

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON ROBERTSON,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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CASE NO: 87811

APPELLANT'S APPENDIX

Volume 3

STEVEN S. OWENS, ESQ.
Nevada Bar #004352
Steven S. Owens, LLC
1000 N. Green Valley #440-529
Henderson, Nevada 89074
(702) 595-1171

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

AARON D. FORD
Nevada Attorney General
Nevada Bar #007704
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Appellant

Counsel for Respondent

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1 He's gone to the lengths of distinguishing between
2 the two defendants, and so he's done a fair amount of thought
3 about this. And these are not general notions of
4 constitutional principles or anything like that; these are
5 impressions that he's formed from observing things that are in
6 court that are not considered to be evidence in the case. And
7 so, I just fall back on his initial hesitation and inability
8 to talk about the starting point being presumption of
9 innocence.

10 I just don't believe that he can be fair to my
11 client. And I do think that it goes over the line in terms of
12 whether or not he can be a fair and impartial juror, because
13 my starting point in representing Mr. Wheeler is -- and I
14 think he conceded this -- that I'm going to have to kind of
15 earn my way out of where we're starting, rather than where we
16 should start, which is total presumption of innocence.
17 There's been nothing to dispute that because there's been no
18 evidence. And because of that, Judge, we're going to move to
19 strike.

20 THE COURT: Mr. Pesci?

21 MR. PESCI: I didn't know Mr. Sanft's position.

22 THE COURT: Are you joining in?

23 MR. SANFT: We'll submit --

24 THE COURT: I guess you can take no position.

25 MR. SANFT: We would submit, Your Honor.

1 THE COURT: Okay.

2 MR. PESCI: So, Judge, I object, because I admire
3 his honesty, and he's been forthright about talking how he got
4 an impression, and he distinguishes between the two defendants
5 as far as that impression, but I think he's much like Ms.
6 Young, 485. I get a negative impression from Ms. Young
7 because she says, I don't think that the law is fair in
8 certain situations when she talks about how her brother-in-law
9 shouldn't have gone to prison even though he pled guilty. It
10 wasn't even a jury finding, he pled guilty.

11 And so there are people that we won't necessarily
12 like, but we're stuck with the answers when they say, for
13 example, with this gentleman, "I'm going to make the decision
14 based on the evidence." He clearly said to me that if we
15 don't prove the case, he can come back with a not guilty, and
16 that's with the impression in mind that he shared with
17 everybody. And so I don't think he qualifies for a cause
18 challenge.

19 THE COURT: Okay. At this time, I'm going to grant
20 the challenge for cause. So I'm going to put -- when we come
21 back in, Sharon Morrison will be in Seat number 3. I'll
22 question Ms. Morrison, then I'll let the State question her,
23 and then the defense. So, Officer Hawkes?

24 THE MARSHAL: Yes, ma'am.

25 THE COURT: When we come in, if you'd just have Mr.

1 McGinty sit in the gallery.

2 THE MARSHAL: Yes, ma'am.

3 THE COURT: Can we bring them back in?

4 THE MARSHAL: Okay.

5 THE COURT: Everybody good?

6 MR. PESCI: Can I just ask a question before we do
7 that?

8 THE COURT: I'm sorry.

9 MR. PESCI: Mr. Ruggeroli, did you have more besides
10 Ms. Morrison? Are there others you're going to go to?

11 MR. RUGGEROLI: There are no challenges for cause
12 for any of the other panel members that I would have right
13 now.

14 MR. PESCI: Because I was waiting to reassert my
15 challenge for cause --

16 THE COURT: Oh, okay, go ahead.

17 MR. PESCI: -- on Ms. Young. And so, I can wait,
18 Judge.

19 THE COURT: Go ahead.

20 MR. PESCI: It's just that we've got everybody out.

21 THE COURT: Yeah, you might as well.

22 MR. PESCI: All right, and I didn't know if he was
23 going to go back to her and try to do anything else with her.

24 THE COURT: Oh, okay. So are you done with Ms.
25 Young?

1 MR. RUGGEROLI: I didn't -- I don't plan on -- well,
2 no, I think we can make the argument for cause now. I would
3 have maybe one or two questions, but she's already said what I
4 would argue in opposition to the State's position.

5 THE COURT: Okay. Go ahead.

6 MR. PESCI: So, Judge, she's talked about how she's
7 born in Hawaii and that she wants to see the good in
8 everybody. She wants to believe everyone can do good. She
9 thinks the law is unfair in certain ways. She did not like
10 the way her brother-in-law was treated. She paused numerous
11 times. She started crying and became emotional on several
12 different occasions, and it wasn't even just in the context of
13 her brother-in-law. I believe that that behavior, just that
14 right there, could potentially impair her ability to be a fair
15 and impartial juror.

16 She said specifically that her brother-in-law is
17 serving for a robbery. It was three banks, and it was here in
18 Las Vegas. It's a very similar charge. I'm afraid she's
19 going to look at these defendants and see her brother-in-law,
20 and I don't think that's a fair -- I think I'm not starting at
21 an even playing field, I think I'm behind in that kind of a
22 situation, and so I reissue my challenge for cause.

23 MR. SANFT: I think the concern on behalf of Mr.
24 Robertson is that the inverse happens all the time. Someone
25 says, hey, I was robbed, I was a victim -- like in this case,

1 we have an individual that's in the front row over here, and I
2 don't remember his name off the top of my head, but was robbed
3 at some point.

4 THE COURT: Switzerland.

5 MR. SANFT: Yeah. And as a result, we can't just
6 automatically say that, hey, the inverse is -- somehow it
7 doesn't -- it changes the dynamic if it's the other way
8 around.

9 The issue that I have though with Ms. Young is she's
10 already admitted in court that she comes from a place in
11 Hawaii where there's a presumption that everyone is good, and
12 as a result of that, now you've added -- or compounded the
13 issue with the fact that it's a family member. I don't think
14 she's necessarily disappointed in the fact that -- or somehow
15 would think that the State is always wrong because it's a
16 family member. I think she's just sad because of the fact
17 that it's her family member who went to prison.

18 Now, I don't know if necessarily that would be
19 enough to say that she would be fair -- not fair and impartial
20 to the State. I think she's articulated over again she could
21 be fair and impartial to the State. The reason why she was
22 crying and emotional was because it was a family member that
23 was going to prison, which I think is a normal reaction in any
24 situation with anyone who loves somebody who is now going to
25 prison.

1 I don't think necessarily that any of her answers
2 would indicate to me that she could not be fair and impartial
3 to the State of Nevada as much as she could be fair and
4 impartial to my client, Mr. Robertson.

5 MR. RUGGEROLI: Judge, I had written in my notes
6 that she responded, "I will follow the law," though. So even
7 though she had reservations about what the law was,
8 specifically to her brother, I wrote down specifically, "Will
9 follow the law." And I think that because she said that, she
10 will follow the law, and do her job, and will be fair and
11 impartial.

12 MR. PESCI: Judge, if I could just perfect the
13 record to make an argument based on what Mr. Sanft said, which
14 I understand as far as him saying, look at the inverse when
15 you have someone who's been robbed.

16 The difference is that Mr. Widdison, Badge 541, he
17 hasn't cried once. He hasn't had a pregnant pause when he's
18 going to answer about when he got robbed at gunpoint in
19 Switzerland, right? He wasn't affected that way. If he was
20 in the inverse situation, they'd have a more compelling
21 argument to get rid of him, right?

22 And then, also to perfect the record, she didn't cry
23 or give pause just for the brother-in-law. It was also her
24 job. You'll recall, she said --

25 THE COURT: Yeah.

1 MR. PESCI: -- "I missed this day to shine. This
2 was my day to shine. The big boss" -- that was the term she
3 used. "The big boss was there." And then I said, "Is that
4 going to affect you?" And she paused on that answer; she
5 became emotional on that answer.

6 And so that's where I agree with defense counsel,
7 that, you know, there are people that are victims of crime who
8 say they can set it apart, but she's not that person. She's
9 not Mr. Widdison who said, "Yeah, police showed up, they took
10 a report, and then I was on my way, that was it."

11 THE COURT: Okay. At this time, I'm going to deny
12 the challenge for cause. Anything else before we bring them
13 in?

14 MR. PESCI: Not from the State.

15 MR. RUGGEROLI: No, Your Honor.

16 MR. SANFT: No, Your Honor. Thank you.

17 THE COURT: Okay. We're just going to take a few
18 minutes because we need to do something with the printer. So
19 we can take about five minutes.

20 THE CLERK: Okay, thanks, Judge.

21 (Off the record at 2:28 P.M. until 2:35 P.M.)

22 (Outside the presence of the prospective jurors)

23 MR. PESCI: Are we on the record?

24 THE COURT RECORDER: We are.

25 MR. PESCI: Okay. Judge, could we ask, with the way

1 this is going, I just don't know that we're going to get to
2 witnesses today. We had five lined up, we've narrowed it down
3 to two. Could we cut those last two loose? Because I just
4 don't think we're going to --

5 THE COURT: Yeah. How many do you have -- you want
6 to just cut your last two witnesses?

7 MR. PESCI: We had scheduled five.

8 THE COURT: Okay.

9 MR. PESCI: And then we've narrowed it down to two,
10 and we're trying to maybe call those two off, with your
11 permission.

12 THE COURT: Oh, you want to call off all your
13 witnesses?

14 MR. PESCI: Well, I just don't see how we --

15 THE COURT: It's only 2:30.

16 MR. PESCI: Right. He's got to finish, we've got to
17 do preempts, then we've got to do openings.

18 MR. BROOKS: I got him on the phone, so I can tell
19 him to keep coming. It's up -- it's whatever.

20 MR. PESCI: We'll do it either way, Judge. I guess
21 what I'm saying is if we do bring them, can we go late if they
22 get here instead of having them come and then leave?

23 THE COURT: Yeah, see, that's the problem. I'll say
24 yes, you can go late, because I'm okay with it, and then I'll
25 have a juror that has childcare.

1 MR. PESCI: Yeah, yeah.

2 THE COURT: So I try not to go past 5:00 o'clock

3 just because a lot of people have childcare issues. So you

4 can turn them loose. Let's see. We can start 10:30 tomorrow,

5 right?

6 THE CLERK: Tomorrow's 10:30.

7 THE COURT: Yeah, we can start at 10:30 tomorrow.

8 (Pause in the proceedings)

9 MR. PESCI: Why don't we just keep going? He can

10 step out, we can keep going.

11 THE COURT: Okay.

12 MR. PESCI: Is that all right?

13 THE COURT: All right, we can keep going.

14 MR. PESCI: I'm sorry for the delay. Thank you.

15 (Pause in the proceedings)

16 MR. PESCI: You said we can tell them tomorrow?

17 THE COURT: Yeah, yeah.

18 MR. PESCI: Okay, thank you very much.

19 THE COURT: Tomorrow at 10:30.

20 MR. PESCI: Thank you.

21 THE MARSHAL: Your Honor, are you ready?

22 THE COURT: Yes, yes.

23 THE MARSHAL: All rise for the entering jury,

24 please. Jurors.

25 (Within the presence of the prospective jurors)

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

3 THE MARSHAL: Thank you, everyone. Please be
4 seated.

5 MR. PESCI: Yes, Your Honor.

6 THE COURT: Mr. Sanft?

7 MR. SANFT: Yes, Your Honor.

8 THE COURT: Mr. Ruggeroli?

9 MR. RUGGEROLI: Yes, Your Honor.

10 THE COURT: Okay. At this time --

11 THE MARSHAL: Where's the microphone? Did I have
12 it?

13 THE COURT: At this time, I'm going to ask Sharon
14 Morrison to take Seat number 3. Sharon Morrison. Oh, okay.
15 Well, you're up there already.

16 PROSPECTIVE JUROR NO. 562: I'm up here already.

17 THE COURT: Okay. Thank you very much for being
18 here. Can you tell us how long you've lived in Clark County?

19 PROSPECTIVE JUROR NO. 562: Since '64.

20 THE COURT: Okay. And your education background?

21 PROSPECTIVE JUROR NO. 562: High school.

22 THE COURT: Okay. And your employment background?

23 PROSPECTIVE JUROR NO. 562: Well, I'm retired now.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR NO. 562: I've been retired for

1 ten years. I was a buyer at the Venetian.

2 THE COURT: What kind of buyer?

3 PROSPECTIVE JUROR NO. 562: Gifts, souvenirs for the
4 hotel.

5 THE COURT: Okay. Your marital status?

6 PROSPECTIVE JUROR NO. 562: I am single, but --

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 562: -- I have a partner of
9 31 years.

10 THE COURT: Okay, and is your partner employed?

11 PROSPECTIVE JUROR NO. 562: No, he's retired also.

12 THE COURT: Okay, and what did he retire from?

13 PROSPECTIVE JUROR NO. 562: He was president of the
14 Luxor for ten years.

15 THE COURT: President?

16 PROSPECTIVE JUROR NO. 562: The Luxor.

17 THE COURT: Of the Luxor Hotel?

18 PROSPECTIVE JUROR NO. 562: Um-hum.

19 THE COURT: Is that a yes?

20 PROSPECTIVE JUROR NO. 562: I'm sorry?

21 THE COURT: President of the Luxor Hotel?

22 PROSPECTIVE JUROR NO. 562: Yeah, he was -- that's
23 when he retired. He was there about ten years.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR NO. 562: He was in the, you know,

1 casino business.

2 THE COURT: All right. And do you have any
3 children?

4 PROSPECTIVE JUROR NO. 562: I do, I have one.

5 THE COURT: And is that child old enough to be
6 employed?

7 PROSPECTIVE JUROR NO. 562: Yes, yes. She works for
8 Citibank.

9 THE COURT: Okay. Have you ever served as a juror
10 before?

11 PROSPECTIVE JUROR NO. 562: Yes. It was probably 30
12 years ago, and I was picked --

13 THE COURT: Was it here in Clark County?

14 PROSPECTIVE JUROR NO. 562: Yes, it was.

15 THE COURT: And so it was at the old building?

16 PROSPECTIVE JUROR NO. 562: It was.

17 THE COURT: Okay. Was it civil or criminal?

18 PROSPECTIVE JUROR NO. 562: It was civil.

19 THE COURT: Okay. Were you selected to be the
20 foreperson?

21 PROSPECTIVE JUROR NO. 562: I was an alternate, but
22 they pleaded out that same day, so.

23 THE COURT: Okay. And that was your only prior
24 experience?

25 PROSPECTIVE JUROR NO. 562: Yes.

1 THE COURT: Anything about that that would affect
2 your ability to be fair and impartial if we select you to
3 serve in this case?

4 PROSPECTIVE JUROR NO. 562: No.

5 THE COURT: Have you or anyone close to you, such as
6 a family member or friend, ever been the victim of a crime?

7 PROSPECTIVE JUROR NO. 562: No.

8 THE COURT: Have you or anyone close to you, such as
9 a family member or friend, ever been accused of a crime?

10 PROSPECTIVE JUROR NO. 562: No.

11 THE COURT: Okay. Would you have a tendency to give
12 more weight or credence or less weight or credence to the
13 testimony of a witness simply because that witness is a police
14 officer?

15 PROSPECTIVE JUROR NO. 562: No.

16 THE COURT: Okay. Ms. Morrison, do you know of any
17 reason why you could not be a fair and impartial juror if you
18 were selected to serve?

19 PROSPECTIVE JUROR NO. 562: No.

20 THE COURT: Okay, thank you. Mr. Pesci, you may
21 voir dire Ms. Morrison.

22 MR. PESCI: Thank you. If I stand here, can you --

23 THE COURT RECORDER: I can hear you.

24 MR. PESCI: Okay. Ma'am, how are you doing?

25 PROSPECTIVE JUROR NO. 562: Great.

1 MR. PESCI: You've heard the questions the last
2 couple of days. Anything that stood out to you?

3 PROSPECTIVE JUROR NO. 562: No, not really.

4 MR. PESCI: All right.

5 PROSPECTIVE JUROR NO. 562: I've listened and taken
6 it all in.

7 MR. PESCI: Anything you said, yeah, I want to
8 answer that question?

9 PROSPECTIVE JUROR NO. 562: I guess the most recent
10 was the open carry law.

11 MR. PESCI: Okay. Speaking about that, what are
12 your thoughts about that?

13 PROSPECTIVE JUROR NO. 562: Well, I'm for the Second
14 Amendment, so yes.

15 MR. PESCI: Okay. And then, with that feeling about
16 the Second Amendment, would that affect your ability to be
17 fair to either side?

18 PROSPECTIVE JUROR NO. 562: No.

19 MR. PESCI: All right. Do you feel that there's any
20 reason, religiously, morally, philosophically, that you could
21 not sit in judgment of another human being?

22 PROSPECTIVE JUROR NO. 562: No.

23 MR. PESCI: Okay. Do you think you could be fair
24 and impartial to both sides?

25 PROSPECTIVE JUROR NO. 562: Absolutely.

1 MR. PESCI: Thank you very much, ma'am. Pass for
2 cause.

3 THE COURT: Mr. Sanft?

4 MR. SANFT: Hi, Ms. Morrison. Is there any question
5 I should be asking you right now?

6 PROSPECTIVE JUROR NO. 562: Gees. No.

7 MR. SANFT: All right.

8 PROSPECTIVE JUROR NO. 562: I don't think so.

9 MR. SANFT: That's fine, that's fine. Well, let me
10 ask you this. When I was asking questions earlier, was there
11 anything about any of my questions you thought, oh, that's an
12 interesting question, I kind of wish he would ask me that
13 question, something like that?

14 PROSPECTIVE JUROR NO. 562: No, I guess just the
15 Second Amendment one was -- I was paying attention. Maybe
16 that was yours. I don't remember whose it was, but --

17 MR. SANFT: Mr. Ruggeroli over here to my left?

18 PROSPECTIVE JUROR NO. 562: Yes.

19 MR. SANFT: Okay.

20 PROSPECTIVE JUROR NO. 562: No, not really.

21 MR. SANFT: All right, thank you. I have no further
22 questions, Your Honor.

23 THE COURT: And you'll pass Ms. Morrison for cause?

24 MR. SANFT: Yes, Your Honor. Thank you.

25 THE COURT: Okay. Mr. Ruggeroli?

1 MR. RUGGEROLI: Thank you, Judge. And Judge, I'll
2 just pick up with the rest of the panel.

3 THE COURT: That's fine.

4 MR. RUGGEROLI: Thank you.

5 THE COURT: Yep, you're right.

6 MR. RUGGEROLI: Thank you. Good afternoon. You
7 might not remember the open-ended questions that I gave to the
8 panel, so for your benefit, I'd like to just quickly go back
9 over them, okay?

10 PROSPECTIVE JUROR NO. 562: Okay.

11 MR. RUGGEROLI: I had asked if you understood and
12 have any objection to the notion that I only represent Mr.
13 Wheeler.

14 PROSPECTIVE JUROR NO. 562: I understand that.

15 MR. RUGGEROLI: And I also asked about any feelings
16 regarding a former co-defendant that may testify. Some of the
17 other prospective jurors did have some feelings. Do you
18 remember that question?

19 PROSPECTIVE JUROR NO. 562: I do.

20 MR. RUGGEROLI: Did you have any --

21 PROSPECTIVE JUROR NO. 562: I think it's -- I think
22 it's totally up to the defendant if he should testify or not.

23 MR. RUGGEROLI: Okay. I'm going to skip to -- I'm
24 going to get to the idea of a defendant testifying in one
25 second.

1 PROSPECTIVE JUROR NO. 562: Okay.

2 MR. RUGGEROLI: Let me clarify some terms so that I
3 am clear.

4 PROSPECTIVE JUROR NO. 562: Okay.

5 MR. RUGGEROLI: The State had originally asked the
6 panel about somebody that may have been charged in this case
7 that might testify as a witness. Do you recall that?

8 PROSPECTIVE JUROR NO. 562: I do.

9 MR. RUGGEROLI: Okay, so somebody that might have
10 been a defendant, but now would be a witness. Is there
11 anything that would cause you concern, like some of the other
12 prospective jurors, about -- any reason about alerting your
13 suspicions to that, generally speaking?

14 PROSPECTIVE JUROR NO. 562: No.

15 MR. RUGGEROLI: Okay. The other question I asked
16 was about the right not to testify. You have strong feelings
17 about Second Amendment rights?

18 PROSPECTIVE JUROR NO. 562: Yes.

19 MR. RUGGEROLI: Okay. How about right not to
20 testify? Is that something that doesn't sit well with you,
21 where you would want to hear from somebody, regardless of what
22 the law might say?

23 PROSPECTIVE JUROR NO. 562: I would leave that up to
24 my attorney.

25 MR. RUGGEROLI: Okay, thank you. I had asked --

1 also asked if you're somebody that's more reserved and might
2 not be as vocal if you're selected to serve on the jury when
3 you go back to deliberate. The idea would be -- I would just
4 like to know, do you think you just kind of go with the
5 majority, or are you somebody that would be more assertive and
6 make the rest of the members aware of your opinions,
7 perspectives, things like that?

8 PROSPECTIVE JUROR NO. 562: Yeah, do I look
9 reserved? No, I would give my opinion.

10 MR. RUGGEROLI: Okay, thank you. Would you also
11 listen to the other jurors to hear --

12 PROSPECTIVE JUROR NO. 562: Of course.

13 MR. RUGGEROLI: -- how they observe the evidence --

14 PROSPECTIVE JUROR NO. 562: Of course.

15 MR. RUGGEROLI: -- as well?

16 PROSPECTIVE JUROR NO. 562: Of course I would.

17 MR. RUGGEROLI: Okay. And I asked if things that
18 lawyers have to do about objecting, things like that, is that
19 something that you would not hold against my client if I have
20 to object and may seem rude to a witness or something like
21 that?

22 PROSPECTIVE JUROR NO. 562: No, not at all.

23 MR. RUGGEROLI: Okay.

24 PROSPECTIVE JUROR NO. 562: That's --

25 MR. RUGGEROLI: Thank you.

1 PROSPECTIVE JUROR NO. 562: That's your job.

2 MR. RUGGEROLI: And then, this notion of whether or
3 not you'd be a good juror.

4 PROSPECTIVE JUROR NO. 562: Um-hum.

5 MR. RUGGEROLI: It sounds like you would say that
6 you are.

7 PROSPECTIVE JUROR NO. 562: I think I would be.

8 MR. RUGGEROLI: Okay. Is there anything in
9 particular about your background or experience that you think
10 would make you a good juror?

11 PROSPECTIVE JUROR NO. 562: Just that I know I would
12 listen to both sides equally, and pay attention to both.

13 MR. RUGGEROLI: Okay.

14 PROSPECTIVE JUROR NO. 562: I can't say it's
15 anything in my background.

16 MR. RUGGEROLI: Right. Some people have specialized
17 experiences or unique things. You have --

18 PROSPECTIVE JUROR NO. 562: Well, I had a staff, you
19 know --

20 MR. RUGGEROLI: Huh?

21 PROSPECTIVE JUROR NO. 562: -- of about 30 people,
22 and I had a -- you know, listened to them back and forth, and
23 -- but you know, I would make a judgment call.

24 MR. RUGGEROLI: Okay.

25 PROSPECTIVE JUROR NO. 562: But most the time, it

1 would go to HR.

2 MR. RUGGEROLI: Right. Okay, thank you, Ms.
3 Morrison. If we could just hand the microphone to your right,
4 please. Thank you.

5 Could you state your name and give us your badge
6 number again, please?

7 PROSPECTIVE JUROR NO. 417: 417, Mary Newcome.

8 MR. RUGGEROLI: Thank you, Ms. Newcome. You were
9 pretty emphatic about -- when asked if there were any reason
10 why you can't be fair, I think your statement was, "Absolutely
11 not."

12 PROSPECTIVE JUROR NO. 417: I am very fair.

13 MR. RUGGEROLI: Right.

14 PROSPECTIVE JUROR NO. 417: I -- I make my own
15 opinion, but I do listen and pay attention.

16 MR. RUGGEROLI: You were a juror on a criminal panel
17 before, but they -- they did reach a verdict; is that correct?
18 Without --

19 PROSPECTIVE JUROR NO. 417: That's correct.

20 MR. RUGGEROLI: Okay. How long ago was that?

21 PROSPECTIVE JUROR NO. 417: After I went home and
22 thought about it, it's been more than ten years ago.

23 MR. RUGGEROLI: And is there anything from that
24 experience that you think might have some overlap, or it might
25 have some impact, or affect you serving as a juror in this

1 case at all?

2 PROSPECTIVE JUROR NO. 417: You know, to me, it was
3 an eye-opener. I never had any conception that this is really
4 what took place in a real life courtroom. It was a learning
5 experience for me. I'm glad I got a chance to be on a juror
6 (sic) because I never thought I would. It's been difficult
7 being here because you miss work, but, you know what, it's --
8 it's an opportunity I think for all of us. And I think I'm a
9 very honest and open-minded person, and I think I would be a
10 good juror.

11 MR. RUGGEROLI: Okay, very good. Thank you.

12 PROSPECTIVE JUROR NO. 417: You bet.

13 MR. RUGGEROLI: If you could hand the microphone.
14 Mr. Bryan?

15 PROSPECTIVE JUROR NO. 420: William Bryan, 420.

16 MR. RUGGEROLI: Good afternoon, sir.

17 PROSPECTIVE JUROR NO. 420: Good afternoon.

18 MR. RUGGEROLI: Good juror, yes or no?

19 PROSPECTIVE JUROR NO. 420: I think so. I think I'm
20 a very rational, logical person. And, well, I would like to
21 say that --

22 MR. RUGGEROLI: Yes, please.

23 PROSPECTIVE JUROR NO. 420: -- every -- every juror
24 brings something different. I don't think there's one ideal
25 juror. For example, Ms. Bruer down here on the end spoke

1 about what her qualities and characteristics are that would
2 make her a good juror. I have a different set of
3 characteristics from what she does, and the two I think would
4 be complimentary, and there are other people that might bring
5 other characteristics.

6 MR. RUGGEROLI: Could you give me an idea
7 specifically? Because this is exactly why I'm asking this.

8 PROSPECTIVE JUROR NO. 420: Well, I think I'm a
9 very, very rational, logical person. I can follow the
10 instructions from the Court precisely, I understand that the
11 prosecution has to prove each element of the law, and
12 regardless of how I may feel or whatever, things have to be
13 done the way they have to be done, according to the
14 instructions of the Court.

15 MR. RUGGEROLI: Right. You've never served on a
16 jury?

17 PROSPECTIVE JUROR NO. 420: No.

18 MR. RUGGEROLI: Have you ever wanted to?

19 PROSPECTIVE JUROR NO. 420: Yes, I'm very interested
20 in how our government works and how the -- you know, the
21 civics lessons involved and that sort of thing.

22 MR. RUGGEROLI: Okay. In terms of listening to
23 statements that are made by witnesses on the stand, being
24 rational, paying attention, those are very important. How
25 about being critical in terms of not just saying, well, they

1 said it, so it must be true? Is that something that you think
2 you can do?

3 PROSPECTIVE JUROR NO. 420: Well, of course. For
4 example, if you had two expert witnesses from opposing sides
5 and conflicting information, a person might have to use their
6 -- where there's no clear-cut answer as to which expert
7 witness is correct, you would have to use your own faculties,
8 your own judgment, your own decision to come to that
9 conclusion. I'm not going to automatically believe that a
10 person's right because of their credentials, or the letters
11 behind their name, or anything like that.

12 MR. RUGGEROLI: Is there anything else in your
13 background or experience that you think that I would want to
14 know?

15 PROSPECTIVE JUROR NO. 420: You know, I'm military,
16 so, you know, we tend to be more or less cut from the same
17 cloth. I would say that I'm a little bit different than most
18 people like that. Most of them tend to be very conservative,
19 and I tend to be very, very rational, and not -- I don't let
20 emotion get in the way of my judgment.

21 MR. RUGGEROLI: Okay, thank you, sir. If you could
22 pass the microphone. Good afternoon.

23 PROSPECTIVE JUROR NO. 429: Christopher Devargas,
24 429.

25 MR. RUGGEROLI: You've had a number of questions. I

1 just wanted to follow up, generally speaking.

2 PROSPECTIVE JUROR NO. 429: Yes.

3 MR. RUGGEROLI: I know that you've probably been
4 paying attention to everything. Is there anything though
5 specific to your work and what you've done that you think
6 would be a specific benefit to being a juror in this case?

7 PROSPECTIVE JUROR NO. 429: Well, like I had
8 mentioned before as far as not having a controlling hand in
9 the things that I photograph and report on, I have to stay
10 neutral even within my own organization. I mean, the Las
11 Vegas Sun is very -- more of a Liberal newspaper, and I'm -- I
12 try to stay out of any kind of left or right, you know, as far
13 as viewpoints and things like that.

14 MR. RUGGEROLI: Um-hum.

15 PROSPECTIVE JUROR NO. 429: Aside from all that, my
16 ethics in journalism, I mean, I was in the military as well.
17 I spent four years in the Army. So following directions,
18 following instruction, doing what's right, regardless of maybe
19 a decision that somebody might make, and not letting their
20 rank influence right or wrong. I just -- that's pretty much
21 what I bring.

22 MR. RUGGEROLI: Thank you. Was there any of the
23 questions that I had asked that were open-ended to the panel
24 that you may have wanted to volunteer for that you didn't, and
25 thought about later?

1 PROSPECTIVE JUROR NO. 429: No, not really. Nothing
2 that would change whether or not I believe that I'm a good
3 person for this, or I wouldn't give a, you know, fair -- fair,
4 you know, viewpoint, so.

5 MR. RUGGEROLI: Right. And just to be clear, when I
6 say good potential juror, I'm not getting to like character
7 and things. It's just, you would agree with me that there are
8 certain aspects that are unique to serving as a juror as
9 opposed to many, many other types of things that we do in the
10 community?

11 PROSPECTIVE JUROR NO. 429: Yeah, absolutely.

12 MR. RUGGEROLI: Okay, thank you sir. If you could
13 pass the microphone. Hi.

14 PROSPECTIVE JUROR NO. 430: Hi.

15 MR. RUGGEROLI: And it's Ms. Hernandez?

16 PROSPECTIVE JUROR NO. 430: Yes, 430.

17 MR. RUGGEROLI: Thank you. You haven't had an
18 opportunity to say a whole lot. You work as a host though,
19 right?

20 PROSPECTIVE JUROR NO. 430: Yes.

21 MR. RUGGEROLI: And so, at the Cosmo?

22 PROSPECTIVE JUROR NO. 430: Yes, Cosmopolitan.

23 MR. RUGGEROLI: Very nice casino. You're dealing
24 with high-rollers, I'm guessing, and so --

25 PROSPECTIVE JUROR NO. 430: Yes.

1 MR. RUGGEROLI: -- you're a professional?

2 PROSPECTIVE JUROR NO. 430: Yes.

3 MR. RUGGEROLI: And sometimes, I'd guess that those

4 -- that clientele can be demanding?

5 PROSPECTIVE JUROR NO. 430: Yes, very, sometimes.

6 MR. RUGGEROLI: Do you have the kind of temperament

7 that matches that, where people may come to you and air their

8 grievances, things like that?

9 PROSPECTIVE JUROR NO. 430: Yes. I do think I'm a

10 very patient person.

11 MR. RUGGEROLI: Okay.

12 PROSPECTIVE JUROR NO. 430: So that's the reason why

13 I'm still there and I'm able to keep up with my job. I have

14 had some challenges, but usually, it just goes to -- straight

15 to management, so I don't really deal with a lot. I just deal

16 with at the front. So I get to, you know, talk to guests,

17 welcome guests, and just walk them to a table, or talk to them

18 about instructions of the table, so that's all I get to do.

19 MR. RUGGEROLI: Okay.

20 PROSPECTIVE JUROR NO. 430: I get to spend about

21 five minutes with a guest.

22 MR. RUGGEROLI: Uh-huh. As a juror, you wouldn't be

23 able to delegate to a supervisor. Would you be comfortable

24 doing that? You would be one of the 12, if you're selected,

25 to decide what the facts are. Is that something that you

1 would be comfortable with?

2 PROSPECTIVE JUROR NO. 430: I'm not sure. I am a
3 very emotional person, so I feel like this is like a first
4 time being in this atmosphere.

5 MR. RUGGEROLI: Yeah.

6 PROSPECTIVE JUROR NO. 430: So I wouldn't know what
7 to expect or how I would react. However, I am a very
8 open-mind (sic) person, so I do believe that I can collect a
9 lot of information, and be open-mind, like I said, and
10 communicate with who I'm working with as to the rest of the
11 people here.

12 MR. RUGGEROLI: Yeah. So let's say you are on the
13 jury and a witness gets called. Do you believe that you'll be
14 comfortable listening to them, and not just assuming that it's
15 accurate, or not just assuming that it's true? Are you able
16 to be critical, and listen to them, and decide for yourself,
17 regardless of what they may claim?

18 PROSPECTIVE JUROR NO. 430: Not without evidence,
19 no.

20 MR. RUGGEROLI: Okay. Do you think that -- one of
21 the aspects about being a good juror though, if there's not
22 some type of test, then you would agree there's really no
23 reason for a trial, right?

24 PROSPECTIVE JUROR NO. 430: Right.

25 MR. RUGGEROLI: Okay. Do you think that you'd be a

1 good juror in that sense of being -- I know you'll listen, you
2 said that, and that's very clear. You'd pay attention,
3 obviously, correct?

4 PROSPECTIVE JUROR NO. 430: Yes.

5 MR. RUGGEROLI: And then you'd work with the other
6 jurors when you deliberate, right?

7 PROSPECTIVE JUROR NO. 430: Correct.

8 MR. RUGGEROLI: But in terms of testing or
9 evaluating the witness and the evidence to decide, are they
10 credible, are they truthful, do they maybe have a motive to
11 say what they're saying, how do you feel about doing that?

12 PROSPECTIVE JUROR NO. 430: That would be
13 challenging, but I think I would do a very good job as well.

14 MR. RUGGEROLI: Okay, thank you.

15 PROSPECTIVE JUROR NO. 430: No prob.

16 MR. RUGGEROLI: If you could just hand it -- hello.

17 PROSPECTIVE JUROR NO. 437: Hi. It's 437.

18 MR. RUGGEROLI: Yes, Ms. Amorosa?

19 PROSPECTIVE JUROR NO. 437: Yes.

20 MR. RUGGEROLI: Amoroso?

21 PROSPECTIVE JUROR NO. 437: Amoroso.

22 MR. RUGGEROLI: Thank you. I know you've been
23 hearing a lot of the questions and answers. Has there been
24 anything that I have asked in particular about certain
25 questions that grabbed your attention that you'd like to

1 follow up on?

2 PROSPECTIVE JUROR NO. 437: There are sometimes, I

3 -- I'm not good in English.

4 MR. RUGGEROLI: Um-hum.

5 PROSPECTIVE JUROR NO. 437: So sometimes, I can't

6 understand what you guys saying, so.

7 MR. RUGGEROLI: Since I've been talking, has there

8 been anything that I may have talked to fastly that made you

9 miss some of the things that I said?

10 PROSPECTIVE JUROR NO. 437: Yeah, a lot of -- a lot

11 of the phrases I can't understand, so.

12 MR. RUGGEROLI: Okay. That is --

13 PROSPECTIVE JUROR NO. 437: And my English is

14 broken, so, sorry.

15 MR. RUGGEROLI: That's okay. I appreciate you

16 telling us.

17 THE COURT: Okay, just a minute, just a minute.

18 You're indicating that you haven't been able to understand

19 everything; is that correct?

20 PROSPECTIVE JUROR NO. 437: Yeah, some -- because my

21 English is broken, and sometimes I can't understand.

22 THE COURT: Okay. About how much do you --

23 PROSPECTIVE JUROR NO. 437: I'm from Phillippines,

24 so.

25 THE COURT: Okay. About how much do you think that

1 you've understood?

2 PROSPECTIVE JUROR NO. 437: A lot -- a lot, I can --

3 I'm just listening, but sometimes I can't understand.

4 THE COURT: Okay. Is there a lot of things you

5 can't understand? Like, you know --

6 PROSPECTIVE JUROR NO. 437: Because I'm not good in

7 English.

8 THE COURT: Okay. You think your language is not

9 good enough in order to sit on this panel?

10 PROSPECTIVE JUROR NO. 437: Yeah, it's not good

11 enough.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 437: Because I can't

14 understand --

15 THE COURT: All right.

16 PROSPECTIVE JUROR NO. 437: -- a lot.

17 THE COURT: And you indicated you do work, correct?

18 PROSPECTIVE JUROR NO. 437: Say it again.

19 THE COURT: You do work, correct?

20 PROSPECTIVE JUROR NO. 437: Yeah, I'm just -- bus

21 the table.

22 THE COURT: Okay. What language do you speak at

23 work?

24 PROSPECTIVE JUROR NO. 437: Tagalog -- some -- a

25 little bit English.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 437: Like, I just speak
3 Tagalog.

4 THE COURT: All right. I mean, do you think it's --
5 can you give me a percentage of how much you've understood?
6 Have you understood 5 percent, 80 percent?

7 PROSPECTIVE JUROR NO. 437: Like 5 percent.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 437: Sorry.

10 THE COURT: All right. Okay, I'm just going to ask
11 you to step down out of the box. And I'm going to ask Aria
12 Flores-Virgen to take Seat number 8.

13 MR. PESCI: Judge, can we approach for a minute?
14 Can we approach for a minute?

15 THE COURT: Oh, you want to approach? Okay.
16 (Bench conference)

17 MR. PESCI: Judge, I just want to make a record. I
18 didn't know if defense counsel was asking to have her removed.
19 I don't think there's been a position stated --

20 THE COURT: No.

21 MR. PESCI: -- on the record.

22 THE COURT: Yeah.

23 MR. PESCI: And so --

24 THE COURT: I -- I removed her for cause.

25 MR. PESCI: Right, and I just wanted to see if they

1 had a position one way or the other, so.

2 MR. RUGGEROLI: I agree with the position. I had
3 not intended -- I wasn't sure how much she knew, and it kind
4 of came up as an aside. And if you recall, I started out by
5 saying, am I talking too fast?

6 MR. PESCI: I'm not arguing --

7 MR. RUGGEROLI: Yeah.

8 MR. PESCI: -- against it.

9 THE COURT: Right.

10 MR. RUGGEROLI: Yeah.

11 MR. PESCI: I just wanted the record. Are you --

12 MR. SANFT: Oh, I see.

13 MR. RUGGEROLI: Yeah.

14 MR. SANFT: Yeah, I have no objection to --

15 MR. PESCI: There we go.

16 MR. SANFT: -- the exclusion of --

17 MR. PESCI: Thank you very much.

18 MR. SANFT: -- that --

19 THE COURT: Okay.

20 MR. RUGGEROLI: Thanks.

21 THE COURT: Thank you.

22 (End of bench conference)

23 THE COURT: Okay, thank you very much for being here
24 this afternoon. I'm just going to ask you a few questions.
25 Can you tell me how long you've lived in Clark County?

1 PROSPECTIVE JUROR NO. 563: 24 years.
2 THE COURT: Okay. Your education background?
3 PROSPECTIVE JUROR NO. 563: High school.
4 THE COURT: And what do you do for a living?
5 PROSPECTIVE JUROR NO. 563: I work at Amazon.
6 THE COURT: I'm sorry?
7 PROSPECTIVE JUROR NO. 563: I work at Amazon
8 Fulfilment.
9 THE COURT: And your marital status?
10 PROSPECTIVE JUROR NO. 563: Married.
11 THE COURT: Okay. Is your spouse employed?
12 PROSPECTIVE JUROR NO. 563: Yes.
13 THE COURT: What does your spouse do?
14 PROSPECTIVE JUROR NO. 563: He also works at Amazon.
15 THE COURT: Okay. Do you have any children?
16 PROSPECTIVE JUROR NO. 563: Yes.
17 THE COURT: How many?
18 PROSPECTIVE JUROR NO. 563: Just one.
19 THE COURT: Okay. I'm assuming that's a minor
20 child?
21 PROSPECTIVE JUROR NO. 563: Yes.
22 THE COURT: Okay. Have you ever served as a juror
23 before?
24 PROSPECTIVE JUROR NO. 563: No.
25 THE COURT: Have you or anyone close to you, such as

1 a family member or friend, ever been the victim of a crime?

2 PROSPECTIVE JUROR NO. 563: No.

3 THE COURT: Have you or anyone close to you, such as
4 a family member or friend, ever been accused of a crime?

5 PROSPECTIVE JUROR NO. 563: No.

6 THE COURT: Would you have a tendency to give more
7 weight or credence or less weight or credence to the testimony
8 of a witness simply because that witness is a police officer?

9 PROSPECTIVE JUROR NO. 563: No.

10 THE COURT: Do you know of any reason why you could
11 not be a fair and impartial juror in this particular case?

12 PROSPECTIVE JUROR NO. 563: No.

13 THE COURT: Okay. Mr. Pesci?

14 MR. PESCI: Thank you. Ma'am, do you have any
15 strong opinions about firearms that would affect your ability
16 to be fair in this case?

17 PROSPECTIVE JUROR NO. 563: I mean, not strong
18 opinions. I'm all for the Second Amendment. I open carry as
19 well, so.

20 MR. PESCI: Okay. So that wouldn't make you convict
21 or acquit for that matter?

22 PROSPECTIVE JUROR NO. 563: No.

23 MR. PESCI: Okay. Any reason why you cannot sit in
24 judgment of another human being?

25 PROSPECTIVE JUROR NO. 563: No.

1 MR. PESCI: Okay. And then, can you follow the law
2 as the Court gives you it, even if you don't agree with it?
3 PROSPECTIVE JUROR NO. 563: Yeah, I could follow.
4 MR. PESCI: Do you think you can be fair to both
5 sides?
6 PROSPECTIVE JUROR NO. 563: Yeah.
7 MR. PESCI: Thank you very much, ma'am. Pass for
8 cause, Your Honor.
9 THE COURT: Mr. Sanft?
10 PROSPECTIVE JUROR NO. 563: No.
11 MR. SANFT: You answered my question; I don't even
12 know what it was. Let me ask you this, ma'am. You work for
13 Amazon, and I forget. Do you work in the warehouse that's up
14 in North Las Vegas?
15 PROSPECTIVE JUROR NO. 563: I work at the new
16 fulfilment center that just opened up.
17 MR. SANFT: What do you do for them?
18 PROSPECTIVE JUROR NO. 563: I'm an ambassador; I'm a
19 team lead. I train the new hires.
20 MR. SANFT: I see. Now, the -- and they work in
21 like fulfilling orders and stuff like that?
22 PROSPECTIVE JUROR NO. 563: Yeah, it depends on
23 which department we're in. I'm in the pack department, so if
24 my new hires are assigned to pack, then I will train them, and
25 I will show them around the warehouse of what their job is.

1 MR. SANFT: I see. And so how long have you been
2 working for Amazon?

3 PROSPECTIVE JUROR NO. 563: I've been working there
4 for about three years.

5 MR. SANFT: And your husband also does the same sort
6 of thing for Amazon as you do?

7 PROSPECTIVE JUROR NO. 563: He just recently started
8 working at Amazon.

9 MR. SANFT: I see. Now, I think I asked this
10 question before with Ms. Morrison. Is there anything that I
11 should be asking you that you're thinking in your mind I --
12 Mr. Sanft should be asking me the question?

13 PROSPECTIVE JUROR NO. 563: No.

14 MR. SANFT: Please ask me this question, something
15 like that?

16 PROSPECTIVE JUROR NO. 563: No.

17 MR. SANFT: How about a question that I shouldn't be
18 asking you? Is there anything, like, I hope they don't ask me
19 this question?

20 PROSPECTIVE JUROR NO. 563: Not that I can think of,
21 no.

22 MR. SANFT: Okay, I have no further questions.
23 Thank you, Your Honor. We'll pass for cause.

24 THE COURT: Thank you. Mr. Ruggeroli?

25 MR. RUGGEROLI: I don't want to make you think that

1 I'm being short with you compared to any of the others.

2 Anything that you have to say is very important though; in
3 particular, background experience, anything like that, that
4 you think that would impact your serving as a juror in this
5 particular case?

6 PROSPECTIVE JUROR NO. 563: No. I mean, I'm very --
7 I will listen to both sides. You know, I'm fair.

8 MR. RUGGEROLI: Okay. I did ask a number of
9 open-ended questions. I don't want to be too repetitive, but
10 were there any of those that stuck out to you?

11 PROSPECTIVE JUROR NO. 563: No, only just the
12 firearm.

13 MR. RUGGEROLI: Okay.

14 PROSPECTIVE JUROR NO. 563: That was the only thing.

15 MR. RUGGEROLI: Yeah, I appreciate you letting us
16 know about that. Thank you. If you could just hand the
17 microphone to your right.

18 Could you give us your badge number again?

19 PROSPECTIVE JUROR NO. 451: Sure. Graham, 451.

20 MR. RUGGEROLI: You have experience teaching special
21 education, correct?

22 PROSPECTIVE JUROR NO. 451: Correct.

23 MR. RUGGEROLI: And you emphasized "psychology."
24 Could you elaborate on that?

25 PROSPECTIVE JUROR NO. 451: Well, as part of my

1 undergrad study towards becoming a teacher, I minored in child
2 psychology.

3 MR. RUGGEROLI: Okay. Is there anything from that
4 experience that you think would enhance your ability to serve
5 as a juror?

6 PROSPECTIVE JUROR NO. 451: I don't know necessarily
7 enhance it. I mean, we're talking about children versus
8 adults, which sometimes you can't tell the difference. But I
9 mean, it was specific to children between the ages of two and
10 nine, so I don't know if it would enhance anything.

11 MR. RUGGEROLI: Okay. You were on the civil jury
12 previously; is that right?

13 PROSPECTIVE JUROR NO. 451: Yes, um-hum.

14 MR. RUGGEROLI: And you were the foreperson?

15 PROSPECTIVE JUROR NO. 451: Correct.

16 MR. RUGGEROLI: Okay. All right, thank you.

17 Ms. Quinn?

18 PROSPECTIVE JUROR NO. 461: 461.

19 MR. RUGGEROLI: I did want to follow up on the
20 notion of whether or not you think you'd be a good juror.

21 PROSPECTIVE JUROR NO. 461: I think I would be good.
22 I'd listen, listen to both sides, and be fair.

23 MR. RUGGEROLI: Okay.

24 PROSPECTIVE JUROR NO. 461: Um-hum.

25 MR. RUGGEROLI: How about this idea of evaluating

1 credibility and motive, things like that? That's a little bit
2 different; you would agree?

3 PROSPECTIVE JUROR NO. 461: Yes. Again, listening
4 to all the information given.

5 MR. RUGGEROLI: Okay. You say, "be fair." We
6 talked a little bit about this. I don't think you mean
7 "fair," meaning we're on an even playing field, right?

8 PROSPECTIVE JUROR NO. 461: Right.

9 MR. RUGGEROLI: Because we're not.

10 PROSPECTIVE JUROR NO. 461: Right.

11 MR. RUGGEROLI: Do you agree with that, that --

12 PROSPECTIVE JUROR NO. 461: Correct.

13 MR. RUGGEROLI: -- I don't have a burden as a
14 defense attorney to prove anything? And you would follow the
15 law that the Judge gives you?

16 PROSPECTIVE JUROR NO. 461: Absolutely.

17 MR. RUGGEROLI: But other than that, evaluating the
18 witnesses or the evidence, that in particular, is that
19 something that you think you'd be good at doing?

20 PROSPECTIVE JUROR NO. 461: Yes, I do. Um-hum.

21 MR. RUGGEROLI: Okay, thank you. If you could hand
22 the microphone.

23 PROSPECTIVE JUROR NO. 462: 462, Camille.

24 MR. RUGGEROLI: Ms. Estrella?

25 PROSPECTIVE JUROR NO. 462: Yeah.

1 MR. RUGGEROLI: Okay. You're going to school, and I
2 wanted to ask you, anything that I've asked about specific
3 characteristics, traits, experiences that you have in your
4 background that you think would come into play during this
5 trial?

6 PROSPECTIVE JUROR NO. 462: Well, I believe that you
7 should be open-minded, because if you aren't open-minded, your
8 intuition could lead you to form -- to making a conclusion or
9 an opinion based on what you want to believe, rather than
10 forming an unbiased opinion based on the actual evidence or
11 statements that you've listened to.

12 MR. RUGGEROLI: Okay. I asked some of the other
13 prospective jurors about open carry. Do you recall that?

14 PROSPECTIVE JUROR NO. 462: Yes.

15 MR. RUGGEROLI: So do you have any opinions about
16 people's right to carry firearms if they're open and
17 displayed?

18 PROSPECTIVE JUROR NO. 462: I think it's fine, but
19 there -- like, there are limitations. So it's -- it's the
20 person who carries the firearm, whether or not they choose to,
21 like, do anything wrong with it.

22 MR. RUGGEROLI: Very good. Thank you. If we could
23 hand it down to the front, Mr. -- yeah, down here, please. I
24 apologize. To Mr. O'Brien.

25 I'm going to be short, Mr. O'Brien. Your badge

1 number is 464?

2 PROSPECTIVE JUROR NO. 464: 464.

3 MR. RUGGEROLI: You've been asked a lot of
4 questions. I just wanted to give you the opportunity if you
5 had anything additional that you wanted to add.

6 PROSPECTIVE JUROR NO. 464: No.

7 MR. RUGGEROLI: Okay. If you could hand it to Ms.
8 Newell.

9 PROSPECTIVE JUROR NO. 468: 468.

10 MR. RUGGEROLI: Okay. Everything's worked out with
11 school now; you would be able to pay attention, correct?

12 PROSPECTIVE JUROR NO. 468: Yeah.

13 MR. RUGGEROLI: And you're not worried about the
14 test?

15 PROSPECTIVE JUROR NO. 468: No.

16 MR. RUGGEROLI: And so you're going to be able to
17 pay attention and serve on this jury really unimpeded?

18 PROSPECTIVE JUROR NO. 468: Yeah.

19 MR. RUGGEROLI: Fair to say?

20 PROSPECTIVE JUROR NO. 468: Um-hum.

21 MR. RUGGEROLI: Okay, is that a yes?

22 PROSPECTIVE JUROR NO. 468: Yes, that's a yes.

23 MR. RUGGEROLI: Okay. You're studying criminal
24 justice. I've asked a number of open-ended questions. Do you
25 have anything that you would like to follow up on that you

1 didn't happen to volunteer for?

2 PROSPECTIVE JUROR NO. 468: No.

3 MR. RUGGEROLI: Okay, thank you. If you could --
4 Mr. --

5 PROSPECTIVE JUROR NO. 475: Mr. 475?

6 MR. RUGGEROLI: Yes, thank you. And I know that you
7 have answered a number of questions as well. I'm just giving
8 you another opportunity if anything has jumped out that you
9 would like to add or clarify.

10 PROSPECTIVE JUROR NO. 475: No, sir.

11 MR. RUGGEROLI: Okay, thank you. If you could hand
12 it to Mr. Bandics.

13 PROSPECTIVE JUROR NO. 477: 477.

14 MR. RUGGEROLI: We did have a chance to ask you some
15 questions. One of the things that you mentioned -- I wrote a
16 question mark about whether or not you could be fair. You
17 elaborated on some things about why you might have some
18 uncertainties. Is there anything apart from that that would
19 cause you any uncertainty about being fair in this trial as a
20 juror?

21 PROSPECTIVE JUROR NO. 477: Yeah, I think there
22 could be. I believe in the Second Amendment, so I'm all for
23 that. Also, sometimes it's hard for me to keep focus on
24 things at times, so I feel like that may -- could be a problem
25 at times.

1 MR. RUGGEROLI: But you were paying attention
2 throughout what we've been discussing, right?

3 PROSPECTIVE JUROR NO. 477: Yes, just some of the
4 questions, just so many for me, and it's hard for me to keep
5 up with.

6 MR. RUGGEROLI: Right. I appreciate you answering a
7 number of the things that you have. So, unless you wanted to
8 clarify or go back over anything else, that would -- that
9 would be my final question for you.

10 PROSPECTIVE JUROR NO. 477: No, not that I can think
11 of.

12 MR. RUGGEROLI: Okay, thank you. Mr. Salazar?

13 PROSPECTIVE JUROR NO. 482: 482.

14 MR. RUGGEROLI: And I started this off by asking you
15 because you made that statement about being a good juror, and
16 so I've already asked you a number of questions about that.
17 Did you have anything that you wanted to follow up on
18 specifically?

19 PROSPECTIVE JUROR NO. 482: No, sir.

20 MR. RUGGEROLI: Okay. Thank you. If you could hand
21 it to Ms. Cook.

22 PROSPECTIVE JUROR NO. 483: It's Ms. O'Brien.

23 MR. RUGGEROLI: I'm sorry, I did it again.

24 PROSPECTIVE JUROR NO. 483: I'm just -- I'm just
25 messing. It really is Ms. Cook.

1 MR. RUGGEROLI: I did it again.

2 PROSPECTIVE JUROR NO. 483: No, no, no. It is Ms.

3 Cook. I'm just --

4 MR. RUGGEROLI: Now you're just messing with me?

5 PROSPECTIVE JUROR NO. 483: He's not my husband.

6 MR. RUGGEROLI: Okay.

7 PROSPECTIVE JUROR NO. 483: It's Cook, 483. I was

8 falling asleep. I had to, like, mess around (indiscernible).

9 MR. RUGGEROLI: Well, I appreciate that.

10 PROSPECTIVE JUROR NO. 483: Okay.

11 MR. RUGGEROLI: Now, we've got to put you under

12 oath. You are Ms. Cook?

13 PROSPECTIVE JUROR NO. 483: I am Ms. Cook.

14 MR. RUGGEROLI: All right, Ms. Cook.

15 PROSPECTIVE JUROR NO. 483: 483.

16 MR. RUGGEROLI: Thank you. This notion of being a

17 good juror, you're not actually going to have to ask a lot of

18 questions necessarily; but judging credibility, those kind of

19 things, is that something that you feel comfortable doing?

20 PROSPECTIVE JUROR NO. 483: Yes.

21 MR. RUGGEROLI: You have an opinion about the Second

22 Amendment. We went through that, correct?

23 PROSPECTIVE JUROR NO. 483: Correct, yeah, we

24 already did.

25 MR. RUGGEROLI: How do you feel about serving on the

1 jury and going in the back, and then maybe half the jury or 11
2 against you has the different opinion? Are you somebody
3 that's going to assert yourself?

4 PROSPECTIVE JUROR NO. 483: Yes.

5 MR. RUGGEROLI: And express your opinion?

6 PROSPECTIVE JUROR NO. 483: Yes.

7 MR. RUGGEROLI: So you would not just be inclined to
8 go with the majority?

9 PROSPECTIVE JUROR NO. 483: No, definitely not.

10 MR. RUGGEROLI: Okay, and you will use comic relief
11 potentially as well?

12 PROSPECTIVE JUROR NO. 483: Absolutely.

13 MR. RUGGEROLI: All right, thank you. If you could
14 just hand the microphone.

15 PROSPECTIVE JUROR NO. 485: Shannon Young, 485.

16 MR. RUGGEROLI: I'm going to be brief because you've
17 really answered a lot of questions. And so if you had
18 anything additional, it's open to you, but I think you've
19 answered all of my questions.

20 PROSPECTIVE JUROR NO. 485: Yes.

21 MR. RUGGEROLI: Thank you.

22 PROSPECTIVE JUROR NO. 485: Thank you.

23 MR. RUGGEROLI: I have nothing further. Mr. --
24 pronounce it, please.

25 PROSPECTIVE JUROR NO. 488: Deperio.

1 MR. RUGGEROLI: Yes, sir.

2 PROSPECTIVE JUROR NO. 488: 488.

3 MR. RUGGEROLI: Thank you, sir.

4 Because you're more reserved, and you explained a

5 lot of that, I didn't have a lot of follow up either. And so,

6 unless there's something that grabbed your attention, I don't

7 have anything further.

8 PROSPECTIVE JUROR NO. 488: No.

9 MR. RUGGEROLI: Okay, thank you, sir.

10 Mr. Castro?

11 PROSPECTIVE JUROR NO. 490: 490.

12 MR. RUGGEROLI: Thank you, sir. I haven't had a

13 chance to ask you a lot of questions. You had some concerns

14 if the case were to go beyond a certain date. Did you clarify

15 that?

16 PROSPECTIVE JUROR NO. 490: Yes, because my company

17 only pays for like certain number of days.

18 MR. RUGGEROLI: Okay.

19 PROSPECTIVE JUROR NO. 490: So I know I'm good until

20 next week.

21 MR. RUGGEROLI: Okay. And you'll be able to pay

22 attention without that being a distraction for you?

23 PROSPECTIVE JUROR NO. 490: Yes.

24 MR. RUGGEROLI: In terms of evaluating the

25 witnesses, how do you feel about serving as a juror in that

1 (indiscernible)?

2 PROSPECTIVE JUROR NO. 490: I don't feel like I'm a
3 good judge of character.

4 MR. RUGGEROLI: Okay. Could you follow up on that,
5 if you don't mind?

6 PROSPECTIVE JUROR NO. 490: Just by looking at the
7 person, not knowing the person, and forming an opinion on are
8 they credible or not.

9 THE COURT: Just a minute.

10 THE MARSHAL: Hang on a second.

11 THE COURT: You got to make sure when you come back
12 in that your phones are turned off, please. Okay, go ahead.

13 MR. RUGGEROLI: Okay, so --

14 PROSPECTIVE JUROR NO. 490: Just judging the
15 credibility of a witness or a person, without knowing that
16 person, I'm not very good at that.

17 MR. RUGGEROLI: Okay, and I appreciate you sharing
18 that. You might have other skills in terms of paying
19 attention, and --

20 PROSPECTIVE JUROR NO. 490: Paying attention, I can
21 do that. I know I'm going to do my best to do what's asked,
22 but that part --

23 MR. RUGGEROLI: Yes.

24 PROSPECTIVE JUROR NO. 490: -- that you were --

25 MR. RUGGEROLI: Very good.

1 PROSPECTIVE JUROR NO. 490: -- asking --

2 MR. RUGGEROLI: Thank you. I am glad, because
3 that's one of my important questions about being in a position
4 of judging what a witness says, so thank you for sharing that.
5 If you could hand it down to the front, please, in the third
6 row.

7 PROSPECTIVE JUROR NO. 496: Angela Segura, 496.

8 MR. RUGGEROLI: How about that notion of being a
9 good juror in terms of evaluating whether or not somebody
10 might have a motive to lie or might be not credible? How do
11 you feel about that, serving as a juror?

12 PROSPECTIVE JUROR NO. 496: I believe I have
13 critical thinking skills. Assessing people on a daily basis
14 is what I do for a living.

15 MR. RUGGEROLI: Yeah, can you tell us about that as
16 well?

17 PROSPECTIVE JUROR NO. 496: I'm a nurse.

18 MR. RUGGEROLI: Right.

19 PROSPECTIVE JUROR NO. 496: Yeah, so I see lots and
20 lots of different people with lots of different symptoms,
21 and --

22 MR. RUGGEROLI: Has anybody ever come in and tried
23 to get medication? Are you trained if somebody is trying to
24 get maybe painkillers or something?

25 PROSPECTIVE JUROR NO. 496: Yes, but that's not my

1 responsibility.

2 MR. RUGGEROLI: Okay.

3 PROSPECTIVE JUROR NO. 496: That's the doctor's.

4 MR. RUGGEROLI: Okay. But you feel comfortable,
5 because of your background and experience, evaluating the
6 witnesses?

7 PROSPECTIVE JUROR NO. 496: Yes.

8 MR. RUGGEROLI: Is there anything about the other
9 questions that I've asked to the panel members that you --
10 that grabbed your attention that you would like to follow up
11 on?

12 PROSPECTIVE JUROR NO. 496: Oh, just I strongly
13 believe in the Fifth Amendment.

14 MR. RUGGEROLI: Okay, which portion?

15 PROSPECTIVE JUROR NO. 496: The right to remain
16 silent.

17 MR. RUGGEROLI: Okay.

18 PROSPECTIVE JUROR NO. 496: Yeah.

19 MR. RUGGEROLI: Thank you, I appreciate that.

20 PROSPECTIVE JUROR NO. 513: Michael Laurie, 513.

21 MR. RUGGEROLI: Mr. Laurie, you've had a lot of
22 questions and answers as well. Let me see if there was
23 anything in particular. You mentioned -- I think you said, I
24 might be highly suspicious given a possibility of somebody
25 that would have been accused making a deal and potentially

1 testifying. Could you just elaborate on that a little bit?

2 PROSPECTIVE JUROR NO. 513: Why isn't he here right
3 now with these two gentlemen?

4 MR. RUGGEROLI: Okay. And so, let's say, this might
5 not be the time. Let's say you're chosen to serve on the jury
6 and he gets on the stand -- he or she. Will you listen to the
7 evidence to decide? We're talking about being critical or
8 evaluating somebody's --

9 PROSPECTIVE JUROR NO. 513: Oh, of course.

10 MR. RUGGEROLI: -- potential motive.

11 PROSPECTIVE JUROR NO. 513: Yeah.

12 MR. RUGGEROLI: How about the other side of that?
13 Maybe the suspicion that you have is not founded for a
14 particular individual. Do you think that you'll be fair to
15 the State, and listen to the witness, and decide for yourself?

16 PROSPECTIVE JUROR NO. 513: Yes.

17 MR. RUGGEROLI: Okay.

18 PROSPECTIVE JUROR NO. 513: Yeah. I mean, they're
19 under oath, and, you know.

20 MR. RUGGEROLI: Right.

21 PROSPECTIVE JUROR NO. 513: Yes.

22 MR. RUGGEROLI: Okay. Anything about the other
23 questions that you might have wanted to add?

24 PROSPECTIVE JUROR NO. 513: The open carry question.

25 MR. RUGGEROLI: Uh-huh.

1 PROSPECTIVE JUROR NO. 513: I work in retail.

2 MR. RUGGEROLI: Yes, sir.

3 PROSPECTIVE JUROR NO. 513: Any time I see someone
4 enter my store with a firearm on the side of their hip, it
5 does make me suspicious, only because I'm concerned about the
6 employees and people that are in the store. I don't know who
7 that person is.

8 MR. RUGGEROLI: Right. How many times would you say
9 that that's happened, that an open carry came in, somebody
10 that you don't know?

11 PROSPECTIVE JUROR NO. 513: Oh, two or three times
12 probably in my five years.

13 MR. RUGGEROLI: Right.

14 PROSPECTIVE JUROR NO. 513: Yeah.

15 MR. RUGGEROLI: And Mesquite is a smaller town.

16 PROSPECTIVE JUROR NO. 513: It is.

17 MR. RUGGEROLI: So you have regulars?

18 PROSPECTIVE JUROR NO. 513: We do, yes, all the
19 time.

20 MR. RUGGEROLI: And those occasions where somebody
21 came in open carry, did any of those result in a crime?

22 PROSPECTIVE JUROR NO. 513: No, no.

23 MR. RUGGEROLI: Okay. All right, thank you, sir.

24 PROSPECTIVE JUROR NO. 513: Sure.

25 MR. RUGGEROLI: If you could hand the microphone up.

1 PROSPECTIVE JUROR NO. 520: Maria Moreno, 520.

2 MR. RUGGEROLI: Ms. Moreno, let me take a look. You

3 haven't had a chance to be asked a whole lot of questions. I

4 know that you've been in town about 15 years, right?

5 PROSPECTIVE JUROR NO. 520: Um-hum.

6 MR. RUGGEROLI: Is that a yes?

7 PROSPECTIVE JUROR NO. 520: Yes.

8 MR. RUGGEROLI: And your -- are you a Clerk? Or I

9 might have written that down wrong.

10 PROSPECTIVE JUROR NO. 520: Payroll Clerk.

11 MR. RUGGEROLI: Yes, okay. And you have two

12 children; one in high school, one in junior high?

13 PROSPECTIVE JUROR NO. 520: Yes.

14 MR. RUGGEROLI: And your spouse is an electrician?

15 PROSPECTIVE JUROR NO. 520: Electrician, yes.

16 MR. RUGGEROLI: Okay. As far as being a juror, do

17 you think you would be a good juror?

18 PROSPECTIVE JUROR NO. 520: Yes.

19 MR. RUGGEROLI: And why is that?

20 PROSPECTIVE JUROR NO. 520: Because I -- because I'm

21 really good at listening, and I have to pay attention to

22 details, and then so I can come to a conclusion.

23 MR. RUGGEROLI: Okay. How about evaluating

24 credibility, things like that? How do you -- how do you feel

25 about listening to witnesses?

1 PROSPECTIVE JUROR NO. 520: Good.

2 MR. RUGGEROLI: You would do that well?

3 PROSPECTIVE JUROR NO. 520: Yes.

4 MR. RUGGEROLI: Okay, thank you. Was there any

5 other questions that were asked that you wanted to follow up

6 on that may have grabbed your attention?

7 PROSPECTIVE JUROR NO. 520: No.

8 MR. RUGGEROLI: Okay, thank you.

9 PROSPECTIVE JUROR NO. 521: Magdalena Perez-Haywood,

10 Badge number 521.

11 MR. RUGGEROLI: Hello, Ms. Haywood.

12 PROSPECTIVE JUROR NO. 521: Hello.

13 MR. RUGGEROLI: And I had asked you -- you have a

14 little bit of a soft-spoken nature right now.

15 PROSPECTIVE JUROR NO. 521: Yes.

16 MR. RUGGEROLI: Do you think that you would be

17 somebody that has, a bit more like one of the other

18 prospective jurors, a temperament that maybe is not as

19 assertive if you were --

20 PROSPECTIVE JUROR NO. 521: I am quiet, but if I

21 have feelings or something that I need to, I let them know. I

22 am a teacher and I have classroom management, so when I need

23 to, I have to. I will do it.

24 MR. RUGGEROLI: Exactly.

25 PROSPECTIVE JUROR NO. 521: Um-hum.

1 MR. RUGGEROLI: And that's why I'm following up --
2 PROSPECTIVE JUROR NO. 521: Um-hum.
3 MR. RUGGEROLI: -- because you're able to share
4 that, and I appreciate that. You also mentioned that you love
5 your job?
6 PROSPECTIVE JUROR NO. 521: Yes.
7 MR. RUGGEROLI: Do you think that you would love
8 being a juror?
9 PROSPECTIVE JUROR NO. 521: Definitely. I was
10 raised and born in Mexico. I came here when I was 21, and
11 then I began taking classes and I got my degree here in the
12 U.S. And then, it is learning different rules, and that
13 whatever I learned is in the past; now I am in a new system,
14 new rules, and everything.
15 MR. RUGGEROLI: Very good.
16 PROSPECTIVE JUROR NO. 521: Yes, and again,
17 learning.
18 MR. RUGGEROLI: Right.
19 PROSPECTIVE JUROR NO. 521: Learning. I love
20 learning.
21 MR. RUGGEROLI: Okay. And were there any of the
22 questions that I asked to the panel as a whole that you might
23 have wanted to express your opinion about?
24 PROSPECTIVE JUROR NO. 521: The one that you said
25 the open carry, I don't feel very comfortable with it.

1 MR. RUGGEROLI: Okay. That's a little different
2 than some, so if you don't mind, if you could follow up about
3 that a little bit.

4 PROSPECTIVE JUROR NO. 521: I haven't had any
5 experiences, but I think that human nature, you don't know
6 what people can do when they get very upset, and what they can
7 do. So I think that they should be limited to certain people.

8 MR. RUGGEROLI: Okay. Thank you for providing us
9 with that information.

10 Good afternoon.

11 PROSPECTIVE JUROR NO. 524: 524, Jennifer Mendoza.

12 MR. RUGGEROLI: Good afternoon, Ms. Mendoza.

13 PROSPECTIVE JUROR NO. 524: Afternoon.

14 MR. RUGGEROLI: I also just had a couple of follow
15 ups, generally speaking, rather than specific. I know that
16 you're going to school, but you took some time off?

17 PROSPECTIVE JUROR NO. 524: Yes.

18 MR. RUGGEROLI: Were there any subjects that grabbed
19 your attention that you want to make sure that you take in the
20 future?

21 PROSPECTIVE JUROR NO. 524: Just maybe like my
22 history courses, because I do want to teach history later on.

23 MR. RUGGEROLI: Right. What -- I was going to
24 follow up on that. What time period is most interesting for
25 you in history?

1 PROSPECTIVE JUROR NO. 524: I mean, I can't like
2 decide really.

3 MR. RUGGEROLI: Okay.

4 PROSPECTIVE JUROR NO. 524: Yeah.

5 MR. RUGGEROLI: Okay, you just like history
6 generally?

7 PROSPECTIVE JUROR NO. 524: Yeah.

8 MR. RUGGEROLI: Is there anything of the questions I
9 asked -- some people are talking about Second Amendment.
10 That's kind of the one that's most prevalent right now, I
11 think. Were there any other questions that I asked that you
12 might have had a strong opinion on?

13 PROSPECTIVE JUROR NO. 524: Just the open carry
14 really.

15 MR. RUGGEROLI: What was yours?

16 PROSPECTIVE JUROR NO. 524: Just like Magdalena
17 said, like, I don't feel comfortable. Like, if I'm in public
18 and I see somebody like with a firearm, I don't know, like it
19 just -- I'm not comfortable with it.

20 MR. RUGGEROLI: Okay.

21 PROSPECTIVE JUROR NO. 524: Like, I don't see a
22 reason why people want to have it in public.

23 MR. RUGGEROLI: Okay.

24 PROSPECTIVE JUROR NO. 524: Um-hum.

25 MR. RUGGEROLI: Thank you. Badge number, please?

1 PROSPECTIVE JUROR NO. 561: 561.

2 MR. RUGGEROLI: Yes, sir. Mr. Keang?

3 PROSPECTIVE JUROR NO. 561: Yes.

4 MR. RUGGEROLI: Okay. You have two younger

5 children; they're not of working age, correct?

6 PROSPECTIVE JUROR NO. 561: No, they're minor.

7 MR. RUGGEROLI: Okay. We're getting near the end,

8 and you've heard an awful lot, and I greatly appreciate your

9 patience. So I don't mean to be short, but --

10 PROSPECTIVE JUROR NO. 561: Um-hum.

11 MR. RUGGEROLI: -- was there anything in particular,

12 your background or experience, that would make you let's say a

13 bad juror?

14 PROSPECTIVE JUROR NO. 561: Um-hum. Yeah, I cannot

15 -- I'm a bad juror. Yeah.

16 MR. RUGGEROLI: Okay, why is that?

17 PROSPECTIVE JUROR NO. 561: Because I'm -- I'm a

18 Christian.

19 MR. RUGGEROLI: Okay.

20 PROSPECTIVE JUROR NO. 561: Yeah. I'm a born-again

21 Christian, and I forgive the sin because everybody make

22 mistake. And God forgave my sin, too, and I forgive all the

23 people of their sin, too.

24 MR. RUGGEROLI: Okay.

25 PROSPECTIVE JUROR NO. 561: Because in the Bible, it

1 said that -- God said that you have to forgive somebody of
2 sin, doesn't matter what they do. You know, like in Isaiah 1,
3 Chapter 1, Verse 18, even their -- even their -- their crimes
4 are like scarlet like blood, you know, God made them like
5 Snow, so.

6 MR. RUGGEROLI: Okay.

7 PROSPECTIVE JUROR NO. 561: That's why we have to
8 forgive their sin, you know?

9 MR. RUGGEROLI: Yes, sir.

10 PROSPECTIVE JUROR NO. 561: Forgive their --

11 MR. RUGGEROLI: What if you were asked to maybe
12 limit your view of things, and agree to put the idea of
13 punishment or forgiveness on hold, and look at the facts of
14 the case; not to decide some other areas? What if you were
15 simply asked to decide whether or not something was true, or
16 in this particular case, with a trial, whether or not the
17 State can prove beyond a reasonable doubt that a crime
18 happened and that a specific individual committed that crime?
19 Perhaps that would not really implicate the things that are
20 very important to you. Do you think you could follow the
21 instructions from the Judge to do that as a juror?

22 PROSPECTIVE JUROR NO. 561: I can.

23 MR. RUGGEROLI: You don't think so?

24 PROSPECTIVE JUROR NO. 561: No.

25 MR. RUGGEROLI: And so your inclination would be

1 that you don't believe that you can be fair to the State, the
2 prosecution? You're saying that somebody that's accused, you
3 would have a very hard time convicting, or that your religious
4 views are such that you don't want to sit in judgment?

5 PROSPECTIVE JUROR NO. 561: I cannot sit in
6 judgment.

7 MR. RUGGEROLI: Okay.

8 THE COURT: If you're asked to serve on this panel,
9 what will you do then? Will you listen to the evidence?

10 PROSPECTIVE JUROR NO. 561: I listen -- yeah, I
11 listen to the evidence, but --

12 THE COURT: Okay, and will you follow the law?

13 PROSPECTIVE JUROR NO. 561: I cannot -- I cannot
14 judge them.

15 THE COURT: Okay. You understand that a jury panel
16 just judges the facts? You understand that?

17 PROSPECTIVE JUROR NO. 561: Yes, but I think it's
18 two different law between God law and state law. It's
19 different, you know?

20 THE COURT: Okay, but if you were selected to serve,
21 would you listen to the evidence?

22 PROSPECTIVE JUROR NO. 561: I'll listen, yeah.

23 THE COURT: Would you follow the law?

24 PROSPECTIVE JUROR NO. 561: I think if I followed --
25 if I followed the law, and if God law is different -- you

1 know, it's --

2 THE COURT: Okay.

3 PROSPECTIVE JUROR NO. 561: -- two different things.

4 Yeah.

5 THE COURT: Do you have a religious belief that

6 prevents you from serving as a juror?

7 PROSPECTIVE JUROR NO. 561: Yes.

8 THE COURT: What is that?

9 PROSPECTIVE JUROR NO. 561: I'm a born-again

10 Christian.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 561: Yeah.

13 THE COURT: And you believe that your religious

14 beliefs will be compromised if you sit as a juror?

15 PROSPECTIVE JUROR NO. 561: I think so, yeah.

16 THE COURT: Okay. If you were asked to serve, would

17 you deliberate with your other jurors, or will you just say,

18 I'm not going to do it?

19 PROSPECTIVE JUROR NO. 561: I cannot -- I cannot do

20 it.

21 THE COURT: Okay. So if you were asked to serve,

22 you would refuse to serve?

23 PROSPECTIVE JUROR NO. 561: I cannot serve, you

24 know.

25 THE COURT: Okay, all right. I'm going to -- you

1 can leave the microphone there. I'm going to ask you to step
2 out of the box.

3 Nicholas Campo, I'm going to ask you to take Seat
4 number 26.

5 PROSPECTIVE JUROR NO. 571: 571, Nicholas Campo.

6 THE COURT: Thank you for being here. How long have
7 you lived in Clark County?

8 PROSPECTIVE JUROR NO. 571: 20 years.

9 THE COURT: And your education background?

10 PROSPECTIVE JUROR NO. 571: Some college.

11 THE COURT: What did you study?

12 PROSPECTIVE JUROR NO. 571: I studied business and
13 marketing.

14 THE COURT: Okay. And what do you do for a living?

15 PROSPECTIVE JUROR NO. 571: I do design and sales
16 for a swimming pool contractor, and I coach high school
17 lacrosse.

18 THE COURT: Your marital status?

19 PROSPECTIVE JUROR NO. 571: Single.

20 THE COURT: Do you have kids?

21 PROSPECTIVE JUROR NO. 571: Nope.

22 THE COURT: Have you ever served as a juror before?

23 PROSPECTIVE JUROR NO. 571: Nope, first time.

24 THE COURT: Okay. Have you or anyone close to you,
25 such as a family member or friend, ever been accused of a

1 crime?

2 PROSPECTIVE JUROR NO. 571: Nope.

3 THE COURT: Have you or anyone close to you, such as
4 a family member or friend, ever been accused of a crime?

5 PROSPECTIVE JUROR NO. 571: No.

6 THE COURT: Okay. Would you have a tendency to give
7 more weight or credence or less weight or credence to the
8 testimony of a witness simply because that witness is a police
9 officer?

10 PROSPECTIVE JUROR NO. 571: No.

11 THE COURT: Do you know of any reason why you could
12 not be a fair and impartial juror if selected to serve?

13 PROSPECTIVE JUROR NO. 571: No.

14 THE COURT: Okay, thank you, sir. Thank you for
15 being here.

16 Mr. Pesci?

17 MR. PESCI: Thank you. Sir, the questions about
18 firearms, do you have any strong feelings about firearms one
19 way or the other?

20 PROSPECTIVE JUROR NO. 571: I haven't seen too much
21 of the open carry myself in person, so, no.

22 MR. PESCI: Okay. That wouldn't affect your ability
23 to be fair and impartial to either side?

24 PROSPECTIVE JUROR NO. 571: No.

25 MR. PESCI: Okay. Kind of building on where we

1 ended with the last gentleman as far as maybe a religious, or
2 a moral, or philosophical reason, would that impede you or
3 prevent you from standing in judgment on another human being?

4 PROSPECTIVE JUROR NO. 571: No.

5 MR. PESCI: Okay. Could you follow the law, even if
6 you don't necessarily agree with all of it?

7 PROSPECTIVE JUROR NO. 571: Yes.

8 MR. PESCI: Think you could be fair to both sides?

9 PROSPECTIVE JUROR NO. 571: Yes.

10 MR. PESCI: Thank you very much.

11 Pass for cause, Your Honor.

12 THE COURT: Thank you. Mr. Sanft, any questions?

13 MR. SANFT: Yes, Your Honor. Sir, you teach
14 lacrosse at a high school?

15 PROSPECTIVE JUROR NO. 571: I coach high school
16 lacrosse.

17 MR. SANFT: Okay. Is that a full-time job?

18 PROSPECTIVE JUROR NO. 571: It's part-time.

19 MR. SANFT: All right. Did you play lacrosse in
20 high school?

21 PROSPECTIVE JUROR NO. 571: I did.

22 MR. SANFT: College?

23 PROSPECTIVE JUROR NO. 571: Yes.

24 MR. SANFT: There's not a pro team, right?

25 PROSPECTIVE JUROR NO. 571: It wasn't a pro team,

1 no.

2 MR. SANFT: No, but there's no pro teams as far as
3 -- you know, for lacrosse?

4 PROSPECTIVE JUROR NO. 571: There are.

5 MR. SANFT: Oh, there are?

6 PROSPECTIVE JUROR NO. 571: Yeah, there's a few, but
7 there's none locally.

8 MR. SANFT: I see.

9 PROSPECTIVE JUROR NO. 571: Yeah.

10 MR. SANFT: And are you from Las Vegas?

11 PROSPECTIVE JUROR NO. 571: I was born in New York,
12 lived in Florida until I was ten, and I moved out here when I
13 was ten. So went to college in California for two years, but
14 other than that, I've been in Las Vegas since I was
15 ten-years-old.

16 MR. SANFT: So you played on a high school lacrosse
17 team here in Las Vegas?

18 PROSPECTIVE JUROR NO. 571: Yes.

19 MR. SANFT: Okay. Just a couple other quick
20 questions. Your other job -- what do you do for a living
21 besides coaching lacrosse?

22 PROSPECTIVE JUROR NO. 571: Sales and design for a
23 swimming pool contractor.

24 MR. SANFT: Okay. And does that mean, for instance,
25 you go into somebody's back yard and you listen to what the

1 homeowner wants in terms of a pool, and then you advise them
2 as to what you think it ought to be, and then you put together
3 like some type of CAD presentation as to what it --

4 PROSPECTIVE JUROR NO. 571: Yeah, we use something
5 called Pool Studios, not CAD, but some guys in our company do
6 CAD. But yeah, that's essentially what it is. And then we
7 try to sell the design, and then they either go with us -- and
8 then I am not part of the construction aspect; my higher-ups
9 are, so.

10 MR. SANFT: I see. So you just do the sale portion
11 of it, and maybe like customer relations sort of thing, but --

12 PROSPECTIVE JUROR NO. 571: Yeah, some
13 communications the whole time. So say they have a problem
14 with their bill, they contact me, and then I talk to my boss,
15 and he takes care of it. So I make his life easy.

16 MR. SANFT: Okay. Do you want to be on this jury?

17 PROSPECTIVE JUROR NO. 571: Yes.

18 MR. SANFT: Why would you want to be on this jury?

19 PROSPECTIVE JUROR NO. 571: It's an interesting
20 opportunity, very unique, and this is the first time I've ever
21 been called in for jury duty, so I definitely feel like
22 there's the upmost integrity involved with doing something
23 like this, and I have that.

24 MR. SANFT: Okay. Now, if you're selected as a
25 juror in this case, would you be fair and impartial with both

1 sides?

2 PROSPECTIVE JUROR NO. 571: Yes.

3 MR. SANFT: I had asked earlier about this idea of
4 where there's smoke, there's fire. Do you understand what
5 that concept is?

6 PROSPECTIVE JUROR NO. 571: Somewhat.

7 MR. SANFT: Okay. Just to give you a rundown, if
8 you see smoke, there's an implication that what's creating the
9 smoke is a fire. My client's sitting here next to me to the
10 left. He's been charged with a very serious crime. Because
11 he's sitting here to the left of me, are -- do you feel or
12 believe that, obviously, he must have done something for him
13 to be sitting here next to an attorney?

14 PROSPECTIVE JUROR NO. 571: I don't have a -- it's
15 exactly like you guys said, it's innocent until proven guilty,
16 so I would need facts put in front of me before I can make an
17 honest assessment of what it is.

18 MR. SANFT: Okay. Now, do you also understand --
19 well, let me ask you this. Are you okay with the idea that if
20 I sat back down, didn't say anything at all during the time
21 that we spend together if you're a juror, at all, that you'd
22 still have to hold the State of Nevada to its burden, beyond a
23 reasonable doubt?

24 PROSPECTIVE JUROR NO. 571: From being here, that's
25 what I understand, yes.

1 MR. SANFT: Okay. And you do understand that we're
2 not here to determine whether my client is guilty or innocent;
3 it's guilty or not guilty? Do you understand that?

4 PROSPECTIVE JUROR NO. 571: Yes.

5 MR. SANFT: Meaning that I'm not here to prove his
6 innocence; we're just here to say, can the State prove its
7 case beyond a reasonable doubt.

8 PROSPECTIVE JUROR NO. 571: I understand that.

9 MR. SANFT: Are you okay with that?

10 PROSPECTIVE JUROR NO. 571: Yes.

11 MR. SANFT: Okay. And then, just lastly, going back
12 to lacrosse, with regards to lacrosse, do you teach anything
13 besides just coach lacrosse?

14 PROSPECTIVE JUROR NO. 571: I just coach.

15 MR. SANFT: Okay.

16 PROSPECTIVE JUROR NO. 571: Yeah.

17 MR. SANFT: And just between you and me -- and
18 everyone else here in the room -- but between you and me, with
19 regard to lacrosse, have you thought at all while you're here
20 about maybe teaching opportunities for the people on lacrosse
21 based upon your experience here today if you were chosen as a
22 juror?

23 PROSPECTIVE JUROR NO. 571: I would use what's been
24 given to me, yes, as far as opportunities.

25 MR. SANFT: Well, in terms of your experience here,

1 have you thought at all about, hey, it would be great if I was
2 a juror on this case; I can share that experience with my
3 lacrosse team at some point in the future?

4 PROSPECTIVE JUROR NO. 571: Sure. Not -- not now,
5 but later on, absolutely.

6 MR. SANFT: All right. And just to be clear, once
7 again, you understand you've been instructed by the Court you
8 can't talk about this case at all until such time as she
9 discharges you from your duty?

10 PROSPECTIVE JUROR NO. 571: I understand.

11 MR. SANFT: Okay. I have no further questions, Your
12 Honor. We'll pass for cause.

13 THE COURT: Mr. Ruggeroli?

14 MR. RUGGEROLI: Thank you, Your Honor. Mr. Campo,
15 you just answered rapid-fire questions, so I only want to ask
16 you, anything about you, your background or experience, that
17 would have an impact with you, positive or negative, as
18 serving as a juror in this case?

19 PROSPECTIVE JUROR NO. 571: I -- no, nothing that
20 I'm hiding.

21 MR. RUGGEROLI: No, I know, but anything that you
22 think I would want to know about you that might be a
23 particularly important asset?

24 PROSPECTIVE JUROR NO. 571: Just that I am unbiased,
25 I'm very fair, and I'd be open to listening to the evidence

1 and everything that is put in front of me, and making the
2 right decision. Again, like it's the upmost integrity
3 involved with something like this.

4 MR. RUGGEROLI: Okay.

5 PROSPECTIVE JUROR NO. 571: So you want to make sure
6 you're doing the right thing.

7 MR. RUGGEROLI: Thank you. If you could just hand
8 the microphone.

9 PROSPECTIVE JUROR NO. 571: Sure.

10 MR. RUGGEROLI: Afternoon.

11 PROSPECTIVE JUROR NO. 540: Staci McCarthy, 540.

12 MR. RUGGEROLI: Okay, Ms. McCarthy, thank you. I
13 wanted to follow up and start with this terrible situation
14 with your father, right?

15 PROSPECTIVE JUROR NO. 540: Right.

16 MR. RUGGEROLI: 1989?

17 PROSPECTIVE JUROR NO. 540: Yes.

18 MR. RUGGEROLI: And he was actually shot?

19 PROSPECTIVE JUROR NO. 540: Yes.

20 MR. RUGGEROLI: In the head?

21 PROSPECTIVE JUROR NO. 540: Yeah.

22 MR. RUGGEROLI: And he lived, thankfully?

23 PROSPECTIVE JUROR NO. 540: Um-hum. Yes.

24 MR. RUGGEROLI: Is that a yes?

25 PROSPECTIVE JUROR NO. 540: Yes.

1 MR. RUGGEROLI: Okay. That's a very difficult
2 experience, and thankfully, it had a happy ending. The
3 allegations here involve something that, on the one hand, may
4 not have any significance or commonality with; and on the
5 other hand, it might have. Is there anything from that
6 experience that you went through that you think would cause
7 you hesitation to sitting in judgment on this case?

8 PROSPECTIVE JUROR NO. 540: No.

9 MR. RUGGEROLI: Your father, did he wind up speaking
10 to the police, and giving statements and things like that?

11 PROSPECTIVE JUROR NO. 540: Yes. There was a whole
12 investigation, but the person was never caught, so.

13 MR. RUGGEROLI: Okay. There's nothing about that --
14 and you understand why I would want to be cautious?

15 PROSPECTIVE JUROR NO. 540: Yeah.

16 MR. RUGGEROLI: There's nothing about that, because
17 somebody got away with that horrible crime, that would cause
18 you to tilt the balance in this case because of the nature of
19 the allegations?

20 PROSPECTIVE JUROR NO. 540: Not at all. I treat
21 each person individually. Everyone's equal in my mind, so.

22 MR. RUGGEROLI: Okay. Got a lot of experience in
23 teaching, and so you've probably had a lot of experiences.
24 You've heard me talk about being critical or evaluating?

25 PROSPECTIVE JUROR NO. 540: Right.

1 MR. RUGGEROLI: How do you think you would be -- I
2 mean you were already on the grand jury, obviously. This is a
3 different context, right?

4 PROSPECTIVE JUROR NO. 540: Right.

5 MR. RUGGEROLI: How about in terms of the different
6 standard, and evaluating motive, credibility, things of that
7 nature?

8 PROSPECTIVE JUROR NO. 540: I mean, I think I would
9 be good. I'm a good listener, patient. I learn to kind of
10 collect all the information before I make any decisions. I've
11 learned to do that with teaching and with resolving conflicts
12 with students, parents, and so on.

13 MR. RUGGEROLI: Okay. So, as my role as a defense
14 attorney, should I have any concerns though about you?

15 PROSPECTIVE JUROR NO. 540: I don't think so.

16 MR. RUGGEROLI: Okay, thank you. If you could pass
17 the microphone.

18 Mr. Widdison?

19 PROSPECTIVE JUROR NO. 541: 541, Kevin Widdison.

20 MR. RUGGEROLI: Good afternoon.

21 PROSPECTIVE JUROR NO. 541: Hi.

22 MR. RUGGEROLI: You were asked a number of follow up
23 questions, but --

24 PROSPECTIVE JUROR NO. 541: Yes, sir.

25 MR. RUGGEROLI: -- there is some similarities. You

1 understand why I would want to make sure?

2 PROSPECTIVE JUROR NO. 541: Yes, sir.

3 MR. RUGGEROLI: So I give you that same opportunity.

4 Me, serving as the representative of a client that's accused

5 of a crime --

6 PROSPECTIVE JUROR NO. 541: Um-hum.

7 MR. RUGGEROLI: -- is there anything about your

8 unique experiences that should cause me some second thoughts

9 about whether or not I would have you serve on this jury?

10 PROSPECTIVE JUROR NO. 541: Not at all.

11 MR. RUGGEROLI: Not at all? And why is that?

12 PROSPECTIVE JUROR NO. 541: It's completely

13 different.

14 MR. RUGGEROLI: Okay.

15 PROSPECTIVE JUROR NO. 541: Not associated at all.

16 MR. RUGGEROLI: Okay. The questions that I've

17 asked, there were a number of open-ended questions.

18 PROSPECTIVE JUROR NO. 541: Yes, sir.

19 MR. RUGGEROLI: The open carry is the one that most

20 people seem to have a particular opinion, compared to some of

21 my other questions.

22 PROSPECTIVE JUROR NO. 541: Um-hum.

23 MR. RUGGEROLI: Is that question or any of the

24 others something that you -- that grabbed your attention?

25 PROSPECTIVE JUROR NO. 541: Yeah, I'm pro-Second

1 Amendment. I have a CCW myself, but I don't open carry. I
2 think that's stupid, for me. It would be stupid for me to do
3 it.

4 MR. RUGGEROLI: Okay, and could you elaborate on
5 that and why?

6 PROSPECTIVE JUROR NO. 541: Well, I think it kind of
7 makes you kind of a target. "Oh, look," you know? I just
8 don't want that attention.

9 MR. RUGGEROLI: Okay. All right, thank you.
10 Anything else that you would want to add in terms of any of
11 the questions that have been asked or answered?

12 PROSPECTIVE JUROR NO. 541: No, sir.

13 MR. RUGGEROLI: Okay, thank you.

14 Mr. Kubota, you've also -- and your badge number,
15 please?

16 PROSPECTIVE JUROR NO. 546: Yes. My badge number is
17 546.

18 MR. RUGGEROLI: I'm just giving you the opportunity,
19 because you've answered an awful lot of questions as well, if
20 anything stirred up new that you would like to add.

21 PROSPECTIVE JUROR NO. 546: Yeah, all sorts of --

22 MR. RUGGEROLI: Okay. Well, maybe I can --

23 PROSPECTIVE JUROR NO. 546: You want to start with
24 the Second Amendment? You know, like --

25 MR. RUGGEROLI: Yeah, why don't we do that.

1 PROSPECTIVE JUROR NO. 546: I hunt.

2 MR. RUGGEROLI: Okay.

3 PROSPECTIVE JUROR NO. 546: I've killed lots of elk.

4 Deer elk, bull elk, cow elk. At the same time, I agree with

5 the idea that guns don't kill people; people kill people.

6 MR. RUGGEROLI: Okay.

7 PROSPECTIVE JUROR NO. 546: You should have the

8 ability to carry a gun if you're sane enough. And the laws

9 haven't gone, I don't think, in the right direction. They're

10 worried about just taking everybody's gun away, and they only

11 should have to take certain people's guns away.

12 MR. RUGGEROLI: I don't mean to cut you off, but I

13 had a follow up --

14 PROSPECTIVE JUROR NO. 546: Okay.

15 MR. RUGGEROLI: -- about a different right though.

16 PROSPECTIVE JUROR NO. 546: Okay.

17 MR. RUGGEROLI: That right, the Fifth Amendment, to

18 not testify. You had made some answers previously that I did

19 want to follow up about that.

20 PROSPECTIVE JUROR NO. 546: Okay. That's another

21 one I was going to bring up, because I know that some people,

22 like me, aren't always good with words. And I can be twisted

23 around by lawyers who are better talkers than me and twist

24 what I said into what I didn't want to say. So I understand

25 he shouldn't have to talk --

1 MR. RUGGEROLI: Okay.

2 PROSPECTIVE JUROR NO. 546: -- because some of us

3 aren't good talkers.

4 MR. RUGGEROLI: Okay. Thank you, sir. That really

5 is what I had for you, and I appreciate it.

6 PROSPECTIVE JUROR NO. 546: Okay.

7 MR. RUGGEROLI: I'm sure you have more. If you're a

8 juror, perhaps you will ask some questions, but I'm going to

9 ask you if you could pass the microphone off. Thank you, sir.

10 Ms. Bell?

11 PROSPECTIVE JUROR NO. 554: 554.

12 MR. RUGGEROLI: Good afternoon. I want to just

13 follow up, because I know you brought up a couple times, and I

14 may have missed it. You did have some concerns about the --

15 is it the 21st?

16 PROSPECTIVE JUROR NO. 554: Yes.

17 MR. RUGGEROLI: And your --

18 PROSPECTIVE JUROR NO. 554: Friday.

19 MR. RUGGEROLI: Okay. If we get down there,

20 Wednesday, Thursday, do you think that that's going to be a

21 distraction that you stop paying attention? I would guess

22 your grand -- is it your granddaughter or grandson?

23 PROSPECTIVE JUROR NO. 554: Yes, my granddaughter.

24 MR. RUGGEROLI: Okay. This is important, I can

25 tell. You agree that this case is very, very important as

1 well?

2 PROSPECTIVE JUROR NO. 554: Right.

3 MR. RUGGEROLI: Is this something that would be a
4 distraction to where you might not be fulfilling your job as a
5 good juror though?

6 PROSPECTIVE JUROR NO. 554: Right, it would.

7 MR. RUGGEROLI: It would?

8 THE COURT: Okay, but you indicated it wasn't until
9 February 21st, correct?

10 PROSPECTIVE JUROR NO. 554: Yeah, next Friday.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 554: Next Friday.

13 THE COURT: I really believe that we will be done.

14 PROSPECTIVE JUROR NO. 554: And if you're done --

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 554: -- then it would be
17 okay.

18 THE COURT: And I'm going to give you my word that
19 you won't have to miss your granddaughter's event.

20 PROSPECTIVE JUROR NO. 554: Okay.

21 THE COURT: Okay? Does that help you?

22 PROSPECTIVE JUROR NO. 554: Yes.

23 THE COURT: Okay.

24 MR. RUGGEROLI: And I appreciate that, Judge,
25 because I forgot. That's a caveat that I remember now. So

1 unless you had anything else to add, that was the one thing I
2 was going to follow up on.

3 PROSPECTIVE JUROR NO. 554: That's it.

4 MR. RUGGEROLI: Okay, thank you. If we could --
5 I'll take that.

6 PROSPECTIVE JUROR NO. 556: 556.

7 MR. RUGGEROLI: Yes, sir.

8 PROSPECTIVE JUROR NO. 556: Andrew Delgadillo.

9 MR. RUGGEROLI: Yes, sir.

10 PROSPECTIVE JUROR NO. 556: Okay.

11 MR. RUGGEROLI: A lot has been asked and answered,
12 sir. I'm going to just open it to you. Anything, background,
13 about you, your experience, that you think would have an
14 impact on your ability to serve as a juror?

15 PROSPECTIVE JUROR NO. 556: Not at all.

16 MR. RUGGEROLI: Any particular opinion about any of
17 the subjects that we discussed? Second Amendment rights,
18 Fifth Amendment?

19 PROSPECTIVE JUROR NO. 556: No.

20 MR. RUGGEROLI: No, sir?

21 PROSPECTIVE JUROR NO. 556: No, no.

22 MR. RUGGEROLI: Okay. And because, Mr. Randall, I
23 had already asked you a number of questions, I don't have any
24 follow up for you either. So, thank you.

25 Judge, I'll pass for cause.

1 THE COURT: You'll pass this panel for cause? And
2 the State passes the panel for cause?

3 MR. PESCI: Yes, Your Honor.

4 THE COURT: Okay. And Mr. Sanft, just so we're
5 clear, you're passing for cause?

6 MR. SANFT: Yes, Your Honor. Thank you.

7 THE COURT: Okay. The Clerk has prepared what will
8 be marked Court's Exhibit --

9 THE CLERK: Number 1.

10 THE COURT: -- Number 1.

11 MR. PESCI: Judge, while that's being marked, can we
12 approach?

13 THE COURT: Yeah, yeah.

14 (Bench conference)

15 MR. PESCI: So just by way of review, the State will
16 have eight, and defense has to share eight?

17 THE COURT: Right.

18 MR. PESCI: And then, whenever we get to 12 --

19 THE COURT: Right.

20 MR. PESCI: -- the next seats in order, we exercise
21 that one alternate for those remaining?

22 THE COURT: Right. Uh-huh. So as soon as -- I
23 mean, when both sides are done exercising their challenges,
24 I'll count down. That will be our 12. And so you will only
25 have those jurors at the bottom or wherever they fall to

1 exercise that final challenge.

2 MR. SANFT: So --

3 MR. PESCI: Unless --

4 THE COURT: So there should be four.

5 MR. SANFT: Right.

6 THE COURT: There would be four jurors left, and

7 each side will have one.

8 MR. SANFT: So if one of us were to waive a

9 challenge, then that would just push up the four to whoever is

10 next in line, right?

11 THE COURT: It would just --

12 MR. SANFT: Because it wouldn't just be the last

13 one?

14 THE COURT: If you waive, then it would probably be

15 five people.

16 MR. SANFT: Okay.

17 MR. PESCI: But there would be two alternate seats?

18 THE COURT: Two alternates.

19 MR. RUGGEROLI: Just one clarification. Let's say

20 number 2 gets stricken.

21 THE COURT: Um-hum.

22 MR. PESCI: Sh.

23 MR. RUGGEROLI: Who would fall into that second

24 slot?

25 MR. SANFT: The next in line.

1 THE COURT: Yeah, I don't know --
2 MR. RUGGEROLI: Is it 3 goes over?
3 THE COURT: There's -- I don't count 1 through 12 --
4 MR. RUGGEROLI: Oh, okay.
5 THE COURT: -- until both sides have exercised their
6 challenges.
7 MR. RUGGEROLI: Okay.
8 THE COURT: So you'll be able to tell. Just go down
9 the list --
10 MR. RUGGEROLI: And then, they fill in?
11 THE COURT: -- and you'll be able to tell who's on
12 the panel.
13 MR. RUGGEROLI: Okay.
14 MR. SANFT: Right.
15 MR. PESCI: Thank you, Your Honor.
16 (End of bench conference)
17 THE COURT: The defense can exercise their first.
18 (Pause in the proceedings)
19 THE COURT: State may exercise their second.
20 MR. PESCI: Thank you, Your Honor.
21 (Pause in the proceedings)
22 THE COURT: Defense may exercise their second.
23 MR. SANFT: Your Honor, may we approach?
24 THE COURT: You may.
25 (Bench conference)

1 MR. SANFT: Do you want to entertain a Batson
2 challenge now, or do we do that at some other time?

3 THE COURT: Well, if you're going to make a Batson
4 challenge, I'll excuse the jurors and you can make it.

5 MR. SANFT: Okay.

6 THE COURT: Okay.

7 (End of bench conference)

8 THE COURT: Okay. At this time, ladies and
9 gentlemen, we're going to take a recess.

10 During this recess, you're admonished not to talk or
11 converse amongst yourselves or with anyone else on any subject
12 connected with this trial, or read, watch, or listen to any
13 report of or commentary on the trial, or any person connected
14 with this trial, by any medium of information, including,
15 without limitation, newspapers, television, the internet, or
16 radio, or form or express any opinion on any subject connected
17 with this trial until the case is finally submitted to you.

18 We'll be in recess. Officer Hawkes will let you
19 know when we're ready. Thank you.

20 THE MARSHAL: Thank you. All rise for the exiting
21 jury, please. Jurors.

22 (Outside the presence of the prospective jurors)

23 THE COURT: Okay. The record will reflect that the
24 hearing is taking place outside the presence of the panel.
25 Mr. Sanft, go ahead.

1 MR. SANFT: Your Honor, we had asked the Court to
2 consider the possibility at this particular point of a
3 challenge under Batson, specifically as to the State's number
4 2, their second peremptory challenge, which I believe
5 identified and struck Juror number -- Badge number 468, Alexis
6 Newell.

7 Just for the record, Ms. Newell is an African-
8 American female who is on the panel, among the individuals
9 that we would be considering with regards to potentially being
10 on this jury. The State struck this particular person. I
11 don't recall during the time that she was canvassed, either by
12 the State, by the Court, or by defense, as to her being not
13 fit to be on a jury. There was nothing that would indicate to
14 me that she would be an individual that would not be
15 appropriate to be on this jury.

16 The problem, I think, with regards to the Batson in
17 this case is that I don't know if we necessarily have a --
18 what you would call a pattern, but what we do have in this
19 case is one individual black juror on this jury that's being
20 struck for a reason, at this particular point, is -- I don't
21 know. I don't know what the State would offer at this point.
22 I just don't see a glaring reason.

23 She never said she would not be fair and impartial;
24 there is no issues with regards to her school. Outside of the
25 fact that she's black, I don't know why she was being struck

1 at this particular point, and that's the reason why we raised
2 the Batson challenge.

3 THE COURT: Okay, because my concern is, it can't
4 just be, "The State used a challenge to strike a minority
5 group." It has to be more than that.

6 MR. SANFT: Well, but that's what I'm saying. I
7 don't --

8 THE COURT: I have to be able to make an inference
9 that the only reason they struck that juror was for a
10 discriminatory purpose.

11 MR. SANFT: Well, the discriminatory purpose for us
12 would be -- is the fact that she's black, and she's the only
13 black juror on this jury panel. I mean, I don't know what
14 else to say besides that. That's why --

15 THE COURT: Well, that's the problem with exercising
16 it when the State's -- I mean, I don't know what to say, but I
17 can just tell you, you know, the three-part test; the first
18 part, there's no pattern. Doesn't necessarily have to be a
19 pattern.

20 MR. SANFT: Right.

21 THE COURT: However, it can't just be, "Batson, the
22 State challenged an African-American." It has to be more than
23 that. There has to be sufficient facts for me to make an
24 inference that they don't have a good purpose; that they
25 struck that juror for a discriminatory purpose.

1 So I don't know if the State wants to be heard as to
2 the first step.

3 MR. PESCI: Well, I do, in the sense that there is
4 no pattern, right? As defense counsel pointed out, this is,
5 as far as in the 32, the only ostensibly African-American
6 person that we have in this group, right? So there hasn't
7 been a pattern, right? And their argument is that there's
8 some sort of a pretext, right? Because I'm going to go to the
9 next step, Judge, and I know I shouldn't --

10 THE COURT: Okay, but if you go to the next step --

11 MR. PESCI: Right, but --

12 THE COURT: -- you waive the first step.

13 MR. PESCI: But the problem is -- I don't disagree
14 with you.

15 THE COURT: Okay.

16 MR. PESCI: I agree with you 100 percent, Judge.
17 But I've been in front of the Supreme Court when I've stood on
18 the, "they didn't even make the pattern, they didn't even show
19 this," and they don't -- well, I won't say it. They want to
20 go to the next step. They just want to go to the next step.

21 So I'm not conceding the first step, but I'm going
22 to put on the record the fact that this is the only human
23 being in this room who's a potential juror who says -- Mr.
24 Sanft talked about school. She wants to go be a criminal
25 defense attorney. I'm never picking a criminal defense

1 attorney, no matter what color, no matter what ethnicity, no
2 matter what sex, no matter what gender, on my jury. Never,
3 ever having someone who aspires to be a criminal defense
4 attorney.

5 And I dare say, if my son who wanted to go to law
6 school -- which he doesn't -- and wanted to be a DA -- which
7 he doesn't -- was seated in this panel, there's no way on
8 God's green earth a defense attorney would sit him when he
9 says he wants to go to law school; not just go to law school,
10 but be a District Attorney. That's my race-neutral. There is
11 no pretext in any way, shape, or form.

12 THE COURT: Okay. I don't know if you want to
13 respond. I know, although the State did state their
14 race-neutral reason, I don't believe that the defense has met
15 the first prong --

16 MR. SANFT: I think the issue though --

17 THE COURT: -- that there's an inference that they
18 utilized that challenge for a discriminatory purpose.

19 MR. SANFT: Well, I mean, just to be fair to the
20 State, there's been multiple times in my career picking juries
21 where there's an individual that's up there who's a police
22 officer, or an FBI agent I had once. I mean, it's -- just
23 because an individual says, "I want to become a criminal
24 defense attorney" doesn't necessarily make it to the point
25 where you can say that she would not be fair and impartial to

1 the State. My question would have been --

2 THE COURT: But that's not the standard.

3 MR. SANFT: Well, but here's the issue though. I
4 mean, I think if the State wanted to delve more into that
5 situation and flesh it out, and say, "Why do you want to
6 become a criminal defense attorney?" "Well, because I believe
7 that, you know, people get unfairly treated, people in my
8 community get fairly" -- whatever it is, then I think at this
9 point I would have more of a reason to not say anything and
10 sit back down.

11 But the problem I'm having is, just because she
12 articulates that she's a criminal justice major and she wants
13 to become a criminal defense attorney in and of itself is not
14 necessarily saying she cannot be a fair and impartial juror.
15 Now, once again, my problem is --

16 THE COURT: But they don't have to -- they just have
17 to state a race-neutral basis. I mean, we're done with
18 challenges for cause. We're on peremptory challenges.

19 MR. SANFT: Well, yes, I understand that, Your
20 Honor. I just think that -- going back again to the pattern,
21 the reason why the pattern and -- you know, let's get back to
22 that issue for a second.

23 We had a long hearing this morning on the issue of
24 whether or not we had a -- you know, a representative, you
25 know, representation of the community up on this jury with

1 regards to potential black jurors. Now we have the only
2 person that was a black juror on this jury, and that person's
3 being struck because of the fact that the State says, well,
4 she wants to become a criminal defense attorney, but there was
5 no effort to regards to fleshing out that issue.

6 If they really believed that that would have been an
7 issue that made her not impartial, not fair to both sides in
8 this case, I think that should have been fleshed out, but we
9 didn't do that. And as a result, what happens now is that we
10 presume that she would be, you know, not fair to the State of
11 Nevada.

12 That's the reason why we had objected. That's the
13 reason why we had made this challenge. And we understand the
14 Court's position with regards to the fact that, you know,
15 yeah, I mean, the State can articulate that as a reason and
16 strike that person.

17 I just look at it and I think in my mind, like, I
18 don't know if that's enough. I don't know if that's enough to
19 say, hey, you know what, we're going to just excuse the image
20 of this whole thing by striking the only black juror off of
21 this jury, when you have two individuals here who are black,
22 and this is the whole reason why we even did this hearing in
23 the beginning of today's proceedings with regards to
24 representation. I just -- I just find that unfair. And as a
25 result of that, that's the reason why I had raised a Batson

1 challenge, so.

2 THE COURT: Okay. Anything else?

3 MR. PESCI: Judge, it doesn't matter if she were a
4 Caucasian female who said she wanted to go to law school to be
5 a criminal defense attorney, I'm never keeping her. And I
6 don't need to ask her the reasons why she wants to be the
7 person who would be in opposition to me in a courtroom.
8 That's it. She wants to take the job that's in opposition to
9 me in the courtroom. I'm not comfortable with someone, no
10 matter what race they're from, in that position, and that's
11 why she's been kicked by the State.

12 THE COURT: Okay. I'm --

13 MR. BROOKS: Judge, can I add just one thing that
14 wouldn't have been on the record?

15 THE COURT: Of course.

16 MR. BROOKS: Do you remember yesterday when we
17 ended? We ended session, and at this point, we didn't know
18 yet that she wanted to be a defense attorney. And remember, I
19 ran up to you as you were getting off the bench and said, can
20 we go get Ms. Newell so you can write her a letter to excuse
21 her from her test?

22 So those are two different -- I mean, I was the one
23 who was trying to get her so she could come back today. Do
24 you remember that? At around --

25 THE COURT: Yeah, I do.

1 MR. BROOKS: So, I mean, it's a little -- it's
2 completely different when yesterday I'm trying to make sure
3 she's allowed to come back, and then today we learned
4 something that's a completely different new fact.

5 MR. RUGGEROLI: Thank you, Judge.

6 THE COURT: I should have given you an --

7 MR. RUGGEROLI: Oh, no.

8 THE COURT: -- opportunity to join in.

9 MR. RUGGEROLI: Mr. Sanft expressed all of my
10 arguments. I just wanted to note that we did join in that
11 motion.

12 THE COURT: Okay. At this time, I'm going to deny
13 the challenge and make a determination that there wasn't a
14 showing made as to the first step of the analysis.

15 You know what? Do you mind doing your challenges
16 with them out there?

17 MR. SANFT: No.

18 THE COURT: Okay.

19 MR. SANFT: We could do that.

20 MR. RUGGEROLI: We don't object.

21 THE COURT: Sometimes lawyers want to look at the
22 people, but, I mean --

23 MR. SANFT: No.

24 THE COURT: -- I guess you've been looking at them
25 for two days. Oh, wait, I don't know if I -- let's see.

1 THE MARSHAL: Well, defense hadn't gone yet.
2 THE COURT: Okay, defense hasn't done their second?
3 THE MARSHAL: No, ma'am.
4 (Pause in the proceedings)
5 THE COURT: You know what, if it would be easier so
6 you can see the jurors -- is that a problem?
7 MR. RUGGEROLI: It's not.
8 THE COURT: Okay.
9 (Pause in the proceedings)
10 THE COURT: State may exercise their third.
11 MR. PESCI: Thank you, Your Honor.
12 (Pause in the proceedings)
13 THE COURT: State may exercise their fourth.
14 MR. PESCI: Thank you, Your Honor.
15 (Pause in the proceedings)
16 THE COURT: Defense may exercise their fourth.
17 (Pause in the proceedings)
18 THE COURT: Okay, the State may exercise their
19 fifth.
20 MR. PESCI: Thank you, Your Honor.
21 (Pause in the proceedings)
22 THE COURT: The State may exercise their sixth
23 peremptory challenge.
24 MR. PESCI: Thank you.
25 (Pause in the proceedings)

1 THE COURT: Defense may exercise their fifth -- I'm
2 sorry, sixth.

3 (Pause in the proceedings)

4 THE COURT: Thank you. Okay. Okay, the State may
5 exercise their seventh.

6 MR. PESCI: Thank you, Your Honor.

7 (Pause in the proceedings)

8 THE COURT: Defense may exercise their seventh.

9 (Pause in the proceedings)

10 THE COURT: The State may exercise their eighth
11 peremptory challenge.

12 MR. PESCI: Thank you, Your Honor.

13 (Pause in the proceedings)

14 THE COURT: All right. At this time, the State and
15 the defense can exercise your final peremptory challenge as to
16 29 through 32 only.

17 (Pause in the proceedings)

18 THE COURT: Thank you. Just a minute, let me just
19 go through the jury list with the attorneys.

20 THE MARSHAL: Yes, ma'am.

21 THE COURT: Okay. Juror number 1 will be Vito
22 Casucci. Number 2, Sharon Morrison. Number 3, Flores-Virgen.
23 Number 4, Suzanne Quinn. 5, Camille Estrella. 6, Rodriguez.
24 7, Salazar. 8, Cook. Deperio, 9. Castro, 10. Segura, 11.
25 Moreno, 12. And our number 13, our first alternate, Roberta

1 Bell. And number 14, our second alternate, Colin Randall.
2 Any objection by the State?
3 MR. PESCI: No, Your Honor.
4 THE COURT: Mr. Sanft, any objection?
5 MR. SANFT: No, Your Honor. Thank you.
6 THE COURT: Mr. Ruggeroli, any objection?
7 MR. RUGGEROLI: No, Judge.
8 THE COURT: Okay. If you want to bring them in,
9 Haly can start calling them, so they can just sit out in the
10 gallery.
11 THE MARSHAL: All rise for the entering jury,
12 please.
13 (Within the presence of the prospective jurors)
14 THE MARSHAL: And we'll just fill in both sides like
15 I told you, and listen for your name to be called.
16 THE COURT: Vito Casucci, you're Juror number --
17 you're Juror number 1.
18 THE CLERK: Juror number 2, Sharon Morrison.
19 THE COURT: Sharon Morrison? I don't think she's
20 here yet. Sharon Morrison? Sharon Morrison?
21 MR. SANFT: She's coming in, Your Honor.
22 THE COURT: Okay.
23 THE MARSHAL: Fill in both sides, folks.
24 THE COURT: Sharon Morrison, you are Juror number 2.
25 THE CLERK: Juror number 3 is Aria Flores-Virgen.

1 Juror number 4, Suzanne Quinn. Juror number 5, Camille
2 Estrella. Juror 6, Danilo Rodriguez. Juror 7, Jonathan
3 Salazar. Juror number 8, Lisa Cook.

4 THE COURT: Ms. Cook?

5 THE CLERK: Juror number 9, Markdelan Deperio.
6 Juror number 10, Caesar Castro. Juror number 11, Angela
7 Segura. Juror number 12, Maria Moreno. Juror number 13,
8 Roberta Bell. Juror number 14, Colin Randall.

9 THE COURT: Okay. At this time ladies and
10 gentlemen, we do have our impaneled jury. I want to thank you
11 very much for your willingness to be here, especially over
12 these last two days. Thank you very much, and you are
13 discharged as jurors.

14 THE MARSHAL: Thank you. On your way out the door,
15 folks, there's a cardboard box right there. You can deposit
16 those clear plastic badges in that box. Thank you.

17 THE COURT: Okay. Does the State stipulate to the
18 presence of the jury panel as now impaneled?

19 MR. PESCI: Yes, Your Honor.

20 THE COURT: Mr. Sanft?

21 MR. SANFT: Yes, Your Honor. Thank you.

22 THE COURT: Okay. Mr. Ruggeroli?

23 MR. RUGGEROLI: Yes, Your Honor.

24 THE COURT: Okay. Thank you very much, ladies and
25 gentlemen, for your willingness to be here and your

1 willingness to serve. I know it has been a long day, so I'm
2 just going to give you a few instructions, and then we will
3 come back tomorrow morning at 10:30.

4 Now that you are jurors -- Officer, did you give
5 them their badges yet?

6 THE MARSHAL: Yes, ma'am.

7 THE COURT: Okay. Officer Hawkes is giving you blue
8 -- oh, I didn't see the blue badges. You can take those white
9 badges off and just put the blue badges on. I just ask that
10 you wear those badges at all times when you are in the
11 courthouse so that everyone knows that you are jurors and they
12 know not to speak to you about this case. That just
13 identifies you as a juror, and I think it's helpful when you
14 go out. You can take it off when you're walking in and out,
15 but as long as you're in the courthouse, please make sure you
16 have those badges on.

17 When you come back tomorrow, you can come straight
18 up to the 14th floor. 10:30 is our start time. If you'll
19 wait outside, Officer Hawkes will greet you, and he'll bring
20 you in when we're ready.

21 I want to remind you that you're not permitted to
22 discuss the case with anyone, even your fellow jurors, until
23 you are excused to go deliberate upon your verdict. So when
24 you go home tonight, you can tell your family member, your
25 friends, your coworkers that you are a juror in a criminal

1 case, but you cannot tell them anything else about this case.

2 So at this time, during this recess, you're
3 admonished not to talk or converse amongst yourselves or with
4 anyone else on any subject connected with this trial, or read,
5 watch, or listen to any report of or commentary on the trial,
6 or any person connected with this trial, by any medium of
7 information, including, without limitation, newspapers,
8 television, the internet, or radio, or form or express any
9 opinion on any subject connected with this trial until the
10 case is submitted to you.

11 You're further admonished you may not communicate
12 with anyone, including your fellow jurors, on your cell phone,
13 through e-mail, Blackberry, iPhone, text messaging, through
14 Twitter, or any blog or website, through any internet chat
15 room, or by way of any other social networking website,
16 including Facebook, Myspace, Linked In, and YouTube.

17 Again, thank you very much for your willingness to
18 serve, and we will see you tomorrow morning at 10:30.

19 THE MARSHAL: Thank you. All rise for the exiting
20 jury, please. Jurors.

21 (Outside the presence of the jurors)

22 THE COURT: Anything outside the presence?

23 MR. PESCI: Yes, Judge.

24 THE COURT: Okay.

25 MR. PESCI: Tomorrow, with the openings -- sorry,

1 the door wasn't all the way closed. Tomorrow, with the
2 openings, the State's going to be introducing some evidence.
3 We have marked all of the evidence. It's been provided -- or
4 the defense has been able to see it.

5 There's one piece of evidence in particular that
6 hasn't been marked yet, but we're going to bring it in
7 tomorrow to have it marked. But we showed it to the defense,
8 and we wanted to make a record before we started.

9 THE COURT: Okay.

10 MR. PESCI: And I'm trying to log on, and for
11 whatever reason, I can't. But there is -- in one of the
12 phones, a forensic analysis of the phone produces a Facebook
13 posting via Messenger on Facebook, and it's coming from
14 Raekwon Robertson's account, going to DeMario -- I'm sorry,
15 DeShawn Robinson's account.

16 And there is a commentary in there about hitting a
17 house, and we want to show it to you, which is why I'm trying
18 to get on here. I apologize. We intend to use that in our
19 case-in-chief, and we wanted to bring that to the attention of
20 defense now, before we're in the midst of doing the opening.

21 THE COURT: And it's from Mr. Robertson to?

22 MR. PESCI: Raekwon Robertson's Facebook account,
23 going to DeShawn Robinson, who will be the testifying
24 co-defendant.

25 THE COURT: And it says?

1 MR. PESCI: Yeah.

2 THE COURT: Did you give us the -- okay, it looks
3 like you're looking for it.

4 MR. PESCI: Well, I'm just trying to connect so
5 you'll be able to see it, Your Honor.

6 THE COURT: Okay.

7 MR. PESCI: So I apologize that I haven't gotten
8 that done. I was on the wrong -- okay, I think I'm attached
9 now. So you can see here, Your Honor --

10 THE COURT: Okay.

11 MR. PESCI: -- Ray Logan, which is a screen name
12 associated with Raekwon Robertson.

13 THE COURT: Okay.

14 MR. PESCI: It's --

15 THE COURT: Okay.

16 MR. PESCI: -- Tuesday at 11:40 A.M. Our event
17 happens Wednesday at 12:10 A.M., so it's just within a 12-hour
18 time period. It's saying, "Ask DJ" -- DJ, as an offer of
19 proof, is the nickname for DeMario Lofton-Robinson, who is
20 currently in competency court -- "if he trying hit a house
21 tonight. Me, you," this is DeShawn. Sace -- there will be,
22 as an offer of proof, information from the detectives that
23 Sace is a nickname or a street name for the co-defendant, Mr.
24 Wheeler -- "and him." So, "Me, you, Sace, and him. Sace
25 already said yeah."

1 So our intent is to introduce this information
2 because it's talking about "trying to hit a house tonight."
3 The co-defendant's going to testify that "hit a house" means
4 that they were going to go into the house and steal. And so
5 that's, from our perspective, information first and foremost
6 that would be kind of a *res gestae*, because it's what they're
7 doing, what they're out there doing, and that the victim was
8 caught, in essence, in the middle of the efforts to hit his
9 house.

10 And it would go to intent as far as why they were
11 there. So, separate and distinct from *res gestae*, we think
12 it's evidence also of their intent. And so we don't feel that
13 this falls under other bad acts, and even if somehow it was
14 perceived that way, we believe that it would be an exception
15 for what their intent and motive was when they were there,
16 when they ran into the victim.

17 MR. SANFT: Your Honor, we have received that item
18 through the discovery. In speaking with my client though, at
19 this particular point, we're going to object to it being
20 admitted.

21 Two things. First of all, I think that the basis as
22 to how it's going to come in would be potentially through the
23 testimony of the cooperating witness in this case. I'm not
24 quite clear if they would be able to get it in through a
25 detective. I think at this particular point, if we were to

1 allow this to come in at opening, and then, all the sudden,
2 during the course of trial, it doesn't come in, it doesn't get
3 admitted into evidence for some reason, I think we would have
4 a problem at that particular point of it being published to
5 the jury in opening.

6 And as a result, just out of an abundance of
7 caution, until such time as they've laid a proper foundation
8 and with regards to the admissibility of this particular
9 document through, once again, the proper witness or the
10 detective, we would object to it being admitted at this point.
11 I think they can talk about it, but I think showing the actual
12 picture of it up on the screen I think would be highly
13 prejudicial.

14 THE COURT: Okay. Does the State have a good faith
15 belief that you will be able to get this piece of evidence in
16 through your witnesses?

17 MR. PESCI: Yes. And the basis would be this,
18 Judge. There was a search warrant --

19 THE COURT: Okay.

20 MR. PESCI: -- executed on all these phones.
21 Pursuant to a legally authorized search warrant, the -- at
22 that time, the CFL detectives downloaded the information from
23 this phone, and the phone came back to information, the
24 detectives could testify, separate and distinct from DeShawn,
25 of being associated with these particular defendants, and this

1 defendant in particular. You'll hear about contacts in the
2 different phones associated with this. This particular
3 version, you can't see very well, but there's a photo -- where
4 is the other photo?

5 MR. BROOKS: It's --

6 MR. PESCI: The photo of the facial picture
7 associated with the person who's texting you'll see is
8 actually a picture of the defendant, Raekwon Robertson.

9 Additionally, Judge, we have a burden to provide
10 independent corroboration of what it is that the co-defendant
11 testifies to. So it's one thing for us to bring DeShawn in
12 and say, this is what the plan was. It's a whole other thing
13 when we bring in physical evidence to corroborate that
14 witness. And that's why we're bringing it in, so that the
15 witness himself, as well as the detectives, as well as the
16 detective who did the forensic analysis of the phones.

17 THE COURT: Okay. Mr. Ruggeroli?

18 MR. RUGGEROLI: Thank you, Judge. And I just needed
19 to clarify. I'm familiar with this; we were provided it. My
20 understanding is that the particular message is from Raekwon
21 Robertson; is that correct?

22 MR. PESCI: Yes.

23 MR. RUGGEROLI: And it's to DJ?

24 THE COURT: Mr. Wheeler.

25 MR. PESCI: No, it's to DeShawn Robinson --

1 MR. RUGGEROLI: Okay.

2 MR. PESCI: -- referencing DJ, the other
3 co-defendant. So it's -- sorry, go ahead.

4 MR. RUGGEROLI: Okay, thank you. And these are
5 important, and I wanted to clarify that, because you'll recall
6 that I filed a Motion to Sever co-defendants. One of the
7 reasons for that was this particular statement.

8 And so my first objection is that it's hearsay, and
9 it's hearsay within hearsay. The damage to Mr. Wheeler is
10 that Ray is making a statement that's attributing something to
11 Mr. Wheeler, who's claimed to be Sace, that I have no ability
12 to cross-examine because it's coming from Mr. Robertson. I
13 don't expect him to testify. And so, one, I believe it is
14 hearsay. I also object on the Confrontation Clause grounds.

15 I would also point out that, at this point of the
16 conversation, I think there's an argument that DJ is not
17 actually a co-conspirator at that point.

18 Additionally, I don't think that this establishes
19 that Mr. Wheeler is part of a conspiracy at the point that
20 that statement is sent. So these statements were not made in
21 the course of an alleged conspiracy, they predate the
22 formation of that, and they are also not made in furtherance
23 of the conspiracy.

24 And so I took a look at this. I believe that one of
25 the cases on point -- and I don't know if we need to cite

1 this, but I will, because I had a couple. But it's -- Court's
2 indulgence.

3 MR. PESCI: While he's looking for that, Judge --

4 MR. RUGGEROLI: Thank you.

5 MR. PESCI: -- I'm going to point out to you State's
6 149, proposed exhibit, which is in fact a blow up of that very
7 circle that you see in the Facebook page where you can clearly
8 see the defendant, Raekwon Robertson. While he's looking for
9 that -- and James, I'm sorry if I'm interrupting you.

10 MR. RUGGEROLI: Yeah, go -- please.

11 MR. PESCI: Okay. So there is not a Confrontation
12 Clause for a statement among co-conspirators. This is in
13 course and furtherance of the conspiracy. It's the very act
14 of the roll call for the conspiracy. Who's in, what's the
15 plan. It tells the parties, it tells the plan. We tell
16 jurors all the time that it's not necessary for a written
17 agreement. We've got one in print. That's the evidence.

18 There is an ability to cross-examine the actual
19 witness who's going to be here. DeShawn is going to be here
20 to be cross-examined, and you don't have a right to
21 cross-examine a statement that's made in the course and
22 furtherance of the conspiracy.

23 Bruton is when you're talking about a defendant in
24 custody talking to a cop and says X, and it's introduced
25 against the co-defendant. That's not what we have here. This

1 is before they've been arrested. This is the conspiracy
2 hatching, formulating, progressing, and explaining what the
3 conspiracy is.

4 THE COURT: Are you done?

5 MR. PESCI: Yeah, sorry.

6 THE COURT: Okay.

7 MR. PESCI: Sorry.

8 MR. RUGGEROLI: Thank you, Judge.

9 Judge, that's why I distinguished the timing of
10 this, because one of our arguments is that this would be a
11 precursor to the conspiracy. I know the State disagrees.
12 They're saying that that statement binds everybody in the
13 conspiracy, and I would say it does not. At best, it's a
14 statement from one individual that's seeking a conspiracy,
15 that's making representations to DeShawn, that binds a person
16 that there's no other evidence of, and it's -- it doesn't
17 establish the conspiracy at that moment.

18 I can't cross-examine because he's making a
19 statement that says "Sace is in." Well, that presumes that
20 that's true. But it's -- this would predate the actual
21 formation of the conspiracy. And so I would object that it
22 does not -- that statement does not establish the conspiracy.
23 It predates it; it hasn't formed yet. I don't think that
24 anything is stated immediately thereafter where it's -- is
25 there a statement from DeShawn in response to that?

1 MR. PESCI: There is. It's in blue.
2 THE COURT: It's still up on the screen.
3 MR. PESCI: Oh, I -- our screen is not on, Judge.
4 THE COURT: Oh.
5 MR. PESCI: It's in blue.
6 THE MARSHAL: Oh, I'm sorry. Let me turn it on for
7 you real quick.
8 THE COURT: Sorry about that.
9 THE MARSHAL: I thought we were done and I shut them
10 off.
11 MR. RUGGEROLI: Okay. You could see that there's a
12 time lapse, and that the statement at issue -- that's not the
13 statement.
14 MR. PESCI: Well, you asked if there was a response.
15 That's the response --
16 MR. RUGGEROLI: Okay.
17 MR. PESCI: -- in blue.
18 MR. RUGGEROLI: So if -- yeah, all right.
19 THE COURT: 11:40, and then 11:53 on Tuesday.
20 MR. RUGGEROLI: I would say that, like I said,
21 Judge, at that particular moment, the conspiracy has not been
22 established. It's an invitation to join a conspiracy, and
23 there's a difference. I would say that the conspiracy that
24 happens later, it binds Mr. Robertson and DeShawn. And if
25 there was a conspiracy that somehow linked Mr. Wheeler, it

1 would only come after that statement.

2 So this, "Me, you, Sace, and him. Sace already said
3 yeah," I can't cross-examine that. It presumes it to be true.
4 It creates a situation where there's no way to challenge it,
5 so we're denied the Confrontation Clause of the ability to
6 challenge that. We won't even be able to do it.

7 And I would suggest and argue that that statement is
8 not made in the course of a conspiracy because it predates the
9 formation. It's an invitation to join the conspiracy. If --
10 and when I say, "join a conspiracy," I mean a conspiracy
11 between Ray, Mr. Robertson, and DeShawn; not a conspiracy that
12 has been formed and established by Mr. Wheeler and Mr.
13 Robertson, and it's not made in the course of that conspiracy.
14 And so my two grounds are hearsay and Confrontation Clause.

15 MR. PESCI: Part of the basis was that this hadn't
16 been formed. We've charged conspiracy to commit robbery.
17 It's one of the charges. And the instruction you're going to
18 give is, "Anyone who conspires to commit robbery is guilty of
19 conspiracy to commit robbery." This is the very act of
20 conspiring to commit robbery. It is the evidence of the crime
21 itself.

22 THE COURT: Okay. I'm going to allow the State to
23 publish it during opening statements.

24 MR. PESCI: Thank you, Your Honor.

25 THE COURT: Can I give this back to the Clerk, 149?

1 MR. BROOKS: I'll put it in order.

2 THE COURT: Okay, thank you. Did you give the
3 defense your witness lineup?

4 MR. PESCI: No, because we --

5 THE COURT: Just so they can be ready.

6 MR. PESCI: We did for the ones that we had today.

7 THE COURT: Okay.

8 MR. PESCI: But honestly, I don't know what we're
9 going to get to --

10 THE COURT: Oh.

11 MR. PESCI: -- because we had to change everything.
12 So our intent was --

13 THE COURT: Okay.

14 MR. PESCI: In a perfect world, we would start
15 tomorrow with what we did -- were planning on today, which
16 would be Robert Mason, the jogger; Lucy Mendoza, his wife who
17 calls 911. I hope to get Mr. Relato, the cousin. He's got
18 some scheduling issues. Then, the first responding officer,
19 Calleja.

20 And then, from there, we also had a CSA or we did
21 have a CSA Speas who documents that scene, who's also involved
22 in another scene. Beyond that, I got to see what we still
23 have --

24 THE COURT: Okay.

25 MR. PESCI: -- because we had to change everything

1 and push everything back. And on that note, Judge, I think
2 you've seen we have an appointment for the blue jeans on
3 Friday in the afternoon. Did that come across to either of
4 you?

5 THE COURT: No.

6 MR. PESCI: Okay, all right.

7 THE COURT: Oh. Sara? Okay.

8 MR. PESCI: Did anybody see it?

9 THE COURT RECORDER: I saw it.

10 MR. PESCI: Okay. So the witness is in West
11 Virginia. It's a three-hour time frame. This is Noreen
12 Charlton.

13 THE COURT: Oh.

14 MR. PESCI: It was the subject of the motion for the
15 videotape. She told me -- she was asking if we can do it
16 after 3:00 P.M. our time because then she'll be out of
17 whatever she's doing back there.

18 THE COURT: Okay, so we're doing a witness's
19 testimony by video?

20 MR. PESCI: Video. Yes, we had a motion.

21 THE COURT: Okay.

22 MR. PESCI: It was unopposed by the defense.

23 THE COURT: Okay.

24 MR. PESCI: Because she's moved on; she's not
25 working here anymore. She was a crime scene analyst, one of

1 the many, and she's back in --

2 THE COURT: That's right.

3 MR. PESCI: -- West Virginia and New Jersey,

4 working.

5 THE COURT: And she wants to do it after 3:00

6 o'clock our time?

7 MR. PESCI: She said that would be easier, because

8 her work responsibilities there will be over because it will

9 be 6:00 o'clock her time.

10 THE COURT: I don't have a problem with that.

11 MR. SANFT: No problem, Your Honor.

12 MR. RUGGEROLI: No, Your Honor.

13 THE COURT: Okay.

14 MR. PESCI: So we'll just be juggling based on that,

15 in part.

16 THE COURT: Okay, that's fine.

17 MR. PESCI: Okay, thank you.

18 THE COURT: Anything else?

19 MR. PESCI: Not from the State.

20 THE COURT: Okay, have a good evening.

21 MR. SANFT: Thank you.

22 THE COURT: See you in the morning.

23 THE MARSHAL: Thank you, everyone.

24 * * * * *

25 (Court recessed at 5:00 P.M., until Thursday,

26 February 13, 2020, at 10:31 A.M.)

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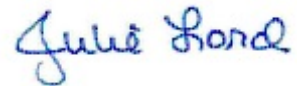
(Outside the presence of the jury panel)

DEFENSE WITNESS:

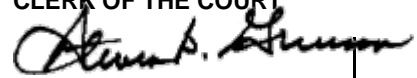
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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.



JULIE LORD, COURT TRANSCRIBER
VERBATIM DIGITAL REPORTING, LLC



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	CASE NO. C-17-328587-2
)	CASE NO. C-17-328587-3
Plaintiff,)	
)	DEPT. NO. XII
v.)	
)	
RAEKWON SETREY ROBERTSON,)	
a/k/a RAEKWON ROBERTSON,)	
and DAVONTAE AMARRI WHEELER,)	
)	
Defendants.)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 13, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
JURY TRIAL - DAY 3**

APPEARANCES:

FOR THE STATE:	GIANCARLO PESCI, ESQ. Chief Deputy District Attorney
	PARKER P. BROOKS, ESQ. Deputy District Attorney
FOR DEFENDANT ROBERTSON:	MICHAEL W. SANFT, ESQ.
FOR DEFENDANT WHEELER:	JAMES J. RUGGEROLI, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

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

2 (Case called at 10:31 A.M.)

3 (Outside the presence of the jurors)

4 THE COURT: Good morning.

5 MR. RUGGEROLI: Good morning.

6 MR. SANFT: Good morning, Your Honor.

7 THE COURT: This hearing is taking place outside the
8 presence of the jury panel. Mr. Wheeler and Mr. Robertson are
9 both present.

10 So, Mr. Ruggeroli, it's my understanding you have
11 something outside the presence?

12 MR. RUGGEROLI: Yes, Your Honor.

13 THE COURT: Does it have to be now?

14 MR. RUGGEROLI: Because of the State's opening.

15 THE COURT: Okay.

16 MR. RUGGEROLI: It's a carryover from the argument
17 from yesterday --

18 THE COURT: Sure.

19 MR. RUGGEROLI: -- if I may.

20 THE COURT: Uh-huh.

21 MR. RUGGEROLI: Judge, you'll recall that the State
22 has asked to be able to publish a copy of an email from Mr.
23 Robertson to DeShawn Robinson-Lofton, who's the juvenile
24 former co-defendant who will testify in this case. There was
25 -- and this was the subject of a big portion of my Motion to

1 Sever the defendants.

2 And so I did want to clarify something as to how
3 this may put the evidence regarding my client, who the State
4 claims is Sace. If you recall, the specifics of the portion
5 of the text at issue that is most important to the defense for
6 Mr. Wheeler is that it indicates that Mr. Robertson texted
7 DeShawn and said to the effect, "Are you in? Sace is in."

8 And so what we've got is the co-defendant in this
9 case specifically identifying Mr. Wheeler, who other evidence
10 I believe the State will use to establish that Sace is Mr.
11 Wheeler. And so he's making a direct identification I wanted
12 to bring to the Court's attention, and also ask to clarify.

13 When we had the State present their Opposition to
14 our Motion to Sever, they specifically addressed the Bruton
15 issue and said -- and I'm quoting from page 21 of their
16 Opposition: "If the State were to introduce the statement in
17 question," and that's the one we're specifically talking
18 about, "defendant is not implicated without further evidence
19 of who Sace is. The State is aware of the evidentiary
20 implications of Bruton and it's progeny. The State is aware
21 of the need to redact any statement admitted so that
22 assertions which facially incriminate co-defendants are
23 removed, and will do so at trial if necessary, thus
24 eliminating the need for a severance."

25 So what we have right now is, if they are going to

1 use it, then I think we need a ruling to prohibit them from
2 using other evidence to establish that Mr. Wheeler is Sace,
3 because they recognize that if Mr. Robertson is establishing
4 this, then we do have a Bruton issue.

5 MR. PESCI: I don't understand that, because if Mr.
6 Robinson is under --

7 THE COURT: I'm not sure I'm following the argument.

8 MR. PESCI: -- under oath and being cross-examined,
9 that's the very person. You actually have a live witness
10 who's going to say who Versace is. That's just one. There's
11 other ways of establishing that.

12 And so State's response is, in the context of a
13 Bruton allegation, which is when you have a defendant's
14 statement given to the police --

15 THE COURT: Right.

16 MR. PESCI: -- we were responding to that
17 allegation. I can tell you now, we're not introducing either
18 defendants' statement in our case-in-chief, so counsel
19 shouldn't rely on that in their opening statements if they
20 have the anticipation of that coming in from the State,
21 because we're not going to.

22 So there's no Bruton concerns there, right? We had
23 the hearing to preserve the right to use it if we change our
24 mind, but that's not our intent in our case-in-chief, so no
25 one can rely on that, and that's the Bruton situation. What

1 we have here is not Co-Defendant A telling to the police what
2 Co-Defendant B said.

3 THE COURT: Right.

4 MR. PESCI: We have, prior to anybody being
5 arrested, the actual solicitation to the crime, the
6 conspiracy. So I'm not sure, I think he has more to argue. I
7 apologize, I jumped in there.

8 MR. RUGGEROLI: No, it's not DeShawn's statement,
9 it's Ray; Mr. Robertson's statement. Mr. Robertson's
10 statement is the one that identifies Mr. Wheeler, and so --

11 THE COURT: But it's still a statement not given to
12 police. It's before -- I mean, the State's contending it's
13 before anything even happens, correct?

14 MR. RUGGEROLI: Yes, and -- but the --

15 THE COURT: Okay.

16 MR. RUGGEROLI: The Bruton issue and the concern for
17 us is -- based on the Confrontation Clause, is that, although
18 DeShawn is going to testify, the State, even in using that
19 text from Ray, the co-defendant in this case, is --

20 THE COURT: Uh-huh. You mean DeShawn?

21 MR. RUGGEROLI: No, Ray.

22 THE COURT: Oh, okay. You're talking about this --
23 okay, I'm sorry.

24 MR. RUGGEROLI: Yeah, and it does get confusing.
25 That's why --

1 THE COURT: Mr. Robertson sitting here? Okay.

2 MR. RUGGEROLI: Correct. It's Mr. Robertson's text,
3 so it's Mr. Robertson's evidence against Mr. Wheeler. It's
4 not -- it's not DeShawn that's going to come about at trial,
5 and that's why we have a situation where we have no
6 Confrontation Clause right to challenge Mr. Robertson's
7 identification and claim that there is this conspiracy. It's
8 just going to be assumed that that must be true because we've
9 got no way to challenge that because we have no Confrontation
10 Clause right.

11 We can challenge DeShawn; DeShawn didn't send the
12 text. And based on the way I'm reading their Opposition, even
13 apart from the idea that a statement was made to the police,
14 which this was not, the State --

15 THE COURT: Right.

16 MR. RUGGEROLI: -- was going to redact any
17 identification of Ray, Mr. Robertson, of Sace. So I think if
18 they want the text, they need to remove the name "Sace,"
19 because otherwise, I think they're specifically utilizing the
20 co-defendant, who cannot be cross-examined, who we have no
21 confrontation rights for, to essentially convict Mr. Wheeler
22 by establishing that there was a conspiracy before this
23 shooting even happened.

24 THE COURT: Are you done?

25 MR. RUGGEROLI: Yes.

1 THE COURT: Okay, thank you. Thank you, Mr.
2 Ruggeroni.

3 MR. PESCI: Thank you, Your Honor. So, Judge, we're
4 not having the portion of a co-defendant's statement when he
5 looks at the surveillance and says, yeah, that's my
6 co-defendant, that's my co-defendant, that's my co-defendant.
7 That's the kind of situation that we were referring to in our
8 Motion that we are not going to do. That's the kind of
9 situation that Bruton applies to.

10 The Confrontation Clause does not apply to
11 statements made in the course and the furtherance of the
12 conspiracy. And if you -- you look at Burnside v. State, 352
13 P.3d 627, it states, "A statement may be in furtherance of a
14 conspiracy even though it is susceptible of alternative
15 interpretations and it was not exclusively or even primarily
16 made to further the conspiracy, so long as there is some
17 reasonable basis for concluding that it was designed to
18 further the conspiracy."

19 There is an extremely reasonable basis to understand
20 the design, because it says verbatim, "Let's go hit a house,"
21 okay? It's -- you don't even have to debate it. It's very
22 clear on its face, and this is actions by co-defendants before
23 police become involved.

24 Additionally, separate and distinct from the actual
25 text message, there is going to be evidence that comes in from

1 cell phone data; there's going to be information that comes in
2 from a co-defendant who will be in the courtroom, subject to
3 cross-examination; there's going to be evidence of things from
4 the scene to corroborate what was happening there, independent
5 of the co-defendant, and in conjunction with that text via
6 Facebook Messenger.

7 THE COURT: I just want to make --

8 MR. RUGGEROLI: Just to put on the record, because
9 it --

10 THE COURT: Absolutely.

11 MR. RUGGEROLI: -- incorporates our argument from
12 yesterday, I'm objecting on the dual basis of not only
13 hearsay, but it really would be double-hearsay. And also,
14 that the statement, we would argue, is not made in furtherance
15 of the conspiracy, nor is it made in the course of the
16 conspiracy, because Mr. Robertson's text message predates the
17 establishment of a conspiracy. We don't -- I need to make
18 these arguments based on my --

19 THE COURT: Sure.

20 MR. RUGGEROLI: -- reading of the law, but it's --

21 THE COURT: Sure.

22 MR. RUGGEROLI: It's that we're arguing that DeShawn
23 at that time was not a co-conspirator, Mr. Wheeler at that
24 time was not a co-conspirator, the statement was not made in
25 the course of the conspiracy, and the statement was not made

1 in further of the conspiracy.

2 And also, because of the Bruton issue that I raised,
3 because they are going to be using Mr. Robertson's statement
4 to identify Sace, which will be established through other
5 evidence as being Mr. Wheeler, and that that conspiracy from
6 that written statement essentially is the State's heart of the
7 case against Mr. Wheeler.

8 We cannot cross-examine Mr. Robertson, and because
9 of that, that shouldn't have been allowed, or we should have
10 been able to sever. Or the State -- I think -- I thought that
11 they were saying that they would redact that, but I guess
12 either I didn't understand it or they have a position that is
13 different. So that's my record, Judge.

14 THE COURT: Okay. Anybody else want to say
15 anything?

16 MR. PESCI: Yes. It's on or about August 9th.
17 That's the charge -- charging document. Conspiracy to commit
18 robbery is one of the actual charges. The furtherance of that
19 conspiracy will go into Counts 2 and 3. So we're covering the
20 very act of this text, and then the actions in conjunction
21 with the text. So it's covering the very crime, because that
22 is the inception of the crime.

23 THE COURT: Okay. The objection's been noted, and
24 the ruling from yesterday will stand. Can we bring the jury
25 panel in?

1 MR. RUGGEROLI: Just one last quick issue.

2 THE COURT: Of course.

3 MR. RUGGEROLI: There's been some statements about
4 referring to street names.

5 THE COURT: Okay.

6 MR. RUGGEROLI: My request, that we use "Nicknames."
7 I think that there's a prejudicial connotation. There's no
8 allegations of any gang involvement or anything like that, but
9 I think that there is a potential prejudice if we start using
10 notions of street names. And there are a number of what I
11 would call nicknames.

12 THE COURT: Okay, what do -- oh, you mean like
13 monikers?

14 MR. RUGGEROLI: Yeah. Well, you can use "Sace," you
15 can use --

16 THE COURT: Okay.

17 MR. RUGGEROLI: -- other names that are going to be
18 used, but I just have some concern about the State or the
19 witnesses saying, "Is his street name." I think that that's
20 potentially prejudicial, because a juror could conclude that,
21 well, maybe that's a gang name and that's what we're really
22 talking about, when we're not.

23 THE COURT: Okay, so what exactly are you trying to
24 object to?

25 MR. RUGGEROLI: If -- and --

1 THE COURT: That they shouldn't -- witnesses
2 shouldn't call your client "Sace"?
3 MR. RUGGEROLI: No, that they --
4 THE COURT: Okay.
5 MR. RUGGEROLI: -- shouldn't use the term "Street
6 name." They should say, "His nickname is."
7 THE COURT: Oh, okay. You just don't want them to
8 say "Street name"?
9 MR. RUGGEROLI: Yes.
10 THE COURT: Okay, a "Nickname"? Okay.
11 MR. PESCI: Okay.
12 THE COURT: Is there any --
13 MR. PESCI: Some people don't use the language
14 "Nickname."
15 THE COURT: I know. They use the term "Moniker" or
16 "Street" --
17 MR. PESCI: No, some people say, "His name on the
18 street," "His street name."
19 THE COURT: Right.
20 MR. PESCI: I mean, we're not eliciting that, we're
21 not looking for that, but there are some people who are going
22 to say, nickname, what? So we're not intending to do that,
23 nor are we ever making an inference that there's anything
24 about gangs, nor is it a logical leap to just say, if
25 someone's saying, "Street name," that we've got into gangs, so

1 we object to that characterization.

2 We have no intent to make an argument about gangs or
3 make any sort of veiled reference to it, but I cannot promise
4 you that someone who knows somebody from their life on the
5 street is not going to say, "His street name is." We'll try
6 really hard, we'll tell people not to say that. We'll use and
7 couch the term of "Nickname."

8 THE COURT: Okay.

9 MR. RUGGEROLI: Thank you.

10 THE COURT: Let's bring them in.

11 THE MARSHAL: All rise for entering jury, please.
12 Jurors.

13 (Within the presence of the jurors at 10:45 a.m.)

14 THE COURT: And ladies and gentlemen, if you will
15 please remain standing when you come in, because the Clerk is
16 going to administer the oath of service. If you'll all please
17 raise your right hand. Thank you.

18 JURY PANEL SWORN

19 THE CLERK: You may be seated.

20 THE COURT: Thank you.

21 THE MARSHAL: Thank you, everyone. Please be
22 seated.

23 THE COURT: Before I do allow the attorneys to speak
24 to you in their opening statements, I am going to give you a
25 few instructions.

1 Ladies and gentlemen, you are admonished that no
2 juror may declare to a fellow juror any fact relating to this
3 case of his or her own knowledge, and if any juror discovers
4 during this trial or after the jury has retired that he, or
5 she, or any other juror has personal knowledge of any fact in
6 controversy in this case, he or she shall disclose such
7 situation to myself in the absence of the other jurors.

8 This means that if you learn during the course of
9 this trial that you are acquainted with the facts of this case
10 or the witnesses, and you've not previously told me this
11 relationship, you must then declare that fact to me.

12 I want to remind you that you communicate through --
13 you communicate with the Court while we're in the courtroom in
14 the presence of both sides or through Officer Hawkes.

15 What I will now say is intended to serve as an
16 introduction to the trial of this case. It is not a
17 substitute for the detailed instructions on the law which I
18 will give you at the close of the case and before you retire
19 to consider your verdict.

20 This is a criminal case commenced by the State of
21 Nevada, which I may sometimes refer to as the State, and this
22 is a criminal complaint against Mr. Wheeler and Mr. Robertson.
23 At this time, the Clerk will now read the charging document
24 and state the plea of the defendants to that document.

25 (Amended Superseding Indictment read by the Clerk)

1 THE COURT: Thank you. This case is based upon the
2 Amended Superseding Indictment which has been read to you by
3 the Clerk. You should distinctly understand that the
4 Indictment is simply a charge, and that it is not in any sense
5 evidence of the allegations it contains.

6 The defendants have entered pleas of not guilty to
7 the Indictment. The State therefore has the burden of proving
8 each of the elements as alleged in their charging document by
9 proof beyond a reasonable doubt. As the defendants sit here
10 today, they are presumed innocent. The purpose of this trial
11 is to determine whether the State of Nevada will meet their
12 burden of proof.

13 It is your primary responsibility as jurors to find
14 and determine the facts. Under our system of criminal
15 procedure, you are the sole judge of the facts. You are to
16 determine the facts from the testimony you hear and the other
17 evidence, including exhibits introduced in court. It is up to
18 you to determine the inferences which you feel may be properly
19 drawn from the evidence.

20 The parties may sometimes present objections to some
21 of the testimony or other evidence. It is the duty of a
22 lawyer to object to evidence which he or she believes may not
23 properly be offered, and you should not be prejudiced in any
24 way against a lawyer who makes objections on behalf of the
25 party he or she represents.

1 At times, I may sustain objections or direct that
2 you disregard certain testimony or exhibits. You must not
3 consider any evidence to which an objection has been sustained
4 or which I have instructed you to disregard.

5 Anything you may have seen or heard outside the
6 courtroom is not evidence and must also be disregarded.
7 Remember, statements, arguments, and opinions of counsel are
8 not evidence in the case. However, if the attorneys stipulate
9 as to the existence of a fact, you must accept the stipulation
10 as evidence and regard that fact as proved.

11 You must not speculate to be true any insinuation
12 suggested by a question asked a witness. A question is not
13 evidence and may be considered only as it supplies meaning to
14 the answer.

15 You must not be influenced in any degree by any
16 personal feeling of sympathy for or prejudice against the
17 State or the defendants. Both sides are entitled to the same
18 fair and impartial consideration.

19 In considering the weight and value of the testimony
20 of any witness, you may take into consideration the
21 appearance, attitude, and behavior of the witness, the
22 interest of the witness in the outcome of the case, if any,
23 the relation of the witness to the defendant or to the State,
24 the inclination of the witness to speak truthfully or not, and
25 the probability or improbability of the witness's statements,

1 and all of the facts and circumstances in evidence. Thus, you
2 may give the testimony of any witness just such weight and
3 value as you believe the testimony of that witness is entitled
4 to receive.

5 There are two kinds of evidence: direct and
6 circumstantial. Direct evidence is testimony by a witness
7 about what that witness personally saw, or heard, or did.
8 Circumstantial evidence is testimony or exhibits which are
9 proof of a particular fact, from which, if proven, you may
10 infer the existence of a second fact. You may consider both
11 direct and circumstantial evidence in deciding this matter.
12 The law permits you to give equal weight to both, but it is
13 for you to decide how much weight to give to any evidence.

14 Opening statements and closing arguments of the
15 attorneys are intended to help you in understanding the
16 evidence and applying the law, but they are not evidence. No
17 statement, ruling, remark, or comment which I make during the
18 course of this trial is intended to indicate my opinion as to
19 how you should decide the case or to influence you in any way
20 in your determination of the facts.

21 At times, I may even ask questions of witnesses. If
22 I do so, it is for the purpose of bringing out matters which I
23 feel should be brought out, and not in any way to indicate my
24 opinion about the facts, or to indicate the weight I feel you
25 should give to the testimony of any witness. I may also find

1 it necessary to admonish the attorneys, and if I do, you
2 should not show prejudice against a lawyer or his or her
3 client because I have found it necessary to admonish him or
4 her.

5 Until the case is submitted to you, you must not
6 discuss it with anyone, even with your fellow jurors. After
7 it is submitted to you, you must discuss it only in the jury
8 room with your fellow jurors. It is important that you keep
9 an open mind and not decide any issue in the case until the
10 entire case has been submitted to you under instructions from
11 the Court.

12 The trial will proceed in the following manner. The
13 deputy district attorney will make an opening statement, which
14 is an outline to help you in understanding what the State
15 expects to prove. Next, the defendant's attorneys may, but do
16 not have to make an opening statement. Opening statements
17 serve as an introduction to the evidence which the party
18 making the statement intends to prove.

19 The State will then present its evidence and counsel
20 for the defendants may cross-examine the witnesses. Following
21 the State's case, the defendants may present evidence and the
22 deputy district attorney may cross-exam the witnesses.
23 However, as I have said, the defendants are not obligated to
24 present any evidence.

25 After all of the evidence has been presented, I will

1 instruct you on the law. After the instructions on the law
2 have been read to you, each side will have the opportunity to
3 present oral argument. What is said in closing argument is
4 not evidence. The arguments are designed to summarize and
5 interpret the evidence. Since the State has the burden of
6 proving the defendants guilty by proof beyond a reasonable
7 doubt, the State has the right to open and close the
8 arguments. After the arguments have been completed, you will
9 then retire to deliberate upon your verdict.

10 Again, let me remind you that until this case is
11 submitted to you, do not talk to each other about it or about
12 anyone who has anything to do with it until the end of the
13 case when you go to the jury room to deliberate upon your
14 verdict. Do not talk with anyone else about this case or
15 about anyone who has anything to do with it until the trial
16 has ended and you've been discharged as jurors.

17 Anyone else includes members of your family and your
18 friends. You may tell them that you are a juror in a criminal
19 case, but don't tell them anything else about it until after
20 you've been discharged by the Court.

21 Do not let anyone talk to you about the case or
22 about anyone who has anything to do with it. If someone
23 should try to talk to you, please report it to me immediately
24 by contacting Officer Hawkes.

25 Do not read any news stories, or articles, or listen

1 to any radio or television reports about the case or about
2 anyone who has anything to do with it.

3 As jurors, you will be given the opportunity to ask
4 written questions of any of the witnesses called to testify in
5 this case. You are not encouraged to ask large numbers of
6 questions because that is the primary responsibility of the
7 attorneys. Questions may be asked, but only in the following
8 manner: after both lawyers have finished questioning the
9 witness, and only at this time, if there are additional
10 questions you would like to ask that witness, you may then
11 seek permission to ask that witness a written question.

12 Should you desire to ask a question, write your
13 question down with your juror number on a full sheet of clean
14 paper; raise your hand. All questions from jurors must be
15 factual in nature and designed to clarify information already
16 presented.

17 In addition, jurors must not place undue weight on
18 the responses to their questions. The Marshal will pick your
19 question up and he will present it to the Court. All
20 questions must be directed to the witness and not to the
21 lawyers or to the Judge. After consulting with counsel, I
22 will then determine if your question is legally proper. If I
23 determine that your question may properly be asked, I will ask
24 it. No adverse inference should be drawn if the Court does
25 not allow a particular question.

1 Both sides have the right to question a witness. So
2 the State will call their witness, they'll do direct. The
3 defendants will have an opportunity to do cross, then the
4 State has the right to do redirect. And if there's redirect,
5 the defense has the right to do recross. So both sides have a
6 couple opportunities to question each witness. When we're
7 done with the witness, I'm going to turn to the witness, I'm
8 going to thank them for being here, and I'm going to excuse
9 them from their subpoena.

10 Get my attention before I do excuse a witness. I'll
11 have the witness sit here and wait until you write your
12 question down. What I won't do is, next week, have a witness
13 come back that testified today. Once I excuse them from their
14 subpoena, I will not require them to come back to answer a
15 question of the jurors. So it's just really important you get
16 my attention or Officer Hawkes's attention before I excuse
17 that witness from their subpoena.

18 You also have juror notebooks. Those will be placed
19 on your chair every morning when you come in. In the back,
20 there are blank pages for you to take notes. When you do go
21 back to deliberate upon your verdict, you will not have a
22 transcript to consult. So, during your deliberations, it will
23 be your memory and your notes collectively that will prevail
24 during your deliberations.

25 Those notebooks are required to be in the court --

1 in the courtroom at all times until you go back to deliberate
2 upon your verdict. When you go back, I'll allow you to take
3 those notebooks back there with you, but you can't take them
4 out of the courtroom until we go back to deliberation.

5 The instructions that I gave you this morning are in
6 that notebook, as well as the procedure for asking a written
7 question, and at the end, you will be given a copy of the jury
8 instructions. I will be required to read them to you by law;
9 however, each of you will have a copy of those instructions,
10 you'll be able to follow along, and you'll be able to take
11 those written jury instructions with you when you go back to
12 deliberate upon your verdict.

13 On the inside of that folder, there's -- in the
14 pocket, there's one sheet of paper. That just gives you
15 information about the courtroom that you're in, in case, when
16 we're out of session, anyone has a need to contact my office,
17 all the information is on that sheet of paper. You can take
18 that sheet of paper out; you can take that with you when you
19 leave the courtroom.

20 At this time, I'm going to allow the State of Nevada
21 to address the panel in their opening statement.

22 STATE'S OPENING STATEMENT

23 MR. BROOKS: August 8th, 2017 was a Tuesday. August
24 9th, 2017 was a Wednesday. Right around midnight, when it
25 shifted from Tuesday to Wednesday, Robert Mason decided to go

1 for a jog. Now, this wasn't really all that unusual for him.
2 He worked the swing shift, roughly 3:00 to 11:00 P.M., so when
3 he got home at night, typically, he would go on a jog. This
4 was August, so it's not like it was really cold around
5 midnight, and he got dressed in his athletic clothes, he left
6 his house.

7 He'd lived in the neighborhood at that point in time
8 for quite a while, and so he went on his typical route. He
9 started heading south down Zachary Street, and then made a
10 left -- made a left and started heading east on Dewey. And as
11 he started heading east on Dewey and made that corner,
12 something struck his eye, something a little unusual.

13 So you see where that circle is on the -- on the
14 picture right there? Right around there, he saw four men; a
15 group of two, and a group of two. And these four guys were
16 all dressed in black clothing, and they were wearing hoodies,
17 and their hoods were up. So he was like, that's a little
18 suspicious, that's odd. And as he makes eye contact with them
19 and they make eye contact with him, they kind of huddle up
20 together, and all four of them get together, and kind of go
21 closer to the wall.

22 And he at that point in time was driving down the
23 side -- running down the sidewalk, and as he's running down
24 the sidewalk, he just veers off into the street. He's in the
25 street, keeps going, and passes them. Makes note of it,

1 thinks it's a little unusual, and then makes a left.

2 Now, as he makes a left, he starts heading north on
3 Lindell. And see where that white arrow is? Right around
4 about there, there's a car. That's unusual for him, because
5 he'll tell you, I've lived in this area for a long time, and
6 no one parks there. No one parks on Lindell; it's just
7 there's too much traffic, you wouldn't do that. And it's a
8 white, older model car, and he's going to refer to it as
9 something similar to like a Crown Victoria.

10 And he's like, I've never seen this in the area
11 before. That's unusual. I've lived in the neighborhood for a
12 while and never seen this car. So he looks at the front, sees
13 the license plate. Kind of looks inside, sees a lot of trash
14 and clutter. And just kind of looks at the back, sees the
15 license plate on the back, makes a mental note, and keeps
16 jogging.

17 So he gets about 20, 30 seconds down on the jog and
18 says, you know what, I'm going to enter that license plate
19 into my phone. And I realize I just left my wife at home, and
20 I think I left the doors unlocked. Feeling a little uneasy,
21 so I'm going to call her.

22 So he calls his wife and he says, hey, honey, can
23 you lock the doors? And I -- I just saw something a little
24 odd; you might want to call 311. I saw four guys, black male
25 adults. They're kind of young, in their 20s, and they're all

1 just wearing dark clothing. She's like, what? And they're in
2 hooded sweatshirts with their hoodies up, and it's August,
3 almost 100 degrees. And she -- oh, okay, I will call 311.
4 I'll just -- I'll let them know. So she does.

5 Now, this arrow right here, right around about there
6 is where the mailbox is located for these two homes, one of
7 which is that 5536 West Dewey. That will come into play
8 later. That's why that arrow's there.

9 But Robert Mason continues on his jog. Now, what he
10 didn't realize is who those four men were. Around 12:10 A.M.,
11 so that's Tuesday night into -- that's Wednesday morning at
12 that point, the four men that he saw were DeMario
13 Lofton-Robinson; sometimes during the trial, you may hear him
14 referred to as DJ. DeShawn Robinson, who's DJ's younger
15 brother. At that point in time, he was 14-years-old. Raekwon
16 Robertson, one of the defendants. And Davontae Wheeler, one
17 of the defendants. You may hear Raekwon Robertson sometimes
18 referred to as Ray or Ray Logan, and you may hear Davontae
19 Wheeler sometimes referred to as Sace.

20 So why were they there? Earlier that day, at around
21 11:00 A.M. on that Tuesday, defendant Raekwon Robertson's cell
22 phone sends a message to DeShawn Robinson's phone. So
23 DeShawn's the younger brother of DJ. And it's a text message
24 via Facebook Messenger, and he says, "Ask DJ if he trying to
25 hit a house tonight. Me, you, Sace, and him. Sace -- Sace

1 already said yeah."

2 Now, Robert Mason continued on his jog. What he
3 didn't realize is what happened after he passed those young
4 men. So after he finishes his three-mile loop, he kind of
5 loops back around, headed back home, and sees a perimeter set
6 up. He sees cops around, and the cops are kind of walking
7 around, trying to get the scene, and he's yell -- kind of
8 flagging one down.

9 So one of the officers walks over; who is this guy?
10 And he says, hey, my wife's the one who called 311; I was the
11 one who saw something here. And the officer's like, wait,
12 what did you say? And Robert Mason says, I got the license
13 plate.

14 (Video is played)

15 (Stopped playing of video)

16 MR. BROOKS: So at that point in time, that's kind
17 of the first investigative lead. He gives it to the officer;
18 the officer gives it to the detective. Robert Mason at this
19 point in time still has no idea why -- what that license plate
20 means; why it's relevant.

21 What he doesn't know is that when he passed those
22 four men, someone else had come home. Someone else lived at
23 5536 West Dewey. That's 24-year-old Gabriel Valenzuela. You
24 may sometimes hear his family refer to him as Kevin, but
25 Gabriel Valenzuela was a nursing student at CSN.

1 He came home, and it was his job to get the family's
2 mail. You're going to learn that there was one mail key to
3 that mailbox that I told you, that -- that arrow earlier. So
4 at night, he would get the mail, bring it home, start looking
5 at it, sift through it, decide what's junk mail, what needs to
6 go in the house. And on that night, that's what he did.

7 He was heading into his home, but he didn't make it
8 into his home, because right there on the corner of this RV
9 ramp where he went to park -- that's his car -- where those
10 four men were huddled, right there, with those papers on the
11 ground, which is mail you'll see photos of, he was asked for
12 his stuff. Those four guys wanted his stuff, wanted his
13 property, and that didn't go well for Gabriel Valenzuela.

14 A smaller-caliber bullet was shot into his abdomen
15 on the left side. Now, that doesn't exit, so there's no exit
16 wound to show you. As you can see from that x-ray that I've
17 circled right there, that is the bullet recovered during the
18 autopsy.

19 Now, additionally, see this stitching right here?
20 That's just medical intervention by the hospital trying to
21 save his life. That's not anything that happened during this
22 incident. I just want to point that out. The circle over the
23 smaller-caliber bullet entering the abdomen is the focus of
24 this.

25 Additionally, Gabriel Valenzuela was shot with a

1 larger-caliber bullet in the back of the head. That's the
2 entry wound. It's on the right side near his ear. There's an
3 exit wound on the front portion of his head right above his
4 eye.

5 Additionally, a larger-caliber bullet, which you'll
6 learn is a .45 caliber bullet, is found in his left leg. So
7 you'll see photos. This circle right here on the right leg,
8 that's an entry wound. There is an exit wound on the other
9 side of that right leg, and then there's an entry wound in
10 that left leg, and the bullet is found in the upper portion by
11 the calf of that left leg. His tibia and fibula is broken
12 through on -- by the bullet in the right leg, and his tibia
13 and fibula is broken through on the left leg by that bullet.

14 People were at the scene. So, at the scene, while
15 Gabriel Valenzuela was rushed to the hospital, but he dies in
16 transit to the hospital, detectives are there, CSA, which are
17 crime scene analysts, are there, patrol officers are setting
18 up the perimeter, and they've started the investigation. And
19 one of the places that most investigations start, especially
20 in a homicide shooting like this, is collecting the cartridges
21 at the scene.

22 At the scene, four cartridges remained. This middle
23 one that you'll see identified as 1, that's the
24 smaller-caliber .22 cartridge. The other ones, 2, 3, and 4,
25 are .45 -- .45 caliber cartridge cases. And if you'll notice,

1 there's different headstamps on each one.

2 When this was initially set up, it's kind of a
3 dynamic scene. There was a call; hey, we have a shooting, get
4 here, because although Robert Mason's wife calls, other people
5 call when they actually hear shots, and then Gabriel
6 Valenzuela's family calls. So people rush there, patrol
7 officers rush there, and some even come from other command
8 posts.

9 So, south of Sunset is one command post, and they
10 were kind of close to the incident. So if you see here,
11 here's Sunset. Officers that were below Sunset rushed up to
12 that 5536 West Dewey and were part of the people who initially
13 set up the perimeter. One of those is Sergeant Tromboni.
14 You're going to hear from him. At that point in time, he was
15 just Officer Tromboni.

16 So once everybody gets there, and some of the -- it
17 goes late into the night, some of the patrol officers are sent
18 home, others come, and they kind of shift in and out. Well,
19 Sergeant Tromboni was sent -- you can go back to your command
20 post. So he starts driving south past Sunset, back to his
21 command post.

22 He has to go to the bathroom, so he decides to stop
23 at that 7325 South Jones Boulevard address. It's a
24 convenience store. There's a photo of the convenience store
25 in daylight hours. At that point in time, it wasn't daylight.

1 This is a photo in daylight hours. The Short Line Express
2 Market. He has to go to the bathroom, and he's with a partner
3 who's driving another patrol vehicle, Lopez, and he pulls in
4 there, too. So Officer Lopez and Officer Tromboni, they go
5 into the Short Line Express.

6 (Video is played)

7 (Stopped playing of video)

8 MR. BROOKS: So that's Officer Lopez's body cam, and
9 that's Sergeant Tromboni there. They go in there, they use
10 the bathroom, and then when they're done, they're kind of just
11 talking to the Clerk. They said, hey, how's it going tonight?
12 Anything unusual? Everything okay?

13 The store Clerk of that market is named Nikolaus
14 Spahn. And Nikolaus Spahn says, you know, there was something
15 odd. About a half-hour ago, about 11:30, which was earlier in
16 the night, four guys came in. It was just a little odd. One
17 of them was open carrying and he had a gun right on his hip.
18 It just kind of was a little odd. It was four young black
19 males, and he went in the bathroom -- the guy that was open
20 carrying went in the bathroom for a while, a little longer
21 than normal. Nothing happened, I mean, it was just odd, and
22 then they kind of sat outside the store for a while and
23 lingered.

24 So Sergeant Tromboni says, any chance you saw what
25 kind of car they had? And Nikolaus Spahn says, yeah,

1 actually, I walked outside to kind of check to see what was
2 up, and it was an older white car, like a Crown Vic type car.
3 At that point in time, Sergeant Tromboni says, hey, I need
4 someone to pull this video surveillance. Can we get the video
5 surveillance of them in the store and that car? So the
6 manager comes, starts pulling the video surveillance.

7 And this is the video surveillance from earlier that
8 night, around 11:27 P.M. Now, in this short video clip,
9 you're only going to see three people walk in, then you'll see
10 other photos with the four.

11 (Video is played)

12 MR. BROOKS: DeMario Lofton-Robinson walks in,
13 Davontae Wheeler with the gun on his right hip, and Raekwon
14 Robertson.

15 (Stopped playing of video)

16 MR. BROOKS: That's the four of them standing right
17 there, and that's Nikolaus Spahn helping the customer ahead of
18 them. Now, at no point in time did they use the gun, or flash
19 the gun, or anything towards the store Clerk. As you can see,
20 there's the open carry, and there's another portion of that
21 shiny handgun that's right there, holstered at Davontae
22 Wheeler's hip.

23 Then, they pull the video surveillance from outside.
24 So Lora Cody, one of the detectives you'll hear from, starts
25 looking at this video surveillance, zooming in, back, forth,

1 and can see a "47" -- a "473" at that starting license plate.
2 And so at this point in time, she's like -- hey, this vehicle
3 that was in -- you know, a vehicle of interest initially, it
4 really is a vehicle of interest; let's go ahead and try to
5 track that down. So she's trying to track it down all night.
6 Other detectives who you'll hear from, Detective Mitch Dosch
7 and Detective Ryan Jaeger, they're also at the scene and
8 trying to begin the investigation.

9 Eventually, Lora Cody tracks that vehicle down. And
10 when she does, she takes the vehicle into custody and the
11 driver at that point in time. That's DeMario Lofton-Robinson.
12 He was the owner of the vehicle at the time, and the driver
13 when the vehicle was pulled over. The vehicle was stopped and
14 taken into custody. That's the person you may hear referred
15 to as DJ.

16 Now, DJ is going to be a part of these proceedings.
17 You're going to hear a lot about him because this is a
18 conspiracy case. And so you'll hear different evidence about
19 DeMario Lofton-Robinson, but he's not on trial in this
20 proceeding, so you guys won't be charged of determining guilt
21 or not guilty with regard to DeMario Lofton-Robinson; just
22 Raekwon Robertson And Davontae Wheeler.

23 That's DeShawn Robinson. He was 14 at the time, and
24 that's DJ's younger brother. You're going to hear from
25 DeShawn Robinson, and he's going to provide additional details

1 and other things that occurred that night.

2 That's Raekwon Robertson dressed in the black
3 hoodie, and that's Davontae Wheeler going into the bathroom.
4 As you can see, firearm on the hip, firearm on the hip, and
5 Raekwon Robertson right behind him.

6 When the vehicle is located by Detective Cody and
7 the other officers, the vehicle's impounded and brought to the
8 CSA lab. Inside that vehicle, they find a few things, one of
9 which is .45 caliber cartridge cases, bullets, and the
10 headstamp on these found in the car matches one of those
11 cartridges found back at the scene. Additionally, you're
12 going to see those Jordan 5 sneakers, those Jordan 5 red
13 sneakers being worn in the video by DeMario, DJ, and DeShawn.

14 Then they process the car, so you're going to hear
15 from crime scene analysts who talk about fingerprint
16 processing. They processed that entire vehicle. And over the
17 course of that vehicle, you're going to find out that DeMario
18 Lofton-Robinson's fingerprints, which is expected because it's
19 his car, are all over it, DeShawn Robinson's fingerprints are
20 all over it, Raekwon Robertson's fingerprints are on it, and
21 Davontae Wheeler's fingerprints and palm prints are on it.

22 So then officers execute a search warrant on DJ and
23 DeShawn's residence, so they go to 919 Bagpipe here in North
24 Las Vegas. And when they initially execute the search
25 warrant, they bring in a dog because they're looking for a

1 firearm. So Trigger, this little K9, is sent through the
2 house. So Trigger's going through the house, going through
3 the house, and he hits on that pink backpack up in one of the
4 bedrooms. He hits on it, and then officers go to the
5 backpack.

6 Officers then open the backpack, and low and behold,
7 inside that pink backpack is an Interarms Star handgun. It's
8 a ten-round magazine with six rounds left in it. They take
9 that gun into possession, impound it into evidence, and begin
10 testing. You'll learn that that Interarms Star firearm was
11 tested, and the .45 caliber cartridge here, here, and here
12 left on the scene, all three of them, were identified as
13 having been fired from that Star firearm.

14 Additionally, the bullet down in this screen -- if
15 you're wondering, you're going to learn that that W5228S,
16 that's the name of the CSA who actually impounds that, and
17 that's why that photograph's there. That bullet found at the
18 scene, that's identified as having been fired through that
19 Star firearm. And then, the bullet taken out of Gabriel
20 Valenzuela's left leg during the autopsy was tested and
21 identified as having been fired out of that Star firearm.

22 The sweater that DJ's wearing with the Jordan symbol
23 up there was found in the back of that car. And as you can
24 see from the video surveillance, the emblem on the chest, and
25 then you can see the bulge in DeMario Lofton-Robinson's pants.

1 A few days later, 6647 West Tropicana, the apartment
2 right there, was then -- a search warrant was executed on it.
3 That's the residence of Raekwon Robertson. Inside there, they
4 go to a bedroom, and in the bedroom, there's a dresser. They
5 pull out the drawer, the bottom left drawer, and hidden below
6 that bottom left drawer is a Taurus .22.

7 Additionally, they find .22 caliber bullets. When
8 you look at the headstamp, you'll see the headstamp on that
9 .22 caliber bullet right there matches the headstamp on the
10 cartridge case found back at the scene. In the closet, the
11 shoes that Raekwon Robertson was wearing in the video
12 surveillance footage is found.

13 And testing occurs on the gun. You're going to
14 learn Raekwon Robertson's DNA is found on that Taurus .22.
15 You're going to learn that cartridge case left at the scene
16 was tested and can be identified as having been fired from
17 that Taurus .22.

18 Now, the bullet that's taken out of Gabriel
19 Valenzuela's stomach, that went through his stomach and his
20 rear back, that was tested, and you're going to learn that it
21 has similar riffling characteristics as having been fired
22 through that Taurus .22. However, they can't -- the scientist
23 isn't going to be able to tell you identification, because, as
24 you can expect, when a bullet goes through somebody's insides,
25 ricochets off their organs, the bullet kind of gets mangled,

1 and so that's as much as they can tell about that bullet.

2 Then, 3300 Civic Center, a search warrant is
3 executed on. And in the bed -- bedroom right there, with the
4 bed wedged right up against that kind of like -- that -- it's
5 not a desk, but that piece of furniture, you're going to see a
6 Millennium Taurus .45. Officers are going to take that
7 Millennium Taurus .45 and impound it. Additionally, there's a
8 holster right near it, and that holster is very similar to the
9 holster being worn by Davontae Wheeler in that video
10 surveillance footage.

11 The gun is processed, and the magazine located
12 inside that gun has Davontae Wheeler's fingerprint on it.
13 Additionally, if you look at the headstamp on those bullets,
14 that headstamp matches one of the bullets that was left at the
15 scene. Now, that gun's tested, and none of the cartridge
16 cases that are left at the scene are going to come back as
17 being identified as having been fired through that gun. All
18 three of the .45 cartridges that were left at the scene are
19 from the Star, and then the .22 is obviously from the Taurus.

20 The Huaraches that Davontae Wheeler is depicted
21 wearing right there in that video surveillance are found in
22 that apartment. And additionally, that Chicago Blackhawks hat
23 that can be seen being worn in the video surveillance footage
24 is found at that apartment.

25 All four of the suspects are eventually taken into

1 custody. Why were they there? They went to hit a house that
2 night, but instead, something else happened. They saw an
3 opportunity to hit Gabriel Valenzuela, and the only reason
4 that Gabriel Valenzuela didn't make it inside his house with
5 his mail is because those four guys wanted his stuff.

6 And so at the end of this trial, Mr. Pesci is going
7 to stand up and he's going to ask you to return a verdict of
8 guilty to all three counts: conspiracy to commit robbery,
9 attempt robbery with use of a deadly weapon, and first degree
10 murder with use of a deadly weapon. Thank you.

11 THE COURT: Thank you. Mr. Sanft?

12 DEFENDANT ROBERTSON'S OPENING STATEMENT

13 MR. SANFT: Ladies and gentlemen, we spent the last
14 two days together, determining who could be a good juror for
15 this case. If you've sat here now and listened to what the
16 State has told you what they believe the evidence would show
17 beyond a reasonable doubt, and now think in your mind, well,
18 why are we even here, then you haven't done your job, and we
19 haven't done our job in picking good jurors.

20 But my guess is, my assumption is that as you're
21 sitting here right now, what you're determining in your mind
22 is exactly what we are going to do during the course of this
23 trial: prove this to me beyond a reasonable doubt. That's it.

24 Now, one of the things that we were cautioning you
25 on when we first met with you as a panel was whether or not --

1 if you could look at photographs -- the crime scene
2 photographs, autopsy photographs -- and not be swayed
3 emotionally, but look at it dispassionately.

4 We're asking you to look at everything
5 dispassionately, whether it's the photographs in this case,
6 whether it's the testimony of the witnesses that will testify
7 in this case, and ask yourself over, and over, and over again,
8 has the State proven to me beyond a reasonable doubt that that
9 person right there, Raekwon Robertson, is a person that's
10 responsible for a murder of a 24-year-old young man in the
11 middle of the night?

12 That's the question you should be asking yourself
13 over, and over, and over again. Is that really Robertson
14 that's up in the video, is that really Robertson that had the
15 gun, and is that really Robertson who shot those bullets that
16 went into this person and killed him in the middle of the
17 night? That's the question.

18 And as you, and me, and the State of Nevada journey
19 through this and get to the end of our case, what you're going
20 to determine at that particular point is the State of Nevada
21 has not proven to you beyond a reasonable doubt that Raekwon
22 Robertson was responsible for the murder of this particular
23 individual. Thank you.

24 THE COURT: Thank you. Mr. Ruggeroli?

25 //

1 DEFENDANT WHEELER'S OPENING STATEMENT

2 MR. RUGGEROLI: Your Honor, counsel, ladies and
3 gentlemen of the jury. Davontae Wheeler is not guilty. He
4 starts this trial, just like we questioned you during the jury
5 selection process, with a presumption of innocence. The
6 State, I'm sure, would say that they welcome their burden of
7 proving that he's guilty beyond a reasonable doubt; but in
8 this case, the State will not prove that case against Davontae
9 Wheeler, and they will not prove this case beyond a reasonable
10 doubt.

11 As you listen to the evidence in this case, as a
12 juror, you would want to have confidence of guilt to
13 comfortably convict someone. And to have belief beyond a
14 reasonable doubt, you deserve to have evidence that's based on
15 reliable and trustworthy testimony from the witnesses or the
16 witness; a situation that's not so suspicious and convoluted.
17 And I'm going to point this out because the State's
18 presentation of this case is very matter of fact, it's very
19 succinct, but it's interesting that they left some very
20 important information out.

21 And you should not make a rush to judgment like the
22 police in this case did, and at a minimum, you should have an
23 adequate investigation. In this particular case, you don't
24 have that. You have an unreliable and an untrustworthy star
25 witness on behalf of the State. Now, I'm not talking about

1 every witness. There's going to be a number of them. In
2 particular, for instance, the jogger, I'm not saying that he's
3 a liar or anything like that. But you're going to hear from
4 DeShawn, and it's going to be your job to test his
5 trustworthiness. I think when you listen to the evidence, you
6 will see that there are very, very serious concerns about his
7 reliability and trustworthiness.

8 Here, you're going to have a situation that's
9 actually suspicious and convoluted with insufficient evidence
10 that lacks corroboration as to what happened particularly at
11 the scene of the shooting at Dewey. And you're going to see
12 that there was a rush to judgment, and in particular, that
13 rush to judgment was because the police got notice that one
14 person was open carrying on that video at the Short Line
15 Express a half-an-hour or 45 minutes before the shooting.

16 And that's very important, because that fact colored
17 the investigation moving forward. They believe that Mr.
18 Wheeler had that .45 open carry, they knew that they had a
19 high-caliber injury, and that fact led them to believe in the
20 beginning that they've got their man, this is almost an
21 open-and-shut case, and Mr. Wheeler's got the .45, so he must
22 be the gunman. Because of that, they didn't fully investigate
23 everything that they should have in this case.

24 Now, the State left this out. The evidence in this
25 case will actually show that at the Short Line Express, there

1 were five people, not four. There's an independent witness.
2 He was contacted by the police. And when the police showed up
3 to talk to him, because the police had seen the video at Short
4 Line Express -- you saw the photos -- the police are thinking,
5 well, we've got four people. So when they approach this
6 individual, they say, were you there? Did you buy one of them
7 a Black and Mild cigarillo? He says, yes.

8 They say, we have these four individuals. The first
9 thing that that individual says is, yeah, I saw five. There
10 are some more questions and answers, and he does waver,
11 because the police are questioning him, and they think that
12 there's four at the Short Line Express. But that independent
13 witness, his first statement was, there are five. And that's
14 very important, because when we get to the jogger a
15 half-an-hour or 45 minutes later, he is absolutely consistent
16 there were only four. So what happened with number 5?

17 I also want to point out, before we get to that --
18 and this was mentioned by the State just now during their
19 opening, but I think it needs to be highlighted a bit more.
20 There was one .22 caliber bullet that they recovered, and one
21 .22 caliber cartridge case, and there were three .45 caliber
22 bullets, and three .45 caliber cartridge cases that they
23 recovered.

24 Mr. Wheeler's .45 caliber, which was obtained during
25 a search warrant at the Civic Center address, was excluded

1 because it wasn't one of the .45 caliber cartridge cases that
2 were recovered, it did not fire them, and it did not fire any
3 of the three bullets that were recovered either. That is
4 because Mr. Wheeler was not a part of this, because he is the
5 fifth person. He was present at Short Line Express, but he
6 wasn't present at the Dewey address. Mr. Wheeler was not
7 present at the shooting.

8 We asked you to be a good juror; you were selected
9 because we believe you will. And after hearing the evidence
10 in this case, if you do your job, we believe that you're going
11 to have some more questions than answers in terms of the
12 State's theory of the case. You'll have more doubts because
13 of the evidence than certainty.

14 Everybody will agree that you must hold the State to
15 that burden. They're going to welcome you to do it, but
16 they're not going to meet that high burden here. They will
17 not be able to prove that Mr. Wheeler is guilty beyond a
18 reasonable doubt.

19 We respectfully request that you do your job as good
20 jurors. Evaluate the trustworthiness of the witness -- the
21 witnesses. Don't rush to judgment. Don't just assume because
22 there's four on a video, and one of them's open carry,
23 automatically, we've got our guy. Fulfill your duty as
24 jurors. And very simply, if you do so, you will have too many
25 reasonable doubts at the conclusion of the evidence, and you

1 will find Mr. Wheeler not guilty. Thank you.

2 THE COURT: Thank you. Thank you very much. The
3 State of Nevada may call their first witness.

4 MR. BROOKS: Your Honor, State calls Robert Mason.

5 THE MARSHAL: Just straight ahead.

6 THE WITNESS: Okay.

7 THE MARSHAL: If you'll please step up into the
8 witness stand. Remain standing, raise your right hand, and
9 face the Clerk.

10 ROBERT MASON, STATE'S WITNESS, SWORN

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

13 THE WITNESS: Robert Mason.

14 THE CLERK: Go ahead and spell your first and last
15 name, please.

16 THE WITNESS: Oh. R-o-b-e-r-t. Mason, M-a-s-o-n.

17 THE CLERK: Thank you.

18 THE WITNESS: Um-hum.

19 DIRECT EXAMINATION

20 BY MR. BROOKS:

21 Q Mr. Mason?

22 A Yes, sir.

23 Q Back in 2017, where did you live?

24 A 5524 Zachary Street, Las Vegas, Nevada, 89118.

25 Q Is that here in Clark County?

1 A Yes.

2 Q And what area of town? Just kind of -- if you could

3 orient us to where that would be.

4 A Southwest. Yeah.

5 Q Southwest? Okay, so were you married?

6 A Yes.

7 Q Are you still married?

8 A Yes, sir.

9 Q What's your wife's name?

10 A Lucinda Mendoza.

11 Q So back in 2017, around August, specifically, how

12 long had you lived in that area? How long had you lived in

13 that home?

14 A Oh, 2017, I would say probably about four or five

15 years then at that point.

16 Q Were you familiar with the area?

17 A Oh, very. Yeah.

18 Q I want to turn your attention to around midnight

19 between August 8th and August 9th of 2017. Do you recall an

20 incident that brings us here to court today?

21 A Yes, sir.

22 Q So tell me a little bit about what you initially

23 remember when -- why you left your house that night.

24 A Just to start off, my jog, since it was warm at

25 night -- or during the day, I would jog in the evenings rather

1 than during the day. I jog twice a week, if not more, and so
2 I jog at night. And just happened to get off work, and decide
3 to just go for a random jog, and left my house.

4 Q So back then, what time, do you remember, did you
5 get off work? What were your typical hours back then?

6 A Oh, I would get off around 11:00, 11:30, just
7 depending.

8 Q So if I think it's unusual to go on a jog at
9 midnight, that was a normal thing for you?

10 A Oh, yeah, yeah.

11 Q So when you leave your house, what was your typical
12 route?

13 A Typically, I would do the same route in that general
14 area. Leave my house going southbound on my street that I
15 lived off of, Zachary, and then I would make a left and go
16 down -- what's that? Lindell, I -- no, not Lindell. Dewey,
17 Dewey. I would make a left on Dewey and head east. And then,
18 from there, I would head to Lindell, and make a north turn on
19 Lindell.

20 Q Okay. And is that the path you started out on on
21 that August 9th, 2017 night?

22 A Yeah.

23 MR. BROOKS: Your Honor, permission to approach the
24 witness?

25 THE COURT: Sure.

1 BY MR. BROOKS:

2 Q Mr. Mason, showing you State's Exhibits 4, 3, and 1,
3 do you recognize the maps and the area depicted in these
4 photographs?

5 A Oh, yeah.

6 Q And specifically, in State's Exhibit 1, is that that
7 Dewey and Lindell address that you just referred to?

8 A That is Dewey and Lindell.

9 Q And State's Exhibit 4, do you recognize a yellow pin
10 where your address is, and then --

11 A Um-hum.

12 Q -- a pin where an address in question --

13 A Yes.

14 Q -- later that night?

15 MR. BROOKS: Your Honor, State moves for admission
16 of Exhibits 3, 1, and 4.

17 THE COURT: Any objection?

18 MR. SANFT: No objection, Your Honor.

19 MR. RUGGEROLI: No, Your Honor.

20 THE COURT: Okay, they're admitted.

21 (State's Exhibits 1, 3, and 4 are admitted)

22 MR. BROOKS: So permission to publish, Your Honor?

23 THE COURT: You may.

24 BY MR. BROOKS:

25 Q Mr. Mason, see that screen next to you?

1 A Yeah.

2 Q So is there a mouse there?

3 A Sure is.

4 Q So take us through -- and I'm sorry I made you do
5 this without a map earlier. Take us through that route that
6 night.

7 A All right. How does this work? Let's see. Do I
8 have to press anything, or?

9 Q I don't think so.

10 THE MARSHAL: Well, hang on a second.

11 THE WITNESS: Oh.

12 THE MARSHAL: He's got the wrong -- give me one
13 second, sir.

14 THE WITNESS: Okay.

15 THE MARSHAL: Now you should --

16 THE WITNESS: Now I can --

17 THE MARSHAL: -- be able to mark.

18 THE WITNESS: -- mark the area? So I would leave my
19 house, and usually kind of stretch a little bit, maybe five
20 minutes or less, and then just start bolting down -- what is
21 this? Zachary. Eesh, I'm terrible. So I would take my jog
22 down here, usually starting out with a really high-intensity
23 pace. I always try to start out quick. So I go really fast
24 down Zachary, and then I hit this corner here. And you just
25 want me to show you my route?

1 BY MR. BROOKS:

2 Q No, that night. So --

3 A That night?

4 Q -- that night, you hit that corner, and then what
5 happens?

6 A Okay. As I -- when I made it to this corner, I just
7 -- I saw what, at my vantage point, looked like a group of
8 people. I didn't know how many at that time, but I saw a
9 group of people standing -- where's the wall? So there was a
10 group of people right in this general area of the wall. Can I
11 erase?

12 Q Let me -- I'll take care of that. And then, let me
13 show you a zoomed-in one, maybe that will help. State's
14 Exhibit 3. Does -- does that help? Is that a better angle?

15 A Yeah, yeah, yeah.

16 Q Okay.

17 A That works. So there's this wall here. And as I
18 rounded this corner, I could see just a group of people
19 standing here, which didn't really bother me at first, so I
20 just continued down this route -- oh, let me see here. I
21 continued down here, jogging, jogging, jogging, jogging. And
22 as I got closer, I just, you know, got a little more power in
23 my run, so I started running pretty -- pretty fast.

24 As I got closer, I decided, rather than run through
25 them, which -- because they were standing here and in this

1 general area. And as I got closer, they proceeded to kind of
2 step away from the wall, and were in a general area of like in
3 that vicinity.

4 Q And at that point --

5 A So I -- excuse me.

6 Q Sorry. At that point in time, when you're right
7 about there, have you identified how many people yet?

8 A Yes. By this -- by this point, I determined there
9 was four individuals standing in a --

10 Q And so what do you do?

11 A So at that point, I just got a bad feeling in a
12 sense of just never really running into people while I was
13 jogging. They were all wearing dark clothing. They were all
14 wearing sweatshirts or some sort of jacket-type material, and
15 it was hot out. So at that point, my mind just said, this
16 just doesn't feel right. So I decided to run even harder,
17 kind of just pushing it, and kind of jogged to the outer --
18 does this thing work? Jogged out to this part of the street,
19 and around them, and then this way.

20 Q And as you pass them, are you able to identify what
21 race they are?

22 A Yeah, pretty -- pretty distinct.

23 Q And what were they?

24 A Four black male individuals. Yeah.

25 Q Okay. Were you able to identify if they were young,

1 old?

2 A Fairly young. I didn't see any distinct older
3 features in any of them that I could -- you know.

4 Q Fair to say, you don't get a good enough look to do
5 any identification or anything?

6 A Not -- not face-to-face, no.

7 Q Okay.

8 A I wouldn't say.

9 Q So my question is, right here --

10 A Yes.

11 Q -- when you're running past them, what do they do?
12 What do they -- what do they do?

13 A Well, at this point, as I run past them, I look at
14 one of them at a glance, and he looked at me. And I just kind
15 of just gave my -- just kind of just jogged past them like
16 they weren't even there in a sense.

17 Q Do they recognize you, and do you -- and by
18 recognize, I mean do you see them, and do they --

19 A Oh, for sure, yes.

20 Q -- see you?

21 MR. RUGGEROLI: Judge, I'm going to object to
22 speculation.

23 THE COURT: Okay, based on your own observation.

24 THE WITNESS: If -- my observation was that they
25 knew I was running past them.

1 BY MR. BROOKS:

2 Q Did you make eye contact with at least one or two of
3 them?

4 A I made eye contact with at least one.

5 Q Okay.

6 A Yes.

7 Q So I guess that's what I meant by recognizing.

8 A Yeah.

9 Q Don't mean identify.

10 A It was a quick -- like a quick, and that was it.

11 Q So like, I see you, you see me?

12 A Yeah. If I were to look at you, I'd just look away
13 and keep jogging.

14 Q So you mentioned jackets or sweatshirts. Was there
15 something in particular that was odd about those sweatshirts?

16 A Dark. Just not really anything in particular that
17 was odd, except for it was hot, and it was -- I just -- I
18 never see people wearing black sweatshirts at night -- or not
19 at night, but during the summer, during the heat.

20 Q So as you turn the corner on Lindell here and start
21 heading north, what do you notice next?

22 A So as I -- as I make the corner here -- do I --

23 Q Oh, you don't need to --

24 A Okay.

25 Q Yeah, just --

1 A So --

2 Q -- tell us.

3 A When I made this corner here, I just saw a car

4 parked in the street, and I put two and two together, assuming

5 that it was their car in the street. And I observed the

6 license plate on the front as I jogged by, and just out of --

7 just -- I don't know, just an instinct, I guess, to look back

8 at the reverse plate on the back, memorized the license plate

9 and started to put it in my phone.

10 Q So before we get to that, what color car was that?

11 A It was white.

12 Q Now, back then, what did you describe it as being?

13 What kind of car?

14 A I believe I described it as a Crown Vic, or a Crown

15 Vic style.

16 Q And was it new; was it old?

17 A It was older.

18 Q Do you remember whether you said anything about

19 whether the windows were tinted? Did you look inside the car?

20 A As I jogged by, I glanced in at the insides of the

21 car. But as far as windows, I could see inside the car, so I

22 believe I said the windows were not tinted. But as I glanced,

23 I could see into the car.

24 Q Was anyone in -- was there a human inside the car?

25 A Unless they were under the seats or hidden

1 underneath something, no, empty.

2 Q Were you previously even asked whether -- inside of
3 the car, whether the seats were torn, or if it was dirty, or
4 trashed inside?

5 A Yeah, yeah.

6 Q And do you remember?

7 A Yeah. I remember saying, I believe, that it was
8 kind of messy, or cluttered, or whatnot. It was just dirty,
9 and then the seats were kind of torn.

10 Q So you got a good enough look inside the car to
11 notice that it was trashy and the seats were torn?

12 A Yeah.

13 Q And there was no human inside?

14 A Yeah, as far as I could tell.

15 Q So as you jog past it, you said you tried to
16 remember the license plate. When you're about 20 or 30 feet
17 past the car, do you do something with that license plate?

18 A I wouldn't say 20 or 30 feet; I would say a lot
19 sooner than that. Probably within the first ten feet of me
20 passing that car, I put the license plate into my phone. And
21 then decided to call my wife at that point, because I just
22 realized I had left the front door unlocked, and I just felt a
23 little eerie about these guys in our neighborhood and wanted
24 to make sure that she locked the door.

25 Q And do you tell her to do something other than lock

1 the door?

2 A Yeah. And then, I was probably at that point 40, 50
3 feet down the road, and I just said, you know what, just, if
4 you would, call 311 and report suspicious individuals in the
5 neighborhood.

6 Q And subsequently -- subsequent to then, have you
7 since learned that she did call 311?

8 A Yeah, yeah.

9 Q And when you initially tell your wife there's
10 something suspicious, do you guys have a conversation about
11 what the people are wearing and the temperature?

12 A Yes.

13 Q And what was that?

14 A Oh, that they were just there -- I felt a little
15 uncomfortable that there was four people in dark clothing and
16 hoodies in the neighborhood, sweatshirt -- well, not
17 sweatshirt, but just hoodies in the neighborhood, and just
18 felt uncomfortable about it.

19 Q And now, I think you were asked this previously.
20 When say hoodies, the hoods were up, but they weren't like
21 cinched?

22 A No, no, no, no. They're just up -- yeah, the hoods
23 were up, and -- but not -- not cinched down or nothing like
24 that, as far as I could tell.

25 Q Was this an unusually cold night in Las Vegas in

1 August?

2 A No, no.

3 Q Was there any reason for someone's hood to be up
4 that night?

5 A No. Well --

6 Q That you --

7 A Unless you're concealing your identity, I mean, in
8 my opinion.

9 Q Well, I don't --

10 MR. SANFT: Objection, Your Honor, speculation.

11 THE COURT: Sustained.

12 MR. BROOKS: Yeah.

13 THE COURT: The objection's sustained.

14 BY MR. BROOKS:

15 Q And so, as you finish your jog, do you make contact
16 with your wife and find out that she's called 311?

17 A Yes.

18 Q Okay. And see this area right here?

19 A Yeah.

20 Q Do you return back to that area that night before
21 you go home?

22 A Yeah. I made my -- my jog around, which is a
23 three-mile jog, and it usually takes me eight minutes,
24 eight-and-a-half per mile. So at that point, I get back to
25 that general area right around 25 or 20 so minutes. Between

1 20 and 25 minutes, I'm back in that general area every --
2 every time I come back.

3 Q Which direction, by the way, was the car facing?

4 A The car was facing southbound, this way.

5 Q And how busy is Lindell? Do cars ever park on that
6 street?

7 A The street can be fairly busy at night. Not so
8 much, but cars never -- never park on the street there, ever.

9 Q So was that why it was kind of unusual to you?

10 A Yes.

11 Q And --

12 A The only time I've seen people parked there is when
13 they're picking up their kids from the school, you know, and
14 they're just kind of getting in the way on that street, and
15 there's a lot of traffic in the day.

16 Q In general, you don't usually see cars?

17 A No, never.

18 Q Have you had the opportunity to come meet me and Mr.
19 Pesci and view some video from that night?

20 A Yes.

21 Q Video from an officer's body cam that you --

22 A Yeah.

23 MR. BROOKS: Your Honor, at this point in time, I
24 want to play a portion of State's Proposed Exhibit 329 to see
25 if he can identify himself before moving it into evidence.

1 THE COURT: Okay.

2 MR. BROOKS: Unless --

3 THE COURT: Is there going to be any -- is there an
4 objection?

5 MR. SANFT: No objection, Your Honor.

6 MR. RUGGEROLI: No, Your Honor.

7 MR. BROOKS: Then --

8 THE COURT: Okay, so if you want to offer it.

9 MR. BROOKS: State moves Proposed Exhibit 329 into
10 evidence.

11 THE COURT: Okay, it's admitted.

12 (State's Exhibit 329 is admitted)

13 THE COURT: And you may publish.

14 (Video is played)

15 (Stopped playing of video)

16 MR. BROOKS: Your Honor, permission to approach?

17 THE COURT: You may.

18 BY MR. BROOKS:

19 Q Mr. Mason, do you recognize the house and the wall
20 depicted in this photograph?

21 A Yeah.

22 Q Does it fairly and accurately depict the area that
23 you were just referring to --

24 A Yeah.

25 Q -- to the officer?

1 A Yeah.

2 MR. BROOKS: Your Honor, State moves for admission
3 of Exhibit 10.

4 THE COURT: Any objection?

5 MR. SANFT: No objection, Your Honor.

6 MR. RUGGEROLI: No, Your Honor.

7 THE COURT: Exhibit 10 is admitted.

8 (State's Exhibit 10 is admitted)

9 BY MR. BROOKS:

10 Q Mr. Mason, if you could, just kind of -- and you
11 don't need to mark it, but if you could take the mouse and use
12 it to show us what you were telling the officer; where you
13 were pointing where you saw the four men.

14 A So the -- I saw the four individuals right in this
15 general area here.

16 Q Okay, so that's what you were kind of describing to
17 him?

18 A Yeah.

19 Q Sort of on the property, sort of on the side of it?

20 A Yeah. When I ran by, it looked to me the two --
21 there was two individuals here that stepped away from the
22 wall, and then were mingling amongst each other when I -- as
23 if they noticed me coming, so it kind of threw them off.

24 Q So let me see if I understand you right. So right
25 here where this mouse is, are you telling me there were two

1 here initially, and then two here, and as you come past, they
2 all four gather together? Or am I --

3 A In my recollection, it was as if -- I honestly say
4 they were here, and then moved out, but it looked as if they
5 were huddled up against the wall just in this general area.

6 Q Okay.

7 A So, I mean, I don't honestly know if they were all
8 the way over here or on this side of the wall, but in this
9 general location. And then they moved out to this -- this way
10 when I came -- when I approached them.

11 Q All four of them?

12 A Yeah.

13 Q And then, showing you State's Proposed Exhibit 155.
14 It was kind of -- it wasn't very loud right there.

15 A Yeah.

16 Q But does this photo fairly and accurately depict
17 the --

18 A Yes.

19 Q -- license plate that you just said on the body cam,
20 473YZB?

21 A Yeah.

22 Q And does this photo fairly and accurately depict the
23 front of the car that you saw that night?

24 A Yeah.

25 MR. BROOKS: Your Honor, State moves for admission

1 of Exhibit 155.

2 MR. SANFT: No objection, Your Honor.

3 MR. RUGGEROLI: No objection.

4 THE COURT: Thank you. It's admitted.

5 (State's Exhibit 155 is admitted)

6 BY MR. BROOKS:

7 Q Mr. Mason, is that what you referred to that night
8 as a Crown Vic, older-style car?

9 A Yeah.

10 Q And is that the license plate that you put down in
11 your phone and then showed the officer?

12 A Yes.

13 MR. BROOKS: Pass the witness, Your Honor.

14 THE COURT: Cross-examination, Mr. Sanft?

15 MR. SANFT: Yes, Your Honor. May we approach for a
16 sec?

17 THE COURT: Of course.

18 (Bench conference)

19 MR. SANFT: How long can we go for before lunch?

20 Can we just keep going all the way through?

21 THE COURT: Yeah.

22 MR. SANFT: Okay.

23 THE COURT: Hopefully, you can finish this witness.

24 MR. PESCI: Well, if we could, his wife is here, and
25 then we also have an Officer Calleja who's been on like a

1 swing shift, I think. So if we can maybe get through those
2 three --

3 THE COURT: I have no problem with that.

4 MR. PESCI: -- before we break for lunch.

5 THE COURT: Okay.

6 MR. PESCI: Just because they've missed yesterday in
7 their schedule for work.

8 THE COURT: Okay. All right.

9 MR. SANFT: Oh, and just one other housekeeping
10 matter. I don't have any objection to the exhibits, so
11 (indiscernible).

12 MR. RUGGEROLI: For the most part. If you want to
13 run them by us, like photos --

14 THE COURT: Right. Maybe we could stipulate.

15 MR. SANFT: We would stipulate to the --

16 MR. RUGGEROLI: Streamline some of it.

17 MR. PESCI: Okay, sure.

18 MR. BROOKS: Okay.

19 MR. PESCI: Thank you.

20 THE COURT: Thank you.

21 (End of bench conference)

22 THE COURT: Okay, Mr. Sanft. You may begin with
23 your cross.

24 MR. SANFT: Yes, Your Honor.

25 //

1 CROSS-EXAMINATION

2 BY MR. SANFT:

3 Q Mr. Mason, the -- your video of yourself a couple
4 years ago, it looks like you have been doing pretty good on
5 your runs.

6 A Oh, yeah.

7 Q Congratulations on that, by the way.

8 A Yeah, thank you.

9 Q Now, your testimony is that you had been in this
10 area -- thank you. You had been in this area and had lived in
11 this area for quite some time prior to this incident occurring
12 in August of 2017?

13 A Yes.

14 Q Okay. Just a couple quick questions.

15 A Sure.

16 Q The -- showing you once again what's been marked and
17 admitted as State's Exhibit number 3.

18 A Okay.

19 Q This photograph right here. Your testimony was that
20 as you were running from your house, you turned the corner,
21 and you started heading in this direction towards Dewey, which
22 is this particular road that's right here? I'm pointing with
23 my pen. Correct?

24 A That is Lindell, actually.

25 Q Oh, that's Lindell?

1 A Yes.

2 Q I'm sorry. And as you were running down Lindell --

3 or running towards Lindell, that you were basically at a

4 high-intensity pace?

5 A Pretty -- pretty fairly, yeah.

6 Q And is that basically a reference to like

7 high-intensity interval training? Is that what we're talking

8 about here?

9 A No, basic running. Just -- no, I'm not super fast,

10 you know. Just basic running, I mean, but at a high -- I

11 mean, just going a good pace.

12 Q Fair. And --

13 A Yeah, not -- not jogging slow, but jogging with

14 intensity, so.

15 Q Right. And as a result of that, as you're heading

16 in this direction, you're keeping that pace as you're

17 approaching what you believe you see; four individuals

18 sitting --

19 A Yes.

20 Q -- somewhere around this particular area here? I'm

21 pointing for the jury once again. Is that correct?

22 A Yes.

23 Q Okay. Now, your testimony was that as you were

24 approaching these four individuals, you felt uncomfortable,

25 and at some point decided, I'm not going to run -- stay on

1 that sidewalk or in that area; I'm going --

2 A Yes.

3 Q -- to go around them, fair?

4 A Yes.

5 Q All right. Now, as you did so, and you went around

6 the area, you said that you saw a group of people, but you

7 could identify kind of roughly maybe general descriptions of

8 them, but nothing specific?

9 A No, nothing specific.

10 Q Okay. Now, at some point after you had spoken with

11 the police officers that we see in the video, at some point in

12 the future, I'm guessing you spoke with detectives? Did

13 anyone come over to your house --

14 A Yes.

15 Q -- and interview you?

16 A Yeah.

17 Q Okay.

18 A No. Actually, I stayed on the scene up until about

19 4:00 A.M., and it was right around I would say 3:00 A.M. or

20 so, in that general -- 2:30, 3:00 o'clock in the morning that

21 one of the detectives approached me and pulled me aside into

22 their vehicle.

23 Q All right. And at that point, you had an interview

24 with that detective?

25 A Yes.

1 Q And during the course of that interview, my guess is
2 the detective was asking you for more specifics; if you could
3 remember shoes, or color of clothing, or maybe specific
4 physical attributes of any of the individuals you saw?

5 A Yes.

6 Q And you couldn't give him anything like that?

7 A No. I actually -- at that point, I remembered that
8 one of the individuals had a -- a curly hairstyle with a crop
9 top, like a -- I don't know how it would be called. A -- it
10 was a certain hairstyle at that time that was pretty popular,
11 but yeah, I can't -- I don't know what it's called, but they
12 had like a crop top fade.

13 Q So there was some type of hairstyle?

14 A Yeah, outside the hoodie. It was like a crop top
15 type hairstyle.

16 Q Okay, and that would be my next question. You've
17 testified and you've told this jury --

18 A Yes.

19 Q -- that every person had their hoodie or a hoodie
20 up?

21 A Yes.

22 Q So this person had a hoodie that maybe went to the
23 middle of the head, and then the hair was just sticking out
24 like that?

25 A It was sticking out the front of the hoodie, yes.

1 Q Okay. Now, your testimony was that you identified
2 or you saw these four individuals, you turned the corner, ran
3 down the street, then took a license plate, right? Did you
4 ever see -- did you ever see any of those four individuals by
5 that vehicle?

6 A No, no one near the vehicle at all.

7 Q Okay. And you're still running down that street,
8 right?

9 A Yeah.

10 Q And I'm pointing once again to the street right
11 here.

12 A Yes.

13 Q And that's Lindell, right?

14 A Yes.

15 Q Okay. And as you're running down, did you at any
16 point ever look back to see anybody walking towards that
17 vehicle?

18 A No.

19 Q Did you hear --

20 A Well, as I ran past the vehicle, I looked at the
21 front plate. And then, as I ran past, I turned back and
22 looked at the rear-view plate, and that's when I turned back
23 and kept running northbound.

24 Q Now, in the video --

25 A But I did turn back.

1 Q Okay.

2 A Sorry.

3 Q I didn't want to cut you off. But in the video,
4 it's obvious you're surprised as to what happened, right? You
5 arrive on the scene --

6 A Yeah.

7 Q -- and you see the police officers there, and you
8 don't know what happened, fair?

9 A Yeah. Yes.

10 Q Okay. Did you hear gunshots when you were running
11 in the --

12 A No.

13 Q -- that direction down Lindell?

14 A No.

15 Q Okay. At any point during your run?

16 A No.

17 Q Were you wearing earphones that night?

18 A Yes.

19 Q Okay. Now, as you were getting ready to begin your
20 run, you had said you had stretched a little bit, and then the
21 pace of your jog was relatively fast, fair?

22 A Fair to say, yes. Fast.

23 Q From your -- okay. Is there -- can you describe for
24 me a little bit about the lighting in the area? We're looking
25 at this photograph here, and my understanding was, according

1 to what we saw in the video, is you were probably over here in
2 this area when police officers approached you and asked you
3 what happened?

4 A Yeah.

5 Q Okay. And once again, just for the record, pointing
6 to -- looked like the corner of Dewey and Lindell on the
7 southwest side. But in this area here, we see in the video a
8 light pole?

9 A Yes.

10 Q Are there any other light poles in this particular
11 area that you could point out for the jury? That you -- that
12 you know since you've been there?

13 A That I recall of?

14 Q Yeah.

15 A I believe there's one over here. There's none here.
16 I don't believe there are any in this general area also. I
17 think -- yeah, I honestly couldn't tell you exactly where all
18 the light poles are. Maybe --

19 Q I don't need for you to guess.

20 A Yeah.

21 Q If you know, and if you don't know, that's fine.

22 A Yeah, no. I know there's one here for sure.

23 Q Okay.

24 A Because that night -- when I've jogged through there
25 in the past, there's -- there's always adequate lighting over

1 here.

2 Q Right.

3 A But I would say there's not too much adequate
4 lighting on this side of the street, but more so on this side
5 of the street, so.

6 Q Okay. And when you say on this side of the street,
7 I just want to make sure we're clear for the record. What
8 you're looking at is you're pointing to the north side of
9 Dewey here, versus the south side of Dewey, which is --

10 A Yes, yes.

11 Q -- right here? And you're testifying -- you're
12 telling the jury that on the south side, you don't believe
13 that there's --

14 A No, no, no.

15 Q -- there's no lighting here?

16 A There's adequate lighting on this side. On the --
17 on this side, it's more so these houses that have the lights
18 on, and -- and -- and they have pretty adequate lighting on
19 their house, so this whole house is lit up that night. It's
20 pretty -- pretty bright over there.

21 Q Okay, and let me show you this as well. This is
22 State's Exhibit number 10. You were shown this earlier by the
23 State.

24 A Yeah.

25 Q Is that how the house is typically?

1 A Yeah.

2 Q Now, and just in terms of this particular night in
3 August of 2017, were the lights like this on that night?

4 A At that point, no. I could say probably not.

5 Q Okay.

6 A I mean, I'd be guessing in a way, but --

7 Q Right, and I don't want you to guess.

8 A Yeah.

9 Q So just tell me what you recall and don't recall.
10 That's fine.

11 A I don't recall lights being on in the -- like, that
12 bright --

13 Q Okay.

14 A -- at all.

15 Q Now, in addition to that, did you ever know the
16 people that lived in that house prior to this incident
17 occurring?

18 A No.

19 Q And are you -- did you ever know the person that was
20 shot in front of this house on that night --

21 A No.

22 Q -- prior to him being shot?

23 A No.

24 Q Okay. So you're not familiar, for instance, with
25 his friends or --

1 A No.

2 Q -- acquaintance, or anything like that?

3 A No, I don't know him.

4 Q Okay.

5 MR. SANFT: Your Honor, I have no further questions.

6 THE COURT: Mr. Ruggeroli?

7 CROSS-EXAMINATION

8 BY MR. RUGGEROLI:

9 Q Mr. Mason?

10 A Yes, sir.

11 Q You spoke to the police that night in the early

12 hours of August 9th, 2017, correct?

13 A That morning. Yes, sir.

14 Q You gave a Voluntary Statement; you verbally told

15 them what you observed?

16 A Yes.

17 Q And we saw that on the body cam footage that was

18 played for you a moment ago, correct?

19 A Yeah.

20 Q And then, you wrote out a Voluntary Statement,

21 correct?

22 A Yeah.

23 Q You also testified before the grand jury on November

24 29th, 2017, correct?

25 A What was that again?

1 Q The grand jury? Do you recall testifying before the
2 grand jury?

3 A Yeah. I don't know the exact date, but yeah.

4 Q Approximately November of 2017?

5 A Okay, yeah.

6 Q You've been very consistent that there were -- on
7 the video, you said, "Four black dudes"?

8 A Um-hum.

9 Q Is that a yes?

10 A It was four black individuals, yes.

11 Q Yes, in all black hoodies, correct?

12 A In all black hoodies, yes.

13 Q And do you recall that when you testified before the
14 -- before the grand jury, you also said that all of them were
15 dark-skinned, black individuals?

16 A Yeah. Or, I didn't -- I don't know if I said
17 dark-skinned, but yeah.

18 Q Do you recall?

19 A No, I don't recall.

20 Q Okay.

21 A I --

22 MR. RUGGEROLI: Judge, may I approach to refresh --

23 THE COURT: You may.

24 THE WITNESS: It's been so long.

25 MR. RUGGEROLI: -- his recollection?

1 THE COURT: You may.
2 MR. RUGGEROLI: This is page 47.
3 THE COURT: Of grand jury?
4 MR. RUGGEROLI: Yes, Your Honor.
5 THE COURT: Okay.
6 THE WITNESS: This is the grand jury testimony?
7 MR. RUGGEROLI: Yeah.
8 THE WITNESS: Okay.
9 BY MR. RUGGEROLI:
10 Q Would you just read this line to yourself, please?
11 A Okay. Yes.
12 Q Thank you. You were -- and today, all of the times
13 that you've given information, you're just trying to do your
14 best, correct?
15 A Yeah.
16 Q And --
17 A I mean, it's been well over a year now, so.
18 Q Right. And so, at the grand jury, you testified
19 they were dark-skinned, black individuals, correct?
20 A That's -- if that's on that paper, then that's what
21 I testified as.
22 Q Thank you.
23 A Yeah, I'm guessing.
24 MR. RUGGEROLI: I have nothing further. Thank you,
25 Your Honor.

1 THE COURT: Any redirect?

2 MR. BROOKS: No, Your Honor.

3 THE COURT: Okay. Thank you very much for your
4 testimony here today. You may step down.

5 THE WITNESS: Okay.

6 THE COURT: And you are excused from your subpoena.
7 Thank you for being here.

8 THE WITNESS: Okay, thank you.

9 THE COURT: You may call your next witness.

10 MR. PESCI: Can we approach real fast, Your Honor?

11 THE COURT: Sure.

12 (Bench conference)

13 MR. PESCI: We're going to ask if we can take the
14 next officer a little bit out of order. We had told him in
15 order previously. When I was out in the hall checking with
16 the witnesses, this officer's son just fell at the school, so
17 he's at the --

18 THE COURT: Just what?

19 MR. PESCI: Just fell --

20 THE COURT: Fell down?

21 MR. PESCI: -- at the school and hit his head. He's
22 at the --

23 THE COURT: Okay.

24 MR. PESCI: -- nurse's office, so we're trying to
25 get this officer on now. So we're out of order, but that's --

1 that's why we're doing it, so he can get to the school.
2 THE COURT: Okay, that's fine.
3 MR. PESCI: His wife's there, but --
4 THE COURT: So do we have to do four witnesses now?
5 MR. PESCI: No, no, no. We're just --
6 THE COURT: Okay.
7 MR. PESCI: We're taking him out of the order that
8 we told them we're calling people.
9 MR. RUGGEROLI: Who is it?
10 THE COURT: Perfect. And then you're going to
11 call --
12 MR. PESCI: Anthony Calleja.
13 MR. RUGGEROLI: Oh.
14 THE COURT: And then Mr. Mason's wife?
15 MR. PESCI: Yes, but we're doing this guy first so
16 he can get to his kid.
17 THE COURT: Perfect.
18 MR. PESCI: Okay, thank you.
19 THE COURT: Okay.
20 (End of bench conference)
21 MR. PESCI: Your Honor, the State calls Anthony
22 Calleja.
23 THE MARSHAL: And if you'll please remain standing,
24 Officer, raise your right hand, and face the Clerk.
25 OFFICER ANTHONY CALLEJA, STATE'S WITNESS, SWORN

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

3 THE WITNESS: Anthony Calleja. A-n-t-h-o-n-y,
4 C-a-l-l-e-j-a.

5 MR. PESCI: May I proceed, Your Honor?

6 THE COURT: You may.

7 MR. PESCI: Thank you.

8 DIRECT EXAMINATION

9 BY MR. PESCI:

10 Q Sir, based on your uniform, are you a Metro officer?

11 A Yes, I am.

12 Q How long have you been doing that?

13 A Coming up on 14 years.

14 Q Back in August of 2017, specifically focusing on the
15 late hours of August 8th, going into the early hours of August
16 9th of 2017, were you working?

17 A Yes, I was.

18 Q What shift was that?

19 A Graveyard shift.

20 Q Okay. What are the hours of graveyard?

21 A We start at 10:00 P.M. and work through 8:00 A.M. in
22 the morning.

23 Q What shift do you work now?

24 A I work the same shift.

25 Q Okay. Are you a little tired?

1 A Little tired.

2 Q Okay, all right. I want to show you what's been
3 marked as State's Proposed Exhibit 327.

4 MR. PESCI: And it's been shown to defense counsel.
5 I believe there's a stipulation.

6 MR. SANFT: Yes, Your Honor.

7 MR. RUGGEROLI: Yes, Your Honor.

8 THE COURT: Okay, it's admitted.

9 (State's Exhibit 327 is admitted)

10 BY MR. PESCI:

11 Q Are you familiar with -- and in anticipation of your
12 testimony, did you review some body-worn camera from you?

13 A Yes, I did.

14 Q Okay.

15 MR. PESCI: Your Honor, I'm sorry, did you say it
16 was admitted?

17 THE COURT: It's admitted.

18 MR. PESCI: Thank you very much.

19 BY MR. PESCI:

20 Q Sir, you know, the ladies and gentlemen of the jury
21 maybe have heard about body-worn camera, but can you tell us
22 about it? How does it work?

23 A We have a camera -- because I'm not working the
24 shift currently, my camera is plugged in to download the film
25 from last night. So I'm not wearing it, but normally, it's --

1 we keep it either on our lapel, our collar, or some even have
2 it on glasses if they wear. The camera is kept with us the
3 entire shift, and there's an activation switch that we keep
4 various places on our body. I keep mine on my hip.

5 Q Is yours on your hip right now?

6 A Right now, what I have is -- if I can stand up here.

7 THE COURT: Sure.

8 MR. PESCI: Please.

9 THE WITNESS: This is where I keep my activation for
10 my camera. As soon as we're assigned to a call, we get
11 assigned to a call, or we initiate a call on our own, I start
12 the camera. The camera has a constantly running feed -- video
13 feed. And when you activate it, it takes 30 seconds back,
14 just in case you get involved in something, it gives you 30
15 seconds to turn on the camera. But at that point, when you
16 turn on the camera, it records everything that you see.

17 My camera is on my left collar. I do have that, and
18 I've always kept it at the same position. It has a fairly
19 good field of view that you can see pretty much what I'm
20 looking at. And generally, we keep the camera on the entire
21 shift or in the entire call until let's say you need to confer
22 with another officer, detective, use the restroom, anything
23 that you would not like on camera because it's a little
24 personal in nature. So generally, we keep the camera on. And
25 in this event, I had it on for approximately 20 -- 21 or so

1 minutes.

2 BY MR. PESCI:

3 Q Okay, and so that camera you spoke of that's yours
4 right now is back at your area command?

5 A That's correct.

6 Q And it's set for downloading?

7 A Yes.

8 Q And does that mean that there's, in the Cloud, in
9 essence, the video from your shift that you finished?

10 A That's correct. We plug it in. They're contracted
11 with Evidence.com. Then, as soon as I plug it in, it
12 downloads, and the battery pack, the activation switch, is
13 recharged, because it's only active for approximately eight or
14 nine hours.

15 Q And so, your shift from yesterday, someone could
16 download it and review it?

17 A That is correct.

18 Q All right. And so, from back on August 8th, going
19 into August 9th, was your body-worn camera activated?

20 A Yes, it was.

21 Q And was that later downloaded?

22 A Yes, it was.

23 Q And does it show what you did in this particular
24 case?

25 A Yes, it does.

1 Q All right. Now, you talked about how it backs up a
2 certain amount of time. Is that, you push the button, and
3 then it picks up some video from before that time?

4 A That is correct. The moment you activate it, it
5 keeps the prior 30 seconds, attaches it to the entire video,
6 but those 30 seconds do not have sound.

7 Q All right, you just went to the next point that I
8 wanted to point out. Sometimes when we play these, at the
9 very beginning, there's just no audio?

10 A That's --

11 Q Is that accurate?

12 A That is correct.

13 Q All right. But you can see, there's the video, it's
14 picking up the video, but the audio just doesn't come in yet?

15 A That is correct.

16 Q Is that a function of that company that runs this
17 system?

18 A Yes, it is.

19 Q Okay. So that portion there, the first 30 seconds,
20 you can see, you can't hear, and then the audio kicks in?

21 A That's true.

22 Q Okay. Now, on this particular case, were you called
23 out to a scene on Dewey Avenue?

24 A Yes, I was.

25 Q Do you remember the address, 5536 Dewey Avenue?

1 A Yes, in the area of Dewey and Torrey Pines.

2 Q All right. Do you have an area that you work in
3 specifically; a certain section of your area command that
4 you're assigned to?

5 A Yes. They're assigned sectors, and my area at that
6 particular time is -- is Sam 5. Sam 5 area is from Tropicana
7 south down to Sunset; from Jones down to Durango. So that
8 area on Torrey Pines and Dewey is within my sector.

9 Q Showing you State's Exhibit 4, which has previously
10 been admitted, do you recognize the streets in this area?

11 A Yes, I do.

12 Q And then, could you show us where Lindell runs?

13 A Lindell is --

14 Q Here, I'm going to help you out.

15 A Yeah. I'm like, looking at the screen.

16 Q State's 1, that's more close-up.

17 A Okay.

18 Q Can you orient us as far as where Lindell is and
19 where Dewey is?

20 A Okay. Lindell is the one running north and south.

21 Q So, I apologize. There's a little mouse in front of
22 you.

23 A Oh, I'm sorry.

24 Q If you'd grab that mouse.

25 A This is Lindell right here.

1 Q There we go, thank you. And then Dewey?

2 A And Dewey is right here.

3 Q All right. And did you respond, looking at State's

4 Exhibit 3, to a particular location?

5 A Yes, I did. I did respond to this location right

6 here. My patrol car came to this location.

7 Q All right. I'm going to show you State's Exhibit

8 10. What time was it when you got there approximately?

9 A Approximately 12:20 in the morning.

10 Q 12:20? So this is August 9th of --

11 A That is correct.

12 Q -- 2017?

13 A Yes.

14 Q All right. Do you -- when you're working a shift on

15 that particular night, do you have a partner with you?

16 A No, I am by myself.

17 Q Okay, is that common? Is that the system that's

18 utilized?

19 A Yes, unless you're a training officer, or every

20 other training night, so every two weeks, we can double-up

21 because there's a lot of officers working that night. But as

22 a regular patrolman, I am by myself.

23 Q Do you remember what the call was; what it came out

24 as?

25 A It came out -- the code that they use for 15A is

1 assault battery with a firearm. A gunshot is the way the call
2 came out.

3 Q All right. So your information as you're responding
4 to this scene is that some shots have been fired?

5 A That is correct.

6 Q And you're riding to the scene by yourself?

7 A Yes.

8 Q Where did you come from, and how did you get there?

9 A I came from a distance. I do know I came further
10 northeast of the location. When the call came out, as soon as
11 it was activated, just roughly based on the 100 blocks, I knew
12 the location, where it was within my sector beat. She does
13 call out -- the dispatcher does call out over the air it's in
14 Sam 5 area, so I know the general location to go to. I
15 activate my camera as soon as I receive the call. And because
16 of the type of call and the nature of the call, I activated my
17 lights and sirens, so that way, at least I can get there a
18 little faster.

19 Q All right, and what's that referred to sometimes
20 when you're responding that way?

21 A Code 3 driving.

22 Q Okay, and is that because you're trying to get there
23 as fast as you can?

24 A That is correct.

25 Q Okay. And then, eventually, do you -- are you kind

1 of flagged down as to what direction to go to?

2 A Yes.

3 Q What happens?

4 A As I approach the scene, the area, I went to one
5 street to the north of, looking for a victim. The call that
6 came out -- may I give a little bit of background --

7 Q Sure, sure.

8 A -- as far as the call that came out? The call that
9 came out said an individual heard what sounded -- sounded like
10 gunshots, went outside, and found his cousin, who appeared to
11 be hit by bullets, so he called 911. Because he was outside,
12 what I did was, when I arrived in the area of the
13 neighborhood, I was looking for someone outside, lying --
14 looking for help.

15 I drove through the cul-de-sac one street to the
16 north of. There was a person standing outside. As I was
17 asking did they call for help, someone came down, flagged me
18 down, waved; we're over here, over here on the next street.
19 Drove south down to Dewey to the street right here, and as I
20 pulled around the corner, I could see the individual on the
21 driveway.

22 Q Okay.

23 MR. PESCI: Your Honor, at this point, I'd move to
24 publish State's Exhibit -- and I apologize. Before we turn
25 that on, last time, our volume was a little bit lower. I'm

1 not sure. I don't think I can control the volume. Is it
2 something that's controlled here? Oh, all right. Well --

3 THE COURT: And is it 327?

4 MR. PESCI: It's 327. Yes, Your Honor.

5 THE COURT: Okay.

6 MR. PESCI: May I publish?

7 THE COURT: You may.

8 (Video is played)

9 BY MR. PESCI:

10 Q You spoke of someone flagging you down, sir. Is
11 that who we see in the video right now?

12 A Yes, that is.

13 Q Okay, and we talked earlier about how there's not
14 audio at first?

15 A Yes.

16 Q Do you know who is who when you first arrive on a
17 scene like this?

18 A Absolutely not.

19 Q In this specific scene, did you know who was who?

20 A No, I did not.

21 Q Sir, when you -- so, as we're watching, are you
22 putting gloves on?

23 A I am.

24 Q Why?

25 A There's a lot of blood at the scene.

1 Q Was he still breathing when you first got there?
2 A He appeared to be breathing, yes.
3 Q Did paramedics arrive?
4 A I'm sorry?
5 Q Did paramedics arrive?
6 A Yes, they did.
7 (Stopped playing of video)
8 BY MR. PESCI:
9 Q So, sir, I want to kind of ask you some questions
10 based on what we just were watching, and ask them based on
11 this Exhibit number 10.
12 A Okay.
13 Q So when you first arrived on that scene, were you
14 the first and only officer at the scene?
15 A Yes, I was.
16 Q We watched in the video, there seems to be a lot of
17 commotion near the body of the victim, correct?
18 A Correct.
19 Q How many people did you have coming and going
20 through that area at first?
21 A At first, initially, about four individuals.
22 Q Family-related?
23 A Yes.
24 Q Okay.
25 A That I found out later.

1 Q All right. Was -- were paramedics called to the
2 scene?
3 A Yes.
4 Q Did they arrive to the scene?
5 A Yes.
6 Q Did they get to the body?
7 A Yes, they did.
8 Q All right. Is the most important thing at that
9 particular time the efforts to try to preserve life?
10 A Yes.
11 Q Okay. Was that done by these paramedics?
12 A Yes.
13 Q All right. In that -- in the melee or the confusion
14 of the family coming out and the paramedics coming to the
15 scene, were there people, in essence, all over where the
16 shooting occurred?
17 A Yes, they were.
18 Q Was that something that you hoped for? Would you
19 have liked to have it been different?
20 A No.
21 Q What would you prefer?
22 A I'd prefer, of course, keeping everything as --
23 exactly as they were, but because he was in the state he was,
24 obviously, he needed medical attention, that took priority, so
25 allowing everyone to come in and do what they needed to. I

1 kept anyone that was nonessential -- tried to keep them off
2 the scene.

3 Q That was my next question. I heard you say to the
4 family, "Please move away," correct?

5 A Yes.

6 Q As hard as that is for family members to see the
7 victim, you tried to get them out of the scene?

8 A That's correct.

9 Q But then the paramedics still came in, because, as
10 we were watching, he was still breathing, wasn't he?

11 A Yes.

12 Q That's the reason why the paramedics got into the
13 scene and took him away?

14 A Yes.

15 Q Okay. After that, you talked about trying to set up
16 a perimeter; is that correct?

17 A That is correct.

18 Q All right. And you talked about how it was maybe a
19 possible drive-by?

20 A That's correct. The call came out where he -- the
21 cousin, Mr. Relato, did call stating that he believes it was a
22 drive-by, so we had to take that into account.

23 Q All right. So you didn't know for sure, but that
24 was a piece of information that you had?

25 A That's true.

1 Q Based on that, did you expand the perimeter?

2 A Yes, we did.

3 Q When we say perimeter, what do we mean?

4 A We set up an area that we don't want anyone to come

5 into, just in case there's evidence. There's a crime scene;

6 we want to make sure everything's preserved. So we set up an

7 inner-perimeter, which is where the immediate crime scene is,

8 the immediate location of whatever we have. In this case, we

9 had the victim in his driveway, that immediate crime scene.

10 The end of the street on one end, east and west, to

11 make sure if there's anything else there; shell casings,

12 cigarette butts, anything that we have to make sure no one

13 tramples on it after that point. Then we have an exterior

14 crime scene where people can walk around, but we keep only

15 personnel in there, whether it be other officers, or

16 detectives, or anyone else.

17 Q Okay. You spoke a moment ago about shell casings.

18 Is that when a firearm is shot, and a cartridge case is

19 expelled out of the firearm?

20 A Yes.

21 Q Assuming it's a semiautomatic?

22 A Yes.

23 Q Okay. Now, you talked about how, after you got this

24 perimeter up, you're trying to preserve that scene?

25 A Yes.

1 Q Okay. It seems as if, from the video, there were
2 some other officers got there as well?

3 A Yes.

4 Q Did they assist you with that?

5 A Yes, they did.

6 Q Okay. So at that point, were you trying to keep
7 that scene, as best as you could, as it was?

8 A Yes.

9 Q All right, after the family's been moved over and
10 the paramedics have left the area?

11 A Yes.

12 Q All right. You're trying to freeze that for further
13 investigation from others?

14 A Yes.

15 Q Did you touch anything?

16 A No.

17 Q Okay. So you weren't picking up cartridge casings,
18 or opening up doors, or doing anything?

19 A No, I do not do that. No.

20 Q Okay. You were a patrol officer at the time?

21 A Yes.

22 Q Did you have a sergeant?

23 A Yes.

24 Q Did you relay the information that you had to your
25 sergeant?

1 A Yes, I did.

2 Q Is there kind of a chain of command within
3 Metropolitan Police Department?

4 A Yes.

5 Q Does that information then get relayed to further
6 investigators down the road?

7 A Yes, it does.

8 Q Did you stay around to kind of relay some of that
9 information?

10 A Yes.

11 Q Okay. And did you assist with getting information
12 as far as who was at the scene, names, and things of that
13 nature?

14 A Yes, I did.

15 Q Okay.

16 MR. PESCI: Court's indulgence.

17 BY MR. PESCI:

18 Q Sir, I apologize. At the beginning, or towards the
19 beginning, when you first approached, you were asking the
20 individual who was helping the victim about firearms. Why was
21 that?

22 A At this point, we didn't know who had shot him,
23 where there were firearms, if there were any firearms present.
24 Because we had a scene that we considered to be dynamic, we
25 still don't know everyone that's involved. What I didn't want

1 is I didn't want there to be someone come out of the house
2 with a firearm, or if there was a firearm that he may have
3 owned himself, I wanted to be aware at least what was in the
4 immediate area at that house as far as safety for the other
5 officers anywhere else.

6 MR. PESCI: All right, thank you very much. Pass
7 the witness, Your Honor.

8 THE COURT: Cross-examination, Mr. Sanft?

9 MR. SANFT: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. SANFT:

12 Q Officer Calleja?

13 A Yes, sir.

14 Q Okay. During the course of your career as a
15 Metropolitan Police Department police officer, have you ever
16 been on this kind of scene before?

17 A Yes, I have.

18 Q And since then?

19 A Yes.

20 Q Very dynamic scene, right?

21 A Yes.

22 Q And as what the State has asked you, a lot of moving
23 parts, right?

24 A Yes.

25 Q Now, you arrived on the scene. Would it be fair to

1 say you were the primary officer, first on the scene?

2 A Yes.

3 Q And as a result, based upon your policy and
4 training, as the first officer on the scene, you arrive, and
5 then at that point, you're kind of taking point when other
6 officers arrive on the scene following that same call, fair?

7 A Yes.

8 Q Okay. And as the person that's on the scene as the
9 primary officer, you're in charge at that point on protecting
10 the safety of the individuals that are there?

11 A Yes.

12 Q So you're determining whether maybe the threat is
13 still there or not, fair?

14 A That's correct.

15 Q And then, once that's determined, or once that's
16 resolved, then the next part of the process is preserving the
17 scene for evidentiary value?

18 A Yes.

19 Q Now, what the State had asked you earlier was you
20 didn't pick up any what you believed to be of evidentiary
21 value during the time that you were spending there, fair?

22 A That -- that's correct.

23 Q Okay, but it is a team effort, right?

24 A Yes.

25 Q So if you saw something on the ground that you

1 believed was of evidentiary value, like, say, for instance, a
2 spent cartridge casing --

3 A Um-hum.

4 Q -- you would have at some point identified it, maybe
5 put a cone by it, tell somebody else, hey, we've got something
6 here, don't step over here, something like that, fair?

7 A Not put a cone, but definitely let people know where
8 there are shell casings, yes.

9 Q Right. Now, at some point in the future when you
10 handed it off to your sergeant, he would then, in turn, hand
11 it off to maybe detectives that are responsible for this kind
12 of case, right?

13 A Yes. I won't hand off the scene to my sergeant. My
14 sergeant will arrive and then make sure that I'm within
15 policies and guidelines. And then, when detectives arrive,
16 I'll brief them on the scene, and then it becomes their
17 investigation.

18 Q Okay. So even though your sergeant was present,
19 you're still the primary officer on the scene?

20 A That's correct.

21 Q And then, he's there in an advisory capacity sort of
22 thing?

23 A Yes.

24 Q And at some point, you hand over your
25 responsibilities as primary officer to detectives to continue

1 with the investigation?

2 A Yes.

3 Q Okay. Now, in this case, and what I'm trying to
4 explain to the jury here through you is that it's -- it's a
5 team effort, right? Meaning, every officer that arrives on
6 the scene is doing one of those things; protecting the people
7 that are there, or in the alternative, protecting the scene
8 for evidentiary value, or conducting investigation?

9 A Yes.

10 Q And it's -- you all talk to one another --

11 A Yes.

12 Q -- to make sure that, hey, if you see something
13 that's of value, you let other people know, right?

14 A Yes.

15 Q Okay. Now, in this case, as you were going through
16 this process, we saw the video of what you saw, and you saw
17 these individuals that were crying that were there, right?

18 A Yes.

19 Q You've been on scenes like that before, right?

20 A Yes.

21 Q Where you arrive, and then the people that are there
22 are potentially trampling over things that are of evidentiary
23 value, fair?

24 A Yes.

25 Q But once again, your number one priority at that

1 point is not evidentiary value; it's to protect the safety of
2 the people that are there?

3 A Yes.

4 Q Right? Now, in this case, as you are conducting
5 this investigation or at some point in the future, did you
6 ever interview anybody in furtherance of what happened; any of
7 the individuals that were there that we saw in the video, or
8 people in the area? Did you do any of that type of
9 investigation?

10 A I did talk to some of the individuals that were
11 there, but after other officers had already conducted an
12 investigation. Gathered names, details as to what they saw,
13 put it down in notes, and then I would then confer -- confirm,
14 "Hey, you ended up seeing this; this is what you were doing?"
15 "Yes," and then I would put it down in my notes for -- for the
16 detectives.

17 Q Okay, and that's just -- just to make sure, that
18 everything kind of went through you at that point as to who
19 was talking to who --

20 A Yes.

21 Q -- and what was said by who?

22 A Yes.

23 Q A general description, fair?

24 A Yes.

25 Q Did you ever write a report with regards to what you

1 did in this case?

2 A Yes.

3 Q And is that a report that was then submitted to the
4 detectives to help them in furtherance of their investigation
5 of this case?

6 A Yes.

7 Q Okay. Now, there was some discussion about this
8 idea that, when you arrived on the scene, potentially, it was
9 a drive-by?

10 A Yes.

11 Q Do you recall, from the time that you received the
12 call to the time that you arrived on the scene, how long that
13 was? What period of time?

14 A Approximately three, four minutes. The body camera
15 does capture the entire drive time, but I'm just -- I'm just
16 guessing, because I do know it was a little distance. I was
17 driving Code 3, going faster than authorized by just general
18 public, so there were intersections I had to clear. So I'm
19 guessing approximately three, four minutes.

20 Q Okay. Did you at any point ever speak with the
21 cousin or the family member that said that they believe there
22 was a drive-by shooting?

23 A Mr. Relato?

24 Q Yes.

25 A Yes.

1 Q Did you ever at any point capture that interview or
2 that discussion with him in a report, or with your notes, or
3 anything like that?

4 A The notes -- the basic notes that I ended up taking
5 that I submitted to detectives, yes.

6 Q Now, you had videotaped that portion with your body
7 cam. Did you videotape your interview with this particular
8 family member when you were speaking to them?

9 A I really don't recall. I don't recall if I did or
10 not.

11 Q Okay. Now, and once again, for this jury, make sure
12 we understand, the body cam that you have isn't automatically
13 turning on and off; you have to make the choice to turn it on
14 or off, fair?

15 A Yes.

16 Q Okay. And based upon your training and experience
17 in this sort of technology, in this case, you received the
18 call, you immediately turned it on, turned your car, and
19 started driving in the direction in which you were taking the
20 call?

21 A Yes.

22 Q Okay. And at some point, you chose to turn off your
23 camera, and that was after this incident occurred, sometime a
24 little bit later, fair?

25 A Yes.

1 Q But you didn't turn it back on when you were
2 interviewing potential people that could have had something to
3 say on this case?

4 A I don't recall if I did or did not.

5 Q Okay.

6 A Probably not. If I do turn off, one of the policies
7 that we have when we turn off a body camera, we have to
8 dictate so you can hear through the camera why you're turning
9 it off. Generally, if I turn off a camera when let's say a
10 supervisor or a detective arrives on scene because they're
11 taking over the investigation, I'll usually say, "Turning off
12 camera to confer with sergeant or detective." I shut off the
13 camera, and at that point, it only comes back on if there's
14 something that I think, hey, I need to turn it back on for, if
15 I recall.

16 Q And once again, I just need to know, I -- and you
17 can understand this. If you are interviewing somebody that
18 may be somebody who saw something, like in this case, that's
19 not a reason for you to turn it back on at that point?

20 A Depends on why I'm interviewing. If I could,
21 detectives were coming to the scene. Not just our local PD
22 detectives; we knew that homicide was going to be coming to
23 the scene as well. When homicide comes to the scene, I do not
24 do in-depth interviews because I don't interfere with their
25 investigation.

1 So the basic information I usually ask someone is,
2 "What did you see until you gave us a call," to gather the
3 basic information to give to detectives so they can go ahead
4 and ask the further questions during the interviews. I don't
5 do in-depth interviews as a preliminary -- as the primary
6 officer, just because I'm more of triage; get everything set
7 up so that when detectives arrive, they can go ahead and
8 conduct the investigation.

9 Q All right. But you are aware, of course, just as a
10 matter of human nature, that when you ask someone a question
11 like, "What did you see," it's not like they're giving you a
12 concise version of what they saw; they're telling you what
13 they saw, fair?

14 A Yes, absolutely.

15 Q And you're the first person that's probably going to
16 be asking them that question in a long line of people asking
17 them that same question, fair?

18 A Yes.

19 Q Okay. All right. Now, in addition to that, you --
20 when you arrived on the scene, there was an individual that
21 was running from the corner back over to that area. Do you
22 know who that was by any chance?

23 A No.

24 Q Okay. Did you ever, during the time that you spent
25 on this scene, ever ask anyone with regards to video footage,

1 phone footage, anything like that of any of the individuals in
2 the area?

3 A Did I ask if -- you mean --

4 Q Did you conduct that type of investigation? I just
5 want to know if you asked --

6 A Yeah, we identify who has cameras outside. We try
7 to identify the houses, so that way, people can start asking,
8 doing a knock on the residents. Is that what you're asking?

9 Q Yes, yeah.

10 A Yes, we do that.

11 Q Okay, but did you do -- did you personally do that
12 in this case, as far as you recall?

13 A I pointed out to houses where officers could go make
14 knocks. I said, across the street, there's a camera there,
15 there may be a camera there. But we start that, and then
16 there are officers that are assigned specifically --

17 Q To knock on the --

18 A -- to start knocking on houses.

19 Q Okay.

20 MR. SANFT: All right, I have no further questions,
21 Your Honor. Thank you.

22 THE WITNESS: You're welcome.

23 THE COURT: Thank you. Mr. Ruggeroli?

24 CROSS-EXAMINATION

25 BY MR. RUGGEROLI:

1 Q Officer, you were asked about priority. I think one
2 of the things you said was policies and guidelines; do you
3 remember that?

4 A Yes.

5 Q And so your priority is to follow the policy and
6 guidelines that you've been taught -- trained to follow,
7 correct?

8 A Yes.

9 Q One of those -- does that include things like
10 putting on the gloves?

11 A It's not specified in a policy, but it's safe
12 practice.

13 Q And when you show up on a scene like that, you have
14 a general procedure that you would go through though, correct?

15 A Yes.

16 Q In this particular case, you mentioned that part of
17 the protocol was to preserve the crime scene, but you're
18 obviously focused on the individual that's injured and trying
19 to get them assistance, correct?

20 A Yes.

21 Q A number of things are going on at once?

22 A Yes.

23 Q At the end of it though, there's going to be a crime
24 scene that's there, correct?

25 A Yes.

1 Q And in this situation, you have to deal with it as
2 you come into it. But it would be fair to say, to a certain
3 extent, this crime scene was compromised because of what the
4 activity was going on around it in an attempt to save the
5 individual's life?

6 A To some extent, yes.

7 Q And so, you mentioned shell casings. Did you
8 specifically look for any evidence like shell casings?

9 A When I first arrived, if you look at the body -- the
10 footage, the first thing I did, went to the victim, and then I
11 did a scan with my flashlight because I knew people were going
12 to be trampling over that particular area. And what I tried
13 to do was preserve at least the immediate area, and I see -- I
14 did a scan. I would look down, I moved around, I backed up so
15 the camera would catch at least most of what we have there
16 initially, because there were things that were moved, and I
17 did see shell casings.

18 Q What about -- did you say cigarette butts, or was
19 that a question that was asked of you?

20 A No, I mentioned that that's one of the things that
21 we're taught in evidence preservation, that if there's
22 anything there, just leave everything as-is because we don't
23 know if it could be evidence or not.

24 Q And something like a cigarette butt could be a very
25 important piece of evidence?

1 A It could be, yes.

2 Q Were you there when the crime scene analysts
3 arrived?

4 A Yes.

5 Q And did you assist them?

6 A As a primary officer, it is my responsibility to
7 point out the crime scene the best that we know. What I ended
8 up doing -- usually, when an analyst arrives, male or female,
9 when they arrive, I have to tell them if I did touch anything,
10 because when they process and lift prints, they're going to
11 check to see if I touched anything. Since I had gloves on,
12 usually I'll say, I put gloves on, I did this, I touched that,
13 but they keep that in their notes when they go ahead and start
14 photographing, and then collect evidence.

15 Q And you had some information about this potentially
16 being a drive-by?

17 A Yes.

18 Q But you didn't have any specific information
19 regarding a suspect, correct?

20 A That's correct.

21 Q Or -- at this time, or any descriptions of a
22 potential suspect?

23 A Well, suspects, as in people of interest, yes, we
24 did have a description, because there was a call that came out
25 a minute prior to me --

1 Q Okay.

2 A -- going to that call.

3 Q I'm specifically referring to the individuals on the
4 scene that you were talking to, and the information that you
5 had at that time.

6 A Okay.

7 Q Okay.

8 A That's --

9 Q Thank you.

10 A That's correct.

11 MR. RUGGEROLI: I have nothing further.

12 THE COURT: Any redirect?

13 MR. PESCI: Yeah.

14 REDIRECT EXAMINATION

15 BY MR. PESCI:

16 Q Well, aside from the people on the scene, you were
17 just about to tell us that you had more information about
18 this, didn't you?

19 A That is correct.

20 Q And what was the information?

21 A That a minute prior to the call coming out -- I say
22 a minute; it could be a couple minutes before -- there were
23 individuals that live on the south side of the street, almost
24 directly across the street from the crime scene, that called
25 in a suspicious circumstance. It was a different call that

1 was generated almost the same time. A gentleman, I believe
2 his name was Mr. Mason, was jogging, he goes for a jog in the
3 morning, saw four individuals --

4 MR. RUGGEROLI: Judge, I'll object to the hearsay.

5 THE COURT: All right, just --

6 MR. PESCI: Okay.

7 THE COURT: I mean, I'm assuming you want him to
8 stop now, or?

9 MR. PESCI: Okay.

10 BY MR. PESCI:

11 Q So you had some information from someone that called
12 in a suspicious situation going on?

13 A That is correct.

14 Q Okay. So you had that through dispatch, correct?

15 A That is correct.

16 Q So it wasn't just the people at the scene?

17 A That is correct.

18 Q Okay. So you're working with the information from
19 dispatch; you're working from the information at the scene;
20 you're working there to try to take down information, correct?

21 A Yes.

22 Q Defense counsel just asked you a few questions
23 about, all right, the body cam's on during interviews, the
24 body cam's not on during the interviews; do you remember those
25 questions?

1 A Yes.

2 Q I think you said you weren't sure; you couldn't

3 remember?

4 A Right.

5 Q Okay. Well, let's see if we can help you remember.

6 The earlier video we watched, it stopped after the individual

7 was put inside of the ambulance, correct?

8 A Yes.

9 Q All right. You stayed on the scene?

10 A Yes.

11 Q And you talked with some of the individuals there?

12 A Yes.

13 Q Okay, and this is still your body cam, correct?

14 (Video is played)

15 THE WITNESS: Yes.

16 (Stopped playing of video)

17 BY MR. PESCI:

18 Q Is there another officer working this with you?

19 A Yes, there were several.

20 Q Is he -- is -- I believe it's a he; is that correct?

21 A Yes.

22 Q Is he gathering information from these witnesses?

23 A Yes, he is.

24 Q You still have the body cam on?

25 A Yes.

1 Q Okay.

2 (Video is played)

3 (Stopped playing of video)

4 BY MR. PESCI:

5 Q So now we have the individual who was the first

6 person. Looks like he's got a shirt on, correct?

7 A Yes.

8 Q And you're interviewing him, getting some basic

9 information?

10 A Yes.

11 Q Body cam's still on, correct?

12 A Yes.

13 (Video is played)

14 (Stopped playing of video)

15 BY MR. PESCI:

16 Q You told us earlier that you're trying to gather

17 information from who's who, what -- the basics, and then hand

18 off to other detectives, correct?

19 A Yes.

20 Q All right. And for the purposes of this jury not

21 having to sit so long, I'm going to move it forward a little

22 bit. As we're moving forward, can you see -- are you still

23 there talking with this witness?

24 A Yes.

25 (Video is played)

1 BY MR. PESCI:
2 Q (Indiscernible) mention he's a student?
3 (Stopped playing of video)
4 BY MR. PESCI:
5 Q So, all this has been preserved?
6 A Yes.
7 Q All of this is available for review?
8 A Yes.
9 MR. PESCI: Okay, thank you very much.
10 THE COURT: Any recross?
11 RECROSS-EXAMINATION
12 BY MR. SANFT:
13 Q Officer, just -- I want to make sure that you and I
14 are clear. I asked you a question earlier about whether or
15 not you had interviewed and saved that body cam footage. Now,
16 we've seen some body cam footage, right?
17 A Yes.
18 Q Okay. That's part of your job is to make sure that
19 you capture whatever you can in terms of evidence, potentially
20 to show a jury, right?
21 A Yes.
22 Q And I want to make sure I'm clear. I -- when I
23 asked you earlier about the body cam footage, you said no.
24 Did you say no?
25 A I said I don't recall.

1 Q You don't recall? Okay, but here it is.

2 A Okay.

3 Q Right? Right? Is that a yes?

4 A Yes.

5 Q Okay. Which means, typically, that these types of

6 things help you recall, because I'm sure you answer hundreds

7 of calls since August of 2017. This is the type of technology

8 that can help you recall specifically things that can turn --

9 that you could then turn to a jury and say, yeah, I do

10 remember now that this did happen?

11 A Okay, yes.

12 Q Would that be fair?

13 A Yes.

14 Q Okay, and that's the reason why we have those

15 things, right?

16 A Yes.

17 Q Okay.

18 MR. SANFT: No further questions, Your Honor.

19 THE COURT: Thank you.

20 MR. RUGGEROLI: Thank you, Your Honor. I have no

21 questions.

22 THE COURT: All right. Officer, thank you very much

23 for your testimony here today. You may step down, and you are

24 excused from your subpoena.

25 THE WITNESS: Okay, thank you.

1 THE COURT: Thank you. And you may call your next
2 witness.

3 MR. BROOKS: State calls Lucinda Mendoza.

4 THE MARSHAL: If you'll please watch your step.
5 Step up into the witness stand.

6 THE WITNESS: Sure.

7 THE MARSHAL: Remain standing, raise your right
8 hand, and face the Clerk, please.

9 LUCINDA MENDOZA, STATE'S WITNESS, SWORN

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

12 THE WITNESS: Lucinda Mendoza. L-u-c-i-n-d-a.
13 Mendoza, M-e-n-d-o-z-a.

14 DIRECT EXAMINATION

15 BY MR. BROOKS:

16 Q Ms. Mendoza, do you recall an incident that occurred
17 back on August 9th, 2017 that brings us here in court today?

18 A Yes.

19 Q Do you recall your husband leaving the house around
20 midnight?

21 A Yes.

22 Q I want to show you State's Exhibit 4. Can you -- do
23 you recognize what's depicted in this map?

24 A Yes.

25 Q And back in 2017, did you live at that 5524 Zachary

1 Street address?

2 A Yes.

3 Q So when your husband went on his jog, as he started
4 off his jog, at some point, do you receive a phone call from
5 him?

6 A Yes.

7 Q And based on that phone call, does he ask you to do
8 something?

9 A Yes.

10 Q Do you end up doing that?

11 A Yes.

12 Q What do you do?

13 A I called the non-emergent 311 number.

14 Q And do you relay some information that your husband
15 had just given to you?

16 A Yes.

17 Q And have you had the opportunity to come and listen
18 to that 911 call previously?

19 A Yes.

20 MR. BROOKS: Your Honor, I don't think there's
21 any --

22 MR. SANFT: No objection, Your Honor.

23 MR. BROOKS: -- objection to State's Proposed
24 Exhibit 330.

25 MR. RUGGEROLI: No objection.

1 THE COURT: Okay, 330 is admitted.
2 (State's Exhibit 330 is admitted)
3 THE COURT: And you may publish.
4 (911 call is played)
5 (Stopped playing of 911 call)
6 BY MR. BROOKS:
7 Q Ms. Mendoza, what's your husband's name?
8 A Robert.
9 Q And is it Robert Mason?
10 A Yes.
11 Q Now, we heard you just relay some facts to a 311
12 operator.
13 A Um-hum.
14 Q At that point in time, had you seen any of those
15 things, or were you just relaying what you --
16 A No, strictly just relaying what I was told to relay.
17 Q So you have no idea whether they were black males or
18 Asian males?
19 A No.
20 Q No? And you have no idea if it was a Ferrari or a
21 white Crown Victoria?
22 A No.
23 Q So you just said white Crown Victoria type car
24 because that's --
25 A Right.

1 Q -- what he said?

2 A That was the description I was given.

3 Q Okay. However, was it hot that night?

4 A Yes.

5 Q And did you think it was odd that people were

6 wearing hoodies?

7 A Very.

8 Q And is that why --

9 A That was the first red flag of suspicion was,

10 midnight, 90 -- it was hot, 90 degrees, unfamiliar people in

11 the neighborhood. So, yeah.

12 Q And so, at that point in time, did you know whether

13 your husband had gotten the license plate or not?

14 A No, I had not known yet.

15 Q Subsequently, did you learn whether he had or not?

16 A After, yeah.

17 Q After. But when he called you, he wasn't trying to

18 report a license plate?

19 A Correct, just the suspicion.

20 MR. BROOKS: Thank you. Nothing further. Pass the

21 witness.

22 THE COURT: Mr. Sanft?

23 MR. SANFT: No cross, Your Honor.

24 THE COURT: Mr. Ruggeroli?

25 MR. RUGGEROLI: Just briefly.

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CROSS-EXAMINATION

BY MR. RUGGEROLI:

Q Mr. Mason is your husband?

A Correct.

Q He contacted you that night?

A Correct.

Q He gave you some information, correct?

A Yes, correct.

Q And you called it in, correct?

A Correct.

Q Four individuals?

A Correct.

Q All wearing dark clothing?

A Correct.

MR. RUGGEROLI: Nothing further.

THE COURT: Okay. Thank you very much for your testimony here today. You may step down, and you're excused from your subpoena.

THE WITNESS: Thank you.

THE COURT: Thank you very much for being here. At this time, we're going to recess for lunch. During this recess -- we're good, right?

MR. PESCI: Yes, Your Honor.

THE COURT: We got through all the witnesses?

MR. PESCI: Yes, thank you.

1 THE COURT: Okay. During this recess, you're
2 admonished not to talk or converse amongst yourselves or with
3 anyone else on any subject connected with this trial, or read,
4 watch, or listen to any report of or commentary on the trial,
5 or any person connected with this trial, by any medium of
6 information, including, without limitation, newspapers,
7 television, the internet, or radio, or form or express any
8 opinion on any subject connected with this trial until the
9 case is finally submitted to you.

10 We'll be in recess until 2:00 o'clock. Thank you.

11 THE MARSHAL: Thank you. All rise for the exiting
12 jurors. Jurors, please leave your notebooks on the chairs.

13 (Outside the presence of the jurors at 12:52 p.m.)

14 THE COURT: Anything outside the presence?

15 MR. SANFT: No.

16 MR. PESCI: No.

17 THE COURT: We're good?

18 MR. RUGGEROLI: No, Your Honor.

19 THE COURT: Okay.

20 MR. SANFT: Thank you, Your Honor.

21 (Court recessed at 12:52 P.M. until 2:08 P.M.)

22 (Outside the presence of the jurors)

23 THE COURT: Is this -- are these exhibits?

24 MR. PESCI: Yes, ma'am.

25 THE COURT: Okay. Have they been given to the Clerk

1 yet, or are you getting ready to give them to her?

2 MR. PESCI: No.

3 THE COURT RECORDER: She has them. She's marking
4 them, I believe.

5 THE COURT: Oh, okay. All right, okay. I'm just
6 trying to figure -- it's okay. I got to wait for my Clerk
7 though. No, you're fine.

8 Okay. The record will reflect that the hearing is
9 taking place outside the presence of the jury panel. Both
10 defendants are present. Anything outside the presence?

11 MR. PESCI: No, Judge.

12 MR. RUGGEROLI: I don't have anything.

13 THE COURT: Okay.

14 MR. SANFT: No, Your Honor.

15 THE COURT: Bring them in.

16 (Pause in the proceedings)

17 THE MARSHAL: All rise for entering jury, please.

18 (Within the presence of the jurors)

19 THE MARSHAL: Thank you, everyone. Please be
20 seated.

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

23 MR. PESCI: Yes, Your Honor.

24 THE COURT: Mr. Sanft?

25 MR. SANFT: Yes, Your Honor.

1 THE COURT: Mr. Ruggeroli?
2 MR. RUGGEROLI: Yes, Your Honor.
3 THE COURT: Thank you. State may call their next
4 witness.
5 MR. PESCI: State calls Allison Rubino.
6 THE MARSHAL: Please remain standing, raise your
7 right hand, and face the Clerk.
8 ALLISON RUBINO, STATE'S WITNESS, SWORN
9 THE CLERK: You may be seated. Please state and
10 spell your first and last name for the record.
11 THE WITNESS: My name is Allison Rubino.
12 A-l-l-i-s-o-n, R-u-b-i-n-o.
13 MR. PESCI: May I proceed, Your Honor?
14 THE COURT: You may.
15 MR. PESCI: Thank you.
16 DIRECT EXAMINATION
17 BY MR. PESCI:
18 Q Ma'am, what do you do for a living?
19 A I am a forensic scientist in the Biology/DNA Detail
20 at the Las Vegas Metropolitan Police Department Forensic
21 Laboratory.
22 Q How long have you been doing that?
23 A I've been with Metro since January of 2014, so just
24 over six years now.
25 Q What training and experience do you have that brings

1 you to this job?

2 A So I have a Bachelor's of Science Degree in
3 biochemistry from the University of Scranton in Pennsylvania.
4 I also have a Master's of Science in forensic science from the
5 University of New Haven in Connecticut. Prior to working here
6 in Las Vegas, I was a forensic scientist at the Armed Forces
7 DNA Identification Laboratory in Dover, Delaware. I was there
8 for about a year-and-a-half. And before that, I was a
9 research associate in forensic sciences at the Suffolk County
10 Crime Laboratory in Hauppauge, New York.

11 When I arrived here in Las Vegas, we don't just go
12 right into casework. We go through a well-documented training
13 program. That includes following all of the procedures and
14 protocols that we have in place that we need to fulfill our
15 everyday duties. We go through oral exams, practical exams,
16 written exams, as well as, at the end, kind of a big mock
17 case, moot court type of situation, where it kind of puts us
18 right into what we would be doing on a regular basis before
19 being released into independent casework.

20 Q Ma'am, considering all that you just said, have you
21 had a focus in the area of DNA?

22 A Yes.

23 Q What is DNA?

24 A DNA, it stands for deoxyribonucleic acid. It's
25 found in nearly every cell within our body, and it contains

1 all of the information that make us into the individuals that
2 we are, from our hair color, our eye color, numbers of fingers
3 and toes we have, the size of our organs, things like that.

4 Our DNA is inherited. That means we get half of our
5 DNA from our mother, and half of our DNA from our father. And
6 known -- no known people are known to have the same DNA, with
7 the exception of identical siblings, like identical twins,
8 identical triplets, et cetera.

9 Q And have you testified in the area of DNA analysis
10 here in Nevada and other courts?

11 A Yes.

12 Q Okay. You talked a minute ago about the unique
13 nature of DNA. What is DNA though? How do you break it down
14 to analyze it; to look at it?

15 A So the steps of the process that we utilize in the
16 lab is first -- the first step is called an extraction. So
17 the extraction, we take a sample, whether it be a swab that
18 may have DNA on it, another item of evidence where we're
19 trying to recover DNA on it. We want to remove all of the DNA
20 from all of the other stuff that's present.

21 So if we think about a swab -- a swab of a
22 doorhandle, for example, there could be -- we want to first
23 remove the DNA from the swab itself, and we also want to
24 remove the DNA from all of that other cellular material, or
25 maybe dirt on the swab, all of those things we don't need for

1 our downstream processing.

2 Once we've isolated the DNA, we quantify it, just
3 find out how much DNA is present in that sample. We'll then
4 take a small portion of that DNA and put it in a copy machine,
5 where we're going to make millions and millions of copies of
6 different parts of the DNA that we're going to analyze. All
7 of those copies go through an instrument, and that instrument
8 separates the different parts of DNA, and they go past a
9 camera.

10 And this camera will take all of these snapshots of
11 all the different parts of DNA as they travel through the
12 instrument. And all of those pictures kind of get --
13 accumulate into a software program, and it generates a DNA
14 profile that we use as analysts for interpretation, reporting,
15 and further investigation as to comparisons between samples.

16 Q And when you're doing that, is there something about
17 alleles that are part of that entire process of analysis?

18 A Yes. So we look at different locations on the DNA,
19 as I said. And when I get my picture of this DNA profile,
20 there -- what I'm going to see are a series of peaks, so I'm
21 going to see peaks that have numbers attributable to them.
22 And what we call those peaks, they're known as alleles.

23 Q And then, those alleles, do you have markers or
24 things at those alleles that will tell you, this is from one
25 person versus another person?

1 A So if we're looking at, let's say, a DNA profile
2 from a known individual, we encounter that a lot, and we call
3 them reference standards. So when we have a reference
4 standard, this known DNA from a known source, we look at the
5 certain number of locations, and we assess these alleles or
6 peaks at each location. So at all of these locations, I'm
7 expecting to see one or two numbers, or one or two alleles
8 that will be indicative of an -- indicative of an individual.

9 Q Speaking of that analysis, you brought with you a
10 water bottle today; is that correct?

11 A Yes.

12 Q All right. Have you held that in your hand?

13 A Yes.

14 Q Okay. Is it possible for DNA from you to be
15 transferred onto that water bottle?

16 A Yes, both on the surface from me holding it, it's
17 possible, but also from drinking the water bottle around kind
18 of the mouth or inside the cap.

19 Q So let's start off with the surface as far as
20 holding it. What would you call that type of DNA?

21 A We call that type of DNA maybe a transfer DNA or
22 touch DNA, and it simply refers to the DNA that gets
23 transferred when a person comes into contact with someone or
24 something else.

25 Q Now, instead, if you had looked at the area -- at

1 the opening of the water bottle where you have drank, would
2 you find a different type of DNA, or would it be a different
3 source, potentially?

4 A It potentially could be a different source. The
5 DNA, if it's -- if it's from me, it would be the same DNA,
6 because the DNA that would maybe come from me drinking from
7 the water bottle would be the same DNA as my DNA if I was
8 holding it. So, regardless of the type of DNA, whether it be
9 blood, saliva, my skin cells, that -- the DNA would be the
10 same from all of those regions.

11 Q So, if I understand correctly, the DNA, meaning that
12 photograph, that microscopic photograph, is the same, correct?

13 A If I were to -- if I were to have DNA picture
14 profiles, and they were to be single-source profiles, and you
15 compared it to my reference standard, it's definitely possible
16 that it could be the same from the handling it, if I'm the
17 only one handling it, and if I'm the only one drinking it.

18 Q A moment ago, you talked about some different
19 sources of DNA, which included -- I think you said blood,
20 saliva, things of that nature, correct?

21 A Yes.

22 Q So let's change the scenario, and let's say you
23 unfortunately cut your finger, and you grab that bottle, and
24 there was blood on the bottle. Is that a source of DNA?

25 A Yes.

1 Q When you compare, let's say blood versus touch DNA,
2 are you more likely -- or in your experience, have you seen
3 that some samples are better sources of DNA?

4 A Definitely body fluids are better sources of DNA
5 than say maybe what we're talking about, touch DNA. Touch DNA
6 is generally from your skin cells, and that can be a very
7 variable situation, because when you think about the type of
8 environment we live in, it's dry out here. So when you're
9 holding something, you may not be inclined to remove skin
10 cells maybe during the winter than you are maybe during the
11 summer when you're sweating a lot, and that sweat is going to
12 be a good vehicle from your skin cells.

13 Another thing to take into consideration is the
14 surface that you're touching in general. If you think of
15 something like sandpaper, if you were to think of rubbing
16 maybe your hand against a piece of sandpaper, because of all
17 those grooves and rough textures, it's more likely to take off
18 skin cells onto that sandpaper as opposed to a smooth surface
19 which doesn't have all those little grooves or any textures to
20 really adhere to the DNA.

21 Other things to think about are maybe duration of
22 handling. If you're holding something or touch something
23 once, you may leave behind less DNA than the pen that you're
24 using all day long. So there are so many factors that do come
25 into play when we talk about touch DNA, so it's a very --

1 sometimes we'll get a profile, sometimes we won't.

2 Q Speaking of DNA and getting a profile, if you don't
3 get a profile, what does that mean?

4 A It's just that there was -- whether there be no
5 detectable DNA using our procedures, or there -- if there's
6 very little, it may not be enough for -- or suitable for
7 interpretation because there just isn't enough DNA present.

8 Q So the example that you gave, being in this dry
9 environment, if I touch that water bottle and I don't really
10 have much sweat, it could be that I just don't leave any DNA
11 molecules on the water bottle?

12 A It's possible.

13 Q Okay. You spoke of a reference sample earlier,
14 correct?

15 A Yes.

16 Q When you're doing analysis of certain pieces of
17 evidence, do you try to compare it against known reference
18 samples?

19 A Yes.

20 Q Okay. And in this particular case, were you asked
21 to analyze some pieces of evidence against some known samples?

22 A Yes.

23 Q Okay. And I want to backtrack for one thing that
24 you said earlier. You talked about, originally, when you
25 extract the DNA, you talked about you could get it from a

1 swab. What's a swab?

2 A So a swab is really just a -- we see them in the
3 form of like a long, thin, wooden stick with kind of the end
4 of a Q-tip on it. So it's a little piece of cotton that
5 somebody will use to wipe down an item of evidence, and submit
6 that swab as being from a particular item.

7 Q So if we had a crime scene analyst come in here
8 today and take a swab from your water bottle, would you expect
9 that to look like you're saying; almost like a piece of wood
10 with a little Q-tip end?

11 A Yes.

12 Q That would be rubbed along the areas on that
13 particular item, and then that swab is impounded into
14 evidence?

15 A Yes.

16 Q All right. Then, are you able to call up that
17 evidence, which means bring it to you to analyze?

18 A Yes.

19 Q If I understand, you don't go to the scene when
20 there's a shooting, a murder?

21 A No.

22 Q You're --

23 A No, I do not.

24 Q You're working in a laboratory?

25 A Yes.

1 Q Okay. Now, to call up a piece of evidence, is there
2 a unique number that's associated with this specific
3 investigation?

4 A Yes. It's called -- it's called an event number.

5 Q And is an event number associated with -- whenever a
6 call is generated by 911, a specific, unique number is given
7 to that, and then all of the research associated with it is
8 tied to that number?

9 A Yes.

10 Q Okay. In this particular case, were you asked to
11 analyze some evidence assigned to Event Number 170809-0029?

12 A Yes.

13 Q Okay. So you knew that's the evidence that you
14 needed to retrieve to be able to look at, and then compare it
15 to some known samples?

16 A Yes.

17 Q Speaking of known samples, did you have known
18 reference samples in this particular case for a DeShawn
19 Robinson, a DeMario Lofton-Robinson, a Davontae Wheeler, and a
20 Raekwon Robertson?

21 A Yes.

22 Q Okay. You didn't get those, but they were
23 eventually at a position where you could analyze them?

24 A Yes.

25 Q Okay. So someone else in the chain of this whole

1 process took a sample from these individuals, which was then
2 able to be -- created an extraction, and then a profile to be
3 able to compare it to?

4 A Yes.

5 Q All right. So you had those known reference samples
6 of those individuals to compare to the evidence from this
7 incident?

8 A Yes.

9 Q Okay. I want to kind of go over a few reports. Did
10 you generate two reports in this case?

11 A Yes.

12 Q Okay. I want to first look at the one that you
13 generated that says November of 2017. Do you have that
14 report?

15 A Yes.

16 Q And will it help you refresh your recollection to
17 review the report as you testify?

18 A Yes.

19 MR. PESCI: Any objections from the defense?

20 MR. SANFT: No, Your Honor.

21 MR. RUGGEROLI: Can I -- can I just take a look at
22 it?

23 MR. PESCI: Sure. This has got notes all over it,
24 but --

25 MR. RUGGEROLI: Yeah, thanks.

1 MR. PESCI: Okay.

2 MR. RUGGEROLI: Yeah.

3 MR. PESCI: Thank you. Your Honor, with your
4 permission then, is it okay if she refers to her report?

5 THE COURT: Absolutely.

6 MR. PESCI: Thank you very much.

7 BY MR. PESCI:

8 Q Ma'am, so, focusing on that first report, there are
9 a lot of different people that are involved in this process
10 before you get the case to work; is that correct?

11 A Yes.

12 Q All right. And then, are you familiar with what's
13 referred to as a personnel number?

14 A Yes.

15 Q Do you have a personnel number?

16 A Yes, I do.

17 Q And what number is that?

18 A My personnel number is 14784.

19 Q Is that a unique number for every employee at the
20 Metropolitan Police Department?

21 A Yes.

22 Q Okay. Now, are you accustomed and have you seen on
23 many situations where you refer to or look at items of
24 evidence that are impounded by someone else with a different P
25 number?

1 A Yes.

2 Q I'm sorry, I said P number. Is that what it's often
3 referred to?

4 A Yes, a personnel number. We just shorten it for P
5 number.

6 Q Okay. And in this particular case, did you have
7 evidence brought to you that was impounded by a P number 5158?

8 A Yes.

9 Q Okay. And then, when that person impounds the piece
10 of evidence, does that particular CSA impound it in a package
11 that has a unique package number, and then the items inside
12 the package have unique item numbers?

13 A Yes.

14 Q Okay. When you work that information and that
15 evidence, do you assign a different number for your report?

16 A Yes, I do.

17 Q All right. So we're going through this just to make
18 connections of the dots as far as the CSA's number versus your
19 number; is that okay?

20 A Yep.

21 Q All right. So, staying with 5158, did you receive a
22 package which was an Impound Package number 5 from 5158, and
23 Impound number 11 and 12?

24 A Yes.

25 Q Okay.

1 MR. PESCI: Court's indulgence. All right, so
2 there's not an objection.

3 BY MR. PESCI:

4 Q I'm going to put a name to a number; is that okay?

5 A Sure.

6 Q All right. So, for 5158, it's Ebony Stephens. She
7 had two pieces of evidence. What were those?

8 A They were two cigarettes -- cigarette butts.

9 Q Okay. And what did you do with those cigarette
10 butts?

11 A So after examining the cigarette butts, what I'm
12 trying to do is look for the best place to obtain where DNA
13 may be coming from. So when you think about a cigarette butt,
14 it's going to be from someone's mouth. So I take a
15 cross-section, including that filter and paper at the
16 non-burnt end, and I process that for DNA.

17 Q Okay. And then, we'll go through those individual
18 items after we go over what items you have, okay? In addition
19 to items impounded by Ebony Stephens, did you have items
20 impounded by 5228, a William Speas?

21 A Yes.

22 Q And specifically, did it have his Package number 5,
23 and two items, being his Item 6 and 7?

24 A Yes.

25 Q And what were those items?

1 A They were a swab from an Interarms handgun, and a
2 magazine.

3 Q When you say a magazine, meaning a firearm magazine?

4 A Yes.

5 Q Okay. And then, additionally, did you have items of
6 evidence impounded by a P number 15291, being Crime Scene
7 Analyst Browning?

8 A Yes.

9 Q And were there three items impounded by her; her
10 Package 3, and Items number 15, 16, and 17?

11 A Yes.

12 Q And what were those items?

13 A They were three swabs from inside a vehicle. One --
14 I believe one was from the right seat back headrest, the other
15 was from the right rear door interior arm rest, and one was
16 from the right rear door just above the handle.

17 Q Okay. And lastly, did you have another reference
18 standard -- I apologize -- sample, under 9618, that same
19 individual of Jeffrey Scott?

20 A Yes.

21 Q Okay, and I apologize. It looks like he has a
22 Package 3, Items 5 and 6, and then a Package 2, which is an
23 Item 2; is that correct?

24 A Yes.

25 Q And then, his numbers 5 and 6, what were they from?

1 A They were swabs from the finger -- the right and
2 lefthand fingernails of a Gabriel Valenzuela.

3 Q Okay. And so, in addition to swabs from his
4 fingernails, did you have the reference standard from Gabriel
5 Valenzuela?

6 A Yes.

7 Q And was that impounded by the same P number 9618,
8 Jeffrey Scott; his Package 2, Item 2?

9 A Yes.

10 Q All right. So now we got all the pieces of evidence
11 from this report. Let's go into specific results. What did
12 you do to compare the items to the known samples?

13 A So once I obtain the DNA profile, I have to
14 interpret it. I kind of have to make the decision as to, one,
15 how many people are present in a particular sample. I then
16 have to determine maybe if there's male present in that
17 profile. And then the next thing I have to do is determine
18 whether it is suitable; whether there's enough information
19 there that's suitable for comparison.

20 Q Okay. And if it's not suitable for comparison, what
21 do you do?

22 A We call it inconclusive, and we don't make any
23 comparisons. So once we deem a profile as not having enough
24 information, or maybe having too much information, that it's
25 too complex, we just won't make any comparisons further.

1 Q Is it strange for you to sometimes have samples
2 where you cannot make a comparison?

3 A No, it happens. Like we had talked about, how touch
4 DNA could be variable, sometimes we won't get a profile
5 suitable for comparison, and sometimes we will.

6 Q All right. And when you're making comparisons and
7 you're looking at those photographs, as you referred to them,
8 are there things that are unique to males versus females
9 within DNA?

10 A Yes. So two of the locations that we do our testing
11 on give us an indication of gender. One is a gender-specific
12 location, and there are only two options. We have females
13 that are XX, and males that are XY. So if I have a DNA
14 profile and I see that Y present, I can say that that male is
15 present in the sample. We also have another location that is
16 male-specific, so when we see a peak in that position, we can
17 then say also a male is present.

18 Q Okay. Looking at your Lab Item 18.1, which
19 corresponds to the cigarette butt, which I believe is 5158's
20 Item 11, what were your conclusions?

21 A I obtained a DNA profile from a single-source DNA
22 profile that was male.

23 Q Okay. And then did you compare that male profile to
24 all the known samples we just spoke of?

25 A Yes.

1 Q Was there a match on any of them?

2 A Every one that was compared to was excluded.

3 Q All right, so what does it mean to be excluded?

4 A Excluded is that there were -- they didn't match
5 that DNA profile.

6 Q So those alleles that we talked about, there were
7 nothing that matched up or lined up around there?

8 A It -- it's not necessarily that one or -- it's not
9 necessarily every single one didn't line up. We have to look
10 at the combination of numbers. And if all of those
11 combinations of numbers at all locations don't match a known
12 sample, the person is excluded.

13 Q All right. So were DeShawn Robinson, DeMario
14 Lofton-Robinson, and Davontae Wheeler, and Raekwon Robertson,
15 and even Gabriel Valenzuela excluded?

16 A Yes.

17 Q All right. And did you actually have some known
18 sample -- reference samples for a couple other individuals; an
19 Anthony (phonetic) Robinson and a Johnquiel Brown?

20 A Yes.

21 Q Okay. All of those people were excluded?

22 A Correct.

23 Q Okay. Now, you had a second cigarette butt,
24 correct?

25 A Correct.

1 Q So your Lab Item 19 corresponded to Ebony Stephens's
2 number 12, correct?

3 A Correct.

4 Q And what did you find from that?

5 A I also got a single-source male profile. That
6 profile was the same as in the other cigarette butt, so every
7 -- all of the reference standards that I had were excluded.

8 Q Okay. So we know the two cigarette butts were
9 touched or used by a male, and it's Unknown Male number 1?

10 A Correct.

11 Q And that Unknown Male number 1 is not any of the
12 reference samples that we have?

13 A Correct.

14 Q Okay. So moving then to the swabs from the
15 Interarms Star handgun, what did you find out about that?

16 A So from the swab of the handgun, I obtained a
17 mixture DNA profile where I determined at least one of those
18 contributors was male. Unfortunately, there was just not
19 enough information to make any further conclusions.

20 Q Okay.

21 A So this profile was deemed inconclusive.

22 Q And when you talk about a mixture, what does that
23 mean?

24 A A mixture is -- so we talked about single-source
25 being from one person. A mixture DNA profile originates from

1 more than one individual.

2 Q Okay. And that particular swab, which is your
3 number 28, is that coming from the Interarms Star handgun; the
4 grips, the hammer, the slide, and the trigger, and the trigger
5 guard area?

6 A Yes.

7 Q Okay. And then, your second swab from the Interarms
8 Star, corresponding to your number 29, is that coming from the
9 base and the ramp of the magazine of that firearm?

10 A Yes.

11 Q What were your results on that?

12 A I did not obtain a DNA profile from that sample.

13 Q All right, so no profile at all?

14 A None at all.

15 Q Okay. Moving onto number 30 and 31, those
16 correspond back to the samples from the victim's fingernails,
17 correct?

18 A Correct.

19 Q And what did you find?

20 A For both of those items, the DNA profiles that were
21 obtained were consistent with Gabriel Valenzuela.

22 Q Okay. And then, moving to your Item 33, which
23 corresponds to Claire Browning's Item 15, is this from
24 different locations inside the car; from the front seat of --
25 the right side of the right front seat of the car?

1 A Yes.

2 Q And what was your result?

3 A So for this sample, I obtained a mixture DNA profile
4 that had two contributors in them, one of which was male.

5 Q Okay. And then, you said it was a mixture, correct?

6 A Correct.

7 Q And then, were you able to include anybody?

8 A Yes, I was.

9 Q And who was that?

10 A DeShawn Robinson was individually included.

11 Q All right. So we've been speaking about exclusion.
12 This is the first time we're talking about inclusion. What
13 does that mean?

14 A When the -- when an inclusion is made, that -- that
15 means, when comparing that reference standard to that mixture
16 DNA profile, a certain statistic is given to show that this
17 person has as high probability of being included in this
18 mixture DNA profile.

19 Q Okay. Now, that number that you come up with, is
20 that based on looking at the DNA and all of those points of
21 reference that match?

22 A It's based on -- so we use the software for a lot of
23 our mixture interpretation and comparisons. So it's based on
24 the numbers that are present, those alleles that are present
25 in that sample, and how well a particular reference standard

1 matches the breakdown of the different contributors.

2 Q Okay. And then, you said that you came up with a
3 number associated with that?

4 A Correct.

5 Q And what was that?

6 A So the number that we calculate, the statistic we
7 use, is a likelihood ratio. And a likelihood ratio compares
8 two different conclusions.

9 So for example, if we're thinking of something like
10 the weather, when you're watching the weather in the morning
11 and they're talking about, you know, the percentage of --
12 percentage of sun, so they say it's based on all of their
13 Doppler, their radar, that there's a 90 percent chance it's
14 going to be sunny today. So, out of 100, that means there's a
15 ten percent chance that it's going to be something other than
16 sunny for the weather. When you make the comparison between
17 the two, the resulting likelihood ratio would essentially be
18 it's nine times more likely to observe all of this information
19 we have about the weather if it was going to be sunny than it
20 was going to be something other than sunny.

21 So when I'm -- so when this likelihood ratio is
22 calculated for this particular item, we say it in the form of:
23 the probability of observing this mixture DNA profile from the
24 swab from the seat back is at least 1.76 octillion times more
25 likely if this profile originated from DeShawn Robinson and

1 one unknown random contributor than if this profile originated
2 from two unknown random contributors.

3 Q Because you have the known of DeShawn Robinson to be
4 able to factor into the equation?

5 A Yes.

6 Q Okay. And so, you said it's 1.76 octillion?

7 A Yes.

8 Q What is octillion?

9 A So we could start -- we'll start at a million that
10 has six zeros to it, a billion has nine, a trillion has 12, a
11 quadrillion has 15, a quintillion has 18, a sextillion has 21,
12 a septillion has 24, and then an octillion has 27.

13 Q And when you say 27, do you mean zeros?

14 A Yes. So when you think about 1.76 octillion, if you
15 move that decimal place over two spots, you have 176 followed
16 by 25 zeros.

17 Q All right. And that's that likelihood ratio as far
18 as finding somebody else who's going to have that?

19 A It's comparing that it's that -- that many more
20 times more likely to see this profile if it originated from
21 DeShawn Robinson and one unknown random contributor rather
22 than two other unknown random contributors.

23 Q So that's how you come to the labeling of
24 "individually included"?

25 A Yes.

1 Q All right. So DeShawn Robinson is included based on
2 the DNA analysis that you did, but we have exclusions in this
3 as well?

4 A Yes.

5 Q All right. So all of the other individuals we've
6 mentioned before, they were all excluded from this particular
7 source?

8 A Correct.

9 Q All right. Moving to you Lab Item 34, a swab from
10 the interior right rear door armrest, was this a mixture
11 profile?

12 A Yes, it was.

13 Q And then did you include DeShawn Robinson in this
14 one?

15 A Yes, I did.

16 Q Individually included? I apologize.

17 A Yes.

18 Q And then, what was the likelihood ratio on this?

19 A So the -- this was also a mixture of two
20 individuals, at least one of which was male. And the
21 probability of observing this mixture DNA profile was at least
22 2.56 octillion times more likely if it originated from DeShawn
23 Robinson and one unknown random contributor than if it
24 originated from two unknown random contributors.

25 Q Still 27 zeros?

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on February 8, 2024. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

ALEXANDER CHEN
Chief Deputy District Attorney

/s/ Steven S. Owens
STEVEN S. OWENS, ESQ.