

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 JAVAR KETCHUM,

Supreme Court Case No.: 87012

3 Appellant,

District Case No.: **Electronically Filed**
C-16-319714-1
Jan 20 2024 12:52 AM
Elizabeth A. Brown
Clerk of Supreme Court

4 vs.

5 THE STATE OF NEVADA,

6 Respondent.

7
8 (Appel From a Final Order of The Eighth Judicial District Court, Denying
9 Petition of Writ of Habeas Corpus (Post Conviction))

10 **APPELLANT'S OPENING BRIEF**

11 **Volume II**

12 **Bates Nos.:**

13 **AO000112 - AO000359**

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7
8 **APPELLANT’S APPENDIX**
9 **ALPHABETICAL INDEX**

10 Pursuant to NRAP 25(c)(1)(E) I certify that I served the foregoing Appellant’s
11 Appendix by causing it to be served by electronic means to the registered users of
12 the Court’s electronic filing system consistent with NEFCR 9 to the following:

13 Aaron Ford
14 Alexander Chen

15 Amended Petition for Writ of Habeas Corpus (Post-Conviction), (03/24/2023).
16 **Volume V - (Bates Nos.: AO000774 – 805)**

17 Appellant’s Corrected Opening Brief, - 75097, (08/29/2018).
18 **Volume IV - (Bates Nos.: AO000575 – 634)**

19 Court Minutes RE Amended PWHC, (05/23/2023).
20 **Volume V - (Bates Nos.: AO000833 – 835)**

21 Court Minutes RE Confirmation of Counsel, (07/26/20218).
..... **Volume IV - (Bates Nos.: AO000571)**

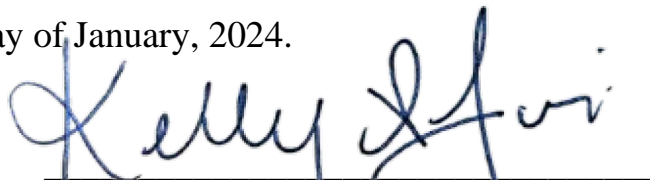
Court Minutes RE Defendant’s Motion for Medical Treatment,
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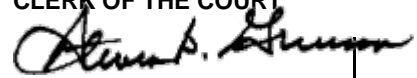
1	Court Minutes RE Defendant’s Motion to Withdraw Stipulation, (12/01/2017).
2 Volume III - (Bates Nos.: AO000549)
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4 Volume IV - (Bates Nos.: AO000555)
5	Findings of Fact, Conclusions of Law & Order, (03/31/2021).
6 Volume IV - (Bates Nos.: AO000704 – 716)
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21	Notice of Additional Letters of Support in Aide of Sentencing, (11/13/2017). Volume III - (Bates Nos.: AO000514 – 537)
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17 CERTIFIED this 20th day of January, 2024.

18 
19 _____
20 KELLY JARVI, Legal Assistant to
21 THE LAW FIRM OF
C. BENJAMIN SCROGGINS, CHTD.



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-16-319714-1
	.	CASE NO. C-16-319714-3
Plaintiff,	.	
	.	DEPT. NO. XVII
	.	
vs.	.	TRANSCRIPT OF
	.	PROCEEDINGS
JAVAR ERIS KETCHUM,	.	
and RODERICK VINCENT,	.	
	.	
Defendants.	.	
.	

BEFORE THE HONORABLE KATHY HARDCASTLE
SENIOR DISTRICT COURT JUDGE

JURY TRIAL - DAY 3

WEDNESDAY, MAY 24, 2017

APPEARANCES:

FOR THE STATE:	JOHN L. GIORDANI, III., ESQ. STEVEN ROSE, ESQ. <i>Deputy District Attorneys</i>
FOR DEFENDANT KETCHUM:	NICHOLAS M. WOOLDRIDGE, ESQ.
FOR DEFENDANT VINCENT:	CARL E. ARNOLD, ESQ.

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

AO000112

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1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 24, 2017, 9:39 A.M.

2 (In the presence of the jury)

3 THE COURT: -- present. Counsel for both sides are
4 present, defendants are present. All right, State, you may
5 call your next witness.

6 MR. GIORDANI: State would call Antoine Bernard.

7 ANTOINE BERNARD, STATE'S WITNESS, SWORN

8 THE CLERK: Please be seated. Please state and
9 spell your name for the court's record.

10 THE WITNESS: Antoine Bernard, A-n-t-o-i-n-e,
11 B-e-r-n-a-r-d.

12 MR. GIORDANI: May I, Your Honor?

13 THE COURT: You may.

14 MR. GIORDANI: Thank you.

15 DIRECT EXAMINATION

16 BY MR. GIORDANI:

17 Q Mr. Bernard, I want to bring your attention back to
18 September 25th of 2016 in the early morning hours. Do you
19 remember those hours?

20 A Yes.

21 Q Where were you in the early morning hours of that
22 day?

23 A At a club.

24 Q And what's the name of --

25 A After hours. Top Notch.

1 Q Okay. Is Top Notch basically a clothing store that
2 doubles as a club?

3 A It's like a lounge area --

4 Q Okay.

5 A -- afterwards.

6 Q Is there a dance area, a bar, basically, a stripper
7 pole, et cetera?

8 A Yes.

9 Q Who were you there with on the early morning hours
10 of that day?

11 A I was with my girlfriend, Jay, a couple other
12 people I knew.

13 Q When you said Jay, do you know Jay's full name?

14 A Javar.

15 Q All right. Do you see Javar in the courtroom?

16 A Yes.

17 Q Can you please point to Javar and describe an
18 article of clothing he's wearing in the courtroom?

19 A Javar is wearing black, black shirt.

20 MR. GIORDANI: Will the record reflect
21 identification of the defendant, Your Honor?

22 THE COURT: It may so reflect.

23 BY MR. GIORDANI:

24 Q Mr. Bernard, how did you know Javar?

25 A I've known him for a long time. Hung out with

1 him --

2 Q Okay.

3 A -- a lot.

4 Q Did you arrive with the defendant to Top Notch?

5 A No.

6 Q When did you arrive to Top Notch, if you recall?

7 A I can't say a specific time, but after 12:00.

8 1:00, 2:00 o'clock-ish.

9 Q Okay. So if I'm referring to September 25th as the
10 early morning hours, you potentially could have arrived on
11 September 24th at midnight or sometime thereafter; is that
12 accurate?

13 A Yes.

14 Q Okay. Who did you arrive with, if you recall?

15 A My baby's mother Tiana (phonetic).

16 Q Is that Tiana Taylor?

17 A Yes.

18 Q Yes. And did you arrive in a vehicle with Tiana
19 Taylor?

20 A Yes.

21 Q Whose vehicle was that?

22 A Both of ours.

23 Q Can you describe that vehicle for the jury?

24 A Black BMW, a 645.

25 Q Okay. Did that have some silver rims on it?

1 A Yes.

2 Q Okay. So you did not arrive at the club with the
3 defendant. Did you eventually see the defendant at the club?

4 A Yes.

5 Q When was that?

6 A Within about 30 minutes of being there.

7 Q Okay. Did you, you know, say hi or what's up or
8 whatever it is to the defendant?

9 A Yes.

10 Q Have some interactions with him throughout the
11 night?

12 A Yes.

13 Q At any point in time while you were in the club,
14 did you ever see an altercation between anyone whatsoever?

15 A No.

16 Q Okay.

17 A Not in the club.

18 Q Okay. Did you have any conversations with the
19 defendant about money?

20 A Yes.

21 Q Describe that for the ladies and gentlemen.

22 A I won a little bit of money when I was gambling,
23 and I knew that he needed a little bit of money so I gave him
24 some money.

25 Q How much money did you give him?

1 A Two, \$300.

2 Q Okay. Did he mention being short on rent or some
3 kind of eviction or something?

4 A Previously, yes.

5 Q Okay. So you knew he was short on money. You gave
6 him 2 to \$300 as the best of your recollection?

7 A Yes.

8 Q At some point in time, did you become aware that
9 there was a person at this party that you did not know? Let
10 me ask that -- that was a poor question. At some point in
11 time, did you see a person who ultimately was shot and killed
12 at the club?

13 A Yes, later in the night.

14 Q Did you know that person at all?

15 A No.

16 Q To your knowledge, did anyone in the club know him?

17 MR. WOOLDRIDGE: Objection, Your Honor. How --

18 THE COURT: To his knowledge. If he doesn't know,
19 he doesn't know.

20 THE WITNESS: There was a lot of people there.

21 Someone knew him.

22 BY MR. GIORDANI:

23 Q Okay. To your knowledge, did the defendant know
24 him?

25 A Probably seen each other --

1 Q Okay.

2 A -- before.

3 Q When you saw this individual, was he -- did he
4 appear to be in any kind of agitated or crazy state? And I'm
5 not talking about the defendant, I'm talking about the other
6 individual. All right, let me ask it this way. Was he
7 dancing and doing what everyone else at the club was doing?

8 A Yeah, he was a dancing a little more than --

9 Q Okay.

10 A -- everyone else.

11 Q Okay. Was there any interaction that you observed
12 between that man and the defendant?

13 A Yes.

14 Q Can you describe that.

15 A Kind of like a dancing towards him like saying
16 what's going on.

17 Q Okay.

18 A Like a elbow.

19 Q Did it appear to you that it was a altercation?

20 A Not really.

21 Q Okay. At some point in time, did the defendant say
22 something about that other individual?

23 A Yes.

24 Q Okay. What did he say?

25 MR. ARNOLD: Your Honor, I'm going to ask for when

1 he refers to the defendant that he specify which defendant
2 for the record.

3 MR. GIORDANI: Oh, and I'm absolutely referring to
4 Defendant Ketchum only at this point. And if I change that,
5 I will definitely make it known.

6 THE COURT: All right.

7 BY MR. GIORDANI:

8 Q Did you -- do you remember my question?

9 A Repeat the question.

10 Q Did the defendant, Mr. Ketchum or Jay, say anything
11 about that person that you didn't know?

12 MR. WOOLDRIDGE: Objection. Hearsay.

13 MR. GIORDANI: It's the defendant's statement.
14 It's not --

15 THE COURT: Overruled.

16 MR. GIORDANI: -- for hearsay.

17 BY MR. GIORDANI:

18 Q Go ahead.

19 A Yeah, he asked who is he. Who is this nigga.

20 Q Okay. Did that indicate to you that he did not
21 know that person that you just used that word for?

22 MR. WOOLDRIDGE: Objection as to how -- what --
23 what that means to this person, to this witness.

24 THE COURT: Overruled. If he can answer.

25 THE WITNESS: I took it more as comedy as of he's

1 like who is this dude dancing like this.

2 BY MR. GIORDANI:

3 Q Okay. When you were in the club, were you standing
4 around Tiana at any point?

5 A Yes.

6 Q Did she become fairly intoxicated throughout the
7 night?

8 A Yes.

9 Q Was everyone drinking and imbibing and even doing
10 drugs?

11 A Possibly.

12 Q Okay. Did there come a point in time where you had
13 a conversation with the defendant where he asked specifically
14 does anyone know who this guy is, and the defendant being
15 Mr. Ketchum, of course.

16 MR. WOOLDRIDGE: Objection. Asked and answered.

17 MR. GIORDANI: I didn't --

18 THE COURT: Overruled. Go ahead.

19 THE WITNESS: Repeat that again.

20 BY MR. GIORDANI:

21 Q Was there a point in time where you had a
22 conversation or some kind of interaction with Mr. Ketchum,
23 the defendant, where he indicated towards that unknown person
24 we've been describing said and asked around who this guy is?

25 A Yes.

1 Q Okay. At some point in the evening, did you have a
2 discussion about providing a ride?

3 A Yes.

4 Q When was that in the evening, if you recall?

5 A I'd say a couple hours before we left, if not an
6 hour before we left.

7 Q Okay.

8 THE COURT: And "we" would be you and?

9 THE WITNESS: Me, Javar, Tiana.

10 THE COURT: All right, thank you.

11 BY MR. GIORDANI:

12 Q And so stepping back that conversation, I made it
13 vague. You just tell me what that conversation was. Who was
14 giving a ride, who was get ago ride?

15 A It was pretty much drop me off at the house.

16 Q Who said that?

17 A Javar.

18 Q Okay. Did you agree to be his ride and give him a
19 ride?

20 A Yes.

21 Q Okay. Did there come a point in time where you
22 learned that the defendant was going to rob that person in
23 the parking lot or get him?

24 A Yes.

25 Q When was that?

1 A Early in the morning.

2 Q Okay. Let me ask you for a point of reference. Do
3 you recall around the time that you actually ended up driving
4 away from that club?

5 A 6:00 o'clock.

6 Q Okay.

7 A 5:00, 6:00 in the morning. It was daylight.

8 Q Okay. So there was daylight. Let's use that as a
9 point of reference. When in reference to that time did you
10 learn that the defendant was going to rob him in the parking
11 lot?

12 A Somewhat --

13 Q Somewhat close or --

14 A Yeah. More like get at him.

15 Q Okay. Did there come a point in time where you,
16 yourself, along with Tiana, walked out of that club?

17 A Yes.

18 Q And when you exited the club, were you actually
19 with the defendant?

20 A He was ahead of me.

21 Q Who was he with?

22 A Z.

23 Q And is Zeke that person that we've been talking
24 about?

25 A Yes.

1 Q Did you subsequently learn the name Zeke?

2 A Yeah, later.

3 Q Okay. Did this case or this incident get published
4 into the news media?

5 A Yes.

6 Q Have you had an opportunity to see news clips,
7 video clips, photographs that included both your car and the
8 defendant?

9 A Say that one more time.

10 Q Have you had an opportunity to see news clips or
11 video or still photos that show --

12 A Yes.

13 Q -- both your car and the defendant?

14 A Yes.

15 Q Okay. And I'm going to get there in a minute. I'm
16 going to step back. When you ex illustrated the club, did
17 you say Tiana was with you?

18 A Yes.

19 Q And where did you go when you actually physically
20 walked out of the club?

21 A To my vehicle.

22 Q Okay. When you went to your vehicle, where was it
23 parked?

24 A In the parking lot, like off to the right of the
25 club.

1 Q Okay. So would that be in the front -- the parking
2 lot in front of the club?

3 A Yeah, down like -- not directly in front when you
4 walk out, but we walked to the right.

5 Q Okay. So you --

6 A About --

7 Q -- walk out of the club and your car is over to the
8 right?

9 A Yeah, about three, four spaces over.

10 Q Okay. Was this -- were there several people moving
11 about and heading basically out of the club at that time?

12 A Yes.

13 Q Did you see the defendant and the person we now
14 know as Zeke walking basically arm to arm?

15 A Yes.

16 Q And what did you see from there?

17 A Just talking.

18 Q Okay. Did there come a point in time where they
19 had stopped at some point and you were in the car?

20 A Yeah, I -- when I got into my car, it was a few
21 people around the car.

22 THE COURT: Around your car?

23 THE WITNESS: Around my car. And they were
24 complimenting my car.

25 BY MR. GIORDANI:

1 Q Okay, when you say they, who complimented your car?

2 A Z and another person passing by.

3 Q Okay. So you -- Zeke is already at your car or
4 near your car, at least, and he is complimented your car?

5 A Yes.

6 Q And as in a positive compliment like hey, nice ride
7 or something like that?

8 A Yeah.

9 Q Okay. When you see the defendant next, what is he
10 doing?

11 A Talking.

12 Q Okay. Did there come a point in time --

13 THE COURT: Talking to whom?

14 THE WITNESS: Talking with Jay. There were a
15 couple people on the side of my car.

16 BY MR. GIORDANI:

17 Q Oh, let me -- I might need to rephrase my question.
18 I may have confused you. When I say the defendant, I'm
19 referring to Jay. Did there come a point in time when you
20 say Jay talking to Zeke?

21 A Yes.

22 Q Okay. Did there come a point in time where
23 something drew your attention?

24 A Can you rephrase that?

25 Q Was there a point in time where something drew your

1 attention or caused you to look over --

2 A Oh, yeah --

3 Q -- you know --

4 A -- the body language of the people on the side of
5 me and everybody started -- started moving away.

6 Q Okay. What did you see, if any, interaction
7 between the defendant and Zeke at that point?

8 A I backed out, and Zeke was on the ground.

9 Q Okay. Was there a point in time where you saw --
10 wait, at this point, have you heard a gunshot?

11 A Not yet.

12 Q So is Zeke --

13 A It was as I was backing out.

14 Q In I'm hearing you correctly, Zeke was already on
15 the ground?

16 A Yes.

17 Q Did you see Zeke's hands at some point?

18 A Yeah, it was -- his hands was out.

19 Q Okay. What was the defendant doing?

20 A Standing over him.

21 Q Okay. Had you heard a gunshot up to that point?

22 A The gunshot was sort of before. It was in the same
23 timing.

24 Q Okay. I imagine this incident happened pretty
25 quick; am I right?

1 A Yes.

2 Q Do you recall seeing the defendant taking anything
3 off of the person of Zeke?

4 A I recall him coming to my car with a -- like a -- a
5 plug. Like a -- like jewelry.

6 Q Okay. Do you recall at any point seeing a belt?

7 A Yes.

8 Q I'm going to show you --

9 MR. GIORDANI: Can I have the Elmo, please. Thank
10 you.

11 BY MR. GIORDANI:

12 Q -- already admitted State's 30.

13 MR. GIORDANI: May I approach?

14 THE COURT: You may.

15 BY MR. GIORDANI:

16 Q What are we looking at there?

17 A A belt and a watch.

18 Q Okay. Did you see this belt and this watch in the
19 possession of the defendant, Mr. Ketchum, after you saw the
20 victim with his hands out?

21 A Yeah, when he got in the car the belt was on the
22 floor.

23 Q Okay.

24 (Pause in the proceedings)

25 MR. GIORDANI: May I just publish this to the jury?

1 THE COURT: You may.

2 MR. GIORDANI: It's already admitted.

3 (Pause in the proceedings)

4 BY MR. GIORDANI:

5 Q Mr. Bernard, you admit that you drove the defendant
6 away from the scene; is that accurate?

7 A Yes, I did.

8 Q Ultimately, did you see something on the news?

9 A Yes.

10 Q What did you do when you saw that on the news?

11 A I called my attorney.

12 Q Okay. Did -- in the presence of your attorney, did
13 you give an interview with police?

14 A Yes.

15 Q Did you give them the whole story that your -- of
16 what you observed that evening when you first interviewed
17 with police?

18 A No.

19 Q Were you scared at the time?

20 A Yes.

21 Q Ultimately, did you have other detectives or
22 officers essentially arrest you?

23 A Yes.

24 Q Okay. You were charged as a co-conspirator in this
25 case; is that right?

1 A Yes.

2 Q Was it your understanding that you were charged
3 with both the crimes of robbery with use of deadly weapon as
4 an aider and abettor and also accessory to the crime of
5 murder?

6 A Yes.

7 Q Did you and your attorney eventually reach a plea
8 negotiation with deputies in my office, the Clark County DA's
9 Office?

10 A Yes. Pled guilty.

11 Q And what is your understanding of that agreement?

12 A Plead guilty to accessory to murder and drop the
13 battery with a deadly weapon.

14 Q Okay. And what do you have to do in exchange? The
15 one only thing you have to do in exchange to receive the
16 benefit of that lesser plea?

17 A Testify of my role in this -- in the accessory.

18 Q Okay. And you understand that the -- the agreement
19 that you made with the State of Nevada is that the -- every
20 single thing you say has to be truthful?

21 A Yes.

22 Q There is an obligation to be truthful and
23 ultimately, the Judge will determine what your sentence is?

24 A Yes.

25 Q Okay. And obviously, you haven't been sentenced as

1 you sit here today?

2 A Say that one more time.

3 Q You haven't been sentenced as you sit here today,
4 right?

5 A No, I have not.

6 MR. GIORDANI: Court's brief indulgence. All
7 right. I will pass the witness at this time, Your Honor.

8 THE COURT: Counsel.

9 MR. WOOLDRIDGE: Sure. Give me a moment, Your
10 Honor.

11 CROSS-EXAMINATION

12 BY MR. WOOLDRIDGE:

13 Q Mr. Bernard, how are you doing?

14 A I'm all right.

15 Q You never saw Jay take this watch, did you?

16 A What do you mean?

17 Q You didn't see Mr. Ketchum take this watch. You
18 saw him take this belt, but you didn't see him take the
19 watch?

20 A Correct.

21 Q The State asked you some questions about a robbery,
22 right?

23 A Yes.

24 Q Is that a, yes?

25 A Yes.

1 Q Mr. Ketchum never told you he was going to rob Zeke
2 Davis, correct?

3 A Is that a question?

4 Q Yes.

5 A Can you rephrase that?

6 Q Sure. Mr. Ketchum, when he was leaving the club,
7 didn't tell you, hey, I'm going to rob this guy, right?

8 A Not to -- something to that nature.

9 Q He said something to that nature to you? Is that
10 your testimony?

11 A Yes.

12 Q And what did you do with that information?

13 A I didn't take it seriously.

14 Q You just went in your car and sat in there?

15 A I got in my car and I was speaking to other people
16 around my car.

17 Q This money that you say you gave Jay, 300 bucks?

18 A Yes.

19 Q That was money you owed Jay, wasn't it?

20 A Yes.

21 Q You knew Jay came into the club with some money,
22 didn't you?

23 A I don't know what he came in with.

24 Q You didn't come in with him?

25 A No.

1 Q You didn't see him with a stack of money when he
2 came into the club?

3 A When he came into the club, he didn't have a stack
4 of money in his hand.

5 Q Your girlfriend, Tiana Taylor, when's the last time
6 you spoke with her?

7 A Today.

8 Q Where is she?

9 A She's not here right now.

10 Q Where -- but where is she?

11 A What do you mean?

12 Q Is she here in Las Vegas?

13 A Yes.

14 Q Where?

15 A I'm not sure.

16 Q Where did you speak to her?

17 A On the phone in the car.

18 Q I want to talk to you about your problems. You're
19 in a lot of trouble, aren't you?

20 A Yeah. I pled guilty to this case.

21 Q Yeah. You got guilty in a bunch of cases, though,
22 right?

23 A Yes. In my past.

24 MR. GIORDANI: And I would object to as vague.

25 MR. WOOLDRIDGE: I'll get -- I'll clarify.

1 MR. GIORDANI: Very, very specific.

2 THE COURT: There's a proper way to do it, Counsel.

3 MR. WOOLDRIDGE: Okay.

4 BY MR. WOOLDRIDGE:

5 Q Right now you're on probation for assault with a
6 deadly weapon?

7 A I'm off probation.

8 Q You're off --

9 THE COURT: Okay, the question is has he been
10 previously convicted of a felonies and what were they and
11 when did they occur.

12 BY MR. WOOLDRIDGE:

13 Q Have you been convicted of assault with a deadly
14 weapon?

15 A Yes.

16 Q Have you been convicted of possession of a firearm
17 by an ex-felon?

18 A Yes.

19 MR. GIORDANI: And Your Honor, at this point, I
20 would object. There's statutory requirements regarding the
21 time frame of those convictions.

22 MR. WOOLDRIDGE: I can -- I have the convictions.

23 MR. GIORDANI: Okay. How about the --

24 MR. WOOLDRIDGE: Sure.

25 MR. GIORDANI: Can we approach, Your Honor, with

1 this?

2 THE COURT: You may.

3 (Off-record bench conference)

4 BY MR. WOOLDRIDGE:

5 Q Mr. Bernard, have you ever been convicted of a
6 felony in the last ten years?

7 A Yes.

8 Q How many felonies have you been convicted of?

9 A I'm not sure.

10 Q More than --

11 A About three, four.

12 Q Would it refresh your recollection to take a look
13 at some convictions to see if that helps you out?

14 A About three in the last ten years.

15 Q And it's your testimony that you're not currently
16 on probation?

17 A Correct.

18 MR. GIORDANI: Objection. Asked and answered.

19 THE COURT: Asked and answered.

20 MR. WOOLDRIDGE: All right.

21 BY MR. WOOLDRIDGE:

22 Q While you were on probation for that assault with a
23 deadly weapon --

24 MR. GIORDANI: Objection, Your Honor.

25 THE COURT: Sustained.

1 BY MR. WOOLDRIDGE:

2 Q Have you ever lied to probation before?

3 A I don't know.

4 Q Have you ever failed a drug test while you were on
5 probation?

6 A Yes.

7 Q And did you deny that you were on drugs when you
8 failed?

9 MR. GIORDANI: Objection.

10 THE COURT: Sustained.

11 MR. WOOLDRIDGE: This goes to his credibility, Your
12 Honor.

13 THE COURT: Sustained.

14 BY MR. WOOLDRIDGE:

15 Q Do you remember in August of 2015, a Judge warned
16 you --

17 MR. GIORDANI: Objection.

18 THE COURT: Sustained.

19 MR. WOOLDRIDGE: Your Honor, this goes all to
20 motive.

21 THE COURT: Sustained.

22 MR. GIORDANI: And I would move to strike all these
23 questions that he's throwing out.

24 THE COURT: The jury is to disregard the last
25 series of questions. Counsel approach.

1 (Off-record bench conference)

2 BY MR. WOOLDRIDGE:

3 Q Mr. Bernard, since September 2015, you've been an
4 informant with the police?

5 MR. GIORDANI: Objection.

6 THE WITNESS: No.

7 THE COURT: Sustained.

8 MR. GIORDANI: Move to strike.

9 THE COURT: The jury will disregard.

10 BY MR. WOOLDRIDGE:

11 Q Mr. Bernard, you have some pressure on you; is that
12 true?

13 A No.

14 Q You don't feel any pressure?

15 MR. GIORDANI: I would object as vague.

16 THE COURT: Overruled. It's asked and answered.

17 BY MR. WOOLDRIDGE:

18 Q I want to talk to you about this -- about this
19 meeting you had with the police on September 30th, 2016. Do
20 you remember that meeting?

21 A In my attorney's office?

22 Q Yes.

23 A Yes.

24 Q Your attorney was there?

25 A Yes.

1 Q She was with you the entire time?

2 A Yes.

3 Q And the meeting wasn't at a police station?

4 A No.

5 Q You weren't handcuffed?

6 A No.

7 Q You were free to leave whenever you wanted?

8 A I turned myself in. I called her, she called them
9 and they came to her.

10 Q They didn't arrest you that day.

11 A Was I free to leave when I wanted? They didn't
12 arrest me that day.

13 Q You were seated on a couch?

14 A No.

15 Q On a chair?

16 A Chair.

17 Q You weren't in handcuffs?

18 A No.

19 Q And that day you told the police the truth?

20 A What do you mean?

21 Q I don't -- is the truth, does it change, I don't
22 know. I mean, I'm asking you a question.

23 A Yes.

24 Q You told them the truth that day?

25 A Yes.

1 Q And you told the police that -- you described how
2 Mr. Ketchum was inside the club?

3 A Yes.

4 Q You told them that he was having a good time?

5 A Yes.

6 Q That he was laughing?

7 A Yes.

8 Q And you talked to police about when Javar showed
9 his gun outside of the club?

10 A Yes.

11 Q You told them that had nothing to do with the
12 shooting?

13 A Yes.

14 Q You told the police that when Zeke Davis bumped
15 into Javar, Javar said, who is this bitch -- bitch ass nigga?

16 A Something to that sort.

17 Q You don't recall? Do you want to --

18 A Yes.

19 Q -- do you want to listen to the tape?

20 A Yes.

21 Q That's what you said?

22 A Yes.

23 Q And you also told the police that everybody just
24 brushed it off like it was nothing, yes?

25 A Yes.

1 Q You never told the police that Javar said anything
2 about robbing Zeke Davis.

3 A No.

4 Q Correct?

5 A Correct.

6 Q You didn't say that until today?

7 A No.

8 Q Well, on September 30th, you didn't tell police
9 that; isn't that right?

10 A Correct.

11 Q And you also told the police that when you were
12 walking out of the club with your girlfriend, you didn't see
13 that Javar had any ill intentions?

14 A Yeah.

15 Q Correct? And then you also told police that when
16 you got outside and you were in your car with your
17 girlfriend, that Javar and Zeke went over to some other cars
18 and that they were outside your view.

19 A Yes.

20 Q You didn't see what happened.

21 A No. I didn't see the beginning of any of it.

22 Q All you saw was the aftermath?

23 A Yes.

24 Q You told police that you were messing with your
25 auxiliary cord and the music was playing, and you didn't even

1 hear a gunshot?

2 A Yes.

3 Q And that was true?

4 MR. ARNOLD: He didn't respond yes. He just nodded
5 his head.

6 BY MR. WOOLDRIDGE:

7 Q Is that a yes?

8 A Yes.

9 Q And when you backed out of your parking spot, you
10 told police that Javar came back to your car, right?

11 A Correct.

12 Q And said I dropped my ID?

13 A Correct.

14 Q And the only thing that you saw Javar have when he
15 came back, in his hand, was a belt?

16 A I don't remember. I don't remember saying if I
17 only seen him having a belt.

18 Q Well, is that what you remember?

19 A He came to the car with the belt, yes.

20 Q So when you told the police on September 30th, 2016
21 is true, correct?

22 A Yes.

23 MR. GIORDANI: And Judge, I would just object as to
24 vague. There's a lot of things he said on that date so --

25 THE COURT: You'll have a chance to --

1 MR. WOOLDRIDGE: No problem.

2 THE COURT: -- to redirect.

3 BY MR. WOOLDRIDGE:

4 Q So did you lie -- did you lie to the police about
5 anything that day on September 30th, 2016?

6 A No. I left stuff out. I was scared.

7 Q What did you leave out?

8 A I can't be specific. I just didn't go into real
9 detail.

10 Q So you omitted things, but you didn't lie about
11 anything, is that your -- what your answer is?

12 A Yeah.

13 Q What did you omit?

14 MR. GIORDANI: Objection. Asked and answered.

15 THE COURT: Overruled.

16 THE WITNESS: That I was there.

17 BY MR. WOOLDRIDGE:

18 Q You omitted that you were there at the club?

19 A I was on the news. I was on film. I was there.

20 Q That's what you omitted from the police?

21 A Yes.

22 Q Okay. Are you incarcerated right now?

23 A No.

24 Q You're out free?

25 A I'm on -- I'm -- I'm, what is it, intense

1 supervision or whatever that is.

2 Q But you get to live at your house?

3 A (No audible response).

4 MR. WOOLDRIDGE: No further questions.

5 THE COURT: Mr. Arnold.

6 MR. ARNOLD: Thank you.

7 CROSS-EXAMINATION

8 BY MR. ARNOLD:

9 Q Sir, did Mr. Ketchum ever say to you that he was
10 going to kill Ezekiel Davis?

11 A No.

12 Q Did he ever say to you that he was going to shoot
13 Ezekiel Davis?

14 A No.

15 Q You talked about you guys were outside of the club
16 at the patio and then Mr. Ketchum showed you and a group of
17 people a weapon; do you recall that?

18 A Yes.

19 Q Did he at that time say that he was going to shoot
20 Mr. Davis?

21 A No.

22 Q Did he say at that time that he was going to murder
23 Mr. Davis?

24 A No.

25 Q You said that you saw him come back to the car with

1 a belt. Did you see him come back to the car with a gun?

2 A No, I seen the belt. It was -- it was quick to the
3 car and back.

4 Q So the only thing you saw him with in his hand was
5 a belt?

6 A At that time, yes.

7 Q You said that when you were backing out, you did
8 see Mr. Davis on the ground?

9 A Yes.

10 Q Was he moving? What was he doing at that time?

11 A He was moving.

12 Q He was moving around?

13 A Yes.

14 MR. ARNOLD: I have no further questions.

15 REDIRECT EXAMINATION

16 BY MR. GIORDANI:

17 Q When you saw Mr. Davis -- I'm sorry, I'll call him
18 Zeke. When you saw Mr. Zeke on the ground, what was he doing
19 with his hands?

20 A They were out.

21 Q And you're putting your hands up, so the record's
22 clear, with the palms open in a defense posture; is that
23 right?

24 A Yes.

25 Q Did you see the defendant take or the victim give

1 any rings?

2 A I didn't see the rings.

3 Q Okay.

4 A I didn't see him giving anything, really. I seen
5 the hands out.

6 Q Did you hear the defendant say something?

7 A Yes.

8 Q And what was that give me my shit or give me your
9 shit?

10 A Something to that sort.

11 Q Okay. Was there a point in time where -- was there
12 ever a point in time throughout the entire night, so from the
13 moment you got there to the moment you left, that you ever
14 saw the victim, Zeke, with a gun at any point in time?

15 A I didn't see him until the end of the night, no.

16 Q Okay. I want to be clear, you never saw him with a
17 gun at all, am I right?

18 A No.

19 Q The point in time when the defendant gets into your
20 vehicle, I'm going to ask you to tell me, do you -- can you
21 describe for the jury his demeanor.

22 A Sarcastic.

23 Q Sarcastic? Where did you take the defendant when
24 he left the scene?

25 A To a gas station.

1 Q And do you know if he met anyone there or why you
2 took him to a gas station?

3 A Yeah, he had a -- he asked to called someone else.

4 Q Okay. Mr. Arnold and the other defense attorney
5 both hit on this point that Mr. Ketchum didn't say anything
6 about "I'm going to rob him" in the club. Was it clear to
7 you that Mr. Ketchum had the intent to rob him as they exited
8 the club?

9 A Yes. It wasn't clear what was going to take place
10 period, but something was going to go down.

11 Q When you dropped the defendant off at this gas
12 station, did you then leave with Tiana and go, I guess, home
13 and then eventually see this on the news and talk to your
14 attorney?

15 A Yeah. I got phone calls a lot. I got a lot of
16 phone calls.

17 Q Okay.

18 A I didn't see it on the news until I want to say the
19 next day --

20 Q Okay.

21 A -- or maybe that night.

22 Q Did there come a point in time where you had a
23 phone call or at least heard the defendant speaking on a
24 phone call? And I'm talking after the night -- after the
25 night we've before discussing.

1 A I'm not sure what you mean.

2 Q Did there come a point in time when you heard the
3 defendant on a speakerphone from someone else's phone?

4 A I believe so.

5 Q Okay. You seem to be trying to recollect that.

6 A Yeah, I'm thinking back like -- I think I did run
7 into one of friends and they were on the phone with him or we
8 were all on the phone -- on the phone together.

9 Q Okay. Do you remember the defendant talking about
10 where he may be going?

11 A Somewhat.

12 Q Can you provide any further detail? I mean, if you
13 don't remember, you don't remember.

14 A No.

15 Q Okay.

16 MR. GIORDANI: I have no further questions. I'll
17 pass the witness.

18 RE CROSS-EXAMINATION

19 BY MR. WOOLDRIDGE:

20 Q Mr. Bernard, so you told the police on September
21 30th, 2016 that you didn't see that Javar had any ill
22 intentions, correct?

23 A Correct.

24 Q And now today your testimony's different?

25 A When I spoke to them, I didn't provide any detail.

1 Q But you -- from your testimony today, you said that
2 you didn't see that he was going to rob him. He didn't tell
3 you he was going to rob him, but you thought that something
4 was going to go down?

5 A Yes.

6 Q That's your testimony?

7 A Yes.

8 Q What gave you that indication?

9 MR. GIORDANI: Well, I would object to that
10 question.

11 THE COURT: Overruled.

12 THE WITNESS: Say it again.

13 BY MR. WOOLDRIDGE:

14 Q Yeah. Jay didn't do anything to give you
15 indication that he was going to rob the guy, right? That's
16 just something that you thought of on your own?

17 A Correct.

18 MR. WOOLDRIDGE: No further questions.

19 THE COURT: Mr. Arnold, any further questions?
20 State --

21 MR. GIORDANI: Nothing further, Your Honor.

22 THE COURT: -- anything further? All right. Thank
23 you, sir, you may step down. You may be excused. Oh, I'm
24 sorry, sir, hang on a second. Were there any written
25 questions from the jury? Okay. Sir, please retake the

1 stand.

2 (Off-record bench conference)

3 THE COURT: Sir, I direct your attention to the
4 photo that is on the screen there. That would be Exhibit No.
5 130. There's a watch that is displayed in that photo, being
6 worn by someone. Do you know who's wearing the watch in this
7 photo? If you don't know, fine. But if you do know, do you
8 know who it is.

9 THE WITNESS: Ezekiel.

10 THE COURT: Ezekiel? Okay. All right. And the
11 jury has asked for clarification whether or not the
12 defendant, Mr. Ketchum, said or told you that he had
13 intentions to rob Mr. Davis.

14 THE WITNESS: Say that one more time.

15 THE COURT: Did Mr. Ketchum say or describe that he
16 had the intention to rob Ezekiel?

17 THE WITNESS: I took it that way.

18 THE COURT: You took it that way? All right. Any
19 further questions?

20 MR. WOOLDRIDGE: Yeah.

21 THE COURT: All right. State.

22 MR. GIORDANI: Oh, yes, thank you.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. GIORDANI:

25 Q What does the term "get at him" mean to you?

1 A Get at him. Somewhat of a fight. I don't know how
2 to describe it.

3 Q Okay. When the words "get at him" came from the
4 defendant, did you interpret that to mean that he was going
5 to rob him or get after him or do something to him?

6 A Yes.

7 Q Okay. Now, when the -- I'm sorry, when your car
8 backed out, you said that you could see at some point the
9 victim on the ground and you described hands up like -- like
10 this; do you remember that? Is that a yes?

11 A Yes.

12 Q You have to answer for the record. Okay. Was
13 there any point in time where you saw the victim attacking,
14 attempting to rob, do anything to Mr. Ketchum?

15 A I couldn't see on the other side of the car.

16 Q Okay.

17 A No.

18 Q When you saw him with his hands out, was he on the
19 ground or standing up?

20 A On the ground coming up.

21 Q Okay.

22 MR. GIORDANI: No further questions, Your Honor.

23 THE COURT: All right. Counsel.

24 MR. WOOLDRIDGE: Sure.

25 //

1 FURTHER RECROSS-EXAMINATION

2 BY MR. WOOLDRIDGE:

3 Q On the ground coming up? So he was getting up?

4 A Like sitting up.

5 Q Okay. When Zeke and Javar went -- they went
6 outside of your view when you were inside your car?

7 A Yes.

8 Q Okay. And so you didn't see anything that
9 happened?

10 A No, not until I backed out.

11 Q You didn't see Zeke try to rob Javar?

12 A No, I didn't see anything.

13 Q And you don't even know if Zeke tried to rob Javar?

14 A I don't.

15 Q You also testified earlier on cross-examination
16 that Mr. Ketchum never told you that he was going to rob
17 Zeke, right? You said that you just -- you thought that
18 might happen.

19 A Yes.

20 Q Right?

21 MR. WOOLDRIDGE: No further questions.

22 MR. GIORDANI: No questions, Your Honor.

23 THE COURT: All right. And just for the record,
24 the one question that was received from Mr. Gregory, correct?
25 Juror No. 4? Okay. I'm going to add his name and juror

1 number to the sheet of paper with his question on it so that
2 we can make it part of the record. All right. There being
3 no further questions, you may be excused. Thank you, sir.

4 State, you may call your next witness.

5 MR. GIORDANI: State would call Detective Bunn.

6 DETECTIVE CHRISTOPHER BUNN, STATE'S WITNESS, SWORN

7 THE CLERK: Please be seated. Please state and
8 spell your name for the court's record.

9 THE WITNESS: Christopher Bunn,
10 C-h-r-i-s-t-o-p-h-e-r, B-u-n-n.

11 MR. GIORDANI: May I?

12 THE COURT: You may.

13 MR. GIORDANI: Thank you.

14 DIRECT EXAMINATION

15 BY MR. GIORDANI:

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

17 A I'm a detective with the Las Vegas Metropolitan
18 Police Department.

19 Q How long have you been with the Las Vegas
20 Metropolitan Police Department?

21 A 24, almost 25 years.

22 Q And in what unit are you currently assigned?

23 A To the homicide unit.

24 Q How long have you been with homicide?

25 A Nine plus years.

1 Q As a homicide detective, what are your general
2 duties and responsibilities?

3 A We respond to all suspected homicide crime scenes
4 in the valley and we're assigned to the investigation of that
5 particular event.

6 Q I want to draw your attention to a particular case
7 reference event number 1609250932. Do you recall responding
8 and being involved in the investigation of that event?

9 A Yes.

10 Q And describe, generally, how is it that a homicide
11 detective receives a call and what do you do when you receive
12 a call?

13 A Well, in this particular case, this was a Sunday so
14 we were -- you know, obviously, I wouldn't have been at work.
15 So we were called at about 6:20 in the morning. It would
16 have been a response by patrol officers. Patrol officers
17 arrive at the location. They do the initial crime scene.
18 They'll secure the scene. That's where you see all the
19 yellow tape and, you know, restricting flow from the area or
20 into or out of the area.

21 This particular one was on South Decatur. And when
22 they arrived, there was a person there that had been shot.
23 So the person was ultimately transported from the scene.
24 Ultimately, if they die, then it becomes a homicide
25 investigation, and that when the -- their investigation stops

1 and they wait for the response of homicide detectives to take
2 offer the investigation.

3 Q Do you recall when you responded to this particular
4 scene?

5 A As in the time, sir?

6 Q Yes.

7 A Probably would have been by 7:00 o'clock in the
8 morning I would have probably been --

9 Q Okay.

10 A -- contacted and rolling.

11 Q 6:40 sound right?

12 A That would -- yes.

13 Q Potentially. Okay. Who was on scene when you
14 arrived?

15 A When we arrived at the location it was secured by
16 patrol officers. So it was blocked with yellow tape and the
17 crime scene had been what we would consider locked down. So
18 like I said, entry and exit from the scene would have been
19 restricted at that time.

20 Q Okay. When you arrived, can you describe the type
21 of personnel, I mean, official people that were there at the
22 scene? How many were there? What types of officials?

23 A Once -- in any shooting in Las Vegas, we have a
24 response from our crime scene analysts or crime scene
25 investigations unit. They'll respond, and in a homicide it

1 will respond to supervisor from that unit, at least two to
2 three crime scene investigators, a number of police officers
3 that are required to hold the perimeter, if there's people in
4 custody, to sit with them, if there needs to be officers at
5 the hospital, officers at any other scene or any of that kind
6 stuff, they'll continue to assign officers until it stops.

7 And then, you know, if medical was needed, if fire
8 department was needed, those people would have rolled, you
9 know, right up front with the police officers responding to
10 the scene initially. They'll render aid. You know,
11 primarily life is primary to us. So medical gets to go in
12 first.

13 Now, they'll hold back and make sure that if it's a
14 shooting situation, that the scene's secured so that they're
15 not going to be confronted with somebody. But then there's a
16 lot of simultaneous response in terms of law enforcement
17 versus fire versus medical in a very short time period.
18 Eventually, we may use the coroner would respond sometimes to
19 the scene, sometimes to the hospital depending on where the
20 person actually passed.

21 So there's a -- you know, from that standpoint,
22 it's most of those folks would be there.

23 Q Okay. So a fairly big police and other personnel
24 presence at the homicide scene; is that accurate?

25 A Yes, sir.

1 Q Were there on this particular scene several lay
2 people or potential witnesses who were also present?

3 A There were some lay people that had been stopped.
4 There were some people that they weren't sure how they fit
5 into the crime so they had just been held. Some of them may
6 have had, you know, outstanding warrants for their arrest or
7 whatever, or they may have felt like they were part of the
8 investigation. And eventually, you know, so we stop and
9 talked to all of those people to see what the -- you know,
10 the response to it was.

11 Q Was there anyone that was still on the scene -- and
12 I'm referring to this initial group that you just described
13 -- that was arrested or were all of those witnesses released
14 for having no information?

15 A I -- the ones that were interviewed, most of them
16 as I recall were released. Now there were some other
17 individuals that were stopped that belonged to a vehicle down
18 the road.

19 Q Okay.

20 A That was handled by Detective Williams just simply
21 because we -- there's a limited number of people that
22 actually respond to these locations in terms of investigators
23 just because we don't have a lot. So in this case, it would
24 have been our -- our homicide squad, which is made up of six
25 individuals and a sergeant. Myself and my partner at the

1 time, which would have been Marty Wildemann, would have been
2 the two detectives assigned to the crime scene. Then the
3 rest the team would have helped with interviews or other
4 stuff.

5 Detective Williams being one of those people that
6 helped in following up that. And he also went to the
7 hospital as well.

8 Q Okay. Let me ask you if based upon the initial --
9 your initial response and these people who were lay people
10 stopped at the scene, was there anyone in that particular
11 group of people that provided you any information regarding
12 who the suspects may be?

13 A Well, we talked to I know a person by the name of
14 Deshawn Byrd was ultimately spoken with.

15 Q Okay.

16 A And he provided some information about, you know,
17 the victim as well as a potential suspect.

18 Q Okay. I want to go through a couple of photographs
19 with you. And starting with already admitted 1, what are we
20 looking at in this photo?

21 A This is going to be the west side of the building.
22 The -- just to the left-hand side of the picture out over
23 here is going to be Decatur. And this is going to be a crime
24 scene, and this some piece of the evidence that are actually
25 here. I'm messing that up. And then you can see some red

1 cups over in this area and some other pieces of evidence out
2 in this area.

3 Q Okay.

4 A And these are a couple of the vehicles that were
5 still locked down in the parking lot at the time that we
6 arrived.

7 Q Okay. And I believe, you said a couple of the
8 vehicles. Were there several vehicles that were on scene
9 when you arrived?

10 A Ultimately, there were six.

11 Q Okay. Showing you State's 2 now, and I'm going to
12 zoom in so it's going to go blank for a minute. Can you
13 describe the vehicle on the left.

14 A This is going to be a Chrysler Dodge four-door.
15 This belonged to the victim. And I don't remember the
16 registered owner of this particular vehicle.

17 Q Did you touch the white vehicle when you said that?

18 A I didn't.

19 Q So to be clear, black car is victim's vehicle.
20 White car you don't recall the owner?

21 A No, it would be in my notes, but I don't have the
22 RO off the top of my head. Wool.

23 MR. ARNOLD: I'm going to object, Your Honor. That
24 whole thing was confusing. Was he talking about the
25 registered owner of the black vehicle, that he did not know

1 who that owner was?

2 THE WITNESS: No. The black vehicle, I know who
3 the register owner of that vehicle was. I don't on the white
4 vehicle off the top of my head. I do have it in my notes if
5 you would like me to look it up.

6 BY MR. GIORDANI:

7 Q That's okay. I'll show you a separate photo.
8 Showing you 6. What are we looking at here?

9 A You're looking from east, from the building itself,
10 out towards Decatur and you're looking slightly south. I'm
11 sorry, you're looking west here. This is going to be west.
12 That's going to be Decatur out there. This is going to be
13 south down this direction. And there's two vehicles here and
14 here.

15 Q Okay. Are those two vehicles two of the six that
16 you initially mentioned?

17 A Yes, sir.

18 Q Showing you now State's 9. You know how to clear
19 that screen, Detective? Okay. Thank you.

20 A Somebody did, thank you.

21 Q In the center of the photograph, are those the two
22 vehicles I just showed you in that last exhibit?

23 A Yes, sir.

24 Q Right here? Now, to the left, you can see the tail
25 end of a vehicle as well?

1 A Yes.

2 Q Is that also included within the crime scene or
3 within the six that you had initially described?

4 A Yes.

5 Q Showing you State's 17 now. What are we looking at
6 here?

7 A This is the interior of the Top Notch Apparel
8 store. Your -- this would be the southwest corner of that.
9 If you're looking out the front window, you can see a vehicle
10 right here, which is a Cadillac.

11 Q And is that the vehicle we just saw the tail end of
12 in this exhibit?

13 A Yes, sir, it's this vehicle over on the far left.

14 Q Oh, I'm sorry.

15 A That's okay. It's the vehicle all the way over
16 here on this side.

17 Q Was there also a Navigator somewhere in that scene?

18 A It was not in this scene. It was actually down at
19 the PT's Pub.

20 Q Okay.

21 A Which was north of there.

22 Q What was the relevance, if any, of that Navigator
23 or how did that become a part of this?

24 A Two of the individuals that had been stopped at the
25 scene belonged to the Navigator and they said that their

1 vehicle was down there. They actually directed officers down
2 to that vehicle as a part of this. Ultimately, their --
3 their stories came out with interviews with Detective
4 Williams and we determined that they weren't involved in the
5 incident itself.

6 Q Okay. So I think we -- have we accounted for all
7 six vehicles that you described being on scene at this point?

8 A Yes.

9 Q Was the decedent/victim on scene when you arrived?

10 A No, sir.

11 Q Was he, to your knowledge, at the hospital by the
12 time you arrived?

13 A Yes, sir.

14 Q Were you ultimately able to identify him by Nevada
15 ID card that was found in his sock at the hospital?

16 A Yes, sir.

17 Q What were your initial steps when you arrived at
18 the scene? And let me ask you a different way. Are there
19 several assignments and duties that are split up amongst
20 homicide detectives?

21 A Yes, sir. When we respond to a scene, as I
22 described, we have a supervisor, our sergeant always rolls
23 with us. And then we have our -- what would be our team,
24 which would be the six detectives that are assigned to that
25 particular supervisor and then we break it down into a

1 two-man unit, which is my partner and myself would be
2 assigned the actual investigation.

3 Between the two of us, we divide that in terms of
4 one of us is responsible for the scene and scene
5 investigation. The other officer is involved in interviews
6 of all of the individuals that are attached to it, and if he
7 needs assistance, they can continue to call more detectives
8 to help us do that as we need. So and that's kind of how
9 homicide scene investigation stuff is broken down.

10 Q Okay. I want to show you a couple of --

11 MR. GIORDANI: May I approach the witness?

12 THE COURT: You may.

13 MR. GIORDANI: (Inaudible) defense counsel.

14 BY MR. GIORDANI:

15 Q Showing you State's 128, do you recognize that?

16 A This looks like a -- it's an overhead view, like a
17 satellite view of the area where we were at.

18 Q Okay.

19 A 30 -- or 4230 South Decatur Boulevard.

20 Q Okay. And if I didn't ask you earlier, that's in
21 Clark County, Nevada; is that right?

22 A Yes, sir.

23 Q And I don't need to show you the second one. It's
24 already admitted as 128. Just so the jury's clear, I know
25 you did this a little bit before, but describe where exactly

1 Top Notch clothing is within this map.

2 A 4230 is the kind of -- on my screen it looks like
3 an orange-ish color marking that's already on the building
4 and that's 4230 South Decatur Boulevard that's kind of a
5 strip mall type deal.

6 Q Can you circle Top Notch, where it's located
7 within --

8 A It's going to be located down on the very south end
9 of the building out here and it -- like, the arrows aren't
10 showing up kind of. There it goes. So the door to Top Notch
11 is right down in that area.

12 Q Okay. And if you can, can you see in this map
13 where that sixth vehicle that ultimately was determined to
14 not be involved was located?

15 A It's not on here.

16 Q Okay.

17 A It would have been further north. It would have
18 been way up here --

19 Q Okay.

20 A -- just past that.

21 Q No problem. Showing you 129, is that just a
22 close-up of what we just saw, 4230 South Decatur?

23 A Yes.

24 Q And is this, just so the jury's very clear about
25 where it is, where Top Notch is located?

1 A That's correct. It's -- it's right there.

2 Q And the vehicles that we saw, were they within this
3 parking lot area, essentially?

4 A They actually go further up into the parking lot
5 down towards this -- up as far as this area. But now we have
6 the entire parking lot blocked off for our --

7 Q Okay.

8 A -- what we -- when we took the scene, we actually
9 had that entire area blocked off.

10 Q Understood. I just want to be clear with regard to
11 the map, about how far was that black Dodge Charger, then?

12 A It's going to -- hopefully, this will --

13 Q I know it's about --

14 A Kind of right up into that area is where you would
15 see it.

16 Q Okay. And would it be on the right side closest to
17 the building basically parked in front of the building?

18 A Yes. And the nose would be parked towards facing
19 the building.

20 Q Got it, okay. Thank you. When you arrived at the
21 scene, these assignments were given out amongst the homicide
22 detectives and other personnel. Did you have an opportunity
23 to do a scene walk-through?

24 A Yes.

25 Q What is that?

1 A A scene walk-through is when we initially get there
2 because patrol officers already been there and they've seen
3 and done a lot of things. They give us what we call our
4 initial briefing. And during that briefing what they do is
5 describe when we arrived at this location, what we saw, what
6 we did, what encounters we may have had with individuals.
7 And so we get that as what we call our initial briefing, and
8 that would also include, you know, where anybody would have
9 been transported to.

10 Like in this case the victim had been transported
11 to UMC. Who followed the vehicle down there. If there were
12 -- you know, any -- any of that kind of information is given
13 to us as what's called an initial briefing.

14 Q Okay. During your scene walk through, did you
15 identify several items of interest or evidentiary value to
16 you and others?

17 A Yes.

18 Q And do you know if crime scene analysts had already
19 photographed those items in place by the time you saw them or
20 no?

21 A Some of them had been, not all of them.

22 Q Showing you now State's 3. What are we looking at
23 here?

24 A This is a gold ring.

25 Q Okay. Showing you now State's 131. Do you recall

1 where that item was located? Let me zoom in here for a
2 moment. First I can ask, do you recall off the top of your
3 head where it was located or do you need to look at this
4 legend?

5 A I'd have to look at the legend, sir, I'm sorry.

6 Q No problem. That's why I'm putting it up here.
7 Fair to say there's two rings described?

8 A Yes.

9 Q Do you know which ring that I just showed you?

10 A I believe it's number 6.

11 Q Okay. So you don't think it's ring with clear --

12 A I don't -- I mean, just from that particular
13 picture and it's got a -- kind of a highlight on it. It's
14 hard to see it, but I don't see a clear stone on it. If it's
15 there, it's just very difficult to see from the image that
16 I've seen here.

17 Q No problem. And there's a glare and we're going to
18 have just deal with that. Showing you now State's 4. What
19 are we looking at there?

20 A There's a pair of pants that was found out in the
21 driveway.

22 Q What did that mean to you?

23 A That somebody had lost their clothing so -- and I
24 understood that the victim had been transported to the scene
25 in his underwear.

1 Q Okay. So obviously, something of potential
2 evidentiary value, and it was photographed and was it
3 ultimately impounded?

4 A Yes, sir.

5 Q Showing you State's 7.

6 A A pair of shoes and a hat.

7 Q Okay.

8 A I believe, it says Prada on the shoes.

9 Q Let me just trim down the number of photos here.
10 Showing you State's 11. Same hat and shoes?

11 A Yes, sir.

12 Q What are we looking at in the center there?

13 A A pair of glasses and it looks like a gold chain
14 and a cell phone.

15 Q Cell phone?

16 A Looks like a cell phone, yes, sir.

17 Q Okay. When you got to the business or during this
18 walk-through, were you able to get inside the business?

19 A Initially, no.

20 Q Okay. Describe what was going on there.

21 A All of the businesses across there had been locked.
22 They were all secured. We had knocked on several of the
23 doors all the way down, but all of those businesses were
24 secured.

25 Q Was Top Notch locked?

1 A Yes.

2 Q Did you ultimately seek a search warrant for not
3 only vehicles but also Top Notch?

4 A Yes, sir.

5 Q I want to first talk about vehicles a little bit
6 further. Did you execute search warrants on any of those six
7 vehicles that we've already gone through?

8 A We executed search warrants on all six vehicles,
9 sir.

10 Q Okay. Now I want to -- I'm going to breeze through
11 a couple of them, and I want to really focus on first this
12 black Charger.

13 A Yes, sir.

14 Q Was there a search warrant executed on that
15 vehicle?

16 A Yes, there was.

17 Q Was there anything of evidentiary value within that
18 vehicle?

19 A No, sir.

20 Q Anything that had to do with firearms whatsoever?

21 A No, sir.

22 Q I want to move on to -- well, how about this
23 vehicle?

24 A I don't -- I believe the search warrant was indeed
25 served on that vehicle, but I don't believe anything of

1 evidentiary value was taken from it.

2 MR. WOOLDRIDGE: Which vehicle are we referring to
3 when we say this?

4 MR. GIORDANI: The one that was 22 on the exhibit,
5 the white vehicle.

6 MR. WOOLDRIDGE: Okay.

7 BY MR. GIORDANI:

8 Q The State's 9. The Cadillac that we see the tail
9 end of in this photograph.

10 A Yes, sir.

11 Q And State's 17 that we see the front end of in this
12 photograph.

13 A Yes, sir.

14 Q Was there a search warrant executed on that
15 vehicle?

16 A Yes.

17 Q Were there items of potential evidentiary value
18 located within that vehicle?

19 A Yes.

20 Q I want you to describe what was located within that
21 vehicle.

22 A There were two DVRs located in the back seat. One
23 of them was a Swan system and one was a Night Owl system.
24 They were in the back seat. There was a .380 cartridge
25 located in the back, which would be for a gun of some sort.

1 We found a briefcase that had some hard drives in it and some
2 additional cell phones.

3 Q And some additional cell phones you said?

4 A Yes.

5 Q Was there some kind of cables as well?

6 A Yes.

7 Q Okay. Showing you now State's 83. Same Cadillac?

8 A Yes, sir.

9 Q Showing you State's 85. Well, I'll flip that over.
10 What are we looking at here?

11 A The DVR. The interior back seat.

12 Q Of that same Cadillac?

13 A Yes, sir.

14 Q Showing you State's 86. What are we looking at on
15 the seat there?

16 A The two DVRs I was talking about earlier.

17 Q Okay. I want to zoom in a little bit. Is that the
18 cartridge that you described.

19 A Yes.

20 Q And is that an unspent, basically, an unfired
21 bullet?

22 A Yes.

23 Q Okay. Showing you State's 88 now. Are we looking
24 at two different systems?

25 A Yes, sir. The upper one is not with -- the model,

1 I mean, it says Night Owl and it tells you that it's a eight
2 channel HD DVR. And then you're looking at the back of
3 another system and with the glare on here, I can't tell you
4 if there's any kind of writing or anything on there from that
5 picture.

6 Q Okay. As a homicide detective, have you
7 investigated cases that involved the video surveillance
8 systems in general?

9 A Yes.

10 Q Of course, right?

11 A Yes, sir.

12 Q Can you tell the ladies and gentlemen of the jury
13 what exactly a DVR system is. What are we looking at here?

14 A It's a digital video recorder, DVR.

15 Q Would that be a DVR system that's attached to
16 cameras?

17 A Yes.

18 Q Okay. So the cameras record and this is what
19 stores the recordings; is that accurate?

20 A Yes, sir.

21 Q Okay. Ultimately, were those two items impounded.

22 A Yes.

23 THE COURT: All right. Counsel, before you ask
24 your next question, why don't we go ahead and break for the
25 morning. We've been sitting here for some time.

1 So I'll just remind the jury not to discuss the
2 case among yourselves. Not to form or express any opinion.
3 Not to do any investigation, read, watch or listen to any
4 reports or commentary about the case. That we'll be in
5 recess until -- let's make it a 15-minute break. So, 11:15.

6 THE MARSHAL: Rise for the jurors.

7 (Court recessed at 11:00 a.m. until 11:15 a.m.)

8 (In the presence of the jury)

9 THE MARSHAL: Department come to order. Department
10 17 is back in session. Everyone, please be seated.

11 THE COURT: We'll be back on the record. Back in
12 the presence of the jury panel. All member of the panel are
13 present. Counsel for both sides are present, defendants are
14 present. You may continue with your examination.

15 MR. GIORDANI: Thank you, Your Honor.

16 BY MR. GIORDANI:

17 Q Detective, I want to show you Exhibits 134, 135 and
18 136. Let's start with 134. You had earlier described an
19 event number associated with this event. Can you please
20 explain for the ladies and gentlemen what an event number is?

21 A For every call that we take as a department, we
22 issue what we call an event number, and it will be the date
23 that's the year, the month, the day and then a numeric
24 sequence of that event is when it occurred during the day.
25 They can go up -- they start at 0001 and then they'll

1 continue until the day is done.

2 This particular one is -- was on -- the year was
3 16, the month was 09, the day 25 and then the event of the
4 day was 0932.

5 Q So by 6:00 a.m. there had been 932 calls for
6 service; is that basically what you're saying?

7 A Yes, sir.

8 Q Is that event number that you just described unique
9 to this particular event in this (inaudible)?

10 A Yes.

11 Q What do you -- what does it appear you're looking
12 at in Exhibit 134?

13 A This is an envelope when we -- it's an evidentiary
14 envelope, and on the outside of that we put on a -- just a
15 notation deal so that we can identify the contents and who
16 impounded it, where it came from, that type of information.
17 And then we identify the item that's contained within.

18 In item 1 is a cartridge case, which means it's a
19 fired -- it's the fired case, and the headstamp that's noted
20 on here is Spear 9 mm Luger plus P.

21 Q 9 mm, does that mean 9 millimeter?

22 A Yes, sir.

23 Q Okay.

24 MR. GIORDANI: And I'd move for the admission of
25 State's 134. At this point, I don't intend to open it with

1 him on the stand.

2 THE COURT: Okay. Any objection?

3 MR. WOOLDRIDGE: No objection.

4 MR. ARNOLD: No objection, Your Honor.

5 MR. GIORDANI: Thank you, Your Honor.

6 THE COURT: It will be admitted.

7 (State's Exhibit 134 admitted)

8 BY MR. GIORDANI:

9 Q All right. Now, showing you Exhibit 135, what does
10 it appear to be (inaudible)?

11 A This is going to be the Night Owl -- the eight
12 channel DVR and a power cord. It has the same identifying
13 event number on it, the date and time it was prepared and who
14 actually did it.

15 Q Okay. Does that -- based on the weight and feel of
16 it, does that appear to be one of those two DVRs that you
17 described earlier?

18 A Yes, sir.

19 Q Which one on the screen is the Night Owl?

20 A It's -- I'm going to give it a shot here. It's
21 going to be this one, which is here. The black -- the back
22 one that we can see in that particular photo.

23 Q The one with the owl eyes on it?

24 A Yes, sir.

25 Q Okay.

1 MR. GIORDANI: I'd move for the admission now of
2 135, Your Honor.

3 MR. WOOLDRIDGE: No objection.

4 MR. ARNOLD: No objection, Your Honor.

5 THE COURT: Admitted.

6 (State's Exhibit 135 admitted)

7 MR. GIORDANI: Thank you.

8 BY MR. GIORDANI:

9 Q This large box here, Exhibit -- State's Proposed
10 Exhibit 136, what are we looking at there?

11 A And this is described as a Swan DVR and power cord.
12 Again, the same event number is on there, who impounded it
13 and when --

14 Q Okay.

15 A -- and that appears to be the other DVR.

16 MR. GIORDANI: I would move for the admission of
17 136 at this point.

18 MR. WOOLDRIDGE: No objection.

19 MR. ARNOLD: No objection, Your Honor.

20 MR. GIORDANI: Thank you.

21 THE COURT: It's admitted.

22 (State's Exhibit 136 admitted)

23 BY MR. GIORDANI:

24 Q And I'm going to return those to the clerk for a
25 moment, and I'll get back to those. Showing you now State's

1 Exhibit 90. What are we looking at there?

2 A Appears to be a vehicle seat with a cell phone in
3 it, and it's hard to read the -- just based on the glare of
4 the screen, I can't read the -- the actual documents that are
5 located there.

6 Q Okay. And you remember describing there was also a
7 cell phone located in the vehicle?

8 A Yes, sir.

9 Q Showing you now 91.

10 A Those are -- now I can see the paperwork. It's a
11 Verizon, looks like a bill or statement or a notice of some
12 sort addressed to Roderick Vincent.

13 Q Is that -- do you see that person in the courtroom
14 today?

15 A He is here.

16 Q Can you please point to that person, describe an
17 article of clothing he's wearing today?

18 A He's got on glasses, a black jacket. He's sitting
19 in the second row back on the left hand side, and I --

20 MR. GIORDANI: Would the record reflect
21 identification of defendant Vincent?

22 THE COURT: It may so reflect.

23 MR. GIORDANI: Thank you.

24 BY MR. GIORDANI:

25 Q Showing you now 92. What are we looking at here?

1 A This is a seat of the same vehicle and it looks
2 like the contents of the glove box are probably on the seat
3 at this point.

4 Q Okay. Going to zoom in here. Can you see that,
5 Detective?

6 A I -- I'm not able to read the --

7 Q That's okay.

8 A -- the writing on that. Not with that.

9 Q Is there a power cord or something to that effect?

10 A I'm sorry, yeah, there is a phone cord. It looks
11 like a flashlight, a CD, some sort of packaging up in the
12 upper left, and it looks like a DMV, like a registration of
13 some sort right there, and I just can't read the -- the
14 writing on it.

15 Q No problem. Did you run this vehicle in a DMV
16 database?

17 A Yes.

18 Q Is that DMV database, a database that you rely upon
19 in conducting your investigations as a Las Vegas Metro
20 homicide detective?

21 A Yes, sir.

22 Q Is that a database that you rely upon frequently
23 and take investigative steps in response of information
24 received from that database?

25 A Yes, sir.

1 Q Who was the registered owner of that vehicle we've
2 just described?

3 A Roderick Vincent.

4 Q Eventually, were you able to get inside Top Notch
5 clothing?

6 A Yes.

7 Q Did you obtain a search warrant?

8 A Yes, we had.

9 Q How did you eventually get into that business?

10 A About 11:00 o'clock in the morning several people
11 that were inside the business came to the front door and
12 opened it and walked out and talked to us.

13 Q So, 11:00 a.m.?

14 A Approximately.

15 Q Can I presume you were still on scene at 11:00
16 a.m.?

17 A Yes, sir, I was.

18 Q What people were -- I think you said four?

19 A I think it was four.

20 Q What are the -- who are the four people that came
21 out of that business?

22 A They were identified as Mario Chiles and Ms.
23 Cordiaro (phonetic), Roderick Vincent and who's the other
24 individual? Can I refer to my notes.

25 Q Would it refresh your recollection to look at your

1 -- did you create a report in this case?

2 A Yes, sir, I did.

3 Q Would it refresh your memory to look at that
4 report?

5 A Yes, it would.

6 Q Go ahead.

7 A I kind of just have those three individuals coming
8 out, sir. I don't have a fourth one that I can recall.

9 Q No problem, sir. Did you conduct an interview with
10 Mr. Roderick Vincent?

11 A Yes.

12 Q What was the nature of that interview?

13 A Basically, I -- once he came out of the business,
14 we talked to all of the individuals that came out. Roderick
15 Vincent, I was told that, you know, we were there
16 investigating the shooting death that occurred in the parking
17 lot of the business, and asked him what his -- you know, what
18 he did at the business, if he was involved in the business
19 itself or if he was simply, you know, attending it there.
20 And during that conversation he told me that he rented a room
21 inside the business and ran a sound studio inside the
22 business and then he had really kind of little interaction
23 with what went on in the business itself. Just simply that
24 he had a music studio that he ran out of there.

25 Q Okay. Did you ask him -- well, first, did you

1 observe cameras within that business?

2 A Yes.

3 Q And --

4 A There --

5 Q -- I mean, not DVRs?

6 A That's correct.

7 Q Okay. I'm going to show you now grand -- sorry,
8 State's Exhibit 96. Can you clear that screen, Detective?

9 A Is it lower right?

10 Q Yes, sir. We've gone through these so I'm going to
11 be brief. Is this the front, I guess, clothing area of the
12 store?

13 A Yes.

14 Q We're looking from the street in; is that --

15 A Correct.

16 Q -- essentially accurate?

17 A Yes, sir.

18 Q Showing you 97. Are you oriented to this
19 photograph?

20 A Yes. This is going to be from the north side of
21 the building from the south probably corner, and you're
22 looking south southwest. You can see on the very right hand
23 edge here is the glass that we were looking at earlier to see
24 the Cadillac.

25 Q Okay. Without having to zoom in too much, do you

1 see the camera up in the top right?

2 A Yes, sir.

3 Q Showing you 98.

4 A That we're looking kind of -- we're southeast, and
5 still in that same front room.

6 Q Camera in that frame?

7 A In the upper left here. It looks like I'm trying
8 to get the -- kind of up in that area there's a camera.

9 Q Got it. State's 101, what are we looking at here?

10 A That actually is the same camera up there in the
11 corner that we were just looking at.

12 Q Oh, okay. State's 102. Is that the hallway to the
13 left of that same area we were just looking at?

14 A Correct. And you can see that there's a camera
15 just partway down kind of down in this area.

16 Q Okay.

17 A And I can't tell for sure, but there might be one
18 way up here in the corner. Up there in the corner.

19 Q No problem. I want to move to State's 103. What
20 are we looking at here?

21 A This is looking back down that same hallway in --
22 on the -- from the original picture, the previous one that
23 was on the right-hand side, that's the door and there was a
24 camera sits over the top of that specific door.

25 Q Okay. Is that -- what am I pointing at here near

1 the door handle?

2 A That door handle is a electronic keypad --

3 Q Okay.

4 A -- to open the door.

5 Q It requires a key code?

6 A Yeah, a numeric code to open it.

7 Q How did you get into that room, if you did?

8 A Ultimately, we did -- yes, we did enter it, but we
9 ended up -- this is a piece of plastic in the center there.
10 We just pushed the plastic out and entered the room.

11 Q Okay. What was behind that door?

12 A Basically, a recording studio, as described -- or
13 -- and the name for most of the stuff in there like on the
14 wall was Roderick Vincent.

15 Q Showing you now 105. Is that within the recording
16 studio?

17 A This is a separate room. It was actually --

18 Q Okay.

19 A -- further down and not able to be entered from
20 that same -- but it's -- but yes, it does appear, and you can
21 see a camera up here kind of in the corner. And this camera
22 was connected to the DVR that had -- or had wires that ran
23 into the recording studio area that we've just previously
24 looked at.

25 Q Okay. Understood. Let me show you 109 now. What

1 are we looking at here?

2 A This is the interior of the room where you can see
3 what looks like a sound mixing board kind of up in this area.
4 I'm not sure it's showing up very well. A desk set up, some
5 speakers, and then there's some plaques on the wall.

6 Q 110 now.

7 A And that's just looking at -- getting a full view
8 of that -- it would have been the west wall of that same kind
9 of little office area.

10 Q Okay. Anything of evidentiary value that you see
11 in this photograph?

12 A I think we took some of hard drives that were in
13 here and I think it's kind of this little orange piece kind
14 of right up in this area. It's hard to see up on the
15 countertop. And then I think as from photographs and then
16 you can see a camera kind of up in that area as well.

17 Q Okay. So we've gone through several photographs,
18 and I'm not going to waste time going through all the
19 cameras. Can you estimate how many cameras were within this
20 business?

21 A I think it was a total of 11. Eight for the Swan
22 DVR, and I can recall the three set up for the -- the other
23 DVR, the owl, the Night Owl one.

24 Q Okay. And that was my next question. So there's
25 two DVR systems that were impound from Mr. Vincent's vehicle,

1 right?

2 A Yes, sir.

3 Q And were you ultimately able to determine which DVR
4 system went with which camera?

5 A The Night Owl with the recording -- the recording
6 studio stuff and simply because the logos on the cameras and
7 stuff was consistent with being Night Owl. And then the
8 other ones were consistent with the Swan system.

9 Q Okay.

10 A And then there's cables that ran to them as well.

11 Q And ultimately, did you review the contents of both
12 those DVR systems that you described?

13 A Yes.

14 Q All right. I'm going to get back to those in a
15 moment. Did you say that you interviewed Mr. Vincent?

16 A Yes.

17 Q And did you describe the contents of that
18 interview?

19 A I -- the initial interview, yes.

20 Q Okay. Did you ask him directly about whether or
21 not those cameras that are throughout the business are
22 connected to a DVR?

23 A We did.

24 Q And what was his response to that?

25 A He said that they weren't currently connected.

1 Q Okay. Did you find areas within the inside of Top
2 Notch, the recording studio or anywhere elsewhere, where
3 there appeared to be wires where potentially DVRs could be
4 connected?

5 A Yes.

6 Q And/or disconnected?

7 A Yes.

8 Q Do you recall where those were?

9 A In -- on this desk here, actually kind of, it was
10 behind it, there was an area where all of the wires came to
11 one location, and obviously, the -- the piece that they would
12 have been connected to was no longer there, being the DVR.

13 Q Okay. Did you conduct a subsequent interview or
14 have a subsequent conversation with Mr. Vincent when you had
15 those DVRs located, essentially?

16 A I didn't talk to -- well, several days later, I
17 believe, it was that we -- that I did have another
18 conversation with him.

19 Q Did you confront him with the fact that he said
20 there were no DVRs for the system and then you found the
21 DVRs?

22 A Yes.

23 Q What was his response?

24 A He said that he had in the confrontation was
25 basically, I had recovered them from his car, he said that

1 they were -- he was protecting them.

2 Q Okay. Protecting as in -- did he say context or
3 anything?

4 A He said that he thought he heard somebody say that
5 they were going to take them, and so he wanted to protect
6 them.

7 Q Okay.

8 MR. GIORDANI: Your Honor, I, at this point, would
9 like to start publishing some videos. I've discussed this
10 with defense counsel. We're going to have to actually
11 connect those DVRs to a bunch of wires. So if we could have
12 the lunch break to do that so we don't skip --

13 THE COURT: All right. Why don't we go ahead,
14 we'll break early for lunch, and if it would not
15 inconvenience the jury, we could have them come back a little
16 early. Come back at 1:15 instead of 1:30. Does that work
17 for everyone? All right.

18 So we'll go ahead and break for lunch at this
19 point. I remind the jury not to discuss the case among
20 yourselves or with anyone else. Don't read, watch or listen
21 to any reports or commentary on this case. Do not form or
22 express any opinion about the case. Do not go on social
23 media about the case, the Internet or do any research on your
24 own.

25 With that, I'll see you back here at 1:15.

1 THE MARSHAL: Rise for the jurors.

2 (Court recessed at 11:34 a.m. until 12:54 p.m.)

3 (Outside the presence of the jury)

4 THE MARSHAL: Come to order. Department 17's back
5 in session.

6 THE COURT: Okay. We're back on the record outside
7 the presence of the jury. Counsel for the State's present.
8 Roderick Vincent is present with his counsel, Mr. Arnold. I
9 have a Guilty Plea Agreement. Roderick Vincent, is that your
10 true name?

11 DEFENDANT VINCENT: Yes, ma'am.

12 THE COURT: Mr. Vincent, how old are you?

13 DEFENDANT VINCENT: 35.

14 THE COURT: How far did you go in school?

15 DEFENDANT VINCENT: Bachelor's degree.

16 THE COURT: So you read, write and understand the
17 English language?

18 DEFENDANT VINCENT: Yes, ma'am.

19 THE COURT: You were provided a copy of the Third
20 Amended Indictment charging you with destroying evidence, a
21 gross misdemeanor. Do you understand this charge?

22 DEFENDANT VINCENT: Yes, ma'am.

23 THE COURT: To this charge, how do you plead?

24 DEFENDANT VINCENT: Guilty.

25 THE COURT: Is anyone forcing you to plead guilty

1 here this morning?

2 DEFENDANT VINCENT: No, ma'am.

3 MR. ARNOLD: We are pleading guilty by way of
4 Alford decision.

5 THE COURT: Oh, okay. So it's guilty pursuant to
6 the Alford decision, correct? Is anyone forcing you to enter
7 in plea?

8 DEFENDANT VINCENT: No.

9 THE COURT: So you're entering this plea of your
10 own free will?

11 DEFENDANT VINCENT: Yes, ma'am.

12 THE COURT: And I have in front of me a Guilty Plea
13 Agreement pursuant to Alford. Is this your signature here on
14 page 5 of this agreement?

15 DEFENDANT VINCENT: Yes, ma'am.

16 THE COURT: And before you signed this agreement,
17 did you read it?

18 DEFENDANT VINCENT: Yes, ma'am.

19 THE COURT: Do you understand everything in it?

20 DEFENDANT VINCENT: Yes, ma'am.

21 THE COURT: And did you have a chance to discuss
22 this agreement and your case and the charge with your
23 attorney?

24 DEFENDANT VINCENT: Yes, ma'am.

25 THE COURT: And did he answer all your questions?

1 DEFENDANT VINCENT: Yes, ma'am.

2 THE COURT: Do you have any other questions?

3 DEFENDANT VINCENT: No, ma'am.

4 THE COURT: And did you understand the
5 constitutional rights set forth on page 4 of this agreement?

6 DEFENDANT VINCENT: Yes, ma'am.

7 THE COURT: And you understand pursuant to your
8 plea here this morning, you're giving up these rights?

9 DEFENDANT VINCENT: Yes, ma'am.

10 THE COURT: And you understand pursuant to your
11 plea, you could be looking at up to 365 days in the Clark
12 County Detention Center and a fine of up to \$2,000?

13 DEFENDANT VINCENT: Yes, ma'am.

14 THE COURT: And --

15 MR. ARNOLD: And just for the record, Your Honor,
16 it's 364 days.

17 THE COURT: 364 days and a fine of up to \$2,000. I
18 never can remember if it's 364 or 365.

19 MR. ROSE: It was 365 --

20 THE COURT: All right.

21 MR. ROSE: -- and then they changed it.

22 THE COURT: Okay. That's why. All right. So and
23 you understand sentencing is up to the Court?

24 DEFENDANT VINCENT: Yes.

25 THE COURT: And is one of the reasons you're

1 entering this plea pursuant to Alford is to avoid having this
2 case go to verdict and possibly being convicted on a more
3 serious charge and possibly facing a harsher penalty if that
4 occurred?

5 DEFENDANT VINCENT: Yes.

6 THE COURT: And you think it's in your best
7 interest to enter this plea pursuant to Alford?

8 DEFENDANT VINCENT: Yes.

9 THE COURT: All right. And State.

10 MR. GIORDANI: Yes, thank you, Your Honor.

11 Mr. Vincent, pursuant to discussion with your attorney, it's
12 come to my attention, to my understanding, that you do not
13 have any information regarding any robbery, attempted
14 robbery, murder, shooting or other altercation in the parking
15 lot on the evening -- morning hours of September 25th 2016;
16 is that accurate?

17 DEFENDANT VINCENT: Yes.

18 MR. GIORDANI: And would you be prepared to swear
19 to that under oath?

20 DEFENDANT VINCENT: Yes.

21 MR. GIORDANI: Can we have him sworn, please.

22 RODERICK VINCENT, STATE'S WITNESS, SWORN

23 DIRECT EXAMINATION

24 MR. GIORDANI: And Mr. Vincent, now that you're
25 under oath, I just ask you is there any information that you

1 have, any observation you made, anything you may have heard,
2 seen, observed in any way whatsoever regarding the -- any
3 attempt robbery, robbery, murder, shooting or theft that
4 occurred on the morning of September 25th, 2016 outside of
5 the Top Notch Apparel store?

6 DEFENDANT VINCENT: No.

7 MR. GIORDANI: Is it your testimony under oath that
8 you never heard or observed the victim, Ezekiel Davis, say
9 anything or do anything that indicated to you that he may be
10 planning to rob Javar Ketchum?

11 DEFENDANT VINCENT: No.

12 MR. GIORDANI: And vice versa, same question as it
13 goes to Javar Ketchum, did you ever hear or observe anything
14 that indicated to you that Mr. Ketchum was potentially going
15 to rob or shoot or steal from Ezekiel Davis?

16 DEFENDANT VINCENT: No.

17 MR. GIORDANI: If you were to testify to the
18 contrary as to any of those questions or any information
19 regarding any attempt robbery, any theft, any murder,
20 shooting or robbery on behalf of any person and against any
21 person, would it be untruthful if you were to testify to that
22 at a future date or later?

23 DEFENDANT VINCENT: (Indecipherable).

24 MR. GIORDANI: Okay. No further questions.

25 THE COURT: All right. And in addition to the

1 testimony that's already been received in this trial, is
2 there anything you want to add to what evidence State would
3 intend to present that would further give a factual basis for
4 the plea in this case?

5 MR. GIORDANI: Yes, Your Honor. Had this case
6 proceeded to trial, State would have proven beyond a
7 reasonable doubt that the defendant, Roderick Vincent, did
8 willfully, unlawfully, feloniously after the commission of a
9 murder, which is a felony, conceal and/or destroy and/or aid
10 in the destruction or concealment of video surveillance
11 and/or DVRs and/or recordings, which are material evidence
12 with the intent that defendant, Javar Eris Ketchum, might
13 avoid or escape, arrest, trial, conviction and/or punishment
14 having knowledge that defendant, Javar Eris Ketchum, had
15 committed the murder of Ezekiel Davis and/or was liable to
16 arrest therefore.

17 And that all happened within County of Clark, State
18 of Nevada.

19 THE COURT: All right. And Mr. Vincent, I have to
20 have a factual basis for your plea. I've heard sufficient
21 evidence during this trial up to this point to determine
22 there is a factual basis for your plea, and I am also going
23 to rely upon the statement just made by the district attorney
24 in making the determination that there is a factual basis for
25 your plea. Do you understand that?

1 DEFENDANT VINCENT: Yes, ma'am.

2 THE COURT: All right. Court does find there's a
3 factual basis for the plea, accepts this plea. Finds the
4 plea is freely and voluntarily entered by the defendant. You
5 understand as to the nature of the offense, consequences of
6 this plea, and we'll refer the matter over to the --

7 MR. GIORDANI: Oh, I'm sorry to interrupt you, Your
8 Honor. It's -- we're agreeing to credit for time served and
9 it is a gross misdemeanor --

10 THE COURT: Okay.

11 MR. GIORDANI: -- if you may sit as a magistrate

12 UNIDENTIFIED MALE SPEAKER: Oh, to gross.

13 MR. GIORDANI: Oh, on a gross, Your Honor doesn't
14 need to --

15 THE COURT: On a gross, I don't have to --

16 MR. GIORDANI: It doesn't need to --

17 THE COURT: -- sit as magistrate. All right, so
18 pursuant to your plea here today, I will adjudicate you
19 guilty to the crime of destroying evidence, a gross
20 misdemeanor, and adjudicate you guilty on that, and sentence
21 you to credit for time served. And we'll waive any
22 assessment fees.

23 MR. GIORDANI: Thank you, Your Honor.

24 MR. ROSE: Thank you, Your Honor.

25 MR. ARNOLD: Thank you, Your Honor.

1 THE COURT: All right. Mr. Roderick -- or
2 Mr. Vincent, I'm sorry, you are free to go.

3 DEFENDANT VINCENT: Thank you.

4 THE COURT: And, Mr. Arnold, thank you.

5 MR. ARNOLD: Thank you, Your Honor.

6 THE COURT: You were very professional here in the
7 trial. It's been a pleasure having you in court.

8 MR. ARNOLD: It was a pleasure having you, Your
9 Honor.

10 THE COURT: And I'm sorry about the family member.
11 Have a safe trip.

12 MR. ARNOLD: Yeah. Thank you, Your Honor. I
13 appreciate it. All right, guys. Thanks, again.

14 (Pause in the proceedings)

15 THE COURT: All right. We'll be in recess.

16 MR. GIORDANI: Thank you, Your Honor.

17 (Court recessed at 1:02 p.m. until 1:21 p.m.)

18 (In the presence of the jury)

19 THE MARSHAL: Come to order. Department 17's back
20 in session.

21 THE COURT: You may have a seat.

22 MR. WOOLDRIDGE: Your Honor, I believe we're
23 missing counsel for Mr. Vincent.

24 THE COURT: Counsel approach.

25 (Off-record bench conference)

1 THE COURT: All right. Ladies and gentlemen, let's
2 see, all members of the panel are present. We're back on the
3 record. Counsel for the State is present. The --
4 Mr. Ketchum is present with his counsel. The remaining
5 defendant, there has been a resolution of the case as to the
6 remaining defendant. I will not reveal to you what the
7 resolution was. You are not to guess or speculate as to what
8 that resolution was nor are you to allow any of that to have
9 any impact on your deliberations or decisions regarding the
10 case as to the remaining defendant.

11 All right. And counsel approach.

12 (Off-record bench conference)

13 THE COURT: We have additional witnesses that will
14 be coming in that will probably answer the question. So
15 we're going to reserve ruling on it at this point.

16 Okay. You may proceed.

17 MR. GIORDANI: Thank you, Your Honor.

18 BY MR. GIORDANI:

19 Q Detective Bunn, during that break, is it your
20 understanding, were you present that when we got the DVR
21 systems, we were discussing hooked up to the court equipment?

22 A Yes, sir.

23 Q Can you please describe -- well, first off, are we
24 working off one of the two DVRs as of now?

25 A That's correct.

1 Q And which of the two DVRs is that?

2 A The Swan DVR is the one that's currently hooked up.

3 Q Okay. Were there four different camera views that
4 would be associated with the Swan DVR?

5 A Well, I think there were a total of eight total
6 cameras as to -- out of those cameras there were certain ones
7 that we used that, you know, in reviewing for -- for what we
8 utilized, for our -- our case.

9 Q Understood.

10 A For when we submitted it to you.

11 Q Understood. And I want to go through these because
12 eventually the jury will have these and access to them. Do
13 you -- can you walk us through if I put it up on the screen,
14 the basic operations of how to look at different views and
15 cameras?

16 A Yes.

17 Q Okay.

18 MR. GIORDANI: Can we switch over, please?

19 BY MR. GIORDANI:

20 Q All right, sir, can you tell the jury what we're
21 looking at here?

22 A This is the main control panel for the system. It
23 identifies the channel being the camera number, the video
24 type is -- it says "all" so it's referring to all the video.
25 And then it gives you a start time. There's a calendar

1 associated and then you can break it all the way down to
2 minutes, hours, you know, all the way down to minutes and
3 seconds. And then there's an end time that also gives you
4 the date and the time that it would end. And that's the main
5 control panel for the menu for it.

6 Q Okay. And without seeming too obvious, now this
7 main control panel, that can be controlled with a mouse; is
8 that right?

9 A That's correct. There is no other keyboard input
10 or anything. You have to attach a mouse to the system.

11 Q Okay. So we're going to have a DVR, the big box.
12 We're going to have cable to whatever viewing device we use,
13 in this case, it's the big screen, and then we're going to
14 have a mouse attached to the box as well?

15 A Correct.

16 Q Okay. When you go on to this main screen, how is
17 it that you go about selecting a channel?

18 A Utilizing the mouse, you can simply click each one
19 or you can click them all. You can click "all" if you
20 choose. The controls, the additional controls, come about by
21 doing individual views. But if you select "all" you get like
22 an eight panel -- you know, camera panel. So you could see
23 them that way, but unfortunately, you don't get the amount of
24 control if you select them one at a time.

25 Q Understood. So as an example, I want to first show

1 camera one, which is also referred to on this as channel
2 one --

3 A That's correct.

4 Q -- right? Okay. So by -- to activate that channel
5 and go in and do what we need to do in viewing it, do you
6 just click and make it white like it is on the screen and
7 then push play?

8 A Well, actually, you're going to have to -- you
9 would have had to preset the dates, the start, date and time
10 and the end date and time that you're looking for. You'll
11 have to fill in those blocks first --

12 Q Understood.

13 A -- before you click play, otherwise, it's going to
14 try to go all the way back to what -- just to wherever it's
15 currently seeing the time.

16 Q Okay.

17 A So have you to actually identify the date and time
18 where you want it to go.

19 Q And in this particular case, we've already done
20 that. Can you read that date -- the start time?

21 A The start time is 9/24/2016 at it looks like 2100
22 hours and seconds and then the end time is set at 9/25/2016
23 at 7:00 a.m.

24 Q Okay. Once you have those dates preset, is that
25 when you push play?

1 A Yes.

2 Q All right.

3 A This is the -- there's a date, timestamp that you
4 can see across the top giving us the date of 9/24/2016, and
5 it gives the time of 20:03, which is going to be 8:03 and 24
6 seconds and it identifies the day as a Saturday.

7 Q What are we looking at in the bottom bar?

8 A The bottom bar is that there is motion sensors, so
9 some of the areas that show the -- either the red or the
10 white will be telling you that there's video available or
11 there's a blank session, but during that time period because
12 there was no motion, that it -- it didn't record anything.
13 That being just a purpose to save space on the hard drive
14 is --

15 Q Oh.

16 A -- why cameras do that.

17 Q Okay. Are there fast forward, play, rewind and
18 other features on this?

19 A If you right click the mouse into the field
20 somewhere, you will get console, which will actually give you
21 the ability to see, play, take that away. And then if you go
22 back and hit exit, it gets you back to the screen here. Go
23 back to play, right click, and then you can do a digital zoom
24 and then this console. So there is a -- now you can see on
25 the bottom of the screen there is some ability. And there's

1 some -- some things that are not showing on my view that I
2 can't -- because there should be a bottom bar, there's a
3 control bar, and I can't see that on this.

4 Q Okay.

5 A And I don't know if that's available on that.

6 Q Are you referring to this small bar?

7 A No, there's actually a -- like a regular -- a
8 standard bar that goes across the bottom of the screen that
9 would have normal like play and -- play, stop, pause, you
10 know, like a control bar across the bottom.

11 Q Okay. Similar to what we saw in that last --

12 A Yes.

13 Q -- screen? Okay. On this screen, we've gone into
14 essentially a zoom feature; is that right?

15 A It appears that that may be. It's not -- I can't
16 tell. You have the ability from him to here. But because
17 it's not -- now you see the hand as the screen turns -- the
18 cursor for the mouse turned into a hand?

19 Q Yes.

20 A That means that you've zoomed it, and you can now
21 grab that picture and move the photo as so you can see that
22 -- that piece that's been zoomed into.

23 Q Okay. Understood. So I'm going to go
24 chronologically through several perspectives. I might switch
25 camera views, but I want to go chronologically essentially

1 through the evening. Are you okay with that --

2 A Yes, sir.

3 Q -- process? Okay.

4 A And one thing we did note when we did this, the
5 timestamp is off by maybe an hour. So if this is saying it's
6 20:04, the time -- the actual time of day is approximately an
7 hour later in the night. So that would basically be 9:00
8 o'clock, not 8:00 o'clock.

9 Q Okay.

10 A So the timestamp is off --

11 Q Okay.

12 A -- on the recording.

13 Q Did you verify the timestamp that we're seeing here
14 with other sources of corroboration, like a 911 call, in
15 order to determine that this was an hour off?

16 A Yes.

17 Q Okay. So is it, so everyone's clear, going to be
18 one hour off on every single different view we see?

19 A Yes.

20 Q I don't have to go back and visit that? We're
21 always assuming it's one hour later than what it's saying?

22 A Yeah, and that's an approximate. It's a couple
23 minutes. But it's approximately an hour difference.

24 Q Okay. And there's a ticking second bar -- I mean,
25 a second digit there?

1 A Yes.

2 Q Is that the seconds --

3 A Yes.

4 Q -- on the -- okay. All right. I'm going to move
5 to -- I'm going to move to a different time in this video.
6 One hour and 29 seconds on the timestamp, for the record.

7 MR. GIORDANI: Bear with -- Your Honor, bear with
8 us here. I apologize. I'm going to rewind it a little bit
9 and get to 1 hour and 29 seconds. And we'll stop right there
10 and just let it play. And for the record, that's about one
11 minute -- or one hour.

12 BY MR. GIORDANI:

13 Q Detective, what time in real life are we talking
14 about here?

15 A We've now changed dates, and we've moved up to 1:00
16 o'clock in the morning on the 25th.

17 Q Okay. Is it still an hour off?

18 A Yes.

19 Q So what time in real life is it?

20 A It's about 2:00 a.m.

21 Q Got it. Do you see three individuals outside
22 there?

23 A Yes, sir.

24 Q And Detective, to make this run a little bit more
25 smoothly, if you could please let us know when you need to

1 pause in order to describe something that was of evidentiary
2 note to you.

3 A Okay. The individuals up front are individuals we
4 later talked to.

5 Q Okay. That's what I wanted to get to, Detective.
6 How about the individual on the left?

7 A Individual on the left we identified as Javar
8 Ketchum.

9 Q Okay. Now, is this the first time that you see
10 this series that we've just looked at, the first time you see
11 Mr. Ketchum at the club or sort?

12 A Yes. It's when we see him, you know.

13 Q Okay.

14 A It appears he just arrived. I mean, you'd have to
15 go back further and further, but some -- it's very close to
16 that time frame.

17 Q Got it. And that will be sufficient. I'm going to
18 go ahead and go to 1 hour, 9 minutes, 48 seconds.

19 A And that was going to be Mr. Ketchum walking into
20 the club, entering through the front doors.

21 Q Thank you. Looked like he was dancing or waving
22 his arms?

23 A Yes.

24 Q Okay. And next go to 2 hours, 25 minute -- 2
25 hours, 25 minutes, 40 seconds, but on a different camera

1 angle. So we're going to exit out there, go to channel 8.

2 A This is the exterior -- this is the back behind,
3 it's to the west of the back alleyway behind Top Notch. The
4 open door you see on the lower left is the entry into and out
5 of the back of Top Notch. And then the fence you see the
6 enclosure. I think we saw that earlier in the overhead view
7 that we saw --

8 Q Okay.

9 A -- was that enclosure fence that's there. These
10 individuals out here, we were able to identify. Obviously,
11 the one wearing the number 3 on the back of the shirt is
12 Mr. Ketchum, and then we were able to identify the -- all but
13 one of those -- two of those individuals, I believe.

14 Q Mr. Ketchum is wearing a big number 3 on his back,
15 right?

16 A Yes, he is.

17 Q It's fair to say that our victim, Mr. Ezekiel
18 Davis, is not in that screen, correct?

19 A No, he is not.

20 Q We're going to go ahead and play it.

21 A And stop. If you can back that up just a little
22 bit. And if you can zoom into that -- to number 3. And
23 there's a gun coming out of his right front pocket there
24 being displayed, and he's showing it to the other individuals
25 present.

1 Q Okay.

2 A And he places it back in his right front pants
3 pocket.

4 Q Fair to say you can't see that gun out in the open?
5 It's in his pocket concealed?

6 A That is correct.

7 Q Okay. I'm going to move now to 2 hours 57 minutes
8 on a different camera angle. And we're going to camera
9 number 6.

10 A This was the front of the store, and you're looking
11 basically, northbound and now we're on -- we're back to the
12 24th at basically 9:00 o'clock at night.

13 Q I'm going to put it at 2 hours, 57 minutes. We're
14 going to have to back out here a minute. If we go back to
15 the control panel, we can set it at the time we're looking
16 for; is that right?

17 A Yes, sir.

18 Q Okay. Channel 6 still. Pause it. That individual
19 in the hat, is that Ezekiel Davis?

20 A It's hard to tell from that particular still there.
21 If we could back it up a little bit, it would be easier to
22 tell that.

23 Q Sorry about that. There's two hats, obviously.
24 The one with the bucket hat, is that Ezekiel Davis?

25 A It appears, yes. The color is hard to see because

1 of the darkness. It goes to a black and white image so
2 you're not seeing the colors of --

3 Q Got it.

4 A -- the true colors of the clothing.

5 Q I should have mentioned that earlier, I apologize.
6 As the sun comes up, do these change from black and white to
7 color view?

8 A Yes.

9 Q Okay. Move to the inside camera.

10 UNIDENTIFIED SPEAKER: That was 6?

11 UNIDENTIFIED SPEAKER: No, that would be --

12 THE WITNESS: That was 6 that he just showed, yes.

13 UNIDENTIFIED SPEAKER: Yeah, 6. Right.

14 BY MR. GIORDANI:

15 Q And now we're moving back to channel 1.

16 A So we're at almost 4:00 o'clock in the morning.
17 It's 2:57, about 3:57, so it's almost 4:00 o'clock in the
18 morning.

19 Q And --

20 A That is this -- if you want to pause it there.
21 Now, does this function still work to touch it? I'm sorry.

22 Q I don't know that it does.

23 A It does.

24 Q Oh, it does.

25 A That would be Ezekiel Davis.

1 Q Okay. So he's arriving at, well, it says 2:57,
2 which means 3:57 --

3 A That's correct.

4 Q -- or around that? I mean, it's not --

5 A Yeah. Approximately.

6 Q -- exactly an hour.

7 A Correct.

8 Q Okay. I'm going to go to about 4:07 on camera 6.

9 A This is outside the front door of Top Notch.

10 Q It says 4:07:59 on the screen. Is that really
11 about 5:10 in the morning, 5:09?

12 A Yes.

13 Q Is that the defendant amongst that group of men?

14 A Yes. He's going to be the one in the USA shirt in
15 the back.

16 Q Okay. I'll pause it right there. What does that
17 appear to be in his hand there?

18 A It looks like it might be a bill or two, maybe
19 currency. It's hard to tell. There's a blur to that screen
20 as it stops there.

21 Q Okay. You said a bill or two?

22 A Yeah. It doesn't look -- I mean, it's hard to
23 tell. It looks -- you know, and you can see that's opening
24 it, but the door gets in the way as well. It's very hard to
25 tell.

1 Q Understood. I'm going to move now to
2 approximately, 5:13:49 on camera number 1. Who are those two
3 gentlemen walking out?

4 A The individual in the green shirt is going to be
5 Ezekiel Davis, the deceased. And the person to his right is
6 going to be Javar Ketchum. They're arm and arm there.

7 Q To be clear, we're talking at about 6:15 in the
8 morning?

9 A Yes, sir.

10 Q Okay. You see the defendant look over his shoulder
11 there and then follow the decedent out?

12 A Yes.

13 Q And they're going off right, and now they're out of
14 screen; is that accurate?

15 A That is correct.

16 Q I'm going to switch camera views here. Go to
17 camera 6. And we're talking about 6:15, as we were in the
18 last camera view. And now the two individuals are seen from
19 a different angle; is that accurate?

20 A Right. This is back to the camera that's out --
21 directly outside the front door to Top Notch. They're now
22 walking north along the -- the sidewalk that runs along the
23 west side of the building and that's -- Mr. Ketchum has the
24 number 3 shirt on and Ezekiel Davis is wearing the green
25 shirt.

1 Q And now we've moved from black and white to color?

2 A Correct.

3 Q So that would indicate, essentially, the sun's
4 coming up?

5 A Yeah. It's done from light for the cameras so --

6 Q I'm going to zoom in here. What does that appear
7 to be on the victim -- I mean, Ezekiel Davis's left wrist?

8 A It's a watch.

9 Q Okay. Zoom back out and start playing it. Do you
10 see the victim give him some kind of hug there?

11 A Yes. Shaking hands, walking further northbound.

12 Q Several other individuals coming out around the
13 same time?

14 A Yes. And you can still see him down here on the --
15 up in this upper right-hand corner.

16 Q Okay.

17 A And it appears that like Ezekiel Davis has a cup or
18 something in his hand. He walked out with it, and he's still
19 got it in his hand.

20 Q Kind of stumbling?

21 A Yep.

22 Q Okay.

23 A You can see the legs stepping off into this brush
24 area, the landscaping. And the two kind of move back and
25 forth there. And you can just barely see the legs up in the

1 upper corner there, and then they move completely away from
2 the camera view at all.

3 Q Okay. I'm going to switch back to camera channel
4 1.

5 A And this is from the back, which would have been
6 the southeast corner looking out the front doors --

7 Q Okay. And we're --

8 A -- of Top Notch.

9 Q -- still around the time when those two have now
10 walked off screen in the other view, and now we're back
11 inside the store; is that right?

12 A That is correct. And the action that we're going
13 to have is actually going to be kind of the center top part
14 of this screen. I don't know if you want to zoom into that
15 or if you want to let this run first and then go back.

16 Q We'll let it run for a moment and we can go back.
17 Does it appear that the individuals in the store conversing
18 and being normal, I guess, for lack of a better term?

19 A Yes. Maybe even purchasing a hat or something from
20 a --

21 Q I'll pause it. Did you see some heads turn?

22 A Everybody's head looks out the -- turns and looks
23 out the door. You can see these individuals over here turn
24 and look out the door. All of them are looking out.

25 Q Okay.

1 MR. GIORDANI: Court's brief indulgence. All
2 right, we're going to activate the zoom feature.

3 THE WITNESS: Timestamp's now 5:16.

4 BY MR. GIORDANI:

5 Q Okay. That vehicle we just saw, did you ultimately
6 identify that as a certain individual's vehicle?

7 A Yes.

8 Q Who's that?

9 A Antoine Bernard.

10 Q Okay.

11 A And if you'll pause it there.

12 Q Go ahead, Detective.

13 A In the image, you can see, and as this individual
14 was moving, you can see that -- the number 3 on the shirt,
15 that he's got a pair of pants that he's pulling a belt out
16 of.

17 Q Okay. Now, what we're going to do is let that
18 angle play without interruption, and then we can go back if
19 you feel there's important things to note. But let me go
20 ahead and just play this once through.

21 A Okay.

22 Q That individual with the long hair in the middle
23 there, do you know who that is?

24 A That is Deshawn -- Deshawn Byrd.

25 Q Deshawn Byrd, does he appear to be coming from the

1 back?

2 A Yes.

3 Q Is there a restroom in the back?

4 THE COURT: Counsel, let me interrupt. We're going
5 to take a short recess.

6 MR. GIORDANI: Okay, thank you.

7 THE COURT: About -- until 2:00 o'clock. And just
8 remind the jury not to converse among themselves. Not to
9 talk about the case. Not to form or express any opinion.
10 We'll see you back here at 2:00 o'clock.

11 THE MARSHAL: Rise for the jurors.

12 (Court recessed at 1:53 p.m. until 2:01 p.m.)

13 (In the presence of the jury)

14 THE MARSHAL: Come to order. Department 17's back
15 in session.

16 THE COURT: All right. We're back on the record.
17 Please be seated. Back in the presence of the jury. All
18 members of the panel are present. Counsel for both sides are
19 present. The defendant's present. You may proceed.

20 MR. GIORDANI: Thank you, Your Honor.

21 BY MR. GIORDANI:

22 Q Detective, I'm going to start this back over from
23 the beginning and let it play through at about 5:16, which
24 again, is really 6:16 in the morning; is that right?

25 A Yes, sir.

1 Q Okay. I'm going to zoom in a little bit. Now, I'm
2 going to back, and I'm going to zoom in a little bit more, if
3 it's possible, on this, and show that same frame.

4 A And do you want me to narrate?

5 Q Yes.

6 A Okay. This is going to be, as you can see the
7 number 3 on the back of the shirt, pulling a belt out of the
8 pants, and you can see in his right hand there's the image of
9 the gun briefly, as it goes through the -- Ketchum goes to
10 the door of the vehicle, stops, returns, continuing to carry
11 the belt, returns to the area where the body would be, and
12 continue to carry the belt, walking back to the car. And
13 then the car leaves the area.

14 Q Thank you.

15 MR. GIORDANI: All right. If we could switch over
16 to the overhead, please.

17 BY MR. GIORDANI:

18 Q I'm going to move on. Detective, did you take
19 several still frames and/or video clips from that in order to
20 attempt to identify who the killer was?

21 A Yes, sir.

22 MR. GIORDANI: May I approach the witness?

23 THE COURT: You may.

24 MR. WOOLDRIDGE: Can I see that? Can we approach?

25 THE COURT: You may.

1 (Off-record bench conference)

2 MR. GIORDANI: May I approach?

3 THE COURT: You may.

4 MR. WOOLDRIDGE: Just note my objection for the
5 record, Your Honor.

6 THE COURT: Okay. And we'll make a fuller record
7 at the break.

8 MR. WOOLDRIDGE: Thank you.

9 BY MR. GIORDANI:

10 Q Showing you State's Proposed Exhibit 132. What
11 does that appear to be to you?

12 A That is a press release basically, that the
13 Department did in this case.

14 Q As a result of this, does that appear to be a fair
15 and accurate depiction of the press release that was released
16 in addition to photos and/or video clips from that video we
17 just watched?

18 A Yes.

19 MR. GIORDANI: And I'd move for the admission of
20 132.

21 THE COURT: Okay. Defense objection is noted. I
22 have ruled that the State may admit it. I will admonish the
23 jury, however, that the information -- this document is just
24 being admitted to show that they released a press release
25 with certain information it. The information within it is

1 hearsay and may not be considered by you as evidence of guilt
2 or that something in it has actually occurred. This is just
3 the information -- it's just to show what was released to the
4 public and then they'll explain what happened after that.

5 (State's Exhibit 132 admitted)

6 MR. GIORDANI: Thank you, Your Honor.

7 THE COURT: All right.

8 MR. GIORDANI: It will be admitted?

9 THE COURT: It's admitted.

10 MR. GIORDANI: May I publish?

11 BY MR. GIORDANI:

12 Q So I want to be very clear, Detective, this was
13 bare bones information what you had at the time, and it's not
14 necessarily describing your opinion about what went on or
15 anything like that; is that right?

16 A That's correct.

17 Q And this press release, was that sent to local
18 media outlets?

19 A Yes.

20 Q And was it sent with -- in addition to other
21 documentary items?

22 A Yes.

23 Q And were those photographs and/or video?

24 A Yes.

25 Q When this press release was issued or thereafter,

1 did you receive information regarding a potential identity of
2 the suspect in any of the video or photos?

3 A Yes.

4 Q And how did that come about?

5 A Actually, we were contacted by a local attorney,
6 and then we were able to interview an individual by the name
7 of Antoine Bernard.

8 Q Were there other -- I don't want to know the
9 content, but were there several other calls that came in that
10 also you used in your investigation, without saying what was
11 said?

12 A Yes.

13 Q Okay. As a result of this press release, did you
14 come up with eventually, a suspect moniker?

15 A Yes.

16 Q What was that moniker?

17 A Jay Fly (phonetic).

18 Q What did you do with that moniker?

19 A We searched that through social media, through all
20 the other areas whether it be Instagram, Facebook, you know,
21 trying to find anybody that would have used that moniker or
22 had that moniker, and as a result, we were able to find a --
23 an image on a Facebook page.

24 Q Okay.

25 (Pause in the proceedings)

1 MR. GIORDANI: May I freely just approach the
2 witness, Your Honor?

3 THE COURT: You may.

4 MR. GIORDANI: Thank you.

5 BY MR. GIORDANI:

6 Q Showing you State's Proposed Exhibit 133.

7 A Yes, sir.

8 Q What does that appear to be to you?

9 A That's a picture of Mr. Ketchum.

10 Q Is that the picture you mentioned that you had
11 located on Facebook?

12 A Yes.

13 Q Based upon that picture, were there any portions of
14 this that you believe you viewed also in the video and/or
15 photographs?

16 A Well, the tattoo on the arm that's depicted on the
17 arm in this particular photograph, and there's an image from
18 the video that shows an identical tattoo.

19 Q Okay.

20 A So we're --

21 Q So that was important to you obviously?

22 A Very much so.

23 MR. GIORDANI: And I would move for the admission
24 now of 133.

25 MR. WOOLDRIDGE: No objection.

1 THE COURT: Okay. It will be admitted.

2 (State's Exhibit 133 admitted)

3 MR. GIORDANI: Thank you.

4 BY MR. GIORDANI:

5 Q Publish that, just zoom in. Fairly distinctive
6 tattoo?

7 A Yes, sir.

8 Q So as a result of the calls you received and
9 information you received after that press release, did you
10 attempt to locate Mr. Ketchum?

11 A Yes.

12 Q Were you able to do so?

13 A Actually, we weren't able to locate him here. We
14 did ask to have a warrant issued for his arrest and --

15 Q Okay. So is that an arrest warrant?

16 A Yes.

17 Q When you issue an arrest warrant, does that get
18 placed in any types of databases?

19 A Yes. It's into the National Crime Information
20 Center, NCIC, and it's a nationwide search database where
21 individuals if they've got a warrant for their arrest, law
22 enforcement can run them if they -- and if it comes up and it
23 shows a hot hit, they can then verify through the department
24 or agency that has the warrant or put that information in to
25 verify it's in status and then they'll make the arrest.

1 Q Did it -- did you become aware at some point that
2 the defendant was apprehended on that warrant?

3 A Yes.

4 Q Where was he apprehended?

5 A Sierra Blanca, Texas.

6 Q Where?

7 A In a -- at a border patrol checkpoint.

8 Q When that occurred, was Mr. Ketchum ultimately
9 brought back to the state of Nevada to face these charges?

10 A Yes.

11 MR. GIORDANI: Court's brief indulgence here. All
12 right. Thank you, Detective. I have the no further
13 questions, at this time, Your Honor. I'll pass the witness.

14 THE COURT: Thank you.

15 (Pause in the proceedings)

16 CROSS-EXAMINATION

17 BY MR. WOOLDRIDGE:

18 Q Detective Bunn --

19 A Yes, sir.

20 Q -- you were not present for the shooting; is that
21 right?

22 A I was not.

23 Q You did not see the shooting?

24 A I did not.

25 Q You have no personal knowledge about what led up to

1 the shooting?

2 A No, sir.

3 Q You have no personal knowledge whether Mr. Ketchum
4 shot Zeke Davis in self-defense?

5 A No, sir.

6 Q And you have watched the video multiple times?

7 A Yes.

8 Q From the information you gathered as part of your
9 investigation, this club, this after-hours or, you know,
10 clothing store moonlighted as the after-hours club didn't
11 charge a cover, did it?

12 A That I don't know. We had differing information
13 that it -- sometimes they did, sometimes they didn't.

14 Q There was no one at the door collecting
15 Mr. Ketchum's money when he had those bills in his hand,
16 right?

17 A I don't know that that would have been at the time.
18 Again, we had information from other people that we
19 interviewed that said they had to pay a cover. Now, whether
20 everybody had to pay a cover, only some people had to pay a
21 cover, that part I don't know, but we did have interviews
22 with people that said they did pay a cover at that time.
23 So --

24 Q Very good. Well, but Mr. Ketchum, from the video
25 you saw, Mr. Ketchum didn't pay a cover?

1 A Not that I'm aware of.

2 Q All right.

3 MR. WOOLDRIDGE: Can we -- and I hate to do this to
4 Steve -- Mr. Rose, but I don't have anybody to help me. So
5 can we pull up -- can we pull up that frame when Mr. Ketchum
6 goes into the club. The one -- I think it's the number 1
7 camera view. It's 1:09:45.

8 BY MR. WOOLDRIDGE:

9 Q And I don't know about your screen, Detective, but
10 my screen is really poor.

11 A It's not the best, but --

12 Q Do mind if I -- I can see much better on this
13 screen.

14 MR. WOOLDRIDGE: Maybe right there. Maybe go back
15 just 44 or something. Right there. Can you go back? When
16 he comes into the club.

17 MR. ROSE: Is there a specific time you want?

18 MR. WOOLDRIDGE: Just -- like around the 45, the
19 1:09:45. If you'd just go to 40 and then I'll have you pause
20 it. Okay, thank you so much. Right there.

21 BY MR. WOOLDRIDGE:

22 Q Could you see what was in his hand, in his right
23 hand?

24 A I don't.

25 Q You couldn't tell what that was?

1 A No.

2 Q For all intents and purposes, it looks like
3 Mr. Ketchum is having a good time dancing around as he walks
4 in?

5 A It would appear so, yes.

6 MR. WOOLDRIDGE: Can we also please go to the -- I
7 don't know the camera view, but it's at the 4:08:25, when
8 Mr. Ketchum is outside the club and is going -- and
9 reentering with money in his hand. Maybe all outside views
10 are number 6, I don't know.

11 MR. GIORDANI: Counsel, you said 25?

12 MR. WOOLDRIDGE: It would be 4:08:25. Can we maybe
13 rewind it just a little bit?

14 (Counsel conferring)

15 BY MR. WOOLDRIDGE:

16 Q So you indicated that maybe one or two or three
17 bills?

18 A It's hard to tell.

19 Q It could be 10 or 20, you can't really tell, right?

20 A Yeah, I can't tell. I -- and I don't know that I
21 would say 10 or 20, but it's hard to tell.

22 Q Okay.

23 A Now, whether he's paying a cover at that point or
24 not, hard it tell.

25 Q Yep. Now, the video shows what happened before the

1 shooting, right?

2 A There's -- yeah. Are -- specific, there's a lot of
3 images, yes.

4 Q In terms of Mr. Ketchum and Mr. Davis walking
5 towards the exterior door?

6 A Yes.

7 Q And going outside --

8 A Yes, sir.

9 Q -- arm and arm?

10 A Yeah.

11 Q Right? And was it your theory that Mr. Ketchum
12 lured Zeke out?

13 MR. GIORDANI: Objection.

14 THE COURT: Counsel, approach.

15 MR. WOOLDRIDGE: Yeah.

16 (Off-record bench conference)

17 THE COURT: You may proceed.

18 MR. WOOLDRIDGE: Sure.

19 BY MR. WOOLDRIDGE:

20 Q Who walked out of the -- who walks out first, Zeke
21 or Mr. Ketchum?

22 A I don't recall. I know they were kind of arm and
23 arm coming across that front foyer area walking towards the
24 door. And once they get to the door, I don't -- I don't
25 remember which one was out first, but --

1 Q Do you think that would be an important fact for
2 you to know?

3 A I don't know that it made any difference either
4 way. They hooked back up right outside the door, so
5 recalling that specific moment --

6 Q Did you watch this video many times?

7 A I have watched it several times. I just don't
8 recall. I mean, if we want to reshow it, I'd be happy to
9 look at it.

10 Q Sure. Did you notice a time when Zeke and Javar
11 were outside, that Zeke actually pointed into a certain
12 direction?

13 A I don't recall him pointing at a certain direction,
14 I'm sorry.

15 Q No problem.

16 MR. WOOLDRIDGE: Can we look at the frame, the
17 video camera frame when they're out? It would be 5:14:09.
18 Probably want to put it just a little bit before and then
19 maybe pause it there. And I think it's going to be the
20 camera view that when they're actually out.

21 MR. GIORDANI: Oh, (inaudible).

22 MR. WOOLDRIDGE: Sorry. Right there.

23 MR. GIORDANI: Yes.

24 BY MR. WOOLDRIDGE:

25 Q Did you see that point?

1 A It kind of looked with the left hand.

2 Q Like a point, let's go over there. Did you see
3 that?

4 A I thought he was -- in my opinion, it looks like
5 he's pointing at the black car that's right there.

6 Q All right. But you don't know what he's pointing
7 at?

8 A I don't. Looks like --

9 Q You just know he was pointing in a direction?

10 A It looks like he's got a cup in his left hand and
11 he's kind of gesturing towards the left.

12 Q Okay. Zeke and Mr. Ketchum actually ended up at
13 the left, right? Ended up near Mr. Davis's car?

14 A Yes.

15 Q And a shell casing was found near Mr. Davis's car?

16 A It was in the parking lot back or I want to say by
17 the right wheel maybe, I want to say.

18 Q That would be Mr. Davis's car?

19 A I believe so.

20 Q I want to talk to you about the people in the video
21 itself. Did you notice based on your review of the video
22 there were quite a bit of girls there that night?

23 A Yes.

24 Q And when Mr. Ketchum and Mr. Davis walked out of
25 the club, there were people behind them; isn't that right?

1 A Yes.

2 Q Do you know how many people were behind them?

3 A Gosh, I don't know. As I recall, there was like
4 five or six people that ended up walking out about that same
5 time.

6 Q Around the same time?

7 A Yep.

8 Q Were you able to -- other than Antoine Bernard and
9 Antoine's girlfriend, were you able to interview those other
10 people?

11 A I think several of the other ones were -- I think
12 there was one of them was a female that there's some video of
13 her. I think she later was interviewed by Detective
14 Wildemann, but I didn't personally interview her. But there
15 were other people that were there that, you know --

16 Q Nobody's like hurrying behind Mr. Ketchum and
17 Mr. Davis, right?

18 A No.

19 Q It appears that they're just walking kind of
20 nonchalantly?

21 A Yes.

22 Q Do you recall a black guy with a white shirt that
23 was behind them?

24 A Yes, a very tall individual. Is that the one
25 you're referring to?

1 Q I don't know if he's very tall, but there comes a
2 time --

3 A He has a white shirt, white pants?

4 Q White shirt, jeans.

5 A Very tall individual, picks up a cup that's sitting
6 on to the side of the car that is Antoine Bernard's car.

7 Q I don't -- did you interview him?

8 A We were never able to find him.

9 Q I don't know if he picked up a cup or not, but I do
10 -- did you notice that he -- after the shooting, he came back
11 into the camera view?

12 A I think he did. Matter of fact, I think when that
13 happens, when they're over in that area, he walks up to a car
14 that's parked in the parking lot and talks to the lady that's
15 at the car. I believe, that's the same individual you're
16 referring to.

17 Q Yes, yes.

18 A And I want to say after that, I think, he does
19 return either into the parking lot or he at some point
20 ultimately, I think, reenters the building.

21 Q Let's go back --

22 MR. WOOLDRIDGE: Can we go outside? It's 5:16?

23 MR. ROSE: This particular frame?

24 MR. WOOLDRIDGE: It would be -- you know, I
25 actually think it's from inside, but you can see the

1 exterior. I think that's 1.

2 MR. ROSE: Okay. And you said 16, Counsel?

3 MR. WOOLDRIDGE: 5:16, yeah.

4 BY MR. WOOLDRIDGE:

5 Q So this the man I'm talking about right there.

6 A The one coming right through the door or --

7 Q Yes.

8 A -- doesn't actually come in?

9 Q Yeah, then he goes back over towards Zeke Davis,
10 right? That would be towards that area?

11 A It would be towards north, the same way they were
12 walking, yes.

13 Q Right? Do you know what he does over there?

14 A I have no idea.

15 Q Do you know if he took anything?

16 A I have no idea.

17 Q You don't know if he took a watch?

18 A I don't.

19 Q You don't know if he fleeced Mr. Davis?

20 A I have no idea.

21 Q Okay. That's good on the video. One of the things
22 that you do in a case like this is you look into people,
23 right?

24 A Yes.

25 Q Look into the witnesses. I think you talked about

1 some warrants and stuff like that?

2 A For Javar Ketchum, yes.

3 Q Or, I mean, you were talking about warrants --

4 MR. GIORDANI: Judge, I would object and ask to
5 approach.

6 THE COURT: All right.

7 (Off-record bench conference)

8 BY MR. WOOLDRIDGE:

9 Q So one of my questions was did you try and look
10 into who these people were?

11 A Yes.

12 Q Did you look into Mr. Davis's background?

13 A In this case, I didn't.

14 Q Not at all?

15 A I didn't.

16 Q You didn't -- you didn't bother to check that out?

17 A No, I didn't pull his criminal history. I didn't
18 pull any of that. It was unnecessary. He was deceased so my
19 investigation focused on finding out who did this.

20 Q It only focused --

21 A This case.

22 Q -- on who did it? Who killed him?

23 A Yes. That was the focus of my investigation.

24 Q Did it matter to you if it was in self-defense or
25 not?

1 A Of course, it matters.

2 Q But you didn't look at anything to determine that?

3 A No. We have all of the witnesses that were present
4 there. Nobody ever brought that up. The people that we did
5 talk to never said that. The other people that were involved
6 -- normally in a self-defense for us, the person who's
7 involved in it, stays and tells us, and that way we can make
8 an evaluation and we submit it to the District Attorney's
9 Office for review. That's the way we normally do
10 self-defense.

11 Q And you're saying every time the self-defense case
12 the person stays there?

13 A I was going to say in my experience they do.

14 Q What about in a case where a -- this person has
15 friends?

16 A What do you mean?

17 Q This person is violent? The person sticks around?

18 A I'm not sure I understand what you're saying.

19 MR. GIORDANI: Judge, I would object.

20 THE COURT: Some limited inquiry.

21 MR. WOOLDRIDGE: Okay. No further questions.

22 THE COURT: Thank you. Redirect.

23 MR. GIORDANI: Court's brief indulgence. No
24 further questions. Thank you, Your Honor.

25 THE COURT: Thank you. You may be excused. All

1 right, before I release you, Mr. Jenny (sic), you had
2 presented a question. We now have had the witness testify.
3 Did that answer your question?

4 JUROR NO. 4: Not really.

5 MR. GIORDANI: I apologize.

6 THE COURT: Counsel approach.

7 (Off-record bench conference)

8 THE COURT: All right. I'm going to allow the
9 attorneys to ask a few extra questions related to your
10 question regarding the watch and the pants.

11 REDIRECT EXAMINATION

12 BY MR. GIORDANI:

13 Q While Mr. Rose is looking through those, I'm going
14 to lay a little bit of foundation for this question here
15 because I don't know where that is. I'm going to show you
16 Grand Jury -- I'm sorry, State's Exhibit 4.

17 MR. GIORDANI: If we could switch back over,
18 please.

19 BY MR. GIORDANI:

20 Q What are we looking at there, sir?

21 A Those are the maroon pants that we recovered in the
22 parking lot.

23 Q Got it. Maroon is the color, correct?

24 A Yes.

25 Q Did you attend the autopsy of Ezekiel Davis?

1 A I did.

2 Q Okay. Were there effects on his person? Meaning,
3 items that were somewhat on his person or attached to his
4 person?

5 A Such as the -- the shirt, jewelry, that kind of --

6 Q Yeah.

7 A Is that -- yes, he had some jewelry.

8 Q Okay. I'm going to show you State's 123. What are
9 we looking at there?

10 A This is a chain and an earring.

11 Q Are those, to your knowledge, the only jewelry that
12 were found on the victim's person?

13 A Yes.

14 Q And then earlier I had shown you several
15 photographs of jewelry scattered throughout the scene; is
16 that -- do you remember that?

17 A Yes, sir.

18 Q Okay.

19 MR. GIORDANI: May I approach again?

20 THE COURT: You may.

21 BY MR. GIORDANI:

22 Q Showing you State's 130. Were either of those
23 items located at the scene?

24 A No, sir.

25 Q Publishing to the jury. These are blue pants,

1 right?

2 A Yes.

3 Q Not red?

4 A No, they are not.

5 Q Do you know when this photograph -- or do you know
6 how this photograph was received?

7 A It was sent to me via e-mail.

8 Q By who?

9 A By Ezekiel Davis's girlfriend.

10 Q Okay.

11 A Wife, I'm not -- I don't -- I think she told us
12 wife at the time.

13 Q Okay. So to clarify the record, this is an earlier
14 photograph of Ezekiel Davis wearing the watch and the belt?

15 A Yes.

16 Q Okay. We're not alleging that this is the
17 defendant, Mr. Ketchum, right?

18 A No.

19 Q Okay.

20 MR. GIORDANI: I'll pass the witness.

21 MR. WOOLDRIDGE: No questions.

22 THE COURT: All right. Thank you. Any further
23 questions? All right. You may be excused. Thank you.

24 MR. GIORDANI: May we briefly approach?

25 THE COURT: You may.

1 (Off-record bench conference)

2 THE COURT: All right. We're going to take a short
3 recess, maybe about 10 minutes, and take care of some
4 housekeeping matters. So I'll remind the jury once again,
5 not to discuss this case, don't form or express any opinions.
6 Don't read or watch or listen to any commentary. Don't
7 tweet, text, or otherwise go on the Internet about this case.
8 So, about ten minutes.

9 THE MARSHAL: Rise for the jury.

10 (Outside the presence of the jury.)

11 THE COURT: Okay. First of all, we -- I wanted to
12 give you an opportunity, Mr. Wooldridge, to make a full
13 record on the objection to the press release that would be
14 Exhibit No. 133, was it? Or 132?

15 MR. WOOLDRIDGE: Exhibit 132, I don't remember.

16 MR. GIORDANI: Something like that.

17 THE COURT: Yeah, I think 133 came in when -- well,
18 they both came in, but the press release I think was 132.

19 MR. WOOLDRIDGE: Something like that. Your Honor,
20 my objection is primarily based on hearsay. I don't think
21 the entire press release needed to come in. I think, Mr. --
22 or Detective Bunn could have just testified that we issued a
23 press release and this was the information received. I think
24 it's prejudicial to the jury, the information that's obtained
25 or that's in the press release itself. The jury may believe

1 that it has some validity or some truth when it's hearsay.
2 It's up for the jury to decide what happened, and I just
3 don't think it should be admitted into evidence.

4 THE COURT: All right, thank you.

5 MR. GIORDANI: As to the hearsay objection, my
6 response is, it's not offered for the truth of the matter
7 asserted, as I explained at the bench. It was offered to
8 show the events that occurred after the press release, and
9 with that we would submit it.

10 THE COURT: And I'm just -- for the record, that
11 they were given an admonition as to how to view the evidence.
12 So, all right, we've made a record on that.

13 Now, is there anything else we need to make a
14 record on, because otherwise, we can go off the record.

15 MR. GIORDANI: Well, I had intended on making sure
16 all the exhibits are admitted before we rest our case. Just
17 housekeeping stuff. I guess, I could look through them now.

18 THE COURT: Right. And so let's go ahead and go
19 off the record, take -- make sure everything's admitted and
20 then --

21 MR. WOOLDRIDGE: I'll have my expert here by 3:00,
22 3:30.

23 THE COURT: Okay.

24 (Court recessed at 2:39 p.m. until 2:53 p.m.)

25 (In the presence of the jury)

1 THE MARSHAL: Court will come to order. Department
2 17 is back in session.

3 THE COURT: All right. We're back on the record.
4 Back in the presence of the jury. All members of the jury
5 panel are present. Counsel for both sides are present.
6 Defendant's present. All right. State, do you have any
7 further witnesses?

8 MR. GIORDANI: We do not have any further witnesses
9 in our case-in-chief. All the exhibits, I believe, having
10 been admitted, the State would rest at this time.

11 THE COURT: All right, thank you. And --

12 MR. GIORDANI: We would reserve the right to call
13 witnesses in rebuttal.

14 THE COURT: All right, thank you. And Counsel, you
15 have made arrangements for a witness to testify this
16 afternoon, but will not be arriving until about 3:30?

17 MR. WOOLDRIDGE: That's correct, Your Honor.

18 THE COURT: Okay. Ladies and gentlemen, I wanted
19 to -- please be seated. I wanted to inquire if you -- I had
20 previously stated that we would go dark on Friday and there
21 was a reason for that. That reason has not gone away. I
22 wanted to inquire if any of you had made plans for Friday
23 that maybe you can change because we might be able to finish
24 this up this week.

25 However, if you'd made plans and we will

1 accommodate you and we'll -- if we need to, we may be able to
2 get this done tomorrow, but we might need just a little more
3 time after that, so we can come back next week. But if
4 you're available on Friday -- okay. Is there anybody who
5 would not be available on Friday? Okay. All right.

6 So we'll just plan to go through tomorrow. Then if
7 we need more time, we'll plan to come back next Wednesday.
8 All right. Thank you so much.

9 And so let's break until 3:30, when we expect the
10 next witness to be here.

11 THE MARSHAL: Rise for the jurors.

12 (Court recessed at 2:55 p.m. until 3:37 p.m.)

13 (In the presence of the jury)

14 THE MARSHAL: Come to order. Department 17 is back
15 in session.

16 THE COURT: All right. You may be seated. All
17 right. We're back on the record. Back in the presence of
18 the jury. All members of the panel are present. Counsel for
19 both sides are present and defendant's present. You may call
20 your first witness.

21 MR. WOOLDRIDGE: Thank you, Your Honor. Defense
22 can call Dr. Mel Pohl.

23 DR. MEL POHL, DEFENDANT'S WITNESS, SWORN

24 THE CLERK: Please be seated. Please state and
25 spell your name for the court's record.

1 THE WITNESS: Mel Pohl, M-e-l, P-o-h-l.

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION

4 BY MR. WOOLDRIDGE:

5 Q Good afternoon, Dr. Pohl.

6 A Good afternoon.

7 Q What do you do for a living?

8 A I'm a physician and I run a drug and alcohol
9 treatment program.

10 Q And where do you run that drug and alcohol
11 treatment program?

12 A Here in Las Vegas on the west side.

13 Q Can you describe to the jury your educational
14 background?

15 A Sure. High school, college, medical school four
16 years, three years of residency in family medicine and I've
17 been practicing for the past 37 years running different
18 addiction treatment programs.

19 Q Are you a member of any professional organizations?

20 A Yes. The American Medical Association Nevada
21 Society of -- Medical Society, and the American Society of
22 Addiction Medicine, which is a speciality organization for
23 people -- physicians who trained in addiction, and also the
24 American Academy of Family Practice.

25 Q Have you received any training on the effects of

1 methamphetamine?

2 A Yes. Some in school, but mostly coursework over
3 the last 30 years, I've probably attended 20 or 30 courses
4 specific to methamphetamine use, abuse.

5 MR. WOOLDRIDGE: At this time, I'm going to offer
6 Mr. -- or Dr. Pohl as a expert in the effects of
7 methamphetamine.

8 MR. GIORDANI: No objection, Your Honor.

9 THE COURT: I will allow him to testify in his
10 field of expertise.

11 MR. WOOLDRIDGE: Thank you.

12 BY MR. ARNOLD:

13 Q First off, are you getting paid today?

14 A Yes, sir.

15 Q You don't do this for free?

16 A I don't.

17 Q Have you reviewed any records in this case?

18 A I reviewed the autopsy report and urine toxicology
19 report of the decedent.

20 Q And according to those reports, was Zeke Davis
21 intoxicated on methamphetamine?

22 A It appeared to me that he was. He had levels of
23 amphetamine and methamphetamine in his urine toxicology
24 report that was taken from his blood in the emergency room.

25 Q And are there different types of methamphetamine?

1 A There are. There are two sort of versions or
2 they're called isomers so the molecule points in two
3 different directions. The L -- isomer L-amphetamine is
4 inactive in most cases and the D isomer is the one that's
5 associated with the negative effects of the stimulant
6 methamphetamine.

7 Q And in this case, what type of isomer did Zeke
8 Davis have in his system?

9 A 100 percent was the D version, the active
10 sympathetic nervous system stimulant.

11 Q And the level of methamphetamine found in Zeke
12 Davis, in your opinion, would that cause a person to display
13 aggressive or violent behavior?

14 A It's certainly conceivable that -- his level, I
15 believe, was a hundred in the urine, could be associated with
16 violent and aggressive behavior, yes.

17 MR. WOOLDRIDGE: No further questions.

18 THE COURT: State.

19 MR. GIORDANI: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. GIORDANI:

22 Q Good afternoon, Dr. Pohl.

23 A Afternoon.

24 Q You did not see the defendant rob and murder
25 Ezekiel Davis; is that accurate?

1 A That's correct.

2 MR. WOOLDRIDGE: Objection, Your Honor.

3 THE COURT: Overruled.

4 BY MR. GIORDANI:

5 Q You indicated that you're paid, of course, to do
6 your job, right?

7 A Yes, sir.

8 Q You've testified in District Courts before, right?

9 A Yes.

10 Q Can you estimate how many times?

11 A Probably 15.

12 Q 15, 1-5?

13 A Yes.

14 Q How many times for the State of Nevada?

15 A 80 percent, 90 percent. Usually, that's who hires
16 me to come and testify.

17 Q And in what context?

18 A To discuss varying conditions associated with
19 intoxication or drug use or pattern of drug use. That's my
20 expertise.

21 Q Fair enough. You would agree with me that the
22 levels seen in this case, the levels of methamphetamine,
23 either isomer, could be indicative of violent behavior, but
24 could also be indicative of elation or positive feelings or
25 simple hyperness?

1 A Well, all of those are potential effects of
2 methamphetamine.

3 Q Okay. So you have no idea how methamphetamine
4 affects Ezekiel Davis?

5 A Well, I see patients who have levels of
6 methamphetamine compatible this level, and they're really
7 simply elated.

8 Q Okay.

9 A Typically, they become aggressive, they become
10 anxious, they become hyperactive, they become irritable, they
11 can't sleep, anorexic or appetite. I mean, those are the
12 typical effects of use of methamphetamine.

13 Q Would they be -- are those people that you're
14 describing, do they smile and bob their head to the music and
15 sway?

16 A You know, I -- I can't think of anybody I've ever
17 seen who is intoxicated on methamphetamine, who merely bobs
18 his or her head and sways. I mean, there's excitation. It
19 could -- I mean, the effects of methamphetamine cause
20 stimulation of the nervous system and also an effect on the
21 dopamine system, which is the pleasure neurotransmitter so --

22 Q That would be the elation portion?

23 A Yeah, yeah. Usually, that passes pretty quickly in
24 a -- in a use, condition.

25 Q And I just want to be very clear, you cannot stand

1 up -- sit up there and say that you know how methamphetamine
2 affects Ezekiel Davis?

3 A Correct.

4 MR. GIORDANI: No further questions.

5 THE COURT: Thank you.

6 MR. WOOLDRIDGE: Very quickly.

7 THE COURT: Redirect.

8 REDIRECT EXAMINATION

9 BY MR. WOOLDRIDGE:

10 Q At the recovery center, do you have an opportunity
11 to come into contact with meth users?

12 A Yes, regularly.

13 Q And you know some of those meth users?

14 A I know all of them that I treat, yes.

15 Q And what are -- is robbery a typical crime that
16 they engage in?

17 A Some have been engaged --

18 MR. GIORDANI: And I would object to that question.

19 THE COURT: I think you need more foundation before
20 you can ask that question.

21 MR. WOOLDRIDGE: All right. That's fine. I'll
22 pass the witness. I'm fine.

23 THE COURT: All right.

24 MR. GIORDANI: No further questions. Thank you.

25 THE COURT: Okay. Thank you, Doctor.

1 THE WITNESS: Thank you. You may step down.

2 You'll be excused. Any further witnesses?

3 MR. WOOLDRIDGE: They're all lined up tomorrow,
4 Your Honor. And I apologize to the jury to keep them --

5 THE COURT: That's fine. I think it was unexpected
6 that we would move this quickly this afternoon. So we will
7 go ahead and break for the afternoon.

8 Before I release you, I will remind you once again,
9 it is your duty --

10 MR. GIORDANI: Your Honor, I apologize to interrupt
11 you. Can we approach just before you release the jury?

12 THE COURT: Sure.

13 (Off-record bench conference.)

14 THE COURT: All right. Before -- we'll be back on
15 the record. Before I release the jury, I'll remind you once
16 again, it's your duty not to discuss this case among
17 yourselves or with anyone else, or anyone connected to it and
18 that includes by phone, text, Internet or other means.
19 You're not to read, watch or listen to any reports or media
20 accounts or commentary about the case or anyone connected to
21 it.

22 You're not to do any research, such as consulting
23 dictionaries, using the Internet or using reference
24 materials, and you're not to make any investigation, test the
25 theory of the case, recreate any aspect of the case or any

1 other way investigate or learn about the case on your own.

2 With that, we'll see you tomorrow morning at 9:30.

3 THE MARSHAL: Rise for the jury.

4 (Outside the presence of the jury.)

5 THE COURT: We're outside the presence of the jury.

6 Okay. Counsel, can I inquire approximately, how many
7 witnesses you have for tomorrow?

8 MR. WOOLDRIDGE: Oh, my gosh. Can I look real
9 quick, Your Honor.

10 THE COURT: That's fine.

11 MR. WOOLDRIDGE: I apologize.

12 MR. GIORDANI: While he's looking, Your Honor, I
13 did forget to mention earlier, after Mr. Vincent negotiated
14 this morning, I hadn't filed the Amended -- the Second
15 Amended that --

16 MR. ROSE: Third.

17 MR. GIORDANI: Third Amended, which refers to
18 Mr. Ketchum and I've now provided the clerk.

19 THE COURT: Thank you. All right. And do you have
20 your jury instructions prepared?

21 MR. GIORDANI: Yes. I received the defense
22 instructions, I believe, yesterday. I just haven't had a
23 chance to look at those.

24 THE COURT: Okay.

25 MR. GIORDANI: Would you like me to send the

1 State's instructions to the Court?

2 THE COURT: No. I'll tell you in just a minute
3 what I require in regards to instructions.

4 MR. WOOLDRIDGE: Oh, I thought you were talking to
5 me about witnesses so --

6 THE COURT: Yeah, no, I'm waiting for --

7 MR. WOOLDRIDGE: Yeah.

8 THE COURT: -- you to just give me an estimate.

9 MR. WOOLDRIDGE: Estimated amount of witnesses will
10 be between three and five.

11 THE COURT: Okay. So we might get them done before
12 lunch or shortly after lunch --

13 MR. WOOLDRIDGE: Yeah.

14 THE COURT: -- or early in the afternoon? All
15 right. What I require in regards to jury instructions is I
16 require that you exchange your proposed jury instructions and
17 you meet and confer. I then want a stack of the ones you
18 agree upon, which are usually the stock instructions. And
19 then I require a separate stack of the ones that you disagree
20 upon.

21 I will need those by noon tomorrow. If you can't
22 meet tonight regarding the instructions or early tomorrow
23 morning, then I'm going to require you to do that over the
24 lunch hour because I find that most of the time counsel can
25 agree upon the jury instructions and then we just put them

1 together or there might be only two or three that you're
2 disagreeing upon, and we can get them settled very quickly.

3 So I often like to, on closing arguments, I like to
4 try and do closings by both sides on the same day, rather
5 than break it up overnight. So it's quite probable that
6 we'll settle the jury instructions tomorrow afternoon. And
7 if you agree upon excusing the one juror, and allowing one of
8 the alternates to stand in, or if I decide that we should do
9 that, because she'll be unable to be here Friday, then we'll
10 do closing arguments on Friday, because that way we don't
11 have a break.

12 I don't like to give the State an advantage by
13 letting them argue and then --

14 MR. WOOLDRIDGE: Yeah.

15 THE COURT: -- have the jury go home on their
16 argument alone.

17 MR. WOOLDRIDGE: I agree.

18 THE COURT: I try and do it all in the same day.

19 MR. GIORDANI: Fair enough, Your Honor.

20 THE COURT: Okay?

21 MR. GIORDANI: There's one other issue. With
22 regard to the witnesses Mr. Wooldridge is intending to call
23 tomorrow, we, of course, don't know who those witnesses are.
24 If they are witnesses who have to do with the other bad acts
25 that we've somewhat discussed throughout this trial and

1 discussed at length with Judge Villani last week, we would be
2 requesting a Petrocelli hearing if those witnesses --

3 THE COURT: This won't be necessary. You can ask
4 about the reputation, if they know of his reputation and what
5 their reputation is and how they know that, but you may not
6 bring out specific prior bad acts or ask --

7 MR. WOOLDRIDGE: We can ask their opinion, though,
8 as well, Your Honor, right?

9 THE COURT: Not their opinion. Whether or not they
10 know of his reputation.

11 MR. WOOLDRIDGE: There are --

12 THE COURT: If they know of his character and how
13 they know that.

14 MR. WOOLDRIDGE: Well, if I ask them how they know
15 that, we're going to get into --

16 THE COURT: If they've known him for 20 years and
17 they've known that he's been a problem child for 20 years,
18 they can say I've known him for 20 years. I know the stuff
19 that he's done. Okay?

20 MR. WOOLDRIDGE: Okay.

21 MR. GIORDANI: And the --

22 THE COURT: And that's -- that is proper.

23 MR. GIORDANI: Right.

24 THE COURT: Trying to prove his reputation or
25 character by bringing in prior bad acts is not appropriate.

1 MR. GIORDANI: Right.

2 THE COURT: So you need reputation or character
3 witnesses, not evidence of the prior bad acts.

4 MR. GIORDANI: Right. And only reputation or
5 opinion for violence, not stick-ups or whatever --

6 THE COURT: For violence.

7 MR. GIORDANI: Right.

8 THE COURT: Whether he's a violent character.

9 MR. GIORDANI: Just --

10 MR. WOOLDRIDGE: I mean, if these witnesses come
11 and say my opinion of this person is he's violent, that --

12 MR. GIORDANI: You wouldn't --

13 MR. WOOLDRIDGE: -- that's completely admissible?

14 MR. GIORDANI: We wouldn't object to that. That's
15 okay, but the problem is, is if --

16 THE COURT: But they have to have the --

17 MR. WOOLDRIDGE: Foundation?

18 THE COURT: There has to be some reason for them to
19 have formed an opinion. If they've known him for two seconds
20 or just read about him or read something about him, that's
21 not good enough.

22 MR. GIORDANI: That's the concern we would, of
23 course, not want to do that in front of the jury. We would
24 want an offer of proof beforehand so he's not --
25 Mr. Wooldridge is not --

1 THE COURT: You can request an offer of proof
2 beforehand.

3 MR. GIORDANI: One additional layer to this. Now,
4 of course, Mr. Ketchum doesn't have an obligation to testify,
5 everyone understands that. If Mr. Ketchum, however, intends
6 to get on the witness stand and say he knows of specific
7 acts, we would yet again be requesting a Petrocelli hearing
8 because he would need to -- they would need to prove, just as
9 State would, by clear and convincing evidence, that the
10 defendant knew about those specific acts.

11 THE COURT: All he has to know is is that he knew
12 the guy before, he knew his reputation as being a violent
13 person.

14 MR. GIORDANI: Right. And I'm not referring to
15 reputation or opinion. I think that's appropriate, but we're
16 talking about specific acts. So I just want to be very
17 clear.

18 THE COURT: No, because we're not going to prove
19 the prior bad acts. It's just what he knew and it can't just
20 be something that he heard after the fact.

21 MR. GIORDANI: And it's just reputation or opinion
22 for violence and it ends there; is that --

23 THE COURT: And how -- how he knew it. He knew it
24 because he knew this guy for -- he's seen the guy around.
25 He's heard what people had to say about him. There's all

1 kinds of ways for him to have developed his opinion -- his
2 knowledge of the guy's character or reputation.

3 MR. GIORDANI: Got it.

4 MR. ROSE: And --

5 THE COURT: Whether or not the reputation was true
6 or not.

7 MR. ROSE: Right.

8 MR. WOOLDRIDGE: You guys are more than welcome to
9 ask.

10 MR. ROSE: Because I don't want to, you know,
11 object when we've already kind of had the ruling on it, but
12 it would be State's request that if the answer to how did you
13 know it was, well, I've known him for 20 years, or I've heard
14 it out in the neighborhood, that that be the end of the
15 answer and not, well, I heard in the neighborhood that he
16 stuck up three people because that's then referencing those
17 prior bad acts.

18 THE COURT: It's referencing the prior bad acts, it
19 establishes how they know, but it's not proving, and I can
20 give a cautionary instruction that simply what they've heard
21 is not proof. They're just testifying as to reputation or
22 character. And that goes to the element of intent or
23 knowledge of the defendant. Okay?

24 I can give cautionary instructions. But yes, they
25 -- I know that my neighbor has been convicted of 20 armed

1 robberies, I get into a beef with him and there's an issue, I
2 can testify. I know this guy's violent because I know he's
3 been -- he's had several armed robberies. He knows he has a
4 history of carrying a gun. That's how you establish
5 reputation and opinion or how you establish my knowledge of
6 his reputation or opinion.

7 MR. GIORDANI: Right. All we're asking is to learn
8 that outside the presence of the jury so it doesn't --

9 THE COURT: We can do that. And I -- we can limit
10 it accordingly.

11 MR. GIORDANI: Understood.

12 THE COURT: Okay? So get your jury instructions,
13 start working together to get those prepared. And Counsel, I
14 overruled your objection to --

15 MR. WOOLDRIDGE: Yes.

16 THE COURT: -- his question because I told the jury
17 several times that the questions by counsel is not evidence.
18 So his characterization of the killing as being a murder --

19 MR. WOOLDRIDGE: Okay.

20 THE COURT: -- is not evidence, but if you wish, I
21 can -- I will reiterate that during jury instructions.

22 MR. WOOLDRIDGE: I don't need to draw attention to
23 it, Judge.

24 THE COURT: Okay. Thank you.

25 MR. GIORDANI: Thank you, Your Honor.

1 MR. WOOLDRIDGE: Thank you.

2 THE COURT: All right. Anything else before we
3 break for the afternoon?

4 MR. GIORDANI: Not on behalf of the State.

5 MR. WOOLDRIDGE: No, Your Honor.

6 THE COURT: Okay.


7 (Court recessed at 3:57 P.M., until Thursday,
8 (May 25, 2017, at 10:42 A.M.)

9 * * * *

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

13

14



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JULIE LORD, INDEPENDENT TRANSCRIBER

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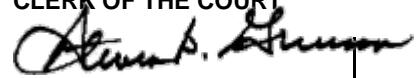
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-16-319714-1
	.	
Plaintiff,	.	DEPT. NO. XVII
	.	
vs.	.	TRANSCRIPT OF
	.	PROCEEDINGS
JAVAR ERIS KETCHUM,	.	
	.	
Defendant.	.	
.	

BEFORE THE HONORABLE KATHY HARDCASTLE
SENIOR DISTRICT COURT JUDGE

JURY TRIAL - DAY 4

THURSDAY, MAY 25, 2017

APPEARANCES:

FOR THE STATE:	JOHN L. GIORDANI, III., ESQ. STEVEN ROSE, ESQ. <i>Deputy District Attorneys</i>
FOR DEFENDANT KETCHUM:	NICHOLAS M. WOOLDRIDGE, ESQ.

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

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1 LAS VEGAS, NEVADA, THURSDAY, MAY 25, 2017, 10:42 A.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. Outside the presence of the
4 jury panel. Counsel for both sides are present, the
5 defendant is present.

6 MR. GIORDANI: Your Honor, I believe, we've come to
7 a stipulation regarding at least two or three lay witnesses
8 offered by the defense. The State is prepared to stipulate
9 that those witnesses may be asked two questions; have you had
10 a single interaction with Mr. Ezekiel Davis? And in your
11 opinion, is he violent? That is the stipulation the State's
12 prepared to enter into.

13 We would request and have discussed with
14 Mr. Wooldridge, bringing those witnesses in outside the
15 presence of the jury so they are very clear that they are not
16 allowed to blurt out anything in addition to that. And we
17 have a couple of cross-examination questions that we would
18 ask them that are essentially, did you convey your opinion to
19 Mr. Javar Ketchum, you know, and leave it at that.

20 And we just want to be very clear that all the
21 jurors -- I mean, witnesses understand what they need to say
22 before the jury is present.

23 THE COURT: Okay. And also, before we bring the
24 jury in, do you want me to go ahead and admonish the
25 defendant as to his right to testify or not?

1 MR. WOOLDRIDGE: Sure, Judge. And then I'd like to
2 address the issue about the juvenile convictions.

3 THE COURT: Okay. All right. Mr. Ketchum --

4 THE DEFENDANT: Yes.

5 THE COURT: -- under the Constitution of the United
6 States and under the Constitution of State of Nevada, you
7 cannot be compelled to testify in this state. Do you
8 understand this?

9 THE DEFENDANT: Yes.

10 THE COURT: You may at your own request give up
11 this right and take the witness stand and testify. If you
12 do, you will be subject to cross-examination by the District
13 Attorney, and anything you may say, be it on direct or
14 cross-examination, will be the subject of fair comment when
15 the District Attorney speaks to the jury in his final
16 argument. Do you understand that?

17 THE DEFENDANT: Yes, I do.

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

22 THE DEFENDANT: Yes.

23 THE COURT: All right. If you elect not to
24 testify, the Court will instruct the jury, but only if your
25 attorney specific requests as follows: The law does not

1 compel a defendant in a criminal case to take the stand and
2 testify, and no presumption may be raised and no inference of
3 any kind may be drawn from the failure of a defendant to
4 testify. Do you have any questions about any of these
5 rights?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: And you have a felony conviction within
8 the last ten years; is that correct?

9 MR. WOOLDRIDGE: Felony convictions in the last 10
10 years; you do.

11 THE DEFENDANT: Oh, yes. Yes, yes, I do, yes.
12 I --

13 THE COURT: Okay. So if you take the stand and
14 testify, the District Attorney, in the presence of the jury,
15 will be permitted to ask you if you have been convicted of a
16 felony? What was the felony? And when did it happen?
17 However, they will not be able to go into any further details
18 about it. Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay, thank you. All right. So do you
21 wish to bring in your --

22 MR. GIORDANI: I -- well, your -- I also want to
23 address the issue of the juvenile convictions, Your Honor.

24 THE COURT: I'm not going to allow the juvenile
25 convictions to come in. That's --

1 MR. GIORDANI: We're not offering the juvenile
2 convictions.

3 THE COURT: I know, but I'm not going to allow you
4 to ask about them either because they're too far in the past.

5 MR. GIORDANI: Well, yeah, we weren't going to ask
6 about them. All I was going to -- what I was inferring or
7 referring to is, when a defendant may offer evidence of an
8 alleged victim's pertinent trait, the prosecutor may offer
9 evidence of the defendant's same trait. That's all.

10 THE COURT: I'm finding that it's too far in the
11 past to be relevant to establish a trait. So I'm not going
12 to allow inquiry into any activity that he may or may not
13 have engaged in as a juvenile.

14 MR. GIORDANI: Okay. Can we revisit that, if the
15 defendant were to say anything to the effect of, I'm not a
16 violent person? That opens the door to --

17 THE COURT: Again, it's --

18 MR. GIORDANI: -- acts of violence.

19 THE COURT: He's 30-something now. He was 15 then.
20 It's too far in the past, and I'm going to find that it's not
21 relevant.

22 MR. GIORDANI: Okay. In addition to that, since
23 we're going to do this outside the presence, before we get
24 there, with regard to our rebuttal witnesses, I scheduled
25 them for 1:30 because I figured that would be your normal

1 break. Citing another rule it says, in a homicide case, the
2 prosecutor may offer evidence of the alleged victim's trait
3 or peacefulness to rebut evidence that the victim was the
4 first aggressor.

5 When I put those witnesses up on the stand, I just
6 want to be clear before we get there that we're offering the
7 victim's past five or so years of his life -- or two to three
8 years of his life in order to rebut what they've done so far
9 and what they're about to do with these next witnesses.

10 THE COURT: Um-hum.

11 MR. GIORDANI: And we're not going any further than
12 that. So of course, it would not open the door to any
13 specific acts, and that's exactly what, you know, the law
14 permits.

15 THE COURT: Again, specific acts are aren't allowed
16 to be brought in.

17 MR. GIORDANI: Understood.

18 MR. WOOLDRIDGE: Your Honor, but if --

19 THE COURT: Reputation and character.

20 MR. WOOLDRIDGE: I can test those witnesses'
21 knowledge about who -- if they're saying they have a
22 particular opinion or know his reputation, I can ask them
23 about those convictions?

24 MR. GIORDANI: No.

25 MR. WOOLDRIDGE: The law is pretty clear on that.

1 MR. GIORDANI: No. See, that's where --

2 THE COURT: Okay. If we get to that, we'll get to
3 it.

4 MR. GIORDANI: Okay.

5 THE COURT: But in the meantime, it is 10 minutes
6 to 11:00. We've had the jury standing out there for over an
7 hour so we will --

8 MR. WOOLDRIDGE: First witness I'll call is
9 Detective Williams.

10 MR. ROSE: You have to do that outside the
11 presence.

12 MR. WOOLDRIDGE: Detective Williams?

13 MR. GIORDANI: No, no.

14 MR. ROSE: Before we bring in the jurors, we have
15 to bring in the other two. Smith and --

16 MR. WOOLDRIDGE: Okay. Just do it, and then I can
17 call them whenever I want?

18 MR. ROSE: Yeah.

19 MR. GIORDANI: Yeah.

20 MR. WOOLDRIDGE: Okay. That's fine.

21 THE COURT: All right. Bring them in.

22 MR. WOOLDRIDGE: That's fine. I'll grab --

23 MR. GIORDANI: He'll grab him.

24 MR. WOOLDRIDGE: Grab Mr. Smith, first.

25 MR. GIORDANI: Not the jury.

1 MR. WOOLDRIDGE: I do plan on asking these
2 witnesses, basically, establishing who they are a little bit,
3 Judge.

4 THE COURT: Sure. Who they are, how they know the
5 defendant, how long they've known the defendant.

6 MR. GIORDANI: I don't think they have.

7 MR. WOOLDRIDGE: No, they don't know the defendant,
8 but in terms of, you know, what do you do for a living?

9 THE COURT: Who they are, where they live, what
10 they do for a living?

11 MR. WOOLDRIDGE: Yeah. Very, very brief.

12 THE COURT: Did you know the victim in case?

13 MR. WOOLDRIDGE: Yeah.

14 THE COURT: How long did you know the victim?

15 MR. GIORDANI: Well, the stipulation is --

16 MR. WOOLDRIDGE: The stipulation is very --

17 MR. GIORDANI: -- did you have one interaction
18 with --

19 THE COURT: Okay. So you had one interaction with
20 the victim in this case --

21 MR. WOOLDRIDGE: Yeah.

22 THE COURT: -- and based upon that one interaction,
23 do you have an opinion as to -- okay.

24 MR. WOOLDRIDGE: That's correct, Judge.

25 THE COURT: All right.

1 (Pause in the proceedings)

2 (Testimony outside the presence of the jury)

3 TRACY SMITH, DEFENDANT'S WITNESS, SWORN

4 THE CLERK: Please have a seat. Please state and
5 spell your name for court's record.

6 THE WITNESS: My name is Tracy Smith.

7 THE COURT: All right. I don't think we're going
8 to take a proper -- proffer of what he will testify to. It's
9 just simply that when you're called in to testify, you will
10 be asked some general questions about who you are and your
11 background, and then you will be asked -- the State and the
12 defense have stipulated that you will be asked two questions.

13 THE WITNESS: Okay.

14 THE COURT: One will be, did you have a single
15 incident --

16 MR. ROSE: Interaction.

17 THE COURT: -- interaction with the victim in this
18 case and --

19 MR. ROSE: Ezekiel Davis.

20 THE COURT: -- the next question was did you then
21 form an opinion as to whether or not he's violent?

22 THE WITNESS: Okay.

23 THE COURT: And that -- and your answer will be yes
24 or no.

25 THE WITNESS: Yes or no on both of them?

1 THE COURT: So --

2 THE WITNESS: Okay.

3 THE COURT: All right.

4 MR. WOOLDRIDGE: Thank you. Yeah, that's it. I
5 mean, yeah.

6 MR. GIORDANI: As long as the witness understands
7 he can't expound on be that opinion.

8 THE COURT: Yeah.

9 MR. GIORDANI: It's just "yes" or "no".

10 THE COURT: Yeah. There's not -- it's --

11 THE WITNESS: "Yes" or "no".

12 MR. WOOLDRIDGE: You can't talk about what happened
13 to him.

14 THE WITNESS: Sure.

15 MR. GIORDANI: Thank you, sir.

16 THE COURT: All right, thank you. You may step
17 down. And just remain outside until we call you in.

18 THE WITNESS: Okay.

19 THE COURT: And the other witness would be --

20 MR. GIORDANI: MacGyver.

21 MACGYVER GALE, DEFENDANT'S WITNESS, SWORN

22 THE CLERK: Please have a seat. Please state and
23 spell your name for the court's record.

24 THE WITNESS: MacGyver, Gale.

25 THE COURT: All right. Sir, the State and the

1 defense have reached a stipulation regarding testimony that
2 they're going to elicit from you. Basically, they'll ask you
3 your name, a little bit about your background and then they
4 will ask you two questions. One, whether or not you had a
5 single interaction with the victim in this case, and the
6 second question will be whether or not you have formed an
7 opinion as to -- based upon that interaction as to whether or
8 not the victim was violent.

9 THE WITNESS: Okay.

10 THE COURT: And so it will be yes or no answers to
11 those. You will not be allowed to testify as to expounding
12 on those answers. All right?

13 MR. WOOLDRIDGE: Yeah, that's right. I mean, I
14 won't use the term victim. I will use the person's --

15 THE COURT: Yeah.

16 MR. WOOLDRIDGE: -- the decedent's name.

17 THE COURT: Mr. Davis. All right?

18 THE WITNESS: Okay.

19 THE COURT: And so we just wanted to bring you in
20 to let -- to admonish you regarding that.

21 THE WITNESS: Okay.

22 THE COURT: All right. Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: Remain outside until we call you in to
25 testify.

1 MR. GIORDANI: There is one more defense witness in
2 addition to the detective that we also wanted to bring in
3 outside the presence. This doesn't have to do with any kind
4 of opinion or any violence whatsoever. It's just a offer of
5 proof that we're seeking.

6 THE COURT: Okay. And that would be?

7 MR. WOOLDRIDGE: Sure, the offer of proof, Your
8 Honor, is -- yes, witness name is Giovanni. What's
9 Giovanni's last name? Giovanni Amoroso, I believe. He's on
10 my witness list.

11 Mr. Amoroso will basically be testifying about
12 the fact that Mr. Ketchum shortly after this shooting took
13 place asked him to please watch his apartment and tell him if
14 anything fishy was happening, and that Mr. Giovanni did see
15 that there was a car basically staking out the apartment with
16 two black guys in there, and that he did tell -- he did tell
17 Mr. Ketchum's girlfriend.

18 THE COURT: And the relevance of that is?

19 MR. WOOLDRIDGE: The relevance of that is it goes
20 to the state of mind, the affect on the -- on Mr. Ketchum and
21 to why he left. I know the State is going to be talking a
22 big -- a big thing that the State is going to be hampering on
23 is the fact that Mr. Ketchum left, that he left Las Vegas,
24 that he fled.

25 MR. GIORDANI: There's no nexus whatsoever to the

1 victim and I don't know how that could ever be presented in
2 front of a jury. A random black car with two people in it.

3 MR. WOOLDRIDGE: Well --

4 THE COURT: Without more, not enough.

5 MR. WOOLDRIDGE: Well, it -- I'm not trying to
6 establish that a black car was even actually there. I'm
7 trying to establish what -- how that affected Mr. Ketchum and
8 when he heard that information, what he did. He left.

9 THE COURT: Not before he asked someone to keep an
10 eye on his apartment because he left.

11 MR. WOOLDRIDGE: Well, he left the state, right? I
12 mean, that's one of the things that the State is hampering
13 on, that he left the state.

14 THE COURT: Unless someone can testify that the car
15 in front -- two people in a car sitting in front had
16 something to do with something.

17 MR. WOOLDRIDGE: Well, I'm not even offering it
18 to --

19 THE COURT: So, what?

20 MR. WOOLDRIDGE: I'm not offering it to proof
21 truth, Judge. I'm just offering it to prove what Mr. Ketchum
22 did as a result of obtaining that information.

23 MR. GIORDANI: That's why we wanted to address this
24 because we wanted to strike this witness.

25 THE COURT: Unless Mr. Ketchum testifies that it

1 had something to do with what he did, it's not relevant.

2 MR. WOOLDRIDGE: Okay.

3 MR. GIORDANI: Thank you.

4 THE COURT: All right.

5 THE MARSHAL: Your Honor, Giovanni went down to pay
6 his meter about ten minutes ago.

7 THE COURT: Okay. We don't need him right now so
8 until I find some reason that it's relevant, the testimony is
9 not going to be allowed.

10 MR. WOOLDRIDGE: Understood.

11 MR. GIORDANI: Understood, Your Honor.

12 THE COURT: Okay.

13 MR. WOOLDRIDGE: All right.

14 THE COURT: All right. So are we ready to bring in
15 the jury?

16 MR. WOOLDRIDGE: We are.

17 MR. ROSE: Yes, Your Honor.

18 THE COURT: Okay.

19 THE MARSHAL: Rise for the jury.

20 (In the presence of the jury)

21 (Off-record bench conference)

22 THE COURT: All right. Back on the record. Back
23 in the presence of the jury panel. All members of the panel
24 are present, and counsel from both sides are present.
25 Defendant's present. Counsel, you may call your next

1 witness.

2 MR. WOOLDRIDGE: Sure, Your Honor. Defense calls
3 Detective Williams.

4 THE COURT: Oh, I'm sorry, you can be seated. It's
5 been a long morning already.

6 DETECTIVE TOD WILLIAMS, DEFENDANT'S WITNESS, SWORN

7 THE CLERK: Please have a seat. Please state and
8 spell your name for the court's record.

9 THE WITNESS: My name is Detective Tod, T-o-d,
10 Williams, W-i-l-l-i-a-m-s.

11 MR. WOOLDRIDGE: Bear with me, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. WOOLDRIDGE:

14 Q Good morning, Detective.

15 A Good morning.

16 Q What is your current assignment as a detective?

17 A I'm assigned as a homicide detective with Metro.

18 Q How long you been doing that?

19 A Approximately, 14 years.

20 Q Okay. Did you interview any witnesses in this
21 case?

22 A I did.

23 Q Do you remember interviewing an individual by the
24 name of Harry Barto-Moran (phonetic)?

25 A Yes.

1 Q And when you interviewed Mr. Moran, were you aware
2 that the person that shot Zeke Davis had left the scene?

3 A I'm not sure who Zeke Davis is. I'm not familiar
4 with this case. I was only -- I only had a small part. Is
5 that the decedent?

6 Q Yes.

7 A Okay.

8 Q So you were aware at that time that the person who
9 had shot the decedent was gone, right?

10 A Yes.

11 Q And do you remember explaining to Mr. Moran that
12 there are --

13 MR. GIORDANI: Objection. Hearsay.

14 MR. WOOLDRIDGE: This is -- he's the declarant,
15 Your Honor. He's subject to cross-examination.

16 MR. GIORDANI: Explaining --

17 THE COURT: Overruled. Go ahead.

18 BY MR. WOOLDRIDGE:

19 Q So do you remember explaining to Mr. Moran that
20 there are self-defense situations in which a person who
21 defended themselves ran away.

22 MR. GIORDANI: Objection. This is argument.

23 THE COURT: Excuse me?

24 MR. GIORDANI: This is argument. Objection.
25 Argumentative.

1 THE COURT: Counsel, approach.

2 (Off-record bench conference)

3 BY MR. WOOLDRIDGE:

4 Q Do you remember telling Mr. Moran that for all you
5 knew, the decedent could have attempted to rob --

6 MR. GIORDANI: Objection. Same objection.

7 THE COURT: Sustained.

8 MR. WOOLDRIDGE: Okay. No further questions.

9 MR. GIORDANI: No questions, Your Honor.

10 THE COURT: All right. Thank you. Thank you. You
11 may step down. All right. You may call your next witness.

12 MR. WOOLDRIDGE: Sure. The defense calls Javar
13 Ketchum.

14 JAVAR KETCHUM, DEFENDANT'S WITNESS, SWORN

15 THE CLERK: Please be seated. Please state and
16 spell your name for the court's record.

17 THE WITNESS: Javar Ketchum, J-a-v-a-r,
18 K-e-t-c-h-u-m.

19 MR. WOOLDRIDGE: May I --

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MR. WOOLDRIDGE:

23 Q Mr. Ketchum, I want to talk to you about a car
24 accident you were involved in. Were you ever in a car
25 accident?

1 A Yes.

2 Q When did that occur?

3 A That occurred August 2014.

4 Q And what happened to you?

5 A I was at the light on Flamingo and Paradise and
6 this truck just came out of nowhere and hit us on the
7 driver's side real hard and shook the car very bad.

8 Q Did you receive a settlement?

9 A Yes, I did.

10 Q Did you suffer any injuries?

11 A Yes.

12 Q What happened to you?

13 A I'm not too familiar with the medical terms of it,
14 but I went to the hospital, and I was there about four or
15 five days. So I don't know the correct terms for the -- for
16 the injuries, but it's all my back, my lower spinal cord.

17 Q I want to talk to you about a crime you were
18 convicted of in 2008.

19 A Um-h'm.

20 Q Were you convicted of a crime?

21 A Yes.

22 Q Do you know what that crime was?

23 A Yes.

24 Q What was it?

25 A It was lying to the police.

1 Q And what did you do wrong in that case?

2 A I got pulled over, and I used my cousin's name, and
3 I used his name because he had a license and I didn't.

4 Q Okay. And did you admit that you were wrong?

5 A Yes.

6 Q Did you plead guilty in that case?

7 A Yes, I did.

8 Q Did you get probation?

9 A Yes.

10 Q Are you telling the truth today?

11 A Yes, absolutely.

12 Q I want to talk to you about the gun that you were
13 carrying on September 25th, 2016. Did you carry a gun that
14 day?

15 A Yes, I did.

16 Q Why?

17 A Well, ever since my accident, you know, I feel very
18 vulnerable so I carry it for my protection.

19 Q Do you carry it for any other reason?

20 A No. I mean, it's -- I know it's foolish to carry
21 it, but I just -- I carry it for my protection because I'm --
22 I am vulnerable.

23 Q Were you trying to intimidate anybody that day that
24 you had the gun?

25 A No, absolutely not.

1 Q Why did you pull it out while you were at the Top
2 Notch?

3 A Well, I was just being foolish, dancing, caught up
4 in the moment and listening to the song. It was just a
5 stupid, stupid moment, I guess.

6 Q Was the song talking about a gun?

7 A Yes, it was.

8 Q Who was the artist, if you can remember?

9 A It was Lil Boosie. The song is called Lifestyle,
10 and he just referred to having a weapon as a part of his
11 outfit so I just was singing a part of the song.

12 Q I want to go next into the night of the Top Notch,
13 all right?

14 A Um-h'm.

15 Q What did you do that night?

16 A Well, that night I got dressed, and I went to Top
17 Notch around like 2:00.

18 Q And what were you dressed in?

19 A I had a white Polo shirt. It was white, red and
20 black with a Gucci belt, black True Religion jeans and black
21 and red denim shoes.

22 Q What kind of shoes were they?

23 A They were Balenciaga shoes.

24 Q Was that about one of your best outfits that you
25 had?

1 A Yes, most certainly.

2 Q Did you have on a belt?

3 A Yes. A Gucci belt.

4 Q Did you have any money on you?

5 A Yes.

6 Q How much?

7 A Around 24; \$2,500.

8 Q Why did you go around with so much money that
9 night?

10 A I mean, you know, it's a after spot, girls were
11 going to be there, and you know, I mean, just -- just have
12 fun, you know. Girls like guys with money.

13 Q Did you tell Antoine Bernard that you didn't have
14 any money that night?

15 A I absolutely did, so I can get the money that he
16 owed me.

17 Q You didn't want to tell him you had a bunch of
18 money?

19 A No, I didn't because I would have never got the
20 money he owed me.

21 Q Were you showing off that night?

22 A Yes.

23 Q Let me just show a photo. Did you actually -- did
24 you see that video of you with money in your hand when you're
25 at -- go into the Top Notch?

1 A Yes, I did.

2 Q Did you have to pay a cover or anything?

3 A No.

4 Q What was the point of pulling out your money?

5 A Just showing off, coming in, feeling myself.

6 Q What does that mean, feeling yourself?

7 A Feeling yourself is just, you know, when you fresh,
8 you feel, I guess, better -- not -- a little bit better than
9 everyone, and I was just flossing my money off, I guess, and
10 foolish.

11 Q I want to talk to you about when you first saw Zeke
12 Davis on September 25th, 2016. Would you tell me about your
13 first contact with him?

14 A Well, my first contact was -- to him was, I was
15 dancing at the stripper -- the stripper thing, the girls up
16 there dancing, and I had a couple loose ones and fives, so I
17 was just, you know, throwing it at them. We call it, make it
18 rain. And he bumped me, but I didn't -- I didn't think
19 nothing of it, you know. I didn't even pay attention to it.
20 I was in a moment with the girls, and then that's -- that's
21 -- that was my first contact with him.

22 Q Well, did you ask somebody, who is this bitch ass
23 nigga?

24 A Yes. I turned to Antoine after, and I was like,
25 you know, after I got done, I turned around was like who is

1 that bitch ass nigga, why -- you know? And he was just
2 like --

3 Q Did --

4 A -- laughed it off.

5 Q Were you upset?

6 A No, not at all. I was having a good time.

7 Q What was your next encounter with Mr. Davis?

8 A Well, Antoine said he was ready to go because his
9 girl, baby mother, was, you know, intoxicated and was ready
10 to leave, they had to get home for their babysitter. So I
11 shook a couple hands, and as I turn around, Zeke was there
12 with open arms embracing me, and was like hey, what's up,
13 bruh, my bad, and about bumping you earlier.

14 And I was like, no, bruh, I ain't trippin. He was
15 like, we shook hands. He was like you about to leave, like,
16 we about to walk outside. Let's -- let's hit this weed
17 before you go?

18 Q Who said let's hit this weed before you go?

19 A Zeke said it.

20 Q And what did that mean to you?

21 A Well, you know, I thought it just meant let's go
22 outside and hit the weed a couple times, bye, hi and bye.

23 Q Did you ever tell Antoine Bernard that you were
24 going to get at him?

25 A No, not at all.

1 Q What was -- so then the two of you, did you walk
2 outside together?

3 A Yes, we did, but --

4 Q Who walked out first, you or Zeke?

5 A Zeke.

6 Q And once you got outside, did there come a point
7 when Zeke pointed into a certain direction?

8 A Yeah, he was pointing like towards his car like,
9 let's walk over by the car.

10 Q Did you go over there with him?

11 A Yes, I did.

12 Q And what eventually happened when you got over
13 there?

14 A When we got over there, he -- he got in between the
15 cars, and you know, he reached like he was reaching for a
16 lighter. And, you know, I was looking -- pulling out my
17 phone and then when I looked up, he had a gun, he grabbed me
18 by my waistline, pulled me very hard, grabbed me by my belt,
19 pulled me very hard close to him, shoved the gun in my
20 waistline, and he -- he was like, he was like, you know, tear
21 it off, bitch ass nigga.

22 I'm like, and I was just, you know, I was very
23 shocked. And, you know, I just thought I was fixing to get
24 shot so I went in my pocket --

25 Q Hold on one second. Before you go there, tell me

1 about did you see Zeke's face when he did that? When he
2 pulled you right above your crotch --

3 A Yes.

4 Q -- and pulled you to him?

5 A When he jerked me very hard and I looked him in his
6 eyes, and you know, I could just see demons all over him.
7 His eyes was real black, black lines -- I mean, black sags up
8 under his eyes. He had white stuff right here or kind of
9 foaming at the mouth, and I could just tell he meant business
10 and he was very serious.

11 Q Were you scared?

12 A Yes, I was.

13 Q And a scale from one to ten, how scared were you?

14 A I mean, I don't want to sound, you know, weak, but
15 I was scared about like a nine, nine and a half.

16 Q Did you -- was that about the scariest time you've
17 ever had in your life?

18 A Yeah. Yes, absolutely.

19 Q Did you think that he was going to kill you?

20 A Yeah, I knew he was.

21 Q Did you think if you gave him your money he was
22 just going to let you go?

23 A No, I knew if I gave him my money, it was still --
24 I -- I knew I was going to get shot.

25 Q And as a result of that, those thoughts that you

1 had in your mind, what did you do?

2 A Well, you know, I just closed my eyes, and I just
3 was like, you no he, dear God help me. I was like, God, you
4 know, I called on him, and you know, I just got a warm
5 feeling and the spirit just came over me like a voice of my
6 grandmother's, it's like, you know, stand up for yourself.
7 And so I just came out of my pocket and I shot. And when I
8 shot, I hit him. And he rolled on the ground -- I mean, he
9 hit the ground. He was shaking, you know, kicking at the
10 pants and then when I seen him hit the ground, I -- I gained
11 my composure back, and you know, I got very, very angry.
12 And --

13 Q Hold on before we get into you being angry. Did
14 there come a time when he had that gun in your rib cage and
15 grabbing on your belt, did you recognize him?

16 A That's when I did recognize him because he had that
17 -- that hat on, a Gucci hat, but I couldn't really see under
18 there. All I could just see the hat and his gold teeth, and
19 I -- when he pulled me close to him, that's when I realized
20 who he was because I could see now.

21 Q Who was -- who did you know him to be?

22 A Zeke. I had had some girls -- I know a girl, she
23 works at Larry's, her name is --

24 MR. GIORDANI: Objection. This is calling for
25 hearsay.

1 MR. WOOLDRIDGE: And hearsay --

2 THE COURT: Overruled.

3 BY MR. WOOLDRIDGE:

4 Q Go ahead.

5 A She works at Larry's Gentlemen Club and her name is
6 Barry (phonetic). I met her up there at her job one time
7 for, you know, just -- just to hang out, and she came to the
8 car with a friend, Misty. They got in talking about girl
9 talk, in my phone looking at Facebook and My Time on it.
10 And as they get in, you know, she like, babe, what you think?
11 And I'm like what? She showed me the phone.

12 She was like --

13 Q Who was on the phone?

14 A -- this -- it was a picture of Zeke.

15 Q Okay.

16 A And she was like Misty want to talk to him or he's
17 trying to talk to Misty, and I'm like, who is that? She was
18 like this dude named Zeke. He -- she -- he ain't no good.
19 He known for this. He been -- so --

20 Q Known for what?

21 A He's known for robbing -- I mean, he's been in jail
22 -- he's been to jail -- in and out of jail and he's known as
23 a jack boy.

24 Q What's a jack boy?

25 MR. GIORDANI: Objection.

1 THE COURT: Overruled.

2 THE WITNESS: A jack boy is someone that's known
3 for sticking people up, robbing, you know, all the -- et
4 cetera.

5 BY MR. WOOLDRIDGE:

6 Q Okay. And so when he -- when he tried to rob you,
7 you realized it was Zeke?

8 A Yes, that when he pulled -- when he pulled me close
9 and shoved the gun in my ribs deep and that's when I realized
10 it was him because that's -- my eyes are bad so I couldn't
11 see him the whole time because it's dark in there. So when
12 we went outside and I seen -- I could see under the hat now,
13 I was close to him, face to face, that's when I seen exactly
14 who he was.

15 Q Let's go -- he goes to the ground, right?

16 A Yes.

17 Q And you indicated earlier that you were angry?

18 A Yes, very angry.

19 Q Why?

20 A I mean, because he just tried to take my life over
21 some money that, you know --

22 Q Did --

23 A I never been -- I never had nobody try to do that
24 before.

25 Q Did he -- did it hurt when he pulled you to him?

1 A Yes, because my back is -- my back is very bad so
2 when he pulled me, it's just like jerked me like this, and I,
3 you know, I kind of -- I wasn't expecting it so it just threw
4 my whole body out of place. And, you know, I was just -- I
5 was very angry.

6 Q And so what did you do when you were angry?

7 A Well, when I did --

8 Q Did you grab his belt?

9 A -- I kind of overreacted, and I -- I snatched at
10 his pants, and snatched his belt off because I wanted to take
11 something from him now. I was very angry, so I was like, you
12 know, and he was kicking them off anyway so I snatched at his
13 pants, ripped him off and then I ripped the belt, and then I
14 -- you know, I just was like -- and then I headed towards the
15 car to get in the car. And I noticed as -- while -- as I'm
16 walking to the car, I noticed I dropped my ID so I ran back,
17 grabbed my ID and I picked up -- when I'm grabbing for my ID,
18 he's reaching for his gun again, you know, like because he
19 was still alive. Like he was reaching for his gun so I
20 struck him with the belt, I guess, it hit him in the face,
21 and I grabbed the gun, put it in my waistline, put my shirt
22 over it.

23 Q Grabbed whose gun?

24 A I grabbed Zeke's gun.

25 Q What kind of gun was it?

1 A It was like a small revolver. I'm not good with
2 names and guns, but I know it was a small revolver.

3 Q And once you got in the car, what did you do?

4 A I got out of there, you know. Antoine kind of
5 looked at me like what the -- what the hell just went on, but
6 you know, kind of like -- act like I didn't know either
7 because his baby's mother in the back. I didn't want her to
8 overreact, you know. I didn't want to just say loud I shot
9 someone.

10 So he kind of pulled off because he -- he kind of
11 look and he seen me kind of, you know, very angry. He was
12 like, you know, he was like -- and I was just like man, drop
13 me off.

14 Q So why didn't you stick around?

15 A I didn't stick around because for one, I'm not from
16 Vegas. And I didn't want to have any, you know, beef with
17 anybody else coming out that club that was Zeke's friends or
18 anything, you know. So I got out of there. I felt that --
19 that was the safest thing for me to do.

20 Q Were you concerned that somebody could shoot you?

21 A Yes.

22 Q What did you do -- did you take Zeke's watch?

23 A Oh, absolutely not.

24 Q If you took Zeke's watch, would you tell us?

25 A Yes, I would.

1 Q You've already admitted to taking the belt?

2 A Yes, I -- yeah, I would have included that, no
3 problem.

4 Q Did -- what did do you with your guns, the gun that
5 you had, Zeke's gun and the belt?

6 A Once Antoine dropped me off, I just threw
7 everything in the trash.

8 Q In a dumpster?

9 A Yes.

10 Q Did you leave Las Vegas?

11 A Yes, I did.

12 Q Why?

13 A Well, I just got a call from my -- from my neighbor
14 that it was a car watching us -- watching my spot outside
15 because, you know, my apartment -- my condo's are small.
16 They individually owned. You go this way, can you go left or
17 right and meet in the back. So everyone knows everyone's car
18 in there. And so he said it was like, you know, it just
19 wasn't one day, two days. They was in there just staking out
20 the house.

21 And he noticed two rough looking black guys so I
22 called and informed me, and I said, I got to get out of here
23 and just, you know, get a lawyer to -- I retained a lawyer
24 and, you know, so I could present myself the right way.

25 Q Did you also -- so you also left to go make money

1 to hire a lawyer?

2 A Yes, because I knew it will be more than what I had
3 to retain a lawyer, especially for this kind of stuff and so
4 I just, you know, I felt that was the best thing for me to
5 do.

6 Q Now, the State talked about that you were,
7 basically, apprehended at a border.

8 A Um-h'm.

9 Q So did -- where did you get apprehended?

10 A Well, after Vegas is Arizona and it's New Mexico.
11 When you're coming out of New Mexico, it's a border -- it's a
12 border patrol stopping you checking your license going into
13 Houston, and it's a border patrol coming from Houston into
14 New Mexico. So you just run through it, you stop, you go.
15 It's just a -- it's just a like a checkpoint, I guess.

16 Q Were you in Mexico?

17 A I was driving through Mexico. I wasn't in Mexico.

18 Q And then when -- so you were actually reentering
19 the United States when you got caught?

20 A Yes, exactly.

21 Q You weren't go in --

22 THE COURT: I'm sorry, you mentioned you were in
23 the state of New Mexico. The question now was were you in
24 the country Mexico versus being in the United States?

25 THE WITNESS: Well, I was on the highway just

1 driving through New Mexico. I didn't --

2 THE COURT: New -- you were driving through New
3 Mexico?

4 THE WITNESS: Yes, New Mexico, yes.

5 THE COURT: From -- going through El Paso, going
6 through the checkpoint?

7 THE WITNESS: Yes, going through the border patrol
8 and entering Houston.

9 BY MR. WOOLDRIDGE:

10 Q Did you go into Mexico the country?

11 THE COURT: That would be Interstate 10 going from
12 El Paso to Houston and there's a checkpoint on Interstate 10?

13 THE WITNESS: Yes.

14 THE COURT: Is that what you're saying?

15 THE WITNESS: Yes, exactly.

16 THE COURT: Okay. So you weren't actually in the
17 country of Mexico?

18 THE WITNESS: No.

19 THE COURT: You were in the state of New Mexico?

20 THE WITNESS: Yes, exactly, New Mexico.

21 THE COURT: All right. Sorry, Counsel, just --

22 MR. WOOLDRIDGE: No problem.

23 THE COURT: -- he didn't clarify that.

24 MR. WOOLDRIDGE: Not a problem, Your Honor.

25 BY MR. WOOLDRIDGE:

1 Q Were you going outside the Top Notch clothing store
2 to rob Zeke Davis?

3 A No, absolutely not.

4 Q Were you going outside the Top Notch clothing store
5 to murder Zeke Davis?

6 A Absolutely not.

7 MR. WOOLDRIDGE: No further questions, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. GIORDANI:

10 Q Mr. Ketchum --

11 A Yes.

12 Q -- how many times have you rehearsed that story
13 with your lawyer? Was that a laugh? Do I sense some sarcasm
14 there, sir?

15 A No, I just -- you know, just --

16 Q How many times have you rehearsed that story?

17 A He don't come see me to rehearse so I don't -- I
18 don't -- I can't answer that. I don't know what you're
19 talking --

20 Q Estimate.

21 A I don't know what you're talking about. He comes
22 to see me to, you know, to tell me stuff about my case, not
23 to rehearse a routine with me.

24 Q How many times have you gone through that story
25 with your lawyer?

1 A He asked me and I told him the truth so he asked
2 me, that's about it. I don't --

3 Q Okay.

4 A -- I don't rehearse --

5 Q You would agree --

6 A -- a routine --

7 Q -- you would agree you've got a lot on the line
8 here, right?

9 A Um-h'm.

10 Q You're on trial for first degree murder?

11 A Yes.

12 Q Are you telling me that you never went over that
13 story with your attorney?

14 A We went over what I -- what happened. We don't --
15 he don't come to me every time and oh, let's go over this, go
16 over that, let's go over this.

17 Q Okay. How many times did you go over what
18 happened?

19 A Three times.

20 Q Okay. How long have you been in preparation for
21 this trial?

22 A How long have I been incarcerated?

23 Q In preparation for this trial?

24 A I don't know what that means.

25 Q How long have you been -- has Mr. Wooldridge been

1 your lawyer; how about that?

2 A Ever since my preliminary hearing.

3 Q Okay. And have you seen several court documents?
4 And you've seen the discovery in the case. Seen the police
5 reports against you and the witness statements against you,
6 et cetera?

7 A I only seen the discovery with Bernard on there,
8 and it had me as a Polo shirt number 3. I never seen
9 anything besides that.

10 Q And how about a video? How many times have you
11 seen video in this case?

12 A He showed it to me about twice.

13 Q You've only seen this video twice?

14 A Yes.

15 Q Okay. And --

16 A Besides here.

17 Q Okay.

18 A Five.

19 Q In court you've seen it a bunch of times, right?

20 A Yeah.

21 Q All right. You would agree with me that you are on
22 camera walking out with Zeke Davis?

23 A Yes.

24 Q You would agree with me that there's a short period
25 of time where off the camera and then you come back on a

1 camera and you have his pants and you're tugging at the belt,
2 right?

3 A Yes.

4 Q Okay. You are attempting to fill in the blanks for
5 this jury what happened off that camera, right?

6 A Yes.

7 Q Okay. I want you to go through step by step
8 exactly what happened when you went off frame.

9 A Step by step?

10 Q Yep, step by step.

11 MR. WOOLDRIDGE: Asked and answered, Your Honor.

12 THE COURT: It's cross-examination.

13 THE WITNESS: He grabbed me, pulled me to him,
14 shoved the gun in my ribs, and I looked in his eyes, seen all
15 the demons in him, closed my eyes, called on the Lord, a
16 feeling came over me, a voice came over me from my grandma, I
17 pulled out and shot.

18 BY MR. GIORDANI:

19 Q Okay. Keep going.

20 A And after that, he hit the floor, shaking, kicking
21 off the pants. I grabbed at the pants, at the legs when I
22 regained my confidence and stuff, and I snatched them, and I
23 snatched at the belt.

24 Q Okay. So before I go into further detail you've
25 now admitted to taking Zeke's force by property -- or Zeke's

1 property by force?

2 A Yes, I did.

3 Q Okay. Now, you left out some details so I want to
4 go back. And when I say step by step, I mean every single
5 step. You're saying --

6 MR. WOOLDRIDGE: Objection, Your Honor.

7 BY MR. GIORDANI:

8 Q -- when you went off the camera --

9 THE COURT: Overruled.

10 BY MR. GIORDANI:

11 Q -- that you were walking towards Zeke's car?

12 A Right.

13 Q Okay. What happened next?

14 A He grabbed me, pulled me close to him, shoved his
15 gun in my ribs and asked me -- told me bitch ass nigga tear
16 it off or I'll pop you.

17 Q Where did he take that gun from?

18 A He took it from his pocket. I don't know, I was
19 looking down at my phone.

20 Q Okay. Did he have anything else in his hands?

21 A I wasn't paying attention.

22 Q Okay. Which hand did he have the gun in?

23 A He had it right -- right, I should say.

24 Q Well, it was stuck in your ribs so you tell me.

25 Right or left?

1 A I mean, but it was the side so it was this side
2 so --

3 Q So he stuck his gun in your ribs?

4 A Um-h'm.

5 Q Touching you? Is that is a yes?

6 A Shoved it in my ribs, not stuck it.

7 Q Okay. Shoved it your ribs?

8 A Um-h'm.

9 Q Did he tug on your belt before or after that?

10 A Before.

11 Q Okay. So he pulled you close to him and stuck the
12 gun in your ribs?

13 A Yes.

14 Q Okay. Did he pull you face to face?

15 A Yes, he -- right here.

16 Q So you were checking your phone, is your story,
17 right?

18 A No, I looked in my phone, and when I looked up,
19 that's when he grabbed me, shoved it in my ribs, and I'm like
20 this to him, like -- like, you know, I wasn't expecting so
21 I'm like this to him. Gun in my ribs, he told me, tear it
22 off bitch ass nigga before I pop you.

23 Q Okay. What did do you?

24 A I'm looking him dead in his eyes, see the demons on
25 him. I could tell he's serious so I wasn't going to play

1 with him. I reached in my pocket, but as I reached in my
2 pocket, I closed my eyes and I just called on the Lord, and
3 you know, I felt the spirit come over me, and I hear a voice,
4 heard my grandma talking to me, telling me to stand up for
5 myself, so I just pulled out my gun and shot.

6 Q Okay. Divine intervention, huh? Is that your
7 story?

8 A Yeah, if that's what you want to call it.

9 Q What pocket did you pull your gun from?

10 A My gun was in my right pocket.

11 Q Okay. Where did your cell phone go?

12 A It fell, I don't know.

13 Q Oh, it fell?

14 A Yeah, I don't -- I don't --

15 Q It was -- fell to the ground?

16 A Yes, I guess.

17 Q All right. Did you pick it back up?

18 A I don't -- I don't really recall picking it back
19 up, no.

20 Q So it would have been either at the scene or --

21 A It could have been.

22 Q -- you would have picked it back up?

23 A It should have been at the scene.

24 Q Okay.

25 A I never picked it back up.

1 Q So when Mr. Davis, you've alleged that he now is
2 attempting to rob you and you reach into your pocket and you
3 grab your gun?

4 A Um-h'm.

5 Q Where is his gun when you do that?

6 A It was in his hand. When he pulled me to him, he
7 shoved it in my ribs. He had it already on deck, I should
8 say, to attempt to do what he was going to do.

9 Q Okay. So you were able to draw your gun from your
10 pocket, pull it out like a cowboy, and shoot him before he
11 shot you; is that your story?

12 A No, it was -- I was this close to him like this,
13 and I just came out like I was listening to him. I wasn't
14 going to be defiant. I was coming out like this and I just
15 came out with in hand first, and I shot.

16 Q Okay. When did you pistol whip him?

17 A H'm?

18 Q When did you pistol whip him?

19 A I didn't -- I didn't pistol whip him.

20 Q Okay. So you just shot him?

21 A Yes.

22 Q When you shot him, you said something to the effect
23 of he went down, he was shaking or something like that?

24 A Yeah, he was --

25 Q Tell me exactly what happened.

1 A He went down, he was just shaking, kicking off his
2 pants like he was -- they were already kind of down so he was
3 just shaking.

4 Q Where was his gun at that point?

5 A It was on the side of him, like right on the side
6 if --

7 Q How far away?

8 A I couldn't tell you the approximate feet, I don't
9 know. It wasn't that far. It was in reach.

10 Q Okay. I don't want you to guess so if his body is
11 on the ground -- is he -- how's he laying?

12 A He was laying flat down. I mean, I don't -- I
13 wasn't paying attention to all of that. I was trying to
14 regain my strength, you know, my -- my confidence.

15 Q Oh, okay. So you weren't paying attention to the
16 guy that you've alleged had a gun?

17 A I wasn't paying attention to the way he was laying,
18 yes, and how was he laying.

19 Q Oh, I asked where -- how far the gun was from him?

20 A Yeah, I said in arm's reach.

21 Q In arms reach?

22 A Yeah.

23 Q It was within arms reach when he was laying on the
24 ground? Is that -- are you sure?

25 A Yes.

1 Q Okay. What did you do once you regained your
2 composure or whatever you're saying there?

3 A I got angry, I snatched his pants, and I took his
4 belt out of him -- out of his pants.

5 Q Okay. Where did you -- where were you in relation
6 to his body when you did that?

7 A I was at his feet.

8 Q Like his feet are right by your feet?

9 A Yeah, I was in front of him. Like, in front of
10 him. I snatched them off.

11 Q Okay. You said something with your lawyer about he
12 was shaking and you were liking pulling down your (sic)
13 pants. How did those pants first start to come off?

14 A I never said pulling down my pants.

15 Q No, no, no, his pants.

16 A Okay, you said mine. His pants were already
17 sagging so when he hit the floor, he was kicking like a fish
18 out of water.

19 Q Okay. Kicking and -- are you saying like reacting
20 because he just got shot?

21 A Yes.

22 Q Like convulsing?

23 A Yes, like he's having a seizure.

24 Q Oh, okay. So now he's having a seizure and that's
25 how his pants started to come off?

1 A No, I said like he was having a seizure. That's --

2 Q Okay.

3 A -- how he was kicking.

4 Q Okay. So the pants are already coming off and then
5 you decide I'm pissed now I'm going to tug them off?

6 A No, I snatched them. I didn't tug. I snatched
7 them off.

8 Q Who you did you -- what is the difference, I'm
9 sorry?

10 A Well, a tug would just be like this (indicating).
11 I snatched them off like aggressively. I was angry.

12 Q Okay. You were angry?

13 A Yes.

14 Q So you went from the divine intervention, the Lord
15 and your grandma speaking to you, to angry enough to rip a
16 man's pants off as he's dying?

17 A Yes, I did.

18 Q Okay. When you pulled his pants off, what did you
19 do?

20 A I snatched his belt out of his pants.

21 Q Okay. Obviously, you've seen the video, we've all
22 seen the video, and that's on camera, right?

23 A Yes.

24 Q All right. So you're taking the belt off, and we
25 know you go back to the car. Why are you going back to the

1 car?

2 A Because I was trying to leave.

3 Q Trying to leave, why?

4 A I was trying to get away, and I was trying to
5 leave, but I noticed I dropped my ID, went back got my ID, he
6 tried to reach for his gun, I striked him with the belt and
7 grabbed his gun --

8 Q Okay.

9 A -- shoved it in my waist and covered it and got
10 back to the car.

11 Q Okay. So when you went back to the car, you got to
12 like the door, right? To the door area of the car?

13 A Yes.

14 Q And you realized then that you forgotten your ID?

15 A Um-h'm.

16 Q How did your ID come out?

17 A I don't know. It must have fell when I whipped out
18 my gun. I don't carry a wallet.

19 Q Okay. When you realized that, what did you do?

20 A I went back and grabbed it.

21 Q Okay. When you were going to your car -- to the
22 car before you realized you had dropped your ID, before you
23 realized you had dropped your ID, what were you thinking at
24 that time?

25 A I was thinking I -- I just want to get out of here,

1 you know.

2 Q Okay. Were you scared or angry?

3 A I was both, scared and angry.

4 Q Okay. Scared and angry --

5 A Yeah.

6 Q -- as you went back to your car tugging his belt,
7 right? Okay. Is that a yes?

8 A Yes.

9 Q She's taking all this down.

10 A Yes.

11 Q All right. So you get back to the car, you realize
12 you forgot your ID?

13 A No, I seen --

14 Q Or you dropped it?

15 A Yeah, I seen it.

16 Q Okay. Then you go back towards Mr. Davis?

17 A Yes.

18 Q Okay. When you go back towards Mr. Davis, tell me
19 step by step what happened.

20 A I went back towards him, grabbed my ID, he was
21 reaching for his gun, I striked him with the belt, and I
22 grabbed his gun, put it in my waistline and covered it with
23 my shirt and headed back to the car.

24 Q Okay. So you're walking back to Mr. Davis, who was
25 -- is he still convulsing or shaking?

1 A He was -- no, he was still alive. He was just, you
2 know, reaching for his gun. He was reaching for his weapon.

3 Q Okay. He was reaching for his weapon. How did you
4 describe that weapon again?

5 A It was a small revolver.

6 Q Okay. Small enough that, of course, the jury
7 wouldn't see it on the camera throughout the night, right?

8 A I don't know. It was small enough to fit in his
9 pocket.

10 Q Okay. So you're walking back towards him? Is that
11 a yes?

12 A Yes. Skipping, walking kind of.

13 Q Skipping?

14 A I mean, you know, jogging, whatever you want to
15 call it.

16 Q All right. So there's a difference, right?

17 A Yeah.

18 Q Are you walking or jogging?

19 A I mean, I kind of -- kind of jog.

20 Q All right. Because you're like I need my ID?

21 A Yeah.

22 Q Why would you need your ID so bad?

23 A Because it's my ID. It's identification.

24 Q Because leaving evidence of your identity at the
25 scene of the murder or --

1 A Yes, that would have been right, I was leaving --

2 Q Oh, okay.

3 A -- evidence.

4 Q Okay. So --

5 MR. WOOLDRIDGE: Objection as to the -- as to the
6 State's characterization.

7 THE COURT: Overruled.

8 BY MR. GIORDANI:

9 Q When you go to retrieve your ID, do you see your
10 ID?

11 A Of course, I seen it.

12 Q All right. Where was it?

13 A It was on the ground.

14 Q Where?

15 A I guess, like right in the middle like where we
16 were.

17 Q Okay. Where in relation to Mr. Davis's dying body
18 was your ID?

19 A Well, you could say the two cars are right here, he
20 was right here in the back, more in front of the white van.
21 My ID was like at the -- both of the tails of the car. It
22 was right there.

23 Q Okay. So did you have to go past his body to get
24 your ID?

25 A No.

1 Q It was before his body? It was between --

2 A It was right there, where his body was, my ID was
3 right there on the floor.

4 Q Okay. So you're going back just to get your ID?

5 A Yes.

6 Q Not to get his watch or jewelry?

7 A No.

8 Q Okay. When you're going back to get your ID, at
9 what point is it that you realize he's reaching for a gun?

10 A I mean, he's right there. I could see him. I
11 could see -- I could see him. He's moaning and (indicating),
12 and he reached for the gun. You know, I could see him. He's
13 right there.

14 Q Okay. When you saw that, how far away were you
15 from him?

16 A Inches.

17 Q Inches?

18 A Yes.

19 Q Okay. And then what do you do when you see him
20 reaching for the gun?

21 A I strike him with the belt. I swing the belt.

22 Q And so the record's clear, you took your right
23 arm, and you're -- I assume, you're facing his body, right?
24 Is that a yes?

25 A Yes.

1 Q And you whip him like a normal right arm swing,
2 right?

3 A I swung it like hard as I could.

4 Q And you whipped him in the face?

5 A Um-h'm.

6 Q Like Indiana Jones?

7 A I mean, I wasn't aiming for the -- it hit him in
8 the face.

9 Q Okay. And when you hit him in the face with the
10 belt, what did he do?

11 A He just turned and, you know, he turned. He took
12 the hit. What could he do? He just took the hit and like,
13 you know --

14 Q Okay. Where did the belt -- where did the gun go?

15 A My gun or his gun?

16 Q Yours.

17 A My gun was still in my hand.

18 Q Oh, which hand?

19 A The hand I gabbbed it with my ID. The gun's -- this
20 -- I just grabbed it, I had the belt in this hand.

21 Q The gun was in your right hand?

22 A No. Yes, the gun was in my right hand. The belt
23 was in my left hand.

24 Q Oh, I thought a moment ago you said you whipped him
25 Indiana Jones style with the belt with the right hand?

1 A I never said that. You said that. You said right
2 hand.

3 Q Didn't you just display that and I put it on the
4 record? Remember that?

5 A Yeah, you said right hand. I never said right
6 hand.

7 Q Okay. So let me get it clear, then, and I'm not
8 trying to confuse you.

9 A Um-h'm.

10 Q What your story is, is that the belt is in which
11 hand? Let me just ask you that.

12 A The belt is in my left hand.

13 Q And what's in your right?

14 A My gun was in my right hand.

15 Q Okay. So this guy is reaching for his gun, which
16 you say is next to him, within arm's reach, right?

17 A Um-h'm.

18 Q And are you right-handed or left-handed?

19 A Right-handed.

20 Q Okay. So you got the belt in your left hand, your
21 gun in the right?

22 A Um-h'm.

23 Q This man that you are scared of, you think he's a
24 robber and he's a scary guy, and you take the belt and whip
25 him in the face when he's reaching for a gun? You've got

1 your gun in the right hand. You've just shot him, right?

2 A Yes.

3 Q So you don't decide to shoot. You decide to do the
4 Indiana Jones swing?

5 A Yes.

6 Q When you do that, what does he do with the gun?
7 Has he reached the gun?

8 A You mean when I strike him with the belt, what did
9 he do?

10 Q Yeah, yeah. Is he --

11 A He was reaching for it, when I struck him. It was
12 -- you know, I struck him. He was reaching for it, and you
13 know, he took the hit and he was like, you know --

14 Q Oh, it knocked him out when you hit him?

15 A No, it didn't knock him out. It just made him --
16 it made him turn his face. I hit him very kind of hard.

17 Q Okay. What happened with his gun?

18 A I grabbed it.

19 Q Which hand did you grab it with?

20 A I grabbed it with the belt -- with the hand I had
21 the belt in, stuffed it in my waistline, covered it with my
22 shirt and headed back toward the car.

23 Q What did you do with your gun?

24 A I had it in my hand still.

25 Q All right. So you got full hands. Now, you got a

1 gun in the right hand, you got a gun in the left hand and a
2 belt in the left hand; is that right?

3 A Yeah.

4 Q Okay. And then you say that you stuffed those all
5 in right before you come back into camera frame; is that
6 right?

7 A Well, I put the gun in my waistline, covered that
8 up with my shirt, I had my gun in my hand. I mean, it's not
9 like it was big or something. It's a little gun, and I had
10 the belt in this hand.

11 Q Okay. So you're saying that you stuffed all that
12 back into -- you put his gun in your belt?

13 A Yeah, in my waistline.

14 Q Okay. His gun goes into your waistline. Where
15 does your gun go?

16 A I never -- it was in my hand the whole time.

17 Q All right. So it's in your hand still until you
18 get back to the car?

19 A Yeah, when I got in the car, I put it in my pocket.

20 Q When you got in the car, you put it in your pocket?
21 Where was the belt?

22 A The belt was in my hand.

23 Q Okay. Where was Mr. Davis's watch?

24 A I don't know. I wasn't paying attention to the
25 watch.

1 Q Okay. Was there any kind of struggle? You know,
2 you said he grabbed your belt, and then you pull out and
3 shoot him. He goes down instantly, right?

4 A He grabbed my belt and pulled me toward me
5 aggressively.

6 Q Okay. There's no like -- you're not boxing, you're
7 not wrestling, nothing?

8 A I would not dare try to box or wrestle someone that
9 has a gun in my (sic) waistline.

10 Q I'm not saying you would be. I'm asking you so
11 this jury's clear. No fighting. It's just he pulls you, you
12 pull out, shoot him, he goes down?

13 A He pulled me, shoved the gun in my waistline, and
14 yes, I did pull out and shoot him.

15 Q Okay. Other than this whip with the belt, is there
16 any other time that you touch his body?

17 A I guess, you could say when I grabbed the pants,
18 but I didn't --

19 Q Okay. That's fair. So that's the only time that
20 you touch his body?

21 A Yes.

22 Q Okay. When you go back -- so you come back on
23 camera screen, and at this point you've hidden both -- or no,
24 you've hidden what in your belt?

25 A I put his gun in my waistline.

1 Q Okay. And now -- you -- and you still have the
2 belt in your left and your gun in the right? Is that
3 accurate?

4 A Yes.

5 Q Okay. What do you do from there?

6 A Get in the car and leave.

7 Q Right. There's -- there's distance, right, between
8 the body and the car? Like I'm saying, step by step. I want
9 to walk through it. So at the point where you put his gun in
10 your waist, you've got his best in your left, your gun in the
11 right --

12 A Um-h'm.

13 Q -- at that point in time, do you start walking,
14 running, jog, skipping to the car, what?

15 A Walk to the car.

16 Q Okay. At that point in time, had you ever touched
17 his neck area?

18 A No.

19 Q Okay. Had you ever touched his hands?

20 A Absolutely not.

21 Q Okay. When you say you looked in his eyes, he had
22 demons, you know, whatever. When you did that, did you
23 notice anything on his mouth?

24 A Yes, he had gold teeth.

25 Q Gold teeth?

1 A Yes.

2 Q Is that known as a grill?

3 A Yeah, it's a grill.

4 Q Okay. When -- so when you looked in his eyes and
5 he tried to rob you, he had that gold grill in, right?

6 A Um-h'm.

7 Q I want to be clear about what the Judge kind of
8 asked you about because I was a little confused. What your
9 lawyer said, he was asking you were you in the state of
10 Mexico and I believe the Judge asked you and you said no?

11 A No, I -- no, not Mexico, New Mexico.

12 Q Okay. But the state of New Mexico, not the country
13 of Mexico?

14 A Well, whatever the highway contains, I don't know
15 if it's state or the country, but I know I was going from
16 Vegas, Arizona, New Mexico. I was entering Texas.

17 Q Vegas, Arizona, New Mexico, entering Texas. So
18 four -- you're four states away when you were apprehended by
19 police?

20 A Um-h'm.

21 Q Yes?

22 A Yes.

23 Q Okay. During the two weeks between the murder and
24 your arrest, what were you doing in that time?

25 MR. WOOLDRIDGE: Objection.

1 THE COURT: Overruled.

2 MR. WOOLDRIDGE: Exceeds the scope of direct.

3 THE WITNESS: I was --

4 THE COURT: Cross-examination, Counsel.

5 THE WITNESS: -- gathering money to retain a
6 lawyer.

7 BY MR. GIORDANI:

8 Q Oh, okay. So you were working to retain a lawyer?

9 A No, I was gathering money to retain a lawyer. I
10 wasn't working.

11 Q How were you gathering money?

12 A Well, I was just, you know, calling friends, asking
13 for, you know, money.

14 Q Okay. Is that something you did often?

15 A No.

16 Q That evening when you were -- before this whole
17 robbery and murder occurred --

18 A Um-h'm.

19 Q -- inside the club, you described with your lawyer
20 some rap song. I'm not sorry, I'm not familiar with the
21 artist. I might have written it down, but you mow what I'm
22 talking about?

23 A Yes, Lil Boosie.

24 Q Lil Boosie? When Lil Boosie came on --

25 MR. WOOLDRIDGE: Boosie, actually.

1 MR. GIORDANI: Excuse me?

2 MR. WOOLDRIDGE: Boosie.

3 BY MR. GIORDANI:

4 Q Lil Boosie. When Lil Boosie came on, you took your
5 gun out, right? I mean, we've all seen that. You're not
6 hiding that, right?

7 A Yes.

8 Q Okay. And you were -- you like kind of danced with
9 it or kissed it, whatever you did, right?

10 A Yes.

11 Q Okay. And you just did that because the song came
12 on and you weren't doing anything else, talking about
13 anything else with that gun?

14 A No.

15 Q Did you -- is that the only time you should have --
16 you would have pulled your gun out that night, other than
17 when the --

18 A Yes, that was the only time.

19 Q That was the only time?

20 A Yes.

21 Q Because other -- I mean, you're saying, you had
22 that gun on you for protection --

23 A Um-h'm.

24 Q -- that time, you know, the song came on, you were
25 just into it. Other than that, you wouldn't have pulled it

1 out because you had no need to, right?

2 A Right.

3 Q All right. And when Mr. Wooldridge asked you about
4 your prior conviction, you gave some details, right? You
5 said something like I got pulled over, I had an ID, I lied to
6 police about it or something?

7 A I never said I had an ID. I said I used my
8 cousin's name.

9 Q Okay, okay. And that was it?

10 A Because he had a license and I didn't.

11 Q All right. So Mr. Wooldridge failed to mention
12 this. The crime you were actually convicted of is a felony,
13 right?

14 A Yes, it was.

15 Q You're telling this jury you got convicted of a
16 felony for just having your cousin's ID?

17 A Yes, it's false impersonation.

18 Q All right. When Mr. Wooldridge asked you about
19 Mr. Davis, I thought initially you had said -- let me get
20 your words. I don't want to twist your words But you said
21 never -- you had first saw Zeke at a tripper pole, made it
22 rain, he bumped you --

23 A Um-h'm.

24 Q -- is that right?

25 A Yes.

1 Q So that's the first time you saw Zeke ever?

2 A That's the first time we had encounters. I
3 couldn't see him because it was dark in there.

4 Q Oh, okay. So you --

5 A He had his hat low.

6 Q He had his hat on?

7 A He had his hat low, yeah.

8 Q Low, okay.

9 A It was on.

10 Q So you've never met Zeke before that night?

11 A No.

12 Q You don't know his family? You don't know his mom?
13 You don't know his aunt? No?

14 MR. WOOLDRIDGE: Objection, Your Honor.

15 MR. GIORDANI: I'm asking if he knew them.

16 THE COURT: Overruled.

17 MR. GIORDANI: He just got into that on direct
18 exam.

19 THE COURT: I overruled it.

20 MR. GIORDANI: Thank you.

21 BY MR. GIORDANI:

22 Q You say that you met -- or you had heard of him
23 from some girl?

24 A Yes.

25 Q When was that?

1 A Like three months before this happened.

2 Q Three months, okay.

3 A Yeah, three months prior.

4 Q Okay. I want to go back to when we're outside.

5 A Um-h'm.

6 Q Would you admit that Bernard, who testified earlier
7 this week, he was going to be your ride that night?

8 A Yes.

9 Q Okay. Would you admit that you knew several people
10 there at the Top Notch (inaudible)?

11 A No, I didn't.

12 Q How many people did you know?

13 A I really didn't know anyone. I just knew them
14 through Bernard.

15 Q You really didn't know anyone that was there that
16 night?

17 A Not really.

18 Q So you -- but Bernard?

19 A Yeah, I -- I met him there.

20 Q Okay. Do you want some water?

21 A No, thank you. I'll get some down there, thanks.

22 Q You didn't know anyone there but Bernard?

23 A Yeah.

24 Q Had you met anyone there but Bernard?

25 A Not really. I just seen their faces before with

1 him, said what's up, just, you know, saying hi and bye, like
2 a meet and greet thing.

3 Q Okay. Would you know who that person was on the
4 screen that your lawyer talked about with some of the
5 witnesses that ran off the screen after the murder or after
6 the shooting?

7 A No, I would not, no.

8 Q Okay. Don't know that person?

9 A No.

10 Q When you were in the car with Bernard, after this
11 just went down --

12 A Um-h'm.

13 Q -- what were you talking about?

14 A I wasn't talking about nothing. He just, you know,
15 kept quiet. We didn't want his baby mama to freak out and he
16 just dropped me off.

17 Q Okay. Where did he drop you off?

18 A At the gas station.

19 Q Who was waiting at the gas station?

20 A A friend.

21 Q How did you get in touch with that friend?

22 A I have two phones.

23 Q Did you call him, then? How did you get in touch
24 with that friend is the question?

25 A I texted him. I told him meet at the gas station

1 on Tropicana and I believe, Rainbow, Chevron.

2 Q Okay. So you texted him from the car? Is that
3 right?

4 A Yes.

5 Q Okay. So I want to be clear here, you're saying
6 you had two phones.

7 A Um-h'm.

8 Q So the one you dropped at the scene; is that right?

9 A Yes.

10 Q And then the one you texted your friend to meet you
11 there?

12 A Yes.

13 Q You obviously didn't go to the police?

14 A No, I did not.

15 Q What did you do with your gun?

16 A Threw it away with all the other stuff.

17 Q Oh, you threw away your gun, too?

18 A Threw away everything.

19 Q So where did you do that?

20 A At the gas station.

21 MR. GIORDANI: Court's brief indulgence. Sorry.

22 Court's brief indulgence.

23 BY MR. GIORDANI:

24 Q When your attorney was questioning you, he talked
25 about your, I guess, car accident, right?

1 A Yes.

2 Q What kind of disability do you have?

3 A Like I said, I'm not good with the medical terms.
4 I just know something like lumbar -- lumbar spine or
5 something. I don't --

6 Q All right. Did you have surgery?

7 A No, not surgery.

8 Q Okay. Did that prevent you from doing everyday
9 activities?

10 A Yes, of course.

11 Q Like what?

12 A A lot of things.

13 Q Give me some examples.

14 A Bending over tying my shoes, just I couldn't do too
15 much of anything, really.

16 Q So you couldn't bend over to tie your shoes?

17 A No, not at all.

18 Q And we're talking -- I'm talking about like the
19 time frame we've been talking about this whole time.

20 A Oh, you -- you thought you was talking about when
21 the accident occurred.

22 Q No, no, no.

23 A It's just -- you know, it's just --

24 Q September 25th --

25 A -- back pains. I could --

1 Q -- 2016.

2 A I could sit in this chair for over too long and my
3 back hurts.

4 Q All right. It hurts?

5 A Yes.

6 Q September 25th, 2016, did your injury prevent you
7 from doing normal things like we've been talking about?

8 A No, I mean, I do a little two-step, but I can't --
9 like, that's what you seen me in the club doing little, you
10 know, dance.

11 Q Okay.

12 A But far as anything else, I'm not active like that.

13 Q All right. Something your lawyer said in opening
14 statement.

15 MR. WOOLDRIDGE: Objection, Your Honor.

16 BY MR. GIORDANI:

17 Q Your words aren't hit --

18 MR. GIORDANI: What's the basis of the objection?

19 MR. WOOLDRIDGE: Openings aren't evidence.

20 THE COURT: Overruled.

21 MR. GIORDANI: Not -- thank you.

22 BY MR. GIORDANI:

23 Q Your lawyer said Zeke wasn't in the back when you
24 were showing your gun off, and I assume that would be
25 referring to this like rap song incident.

1 A Are you saying he wasn't in the back? Yeah, he
2 wasn't.

3 Q Okay. Did you take any illicit substances that
4 night?

5 A What do you mean, like --

6 Q Drugs?

7 A Oh, yeah, I smoked some weed. I smoked a blunt,
8 that's it.

9 Q All right. Were you drinking?

10 A I had a mixed drink before I left the house, that's
11 all.

12 Q Okay. So you had a mixed drink before you left the
13 house.

14 A Yes.

15 Q You weren't drinking at the club?

16 A No.

17 Q Not at all?

18 A Not at all.

19 Q Okay. And you smoked a little weed. Weed's legal.
20 I mean, no one's judging you for that.

21 A Um-h'm.

22 Q How much weed are we talking about just --

23 A I just --

24 Q -- a blunt?

25 A -- smoked a blunt when I got there.

1 Q Okay. Who did you smoke it with?

2 A I passed it to a couple people. I don't -- I don't
3 really know their names. I don't --

4 Q All right. You didn't know anybody there but
5 Bernard, right?

6 A Yeah.

7 MR. GIORDANI: I'll pass the witness, Your Honor.
8 Thank you.

9 THE COURT: All right, thank you. We've got five
10 minutes to noon.

11 MR. WOOLDRIDGE: No further questions, Your Honor.

12 THE COURT: Okay. All right. Thank you,
13 Mr. Ketchum. You may step down.

14 THE WITNESS: Thank you.

15 THE MARSHAL: Your Honor, the jury has some
16 questions.

17 THE COURT: Oh, we have a couple jurors with
18 questions. So hang on just one minute.

19 (Off-record bench conference)

20 REDIRECT EXAMINATION

21 BY MR. WOOLDRIDGE:

22 Q Mr. Ketchum, you indicated that you weren't from
23 Las Vegas?

24 A No.

25 Q Where are you from?

1 A Sacramento, California.

2 Q Thank you.

3 THE COURT: I'm sorry, Counsel, I think we also
4 need to clarify -- the question was, Mr. Ketchum said he's
5 not from Vegas, where is he from, where does he live. So --

6 MR. WOOLDRIDGE: Oh.

7 THE COURT: -- at the time of the incident, he's
8 not -- he wasn't from Vegas, but where was he living at the
9 time.

10 BY MR. WOOLDRIDGE:

11 Q Oh, where were you living at the time of the
12 incident?

13 A Las Vegas, Nevada.

14 Q Okay.

15 THE COURT: And at that time, how long had you been
16 living here?

17 THE WITNESS: For about three years.

18 THE COURT: All right, thank you.

19 MR. WOOLDRIDGE: Thank you.

20 THE COURT: All right. And State, you were going
21 to ask the other question.

22 MR. GIORDANI: And if I could just see that. Thank
23 you, Your Honor.

24 RECROSS-EXAMINATION

25 BY MR. GIORDANI:

1 Q For clarification, what side of your body were you
2 grabbed from?

3 A I was grabbed from the -- my belt buckle, the
4 middle. He grabbed it just -- he grabbed it and -- and
5 gripped like my pants. He almost grabbed my private area,
6 and he just grabbed me and pulled me toward him very
7 aggressively.

8 Q Okay.

9 A So I could stand up and show you guys, but, you
10 know, it was like he grabbed all of this right here. Just
11 grabbed -- put his hands and grabbed all of this.

12 Q All right.

13 A Had a tight grip on me.

14 Q Okay. So the record reflects, you went -- so he
15 grabbed it like this, like over your belt, right?

16 A Yeah.

17 THE COURT: With his right hand, correct?

18 THE WITNESS: Yes.

19 MR. GIORDANI: All right.

20 THE WITNESS: I mean, well, left hand really, yeah,
21 and had the gun.

22 THE COURT: Correct.

23 MR. GIORDANI: Okay.

24 THE COURT: That's what we need clarified is which
25 hand did he grab you with, and which hand did he have the gun

1 in?

2 MR. GIORDANI: Go ahead.

3 THE WITNESS: He grabbed me with his left, yanked
4 me towards him, jammed a gun in my ribs with his right.

5 THE COURT: Okay. All right. Any further
6 questions?

7 MR. WOOLDRIDGE: No further questions, Your Honor.

8 THE COURT: All right. And could we have the piece
9 of paper with the question back? As to the questions
10 regarding the watch and the gun, I think counsel will cover
11 that with you -- they'll review the evidence with you during
12 closing arguments, and so I'm not going to ask those
13 questions. Anything else? All right. It is the noon hour.
14 Thank you, Mr. Ketchum, you may step down.

15 THE DEFENDANT: Thank you, Judge.

16 THE COURT: We're going to break for the noon hour.
17 I'll remind the jury -- what's -- I'm sorry, you had your
18 hand up?

19 UNIDENTIFIED JUROR: No.

20 THE COURT: Okay. I remind the jury, once again,
21 not to discuss this case, don't form and express any opinions
22 about it. Don't read, watch or listen to any report or
23 commentary or do any investigation or research about it.
24 With that, I'll see you back here at 1:30.

25 THE MARSHAL: Rise for the jurors.

1 (Court recessed at 12:01 p.m. until 1:42 p.m.)

2 (Outside the presence of the jury)

3 (Pause in the proceedings)

4 THE MARSHAL: Court come to order. Department 17
5 is back in session.

6 MR. GIORDANI: Mr. Wooldridge literally just
7 stepped out. I apologize, Your Honor.

8 THE COURT: That's okay. We'll settle jury
9 instructions after we finish with all the witness testimony
10 because he should only have three witnesses, right?

11 MR. GIORDANI: He should only have three and then
12 we have the two rebuttal.

13 THE COURT: Okay. So let's get the testimony done.
14 We'll see what time it is and from there we'll work it.

15 MR. GIORDANI: Okay.

16 MR. ROSE: Yes, Your Honor. Thank you.

17 (Pause in the proceedings)

18 (Off the record at 1:44 p.m. until 1:45 p.m.)

19 (Outside the presence of the jury)

20 (Pause in the proceedings)

21 THE MARSHAL: Court come to order. Department 17
22 is back in session.

23 THE COURT: All right, we're back on the record.
24 We're outside the presence of the jury. Counsel for both
25 sides are present, defendant's present.

1 MR. ROSE: Your Honor, I believe, there was one
2 issue that defense counsel wanted to raise before bringing in
3 the jury.

4 THE COURT: Okay. And that would be?

5 MR. WOOLDRIDGE: There is, Your Honor. I'm going
6 to make a quick record. Your Honor can rule however she
7 wants. I've brought up this issue before to Judge Villani
8 and was essentially, I'd have to make a showing. I believe,
9 I've made that showing with Mr. Ketchum testifying. It would
10 be under NRS 48.045. I believe that prior bad acts of the
11 decedent should come in under that 48.045, subdivision (2) as
12 not for it to show propensity evidence or to show that he
13 acted in conformity therewith, but for other admissible
14 purposes such as common plan or scheme and intent.

15 These other prior bad acts of the decedent occurred
16 in very similar circumstances as to what happened to Javar
17 Ketchum. This decedent had robbed people at gunpoint in
18 parking lots on two prior occasions.

19 THE COURT: In what year?

20 MR. WOOLDRIDGE: 2008, and then he was convicted in
21 2010. He went to prison for three years, according to the
22 judgments of conviction.

23 THE COURT: Okay. I think you've already had your
24 rulings on it. It's denied.

25 MR. WOOLDRIDGE: Okay.

1 MR. ROSE: I believe that was the only for outside
2 the presence of the.

3 THE COURT: Okay.

4 MR. WOOLDRIDGE: Thank you, Your Honor.

5 THE COURT: We'll bring in the jury now.

6 THE MARSHAL: Yes.

7 THE COURT: Finish your testimony, and then we'll
8 finish settling jury instructions. I've looked over defense
9 jury instructions and I'm really not finding anything that
10 isn't covered by the State's stocks.

11 THE MARSHAL: Rise for the jury.

12 MR. WOOLDRIDGE: Okay.

13 THE COURT: We'll deal with it.

14 (In the presence of the jury)

15 THE MARSHAL: Panel is present, Your Honor.

16 THE COURT: All right. We're back in the presence
17 of the jury panel. I'll members of the panel are present.
18 Please be seated. Counsel for both sides are present,
19 defendant is present. You may call your next witness.

20 MR. WOOLDRIDGE: Yes, Your Honor. The defense
21 calls Tracy Smith.

22 THE COURT: All right, please state your name,
23 spell your last name. Oh, and I'd remind you, you've already
24 been sworn.

25 THE WITNESS: Yes.

1 THE COURT: And you remain under oath so --

2 THE WITNESS: Right.

3 THE COURT: -- please state your name, spell your
4 last name for the jury.

5 THE WITNESS: Tracy Smith, S-m-i-t-h.

6 THE COURT: All right. You may proceed, Counsel.

7 MR. WOOLDRIDGE: Thank you.

8 TRACY SMITH, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

9 DIRECT EXAMINATION

10 BY MR. WOOLDRIDGE:

11 Q Mr. Smith, what do you do for a living?

12 A I am head of marketing for a consumer electronics
13 accessories company.

14 Q And where are you employed?

15 A I'm employed with STM Brands, which is a company
16 out of San Diego, and I live near Salt Lake in a city called
17 Loram (phonetic).

18 Q Did you come all the way out here for this?

19 A I did.

20 Q Are you familiar with a person by the name of
21 Ezekiel Davis?

22 A I am.

23 Q And have you had any personal interaction with this
24 person?

25 A I have.

1 Q And based on that personal interaction is your
2 opinion of him that he is violent?

3 A Yes.

4 Q Thank you.

5 THE COURT: Okay. State.

6 MR. ROSE: Very briefly, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. ROSE:

9 Q Mr. Smith, do you recognize the individual sitting
10 at the table to my right wearing the white shirt but no
11 jacket?

12 A I do not.

13 Q Have you ever spoken with that individual?

14 A No.

15 Q Okay.

16 MR. ROSE: I have no further questions, Your Honor.

17 THE COURT: All right, thank you. Any further
18 questions?

19 MR. WOOLDRIDGE: No, Your Honor.

20 THE COURT: All right, thank you. You may step
21 down.

22 THE WITNESS: Thanks.

23 THE COURT:

24 MR. WOOLDRIDGE: Bear with me one --

25 THE COURT: Call your next witness.

1 MR. WOOLDRIDGE: Yep. Can I please call Houston
2 MacGyver.

3 THE COURT: Okay, Mr. MacGyver, you've been
4 previously sworn outside the presence of the jury. I'll just
5 remind you you're still under oath. Please state your full
6 name for the jury.

7 THE WITNESS: MacGyver Gale.

8 THE COURT: Okay. You may proceed.

9 MACGYVER GALE, DEFENDANT'S WITNESS, PREVIOUSLY SWORN
10 DIRECT EXAMINATION

11 BY MR. WOOLDRIDGE:

12 Q Mr. MacGyver --

13 THE COURT: MacGyver Gale, so last name's Gale.

14 THE WITNESS: Last name Gale, yes.

15 BY MR. WOOLDRIDGE:

16 Q Oh, I'm sorry.

17 THE COURT: I know, I made the same mistake.

18 MR. WOOLDRIDGE: All right.

19 BY MR. WOOLDRIDGE:

20 Q Mr. Gale, what do you do for a living?

21 A I own a clothing line.

22 Q Do you know a person by the name of Ezekiel Davis?

23 A Yes.

24 Q Have you had any personal interaction with
25 Mr. Davis?

1 A Yes.

2 Q Based on that personal interaction that you had
3 with Mr. Davis, is your opinion of him that he is a violent
4 person?

5 A Yes.

6 Q Thank you.

7 MR. WOOLDRIDGE: No further questions.

8 THE COURT: State.

9 MR. ROSE: Very briefly, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. ROSE:

12 Q Mr. Gale?

13 A Yes.

14 Q Do you know the individual sitting at the table to
15 my right wearing the white shirt but no jacket?

16 A No.

17 Q Have you ever spoken with that individual?

18 A No.

19 Q Now, you said that you owned a clothing line?

20 A Yes.

21 Q Is that clothing line sold at Top Notch Apparel?

22 A No. We're just online right now. It's completely
23 individual. We're not involved with anybody.

24 Q Okay.

25 MR. ROSE: No further questions, Your Honor.

1 THE COURT: All right. Anything further?

2 MR. WOOLDRIDGE: Nothing.

3 THE COURT: All right. Thank you, sir.

4 THE WITNESS: Thank you.

5 THE COURT: You may step down. You may call your
6 next witness.

7 MR. WOOLDRIDGE: The next witness I would call is
8 Giovanni Amoroso.

9 MR. GIORDANI: Can we approach?

10 THE COURT: You may.

11 (Off-record bench conference)

12 GIOVANNI AMOROSO, DEFENDANT'S WITNESS, SWORN

13 THE CLERK: Please be seated. Please state and
14 spell your name for the court's record.

15 THE WITNESS: Giovanni Amoroso.

16 THE CLERK: Can you spell your name?

17 THE WITNESS: G-i-o-v-a-n-n-i. Last name is
18 A-m-o-r-o-s-o.

19 DIRECT EXAMINATION

20 BY MR. WOOLDRIDGE:

21 Q Mr. Amoroso, what do you do for a living?

22 A I'm a busboy at Batista's Hole in the Wall.

23 Q At Batista's Hole in the Wall?

24 A Yes.

25 Q And how long you been doing that for?

1 A May 29th will be four years.

2 Q And do you know a person by the name of Javar
3 Ketchum?

4 A Yes.

5 Q And how long have you known him?

6 A Two years about.

7 Q Do you recall a time period of around September
8 25th, 2016?

9 A Yes.

10 Q And what do you remember about that time period?

11 A Around like late September, I got a call from Jay
12 saying just watch the house, you know, and so get off work,
13 go home, go upstairs and just see a weird car, black car,
14 there's two guys in it, so I'm watching out my window and
15 just, you know, go to sleep and they're gone the next day.

16 Q Let me cut you off. What did those people look
17 like?

18 A They were two African-American males.

19 Q Had you seen them around there before?

20 A No.

21 Q And how long -- for about what period of time did
22 they stick around watching Jay's place?

23 A It was three days.

24 Q Did you tell Jay?

25 A I tried to call Jay, but I called his girlfriend

1 because that was only contact I had.

2 Q During the time that you've known Jay, how many
3 phones does he carry with him?

4 A Two. A iPhone and a Blackberry.

5 Q Thank you.

6 THE COURT: Cross?

7 MR. ROSE: State has no questions.

8 THE COURT: All right. Thank you, sir. You may
9 step down. All right. Do you have anymore witnesses?

10 MR. WOOLDRIDGE: Bear with me, Judge. I do not,
11 Your Honor.

12 THE COURT: All right. So defense rests?

13 MR. WOOLDRIDGE: I have one issue. Could we
14 approach on it real quick?

15 THE COURT: You may.

16 (Off-record bench conference)

17 THE COURT: All right. With the one reservation
18 that we just discussed, the defense will rest?

19 MR. WOOLDRIDGE: Defense rests, Your Honor.

20 THE COURT: All right. State.

21 MR. GIORDANI: The State would call Bianca Hicks.

22 MR. WOOLDRIDGE: Your Honor, can we approach real
23 quick? I apologize.

24 (Off-record bench conference)

25 THE COURT: All right. You may call your witness.

1 MR. GIORDANI: Bianca Hicks.

2 (Pause in the proceedings)

3 BIANCA HICKS, STATE'S WITNESS, SWORN

4 THE CLERK: Please be seated. Please state and
5 spell your name for the court's record. Can you state and
6 spell your name for the court's record.

7 THE WITNESS: Bianca Hicks, B-i-a-n-c-a, H-i-c-k-s.

8 MR. GIORDANI: May I, Your Honor?

9 THE COURT: You may.

10 MR. GIORDANI: Thank you.

11 DIRECT EXAMINATION

12 BY MR. GIORDANI:

13 Q Ms. Hicks, when did you meet Ezekiel Davis?

14 A Three years ago.

15 Q And subsequent to that, did you get into a
16 relationship with him?

17 A Yes.

18 Q Do you, in fact, share children with Mr. Davis?

19 A Yes.

20 Q How many children do you have?

21 A Two.

22 Q How old are those children?

23 A Two and seven months.

24 Q Okay. Prior to -- well, not prior to. Since you
25 met Mr. Davis, did you live together?

1 A Yes.

2 Q And where did you live? You don't need to give the
3 address, but where did you live?

4 A Here in Las Vegas.

5 Q Okay. Did you live in an apartment?

6 A Yes.

7 Q Did -- what did you refer to Mr. Davis as? What
8 was his name to you?

9 A Ezekiel.

10 Q Okay.

11 A Zeke.

12 Q Zeke or Ezekiel?

13 A Um-h'm.

14 Q Okay. So I'm going to call him Zeke. Was Zeke
15 working throughout the three or so years that you were
16 together?

17 A Yes.

18 Q What type of work did he do?

19 A Car detailing, car -- car detailing, construction
20 and roofing and solar panel.

21 Q Okay. Was there ever a point in time while you
22 were together that he was without a job?

23 A No.

24 Q About three to four months prior to his death, did
25 he get a job somewhere not in Las Vegas?

1 A Yes.

2 Q Where was that?

3 A It was in Hawthorne.

4 Q Where is Hawthorne, if you know?

5 A Two hours away from here just about, I believe.

6 Q Okay. Did he still live with you during that time?

7 A Yes.

8 Q So how did he work two hours away? Would he
9 commute daily or what?

10 A No, he'll leave for a week and come home for the
11 weekend.

12 Q Okay. Who else lived with you in that apartment?

13 A Nobody. Just me and him.

14 Q The baby?

15 A And the babies.

16 Q Okay. So you said you have two babies. And I want
17 to draw your attention to September 25th of 2016. Is that
18 the day that you know that Zeke died?

19 A Yes.

20 Q Was there something else important that day?

21 A The due date of the baby.

22 Q Okay. Is that the due date of, I guess, Zeke's
23 second child?

24 A Yes, the seven-month-old.

25 Q Okay. As of -- the 25th was a Sunday; am I right?

1 A Um-h'm.

2 Q Is that a yes?

3 A Yes.

4 Q She's writing all this down so you got to --

5 A Sorry.

6 Q When -- did Zeke go out the night of the 24th,
7 which would be a Saturday into the 25th?

8 A Yes.

9 Q And what was he doing that night?

10 MR. WOOLDRIDGE: Objection, Your Honor --

11 THE COURT: Overruled.

12 MR. WOOLDRIDGE: -- as to foundation. How does she
13 know what he's doing that night? That hasn't been
14 established.

15 MR. GIORDANI: Well, I can -- I can clarify. Maybe
16 I was vague.

17 THE COURT: All right.

18 BY MR. GIORDANI:

19 Q Was Zeke going out to celebrate that night?

20 A Yes.

21 Q Okay. How often did Zeke go out around that time?

22 A Not that often. Very -- no. Because the baby was
23 on the way so he wasn't really going out.

24 Q Okay. On that evening, September 25th -- 4th of
25 2016, did you see him before he left to go out?

1 A Yes.

2 Q Okay.

3 MR. GIORDANI: Can I have the Court's brief
4 indulgence?

5 THE COURT: You may.

6 MR. GIORDANI: Thank you.

7 BY MR. GIORDANI:

8 Q Showing State's Exhibit 2, is that Zeke's car?

9 MR. WOOLDRIDGE: Your Honor, can we approach real
10 quick?

11 THE COURT: You may.

12 (Off-record bench conference)

13 BY MR. GIORDANI:

14 Q Whose car is this?

15 A Zeke's.

16 Q Okay. Can you see on your screen there, too? Did
17 you say you had seen Zeke before he went out that evening?

18 A Yes.

19 Q Do you know generally what he was wearing that
20 evening?

21 A He had on a green shirt, I believe, it was Polo,
22 some red corduroys, a Gucci bucket hat, he had a chain on, a
23 bracelet, a watch, an MCM belt, some Prada shoes, some
24 glasses, a grill, and some earrings.

25 Q Okay. Tell the ladies and gentlemen what a grill

1 is.

2 A It's like gold that shapes your teeth and it covers
3 your teeth. So it's like gold in your mouth, I believe.

4 Q Okay. That's okay. That's, I mean, enough. I
5 want to ask you what was Zeke's demeanor that evening, not in
6 general, that evening when he was going out?

7 A He was happy and feeling good.

8 Q Your daughter was due the next day?

9 A Yes.

10 Q Did you have a doctor's appointment the Monday
11 after Sunday?

12 A Yes.

13 Q I want to show you some photographs and see if you
14 -- State's 4. Oops, let me zoom out. Do you recognize
15 those?

16 A Yes.

17 Q What are those?

18 A His red pants he had on.

19 Q That?

20 A That's his ring.

21 Q These?

22 A Yes, his Prada shoes.

23 Q This?

24 A And his Gucci hat, bucket hat.

25 Q This?

1 A His glasses and his chain.

2 Q What is that?

3 A The phone he had that night.

4 Q Whose phone is that?

5 A Mine.

6 Q Why does he have your phone?

7 A His phone wasn't charging right, properly, it broke
8 for him, so I gave him that phone for him to keep contact
9 with him since the baby was due the next night, the next day.

10 Q Okay. Showing you 50. Is that that same phone?

11 A Yes.

12 Q I'm going to show you a few more photos in a
13 moment. You said he was going out. He was celebrating, he
14 was happy. There's been testimony that Zeke was on drugs
15 that night. I want to ask you very simply, did you ever know
16 Zeke to do drugs or did he ever do drugs in your presence?

17 A No.

18 Q Showing you 58, what's that?

19 A That's the ring that he proposed to me with.

20 Q Showing you State's 55. Do you know or can you
21 tell what that is?

22 A His pendent.

23 Q His pendent?

24 A A pendent to a chain.

25 Q State's 53?

- 1 A His earrings.
- 2 Q State's 49. Is that a bracelet or a chain?
- 3 A It's a chain.
- 4 Q Like a neck chain?
- 5 A Um-h'm.
- 6 Q Is that a yes?
- 7 A Yes.
- 8 Q One more. State's 123. Do you see that? Do you
- 9 know what that is?
- 10 A Bracelet.
- 11 Q Whose?
- 12 A His.
- 13 Q Down here?
- 14 A His earring.
- 15 Q Okay. Did you get the black Charger vehicle back
- 16 after Zeke's death?
- 17 A Yes.
- 18 Q When did you get it back?
- 19 A That day on the scene.
- 20 Q Okay. So detectives released it to you directly?
- 21 A Yes.
- 22 Q And did you have it for a few weeks thereafter?
- 23 A Um-h'm.
- 24 Q Is that a yes?
- 25 A Yes.

1 Q Okay.

2 A I'm sorry again.

3 Q One final -- did you ever see Zeke with a gun
4 during the three years that you knew him?

5 A No.

6 Q Did you own a gun or have one at your home?

7 A No.

8 MR. GIORDANI: Court's brief -- oh, I'm sorry. I
9 was going to propose some exhibits, I believe, there's an
10 objection.

11 THE COURT: All right.

12 (Off-record bench conference)

13 MR. GIORDANI: May I approach?

14 THE COURT: You may.

15 MR. GIORDANI: Thank you.

16 BY MR. GIORDANI:

17 Q I'm showing you State's Proposed Exhibit 154. What
18 is that?

19 A His daughter.

20 Q Is that a photo of him with his daughter?

21 A Him, yes.

22 Q What's on his left wrist there?

23 A His watch.

24 THE COURT: Can the jury hear because your voice a
25 little low? All right. I just wanted to make sure.

1 BY MR. GIORDANI:

2 Q Showing you State's 153. What are we looking at
3 there?

4 A With his daughter and his watch and the family.

5 Q Okay.

6 A And his earrings.

7 Q Okay.

8 MR. GIORDANI: State would move for the admission
9 of 153 and 154.

10 THE COURT: Your objection's noted.

11 MR. WOOLDRIDGE: Thank you.

12 THE COURT: They'll be admitted.

13 (State's Exhibits 153 and 154 admitted)

14 BY MR. GIORDANI:

15 Q When did he get this watch?

16 A I would say about three months before.

17 Q Those earrings, did he commonly wear those?

18 A Yes.

19 Q Showing you 154. Same watch?

20 A Yes.

21 Q What was around his waist here?

22 A His belt, his MCM belt.

23 Q Is it a big like M logo?

24 A Yes.

25 Q Okay. Showing you State's 130. Is that the same

1 belt and watch that we were talking about?

2 A Yes.

3 Q Did you send this photo to detectives at their
4 request or to someone official?

5 A Yes.

6 MR. GIORDANI: Pass the witness.

7 CROSS-EXAMINATION

8 BY MR. WOOLDRIDGE:

9 Q I'm very sorry for your loss. I take it you didn't
10 know everything about Zeke Davis?

11 A Yes.

12 Q And did you know he would go to strip clubs?

13 MR. GIORDANI: Objection. That's not relevant.
14 Did you know he would go to strip clubs?

15 THE COURT: There's no testimony that this was a
16 strip club. Objection's sustained.

17 BY MR. WOOLDRIDGE:

18 Q The night that you -- you were going to have a baby
19 the following day, you said?

20 A Um-h'm.

21 Q And that night he went to an after-hours club?

22 A Yes.

23 Q And you had never seen him do methamphetamine?

24 A No.

25 Q Would you be surprised if he was intoxicated

1 under --

2 A Yes.

3 Q Had done methamphetamine that night?

4 A Yes.

5 Q And how long had you known Zeke for?

6 A A little over three years.

7 Q Do you know where he was before those three years?

8 MR. GIORDANI: Objection. I believe the question
9 was do you know where he was before those three years. I --
10 relevance.

11 THE COURT: The answer is yes or no.

12 MR. WOOLDRIDGE: Yes?

13 THE WITNESS: Yes.

14 BY MR. WOOLDRIDGE:

15 Q And where was he?

16 MR. GIORDANI: Objection.

17 THE COURT: Approach.

18 (Off-record bench conference)

19 BY MR. WOOLDRIDGE:

20 Q You indicated that he did not carry a gun?

21 A Yes.

22 Q Were you aware that he had been convicted --

23 MR. GIORDANI: Objection.

24 BY MR. WOOLDRIDGE:

25 Q -- of --

1 MR. GIORDANI: Objection.

2 BY MR. WOOLDRIDGE:

3 Q -- possession of a firearm by an ex-felon.

4 THE COURT: Counsel. Jury will take a five-minute
5 recess.

6 THE MARSHAL: Rise for the jurors.

7 (Off-record bench conference)

8 (Outside the presence of the jury)

9 (Court recessed at 2:17 p.m. until 2:22 p.m.)

10 (Outside the presence of the jury)

11 THE COURT: All right. We'll be back on the
12 record. Counsel for State is present. Counsel for the
13 defense is present. Defendant is present. We're outside the
14 presence of the jury panel.

15 Counsel, you have been told time and time and time
16 again by not only myself but Judge Villani who made the
17 original ruling, you were not to ask regarding the prior
18 convictions of the victim in this case. You specifically
19 violated the ruling of the Court, and you did it deliberately
20 and with intent. So you are found in contempt of court. I'm
21 going to leave it to Judge Villani to determine the sanction.
22 The question is, where do we go from here?

23 I am not inclined to give a mistrial in this case.
24 However, I think the door has been opened. I think that the
25 best way to resolve this would be for both sides to stipulate

1 to the fact that the victim was convicted in 2008, in 2010
2 and we'll state what the convictions were for.

3 MR. WOOLDRIDGE: Your Honor --

4 THE COURT: And that can be the only information
5 that will be presented to them.

6 MR. WOOLDRIDGE: -- one of the -- just to be heard.
7 So the State brought a witness who testified. They opened
8 the door about whether the -- about the fact that Ezekiel
9 Davis doesn't carry a gun. I didn't even bring in the
10 conviction about the robberies. That was not the question I
11 had. The question I had, and I tested this witness'
12 knowledge --

13 THE COURT: You asked specifically, so are you
14 aware that he was convicted of --

15 MR. WOOLDRIDGE: Of ex-felon in possession of a
16 firearm? Her testimony --

17 THE COURT: I specifically told you, you were not
18 to mention the convictions. If you wanted to draw and bring
19 them in at that point, it was your obligation to ask to
20 approach the bench and request that the Judge the prior
21 ruling.

22 MR. WOOLDRIDGE: Judge --

23 THE COURT: You don't just get to blurt it out in
24 court in front of he have been in contravention of a Court's
25 earlier ruling. You violated your duties as an attorney when

1 you did so.

2 MR. WOOLDRIDGE: Judge, I don't think I violated my
3 duties. They opened the door, I cross-examined her. I
4 did --

5 THE COURT: I just explained to you the
6 circumstances under which you had an obligation to this Court
7 to approach the bench first. When you have a specific order
8 from a Judge that you may not bring up prior convictions, it
9 is your obligation to ask the Judge to change the ruling
10 before you ask the question. Look up any case law on it.
11 Educate yourself, Counsel, before you do stupid things in
12 court.

13 MR. WOOLDRIDGE: Judge, I'm not trying to upset
14 you, but I will tell you that when we approached and I did
15 say if they opened up the door, I would be cross-examining
16 this witness on any prior bad acts. I did not -- I did not
17 cross-examine the witness --

18 THE COURT: Counsel, you were wrong.

19 MR. WOOLDRIDGE: I did not --

20 THE COURT: I don't need any further explanation.
21 I'm going to leave it up to Judge Villani. If it were me,
22 you might be going to jail this afternoon. I'm going to hold
23 a off on that. I'm going to let Judge Villani determine
24 whether or not he's going to impose some type of sanction,
25 whether it be monetary sanctions, referral to the bar, or

1 some other type of sanction. It will be up to him.

2 MR. WOOLDRIDGE: I understand. I just want to -- I
3 just want to make a record, that's all, Judge. I'm not
4 trying to upset you.

5 THE COURT: You made your record.

6 MR. WOOLDRIDGE: I'm not trying to upset you at
7 all.

8 MR. GIORDANI: Briefly, Your Honor. As to the
9 remedy proposed by the Court, the State certainly doesn't
10 want anything about a robbery conviction coming in, and I
11 don't believe he blurted that out. The one he did blurt out,
12 I believe --

13 THE COURT: You know, at this point --

14 MR. GIORDANI: I know, but Judge, it's --

15 THE COURT: -- so they know it was in 2008 or 2010.
16 So what?

17 MR. GIORDANI: Well, the title's never been said so
18 I don't want us to be punished, and now they're going to know
19 he has a robbery conviction because of what he did. All I'm
20 asking is tell the jury that they're to disregard what he
21 just said and we'll leave it at that and not draw anymore
22 attention to it.

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

24 MR. GIORDANI: Thank you. Should I bring the
25 witness back on the stand?

1 THE COURT: You may. Bring the jury back in.
2 We're going to finish it this afternoon and then we're going
3 to settle jury instructions. Do you have any further
4 witnesses after this one?

5 THE MARSHAL: Rise for the jurors.

6 (In the presence of the jury)

7 THE MARSHAL: The panel's present, Your Honor.

8 THE COURT: All right. All members of the panel
9 are present. Please be seated. Back on the record. Back in
10 the presence of counsel. Defendant is present and jury will
11 disregard the last question by counsel. You are not to take
12 it into consideration in any way whatsoever nor are you to
13 discuss it during deliberations. Counsel, you may continue
14 with your examination.

15 MR. WOOLDRIDGE: Thank you. Can we approach real
16 quick, Judge?

17 THE COURT: You may.

18 (Off-record bench conference)

19 MR. WOOLDRIDGE: I'll pass this witness, Your
20 Honor.

21 THE COURT: Thank you.

22 MR. WOOLDRIDGE: Thank you.

23 MR. GIORDANI: And I have no further questions,
24 Your Honor. Thank you.

25 THE COURT: Thank you. All right, thank you. You

1 may step down. State have any further witnesses?

2 MR. GIORDANI: Not at this time, Your Honor. The
3 State would rest its case.

4 THE COURT: Okay. And it is 2:30. The -- we have
5 some housekeeping matters to take care of. One of those
6 would be to settle jury instructions. We may have one
7 additional witness. I need to confer with counsel to
8 determine whether or not there may be one -- may be probably
9 just one?

10 MR. WOOLDRIDGE: Just one, Your Honor, if we
11 have --

12 THE COURT: One additional witness. So we need to
13 confer with counsel on that. I need to confer with them on
14 finalizing the jury instructions, which we have prepared.
15 That's probably going to take us at least an hour, it has
16 been my experience in settling jury instructions.

17 I know we have the issue regarding the one juror
18 who cannot come back tomorrow. Is there anybody else who
19 cannot come back tomorrow, on Friday? Because we would go
20 right into closing arguments and submit the case to the jury
21 tomorrow. All right.

22 With that, then counsel approach.

23 (Off-record bench conference)

24 THE COURT: All right. In order to preserve
25 judicial economy and to also, since we've got a long weekend

1 coming up, and if we don't do closing arguments tomorrow, we
2 would have to come back -- you wouldn't be able to come back
3 until next Wednesday and -- to finish up this trial, so I
4 think that at this point, we're going to thank and excuse
5 Juror No. 2, Ms. -- I'm sorry, madam, your name was?

6 JUROR NO. 2: Erika Aguilar.

7 THE COURT: Aguilar. And I want to thank you for
8 your service here today. We appreciate you having spent the
9 time giving this case a lot of attention, and appreciate your
10 service. With that, please check out with the Jury Service
11 Commissioner before leaving the building, and we will replace
12 you with the first alternate juror, which will be Wendy
13 Brizuela.

14 JUROR NO. 13: Brizuela.

15 THE COURT: Okay. So, if you'll -- you can go
16 ahead and leave, Ms. Aguilar, and if you'll take the seat up
17 there. Now, I could keep you waiting around for an hour and
18 then read you the jury instructions this afternoon, but I
19 could do the same thing tomorrow morning. It doesn't take me
20 that long to read the jury instructions tomorrow morning, and
21 then we can go right into closing arguments.

22 So I think it would be best if I go ahead and
23 excuse the jury panel. Counsel, was there anything else we
24 need it address before I excuse the jury panel for the
25 afternoon?

1 MR. WOOLDRIDGE: No, Your Honor.

2 MR. GIORDANI: No, Your Honor.

3 MR. ROSE: No, Your Honor.

4 THE COURT: Okay. Before I release you, I'll
5 advise you once again, you're not to discuss this case among
6 yourselves or with anyone else. You're not communicate with
7 anyone in any ways regarding this case or its merit, either
8 by phone, text, Internet or other means. You're not to read,
9 watch or listen to any news or media accounts or commentary,
10 excuse me, about the case.

11 Do not do any research such as consulting
12 dictionaries, using the Internet, or using reference
13 materials and do not make any investigation, test the theory
14 of the case, recreate any aspect of the case or in any other
15 way investigate or learn about the case on your own.

16 With that, we'll be in recess until tomorrow at
17 9:30.

18 THE MARSHAL: All rise for the jury.

19 (Outside the presence of the jury)

20 THE COURT: Okay. We need to make some records.
21 Outside the presence of the jury panel. Everybody take a
22 seat. All right. State, anything you wish to make a record
23 on?

24 MR. GIORDANI: I believe we've put everything on
25 the record that needed to be outside the presence prior to

1 the jury coming in so --

2 THE COURT: Okay. Anything regarding replacing the
3 jury with the alternate?

4 MR. WOOLDRIDGE: Your Honor, I would object, but,
5 you know, I think you did that over my objection.

6 THE COURT: And the basis for your objection being?

7 MR. WOOLDRIDGE: I think that we could -- we had a
8 jury that was empaneled. We had the 12. I liked the jury --
9 the panel that we had. I think we could have held them over
10 if necessary. And Your Honor made a ruling, so with that I
11 submit it.

12 THE COURT: Okay. Anything else State wants to add
13 to that?

14 MR. GIORDANI: The alternate was just as qualified
15 to be a juror as Juror No. 2. No one knows, obviously, which
16 direction she was going or anything to that nature, and in
17 the nature of judicial economy, I believe the Court's
18 decision was appropriate.

19 THE COURT: And the Court would note that when we
20 began the trial, there were two defendants, that the
21 co-defendant's counsel had informed the Court that he had
22 suffered a death in the family, and that he needed to leave
23 on Friday in order to be able to attend and funeral in South
24 Carolina on Saturday. That the Court had announced -- as a
25 result, had announced to the jury that we would be going dark

1 on Friday, which is the Friday before the long Memorial Day
2 weekend, and did not explain to the jury why, but it was
3 necessitated by circumstances.

4 Subsequently, the co-defendant pled. Therefore, it
5 took away the reason that the Court had -- or for going dark
6 on Friday, but because the Court had already announced to the
7 jury panel we'd be dark on Friday, I inquired of the panel
8 whether any of them had now made changes in their plans where
9 that they could not change back. And Juror No. 2, Ms.
10 Aguilar indicated that she would not be able to return on
11 Friday, and for that reason, since we're now going forward on
12 Friday, we've replaced her with the alternate. All right.
13 Anything else we need to make a record on?

14 MR. GIORDANI: Not on behalf of State.

15 MR. WOOLDRIDGE: No, Your Honor.

16 THE COURT: All right.

17 MR. WOOLDRIDGE: Actually, I think we -- I had some
18 objections to the rebuttal witness. I thought that that
19 witness went beyond the scope.

20 THE COURT: All right. Make your record.

21 MR. WOOLDRIDGE: Yeah. And I had made it at the
22 bench, Your Honor, but the objection was that her testimony
23 went beyond the scope of a rebuttal witness. Most of that
24 stuff in issues of items of clothing and who the stuff
25 belonged to, that stuff should have been brought up on the

1 State's case-in-chief. I had made numerous objections at the
2 bench. And then we had the long discussion about
3 cross-examining her about the specific bad act of ex-felon in
4 possession of a firearm.

5 I made that inquiry as a result of the witness's
6 testimony when she said she did not know him to carry a gun.

7 MR. GIORDANI: And may I, Your Honor?

8 THE COURT: You may.

9 MR. GIORDANI: With regard to her not being a
10 rebuttal witness, she absolutely was a rebuttal witness.
11 When the defendant took the stand, he put at issue the items
12 that were on scene. Specifically, indicated that he had two
13 cell phones. The jury would have been left with a major
14 question in their mind as to whose cell phone was on the
15 scene, and the defense could have argued that it supported
16 their theory of the case that cell phone was Bianca Hicks.
17 She was absolutely a relevant witness for that purpose.

18 And in addition, when Counsel blurted out the prior
19 conviction, I object strenuously. The Court brought us to
20 the bench and there was some discussion about
21 Mr. Wooldridge's belief that that came in for some reason
22 because State opened the door.

23 The State on direct examination simply inquired
24 into Ms. Hicks regarding the last three years and the last
25 three years alone because she could have no knowledge of what

1 happened prior to that, she didn't know Mr. Davis. So that
2 was the purpose of State's inquiry regarding it a gun and it
3 had nothing to do with a prior conviction for any crime,
4 including possession of a gun. And with that, State has
5 nothing else.

6 THE COURT: All right.

7 MR. WOOLDRIDGE: And then, Your Honor, I just -- a
8 quick rebuttal on that. She testified that this is
9 basically, some type of fiancé relationship. She has a
10 couple kids with him. The State cannot just come and say, in
11 the last three years, did you know him to carry a gun and not
12 open up the door to his past. And it's not like I inquired
13 about a conviction that was over ten years ago. I inquired
14 about a conviction from 2010.

15 THE COURT: All right. You've had your previous
16 rulings. All right. We'll take a short recess. We're going
17 to settle jury instructions. I've got -- I've gone through
18 the instructions. I've got them in the order that we're
19 going to go through them. I'm going to have copies made so
20 we're all operating off of. I've got the separate jury
21 questions presented by the defense counsel that I will not
22 give or that we will discuss.

23 MR. WOOLDRIDGE: Okay.

24 THE COURT: And then we'll decide if there's any
25 additional ones from your stack that we need to add to this.

1 And then there is one additional jury instruction that I have
2 sitting on my desk. That's the one that's now being required
3 by the Supreme Court. It's referred to as the Bowman
4 (phonetic) instruction. You need to make it part of your
5 stock --

6 MR. GIORDANI: Will do.

7 THE COURT: -- and stuff. It's regarding the text
8 -- we're admonishing the jury about texting and tweeting and
9 all that stuff.

10 MR. ROSE: Oh, the testing a theory?

11 THE COURT: Well, I've got it on my desk. I'll add
12 it to this. Let me make copies. Then we'll all sit down
13 together and go through these.

14 MR. WOOLDRIDGE: Thank you.

15 MR. ROSE: Yes, Your Honor.

16 (Court recessed at 2:43 P.M., until Friday,
17 May 26, 2017, at 9:40 A.M.)

18 * * * * *

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

22

23

24

25



JULIE LORD, INDEPENDENT TRANSCRIBER