAN-FATEMI: And we just heard all that --

16 MR. HAUSER: 12:30.

17 THE COURT: No, 12:30. Yeah.

18 MR. SHAYGAN-FATEMI: 12:30.

19 THE COURT: And you guys be here at 10:30 for jury  
20 instructions.

21 MR. SHAYGAN-FATEMI: Okay.

22 MR. HAUSER: Yeah.

23 THE COURT: All right. Sounds good.

24 MR. HAUSER: Sounds good.

25 THE COURT: Thanks, guys.

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MR. HAUSER: Thanks, Judge.

[End of bench conference.]

THE COURT: All right, you guys, it looks like we potentially are going to finish this case tomorrow. So I'm going to do some morning calendar, and then the parties, we're going to set up some jury instructions. And then we'll continue the case. So you guys don't need to be here tomorrow until 12:30. If you could, please come already have eaten lunch, so that -- obviously, we'll take an afternoon break, but it won't be one of those longer ones, so we can power through. Okay?

During the recess you're admonished not to talk or converse among yourselves or with anyone else on any subject connected to this trial or read, watch, or listen to any report of or commentary on the trial of any person connected with this trial by any medium of information, including, without limitation to newspapers, television, the Internet, and radio, or form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

I hope you have a good night, I'll see you back at 12:30.

[Jury recessed at 4:50 p.m.]

THE COURT: Officer, is there a door still open? Is there someone there or am I just --

MR. HAUSER: Just the marshal.

THE COURT: It's just the marshal? Okay. All right. Great.

MR. HAUSER: He's coming in.

1 THE COURT: All right. So we are outside the presence of  
2 the jury.

3 MR. SHAYGAN-FATEMI: Your Honor, I'd just like to make  
4 a brief record.

5 THE COURT: Okay.

6 MR. SHAYGAN-FATEMI: I think what happened was very  
7 unusual. Your Honor has done more trials than anybody. When  
8 you put a witness on the stand, it's one thing if some other  
9 evidence comes out and then the State wants to recall that witness  
10 to correct the -- what was presented after they got off the stand.  
11 And there might not be an NRS or something on point, but the fact  
12 that the issue of him being recalled was strictly for an identification.  
13 Absolutely nothing else.

14 He takes the stand, you have two beyond competent  
15 prosecutors. They certainly could have asked him, Can you make  
16 an identification of the person? Obviously, he couldn't, which is  
17 why they didn't ask him that. Obviously, they couldn't. So -- he  
18 couldn't.

19 So the fact that they then recall him, after the guy's been  
20 sitting there, looking at Ted, maybe he doesn't like Ted. Maybe  
21 Ted -- I don't know. And he then decides to come back in here and  
22 for the sole purpose and say, you know what, I was nervous and  
23 didn't want to say anything.

24 They have an opportunity to pretrial their witnesses. You  
25 know, I just thought it was absolutely ridiculous that that happened.



1 And I appreciate Your Honor allowing me to carry a tone. But I  
2 think the fact that he made that identification was just absolutely  
3 absurd, after he came on the stand and they didn't ask him about it  
4 the first time.

5 We didn't present any information that rebutted anything  
6 that he said. Now they're calling him as a rebuttal witness. Or even  
7 any of their own witnesses said anything that then they just want to  
8 kind of clarify it. I thought it was absolutely ridiculous. I think that  
9 the jury was confused as to why he was back. And I think that it  
10 made the whole process unfair for Ted.

11 I -- just for the record, we did ask for a mistrial at the  
12 bench. And Your Honor denied our request for a mistrial. We  
13 asked for his identification to be stricken, and Your Honor did not  
14 strike it. And so I just wanted to make a record about that and I  
15 appreciate it.

16 THE COURT: Okay. State?

17 MR. LEXIS: Your Honor, State did nothing improper. I  
18 asked him myself if, after Defense counsel got up there and asked  
19 for a mistrial, and addressed their concerns, that the State never  
20 told him, Hey, come in here and identify the victim -- or, excuse me,  
21 the defendant.

22 I never showed him a picture of the defendant. The cops  
23 never showed him a picture of the defendant. Simply walked him  
24 out, as he stated, told him you're good to go, and that's when he  
25 told me he wished he would have said that that was the man. He

1 was nervous, but he recognized that person in this court as being  
2 the guy with the red shirt. So I asked to recall him.

3 THE COURT: Okay. So, look, I understand both sides.  
4 Right? I don't know what are prosecutors supposed to do if a  
5 witness walks out and then turns around and says, hey, I was  
6 nervous, I wanted to ID the guy, but I was too scared to do so.

7 On the other side, I see the defense's position, because  
8 they feel like, well, he never ID'd him. Then he had the ability to sit  
9 here for 30 minutes or however long it was, get the opportunity to  
10 be alone, and now he wants to identify him.

11 But that's really kind of the beauty and mess of a trial,  
12 right? It's completely fluid and it's almost like organized chaos.  
13 You never know what's going to happen. And so here, I definitely  
14 don't think that the State did anything wrong. I don't think that they  
15 followed him out and, you know, tried to get him to change his  
16 story. It's clear, I think everybody would probably agree, he's very  
17 nervous up there. In fact, once Mr. Hauser started asking him  
18 questions, he kind of looked to me and said, I really -- I need a  
19 break, or whatever it was that he said.

20 So I understand why the defense is frustrated. But I don't  
21 think that there was anything wrong with what happened. I think  
22 exactly what happened, happened. He walked out, he told the  
23 prosecutor, Hey, I was scared, but I wanted to identify him. And so  
24 he came back in and he did that. I think that that was fair game for  
25 cross-examination, and I think the arguments that you are making

1 are great arguments to be hand on cross-examination and then in  
2 front of a jury. But I don't think that they're objectionable and make  
3 the identification inadmissible, nor do I think it's cause for a  
4 mistrial.

5 So I appreciate the objections that have been made. I did  
6 overrule the Motion to Strike and I also overruled the Motion -- or  
7 denied the Motion for a Mistrial.

8 So we will -- let's see, we'll come back tomorrow to do  
9 jury instructions at 10:30, and then we'll resume trial at 12:30.

10 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

11 MR. HAUSER: Thank you, Judge.

12 THE COURT: Thank you.

13 You guys, in regards to this, I will make it a court's exhibit,  
14 unless you guys would like me to make it State's next. Either way,  
15 it goes back to the jury as a demonstrative aid. Parties' pleasure.

16 MR. SHAYGAN-FATEMI: Guess I don't really care.

17 MR. HAUSER: We'll go another way.


18 THE COURT: Just do State's next.

19 MR. HAUSER: Whatever the label is. Yeah.

20 [Court recessed at 4:49 p.m.]

21 ///

22  
23 ATTEST: I do hereby certify that I have truly and correctly  
24 transcribed the audio/video proceedings in the above-entitled case  
25 to the best of my ability.

  
Shawna Ortega, CE ¶\*562



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff(s),

vs.

TED MICHAEL DONKO,

Defendant(s).

Case No. C-19-345584-1

Department VI

BEFORE THE HONORABLE JACQUELINE M. BLUTH,  
DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 13, 2020

**TRANSCRIPT OF PROCEEDINGS RE:  
JURY TRIAL – PART I – DAY 4 OF 4**

APPEARANCES:

For the Plaintiff(s):

CHAD N. LEXIS, ESQ.  
LAURA ROSE GOODMAN, ESQ.  
(Deputy District Attorneys)

For the Defendant(s):

ROBSON M. HAUSER, ESQ.  
KAMBIZ SHAYGAN-FATEMI, ESQ.  
(Deputy Public Defenders)

RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

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1 **LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 13, 2020**

2 [Proceeding commenced at 11:15 a.m.]

3  
4 [Outside the presence of the jury.]

5 THE COURT: All right. We're on the record in State of  
6 Nevada versus Ted Michael Donko, C-345584-1. He's present in  
7 custody with both attorneys, Mr. Shaygan and Mr. Hauser, both  
8 deputy district attorneys, Ms. Rose Goodman, as well as Mr. Lexis  
9 are all present.

10 All right. So we have -- we are going to put the objections  
11 to the jury instructions on the record.

12 Mr. Shaygan, the first proper instruction you had, I will  
13 put as Defense Number 1. And then on Defense Proposed 1, you  
14 put:

15 A defendant in a criminal case action is presumed to be  
16 innocent.

17 And instead of the word, Until the contrary is proved,  
18 Defense wanted the word, Unless; is that correct?

19 MR. SHAYGAN-FATEMI: That's correct, Your Honor.

20 THE COURT: And then can you put why you thought that  
21 was appropriate?

22 MR. SHAYGAN-FATEMI: I did, Your Honor. I -- just a  
23 moment of indulgence.

24 THE COURT: Yes.

25 MR. SHAYGAN-FATEMI: Your Honor, we're referring to

1 the defense proposed at this time?

2 THE COURT: Yes.

3 MR. SHAYGAN-FATEMI: Your Honor, the reason I wanted  
4 it to be unless versus until is until gives the indication to the jury  
5 that it's inevitable that the defendant is going to be found guilty in  
6 this case, and it's only a matter of time until he's found guilty.

7 The unless highlights his -- the presumption of innocence.  
8 The unless highlights the fact that the State has the burden in this  
9 case, and it's not inevitable that he's to be found guilty. And so  
10 that's why the defense wanted the unless versus the until.

11 THE COURT: Okay. State, your objection for the record?

12 MR. LEXIS: NRS 175.191 is where that instruction comes  
13 from, and it specifically states, Until.

14 THE COURT: All right. So I do agree that that is the  
15 language of the statute. This is the one that's customarily given, so  
16 that is the one that I'm going to give. I did mark the Defense  
17 Proposed as Defense Proposed Number 1 and it will be marked as a  
18 Court's exhibit, as well, as part of the trial record.

19 Number 2 is the:

20 If the evidence in this case is susceptible to two  
21 constructions of interpretation, each of which.

22 That is Defense Proffered Instruction Number 2.

23 Mr. Shaygan.

24 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

25 I know that this issue was litigated by my office on a



1 homicide case by Joseph Abud [phonetic], who's a colleague of  
2 mine. And the court in that matter, in the -- did give the instruction.  
3 I know that other district courts in this jurisdiction have given this  
4 instruction. It's good case law that I've cited to, the *Bales v State*  
5 [phonetic], the *Crane v State* [phonetic], and the *Mason vs. State*.  
6 And I understand that it's a discretion -- you know, the courts may  
7 view it as a discretionary standard as to whether or not the Court  
8 can choose to give the instruction or not, it's the defense's position,  
9 Your Honor, that the Court must give the instruction. And that is  
10 why we included it in the instructions, and we'll submit it based on  
11 that.

12 THE COURT: State?

13 MR. LEXIS: It goes to reasonable doubt, it's confusing,  
14 and their own case that they cite, *Mason vs. State* states that it's not  
15 ever refused to give this instruction when the jury has been  
16 properly instruction on reasonable doubt, which they obviously are  
17 going to be.

18 THE COURT: All right. So I agree, I do think that it is  
19 confusing to the jury. I also know that it is discretionary. So in my  
20 discretion, I am choosing not to give it. But it will marked as part of  
21 the court record.

22 Defense Proffered Number 3 is the reasonable doubt  
23 standard, requires the jury to reach a subjective state of mere  
24 certitude. This is Defense Proffered Number 3.

25 Mr. Shaygan.

1 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

2 I had indicated to the Court that the general reasonable  
3 doubt instruction can be confusing, even when attorneys read it, it  
4 is not abundantly clear exactly what it is. That's why I included the  
5 subjective certitude instruction, if you want to call it that. And the  
6 case law that I've cited, the defense believes that it's good case and  
7 we believe that the Court should give this instruction to provide a  
8 little bit more guidance as to what reasonable doubt means. And  
9 that's why we included it and I'll submit it based on that.

10 THE COURT: All right. State?

11 MR. LEXIS: Again, goes to reasonable doubt. In addition,  
12 in *Rudolph* itself, it's dicta at best, they specifically state jury  
13 instruction of reasonable doubt was correctly provided as set forth  
14 in NRS 175.211.

15 THE COURT: All right. So the reasonable doubt  
16 instruction that is used in every case will be used in this case, and I  
17 think that that puts -- that properly informs and instructs the jurors.  
18 So I'm not going to give this one.

19 Number 4, Defense Proffered Number 4:

20 If the State fails to prove beyond a reasonable doubt.

21 All right. So Proffered 4, 5, 6, 7, and 8 are all *Crawford* --  
22 proposed *Crawford* instructions in regards to the charges in this  
23 case.

24 Mr. Shaygan.

25 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

1 With regards to our Crawford instructions, the defense  
2 included these as, essentially, an inverse instruction. We believe  
3 that *Crawford* allows us to do that. We -- I had mentioned to the  
4 Court that oftentimes we can -- my office will pick an element and  
5 have an inverse based on the element. This is even more broad  
6 than that, which we think should be even more of a reason for the  
7 Court to give the instruction.

8 The language that we used to draft these instructions was  
9 taken from the charging document in this case, specifically, the  
10 information. There was no added language that I recall that  
11 changes anything in this case. Nothing that is included here  
12 changes what the instructions are. We believe that we should be  
13 given each and every one of these inverse instructions. And we  
14 believe that *Crawford* allows us to give them. And I'll submit it  
15 based on that.

16 THE COURT: State?

17 MR. LEXIS: The State objects to the form. Basically, just  
18 regurgitating what's in the information does not go to any specific  
19 element. As cited in their own paragraph that they include at the  
20 bottom of their proposed instruction, it specifically states it goes to  
21 the defense position on their theory, which, obviously, has to go to  
22 some specific element.

23 The Court has offered them to, if they want to come up  
24 with some specific position or theory to go to a specific element,  
25 they -- the Court gave them that opportunity. They declined.

1 THE COURT: So what I said was, basically, in the  
2 *Crawford* case, the defense's theory in that case was that the State  
3 had -- the defendant did not have the heat of passion that was  
4 required to commit that crime. And so the defense had requested a  
5 jury instruction for the jury so that the jury would be instructed that  
6 if the State failed to prove to them that the defendant had been  
7 acting within this heat of passion, then they had to find him not  
8 guilty.

9 And so I do think that it needs to be a specific theory of  
10 the case. I don't think if you charge a person with 30 charges, then  
11 the defense gets to say the opposite thing of all 30 charges.

12 So what I offered to Defense is I said, Look, I'm not -- I  
13 don't pretend to be an attorney on your case, but it seems to me  
14 from opening arguments and from where everyone is going thus  
15 far is this a ID case, which both attorneys agreed with me. And I  
16 said, If you wish to, you know, ride two horses and said it's an ID  
17 case, but, for instance, just for example, if you find it's him, the  
18 State has not met the burden of showing he had the intent to kill,  
19 and offered a *Crawford* instruction in regards to whether or not the  
20 State had proved the defendant, in his mind, had the intent to kill  
21 someone. But they -- it's my understanding that Defense is stating  
22 no, that they don't want that.

23 And without any other reason of showing you what the  
24 theory of their case is and how specific detailed *Crawford*  
25 instruction could be made, I am not going to be giving that.

1 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

2 THE COURT: You're welcome. So 4 through 8 have to do  
3 with those. So those have all been marked. So these can all be  
4 court's exhibits. They can just be Court Exhibit Number 1. And  
5 then I put Defense proffered on each of those with the correlating  
6 number.

7 All right. Okay. So I will, as we're sitting here, just make  
8 those few corrections on the Word document, and then I'll print a  
9 set, make sure we're all on the same page.

10 MR. SHAYGAN-FATEMI: Your Honor?

11 THE COURT: Yes?

12 MR. SHAYGAN-FATEMI: Are we going to address the  
13 verdict form?

14 THE COURT: Oh, yeah. I'm sorry. Yeah.

15 On the verdict form, let's talk about that.

16 Go ahead.

17 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

18 I believe, Your Honor, the State's verdict form has the  
19 guilty's and then it lists not guilty as an option. So not guilty is  
20 second. And given the presumption of innocence, given the State's  
21 burden to prove this case beyond a reasonable doubt, it's the  
22 defense's position that not guilty should actually be the first option  
23 and then the rest of the -- and then the guilty's.

24 So based on that, we ask that the verdict form be adjusted  
25 to reflect not guilty be mentioned first for each count, and then

1 guilty as an option, and so and so forth for each count.

2 THE COURT: State?

3 MR. LEXIS: We'd ask that you follow what the State has  
4 submitted. This jury [indiscernible] is going to be properly  
5 instructed on reasonable doubt.

6 THE COURT: All right. So I think that the jury verdict is  
7 fine as is. I don't think that there's any reasoning for one to go in  
8 front of the other, and it's customarily done the way it is here. So  
9 we're going to leave it as is, but -- as is, but the objection is noted  
10 for the record.

11 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

12 MR. LEXIS: And, Judge, I don't know now it's printing out  
13 on your printer, but it looks like on ours, it -- the boxes came all  
14 messed up.

15 THE COURT: Yeah. I'm working on it.

16 MR. LEXIS: So you might not be -- sorry about that.

17 THE COURT: That's okay. It's something about, I don't  
18 know, the DA's Office Word sometimes doesn't always --

19 MR. LEXIS: Convert it correctly?

20 THE COURT: Yeah. I don't know why, but it happens  
21 sometimes and other times it doesn't. But no worries.

22 MR. LEXIS: Oh, one last thing, Judge, that I've already  
23 talked to Defense counsel about that I was going to put on the  
24 record.

25 Yesterday, when Mr. Ramos took the stand, he was

1 obviously nervous. At one point, he gets frustrated, he even turns  
2 to you, asks for a break. He's obviously spoken to the district  
3 attorney's office prior to yesterday, as well as investigators who  
4 have got him here. And then he refers to them as officers and so  
5 forth.

6 I reached out to Mr. Hauser, asked him if he wants to  
7 recall Mr. Ramos to flush all that out, I'd be more than happy to  
8 bring him in today. Mr. Robson said that that would not be  
9 necessary.

10 MR. HAUSER: That's correct.

11 THE COURT: Okay.

12 MR. HAUSER: Yeah, I agree with everything Mr. Lexis --

13 THE COURT: All right.

14 [Pause in proceedings.]

15 MS. GOODMAN: And, Your Honor, just the last thing.

16 THE COURT: Yeah.

17 MS. GOODMAN: We also have redacted, and I apologize,  
18 I don't remember what the exact State exhibit it was, but it was that  
19 fingerprint, the fingerprint analysis report. And we had redacted  
20 that LVMPD language out of the document and re-admitted it as  
21 another -- as the same exhibit. But we just wanted to put that on  
22 the record to ensure that that was done. I know it was published in  
23 front of the jury, but taken down soon thereafter it was brought to  
24 our attention.

25 THE COURT: Yeah. So I saw it, and I don't know how to

1 explain it, it was, like, partially -- I couldn't see the whole thing, but I  
2 could see, like, the top of the box. And knowing what these look  
3 like, I immediately just called everybody to the bench so we could  
4 talk about it. Because it was a document that was stipulated into.

5 And so sometimes attorneys don't care about those things  
6 and stipulate into it. So I just wanted to make sure everybody was  
7 on the same page. I don't think it was something that the jury  
8 would have either, A, recognized or really even seen, like I stated.  
9 Because by the time I saw it, it was only -- I don't know, the way the  
10 paper was up there, it was only half -- the box where it says, LVMPD  
11 Archive Prints From date -- the 2016 date, I could only see half of  
12 that. So that's why I needed the document to come up, so I could  
13 see it in its full. So I don't think there were any issues.

14 But I'm happy to hear from Defense, if you think  
15 differently.

16 MR. HAUSER: Nope. We're good.

17 THE COURT: All right. Sounds good.

18 MS. GOODMAN: Thank you, Your Honor.

19 [Pause in proceedings.]

20 THE COURT: All right. So everyone has had the  
21 opportunity to look through the instructions.

22 Any further objections than what we've already stated on  
23 the record, Mr. Shaygan?

24 MR. SHAYGAN-FATEMI: No, Your Honor.

25 THE COURT: And are these a fair and accurate depiction



1 of the jury instructions that we settled?

2 MR. SHAYGAN-FATEMI: They are, Your Honor.

3 THE COURT: Same questions for you, Mr. Lexis, in  
4 regards to any objections?

5 MR. LEXIS: No, ma'am.

6 THE COURT: And these are an accurate reflection of the  
7 jury instructions that we settled?

8 MR. LEXIS: Yes, ma'am.

9 THE COURT: All right. So I will have a copy of these  
10 prepared for each of the jurors, and I'll see you guys in 45 minutes.

11 THE DEFENDANT: Ms. Bluth, may I ask you a question?

12 THE COURT: Yes.

13 THE DEFENDANT: A couple of questions?

14 THE COURT: Yeah, of course.

15 THE DEFENDANT: How would I go about -- I asked  
16 Mr. Hauser to ask you, but it wasn't brought up. How would I go  
17 about getting a hospital visit with police escort to see my mom?

18 MR. HAUSER: This is where I was about to go, Judge,  
19 before you left the bench.

20 THE DEFENDANT: She's going to pass away soon.

21 THE COURT: Okay.

22 THE DEFENDANT: And I would just like to see her one  
23 time. I'm not asking to get out or anything, I just would like to say  
24 bye to her.

25 THE COURT: So --

1 MR. HAUSER: Mr. Donko informed us of this, that he  
2 received a call last night that his mother's on life support at UMC. I  
3 believe you said your sister intends to eventually remove her from  
4 the life support probably now, and she just --

5 THE DEFENDANT: And she's been fighting on her last  
6 two years on breast cancer, Your Honor.

7 THE COURT: Oh. Okay.

8 MR. HAUSER: And he's wondering if he can get a  
9 supervised visit to UMC. Not an OR, by any stretch.

10 THE COURT: No.

11 MR. HAUSER: But if there's some way we can try and  
12 arrange that.

13 THE COURT: So I know that that has to be done by  
14 motion, and I know also that it has to be -- because Metro's actually  
15 the one who does the transport. And so I know I've seen it -- I think  
16 I saw it one other -- I mean, I've seen it a couple of times, but the  
17 only time where I was a part of it was a somewhat similar situation,  
18 but it was actually a funeral. And there was gang involvement on  
19 both sides. And so Metro actually refused any type of transport  
20 because of the danger.

21 So that definitely has to be -- that has to be done in  
22 motion, because there are so many moving parts to it.

23 MR. HAUSER: No problem.

24 THE COURT: I'm, obviously, happy to hear it, like, on  
25 Order Shortening Time.

1 MR. HAUSER: Uh-huh.

2 THE COURT: But I have to just make sure everybody has  
3 notice of it.

4 MR. HAUSER: Okay. I'll try and file something as soon as  
5 I can.

6 THE COURT: Okay.

7 THE DEFENDANT: And one last thing, Your Honor.

8 THE COURT: Yes, sir.

9 THE DEFENDANT: I would like to take the stand today on  
10 my own behalf.

11 THE COURT: Okay. So I -- that's actually what I was  
12 going to do right now.

13 THE DEFENDANT: I apologize for my frustration  
14 yesterday and Your Honor in court.

15 THE COURT: That's all right. I know that trial's a  
16 frustrating thing. I get it. So I just have to ask you a few questions.  
17 All right?

18 So under the Constitution of the United States and under  
19 the Constitution of the State of Nevada, you cannot be compelled to  
20 testify in this case; did you understand that?

21 THE DEFENDANT: Pardon me?

22 THE COURT: That you can't be forced to testify.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: You may, at your own request, give up this  
25 right and take the witness stand and testify. If you do, you will be

1 subject to cross-examination by the district attorney and anything  
2 that you may say, be it on direct or direct examination, will be the  
3 subject of fair comment when the deputy district attorney speaks to  
4 the jury in his or her final argument. Do you understand that?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: If you choose not to testify, the Court will  
7 not allow the deputy district attorney to make any comments to the  
8 jury because you have not testify; do you understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: If you elect not to testify, the Court will  
11 instruct the jury, but only if your attorney specifically requests as  
12 follows:

13 The law does not compel a defendant in a criminal case to  
14 take the stand and testify. And no presumption may be raised and  
15 no inference of any kind may be drawn from the failure of a  
16 defendant to testify.

17 Do you have any questions about these rights that I have  
18 explained?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: You are further advised that if you have a  
21 felony conviction and more than 10 years has not elapsed from the  
22 date you have been convicted or discharged from prison, parole, or  
23 probation, whichever is later, and the defense has not sought to  
24 preclude that coming before the jury, and you elect to take the  
25 stand to testify, the deputy district attorney, in the presence of the

1 jury, will be permitted to ask you the following things:

2 1. Have you been convicted of a felony?

3 2. What was that felony?

4 3. When did that happen?

5 However, no details of that may be gotten into.

6 Do you understand that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Okay. All right.

9 THE DEFENDANT: May I ask one question?

10 THE COURT: Yeah.

11 THE DEFENDANT: You said felonies, right?

12 THE COURT: Yep.

13 THE DEFENDANT: So it would only be the attempt  
14 burglary and the attempt grand larceny, not the attempt battery,  
15 which is to actually bodily harm, that was a misdemeanor.

16 THE COURT: So attempt battery with substantial bodily  
17 harm could either be a felony or a gross --

18 THE DEFENDANT: It was a misdemeanor.

19 THE COURT: But it was pled down to?

20 THE DEFENDANT: Yes.

21 THE COURT: To a battery?

22 MR. HAUSER: To gross misdemeanor in this case.

23 THE COURT: It's to gross? Okay.

24 So, correct, then, yes.

25 THE DEFENDANT: Okay. Thank you.

1 THE COURT: So it can only be felonies within the last 10  
2 years.

3 THE DEFENDANT: Thank you.

4 THE COURT: All right. And so that is completely up to  
5 you. And it may change as we go. Only thing is, is I have to pull it  
6 out of the jury instructions if we're not going to use it.

7 MR. HAUSER: Right. Judge, if you're set with the  
8 canvass, I do want to make a record about what we're doing here.

9 THE COURT: Okay.

10 MR. HAUSER: Mr. Donko and I have had numerous  
11 conversations with Mr. Shaygan as well. It is against our advice  
12 that he testifies today. We've made that very explicitly clear.

13 THE COURT: Okay.

14 MR. HAUSER: I've advised him that his felonies will come  
15 in. I've also advised him that if certain doors are opened, that gross  
16 misdemeanor for attempt battery with substantial bodily harm will  
17 also be introduced to the jury.

18 There's another case out there that I don't believe would  
19 come in, based on what I anticipate his testimony being. I don't  
20 want to open the door to any of that. I've advised him of the risks  
21 of that, knowing what the jury's going to learn. It's his right, but I  
22 did want to make a record that he has received all of that advice.

23 THE COURT: All right. So your counsel, both  
24 Mr. Shaygan and Mr. Hauser, have discussed those concerns with  
25 you?

1 THE DEFENDANT: You said convicted felonies, right?  
2 Commissions?

3 THE COURT: Yeah.

4 THE DEFENDANT: I'm not convicted of those felonies that  
5 I'm being -- what I'm being heard for on -- besides this.

6 THE COURT: Right. So the -- what was it, attempt burg  
7 and grand larceny?

8 THE DEFENDANT: It was --

9 MR. HAUSER: Yeah.

10 THE DEFENDANT: -- yeah, attempt burglary and attempt  
11 grand larceny. I'm being heard on 25 counts of possession of  
12 documents that they seized from my girlfriend's house when they  
13 did the search warrant for this.

14 THE COURT: Yeah. No, I don't think that -- I think what  
15 Mr. Hauser's saying is it's unlikely that that would come in. But you  
16 have to be careful about the types of things that you say, because  
17 sometimes you -- we use the word you open the door, right? So, if  
18 for some reason you said something like, I've never been involved  
19 in anything violent in my whole life. Something like that. Right?  
20 And then the State would be, like, Well, that's not true, because  
21 you've got a gross misdemeanor for attempt battery with  
22 substantial bodily harm.

23 So that's just what Mr. Hauser's saying, is, like, that --  
24 the 25 counts shouldn't come in.

25 THE DEFENDANT: Uh-huh.

1 THE COURT: But for some reason you open the door,  
2 then the State would approach and say, Hey, look, I think he just  
3 opened the door to us being able to get into that. And then your  
4 defense are -- would make an argument one way or the other and  
5 then I would --

6 THE DEFENDANT: I wouldn't say that, ma'am. But I  
7 would like you -- you and me clear that this is from when I was 18  
8 years old. I'm 30 years old now.

9 THE COURT: What was 18?

10 THE DEFENDANT: And when I caught that attempt grand  
11 larceny, I had pawned a camera for a friend. And attempt burglary,  
12 I broke my girlfriend's window to get my belongings at her house,  
13 because she was holding them from me.

14 THE COURT: Okay.

15 THE DEFENDANT: And I -- me being young and naive, I  
16 took a first deal and, you know, and there's a lot of -- Your Honor,  
17 and I understand if you guys got a job to do. And it's not for you to  
18 say if I'm innocent. It's them to say if I'm innocent. I know I'm  
19 innocent. But there's a lot of state -- facts that haven't been brought  
20 up during questioning the witnesses.

21 THE COURT: Sure. I understand.

22 THE DEFENDANT: You know, like Woods stating that I  
23 had black pants on, but Gilbert's saying I had khaki shorts on. You  
24 know? And I feel like if -- I'm confused, I don't -- it's my first time  
25 going to trial. I would like to know what I could do to not fix it, but



1 to make you understand that it's not fair what's going on right now.  
2 It's -- I'm getting yelled at -- not yelled at, but every time I speak  
3 about what I feel like I should do, I'm getting shut down.

4 THE COURT: Right. But I --

5 THE DEFENDANT: I'm getting shut down. The DA, I  
6 understand, didn't know nothing about me, they're doing their job.  
7 But this is, like, once again, my life that we're talking about.

8 THE COURT: Sure.

9 THE DEFENDANT: And her winking her eye at them and  
10 laughing, and, like, it's not funny to me, Your Honor.

11 THE COURT: Who winking?

12 THE DEFENDANT: The DA. You know, I mean, when  
13 they're -- when she brought the other guy back in and you  
14 overruled it, that Gilbert about pointing me out, saying that I was  
15 the one that -- when she got up to get to the podium, she, like, did a  
16 little bow and she winked her eye at them. You know, and --

17 THE COURT: How could -- sir, how could you see her  
18 wink her eye?

19 THE DEFENDANT: I was right here and I was looking.

20 THE COURT: But if she --

21 THE DEFENDANT: She came right -- like, she ducked off  
22 right here, and she winked -- she bowed a little bit and she winked  
23 her eye at him.

24 THE COURT: Okay. But if she's looking at them and  
25 winking --

1 THE DEFENDANT: She wasn't look -- no, she was getting  
2 out of her seat.

3 THE COURT: Okay. Well, I'm sorry, I --

4 MR. HAUSER: I think he means us.

5 THE COURT: Oh, winking at you guys?

6 MR. HAUSER: Yeah.

7 THE DEFENDANT: Yeah. Yeah.

8 THE COURT: Oh. Okay. Sorry.

9 MR. HAUSER: Yeah. Not the jury.

10 THE COURT: I thought you meant winking at the jury.

11 THE DEFENDANT: Like, we got him. And I know there's a  
12 fingerprint on the license plate inside of the car. And I know there's  
13 a DNA, my DNA and somebody else's DNA.

14 THE COURT: Uh-huh.

15 THE DEFENDANT: But it's also not brought up that I live  
16 nine houses down from the shooting. You know, it's not brought  
17 up that at 12:14 the shooting happened, but I'm on video at 12:15  
18 walking to -- it's physically impossible for me to drive down  
19 Charleston --

20 THE COURT: Right, but do you -- the detective hasn't  
21 even been -- the lead detective hasn't even testified. A lot of these  
22 things are things that I'm sure your attorneys are going to bring up.

23 THE DEFENDANT: I know, Your Honor. But I asked him --

24 THE COURT: But here's the thing --

25 THE DEFENDANT: -- for [indiscernible] and they haven't.

1 THE COURT: Okay. And if you -- but what I've told you is,  
2 is what questions they ask are strategic decisions that are their  
3 decisions as your trial counsel. If you feel like there are certain  
4 things that you want asked, you have the opportunity to represent  
5 yourself and ask whatever questions you deem appropriate, as long  
6 as they're legally admissible.

7 So you have them or you choose to represent yourself.

8 THE DEFENDANT: I just want it to be fair, Your Honor.  
9 That's all.

10 THE COURT: Okay.

11 THE DEFENDANT: I just -- I got a whole stack of report --  
12 detective questioning people in here where it's all messed up. And  
13 it's not being brought up that, like, when they came to see me in  
14 jail, I tried to read them a couple, and they said -- he said, We don't  
15 have time for that. You know? And how could you not take two or  
16 three minutes out to read my report, when I could be facing the rest  
17 of my life in prison for --

18 THE COURT: Okay.

19 THE DEFENDANT: I'm scared. Your Honor, I didn't shoot  
20 these people. I've never owned a gun.

21 THE COURT: Okay. So do you want to continue with  
22 them, or would you like to represent yourself?

23 THE DEFENDANT: How would that go? What questions  
24 would I be able to ask?

25 THE CLERK: So I -- that's the problem is I can't counsel

1 you. You would be able to ask any questions that are legally  
2 admissible. So, for instance, you wanted them to ask that one  
3 gentleman whether or not he's a gang member; not admissible.

4 THE DEFENDANT: I understand that. I understand that.

5 THE COURT: So --

6 THE DEFENDANT: Like, Woods stating that the brothers  
7 are coming, what brothers are coming? You know what I mean?  
8 And that wasn't asked. He obviously -- these other people were  
9 showing up to that address, but he doesn't state what -- who it is.

10 THE COURT: I don't -- what do you mean? He didn't  
11 say -- what are you talking about? Oh, you mean in the report.

12 THE DEFENDANT: In the report.

13 THE COURT: Oh, sorry. I don't know, I thought you  
14 meant -- I thought you were talking about on the stand.

15 THE DEFENDANT: Gilbert states that he left right after the  
16 shooting. Why wouldn't somebody leave after the shooting and go  
17 to AutoZone?

18 THE COURT: Okay. But I can't have --

19 THE DEFENDANT: Wouldn't you be worried about me?

20 THE COURT: -- this conversation with you, sir, because  
21 this is not my job. My job is to make sure you are aware of your  
22 rights. Your choices are to continue on with your counsel, or if  
23 you'd like --

24 THE DEFENDANT: They pretty much told me already I'm  
25 guilty -- I'm going to be pled guilty.

1 THE COURT: Okay. So then would you like to represent  
2 yourself, if you feel like they're not doing the job?

3 THE DEFENDANT: What's my other options?

4 THE COURT: These are your two options: Them or you.  
5 We're in the middle of a trial on the last day of trial. So --

6 THE DEFENDANT: I just feel like this trial went fast and  
7 not -- I just want to know what my options -- there's -- I feel like  
8 there's got to be something else that I can do. Have a new trial set  
9 or something else that I should be able to do, you know?

10 THE COURT: No.

11 THE DEFENDANT: It wasn't -- it -- I've been shut down  
12 every time I whispered to him to ask a question, it's no, we got this.  
13 We got this. We got this.

14 THE COURT: Okay.

15 THE DEFENDANT: You know?

16 THE COURT: So until you tell me that you would like to  
17 represent yourself, we're going to carry on as we've been carrying  
18 on. If at some point you change your mind, please let me know,  
19 because I have to canvass you on making sure you understand your  
20 rights to represent yourself.

21 As you sit here right now, and it -- honestly, it doesn't  
22 matter to me. I want you to do whatever you feel comfortable with.  
23 Do you believe you're going to testify? I'm going to make this jury  
24 instruction packet.

25 THE DEFENDANT: I'm going to testify.

1 THE COURT: Okay.

2 THE DEFENDANT: Obviously, I'm not going to represent  
3 myself, because I'm not a lawyer.

4 THE COURT: Okay.

5 THE DEFENDANT: And the only things I looked up was  
6 the things that would stick out to a 5-year-old. You know? And the  
7 DA just having the same comeback, oh, he had a red shirt on, he  
8 had a red shirt on. You know how many people wear red shirts?

9 THE COURT: All right. So --

10 THE DEFENDANT: I don't wear 4X. I wear 1X. This is  
11 a 1X shirt. I've been in jail eating.

12 THE COURT: That's something that you can talk about  
13 when you testify. All right.

14 So we're going to go off. And --

15 MR. HAUSER: Before we do that, Judge.

16 THE COURT: Yes, sir.

17 MR. HAUSER: Just one more brief addition to the record.

18 I've also advised him that he's only allowed to testify to  
19 things of which he has personal knowledge. That we can't get up  
20 there and just say, I disagree with these witnesses' statements that I  
21 saw in the discovery.

22 THE COURT: Right. So when you testify, you have to  
23 testify in regards to -- you don't just get to turn to them and just  
24 give a narrative. Your attorneys will ask you specific questions and  
25 then you have to answer the questions that they ask you.

1 THE DEFENDANT: Am I allowed to pick some of the  
2 questions?

3 THE COURT: You can talk to them about questions that  
4 you deem appropriate and that you'd like them to ask you so that  
5 you can answer in front of the jury.

6 Anything else on the record?

7 MR. HAUSER: No.

8 THE DEFENDANT: All right. Let's go off.

9 [Court recessed at 12:00 p.m., until 12:43 p.m.]

10 [Outside the presence of the jury.]

11 THE COURT: All right. We are back on the record in  
12 C-345584-1, State of Nevada versus Ted Michael Donko. He's  
13 present with both attorneys, Mr. Shaygan and Mr. Hauser. Both  
14 deputy district attorneys, Ms. Rose Goodman and Mr. Lexis are  
15 present.

16 Anything outside the presence before I bring the jury in,  
17 guys?

18 MR. SHAYGAN-FATEMI: Not from the defense, Your  
19 Honor.

20 MS. GOODMAN: Not from the State, Your Honor.

21 THE COURT: All right. Let's go.

22 [Jury reconvened at 12:44 p.m.]

23 THE COURT: All right. Good morning, ladies and  
24 gentlemen. Welcome back. We are back on the record in State of  
25 Nevada versus Ted Michael Donko. He is present with both of his

1 attorneys, Mr. Shaygan as well as Mr. Hauser. Both deputy district  
2 attorneys, Ms. Rose Goodman is -- as well as Mr. Lexis are also  
3 present.

4 State, next witness?

5 MS. GOODMAN: State will call Detective Marin.

6 THE COURT: And both sides stipulate to the presence of  
7 the jury?

8 MS. GOODMAN: Yes, Your Honor.

9 **JASON MARIN,**

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

12 THE CLERK: Thank you. Please have a seat. Please state  
13 your complete name, spelling both first and last names for the  
14 record.

15 THE WITNESS: Jason Marin, J-A-S-O-N M-A-R-I-N.

16 THE CLERK: Thank you.

17 **DIRECT EXAMINATION**

18 BY MS. GOODMAN:

19 Q Good afternoon.

20 A Good afternoon.

21 Q How are you employed?

22 A As a police officer with Las Vegas Metropolitan Police  
23 Department.

24 Q Okay. And in what capacity?

25 A As a detective.



1 Q Okay. And how long have you been employed there?  
2 A With the department entirely, ma'am?  
3 Q Oh, yeah, I apologize. I'm so sorry.  
4 THE COURT: I hear it, but I can't find it.  
5 THE WITNESS: That might be my phone in the --  
6 THE COURT: Oh, in the anteroom?  
7 MS. GOODMAN: Okay.  
8 THE WITNESS: Yes. Sorry.  
9 THE COURT: Do you mind if my marshal just puts it on  
10 silent?  
11 THE WITNESS: Yes, that's fine.  
12 THE COURT: Okay.  
13 MS. GOODMAN: Thank you so much.  
14 BY MS. GOODMAN:  
15 Q And I'm sorry, with Las Vegas Metropolitan Police  
16 Department as a whole?  
17 A A little over five years.  
18 Q Okay. And how long have you been a detective?  
19 A Approximately six months.  
20 Q Okay. Now, I'm going to direct your attention back to  
21 October 1st, 2019. Okay. Were you a detective back then?  
22 A Yes.  
23 Q I know this was about four months ago?  
24 A Yes.  
25 Q Okay. And in your capacity as a detective, you're

1 assigned cases?

2 A Yes.

3 Q And you're assigned to follow up on those cases?

4 A Yes.

5 Q Okay. You were called out to 56 Linn lane?

6 A Yes.

7 Q Here in Clark County, Las Vegas, Clark County, Nevada?

8 A Yes.

9 Q All right. And what was the details of those calls that you  
10 came in?

11 A There was a shooting that had occurred and two  
12 individuals were shot.

13 Q Okay. And did you identify the two people eventually that  
14 got shot?

15 A Yes.

16 Q And who did you identify those two as?

17 A Jonathan and Fernando.

18 Q Okay. Jonathan Sanchez and Fernando Espinoza?

19 A Yes.

20 Q All right. Now, when you arrived, was patrol already on  
21 the scene?

22 A Yes.

23 Q Okay. Did you conduct a walk-through of the initial  
24 scene?

25 A Yes.

1 Q Okay. And this is of 56 Linn Lane?

2 A Yes.

3 Q Okay. What did you observe?

4 A I observed cartridge casings in the roadway in front of 56  
5 North Linn Lane. I observed a white pickup truck reversed into the  
6 driveway that contained bullet impacts. And I observed bullet  
7 impacts to the garage door of the residence, 56 North Linn Lane.

8 Q Okay. And I'm showing you State's Exhibit 11; and,  
9 Detective, are those marked placards those casings?

10 A Yes.

11 Q Okay. And you referred to the white pickup truck that was  
12 backed up into the driveway?

13 A Yes.

14 Q Okay. So that's a fair and accurate depiction of that scene  
15 that day?

16 A Yes.

17 Q All right. Now, let's talk a little bit about those casings.  
18 Now, as a detective, did you order fingerprints or DNA from those  
19 spent casings?

20 A No. It's not standard procedure for us to request the DNA  
21 or fingerprints off cartridge casings.

22 Q And why is that?

23 A It's typically unreliable, and typically, fingerprints and  
24 DNA are not located on the casings or cartridges.

25 Q Okay. These were already fired, right?

1           A     Yes.

2           Q     Okay. And so typically, when it gets fired out of a  
3 weapon, fingerprints and DNA aren't collected on those casings?

4           A     Correct.

5           Q     Okay. And you said that you observed two impacts to the  
6 garage door?

7           A     Yes, it was two impacts to the garage door.

8           Q     All right. Were the victims present?

9           A     They were not. They were -- already had -- by the time we  
10 arrived, they were already transported to UMC.

11          Q     Okay. Now, did you make contact with the people on  
12 scene?

13          A     Yes.

14          Q     Okay. Who did you make contact with?

15          A     I made contact with DeAndre Woods.

16          Q     Okay. DeAndre Woods, now, after making contact with  
17 him, did you learn that there were occupants of that residence?

18          A     Yes.

19          Q     At the time of the shooting?

20          A     Yes.

21          Q     Okay. And who was in that residence?

22          A     Kesha and her kids.

23          Q     Okay. And, now, you observed DeAndre Woods, correct?

24          A     Yes.

25          Q     All right. And in your training and experience, you

1 learned how to look at someone's demeanor?

2 A Correct.

3 Q All right. Now, did you -- did he appear to be intoxicated  
4 at all?

5 A No.

6 Q Okay. Did he have a smell of alcohol on his breath?

7 A No.

8 Q Okay. So DeAndre seemed pretty normal?

9 A Yes.

10 Q Okay. Was he still a little scared?

11 A Yes.

12 Q Okay. Now, based on the interview that you had with  
13 DeAndre, did you develop the description of the suspect?

14 A Yes.

15 Q And what was that?

16 A It was a Hispanic male adult, 5-11, 200 pounds, wearing a  
17 red t-shirt and nearly bald hair.

18 Q Okay. And, now, did you also learn that DeAndre had a  
19 previous interaction with that suspect the day prior?

20 A Yes.

21 Q Okay. And was that a short but aggressive interaction?

22 A Yes. He stated that he was in his driveway --

23 Q Yeah -- okay. Go ahead.

24 A No, go ahead. I'm sorry.

25 Q He was in his driveway?

1       A     Yes. DeAndre was in his driveway and the -- Ted Donko  
2 had approached him and they had a brief interaction, and he was  
3 asking for Shorty.

4       Q     Okay. And he was -- Ted Donko was with another guy?

5       A     Yes.

6       Q     Did he give a description of the other guy?

7       A     Yes. He said he was 5-7, smaller build, skinnier build, and  
8 I can't recall if it was a WMA or HMA as well.

9       Q     Okay. All right. Now --

10       THE COURT: Sorry. For the record, what does WMA and  
11 HMA mean?

12       THE WITNESS: I apologize. I apologize.

13       MS. GOODMAN: I'm sorry.

14       THE WITNESS: White male adult or Hispanic male adult.  
15 BY MS. GOODMAN:

16       Q     Okay. And I'm sorry, sometimes we're so familiar with  
17 terms that --

18       A     Yes. I apologize.

19       Q     -- we wouldn't want to use abbreviations right now.

20       A     I apologize.

21       Q     All right.

22       MS. GOODMAN: Thank you, Your Honor.

23       Q     All right. So after your interaction with DeAndre Woods,  
24 did you come to learn that the suspect vehicle was found?

25       A     Yes.

1 Q Okay. And where did you find -- where did -- did you  
2 locate that vehicle?

3 A No, patrol did. Patrol officers.

4 Q Okay. And where, to your knowledge, was that vehicle  
5 located?

6 A I believe it was located on Blue Sea and Linn Lane just  
7 west of.

8 Q Okay. And showing you State's Exhibit 7. Okay. Do you  
9 recognize this area?

10 A Yes.

11 Q Okay.

12 A I apologize, it was -- the vehicle was located on White Cap  
13 Street and Linn Lane, just west of.

14 Q All right. And where that marker is on 56 Linn Lane, that's  
15 where the shooting occurred?

16 A Yes.

17 Q Okay. All right. So showing you State's Exhibit 207; was  
18 that the vehicle found?

19 A Yes.

20 Q Okay. What was the color, year, make, and model of that,  
21 if you know?

22 A It was a gray Toyota Corolla, '90s model.

23 Q Okay. Now, did you have that vehicle processed for any  
24 potential evidence?

25 A Yes, we had it processed for fingerprints.

1 Q Okay. Did you learn of anything that was recovered from  
2 that vehicle of evidentiary significance?

3 A Yes. We record -- we recovered a license plate.

4 Q Okay. A license plate. And then I'm going to show you  
5 State's Exhibit 217; is that where the license plate was found?

6 A Yes.

7 Q Okay. Did you find anything else in that vehicle?

8 A And then we also located a .40-caliber cartridge, a bullet.

9 Q Okay. So I'm showing you State's 215; is that that same  
10 bullet? Is it the same cartridge?

11 A Yes.

12 Q Okay. So did that cartridge match the same head stamps  
13 of the casings done on scene?

14 A Yes, they did .40 caliber S&W, I believe.

15 Q Okay. So same head stamps?

16 A Yes.

17 Q All right. Now, what was the significance of you wanting  
18 to process the license plate for fingerprints?

19 A It's common for people involved in shootings to take a  
20 plate off a vehicle, bring it into the vehicle with them. So we may  
21 have been -- we considered it belonging to the suspects that were  
22 involved in the shooting.

23 Q Okay. Now, did you also -- did patrol officers also locate a  
24 register in the area?

25 A Yes.



1 Q Okay. And I'm showing you State's Exhibit 229; is that  
2 that red shirt?

3 A Yes.

4 Q Okay. And then I'm going to refer you back to State's  
5 Exhibit 7. If you can see this map here, I'm going to zoom it up.  
6 And, Detective, you see a mouse that's next to you?

7 A Yes.

8 Q Right there? If you squiggle the mouse and you hit that  
9 red cursor to the very bottom right. And can you mark where the  
10 shooting -- can you circle where the shooting happened?

11 A [Witness complies.]

12 Q And that's at 56 Linn Lane; is that correct?

13 A Yes.

14 Q Okay.

15 MS. GOODMAN: And for the record, the witness had  
16 circled 56 Linn Lane.

17 THE COURT: Okay.

18 BY MS. GOODMAN:

19 Q And can you circle where the Toyota Corolla was found?

20 A [Witness complies.]

21 Q And -- thank you. And then can you circle where the red  
22 shirt was found?

23 A [Witness complies.]

24 Q Thank you. Okay.

25 So this was just right in the same neighborhood, right?

1           A     Correct.

2           Q     Okay. Now, did you also learn while on the scene that  
3 there was somebody who witnessed an individual driving the  
4 vehicle, which was recovered as well as exited the vehicle after the  
5 shooting?

6           A     Yes.

7           Q     Okay. And what was the name of that individual?

8           A     Genaro Ramos.

9           Q     Okay. And based off of the interview that you -- the  
10 investigation and after his interaction with the detectives, did you  
11 eventually learn to discover the potential path of the suspect?

12          A     Yes.

13          Q     Okay. And where was that?

14          A     We believe that he may have went westbound on  
15 Charleston, up Christie to White Cap, made a right, eastbound, and  
16 then parked facing west, just east of Linn Lane, where the vehicle  
17 was located.

18          Q     Okay. And where did the suspect go after he exited the  
19 vehicle?

20          A     He then walked northbound on Surf Lane.

21          Q     Okay. And did you or other detectives comb that area for  
22 surveillance?

23          A     Yes.

24          Q     Okay. And did you recover surveillance?

25          A     Yes.

1 Q Okay. And did you recover surveillance from that 5675  
2 Dixie Street?

3 A Yes.

4 Q This is the surveillance that you had recovered that day?

5 A Yes.

6 [Video played.]

7 Q Now, Detective, I'm assuming that you watched that  
8 multiple times?

9 A Yes.

10 Q Okay. And why was that of significant value to you?

11 A That matched the description of the shooting suspect.

12 Q With his red shirt on?

13 A Red shirt on and nearly bald hair.

14 Q Okay. And was he headed the same direction where the  
15 red shirt was actually found?

16 A Yes.

17 Q Okay. Now, the part of your investigation, did you learn  
18 where the suspect was residing at at the time of the shooting?

19 A Yes. During an interview with him.

20 Q Okay. And where was that?

21 A That was at 299 Linn Lane.

22 Q I'm going to zoom out. And can you indicate on the map  
23 in the same fashion where that address is?

24 A [Witness complies.]

25 Q So just up the street from the shooting; is that correct?

1           A     Yes.

2           Q     Okay. Now, given the -- all that information, does it -- did  
3 it affect your investigation at all that the red shirt suspect was  
4 actually driving that vehicle just within that same block, minutes  
5 after the shooting?

6           A     Yes.

7           Q     It changed your investigation?

8           A     I'm sorry, can you repeat the question?

9           Q     Oh, I'm sorry.

10          A     I apologize.

11          Q     How -- no, it's okay. It's poorly -- it was -- it's probably --

12          A     That's okay.

13          Q     -- poorly worded.

14                 Did it change your investigation that the person who  
15 shot -- that was described as the shooter was wearing a red shirt,  
16 but on the passenger side of the vehicle? Did it change your  
17 investigation when you found out that the driver of that Toyota at  
18 that time came out of the car by himself?

19          A     No.

20          Q     Okay. And why is that?

21          A     Because there was enough time for the driver to drop  
22 himself off and for the passenger to get into the driver's seat to get  
23 rid of the vehicle in a neighborhood that he's familiar with.

24          Q     Okay. So can you draw on the map the path you believed  
25 that the car went, based off your investigation?

1           A     [Witness complies.] Sorry.

2           Q     Okay. So this is all within the same block, correct?

3           A     Yes.

4           Q     Okay. Now, if you drove that, there's a marker on the map  
5 that said -- that indicates 800 feet is about this long here. If you  
6 were to drive that quickly, would you be -- would you get to that  
7 location in two, three minutes?

8           A     I'd say -- I'd probably say less than a minute.

9           Q     Okay. So it's your belief that it was time for a passenger  
10 to be let out of the vehicle?

11          A     Yes.

12          Q     And go to the driver side?

13          A     Yes.

14          Q     Okay. Now, I'm going to bring your attention back to  
15 October 2nd, 2019. Did you locate the victims of the shooting at  
16 UMC?

17          A     Yes.

18          Q     All right. I'm showing you State's 153. On the monitor  
19 there, there's a little arrow. Or if you toggle the map --

20                THE COURT: So move the mouse again.

21          BY MS. GOODMAN:

22          Q     -- or I guess I could do it this way. We'll do it that way.  
23                And, Detective, did you identify that person?

24          A     Yes.

25          Q     Okay. And is that Fernando Espinoza?

1           A     Yes.

2           Q     All right. And with Fernando, do you recall doing an  
3 interview with Fernando?

4           A     Yes.

5           Q     Okay. And in that interview, did Fernando Espinoza  
6 indicate that he was at 56 Linn Lane on October 1st, 2019?

7           A     Yes.

8           Q     And in that interview did he indicate that while he was on  
9 the driveway, an older model Toyota pulled up to the residence?

10          A     Yes.

11          Q     And in that interview, did he also tell you that he saw a  
12 passenger get out and ask about Shorty?

13          A     Yes. He either asked about Shorty or said, Fuck Shorty.

14          Q     Okay. And he -- but he didn't get a good look at the  
15 shooter?

16          A     Correct.

17          Q     Okay. Now, you also conducted an interview with  
18 Jonathan Sanchez?

19          A     Yes.

20          Q     Okay. Now, I'm going to bring your attention to  
21 October 8, 2019. Did you end up getting the latent print results off  
22 of that license plate?

23          A     Yes.

24          Q     Okay. And what were those results?

25          A     It revealed the left middle finger of Ted Donko.

1 Q Okay. So the fingerprints that were inside the vehicle  
2 matched Ted Donko.

3 Now, did your investigation stop there?

4 A No.

5 Q Okay. What did you do next?

6 A We conducted a photo lineup with DeAndre Woods.

7 Q Okay. Can you kind of tell us and the ladies and  
8 gentlemen of the jury how you would put together a photo lineup?

9 A It's essentially six photos, including the suspect, in this  
10 case, Ted Donko. And all of the other images or all the other  
11 individuals in the six-pack are of the same description to Ted  
12 Donko, height, weight, skin tone, hair style. So there isn't -- for an  
13 example, since DeAndre said that the suspect was a Hispanic male  
14 adult, we didn't put all Hispanic male adults in the photo lineup.  
15 We matched every other person to Ted Donko.

16 Q Okay. Let's talk about that for a second. Now, DeAndre  
17 said he was Hispanic and Ted Donko appeared to be a white male?

18 A Yes.

19 Q Okay. And you still did a photo lineup with DeAndre?

20 A Yes.

21 Q Okay. And why is that?

22 A We believed that may be our shooting suspect, Ted  
23 Donko.

24 Q Okay.

25 A And -- I'm sorry, go ahead.

1 Q Oh, no, it's okay. Did it change your investigation into Ted  
2 Donko because DeAndre described the man as a Hispanic male?

3 A No, it's possible he could have interpreted it differently or  
4 just didn't -- or just thought he was a Hispanic male adult during the  
5 brief interaction he had with him.

6 Q Okay. Is that common?

7 A Yes.

8 Q Okay. To get race kind of mixed up?

9 A Yes.

10 Q All right. I'm going to show you State's Exhibit 202; what  
11 are those, Detective?

12 A It's a photo lineup witness instructions.

13 Q Okay. Now, how important are those photo lineup  
14 instructions?

15 A Very important. We read them before we show them the  
16 photos.

17 Q Okay. Because you, as a detective from Las Vegas  
18 Metropolitan Police Department, don't want to make wrong  
19 identifications; is that correct?

20 A Correct.

21 Q Okay. So you read this, and you read this to DeAndre that  
22 day?

23 A Yes.

24 Q And, I'm sorry, and this was fast-forwarding to 10/9/2020,  
25 and you read those out loud to DeAndre?



1 A Yes. 10/9/2019, just for the record.  
2 Q Oh, I'm sorry.  
3 A It's okay.  
4 Q October 9th, 2019.  
5 A Yes.  
6 Q And DeAndre understood what you were -- what you  
7 read?  
8 A Yes.  
9 Q Okay. And he signed it?  
10 A Yes.  
11 Q And you signed it?  
12 A Yes.  
13 Q Okay. And he marked -- can you read what he had wrote  
14 there?  
15 A Five the person that shot at me and was asking for  
16 Shorty. 95 percent sure.  
17 Q Okay. And he then proceeded to -- State's Exhibit 203 -- to  
18 circle Number 5?  
19 A Yes.  
20 Q Okay. And he actually signed that?  
21 A Yes.  
22 Q Okay. And showing you State's Exhibit 204; who is that?  
23 A That's Ted Donko in Position Number 5.  
24 Q Okay. So DeAndre made a positive match to Ted Donko?  
25 A Yes.

1 Q All right. Now, on November 23rd, 2019, was Ted Donko  
2 eventually apprehended?

3 A Yes.

4 Q Okay. And that -- you didn't do that, correct?

5 A No.

6 Q Okay. When you first saw Mr. Donko, what -- where were  
7 you at?

8 A I was at LVMPD headquarters.

9 Q Okay. And when they -- when Mr. Donko and other  
10 detectives were approaching, did you see anything on his face?

11 A No.

12 Q Okay. When did you first see that, obviously, on State's  
13 Exhibit 8, it appears that he has face tattoos?

14 A Yes.

15 Q Okay. So when did you actually see his tattoos?

16 A In a interview room when I was sitting two feet across  
17 from him.

18 Q So that's when you first recognized that?

19 A Yeah. And it wasn't immediately apparent.

20 Q Okay.

21 A It was shortly into.

22 Q All right. And now you also identified his height?

23 A Yes.

24 Q Okay. What is Ted Donko's height?

25 A 5-11.

1 Q Okay. And what are his -- what is his eye color?

2 A Blue.

3 Q Okay. Do you see that individual in court today?

4 A Yes.

5 Q And could you please point that person out and identify  
6 an article of clothing he or she is wearing?

7 A He's wearing a button-up dark blue shirt.

8 MS. GOODMAN: Okay. And let the record reflect the  
9 identification of the defendant.

10 THE COURT: It will.

11 BY MS. GOODMAN:

12 Q All right. And you said you conducted an interview with  
13 him, correct?

14 A Yes.

15 Q Okay. Now, after all of that is said and done, you actually  
16 got the DNA results back after the -- after everything else?

17 A Yes.

18 Q Okay. And what were the DNA results from that red shirt?

19 A The DNA buccal swab that we obtained from Ted Donko  
20 matched the DNA that was swabbed from the red t-shirt.

21 Q Okay. Which further confirms him as the shooting  
22 suspect?

23 A Yes.

24 Q All right.

25 MS. GOODMAN: I pass the witness, Your Honor.

1 THE COURT: Cross?

2 MR. HAUSER: Thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MS. GOODMAN:

5 Q Good afternoon, Detective.

6 A Good afternoon, sir.

7 Q You've got to bear with me, my voice is going a bit.

8 A It's all right.

9 Q Let's start with Mr. Woods. You did interview Mr. Woods  
10 on October 1st, right?

11 A Yes.

12 Q Why is it important to interview someone right away?

13 A When we're on scene there, it's just one of the preliminary  
14 things we do immediately to interview them so we can obtain fresh  
15 information.

16 Q You want to get it while the information's still fresh in  
17 someone's mind?

18 A Correct.

19 Q And this was immediately after the shooting, obviously?

20 A Yes.

21 Q All right.

22 A About an hour and a half.

23 Q And you want to be able to put out a description of the  
24 suspects that haven't been found?

25 A Correct.

1 Q And during that interview, he gave you a pretty specific  
2 description of the suspects, right?

3 A Correct.

4 Q He specifically said it was two Mexicans?

5 A No. I don't believe --

6 Q He didn't say the word Mexican?

7 A I can't recall if he said Mexican or Hispanic. But -- I can't  
8 recall from --

9 Q If I showed you his statement, would you remember?

10 A Yeah. Yes.

11 MR. HAUSER: Judge, may I approach?

12 THE COURT: Of course.

13 BY MR. HAUSER:

14 Q I'll show it to you, you can read through it. All right.

15 So, Detective, I'm showing you Mr. Woods' voluntary  
16 statement, right?

17 A Yes.

18 Q All right. So that's the statement you took right after the  
19 shooting?

20 A Yes.

21 Q All right. Go ahead and read we'll say the top half of  
22 page 3, and then just look up at me when you're done.

23 A That's in front of 56 Linn, yep.

24 Q Oh, you don't have to read it out loud, sorry.

25 A Oh, I apologize. [Witness reads document.]

1 I'm done.

2 MR. HAUSER: May I approach, Judge?

3 THE COURT: Yes.

4 BY MR. HAUSER:

5 Q Did that refresh your memory as to how, exactly, he  
6 described the suspects on that day?

7 A Yes.

8 Q All right. And he did use the word Mexican?

9 A Yeah. So then he used Hispanic afterwards.

10 Q Okay. So he used both Mexican and Hispanic?

11 A Yes.

12 Q Okay. He also told you that they had no facial hair?

13 A Yes.

14 Q He told you they had no tattoos?

15 A Yes.

16 Q He specifically said that the shooter, the one wearing the  
17 red shirt, was bald?

18 A Can't recall if it was bald or nearly bald, but --

19 Q Would you remember if I showed you?

20 A Yes.

21 Q All right.

22 MR. HAUSER: May I approach again, Judge.

23 THE COURT: Yes. Feel free to move freely.

24 MR. HAUSER: Thank you. I appreciate it.

25 BY MR. HAUSER:

1 Q All right. Detective, this is the same statement we just  
2 went over. Looking at page 4 here. Go ahead and read that, look  
3 up at me when you're done. You can read silently.

4 A [Witness complies.] I'm done.

5 Q All set?

6 A Yep.

7 Q So he did specifically described the shooter as bald?

8 A Yes.

9 Q And that's the shooter who's wearing the red shirt, right?

10 A Yes.

11 Q Okay.

12 MR. HAUSER: Judge, I'm going to retrieve that, if that's  
13 okay.

14 THE COURT: Okay.

15 BY MR. HAUSER:

16 Q I appreciate that, Detective. Thank you.

17 A No problem.

18 Q That's what happens when I don't staple it.

19 A That's all right.

20 Q So, detective, I think you covered this with Ms. Goodman.  
21 You're in charge of the entire investigation?

22 A Yes.

23 Q So whatever happens in this investigation comes back to  
24 you?

25 A Yes.

1 Q It's not like they would keep information over here and not  
2 show it to you?

3 A Correct.

4 Q So you saw what you needed to see in this case to come  
5 to your conclusions, right?

6 A Yes.

7 Q Okay. Now, in this case, you actually did seize  
8 Mr. Donko's cell phone, right, when he got arrested?

9 A Yes.

10 Q You sent that off for investigation?

11 A We conducted a search warrant on it.

12 Q Right. To the best of your knowledge, nothing came back  
13 that tied Mr. Donko to the shooting based on that cell phone record,  
14 right?

15 A No. It was a new cell phone that was purchased or -- after  
16 the shooting had occurred.

17 Q Got it. Okay.

18 Let's talk about the interviews you conducted with the  
19 victims. You spoke a little bit about speaking to them in the  
20 hospital, right?

21 A Correct.

22 Q And that was Mr. Espinoza and Mr. Sanchez?

23 A Yes.

24 Q Neither of them could give you a description of the  
25 shooter?



1           A     Can't recall if they gave a description or not. I don't recall  
2 if it was maybe something as small as wearing a red shirt or just  
3 skin tone. I just can't recall.

4           Q     If I showed you your report?

5           A     Yes.

6           Q     All right.

7           MR. HAUSER: Approach, Judge?

8           THE COURT: Yes.

9           MR. HAUSER: I said you said it was cool, but I just want  
10 to make sure.

11          THE COURT: Yeah, of course.

12 BY MR. HAUSER:

13          Q     Detective, I'm showing you the Declaration of Arrest in  
14 this case. This is the report you wrote, right?

15          A     Yes.

16          Q     All right. I'm just going to look ahead here, page 3. Why  
17 don't you go ahead and review those two paragraphs. Same kind  
18 of deal, look up at me when you're done.

19          A     [Witness complies.] I did.

20          Q     So neither of them could give you a description of the  
21 suspect?

22          A     No, they did not.

23          Q     All right.

24          MR. HAUSER: Approach to retrieve.

25          Q     Thank you, Detective.

1           A     Thank you.

2           Q     In fact, you only spoke to one other person who's actually  
3     able to give a description in this case; is that right?

4           A     Yes, DeAndre Woods.

5           Q     How about Edgar Miller?

6           A     I can't recall if Edgar Miller gave a description or not. I  
7     can't recall.

8           Q     You don't recall if Mr. Miller described the suspects as  
9     Hispanic?

10          A     I can't recall.

11          Q     All right. Would you remember if I showed you the  
12     interview?

13          A     Yes.

14          Q     All right.

15                 MR. LEXIS: Judge, can we approach?

16                 THE COURT: Yep.

17                         [Bench conference transcribed as follows.]

18                 MR. LEXIS: Edgar Miller has not testified. It's hearsay.

19                 MR. HAUSER: It's for further investigation, Judge. Not  
20     for truth.

21                 THE COURT: And I [indiscernible] hear that's for the truth.  
22     So the --

23                 MS. GOODMAN: It's absolutely for the truth.

24                 MR. HAUSER: Mr. Woods, it's definition [indiscernible].

25                 THE COURT: But Mr. Woods testified, right? So you can

1 do prior consistent or prior inconsistent.

2 MR. HAUSER: Right.

3 THE COURT: But since this guy never testified and he  
4 hasn't [indiscernible] anything [indiscernible].

5 MR. HAUSER: Oh, I understand. It's not impeachment.  
6 I'm saying that the hearsay's not offered for the truth. It's --

7 MS. GOODMAN: It's the opposite.

8 MR. HAUSER: His subsequent investigation that he was  
9 then told by both the eyewitnesses it was a Hispanic male and  
10 where the investigation went from there.

11 THE COURT: So -- all right, so this guy -- what's  
12 [indiscernible]?

13 MR. HAUSER: Miller.

14 THE COURT: This is Miller.

15 MR. HAUSER: Yeah.

16 THE COURT: So he believes he doesn't -- he talked to  
17 Miller and Miller said --

18 MR. HAUSER: Hispanic. That's all he got. He doesn't get  
19 anything else out of him, to the best of my recollection.

20 THE COURT: Okay. So you never -- I mean, it's still  
21 hearsay. I think you can say, from what the other people say, you  
22 were told it was two Hispanic men, and then you did what? He  
23 hasn't had time to look at it, right? So --

24 MR. HAUSER: Right.

25 THE COURT: -- I think if he --

1 MR. HAUSER: It's [indiscernible]. Yeah.

2 THE COURT: Right. So it's [indiscernible] to hearsay, but

3 [indiscernible] same thing. So.

4 MR. HAUSER: Cool.

5 MR. LEXIS: Judge, I would move to strike that last

6 question.

7 THE COURT: All right.

8 MR. HAUSER: All right. I'll narrow it down.

9 THE COURT: Okay.

10 [End of bench conference.]

11 THE COURT: So the last question and answer will be

12 stricken from the record. So you are to disregard the last question

13 and answer by the detective.

14 Next question.

15 BY MR. HAUSER:

16 Q Suffice it to say, Detective, no eyewitness to the shooting

17 described the shooter as white?

18 A That's correct.

19 Q Okay. All right. Detective, I'm showing you what's been

20 admitted as State's 7. All right. You were looking [indiscernible],

21 right?

22 A Yes.

23 Q Do you see an address marked towards the top of that

24 screen?

25 A Yes.

1 Q 299 North Linn?

2 A Yes.

3 Q Whose address is that?

4 A At that time, when the shooting occurred, Ted Donko was  
5 residing there.

6 Q That's Ted Donko's address at the time?

7 A At the time, yes.

8 Q Right. I appreciate that, Detective.

9 MR. HAUSER: Brief indulgence, Judge.

10 THE COURT: Yep.

11 [Pause in proceedings.]

12 BY MR. HAUSER:

13 Q Detective, you remember when the 911 call was made in  
14 this case?

15 A What time?

16 Q Yeah.

17 A I want to say it was possibly 12:14.

18 Q 12:14?

19 A Yeah.

20 Q If I tell you that's right, would you believe me?

21 A Yes.

22 Q All right. So 12:14 the 911 call was made?

23 A Yes.

24 Q All right. And I want to finish by talking to you about the  
25 lineup that you introduced. That was down here. All right. So this

1 is State's 203, right? This is the lineup that you put together?

2 A Yes.

3 Q All right. That's the lineup you showed to Mr. Woods as  
4 well, right?

5 A Yes.

6 Q And you showed that to Mr. Woods on the 9th, correct?

7 A Yes, I believe so.

8 Q Showing you State's 202; see the date on the top up  
9 there?

10 A Yes.

11 Q All right. So it's on the 9th?

12 A Yes.

13 Q Cool. Back to State's 203. Now, when you look at that  
14 lineup, obviously, there's no Hispanic males in that lineup, right?

15 A That's correct.

16 Q There are no bald individuals in that lineup, right?

17 A That's correct.

18 Q There are, however, gentlemen with facial hair in that  
19 lineup?

20 A That's correct.

21 Q Now, in this lineup, Mr. Donko has no facial hair?

22 A I'd say he has facial hair.

23 Q I guess that little tuft under the chin, right?

24 A And on the sides and -- there's, like, some scruff.

25 Q Yeah. So 5:00 shadow kind of thing?

1           A     Little more than that.

2           Q     Maybe a little longer? Okay. You wouldn't call it a beard,

3 right?

4           A     No.

5           Q     And certainly not compared to Number 6, right?

6           A     No.

7           Q     Or Number 4?

8           A     No.

9           Q     Or Number 1?

10          A     The sides are kind of like Number 1.

11          Q     But those guys all clearly have facial hair, right?

12          A     Yes.

13               MR. HAUSER: Brief indulgence, Judge.

14               THE COURT: Sure.

15               MR. HAUSER: Thank you, Judge.

16               I have no further questions at this time. Thank you,

17 Detective.

18               THE WITNESS: Thanks.

19               THE COURT: Redirect.

20               MS. GOODMAN: Just briefly, Your Honor.

21                         **REDIRECT EXAMINATION**

22 BY MS. GOODMAN:

23           Q     All right, Detective. Both of the victims identified the

24 passenger as the one who got out and shot?

25           A     Yes.

1 Q Both victims said Shorty, they said something about  
2 Shorty, and he shot?

3 A Yes.

4 Q Okay. The eyewitness to the shooting says that he has a  
5 red shirt?

6 A Yes.

7 Q Okay. Not only did that eyewitness identify Ted Donko,  
8 but identifies the red shirt, correct?

9 A Yes.

10 Q Okay. I'm pointing to the Toyota Corolla found up the  
11 street, the inside of the Toyota Corolla, there's a license plate with  
12 Ted Donko's fingerprints in it?

13 A Yes.

14 Q Just a little bit further, there's a surveillance still that  
15 shows a man wearing a white shirt towards the direction of Big  
16 Sea?

17 A Wearing a red shirt.

18 Q At the video surveillance that you recovered from 5675  
19 Big Sea Street, shows a male with a red shirt that day, on  
20 October 1st?

21 A Yes.

22 Q Okay. And that's headed the direction to the Big Sea  
23 street that's right here?

24 A Yes.

25 Q Same direction of where the red shirt was found?



1           A     Yes.

2           Q     The red shirt containing Ted Donko's DNA?

3           A     Yes.

4           Q     Right up in the same path, that's an easy out to get to 299

5 North Linn?

6           A     Yes.

7           Q     Okay.

8           MS. GOODMAN: No further questions, Your Honor.

9           THE COURT: Anything based on that, Mr. Hauser?

10          MR. HAUSER: A moment of indulgence, Your Honor.

11          THE COURT: Sure.

12          MR. HAUSER: No, thank you, Judge. I'm all set.

13          THE COURT: Any questions from the ladies and

14 gentlemen of the jury? Yes, sir.

15                 [Bench conference transcribed as follows.]

16          MR. HAUSER: Was that the only one?

17                 [End of bench conference.]

18          THE COURT: All right. Detective, was a weapon ever

19 recovered?

20          THE WITNESS: No.

21          THE COURT: Any follow-up by the State?

22                         **FURTHER EXAMINATION**

23 BY MS. GOODMAN:

24           Q     Detective, are you surprised by that?

25           A     No.

1 Q Why?

2 A The timeframe from when we -- the shooting occurred  
3 and we took Ted Donko into custody was about a month and a half.

4 Q Okay.

5 A That's -- and then you're not going to leave a firearm  
6 inside of a vehicle or -- you'll try to dispose of it as soon as possible  
7 after the crime has been committed.

8 Q Thank you.

9 MR. HAUSER: Objection. Speculation.

10 MS. GOODMAN: No further questions, Your Honor.

11 THE COURT: Sustained.

12 MS. GOODMAN: Thank you, Your Honor.

13 THE COURT: Defense, follow-up in regards to that specific  
14 question?

15 MR. HAUSER: No, Judge.

16 THE COURT: All right. Any other questions from the jury?  
17 Yes, sir.

18 [Bench conference transcribed as follows.]

19 MR. HAUSER: I'm okay with that.

20 [End of bench conference.]

21 THE COURT: Detective, did investigators view an  
22 enhanced or zoomed-in version of the video?

23 THE WITNESS: The surveillance video from the address?  
24 I mean, we did try to zoom in on it, but it wasn't enhanced. It was  
25 fairly poor quality, but you can still see that there was a very similar

1 description to the shooting suspect.

2 THE COURT: Can everyone -- did everyone hear that  
3 answer? All right.

4 Follow-up?

5 MS. GOODMAN: Yes, Your Honor.

6 Your Honor, may I approach?

7 THE COURT: Yes.

8 MS. GOODMAN: And these actually are not marked.

9 THE COURT: Okay.

10 MS. GOODMAN: Can we mark these real quick? I  
11 apologize.

12 [Pause in proceedings.]

13 MS. GOODMAN: And, Your Honor, may I approach?

14 THE COURT: Yes.

15 **ADDITIONAL EXAMINATION**

16 BY MS. GOODMAN:

17 Q Can you look through those, that stack of photos,  
18 Detective?

19 A [Witness complies.]

20 Q And do you recognize those?

21 A Yes.

22 Q What do you recognize them to be?

23 A The still photos from the video surveillance.

24 Q Okay. And are they, in fact, zoomed up?

25 A Yes.

1 Q Okay.

2 MS. GOODMAN: And, Your Honor --

3 Q Do these truly, fairly, and accurately depict the video  
4 surveillance?

5 MS. GOODMAN: Again, Your Honor, I move for a State's  
6 admission as 235 through 238.

7 MR. HAUSER: No objection.

8 THE COURT: All right. Those will be admitted.

9 [State's Exhibit Nos. 235 through 238 admitted.]

10 MS. GOODMAN: Thank you, Your Honor.

11 No further questions at this point.

12 THE COURT: All right.

13 Yes?

14 MR. HAUSER: Just one brief follow-up.

15 THE COURT: Okay.

16 **ADDITIONAL EXAMINATION**

17 BY MR. HAUSER:

18 Q Detective, I think it's fair to say you -- good lord, you  
19 yourself would describe those as poor quality? The video, the  
20 stills?

21 A Yeah, they -- we can't get a -- it's not like a driver's license  
22 photo.

23 Q Right. It's not like *CSI*, where you can zoom all the way in  
24 and get the clear ID.

25 A Right. It's fairly pixilated.

1 Q I appreciate it.  
2 MR. HAUSER: Thank you very much, Judge.  
3 THE COURT: All right. Anything else, State?  
4 MS. GOODMAN: No, Your Honor.  
5 THE COURT: Any other question from the jurors? Okay.  
6 [Bench conference transcribed as follows.]  
7 MR. LEXIS: Obviously, I say that can't be asked.  
8 MR. HAUSER: I think that would be -- yeah, agree.  
9 MR. SHAYGAN-FATEMI: I like that. I'm okay with that.  
10 MR. LEXIS: Can you explain [indiscernible].  
11 MR. SHAYGAN-FATEMI: Yeah, I like that.  
12 THE COURT: All ready? Oh, no.  
13 MR. HAUSER: No, there was one.  
14 THE COURT: All right.  
15 MR. HAUSER: The one on the bottom now. And I think  
16 if -- I don't think you need an explanation.  
17 THE COURT: Okay.  
18 [End of bench conference.]  
19 THE COURT: All right. Detective, were you able to find  
20 traffic or any other cameras with the car?  
21 THE WITNESS: There was an AutoZone video  
22 surveillance. I could point it on the map. However, that video was  
23 also poor quality. There is a vehicle that passes by that's a very  
24 similar description, but, again, you can't depict that it would be the  
25 exact vehicle.

1 THE COURT: Okay. Can you explain how lineup photos  
2 are -- were selected? And why did none match the original  
3 description provided by Mr. Woods?

4 THE WITNESS: So we match the other five photos based  
5 off the main individual, the main suspect. The reason why the  
6 other photos weren't based off of DeAndre Woods' suspect is  
7 because if we had five Hispanic male adults and then one male  
8 adult, that male adult would stick out. So we have to pick the other  
9 photos to similarly match the suspect photo. If that -- I can  
10 elaborate if anybody has some questions.

11 THE COURT: Well, let's see if there's any follow-up  
12 questions.

### 13 ADDITIONAL EXAMINATION

14 BY MS. GOODMAN:

15 Q And go ahead, you can elaborate if you'd like on why --  
16 what photos you chose to pick.

17 A So they were based off height, weight, skin tone, hair  
18 length, similar facial hair. So it's -- the program is set up to where  
19 the suspects' descriptions are put into the system and then all these  
20 other people are pulled up based off the same descriptions of the  
21 suspect.

22 Q Okay. And the -- and Ted Donko matches a 5-11, 200  
23 pound -- that's what his specs are?

24 A Yes.

25 Q Okay. And -- which is -- matches DeAndre's suspect, 5-11,

1 about 200, 200-plus pounds.

2 A Yes.

3 Q Thank you.

4 MR. HAUSER: No further questions, Your Honor.

5 THE COURT: Defense.

6 MR. HAUSER: Yes, Your Honor.

7 **ADDITIONAL EXAMINATION**

8 BY MR. HAUSER:

9 Q Just to be clear, Detective, when you say you were picking  
10 them to match the description, that's the description of Ted Donko,  
11 not the description you received from the scene?

12 A Correct. Description of Ted Donko being the suspect in  
13 that photo.

14 Q Thank you very much.

15 MS. GOODMAN: Nothing further, Your Honor. Thank  
16 you.

17 THE COURT: Anything else from the jury?

18 All right. Detective, you are excused from your subpoena  
19 and free to leave. Please do not share you testimony with anyone  
20 else involved in the case.

21 THE WITNESS: Thank you, ma'am.

22 THE COURT: Thank you. Have a nice day.

23 State?

24 MR. LEXIS: Could we approach?

25 THE COURT: Yep.

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[Bench conference transcribed as follows.]

MR. LEXIS: We're going to rest now.

[End of bench conference.]

MR. LEXIS: With the admission of all our exhibits, the  
State rests.

THE COURT: Okay. The State rests their case in chief.  
Defense?

MR. HAUSER: Brief indulgence, Judge.

THE COURT: Sure.

[Pause in proceedings.]

MR. HAUSER: The defense does have a witness, Your  
Honor.

THE COURT: Okay.

MR. HAUSER: Defense calls Ted Donko.

THE COURT: All right.

**TED MICHAEL DONKO,**

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

THE CLERK: Thank you. You may be seated. Please state  
your complete name, spelling both your first and last name for the  
record.

THE WITNESS: Ted Michael Donko, T-E-D, D-O-N-K-O.

THE CLERK: Thank you.

///

///



**DIRECT EXAMINATION**

**BY MR. HAUSER:**

Q Mr. Donko, how old are you?

A 30 years old.

Q Where do you live?

A 299 North Linn.

Q Is that close to 56 North Linn?

A Eight houses down.

Q How long have you lived there?

A Four years.

Q How long you been in Las Vegas?

A Since 1999.

Q Did you go to school here?

A Yes, I did.

Q Where?

A I went to Valley, I went to Chaparral, Mohave, and attended UNLV for three and a half months.

Q Ted, in the interest of fairness, I want to ask this jury right now, you ever been in trouble before?

A Yes, I have.

Q What do you mean?

A I have two prior convictions for attempted grand larceny and attempt burglary.

Q So you're a convicted felon?

A Yes, I am.

1 Q Honesty is always the best policy. I appreciate that.

2 Ted, we've heard a lot about October 1st in this case. On  
3 October 1st, you're accused of shooting at three people and hitting  
4 two of them. Did you shoot anybody?

5 A No.

6 Q Do you own a gun?

7 A No.

8 Q Have you ever tried to shoot anybody?

9 A No.

10 Q Do you know where you were on October 1st?

11 A Yes. I was at home, and I went to Sonic, which is across  
12 the street from the AutoZone.

13 Q When you say across the street from the AutoZone, give  
14 me, like, some cross-streets there.

15 A You -- as you go down Linn, and then where they said the  
16 car had made a right turn, across -- right across from Charleston is  
17 where Sonic is.

18 Q Let me show you a map and we can try to identify it,  
19 okay?

20 A No problem.

21 Q I'm going to show you State's Exhibit 7.

22 A Okay.

23 Q All right. So you're looking at Charleston and Linn there,  
24 right?

25 A Yes.

1 Q That's here at the bottom of the photo?  
2 A Yes.  
3 Q So the Sonic is maybe even where this --  
4 A It's right here.  
5 Q Want to draw it on there for me?  
6 A Yes. It's about right there somewhere.  
7 Q Okay. So very, very close to Charleston and Linn?  
8 A Yes.  
9 Q Okay. I appreciate that.  
10 Ted, have you ever met DeAndre Woods before?  
11 A Yes, I have.  
12 Q Where?  
13 A From the neighborhood. From the neighborhood we  
14 hung out, smoked pot together, stuff like that.  
15 Q All right. So you've seen him before?  
16 A Absolutely, yes.  
17 Q Do you know how long ago you first met him?  
18 A I met him probably back in 2017.  
19 Q All right.  
20 A That's before him and his girl broke up, when he got  
21 kicked out of the house.  
22 Q Okay. Ted, tell me about what your house looks like;  
23 what's the front yard look like?  
24 A I have five cars in front of it that I work on. I'm a  
25 mechanic, do side jobs for a mechanic.

1 Q Okay.

2 A It's -- I have my front driveway, the garage -- there is no  
3 garage. It's in the front, the back gate's on the right side. There's a  
4 front dirt lot. There's a white gate. One side bedroom window is  
5 by the front door. There's a two-door garage.

6 Q Tell me about your neighborhood a little bit; what's it like?

7 A It's -- I just -- we moved out of there. It's been a rough --  
8 there's a lot of Hispanic on Hispanic gang, violence going on. A lot  
9 of shootings been going on over there.

10 Q Would you describe it as a safe area?

11 A No.

12 Q How about a clean area?

13 A No.

14 Q Not to be offensive, would you describe it as a poor  
15 neighborhood?

16 A I wouldn't say it's poor. There's -- anywhere you go,  
17 there's bad fruit, you know?

18 Q Of course.

19 A But it calmed down for a while over there, and then it  
20 started, it got -- and then that situation happened.

21 Q Is it the kind of neighborhood where people occasionally  
22 have street names?

23 A Yes.

24 Q Like Shorty?

25 A Yes. I only know of -- I didn't really know Shorty at all. I

1 just heard that he had got jumped by a black male. And -- because  
2 everybody -- there's a few people there that hang out. DeAndre  
3 Woods, I just bought pot from him.

4 Q Okay. And the reason I ask that is when you hear  
5 someone referred to by a nickname, that's not surprising to you,  
6 right?

7 A No, sir.

8 Q In that neighborhood, some people just go by nicknames?

9 A You could say that, yes.

10 Q All right. Would you say that?

11 A Yes.

12 Q All right.

13 MR. HAUSER: Brief indulgence, Judge.

14 [Pause in proceedings.]

15 Q Ted, I want to be very clear: Do you have any problems  
16 with Fernando Espinoza?

17 A I've never seen him in my life. I --

18 Q How about Jonathan?

19 A I've seen Jonathan around.

20 Q Do you have any problems with Jonathan Sanchez?

21 A No.

22 Q Or DeAndre Woods?

23 A No.

24 Q Would you ever shoot at those individuals?

25 A I would never shoot at anyone, Your Honor.

1 Q I appreciate it, Ted. Thank you very much.  
2 MR. HAUSER: I have no further questions of this witness.  
3 THE COURT: Cross.  
4 MR. LEXIS: Yes.  
5 THE WITNESS: Your Honor, the attorney. Sorry.  
6 MR. HAUSER: It's okay, bud.

7 **CROSS-EXAMINATION**

8 BY MR. LEXIS:

9 Q Sir, you gave a statement to the police after you were  
10 arrested, correct?

11 A Yes, sir.

12 Q It was a long interview, correct?

13 A Yes, sir.

14 Q Okay. You just got up there and told this jury, with your  
15 defense attorney, that, Oh, yeah, it's common to know people by  
16 the name of Shorty, right?

17 A Yes, sir.

18 Q Okay. Do you remember when the detective first asked  
19 you if you knew a man by the name of Shorty, you said no, correct?

20 A I didn't say no, I said I bought methamphetamine off of  
21 him.

22 Q It's yes or no.

23 A I didn't say I didn't know him, no.

24 Q Okay. So when the detective first asked you if you knew a  
25 man named Shorty, you said no, right?

1           A     No, that's not right.

2           Q     Okay. And then, when pressed, you did admit to knowing

3 a man named Shorty, correct?

4           A     I admitted to it on the first -- the first time he asked me.

5           Q     Okay.

6           A     Also, I have a statement, if you'd like to see, where I

7 admitted knowing --

8           Q     Sir, that's -- I'm asking the questions. Okay?

9           A     Okay, I'm sorry. Yes, sir.

10          Q     Now, you gave this full interview, you said that you know

11 the victim in this case, but in no point in time in that interview did

12 you say you knew DeAndre Woods, correct? Yes or no.

13          A     I said I didn't --

14          Q     Yes or no.

15          A     Yes.

16          Q     You did say that? Okay.

17          A     Yes, I did tell him.

18          Q     Now, as you stated, sir, you reside near this area, correct?

19 Right?

20          A     Yes.

21          Q     In this whole general vicinity, where the shooting

22 occurred, where the car was located, where the red shirt is, and

23 where your house -- it's all in the same area, correct?

24          A     Yes, it is.

25          Q     Okay. So fair to say you know this area well, correct?

1           A     To a certain point, yes.

2           Q     Okay. You remember telling the detective that your  
3 girlfriend picked you up around that day, around 11:00 or 12:00?

4           A     Yes.

5           Q     Okay. Do you remember saying that you were over by her  
6 house, across town at the time of the shooting?

7           A     No. I stated I went to her house later on that day.

8           Q     Okay. So this license plate that's in the vehicle right here,  
9 correct?

10          A     Which license plate?

11          Q     The license plate that we've seen in this case, sir.

12          A     Yes.

13          Q     Okay. Do you normally drive around with no license plate  
14 on your car?

15          A     I don't have a car. I don't have a license.

16          Q     Okay. You normally take license plates on and off?

17          A     Not really, no. Unless it's for my mom.

18          Q     Okay. But your print's on that license plate in that car,  
19 correct?

20          A     Yes.

21          Q     Okay. And it's your testimony you did not park that car at  
22 that address?

23          A     No.

24          Q     Just a big coincidence how there's no license plate on it  
25 and the only viable print in that car comes to you on the plate,



1 correct?

2 MR. HAUSER: Objection. Badgering the witness.

3 THE WITNESS: I find it's kind of --

4 THE COURT: Hold on just a second.

5 I'm sorry, what was the objection?

6 MR. HAUSER: Badgering the witness.

7 THE COURT: Overruled.

8 Go ahead.

9 BY MR. LEXIS:

10 Q Go ahead.

11 A Can I say something?

12 THE COURT: Can you re-ask the question?

13 MR. LEXIS: Yes.

14 BY MR. LEXIS:

15 Q So the only viable print on that vehicle you said that you  
16 weren't in comes back to the license plate, correct?

17 A In the statement, it says that --

18 Q Yes or no. I'm asking yes-or-no questions, sir. Yes or no?

19 A Yes or no what?

20 Q I'll move on.

21 Sir, the detectives pressed you, correct, and told you that  
22 they found fingerprints in the vehicle, correct?

23 A Yes.

24 Q Okay. You actually admitted to being in a four-door  
25 sedan, older model, beat-up condition, the night prior to this

1 shooting, correct? Yes or no.

2 A Yes.

3 Q Okay. In fact, when confronted with evidence from the  
4 detectives, you admit to being the passenger in that vehicle,  
5 correct?

6 A Yes. Again, I don't have a license in --

7 Q Yes or no?

8 A Yes.

9 MR. SHAYGAN-FATEMI: Your Honor, is it necessary for  
10 the State to yell at him?

11 THE COURT: So I just need you to answer just yes or no.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: And then your --

14 THE WITNESS: I apologize for it, ma'am.

15 THE COURT: It's all right.

16 And then your attorneys will have an opportunity to ask  
17 you questions and you can --

18 THE WITNESS: Okay.

19 THE COURT: -- say more than yes or no if it calls for it.

20 THE WITNESS: Okay.

21 THE COURT: But when the State's asking you, if it's just  
22 yes or no, just say yes or no. Okay?

23 THE WITNESS: Okay. I apologize, sir.

24 THE COURT: That's all right.

25 BY MR. LEXIS:

1 Q Do you normally discard clothing throughout the  
2 neighborhood, sir? Yes or no.

3 A No.

4 Q But roughly minutes after this shooting, your -- a red shirt  
5 that you obviously wore is found a couple blocks from your house,  
6 correct?

7 A That's what I've been told, yes.

8 Q A couple of blocks from the shooting too, correct?

9 A Yes.

10 Q When were you driving around, sir, in this older -- in your  
11 words, a four-door sedan, older model, beat-up condition?

12 A It was an Audi. Four-door Audi. And it was about 10:00 at  
13 night when my buddy took me -- Patrick -- he took me to the  
14 dispensary.

15 Q Okay. Did you mention Audi to the detective? Yes or no.

16 A No, at that time, I didn't know exactly what kind of car it  
17 was, but I asked him on the phone. I called him from jail.

18 Q Okay. So you brought that up -- this is some new  
19 evidence that you're bringing forward, that it's an Audi, right?

20 A I wouldn't really say it's new.

21 Q Okay.

22 A I mean, I asked him when I first got -- came to jail.

23 Q But you described it to the detective as a beat-up  
24 condition four-door sedan, old model, correct?

25 A Yes.

1 Q Okay. And what time were you driving that vehicle  
2 around, sir?

3 A I wasn't driving the vehicle. I was the passenger. And it  
4 was about 10:00 p.m.

5 Q 10:00 p.m. But it wasn't the vehicle that we saw earlier?

6 A No, it was not.

7 Q This one, it just happens to be a different vehicle that has  
8 your prints on the license plate, correct?

9 A Yes.

10 Q Okay.

11 A Your Honor, may I say something?

12 THE COURT: No. You have to wait for a question.

13 BY MR. LEXIS:

14 Q The spent -- unspent cartridge casing that matches the  
15 casings at the crime scene, as you've heard, in evidence, sir, that's  
16 found in the vehicle with your print on it; just a coincidence,  
17 correct?

18 MR. SHAYGAN-FATEMI: Your Honor, that calls for  
19 speculation.

20 BY MR. LEXIS:

21 Q You have no idea it's in there, correct?

22 A I -- I believe my fingerprint was on the license plate  
23 wedged between the seat, not on the vehicle. But yes, there's a  
24 shell casing in that car.

25 Q But today you're telling us that at the time of the interview

1 with the detective, it was a four-door sedan, light brown, when  
2 confronted with evidence. Basically, you described that car, the  
3 description of it, a four-door sedan, beat-up condition. But today,  
4 all of a sudden, it switches to an Audi, correct?

5 MR. HAUSER: Objection. Compound.

6 THE WITNESS: It was --

7 THE COURT: Hold on. You have to wait till I rule on the  
8 objections.

9 THE WITNESS: Okay.

10 THE COURT: So no, I don't believe it was compound.  
11 Overruled.

12 Go ahead.

13 THE WITNESS: No. He -- I asked him what kind of car he  
14 had. He told me it was an Audi and it was a beat-up older car,  
15 about 2002.

16 BY MR. LEXIS:

17 Q Okay. Sir, this is my question --

18 A Four-door.

19 Q This is my question, sir: You could have described any  
20 car to the detectives that day, correct?

21 A Yes.

22 Q Okay. But when the detective presses you and says, Sir,  
23 we have your fingerprints in a car, your response wasn't, It was an  
24 Audi, correct? Yes or no.

25 A No, it was not.

1 Q Okay. You didn't say it was a truck, an SUV, correct?  
2 A No, because it wasn't.  
3 Q Okay. You didn't give a particular -- saying it was a newer  
4 model, you didn't say any of that, correct?  
5 A No, because that would be lying if I did.  
6 Q Okay. You, not the detective, you described it as a  
7 four-door sedan, older model, correct?  
8 A Yes, sir.  
9 Q In which you were the passenger, correct?  
10 A Yes, sir. But he never --  
11 Q Nothing further.  
12 A -- told me he had --  
13 Q Nothing further. Thank you.  
14 THE COURT: Mr. Hauser?

15 **REDIRECT EXAMINATION**

16 BY MR. HAUSER:

17 Q Mr. Donko, you could have described any car, an SUV, a  
18 truck, a Maserati, any car to the cops.  
19 A Yes.  
20 Q Why didn't you?  
21 A Because I was telling the honest truth about what I was  
22 doing the night before. And for the record, he never told me they  
23 had a fingerprint inside of the car at that moment.  
24 Q Mr. Lexis asked you a lot of questions about why you  
25 didn't give this additional information. Were you asking the

1 questions in this interview?

2 A No.

3 Q Did the ask you to just say everything you wanted to say?

4 A No.

5 Q Were you trying to do the best you could to answer the  
6 questions the detective was asking you?

7 A I was very cooperative, yes.

8 Q And were you -- did you cooperate with him?

9 A Absolutely.

10 Q Take a look back here at Exhibit 7. All these pins on here,  
11 your house, the shirt, the car, the shooting; how far do you think it  
12 is between your house and the shooting? I know you said eight  
13 houses, but give me a distance.

14 A Three-and-a-half-minute walk, if that.

15 Q So all of this is very close together, right?

16 A Yes.

17 Q And this is your neighborhood?

18 A Yes.

19 Q How do you do laundry at your house?

20 A My mom kicked me out for a while, so I had to storage all  
21 my clothes in a broke-down car that I had in front of my house.

22 Q Did you occasionally lose some of those clothes?

23 A People came through and rummaged through the car.

24 Q Just kind of one of the hazards of being homeless?

25 A I guess it was not really having nowhere to take it. So I

1 moved in with my girlfriend.

2 Q Ted, we heard some information earlier about the bullets  
3 that are in the car. Your fingerprint's on those bullets?

4 A No.

5 Q Would you like for them to have been tested?

6 A Yes.

7 Q How long have you had your tattoos?

8 A Since 2011.

9 Q Roll up your sleeves for me.

10 A [Witness complies.]

11 Q This is Defense Exhibit D; those are your tattoos, right?

12 A Yes.

13 Q On your left arm there?

14 A That's the right arm.

15 Q That is the right arm. I'm bad at directions, man. I?

16 A It's all right.

17 Q I guess that's why I went to law school.

18 All right. How about Exhibit C; this one, then, is your left  
19 arm, right?

20 A Yes.

21 Q All right. You've had these tattoos for a long time?

22 A Yes. As you can see, the two calendars.

23 Q What do the calendars say?

24 A Those are times that special somebody died in my family.  
25 And 12 and 14 is from the time I went to prison for the grand



1 larceny.

2 Q I see an 11 on there too, right?

3 A Yes.

4 Q Did you get that in 2011?

5 A Yes.

6 MR. HAUSER: Brief indulgence, Judge.

7 Q Ted, were you honest with the detective who talked to  
8 you?

9 A Yes.

10 Q You being honest with me right now?

11 A Yes, sir.

12 Q Were you honest with Mr. Lexis when he just asked you a  
13 lot of questions?

14 A Yes, sir.

15 Q Did you shoot anybody?

16 A No.

17 MR. HAUSER: I have nothing further at this time.

18 THE COURT: Okay. Redirect -- or, excuse me, recross.

19 **RECROSS-EXAMINATION**

20 BY MR. LEXIS:

21 Q Okay. Sir, you have offered no reason on why your red  
22 shirt is found in the middle of the road, correct?

23 A Sir, I just stated to you I had all my clothes in the car. It  
24 got ransacked. So a lot of my clothes was missing.

25 Q Okay. When was your car ransacked?

1           A     Multiple times.

2           Q     Oh, so multiple times your car was ransacked with that  
3 red shirt, huh?

4           A     Yes.

5           Q     Okay. You couldn't find a date --

6           A     More than that's been took.

7           Q     -- or can't find a date?

8           A     Pardon me?

9           Q     When was that?

10          A     I can't give you an exact date. My clothes was probably in  
11 there for anywhere from three weeks to a month and a half.

12          Q     Okay. And it just so happens it appears to be freshly  
13 thrown on the side of the road minutes after the shooting on this  
14 particular --

15               MR. HAUSER: Objection. Argumentative.

16               THE COURT: Sustained.

17               THE WITNESS: When my mom kicked me out, I just  
18 took -- I grabbed the --

19               THE COURT: So when I sustain, you don't have to  
20 answer.

21               THE WITNESS: Okay. I'm sorry, ma'am.

22               THE COURT: That's all right.

23               Next question.

24 BY MR. LEXIS:

25          Q     So, again, sir, you've got no explanation on why that shirt

1 is sitting there on the side of the road?

2 MR. HAUSER: Objection. Asked and answered.

3 THE COURT: Sustained.

4 BY MR. LEXIS:

5 Q Is that your shirt, sir?

6 A I don't know if it's exactly my shirt. I own a few red shirts.

7 Q Okay. That 99 -- or the -- excuse me, not the 99.

8 The DNA evidence that came in [indiscernible], but you  
9 don't recognize that as your shirt?

10 A If my DNA's on it, then it must have been one of the shirts  
11 that was in the car, yes. But there was also another DNA on that  
12 shirt.

13 Q Who said it was in the car?

14 A Pardon me?

15 Q Who said it was in the car?

16 A It was in my car. The broke down car in front of the  
17 house.

18 Q Same car that you were driving where the license plate's  
19 found?

20 A No. The car that's in front of my house where I storage  
21 my clothes.

22 Q Okay.

23 MR. LEXIS: Nothing further, Judge.

24 THE COURT: Mr. Hauser.

25 MR. HAUSER: Judge, I'm all set. Thank you.

1 THE COURT: Okay. Ladies and gentlemen, any questions  
2 from the jury? Okay.

3 Thank you so much, sir. You're free to go back to your  
4 seat.

5 THE WITNESS: Thank you.

6 THE COURT: Mr. Hauser?

7 MR. HAUSER: Defense has no further witness. We'll rest,  
8 Your Honor.

9 THE COURT: All right. State?

10 MR. LEXIS: State calls Detective Marin.

11 May we approach, Judge?

12 THE COURT: Yep.

13 [Bench conference transcribed as follows.]

14 MR. LEXIS: So these -- obviously, these times don't  
15 match up on when the car and the -- his statements regarding the  
16 car, the plates in the car. I've asked to call the owner of the car. It  
17 was stolen, literally, the night before, and he knows it not to be  
18 stolen until well after Defense claims to be. And this other car with  
19 Patrick, this older model car.

20 MR. HAUSER: I don't think we opened the door that at all,  
21 Judge. I don't think he said anything about I didn't steal a car, or it  
22 was a stolen car, anything like that.

23 THE COURT: Okay. So --

24 MR. HAUSER: It's not going to rebut what was actually  
25 said.

1 MR. LEXIS: He's claiming he was not in the car, his prints  
2 are in the car, and that he was driving around with a --

3 MR. SHAYGAN-FATEMI: They're stretching, Judge.

4 THE COURT: What?

5 MR. SHAYGAN-FATEMI: They're stretching. It shouldn't  
6 come in.

7 THE COURT: So can someone help me understand this?  
8 Because I don't really know a lot about the stolen car or the  
9 circumstances around it. So can someone help me out with that?

10 MR. LEXIS: The timeline is extremely important, because  
11 this car was taken from the owner the night before. So the timeline  
12 is extremely important, this car is -- to try to say that he had no idea  
13 how this plate had been on this car, he's never seen that car, he's  
14 never been in that car, that is absolutely highly relevant that the  
15 owner of that car will say that he and -- he lost possession of that  
16 car or noticed it was gone between basically the middle of the night  
17 the night before.

18 MS. GOODMAN: So, basically, an argument, it's going  
19 to -- the argument is that the defendant in an interview sua sponte  
20 pretty much said, Oh, I was in this car at -- like, right before, you  
21 know, before midnight I was in this older car, pretty much  
22 described the car to the T to the detective. And the detective said,  
23 That's impossible, because the car was stolen after midnight. And  
24 then all of a sudden he started backtracking and be, like, Oh, well  
25 no. Oh, no. So it's relevant to pretty much impeach the defendant

1 that he places himself in the vehicle with the detective.

2 And then also the detective says it's stolen, and then he  
3 tries to backtrack his story. That's basically what the relevancy is.

4 MR. HAUSER: Here's the thing, Judge, it's a rebuttal  
5 witness. If they wanted it in because it was relevant, they could  
6 have litigated it before trial.

7 MS. GOODMAN: Well, no, that's not correct.

8 THE COURT: [Indiscernible].

9 MS. GOODMAN: Exactly.

10 THE COURT: Then what's the difference? Oh, he knows  
11 the argument, right?

12 MR. HAUSER: Right. But the door has not been opened,  
13 is what I'm saying.

14 THE COURT: So, I mean, I guess my thing is, is --

15 MS. GOODMAN: The problem that comes when  
16 impeaching, we have to be able to impeach the defendant. And in  
17 order for us to do so, we would have to call the detective. The  
18 detective has to mention that the car's stolen. And before we  
19 either -- see what I'm saying? So --

20 THE COURT: Yes.

21 MR. HAUSER: But it's not actually a contradiction.

22 THE COURT: Well, I guess I've been trying to  
23 [indiscernible] vehicle that he had a bunch of cars that he works on  
24 in front of his house. That idea is a little bit bothersome. And I  
25 couldn't tell if that's where he was going with that or if it's --

1 MR. SHAYGAN-FATEMI: If he would have went there,  
2 Your Honor would know. And he didn't.

3 THE COURT: But if I know during it, right? If I'm  
4 wondering that the suggestion is -- because if you think about it, I  
5 don't know all the ins and outs of this case, right, because I got it  
6 from [indiscernible].

7 MR. HAUSER: Right.

8 THE COURT: So I'm almost in the shoes of them in  
9 regards to [indiscernible]. So he's talking about he works on cars  
10 all the time and that that's why it's confusing.

11 MR. SHAYGAN-FATEMI: And him saying that he works  
12 on cars doesn't rise to a level of opening a door and bringing in the  
13 detective and talking about --

14 THE COURT: I want to have this on the record outside the  
15 presence.

16 MR. HAUSER: Let's do that.

17 [End of bench conference.]

18 THE COURT: All right. Ladies and gentlemen, we are  
19 going to take a quick recess.

20 During the recess you're admonished not to talk or  
21 converse among yourselves or with anyone else on any subject  
22 connected to this trial or read, watch, or listen to any report of or  
23 commentary on the trial of any person connected with this trial by  
24 any medium of information, including, without limitation to  
25 newspapers, television, the Internet, and radio, or form or express

1 any opinion on any subject connected with the trial until the case is  
2 finally submitted to you.

3 Give me about 10 minutes, please. So be out there  
4 between 2:10 and 2:15.

5 [Jury recessed at 2:02 p.m.]

6 THE COURT: All right. So we're outside the presence.

7 I want to have this talk more thoroughly, ferret it out on  
8 the record, rather, and at the bench.

9 So, State, explain to me the timeline of the stolen vehicle  
10 and then how it relates to the defendant's statements, to the  
11 detective, when they made contact with him.

12 MR. LEXIS: Okay. So he initially denies being in any  
13 vehicle or anything like that. They press him on, Well, your prints  
14 are found in this car. So then he basically describes the stolen  
15 vehicle car. And then admits that he was the passenger in that car.

16 He -- that particular vehicle at issue in this case was stolen  
17 and the owner of that car is right outside of the courtroom, that it  
18 was stolen the night prior to the shooting. So when he gets up on  
19 the stand and says he has no idea why his print's on that car, that  
20 he works on cars, then the timeline -- the door to the timeline of  
21 when this car could have possibly be in possession of anybody  
22 other than the owner is highly relevant.

23 THE COURT: So they confront -- so what -- he says that  
24 he's in a car like -- look --- with all the similar --

25 MR. LEXIS: Yes.



1 THE COURT: -- characteristics at, like, 10:00 the previous  
2 night?

3 MR. LEXIS: Yes.

4 THE COURT: And then the detective confronts him with,  
5 Well, you couldn't have been in -- so that that vehicle --

6 MR. LEXIS: Yeah. It couldn't have been at this particular  
7 timeline, because the car was taken after that.

8 THE COURT: So the description of the car that he gives,  
9 though, is just a description of a car, right? He never admits to  
10 being in the vehicle with the license plate.

11 MR. LEXIS: No. They don't -- no, they don't give him any  
12 description of the car, and he gives them a description of a -- where  
13 is it at? -- late four-door sedan, lighter brown, older model, beat-up  
14 condition, being the passenger with a man named Patrick.

15 MR. HAUSER: So here's the issue, Judge. What we're  
16 trying to do is conflate the car he says he was in, therefore, it must  
17 actually be the stolen car. But on the stolen vehicle questionnaire,  
18 he said he was in the car 10:00 p.m. previous night. Stolen vehicle  
19 says it wasn't actually stolen till midnight, because that's the last  
20 time the owner saw it.

21 So even if we want to bring the owner in to say that  
22 vehicle was stolen, which isn't relevant, it doesn't actually match  
23 the timeline that Mr. Lexis is trying to establish. His own witness is  
24 contradicting his argument here. He says he still had the car at  
25 midnight. They're trying to put Ted in that car at 10:00 p.m. It

1 simply doesn't work.

2 THE COURT: No, isn't it -- it's vice versa. He's putting  
3 himself in the car at 10:00 p.m.

4 MR. HAUSER: Right.

5 THE COURT: The detectives are saying you couldn't have  
6 been in that car at 10:00 p.m., buddy, because it wasn't stolen till  
7 midnight.

8 MR. HAUSER: Right. But he's not putting himself in the  
9 car that was found at the scene. He's saying he was in a completely  
10 different car. The State is saying that's not true, you must have  
11 been in the car that was at the scene, but it simply cannot be that  
12 way, because his timeline and the timeline of the stolen car do not  
13 match.

14 MR. LEXIS: Well, this is the thing, Judge. He never -- he  
15 places himself in that car, but not the print in that car. And then  
16 tries to say, Oh, yeah, there's no way I could have been on that car,  
17 because I work on cars. Well, Judge, there's no way in his  
18 testimony that he's revealed that, oh, yes, between those --  
19 midnight and the time of the shooting, he was working on a car.

20 He said that he was at his house and then he went to I  
21 believe he said Sonic and his girlfriend's house. Nowhere would --  
22 was he working on cars.

23 MR. HAUSER: There's plenty of time there to work on  
24 cars. I don't understand how that's not possible.

25 THE COURT: Well, but here's the thing. Nobody's going

1 to get there in front of that jury and say he was working on that car  
2 and that's the reason why the fingerprint's on the license plate.

3 MR. HAUSER: No, not at all.

4 THE COURT: Because that would just be absolutely  
5 unethical, and I don't think that either of you would do that.

6 MR. HAUSER: No.

7 THE COURT: Because it also paints a picture that's clearly  
8 incorrect in front of the jury.

9 MR. HAUSER: Right.

10 THE COURT: The problem here is, is that, unfortunately, it  
11 wasn't fettered out enough when he speaks to the detectives. I  
12 mean, I think -- and correct me if I'm wrong, Mr. Lexis, but when he  
13 was on the stand, you stated, There -- just like with the red shirt,  
14 there's no reason that your fingerprint should be on that license  
15 plate. I mean, he couldn't give you a good answer, right? So you  
16 get to argue all day to the jury, this wasn't a car that he worked on,  
17 this was -- because, obviously, that's what he would have said.

18 The problem with the vehicle being stolen is he wasn't  
19 firm enough or descriptive enough in his statement to the  
20 detectives to prove he was driving the car. Do you know what I'm  
21 saying? Like, he gives the four-door sedan, and he gives the  
22 coloring and it's all similar and everything. But he doesn't -- I don't  
23 think that in his statement or even today he gives you enough room  
24 to open the door. And I think also when I look at that, you know,  
25 and then I look at the other bad act evidence type of stuff, where

1 we're looking at clear and convincing, and we're looking at  
2 probative versus prejudicial, I just don't -- I don't think it's enough.

3 So I'm not going to allow that in. But, obviously, I expect  
4 that all arguments in front of the jury would only be in regards to  
5 evidence that people can prove or not prove or know to be true.

6 MR. LEXIS: Okay. Judge, so --

7 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

8 MR. LEXIS: -- if I understand your ruling right, I  
9 understand we're not going with that guy, then. But, again, during  
10 closing arguments, we're not going to hear of all these other  
11 reasons why this man's fingerprint could be on that license plate  
12 when it's clear that the timeframe of the car stolen was midnight.

13 You're not -- I understand you're not letting me in, but at  
14 the same time, you're ruling's telling them, Don't try to be arguing  
15 something that you know is not true.

16 THE COURT: Yeah. I mean, what was your intent in  
17 regards to -- I understand the argument you can make in front of  
18 the red shirt. Where were you going to go in regards to arguments  
19 in regards to the license plate?

20 MR. HAUSER: I didn't ask him any questions about the  
21 license plate.

22 THE COURT: I know. I'm talking about your argument in  
23 front of the jury.

24 MR. HAUSER: Well, you know, the thing is I didn't expect  
25 him to testify. So my argument's kind of in flux right now, I'm not

1 going to lie to you.

2 What I was going to say is the argument -- I don't care, I  
3 [indiscernible]. My plan, and probably soon plan is that the  
4 fingerprint is on a license plate. Any idiot can put a license plate in  
5 a car, it doesn't actually put someone in that car, like a fingerprint  
6 on a door handle or a window shield would.

7 THE COURT: But it's not going to be, like, he worked on  
8 all sorts of cars and it could be --

9 MR. HAUSER: Oh, I'm not going to say he was ever in  
10 that car that he ever touched. Not at all.

11 THE COURT: Okay.

12 MR. HAUSER: Absolutely not.

13 THE COURT: All right. That's fine.

14 MR. HAUSER: No.

15 THE COURT: Yeah.

16 THE DEFENDANT: Judge --

17 MR. HAUSER: You going to --

18 THE DEFENDANT: I understand her ruling. But I just want  
19 to tell her the truth.

20 MR. HAUSER: Tell it to him first.

21 THE COURT: We good?

22 MR. HAUSER: We're good with the record we got.

23 THE COURT: Okay.

24 MR. HAUSER: Yeah.

25 MR. LEXIS: Can I just --

1 THE COURT: Just let's give them a few more -- or do you  
2 need something to talk to me about?

3 MR. LEXIS: No. I just need to tell the detective what he  
4 needs to cut out.

5 THE COURT: Yeah. Let's make it sure with the detective  
6 on both sides that the questions and answers are going to be well  
7 thought out, because we're way too far in this game to get  
8 someone to utter something that we don't need uttered.

9 MR. HAUSER: Yeah, we don't want to [indiscernible].

10 THE COURT: All right? So let's make --

11 MR. SHAYGAN-FATEMI: Your Honor -- didn't Your Honor  
12 just preclude them from calling the detective?

13 THE COURT: No, no, no. He can get into the statement, if  
14 in any way he was inconsistent or anything like that. But they're  
15 not -- I precluded them from bringing in the stolen car owner, who  
16 is outside.

17 MR. SHAYGAN-FATEMI: And we trust you'll do that, Your  
18 Honor. Thank you.

19 THE COURT: Okay.

20 MR. HAUSER: Thank you, Judge.

21 THE COURT: All right. So I'll see you guys in five.

22 [Court recessed at 2:11 p.m., until 2:20 p.m.]

23 [Outside the presence of the jury.]

24 THE COURT: All right. We're back on the record is  
25 C-345584-1, State of Nevada versus Ted Michael Donko. Mr. Donko

1 is present with his attorneys, Mr. Shaygan and Mr. Hauser. Both  
2 deputy district attorneys, Ms. Rose Goodman, as well as Mr. Lexis,  
3 are present.

4 Anything outside the presence of the jury?

5 MR. LEXIS: No, Judge.

6 MR. HAUSER: No.

7 THE COURT: All right. Let's go.

8 [Jury reconvened at 2:20 p.m.]

9 THE COURT: Both sides stipulate to the presence of the  
10 jury?

11 MR. LEXIS: Yes, Judge.

12 MR. HAUSER: Yes, Judge.

13 THE COURT: All right. We are now in the State's rebuttal  
14 presentation.

15 MR. LEXIS: Detective Marin.

16 **JASON MARIN,**

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

19 THE CLERK: Thank you. You may be seated. Please state  
20 your complete name, and spell both your first and last name for the  
21 record.

22 THE WITNESS: Jason Marin, J-A-S-O-N, M-A-R-I-N.

23 THE CLERK: Thank you.

24 ///

25 ///

100

**DIRECT EXAMINATION**

**BY MR. LEXIS:**

Q Detective, do you remember interviewing the defendant?

A Yes.

Q And as far as tactics, is it common for detectives to hold back certain evidence and then present certain evidence, and as a tactic to get them to talk and see what they're going to say?

A Yes.

Q Okay. Did you initially confront the defendant on whether or not he knew about the shooting?

A Yes.

Q And what was his response?

A He denied knowing about the shooting.

Q After looping back and confronting him some more, what did -- did he eventually change his story?

A Yes. He said he heard that a shooting had occurred on Linn Lane.

Q Okay. Did you eventually, during this interview, ask him knew a man named Shorty?

A Yes.

Q And what did he initially say?

A He denied knowing Shorty.

Q After confronting him with some more evidence and asking him again, did he switch his story?

A He said he knew a Short Dog.



1 Q Now, did you keep prying?

2 A Yes.

3 Q And, eventually, what did he say?

4 A He said he did know Shorty.

5 Q Sir, did he ever mention that he knew a DeAndre Woods?

6 A No.

7 Q Was there any evidence in this investigation linking those

8 two as knowing each other?

9 A No.

10 Q Now, sir, obviously, one of the tactics you were going to

11 use to try to get him to talk and extract evidence is this fingerprint,

12 correct?

13 A Correct.

14 Q This fingerprint found in the vehicle?

15 A Correct.

16 Q Okay. Did you confront him on that you had a fingerprint

17 in the vehicle?

18 A Yes.

19 Q Did you press him and ask him more and more about it?

20 A Yes. I mentioned the fingerprint several times.

21 Q Okay. Did he eventually start saying, Oh, well, I happened

22 to be in a vehicle the night before?

23 A Yes.

24 Q Okay. Did you ever described for him -- to him, before

25 giving him an opportunity to explain the vehicle, what the vehicle

1 actually was where the fingerprint was found?

2 A No.

3 Q Okay. And how did he describe this vehicle?

4 A And older model sedan in beat-up condition.

5 Q Did he ever tell you it was an Audi?

6 A No.

7 Q And with pressing him some more, did he reveal whether  
8 he was the driver or the passenger of that vehicle?

9 A The passenger.

10 MR. LEXIS: Nothing further.

11 THE COURT: Cross, Mr. Hauser?

12 MR. HAUSER: Yes, Judge.

13 **CROSS-EXAMINATION**

14 BY MR. HAUSER:

15 Q Detective, has anyone ever lied to you in your life?

16 A Yes.

17 Q In your job?

18 A Yes.

19 Q Do people get nervous speaking to the police?

20 A Yes.

21 Q Do people in bad neighborhoods, when you're asking  
22 about shootings, get nervous talking to the police?

23 A Yes.

24 Q Do those people sometimes change their story  
25 afterwards?

1           A     Yes.

2           Q     A lot of times when they change their story, do they end

3 up telling you the truth?

4           A     No. Not always.

5           Q     Not always, but sometimes, right?

6           A     Maybe.

7           Q     No one ever tells you the truth?

8           A     Correct. People tell us the truth. But when you're saying

9 people are continuing lying, then tell us the truth, it's very rare.

10          Q     They don't ever confess later, tell you the truth?

11          A     Sometimes. It's rare.

12          Q     You've been down in this neighborhood, right?

13          A     Yes.

14          Q     Is it fair to say that there's only one in the entire

15 neighborhood older model beat-up four-door sedan?

16          A     No.

17          Q     There might be more?

18          A     Yes.

19          Q     Even some that are gray or silver and tan in color?

20          A     Yes.

21                MR. HAUSER: I have nothing further at this time.

22                THE COURT: Okay.

23                MR. SHAYGAN-FATEMI: Your Honor, a moment of

24 indulgence before the witness --

25                THE COURT: Sure. Yeah.

1 MR. HAUSER: We're all set, Judge. Thank you.  
2 THE COURT: Okay. State?  
3 MR. LEXIS: Nothing further, Judge.  
4 THE COURT: Anything from the jurors? All right.  
5 So this time you really are released.  
6 THE WITNESS: Thank you, Your Honor.  
7 THE COURT: Please don't share your testimony with  
8 anyone else involved in the case.  
9 THE WITNESS: Thank you, Your Honor.  
10 THE COURT: All right. Thank you. Have a great day.  
11 State?  
12 MR. LEXIS: State rests, Judge.  
13 THE COURT: All right. Okay. At this time -- do the parties  
14 need a second to set up for closing arguments, or are we ready to  
15 go? Obviously, I have to read the instructions and everything.  
16 MR. HAUSER: Yeah. I can grab some exhibits while  
17 you're doing that.  
18 MR. LEXIS: Judge, can we approach real quick?  
19 THE COURT: Sure.  
20 [Bench conference transcribed as follows.]  
21 MR. LEXIS: I need to go get my thumb drive, Judge.  
22 That's it. But I could do that while you're reading instructions.  
23 MS. GOODMAN: [Indiscernible] 30 of them.  
24 MR. LEXIS: Yeah. Are you guys ready?  
25 MR. HAUSER: Oh, yeah. I just need to get some exhibits

1 from over here, and I'm ready.

2 THE COURT: Okay. While he's doing this, you go get  
3 that, and you get that.

4 MR. HAUSER: Yeah. Yeah, yeah.

5 MR. LEXIS: Okay.

6 [End of bench conference.]

7 [Pause in proceedings.]

8 THE DEFENDANT: Excuse me, Your Honor.

9 THE COURT: Just one second.

10 THE DEFENDANT: I want to say something.

11 MR. HAUSER: Don't do that.

12 MS. GOODMAN: Your Honor, may we approach, please.

13 THE COURT: Sure.

14 [Bench conference transcribed as follows.]

15 MS. GOODMAN: I would rather have a break if there is  
16 something that he just can't contain himself on, outside the  
17 presence. Or is he going to be fine?

18 THE COURT: Or does he have an issue?

19 MR. HAUSER: Perpetually. But up to you.

20 THE COURT: What is he -- is what he wants to talk to me  
21 about something you didn't do probably, like answer a specific  
22 question?

23 MR. SHAYGAN-FATEMI: Yep.

24 MR. HAUSER: Yeah.

25 MR. SHAYGAN-FATEMI: Yep.

1 THE COURT: Or whatever --

2 MR. HAUSER: Cool.

3 MS. GOODMAN: Thank you, Your Honor.

4 [End of bench conference.]

5 THE COURT: All right. Ladies and gentlemen, now is the  
6 time that I will read you the instructions on the law that applies to  
7 this case. So each of you, obviously, can read along with me, but  
8 you also get to take them back in the room. I'm a really quick  
9 reader, and sometimes jurors panic that they're not going to get  
10 those when they get back. But I promise you those will go back. So  
11 feel free to take notes on them or whatever, they will go back to  
12 you, as well as your notepads, in the deliberations room. Okay? All  
13 right.

14 [Jury instructions read.]

15 THE COURT: So, ladies and gentlemen, we have now  
16 reached the portion of this trial where closing arguments are given.  
17 Since the State has the burden of proof, they are allowed to both  
18 give the open and close of the closing arguments.

19 So, State, I will turn it over to you.

20 MS. GOODMAN: Thank you, Your Honor.

21 **CLOSING ARGUMENT FOR THE STATE**

22 MS. GOODMAN: Ladies and gentlemen, we heard, Fuck  
23 Shorty, pop, pop, pop, pop, pop, pop, eight times. The State of  
24 Nevada has to prove two things in any criminal trial. That is,  
25 number one, a crime has been committed; and number two, it's the

1 defendant who committed the crime. I don't think that there's  
2 much dispute on whether or not a crime was committed. But, since  
3 we still hold our burden, which we're proud to bear, I still have to  
4 teach you about the law, what the law says and how, elementally,  
5 does this fit this crime.

6 So we're going to break down the crimes in itself. So we  
7 have three counts of attempt murder with use of deadly weapon.  
8 One count is for DeAndre Woods. One count is for Jonathan  
9 Sanchez. And one count is Fernando Espinoza.

10 Battery with use of deadly weapon resulting in substantial  
11 bodily harm, times two, which is Jonathan Sanchez and one for  
12 Fernando Espinoza.

13 Then we have the count for assault with deadly weapon,  
14 which the victim in this case was -- in that count is DeAndre Woods.

15 Discharging a firearm at or into an occupied structure. So  
16 we're going to break down all these charges. But the easiest one to  
17 break down is what a deadly weapon is. So a deadly weapon is,  
18 one, an instrument in the ordinary manner contemplated by design  
19 and construction will or is likely to cause substantial bodily harm or  
20 death. Like for number one, a firearm, by its own basic design,  
21 when you shoot it and you pull the trigger, it's meant to cause  
22 bodily harm, or it can.

23 Or -- and now whenever you see an and or or, it's an or  
24 test. Not a -- it's a -- I can either stick it in my number one or  
25 number two.

1 Two, any weapon under the circumstances in which it's  
2 used, attempted to be used, or threatened to be used, is readily  
3 capable of causing substantial bodily harm or death. What that  
4 means is if I take a pen, which is just a pen that you write with on  
5 an everyday basis, but since -- now, with Mr. Lexis walking in, I start  
6 stabbing him with that pen, that means that pen turns into a deadly  
7 weapon. Why? Because now I'm using that pen to cause  
8 substantial bodily harm. That's what that part is.

9 Well, in this case, we know that a firearm was used.  
10 Oop, -- sorry. State does not have to recover or produce the deadly  
11 weapon. Okay. So, why? It makes sense, right? When somebody  
12 just does a shooting, the first thing that typically happens, go and  
13 ditch the gun. Okay. That's what our common sense says it's --  
14 you typically don't carry the gun with you after committing a  
15 shooting. So the State does not have to recover or produce a  
16 deadly weapon to prove beyond a reasonable doubt the deadly  
17 weapon was used.

18 Again, had it easier, because it's a firearm that's used. We  
19 know it was used, because there's bullets inside bodies. So a  
20 firearm is a deadly weapon. So every single count that you see  
21 deadly weapon, deadly weapon -- that that portion's satisfied.

22 So battery with use of deadly weapon resulting in  
23 substantial bodily harm. So one, we have to prove a battery that  
24 happened with a deadly weapon, and it -- that substantial bodily  
25 harm occurred. So we're going to break those down.



1           What is a battery? Battery means any wilful and unlawful  
2 use of force or violence upon the person of another. Again, a push,  
3 a shove, I if take this pointer and throw it at Mr. Lexis, those are all  
4 batteries. Any slight touching not done on accident.

5           Substantial bodily harm means bodily injury which  
6 creates substantial risk of death or which causes serious permanent  
7 disfigurement or protracted loss or impairment of the function of  
8 any bodily member or organ. Again, there's the or, so it's either  
9 one or two or both.

10           Two, prolonged physical pain. And what that means is  
11 some physical suffering or injury that lasts longer than the pain  
12 immediately resulting from the wrongful act. Again, it's pretty easy  
13 in this case, right? So Fernando Espinoza, gunshot wound to the  
14 stomach and wrist. Several surgeries, last surgery was just two  
15 weeks ago. You saw that he just had that on his arm. Still suffering  
16 four months later. Scar from the gunshot, permanent  
17 disfigurement, right? He's still suffering. He -- it's not like he  
18 recovered in the same second that the gunshot happened; he's still  
19 recovering four months later. Easy, substantial bodily harm is met  
20 on Fernando.

21           Jonathan, shot in both legs, walks with a cane, left leg,  
22 bullet's still in there, impaired walking, right leg scarring. Again,  
23 he's walking with a cane. Substantial bodily harm, ladies and  
24 gentlemen, that's easy.

25           Okay. So assault with deadly weapon. So battery with

1 use of deadly weapon resulting in substantial bodily harm. You  
2 have the battery, because bullet -- you've got shot with a bullet,  
3 right? That's the battery. You have the deadly weapon with the  
4 firearm. Substantial bodily harm. All those things we just talked  
5 about. Easy. Battery with substantial bodily harm in this case is  
6 met by beyond a reasonable doubt with the crimes committed.

7           So assault with a deadly weapon, what does that mean?  
8 A person who unlawfully attempts to use physical force or  
9 intentionally places another person in reasonable apprehension of a  
10 immediate bodily harm is guilty of assault with deadly weapon.

11           To constitute an assault, it's not necessary that the actual  
12 injury be inflicted. Okay. Well, I know it sounded like a silly  
13 question, because when we point guns in peoples' face or towards  
14 them or shoot bullets at them, you're going to be in fear of your life,  
15 because of -- you're getting a firearm aimed at you.

16           Again, assault with deadly weapon is pretty easy in this  
17 case. DeAndre testified, yeah, I was scared. Bullets were actually  
18 fired at him. Any reasonable person would be scared of that, which  
19 assault with deadly weapon is met. So again, beyond a reasonable  
20 doubt, that the crime of assault with deadly weapon was  
21 committed.

22           Oh, we just talked about aiming a firearm at DeAndre,  
23 firing at DeAndre, both constitutes the assault.

24           Again, evidence where DeAndre was sitting in that black  
25 plastic chair that's all shot up, but had he moved, he would be shot

1 himself.

2           So discharging at or into occupied structure; what is that?  
3 What is that count? Willfully and maliciously discharges firearm at  
4 or into any house that is occupied. What do we have here? Again,  
5 easy. Shoots eight rounds towards the house and into the house,  
6 which, because it struck the house twice in the garage, occupied by  
7 grownups and kids. You heard from DeAndre that there's kids in  
8 that home. There's also adults in that home.

9           Again, beyond a reasonable doubt discharging at or into  
10 occupied structure is met, pretty -- all, again, easy.

11           So comes up with attempt murder with use of deadly  
12 weapon. An attempt murder is a little bit bigger of a charge, right?  
13 Because it's attempt murder with use of deadly weapon. So there's  
14 a little bit more elements to be met in attempt murder.

15           So what's an attempt? This isn't a murder; it's an attempt.  
16 So what's an attempt? Number one, the attempt to commit the  
17 crime, performance of some act towards its commission, and  
18 failure to consummate. So it's -- I'm going to go up to a house and  
19 shoot at a bunch of people, but I actually don't kill them, it's an  
20 attempt, not a murder.

21           But what's the attempt murder? Performance of an act or  
22 acts which tend, but fail to kill a human being. When such acts are  
23 done with express malice, mingling with a deliberate intention to  
24 unlawfully kill, it is not necessary to prove the elements of  
25 premeditation and deliberation in order to prove attempt murder.

1 When we hear murder, what's the first thing we kind of think about?  
2 That premeditated, oh, I meant to go do this; that's not an element  
3 of attempt murder.

4 So what's express malice? The deliberate intention  
5 unlawfully to take away the life of a human, which is manifested by  
6 external circumstances capable of proof. Unfortunately, in crimes,  
7 we don't have manifestos, we don't have somebody or confessions  
8 all the time, we don't have the reasons why people do things.

9 So how we get to that express malice is all the factors that  
10 happen in the case. And you're actually instructed, the intention to  
11 kill may be ascertained and deduced from the facts and  
12 circumstances of the killing, such as the use of a weapon, again,  
13 firearm, the manner of its use, and attendant circumstances  
14 characterized in the act.

15 So how do we know the attempt murder happened in this  
16 case? Well, Donko states, Fuck Shorty. Aims and shoots and  
17 sprays into people and hitting the house, hitting two people.  
18 Express malice, when you point, aim, and fire a weapon, there is  
19 one thing you're trying to do. You're not trying to scare them.  
20 When you're aiming at someone, pointing a gun, shooting, pop,  
21 pop, pop, pop, pop, it's not one shot, not two shots, not even three  
22 shots. Eight shots. Express malice.

23 Bullet impacted the house, not just all around.  
24 [Indiscernible] on the [indiscernible], please. Again, ladies and  
25 gentlemen, this case is not -- you see the casings, you see the bullet

1 holes, you see the bullet part holes to the house. You see the chair  
2 that DeAndre almost got shot. I showed you pictures of Fernando,  
3 who got shot in the abdomen and in the wrist. Jonathan, who got  
4 shot right -- well, you saw where he got shot up in his upper thighs.  
5 We all know what's in the upper thighs, arteries and stuff. Ladies  
6 and gentlemen, attempt murder is satisfied in this case. We have  
7 proved beyond a reasonable doubt that attempt murder with use of  
8 a deadly weapon was committed in this case.

9 So why are we here? Right? Why did we just spend all  
10 this time presenting evidence if we know all the things were  
11 committed? Well, we also have to prove another thing, right? The  
12 defendant is the one who committed the crime.

13 And in this case, right, who did it? Ted Donko, and we'll  
14 tell you why. But who -- the shooter equals Ted Donko. How do we  
15 know that?

16 So you have Mr. Ramos. He says two to five minutes  
17 later -- two -- and I'm sorry, about two minutes, he said, Saw Donko  
18 pulling around the corner quickly in the Toyota. Describes white  
19 male with red shirt.

20 Now, Mr. Ramos, who sees the defendant, doesn't say  
21 Mexican male or Hispanic male. He says white. See Donko park  
22 and exit the car, acting suspicious, patting his pants, goes back to  
23 the car, runs off to surf. Tells police, identifies the car.

24 Now, in court he identifies Donko. And as you heard in  
25 the last cross-exam -- or the cross-examination of the detective,

1 right, people get nervous from this neighborhood. Do people not  
2 want to get up there and tell you everything that happened?  
3 Obviously. Obviously.

4 Are people scared to come up and testify? Do people  
5 want to sit on this stand, look that man, and say, yeah, that's him.  
6 That one. Ladies and gentlemen, common sense. When your  
7 mother lives in this neighborhood, your mom lives in this  
8 neighborhood, the last thing you want to do is point out somebody  
9 and say, That guy. The last thing.

10 So he goes out in the hallway and knows he has to come  
11 back and do the right thing. That's what he does. And he identifies  
12 Ted Donko, that gentleman right there. He was too scared to do it  
13 the first time, and he had to come back and do it the second.

14 But he identifies him as white, identifies Donko. That  
15 came out of that same vehicle.

16 But Mr. Ramos is not the only witness that we had in this  
17 case that identifies Ted. We have the Toyota. So that gray, sandy,  
18 whatever you want to call -- whatever color you want to call it, the  
19 gray Toyota. And by the way, you see it at the -- it's dull. That car  
20 right next to it is a silver car. You see that the silver/gray, the color  
21 difference in there. It's easy to confuse. You have the Toyota,  
22 which the license plate was found wedged between the driver's  
23 seat and the console there. That's for the -- that's a plate.

24 And what does that plate have? It identifies the  
25 fingerprint of Ted Donko. You see a cartridge and what is that --

1 what's unique about that cartridge? Again, same cartridge that's  
2 found at the scene of the crime. Same head stamp, same thing, just  
3 not fired.

4 Weird. Right? Not so much of a coincidence anymore  
5 that two people identified Ted Donko. One person as the shooter,  
6 one person that says that he got out of the vehicle. Now you have  
7 cartridge casings from the same shooting that just occurred. Not a  
8 coincidence, ladies and gentlemen. Not a mere coincidence.

9 So now you have DeAndre Woods. Now, DeAndre, as  
10 you saw up on the stand, is from that neighborhood. As you saw,  
11 DeAndre said that he saw Donko the day before. At no time, no  
12 time in this case, besides the defendant's statement, did DeAndre  
13 say, Yeah, yeah, I smoked weed with him. I know him from the  
14 block. I know him. No.

15 What's he say? I saw him the day before the shooting. He  
16 was asking for Shorty, sees the same car that he pulled up in, the  
17 same Donko on the red shirt. Here -- oh, then the days and the next  
18 day, same Donko in the red shirt, drives up in the same car. Hears  
19 him say, Fuck Shorty. Picks him out of a lineup. Okay? That lineup  
20 right there, yeah, we -- the detectives aren't in the business of  
21 putting a bunch of Hispanic males and then him taking it out the  
22 one person that was white. That's not what the detectives are  
23 going to do. The detectives are going to -- whatever specs of  
24 Donko, that's what the detectives are going to put in their lineup.

25 He picks him up out of the lineup. Those witness

1 instructions don't pick anybody out if you don't recognize them as  
2 the shooter. Right? Don't pick them out of the lineup, you're not  
3 just picking any individual out that you know.

4 He then put -- but he puts up -- he puts in that it's 95  
5 percent the shooter. And you heard, Oh, well, what DeAndre, what  
6 would make it 100 percent? If his hair was shorter.

7 You didn't hear DeAndre say, Oh, if he didn't have tattoos,  
8 yeah, that would be him. Or if I thought he was white and/or -- I --  
9 maybe if he was more Hispanic, it would be him. No. Right? He  
10 says that -- he picked and circled, that that's the shooter.

11 You heard him that he testified at the preliminary hearing  
12 in this case. Still identifies the defendant.

13 Identifies him at trial. And, ladies and gentlemen, did  
14 DeAndre sit up here and immediately say, Yeah, that's him, that's  
15 him, that's the guy, that's the guy, I'm 100 percent sure? He's, like,  
16 Yeah, that's him. Yeah, that guy. And he's looking at him, looking  
17 at him, looking at him.

18 And then he sits there and I say, DeAndre, are you 100  
19 percent sure that this is the guy? 100 percent? He looked at him,  
20 did you see? It's not like he automatically was, like, Yep. He sat  
21 here looking at him, looking at him. And what does he say? I'm  
22 sure. It's not like he's making a quick judgment that this is  
23 definitely -- this is the guy. He wants to look at him, he wants to  
24 see, Yeah, that's him. Just to make sure. He says, I'm sure.

25 Then he says, This whole thing about defendant, that



1 where the car went, where the direction was going. He says went  
2 toward Charleston and goes towards Christie.

3 But again, ladies and gentlemen, it's not just Mr. Ramos's  
4 testimony that we have. It's not just DeAndre Woods' identification  
5 that we have. What do we also have? A red shirt. Again,  
6 coincidence? Coincidence that it's just laying around the block?  
7 This red shirt was found, Ted Donko.

8 Now, let's talk about this contributor, right? Someone  
9 else's DNA is on that shirt. Someone else -- that's someone else's  
10 shirt. I don't know, maybe my shirt, but somebody -- I don't  
11 know. 99 to 1. 99 to Donko, 1 to the other contributor.

12 Ladies and gentlemen, use your common sense on what  
13 that means. I don't have to point that out. I mean, 99 to 1 is Ted  
14 Donko's DNA is on that shirt. So 13.6 octillion times more likely it  
15 originated from Ted Donko.

16 That number is huge. Right? That number is huge. In a  
17 science world, it's not just yes, absolutely, 100 percent sure,  
18 because that's not how scientists work. Right? But it's 13.6 octillion  
19 times more likely to be Ted Donko's DNA on that shirt, a 99-to-1  
20 contributor, 99 being Ted Donko.

21 And you have the surveillance. And you're going to have  
22 this. And I encourage you to watch it. And when you watch it, and  
23 you watch it over again if you choose to, just happens to have a  
24 man who's walking the same direction in a red shirt, who's bald,  
25 looking around. And when you watch that shirt -- when you watch

1 that and when you see the stills, look at it. Okay. Look at it. I don't  
2 think you're going to see a Hispanic Mexican dude in that video or  
3 on those stills.

4           So just coincidence that the shooting happened at 56  
5 Lane -- 56 Linn Lane and the car headed to Charleston towards  
6 Christie, and that just coincidence that Christie goes back up and  
7 goes back into that neighborhood? Coincidence that Ramos,  
8 minutes later, minutes thereafter, identified the defendant coming  
9 out of that same Toyota Corolla where the cartridge was found, the  
10 same cartridge that matched the casings in a shooting? Just  
11 coincidence that then the surveillance shows a red shirt?  
12 Coincidence that Ted Donko's shirt is then left in the path of two  
13 where he was staying.

14           Ladies and gentlemen, it's not coincidence. Right? It's  
15 not a coincidence.

16           We have the casings and -- the casings, we have the head  
17 stamp of all those casings which match. Which match the cartridge  
18 found in the car.

19           So the evidence. DeAndre identifies Donko. Ramos  
20 identifies Donko. Donko's fingerprints are on the license plate  
21 found inside that Toyota. Fingerprints. So unique, right? So  
22 unique that that's how you tell twins apart. That's your fingerprints.  
23 Every individual has their fingerprints. It just doesn't happen -- by  
24 happenstance, having Ted Donko's on them.

25           Why was a license plate important to the detective? Well,

1 it's something that you grab, in and out. It just so happens that that  
2 car doesn't have a license plate on it right after the scene of a  
3 shooting. Donko's DNA on the red shirt. 99 to 1. Head stamps  
4 from casings match the head stamp found in the vehicle. The WIN -  
5 same WIN .04 S&W. Donko lives right up the street. So what  
6 makes sense?

7 Ladies and gentlemen, I asked you at the beginning of this  
8 trial to use your common sense. I keep saying, common sense,  
9 common sense, common sense. What makes sense in this case?  
10 Well, here's the map.

11 Who can make a clean getaway? You heard that these  
12 officers arrived two minutes after the shooting, a little over two  
13 minutes after the shooting, right? Who can make a clean getaway?  
14 Well, you have Donko, who is passenger, shooting, and then you  
15 have the driver. Plenty of time -- plenty of time to let a passenger  
16 out, license plate's off the car, jump in the car, and haul it back to  
17 your neighborhood where you know you can make a clean  
18 getaway.

19 You know that if you go right around the block, you can  
20 take your shirt off and get to your house. Plenty of time. That  
21 block's not that big. But who can make the clean getaway? Well,  
22 he can.

23 We know by driving from Linn Street up and around the  
24 block, that's not going to take two minutes. That's not going to --  
25 especially when you're going back and Ramos, why did Ramos

1 notice the car? It's hauling butt turning the corner. That's why he  
2 notices it.

3 Again, who can make a clean getaway? Well, Donko can.  
4 His house is right here. Shoots, goes, goes to the pass, knows he  
5 can ditch the car. Goes -- and you can see in that video, he's, like,  
6 oh, oh, notice -- that's not parked on Linn. That's not -- that doesn't  
7 go back to the crime scene, right? That's not parked at Linn.  
8 Strategically, it's parked right at Surf.

9 Knows the block. How do you know -- how do you think --  
10 you think it's another coincidence that Toyota's just parked right  
11 there by Surf? No. You know this block. You know that you can up  
12 Surf, you can go down the other block, ditch your shirt, go back  
13 home before you get seen on Linn.

14 Who can make a clean getaway? He can.

15 Again, I'm not just telling you to use your common sense  
16 because, you know, that's what I -- that's what your dad says. Use  
17 your common sense, every day, or your parents are, like, Use your  
18 common sense today. No, ladies and gentlemen, you don't just  
19 check your common sense at the door. You don't take all of your  
20 experiences in life and just say, Oh, nope, I'm a juror now, can't  
21 think about all that other stuff. No.

22 Although you are to consider only the evidence in this  
23 case in reaching a verdict, you must bring to the consideration of  
24 evidence your everyday common sense and judgment as  
25 reasonable men and women. Thus, you are not limited solely to

1 what you see and hear as witnesses testifying. You may draw  
2 reasonable inferences from the evidence which you are feel  
3 justified in the light of common experience, keeping in mind that  
4 such inferences should not be based on speculation and guess. A  
5 verdict may never be influenced by sympathy, prejudice, or public  
6 opinion. You're just in it to be the product of sincere judgment  
7 and sound discretion in accordance with these rules of law.

8 Ladies and gentlemen, as I said to you at the beginning of  
9 this trial, and I will say it to you at the end of this trial, use your  
10 common sense. Use your reason as men and women in this case.

11 You're going to find the verdict form. Battery with use of  
12 a deadly weapon resulting in substantial bodily harm. Guilty of  
13 battery with the use of deadly weapon resulting in substantial  
14 bodily harm.

15 You're going to see that you see guilty of battery with a  
16 deadly weapon, guilty of battery and also guilty of bodily harm,  
17 guilty of battery -- we have already talked about all the charges.  
18 We -- the charge aren't going to speak in this case.

19 Guilty on Count 1, guilty on Count 2, guilty on  
20 Count 3, 4, 5, with the intent to murder, with use of a deadly  
21 weapon charge, guilty on 6, and guilty on 7.

22 Ladies and gentlemen of the jury, Ted Donko in this case  
23 is the shooter. DeAndre Woods, I'm sure. Ramos, that's the guy.  
24 DNA, fingerprints. Ladies and gentlemen, find him guilty on all  
25 counts.

1 Thank you.

2 THE COURT: All right. Thank you.

3 Mr. Hauser, do you need set-up or anything?

4 MR. HAUSER: I'm going to use this, but that's about it.

5 THE COURT: Do you -- I meant, did you -- do you need  
6 the podium, is what I meant.

7 MR. HAUSER: No, I don't need the podium.

8 THE COURT: Okay.

9 MR. HAUSER: No, thank you, Judge.

10 How do I turn this? Like that.

11 **REBUTTAL CLOSING ARGUMENT FOR THE DEFENDANT**

12 MR. HAUSER: A Mexican man with no tattoos committed  
13 this crime. Two Mexican men drove up, shot up a driveway, and  
14 got away with it. Because instead, Ted Donko sits here. A Mexican  
15 man with no tattoos committed this crime.

16 Members of the jury, you heard the State talk a lot about  
17 the evidence that's before you. And when they list it all out like  
18 that, it sounds like a lot. Well, there's ID, there's another ID, there's  
19 fingerprints, there's DNA. That's the simple way of looking at it.

20 What I'm asking you to do today is not easy. What I'm  
21 asking you to do today is not take the easy way out. I'm asking you  
22 to look at this very carefully. Because when you look at the  
23 evidence in this case very carefully, you'll see that you have two  
24 choices, because you have two different sets of evidence that  
25 contradict each other in every way. Which one are you going to

1 believe?

2 But the problem is neither of them gets you to beyond a  
3 reasonable doubt that Ted Donko committed this crime. A Mexican  
4 man with no tattoos shot up that house.

5 Ms. Rose told you a few moments ago that she was proud  
6 to bear the burden in this case. But for someone who's so proud to  
7 bear that burden, she didn't actually tell you a lot about what it was.  
8 That's because it's not something the State likes to talk about,  
9 because of just how high that burden is.

10 The State has to prove to you each and every element in  
11 this case beyond a reasonable doubt. As you heard, that's the  
12 highest burden in our justice system. There is no courtroom  
13 anywhere in America in any way with a higher burden than this one  
14 right here. Because here in America, we value freedom more than  
15 money. So when money's at stake, the burden's just more likely  
16 than not.

17 But that's not what's at stake today. For Ted, it's freedom  
18 itself. It's liberty. And this burden is the price the government has  
19 to pay if they want to take that away. That's why the burden is so  
20 high.

21 And that's why the State and the State alone bears it.  
22 Because we as the defense, we don't bear that burden. In our  
23 justice system, you don't have to come up here and prove that you  
24 are innocent. You sit before that court, innocent unless proven  
25 guilty.

1           So Kambi and I, we don't have to do anything in this trial.  
2 We didn't have to ask any questions. When you were all sitting in  
3 here with a full panel, Kambi didn't have to get up here and ask you  
4 anything. He didn't have to make an opening. We didn't have to  
5 get up here and question any witnesses. Ted didn't have to take the  
6 stand. And I don't have to be up here right now.

7           I could have sat here next to Kambi this entire trial and not  
8 said a single word, just like this. And it wouldn't change where the  
9 burden lies. The State and the State alone has to provide yo with  
10 the evidence you need to reach the highest burden in the land, to  
11 give you an abiding conviction that only Ted Donko could have  
12 committed this crime. The evidence today doesn't meet that  
13 burden.

14           So let's start talking about it. Our main witness in this  
15 whole case, we know, is DeAndre Woods. Because DeAndre  
16 Woods is the only person who was at the shooting who then IDs  
17 Mr. Donko. And I know he pointed to him in here, and Ms. Rose  
18 made a big deal about her standing over here and making sure that  
19 it was okay.

20           But let's think about what that ID actually entails. Because  
21 if we're to believe that Ted Donko is the shooter based on DeAndre  
22 Woods, we have to disbelieve DeAndre Woods. Because he's the  
23 only person that you heard from in here to give you a description of  
24 the shooter. He didn't say white guy, tatted up on his face and  
25 arms. He said a Mexican man with no tattoos, no facial hair, and a



1 bald head. That was his exact description to the police.

2 And I confirmed that with Detective Marin on the stand.  
3 Because DeAndre, he came up here, and I get it, we're all nervous.  
4 But the thing is, when I asked him about it, he started waffling.  
5 Well, that's not what I told the cops. Well, you know, I was trying to  
6 tell them that I didn't really get a good look at the guy.

7 In fact, from behind the car all the way down the driveway  
8 on the other side of the shooter's car, I couldn't really see him,  
9 because I was focused on his eyes and his eyes alone. And the  
10 gun. I could only see the gun and his eyes.

11 What does this story tell us? This story tells us that, one,  
12 we know that isn't how appearances work. We know when  
13 you're 20 feet away, you're not only looking at the eyes and not  
14 seeing the rest of the face. And you certainly wouldn't just make it  
15 up. When the cops ask you that question, you're not going to be,  
16 like, eh, I'll just pick a race out of a hat, I'll pick a description out of a  
17 hat and, eh, that'll stick. No. You want to give the description of  
18 who you just saw.

19 Now, of course, he's trying to get away. Which is  
20 reasonable. Which means we should probably rely on the  
21 description from the day before, when he had a face-to-face  
22 conversation with the man he says showed up later. Who was that  
23 man? A Mexican man with no tattoos, no facial hair, and a bald  
24 head. That's the description of the shooter in this case.

25 So if we're to believe his identification, we have to ignore

1 what the detective told us is the important description. Because the  
2 detective told us on the stand just today, you interview people on  
3 the day of, because it's the most fresh in their minds. Not what is  
4 now 136 days later. That's not when you remember the most  
5 details. You remember it right away. And right away, what did he  
6 tell us? A Mexican man with no tattoos, no facial hair, and a bald  
7 head committed this crime.

8           You know what he didn't tell us? It was Ted Donko. He  
9 never told that to the police. And that's all that you need. Because  
10 it turns out he knows Ted. And apparently he doesn't like to admit  
11 that on the stand, which I get. No one wants to come before the  
12 Court and say, like, oh, yeah, I get high with dudes in my  
13 neighborhood. That's not something you want to confess to a  
14 group of strangers, much less a judge or a DA who could prosecute  
15 you. So he didn't want to say.

16           But he knows Ted. Ted has lived in that neighborhood  
17 four years and they've gotten high together. And if you see  
18 someone you know committing a crime, and they ask you what you  
19 look like, you have two options. One, you can lie, but we're not  
20 supposed to do that, and we don't believe he did here. Or two, you  
21 get an accurate description. You tell then exactly who you saw.  
22 And if you happen to know the name, you'd say. Who committed  
23 the shooting? Oh, it was Ted Donko. That's what he would have  
24 said if it had actually been Ted.

25           But what we're left with instead is the person who actually

1 did it, and he's not in this courtroom. He's a Mexican man with no  
2 tattoos, no facial hair, and a bald head.

3 So why did he pick him out of a lineup? Why, if he didn't  
4 think Ted was the guy, did he bother to point him out in the lineup?  
5 We all saw the lineup. You're going to see it again back there.  
6 Who's the closest to the description he gave? It's Ted. Which of  
7 these six guys is a face he knows? Ted's. Which of these guys has  
8 he seen around the area of the shooting before, because he lives in  
9 the neighborhood? Ted.

10 So when he's looking at a lineup of six guys who don't  
11 match his description of the shooter at all, he did the best he could.  
12 And he picked the only face he knew. And I get that.

13 When you're under pressure, when the cops are asking  
14 you questions, you want to be helpful. You don't want to tell them  
15 that they're wrong, so you pick Ted. That's how we get here.  
16 Everything comes from that lineup. Everything comes from the  
17 fingerprint.

18 But what it doesn't mean is that we throw away the fresh  
19 testimony, a Mexican man, no tattoos, no facial hair, and a bald  
20 head. And, members of the jury, I want you to think all the way  
21 back to the first witness in the case, the officer who was the initial  
22 responder, Officer Hennig.

23 I asked him on the stand, What was the initial description  
24 you got? Oh, it was for two Hispanic males. Who gave you that  
25 description? The witnesses at the scene. Was it DeAndre Woods

1 who gave it to you? No, it was someone else. And how did he  
2 describe those witnesses by race? Hispanic.

3 So the Hispanic witnesses who were there said it was  
4 Hispanic guys. DeAndre Woods, who was there, said it was  
5 Mexican guys. We don't know who did it. All we know is what they  
6 look like. Mexican man, no tattoos, no facial hair, and a bald head.

7 DeAndre Woods' ID gets us nowhere in this case. When  
8 the witness has to contradict himself, that does not meet the  
9 standard you have to. That is not proof beyond a reasonable doubt.  
10 Which means you must not convict Ted Donko.

11 But there's a second ID. Mr. Ramos, he ID'd him the  
12 second time around. So what did we learn? When he saw the car  
13 pull up in front, he says he saw Ted get out and walk away. So  
14 we're talking about an interaction that he had no particular reason  
15 to remember. Because after all, when someone pulls up in front of  
16 somebody's house, you might see them, and if they walk away,  
17 okay. We're done here. There's nothing particularly memorable  
18 about that.

19 If Ted had been waving a gun around in the air, maybe  
20 there would be some reason to remember all the specific details of  
21 this. But he wasn't. This is just some guy who pulls up and walks  
22 away. So how long does that take? A few seconds? Even if you  
23 have a patted waist. A few seconds. Looking down at the street at  
24 a man apparently he hadn't seen before, that you're now asked to  
25 identify 135 days later.

1           Members of the jury, I applaud you sincerely if any of you  
2 can remember a single face you saw 135 days ago that isn't a  
3 member of your family. I sure can't. I have no idea who I saw that  
4 time. But they've had no interaction since then.

5           So why didn't Mr. Ramos ID him the first time? Because  
6 he isn't sure. The only way he got to be sure was to sit right here  
7 for 20 minutes and look at the guys at the table that says,  
8 Defendant. He knows why we're here. We're here to try. He knows  
9 it's not someone sitting here. I'm asking questions, so he knows it  
10 isn't me. It's obviously not Kambi, he doesn't look anything like the  
11 guy.

12           So what's the conclusion he comes to? Well, I've been  
13 sitting here for 20 minutes. There's clearly something wrong here.  
14 I guess it's the guy at the table I don't know. Must be that guy, he's  
15 a white guy that looks kind of similar to someone I saw for a few  
16 seconds a 135 days ago. That's the best thing the State can say in  
17 this case.

18           But here's the problem with that. What the State wants  
19 you to believe is that not only is that a good ID, which is it, but that  
20 that man that walked and was caught on video. Let's talk about the  
21 video then.

22           The video you just saw is a guy who's clearly white,  
23 walking behind a fence, and that's it. Well, what you can tell when  
24 you watch that video closely is that's a white guy, not a Mexican  
25 guy, that he's not bald, and that he has facial hair.

1           So here's, then, what we're left with. The State has two  
2 options when it comes to this video. Either that's Ted Donko or it's  
3 the shooter. It cannot be both. And here's part of the reason why.

4           One, obviously, the description doesn't match. And two,  
5 the timeline doesn't match. What we heard is 911 call,  
6 immediately, officers respond 12:14 on the dot. When is the video  
7 filmed? We asked the woman on the stand. 12:15, on the dot. Not  
8 around 12:15. 12:15.

9           So the shooters have to shoot up a house, drive onto  
10 Charleston, and I know Ms. Rose said everything can be  
11 accomplished here in two minutes, but that sounds like someone  
12 who hasn't driven on Charleston during the day. Drive up  
13 Charleston, drive around the block, come to a different place,  
14 apparently drop off the other passenger -- who, by the way, is the  
15 one alleged to have done the shooting -- somewhere else, get in  
16 front of Mr. Ramos's house, park, get out, pat himself down, walk  
17 down the street a couple of houses till he's caught on video. And  
18 that has to take 45 seconds. That's what that has to be. If that's the  
19 shooter, that can't happen. That timeline is impossible.

20           So the other explanation is that's Ted Donko. What does  
21 that mean? That Ted has a red shirt and lives in the area? We  
22 know those things. We know Ted's not bald. We know he has  
23 facial hair. We know he's not Hispanic. And we know that that's all  
24 true at the time of the shooting. The State can't have this both  
25 ways. Either he's the suspect or he's the guy in the video. Or the

1 guy in the video is the suspect and it isn't Ted. It has to be one or  
2 the other. It's impossible for it to be the shooter or Ted. The video  
3 doesn't actually add up. It adds nothing to the case.

4 And this is where the evidence starts to contradict itself.  
5 What we have to do to believe the State's case is believe a video,  
6 ignore the witness. Believe the witness, ignore the video. Ignore  
7 the forensic evidence, believe the witness. Or vice versa. But that  
8 doesn't work. That's not how the justice system works.

9 So what about that forensic evidence? Does the forensic  
10 evidence actually put Ted Donko at the scene of the crime? No.  
11 Not one piece of evidence in this case, be it the description of the  
12 shooter or the fingerprints found or the DNA actually puts Ted at  
13 the scene. The State sounds pretty sure it's him, but the evidence  
14 doesn't actually tell us that.

15 What the evidence tells us, when we talk about the  
16 fingerprints, is that Ted touched a license plate. That is literally all it  
17 tells us. It doesn't tell us Ted touched the license plate that is  
18 attached to the car that the shooter was apparently driving, because  
19 that's not the license plate for that car. All it tells us is at some  
20 point, and we don't know when, Ted Donko touched a license plate.

21 So what did he tell you today? He's a mechanic by trade.  
22 That's it. That's all the State can tell us off the fingerprints is that a  
23 mechanic might have touched a license plate at some point?

24 MS. GOODMAN: Your Honor --

25 THE COURT: Approach.

1 [Bench conference transcribed as follows.]

2 MS. GOODMAN: I knew 100 percent that that's what was  
3 going to happen.

4 THE COURT: But we just talked about it.

5 MS. GOODMAN: I knew 100 percent that was -- and it just  
6 happened.

7 MR. HAUSER: What?

8 THE COURT: We just talked about that.

9 MR. HAUSER: No, I specifically said I wasn't going to say  
10 he was in the car, that he had worked on the car.

11 THE COURT: But I said [indiscernible] there wasn't going  
12 to be any more [indiscernible] to his working on a car  
13 [indiscernible] how his fingerprint would get on it. Because you  
14 know that that's not how that happened. [Indiscernible.] And so  
15 [indiscernible] you guys are going to get up there and argue that  
16 that could have potentially been one of the cars he worked on or his  
17 prints got on the license plate because that was a car he worked on,  
18 that's exactly what you're inferring right now.

19 MR. HAUSER: I didn't -- I misunderstood your instruction.  
20 I sincerely apologize I did that. I thought I wasn't allowed to say he  
21 was working in on the car that was in the shooting. That's what I  
22 thought they were opposing.

23 THE COURT: [Indiscernible.]

24 MR. HAUSER: Right. And I'm not saying he worked on  
25 that car.



1 THE COURT: But you're saying that he worked on a  
2 license plate within the car.

3 MR. HAUSER: Right, the car doesn't -- the car and the  
4 license plate don't actually match. It's the other way [indiscernible]  
5 that car.

6 MS. GOODMAN: And then you said he was a mechanic  
7 that works on a car that touched a license plate. That is exactly  
8 what you were barred from saying.

9 MR. LEXIS: He can strike his statement and just --

10 MR. HAUSER: Right. You can strike that. All clear now.

11 THE COURT: Just a bare minute and go on.

12 MR. HAUSER: Okay.

13 THE COURT: Do you want me to strike that?

14 MR. LEXIS: Yes.

15 THE COURT: Okay.

16 MR. HAUSER: Do you want me to clear it up or just  
17 strike?

18 THE COURT: I'll just strike it.

19 MR. LEXIS: No, that's --

20 MR. HAUSER: All right.

21 [End of bench conference.]

22 THE COURT: Okay. In regards to the argument that was  
23 just made about a mechanic having prints on a license plate in the  
24 car, that is stricken from the record. You are not -- you are noticed  
25 not to consider that a mechanic would have a fingerprint on a

1 license plate in a car. So everybody understands that  
2 admonishment? All right. Everybody's nodding their head yes.

3 Carry on, please.

4 MR. HAUSER: Thank you, Judge.

5 What the fingerprint tells us is nothing. Doesn't put Ted  
6 on the scene, doesn't put him in the car. Which leaves us, then,  
7 with the last piece of evidence, the DNA. And DNA is like that  
8 mysterious three-letter word that *CS* always throws around,  
9 because, well, if there's DNA, someone has to be guilty, right? Like,  
10 that's always how crime shows work.

11 That's not how real life works. So in real life, the DNA  
12 only tells us someone touched an object at some point. That's what  
13 we learned. And it doesn't actually mean that they're the only  
14 people that touched it. What we heard from the DNA expert on the  
15 stand was, well, not everyone that touched a shirt leaves DNA  
16 behind. You can and you can't. How many people touched the  
17 shirt in this case? We don't know.

18 We know that Ted did. We know that for a fact, because  
19 they swabbed the places where people tend to sweat, like me.  
20 Right here and under the arms.

21 But the thing is, if someone else's DNA is here or here,  
22 logic tells us they also wore that shirt. That's what common sense  
23 tells us. It doesn't tell us that they picked it up off the street or took  
24 it out of a car and just left it somewhere. They had to actually wear  
25 it.

1           So we know that the shirt that ties him to the shooting  
2 wasn't only worn by him. And that's important. Who is this other  
3 person? Was that person a Mexican shooter with no facial hair, no  
4 tattoos, and a bald head? We have no idea. But the fact that we  
5 can't answer those questions means we have doubts. And if we  
6 have doubts, the State hasn't met its burden.

7           All of the evidence in this case leaves us with doubts. The  
8 IDs are suspect or requires to ignore it. The video timeline does not  
9 match or it is Ted and he walks away, because he's not guilty. The  
10 fingerprint doesn't put him at the scene or pulling the trigger. The  
11 DNA says it could have been someone else, or it means Ted lost a  
12 shirt at some point.

13           Ted, the homeless guy who was living in the car that  
14 didn't lock and got broken into lost a red shirt. That's all we really  
15 know. That's all we know for certain.

16           And if you're expected to give an abiding convictions, I  
17 would bet it can't be done.

18           Excuse me for just a moment. My voice seems to be  
19 going after this, I apologize.

20           Let's talk about what evidence there isn't. What the State  
21 wants you to believe is that Ted walked down the street, got caught  
22 by Mr. Ramos, got caught by the cameras, walked around the  
23 corner, ripped his shirt off, and then just walked home. Okay.

24           So what evidence would there be if that was true? Might  
25 there be someone who's, like, Hey, who's that really tatted guy

1 walking down the street with no shirt on right after a shooting?  
2 That person would exist. It seems like a neighborhood with a  
3 bunch of cameras, because the detective even [indiscernible] that  
4 didn't produce footage.

5 Might there be a video of a shirtless Ted Donko walking  
6 down the street? There might. But there isn't. Because that didn't  
7 happen. Might there be fingerprints on those bullets? Might there  
8 be DNA on those bullets? Yeah, there might.

9 And I understand what they're saying. Everybody's said,  
10 well, we don't run those tests, it's just standard policy that we don't  
11 do that. But here's the thing. It's easy to say that when we're  
12 talking about, well, the budget doesn't allow us to do it. That's  
13 because the only thing on the line for them is their budget.

14 But when it's your life on the line, when you're sitting here  
15 staring down the barrel of an attempt murder with deadly weapon,  
16 seven felony charges, you want them to run those tests. You don't  
17 care if it's the budget. You want those results. Ted would love to  
18 be able to come up here and tell you, My DNA's not on those  
19 bullets, my fingerprints aren't on those bullets. But he can't,  
20 because they didn't run the test. And he can't run it himself.

21 What other evidence are we missing? We heard there  
22 were a lot of people at the house when there was a shooting. We  
23 heard there were at least two other people there that the officers  
24 described as Hispanic, and who described the shooters as Hispanic  
25 males. Where are those people? Wouldn't it be nice to know why

1 they thought the shooter was Hispanic? Wouldn't it be nice if you  
2 got to hear from them? Wouldn't it be nice if we got to question  
3 them? Yes. But we don't get to.

4 So all we have left is the limited contradictory evidence  
5 we have before us. He's on the video or he's not the shooter. The  
6 fingerprint matches or it doesn't actually put him at the scene. The  
7 DNA is his, unless, of course, it isn't, which they admit to. The ID is  
8 him if we ignore the ID. This is all they have to rely on. It's all the  
9 State has.

10 And they want you to meet the highest burden in the land  
11 with contradictory and flimsy evidence. With so much on the line.  
12 With so much at stake for Ted. That simply isn't enough.

13 Now, Ms. Rose made a big deal about witnesses on the  
14 stand being nervous, and maybe that's why the ID was a little  
15 weird. You know who else was nervous up there on that stand?  
16 Ted. He's got more reason to be nervous than anybody in this  
17 courtroom. He's the one that has something to lose, none of the  
18 rest of us do.

19 And he wasn't forced to take that stand. No. Every other  
20 witness here, you heard the judge say, You're released from your  
21 subpoena. They were required to be here, that's why they were  
22 here.

23 Ted, specifically, has a constitutional right not to get on  
24 that stand. He doesn't have to submit to questioning. You didn't  
25 have to find out he's a felon. He didn't have to try and explain

1 himself, because that's not the system we live in.

2 But he wants to defend himself. And he has done every  
3 single thing in his power to do that. No, we don't have footage of  
4 him at the Sonic. Because you can't defend yourself against an  
5 allegation you don't know is coming. If I ask any of you or if you  
6 ask me, can you tell me where you were at noon 45 days ago? And  
7 then can you prove it? Almost certainly not. That's not how we live  
8 our lives. We're not always prepared for an accusation to come our  
9 way at any given time.

10 So I want you to think very critically about the evidence  
11 we have before us. About the Mexican man with no tattoos who  
12 committed this crime. Because, members of the jury, you've seen  
13 Ted's tattoos. You're going to have the pictures yourselves. And if  
14 someone came up and held a gun with an arm that looked like that  
15 in what we know is a short-sleeve shirt with nothing else on under  
16 it, we'd have heard about it. We hear anything about tattoos. But  
17 Mr. Woods said no tattoos, Mr. Ramos said no tattoos. No witness  
18 saw anyone with tattoos anywhere in this case. But Ted's had  
19 these since 2011.

20 Members of the jury, we've done everything we can. And  
21 this is where I'm done. I don't get to come up here and talk to you  
22 again. Mr. Lexis is going to get up and he's going to disagree with  
23 everything I'm saying right now by telling you that my theories are  
24 outlandish or even ridiculous.

25 But what I want you to think about is that the State is

1 consciously asking you to ignore evidence. And try and answer  
2 these questions: Which witnesses am I supposed to ignore in order  
3 to believe he did it? Which evidence do I get to disregard that says  
4 he didn't do it in order to believe he did? Why should I have to  
5 believe the forensic evidence or the ID? Because you can't believe  
6 both.

7           Members of the jury, this case is very simple. I'm not up  
8 here talking about technicalities. I'm not up here talking about  
9 elements. There's no ifs, ands, or buts about it, a crime was  
10 committed. These men suffered immense pain, because they were  
11 shot by a Mexican man with no tattoos, no facial hair, and a bald  
12 head.

13           Ted Donko is not that man. I ask you to find him not  
14 guilty on all charges. Thank you.

15           THE COURT: Thank you, Mr. Hauser.

16           Ladies and gentlemen, how are we doing? Do we need a  
17 quick break before the last -- yes, okay. So yeah. All right.

18           So during the recess you're admonished not to talk or  
19 converse among yourselves or with anyone else on any subject  
20 connected to this trial or read, watch, or listen to any report of or  
21 commentary on the trial of any person connected with this trial by  
22 any medium of information, including, without limitation to  
23 newspapers, television, the Internet, and radio, or form or express  
24 any opinion on any subject connected with the trial until the case is  
25 finally submitted to you.

1 Let's be back at 10 till 4:00. All right? Thank you very  
2 much.

3 [Jury recessed at 3:38 p.m.]

4 THE COURT: All right. We're outside the presence.  
5 Anything?

6 MR. SHAYGAN-FATEMI: Not from the defense.

7 MR. LEXIS: No, Judge.

8 THE COURT: All right. So we'll go off.

9 [Court recessed at 3:39 p.m., until 3:53 p.m.]

10 [In the presence of the jury.]

11 THE COURT: All right. Thank you. We're back on the  
12 record is C-345584, State of Nevada versus Ted Michael Donko. He  
13 is present with both of his counsel, Mr. Hauser and Mr. Shaygan.  
14 Both deputy district attorneys are also present.

15 Do both sides stipulate to the presence of the jury?

16 MR. LEXIS: Yes, Your Honor.

17 MR. HAUSER: Yes, Your Honor.

18 THE COURT: All right. Mr. Lexis.

19 **SURREBUTTAL CLOSING ARGUMENT FOR THE STATE**

20 MR. LEXIS: Folks, with 2 million peoples in Clark County,  
21 when you have a case where somebody's being picked out of a  
22 six-pack photo lineup, backed by the 2- or 3,000-pound elephants in  
23 the room called DNA and fingerprints, we do this, right? And this.  
24 Blame the cops, you blame the victims. Do it all you want, it  
25 doesn't change the facts. Okay.



1           It's the victims' fault that they're placed in a situation  
2 where they're met -- DeAndre's met the first day with what? It's an  
3 ultimate play. Guys trying to front, threatening him with a weapon.  
4 Second day even more so. Even quicker, actually shooting. But it's  
5 his fault, right, that he mistakes him for a Hispanic individual.

6           We can talk about how it's possible and speculate as to  
7 why he initially thought he was Hispanic all day long. That's not  
8 reasonable doubt, let's do that.

9           Then blame the police, right? It's the police's fault. They  
10 could have done this, this, and this. Once again, folks, in every case  
11 we can go around the wheel of possibilities and speculation on  
12 what they could -- police could have done, should have done.  
13 That's not reasonable doubt either.

14           Plus, he wants to harp on the fact, well, they had -- how  
15 about the shell casings, the fingerprints, and DNA on the shell  
16 cases? Well, as the CSA told you, that stuff's burned off when it's  
17 fired. In addition, it's not Metro's policy to test such items due to  
18 the unreliability.

19           Now, folks, you don't need me to tell you in this type of  
20 case, when you're dealing with this type of neighborhood and this  
21 type of crime, it is a luxury to have any victim come forward who is  
22 both able to identify and willing to identify.

23           Not only do you have that in this case with DeAndre, you  
24 have this with Mr. Ramos. You could cut the tension in the  
25 courtroom with that man, how nervous he is, doesn't want to be

1 here, scared. But he eventually comes around.

2 Let alone DNA evidence and fingerprint evidence. Which,  
3 as you saw, that's no guarantee in any case. You saw the amount  
4 of prints that were lifted off that car. And only one of them had a  
5 viable amount, was a viable hit, good enough to test it, good  
6 enough to run through this national database of AFIS, which comes  
7 back to not only that man, and it's one of your questions that asked,  
8 Well, how rare is it? Well, ask you heard, your identical twin  
9 doesn't even have it.

10 Let alone DNA evidence. It's a luxury in these type of  
11 cases to have one of the four. In this case, you have all of them.

12 Folks, I took notes during defense counsel's opening  
13 statement. And the whole basis of that opening statement was  
14 what? That the State is trying to convict this man on a 95 percent  
15 identification, and that's it. Is that true? If you want to talk about  
16 numbers --

17 MR. SHAYGAN-FATEMI: Objection, Your Honor. That  
18 misstates the opening.

19 THE COURT: I'm sorry, that misstates what?

20 MR. SHAYGAN-FATEMI: My opening argument.

21 THE COURT: Okay. So what I'll say, ladies and  
22 gentlemen, is it's up to you to look at your notes or to rely on your  
23 memories in regards to what was actually said. As I've stated  
24 before, arguments by counsel are not evidence. But you can look at  
25 your own notes and your own memory, consider that. Okay?

1 MR. LEXIS: Direct quote from what I wrote down:  
2 Prosecuting relying only on 95 percent identification. Folks, is that  
3 true? Part of it. First of all, as you heard that man say, we asked  
4 him, what would have made it 100 percent? And he said the man's  
5 hair was -- if that hair was shorter from that six-pack photo lineup.

6 Folks, you're going to have the video surveillance and  
7 these still photos. It's one of your questions that actually brought  
8 them into evidence, 235. First of all, you surely can tell how long  
9 any facial is on this man. And if it is, if he does have any facial hair,  
10 it's extremely minor.

11 But what you can tell, folks, is you'll see, you'll have this  
12 photo, you'll have the other photos, you could see, his hair is so  
13 short on top you could see the glare from the sun shining off his  
14 head.

15 Add that to the fact that in court, he's asked, you know,  
16 Look at him; is that your man? Is he the one? Is he the shooter?  
17 What's he tell you? I'm sure.

18 Add that to the fact, again, relying on only a 90 percent  
19 identification? Hardly. Add that to Mr. Ramos and his  
20 identification, which just happens to corroborate this man picked  
21 out of a six-pack photo lineup, who they both identify in court. Oh,  
22 no, what a coincidence.

23 You can't argue with the numbers with fingerprints and  
24 DNA. There's no way around it. That is actual evidence, folks.  
25 That's not based on possibilities and speculation. And I'm going to

1 use that word several times. But again, to speculate as to, you  
2 know, he got his race wrong. Speculate as all the cops could have  
3 done this. It's possible this. That is not reasonable doubt.

4 Before I move on, I want to bring up one of the jury  
5 instructions. I'm going to go over several in my PowerPoint. But,  
6 obviously, I didn't have time after the defendant took the stand.

7 Folks, one of your jury instructions basically says:

8 If you believe that a witness has lied about a material fact  
9 in the case, you may disregard the entire testimony of that  
10 witness or any portion of his testimony which is not proof by  
11 any other evidence.

12 Let's talk about Mr. Donko's testimony. Right off the bat,  
13 the main -- talk about material facts, it's the main part of all the --  
14 everything he said. Do you know about the shooting that happened  
15 down the street? No.

16 Then what did the detective tell you? When presented  
17 with the evidence that they had, fingerprint and the card, he said,  
18 Oh, yeah, I've heard about the shooting. Yes, I know about it.

19 How about this whole thing, the first day Shorty, the  
20 second day, Shorty. Again, so Mr. Donko, did you mention that you  
21 knew a Shorty to the detective? No. What does the detective say?  
22 He asked him that question and he initially denied it.

23 MR. SHAYGAN-FATEMI: Objection. That misstates the  
24 testimony, Your Honor.

25 THE COURT: In regards to whether or not -- you're talking

1 about the testimony or what's in the statement?

2 MR. SHAYGAN-FATEMI: The testimony.

3 THE COURT: And what were you discussing?

4 MR. LEXIS: Judge, when the detective was on the stand,  
5 he was asked, Did you confront this man? Did he -- did you ask him  
6 if he mentioned Shorty? He said no. Did you confront him again  
7 with additional evidence? Yes. Did he change? Yes.

8 THE COURT: Approach.

9 [Bench conference transcribed as follows.]

10 THE COURT: What is your memory, when you say that  
11 misstates it, what did you --

12 MR. SHAYGAN-FATEMI: A moment of indulgence.

13 THE COURT: Sure.

14 MS. GOODMAN: Just to be sure, we're talking about  
15 Detective Marin, and that was one of the main points.

16 THE COURT: That's why I [indiscernible].

17 MR. LEXIS: Shorty, Shorty Dog, and then Shorty.

18 MS. GOODMAN: Yeah.

19 MR. HAUSER: We may be [indiscernible] and I apologize.  
20 I'm not trying to --

21 THE COURT: Okay.

22 MR. HAUSER: -- mislead. My understanding of it was he  
23 said I did say I knew Shorty. He's not saying I said it on the first  
24 time, but he's saying I knew Shorty. The State was asking about  
25 the first time, and that's why there was contradicting testimony

1 between Mr. Lexis's questions and --

2 THE COURT: I understand what we're talking about. But  
3 he's talking about what was said to Detective Marin. Not what your  
4 client has --

5 MR. HAUSER: We thought he was talking about the  
6 testimony on the stand.

7 THE COURT: And you're talking about his statement,  
8 right?

9 MR. LEXIS: His statement to the detective.

10 THE COURT: Yeah.

11 MR. HAUSER: Got it.

12 THE COURT: Got it?

13 MR. HAUSER: Got it.

14 THE COURT: Okay.

15 MR. SHAYGAN-FATEMI: Yep. Thank you.

16 MR. HAUSER: Thanks, Judge.

17 THE COURT: Yeah, no problem.

18 [End of bench conference.]

19 THE COURT: All right. The objection is overruled.

20 MR. LEXIS: Thank you, Judge.

21 Again, Detective asks him, Do you know Shorty? No.  
22 Presses him with more evidence. Know a man named Shorty? Oh,  
23 I know a man named Shorty Dog. Then loops back again, Yes, I  
24 know Shorty.

25 Folks, first of all, you know now the reason he took the

1 stand. Okay. And it's pretty obvious, using your common sense.  
2 He wants a reason, right, why -- to provide by this DeAndre guy,  
3 who's pointing him out. So he has to come up with a reason.

4 First of all, ask yourself, do you believe this guy is giving  
5 you some Academy Award winning performance up here with  
6 regard to DeAndre Wood? Hardly. If he was trying to really play  
7 this up, to bury this man, he could have done a lot better job. From  
8 the very beginning, Yeah, Detective, 100 percent, that's the man. In  
9 court, you going to sit here and stare at him when asked, Is that the  
10 guy? No. He's going to say, That's your man.

11 But instead, he catches himself in another lie. Right? I  
12 asked the detective. He told me on the stand -- Defendant told me  
13 on the stand that, Yeah, I told him I knew DeAndre.

14 What did the detective tell you? Not only did he never  
15 mention it, but there was no link in the entire investigation that  
16 these two knew each other. Period.

17 But, you know, you want to take the stand and get that  
18 out, and then you're subject to everything else. It's the first two  
19 points I got across.

20 And then what else did he get tripped up on? Well, no, I  
21 told the detective it was an older model beat-up four-door sedan,  
22 and I was the passenger. I just -- he didn't confront me with  
23 everything, I told him that. And, by the way, it was an Audi now.  
24 What did the detective tell you? He didn't reveal that until he  
25 informed him several times with, Oh, well, we got your print inside

1 a car.

2 He kept him talking until he finally revealed what? Out of  
3 all the things you could say about the vehicle, he mentioned an  
4 older model vehicle, four-door sedan, beat up, and to top it off, that  
5 he was the passenger.

6 Red shirt. Gives no viable explanation of a red shirt. Oh,  
7 broken out of my car. Okay, what day, sir? Uh, uh, uh. Yeah. And  
8 it just so happens it's neatly placed there. No tire marks, not wet,  
9 nothing else. Found minutes after the shooting.

10 MR. SHAYGAN-FATEMI: Objection. That's burden  
11 shifting, Your Honor.

12 THE COURT: Overruled. It's just argument.

13 MR. LEXIS: And then the fingerprint, same thing. No  
14 viable explanation. Found in this unregistered vehicle. And may I  
15 point out on the most damaging, damning and damaging piece of  
16 evidence in that vehicle, a license plate which is off the unregistered  
17 vehicle, again, found minutes after the shooting.

18 Defense counsel then wants to come up here and talk  
19 about, well, when the first responding officer showed up, the  
20 description was Hispanic from these people. Yeah. He had two on  
21 the ground. He told the others were reluctant, fearful.

22 And what did DeAndre say? These people got the  
23 descriptions from him. They were in the house. He went in and  
24 basically -- when they came out and told them the description,  
25 they're the ones that called 911. But it's their fault, right? It's their



1 fault.

2 MR. HAUSER: Objection, Judge. Misstates the testimony.  
3 Could we approach?

4 THE COURT: Sure.

5 [Bench conference transcribed as follows.]

6 MR. HAUSER: Judge, I don't recall the testimony that  
7 DeAndre actually went in the house and provided a description. I  
8 recall the testimony that there were four people outside, one of  
9 whom was Edgar Miller, who didn't testify. And then one was the  
10 woman who called 911. I don't believe she was outside.

11 THE COURT: [Indiscernible] ask DeAndre [indiscernible]  
12 ask DeAndre about where did she get that information? He said she  
13 was always inside, I told her.

14 MR. HAUSER: I don't recall the testimony about him  
15 going in the house in any way. He specifically said he ran and hid  
16 behind the fence.

17 THE COURT: But yesterday, at the end of DeAndre's  
18 testimony, Ms. Goodman asked him where did she get that? And  
19 he said she got her information to me.

20 MR. HAUSER: Right, but that part --

21 THE COURT: From me.

22 MR. HAUSER: Right, right. That part I remember. The  
23 problem is we're talking about multiple witnesses describing them  
24 as Hispanic. We're not saying it was just her. The officer testified --

25 THE COURT: Yeah, I know. She --

**PLEADING  
CONTINUES  
IN NEXT  
VOLUME**