

IN THE SUPREME COURT OF THE STATE OF NEVADA

TULY LEPOLO,

Appellant,

vs.

STATE OF NEVADA,

Respondent,

Supreme Court Case No. 85631
District Court Case No. C-20-345911-1
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**APPELLANT'S APPENDIX
Volume V**

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1 over three-and-a-half years.

2 Q And what training, education, and experience led you to that
3 position?

4 A So I have my bachelor's degree in sociology and my master's
5 degree in forensic science. As I stated, I started at the laboratory as a
6 forensic laboratory technologist where I learned how to do basic
7 comparisons, how to enter and search prints in our AFIS database, which
8 is the automated fingerprint identification system, and how to process
9 evidence to recover items -- latent prints off of items of evidence.

10 After doing that for about three-and-a-half years, I then
11 promoted to a forensic scientist training where I underwent one year of
12 extensive training, academically and also with practical exercises
13 learning how to do more complex comparisons and how to report
14 conclusions that we report out. Additionally, I learned how to do
15 technical reviews and admin reviews.

16 And then every -- in order to pass my -- my training, I had to
17 do competency tests to be released to full-time work. And then every
18 year I'm also proficiency tested to make sure that I can maintain my job
19 duties. I'm also a certified latent print examiner for the International
20 Association for Identification.

21 Q What are the primary duties and responsibilities of a latent
22 print examiner?

23 A So we have several different duties. So we can search and
24 enter prints in our AFIS database. We can process evidence to recover
25 latent prints from items. We do comparisons. So we're given a subject

1 and asked to compare that subject to latent prints. And then we report
2 out any of those findings that -- or conclusions that we have in reports,
3 as well as doing technical and administrative reviews on all the cases
4 that we report out.

5 Q And so you mentioned prints and fingerprints. Could you
6 just explain what is a fingerprint?

7 A Sure. So what a latent print is -- I'll explain what a latent
8 print is first. A latent print if you look at the -- your palms of your hands,
9 you'll notice your skin is different and it also is on the soles of your feet.
10 This skin is different from the rest of your skin. This skin is textured. It's
11 got ridges and furrows which is called friction ridge skin. So residue
12 coats these ridges and -- such as like sweat, oils, grease, anything like
13 that. And when you touch a surface, you have the potential to leave
14 behind a replication of your friction ridge skin. So that's what a latent
15 print is.

16 Then you also have what is called exemplar prints, and that's
17 when there is a known recording of someone's friction ridge skin. So it
18 could be of just the fingerprints which is the top portion of your fingers
19 here, and that's what's common for most people to see. If you go get a
20 work card, that's typically what they're going to take from you when you
21 -- when they take the exemplars from you.

22 But we can also record the palms. And we can also do
23 footprint comparisons. So if we needed exemplars from a footprint, we
24 can get exemplars from a footprint.

25 Q So in regards to prints, people are touching things, do they

1 always leave a print behind?

2 A Not always. Sometimes it -- it depends on several different
3 factors. So the first factor you have to consider is your skin. So how is
4 your skin? Is it dry? Is it oily? What condition is your skin in? And then
5 how does your -- how do you touch the surface? So if you touch the
6 surface and leave -- and pull your hand away real quick, you have the
7 potential of leaving behind a decent looking latent print. But if you touch
8 a surface and you move your hand in any way, then you'll get like a
9 smudge print because you're -- you're rubbing over top of the same area
10 that you just touched.

11 So and then you have to also consider the surface itself. If
12 the surface is flat and smooth, then you have a better chance of leaving
13 behind a latent print then if the surface is textured and rough.

14 Also environmental factors. So here in Las Vegas, we live in
15 the desert. And so during the summer if you leave an item out in the
16 heat, the chances of recovering a latent print from that surface is going
17 to be less than if we live in a humid climate.

18 Q So moving onto some of your responsibilities, how are
19 fingerprints compared?

20 A So when I do a comparison, what I'm looking at is, is there --
21 first -- the first thing I do is I have to look and see a latent print, if there's
22 enough information in that latent print to go ahead and move onto a
23 comparison. Sometimes like I just explained there's not enough
24 information. There's too little information I can't do anything with. That
25 -- I will stop my -- I won't even do a comparison in that case.

1 But if I determine that there's enough information to move
2 on for a comparison, then I will take the exemplars that I have available
3 to me, and I will do a side-by-side comparison. So I'm looking at all the
4 information in the latent print that I have available, and I'm looking to
5 find correspondence in the latent -- in the known exemplars that I have.
6 And if I find enough correspondence, then I will make a conclusion of
7 identification meaning that they come from the same source. And then if
8 I don't have any information in correspondence, then I'll say it's
9 exclusion meaning they come from different sources.

10 But then there's a range in between of different conclusions
11 that we can come up with such as incomplete with no detailed
12 agreement. And often times what that means is I looked at the
13 exemplars that I have, that I'm provided, but there's not enough
14 information and I can't find correspondence, so I need additional
15 exemplars from that subject to do my full comparison.

16 Q Are you ever able to identify when a fingerprint is put on a
17 surface?

18 A No, we are not able to do that.

19 Q Are fingerprints unique to an individual?

20 A Fingerprints are highly discriminating and persistent
21 throughout a person's lifetime. That's because they are highly
22 discriminating because they were formed when they were in the uterus
23 as an embryo. And then -- so the friction ridge skin that you are born
24 with is the same friction ridge skin you will continue with throughout
25 your lifetime. So the patterns in your -- your friction ridge skin will

1 typically maintain their shape and their form throughout the lifetime of
2 the individual.

3 That's barring any scarring. So if I get a scar on my finger, if
4 the scar is deep enough, then that scar will become a feature in itself. A
5 lot of times scars aren't deep enough so they are transitory. So I'll see a
6 scar on like a latent or exemplar. But then when it heals, it goes through
7 the healing process, that skin has regrown back to its normal ridge flow
8 and --

9 Q All right. So turning to this investigation and the analysis
10 that you did in this case, were you -- were you asked to do analysis and
11 an examination here?

12 A So this case came to me through our AFIS workflow meaning
13 we weren't given any names to compare, but we were asked to search
14 our database to see if we can generate any leads.

15 Q And that would have been done under both what's called a
16 Las Vegas Metropolitan event number as well as a lab number?

17 A That's correct. Yes.

18 Q And so here it would have been done under Las Vegas event
19 number 160403-3524?

20 A Yes.

21 Q And lab case number 16-03245?

22 A Yes.

23 Q All right. And as part of your process and analysis and
24 examination, do you ultimately create a report with the information?

25 A I do. Yes.

1 Q And so turning to your analysis in this case, do you
2 ultimately receive packages from -- that are listed under the event
3 number?

4 A Yes. So when we get the request, it's through our -- our lift
5 system which is a case management system. So I'll get information such
6 as the lab case number. That's what's generated through that system.
7 And it will tell me which latent print packets I have to go find and obtain.
8 I then go to our secure repository, and I obtain all the lift card -- all the
9 latent print packets within that case that I'm asked to compare or asked
10 to do an analysis on in the case.

11 In this case, there were several different packets. And when I
12 do get the packets, what I do is I check to ensure that they are sealed. So
13 every CSA who recovers a packet when they turn them in, they'll have a
14 seal on the back that has their initials and date imprinted on it. And then
15 I also assign it a lab item number, and as well as assign it packet
16 numbers so -- impound package numbers so the CSA personnel number
17 and a dash 1 or dash 2 or a dash 3. And then when I open the lift card --
18 open the packet, I'll go ahead and number the lift cards with my Q
19 number. So it will be listed as Q1, Q2, Q3, all the way through each
20 packet until I get to the end.

21 Q Does Q stand for anything?

22 A It's just a number -- or a letter that we came up with as a
23 detail to differentiate. So if the packet comes from an outside source, we
24 assign it a Q number. If we recovered the latent prints ourselves from
25 the items that we processed, then we'll assign it an L number. It's just a

1 matter of what one of my managers came up with years ago, and it's
2 written in our technical manual to do it that way.

3 Q Okay. And so in this case, did you receive an impound
4 package number 13572-1?

5 A I did.

6 Q And that 13572 would that have been the personnel number
7 that you were previously --

8 A Yes.

9 Q -- discussing? And do you know that to be a Norreen
10 Charlton?

11 A Yes.

12 Q And how many cards did you review in that impound
13 package number:

14 A May I look at the report?

15 MS. CONLIN: That's not -- so objection --

16 MR. MARGOLIS: No objection.

17 MS. CONLIN: Thank you.

18 THE WITNESS: So under that impound package, I looked at
19 three different lift cards. In each lift -- and under each lift card, I had one
20 latent print on each lift card. So I looked at three different latents.

21 BY MS. CONLIN:

22 Q And could you walk through your examination and analysis
23 as to each card?

24 A Sure. So for the lift card Q3, I had determined that there was
25 one suitable latent print in that -- on that lift card that I was able to put

1 into our AFIS database. So when I searched our AFIS database, what
2 happens is I -- I enter the prints, and then I have to tell the computer, like,
3 say it -- so I'll take a fingerprint, for example. I'll have to tell the
4 fingerprint -- or the computer where the core of that fingerprint is, so
5 where the middle of that fingerprint is. I then have to also tell the
6 computer what data or information I'm looking at. And that's the --
7 they're called minutia.

8 So when you have ridges, they don't just keep flowing along.
9 They do something. So if a ridge ends, that's called a ridge ending, or if
10 a ridge merges into another ridge or divides into two ridges, that's called
11 a bifurcation. So when I enter the information into the computer, then I
12 tell the computer that there is information at this point, at this point, and
13 at this point. And when I map it all out, it looks like a constellation. So
14 it's searching a database of fingerprints and palm prints that -- for that
15 constellation. And then I'll get back a list.

16 And so when I get back the list, then I have to do a
17 comparison on the screen to see if it's a positive or a negative
18 association at that point. If I determine it's a negative association, that
19 means that there's not any information in correspondence, then I'll move
20 onto the next candidate on the list and so on and so forth until I'm done
21 with my candidate list that I requested.

22 If I do get a positive association, so for instance, this very
23 first latent I got a positive association, then that means I have some
24 correspondence between the latent and the exemplar print that's on my
25 screen. So then I will go and obtain exemplars from -- using the number

1 that is generated by the computer, I will obtain exemplars and then do a
2 manual comparison. So I will look at the latent print to the exemplars
3 that I have, and then I will look for correspondence and information. And
4 if I have enough information, then I will say it's an identification.

5 So in this case, I did search for Q3A. I searched AFIS with
6 positive results, and I identified it to the left middle finger of Elise -- and
7 sorry if I butcher this name -- Faamasinno.

8 Q Okay. And you mentioned that you get the exemplars and --
9 do those come from certain -- or databases?

10 A Right. So what AFIS is, it's a -- it's basically a storage of -- of
11 exemplar prints. And this is both criminal and civilian. So for instance,
12 my fingerprints are in our local database because I work for the Metro
13 Police Department. We both -- we search both our local database and
14 the FBI database. And both of those databases contain similar
15 information where it's criminal and civilian exemplar prints inside those
16 systems.

17 Q And so for the Q3 card that you were talking about, that --
18 you also get a description of where this print is found. Is that right?

19 A Correct. So every lift card comes with a label by the -- that is
20 generated by the CSA, and that has their P number, the date, and the
21 location of where they're recovered, as well as to the description that we
22 report out. So for instance, Q3 is a lift card from the exterior front left B
23 pillar of vehicle 1. And vehicle 1 was a Chevrolet Suburban.

24 Q And that was also a -- what's listed as California 5FPB429?

25 A Correct. Yes.

1 Q All right. Moving onto Q4 which was a card located from the
2 exterior front left door of V1, the Chevrolet Suburban, same license
3 plate. Could you explain your results there?

4 A Sure. So in -- in this case, I actually had positive association
5 meaning I obtained exemplars for five different individuals. And in -- for
6 Q4A, I actually excluded all five individuals which means I did not find
7 correspondence between the latent and the exemplars provided for two
8 of those individuals.

9 So then I still searched the database, and I did not have any
10 positive. I had negative results. And I registered that latent print in our
11 database.

12 Q And you mentioned you had multiple exemplars. Could you
13 list out the exemplars that you had?

14 A Sure. I compared the following people, Elise Faamasino,
15 Tuly Lepolo, Bo McGowan [phonetic], Jasmine Jenkins [phonetic], and
16 Jake Lepolo.

17 Q And you indicated, as to Q4, those were excluded?

18 A They were excluded from Q4, yes.

19 Q Moving on to Q6, which is the lift card from the exterior rear
20 left B pillar of the Chevrolet Suburban. Could you explain your results
21 there?

22 A Sure. With that one, I actually searched, initially, with
23 negative results -- the database. But when I did my comparisons -- so
24 anytime we have people to compare, we compare everyone to those
25 exemplars -- to those latent prints.

1 So when I did my comparisons, just because the AFIS system
2 said that it was negative, I actually found correspondence in between a
3 latent and exemplar. So I ended up identifying the right palm of Jake
4 Lepolo.

5 Q And that would've been through your own manual
6 comparison?

7 A That's through the manual comparisons, yes.

8 Q Okay. Now, moving on. Did you also receive three different
9 packages, underneath the personal number 4934?

10 A I did, yes.

11 Q And do you know that individual -- individual to be Brad
12 Grover?

13 A I do.

14 Q So, first, focusing on impound package under that personal
15 number, dash three. Could you walk us through the result for Q13,
16 which is one lift card from the right front hood of the 2004 Chevrolet
17 Suburban?

18 A So for that one, I searched our database, and I got positive
19 association -- so positive results. And I did a manual comparison and
20 identified the right index finger of Tuly Lepolo.

21 Q And moving on to Q14. Again, a lift card from the right front
22 hood of that Chevrolet Suburban. What were your results?

23 A Again, I searched our AFIS database, and I got positive
24 results. I identified to the right palm of Jake Lepolo.

25 Q As to Q17, which is another lift card from the front of the

1 hood of the Chevrolet Suburban. Could you explain the results?

2 A So that one, I didn't search our database for this one. I just
3 did a manual comparison, and I identified the left thumb of Elise
4 Famatice -- Faamasino, sorry.

5 Q As to Q22, one lift card from the front of the hood of a
6 Chevrolet Suburban. What were your results?

7 A For Q22, I searched our database -- our AFIS database, with
8 positive results. And then I did a manual comparison and identified it to
9 the left palm of Jake Lepolo.

10 Q Moving on to Q27, a lift card from a Monster drink can in the
11 center console drink holder from a 2004 Chevrolet Suburban. What were
12 your results?

13 A That one, I also searched in our AFIS database, with positive
14 results. And I did a manual comparison, and I identified it to the right
15 thumb of Tuly Lepolo.

16 Q As to Q35, which was a lift card from number one cologne
17 bottle, in rear pocket of right front seat, from the 2004 Chevrolet
18 Suburban. What were your results?

19 A That one I also searched in our AFIS database, with positive
20 results. And did a manual comparison, and identified it to the right index
21 finger of a Bo McGowan.

22 Q Moving on to the impound package number, under that
23 personal number 4934, package number 2, Q40, the lift card from the
24 exterior right rear door of that 2004 Chevrolet Suburban. What were
25 your results?

1 A So for this one, I did a manual comparison to all five
2 subjects. Elise Faamasino, Tuly Lepolo, Bo McGowan, Jasmine Jenkins,
3 and Jake Lepolo. And I excluded all of those subjects. I also searched
4 our AFIS database and I got negative results in that. And I registered
5 that latent print in our database.

6 Q As to Q41, a lift card from the exterior right rear -- right rear
7 door from that 2004 Chevrolet Suburban. What were your results?

8 A So for this one, I didn't search it in our database. I just did a
9 manual comparison, and I identified the left palm of a Jasmine Jenkins.

10 Q Moving on to Q46, a lift card from the exterior right rear door
11 of 2004 Chevrolet Suburban. What were your results?

12 A So this one, I excluded all five of the subjects, Elise
13 Faamasino, Tuly Lepolo, Bo McGowan, Jasmine Jenkins, and Jake
14 Lepolo. I searched the latent print in our AFIS database, with negative
15 results. And I registered that latent in our database.

16 Q Q53, a lift card from the extreme right front door of the 2004
17 Chevrolet Suburban. What were your results?

18 A So for that one, I just did a manual comparison. I identified
19 the right palm of a Jake Lepolo.

20 Q As to Q54, a lift card from the exterior right front door of the
21 2004 Chevrolet Suburban. What were your results there?

22 A So for this lift card, I actually had two latent prints on the
23 same lift card, that were suitable for our AFIS search. I searched the first
24 one, with positive results in our AFIS database. And I identified that to
25 the right middle finger of a Jasmine Jenkins.

1 And then for the second one, which is labeled B, I searched
2 through our AFIS database, with positive results. And I identified it to
3 the right ring finger of a Tuly Lepolo.

4 Q As to Q57, a lift card from the exterior right front door of that
5 2004 Chevrolet Suburban. What were your results there?

6 A I identified the right palm of Jasmine Jenkins.

7 Q As to Q58, a lift card from the exterior right front door of the
8 2004 Chevrolet Suburban. What were your results there?

9 A So for this one, I excluded a Tuly Lepolo, a Bo McGowan, a
10 Jasmine Jenkins, and a Jake Lepolo. And for Elise Faamasino, I said --
11 my conclusion was "Incomplete. No detail in agreement, but I need
12 better palm exemplars for that subject." I searched the AFIS database,
13 with negative results. And I registered that in our -- in our database.

14 Q Moving on to Q59, a lift card from the exterior right front
15 door of the 2004 Chevrolet Suburban. What were the results there?

16 A So for that, I did a manual comparison, excluded the Tuly
17 Lepolo, Bo McGowan, Jasmine Jenkins, Jake Lepolo. And for Elise
18 Faamasino, I went "Incomplete. No detail in agreement. I need
19 additional exemplars, that being palms."

20 Q As to Q62, a lift card from the right side of the hood of the
21 2004 Chevrolet Suburban. What were your results there?

22 A To go back to Q59. I forgot. I also searched that one in AFIS,
23 negative results. And registered that one in our database.

24 Now, for Q62, I -- I did a manual comparison, and I identified
25 the left palm of Jake Lepolo.

1 Q All right. And then the last package from personal number
2 4934, -- package number one. Q66, which is a lift card from the left side
3 of the hood of the 2004 Chevrolet Suburban. What were your results?

4 A So for this one, I excluded Jasmine Jenkins and Jake Lepolo.
5 But I went "Incomplete" to Elise Faamasino, Tuly Lepolo, and Bo
6 McGowan. "Finding no detail in agreement. But I need additional
7 exemplars of their palms, to render a conclusion." I also then searched
8 it, negative, in our database, and registered that latent print, as well.

9 Q As to Q67, a lift card from the left side of the hood of the
10 2004 Chevrolet Suburban. What were your results there?

11 A I excluded Tuly Lepolo, Bo McGowan, Jasmine Jenkins, and
12 Jake Lepolo. And I went "Incomplete. No detail in agreement" to Elise
13 Faamasino. And "I need additional palms for her, to render a
14 conclusion."

15 And I searched that one in the AFIS database, with negative
16 results, and registered it in our database.

17 Q As to Q68, a lift card from the -- from the left side of the hood
18 of the 2004 Chevrolet Suburban. What were your results there?

19 A I did a manual comparison. I identified the left palm of Tuly
20 Lepolo.

21 Q And Q69, a lift card from the left side of the hood of the 2004
22 Chevrolet Suburban. What were your results?

23 A I did a manual comparison. I identified to the right palm of
24 Tuly Lepolo.

25 Q As to Q73, a lift card from the exterior left rear door of the

1 2004 Chevrolet Suburban. What were your results?

2 A So for this one, I excluded Elise Faamasino, Tuly Lepolo, Bo
3 McGowan, Jasmine Jenkins, and Jake Lepolo. I searched it, with
4 negative results, and registered it in the database.

5 Q As to Q78, a lift card from the exterior left side rear, of the --
6 of the rear door of the 2004 Chevrolet Suburban. What were your
7 results?

8 A For this one, I excluded Tuly Lepolo, Bo McGowan, Jasmine
9 Jenkins, Jake Lepolo. I went "Incomplete. No detail in agreement," to
10 Elise Faamasino. "I need additional palms for her."

11 And I searched the AFIS database, with negative results, and
12 registered the latent in our database.

13 Q As to Q80, a lift card from the exterior real -- rear windshield
14 from the 2004 Chevrolet Suburban. What were your results?

15 A I did a manual comparison. I identified the right palm of a Bo
16 McGowan.

17 Q As to Q81, a lift card from the exterior rear windshield of that
18 2004 Chevrolet Suburban. What were your results?

19 A I identified the left middle finger of Jasmine Jenkins.

20 Q And as to Q82, a lift card from the exterior rear windshield of
21 the 2004 Chevrolet Suburban. What were your results?

22 A I identified the left middle finger of a Jasmine Jenkins.

23 Q And Q86, a lift card from the exterior right rear side of the
24 2004 Chevrolet Suburban. What were your results there?

25 A I excluded a Tuly Lepolo, Bo McGowan, Jasmine Jenkins, a

1 Jake Lepolo. And I went "Incomplete. No detail in agreement," to Elise
2 Faamasino. "I need additional palm exemplars for her." And I searched
3 AFIS, with negative results, and registered it in that database.

4 Q And so after this entire process that we've been talking
5 about, you indicated that you put this all into a report; is that right?

6 A That is correct, yes.

7 Q And then after you put this into a report, is there another step
8 in the verification process?

9 A Yes, so once I complete my case notes and I complete the
10 report, I then send it to technical review. In which case my technical
11 reviewer, they'll go through every lift card and exemplar, and they'll
12 actually do this -- a comparison similar to what I do, and see if they can
13 render the same conclusions that I rendered.

14 If they agree, then they'll just initial, next to my conclusion,
15 that they agree. Or if we disagree, then there'll be documentation of the
16 disagreement, and we'll discuss that further -- disagreement. Which may
17 result in me changing my conclusion, or my technical reviewer changing
18 their conclusion.

19 But all that would be documented into our case notes. And
20 then after technical review, then it gets a third set of eyes, where it goes
21 through administrative review. So that's, basically, ensuring that the
22 report, it matches all the information that is contained within the case
23 notes.

24 Q And so the technical review, and then that third set of review
25 that you mentioned, that was done here in this case, as well?

1 A That is correct. Yes.

2 MS. CONLIN: And, Your Honor, at this time, I will pass the
3 witness.

4 THE COURT: Okay. Mr. Margolis, whenever you're ready,
5 sir.

6 MR. MARGOLIS: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. MARGOLIS:

9 Q Hi, Ms. Gouldthorpe.

10 A Hello.

11 Q So I'm going to ask you a couple questions. Hopefully, if I
12 get any wrong, you'll correct me. I believe you said that another witness
13 collects these latent print packets, and they're all stored, sealed, for you
14 to eventually conduct the actual process of examining them, right?

15 A Correct, yes.

16 Q Okay. And I believe there were, you know, like, 80 of these.
17 There were a lot of them. But you only tested approximately 30 of them;
18 is that about right?

19 A Correct. So what I do, for this workflow, it's a limited
20 examination for any latent print that can go into our AFIS database.
21 Meaning, that there are more lift cards in the case, that could manually
22 be compared. But I was not requested to do a comparison, in this case,
23 so I was only requested to do the AFIS-suitable latent prints. So it's a
24 limited examination.

25 Q Okay. I want to get educated, too. So what is it that makes a

1 print AFIS-ready vis-a-vis one you'd have to manually --

2 A So AFIS, it's -- it's basically the clarity. Meaning, how clear a
3 print is. And also, only certain parts can go into our AFIS database. So
4 the distal portion of your fingerprint, right here. Which is commonly
5 known as a fingerprint to most people. That can be searched in our AFIS
6 database.

7 And then our palms can also be searched in our AFIS
8 database. However, this whole middle -- all your joint section, which is
9 called the phalanges, they are not eligible to go into our database. So I
10 cannot search our database for anything that is represented by -- any
11 latent print that is represented by the phalanges. I can do manual
12 comparisons on them, but I can't put them in our database and search.

13 Also, the -- we have suitability criteria in our technical
14 manual. So for the distal portion, I need to have at least eight points of
15 information, or minutiae points, so the ridge endings and bifurcations I
16 talked about earlier. Eight points in a contiguous region. Meaning, they
17 have to be, kind of, all in, like, one area. They can't be scattered
18 throughout the print.

19 And for fingers, especially, I need to know what pattern type
20 is associated. So if it's -- there's several different patterns. So if it's a
21 right loop, it comes in and -- the ridges come in. They flow up, and they
22 exit the same side -- right side. And then left loop would be the same
23 looping pattern, just on -- they come in, round, and exit on the left side.

24 And then there's arch, which means it just -- it's like a -- a
25 simple flow across the ridge. There's no pattern to it, or a whorl, which

1 is kind of a circular kind of pattern in the fingers. So I kind of need one of
2 those pattern types to reference for the fingers, as well as palms.

3 So with palms, if you look at your palm and imagine a T
4 shape, you -- there -- it's divided into three distinct areas. So the inner
5 digital is the top area -- top portion. The portion near your thumb, that's
6 called the thenar area. And then the other portion is called the
7 hyperthenar area.

8 So for -- in order for me to put a palm print into our AFIS
9 database, I need to know which region of the palm it comes from, as well
10 as which -- how it is oriented -- so which way is up --

11 Q Okay. So --

12 A -- for the latent print.

13 Q Safe to say that the greater the ridge detail and the more
14 you know about the orientation of a given print, the better able you are
15 going to be to compare it manually? And, especially, you wouldn't even
16 be able to enter into a database, without this criteria?

17 A Correct. Yes.

18 Q Okay. And in this case, of all of the nearly 90 that were
19 collected, you tested or examined approximately 30 of them?

20 A I didn't count them.

21 Q Yeah, I mean, I counted 27.

22 A Okay.

23 Q If I'm off by one, I'll -- I'll accept that. But -- and in so doing,
24 you had five exemplars of individuals that you knew to be in regular
25 contact with that vehicle, right? That you were, kind of, testing for?

1 A That -- I didn't know, at the time. So I ran it in our database.

2 Q Right.

3 A And they got a positive association, in our database. And
4 then I did a manual comparison. Who those subjects are, what contact
5 they have with that vehicle, I -- I have no idea. That's not for me to say.

6 Q Sure.

7 A I just compare the latent to the exemplars, and issue my
8 report, and then --

9 Q But by the time you've got it, you've got a -- a handful of
10 names, including Lepolos and McGowans?

11 A Through our database search, I -- I --

12 Q Right.

13 A -- obtain those, yes.

14 Q Okay. And you found Mr. Lepolo's print on that vehicle, in
15 various places, I want to say five times. That's what I counted, amongst
16 your testimony. Does that sound about right?

17 A I can count for you, or we'll go with --

18 Q If you'll agree with me, I'll agree.

19 A Okay.

20 Q And if I'm wrong, we'll -- the record will correct me.

21 A Yes.

22 Q Okay? So 5 of 27, okay? So, no question, Mr. Tuly Lepolo --
23 Mr. Lepolo, in your opinion, is associated with this Suburban?

24 A He had contact, at some point, with --

25 Q Okay.

1 A -- the vehicle, yes.

2 Q As did Jasmine Jenkins?

3 A Yes.

4 Q As did Elise Faamasino?

5 A Yes.

6 Q As did Bo McGowan?

7 A Yes.

8 Q Okay. And as we know, from my cross-examination of

9 previous witnesses, you can't tell the jury when this fingerprint or that

10 fingerprint or that palm print was placed, right?

11 A No, I cannot.

12 Q Okay. But you can, by virtue of the presence of Ms. Jenkins,

13 and Mr. McGowan, and Mr. Lepolo, and Ms. Faamasino's fingerprints,

14 say that those individuals were, at some point, associated with that

15 vehicle?

16 A Yes.

17 Q They had contact with that vehicle, whether it be the rear

18 quarter panel or the Monster can, or what have you --

19 A Yes.

20 Q -- correct? Okay. That's what you're able to tell the jury,

21 though, right? That's --

22 A That is correct, Yeah.

23 MR. MARGOLIS: Okay. Thank you.

24 THE COURT: Ms. Conlin?

25 MS. CONLIN: No -- nothing further from the State.

1 THE COURT: Anything from the jury? All right, Ms.
2 Gouldthorpe. Thank you so much for being here. Please don't share
3 your testimony with anyone else involved in the case, as it is an ongoing
4 trial. I appreciate you being here. And you are excused.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you. All right, ladies and gentlemen.
7 That was our last witness of the day. So tomorrow morning, I do have
8 my criminal calendar, which means I'll pick back up with you guys at
9 11:30 tomorrow morning. Which means, we'll go straight through. So
10 we won't have a lunch break.

11 During this recess, please remember not to discuss or
12 comment on the case with one another. In regards to your fellow jurors,
13 please do not -- regarding the case or its merits, either by voice, phone,
14 email, text, internet, or other means of communication or social media.

15 Please do not read, watch, or listen to any news, media
16 accounts, or commentary about the case, do any research, such as
17 consulting dictionaries, using the internet, or using reference materials.

18 Please don't make any investigation, test a theory of the
19 case, recreate any aspect of the case, or in any way attempt to learn or
20 investigate the case on your own. And please don't form or express any
21 opinion on the matter, until it's formally submitted to you. We'll see you
22 tomorrow morning, at 11:30. Have a nice evening.

23 THE MARSHAL: All rise.

24 [Jury out at 3:47 p.m.]

25 THE COURT: All right. We are outside the presence of the

1 jury. It looks like, tomorrow, we have two witnesses left for the State,
2 Ms. Rubino, and Mr. Sanborn; is that correct?

3 MR. GIORDANI: Yes.

4 THE COURT: All right. Mr. Lepolo, I need to go over a few
5 things with you, sir. Under the Constitution of the United States, and
6 under the Constitution of the State of Nevada, you cannot be compelled
7 to testify in this case; do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Okay. You may, at your own request, give up
10 this right and take the witness stand and testify. If you do, you will be
11 subject to cross-examination by the deputy district attorney, and
12 anything that you may say, be it on direct or cross-examination, will be
13 the subject --

14 THE DEFENDANT: No.

15 THE COURT: -- of fair comment, when the deputy district
16 attorney speaks to the jury in his or her final argument; do you
17 understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: If you choose not to testify, the Court will not
20 permit the deputy district attorney to make any comments to the jury
21 because you have not testified; do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: If you elect not to testify, the Court will instruct
24 the jury, but only if your attorney specifically requests, as follows, "The
25 law does not compel a defendant in a criminal case to take the stand and

1 testify, and no presumption may be raised, and no inference of any kind
2 may be drawn, from the failure of a defendant to testify." Do you have
3 any questions about these rights?

4 THE DEFENDANT: No.

5 THE COURT: You are further advised that if you have a
6 felony conviction, and more than ten years has not elapsed from the date
7 you have been convicted or discharged from prison, parole, or
8 probation, whichever is later, and the Defense has not sought to
9 preclude that from coming before the jury, and you elect to take the
10 stand and testify, the district attorney, in the presence of the jury, can be
11 permitted to ask you the following.

12 Number 1, Have you been convicted of a felony?

13 Number 2, what was the felony?

14 And number 3, when did that happen? No other details may
15 be gotten into. State, if the Defendant were to take the stand, were there
16 any felonies that would meet these requirements in the ten-year period,
17 to your knowledge?

18 MR. GIORDANI: I believe so, Your Honor.

19 THE COURT: Okay. So, Mr. Lepolo, what that means is that
20 if you were to take the stand, any felony within the last ten years, for
21 which you know, you were convicted within the last ten years, or you
22 were in prison, parole, or probation, they can ask you about that. But the
23 only thing they can ask you about is, have you been convicted of felony?
24 What was the felony? And what was the year? And they can't get into
25 any of the other facts. So I just wanted to make sure you are aware of all

1 those rights. Do you have any questions about any of those, sir?

2 THE DEFENDANT: No.

3 THE COURT: Okay. Sounds good. Thank you. All right,
4 guys. So let's talk about -- you can go off, Laura.

5 [Recess at 3:50 p.m., recommencing at 3:53 p.m.]

6 THE CLERK: On the record.

7 THE COURT: Back on the record in Lepolo, C-345911. All
8 parties present. Still outside the presence of the jury.

9 Mr. Giordani?

10 MR. GIORDANI: One more thing I forgot to mention. Earlier,
11 I provided a disk to Mr. Margolis. That disk contains both of the
12 statements Mr. Lepolo made to homicide detectives.

13 THE COURT: Uh-huh.

14 MR. GIORDANI: We've discussed some redactions to those
15 statements. They're in that disk. So Mr. Margolis -- I told him, basically,
16 if there's anything you -- else he wants redacted, to let me know and
17 we'll do that. But this is going to be used, if we use it, with the witness
18 tomorrow morning.

19 THE COURT: Okay.

20 MR. GIORDANI: Thank you.

21 THE COURT: Sounds good.

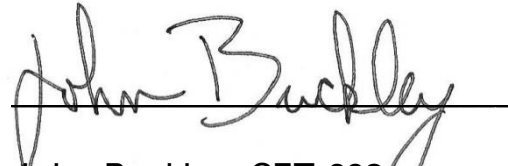
22 [Proceedings adjourned at 3:54 p.m.]

23 * * * * *

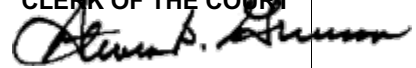
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1 ATTEST: I do hereby certify that I have truly and correctly
2 transcribed the audio/video proceedings in the above-entitled case to the
3 best of my ability.

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5 
6 _____
7 John Buckley, CET-623
8 Court Recorder/Transcriber

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1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

10 vs.

11 TULY LEPOLO, #8471381,
12 Defendant.

)
) CASE#: C-20-345911-1
)
) DEPT. VI
)
)
)
)
)

13 BEFORE THE HONORABLE JACQUELINE BLUTH
14 DISTRICT COURT JUDGE
TUESDAY, AUGUST 23, 2022

15 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 5**

16
17 APPEARANCES:

18 For the Plaintiff:

JOHN GIORDANI, ESQ.
ELISA CONLIN, ESQ.

19
20 For the Defendant:

JASON MARGOLIS, ESQ.

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25 RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

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None

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10-2491818
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323105105
<u>FOR THE DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
None		

1 Las Vegas, Nevada, Tuesday, August 23, 2022

2
3 [Case called at 11:15 a.m.]

4 THE COURT: All right. We're on the record in State of
5 Nevada versus Tuly Lepolo, C-345911. Mr. Lepolo is not present. Mr.
6 Margolis is present on his behalf. Mr. Giordani, Ms. Conlin, present on
7 behalf of the State. We're outside the presence of the jury. Mr. Margolis
8 said he wanted to just put something on the record before the jury came
9 in. And we proceeded this morning.

10 Mr. Margolis?

11 MR. MARGOLIS: Yes. Thank you, Your Honor. I just wanted
12 to address these statements made by my client. It's my understanding,
13 today, that the State intends to introduce portions of so called voluntary
14 statements that my client made. I would take a little bit of issue with
15 whether or not they were actually voluntary. They seemed to be
16 custodial in nature, to me.

17 The two -- two statements in question, there's audio
18 recordings of them. The first is approximately six and a half minutes.
19 The second is approximately 24 minutes. I believe, in the first one, it's
20 pretty clear cut. At about the 49-second mark, he says, "Let me talk to a
21 lawyer." In spite of that, it continues for five minutes and change, after
22 that.

23 I feel like once he says "lawyer," that is the equivalent of a
24 magic word, and a lot of the jurisprudence, and it should cease right then
25 and there. As for the second statement, admittedly, he is Mirandized

1 very early on, by Detective Sanborn, and does admit to understanding
2 his rights, and proceeds to speak.

3 Now, again, the issue of whether or not it's voluntary, seems
4 relevant to me, because there's discussion about the fact that he is not
5 under arrest yet. He's already been previously handcuffed and he's
6 already been detained. And when he asked if he is free to leave, the
7 answer is not an affirmative yes, or negative no. It is, instead, "Well,
8 you're free to cease speaking with me."

9 THE COURT: You're free to what?

10 MR. MARGOLIS: To stop speaking.

11 THE COURT: Oh, cease? Oh, okay.

12 MR. MARGOLIS: Yeah, "To cease speaking with me." But,
13 you know, which --

14 THE COURT: It's ambiguous?

15 MR. MARGOLIS: At best. If -- I mean, I can see how you'd
16 say it's ambiguous. Me, personally, when I -- when I ask question A and
17 I receive answer B, that tells me that I am not free to leave. Now,
18 admittedly, maybe my client wouldn't have immediately interpreted it
19 the way that I would, granted, you know?

20 And I will submit that my argument to suppress the second
21 statement is not as strong as the first. But I believe the first, the six-
22 minute conversation where, in 49 seconds in, he very explicitly says, "Let
23 me talk to a lawyer." I think that's pretty clear cut.

24 THE COURT: Can I see the transcription?

25 MR. MARGOLIS: Yes. I brought extra copies for you Judge.

1 I also brought the audios.

2 [Counsel confer]

3 MR. MARGOLIS: Are you going to read now, or can I add a
4 little context?

5 THE COURT: Let me just go to --

6 MR. MARGOLIS: Okay.

7 THE COURT: Yeah. Just give me one second to the -- I get to
8 the -- where does he say the lawyer thing? What page?

9 MR. MARGOLIS: Let's see. You're talking about the first
10 statement, right?

11 THE COURT: Yeah.

12 MR. MARGOLIS: It is page --

13 THE COURT: Oh, sorry. You know what? "Let me talk to a
14 lawyer." It's --

15 MR. MARGOLIS: You found it?

16 THE COURT: -- page 2. Yeah.

17 MR. MARGOLIS: Okay. All right. Yeah, there it is.

18 THE COURT: Okay. Mr. Giordani?

19 MR. GIORDANI: So, first off, I think volunteering is,
20 obviously, Constitutional issue to be raised at any time, so, happy to
21 have a discussion. But I need to provide some context. So that first
22 statement is in 2017. The second statement is in 2019. The 2017
23 statement is down in San Bernardino, after the Defendant was detained,
24 not arrested but detained, pursuant to a buccal swab search warrant.

25 So, basically, homicide here gets a CODIS hit for Tuly. The

1 DNA lab says you need to get a known sample from him, for
2 confirmation. So they enlist the help of San Bernadino. San Bernadino
3 finds him, detains him. And homicide detectives go down there. He is
4 at, I believe, the headquarters down there in San Bernadino.

5 And at the beginning of the interview, I believe the detective
6 indicates that -- or asks Mr. Lepolo, have you been read your rights? And
7 he says, yes. But let me -- I don't want to misspeak, so let me go to my
8 transcript. Did I give you two copies of the first statement by accident,
9 Your Honor? Where did mine go?

10 THE COURT: You're talking about the first statement right
11 now, John, or the second one?

12 MR. GIORDANI: Yes, first statement.

13 MR. MARGOLIS: Okay.

14 MR. GIORDANI: I just don't have my transcript in front of me
15 now. Oh, I found it. Sorry. Oh, okay. I see. So he says -- in the
16 beginning, he says -- he asks him, "What's your name?" And that's when
17 the statement comes in, at page 2, "You know what? Let me talk to a
18 lawyer. I mean, you guys -- you guys, that was a bit crooked. You guys
19 don't have my name. You guys got me here." And he goes on. And
20 there's a whole lot of back-and-forth, and this theme continues in the
21 second statement.

22 But later in the interview -- and I would ask to play it for the
23 Court, since it's so short. Page 4 is what I was referring to earlier. So
24 when they get done, kind of going back and forth about the name, and
25 the name on the search warrant, the detective says, on page 4, "So

1 because you were in handcuffs and all that, and I don't want there to be
2 any issues about your custody status, you're not under arrest right now.
3 But you may feel like you're not free to leave. And I want you to be
4 advised of your rights before we talk, okay?"

5 And Mr. Lepolo, according to the transcript, says, "Am I free
6 to go?" And the detective says, "You -- you're free to end the interview.
7 You don't have to talk to us, if you don't want to talk to us. I can't make
8 you talk to me. I just thought you wanted to be under -- to talk about
9 what we had" -- and then Mr. Lepolo says, "No, you was going to talk to
10 me about it." And there's some crosstalk in the transcript.

11 And then Mr. Lepolo says, "Because I ain't got no statement,
12 because I don't know what's going on." The detective says, "Okay." Mr.
13 Lepolo says, "I don't -- I don't know what's going on with the" -- and then
14 the detective interrupts and he says, "All right. Listen up for a second,
15 real quick. You have the right to remain silent.

16 Anything you say can be -- can be used against you in a court
17 of law. You have the right to consult with an attorney before
18 questioning. You have the right to -- to the presence of an attorney
19 during questioning. If you cannot afford an attorney, one will be
20 appointed before questioning. Do you understand those rights?"

21 Mr. Lepolo says, "Yeah." Detective says, "Do you understand
22 all that?" And in the transcript, it says, "No audible response." And then
23 Detective says, "Okay. My partner and I are following up on a shooting
24 that took place in Las Vegas." And then it -- kind of, the questioning
25 begins there.

1 So, initially, they're talking about his name. They're going
2 back and forth about his name. He's indicating it's an alias. "Like, how --
3 how am I booked into that name," et cetera. So I think that the -- I -- I
4 don't know if you want argument now, but --

5 THE COURT: Yeah, I mean, I think that -- so what I get from
6 what you're saying, Mr. Giordani -- correct me if I'm wrong -- is that, in
7 the beginning, they're not even getting into anything, they're just saying,
8 like, what's your name? Tell me your name, you know, trying to get
9 down some basics. And he's, like, "Let me talk to a lawyer."

10 It's not till a little bit later that they read him his Miranda
11 rights, and then he, you know, kind of keeps -- he talks a little bit with
12 them. But the thing is, is I don't think any Miranda or post-Miranda
13 cases stand for the proposition that even before your read Miranda, if
14 you say, unequivocally, like, I want a lawyer --

15 MR. GIORDANI: Sure.

16 THE COURT: -- it doesn't --

17 MR. GIORDANI: Sure. And if --

18 THE COURT: I mean, I know that there's case law that says,
19 listen, if you -- you say you want a lawyer, but then you keep talking,
20 then you, in effect, wave it. But, I mean, I think at this point, he's saying -
21 - he says he wants a lawyer.

22 Then he says, like, "Am I free to go to?" To me, he's, not
23 once but twice, really, kind of, asking them, like, Hey guys, what -- am I
24 free to go? Do -- can I get a lawyer? So I don't know, in this statement,
25 what you have here.

1 MR. GIORDANI: Yeah, that's fair. And that's why I asked if
2 you want argument now, because I was going to say, the ultimate issue
3 is, do you think it's unequivocal or not, and I'll submit it to the Court.

4 THE COURT: Yeah.

5 MR. GIORDANI: Is it unequivocal or not?

6 THE COURT: I think it's unequivocal, so the first --

7 MR. GIORDANI: Okay.

8 THE COURT: -- statement is suppressed.

9 MR. GIORDANI: Okay. So --

10 [Counsel confer]

11 MR. MARGOLIS: The second statement.

12 MR. GIORDANI: Yeah. Should we move on to the second?

13 THE COURT: Yes.

14 MR. MARGOLIS: Harder road to hell. Okay. This statement
15 is, admittedly, longer. And this statement, I would say that there is a
16 very clear indication of Mr. Lepolo's rights. And in response to that
17 indication, he does indicate that he understands. And, "Yeah, they read
18 me my rights when they brought me in," at the top of page 3.

19 So, you know, at that point, it feels as if he does, in fact,
20 acknowledge that he's read -- been read his rights. So in terms of the
21 Miranda challenge, I'm going to, basically, fold my tent there. But as far
22 as voluntariness, again, this is a -- it seems very nebulous, the -- the
23 custodial situation that -- that he is in.

24 And it seems like every time he intimates, "Am I free to go,"
25 the answer is usually some version of "You're not under arrest and you

1 don't have to talk." But it's very clear from the circumstances, that he's
2 not actually free to go, you know?

3 So I feel like, at the very least, there's a little bit of deception
4 going on. And voluntariness doesn't need to be overwhelmed with Billy
5 clubs. It can be overwhelmed with guile, as well. And I would submit
6 that that's what happens at the outset of this statement.

7 THE COURT: Are you requesting that this be done via
8 argument, or you requesting that you be able to question the detective,
9 outside the presence of the jury, in regards to the level of voluntariness?

10 MR. MARGOLIS: Just argument.

11 THE COURT: Okay. Mr. Giordani?

12 MR. GIORDANI: Yes, Your Honor. And I've provided that
13 transcript to you as well.

14 THE COURT: Yes.

15 MR. GIORDANI: This particular statement, now, for context,
16 is in 2019.

17 THE COURT: Right.

18 MR. GIORDANI: So in the first -- the initial statement, 2017,
19 that you've now suppressed, they're there to get a buccal swab from
20 him, and they take one. And I believe, at the very end of that statement
21 that you've suppressed, he says -- Mr. Lepolo says, You know, and
22 maybe, you know, come back when you got your DNA or whatever. And
23 I'm not saying that verbatim --

24 THE COURT: Verbatim.

25 MR. MARGOLIS: -- in case is has ever looked at. So in this

1 particular statement in 2019, now he has been booked on the murder
2 arrest warrant out of Vegas. So he is in custody, in California, on our
3 warrant. They go down to speak to him, on page 3 -- page -- yep, right at
4 the top of page 3, bottom of page 2, actually, the detective says,
5 essentially, Before we do that, I've got to let you know your rights since
6 you're in custody, okay? Mr. Lepolo says, Yeah, you -- they read me my
7 rights when they brought me in.

8 And the detective interrupts them and, kind of, says -- or
9 basically says, Let me just read them, real quick. I need to -- just so I
10 know we're on the same page with them, because sometimes people
11 read them differently. And I'm assuming he's referring to California
12 authorities.

13 Mr. Lepolo says, Okay. He then -- the detective then says,
14 This way, we'll know. You have the right to remain silent. Anything you
15 say can be used against you in a court of law. You have the right to
16 consult with an attorney before questioning. You have the right to the
17 presence of an attorney during questioning. If you cannot afford an
18 attorney, one will be appointed before questioning. Do you understand?

19 Mr. Lepolo verbally and affirmatively says, Yeah. Detective
20 then goes on and says, Okay. Cool. Okay. So when we came down
21 here a couple of years ago, we got your DNA. We compared that DNA.
22 And then question begins.

23 So throughout -- I mean, I understand that Mr. Margolis is
24 raising voluntariness throughout this statement. Mr. Lepolo goes back
25 and forth, tries to mislead the detectives about not being in Vegas, or not

1 remembering being in Vegas. He's never, to my knowledge -- and let --
2 Mr. Margolis can, of course, correct me if I'm wrong, says, anything, like,
3 Hey I don't want to talk to you about this, or you know, I want that lawyer
4 I asked for earlier, or anything like that.

5 So this is entirely different from the first statement. If the
6 Court has any questions, or would like to play it, I will. I didn't have a
7 chance to go line by line through statement number two, I just, kind of,
8 listened to it when Mr. Margolis notified me he was about to do this.

9 THE COURT: Okay. Rubino's the first witness?

10 MR. GIORDANI: Yeah.

11 THE COURT: And then Sanford.

12 MR. GIORDANI: Yes.

13 THE COURT: Okay. All right. So I just need some time on
14 this. But we'll -- we'll have it dealt with before Sanford hits the stand.

15 MR. GIORDANI: Okay. And, Your Honor, I do have a second
16 amended Information --

17 THE COURT: Oh.

18 MR. GIORDANI: -- to be filed. I emailed both the Court and
19 Defense Counsel -- I think it was last night -- indicating this is going to
20 strike the challenge to fight theory of liability.

21 [Court and Clerk confer]

22 [Bailiff and Counsel confer]

23 MR. GIORDANI: One last, real quick thing before the jury
24 comes in, Your Honor?

25 THE COURT: Yeah.

1 MR. GIORDANI: As I was coming up this morning, one of our
2 jurors tried to hold the elevator for me, and I, very awkwardly, like, broke
3 eye contact and walked to a different elevator. Can you give them that
4 admonishment --

5 THE COURT: Yeah.

6 MR. GIORDANI: -- that -- that the parties aren't trying to be
7 rude if they ignore you?

8 THE COURT: Yeah.

9 MR. GIORDANI: Okay. Thank you.

10 THE COURT: Yep.

11 [Recess at 11:33 a.m., recommencing at 11:36 a.m.]

12 THE COURT: All right. Good morning, everyone. We're on
13 the record in the State of Nevada versus Tuly Lepolo, C-345911. Mr.
14 Lepolo is present, in custody. He is with counsel, Mr. Margolis and
15 Paralegal Mendoza. Both Mr. Giordani, as well as Ms. Conlin, are
16 present on behalf of the State. We're outside the presence of the jury.

17 Mr. Lepolo, when -- when you were being brought up, Mr.
18 Margolis had brought up some arguments, in regards to why he felt like
19 your first statement and your second statement to the police, should be
20 suppressed.

21 I agreed with him, in regards to your first statement to the
22 police. I think that you unequivocally asked for an attorney, and you also
23 asked if you were free to go. So I have suppressed that first statement.

24 On your second statement to the police, that was given in
25 2019, I haven't made a determination yet, because I would like to, on

1 break, look at the video, as well as -- I've read through a good portion of
2 it. But there are some other -- I'd like to finish it, and I'd like to look at the
3 video.

4 So if there's anything that you would like to speak to Mr.
5 Margolis about, or add to that argument, I'm happy to consider it at any
6 time, only because you weren't here, and I want to give you an
7 opportunity to be heard. So if there's anything, just while we're here,
8 you know, on the break, just let Mr. Margolis know, and I'll be happy to
9 consider that as well, okay?

10 THE DEFENDANT: Okay.

11 THE COURT: All right.

12 THE DEFENDANT: Thank you.

13 THE COURT: Mr. Giordani?

14 MR. GIORDANI: One more thing about the second
15 statement. I'd previously mentioned to the Court, but I just want to
16 include it in the record here, I -- Mr. Margolis and I discussed redactions,
17 in the event the Court does not suppress that statement. So I've placed
18 -- anticipating what you do with the first one, I've placed only the second
19 one onto a disk. I can provide that to the Court. Mr. Margolis has had
20 that for a couple days. I presume he's looked at it.

21 THE COURT: Okay.

22 MR. GIORDANI: I think we have an agreement, as to
23 redactions on the second one, in -- in the event that the Court doesn't
24 suppress it.

25 THE COURT: Okay.

1 MR. GIORDANI: Do you want me to --
2 THE COURT: Yes.
3 MR. GIORDANI: -- approach?
4 THE COURT: Thank you.
5 MR. GIORDANI: Yes. And I apologize, I don't have the
6 transcript redacted.
7 THE COURT: So if it is admitted, we'll just -- it'll -- we'll just
8 be playing it for the jury. They won't have a transcript to go with it?
9 MR. GIORDANI: Right.
10 THE COURT: Okay. All right.
11 MR. GIORDANI: And, unfortunately, I don't have one to give
12 you to go through as you listen.
13 THE COURT: It's all right.
14 MR. GIORDANI: But, sorry.
15 THE COURT: It's okay.
16 [Counsel confer]
17 [Court and Clerk confer]
18 THE MARSHAL: All rise.
19 [Jury in at 11:38 a.m.]
20 THE COURT: All right. Thank you, everyone. Please be
21 seated. Good morning. We are on the record in State of Nevada versus
22 Tuly Lepolo, C-345911. Mr. Lepolo is present, with Counsel, Mr.
23 Margolis, as well as Paralegal Mendoza. Mr. Giordani just stepped out
24 for a moment. Ms. Conlin is present on behalf of the State.
25 Do the parties stipulate to the presence of the jury?

1 MR. MARGOLIS: Yes, Your Honor.

2 MS. CONLIN: Yes, Your Honor.

3 THE COURT: All right. And I believe that Mr. Giordani
4 stepped out. He might be getting the next witness which, I believe, is
5 DNA Analyst Rubino, R-U-B-I-N-O.

6 Is Analyst Rubino out there, Mr. Giordani?

7 MR. GIORDANI: She is, yes.

8 THE COURT: Okay. Would you mind grabbing her, Chris
9 (phonetic)?

10 THE MARSHAL: All right.

11 THE COURT: Thank you.

12 MR. GIORDANI: That admonition.

13 THE COURT: And then while Ms. Rubino is walking in, I just
14 want to remind you guys. If you have any contact with any of the
15 witnesses or any of the attorneys or my staff in -- out there, and they
16 won't talk to you or they won't get in elevator with you, I just want you to
17 -- I don't want you to be offended in any way.

18 Just know that they're under such strict admonitions. For
19 me, I know it happens all the time, but I wouldn't want you to hold it
20 against them just because they're under strict court orders, all right?

21 UNIDENTIFIED JUROR: Okay.

22 THE CLERK: Please raise your right hand.

23 ALLISON RUBINO, STATE'S WITNESS, SWORN

24 THE CLERK: Please be seated. Will you please state your
25 name and spell it, for the record?

1 THE WITNESS: My name is Allison Rubino, A-L-L-I-S-O-N R-
2 U-B-I-N-O.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MR. GIORDANI:

6 Q Good morning. How are you currently employed?

7 A I am a forensic scientist in the biology DNA detail, at the Las
8 Vegas Metropolitan Police Department Forensic Laboratory

9 Q And how long have you been a forensic scientist in that
10 capacity?

11 A I've been with Metro since January of 2014.

12 Q And are you -- or do you have any specialized training or
13 education, in order to do what you do?

14 A Yes. I have a Bachelor's of Science in Biochemistry, from the
15 University of Scranton, in Pennsylvania. And I have a Master's of
16 Science in Forensic Science, from the University of New Haven, in
17 Connecticut. Prior to working here in Las Vegas, I was a forensic
18 scientist at the Armed Forces DNA Identification Laboratory, in Dover
19 Delaware. I was there for about a year and a half. And before that, I was
20 a research associate and forensic scientist, at the Suffolk County Crime
21 Laboratory, in Hauppauge, New York, where I was for about three years.

22 Q And have you received ongoing training in your role with
23 Metro?

24 A Yes. We're required to undergo eight hours of continuing
25 education every year, to maintain our education throughout the

1 laboratory.

2 Q Is it fair to say that DNA maybe technology or systems
3 sometimes advance with time?

4 A Just like all fields of technology, things advance over time.
5 So over the course of the years that I've been with Metro, some of our
6 instrumentation and some of our software technologies have updated.
7 Just like the cell phones. We get a new iPhone every year, and -- and
8 things change. And as the field evolves, we have to evolve with it.

9 Q And in your capacity, have you testified in the 8th Judicial
10 District Court on several occasions?

11 A Yes.

12 Q Can you describe for the folks on the jury, what it is you do,
13 as a DNA analyst, on a daily basis?

14 A Primarily, I'm responsible for examining evidence for the
15 presence or the absence of biological materials, and conducting DNA
16 analysis on those samples, as well as other samples, as they're
17 requested to our section of the laboratory.

18 Q And what is DNA, ma'am?

19 A DNA, it stands for deoxyribonucleic acid. It's a compound
20 that's found in nearly every cell within our body. And it contains all of
21 the information that make us into the individuals that we are. Our hair
22 color, our eye color, numbers of fingers and toes we have, the size of our
23 organs, things like that. Our DNA is inherited, which means we get half
24 of our DNA from our mother and half of our DNA from our father. And
25 no two people are known to have the same DNA, with the exception of

1 identical siblings -- identical twins, identical triplets, et cetera.

2 Q On that same subject, would a father share half of his son's
3 DNA with his son?

4 A Yes. Genetically, a son would get half of the DNA from the
5 father.

6 Q And the other half would come from, obviously, the mother?

7 A Correct.

8 Q And those would be different sources, and I guess, entire
9 genomes, or --

10 A They would -- they would share some of the genetic material.
11 So when making comparisons, we can kind of gauge what kind of
12 information came from which parent. But unless they're identical
13 siblings, they wouldn't have the same exact DNA profile.

14 Q Understood. And where on our bodies do we have DNA?

15 A Some of the best sources of DNA that we -- are routinely
16 tested at the laboratory, are -- are body fluids -- blood, semen saliva. But
17 DNA, since it's found in, you know, nearly every cell within our body, it's
18 also on our -- you know, on our skins. We have what we call epithelial
19 cells, and that's just the DNA that -- that comes from the skin surfaces.

20 Q I believe you indicated blood and saliva?

21 A Correct.

22 Q As potential sources of DNA?

23 A Correct.

24 Q And then you indicated epithelial cells. Is that commonly
25 referred to as "touch DNA"?

1 A We refer to it now more as "trace DNA" --

2 Q Okay.

3 A -- or "touch DNA". And that's just because it's a more
4 variable source of DNA and relies on a lot of different factors, as to
5 whether or not -- we get a lot of DNA from a trace or a touch sample.

6 Q And can you, kind of, describe the factors involved in that?

7 A Sure. So with trace DNA and touch DNA, we're talking about
8 when DNA gets left behind when someone comes into contact with
9 someone or something else. So you think about the clothes that you're
10 wearing, your collars or your cuffs rubbing up against your arms or your
11 neck. Going in your car later and opening up your car door. You're
12 relying on one thing. Some people tend to shed their DNA a lot more
13 than others. So there's a higher propensity for certain people to leave
14 behind DNA. Another one is how -- it's really hot outside. So walking to
15 your car, and going -- open up your car door, you're going to have a lot
16 of maybe sweat on your -- you know, on your neck, or on your hands.
17 And sweat is a great vehicle for skin cells to transfer from one surface to
18 another. Yeah. So if it's hot or cold, if you shed, or you don't shed,
19 those are some of the factors you have to take into consideration.

20 Q And also the surface itself, right?

21 A Oh, correct. So if you're thinking about a smooth surface,
22 you may need more time to leave behind DNA, as opposed to maybe a
23 rougher grooved surface because those groove surfaces have little
24 nooks and crannies for DNA or skin cells to, kind of, lodge in between
25 and get stuck. So time of contact is a factor, as well as a smooth versus

1 a grooved surface.

2 Q So if I just reach down and I touch this jury box, am I likely to
3 leave DNA behind?

4 A It's possible. But within the factors of shedding, time, you
5 may not.

6 Q Sure. Now, a little gross, but if I were to lick the jury box,
7 would I be more likely to deposit DNA?

8 A I would -- I would suspect that licking would leave a little bit
9 more DNA than just gradually touching a surface.

10 Q And, likewise, if I, say, cut my finger and I leave a drop of
11 blood, would I then be more likely to potentially leave DNA behind
12 there?

13 A Yes. The blood would be a better source than the gradual
14 touch.

15 Q All right. I'm going to stop with fluid examples and ask you
16 some other questions. What exactly is a DNA profile?

17 A So the DNA profile is, kind of, the resultant picture
18 representation throughout the DNA process. The process of obtaining
19 that profile is first called extraction, which is isolating the DNA from all
20 that other stuff that's in a particular sample. So let's say I have a swab of
21 possible blood. I want to remove the DNA from all of the other cell --
22 cellular material, the swab itself. I just want to, kind of, have a clean
23 sample of DNA. Then I quantify it, just see how much DNA is present.
24 I'll take some of that and put it in our -- our DNA copy machine, where
25 it's going to make millions and millions of copies of different parts of the

1 DNA profile. And then it's going to go on an instrument, and that
2 instrument has a camera. And as the DNA passes across the camera, all
3 of these little snapshots are going to be taken. And these snapshots are
4 then going to be compiled into a software, giving us a graphical
5 representation of the DNA profile.

6 Think about it like a EKG. It looks like a series of peaks and
7 valleys. It's not as much as it would be on an EKG, but similar looking.
8 So with that, we then make our interpretations on that DNA profile, and
9 any comparisons between samples from crime scenes, or question
10 samples, and known DNA profiles or known reference standards.

11 Q Okay. And we're going to get to knowns and comparisons in
12 a moment. I just want to back up a second. When you talk about
13 profiles, you indicated, earlier, that profiles are unique to the individual,
14 right?

15 A Correct.

16 Q Unless you have identical twins?

17 A Correct.

18 Q Are there times in which you may develop profiles on an
19 item, say, this jury box, or a swab from this jury box, where you have
20 more than one DNA profile?

21 A Yes. When we go through our first step of interpretation, it's
22 determining how many people are there. So when we talked about how
23 we get half of our DNA from our mom and half of our DNA from our dad.

24 If I'm looking at a DNA profile, if it's one person, I'm going to
25 either see one piece of information from -- from an individual, or two

1 pieces of information from an individual, at a particular location. And
2 that gives me that indication that one person is here.

3 When I start to see a lot more peaks in the locations we test
4 for, we call it a "mixture DNA profile." Meaning that more than one
5 person is a contributor to this particular sample.

6 Q So -- but the jury box is an example. Say every single juror --
7 you know, 14 of them -- come in, they touch the same exact spot, and
8 then we swab that spot and give it to you. Are you able to develop
9 necessarily 14 different profiles from that?

10 A We just get one DNA profile, but that DNA profile will have
11 as much detectable information. It may have information from some of
12 you guys, it may have information from all of you. But that, again, will
13 depend on who's leaving what kind of DNA behind.

14 Q Sure. And you mentioned detectable. I want to just ask you.
15 They're, kind of, threshold levels or requirements within the DNA lab?

16 A There will be thresholds, in regards to how much DNA is
17 actually present in the sample, that can be detected with the
18 instrumentation that we have available. There is also a threshold in
19 which, at certain times, we're able to analyze or look at data in a DNA
20 profile, in order to confidently determine -- and make determinations on
21 our conclusions.

22 Q And you previously mentioned known profiles and
23 comparisons. Can you tell the jury what a known profile is?

24 A A known DNA profile, sometimes it's called a buccal swab.
25 We call it a "reference standard," and it's a DNA sample that has a known

1 source. So it comes in an envelope that says "buccal swab kit." It has
2 information regarding an individual's name, their date of birth, maybe
3 some other information in the packaging.

4 But we track that throughout the course of the DNA process,
5 so that when we get that DNA profile, we can say this DNA profile came
6 from this person. And then we can use that to make comparisons to the
7 evidence that's within the case.

8 Q And you mentioned a buccal swab. What is that?

9 A The buccal swab, it's essentially a Q-tip with a longer stick,
10 and it's used to swab the inside of someone's cheek.

11 Q Any reason the inside of the cheek in particular, as opposed
12 to the outside of the cheek?

13 A Well, we know it's going to have saliva and it get -- it will get
14 the cells that are, kind of, inside the mouth, so, as opposed to, who
15 knows if there's any trace DNA on your face that could transfer onto the
16 swab. So we know that that saliva is going to be a good vehicle for cells
17 within your mouth.

18 Q Okay. So an investigator gets a buccal swab from a known
19 individual. They take that, they provide it to you. And then what do you
20 do with that -- with that swab?

21 A The same process, that I mentioned earlier, gets done for
22 both reference standards and for evidence samples. They're done in,
23 kind of, separate times and spaces, to keep -- to keep everything
24 separate. But they go through the same DNA process in order to get the
25 profile.

1 Q Okay. And then let's get to comparisons, briefly. What do
2 you mean by comparison?

3 A So when a particular DNA profile is interpretable, we can
4 take all of the profile, or part of a profile and compare it -- compare, kind
5 of, those peaks and those numbers to the references that are in the case,
6 to determine whether or not somebody can be included or excluded as a
7 part of a profile.

8 Q What exactly are you comparing? I mean, I -- I presume
9 there's millions of alleles in a DNA profile. What are you actually looking
10 at?

11 A Well, our profile -- profiles will only have a certain number of
12 locations that we're looking at. So we are looking at the numbers in a
13 reference profile, location by location, and comparing the one or two
14 numbers in the reference, to what's present in an evidence.

15 And if the numbers continually match up, from one profile to
16 the other, then we say that person is included as being a part of a profile.
17 And then, based on that, we can calculate a statistic, to give you the
18 strength of that comparison.

19 If the numbers don't match up, or at least at one location
20 don't match up, then we would call it an exclusion, and that person isn't
21 a contributor to that DNA profile.

22 Q So you get a known sample from an individual, then you get
23 items of evidence from an investigator, and you actually develop profiles
24 for both, and then you compare them to one another, right?

25 A Correct.

1 Q Okay. I want to draw your attention to November 3rd of
2 2016. Did you receive several items of evidence, under Las Vegas
3 Metropolitan Police Department event number 1604033524?

4 A Yes.

5 Q And did you also -- or, I guess, did the forensic lab initiate a
6 lab case number as 16-03245?

7 A Yes.

8 Q Can you tell the ladies and gentlemen of the jury what you
9 received, initially, back on November -- or let me -- let me back up a
10 second here. You author reports every time you do work on a DNA case,
11 right?

12 A Correct.

13 Q And those -- each report has a distribution date?

14 A Correct.

15 Q So when I say "a report from November 3rd, 2016, that
16 doesn't mean you're doing all the lab work on November 3rd, 2016,
17 right?

18 A No. That means the report was distributed.

19 Q Okay. So you received several items of evidence, way back
20 in 2016, and then you issued a report on November 3rd. What items of
21 evidence did you receive in association with that report?

22 A I received a swab from a Monster drink can, a swab from a
23 steering wheel, and then seven swabs of possible blood from different
24 locations.

25 Q Okay. And when you say "swab", is that what you were

1 referring to, earlier, as a --

2 A Yeah, it's like a half of -- it's a longer stick, about half a Q-tip,
3 that has any staining or sampling on it.

4 Q Okay. And sometimes you'll receive actual items of
5 evidence, right?

6 A Correct.

7 Q And then you will do actual swabbing, yourself, in the lab?

8 A Correct.

9 Q And is that referred to as a "swab", as well, or something
10 else?

11 A We use -- we use different terminology. So I know, if it's a
12 swab, it's a swab I received. But let's say I got a piece of glass that had
13 red-brown staining on it, I would do a swabbing of the stain, and I would
14 make that indication -- whether it be on the report or in my notes -- that a
15 swabbing was done.

16 Q And you indicated you received a swab from the Monster
17 energy drink?

18 A Correct.

19 Q And then you mentioned the steering wheel. And I just want
20 to specify a little more; was that a swab from the steering wheel and shift
21 lever of the 2004 Chevy Suburban?

22 A Yes.

23 Q Okay. And that Monster can, was -- was that from the center
24 console of that same vehicle?

25 A Yes.

1 Q You indicated, also, several swabs of blood. Would that have
2 been AB1 through AB7?

3 A Yes.

4 Q Did you also receive a reference standard?

5 A Yes, I did. I received a reference standard from an Elise
6 Faamasino.

7 Q And any other reference standards, at that time?

8 A At that time, no.

9 Q Okay. So when you receive -- let's start with the swab from
10 the Monster can and the steering wheel and shift leverage swab. What
11 do you do with those particular items as soon as you receive them?

12 A When I receive them, I make documentation as to the
13 particular packaging, make sure it's sealed appropriately, and has the
14 correct event number, item number. And then I'll open them one at a
15 time, make documentation as to what they look like, any staining. And
16 then I'll take the swab and I'll -- I'll cut it off of the stick, and I will put it
17 through the DNA process.

18 Q And you indicated you'll document, basically, item numbers.
19 When you received those, were they under an impound package number
20 4934-4?

21 A Yes.

22 Q And would that be indicative of the crime scene analyst, Brad
23 Grover, who impounded those items at whatever location he did it?

24 A I know them by P numbers.

25 Q Sure.

1 A So.

2 Q Okay. And those were impound items 4 and 5, 4 for the
3 Monster can, and 5 for the steering wheel and -- and shift lever?

4 A Correct.

5 Q And then did you provide your own numbers to those items?

6 A Yes.

7 Q What did you call those items?

8 A They get their own sequential, based on the request. So they
9 were lab items 20 and 21.

10 Q Okay. So if I refer to lab item 20, we're talking about the
11 Monster can. And 21 is the steering wheel and shift lever, right?

12 A Correct.

13 Q What were you able to determine or do with lab item 20, the
14 Monster can?

15 A So with the Monster can, I obtained a mixture DNA profile of
16 at least two individuals. At least one of those individuals was male. And
17 when looking at the profile, I was able to discern a -- what we call a
18 major DNA profile. Meaning, someone in this profile gave more of their
19 DNA within the sample.

20 Q I forgot to ask you about that. Can you just describe major
21 versus minor?

22 A Yeah. We use major and minor. Major is someone who
23 gives more of their DNA to a particular sample. And then the minor
24 contributors or minor individuals are people that give less of their DNA
25 to the profile.

1 Q Okay. So you developed a major?

2 A Correct.

3 Q Did you develop any minors on this item?

4 A We -- minor -- or we also, at the time, called them trace
5 contributors -- we couldn't make any further conclusions on any trace
6 contributors. Just on that major DNA profile.

7 Q And you've indicated that you received one known reference
8 standard, back then, of Elise Faamasino, F-A-A-M-A-S-I-N-O?

9 A Yes.

10 Q Did you compare Ms. Faamasino to this particular item?

11 A Yes, and she was excluded.

12 Q Okay. So that major DNA profile, do you know, at that point
13 in time, did that identify to any particular individual?

14 A No.

15 Q And why is that?

16 A Because I only had one reference to compare to, and that
17 person was excluded.

18 Q Okay. So you have an unknown major profile. You have
19 someone on this DNA can, essentially, but what do you -- what do you
20 call that DNA profile?

21 A We call it an unknown -- an unknown male. However, base --
22 we used a numerical, in case there are multiple unknowns within a case.
23 So this was classified as unknown male number 1.

24 Q And how do you know it's a male?

25 A So in one of the locations that we look at on the profile, it's

1 what we call a "gender-determining location". And there -- there are
2 really only two options. Females are going to be deemed XX. And
3 males are going to be XY. So based on what the profile looked like, the
4 major individual was an XY, so it was deemed a male.

5 Q And with regard to this particular lab item, now that you've
6 had an -- a -- or developed a major known profile, is that available to you
7 for further testing, say detectives develop suspects and they get buccal
8 swabs from more individuals?

9 A Yes.

10 Q So you have an unknown male number 1. Your profile's
11 there, it exists, you know what it is; and it can be used later, right?

12 A Correct.

13 Q Moving on to lab item 21, the swab from the steering wheel
14 and shift lever; did you do anything with that?

15 A I did. I obtained a mixture DNA profile. This was at least
16 three contributors, at least one of which was male. And I was able to
17 discern, in this profile, a major DNA contributor. And that was consistent
18 with unknown male number 1.

19 Q Okay. So that profile was consistent with the same unknown
20 male number 1, with regard to lab item 20?

21 A Correct.

22 Q Okay. So if I go through several more items in this report,
23 anytime you refer to unknown male number 1, you're referring to the
24 same profile, right --

25 A Correct.

1 Q -- or same person, I guess?

2 A The same --

3 Q The same unknown?

4 A The same unknown, yes.

5 Q Okay. Lab items 20 -- well, let's go with lab item 22, swab
6 from area AB1. What did you do or develop with that item?

7 A It was a single source DNA profile that was consistent with
8 unknown male number 1.

9 Q When you say "single source," you're -- are you saying, in
10 other words, it's not a mixture?

11 A It's not a mixture. It was a DNA profile of one person.

12 Q Okay. Save a little time here. I'm going to just go through lab
13 items. 23, which is a swab from AB2. Lab item 24, swab from AB3. Lab
14 item 25, swab from AB4. Lab item 26, swab from AB5. Lab item 27,
15 swab from AB6. Lab item 28, swab from AB7. Were all of those
16 consistent with that single source profile?

17 A No.

18 Q Okay

19 A So AB -- AB1 through 4 -- so lab items 22, 23, 24, and 25,
20 were consistent with that unknown male number 1, that single source
21 profile. AB5 and AB6 actually were a single-source, one-person DNA
22 profile of a female, and that was classified as unknown female number 1.

23 Q Okay.

24 A And then AB7 was a single-source, male DNA profile. That
25 was classified as unknown male number 2.

1 Q Okay. So AB1 through 4, unknown male number 1. AB5 and
2 6, unknown female number 1?

3 A Correct.

4 Q AB7, unknown male number 2?

5 A Correct.

6 Q Were all of -- were those two female profiles compared to
7 this known standard of Elise Faamasino?

8 A Elise Faamasino was compared to all of them, and she was
9 excluded.

10 Q Because then it wouldn't be called unknown female
11 number 1, right?

12 A Correct.

13 Q Okay. So moving on to November 22nd, 2016, did you
14 distribute another report?

15 A Yes.

16 Q And well, what does CODIS mean?

17 A CODIS? It stands for the combined DNA indexing system.

18 Q And is that, essentially, a database of DNA profiles?

19 A Correct.

20 Q And are there various ways where someone may end up in a
21 database such as this?

22 A Correct.

23 Q And when you developed all of those profiles, initially, did
24 you do anything with them, related to CODIS?

25 A Yes, one was uploaded into CODIS.

1 Q Which one was uploaded into CODIS?

2 A Would I be able to check my report --

3 Q Absolutely.

4 A -- to refresh?

5 THE COURT: If doing so --

6 MR. GIORDANI: Would that refresh --

7 THE COURT: -- would help refresh your recollection. Go
8 ahead and read it to yourself, and then just look up when you're done.

9 BY MR. GIORDANI:

10 Q Does that refresh your memory?

11 A Yes.

12 Q Which profile did you upload into CODIS, ma'am?

13 A It was lab item 22, which was AB1.

14 Q And AB1 was unknown male number 1; is that right?

15 A Correct.

16 Q And I guess a few weeks later -- a couple weeks later, in
17 November of 2016, did you get a CODIS hit, related to unknown male
18 number 1?

19 A Yes.

20 Q And who did that hit to, I guess, for lack of a better term?

21 A It came back to a Tuly Lepolo.

22 Q Okay. And subsequent to that -- well, I guess, when you
23 issued your report, did you indicate to investigators that they needed to
24 do something else or something further?

25 A Yes. The CODIS hit reports are strictly investigative

1 information, and it requires -- for any comparison to be done, it requires
2 for the investigating party to obtain a reference standard from that
3 particular individual, to confirm the comparison and issue any stat --
4 statistical calculations, in regarding any comparisons.

5 So it's not just "Here's the hit. The end." It's "Here's this
6 information. You now need to go and get a reference standard for us to
7 complete the analysis and comparison."

8 Q So fast forward now to your report distributed May 2nd,
9 2017. Did you receive additional items of evidence, under that same
10 event number that I referenced?

11 A Yes.

12 Q What were those items?

13 A I received a swab from a gun, and I received a reference
14 standard from a Terrence Parris.

15 Q And the gun, was that specifically a Dan Wesson Arms
16 revolver?

17 A Yes.

18 Q So do you know what the -- what portions of that gun were
19 swabbed? If I could look at my report to refresh my recollection?

20 THE COURT: Yep.

21 BY MR. GIORDANI:

22 Q Does that refresh your memory?

23 A Yes.

24 Q What portions of that gun were swabbed?

25 A The grips, the trigger, and the cylinder release.

1 Q And --

2 A And the hammer.

3 Q -- the hammer?

4 A Uh-huh.

5 Q Thank you. You also received a reference standard from a
6 person named Terrence Parris?

7 A Yes.

8 Q And did you do, with that reference standard, what you
9 described previously with Elise Faamasino's reference standard?

10 A Yes.

11 Q What was the result, with regard to that?

12 A So Terrence Parris was compared to all of those items of
13 evidence, and he was excluded as being the major contributor to the
14 swab from the drink can and the steering wheel and gear shifter.

15 He was also excluded from samples that were from those
16 bloodstains, AB1 through AB7.

17 Q And with regard to the revolver, what did you do with that?
18 And explain, kind of, your results?

19 A So I obtained a DNA profile that was from at least one male
20 contributor. However, due to the limited information that was present in
21 that particular sample, no additional conclusions could be made. So no
22 comparisons were made between the gun and any of the reference
23 standards.

24 Q Okay. So with regard to the revolver, even if you had 20
25 reference standards, is there enough information or DNA on that

1 revolver, to come to any conclusions?

2 A No, it -- the profile was deemed unsuitable for comparison.

3 Q Okay. So, basically, dead end, with DNA, as it relates to the
4 revolver, at this point in time?

5 A There was nothing more we could do.

6 Q I want to fast-forward now to your report, distributed
7 September 11th of 2017. Did you receive another reference standard, at
8 that time?

9 A Yes.

10 Q And who was that reference standard from?

11 A I received a reference standard from Tuly Lepolo.

12 Q Okay. And what was the lab item on that, do you recall?

13 A Item number 32.

14 Q And we previously discussed the CODIS hit on that -- CODIS
15 hit to Tuly Lepolo. You did a request further, essentially asking for a
16 known, and now you've received it, at this point in time; is that right?

17 A Correct.

18 Q What did you do with that reference standard?

19 A So I put it through the DNA process. And then I made the
20 comparisons to all of those other items that we spoke of earlier.

21 Q And you're referring to lab items 20 through 30?

22 A All of the evidence that could be compared to. So that would
23 be 20 through --

24 Q Oh, 28?

25 A -- 28.

1 Q Okay. Apologies. Because 29 was another reference
2 standard, and -- okay. So I want to go back to lab item 20. And remind
3 the folks on the jury, that would be the swab from the Monster can?

4 A [No verbal response].

5 Q Did you compare this -- the unknown male number 1 profile
6 from the Monster can, to the reference standard of Tuly Lepolo?

7 A Yes.

8 Q And what were your results?

9 A The DNA profile obtained from that major DNA profile is --
10 was consistent with Tuly Lepolo.

11 Q And was there a statistic associated with your finding?

12 A Yes.

13 Q Can you describe it? Go ahead.

14 A Sorry.

15 Q Sorry.

16 A The probability of randomly selecting an unrelated individual
17 having a DNA profile that was consistent with that major DNA profile in
18 the evidence, is approximately 1 in 24.1 quintillion.

19 Q Was is quintillion?

20 A So we can start -- we can start off with a number that we may
21 hear of more often, which is a million. A million -- one million has 6
22 zeros. One billion has 9 zeros. A trillion has 12 zeros. A quadrillion has
23 15 zeroes. And then a quintillion has 18 zeros.

24 Q I want to go now to lab item 21. Did you compare the
25 unknown male number 1 profile, obtained from the steering wheel and

1 shift lever of the '04 Chevy Suburban, to the known standard from Tuly
2 Lepolo?

3 A Yes.

4 Q And what were your results?

5 A The major DNA profile was consistent with Tuly Lepolo.

6 Q And was there a statistic associated with your finding there?

7 A Yes.

8 Q What was that?

9 A The probability of randomly selecting an unrelated individual
10 from the general population, having a DNA profile consistent with that
11 major DNA profile, is approximately 1 in 24.1 quintillion.

12 Q Going now to lab item 22, which is the swab from AB1. Was
13 that unknown male number 1 profile compared to the known profile or
14 reference standard of Tuly Lepolo?

15 A Yes.

16 Q What were your results?

17 A That DNA profile was consistent with Tuly Lepolo.

18 Q And was there a statistic associated with your findings?

19 A Yes.

20 Q What was that?

21 A The probability of randomly selecting an unrelated individual
22 from the general population, having a DNA profile that is consistent with
23 that -- of that evidence, is approximately 1 in 24.1 quintillion.

24 Q Moving on to lab item 23, swab from AB2. Did you compare
25 that unknown male number 1 profile with the reference standard of Tuly

1 Lepolo?

2 A Yes.

3 Q What were your results?

4 A Yes, that DNA profile was consistent with Tuly Lepolo.

5 Q And what is the statistic associated with that finding?

6 A The probability of randomly selecting an unrelated individual
7 from the general population, having a DNA profile consistent with that of
8 the evidence, is approximately 24.1 -- 1 in 24.1 quintillion.

9 Q Moving on to lab item -- I apologize -- lab item 25. Yes -- I
10 apologize -- lab item 25, which would've been the swab from AB4. Did
11 you compare the unknown male number 1 profile with the reference
12 standard from Tuly Lepolo?

13 A Yes.

14 Q What was your -- what were your results?

15 A That DNA profile was consistent with Tuly Lepolo.

16 Q And what was the statistic associated with that finding?

17 A The probability of randomly selecting an unrelated individual
18 from the general population, having a DNA profile consistent with that of
19 that evidence, is approximately 1 in 24.1 quintillion.

20 Q And I'm going to go with -- go to lab items 26 and 27. I
21 believe you previously said you developed an unknown female number
22 1?

23 A Correct. As -- out of an abundance of caution -- although,
24 obviously, Mr. Lepolo's not a female -- you compared his DNA to those,
25 as well?

1 A Correct.

2 Q He was excluded as the source?

3 A He was excluded, yes.

4 Q Okay. And then I want to go down to AB7 -- well, I'm sorry,

5 item 28, which was a swab from area AB7. Did you compare that

6 unknown male number 2 with the reference standards from Tuly Lepolo?

7 A Yes.

8 Q And what were your results?

9 A He was excluded.

10 Q Okay. Not surprising, right, considering you have an

11 unknown male number 1 and an unknown male number 2; is that right?

12 A Correct.

13 Q And was there anything else that you compared Mr. Lepolo's

14 reference standard with?

15 A No, that was it.

16 Q Very briefly. You distributed another report, February 7th of

17 2018; is that right?

18 A Yes.

19 Q February 7th of 2018?

20 A [No verbal response].

21 Q And was there a -- was the unknown male number 2 profile

22 placed into CODIS on that?

23 A Yes.

24 Q Okay. And, to date, no hits on that; is that right?

25 A There's been no other reports requested for that, since.

1 MR. GIORDANI: Understood. Thank you very much. I will
2 pass the witness, Your Honor.

3 THE COURT: Mr. Margolis?

4 MR. MARGOLIS: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MARGOLIS:

7 Q So, Ms. Rubino, you tested a bunch of items?

8 A Correct.

9 Q And on several of those items, you found Mr. Lepolo's DNA?

10 A The DNA profile obtained from the evidence was consistent
11 with that of that particular reference.

12 Q Thank you. That's a much cleaner way of saying what I
13 intended to say. So, fair to say that Mr. Lepolo touched the Monster
14 can?

15 A We don't talk about how the DNA got there, we just kind of
16 answer that question, What DNA is there? How? When? Why? Those
17 are -- those are questions we don't answer when we're talking about
18 DNA.

19 Q Okay. Good point. So, basically, all the DNA can tell you is
20 that a profile consistent with the reference sample you were given, is
21 present at a given place?

22 A The -- what -- what DNA is there, correct.

23 Q Okay. Can't tell when it was placed there?

24 A Correct.

25 Q Can't tell the circumstances under which it was placed there?

1 A Correct.

2 Q Now, you also swabbed, I believe, a revolver?

3 A I received the swab --

4 Q Sorry.

5 A -- I didn't swab the revolver.

6 Q Okay. So you received a swab from a revolver?

7 A Correct.

8 Q And I believe that revolver fired .40 caliber ammunition, if
9 you know?

10 A I do not know.

11 Q Okay. At any rate, you swabbed this revolver and you were
12 trying to confirm, with the reference sample that you were given,
13 regarding Mr. Lepolo?

14 A I was given a swab from the revolver, and I conducted DNA
15 analysis in hopes of obtaining a DNA profile to make comparisons. But
16 there was not enough DNA for any comparisons.

17 Q Now, I know you talked a little bit about the ways in which
18 touch DNA or trace DNA is left on an object. And I don't want to
19 misstate your testimony, but I believe I heard something along the lines
20 of smooth surfaces are not as likely to obtain touch or trace DNA, as
21 ridged or grooved surfaces?

22 A It's just more of, those grooved surfaces have, like I said,
23 those nooks and crannies for skin cells to, kind of, harbor and hang out
24 in, as opposed to some of the smooth surfaces. It doesn't mean that on
25 a smooth surface, we couldn't get a DNA profile. It's just, when you're

1 thinking about all of those different factors, knowing that those grooved
2 surfaces have those little spaces for DNA to, kind of, hang out in
3 between, it's, to me, a little more likely that DNA would be in there, as
4 opposed to maybe just a strictly smooth surface.

5 Q Another question, kind of, related to that, okay? The
6 depositing of touch or trace DNA on objects we touch. Does the -- I
7 believe you said something along the lines of the temperature or the
8 weather, the likelihood of increased sweat. What does that do to the
9 probability that touch or trace DNA will be left on a particular surface?

10 A Well, if you think about -- if you think about, especially now,
11 because it's so hot outside, and you're sweating so much, the sweat, if
12 your hand -- my palms right now are a little sweaty, sweat is a -- is a
13 good vehicle to transfer things from one surface to another.

14 So if I'm sweating, my skin cells that may be, kind of,
15 hanging out, ready to shed off, they're -- it's more likely that they can get
16 transferred, because there's that liquid that's coming from my pores,
17 onto another surface.

18 As opposed to maybe the middle of winter when it's really
19 dry. You're not sweating as much, so you may not have enough, like,
20 vehicle to transfer that DNA from one surface to another. So that's a
21 possibility, yeah.

22 Q Okay. So if that revolver had been handled on a hot day, by
23 someone engaged in some form of movement, that might, theoretically
24 at least, increase the likelihood that touch or trace DNA would be left on
25 the revolver?

1 A It could be possible, bearing all of the other, kind of, factors
2 fall into place. But it could be possible.

3 MR. MARGOLIS: Thank you

4 THE COURT: Mr. Giordani?

5 MR. GIORDANI: No, thank you.

6 THE COURT: Questions from the jurors? Okay.

7 [Pause]

8 [Sidebar begins at 12:23 p.m.]

9 MR. MARGOLIS: Sure.

10 MR. GIORDANI: Okay.

11 [Sidebar ends at 12:23 p.m.]

12 THE COURT: All right. Ms. Rubino, the question is, is it
13 possible that the AB samples could degrade over time, or environmental
14 factors could have played a role?

15 THE WITNESS: Sure. Like any samples, when they're out in
16 the heat, can break down over time, or if they're left on a surface for an
17 extended amount of time, could degrade. These samples, I believe, were
18 collected relatively around a particular incident.

19 So once they're collected, they -- they're collected, especially
20 the blood, on a swab that is covered and allowed to dry, and then
21 packaged in breathable -- in a breathable way. So we hope that during
22 the storage, it won't degree as much.

23 There's a possibility that it could, over an extended period of
24 time between collection and analysis. Or if a sample was collected much
25 later, it's possible that if it succumbs to maybe rain or excessive UV

1 exposure, it could break down the DNA that's there. Given the DNA
2 profiles obtained for AB1 -- at least what I can see, from AB1 through 4,
3 that didn't seem to be the case.

4 MR. GIORDANI: Can I --

5 THE COURT: Yeah.

6 MR. GIORDANI: -- just ask one follow-up?

7 THE COURT: Uh-huh.

8 REDIRECT EXAMINATION

9 BY MR. GIORDANI:

10 Q And I don't want to be repetitive, but had -- had AB1 through
11 4 degraded, I mean, you never would've been able to develop the profile
12 from them, right?

13 A The profile may not have been the same. So when -- when I
14 was saying the same statistic over and over, it was the same DNA
15 profile, the same number of locations that were compared. If it were to
16 have been degraded, I may not have been able to compare as many
17 locations, and that would be reflective in the statistical weight of any
18 comparisons.

19 Q Oh, okay. So because you get the same 24.1 quintillion --

20 A Correct.

21 Q -- over and over, that tells you that they're -- all four profiles
22 are similarly not degraded?

23 A I wouldn't know a hundred percent from -- without looking at
24 the profiles again. However, I had enough of the same information that
25 was interpretable, to make the comparison.

1 MR. GIORDANI: Okay. Thank you.

2 THE COURT: Mr. Margolis?

3 RECROSS-EXAMINATION

4 BY MR. MARGOLIS:

5 Q All right. So for AB1 through 4, you're -- you're able to say
6 that they're -- those - those samples all contained the same level or
7 completeness that enabled you to make the one in 24.1 quintillion
8 comparison?

9 A Completeness, yes.

10 Q Okay. You don't, however, know how long after those were
11 deposited on the asphalt, let's say, before the swab got there? You don't
12 know that, right?

13 A Correct, I can only gauge. There's an event number with a
14 specific -- with this case, and that would be when it was called in and
15 then subsequently collected by -- whether it's the investigator or the CSA
16 collecting those samples.

17 Q And it's fair to say that if AB1 through 4 had a level of
18 completeness that enabled you to conclude one in 24.1 quintillion, and
19 the revolver, you were unable to even make a comparison, that suggests
20 that the completeness of any touch or trace DNA left on the revolver,
21 was far less than that present in AB1 through 4?

22 A It just might've been because we're talking about a
23 bloodstain versus DNA that could be left behind from skin cells. That
24 because it's such a variable situation, there just wasn't enough DNA for
25 comparison. So whether or not DNA was there and degraded off, or

1 very little DNA was there to begin with, I can't say. I can just say, based
2 on my results, that the revolver profile was unsuitable for comparison
3 because of the limited nature of the information.

4 Q Now, if you know, you were trying to test that revolver in
5 order to relate it to other pieces of evidence you tested, right?

6 A I was given the swabs in -- the swab from the revolver, in
7 hopes to get a profile that was suitable for comparison. However, after
8 looking at my analysis and my interpretation, it wasn't suitable for
9 comparison.

10 Q But you don't know, ultimately, what your objective would've
11 been with said profile from the revolver had you obtained it?

12 A If I would've gotten a compare -- a DNA profile suitable for
13 comparison, I would have made the comparison, and then would have
14 administered the results from that comparison.

15 Q And when you said you "would have made the comparison,"
16 you would've made a comparison to the same reference sample that was
17 provided for AB1 through 4, if you know?

18 A I would've made the same comparison to the original Elise
19 Faamasino reference standard, to the reference standard from Terrence
20 Parris --

21 Q Right.

22 A -- as well as the reference standard from Tuly Lepolo.

23 Q So any collected reference standard would have been run
24 against that piece of evidence, had you had the profile?

25 A If I had a comparable profile, I would've made that

1 comparison.

2 MR. MARGOLIS: Thank you.

3 THE COURT: State?

4 MR. GIORDANI: Just very briefly.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. GIORDANI:

7 Q So with regard to the revolver, at least, I used the word "dead
8 end" earlier, and -- and maybe that's too dramatic. If you had gotten 20
9 more reference standards from 20 different people and developed those
10 profiles and compared them to the revolver, could you have made any
11 conclusive identification or --

12 A The DNA profile from the revolver, there was too limited
13 information. No comparisons were made. Once I say it's at least one
14 male contributor, that was as far as I could go because the data was just
15 too limited for any further conclusions.

16 MR. GIORDANI: Understood. Thank you.

17 THE COURT: Mr. Margolis?

18 MR. MARGOLIS: No, Thank you.

19 THE COURT: Okay.

20 THE MARSHAL: I think we have one more, Judge.

21 [Sidebar begins at 12:30 p.m.]

22 THE COURT: (Displays juror question.)

23 MR. MARGOLIS: I don't even know exactly how to respond
24 to that.

25 MR. GIORDANI: Yeah, I don't know.

1 THE COURT: What?

2 MR. MARGOLIS: I don't know what he's even asking.

3 THE COURT: I don't know. But I think we've got to clarify it
4 one way or the other, right? I mean, we don't want to just not ask it,
5 right? Clearly, there's -- I mean, maybe we ask him to read?

6 MR. MARGOLIS: No, I mean, I say we just ask her. If she
7 says she doesn't know, we move along.

8 THE COURT: Do you want me to ask him to read it, saying
9 none of us can understand the question?

10 MR. MARGOLIS: Sure.

11 MR. GIORDANI: Sure.

12 [Sidebar ends at 12:31 p.m.]

13 [Court and Bailiff confer]

14 THE COURT: Okay. The question is, ".40 cal revolver?
15 Referring to the .40 cal semi-automatic or the .357 magnum revolver?" I
16 think, mistakenly, Mr. Margolis, on cross-examination, used the term ".40
17 caliber revolver."

18 MR. MARGOLIS: My fault.

19 UNIDENTIFIED JUROR: Okay.

20 THE COURT: Can you clarify that or do you need the
21 attorneys to clarify that?

22 THE WITNESS: I can either quickly look at my report --

23 THE COURT: Why don't you do that.

24 THE WITNESS: - to see if it's there. All I have in my report is
25 that it was a -- that Dan and -- Dan Wesson revolver. I don't have a

1 caliber associated with it, I just have that. And that -- that particular
2 swab can be tracked from the impounding officer's package and item.
3 That can go back to the actual, physical revolver. And that would have
4 the information, in regards to a particular revolver caliber.

5 THE COURT: State?

6 MR. GIORDANI: No further -- nothing further.

7 THE COURT: Mr. Margolis?

8 MR. MARGOLIS: Nothing further. Thanks.

9 THE COURT: All right. Ms. Rubino, thank you for being here.
10 Please don't share your testimony with anyone else involved in the case,
11 as it is an ongoing trial. But we appreciate it. And you're excused.

12 THE WITNESS: Thank you.

13 THE COURT: Thank you. All right. Ladies and gentlemen,
14 we are going to take a quick break before our witness, right now. Please
15 remember, during this recess, you're not to discuss or communicate with
16 anyone, including fellow jurors, in any way, regarding the case or its
17 merits, either by voice, phone, email, text, internet, or other means of
18 communication or social media.

19 Please not read, watch, or listen to any news, media accounts
20 or commentary about the case, do any research, such as consulting
21 dictionaries, using the internet, or using reference materials. Please do
22 not make an investigation, test a theory of the case, recreate any aspect
23 of the case, or in any other way attempt to learn or investigate the case
24 on your own.

25 And please not form or express any opinion regarding the

1 case, until it's formally submitted to you. I will see you at ten to 1:00, so
2 12:50, twelve five zero, please.

3 THE MARSHAL: All rise.

4 [Jury out at 12:34 p.m.]

5 [Recess at 12:34 p.m., recommencing at 12:52 p.m.]

6 THE CLERK: Back on the record, Your Honor.

7 THE COURT: All right. We are back on the record in State of
8 Nevada versus Tuly Lepolo, C-345911. Mr. Lepolo is present, with
9 Counsel Mr. Margolis, as well as PD Mendoza. Mr. Giordani is present
10 on behalf of the State, as well as Ms. Conlin. We are outside the
11 presence of the jury. All right.

12 I've had the opportunity to read the statement entitled Tuly
13 Lepolo Number 2. And this is on August 21st of 2019, starting at 1024
14 hours, culminating at 1048 hours.

15 I've also had the opportunity to listen to the audio between
16 Detective Tate Sanborn, as well as Mr. Lepolo. As I know that you guys
17 are aware, but the factors that the Court is to consider, in regards to the
18 element of voluntariness, are as follows:

19 The youth of the accused, his lack of education or his low
20 intelligence level, the lack of any advice of Constitutional rights, the
21 length of detention, the repeated and prolonged nature of questioning,
22 and the use of physical punishment, such as the deprivation of food or
23 sleep.

24 So the first thing I'd like to discuss is the use of -- youth of
25 the accused. I don't want to pretend to guess Mr. Lepolo's age, but I

1 would think that he's somewhere north of 50 during this interaction. So
2 the youth of the accused is a non-element here.

3 In regard to his lack of education or his low intelligence level,
4 one thing I noticed right away is. Mr. Lepolo does not appear to have a
5 lack of education, or a low intelligence level. He's very responsive to the
6 questions asked. He answers appropriately. He also, most importantly
7 and most indicatively, is he asks appropriate questions back.

8 Number three, the lack of any advice of Constitutional rights.
9 Detective Sanborn does the rights almost immediately. The length of the
10 detention, the statement is 24 minutes in length.

11 The repeated and prolonged nature of questioning. I didn't
12 see any evidence of repeated or prolonged questioning, throughout the
13 24 minutes. I've got to be honest, if anything, it was almost the other
14 way around. Mr. Lepolo repeatedly asked the detectives, over and over
15 again, about the incorrect usage of his name.

16 And he repeatedly tells -- repeatedly brings up the fact that
17 the previous search warrant done for his buccal was faulty, as it wasn't
18 signed by a magistrate, and that they didn't have his proper name. And
19 wherever the detectives go, he, kind of, comes back to that and really
20 wants to focus on the legality of that original search warrant.

21 The use of physical punishment, such as the deprivation of
22 food or sleep. It was 24 minutes in length. It started at 10:24 in the
23 morning. I didn't hear any use of physical punishment. There was no
24 deprivation of food or sleep. Mr. Lepolo never asked for food, never
25 asked for water, never asked to use the restroom, never in any way

1 indicated that he was sleepy. And, quite honestly, both were very kind
2 and respectful to one another.

3 Detective Sanborn was very respectful, always referring to
4 Mr. Lepolo as Mr. Lepolo. Mr. Lepolo was very respectful back. At one
5 time, they kind of joked or teased a little bit. So there was nothing, in
6 regards to the statement that I either read or listen to on the audio,
7 where I was concerned, in regards to the voluntariness of the -- the
8 statement. So that motion to suppress the second statement is denied.

9 As everybody already knows, the motion to suppress the first
10 statement was granted. So the State can play the second statement.
11 There were several areas that I thought should be redacted, in regards to
12 previous criminal history, that I'm sure you guys have worked out.

13 MR. GIORDANI: I believe we have. Just --

14 MR. MARGOLIS: Yeah.

15 MR. GIORDANI: One other thing. Just for the record's sake,
16 Mr. Margolis isn't making any kind of Miranda claim as to the second.
17 It's just the voluntariness claim as to the second statement.

18 THE COURT: That was my --

19 MR. GIORDANI: -- correct?

20 THE COURT: -- my understanding.

21 MR. MARGOLIS: That's correct.

22 THE COURT: I mean, and I'll -- I'll put on the record, I
23 obviously recognize that there was a point where Mr. Lepolo, I think,
24 does ask for a lawyer. But immediately after asking for a lawyer, he -- he
25 goes in -- like, he says it in the middle of a sentence, and then go -- keeps

1 going into the -- the discussion. And so I did not find that to be
2 unequivocal.

3 I know that Mr. Margolis wasn't bringing that up as an issue.
4 He brought it up as an issue in the first statement. The second
5 statement, he wasn't bringing it up as an issue, he was bringing up the
6 voluntariness. But I do want you guys to know that I saw that issue, and
7 I did consider it.

8 MR. GIORDANI: And there was a break in custody between
9 2017 and '19.

10 THE COURT: Oh.

11 MR. GIORDANI: That's not an --

12 THE COURT: Yeah, I mean, clearly, like, two year -- I mean, I
13 think that some of the case law is, like, an hour. This is two years. So,
14 clearly, there was a break in custody between the admonitions.

15 MR. GIORDANI: Thank you, Your Honor.

16 THE COURT: All right.

17 THE MARSHAL: Bring them in, Judge? No?

18 THE COURT: Is this something you need marked, or is this --
19 oh, it was just something --

20 MR. GIORDANI: I would just keep it.

21 THE COURT: Oh.

22 [Counsel and Clerk confer]

23 THE COURT: Are we good now?

24 MR. GIORDANI: Yes.

25 [Court and Clerk confer]

1 THE MARSHAL: All rise.
2 [Jury in at 12:59 p.m.]
3 [Court and Clerk confer]
4 THE COURT: All right. Welcome back, everybody. We are
5 on the record in State of Nevada versus Tuly Lepolo. Please be seated.
6 Mr. Lepolo is present, with Mr. Margolis, as well as Paralegal Mendoza.
7 Both Deputy District Attorneys, Mr. Giordani, as well as Ms. Conlin, are
8 present on behalf of the State. Do the parties stipulate to the presence of
9 the jury?
10 MR. GIORDANI: We do, Your Honor.
11 MR. MARGOLIS: Yes.
12 THE COURT: State, next witness.
13 MR. GIORDANI: The State would call Detective Tate
14 Sanborn.
15 THE MARSHAL: All right. If you would, if you could just step
16 up there. Remain standing, and raise your right hand so the clerk can
17 swear you in.
18 MR. SANBORN: Thank you
19 TATE SANBORN, STATE'S WITNESS, SWORN
20 THE CLERK: Please be seated. Will you please state your
21 name, and spell it for the record.
22 THE WITNESS: Tate Sanborn, T-A-T-E S-A-N-B-O-R-N.
23 THE CLERK: Thank you.
24 THE COURT: Mr. Giordani.
25 MR. GIORDANI: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. GIORDANI:

3 Q What do you do for a living, sir?

4 A I'm a detective with the Las Vegas Metropolitan Police
5 Department.

6 Q How long have you been a detective with Metro?

7 A Over 20 years.

8 Q And in what unit are you currently assigned?

9 A I'm currently assigned to the homicide section.

10 Q How long have you been with homicide?

11 A October of this year will be 15 years.

12 Q And in 15 years with homicide, have you responded to
13 numerous homicide scenes?

14 A Yeah, countless deaths, yes.

15 Q Okay. Can you describe, for the ladies and gentlemen of the
16 jury, what you do as a homicide detective on a day-to-day basis?

17 A Well, typically, we start when we receive a call from patrol
18 officers in the field, first responders who've arrived on a scene that
19 involves a homicide or a suspicious dead body. Once we get out there,
20 we meet with the first responders and get a quick briefing from them, as
21 to what they saw when they first got there. We then conduct interviews
22 with anyone that was present on the scene -- with the first responders.

23 We interview the first responders. We document the crime
24 scene. And then from there, we go follow up on all the leads that we
25 were able to develop, either the leads that are provided by first

1 responders or leads that we develop on our own. We process all of our
2 forensics, for fingerprints, DNA. Basically, take the cases where the
3 evidence goes,

4 Q Prior to being a homicide detective, were you with Metro?

5 A Yes.

6 Q What did you do prior to homicide?

7 A Prior to homicide, I worked in our robbery section.

8 Q Prior to that, were you a patrol officer?

9 A No, prior to that, I was a detective. I worked in an undercover
10 capacity on a firearms-related -- federal firearms-related task force.

11 Q And prior to that?

12 A Prior to that, I was a detective in our auto theft unit. And I
13 worked in an undercover capacity on auto theft for profit task force.

14 Q You've been a detective for quite a while?

15 A Correct.

16 Q I want to draw you back to April of 2016 -- April 3rd,
17 specifically. Did you respond to a homicide call on that date?

18 A Yes.

19 Q And where did you respond to?

20 A We responded to the Lantana Apartments, at 6501 West
21 Charleston.

22 Q That's here within Clark County, Nevada?

23 A Yes, it is.

24 Q What was the nature of the call when it initially came in?

25 A The call was that we had a female shot and killed in the

1 central portion of the apartment complex. And the details were that
2 there were two large parties that had occurred. And there was a physical
3 altercation that occurred in the courtyard, prior to the shots being fired.

4 Q Do you know when the first -- very first 911 call originated?

5 A Yes, it came in at 2057 hours, or 8:57 p.m.

6 Q Okay. So a 911 call comes in at 8:57 p.m.; were you familiar
7 with that call?

8 A Correct. Yes. Sorry. Yes.

9 Q In that call, was there a witness who's essentially conveying
10 information contemporaneously to what she's observing?

11 A Yes.

12 Q And was there any indication as to when the very first
13 gunshot had occurred, in that 911 call?

14 A I believe it -- I -- I want to say I recall that happening just prior
15 to her making the call. When she was going back to grab the phone, I
16 believe she witnessed some sort of altercation in the parking lot. Was
17 going to get her phone to grab to call the police, and then a single shot
18 rang out at that time. And then she followed through with her call to 911
19 from there.

20 Q Understood. So you have a pretty good idea of when this
21 whole thing popped off, for lack of a better term?

22 A Yeah, it would've been within just a couple of minutes prior
23 to that 2057 call.

24 Q When a 911 call -- well, let me ask you this. Was there more
25 than one 911 call?

1 A Yes.

2 Q In fact, there were several, in this case, right?

3 A Correct.

4 Q When a 911 call comes in, does that go -- does the case come
5 directly to you? Or how does that process work with Las Vegas Metro?

6 A No, the call -- the call ticket is generated call for the area of
7 town that call's in. And they assign patrol officers to -- this would be a
8 shooting call. The police code would be, like, a 415A. So patrol officers
9 would be assigned and start responding immediately. That's -- there is a
10 little bit of a lag to create that process as the dispatcher confirms the
11 address, types up the details, sends out the call. So a call coming in at
12 2057 may actually be just a couple of minutes before that, as they
13 generate the call. But patrol officers are assigned. They respond to the
14 scene, initially. And then they can handle it if it's not serious, or they can
15 call detectives from that area of town, or in this case, if you -- you have a
16 female victim, deceased, then that -- that call can -- that call comes to
17 homicide.

18 Q And in this case, that initial 911 caller that initiated at 2057,
19 was Courtney Franco?

20 A Yes.

21 MR. GIORDANI: And you mentioned when you have a
22 female deceased -- may approach?

23 THE COURT: Yes.

24 BY MR. GIORDANI:

25 Q I'm showing you now State's Proposed 4. Do you recognize

1 that woman?

2 A Yes.

3 Q And who is that?

4 A That's Raquel Stapinski.

5 MR. GIORDANI: Move for the admission of 4.

6 THE COURT: Mr. Margolis?

7 MR. MARGOLIS: No objection.

8 THE COURT: That will be admitted. You can publish, if
9 needed.

10 [State's Exhibit 4 admitted into evidence]

11 BY MR. GIORDANI:

12 Q Well, overhead's not on. So Ms. Stapinski in life, obviously?

13 A Correct.

14 Q You learned that this is a homicide call and are you enlisted,
15 your services enlisted?

16 A Yes, my squad was up on call for the next homicide so we
17 responded to the scene.

18 Q When you say your squad, what are you referring to?

19 A The homicide section is broken up into four squads of six
20 detectives and typically roll as many as the six detectives who are
21 available that night to come and assist with the two primary detectives,
22 myself and my partner who were primary that night. And we would
23 have enlisted the help of as many people as we could get from our
24 squad. I think three more came out. I think there was five of us total.

25 Q Sure. In Vegas, unfortunately, sometime there are multiple

1 murders going on at a single time.

2 A Correct.

3 Q Murder investigations. So sometimes you may not have
4 your whole squad when police operate.

5 A Correct. Some of them may be off for personal reasons.
6 Some of them may be unavailable. Yeah, you get who you get.
7 Hopefully it's all six, but it doesn't always work out that way.

8 Q And in this particular case do you recall whether your whole
9 squad went out or a portion of it?

10 A It was actually on this case, I know there was detectives from
11 another squad had gone out to assist us. Detective Dosch was out
12 there, and he's on a different homicide squad. Detective Kisner was out
13 there with me, myself and my partner, Detective Ivie, were out there.

14 Q And when you, all you homicide detectives show up, is this
15 when the scene is already static?

16 A Yes. As best it could. We got there within an hour, so it was
17 still -- that's pretty quick for us, but typically it -- they have taken care of
18 the dynamic aspect of the situation and try to have it under control
19 before we get there.

20 Q Do you recall how many approximately Las Vegas
21 Metropolitan Police Department personnel were on the scene when you
22 all got out there?

23 A Yeah, this was a large -- it was a large crowd for the first
24 responders. I know we had well over 30 police officers who responded
25 initially out there.

1 Q And those initial officers that responded, they would have
2 done whatever they did at the scene and then are you briefed essentially
3 on what's going on?

4 A Yes.

5 Q With regard to your briefing in this particular case, what
6 preliminary information did you get?

7 A The preliminary information was that there were two large
8 parties that had occurred at the same time within the same complex.
9 One had occurred in Apartment 231, which is in Building 26, another
10 party was going on in Apartment 215, across -- just across the little
11 courtyard area in building 25. There was an altercation between
12 members of each -- attendees from each party. It turned into a physical
13 fight in the parking lot just north of the buildings. A single shot was fired
14 in the parking lot. A witness had observed a shooter, a second shooter
15 go to a vehicle, a white Chevy Suburban, grabbed a gun and then
16 followed what appeared to be the first subject who fired the first shot.
17 And then a shootout occurred, an exchange of gunfire and then there
18 was a female deceased on the sidewalk.

19 Q So that's your preliminary information going in?

20 A Correct.

21 Q And describe for the ladies and gentlemen of the jury what it
22 is you do with that information, and what steps you take next?

23 A Well, it's kind of what you like to do is just kind of start at the
24 very beginning. That's what the information is that we get when we get
25 there. So me as an investigator, I'm kind of more visual and it takes me

1 a while to kind of take everything in. So I like to take a walk around the
2 entire crime scene, just to get an idea for your north, south the
3 directions, your buildings and the way they're established, the way
4 they're set up, ingress, egress.

5 Because as you start to talk to people later in the
6 investigation, it helps me if they're able to say, like, "I was looking out
7 my window" or "I was going to my door" you know which way that door
8 faced. So I like to take some time and walk around.

9 Unfortunately, I have to take some time and find out where
10 Mrs. Stapinski ended up on the sidewalk, and then, while you're doing
11 that, you kind of note all the evidence that you can while you're walking
12 around.

13 So you take note of, you know, physical evidence -- cartridge
14 cases, any bullets that you can see, and bullet holes, directionality of
15 things like that -- and then we kind of do that as a squad. Me and my
16 partner especially. And then from there we'll break up into assignments
17 and I may assign -- in this particular case I believe I assigned myself,
18 Detective Dosch and Detective Kisner to start interviewing people that
19 patrol had detained at the scene.

20 Once we get through those preliminary interviews, we'll
21 meet back up, go over the information. If that leads us in a specific
22 direction, we would follow that. If not, we would start then like a general
23 canvas of the complex. Knock on any doors or windows that may have
24 faced the area, if anyone could have seen something. Reach out to the
25 911 callers.

1 And all while this was going on, my partner then would be
2 kind of married to the crime scene investigator and stay with the crime
3 scene investigator and go over all the evidence. And then I would check
4 in periodically with him to see if some of the stories that we were getting
5 from the witnesses who had seen stuff matches up with the physical
6 evidence as we keep going back together and kind of talking about
7 everything that we learned as we're doing it.

8 Q So I want to break that down just a little bit, Detective, and go
9 to State's 9. Actually, I'd like to show you Stats 10.

10 Do you recognize this?

11 A Yes.

12 Q Does that appear to be a crime scene diagram?

13 A Correct.

14 Q And now I'm going to go to 10 -- I'm sorry, 9 real briefly and
15 try to overlay. Do you recognize this?

16 A Yes. It -- yes.

17 Q Going back to 10 just so we're on the same page, we have
18 some kind of curved, I guess, sidewalks here on the end of 10, and then
19 do you recognize those in 9 as being over here?

20 A Correct.

21 Q You indicated that you previous -- I'm sorry, you conducted a
22 walk-through of the scene is what I'll refer to it as.

23 What did you observe as you did your initial walk-through?

24 A We observed the -- there were some items still in the parking
25 lot where the initial physical altercation had taken place. I think there

1 was a belt out there. There was a single cartridge case out there which
2 matched the 911 caller's information. We obviously had our victim on
3 the sidewalk. We had numerous cartridge cases and live cartridges in
4 the entryway alcove on Building 26 for Apartments 231 and 233. There
5 was also blood in that area. There was firearm parts, as if there was a
6 malfunction on one of firearms.

7 And then there were multiple bullet strikes at the apartments
8 even further out from these buildings, all the way out in this area here.
9 There's impacts on that building there, and then there was an apparent
10 blood trail that ran in an easterly direction alongside Building 25 and up
11 to the parking lot again.

12 So it was a large -- it was a large, I wouldn't say overly
13 complicated crime scene, but it was large and it took up a lot of area.

14 Q You previously indicated that while your partner and the
15 crime scene investigator were going through the crime scene
16 documenting evidence, you're a little more focused on canvassing.

17 Were witnesses -- were there members of both of those
18 groups that you previously described detained on the scene?

19 A Yes.

20 Q Do you know approximately how many from each group?

21 A I believe we had, or patrol had contacted approximately nine
22 or ten from each party.

23 Q And you indicated that one group was associated with an
24 Apartment 215.

25 A Correct.

1 Q And then another group was associated with a separate
2 apartment. Do you recall what that was off the top of your head?

3 A Yes, 231.

4 Q And now I want to show you -- well, I guess I could stay on
5 the map which is Exhibit 9. Can you see on here approximately where
6 those two apartments were located? And if you would --

7 A Is this the writing one or --

8 THE COURT: No, it's not. Just toggle that mouse in front of
9 you.

10 THE WITNESS: Oh, okay.

11 THE COURT: And then, do you want him to use the red or
12 no?

13 BY MR. GIORDANI:

14 Q Well, if you can do it with -- you don't need to click if you can
15 do it by just toggling over the two homes, that would be great.

16 A Okay. This would be the -- approximately this area here
17 would be the entryway alcove for the downstairs apartments. This is
18 Building 26 here. The downstairs apartments, 231 ad 233 -- 231 would
19 be on the southern side, 233 would be on this side.

20 Straight across or straight east would be this whole thing is
21 Building 25, and on the corner here, down here, you can't see the
22 entryway because of this tree, 215 would be right on the corner.

23 Q So fairly close in proximity these two apartments?

24 A Yes.

25 THE COURT: Can you put those on the record, Mr. Giordani?

1 MR. GIORDANI: Oh, I'm sorry, yes.

2 BY MR. GIORDANI:

3 Q For the record, on Exhibit 9, when you described 231, you
4 pointed at the building furthest on the left on the lower portion of the
5 exhibit. And then 215 you pointed at Building 25 which is the long
6 rectangle building right in the center of the exhibit, and you pointed at
7 the lower left corner of that building. Is that accurate?

8 A Correct.

9 Q That would have been Apartment 215.

10 A Correct. And the initial physical altercation would have taken
11 place in the parking lot right out here.

12 Q And for the record, you're pointing on the top left portion of
13 the exhibit, just on -- just north of the parking overhang, carport?

14 A Yes. Just north of the -- yes, that's a -- this dark structure
15 here is covered parking. These are uncovered spots. So yeah, just in
16 this area here in the street. Just north of the covered parking.

17 Q You indicated about nine members of each group were
18 basically stopped at the scene, kept there for a period of time.

19 A Yes.

20 Q Did you interview some of those folks?

21 A Yes.

22 Q Did other homicide detectives interview some of those folks?

23 A Yes.

24 Q Can you give a general idea of what you learned from those
25 conversations?

1 A Generally it was confirmation of what we had learned from
2 patrol. Obviously that information came through those same witnesses
3 to our first responders, that there had been a birthday party at Dana
4 Forman's apartment that she was putting on; another party at 215 at
5 Elaine Lepolo's house, and there had been an altercation between Dana
6 Forman's son Dwayne Armstrong, he wanted to fight someone who
7 attended the party in 215 and they ended up fighting in the parking lot.

8 From there an unidentified male, associated with the party in
9 Apartment 231 came out to the parking lot where the fight was taking
10 place and fired a single shot into the air as a way to break up the fight.
11 The fight kind of disbursed, everyone kind of made the way back to their
12 respective apartments, when the suspect from Apartment 215, the party
13 that was going on in 215, went into a white Chevy Suburban with
14 California license plates, retrieved a black handgun, and then went back
15 toward the party at 231, yelled a vague threat, and then an exchange of
16 gunfire occurred in the alcove of the apartment there.

17 Q Would any of those individuals, 18, 20 or so individuals,
18 identify either of the people who discharged weapons?

19 A No.

20 Q Would they give you any information related to those
21 shooters?

22 A I think we received the nickname or the moniker of the
23 possible shooter from -- that was associated with the Forman's
24 apartment 231, we received his moniker as T-Loke [phonetic] that night?

25 Q T-Loke?

1 A T-Loke. I think that's all that we were able to obtain as far as
2 each -- when we interviewed each party's attendees there was a lot of I
3 don't know, I didn't see anything, but thank fully we did have the two
4 witnesses who weren't associated with either party and who ended up
5 being more important witnesses at that time than either of the party
6 attendees.

7 Q And I'll get to that in one moment. With regard to the two
8 groups -- one group associated with 215, the other with 231 -- would you
9 characterize, their interviews as -- or the information they provided as
10 cooperative?

11 A No, completely uncooperative. It was immediately apparent
12 to me and my -- you know, me out there that I wasn't going to get any
13 help from the witnesses out at the crime scene that had attended either
14 party that we were going to -- me and my partner were going to have to
15 figure this case out largely based on forensics.

16 Q You mentioned that you had two uninterested, essentially
17 uninterested witnesses also.

18 A Correct.

19 Q What were their names?

20 A Well, we had Courtney Franco, which was our initial 911
21 caller; and then we had Ta'Von Love -- was it Love or Low -- Ta'Von Love
22 who actually stayed in the apartment right next door to Dana Forman,
23 just north of, in 233.

24 Q Okay. And based upon that did you have information or a
25 belief as to, I guess, the relative culpability of the shooters, or an idea of

1 what went on?

2 A Yeah. Over all we had a pretty decent framework as to what
3 happened out there.

4 Q You indicated earlier that it became apparent to you, based
5 on the lack of cooperation, that you'd have to solve this via forensics.
6 What do you mean by that?

7 A Well, typically you have someone gets shot and killed, you
8 typically have an interested party out there who has some sort of
9 relationship or feeling for that victim, and that would be who you rely on
10 heavily, when you first get out to a crime scene, to maybe assist the
11 investigation.

12 In this particular case, Ms. Stapinski was at a party with
13 numerous other people in Apartment 231. In my experience as a
14 homicide detective, you would expect or I'm sorry, I would expect
15 several people in 231 to explain to me what happened, who was Wayne-
16 Wayne fighting. Why -- who went out there and fire.

17 We just didn't get that. And then, on the other side, the
18 people that had attended the party in 215, I would expect less
19 cooperation from that party just in my general experience, because
20 obviously the shooter who went to the car and got the gun, emanated
21 from that party, so I would expect that level of cooperation out of the
22 people in 215. It was surprising to get the same level of uncooperation
23 out of 231. But that's what we ended up with.

24 Q Sure. Play the hand you're dealt, right?

25 A Correct.

1 Q So based upon that, did you pay an extra attention to the
2 scene in this case? Not that you don't normally.

3 A Yes. Once you get everything you're going to get out there
4 from the witnesses, then both me and my partner can focus on the crime
5 scene and come up with, like I said, the framework as to what we believe
6 happened out there. And then, once we finish out there and get back to
7 our office, that's when we can start to see if we can confirm our beliefs
8 through forensic as to how things played out in the parking lot and
9 everything.

10 Q I want to walk through the scene with you. Showing you
11 now State's 10, previously described as essentially an overall view of the
12 scene; is that right?

13 A Correct.

14 Q We have additional diagrams authored by crime scene
15 analyst and I want to show you those as well.

16 Go to State's 12, do you recognize this diagram?

17 A Yes. This is just an up close diagram of the actual apartment
18 alcove entryway for 231 and 233. 231 there and 233 there, that's the
19 front door. So this is just a -- the scene was so large that we had to
20 break it down into several diagrams just to have a better understanding
21 of it.

22 Q Okay. So focusing in on this alcove here, what evidentiary
23 value did you note, what drew your attention within this alcove?

24 A Well, you can see from the sheer amount of numbers alone,
25 that there's a large amount of evidence contained within such a small

1 area. So we had everything in here from cartridge cases to live
2 cartridge, to handgun parts. We had blood and we had bullet impacts on
3 both walls. So a lot to note.

4 Q Of the various cartridges that were found in that alcove, were
5 they all of the same caliber?

6 A Yes. This alcove contained, I believe, 19 live .9 millimeter
7 cartridges and 4 .9 millimeter cartridge cases, along with the spraying
8 and magazine components from what would have been a .9 millimeter
9 semiautomatic magazine before it fell apart.

10 Q Okay. You say before it fell apart. Some of the folks on the
11 jury may not be familiar with firearms. Can you describe why you
12 believe that, what that meant to you?

13 A A typical firearm magazine you've seen them all, you've see
14 how they load bullets, you press them down. They're -- when you're
15 loading them up they're under a spring compression so a spring is
16 pushing them all down. In the alcove there was the bottom piece of a
17 magazine.

18 So there's like a piece that holds it all together on the
19 bottom. That's what keeps that spring in there and we had that piece
20 there which if that piece falls out the bottom of the magazine, then all the
21 bullets that you loaded in the top all fall out the bottom. And the spring
22 was in the alcove as well.

23 So it appeared the bottom of the magazine broke or there
24 was some sort of malfunction, but the bottom was there, the spring was
25 there, the bullet guide at the top where you load it was still connected to

1 the spring. And then, with having 19 live .9 millimeter rounds there, it
2 was pretty apparent that the magazine fell apart.

3 Q You also mentioned there were four cartridge cases from a
4 .9?

5 A Correct?

6 Q And those four cartridge cases obviously means that the .9
7 was discharged four times, right?

8 A Correct.

9 Q Okay. You indicated some impacts on the walls. Can't see
10 those in this diagram, can you?

11 A No, they're not noted in this one.

12 Q Okay. I want to very briefly zoom back out to 10, Exhibit 10,
13 were there also -- was there also firearms evidence outside the alcove?

14 A Yes.

15 Q And can you describe that?

16 A There were .40 caliber cartridge cases located south of the
17 entryway alcove to Apartment 231 and 233 right here. These were five
18 .40 caliber cartridge cases. Different caliber than the weapon used in the
19 alcove.

20 Q Any other firearms evidence at the scene that you recall?

21 A There was a single cart case in the parking lot up here where
22 the initial altercation took place. But I believe that was -- that's primarily
23 all the ballistic evidence that we had right there.

24 Q Let me zoom out. We refer to our diagram here, No. 3 is a
25 cartridge case. Are you referring to this on the diagram?

1 A Correct.

2 Q Okay. Number 2 -- oops, I'm sorry, I don't have the key up
3 there -- was that belt that I believe you referenced earlier.

4 A Correct.

5 Q So other than single cart case up here, the five cart cases just
6 south of the alcove, and all of the firearms evidence in the alcove, was
7 there any other firearms evidence outside of the apartments?

8 A No.

9 Q You mentioned impacts earlier. I now want to show you
10 State's 14. What are we looking at here?

11 A It's the diagram basically of that same alcove, not with as
12 much detail as that one we were just looking at, but the bullet
13 trajectories of the bullet impacts are noted by letter so you can see just
14 by the letters. Each letter represents a different bullet trajectory or
15 bullet impact.

16 Q And there are some here in Building 26, and there are a
17 couple here in Building 25; is that right?

18 A Correct.

19 Q And then zooming out to Exhibit 13, are we still looking at
20 the same area?

21 A Yes, just further south and east you can see two additional
22 bullet impacts, A and B in Building 27.

23 Q Got you. So based upon your training and experience as a
24 homicide detective, what does all of this firearms evidence and these
25 impacts you just looked at, what does that tell you as an investigator?

1 A Well, looking at the impacts and the cartridge cases shows
2 that you have a moving scene. Basically you have someone shooting
3 out from the alcove, this way initially, but moving this way, so he's kind
4 of moving this way. Think of it as like a yin and yang zone. Then you
5 have a shooter outside the alcove coming by this way shooting, and
6 moving this way and firing into the alcove. And someone in the alcove
7 moving out shooting this way. Initially shooting straight then continuing
8 to fire as he moves. So we have two people kind of creating a half circle
9 while shooting at one another.

10 Q And of course, just based on the crime scene itself, you can't
11 tell the order of the shots, right?

12 A Correct.

13 Q You have to rely upon other evidence in order to do that.

14 A Correct.

15 Q You indicated -- well, let me ask you this way:

16 Was there also a vehicle on scene?

17 A Yes.

18 Q Suspect vehicle.

19 A Correct.

20 Q You indicated earlier there was a 911 caller by the name of
21 Courtney Franco?

22 A Yes.

23 Q Why did you focus in on this particular suspect?

24 A She had observed while on the phone with 911 a male enter
25 the driver's side of that white Suburban with California plates, obtain a

1 black firearm, shut and lock the door, and then proceed southbound
2 toward the entryway alcove of Apartment 231 just prior to hearing I think
3 what she believed were nine gunshots. And then she observed the
4 suspect run away in an easterly direction along the side, along the south
5 side of building 25. So the vehicle became important.

6 Q Okay. I want to, before I get back to the vehicle, just ask you
7 real quick, go into Exhibit 10. When you indicated an easterly direction
8 along 25, you're talking about throughout this courtyard just south of 25
9 on this exhibit

10 A Correct. She -- the witness can't see the full path, just that
11 the suspect left eastbound along that building there.

12 Q Got you. Okay. And you also mentioned a witness by the
13 name of Ta'Von Low or Love?

14 A Yes.

15 Q Low.

16 A Is it Low or Love, I'm sorry. I don't want to say the wrong
17 name.

18 Q It's okay. I can refresh your memory. Technically I need to
19 bring you a report.

20 THE COURT: We can just stipulate what the real name is.

21 MR. GIORDANI: Thank you, Your Honor.

22 BY MR. GIORDANI:

23 Q Ta'Von Low.

24 A Low. Okay.

25 Q Mr. Low was important for your investigation as well, right?

1 A Yes.

2 Q Why is that?

3 A Well, Mr. Low wasn't associated with either party, he didn't
4 attend either party, and he lived in really close proximity to both. And
5 when he heard the initial commotion, he looked out. So he became an
6 important witness for us.

7 Q Based upon the witness statements that you just described,
8 did you have an idea of who -- which shooter, I should say, not who, but
9 which shooter was the aggressor?

10 A Yes.

11 Q And who was that?

12 A That would have been the shooter from the apartments at
13 215 -- from Apartment 215 who went to the truck and retrieved his
14 firearm and then proceeded to go southbound back toward the
15 apartment yelling a threat as he approached with a handgun you know,
16 raised out from his hand.

17 Q As a result of that, did you then focus some attention on V1
18 or Vehicle 1?

19 A Yes. Knowing the lack of cooperation that we got out at the
20 scene from both party attendees, the vehicle then became, like I had
21 talked about at the beginning, forensically is how we were going to have
22 to put the case together. So with the witness identifying the vehicle and
23 the suspect going in there to get the vehicle [sic] we knew that,
24 obviously, our suspect was associated in some way with the white
25 Suburban and our hope was the forensically we could identify him from

1 evidence that we would obtain inside that vehicle. And research that we
2 would do on that vehicle.

3 Q Okay. So let's start with forensics first. What type of
4 forensics are you referring to with regard to the vehicle at least?

5 A So initially, before we take the vehicle from the crime scene,
6 our crime scene analyst fingerprinted the entire outside of the vehicle for
7 latent fingerprints with powder. And that was simply to protect it before
8 we move it from there. Because once you start to move it, you introduce
9 a whole lot of other people and someone could mistakenly touch it
10 without gloves and everything. So we wanted it the way it was at that
11 time. So they processed the outside area -- the hood, the doors,
12 windows, everything like that. Once they're done, then we seal the
13 vehicle up with evidence seals, and then we tow that vehicle back to our
14 crime lab where we can do everything inside. We can get back into it
15 and then search the interior and look for items of evidence inside that
16 would assist us forensically and help us identify people who have been
17 in and out of the vehicle.

18 Q You also indicated research on the vehicle itself.

19 A Correct. Obviously running the license plate, finding out
20 whose car it was, things like that.

21 Q And that white 204 Suburban we've been talking about was
22 that bearing a California license plate 5FPB429?

23 A Yes.

24 Q And did that plate come back to anyone?

25 A I believe the vehicle belonged to Elise Faamasino. I don't

1 know if the registration reflected that. I just know that she was in control
2 of the vehicle and claimed it as her vehicle.

3 Q Fair enough. So on the scene she actually claimed it?

4 A Correct.

5 Q Okay. As a result of that, did you obtain what is referred to
6 as a buccal swab from Elise Faamasino?

7 A Yes, we did. We took a sample of her DNA via buccal swab
8 and then we also received major case fingerprints of hers to eliminate
9 any of her fingerprints that we recovered inside.

10 Q And you mentioned further processing later. While we're
11 still on the subject of the vehicle, after it's sealed, it's towed to the crime
12 lab, there's further processing done by crime scene analysts.

13 A Correct.

14 Q And would that include both fingerprint processing and
15 swabbing for DNA?

16 A Yes.

17 Q Going back to our crime scene now. I want to refer you to
18 Exhibit 10 again. At some point in time did homicide detectives and
19 crime scene analysts enter Apartment 233, which was north on Building
20 26?

21 A Yes.

22 Q And who was the occupant or, I guess --

23 A That was Ta'Von Low's apartment.

24 Q Was Ta'Von Low accompanied by family members there at
25 the scene, if you recall?

1 A I do recall someone else being present. I don't recall off the
2 top of my head who was in there with him. But I believe there were
3 other occupants.

4 Q Do you recall something about a bullet coming through the
5 shower?

6 A Oh, absolutely, yeah.

7 Q Go ahead.

8 A Well, Mr. Low had heard the initial commotion and looked
9 out his window, which was in this wall here, so he had a view north and
10 east kind of. So he looks out just in time to see our shooting suspect,
11 who had come from the white Suburban, aggressively coming this way
12 with a firearm in his hand shouting a threat to the alcove area and then
13 shooting. The shooting starts and the bullets enter his apartment where
14 he's looking out the window. He has to duck. He has to duck out of the
15 way and get out of that bedroom for fear of being hit. We got a bullet
16 from his bed, out of his pillow, I think, and in his shower that went all the
17 way through the walls into the shower. So very dangerous spot this
18 corner turned out to be. Mr. Low was very lucky.

19 Q Did you also eventually enter Apartment 231?

20 A Yes.

21 Q And inside was there various items of evidentiary value?

22 A Yes.

23 Q Before I -- almost missed it. Before I go into the inside the
24 apartment, had you learned previously, during the briefing or at any
25 point on the scene, that there was actually a person caught red-handed

1 messing with the crime scene?

2 A Yes. Yes, actually.

3 Q Describe that.

4 A During the briefing I forgot that. We were briefed that
5 initial -- our first responders or initial patrol officers to arrive on the
6 scene encountered, when they came around this area here, of course
7 they have their guns drawn, you know, it is a shooting scene, an active
8 shooting scene, and when they rounded this corner here, they came
9 upon a Dana Forman, who was the host of the party in Apartment 231,
10 on the ground picking up bullets and cartridge cases, as many as she
11 could hold. And so the officer at gunpoint told her to drop those and
12 then detained her there. But while doing that, unfortunately, other
13 people were able to leave the area, leave the party, while he's focused
14 on Ms. Forman.

15 Q So we were just getting into you go into 231, correct?

16 A Correct.

17 Q Apartment 231.

18 A Yes.

19 Q Is there -- well, anything of evidentiary value found in 231?

20 A Yeah. 231 was where the party was. There was a bedroom
21 in this area here. On the floor in that bedroom was an open backpack
22 and in the backpack, the bottom of the backpack, were some live .9
23 millimeter cartridges. And then there was a box of .9 millimeter ammo
24 on the floor, I believe, adjacent to that bag. And then there was
25 paperwork in that bedroom it the name of Dwayne Armstrong which was

1 Dana Forman's son.

2 And then, going through the apartment, not much evidence
3 as far as involving the kitchen, living room area, you could tell that there
4 was obviously a party going on. And then out on the back patio there
5 was a gentleman who was barbecuing during the party, and there was a
6 handgun recovered in a bag of charcoal out on the patio.

7 And then, when we completed that kind of search, it kind of
8 solidified, at least corroborated the evidence that the .9 millimeter
9 shooter in the parking lot who shot the single shot to break up the fight
10 had gone into that bedroom, recovered a gun from the backpack, more
11 than likely went out there, fired the single shot, and then was returning
12 to the apartment when the second exchange of gunfire broke out.

13 Q A couple of questions for you. You mentioned a patio,
14 barbecue on patio?

15 A Correct.

16 Q When we have some photographs -- I'm not going to fish
17 them out unless you need them -- but are people able to exit from that
18 patio?

19 A Yes. It has a privacy wall around it. I believe it was about a
20 6-foot tall wooden privacy wall. Almost looked like, if you're familiar
21 with pallets, how pallets are put together. Where it had slats like that,
22 but it was just for privacy on three sides, open to the top so you could
23 barbecue and cook out, but it made it real easy because the way they
24 were set up, the slats, every other one left a two by four exposed which
25 is where you could put your foot and just go over and go over the wall.

1 So it wasn't an enclosed patio.

2 Q Understood. So there's really no door to exit that way to, I
3 guess, leave the apartment, but you could easily hop the wall.

4 A Correct.`

5 Q You also mentioned that a revolver was found. Is that, as a
6 homicide detective, something that obviously draws your attention?

7 A Yes.

8 Q And what caliber was this particular revolver?

9 A I believe it was a 357.

10 Q And is a 357 revolver entirely different from a .40 caliber or .9
11 millimeter?

12 A Yes.

13 Q It's a different caliber, different sized bullets, correct?

14 A Yeah, different caliber, different sized bullets, different -- this
15 was a different firearm altogether as far as the semiautomatics that
16 we're dealing with -- the semiautomatic evidence in the parking lot and
17 in the alcove, and long the building here. The revolver doesn't leave that
18 type of evidence when fired. So completely different set of firearms.

19 Q And does a revolver eject a cartridge case when fired?

20 A No.

21 Q However, in order to pull a cartridge -- or I guess no.

22 In order to get a fired cartridge case out of a revolve, what do
23 you need to do?

24 A You have to open the cylinder, there's a cylinder release
25 button on the side, then you poke the cylinder out the other side and the

1 cylinder drops out to the left. And then there's another cylinder release
2 pushpin that you push and then it lifts all the cartridge cases out and
3 then you can grab them or dump them into your hand that way to empty
4 them out. But they stay in there typically till you do that. You have to
5 actually physically take the cart cases out.

6 Q And this particular revolver that you found did you or crime
7 scene analyst open it up to see what was in the cylinder?

8 A Yes. It was loaded with five live 357 rounds with one
9 cylinder empty, completely empty.

10 Q And when you say completely empty, you're not talking
11 about a fired cartridge, correct?

12 A Correct. Just no bullet at all, just an empty cylinder.

13 Q Okay. And had someone fired that weapon, they would have
14 needed to go through that process you just described to find that fired
15 cartridge case and take it out.

16 A Correct. And they don't come out singular, either. So all five
17 would have came out. It's hard to -- you can kind of push them to
18 release them and the let it drop back and grab one, but that's not
19 typically something you use. You fire a revolver, dump all five out,
20 move on. So there was one missing with no bullet in it, five live.

21 Q Have you come across revolvers that are stored with one
22 cylinder empty?

23 A yes.

24 Q Can you describe those experience or, I guess, the purpose
25 for doing that?

1 A Yeah, it's very common in older revolvers. Due to the
2 difference between the semiautomatic handgun and the revolver, the
3 revolver actually has the firing pin attached to the back of the hammer.
4 The firing pin is what actually hits the primer and causes the gun to fire
5 the bullet. So on those older revolvers, in theory, if you left a live round
6 under the hammer, the chance that you could drop it and it would
7 discharge or if you hit the back of it, the hammer, it could discharge, so
8 to combat that people usually stored them at home or in their holsters
9 with nothing under the hammer. And that way you wouldn't have to
10 worry about that accidentally going off.

11 Q Was there or were there any witnesses that suggested in any
12 way that a third firearm was in play at any point in this altercation?

13 A No. We had been told the chrome semiautomatic handgun
14 and a black semiautomatic handgun.

15 Q And our two respective shooters that you just described
16 earlier, correct?

17 A Correct.

18 Q Was there any firearms evidence related to a 357 revolver
19 located anywhere within the exterior or interior crime scenes?

20 A No.

21 Q You just previously indicated you would need, if you wanted
22 to removed a fired cart case from a revolver, you'd have to dump all of
23 the cylinders, you know, pull that one out.

24 A It would be easier. It would be tedious to get one.`

25 Q Okay. And was there one or four or five or was there any 357

1 ammunition found anywhere within this crime scene?

2 A No.

3 Q Nonetheless, was that impounded as evidence in this case?

4 A Yes. It appeared that they hid it, they didn't want -- in
5 anticipation of the police coming to investigate the shooting that just
6 occurred in the parking lot, and the gun was hidden on the balcony in
7 hopes that we wouldn't find it.

8 Q Outside, going back outside, and I'm showing you diagram
9 10, right on the sidewalk here, I see AB1, do you see that?

10 A Yes.

11 Q What is that representing?

12 A AB1 is the start of an apparent blood trail that led east along
13 the south side of Building 25.

14 Q And did you observe that apparent blood trail yourself?

15 A Yes.

16 Q Based upon your training and experience and day to day
17 work as a homicide detective, did that appear to be a fresh blood trail?

18 A yes.

19 Q Why do you say that, Detective?

20 A Well, I was out there and I had been on numerous crime
21 scenes, and blood definitely changes, physiologically changes with time.
22 I would definitely know if a blood stain had been there for days or
23 months prior to my active crime scene.

24 Q Okay.

25 A So I continued to follow it until it ended.

1 Q I cut you off. Where did you follow it to?

2 A All the way till it ended.

3 Q And at the end of the blood trail, was there an empty parking
4 spot?

5 A Correct.

6 Q And is that represented here on our diagram as AB -- well,
7 AB4 is within that empty parking spot?

8 A Correct.

9 Q Was that, that fresh blood trail, relevant to you or important
10 to your investigation in your opinion?

11 A Yes. With the witness on the phone describing that as the
12 direction that the shooter fled after the shooting, I believe that that day
13 the shooter had been struck during -- he may have been struck during
14 the shootout or injured during the initial fight, and that blood trail in
15 leaving the scene and ultimately leaving in the parking lot belonged to
16 my shooting suspect.

17 Q So when you indicated earlier that this was going to be a
18 forensic intensive investigation, is this part of what you're referring to?

19 A Yes.

20 Q I want to fast forward a bit. Eventually is that crime scene
21 finally done with processing and do you leave the scene?

22 A Yes.

23 Q And do you attend an autopsy?

24 A Yes.

25 Q And is that, of course, of Raquel Stapinski?

1 A Yes.

2 Q Was there anything of evidentiary value learned or
3 impounded during the course of that autopsy?

4 A Yes. We learned that Raquel had been shot one time on the
5 right side of her body. The bullet entered her upper arm, exited her
6 inner arm, and then then it entered her torso, and then we were able to
7 recover a projectile from inside of her.

8 Q Okay. that projectile, was that subsequently submitted by
9 you or other homicide detectives --

10 A Yes.

11 Q -- for further testing? What's the purpose of that?

12 A Well, all the ballistic evidence when we submitted it, the
13 purpose was to kind of corroborate our belief on how things had
14 occurred out there, as far as how many guns were involved, the chain of
15 events, and then who -- whose bullet actually struck Raquel.

16 Q At that point in time did you come to a determination as to
17 which of your shooters was the killer?

18 A Yes.

19 Q And which shooter was the killer?

20 A Raquel Stapinski was killed by a .40 caliber bullet. So our .40
21 caliber shooter was out shooting suspect -- was our murder suspect.

22 Q And did you have a location you believed that the .40 caliber
23 shooter was in, based upon your scene evidence?

24 A The location he was in prior to --

25 Q Was he in the alcove or outside the alcove?

1 A No, he was outside the alcove shooting into the alcove.

2 Q Understood. Did you continue attempts to interview several
3 witnesses and people who were present?

4 A Yes. After -- it took some time to keep trying to identify
5 subjects who were present at the party, and we would get calls
6 occasionally from people who were there and, you know, we kept trying
7 to get people to come forward and help. So it was a long process.

8 And there were time in between where we were trying to
9 catch up to certain people, where two or three months would go by at a
10 time before we would find someone else who was at the party and
11 things like that. So it definitely started to drag out.

12 Q So would it be fair to characterize -- I don't want to over
13 summarize, but did several people continue to be uncooperative?

14 A Yes.

15 Q And did you subsequently or during the course of this long,
16 drawn out process submit several forensic requests to the DNA -- for the
17 forensic laboratory?

18 A Yes.

19 Q And what requests did you submit? What types of evidence
20 were you looking at?

21 A Well, going back to what we believed initially, the car being a
22 huge piece of evidence for us, that's something we know the shooter
23 was in. So that's a huge deal. And then now, before clearing the scene
24 and seeing that blood train heading east, we now have two big pieces of
25 evidence that maybe we can combine, once we're able to try to

1 determine who the suspect is.

2 So once we're processing the vehicle, you go through the
3 vehicle and you process items that you think you can get fingerprints
4 from , DNA from, and then now we have the scene which we believe to
5 have decent DNA evidence at the crime scene, too. So our hopes was to
6 get our forensic evidence, our firearms related evidence processed,
7 confirmed, that we had our two firearms involved. And then get our
8 DNA evidence confirmed, and see if we could get someone who was in
9 the truck and bleeding leaving the scene.

10 Q I want to fast forward now to May of 2016. At some point in
11 May did you receive your firearms examination results?

12 A Yes.

13 Q And did those confirm your initial beliefs about the crime
14 scene?

15 A Correct. It confirmed that all the .9 millimeter cartridges
16 were fired by a single .9 millimeter handgun and then the .40 caliber cart
17 cases all had the same general rifling characteristics, or firing pin
18 characteristics as one another and was likely one firearm as well.

19 Q And that same .40 caliber firearm was compared to the .40
20 caliber bullet taken from Raquel, right?

21 A Correct.

22 Q And was that confirmed as the murder weapon?

23 A Well, we didn't have the murder weapon, but it was the
24 bullet that actually --

25 Q Understood.

1 A The bullet that came out of Raquel matched the bullets that
2 we recovered from Ta'Von Low's apartment and confirmed they were
3 fired from the same handgun.

4 Q Fast forward again to September 2016, did you receive some
5 latent print evidence back at that point in time?

6 A Yes.

7 Q Were there a few individuals that were connected to that
8 white SUV based upon latent fingerprints?

9 A Yes.

10 Q And was one of those people the person that was ultimately
11 your suspect?

12 A Yes.

13 Q And who was that?

14 A Mr. Tuly Lepolo.

15 Q Do you see that person in court today?

16 A Yes.

17 Q Can you please point to that person and describe an article of
18 clothing he's wearing in court today?

19 A Mr. Lepolo's off to my left wearing a blue and white striped
20 long-sleeved shirt -- or, yeah.

21 MR. GIORDANI: Would the record reflect identification of the
22 Defendant.

23 THE COURT: It will.

24 MR. GIORDANI: Thank you.

25 ///

1 BY MR. GIORDANI:

2 Q So at this point in time, we're talking September 2016, is this
3 the first time you heard mention of a Tuly Lepolo?

4 A Correct.

5 Q First time you developed him as a potential suspect at least?

6 A Correct.

7 Q I want to move now to the next -- I'm sorry, two months later
8 November of 2016. At that point in time did you receive your DNA
9 evidence?

10 A Yes, our initial round of DNA came back late 2016.

11 Q And what did that tell you as an investigator?

12 A That was our DNA work from the truck and our initial
13 processing of the crime scene so it basically identified a subject from the
14 steering wheel and gear shifter of the truck, and energy drink in the
15 truck, the blood leaving the crime scene all as emanating from one
16 individual, who the lab categorized as unknown male 1. Because we still
17 didn't know who that male was. But he was unknown male 1 and all the
18 DNA matched between those three areas.

19 Q And a short time later did you receive what's referred to as a
20 CODIS hit on Tuly Lepolo?

21 A Yes. About three weeks later, I believe.

22 Q Based upon that CODIS hit, did you need to some follow up
23 or something in order to confirm the DNA?

24 A Yes. The hit on the DNA that came out of California is
25 basically an investigative lead and California reaches out says, hey, this

1 DNA evidence that you entered into this database may belong to this
2 gentleman. But now you have to go, basically I have to go physically
3 then take DNA from Mr. Lepolo and then compare it directly to the
4 evidence so there's no mix-up in lab work or data entry. So I know that
5 the evidence that I physically took from Mr. Lepolo would then be
6 compared to the evidence we recovered.

7 Q Okay. And did you do some very basic research, like DMV
8 research on Tuly Lepolo as well?

9 A Yes.

10 Q And prior to proceeding out -- or did you proceed out to
11 California at some point in time?

12 A Yes.

13 Q Based upon that research you did initially, were you able to
14 determine whether he fit the shooter's description?

15 A Yes.

16 Q And did he?

17 A Yes.

18 Q And did you then proceed out to California?

19 A yes.

20 Q At that point in time, -- well, where did you go?

21 A We went to -- it was San Bernardino County, California to an
22 address that we had on file for Mr. Leolo, and parked at that address was
23 the white Chevy Suburban that we had searched back in 2016 and
24 developed our evidence from.

25 Q Okay. Was that potentially relevant for your investigation as

1 well?

2 A Yes. It showed that he had access to it back in 2016 and he
3 still had access to it when we went out to California. Which I believe was
4 2017 by this time.

5 Q Okay. And did you enlist the assistance of the San
6 Bernardino Sheriff's Department in locating and making contact with Mr.
7 Lepolo?

8 A Yes.

9 Q Were you -- did you sit and were you doing the visual
10 surveillance along with them, or did they do that portion for you?

11 A They had the physical eyeball on the surveillance. I was in
12 the area, but not physically on the house where I could see it, and just
13 listening to the radio and were able to confirm that way I could listen to
14 when they made contact. And I could proceed to the police station with
15 them.

16 O Okay. Did they eventually make contact ==

17 A Yes.

18 Q -- with Mr. Lepolo?

19 A Yes.

20 Q And did you then proceed to make contact with him?

21 A Yes.

22 Q Do you recall where you did that?

23 A I did it at the San Bernardino County Sheriff's Department
24 homicide office in their headquarters.

25 Q And did San Bernardino personnel assist you in obtaining a

1 search warrant for a buccal swab on Tuly Lepolo?

2 A Yes.

3 Q And was that buccal swab taken from Mr. Lepolo?

4 A Yes.

5 Q Were you present for that?

6 A Yes.

7 Q Who physically took the swab?

8 A Myself.

9 Q So you actually put a swab into Mr. Lepolo's mouth?

10 A I believe so. I'm trying to think back. It may have been

11 Detective Kahow [phonetic] from San Bernardino, though.

12 Q Okay. Were you present for that?

13 A Yes, yes.

14 Q You observed that whatever's on that Q-tip is actually Mr.

15 Lepolo's DNA?

16 A Yes.

17 Q Now, at some point in time shortly thereafter, do you return

18 to Vegas with that known standard buccal swab from Mr. Lepolo?

19 A Yes.

20 Q And do you submit it to the DNA lab?

21 A Yes.

22 Q I'm going to fast forward again to September 11th of 2017,

23 did you receive DNA results -- updated DNA results at that time?

24 A Yes.

25 Q And what did those tell you, Detective?

1 A The results from the DNA lab confirmed that unknown male
2 1 was actually Tuly Lepolo.

3 Q I want to kind of switch gears here and keep you in 2017. At
4 some point in time in 2017, were you able to identify the second shooter
5 from the --

6 A Yes.

7 Q And who was that person identified as?

8 A Henry Taylor.

9 Q Did you conduct follow up research and investigation on
10 Henry Taylor?

11 A Yes.

12 Q And can you give an example of some of the things you did
13 with regard to Henry Taylor?

14 A As far as after we identified him or just attempting to identify
15 him?

16 Q Either or both.

17 A We have numerous databases that we use to help locate
18 people when we need to contact them. We can use the Department of
19 Motor Vehicles, we can use information provided during bond
20 transactions and you know, things like that. We have all kinds of ways
21 where we can kind of dig through and try to make contact with people if
22 we need to.

23 Q And eventually you were able to identify Mr. Taylor via these
24 databases --

25 A yes.

1 Q -- right? And did you -- you previously referred to a moniker,
2 were you able to confirm that was a moniker sometimes associated with
3 Mr. Taylor?

4 A Yes.

5 Q And that was T-Loke?

6 A T-Loke, yes.

7 Q Once you were able to identify Mr. Taylor, did you make
8 some form of familial connection between Mr. Taylor and one of the
9 groups?

10 A Yes, during our research, we learned that Henry Taylor was
11 Dana Forman's brother. And Dwayne Armstrong was his nephew and
12 Flora Taylor was his sister also. She was -- had attended the party as
13 well.

14 Q And Flora Taylor was actually one of those people who were
15 still on scene initially, right?

16 A Yes.

17 Q But she wouldn't identify any shooter at that time?

18 A Correct. She put it on someone else. There's a little bit of a
19 shell game out there as to who was going to be someone that would tell
20 the police who the shooter was. So she indicated that someone from
21 Apartment 215 would know, you should talk to them. And they indicated
22 someone in Apartment 231 would know, you should talk to them.

23 Q Okay. So Flora's like don't ask me, ask them.

24 A Correct.

25 Q And other folks would do the same.

1 A Correct.

2 Q At some point in time in August of 2019 -- now we're two
3 years later -- August of 2019 were arrest warrants issues for both Mr.
4 Lepolo and Mr. Taylor?

5 A Yes.

6 Q What was the purpose of the arrest warrants?

7 A Well, the purpose was, at this point, we believed we had our
8 murder suspect in Mr. Lepolo. We still hadn't received any cooperation
9 at this point and being that so many years had passed, you're not likely
10 to get any more cooperation unless something drastic changes. And you
11 know, being frustrated for so many years, at that point I felt Henry had
12 already told us his story, which was not accurate. At that point I felt, you
13 know, that he can go in with Mr. Lepolo then and be responsible for his
14 part in the shooting that led to the death of Raquel Stapinski.

15 Q Fair enough. And was Mr. Taylor located and arrested?

16 A Yes.

17 Q Actually, that same day when the arrest warrant was issued,
18 right?

19 A Yes.

20 Q And was Mr. Lepolo located and arrested a couple of days
21 later?

22 A Yes, in California.

23 Q And did you, again, enlist the help of those San Bernardino
24 PD detectives?

25 A Yes.

1 Q Before get to Mr. Lepolo, I apologize, I want to back up.
2 MR. GIORDANI: I apologize. The Court's brief indulgence.
3 THE COURT: Yep.
4 MR. GIORDANI: May I approach?
5 THE COURT: Yep.

6 BY MR. GIORDANI:

7 Q Showing you now already admitted 312, do you recognize
8 this?

9 A Yes.

10 Q What is that?

11 A This is a photo lineup witness instruction form, along with
12 the actual photo lineup that I showed to Dana Forman in 2019.

13 Q Fair to say that in 2019 Dana finally cooperated a bit?

14 A Yeah, the dynamic had changed on the Forman/Taylor side
15 of the investigation.

16 Q Showing 312 to the jury just real briefly, there's a big
17 typewritten paragraph on the top half of this. Can you just briefly
18 describe what that is?

19 A Yes, that's a set of instructions we read to individuals who
20 we're showing a photo lineup to. It basically just tells you not to pay any
21 attention to the difference in the photograph -- like color, black and
22 white, beards, moustaches. We're not trying to trick you. Some people
23 may think that if it's a different color and whatnot, so this just kind of
24 explains like don't pay attention to any artifact in the photograph. You
25 should pay only attention only to the person being depicted in this

1 photo. And then not to talk to anyone while you're viewing it except the
2 police. Just a general instruction.

3 Q Going to page 2 of this document. Prior to showing page 2
4 to Ms. Forman, did you read those instructions to her?

5 A Yes.

6 Q And then, on page 2, did you show her these six
7 photographs?

8 A Yes.

9 Q And was Ms. Forman able to identify the shooter?

10 A Yes, she identified Mr. Lepolo as the shooter.

11 Q And for the record, Mr. Lepolo is the one contained in the top
12 middle row?

13 A Correct, she circled it and initialed her circle, signed her
14 circle, rather.

15 Q You indicated that you enlisted the services of San
16 Bernardino PD to help you locate and apprehend Mr. Lepolo; is that
17 right?

18 A Yes.

19 Q Did you then travel down to San Bernardino?

20 A Yes.

21 Q Did you make contact with Mr. Lepolo?

22 A Yes.

23 Q And did you -- where did you make contact with him?

24 A He was in a facility there like San Bernardino County or
25 Riverside County, a jail, I believe.

1 MR. GIORDANI: May I approach the witness?

2 THE COURT: Yes

3 BY MR. GIORDANI:

4 Q Showing you now State's 1, 2, and 3.

5 A Yes.

6 Q Do you recognize all of those photographs?

7 A Yes.

8 Q And are those all fair and accurate depictions of Mr. Lepolo's,
9 not only his face, but his arms and that tattoos that are on as they
10 appeared back when you made contact with him?

11 A Yes.

12 MR. GIORDANI: I move for the admission of those.

13 THE COURT: Mr. Margolis?

14 MR. MARGOLIS: No objection.

15 THE COURT: They will be admitted, you can publish.

16 [State's Exhibit 1-3 admitted into evidence]

17 BY MR. GIORDANI:

18 Q So showing you 1, that's obviously Mr. Lepolo's face.

19 A Correct.

20 Q Showing you State's 2 and I'll focus you in on the right one.
21 What are we looking at here and here on Mr. Lepolo's right arm?

22 A Tattoos.

23 Q And then State's 3, on the left -- focusing on the left arm of
24 Mr. Lepolo, what are we looking at here?

25 A Tattoos.

1 Q Did you have what you believed to be an independent
2 witness or an -- I'm sorry, I guess not independent, uninterested or not
3 part of the groups, a witness at the scene that indicated tattoos?

4 A Yes. We had Ta'Von Low indicate the subject had tattoos
5 down both his right and left arms.

6 Q Now, when you made contact with Mr. Lepolo, did you
7 record your contact in any way?

8 A Yes.

9 Q How?

10 A It was audio recorded with an audio recorder that I bring with
11 me, a little tape recorder, digital tape recorder.

12 Q And did you question him about the incident in Las Vegas
13 back in 2016?

14 A Yes.

15 MR. GIORDANI: Your Honor, with the Court's permission I
16 would like to play that audio recording.

17 THE COURT: Mr. Margolis?

18 MR. MARGOLIS: Subject to what we agreed to, of course.

19 THE COURT: Just one second, Mr. Giordani. Could you look
20 at that exhibit quickly?

21 And may I have the noise, please.

22 [Sidebar at 205 p.m., not transcribed]

23 THE COURT: And so what number exhibit is this, Mr.
24 Giordani?

25 MR. GIORDANI: It is 323, Your Honor. Mr. Margolis and I

1 have looked at it and confirmed it's --

2 THE COURT: Understood. Thank you.

3 So 323 was previously built upon. So that will be admitted
4 and you can publish when needed.

5 [State's Exhibit 323 admitted into evidence]

6 MR. GIORDANI: Thank you, Your Honor.

7 BY MR. GIORDANI:

8 Q All right. Detective, I'm going to play this for you now.

9 [Audio played at 2:19 p.m.]

10 MR. GIORDANI: I apologize, Judge. I think we need to take a
11 break.

12 THE COURT: Okay. It's all right. I think we're having a little
13 bit of issues with the audio, so we're just going to take a break for a
14 second and then we will come back.

15 Ladies and gentlemen, remember during this recess not to
16 discuss the case with anyone, including fellow jurors, in any way
17 regarding the case or its merits either by voice, phone, email, text,
18 internet or other means of communication or social media.

19 Please do not read, watch, or listen to any news or media
20 accounts or comments about the case, do any research such as
21 consulting dictionaries, using the internet or using reference material.
22 Please do not make any investigations, test the theory of the case,
23 recreate any aspects of the case or in any way attempt to learn or
24 investigate the case on your own. Please don't form or express any
25 opinion regarding the case until it's formally submitted to you.

1 It is 2:30, I'll see you at 2:45, two, four, five, please.
2 Thank you.
3 THE MARSHAL: All rise.
4 [Jury out at 2:31 p.m.]
5 [Recess at 2:31 p.m., recommencing at 2:59 p.m.]
6 THE MARSHAL: All rise.
7 [Jury in at 2:59 p.m.]
8 THE COURT: All right. Welcome back everyone. Thank you.
9 Please be seated. We are on the record in State of Nevada
10 vs. Tuly Lepolo, C-345911. Mr. Lepolo is present with Mr. Margolis as
11 well as Mr. -- the paralegal Mr. Mendoza. Both District Attorneys, Mr.
12 Giordani as well as Ms. Conlin are present on behalf of the state.
13 Thank you for your patience. We're just having some
14 skipping issues, and I wanted to make sure you could hear the entire CD.
15 But of course, like all the other exhibits, when you go back there, we'll
16 make sure that all the exhibits -- when I say go back there, I mean when
17 you go back to deliberate we'll make sure that you have all of the
18 exhibits. You'll have all the opportunity to hear everything.
19 So we're just testing it through our system right now. So
20 just be patient and we'll have very much left at this point.
21 [Audio played at 3:00 p.m.]
22 MR. GIORDANI: I will pass the witness at this time. Thank
23 you, Detective.
24 THE WITNESS: Thank you.
25 THE COURT: Mr. Margolis?

1 MR. MARGOLIS: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MARGOLIS:

4 Q Detective Sanborn, you spoke a little bit, early on in your
5 testimony, about Ta'von Lowe; do you remember that?

6 A Yes.

7 Q And Ta'von Lowe resided in Apartment 633; is that right?

8 A 233.

9 Q Yeah, 233. Sorry. And that's right next door to 231, the
10 Dana-Forman, Dwayne-Armstrong apartment?

11 A Correct. Just north of it.

12 Q Right. Okay. And did -- I think you testified -- and I just
13 wanted to clean this up, because maybe I'm mistaken. I think you
14 testified that you thought that the bullets had gone into his bedroom?

15 A Correct -- or bedroom in the apartment.

16 Q Okay. Okay. Yeah, no, I think it -- I think it did go into a
17 bedroom in the apartment. I think he testified that it had gone into, like,
18 his -- the mother of his child's cousin's bedroom.

19 A Correct.

20 Q Probably a distinction without a difference. But at any rate,
21 .40 caliber bullets entered that Apartment Number 233?

22 A Yes.

23 Q Okay. And you also testified that Mr. Lowe said that he had
24 heard a commotion of some kind, correct?

25 A Yes.

1 Q And I believe it was your testimony that he saw a -- a
2 tattooed man, or a man with tattooed arms, running past that window of
3 that bedroom in the apartment?

4 A Correct.

5 Q Would you quarrel with me if I said that I believe that his
6 testimony was that he'd seen a number of individuals running by there
7 in the immediate aftermath of the physical fistfight up above?

8 A Well, I was focused on the description of the -- the suspect
9 with the gun.

10 Q Fair enough. I understand --

11 A Yeah.

12 Q -- that's what you were focused on.

13 A Yeah.

14 Q But would you quarrel with the testimony that I heard, which
15 was that a number of people?

16 A No, there's a number of people out there.

17 Q Okay. And it was also your testimony that there was a
18 fistfight up in the parking lot above, that preceded any firing of any
19 shots, correct?

20 A Correct.

21 Q And it was also your testimony that there was one shot fired
22 in the vicinity of the fistfight up above, correct?

23 A Correct.

24 Q And by all accounts, that shot was not fired by my client?

25 A Correct.

1 Q That shot was fired by Henry Taylor, correct?

2 A Correct.

3 Q So only one individual brought a gun to a fistfight here,
4 correct?

5 A Correct.

6 Q And that was Henry Taylor?

7 A Yes.

8 Q Okay. Thank you. Now, there's a collection of, I -- I want to
9 use the correct terminology -- I'm not a gun guy -- cartridge cases of both
10 9mm and also I believe a .40 caliber cartridge case, outside the alcove, or
11 generally in that same area?

12 A Correct, .40s just outside and 9mms inside.

13 Q Right.

14 A -- the alcove.

15 Q And then a bunch of unfired cartridges?

16 A Correct.

17 Q Okay. From a 9mm. Now, we can see that there was a gun
18 battle. I think your words were there, "There was a gun battle"?

19 A Correct.

20 Q Okay. And that the victim, Ms. Stapinski, was killed in the
21 crossfire of this gun battle?

22 A Correct.

23 Q Okay. Can I infer, from your testimony, then, that there were
24 two people shooting at one another in that alcove?

25 A Yes. There were two people shooting at one another, yes.

1 Q Okay. And can you, as you sit on the stand today, testify as
2 to which gun fired first in that area? Can you --

3 A Yeah.

4 Q -- based on your investigation?

5 A No.

6 Q Okay. And part of the reason that you're unable to -- to make
7 that statement to the jury, is based on the credibility of the witnesses you
8 spoke to in this case, correct?

9 MR. GIORDANI: Objection.

10 THE WITNESS: Correct.

11 MR. GIORDANI: I would --

12 THE COURT: So just let me hear the objection first. Sorry,
13 Mr. Margolis, let me interrupt.

14 MR. GIORDANI: I would just object as to the characterization
15 of credibility. It's up for the folks on the jury to determine credibility of
16 witnesses.

17 THE COURT: So I'm going to sustain that, but you can
18 rephrase --

19 MR. MARGOLIS: Okay.

20 THE COURT: -- if you'd like.

21 BY MR. MARGOLIS:

22 Q Fair to say, when you spoke to these individuals in the
23 aftermath of this incident, you found them to be dishonest with you?

24 A Not necessarily dishonest. I just didn't get a lot of
25 cooperation. I believe they were directing me to people who had the

1 right information. So I didn't get a lot of straight-out lying to me, but --

2 Q Okay.

3 A -- I got more uncooperative than dishonest --

4 Q I mean --

5 A -- if that --

6 Q I --

7 A -- if that makes sense.

8 Q It, sort of, does. But it, kind of, feels like we're splitting hairs
9 and gilding a lily here, a little bit, right? Like --

10 A I would characterize it different. If someone out there
11 outright lied to me and said the -- the suspect was a white male and he
12 fled in a red car versus --

13 Q All right.

14 A -- someone who told me, Hey, you should ask someone in
15 apartment 215. That's the difference between uncooperative and
16 dishonest.

17 Q Did you speak with Dana Forman?

18 A Yes.

19 Q So you're going to tell this jury that you don't find that Dana
20 Forman was dishonest in her statements to you, Detective? Because, I --
21 I find that a -- a bridge a bit too far.

22 A I recalled my initial contact. She was extremely intoxicated.
23 And then my subsequent contacts were better, but I still didn't get the
24 level of cooperation that I would've liked me.

25 Q I mean, it was her 42nd birthday. So fair to say, whether or

1 not she was intoxicated, she understood what was true and what wasn't?

2 A I don't know if she understood that.

3 Q Okay. Let me ask you this then. My client's daughter lived
4 with Dana Forman for a period of time; were you aware of that?

5 A I was aware of the relationships between both families, with
6 some of the Forman family having children with --

7 Q All right. so --

8 A -- some of the Lepolo family.

9 Q -- if I'm -- if I'm reading between the lines, I think that you're
10 telling me that you're aware of connections. You're not necessarily
11 aware of the depth of that specific connection that I just asked you
12 about?

13 A Correct.

14 Q Okay. Do you have children?

15 A Yes.

16 Q Do you have a daughter?

17 A No.

18 Q Okay. I have two daughters, okay? If my daughter lived with
19 someone, I'd like to think that I would know. But you don't believe that
20 Dana Forman lied to you when she initially spoke to you; is that your
21 testimony? She just omitted?

22 A Correct. I believe she wasn't cooperative. I believe she knew
23 the information, and she could've told me at any time. But she did not
24 lie to me and give -- and lead me in a different direction. That's what --
25 that's what I would consider someone lying to me.

1 Q Fair enough. Okay. How about Henry Taylor?

2 A Henry Taylor also was uncooperative. Henry Taylor was
3 untruthful in our initial statement as well.

4 Q And so, in other words, if I'm going to, kind of, assess, Dana
5 Forman omitted information. Henry Taylor outright fabricated
6 information?

7 A Correct. He -- Henry Taylor's stating he wasn't present, was
8 a lie.

9 Q okay. There wasn't a lot of cooperation from many
10 witnesses, for you, in this case, correct?

11 A Correct.

12 Q Okay. Let's talk about one witness that did cooperate and I
13 believe did do her best, Courtney Franco. You're familiar with the 911
14 call made by Courtney Franco, correct?

15 A Yes.

16 Q And I believe your testimony was that she's -- she's going to
17 get her phone to make the call, when the shots -- the first shot is fired?
18 Or --

19 A Correct. I believe that -- I -- I believe that was the chain of
20 events. She -- there was a fistfight going on in the parking lot. She was
21 going to grab her phone to call the police, and as she turned to grab the
22 phone, a single gunshot goes off. She goes through with making the
23 phone call, so she's got the phone, and on the phone, when the second
24 volley of gunshot -- gun -- gunshots go off.

25 Q Okay. But she's not actually -- she's not watching the

1 gunshot go off, because she's going down the hall to grab her phone,
2 right? She hears the gunshot?

3 A Correct. I didn't get the feeling she saw the first gunshot.

4 Q Okay. And because she didn't see the first gunshot, she
5 doesn't know whether that shot was fired into the air, whether that shot
6 was fired in the general direction of this part of the crowd, or that part of
7 the crowd; she doesn't know that, correct?

8 A Correct?

9 Q Let me ask you this, okay? If you were engaged in a fistfight
10 with another person and a gunshot went out, what do you believe your
11 reaction might be?

12 A My first reaction would be, who was shot, and who is
13 shooting.

14 Q Okay. Fair to say that the introduction of a gunshot to a
15 previously, I guess, we'll call it agreed-upon fistfight, that's a -- that's an
16 escalation, that's a change in the nature of events, is it not?

17 A I believe, in this case, it was meant for something different,
18 more like a Wild-Wild-West way of breaking up a fistfight.

19 Q I mean --

20 A Not proper, but that's what I believe the effect was for.

21 Q Okay. But you'll agree with me, from the -- the Forman-
22 Taylor-Dwayne-Armstrong perspective, it's really self-serving for that to
23 be the express purpose of the shot, is it not?

24 A To --

25 MR. GIORDANI: I would object as to the characterization of

1 that question as well.

2 THE COURT: So sustained. I mean, I -- I'm going to sustain
3 the objection. You can rephrase it, though.

4 BY MR. MARGOLIS:

5 Q Henry Taylor lied to you about a number of things involved
6 in your investigation in this case, right?

7 A Correct.

8 Q But you want the jury to believe that Henry Taylor fired the
9 gun into the sky for the reasons that he claims, correct?

10 A Correct.

11 Q Okay. So for whatever reason, a liar is not a liar, in that
12 instance?

13 A Which instance?

14 Q His reason for bringing a gun to a fistfight and firing in the
15 sky? On that, he's being honest, in your opinion, even though you would
16 testify that he was dishonest and almost every other manner?

17 A Henry Taylor never told me why he fired the handgun into
18 the air, so I can't speak as to if he --

19 Q Okay. So --

20 A -- was being honest with me about that.

21 Q And then --

22 A He didn't tell me that.

23 Q Then on what are you basing your opinion, that you're
24 testifying to the jury about, that there was this -- this purpose to Wild-
25 West dispel the fight? I mean, that's -- it seems to me that that gunfire

1 could be for myriad purposes.

2 A Yeah, but that came out during our preliminary investigation
3 with the witnesses that were detained. That the subject came out and
4 fired a -- a chrome, semi-automatic into the air.

5 Q But those witnesses that were detained, also consistently
6 deceived and pointed you in other directions. The witnesses from 215
7 pointed you to 231. And from 231, pointed you to 215. And then,
8 inevitably, no one knew anything about anything, because they were
9 intoxicated -- birthday, Tequila, correct?

10 A I agree. But the initial information we received about the gun
11 being brought into the fistfight in the parking lot, came from the Lepolo
12 family in 215. I agree that we were just given the framework, and not
13 everyone created -- like, cooperated, and then they eventually did point
14 back and forth. But our -- we did receive an initial framework out there,
15 in -- in statements. Although vague and -- and, you know, not the best
16 statements, that was what we got to start to work with.

17 Q Fair to say, if you could've acted on it, we'd be here sooner
18 than we are now, correct?

19 A Absolutely.

20 Q So, fair to say, there were some holes in what you were
21 provided -- big ones?

22 A Correct.

23 Q Okay. Now, going back to the shootout between Henry
24 Taylor and the other shooter, okay? There's no way, from analyzing the
25 shells there, to determine cartridge cases, okay? There's no way to

1 determine what's what, an order of shots. There's no way, correct?

2 A Correct. Not just from the physical evidence, no.

3 MR. MARGOLIS: Okay. Thank you. Pass the witness.

4 THE COURT: Mr. Giordani.

5 REDIRECT EXAMINATION

6 BY MR. GIORDANI:

7 Q Just to be clear, you're not -- you're not providing your --
8 your personal opinion or belief, as to the motive behind Mr. Taylor firing
9 into the air; is that right?

10 A Correct. I have no idea.

11 Q You weren't there?

12 A Correct.

13 Q The witnesses from Apartment 315 [sic], actually indicated
14 that it was fired into the air?

15 A The witnesses from 215.

16 Q I'm sorry, two --

17 A Yeah. Yes.

18 Q Apartment 215?

19 A Yes.

20 Q That's not Mr. Taylor's side of things, is it?

21 A No.

22 Q And there's certainly crossover, but it's not the group that he
23 was with that day, right?

24 A Correct.

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

1 THE COURT: Mr. Margolis, anything based on that?

2 RECROSS-EXAMINATION

3 BY MR. MARGOLIS:

4 Q There's no evidence of any other guns at the fistfight?

5 A Correct.

6 MR. MARGOLIS: Thanks.

7 THE COURT: Juror questions?

8 [Sidebar begins at 3:16 p.m.]

9 MR. GIORDANI: No objection. No objection. No objection.

10 MR. MARGOLIS: Sorry.

11 MR. GIORDANI: No objection.

12 MR. MARGOLIS: Yeah, I don't think anybody -- I don't think
13 anybody knows that information.

14 MR. GIORDANI: Yeah, I don't -- do you want to agree not to
15 ask this one?

16 MR. MARGOLIS: Yeah.

17 MR. GIORDANI: I think the parties are agreeing not to ask
18 this one.

19 THE COURT: It's not [indiscernible]?

20 MR. GIORDANI: I'm sorry?

21 THE COURT: It's not [indiscernible]?

22 MR. GIORDANI: From [indiscernible].

23 MR. MARGOLIS: [Indiscernible] don't think anybody knows.

24 MR. GIORDANI: Oh, no --

25 MR. MARGOLIS: Sure.

1 MR. GIORDANI: -- objection.

2 MR. MARGOLIS: Yeah.

3 MR. GIORDANI: I should've asked that. I have that in my
4 outline.

5 [Sidebar ends at 3:18 p.m.]

6 THE COURT: All right, Detective. You mentioned that the
7 lack of -- you mentioned the lack of cooperation. Were you informed that
8 the parties were related, at the time of the prelim investigation -- the
9 preliminary investigation?

10 THE WITNESS: No. Not initially, no.

11 THE COURT: What -- at what point would you say you came
12 into that information? If you remember.

13 THE WITNESS: It had been some time before I was informed
14 that members of Henry Taylor's family was -- were actually in dating
15 relationships with the members of the two -- the apartment from 215. I
16 can't put a timetable on of it, but I'm -- I'm sure it had been several
17 months before I found any of that information out.

18 THE COURT: Okay. Is the spot where AB4 was located,
19 assigned to a resident, or was it a visitor spot?

20 THE WITNESS: I do not know.

21 THE COURT: Is there any video surveillance, either from the
22 apartment complex security, private security, or cell phones?

23 THE WITNESS: No.

24 THE COURT: Do you have a physical description of Lepolo's
25 nephew, Mua, or a picture of him?

1 THE WITNESS: I don't know if I have one, in particular, of
2 Mua. I have a lot of family photos. I don't know if I have one of the
3 younger Mua.

4 THE COURT: Mr. Giordani, follow-up?

5 MR. MARGOLIS: No, your Honor. Thank you.

6 THE COURT: Mr. Margolis?

7 MR. MARGOLIS: No, thank you, Your Honor.

8 THE COURT: All right, Detective. Thank you so much for
9 your testimony. Please don't share it with anyone else involved in the
10 case, as it is ongoing. I appreciate your being here. You are excused.

11 THE WITNESS: Thank you.

12 THE COURT: State?

13 MR. GIORDANI: At this time, Your Honor, the State would
14 rest.

15 THE COURT: Okay. Mr. Margolis?

16 MR. MARGOLIS: Defense rests, Your Honor.

17 THE COURT: Okay. So, ladies and gentlemen, at this point
18 in time, both sides have rested. So what that means is, tomorrow, when
19 we come back, I'll read you the instructions on the law that applies to
20 this case. And then we'll move into what's referred to as closing
21 arguments.

22 Tomorrow, we will start at 9.30. Please remember, during
23 this recess, do not discuss or communicate with anyone, including fellow
24 jurors, in any way, regarding the case or its merits, either by voice,
25 phone, email, text, internet, or other means of communication or social

1 media.

2 Please do not read, watch, or listen to any news media
3 accounts or commentary about the case, do any research, such as
4 consulting dictionaries, using the internet, or using reference materials.
5 Please do not make any investigation, test a theory of the case, recreate
6 any aspect of the case, or any other way attempt to learn or investigate
7 the case on your own.

8 Please do not form or express any opinion, regarding this
9 matter, until it's formally submitted to you. We'll see you tomorrow
10 morning at 9:30. Thank you.

11 THE MARSHAL: All rise.

12 [Jury out at 3:21 p.m.]

13 THE COURT: All right, guys. Do you guys -- Mr. Lepolo, we
14 are going to do what's referred to as settled jury instructions now --
15 which means we go over the law that applies -- that I'm going to read to
16 the jurors. You are welcome to stay for this. Some individuals don't
17 want to stay because they think the process is boring. I'll leave it
18 completely up to you. It's your right to be here, but if you want to leave,
19 then that's fine, too.

20 [Counsel and Defendant confer]

21 THE DEFENDANT: I'll just go.

22 THE COURT: You're going to go?

23 THE DEFENDANT: Yeah.

24 THE COURT: Okay.

25 THE DEFENDANT: I've got a copy of the --

1 MR. MARGOLIS: You've got a paper, yeah?
2 THE COURT: Of the jury instructions?
3 THE DEFENDANT: Yeah.
4 THE COURT: Yeah. Of course. Tomorrow morning, 9:30,
5 guys. Thank you.
6 [Counsel confer]
7 [Court and Bailiff confer]
8 THE CLERK: We're still on the record, Your Honor.
9 THE COURT: Yeah, we can go off for a second.
10 [Recess at 3:24 p.m., recommencing at 3:28 p.m.]
11 THE COURT: All right. We're on the record in State of
12 Nevada versus Tuly Lepolo, C-345911. Mr. Lepolo is not present. He
13 chose to waive his own presence for the arguing or the settling of jury
14 instructions.
15 Mr. Margolis is here, as well as paralegal Mendoza. Both
16 Deputy District Attorneys, Mr. Giordani, as well as Ms. Conlin, are
17 present on behalf of the State. All right, guys.
18 So I think the easiest way to go through this first is, let's go
19 through the State's proposed. I have them numbered. And then, Mr.
20 Margolis, you just shout out if there's an objection.
21 Instruction number 1. It is now my duty.
22 MR. MARGOLIS: No.
23 THE COURT: Do you have a copy? Do you want --
24 MR. MARGOLIS: I -- no.
25 THE COURT: Do you want a copy?

1 MR. MARGOLIS: I gave him mine, and we, kind of -- I looked
2 at them all.

3 THE COURT: Okay.

4 MR. MARGOLIS: So I don't have any --

5 THE COURT: Are there any specific objections that you have
6 to these? Or any --

7 MR. MARGOLIS: There are no --

8 THE COURT: different language?

9 MR. MARGOLIS: -- specific objection to the ones that were
10 submitted. And, basically, every one that I would have proposed, the
11 State had the courtesy of including for me, so.

12 THE COURT: Okay. And then you guys saw my email to the
13 parties. We were just missing the playback instruction and the
14 admonition instruction. I've received the playback instruction. I'll put in
15 the admonition instruction.

16 For the expert instruction, I just --

17 MR. GIORDANI: Oh, can I stop you there?

18 THE COURT: Yeah.

19 MR. GIORDANI: I don't necessarily really want the playback
20 instruction.

21 THE COURT: Then we don't have to -- some people choose
22 not to have it. It's always -- it's always --

23 MR. GIORDANI: Yeah.

24 THE COURT: -- you guys' preference.

25 MR. GIORDANI: I don't know if the Defense has a position,

1 but it just seems like that sometimes.

2 MR. MARGOLIS: I'd rather leave it lie, as well, personally.

3 THE COURT: Okay.

4 MR. MARGOLIS: I mean, I think --

5 THE COURT: That's fine.

6 MR. GIORDANI: The testimony is what it is.

7 MR. MARGOLIS: It is what it is. And, you know, infer your
8 own conclusion from what was said up there, right?

9 THE COURT: Well, I mean, and we can play it by ear, right?
10 If someone asks for, Hey, we -- we don't agree on so-and-so's testimony,
11 or can you give us --

12 MR. MARGOLIS: Sure.

13 THE COURT: -- so-and-so's testimony --

14 MR. MARGOLIS: Sure.

15 THE COURT: -- then we can -- we can do that.

16 MR. GIORDANI: Okay.

17 MR. MARGOLIS: You know, Juror 6 says it says X, and --

18 THE COURT: Yeah.

19 MR. MARGOLIS: -- Juror 7 says Y. Sure.

20 THE COURT: In regards to the credibility, I just changed it to
21 "his and her" so it doesn't look like we're just saying "his" testimony.
22 Same thing for the expert witness. Changed it to "her" even though --
23 we -- we only had female experts. But I don't know, if Grover testifies.
24 Well, I just made "his or her". 43? Okay. So 44 says "punishment is not
25 up to you, it is up to them." So I better take 44 out.

1 MR. GIORDANI: No, the -- it says more than that doesn't it? I
2 thought that was the one that said --

3 MR. MARGOLIS: No, doesn't it say that they're just not
4 supposed to consider punishment, in rendering verdict?

5 THE COURT: Oh. Oh, oh, yeah, yeah. No, you['re right.
6 You're right. I thought there -- I thought that there was one that said "at
7 this time." There is one that says, "At this time, at a later date," but it's--
8 it's fine as is. It's fine as is.

9 MR. GIORDANI: Okay. Yeah. "In arriving at a verdict," that's
10 the one you're talking about?

11 THE COURT: Yeah.

12 MR. GIORDANI: Yeah.

13 THE COURT: Yeah, we're good. And 45. So, no, on the
14 playbacks. Yes, on the admonition. Can you -- All right. So let's talk
15 about -- I know you included second voluntary self-defense?

16 MR. GIORDANI: Yup.

17 THE COURT: Are you agreeing that all of those are on the
18 table, or are you just -- you just -- he asked you to --

19 MR. MARGOLIS: Had --

20 THE COURT: He -- you knew he was going to ask for those?
21 I'm --

22 MR. GIORDANI: That's correct.

23 THE COURT: I'm unclear. Okay.

24 MR. GIORDANI: I knew he was going to ask for those.

25 THE COURT: Sure. So what's the State's -- Mister --

1 MR. MARGOLIS: He is correct.

2 THE COURT: -- Margolis' present [sic] --

3 MR. MARGOLIS: He knew I was going to ask for --

4 THE COURT: Mr. Margolis' point is -- position is that first,
5 second, voluntary, and self-defense are all on the table?

6 MR. MARGOLIS: Absolutely. State's position is what?

7 MR. GIORDANI: As to voluntary, I think that there is enough
8 evidence, that that shouldn't -- shouldn't be argued or an issue. So I
9 have no issue with that. As to self-defense, obviously, Mr. Lepolo has
10 claimed he wasn't there, and then he's claimed he doesn't remember.
11 And assuming he doesn't testify to the contrary, I don't know that
12 evidence of self-defense is present, but I will submit it to the Court.

13 THE COURT: Well, so let me ask you this. Like, I mean,
14 voluntary, I think we're all on the same page, right? Like, how many
15 times has everybody heard the argument in regards to voluntary versus
16 first, of the guy who goes upstairs with the gun, finds his best friend in
17 bed, automatically starts shooting. Shooting is voluntary.

18 But then he goes downstairs because he forgot his gun in the
19 car, goes down, gets the car [sic], goes back up, right? I mean, we've --
20 we've all heard that argument --

21 MR. MARGOLIS: Sure.

22 THE COURT: -- five million times.

23 MR. MARGOLIS: Sure.

24 THE COURT: So I think that voluntary is, like, 110 percent on
25 board, because those scenarios, you know, we can see them coming

1 from a mile -- those arguments, you can see them coming from a mile
2 away.

3 Where I'm caught up on self-defense, though, is that because
4 he didn't testify -- which, of course, is his right -- what evidence do we
5 have of that threat, right? We have all this testimony about this fight
6 going on, and a shot, and then a break.

7 MR. MARGOLIS: I mean, I would argue that the break is
8 really, like a -- the three or four minutes of the Courtney Franco phone
9 call. The first three or four minutes of that phone call is the alleged
10 break. And I know that distance doesn't look particularly large on that
11 diagram, but I don't think it's like me walking to John, either, you know?

12 So my -- my argument vis-a-vis self-defense would be -- or
13 defense of others, as the case may be, would be this. You know, these
14 two guys are grappling, let's say right here, okay? And any of us that
15 have ever witnessed a fight, whether it be at school or in the street, fight,
16 fight, fight. Okay.

17 People gather around, people get closer, right?
18 Theoretically, my client would be very interested in the outcome of the
19 fight. And there, as -- if you read the discovery, there's -- there seems to
20 me to be a one-sided description of whom is winning the fistfight. And
21 it's not Wayne-Wayne, okay?

22 And the only -- anything in the discovery, or testimony, or
23 evidence that we've heard otherwise, is when paragon of credibility,
24 Henry Taylor, gets up there and says that his nephew was winning the
25 fight.

1 THE COURT: Right. And the --
2 MR. MARGOLIS: And then --
3 THE COURT: -- Samoans were --
4 MR. MARGOLIS: And then my client --
5 THE COURT: -- starting to --
6 MR. MARGOLIS: -- starts to -- you know, the Samoan start --
7 you know --
8 THE COURT: To hover.
9 MR. MARGOLIS: And, I'm sorry, if -- if that's the description
10 I'm given, and this guy is at some position of higher vantage point, and I
11 hear the gunshot, I don't know that that's a shot in the air, at the time
12 that the ship's going down, so to speak.
13 And that's great that everybody and their brother now
14 testifies that it was a shot in the air, designed to disperse the crowd. And
15 I tried to intimate that it's real convenient for that to be what that is, at
16 that point in time, you know? But, you know, we also have Courtney
17 Franco's description of 20 to 30 people there, primarily Black. That was
18 her description, not mine, okay?
19 Now, granted, my guys are not, you know, pale-completed,
20 okay? No one's going to convince them -- you know, confuse them for
21 an albino. They're much more likely to confuse them for an African
22 American --
23 THE COURT: Yeah.
24 MR. MARGOLIS: -- or for a person of mixed race.
25 THE COURT: Yeah.

1 MR. MARGOLIS: But I don't know that we have a lot of
2 evidence before the Court, period, about what that gunshot meant. And I
3 don't know that any of us can climb into Henry Taylor's head. I don't
4 want to go, for what it's worth. But I think that could be predicate for a
5 self-defense defense of other's argument, especially if we believe what's
6 in the discovery.

7 Which is generally pretty consistent that Mua didn't want to
8 fight, but once he did, Wayne-Wayne was not winning. And then it
9 becomes hair-pulling, and the pejorative association between macho
10 guys, is that dudes don't pull each other's hair, okay, in fights. That's
11 something that girls do, right? So -- not my words. I'm just casting the
12 sexist trope out there so I can service my argument, okay?

13 So the Samoans, obviously, are going to see any attempt at
14 hair-pulling, as totally unfair, you know? My big thing is, there's one gun
15 at this -- this fight, and it wasn't brought by a Samoan, and my client's
16 not packing, you
17 know?

18 So I -- I think it's great that everybody is so far into guns that
19 we have more than one per person in this country. But I, personally --
20 you don't even need to fire the gun in the air. If all of a sudden I see you
21 waving your gad around, I'm threatened. I'm sufficiently threatened, you
22 know? I'm five-foot nothing, a hundred and nothing, and I don't have a
23 gun, you know? So that's -- that's a threat to me.

24 THE COURT: The only question, though, I mean, I think we
25 have to make a differentiation, is between what the discovery shows and

1 what we have at trial, right? Because the law says, you know, if the
2 Defense presents any evidence, however slide, or you know what I
3 mean?

4 MR. MARGOLIS: Okay. Sure.

5 THE COURT: Then you get --

6 MR. MARGOLIS: So --

7 THE COURT: -- the instructions. So then I'm stuck with,
8 okay. Well -- but what, at trial, do we have? We have Henry's testimony
9 about the gun --

10 MR. MARGOLIS: We have --

11 THE COURT: -- in the air.

12 MR. MARGOLIS: -- a couple of their -- of -- of the State's
13 witnesses. They're the only witnesses we have. But I'm going to go one
14 step further. Taylor-Forman witnesses, okay? It's Taylor-Forman
15 witnesses that are saying that the shot was in the air.

16 Did Courtney Franco see that shot? I think I established that
17 she didn't, okay? She sees a big fight break out and all of the hoopla
18 surrounding the fight, as we described. She goes down the hallway to
19 get her phone. Before she's back to the window, shots have been fired,
20 okay?

21 I would submit -- and I don't think the State would disagree
22 with me -- that Courtney Franco is easily the most -- amongst the lay
23 witnesses, she's the -- the jewel in the crown --

24 THE COURT: Her and Lowe.

25 MR. MARGOLIS: -- okay? Huh?

1 THE COURT: Her and Lowe. I -- Lowe's --

2 MR. MARGOLIS: Lowe, sure.

3 THE COURT: -- could be --

4 MR. MARGOLIS: But I mean, I have -- sure. Both of them
5 were very, very direct about what they were able to observe. And, more
6 importantly, from my perspective, obviously, what they weren't able to
7 observe, okay?

8 So I would argue that the testimony, that the shot was fired
9 into the air, that we have received in this trial, is primarily from three
10 witnesses that I feel like I've pretty thoroughly discredited on the stand,
11 you know? And the other witness that allegedly said the witnesses from
12 215 -- from apartment 215, that allegedly told Detective Sanborn that,
13 well, they're not here.

14 THE COURT: Let me --

15 MR. MARGOLIS: And that hasn't come in.

16 THE COURT: -- ask you both your memories. From my
17 memory, I thought both Lowe -- well, I'm sorry. Courtney's -- Courtney,
18 we have a good timing on, because we have the 911 call. But I thought
19 both between her and Lowe, they said that several -- did they say four to
20 five minutes had passed between gunshots?

21 MR. GIORDANI: I thought it was two to three.

22 THE COURT: Two to three?

23 MR. MARGOLIS: Two to three.

24 THE COURT: Okay.

25 MR. MARGOLIS: And if we're agreeing, then that's pretty --

1 THE COURT: Yeah. I mean, two to three --

2 MR. MARGOLIS: -- extraordinary sign.

3 THE COURT: -- minutes is different than five minutes in lab
4 time, in -- in regards to the analysis.

5 MR. GIORDANI: Okay.

6 THE COURT: So I think -- I think it's really -- I have to be
7 honest, respectfully, I think it's really thin, and I think it's really close. But
8 I think that the law says you get it, even if it's thin, so.

9 MR. MARGOLIS: Hallelujah, Your Honor. Thank you very
10 much. I agree. As in, great, you know? I would not --

11 MR. GIORDANI: Well, for --

12 MR. MARGOLIS: -- ever say otherwise.

13 MR. GIORDANI: -- what it's worth, I'm sorry, Ms. Conlin just
14 slapped me in the arm and showed me the trial notes that she was
15 taking, and it is four to five minutes, according to Ms. Conlin.

16 MR. MARGOLIS: Oh.

17 THE COURT: I thought it was four to five minutes.

18 MR. GIORDANI: According to her notes. And, of course, the
19 Court thought it was that, too, so.

20 MR. MARGOLIS: Damn your studious note-taking.

21 MS. CONLIN: I know.

22 MR. GIORDANI: That changes the analysis.

23 THE COURT: I mean --

24 MR. MARGOLIS: Nice.

25 THE COURT: I've got to be honest. The fact that the State

1 isn't vehemently arguing it, also kind of tells me a little something. I
2 mean, it doesn't seem like you're -- sometimes you're, like, morally
3 opposed -- the State's, like, morally opposed to something, right? And
4 they're, like, this is crazy, this and that. It seems to me, like, you're, like, I
5 don't think they have it, but I'm going to submit it.

6 MR. GIORDANI: Judge, I have so much respect for this
7 Court.

8 THE COURT: Oh, okay.

9 MR. GIORDANI: -- that I don't need --

10 THE COURT: Uh-huh.

11 MR. GIORDANI: -- to vehemently --

12 MR. MARGOLIS: All right. All right.

13 THE COURT: Okay.

14 MR. GIORDANI: -- argue, okay? When I submit it to the
15 Court, it's a sign of respect --

16 THE COURT: Oh, okay. yeah.

17 MR. GIORDANI: -- for the Court's intelligence.

18 THE COURT: I'll remember that.

19 MR. GIORDANI: And legal aptitude.

20 THE COURT: I think it's real slim that I should even give it,
21 but I'm going to let you have it.

22 MR. MARGOLIS: Thank you, Your Honor. Something tells
23 me, that, and a whole lot of luck, still might not get me there, but I
24 appreciate it.

25 THE COURT: That's okay. All right, guys. The only thing is,

1 is I need -- somebody work on this for me. I don't know what it is --

2 MR. MARGOLIS: Peer victory.

3 THE COURT: -- with your -- the formatting. Whenever you
4 guys give me a verdict form, when we print it, it comes with that, those
5 special e signs as the boxes.

6 MR. GIORDANI: Oh, okay.

7 THE COURT: So if you could just print it. I don't think when
8 you print it, it comes with those boxes. So can you please just --

9 MR. GIORDANI: Print one?

10 THE COURT: -- print one for me, and then just bring it?

11 MR. GIORDANI: Okay.

12 THE COURT: And then --

13 MR. GIORDANI: Are we going to number these?

14 THE COURT: I already have them numbered.

15 MR. GIORDANI: Oh.

16 THE COURT: So I'm just going to print them for you --

17 MR. GIORDANI: Thank you.

18 THE COURT: -- right now, numbered, and then you'll have
19 them.

20 MR. GIORDANI: Thank you. Thank you.

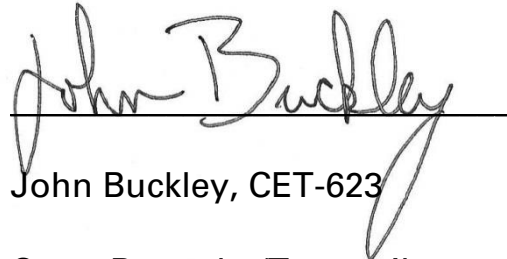
21 THE COURT: So just give me a few minutes. We can go off,
22 and I will just make these changes.

23 [Proceedings adjourned at 3:42 p.m.]

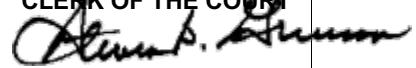
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1 ATTEST: I do hereby certify that I have truly and correctly
2 transcribed the audio/video proceedings in the above-entitled case to the
3 best of my ability.
4

5 
6 John Buckley, CET-623
7 Court Recorder/Transcriber
8

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10 Date: February 6, 2023
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1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

10 vs.

11 TULY LEPOLO, #8471381,
12 Defendant.

)
) CASE#: C-20-345911-1
)
) DEPT. VI
)
)
)
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)

13 BEFORE THE HONORABLE JACQUELINE BLUTH
14 DISTRICT COURT JUDGE
WEDNESDAY, AUGUST 24, 2022

15 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 6**

16
17 APPEARANCES:

18 For the Plaintiff:

JOHN GIORDANI, ESQ.
ELISA CONLIN, ESQ.

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20 For the Defendant:

JASON MARGOLIS, ESQ.

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25 RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

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WITNESSES FOR THE PLAINTIFF

None

WITNESSES FOR THE DEFENDANT

None

1 Las Vegas, Nevada, Wednesday, August 24, 2022

2

3 [Case called at 9:40 a.m.]

4 THE MARSHAL: All rise.

5 [Jury in at 9:40 a.m.]

6 THE COURT: All right. Good morning, everyone. Please be
7 seated. We are on the record in State of Nevada versus Tuly Lepolo, C-
8 345911. Mr. Lepolo is present with Counsel, Mr. Margolis, as well as
9 Paralegal Mendoza. Both Deputy District Attorneys, Mr. Giordani, as well
10 as Ms. Conlin, are present on behalf of the State.

11 Do the parties stipulate to the presence of the jury?

12 MR. GIORDANI: We do, Your Honor.

13 MR. MARGOLIS: Yes, Your Honor.

14 THE COURT: All right. Okay. So when you walked in, you
15 should have a copy of the jury instructions. I'm going to go through the
16 law that applies to the case, now, that's in these packets. These
17 instructions will go with you back into the deliberation room. So your
18 set, is your set.

19 So just like your notebook, you can write instructions -- or
20 excuse me, you can write notes on your instructions. Anything that, you
21 know, you would like to do with them, is completely fine, but know that
22 they go back in there with you.

23 And I always encourage all -- all the juries that I work with, to
24 go back there and read through the instructions. Because, obviously, the
25 -- the law, with this level of specificity, is foreign to you, right? So go

1 back there, read it. Just get comfortable with it, all right?

2 Ladies and gentlemen, members of the jury, it is now my
3 duty as judge to instruct you in the law that applies to this trial. It is your
4 duty as jurors to follow these instructions, and to apply the rules of law
5 to the facts as you find them from the evidence.

6 You must not be concerned with the wisdom of any rule of
7 law stated in these instructions. Regardless of any opinion you may
8 have as to what the law ought to be, it would be a violation of your oath
9 to base a verdict upon any other view of the law than that given, and the
10 instructions of the Court.

11 Number 2. If, in these instructions, any rule, direction, or
12 idea is repeated or stated in different ways, no emphasis thereon is
13 intended by me and none may be inferred by you. For that reason, you
14 are not to single out any certain sentence or any individual point or
15 instruction and ignore the others, but you are to consider all the
16 instructions as a whole and regard each in the light of all of the others.

17 The order in which the instructions are given has no
18 significance as to their relative importance.

19 Number 3. A second amended Information is but a formal
20 method of accusing a person of a crime. It is not, of itself, any evidence
21 of his guilt. In this case, it is charged, in an amended Information, that
22 on or about the 3rd day of April, 2016, the Defendant, Tuly Lepolo, aka
23 Tutamua Lepolo, committed the crimes of murder with use of a deadly
24 weapon, and assault with a deadly weapon.

25 It is the duty of the jury to apply the rules of law contained in

1 these instructions, to the facts of the case, and determine whether or not
2 the Defendant is guilty of the offenses charged. Count 1, murder with
3 use of a deadly weapon, did willfully, unlawfully, feloniously, and with
4 malice aforethought, kill Raquel Stapinski, a human being, with use of a
5 deadly weapon, to wit, firearm, by shooting at and into the body of the
6 said Raquel Stapinski, the said killing having been willful, deliberate, and
7 premeditated.

8 Count 2, assault with a deadly weapon. Did willfully,
9 unlawfully, feloniously, and intentionally place another person in
10 reasonable apprehension of immediate bodily harm, and/or did willfully
11 and unlawfully attempt to use physical force against another person, to
12 wit, Flora Marie Taylor, with use of a deadly weapon, to wit, a firearm, by
13 pointing said firearm at Flora Marie Taylor.

14 Number 4. In this case, the Defendant is accused, in a
15 second amended Information, alleging a charge of open murder. This
16 charge includes and encompasses murder of the first degree, murder of
17 the second degree, and voluntary manslaughter. The jury must decide if
18 the Defendant is guilty of any offense, and if so, of which offense.

19 Number 5. Murder is the unlawful killing of a human being,
20 with malice aforethought, whether expressed or implied. The unlawful
21 killing may be affected by any of the various means by which death may
22 be occasioned.

23 Number 6. Malice of forethought means the intentional
24 doing of a wrongful act, without legal cause or excuse of what the law
25 considers adequate provocation. The condition of mind described as

1 malice aforethought may arise, not alone from anger, hatred, revenge, or
2 from a particular ill will, spite, or grudge toward the person killed, but
3 may result from any unjustifiable or unlawful motive or purpose to injure
4 another.

5 Which proceeds from a heart fatally bent on mischief or with
6 reckless disregard of consequences and social duty. Malice of
7 forethought does not imply deliberation, or the lapse of any considerable
8 time between the malicious intention to injure another and the actual
9 execution of the intent, but denotes, rather, an unlawful purpose and
10 design, in contradistinction to accident and mischance.

11 Number 7. Express malice is that deliberate intention,
12 unlawfully, to take away the life of a fellow creature, which is manifested
13 by external circumstances capable of proof. Malice may be implied
14 when no considerable provocation appears, or when all the
15 circumstances of the killing show an abandoned and malignant heart.

16 Number 8. The Prosecution is not required to present direct
17 evidence of the Defendant's state of mind as it existed during the
18 commission of a crime. And the jury may infer the existence of a
19 particular state of mind, from the circumstances disclosed by the
20 evidence.

21 Number 9. Any kind of willful, deliberate, and premeditated
22 killing, is murder of the first degree. All three elements, willfulness,
23 deliberation, and premeditation, must be proven, beyond a reasonable
24 doubt, before an accused can be convicted of willful, deliberate,
25 premeditated first degree murder.

1 Number 10. Willfulness is the intent to kill. There need be
2 no appreciable space of time between formation of the attempt to kill
3 and the act of killing.

4 Number 11. Deliberation is the process of determining upon
5 a course of action to kill, as a result of thought, including weighing the
6 reasons for and against the action, and considering the consequences of
7 the actions.

8 Number 12. A deliberate determination may be arrived at in
9 a short period of time. But in all cases, the determination must not be
10 formed in passion. Or, if formed in passion, it must be carried out after
11 there has been time for the passion to subside and deliberation to occur.
12 A mere unconsidered and rash impulse is not deliberate, even though it
13 includes the intent to kill.

14 Number 13. Premeditation is a design, a determination to
15 kill, distinctly formed in the mind, by the time of the killing.

16 Number 14. Premeditation need not be for a day, an hour, or
17 even a minute. It may be as instantaneous as successive thoughts of the
18 mind. For if the jury believes, from the evidence, that the act constituting
19 the killing has been preceded by and has been the result of
20 premeditation, no matter how rapidly the act follows the premeditation,
21 it is premeditated.

22 Number 15. The law does not undertake the measuring units
23 of time, the length of the period during which the thought must be
24 pondered before it can ripen into an Intent to kill, which is truly
25 deliberate and premeditated. The time will vary with different

1 individuals and under varying circumstances.

2 Number 16. The true test is not the duration of time, but
3 rather the extent of the reflection. A cold, calculated judgment and
4 decision may be arrived at in a short period of time. But a mere
5 unconsidered and rushed impulse, even though it includes an intent to
6 kill, is not deliberation and premeditation as will fix an unlawful killing as
7 murder of the first degree.

8 Number 17. Murder of the second degree is murder with
9 malice aforethought, but without the admixture of premeditation and
10 deliberation. All murder which is not murder of the first degree, is
11 murder of the second degree.

12 Number 18. It is a killing, upon a sudden quarrel or heat of
13 passion caused by a provocation sufficient to make the passion
14 irresistible. The provocation required for voluntary manslaughter must
15 either consist of a serious and highly provoking injury inflicted upon the
16 person killing, sufficient to excite an irresistible passion in a reasonable
17 person, or an attempt by the person killed to commit a serious personal
18 injury on the person killing.

19 Voluntary manslaughter is the unlawful killing of a human
20 being, without malice aforethought and without deliberation or
21 premeditation. For the sudden violent impulse of passion to be
22 irresistible, resulting in the killing, which is voluntary manslaughter,
23 there must not have been an interval between the assault or
24 provocation, and the killing, sufficient for the voice of reason and
25 humanity to be heard for.

1 If there should appear to have been sufficient time for a cool
2 head to prevail and the voice of reason to be heard, the killing shall be
3 attributed to deliberate revenge, and determined, by you, to be murder.
4 The law assigns no fixed period of time for such an interval, but leaves
5 its determination to the jury, under the facts and circumstances of the
6 case.

7 Number 19. The heat of passion, which will reduce a
8 homicide for voluntary manslaughter, must be such an irresistible
9 passion as naturally would be aroused in the mind of an ordinarily
10 reasonable person in the same circumstances.

11 A Defendant is not permitted to set up his own standard of
12 conduct and to justify or excuse himself because his passions were
13 aroused, unless the circumstances in which he was placed, and the fact
14 that confronted him, were such as would have aroused the irresistible
15 passion of the ordinarily reasonable man, if likewise situated.

16 The basic inquiry is whether or not, at the time of the killing,
17 the reason of the accused was observed or disturbed by passion to such
18 an extent as would cause the ordinarily reasonable person, or average
19 disposition -- of average disposition, to act rashly and without
20 deliberation and reflection, and from such passions rather than from
21 judgement.

22 Number 20. When it is impossible to commit a particular
23 crime without committing, at the same time and by the same conduct,
24 another offense of lesser or greater degree, the latter is, with respect to
25 the former, a lesser included offense.

1 If you are not satisfied beyond a reasonable doubt that the
2 Defendant is guilty of the offense charged, he may, however, be found
3 guilty of any lesser included offense if the evidence is sufficient to
4 establish his guilt of such lesser offense, beyond a reasonable doubt.

5 The offense of murder, which actually charges the Defendant
6 with first degree murder, necessarily includes the lesser offense of
7 second degree murder. If you are convinced, beyond a reasonable
8 doubt, that the crime of murder has been committed by the Defendant,
9 but you have a reasonable doubt whether such murder was of the first or
10 of the second degree, you must give the Defendant the benefit of the
11 doubt and return a verdict of murder of the second degree.

12 Voluntary manslaughter is a lesser included offense of both
13 first and second degree murder. Thus, you may only return a verdict of
14 voluntary manslaughter, if you first rule out first and second degree
15 murder.

16 Number 21. The jury is instructed that upon the question of
17 intent, the law presumes a man to intend the reasonable and natural
18 consequences of any act intentionally done. And this presumption of
19 law will always prevail, unless, from a consideration of all the evidence,
20 bearing upon the point, the jury entertained a reasonable doubt whether
21 such intention did exist.

22 Number 22. You are instructed that the doctrine of
23 transferred intent provides where a person unlawfully attempts to kill a
24 certain person, but by mistake or inadvertence, kills or injures a different
25 person. The crime committed is the same as though the intended victim

1 had been killed.

2 Number 23. If you believe that at the time of the shooting, in
3 this case, that the Defendant intended to kill any person, it is of no legal
4 consequence that he mistakenly killed a different person. His intent to
5 kill transfers to the person actually harmed.

6 Number 24. During an attack upon a group, a defendant's
7 intent to kill need not be directed at any one individual. It is enough if
8 the intent to kill is directed at the group.

9 Number 25. A person who unlawfully attempts to use
10 physical force against the person of another, or intentionally places
11 another person in reasonable apprehension of immediate bodily harm, is
12 guilty of assault. To constitute an assault, it is not necessary that any
13 actual injury be inflicted.

14 Number 26. You are instructed that if you find the Defendant
15 guilty of murder and/or assault, you must also determine whether or not
16 a deadly weapon was used in the commission of each crime. If you find,
17 beyond a reasonable doubt, that a deadly weapon was used in the
18 commission of such an offense, then you shall return the appropriate
19 guilty verdict reflecting, with use of a deadly weapon.

20 If, however, you find that a deadly weapon was not used in
21 the commission of such an offense, but you find that it was committed,
22 then you shall return the appropriate guilty verdict, reflecting that a
23 deadly weapon was not used.

24 Number 27. A deadly weapon is any instrument which, if
25 used in the ordinary manner contemplated by its design and

1 construction, will or is likely to cause substantial bodily harm or death, or
2 any weapon or device, instrument, material, or substance which, under
3 the circumstances of which it is used, attempted to be used, or
4 threatened to be used, is readily capable of causing substantial bodily
5 harm or death. You are instructed that a firearm is a deadly weapon.

6 Number 28. The state is not required to have recovered the
7 deadly weapon used in an alleged crime, or to produce the deadly
8 weapon in court at trial, to establish that a deadly weapon was used in
9 the commission of the crime.

10 Number 29. The killing of another person in self-defense is
11 justified and not unlawful, when the person who does the killing actually
12 and reasonably believes, one, that there is imminent danger that the
13 assailant will either kill him or cause him great bodily injury, and, two,
14 that it is absolutely necessary, under the circumstances, for him to use,
15 in self-defense, force or means that might cause the death of the other
16 purpose -- person, for the purpose of avoiding death or great bodily
17 injury to himself.

18 Number 30. A bare fear of death or great bodily injury is not
19 sufficient to justify killing. To justify taking the life of another, in self-
20 defense, the circumstances must be sufficient to excite the fears of a
21 reasonable person placed in a similar situation. The person killing must
22 act under the influence of those fears alone, and not in revenge.

23 Number 31. An honest but unreasonable belief in the
24 necessity for self-defense, does not negate malice and does not reduce
25 the offense from murder to manslaughter.

1 Number 32. The right of self-defense is not available to an
2 original aggressor. That is a person who has sought a quarrel with the
3 design to force a deadly issue, and, thus, through his fraud, contrivance,
4 or fault, to create a real or apparent necessity for making a felonious
5 assault.

6 However, where a person without voluntarily seeking,
7 provoking, inviting, or willingly engaging in the difficulty of his own free
8 will, is attacked by an assailant, he has the right to stand his ground and
9 need not retreat when faced with the threat of deadly force.

10 Number 33. Actual danger is not necessary to justify a killing
11 in self-defense. A person has a right to defend from apparent danger, to
12 the same extent as he would from actual danger. The person killing is
13 justified if, one, he is confronted by the appearance of imminent danger,
14 which arouses in his mind, an honest belief and fear that he is about to
15 be killed or suffer great bodily injury, and, two, he acts solely upon these
16 appearances and his fear and actual beliefs, and, three, a reasonable
17 person in a similar situation would believe himself to be in like danger.

18 Number 34. The killing is justified even if it develops,
19 afterward, the person was mistaken about the extent of the danger.

20 Number 35. If evidence of self-defense is present, the State
21 must prove, beyond a reasonable doubt, that the Defendant did not act
22 in self-defense. If you find that the State has failed to prove, beyond a
23 reasonable doubt, that the Defendant did not act in self-defense, you
24 must find the Defendant not guilty.

25 Number 36. The flight of a person after the commission of a

1 crime is not sufficient in itself to establish guilt. However, if flight is
2 proved, it is circumstantial evidence in determining guilt or innocence.
3 The essence of flight embodies the idea of deliberately going away, with
4 consciousness of guilt, and for the purpose of avoiding apprehension or
5 prosecution. The weight to which such circumstance is entitled, is a
6 matter for the jury to determine.

7 Number 37. To constitute the crime charged, there must
8 exist a union or joint operation of an act forbidden by law, and intent to
9 do that. The intent with which an act is done, is shown by the facts and
10 circumstances surrounding the case.

11 Do not confuse intent with motive. Motive is what prompts a
12 person to act. Intent refers only to the state of mind with which the act is
13 done. Motive is not an element of the crime charged, and the State is
14 not required to prove a motive, on the part of the Defendant, in order to
15 convict. However, you may consider evidence of motive, or lack of
16 motive, as a circumstance in the case.

17 Number 38. The Defendant is presumed innocent until the
18 contrary is proved. This presumption places upon the State the burden
19 of proving beyond a reasonable doubt every element of the crime
20 charged, and that the Defendant is the person who committed the
21 offense.

22 A reasonable doubt is one based on reason. It is not mere
23 possible doubt, but it's such a doubt as would govern or control a person
24 in the more weighty affairs of life. If the minds of the jurors, after the
25 entire comparison and consideration of all the evidence, are in such a

1 condition that they can say that they feel an abiding conviction of the
2 truth of the charge, there is not a reasonable doubt.

3 Doubt, to be reasonable, must be actual, not mere possibility
4 or speculation. If you have a reasonable doubt as to the guilt of the
5 Defendant, he is entitled to a verdict of not guilty.

6 Number 39. It is a constitutional right of a Defendant in a
7 criminal trial, that he may not be compelled to testify. Thus, the decision
8 as to whether he should testify is left to the Defendant, on the advice and
9 counsel of his attorney. You must not draw any inference or guilt -- of
10 guilt from the fact that he does not testify. Nor should this fact be
11 discussed by you, or enter into your deliberations, in any way.

12 Number 40. The evidence which you are to consider in the
13 case consists of the testimony of the witnesses, the exhibits, and any
14 facts admitted or agreed to by counsel. There are two types of evidence,
15 direct and circumstantial. Direct evidence is the testimony of a person
16 who claims to have personal knowledge of the commission of the crime
17 which has been charged, such as an eyewitness.

18 Circumstantial evidence is the proof of a chain of facts and
19 circumstances which tend to show whether the Defendant is guilty or not
20 guilty. The law makes no distinction between the weight to be given
21 either direct or circumstantial evidence.

22 Therefore, all of the evidence in the case, including the
23 circumstantial evidence, should be considered by you in arriving at your
24 verdict. Statements, arguments, and opinions of counsel are not
25 evidence in the case. However, if the attorneys stipulate to the existence

1 of a fact, you must accept the stipulation as evidence and regard that fact
2 as proof.

3 You must not speculate to be true any insinuations
4 suggested by a question asked a witness. A question is not evidence
5 and may be considered only if it supplies meaning to the answer. You
6 must disregard any evidence to which an objection was sustained by the
7 Court, and any evidence ordered stricken by the Court. Anything you
8 may have seen or heard outside the courtroom, is not evidence. It must
9 also be disregarded.

10 Number 41. The credibility or believability of a witness
11 should be determined by his or her manner upon the stand, his or her
12 relationship to the parties, his or her fears, motives, interests, or feelings,
13 his or her opportunity to have observed the matter to which he or she
14 testified, the reasonableness of his or her statements, and the strength or
15 weaknesses of his or her recollection.

16 If you believe that a witness has lied about any material fact
17 in the case, you may disregard the entire testimony of that witness, or
18 any portion of his or her testimony, which is not proved by other
19 evidence.

20 Number 42. A witness who has special knowledge, skill,
21 experience, training, or education in a particular science, profession, or
22 occupation, is an expert witness. An expert witness may give his
23 opinion as to any matter in which he or she is skilled. You should
24 consider such expert opinion and weigh the reasons, if any, given for it.

25 You are not bound, however, by such an opinion. Give it the

1 weight to which you deem it entitled, whether that be greater slight, and
2 you may reject it, if, in your judgment, the reasons given for it are
3 unsound.

4 Number 43. Although you are to consider only the evidence
5 in the case, in reaching a verdict, you must bring to the consideration of
6 the evidence, your everyday common sense and judgment, as
7 reasonable men and women. Thus, you are not limited solely to what
8 you see and hear as the witnesses testified. You may draw reasonable
9 inferences from the evidence which you feel are justified in the light of
10 common experience, keeping in mind that such inferences should not be
11 based on speculation or guess.

12 A verdict may never be influenced by sympathy, prejudice, or
13 public opinion. Your decision should be the product of sincere judgment
14 and sound discretion, in accordance with these rules of law.

15 Number 44. In arriving at a verdict in this case, as to whether
16 the Defendant is guilty or not guilty, the subject of penalty or
17 punishment is not to be discussed or considered by you, and should in
18 no way influence your verdict.

19 Number 45. During your deliberations, you are not to
20 communicate with anyone other than your fellow jurors, in the jury
21 deliberation room, in any manner regarding the facts and circumstances
22 of this case or its merits, either by voice, phone, email, text, messaging,
23 internet, or other means.

24 You are admonished not to read, watch, or listen to any news
25 or media accounts or commentary about the case. You are not

1 permitted to do any independent research, such as consulting
2 dictionaries, using the internet, or using any other reference materials.

3 You are further admonished to not conduct any
4 investigation, test a theory of the case, recreate any aspect of the case,
5 or in any other way investigate or learn about the case on your own.

6 Number 46. When you retire to consider your verdict, you
7 must select one of your members to act as foreperson, who will preside
8 over your deliberation, and will be your spokesman here in court.

9 During your deliberation, you will have all the exhibits which
10 were admitted into evidence, these written instructions, and forms of
11 verdict which have been prepared for your convenience.

12 Your verdict must be unanimous. As soon as you have
13 agreed upon a verdict, have it signed and dated by your foreperson, and
14 then return with it to this room.

15 Number 47. Now you will listen to the arguments of
16 Counsel who will endeavor to aid you to reach a proper verdict, by
17 refreshing, in your minds, the evidence, and by showing the application
18 thereof of the law.

19 But whatever counsel may say, you will bear in mind that it is
20 your duty to be governed, in your deliberation, by the evidence as you
21 understand it and remember it to be, and by the law, as given to you in
22 these instructions, with the sole, fixed, and steadfast purpose of doing
23 that equal and exact justice between the Defendant and the State of
24 Nevada, given by District Court Judge Jacqueline Blume.

25 THE COURT: State, are you prepared at this time to give

1 your closing argument?

2 MS. CONLIN: Yes, Your Honor.

3 THE COURT: All right.

4 MS. CONLIN: In every criminal case, the State must prove
5 that crimes have been committed and that an individual committed
6 those crimes. In this case, we have two counts, murder with use of a
7 deadly weapon, and assault with use of a deadly weapon. Before I go
8 into the elements of those counts, I want to talk about the types of
9 evidence.

10 Direct, is the testimony that you heard from the witness
11 stand. Circumstantial, is a chain of facts and circumstances which tend
12 to show whether the Defendant is guilty or not guilty. If you'll recall, in
13 the beginning of this trial, the example, regarding the rain. You don't
14 need to see the rain fall from the sky to know that it rained outside.

15 In addition, in some crime shows, you might hear the phrase,
16 Oh, the case is only circumstantial. But here in Nevada, the law is that
17 the law makes no distinction between the weight to be given to direct or
18 circumstantial evidence.

19 Both of the counts in this case involve a deadly weapon. You
20 received the instruction, regarding what a deadly weapon is, but you're
21 also instructed that a firearm is a deadly weapon. There's no dispute
22 there was a firearm used in this case. A firearm is a deadly weapon.
23 You can check that
24 off your list.

25 So the count regarding assault with use of a deadly weapon.

1 Assault is defined as unlawfully attempting to use physical force against
2 another, or intentionally placing another person in reasonable
3 apprehension of immediate bodily harm. And sometimes, outside of the
4 courtroom, we use a phrase "someone assaulted me," and that means he
5 beat me up. But in Nevada, the law of assault is not that. In fact, for
6 assault, there -- it's not necessary to prove that an actual injury occurred.

7 You heard from Flo Taylor, regarding what happened on
8 April 3rd, 2016. She indicated that Tuly Lepolo went to what she
9 described as the "white truck," and at that point, he walks over to her
10 with a gun in his hand. He puts the gun in her face, makes a threat along
11 the lines of, Oh, what's up, motherfuckers? She closes her eyes, puts her
12 hands up, and says, No, wait.

13 She told you that she was scared for her life. And you saw
14 her on the stand. You saw her demeanor on the stand. Putting a gun in
15 someone's face, after making a threat, is an assault with use of a deadly
16 weapon. You can check assault with use of a deadly weapon off on your
17 verdict form.

18 Moving on to the second count, murder with use of a deadly
19 weapon. You will see, on your verdict form, first degree murder with use
20 of a deadly weapon, second degree murder with use of a deadly
21 weapon, voluntary manslaughter with use of a deadly weapon, and not
22 guilty. And I'm going to walk through each of the first degree, second
23 degree, voluntary manslaughter.

24 But I first want to talk to you about what this case is not. This
25 is not a case of voluntary manslaughter. Voluntary manslaughter is

1 defined as the unlawful killing of a human being, without malice
2 aforethought, and without deliberation or premeditation. And some of
3 those terms, I will define, under murder.

4 But voluntary manslaughter is without those elements. In
5 addition, voluntary manslaughter is a heat of passion crime caused by
6 some sort of provocation, sufficient to make that passion irresistible. A
7 stereotypical law school example is a man comes home, goes into his
8 bedroom, sees his best friend and his wife in bed together. And he, on
9 impulse, grabs the gun off the dresser, shoots both of them. That's the
10 stereotypical voluntary manslaughter heat of passion.

11 What voluntary manslaughter is not, is that man coming
12 home, going into the bedroom, seeing his best friend and wife in the car
13 (sic), and he decides to go back downstairs, go outside the house, go
14 across the street to a house where he knows a gun is at, grabs the gun,
15 comes back to his house, back upstairs, and then shoots the wife and
16 best friend. That is not voluntary manslaughter.

17 This case is not voluntary manslaughter, because you heard
18 about the fight in the parking lot between Wayne-Wayne and Tuly
19 Lepolo's son. You heard about Henry Taylor shooting off that round in
20 the air. And from there, witnesses describe a time gap between the
21 initial gunshot and the time of the shooting in front of Apartment 231.

22 That time gap is crucial, because you're also instructed,
23 regarding voluntary manslaughter, that there must not be an interval
24 between that assault or provocation and the time of the killing. If there is
25 sufficient time for the voice of humanity and reason to prevail, that is

1 determined to be deliberate revenge, and should be determined, by you,
2 as murder.

3 So, again, here we have a time gap of Ta'Von Lowe describes
4 four to five minutes between that initial gunshot in the air by Henry
5 Taylor, and the time that he hears the shooting in front of Apartment
6 231. That is sufficient time to -- for cooler heads to prevail. This is not
7 voluntary manslaughter.

8 Again, just to visualize the storyline of the fight in the parking
9 lot. Henry Taylor shooting in the air in that parking lot. And from there,
10 you heard that people dispersed, people went back to their respective
11 homes, and there was a time gap, as Ta'Von Lowe described, as four to
12 five minutes between that initial gunshot, and the time that he heard the
13 gunshots in front of Apartment 231. That -- this case is not voluntary
14 manslaughter.

15 Let's discuss murder. So murder is defined as the unlawful
16 killing of a human, being with malice aforethought, whether expressed
17 or implied. Murder of the second degree is murder with malice
18 aforethought, but not the elements of deliberation and premeditation.
19 So any murder that is not first degree murder, is second degree murder.
20 Express malice is a deliberate intention, unlawfully, to take away the life
21 of another, which is manifested by external circumstances capable of
22 proof.

23 Implied malice is when no considerable provocation appears,
24 or when all the circumstances of the killing show an abandoned and
25 malignant

1 part. First degree murder has three elements, willful, premeditated,
2 deliberate, and we'll go through each of those. Willful intent to kill. All
3 that means is, it wasn't an accident. The trigger being pulled wasn't an
4 accident.

5 And, here, we heard that the shooter went to the car -- the
6 white Chevrolet Suburban from the parking lot, opened the car door,
7 grabbed the gun from the car, closed that door, locked the car, went over
8 to Apartment 231, in front, in the quad area.

9 You heard from both Ta'Von Lowe -- he said he heard the
10 threat of, What's up now, bitch-ass N-word? And Flo Taylor, who said,
11 Oh, yeah, motherfuckers? And then the shooter turns towards the alcove
12 where Dana Forman's apartment and Apartment 233 are at, and shoots
13 several times directly at human beings who are standing in the alcove, at
14 a close range. That is an intent to kill. Shooting multiple times into an
15 alcove where human beings are standing, is the intent to kill.

16 You also heard from crime scene analysts, who drew up the
17 diagram depicting the trajectories and the trajectory process that they
18 did at the scene. They found those trajectories into Apartment 233.
19 They were able to recover some of those bullets from inside, that were
20 ultimately determined to be .40 caliber bullets. The bullet that was
21 recovered from Raquel Stapinski, at the autopsy, was also a .40 caliber.
22 And one of those bullets inside Apartment 233 was found to be fired
23 from the same weapon that killed Raquel Stapinski.

24 As it relates to the intent, you also were instructed, regarding
25 transfer intent. And what that is, is that where a person unlawfully

1 attempts to kill or -- a certain person, but, by mistake or inadvertence,
2 kills another person, the crime committed is the same as though the
3 person -- the intended target was killed. So the person doesn't get the
4 benefit of bad aim or the fact that a person pushed the intended target
5 down to the ground and then another person was killed by mistake or
6 inadvertence.

7 So if you believe -- again, you heard testimony regarding the
8 alcove in front of 231 and 233 -- and that Raquel and Wayne-Wayne were
9 in that alcove. If you believe that the shooter intended to kill Wayne-
10 Wayne, but instead -- and we know Raquel Stapinski was shot and killed,
11 that does not reduce the crime in any way.

12 In addition, you're instructed regarding intent to kill that's
13 directed at a group. So, again, you heard that Raquel, Wayne-Wayne,
14 are in that alcove. It's sufficient that the intent to kill be directed at that
15 group. So if you don't believe that Wayne-Wayne or Raquel was the
16 intended target, the intent to kill towards the group, is sufficient.

17 Let's move on to deliberation. Deliberation is the process of
18 determining, upon a course of action, to kill. And it's including weighing
19 the reasons for and against taking the action, and the consequences of
20 such actions. Premeditation is a design and a determination to kill,
21 distinctly formed in the mind, by the time of the killing.

22 And as well as premeditation, but also for deliberation,
23 there's no time frame. The law does not indicate that there is a specific
24 time that this process has to happen. It doesn't need to be minutes,
25 hours, days, weeks. It can be as instantaneous as successive thoughts of

1 the mind.

2 For example, a person is approaching a traffic light
3 intersection. The light's green but then it turns to yellow. And the
4 person has to decide, am I speeding up and going through that
5 intersection, or am I slowing down and stopping for the red light? And
6 making -- and in making that decision, the person thinks, is there going
7 to be anyone else in the intersection? Are there any cop cars around? Is
8 the bag in my passenger seat going to spill over? Is the coffee that's in
9 my center console going to spill out?

10 These thoughts are happening as instantaneous, successive
11 thoughts of the mind. And that person has to make that decision quickly.
12 That is sufficient for premeditation.

13 So what did we hear in this case? We heard that the shooter
14 takes the time to walk to the car, that white Chevrolet Suburban. He
15 opens the back door, grabs the gun from the car, closes that door, opens
16 the front door, locks the car. Then heads over to Apartment 231, runs up
17 on Flo, puts the gun in her face. Again, the threats are heard. Ta'Von
18 Lowe hears, What's up now, and Flo hears, Oh, yeah, motherfuckers?

19 And then it's at that point that the shooter shoots into the
20 alcove, multiple times, where, again, human beings, Raquel, Wayne-
21 Wayne, are standing. And, again, he shoots multiple times. He has to
22 aim, pull the trigger, fire, recoil, resituate aim, pull the trigger, fire, aim,
23 pull the trigger, fire, aim, pull the trigger, fire. Each time, he has to do
24 that process. That is sufficient time for deliberation and premeditation.

25 You also heard, from Courtney Franco, who explained that

1 when she was in her apartment, she heard people barbecuing in the
2 street outside her apartment. Later in the evening, she hears a
3 commotion and what she describes as not happy commotion.

4 She sees two men fighting. And then there's a circle of
5 people around them. She turns away from the window, and then she
6 hears one gunshot. It's at that time that she decides to grab her phone
7 and call 911. In the timeline here, she says about 30 seconds elapsed
8 from the time she hears the gunshot, to the time that she's on the call,
9 talking with the 911 dispatcher.

10 She's watching from her balcony, at one point, and then the
11 kitchen window. She sees people scatter after the gunshot, and people
12 run over to the alcove in Building 26, and that she also sees a man
13 walking from the parking lot to that white Chevrolet Suburban. Again,
14 she's giving the description of that car, that plate, to the 911 dispatcher.

15 She sees the man go on the left-hand side, open up the back
16 passenger door, pulled out the gun, closes that door, locks the vehicle.
17 He is then seen walking towards the alcove, with the gun in his hand.
18 Again, the same man that goes into the car, she sees that same man go
19 over to that alcove in front of 231, and he stops right in front of that
20 alcove.

21 Ms. Franco also told her that she saw a female near him in
22 the quad. She then sees that man turn towards the alcove and fire nine
23 shots. After firing those rounds, she sees him run and disappear behind
24 Building 25, and heading towards Torrey Pines.

25 You also heard from Ta'Von Lowe, where he describes

1 hearing commotion, yelling, outside. He hears an altercation. And then
2 he hears the single gunshot. After that gunshot, he hears people
3 running by his apartment, and he sees a man run by. And he describes
4 that that man came from the parking lot area. He hears, What's up now,
5 you bitch-ass N-word. And then he hears those five to six more shots.

6 Ta'Von Lowe describes the time from hearing that single
7 shot, to the four to five shots -- or excuse me, the five to six shots. He
8 describes a time frame of four to five minutes. And then when police
9 officers arrive on scene, they find Raquel Stapinski on the sidewalk.

10 Now that we've established that this course of conduct was
11 first degree, willful, deliberate, premeditated murder, I want to explain
12 why this is not self-defense. There are multiple instructions in your
13 packet, regarding self-defense. One of those being that, the right of self-
14 defense is not available to an original aggressor.

15 And the shooter that is from outside the alcove, that
16 ultimately shoots and kills Raquel Stapinski, is the original aggressor.
17 We heard about the fight in the parking lot. We heard about the single
18 shot in the air. But that was done. That was over with. People went to
19 their respective homes. About four to five minutes passed between that
20 single gunshot and the killing of Raquel Stapinski.

21 And the actions taken by the shooter, to go into the car, open
22 the door, grab the gun, close the door, head over to Apartment 231, he
23 became the original aggressor, by starting to go get the gun and head
24 over to the apartment by -- an apartment that, from the testimony of the
25 witnesses, he did not live at. This is not self-defense.

1 Another instruction regarding self-defense, is that a bare fear
2 of death or great bodily injury, is not sufficient to justify killing, under
3 self-defense. For self-defense, the circumstances must be sufficient that
4 the fears -- or must be sufficient to excite the fears of a reasonable
5 person placed in a similar situation. The person killing, must be acting
6 under those fears and not in revenge.

7 Again, you heard that the fight in the parking lot, the single
8 gunshot that ended that fight, that was done, people scattered, people
9 went to their respective homes. And then the man, the shooter, who
10 ultimately killed Raquel Stapinski, goes to the car to grab the gun to,
11 ultimately, go in front of Apartment 231 to kill Raquel Stapinski. This is
12 not self-defense. The shooter outside the alcove is not entitled to self-
13 defense. A

14 Again, as a visual, the parking lot fight, the shot in the air,
15 that's over with. That's done. People went home. But the man, the
16 shooter from outside the alcove, took the step to go into the car and grab
17 the gun.

18 You also heard from Henry Taylor, and he explained that
19 Wayne-Wayne and Mua -- or sorry, Nana's [phonetic] brother, fight in the
20 parking lot. He fires one round in the air to disperse the fight when he
21 sees people crowding in. He told you that he went back to Dana's
22 Apartment 231. He was inside -- he said he went inside the apartment.

23 And a few minutes later, he hears shooting. It's at that point
24 that he goes outside the apartment, and he sees Tuly Lepolo shooting
25 from outside the alcove. He has a gun -- he, meaning, Henry. He shoots

1 back. He explained that, at one point, he falls and his gun breaks apart.
2 And you heard from the crime scene analyst, that they found the bottom
3 piece of the magazine, in the alcove area outside of 231.

4 Now that we've established that, again, the shooter outside
5 the alcove, that conduct is willful, deliberate, premeditated first degree
6 murder, not entitled to self-defense. The question for you all now is,
7 who is the shooter outside the alcove? The evidence shows, beyond a
8 reasonable doubt, that the shooter outside the alcove is Tuly Lepolo.

9 You heard from Flo Taylor who, again, describes the fight in
10 the parking lot. People started to scatter once Henry shot in the air. Flo,
11 herself, ran back and in front of Dana's apartment. She explained that
12 the family went inside the apartment. The Samoan family also went
13 back to their apartment after the gunshot.

14 She identifies Tuly Lepolo as the man who went to what she
15 describes as the white truck, and after he goes there and he has the gun
16 in his hand, he goes up to her and puts the gun in her face and says, Oh
17 yeah, you motherfuckers? She closes her eyes, puts her hands up, and
18 says, No , wait. And then when she opens her eyes, she sees Tuly
19 Lepolo shooting from outside the alcove.

20 She also describes that Raquel and Wayne-Wayne are
21 outside in that alcove. She sees Raquel push Wayne-Wayne down to the
22 ground, and then, ultimately, she sees Raquel stumble off. She also sees
23 Tuly, after the shooting, run down along Building 25 towards Torrey
24 Pines.

25 She also described that Tuly was -- she saw another man

1 standing with Tuly, but she also told you that that man didn't have a gun.
2 Tuly Lepolo was the man with the gun.

3 You heard from Ta'Von Lowe. He described the man that he
4 saw running by his window, as similar to Troy Polamalu. He described,
5 six foot, 180 pounds, and he also saw tattoos on his arms. And he
6 described that the man that ran by his window, his shirt sleeves were
7 rolled up, so he was able to see his arms.

8 You heard from Dana Forman. She described that Wayne-
9 Wayne, and who she called Mua, were fighting in the parking lot. Again,
10 Wayne-Wayne was on top of Mua at one point, and then everyone
11 started to move in. Henry shoots the fire -- shoots the shot in the air,
12 people dispersed and went home, including Dana.

13 She said she went back to her apartment. She said she
14 comes outside her apartment a few minutes later and she sees and
15 identifies Tuly shooting towards her apartment and a neighboring
16 apartment, 233. She describes that Wayne-Wayne and Raquel were
17 outside in the alcove area. It's at that point, after she sees and hears the
18 shooting, she goes back inside because she wants to go tell her kids to
19 get down.

20 She describes that she saw Henry walking outside, and he
21 had a gun, and he went to the front door. And it's at that point, Dana
22 doesn't see outside anymore, but she hears shooting. So, again, Dana
23 Forman, she identifies Tuly Lepolo in a lineup in 2019 as the shooter
24 outside the alcove. She identified Tuly Lepolo in court as the shooter
25 outside the alcove. You heard from Flo Taylor. She also identified Tuly

1 Lepolo as the shooter from outside the alcove.

2 Again, here is the lineup regarding Dana Forman and her
3 identification of Tuly Lepolo. You heard from Courtney Franco who
4 described that the same man who went into the white suburban to grab
5 the gun is the same man that she saw shooting in front of the alcove into
6 the alcove.

7 You heard from Flo. She identifies that Tuly Lepolo went
8 into, what she described as the white truck, and then she saw him with
9 the gun in his hand.

10 In addition to those witnesses, you heard from the crime
11 scene analysts that found -- did latent fingerprint processing. You heard
12 from the fingerprint examiner regarding the vehicle. You heard that the
13 fingerprint examiner was able to identify Tuly Lepolo's palms on the
14 outside of the vehicle as well as fingerprints on items inside the vehicle.

15 You also heard from the DNA analyst who analyzed swabs
16 from items inside the vehicle and that Tuly Lepolo's DNA was included
17 on those items. You heard from crime scene analysts who responded to
18 the scene and were ultimately able to identify a blood trail.

19 Again, the solid line here is not suggesting it was a solid
20 bloodline, but a trail that ultimately ended on an empty parking spot on
21 the -- under the carport, on the other side of building 25.

22 And you heard that the crime scene analysts swabs maybe
23 one, maybe two, maybe three, maybe four. The DNA analyst identified
24 and found that Tuly Lepolo's DNA was included on those swabs.

25 Again, that's the direction described by Courtney Franco

1 seeing the shooter disappear from behind building 25 and what Flo
2 explained. She saw Tuly Lepolo running that direction.

3 The State is asking you to find Tuly Lepolo responsible for
4 what he did to Flora Taylor. Guilty of assault, abuse of a deadly weapon,
5 hold him accountable for what he did to Raquel Stapinski, shooting and
6 killing and ending her life. First degree murder with use of a deadly
7 weapon. Thank you.

8 THE COURT: Mr. Margolis.

9 MR. MARGOLIS: Thank you, Your Honor. Good morning,
10 everyone. Thank you for your attention on this last occasion that I will
11 speak to you. I'm going to start at the end and then I'll kind of show you
12 how I got there.

13 Mr. Lepolo is entitled to a not guilty verdict on both of these
14 counts. And he's guilty -- he's entitled to that verdict of not guilty because
15 the State has not proven these counts beyond a reasonable doubt. And
16 I'm going to proceed to explain to you why the evidence that you've
17 seen in the witnesses you've heard from demonstrate those facts.

18 First, I want to talk about kind of the witnesses more
19 generally. Okay. I would characterize three different groups of
20 witnesses that came into this court and testified. First, I would call the
21 Forman-Taylor clan witnesses. Okay. And I would submit to you that
22 even the most favorable assessment of those witnesses would have to
23 find them a little bit partial. They quite clearly had a close relationship
24 with the deceased, Raquel Stapinski and whether or not they fired the
25 bullet, some member of the Forman or Taylor clan fired the bullet that

1 ended her life.

2 I would submit to you as reasonable men and women that
3 there was some feeling of responsibility in that household at the, at the
4 sequence of events that transpired. Okay. This was not a one-sided fly-
5 by-night attack. That's not what it was. Okay. When we started the
6 State told you they were going to demonstrate first degree murder by
7 virtue of a challenge to fight. Okay. I'm not going to mention --

8 MR. GIORDANI: Objection.

9 THE COURT: Sustained.

10 MR. MARGOLIS: So, to the extent there was a fight, I'd argue
11 there were two fights. Okay. One was a fistfight. A good old-fashioned,
12 draw a circle, let's all gather 'round and let's have a fistfight. Okay.

13 And the second was a gunfight. And that is a considerably
14 different animal. I've been in a few fistfights. Okay. And I think pretty
15 much everyone should get in one at least once. I've never been in a
16 gunfight and I'm not intending to start. Okay.

17 Guns fundamentally change the nature of conflicts. I think
18 we all know that whether you are a gun enthusiast, or someone who
19 feels like the fact that we've got more guns than people in the country, is
20 a scary thing. Whichever side you are on that, there's no real dispute.
21 Guns change the level of the conflict. They change the level of the
22 danger, and they change the potentiality for horrible, tragic, senseless,
23 consequences like what happened to Ms. Stapinski.

24 The Forman-Taylor witnesses, okay. I took my time in cross-
25 examining them because I felt that they were uncooperative, to say the

1 least, in the course of an investigation. And it seemed relatively difficult
2 to understand why they would be so uncooperative with detectives
3 Sanborn and Dosch and so forth.

4 And you know, I think Detective Sanborn even testified to
5 you from the stand that he expected believing that a Lepolo family
6 member was the second shooter. He expected a little bit of difficulty in
7 dealing with the occupants of apartment 215 in building 25. He didn't
8 anticipate that he'd get a great deal of information from them for
9 obvious self-serving reasons.

10 But he was a little taken aback by the fact that members of
11 the Taylor and Forman clan were also seemingly disinterested in
12 providing him with information. Now, whether or not you want to
13 consider what Flora Taylor, Dana Forman and Henry Taylor said, or
14 neglected, or omitted saying to Detective Sanborn and his team.
15 Whether or not you consider that to be dishonesty or lack of cooperation
16 to me is the difference between potato and potato. You can emphasize
17 whatever syllable you want. They did not cooperate with the
18 investigation. They did not help find justice for their friend, until now.
19 Now what changed?

20 Okay. Now a lot was bandied about of fear of my client. My
21 client resides in California. My client resided in California in 2016. My
22 client resided in California in 2019. And my client, should this jury return
23 a not guilty verdict, will return and reside in California forever more.

24 So, I would ask you to --

25 MR. GIORDANI: Objection.

1 THE COURT: Sustained.

2 MR. GIORDANI: Objection.

3 MR. MARGOLIS: View with skepticism --

4 THE COURT: It's just irrelevant.

5 MR. GIORDANI: It's not in evidence.

6 MR. MARGOLIS: I would submit to you that when these
7 individuals took the stand and testified that they were afraid of my client.
8 They were not actually afraid of my client. They were afraid of
9 consequences that might have befallen them for conduct they took and
10 behaviors in which they engaged on the night of April 3, 2016. And
11 perhaps even before. Because if we're going to talk about there being at
12 least two fights, we might even consider that there was a third fight that
13 we know very little about. Okay. That fight was testified to by Dana
14 Forman and she testified that she was jumped, I believe were her words
15 on the stand, by my client's son and another Lepolo family member.

16 Now, we heard very little evidence, very little was put before
17 you about this fight. Okay. But Dana herself took the stand and told you
18 that it happened. And I believe her testimony was that it wasn't hours
19 prior, or even days prior, that it may well have been weeks prior. Your
20 memory controls. I'm not going to pretend that I remember the exact
21 chronology. Okay.

22 What I will say is, the State is here today saying that four and
23 five minutes is more than enough time to move on, for passions to cool,
24 for cooler heads to prevail, and for sanity to reign. And it's interesting to
25 hear them say that and ask you to hold Mr. Lepolo to a standard that it

1 doesn't feel like other members of this conflict were held to. Specifically,
2 Dana Forman.

3 Second group of witnesses. Okay. And admittedly, I cross-
4 examined them less, and less ferociously. That group of witnesses I
5 would call lay percipient witnesses and they included two people, Ta'Von
6 Lowe and Courtney Franco. I believe they testified to you as truthfully as
7 they could. I also believe that those are individuals that actually were
8 scared on April 3, 2016. And with good reason because a lot of chaotic
9 stuff was going down over which they had no control, no agency, no
10 participation and no exit, no escape, no egress. This is where they live.
11 They can't feel comfortable and safe in the place that they live without
12 royal rumbles taking place in the parking lot and miscellaneous gunshots
13 coming into their bedrooms and bathrooms of their home. It's pretty
14 scary. Okay.

15 I believe that they felt that they observed what they observed
16 to testified truthfully about it. I also feel, and they testified truthfully
17 about this too, there were things that they didn't see, couldn't see
18 wouldn't see because they also had an interest in self-preservation as
19 every single one of us does. Okay.

20 And I always laugh in a horror movie when someone goes to
21 investigate the strange noise in the dark corner of the attic. Me
22 personally, I'm inclined to let that sleeping dog lie. I'm not inclined to
23 court that myself. Okay. But that's why movies are movies in real life is
24 real life.

25 Mr. Lowe and Ms. Franco both testified that they were, they

1 were moving in the course of what they were witnessing, hearing or
2 seeing. And that there were gaps in their visibility. For instance, the
3 shot that we've heard that Henry Taylor threw into the air. Courtney
4 Franco nor Ta'Von Lowe saw that shot. Courtney Franco, when the
5 unhappy noise, or unpleasant noise started, i.e. the fistfight, she went to
6 get her phone and after, I don't know how long she had been displeased
7 with the amount of noise and chaos reigning around her and disturbing
8 her movie, but it has been a while. But as people do, she had resisted
9 nancing, calling the cops.

10 If you want to make a good neighbor a bad neighbor, that's a
11 real good place to start, you know. So, she, she avoided that impulse,
12 you know? But when the fist fight is happening and the crowd is
13 gathering, and the din is rising to what could be a melee at this point,
14 she goes down the hallway, I believe she said, to grab her phone. A shot
15 rings out. She calls 911. She's on the phone, you know, sometimes
16 subsequent to that an additional series of shots are fired.

17 The State is relying a lot upon testimony suggesting that
18 Henry Taylor's shot was some, to use Detective Sanborn's
19 characterization, wild west style attempt to stop the fight. And if that
20 were the intention, I don't know even in that, in service of that intention,
21 that that action was favorable or saying or well considered, you know.

22 But in the context of a physical fight going on, the
23 introduction of gunfire escalates the nature of that conflict. And if the
24 State wants to get up in rebuttal and suggest otherwise, I invite them to
25 do so. Okay. If any of you were involved in an altercation and a gun

1 appeared, I think there would be a universal reaction to that, and it would
2 not be favorable. It might well end the fight, you know. And for many of
3 us it absolutely would, you know, but doesn't necessarily end the fight or
4 does it potentially create an entirely different one with greater stakes and
5 greater potential damages to the participants?

6 Third group of witnesses, I'll call the pros, okay. The pros
7 got up here and, you know, when they testified, they were much more
8 likely to turn their chairs so that they could look at you. Because
9 generally speaking, the more we look at you and the more we make eye
10 contact with you, the more, the more you're inclined to believe the
11 veracity of what we are saying. They're professional witnesses. I am not
12 in any way suggesting that they did anything incorrect. I believe they
13 testified truthfully to the facts that they were able to ascertain through
14 the investigation.

15 You heard from DNA and fingerprint witnesses that place my
16 client at the scene and connect my client, Mr. Lepolo, to the Chevy
17 Suburban. Conceded. Mr. Lepolo was at that scene. Conceded. Mr.
18 Lepolo had access to that suburban, as did other members of his family.
19 That doesn't end the inquiry. The fact that Mr. Lepolo is at the scene,
20 doesn't end the inquiry. It merely begins it.

21 And suffice it to say, I'll remind you of this at least this once,
22 Mr. Lepolo and I are not required to prove his innocence. That's not our
23 charge. Every element of every charge must be proven beyond a
24 reasonable doubt by the State. The State does the accusing, and they do
25 the proving as we heard earlier. Our job is to ensure that that is done.