

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON ROBERTSON,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Feb 08 2024 10:41 AM
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 87811

APPELLANT'S APPENDIX

Volume 5

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

ALPHABETICAL INDEX TO APPELLANT'S APPENDIX

<u>Vol</u>	<u>Pleading</u>	<u>Page</u>
1	Amended Superseding Indictment	109
8	Appellant's Opening Brief	1795
8	Appellant's Reply Brief	1862
1	Court Minutes – February 13, 2018	15
1	Court Minutes – December 19, 2018	70
7	Court Minutes – March 12, 2020	1574
7	Court Minutes – December 22, 2020	1623
7	Court Minutes – June 2, 2022	1637
7	Court Minutes – July 7, 2022	1640
8	Court Minutes – September 14, 2023	1886
7	Guilty Plea Agreement	1577
8	Exhibits in Support of Evidentiary Hearing	1890
1	Indictment	1
7	Judgment of Conviction	1600
7	Memorandum of Points and Authorities	1617
7	Motion for Appointment of Counsel	1632
7	Notice of Appeal	1604
8	Notice of Appeal	1793
8	Notice of Appeal	1976
8	Notice of Entry of Findings of Fact, Conclusions of Law and Order	1768
8	Notice of Hearing	1884
8	Order Affirming in Part, Reversing in Part and Remanding	1876
7	Order Appointing Counsel	1638
8	Order for Audiovisual Appearance of Inmate	1887
8	Order Regarding Evidentiary Hearing	1968
7	Petition for Writ of Habeas Corpus (Post-Conviction)	1606
7	Petition for Writ of Habeas Corpus (Post-Conviction)	1624
1	Recorder's Transcript – January 9, 2018	7
1	Recorder's Transcript – April 5, 2018	16
1	Recorder's Transcript – May 3, 2018	29
1	Recorder's Transcript – June 6, 2018	46
1	Recorder's Transcript – June 14, 2018	52
1	Recorder's Transcript – September 5, 2018	62
1	Recorder's Transcript – December 5, 2018	67
1	Recorder's Transcript – January 2, 2019	72
1	Recorder's Transcript – April 17, 2019	78

1	Recorder's Transcript – May 15, 2019	82
1	Recorder's Transcript – August 21, 2019	87
1	Recorder's Transcript – November 5, 2019	91
1	Recorder's Transcript – December 18, 2019	100
1	Recorder's Transcript – January 15, 2020	103
1	Recorder's Transcript – February 11, 2020, Trial Day 1	113
2	Recorder's Transcript – February 12, 2020, Trial Day 2	288
3	Recorder's Transcript – February 13, 2020, Trial Day 3	611
4	Recorder's Transcript – February 14, 2020, Trial Day 4	875
5	Recorder's Transcript – February 18, 2020, Trial Day 5	1140
6	Recorder's Transcript – February 19, 2020, Trial Day 6	1344
7	Recorder's Transcript – February 20, 2020, Trial Day 7	1559
7	Recorder's Transcript – February 24, 2020, Trial Day 8	1563
7	Recorder's Transcript – June 11, 2020	1586
8	Recorder's Transcript – November 17, 2022	1763
8	Recorder's Transcript – November 3, 2023, Evidentiary Hearing	1934
8	Respondent's Answering Brief	1826
8	Response to Petition for Writ of Habeas Corpus	1741
7	Second Amended Superseding Indictment	1575
1	Superseding Indictment	23
7	Supplemental Petition for Writ of Habeas Corpus (with Exhibits)	1641
7	Verdict	1572

1 A Yes.

2 Q Would you recognize the photo if I showed it to you?

3 A Yes.

4 Q I want to show you State's Proposed Exhibit 149. Do
5 you recognize that?

6 A Yes.

7 Q And do you recognize the person depicted there?

8 A Yes.

9 MR. BROOKS: Your Honor, State moves for admission
10 of 149.

11 THE COURT: Any objection?

12 MR. SANFT: Just a matter of clarification with
13 regards to 149, Your Honor. There are two people in that
14 photograph.

15 THE COURT: Okay, why don't you clarify?

16 MR. BROOKS: Sure.

17 BY MR. BROOKS:

18 Q Did you know both of them, or just one of them?

19 A Just one of them.

20 Q Which one?

21 A The one in the back.

22 Q So when you say "back," can you give me a color?

23 A White shirt.

24 Q The white shirt?

25 MR. SANFT: That's fine, Your Honor.

1 MR. RUGGEROLI: I'd like to see it. Thank you.

2 MR. SANFT: No further objection, Your Honor.

3 MR. RUGGEROLI: No objection.

4 THE COURT: Okay, it's admitted.

5 (State's Exhibit 149 is admitted)

6 BY MR. BROOKS:

7 Q So when you say you knew the person in the white
8 shirt, is that the person who you're messaging with; is that
9 his profile picture?

10 A Yes.

11 Q Okay. I want to show you Exhibit 336. DeShawn, the
12 gray part, the text that you received, will you read it to me?

13 A "Ask DJ if he is trying to hit a house tonight; me,
14 and Sace, and him. Him, Sace already said yeah."

15 Q All right, so who's DJ?

16 A My brother.

17 Q And who's "you"?

18 A Ask -- what?

19 Q So when it says, "Me, you, Sace, and him," is "you"
20 you, DeShawn?

21 A Yes.

22 Q Okay. Who's Sace?

23 A Don't know his first name.

24 Q But did you know who Sace was?

25 A Yes.

1 Q Have we seen him in some of the photos today?

2 A Yes, sir.

3 Q Which one was he of the four in the photos?

4 A The one in the red.

5 Q Could you use a different descriptor for me?

6 A The one in the Huaraches.

7 Q The Huaraches?

8 A The red, yes.

9 Q Oh, and the hat? Okay.

10 A Yes. Red Huaraches, yes.

11 Q And then, you respond?

12 A Yes.

13 Q Does this person send you another text?

14 A Yes, sir.

15 Q What does it say?

16 A "Tell him -- tell him, call me."

17 Q And there's a phone number?

18 A Yes.

19 Q Who's "him"? Who's he -- who's this person

20 referring to?

21 A He's referring to my brother.

22 Q So Ray Logan is telling you to have DJ call him?

23 A Yes.

24 Q All right. What's -- what's "HML"?

25 A Hit my line.

1 THE COURT: I'm sorry, what?
2 THE WITNESS: Hit my line.
3 BY MR. BROOKS:
4 Q So, DeShawn, what's the timestamp on that?
5 A Tuesday at 11:40 A.M.
6 Q Was that the morning before you went to this house?
7 A Yes, sir. I -- as I believe, yes, sir.
8 Q So why did everybody get out of the car?
9 A Can you please repeat the question?
10 Q Why did everyone get out of the car and go near this
11 house?
12 A Everybody got out the car to go near the house as
13 for -- to hit the house; to rob the house.
14 Q And what was your job going to be?
15 A My job was supposed to be to go in the house and
16 tell everybody to get on the ground and everything.
17 Q And was there a reason that you were going to be the
18 person who went in?
19 A Because I was the youngest.
20 Q So, showing you Exhibit 133, did you look younger
21 than everyone?
22 A Yes.
23 Q So you were going to enter first?
24 A Yes, I was supposed to.
25 Q Did you have any weapons?

1 A No, sir.

2 Q Did the other three?

3 A Yes, sir.

4 Q Did you guys make it inside the house that night?

5 A No, sir.

6 Q So while you guys are standing near that wall, does
7 somebody pass by?

8 A Yes, sir.

9 Q Who was it, or -- well, tell me about it.

10 A He was jogging. He was just jogging around and --

11 Q And does he just run past you?

12 A Yes, sir.

13 Q Do you recall what he was wearing?

14 A A red shirt, black shorts.

15 Q So after he jogs by, do you guys come into contact
16 with someone else?

17 A Yes.

18 Q Did you -- did any of you guys know that person?

19 A No, sir.

20 Q What did you want from that person?

21 A What did who want?

22 Q The group of you.

23 A I don't know, sir.

24 Q Was he asked for something?

25 A Yes.

1 Q What was said to him?

2 A As I walk up, I hear, "Give me everything you got."

3 Q Do you remember which one of the three said it?

4 A One in the black sweater.

5 Q And is -- he's saying it to this other person?

6 A Yes.

7 Q Do you know -- can you describe the other person for
8 me at all?

9 A He had glasses, white shirt, and black shorts.

10 Q Was he a white kid, a black kid, a Hispanic kid? Do
11 you know?

12 A I don't know the race.

13 Q Okay. After you hear that phrase -- what was that
14 phrase?

15 A "Give me everything you got."

16 Q After you hear that, what happens?

17 A After I hear that, I hear, "Oh, yeah," then that's
18 when -- that's when the man got shot.

19 Q Do you know who shot first?

20 A Yes.

21 Q And who was that?

22 A One in black sweater.

23 Q The one in the black sweater. Do you know where he
24 shot that first shot?

25 A I can't recall where, but shot near the body.

1 Q And then, were there other shots fired?

2 A Yes.

3 Q Do you recall how many?

4 A Several more, but I don't recall the number of them.

5 Q Did some of those other shots hit that person?

6 A Yes.

7 Q Did the person stay standing or did he fall?

8 A He fell.

9 Q So when he falls, what happens next?

10 A Two of them ran off. I stood there in shock. My

11 brother tugged on me, said, "Let's go."

12 Q And where do you guys go?

13 A To the car.

14 Q Is it just you and your brother run to the car, or

15 do all four?

16 A It was two ran to the car, then after that, me and

17 my brother did.

18 Q And do you all get in the car?

19 A Yes.

20 Q Do you drive away? Where do you go?

21 A We drove away.

22 Q Where?

23 A To a convenience store.

24 Q And then where?

25 A Back to the apartments.

1 Q Whose apartments? Is it yours or someone else's?
2 A Someone else's.
3 Q Do you drop someone off? What do you do?
4 A Stay in the apartments for a minute. Then, the one
5 that was in -- that lived in the apartments, he went home.
6 Then --
7 Q Had you ever been inside those apartments before?
8 A Like inside actually, like inside of a house, or
9 inside of the apartments?
10 Q Yeah. Have you ever been inside that -- so, yeah,
11 let me ask that better. So the person that you drop off, have
12 you ever been inside his apartment?
13 A No, sir.
14 Q Have you been to the outside of his apartment?
15 A Yes, sir.
16 Q Was that apartment complex near this area, or was it
17 really, really far?
18 A It was near the area.
19 Q Would you recognize a photo if I showed you the
20 outside of it?
21 A Yes, sir.
22 MR. BROOKS: Permission to approach, Your Honor?
23 THE COURT: You may.
24 BY MR. BROOKS:
25 Q Showing you State's Proposed Exhibit 235, do you

1 recognize that?

2 A Yes, sir.

3 Q And is it the outside of the apartment that you're

4 discussing right now?

5 A Yes, sir.

6 MR. BROOKS: Your Honor, State moves for admission

7 of 235.

8 MR. SANFT: No objection, Your Honor.

9 MR. RUGGEROLI: No objection.

10 THE COURT: It's admitted.

11 (State's Exhibit 235 is admitted)

12 BY MR. BROOKS:

13 Q So, DeShawn, which one of the four of you gets

14 dropped off at this apartment complex?

15 A Do I have to say the name, or describe him?

16 Q Need you to say the name.

17 A Ray Logan.

18 Q And he gets out of the car?

19 A Yes, sir.

20 Q And this is 6647?

21 A Yes, sir.

22 Q Okay. How many are still left in the car now?

23 A Me, my brother, and the other guy that was with us.

24 Q Do you refer to the other guy by a different name

25 than his name?

1 A Yes.

2 Q What do you call him?

3 A Sace.

4 Q Why do you call him that?

5 A I have no clue. It was his -- his nickname.

6 Q It was his nickname? You know how we kind of talked
7 about Ray Logan? Is Ray Logan a nickname, or is that his
8 name?

9 A It's a nickname.

10 Q Did everyone call this person Sace, or did just some
11 people?

12 A Everyone that I knew that knew him, and that was my
13 brother, called him Sace.

14 Q As far as you know, did any of those four people
15 know that kid or anyone who lived at the house?

16 A The kid that was shot?

17 Q Yeah.

18 A No, not to my knowledge.

19 Q After he was shot, did anyone attempt to go inside
20 his house and take anything?

21 A No, sir.

22 Q Why not?

23 A I have no clue.

24 Q Do you guys just immediately run, or do you stay and
25 talk for a while?

1 A I stood there in shock, so we immediately ran right
2 after.
3 Q And DeShawn, you don't want to be here today, do
4 you?
5 A No, sir.
6 MR. BROOKS: Permission to approach, Your Honor?
7 THE COURT: You may.
8 BY MR. BROOKS:
9 Q Showing you State's Proposed Exhibit 337, do you
10 recognize that?
11 A Yes, sir.
12 Q Is that your name?
13 A Yes.
14 Q Is this a Guilty Plea Agreement, pursuant to Alford,
15 that you signed?
16 A Yes, sir.
17 Q And did you plead guilty to two offenses?
18 A Yes.
19 Q Could you read Count 1 for me?
20 A Count 1, conspiracy to commit robbery.
21 Q And Count 2?
22 A Attempted robbery with use of a deadly weapon.
23 MR. BROOKS: Your Honor, at this point in time,
24 State moves for admission of Proposed Exhibit 337.
25 THE COURT: Any objection?

1 MR. SANFT: No objection, Your Honor.

2 MR. RUGGEROLI: Judge, could I just review it,
3 please? Can we approach, Judge?

4 THE COURT: Sure.

5 (Bench conference)

6 MR. RUGGEROLI: I just want to make sure before I
7 stipulate that this doesn't change anything, and that nothing
8 needed to be redacted. I know you would have done it, but
9 this one --

10 THE COURT: No, it's in the Agreement to Testify.

11 MR. RUGGEROLI: -- everything is just fine; it's in
12 the Agreement to Testify. I just --

13 MR. PESCI: Which is -- which is attached.

14 MR. RUGGEROLI: Okay.

15 MR. PESCI: So there's the Guilty Plea Agreement.

16 MR. RUGGEROLI: Right.

17 MR. PESCI: At the end of that is the information
18 showing what it is he's pleading to.

19 MR. RUGGEROLI: Okay.

20 MR. PESCI: And here's the Agreement to Testify.

21 MR. RUGGEROLI: So does that have the portion
22 included --

23 MR. PESCI: No, it takes out -- pursuant to the case
24 law, I must take out the --

25 MR. RUGGEROLI: So we're going to file it

1 separately?

2 MR. PESCI: If you want to do that, you can do that.
3 I'm not doing that.

4 MR. RUGGEROLI: Okay, I thought we --

5 THE COURT: Okay, I understand, I understand. I
6 mean, the case law is as Mr. Pesci says, but I understood -- I
7 understood differently. So you want it submitted pursuant to
8 the statute in Sessions?

9 MR. PESCI: Right, because he hasn't crossed it yet.
10 He hasn't --

11 THE COURT: And you know what, that's a good point,
12 because Sessions says, you know, unless --

13 MR. RUGGEROLI: Um-hum.

14 THE COURT: -- on cross-examination, then it can
15 come in.

16 MR. RUGGEROLI: Okay.

17 THE COURT: So --

18 MR. RUGGEROLI: I expect that --

19 THE COURT: And this is probably the best way to do
20 it.

21 MR. RUGGEROLI: Okay, but I don't have access to the
22 document to generate it myself to have it included, but --

23 MR. PESCI: You have the original; we gave you the
24 original.

25 MR. RUGGEROLI: But it's not the --

1 THE COURT: Okay, well, here's the deal.
2 MR. RUGGEROLI: Uh-huh.
3 THE COURT: Once on cross-examination, if you attack
4 his credibility and truthfulness, then the State can move to
5 admit the Agreement to Testify --
6 MR. RUGGEROLI: Okay.
7 THE COURT: -- in its entirety --
8 MR. RUGGEROLI: I --
9 THE COURT: -- absent that --
10 MR. RUGGEROLI: But nobody -- the State's not going
11 to do that; is that right?
12 MR. PESCI: I'm not taking out that part.
13 MR. RUGGEROLI: So I misunderstood. I thought the
14 reason why you hadn't ruled is because Mr. Pesci was going to
15 have that taken out.
16 MR. PESCI: What I'm saying is there's no way on
17 God's green earth I can do that by the time you're going to
18 cross this kid.
19 THE COURT: Right.
20 MR. RUGGEROLI: So --
21 THE COURT: Yeah.
22 MR. RUGGEROLI: So the --
23 THE COURT: I mean, what will happen is, is that
24 you'll have to modify this at lunch or whatever, and then --
25 MR. RUGGEROLI: Okay, but --

1 THE COURT: -- bring it in.

2 MR. RUGGEROLI: I can't do that. I mean, I can --

3 MR. PESCI: Why can't you?

4 MR. RUGGEROLI: -- white it out. What?

5 MR. PESCI: Okay.

6 MR. RUGGEROLI: You're okay with me whitening it out,
7 but not you?

8 MR. PESCI: That's up to you guys.

9 MR. RUGGEROLI: See, I just had a different
10 understanding. I thought the State was working on it.

11 MR. PESCI: No, I said very clearly, I'm not going
12 to do that.

13 THE COURT: He said repeatedly he's not going to do
14 it.

15 MR. RUGGEROLI: Okay, well, then I object to this
16 because it's a mis -- I mean, I wanted --

17 THE COURT: Oh my gosh. Okay, here's the deal.

18 MR. RUGGEROLI: Yeah.

19 THE COURT: Let's do this. I mean, this is what the
20 statute and the case law says, that it absolutely has to be
21 like this.

22 MR. RUGGEROLI: Yeah, but we --

23 THE COURT: Okay?

24 MR. RUGGEROLI: -- went through a waiver on it.

25 THE COURT: I understand that.

1 MR. RUGGEROLI: You -- you canvassed --
2 THE COURT: I understand that. I'm going to admit
3 the Agreement to Testify --
4 MR. RUGGEROLI: Okay.
5 THE COURT: -- in its entirety.
6 MR. RUGGEROLI: Okay.
7 THE COURT: However, before I can do that, you've
8 got to fix -- somebody, I don't know who it's going to be, has
9 got to fix it.
10 MR. PESCI: And I said --
11 THE COURT: Okay?
12 MR. PESCI: -- specifically when this was discussed
13 that, you know, before it actually goes to the jury, we have
14 between now --
15 THE COURT: Yes.
16 MR. PESCI: -- and then to get a doctored up version
17 of it, but --
18 THE COURT: Yes.
19 MR. PESCI: And it's impossible for me, in court
20 now, to doctor this document in order to comply based on what
21 the defense does.
22 THE COURT: And that's why we asked you --
23 MR. RUGGEROLI: Yes.
24 THE COURT: -- you're not going to want to actually
25 show it, are you?

1 MR. RUGGEROLI: I'm not.
2 THE COURT: Okay.
3 MR. RUGGEROLI: I just am responding to -- you're
4 not going to do that in the future either though?
5 MR. PESCI: No, I'm not.
6 MR. RUGGEROLI: So --
7 THE COURT: Okay.
8 MR. RUGGEROLI: I mean, I just -- I didn't --
9 MR. PESCI: You can do it between now and --
10 MR. RUGGEROLI: I know.
11 MR. PESCI: -- when we give it to the jury.
12 MR. RUGGEROLI: I didn't think they were admitting
13 this, so -- because it doesn't include the complete portion.
14 Nobody's going to reference this anyway, correct? Like,
15 publish it?
16 THE COURT: I don't know.
17 MR. PESCI: State's not publishing it. It's an
18 exhibit that's going to go back to the jury.
19 THE COURT: This is going to go back to the jury.
20 MR. RUGGEROLI: Right.
21 THE COURT: Okay.
22 MR. RUGGEROLI: And that's why I -- that's why I'll
23 object, is I'm objecting because it does not contain the
24 portion that will be triggered after the cross-examination.
25 MR. PESCI: And you can cross him --

1 THE COURT: It's not triggered yet.
2 MR. RUGGEROLI: I know.
3 THE COURT: Okay.
4 MR. PESCI: I apologize.
5 MR. RUGGEROLI: Perhaps you don't --
6 THE COURT: So the objection is overruled. It's
7 going to be admitted.
8 MR. RUGGEROLI: Or -- okay.
9 THE COURT: Okay?
10 MR. RUGGEROLI: Or we could --
11 THE COURT: Clearly, that's going to come in if you
12 challenge it --
13 MR. RUGGEROLI: Okay.
14 THE COURT: -- on cross-examination.
15 MR. PESCI: And in the interim, you can take the
16 unredacted version I gave to you weeks, and weeks, and months
17 ago, and you can cross him with it without publishing it, and
18 you can reference it. You can show it to him and say, look
19 right here, it says X, Y, and Z.
20 THE COURT: Yes.
21 MR. RUGGEROLI: Yes.
22 MR. PESCI: You could even -- you could even put in
23 a door and cover up that spot with a piece of paper.
24 MR. RUGGEROLI: Okay. I'm just getting to the --
25 THE COURT: And then we'll make sure that the

1 exhibit gets admitted.

2 MR. RUGGEROLI: I am the one that has to do the one
3 that actually gets admitted?

4 MR. PESCI: Yes.

5 MR. RUGGEROLI: Okay.

6 MR. PESCI: The State of Nevada is not doing it
7 because it's your actions that would create the necessity to
8 do it.

9 MR. RUGGEROLI: Okay.

10 THE COURT: Okay? All right.

11 MR. RUGGEROLI: Thank you.

12 (End of bench conference)

13 THE COURT: Okay, it's admitted.

14 (State's Exhibit 337 is admitted)

15 MR. BROOKS: May I proceed?

16 THE COURT: Go ahead.

17 BY MR. BROOKS:

18 Q So this was your Guilty Plea Agreement?

19 A Yes, sir.

20 Q And with this Guilty Plea Agreement, did you also
21 enter into an Agreement to Testify here today?

22 A Yes, sir.

23 Q And that's your name?

24 A Yes.

25 THE CLERK: (Indiscernible). It's admitted?

1 THE COURT: It's already been admitted.
2 THE CLERK: Okay.
3 THE COURT: Um-hum.
4 MR. RUGGEROLI: Could we have the number of that,
5 please?
6 THE COURT: 337.
7 MR. RUGGEROLI: Thank you.
8 BY MR. BROOKS:
9 Q So going back to 3 -- Exhibit 323, DeShawn. We've
10 been talking about Ray Logan. Which one's Ray Logan? And
11 then, which one's DJ? Which one's you? What's the other
12 person's name?
13 A Sace.
14 Q Point him out for me. When you guys were in the
15 car, was there talk about guns and bullets?
16 A Before or after?
17 Q At any point.
18 A Yes, sir.
19 Q Okay. Now, specifically, before, was there talk
20 about the different guns and different bullets?
21 A Yes.
22 Q What was the discussion around bullets?
23 A What type of bullets they were.
24 Q Did people have different type caliber guns in the
25 car?

1 A I don't -- I don't -- I don't know.

2 Q Did anyone take bullets out of the magazine and show
3 each other?

4 A Yes.

5 Q Did anyone exchange bullets?

6 A Yes.

7 Q And was that what the discussion was?

8 A Yes.

9 Q DeShawn, I want to show you this photo. Are you
10 familiar with the gun box your brother had?

11 A Yes.

12 Q Showing you State's Exhibit 177. Do you recognize
13 that?

14 A Yes.

15 Q Were you familiar with some of the ammunition he
16 had?

17 A No, I wasn't.

18 Q Okay. DeShawn, I want to show you a map, State's
19 Exhibit 3. Is that the house that we were just talking about?

20 A Yes, sir.

21 Q From this night?

22 A Yes, sir.

23 Q Can you take the mouse for me? And the guy who was
24 shot, where was he standing or sitting? What was he doing?

25 A He was standing right here.

1 Q Could you make a mark for me? Let me -- sorry, hold
2 on. Let me do this. All right, now, make a mark. Just a
3 line. Okay. When he was shot, where were you standing?
4 Could you do a circle for me?

5 A I believe --

6 Q Okay. Where was DJ? Where was Sace? Where was Ray
7 Logan?

8 A In front of me.

9 Q So -- okay, so just -- and it's my fault because I
10 had you do that. So Ray Logan's a little bit in front of you?

11 A Yes, sir.

12 Q And is Ray Logan in between you and the victim -- or
13 the guy who's shot? I'm sorry.

14 A Was he between?

15 Q Yeah, so tell me -- because we can't see, tell me
16 where you, where the guy who was shot, and where Ray Logan is.

17 A The guy --

18 Q With words. Sorry, with words.

19 A The guy that was shot was in the middle.

20 Q In the middle?

21 A And Ray was like in front of him right here, and I
22 was behind him right here.

23 Q So when you say "in the middle," do you mean in the
24 middle of you and Ray Logan, or do you mean the middle of the
25 group?

1 A The middle of the group.

2 Q Okay. DeShawn, do you see Sace in court today?

3 A Yes.

4 Q Could you tell me an article of clothing he's

5 wearing?

6 A Can I -- he's wearing a blue shirt.

7 Q Which side of the room?

8 A Light blue shirt.

9 Q A what?

10 A A light blue shirt.

11 Q Which side of the room is he on.

12 A Right.

13 Q On your right?

14 A Yes, sir.

15 Q Could you use your hand and kind of point to that

16 area?

17 MR. BROOKS: Your Honor, let record -- let the

18 record reflect identification of the defendant, Davontae

19 Wheeler.

20 THE COURT: So reflected.

21 BY MR. BROOKS:

22 Q DeShawn, do you see Ray Logan here in court today?

23 A Yes.

24 Q What's he wearing?

25 A A dark blue shirt.

1 Q Could you point to his area?

2 MR. BROOKS: Your Honor, let the record reflect

3 identification of Defendant Raekwon Robertson.

4 THE COURT: So reflected.

5 BY MR. BROOKS:

6 Q Sorry, DeShawn, I need to clear this really quickly.

7 So -- or during this time frame, DeShawn, when you're all

8 right here, was the guy who was shot, was he touched ever?

9 A Yes.

10 Q By who?

11 A My brother and Sace.

12 Q How was he touched?

13 A Tugged on. Like, pulled.

14 Q And so you're like grabbing at your clothing?

15 A Yeah, like how he was grabbed.

16 Q So he was grabbed by -- when?

17 A When?

18 Q Yeah.

19 A He -- I just know he was grabbed, like tugged on

20 by --

21 Q So I guess my question is, had he been shot yet?

22 A No.

23 Q So how long in between when DJ and Sace are grabbing

24 him to when he's shot?

25 A Like -- like a couple seconds after.

1 Q And did your brother fire shots?
2 A That's what I was told.
3 Q By him?
4 A Yes.
5 MR. BROOKS: Your Honor, pass the witness.
6 THE COURT: Mr. Sanft, cross-examination?
7 MR. SANFT: Yes, Your Honor.
8 CROSS-EXAMINATION
9 BY MR. SANFT:
10 Q DeShawn, my name's Michael Sanft. I represent Mr.
11 Robertson that's stand -- or sitting here next to me to my
12 left, okay? How many times have you testified in court
13 outside of today?
14 A This is my first time.
15 Q First time you've been sitting up on a stand and
16 being asked questions --
17 A Yes, sir.
18 Q -- by the defense attorney, right?
19 A Yes.
20 Q Okay. Now, you have talked to people about what you
21 say happened on this particular night before, right? You've
22 talked to other people about it?
23 A Yes.
24 Q Meaning, you've talked to detectives?
25 A Yes.

1 Q And then, you've had conversations with the district
2 attorney's office, right?

3 A Yes.

4 Q You've been in court before on this, right?

5 A Yes.

6 Q But not once have you been asked questions by
7 myself, my investigator, somebody from my office, right?

8 A No.

9 Q Okay. I -- I don't want to -- I want to make sure
10 you're not confused. So is there any confusion at all with my
11 question? I want to make sure that we're clear.

12 A Yes, we're clear.

13 Q Now, when I -- when I say my investigator, my guess
14 is you've probably been talked to by other investigators --

15 A Yes.

16 Q -- with regards to this case, right?

17 A Yes, sir.

18 Q Okay. And you're currently in the juvenile
19 detention center, right?

20 A Yes, Summit View. Summit View.

21 Q Where's that?

22 A I don't know where it's located, but it's located in
23 Vegas.

24 Q Okay. And that's with other juveniles, right?

25 A Yes.

1 Q Okay. Now, you do understand that you've pled
2 guilty to a crime that requires you to be in adult prison,
3 right?

4 A Yes.

5 Q But as of right now, you're not in adult custody;
6 you're in juvenile custody --

7 A Yes.

8 Q -- fair? Okay. And you've never been in adult
9 custody before, right?

10 A Yes, I have.

11 Q Oh, you have?

12 A Yes, sir.

13 Q Okay. So you understand the difference then between
14 adult custody and juvenile custody?

15 A Yes, sir.

16 Q All right. Fair to say that being in juvenile
17 custody is a little easier than being in adult custody, right?

18 A Yes, sir.

19 Q Okay. Now, when you've had opportunity to talk
20 about what you said that you saw, the first time you did so
21 was with detectives; is that fair?

22 A Yes.

23 Q Okay. And you met with detectives after this event
24 had occurred, right?

25 A Yes.

1 Q Now, when you talked to the detectives, fair to say
2 that you didn't call detectives and say, hey, I need to talk
3 to you, I have some information; you didn't call police; you
4 didn't do any of those things, right?

5 A No, sir.

6 Q Okay. You were arrested, and then, while you were
7 in custody, you were asked questions by a detective?

8 A Yes, sir.

9 Q All right. Now, when you were talking to the
10 detectives, did you tell them that you were going to tell them
11 the truth?

12 A Yeah, I did.

13 Q Okay. And as you were talking with these
14 detectives, did you at any point ever tell the detectives,
15 hey, you know what, that's not the truth; here's the real
16 truth?

17 A No, I think -- yeah -- well, have I talked to them
18 and said, here's the truth? No, not really. Well, I don't
19 recall.

20 Q That's fine.

21 A I don't know if you're talking about before I have
22 got -- before I was in custody, or after I was in custody.

23 Q All right. And when I say in custody, what I'm
24 talking about specifically is, the day you get arrested --

25 A Um-hum.

1 Q -- sometime after, you're sitting in a room --
2 A Yes.
3 Q -- with two detectives?
4 A Um-hum.
5 Q Is that a yes?
6 THE COURT: Is that a yes?
7 THE WITNESS: Yes.
8 BY MR. SANFT:
9 Q Okay, and you're having conversations with those two
10 detectives, and you're answering questions they're asking you?
11 A Yes.
12 Q Okay. And while you're there, fair to say, once
13 again, you basically were telling them that this is what the
14 truth is, right?
15 A Yeah.
16 Q Okay. And as you're being asked these questions,
17 there's no one else in the room besides you and the two
18 detectives, right?
19 A No.
20 Q There's not a defense attorney; there's not your
21 parents?
22 A No, sir.
23 Q There's not your grandmother?
24 A No.
25 Q Okay. But there were people in the vicinity that

1 were your family, right, that were in the same building?

2 A Yes.

3 Q Your brother?

4 A Yes.

5 Q Okay. And that's not the brother that we're talking
6 about involved in this situation, right?

7 A No.

8 Q Another brother?

9 A Yes.

10 Q Okay. Now, during the time that you were talking to
11 the detectives, do you recall that you had a -- that you had
12 informed them that you went to the store?

13 A Yes.

14 Q And the store that we're talking about is the one
15 you saw the picture of earlier, right?

16 A Um-hum.

17 Q Is that a yes?

18 A I apologize. Yes.

19 Q That's okay, and I'll keep making sure that we're
20 clear.

21 A Yes, sir.

22 Q But you told the detectives that you -- when you
23 were there, that you had gone to the store, and then at some
24 point as you're in the store, you decide to leave, but you
25 travel to your girlfriend's house?

1 A Yes, it was a lie.

2 Q Okay, thank you for getting to the point. So when
3 you told detectives that you were going to Lamb and Bonanza to
4 get dropped off at your girlfriend's house, that was a lie?

5 A Yes.

6 Q Okay. You also told detectives at that point that
7 you didn't know, outside of who your brother was, who the
8 other two individuals were?

9 A Yes, that was a lie.

10 Q Okay, that was a lie, too?

11 A Yes.

12 Q Okay. And once again, you're telling these
13 detectives this because you just want to tell them what they
14 think -- you think they want to hear, right?

15 A Yes, I was scared.

16 Q Okay, and you were scared. Why were you scared?

17 A Because I had never been really sat down like that
18 and talked to. Like, I'd never been -- I -- I can't -- I'd
19 never been investigated before.

20 Q Investigated before, meaning no one's ever sat you
21 down and asked you questions like that before?

22 A No.

23 Q Okay, so that was your first time?

24 A Yes.

25 Q And when you were sat down, you were scared. Would

1 that be fair to say that you were intimidated? Would that be
2 a good way to describe that?

3 A Can you describe intimidated to me?

4 Q Meaning that you're scared --

5 A Yeah.

6 Q -- of somebody or something that's in front of you?

7 A Yeah.

8 Q Okay. Would that be a fair way -- I don't want to
9 put words in your mouth.

10 A Yes.

11 Q Okay. Now, the -- your -- when you're talking with
12 the detectives, at some point, you do mention the fact that
13 you know that you were present potentially during something
14 that happened?

15 A Yes.

16 Q And you tell detectives, hey, you know, actually,
17 the story's different; there was something that went down,
18 right?

19 A Yes.

20 Q Now, you tell detectives that you actually went and
21 picked up another individual; a fifth person. Do you recall
22 telling the detectives that?

23 A No, sir.

24 Q Okay. I have in front of me the -- a transcript of
25 your discussion. If I give you this transcript to have you

1 read it, would that help refresh your recollection as to what
2 you told detectives?

3 A Yes, sir.

4 Q Okay.

5 MR. SANFT: Your Honor, may I approach?

6 THE COURT: You may.

7 BY MR. SANFT:

8 Q Okay, I'm going to show you this real quick here.
9 This is page 39. I just want you to read to yourself from
10 here, all the way down to the end.

11 A Yes, sir.

12 Q Now, I've shown you page 39 of your Voluntary
13 Statement. Did you have any problems reading that? Do you
14 understand what was -- what was shown to you?

15 A Yes.

16 Q Okay. And do you recall that in your conversation
17 with detectives on that night, that you had a discussion about
18 this person you had picked up, and you were wondering, "Why
19 are we picking up another person," right?

20 A Yeah.

21 Q "There's already four people in the car"; that's
22 what you told detectives, right?

23 A No. We -- at first, it was three, then we picked up
24 somebody else, and that makes it four.

25 Q Oh, okay. So before you -- or after you leave the

1 convenience store, there was three people in the car, and then
2 you pick up a fourth?

3 A Yes.

4 Q Okay. And that person wasn't in the convenience
5 store?

6 A Was that person? Not in that convenience store
7 right there.

8 Q I'm sorry, in --

9 A Not in the convenience store that's in the pictures
10 right there.

11 Q Right. And showing you once again -- I want to make
12 sure we're clear for the record and for the jury -- State's
13 Exhibit number 320. We're talking about this convenience
14 store, right?

15 A Oh, that convenience store. That's after; after we
16 picked up the fourth person.

17 Q Oh, okay. So when -- the discussion is between you
18 and the police officers. When you tell police officers -- you
19 say, "I'm like, why are you trying to pick somebody else up?
20 There's already four people in the car," you weren't saying
21 that? That's not correct?

22 A That's not -- well, that's correct what I said, but
23 I intentionally lied.

24 Q You intentionally lied?

25 A Yes, lied about what -- what happened.

1 Q Okay. Now, in addition to that, your -- your
2 statements, when you were talking to these detectives, you had
3 said that there was some discussion about -- and it's in this
4 particular page again -- about "Robbing some Mexican dude or
5 whatever." Do you recall telling detectives that?

6 A Yes.

7 Q Okay. And so then there was some discussion about
8 you pulling into the apartments on Tropicana and Jones to pick
9 up this dude. Is that the fifth dude that you lied about?

10 A Yes.

11 Q So you lied about the fact that you were trying to
12 rob a Mexican dude, and then you lied about the fact that
13 there was five people that were present, not four?

14 A Yes.

15 Q Okay. Now, at some point, as you're describing what
16 happened to the detectives, you said at some point that you
17 were there, you're present when it's happening, and then you
18 turn around, and you don't see anything else. Do you recall
19 telling detectives that?

20 A Yes.

21 Q And you told detectives, "I just heard, boom, boom,
22 boom, boom, boom," right?

23 A Yes.

24 Q Okay. Was that a lie?

25 A Yes.

1 Q Okay. In addition to that, you had said -- and I
2 want to make sure we're clear. Your brother is DeMario,
3 right?

4 A Yes.

5 Q Okay, and he was present when all this was
6 happening?

7 A Yes.

8 Q And throughout the time that you were spending with
9 the detectives, you don't ever really say he shoots a gun,
10 right?

11 A No, sir.

12 Q Okay.

13 A (Indiscernible).

14 Q In fact, today, you even tell the jury, you know, I
15 don't know. You said -- and I want to make sure that we're
16 clear about what you wrote down. You said something along the
17 lines of, well -- when the question was asked of you, "Did
18 your brother fire shots?" And you said something like,
19 "That's what I was told."

20 A Yes.

21 Q So you're telling this jury that, even now, even
22 though you said you watched everything, you don't know if your
23 brother fired shots; you were told he fired shots, correct?

24 A Yes.

25 Q Okay. And in addition to that, when you were going

1 through your statement with the detectives, you had said that
2 at some point -- the discussion as to when that was going to
3 happen. You ever tell them when that was going to happen, in
4 terms of --

5 A Tell them what was going to happen?

6 Q That the -- this idea that you guys were going to
7 hit a house. Did you ever tell detectives exactly when you
8 made that decision that this was going to happen this way?

9 A No.

10 Q And would it be fair to say that what you're trying
11 to tell detectives is, like, I was just along for the ride, I
12 don't really know what was going on, right?

13 A Yes.

14 Q Okay. Now, you get arrested, and you don't tell
15 police officers until you are speaking with them, right?

16 A Tell them what?

17 Q To -- what happened. You don't talk to anybody
18 about that until such time as you get arrested, right?

19 A Yes.

20 Q Now, at some time in the future, you have an
21 opportunity to potentially negotiate something other than what
22 you are charged in initially, right?

23 A Yes.

24 Q Meaning, in the very beginning, you were actually
25 charged with murder?

1 A Yes.

2 Q Attempt robbery with use of deadly weapon?

3 A Yes.

4 Q And conspiracy to commit robbery, right?

5 A Yes.

6 Q Okay. And you understand that, for instance -- and

7 you could -- if you need a break, you just let me know, okay?

8 A Yes.

9 Q But you understand that there is a certain amount of

10 penalty that goes along with each of those charges, right?

11 A Yes.

12 Q And you do understand that murder would have a

13 bigger penalty than conspiracy to commit robbery and robbery

14 with use or attempt robbery with use?

15 A Yes.

16 Q Okay, you were told that?

17 A Yes.

18 Q And you understand the difference?

19 A Yes.

20 Q Okay. So, in this case, you decided that you were

21 going to take a negotiation, right?

22 A Yes.

23 Q Did you speak to detectives again prior to taking a

24 negotiation in this case?

25 A Yes.

1 Q So you had another conversation with detectives
2 after this first conversation?

3 A Yes.

4 Q But before you entered into a plea?

5 A Yes.

6 Q Okay. And do you recall who the detectives were
7 that you spoke to?

8 A No, sir.

9 Q And where did that conversation take place?

10 A Where did that conversation take place?

11 Q Um-hum, yes.

12 A It was down here, down -- down in the jail.

13 Q Okay, so you're in custody in the jail?

14 A Yes.

15 Q In Clark County Detention?

16 A Yes, sir.

17 Q The adult jail?

18 A Yes, sir.

19 Q And you're having a conversation with a couple
20 detectives?

21 A Yes.

22 Q Or were they the same detectives as were in the
23 first time that you interviewed with detectives?

24 A They were the detectives that talked to my brother.

25 Q They were the same detectives that talked to your

1 brother?

2 A Yes.

3 Q But did they talk to you specifically as well?

4 A Yes.

5 Q Was your -- was your attorney present for that

6 conversation?

7 A Yes.

8 Q And by that point, did you already agree that, hey,

9 I'm going to negotiate my case, try to get something out of

10 it?

11 A No.

12 Q So let me make sure we're clear. Are you telling

13 the jury now that, I just wanted to have a conversation with

14 detectives without any type of agreement?

15 A I wanted to tell the truth.

16 Q I see, okay. And with regards to that conversation

17 -- and with regard to this conversation, do you recall if the

18 detectives took notes?

19 A Yes.

20 Q Did they at any point ever inform you that they had

21 audiotaped that conversation?

22 A When I first got arrested?

23 Q No, we're talking about the conversation that you

24 said that you wanted to come forward and tell the truth. That

25 conversation.

1 A No.

2 Q Okay. So they were there, they took notes, that was
3 it, as far as you know?

4 A I believe so.

5 Q Okay. Now, at the entry of plea, you had an
6 opportunity to review your Guilty Plea Agreement; that's the
7 same thing that you were shown earlier today?

8 A Yes.

9 Q You read it?

10 A Yes.

11 Q You understood it?

12 A A little bit, yes.

13 Q A little bit, meaning what?

14 A Like, I understand most of it.

15 Q Okay. Was your attorney there to help you
16 understand what that --

17 A Yes.

18 Q -- document was?

19 A Um-hum.

20 THE COURT: Is that a yes?

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 BY MR. SANFT:

24 Q And when you had an opportunity, you signed that
25 document, right?

1 A Yes.

2 Q Indicating that you agreed to the terms of that
3 agreement?

4 A Yes.

5 Q And then, you got in here, into a courtroom?

6 A Yes.

7 Q And in that courtroom, you were asked by the judge
8 specifically as to your understanding of what you signed,
9 right?

10 A Yes.

11 Q And what you are pleading guilty to?

12 A Yes.

13 Q Okay. Now, with regards to what you agreed that you
14 had pled guilty to in this case, you understood that, at that
15 point, you weren't even pleading to murder, right?

16 A Yes.

17 Q You were just pleading to conspiracy to commit
18 robbery, and attempt robbery with use of deadly weapon, right?

19 A Yes.

20 Q Okay. Once again, the murder's taken off the table?

21 A Yes.

22 Q Now, you're telling this jury, right, that because
23 you felt like, I needed to come forward and say -- get this
24 off my chest, that somehow in the process you are no longer
25 charged with the murder, right? That's what you're telling

1 the jury?

2 A Yes.

3 Q Okay. Now, at some point though, fair to say that
4 you did sign an Agreement to testify truthfully -- to testify
5 under oath and testify truthfully in this case, right?

6 A Yes.

7 Q Okay. Now, when you had an opportunity to be before
8 the judge, you didn't tell the judge the facts in this case as
9 to why you're pleading guilty to it, right?

10 A Did I? No.

11 Q You had somebody else do that? Somebody else told
12 the judge what they believed was going to be the evidence that
13 would prove you guilty of these crimes, right?

14 A Can you please repeat?

15 Q Meaning, as you're sitting here today, this is the
16 very first time you're talking about this case in front of
17 people, right?

18 A Yes.

19 Q When you entered in your plea, you didn't have to do
20 this, right?

21 A No.

22 Q You didn't have to say, hey, this is what I did, and
23 this is what went down; you had somebody else do that, right?

24 A Yes.

25 Q Somebody else did that, not you. You didn't tell

1 the judge, this is what I did, right?

2 A No, sir.

3 Q Okay. That was the State of Nevada who said, here's

4 what the evidence will show if we were to proceed to trial

5 against you, right?

6 A Yes.

7 Q Okay. Now, in addition to that, when you had --

8 when you had a moment, you had an opportunity to speak again

9 to the State prior to your testimony here today, right?

10 A No.

11 Q Did you ever speak to them after your entry of plea

12 in this case?

13 A Yes.

14 Q Okay. When was that?

15 A Say about a week before today.

16 Q Okay. About a week before today, right?

17 A Yes.

18 Q Okay. And you sat down with them, right?

19 A Yes.

20 Q I wasn't present?

21 A No.

22 Q Mr. Ruggeroli wasn't present?

23 A No.

24 Q Just you, your attorney?

25 A Yes.

1 Q I'm just guessing. Was that -- your attorney
2 present as well?

3 A Yes.

4 Q And then the State of Nevada, right?

5 A Yes.

6 Q They were able to ask you questions and talk to you
7 about this case, right?

8 A Yes.

9 Q Did they show you these photographs that we see here
10 today?

11 A Yes.

12 Q So you had an opportunity to review these
13 photographs before you testified before these people here
14 today, right?

15 A Yes.

16 Q Okay. Now, in addition to that, you -- when you
17 entered in your plea, were you sentenced at the time you
18 entered in your plea?

19 A Was I?

20 Q Yeah.

21 A No.

22 Q You entered in your plea -- and I want to make sure
23 we're clear here -- October 22nd, 2018?

24 A Yes.

25 Q That was a year and some months ago?

1 A Yes.

2 Q And you still have not been sentenced on this case,
3 right?

4 A No.

5 Q So the understanding is, after you testify here
6 today, you will be sentenced at some point in the future?

7 A Yes.

8 Q Right? Okay. Now, to be fair, in your Guilty Plea
9 Agreement, you understand that no one can promise you a
10 sentence, right?

11 A Yeah.

12 Q So there's no promise here as to what a judge can do
13 in terms of how you get sentenced on the case, right?

14 A Yes.

15 Q That would be up to the judge at the time of
16 sentencing?

17 A Yes.

18 Q Okay. And then your attorney would be able to talk
19 about you, right?

20 A Yes.

21 Q And the State of Nevada can talk about you as well,
22 right?

23 A Yes.

24 Q Okay. And finally, just to make sure, when you were
25 first arrested and you were scared, you told detectives you

1 didn't want to go to prison, right?

2 A Yes.

3 Q In fact, you told them that you had health problems,
4 and that's -- that you just didn't want to go to prison?

5 A Yes.

6 Q And as you sit here today, would it be fair, you
7 don't want to go to prison today, too, right?

8 A No, sir.

9 Q You don't -- and you don't voluntarily sign up to go
10 to prison, right?

11 A True. Yes, sir.

12 Q And as you sit here right now, technically, you're
13 not? You're not in an adult prison somewhere, are you?

14 A No.

15 Q Okay. That's something for the future, right?

16 A Yes.

17 MR. SANFT: No further questions, Your Honor.

18 THE COURT: Thank you. Mr. Ruggeroli?

19 MR. RUGGEROLI: Approach?

20 THE COURT: Yeah, okay.

21 MR. RUGGEROLI: For -- just for the Clerk.

22 THE COURT: Oh, okay.

23 MR. RUGGEROLI: Thank you, Judge. Can I have the
24 Court's indulgence for just one moment?

25 THE COURT: Of course.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION

BY MR. RUGGEROLI:

Q Mr. Robinson?

A Yes.

Q You spoke to the detectives the night -- or the day after the shooting?

A Yes.

Q And that was August 9th, 2017?

A Yes.

Q You've admitted to this jury that there were a number of things that you lied to them about?

A Yes.

Q When they met with you at that time, they asked you specifically to tell them about your brothers and your family; do you remember that?

A Yes.

Q You told them about Anthony Robinson. Who's that?

A My older brother.

Q And then you told them about DeMario Lofton-Robinson?

A Yes.

Q Who's that?

A My older brother.

Q You told them about -- is it DeAndra?

A Yes.

1 Q Who's that?

2 A My sister.

3 Q And you told them about John?

4 A Yes.

5 Q And who's John?

6 A My sister's boyfriend.

7 Q And his full name, is it Johnquiel Brown?

8 A Yes.

9 Q Those are the individuals during that interview on

10 August 9th, 2017 that you told them about, correct?

11 A Yes.

12 Q Now, you've had a number of years in school,

13 correct?

14 A Yes.

15 Q You have needed tutors; is that right?

16 A Yes.

17 Q You've had some difficulty with concentration and

18 attention?

19 A Yes.

20 Q You've been medicated. Are you on any medications

21 today?

22 A Yes.

23 Q Do those medications impair your ability to

24 understand, or do they enhance it?

25 A Both.

1 Q You have had an extensive history, not recently, but
2 of drug abuse?

3 A Yes.

4 Q Now, in this case, you were asked a number of
5 questions, and I do need to go back over some things, because
6 I only represent Mr. Wheeler, okay?

7 A Yes.

8 Q You were charged as an adult, correct?

9 A Yes.

10 Q And today, you were asked by Mr. Sanft, why did you
11 tell the detectives -- and this is after the first interview
12 in 2017, okay? So let me direct your attention.

13 A Yes.

14 Q By the way, you've looked around the court a couple
15 of times. Is -- people are present here for you?

16 A Yes.

17 Q Your lawyer?

18 A Yes.

19 Q So you had an interview after you were charged in
20 this related case, correct?

21 A Yes.

22 Q And you wanted to provide information that would
23 lead to a possible negotiation; is that correct?

24 A Yes.

25 Q Now, you said that you wanted to tell the truth?

1 A Yeah.

2 Q And now I'm talking about, not when you lied in 2017
3 to the detectives, but when you were trying to get a deal back
4 in 2018, okay?

5 A Okay.

6 Q So you gave them an explanation of what happened; is
7 that right?

8 A Yes.

9 Q And then, later, in 2018, you entered a plea,
10 correct?

11 A Yes.

12 Q Now, your desire to tell the truth, was it the same
13 when you entered that plea?

14 A Can you please tell me again?

15 Q When you entered your plea, you actually entered a
16 plea pursuant to the Alford decision?

17 A Yes.

18 Q You understand that that's not a regular type of a
19 plea, right?

20 A Yes.

21 Q And so, you had indicated that you wanted to tell
22 the detectives the truth, right?

23 A Yeah.

24 Q And that you wanted to probably tell the prosecutors
25 the truth, correct?

1 A Yes.

2 Q And that's prior to the plea, correct?

3 A Yes.

4 Q After you spoke to them, then you got an offer to
5 plead?

6 A Yes.

7 Q And when you took that plea, and you stood in court
8 to accept it, correct?

9 A Yes.

10 Q You did not admit that you were a part of any
11 conspiracy?

12 A True.

13 Q You did not admit that you were a part of any
14 robbery or attempt robbery?

15 A True.

16 Q So was that a lie?

17 A Was it a lie?

18 Q Yes.

19 A Yes.

20 Q Okay, so you also lied in court when you took your
21 plea?

22 A In -- back in 2018?

23 THE COURT: You know what, can I have the lawyers
24 approach a minute?

25 (Bench conference)

1 THE COURT: That is absolutely not true. I never
2 asked him, so you're -- he's -- you're telling him that he
3 lied to me --
4 MR. RUGGEROLI: Well --
5 THE COURT: -- but he didn't, because I never asked
6 him.
7 MR. RUGGEROLI: I'm talking about him saying he
8 wanted to tell the truth. So he didn't tell the truth when he
9 took the plea, because he didn't --
10 THE COURT: That's not -- that's -- that's not true.
11 MR. RUGGEROLI: But he didn't admit to --
12 THE COURT: Because I didn't ask him. You can ask
13 him --
14 MR. RUGGEROLI: Okay.
15 THE COURT: -- did you -- you know, "Did you admit
16 to it," but you can't say, "You lied to the Court," because --
17 MR. RUGGEROLI: No, no.
18 THE COURT: -- I never asked him.
19 MR. RUGGEROLI: I'm not saying he lied to the Court.
20 I'm saying he lied about wanting to tell the truth because he
21 didn't admit that he was part of a conspiracy.
22 MR. PESCI: Judge, the last question was, "Did you
23 lie in court?" His answer --
24 THE COURT: Yeah.
25 MR. PESCI: -- was yes. We're asking it to be

1 stricken; we're going to ask for you to give some sort of a
2 curative instruction to this jury.

3 THE COURT: That's just not true.

4 MR. RUGGEROLI: Okay, well, I --

5 THE COURT: It's just absolutely not true, and I
6 never asked him.

7 MR. RUGGEROLI: No, you didn't.

8 THE COURT: Because he entered an Alford plea.

9 MR. RUGGEROLI: Okay. I'm focused on him saying,
10 before he took the plea, that he wanted to tell the truth.
11 Today, he's saying that the truth is that he was a part of a
12 conspiracy. He didn't admit to that. So what I'm saying is,
13 the lie is that he didn't admit.

14 MR. PESCI: But it's not a lie.

15 THE COURT: That's not a lie.

16 MR. PESCI: It's not a lie.

17 THE COURT: That's not a lie. I allowed him to
18 enter into this Alford plea.

19 MR. RUGGEROLI: Yes.

20 THE COURT: So I'm not going to let you represent --

21 MR. RUGGEROLI: Okay.

22 THE COURT: -- to this jury that he lied to the
23 Court when he didn't.

24 MR. RUGGEROLI: Okay. Well, how about I withdraw
25 the question, and I will --

1 THE COURT: Well, I'm going to strike it --
2 MR. RUGGEROLI: Okay.
3 THE COURT: -- on the record.
4 MR. PESCI: The question and the -- the question and
5 the answer, right, Your Honor?
6 THE COURT: Yeah. I mean, if he -- he said to you
7 that he lied, and he didn't. I never asked him.
8 MR. RUGGEROLI: I understand that; I'm not
9 suggesting that you did though.
10 MR. PESCI: You just said --
11 MR. RUGGEROLI: No.
12 MR. PESCI: -- "Did you lie in court?"
13 THE COURT: I'm going to tell you, that's --
14 MR. RUGGEROLI: I --
15 THE COURT: You asked him --
16 MR. RUGGEROLI: That's not what --
17 THE COURT: -- "So you lied in court?"
18 MR. RUGGEROLI: Yeah, but that's not, "What the
19 judge said." So I'll -- you'll make the motion -- you'll
20 grant the --
21 THE COURT: What do you mean, that's not what the
22 judge said? I was the judge who took his plea.
23 MR. RUGGEROLI: I was asking him what he said
24 though; I didn't ask him if you were asking him.
25 THE COURT: Right, because you know what he did? He

1 answered my questions, and I never asked him that question. I
2 never said, "What did you do?"

3 MR. RUGGEROLI: I agree, but --

4 THE COURT: Okay, then I think that is --

5 MR. RUGGEROLI: Okay.

6 THE COURT: -- a misrepresentation right now,
7 because --

8 MR. RUGGEROLI: Okay, but what I'm saying --

9 THE COURT: -- I know he didn't lie during his plea.

10 MR. RUGGEROLI: Here's my point. You said that you
11 wanted to tell the truth when you talked to the detectives.

12 THE COURT: Okay.

13 MR. RUGGEROLI: Okay, and that would have been a
14 conspiracy, but then you didn't admit that you --

15 THE COURT: Nor was he required to.

16 MR. RUGGEROLI: Yes, but I didn't say, "The judge
17 asked you." So if you want to strike it, that's fine. My
18 point is, I -- I can clarify that, "You didn't admit that you
19 were part of a conspiracy."

20 THE COURT: Okay. You can ask him -- I just want
21 the record to reflect that Mr. Evans is present at the bench
22 now --

23 MR. RUGGEROLI: Okay.

24 THE COURT: -- Mr. Robinson's attorney. I mean, you
25 can ask him, were you required to admit; did you have to --

1 MR. RUGGEROLI: Okay.

2 THE COURT: -- admit to the Court? But I mean --

3 and again, we're talking to a 17-year-old that was 14 at the

4 time, who has obviously some learning issues.

5 MR. RUGGEROLI: Yes.

6 MR. PESCI: So, Judge, I would ask -- and I would

7 have to confer with Mr. Evans, obviously, who doesn't have to

8 commit to anything -- is that, potentially, he's going to need

9 to testify and explain what an Alford plea is, because right

10 now --

11 MR. RUGGEROLI: Who's going to need to testify?

12 MR. PESCI: Mr. Evans, to be able to explain --

13 MR. RUGGEROLI: Well, then he shouldn't be here.

14 MR. EVANS: I apologize --

15 MR. PESCI: There was misrepresentations put in the

16 record.

17 MR. EVANS: -- to everybody here. I did not want to

18 come up and get involved in it. I'm concerned now. You know,

19 I'm still representing the kid. He hasn't been sentenced yet.

20 THE COURT: I understand, and we have him on the

21 record --

22 MR. EVANS: Well, I don't know --

23 THE COURT RECORDER: Judge, can he get closer?

24 THE COURT: Yeah, you're going to have to get

25 closer. And will you state your name, too, so the Court

1 Recorder --

2 MR. EVANS: I'm sorry. JD Evans, Bar number 2267,
3 representing DeShawn Robinson.

4 THE COURT: I'm going to strike the question and his
5 -- and his answer to the last question.

6 MR. RUGGEROLI: Okay.

7 MR. EVANS: Okay.

8 THE COURT: Okay? I'll allow you to rephrase it.

9 MR. RUGGEROLI: Okay.

10 THE COURT: You can ask him, you know, was he
11 required to admit it; was he required to do this?

12 MR. RUGGEROLI: Um-hum. Okay.

13 THE COURT: Okay? But --

14 MR. EVANS: And if any of you guys, I don't care,
15 want me to go outside and talk to him about the Alford plea
16 and all that -- I did not discuss all that stuff with him.
17 You see what I'm saying? I did not (indiscernible). I'm
18 offering anyone here, if the Judge feels it's appropriate, I
19 will take Mr. Robinson outside and go over Alford plea, and
20 what he entered his plea into, and everything else. I did not
21 prep him along those lines, but I'm offering it, if you want
22 it, while -- I don't even --

23 THE COURT: I don't think we need to do that at this
24 point.

25 MR. EVANS: Okay.

1 MR. PESCI: And Judge, just for the record, I think
2 he's referring to for today's testimony, right? He obviously
3 went through that when he did the plea, but it's like --

4 THE COURT: Of course.

5 MR. PESCI: It was -- it was not at the time of him
6 getting ready to testify, because there was no understanding
7 that he was going to be asked the legal consequences or --

8 THE COURT: Right, and that's my --

9 MR. EVANS: Correct.

10 MR. PESCI: -- intricacies of an Alford, because
11 there's --

12 THE COURT: Yeah, and I would prefer that you not do
13 that because I don't think it's appropriate. I don't think
14 it's appropriate to ask anybody that unless they're a lawyer.

15 MR. RUGGEROLI: Okay. I'll --

16 THE COURT: Yeah. The intricacies of an Alford
17 decision, and the difference between an Alford decision and a
18 Guilty Plea Agreement --

19 MR. RUGGEROLI: The main thing that I'm concerned --

20 THE COURT: -- that's not known to regular people.

21 MR. RUGGEROLI: -- he's not admitting that he was a
22 part of a conspiracy.

23 THE COURT: You can say --

24 MR. RUGGEROLI: Yeah.

25 THE COURT: You can ask him if he entered into a

1 plea when he was not required to admit. That's fine.

2 MR. RUGGEROLI: Okay.

3 (End of bench conference)

4 THE COURT: Okay. Ladies and gentlemen of the jury,
5 that last question and response from the witness is stricken
6 from the record, and you are not to consider it for any
7 purpose. You may proceed.

8 MR. RUGGEROLI: Thank you, Your Honor.

9 BY MR. RUGGEROLI:

10 Q Mr. Robinson, you were asked some questions; you
11 were not asked specifically other questions when you entered
12 the plea, correct?

13 A Yes.

14 MR. RUGGEROLI: And Judge, I would just like to make
15 a record that there is an actual transcript of that colloquy,
16 the canvass between the Court and Mr. Robinson, which has been
17 admitted as Defense Exhibit A1, so that's actually in
18 evidence. And so I'd like to move a little bit beyond,
19 because it is provided for --

20 THE COURT: Okay.

21 MR. RUGGEROLI: -- and the actual questions and
22 answers are within this exhibit.

23 MR. PESCI: I'm really sorry to interrupt. I
24 apologize, Mr. Ruggeroli. Has it actually been moved into
25 admission?

1 MR. RUGGEROLI: It was.

2 THE CLERK: She did admit it earlier.

3 MR. PESCI: Thank you.

4 BY MR. RUGGEROLI:

5 Q Today, you're saying to this jury that you were a
6 part of a conspiracy; is that right, or am I not understanding
7 that?

8 A I'm not understanding. I'm -- I'm confused.

9 Q Okay. Are you telling the jury that you showed up
10 at the Dewey address and didn't do anything wrong; you didn't
11 know why you were there?

12 A Yes.

13 Q All right. So you say that you want to tell the
14 truth, correct?

15 A Yeah.

16 Q And by giving certain information, you were able to
17 obtain an agreement where your charges were reduced? You were
18 asked that by Mr. Sanft; remember that?

19 A Yes.

20 Q You are obligated to testify in order to get the
21 benefit of that agreement, correct?

22 A Yes.

23 Q And you haven't been sentenced yet?

24 A True.

25 Q And so what you say today could have an impact on

1 what happens in the future with your sentencing?

2 A True.

3 Q Okay. Now, your brother DJ owns a .45 caliber --

4 owned a .45 caliber firearm on August 8th, August 9th, 2017?

5 A Yes.

6 Q Now, are you telling the jury that you've never

7 handled that firearm?

8 A Yes.

9 Q You have admitted today that you were actually

10 present at the scene of a murder?

11 A Yes, sir.

12 Q How does this jury know that you didn't pull the

13 trigger?

14 A How does the jury know I didn't pull the trigger?

15 Q Yes.

16 A I don't -- I don't know.

17 Q When you were arrested, did they put bags over your

18 hands?

19 A Was I arrested when I -- yes.

20 Q They put bags over your hands?

21 A No, not actual bags.

22 Q Okay. I'm asking you, when you were arrested, did

23 they put actual bags over your hands?

24 A I'm -- I'm confused.

25 Q It's okay.

1 A I'm confused.

2 Q Let's go back to August 9th, early morning hours.

3 A Yes.

4 Q You and some other individuals --

5 A Yes.

6 Q -- go to a location in a neighborhood, correct?

7 A Yes, sir.

8 Q You say that you parked the car, yes?

9 A Yes.

10 Q Get out of the car, yes?

11 A Yes.

12 Q You come up on an individual, correct?

13 A Yes.

14 Q You're admitting that you're right there?

15 A Yes.

16 Q And that individual gets shot and killed, correct?

17 A Yes.

18 Q What I asked you was, how do we know that you didn't

19 shoot that individual?

20 A Because I'm telling you I didn't do it.

21 Q Okay. You've admitted to lying a number of times,

22 including --

23 A Yes.

24 Q -- including to the detectives the very next day?

25 A Yes.

1 Q And the very next day, what I'm asking you is, the
2 detectives had a lot of questions about the convenience store
3 and about -- I'm going to just show you 320, really focusing
4 on the individual in the back. They had a lot of questions
5 about the individual that was open carry, correct?

6 A Yes.

7 Q But your brother DJ had a .45?

8 A Yes.

9 Q And you were right there at the time of the killing,
10 yes?

11 A Yes.

12 Q And what I'm saying is, did the detectives the very
13 next day bag up your hands to do any testing?

14 A No.

15 Q Okay. Did you have any testing on your hands?

16 A I believe so, yes.

17 Q Are you sure, or you just don't know?

18 A They took my fingerprints.

19 Q Fingerprints? Okay, other than that though?

20 A No.

21 Q All right. Now, you're saying that you just want to
22 be truthful?

23 A Yes.

24 Q And the jury basically has to take you at your word,
25 correct?

1 A I don't -- I don't know.

2 Q Well, you didn't have a video; you didn't videotape
3 this incident, correct?

4 A True.

5 Q And so anything in terms of physical evidence of
6 what you're saying actually happened, you don't have any
7 physical evidence, correct?

8 A True.

9 Q No photographs, correct?

10 A Yes.

11 Q You didn't video record it on your phone?

12 A No.

13 Q Okay, so we have your word, right?

14 A I'm confused, sir.

15 Q Okay. You do remember an individual that bought a
16 cigarillo at the Speedy Mart (sic)?

17 A Yes.

18 Q All right. He went in and he actually bought it.
19 Was that for you?

20 A Yeah, it was for people that was in the car, yes.

21 Q All right, but you guys couldn't buy it, and so you
22 had to get another guy to go in the store to buy it?

23 A Yes.

24 Q And that actually happened?

25 A Yes.

1 Q He's an African American?

2 A Yes.

3 Q All right. Now, you've gone back and forth a number
4 of times as to when you were dropped off and picked up that
5 night, correct?

6 A Yes.

7 Q Mr. Sanft specifically asked you about a portion of
8 your statement to the police the next day about a fifth
9 person. Remember that questioning?

10 A Yes.

11 Q Now, do you recall that right before that
12 questioning, the detectives had got to a point where they
13 basically told you, "This is the moment of truth"?

14 MR. PESCI: Judge, I apologize.

15 THE WITNESS: Yes.

16 MR. PESCI: I'd ask for a page for a reference to
17 the statement.

18 MR. RUGGEROLI: Oh, I'm sorry. 38 of his statement.

19 MR. PESCI: Okay, thank you.

20 MR. RUGGEROLI: All right.

21 BY MR. RUGGEROLI:

22 Q So the detectives got to the point where they said,
23 "Now is the moment of truth"?

24 A Yes.

25 Q All right. And then -- and now I'm on page 39. You

1 say, "Here's the truth"?
2 A Yes.
3 Q "Here's what happened. They was talking about
4 robbing a Mexican dude." Remember that?
5 A Yeah.
6 Q And then you talk about, "We pulled up right on the
7 apartments of Tropicana and Jones," correct?
8 A Yeah.
9 Q Now, that's where Ray would have been, right?
10 A Yeah.
11 Q Then you go on to say -- and I'm skipping ahead --
12 "He was picking up somebody else," and this is what Mr. Sanft
13 specifically read to you. You said, "I'm like," quote, "why
14 are you trying to pick up somebody else? There's already four
15 people in the car." Remember that?
16 A Yeah.
17 Q Correct, right?
18 A Lie.
19 Q Lie?
20 A I lied.
21 Q Why would you lie?
22 A Because I was scared.
23 Q No, but how does that help you in any way?
24 A I don't -- that's a good question, but I was scared.
25 Q Right. Well, maybe you were trying to protect

1 somebody.

2 A Protect who?

3 Q Who's Adrian?

4 A That's my older brother.

5 Q You didn't tell these detectives that you had an
6 older brother named Adrian when they questioned you.

7 A Because they didn't ask about him; they asked for
8 the people who was there in that -- in the investigation.

9 Q That's what you thought?

10 A That's -- yeah.

11 Q You don't remember them specifically asking you,
12 "Tell me about your brothers"?

13 A Yeah, I did. I thought he was talking about the
14 ones that was there.

15 Q Let me slow you down.

16 MR. PESCI: Judge, I apologize for the interruption.
17 I'd ask that the witness be able to finish before the next
18 question comes.

19 THE COURT: Right. And if at any time you don't
20 understand the question, just let me know, and I'll have the
21 attorney rephrase it, okay?

22 THE WITNESS: Yes, ma'am.

23 MR. RUGGEROLI: Okay.

24 BY MR. RUGGEROLI:

25 Q The next day, the detectives questioned you,

1 remember?

2 A Yes.

3 Q I'm sorry, I don't want to interrupt you. They
4 asked you specifically, "Tell me about your brothers,"
5 correct?

6 A Yes.

7 Q Now, today you talked about Adrian?

8 A Actually, no, I didn't. I talked about Anthony.

9 Q I wrote down Adrian.

10 MR. RUGGEROLI: Let me just have a moment, Your
11 Honor. Okay.

12 BY MR. RUGGEROLI:

13 Q You were asked on direct examination of being in
14 handcuffs; do you remember that?

15 A Yes.

16 Q You were 14-years-old in 2017; remember that?

17 A Yes.

18 Q You have a brother named DeMario Lofton-Robinson;
19 remember that?

20 A Yes.

21 Q You were asked about your family, and DeMario goes
22 by DJ; do you remember that?

23 A Yes.

24 Q You indicated that you lived with grandma?

25 A Yes.

1 Q Then you brought up Adrian?

2 A Brought up Anthony.

3 Q Okay. Well, we'll leave it to the jury, but my
4 notes were Adrian. So you did not say Adrian today?

5 A I apologize, I must have got mixed up. My brother
6 Adrian does not live with my grandma.

7 Q Okay, but you have a brother named Adrian?

8 A Yes, sir.

9 Q And August 9th, 2017, detectives asked you about
10 your brothers --

11 A Yes.

12 Q -- brothers, plural, correct? Yes?

13 A Yes.

14 Q And you didn't tell them about Adrian?

15 A No, sir.

16 Q If you have four people in the car, and you pick up
17 one more, that's five, correct?

18 A Yes.

19 MR. RUGGEROLI: I have nothing further.

20 THE COURT: Any redirect?

21 MR. BROOKS: No, Your Honor.

22 THE COURT: Okay, so we're done with this witness?

23 MR. BROOKS: Yes, Your Honor.

24 THE COURT: Okay. We're going to take a recess.

25 During this recess, you're admonished not to talk or

1 converse amongst yourselves or with anyone else on any subject
2 connected with this trial, or read, watch, or listen to any
3 report of or commentary on the trial, or any person connected
4 with this trial, by any medium of information, including,
5 without limitation, newspapers, television, the internet, or
6 radio, or form or express any opinion on any subject connected
7 with this trial until the case is finally submitted to you.

8 We'll be in recess until 1:45. Thank you.

9 MR. PESCI: Judge --

10 THE MARSHAL: Thank you. All rise for the exiting
11 jury, please. Jurors.

12 MR. PESCI: Before they leave --

13 THE COURT: Before they leave?

14 MR. PESCI: We pushed the witnesses back until 2:00
15 because of the length of this.

16 THE COURT: Okay, 2:00 o'clock?

17 MR. PESCI: Yes, I'm sorry.

18 THE COURT: Okay, 2:00 o'clock. Sorry, 2:00
19 o'clock.

20 THE MARSHAL: Thank you. Sorry.

21 THE COURT: That's okay, thanks. We're in recess
22 until 2:00.

23 (Outside the presence of the jurors at 12:38 p.m.)

24 THE COURT: Okay, and Mr. Robinson can be excused?
25 Yes?

1 MR. BROOKS: Yes, Your Honor. Yes.

2 THE COURT: Okay, Mr. Robinson can be excused. And
3 the record will reflect that the hearing is taking place
4 outside the presence of the jury panel.

5 I just want to make sure that we're clear on the
6 Guilty Plea Agreement and the Agreement to Testify. The
7 Sessions case indicates that truthfulness conditions have to
8 be taken out of the Plea Agreements. They're not admissible
9 to rebut prior impeachment, so the State of Nevada could not
10 introduce those truthfulness provisions.

11 Why don't we wait until they get Mr. Robinson out.
12 Thank you, everybody. Thank you. Thank you, Mr. Robinson.

13 THE WITNESS: You're welcome.

14 MR. EVANS: Thank you, Judge.

15 THE COURT: Thank you.

16 MR. EVANS: I'll see you later.

17 THE COURT: Thanks. Okay, because there seemed to
18 be some kind of confusion at the bench. So the Guilty Plea --
19 what exhibit is it? The Guilty Plea Agreement and the --

20 MR. BROOKS: 337, if I remember.

21 THE COURT: That's what I thought. Was admitted
22 pursuant to the Sessions decision, correct?

23 MR. PESCI: Yes, Your Honor. The State --

24 THE COURT: Okay. The State is not permitted to
25 admit their Guilty Plea Agreement with those truthfulness

1 provisions in there in anticipation of impeachment. They
2 can't come up unless there's some type of impeachment, so
3 that's why 337 was admitted as-is. And I'm assuming you felt
4 like you were able to question him, you know, about any
5 ability to tell the truth or what that meant?

6 MR. RUGGEROLI: Yes. I believe that Sessions and
7 the statute are really designed not to protect the State, but
8 to protect a defendant. And so when you --

9 THE COURT: I agree.

10 MR. RUGGEROLI: -- have a defendant that's willing
11 to waive that provision for strategic purposes -- and in
12 particular, Judge, in the portion that was taken out, at
13 approximately line 22 on page 2, it would have read, "It is
14 further understood that this entire agreement shall become
15 null and void, and DeShawn Robinson shall lose the benefits of
16 this agreement for any deviation from the truth; for failure
17 to answer any question that is the subject matter of this
18 investigation." It does go on for a while, so I'll stop the
19 sentence there.

20 My point is that, strategically, Mr. Wheeler had
21 represented to Your Honor that he would waive any of his
22 protections pursuant to the statute and case law that would
23 protect him by taking that provision out, so that we could
24 have it, not just for cross-examination, but in an exhibit
25 that is actually the exhibit that is the original that would

1 have the authentic signatures.

2 And so my request is that we have the ability to
3 have another exhibit because of the waiver. And I chose to
4 move on because, you know, during the course of a
5 cross-examination, there's a lot of uncertainty, and you don't
6 know where certain things are going to go.

7 THE COURT: Sure.

8 MR. RUGGEROLI: But I specifically referenced the
9 notion of, "You're obligated," and that's taken from the --

10 THE COURT: Of course.

11 MR. RUGGEROLI: -- portion that's been withdrawn.
12 "You're obligated, and things are kind of in limbo since you
13 haven't been sentenced."

14 THE COURT: Um-hum.

15 MR. RUGGEROLI: The State -- and I think this is why
16 we have this provision and it's taken out initially. The
17 notion of truth, it would bolster potentially the witness's
18 credibility by --

19 THE COURT: Vouching.

20 MR. RUGGEROLI: Exactly. So, by waiving, I don't
21 think we should be harmed by not letting the jury know,
22 because we're saying, hey, that's okay. They can know about
23 the notion of truth because we think it's more important that
24 they're advised that he might lose the benefit if he doesn't
25 testify, quote, unquote, "truthfully." And then, at closing,

1 we can argue about what the truth is, because our position is
2 the truth is what got him the deal; not what actually happened
3 that night. So I would ask --

4 THE COURT: Okay, so --

5 MR. RUGGEROLI: I would ask --

6 THE COURT: So you want another exhibit --

7 MR. RUGGEROLI: I do.

8 THE COURT: -- that has those -- that has the
9 truthfulness provisions in it?

10 MR. RUGGEROLI: Yes, and then I -- my understanding
11 is I would need to redact the portion that applies to Mr.
12 Robertson's other charge. And so, if you decide to do this,
13 if I could just respectfully request to get a file-stamped
14 copy, and I will scan it, and I will get on Adobe, and I will
15 remove -- I'm not going to make it look perfect, but it's
16 going to have them removed, and there won't be any mention of
17 the other case.

18 MR. PESCI: So let's just play this out, Judge.
19 Let's assume that that's admitted, right? And I agree with
20 everything he's just said, right?

21 THE COURT: Uh-huh.

22 MR. PESCI: Because the whole concept is to avoid
23 witness vouching. But if he's going to say that he lied, if
24 this portion comes in, I'm going to say, I don't think he did,
25 and I'm not moving to withdraw the guilty plea, so you can

1 know, ladies and gentlemen of the jury, that I think he was
2 truthful. That's the implication, right? That's the concern.
3 But that's going to be completely relevant -- if he puts this
4 language in and he says, "Oh, he wasn't truthful," what I can
5 do under that portion is say, "I think he was, because I'm not
6 moving to withdraw his plea."

7 MR. RUGGEROLI: Well --

8 MR. PESCI: That's -- that's the problem. That's
9 where we're going to go with this. I'm telling you now,
10 that's how I'm going to argue this.

11 MR. RUGGEROLI: They can't withdraw the plea in this
12 context. They can't withdraw it at closing argument. If they
13 were going to do that, they could do it in the future. That
14 won't be evidence. Of course the State thinks he was
15 truthful, because they're saying that there was a conspiracy,
16 and they're saying that DJ shot from the .45, and they're
17 alleging that Mr. Robertson shot with the .22, and that there
18 was this conspiracy.

19 They had -- I think it's Exhibit 336, what they
20 claim establishes a conspiracy, so they're already going to
21 say that it's true. I'm saying that it's not, and I'm saying
22 that if he didn't testify to what he kind of testified to
23 today, that he may lose in a separate proceeding, and we can't
24 have evidence of what's going to happen in the future because
25 we don't know.

1 MR. PESCI: And what I'm saying is, what that
2 provision provides is an outlet for the State of Nevada to
3 exit the negotiation. If in fact DeShawn Robinson told us in
4 a proffer X, and then came to court and said Y, I could back
5 out. So under this scenario, I'm going to tell this jury, he
6 said X before, he said X again, and he said X to you now.
7 That could be perceived as witness vouching, that he was
8 consistent the whole way through. I intend to follow through
9 this open door in that fashion.

10 MR. RUGGEROLI: Judge, if Mr. Pesci is going to
11 testify in that manner, then he's making himself a witness.
12 We have no documentation on what was said during that hearing.
13 If there's a detective that would be called to testify, that's
14 a different story, but the evidence that he's alluding to on
15 closing would have to be what's brought out during the trial
16 and that's admissible. If they're going to have one of the
17 detectives --

18 THE COURT: Okay, so let me ask you this. Why do
19 you need to have the Agreement in that has the truthfulness
20 provisions in it?

21 MR. RUGGEROLI: The --

22 THE COURT: I mean, you can argue to this jury that
23 the testimony he presented today is going to be the basis of
24 what happens to him in the future, okay? And you can argue
25 that if he wasn't truthful, he could lose the benefit of his

1 bargain. I'm not -- I'm trying to figure out why you need to
2 admit that in.

3 MR. SANFT: Your Honor, I guess the issue we have
4 with that question from the Court is that that may delve into
5 issues of strategy. We can explain to the Court, but I think
6 we would like to ask for the State to be not present if we're
7 disclosing to you what the strategy would be and the reason
8 why Mr. Ruggeroli believes this is important.

9 MR. PESCI: While I respect that, I really do, I
10 can't respond to it if it's not done until closings by
11 reopening the case, Judge. And so that's the quandary that
12 we're in.

13 And just to go back a moment ago, what he said about
14 being a witness, I cannot put the detective on the stand who
15 was at the proffer because he was not in court to witness this
16 witness's testimony. So Detective Dosch or Jaeger wasn't here
17 today to be able to ascertain whether he was consistent. I
18 was at the proffer, I was at the second time we talked to him
19 just a week ago, and I was here in court.

20 THE COURT: Yeah, but you cannot testify or make
21 representations in front of this jury about stuff that was not
22 in front of this jury.

23 MR. PESCI: Agreed.

24 THE COURT: His proffer was not evidence.

25 MR. PESCI: That's the problem with this. I don't

1 disagree that he can get this in. It's his strategic decision
2 to open this up and do that. I agree with that. But if he's
3 going to stand up in closing and tell this jury that he lied,
4 the evidence is to the contrary, based on my experience.

5 THE COURT: Well, I'm not going to let him say he's
6 a liar. He can talk about the credibility of a witness, but
7 I'm not going to let either side say someone is a liar. So
8 both sides can talk about the credibility of a witness, but
9 neither side can call a witness a liar.

10 You can talk about inconsistencies, you can talk
11 about whether they should be believed or not, but I'm not
12 going to allow either side to get up and say, he told the
13 truth or he lied. You know, you can talk about their
14 credibility and about the evidence, but I think both sides
15 know you can't do that; you can't refer to witnesses as liars.

16 MR. RUGGEROLI: What we have right now though is
17 Exhibit 336. Because of the waiver and our desire to get into
18 the --

19 THE CLERK: (Indiscernible).

20 THE COURT: What's 336?

21 MR. RUGGEROLI: Oh, is it --

22 MR. SANFT: 337.

23 MR. RUGGEROLI: 337 is the --

24 THE COURT: Okay, the Guilty Plea.

25 MR. SANFT: The Plea.

1 MR. RUGGEROLI: The Plea.
2 MR. SANFT: Yeah.
3 THE COURT: Right.
4 MR. RUGGEROLI: Thank you. What we have right now
5 is an incomplete representation of his agreement in its full.
6 That is done to protect a defendant's right.
7 MR. PESCI: State's not objecting to that portion
8 coming in.
9 THE COURT: Right.
10 MR. PESCI: If defense is requesting that --
11 THE COURT: You want that in --
12 MR. PESCI: -- I'm not objecting it.
13 THE COURT: -- then you can have that in.
14 MR. RUGGEROLI: What I'm saying is that it's not
15 complete, which is, in this particular context, going to work
16 to the detriment of my client, because I want the jury to know
17 what's not included --
18 THE COURT: Okay.
19 MR. RUGGEROLI: -- includes a specific --
20 THE COURT: Then what you're going to do is you're
21 going to provide --
22 MR. RUGGEROLI: Okay.
23 THE COURT: -- an exhibit with the Agreement to
24 Testify with those portions on page 1 and 2 that we've
25 indicated can't come in.

1 MR. RUGGEROLI: Yes.

2 THE COURT: And then it will be admitted.

3 MR. RUGGEROLI: Okay.

4 THE COURT: With those things redacted.

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

6 THE COURT: Okay. All right, 2:00 o'clock.

7 MR. PESCI: All right.

8 MR. SANFT: Thank you, Your Honor.

9 MR. PESCI: Thank you.

10 (Court recessed at 12:49 P.M. until 2:13 P.M.)

11 (Outside the presence of the jurors)

12 THE MARSHAL: Please come to order.

13 THE COURT: Okay. The record will reflect that the

14 hearing is continuing to take place outside the presence of

15 the jury panel, and both defendants are present.

16 Apparently, there is an objection to some of these

17 autopsy photos.

18 MR. RUGGEROLI: Yes, Your Honor.

19 THE COURT: So what's the objection to 96 and 97?

20 MR. RUGGEROLI: Judge, those, if I recall, are the

21 head shots --

22 THE COURT: Yeah.

23 MR. RUGGEROLI: -- and it shows a duplicative photo

24 of the injury that is quite graphic in nature. And so my

25 argument is that it's not necessary; there's no dispute about

1 the manner of death. It would be potentially prejudicial. We
2 have one juror that was excused that specifically noted that
3 when he saw -- and what he saw was very, very tame compared
4 to, specifically, 96 and 97. My concern is --

5 THE COURT: Your objection is to both, or that they
6 should only use one?

7 MR. RUGGEROLI: Well, I think that both of those
8 show more of an enlarged hole.

9 THE COURT: Right. They show -- I don't know if
10 that's the entrance or exit.

11 MR. RUGGEROLI: Right. So, yes, I am objecting to
12 both. I really think they only need one; not either of those.
13 The one that is -- yeah.

14 THE COURT: I don't know if the State has a reason
15 for wanting to admit both of these. They do appear to depict
16 the same injury.

17 MR. PESCI: So let me get next to a microphone. So,
18 Judge, the situation that we have in this case is that Lary
19 Simms was the doctor who performed the autopsy. He has since
20 retired.

21 THE COURT: Okay.

22 MR. PESCI: So Dr. Jennifer Corneal is filling in
23 for him. She has to review the photos to make her own
24 independent --

25 THE COURT: Okay.

1 MR. PESCI: -- assessment and determination, and so
2 the thing that is uniquely independent are the photos
3 themselves. So she relies on his report, looks at his report,
4 reads his report, but then goes to the photos. And so, in
5 order for her, having not been in the room, to do the autopsy,
6 we have these photos to try to show it all so she can make her
7 own independent decision.

8 THE COURT: Okay, but she's done all that, correct?

9 MR. PESCI: She has.

10 THE COURT: Okay. Well, I'll allow the State to use
11 one or the other.

12 MR. PESCI: I believe there was a 98 objection as
13 well. Is there --

14 THE COURT: There is.

15 MR. PESCI: 98 is a head shot as well, or no?

16 THE COURT: No.

17 MR. PESCI: So --

18 THE COURT: 98, it appears to be -- I mean, I'm not
19 sure what the objection is, because it appears to be -- I
20 don't know what it is, but there appears to be an injury.

21 MR. RUGGEROLI: Yes, my objection is --

22 THE COURT: So what would be the objection?

23 MR. RUGGEROLI: The objection is that the torso is
24 -- the photo goes so low that it goes well below the belt
25 line, and because of the nature of the exposure, I just think

1 it's rather demeaning to the decedent. And because of that, I
2 don't see that it's a medically necessary photograph. And --

3 THE COURT: It appears to depict an injury.

4 MR. RUGGEROLI: I agree. That's -- that portion
5 does, but I'm trying to prevent anything that might further
6 inflame other jurors' passions related to the photos of the
7 decedent.

8 MR. PESCI: So, Judge, if I could --

9 THE COURT: I mean, I'm assuming that's an injury on
10 his stomach.

11 MR. PESCI: Correct, Your Honor. What you're seeing
12 is the hole that's the entrance wound of the small caliber
13 bullet.

14 THE COURT: Okay.

15 MR. PESCI: We have in fact picked a photo that does
16 not show his groin --

17 THE COURT: Okay.

18 MR. PESCI: -- or his genitalia, and so that's why
19 we had this one. As far as between 96 and 97, the State would
20 request 97 as opposed to 96, if you're going --

21 THE COURT: Okay.

22 MR. PESCI: -- to strike one of them. I believe
23 that was your ruling.

24 THE COURT: Okay. So 96, the objection is
25 sustained; and 97, the State will be permitted to admit; and

1 98, the objection is overruled.

2 And then, there is an objection as to -- let me find
3 it -- 112. Yeah, and I kind of agree. What is this?

4 MR. PESCI: So, Judge, there are -- in response, in
5 112 --

6 THE COURT: Oh, okay.

7 MR. PESCI: -- there are injuries to his -- the
8 bullet --

9 THE COURT: His ankles.

10 MR. PESCI: -- goes in his ankles. So it goes in
11 one, out, and then goes in the other. And so, again,
12 especially for the doctor who did not perform the autopsy and
13 was not in the room where it happened, she needs to be able to
14 review the photos to be able to make that determination.

15 THE COURT: What's --

16 MR. RUGGEROLI: Same argument.

17 THE COURT: So the objection is overruled, and 1 --

18 THE CLERK: I'm sorry, Judge, what number?

19 THE COURT: 112 will be permitted. Now, 114, I have
20 no idea what that was supposed to depict.

21 MR. PESCI: So we are showing that, in fact, the
22 bullet that went into the stomach -- earlier, when you said
23 you believed that there was a hole in the stomach --

24 THE COURT: Uh-huh.

25 MR. PESCI: -- this shows that there's no exit.

1 We're trying to tell --

2 THE COURT: Oh.

3 MR. PESCI: -- the jury that there is no exit
4 associated with that particular bullet. And so State's 114
5 establishes that, because there is no exit on his body,
6 whereas the head shot had an entrance and an exit wound.

7 MR. RUGGEROLI: Same argument.

8 THE COURT: Okay, the objection as to 114 is
9 overruled. So, 122. Okay, so there was an objection to 122
10 and 123. They appear -- they're x-rays of the skull. Does
11 the State need both?

12 MR. PESCI: I think it's to help to try to show --
13 because if you look at the front shot, you can't see where the
14 placement is in the head. So it was to try to show the
15 orientation, because in 123, we understand that it is the left
16 side of the head.

17 THE COURT: Okay.

18 MR. PESCI: When you look at 122, you can't tell for
19 sure where the --

20 THE COURT: Oh, (indiscernible).

21 MR. PESCI: -- where the defect is in the head. And
22 so, with the two of them combined, we can show it. And I've
23 never had an objection to an x-ray before.

24 MR. RUGGEROLI: Well, it's going to the extent of
25 that injury, which it shows a completely crumbled skull, and I

1 think that it's not necessary. It's relevant, but its
2 relevance is overwhelmed by the potential prejudice. And like
3 I said, I'm reiterating it, but we already had one juror say,
4 because of viewing those types of photos, injuries, which are
5 not even that graphic, it just had that prejudicial impact.

6 MR. PESCI: So, Judge, in response, there are two
7 different caliber firearms utilized in the murder of this
8 victim; a .45 caliber and a .22. And so what you're holding
9 in your hand, State's 122 and 123, is evidence that we can
10 utilize to argue that the shot to the head is a .45 because it
11 does massive injury, as opposed to a .22, which makes a small
12 hole in his stomach. And so it's for us to be able to prove
13 our case.

14 THE COURT: Okay, so the objection as to 122 and 123
15 is overruled. And then, I think that's it.

16 MR. PESCI: I think so.

17 THE COURT: Is that it as to the objections on the
18 autopsy?

19 MR. RUGGEROLI: Yes, Your Honor. Thank you.

20 THE COURT: I'll give these all back.

21 (Pause in the proceedings)

22 THE COURT: Okay. Now, our next witness is going to
23 be?

24 MR. PESCI: The coroner. That's why we're going
25 over this.

1 THE COURT: Oh, okay. When are we going to do the
2 one on the video?
3 MR. PESCI: Not until after 3:00.
4 THE COURT: Okay.
5 MR. PESCI: She's not available until, at the
6 earliest, 3:00.
7 THE COURT: Okay. Can we bring them in?
8 MR. PESCI: Yes.
9 THE COURT: Okay.
10 MR. PESCI: Wait, I -- sorry, really fast.
11 THE CLERK: Judge, are they going to be stipulating
12 to the rest of these?
13 THE COURT: Yeah, you know, are you going to be
14 stipulating to them, other than the objections that have
15 already been noted?
16 MR. SANFT: Yes, Your Honor.
17 MR. RUGGEROLI: Yes, Your Honor.
18 THE COURT: Okay.
19 THE CLERK: So, 97 is the only one that's not coming
20 in? That's what I have. Everything else, you overruled?
21 THE COURT: Right.
22 THE CLERK: Okay.
23 THE COURT: 96, the objection is sustained, so it
24 doesn't come in. 97 is coming in. You said the opposite.
25 You said 97 instead of 96.

1 THE CLERK: I have it written that way. Okay.

2 THE COURT: Well, let me just make sure. Hand me 96

3 and 97 so I just -- because I told the State you could have --

4 THE CLERK: I have you saying 96 is in; 97 is not.

5 MR. PESCI: That's -- that's my fault. I was asking

6 for 97, because that's 97, correct?

7 THE CLERK: Okay.

8 THE COURT: Okay.

9 THE CLERK: So, 97 is in?

10 THE COURT: You want 97?

11 MR. PESCI: Yes, please.

12 THE COURT: Okay, so --

13 MR. PESCI: That's my fault.

14 THE CLERK: Everything is in except for 96?

15 THE COURT: Right.

16 MR. PESCI: That's my understanding.

17 THE CLERK: Correct?

18 THE COURT: That's correct.

19 THE CLERK: Okay.

20 THE COURT: And there's a stipulation to everything

21 else?

22 MR. SANFT: Yes, Your Honor.

23 MR. RUGGEROLI: Other than the objections, yes.

24 THE CLERK: Yes, I'll note the objections on the

25 sheet.

1 THE COURT: Okay. All right. Oh, you want the
2 noise on?

3

4 (Off-record bench conference)

5 THE COURT: Okay, we can bring them in.

6 THE CLERK: Judge, you don't have 96 up there with
7 you, do you?

8 THE COURT: No. Did you take 96?

9 MR. PESCI: No, Your Honor, but I'll look.

10 THE COURT: I didn't think you did.

11 THE MARSHAL: All rise for the entering jury,
12 please. Jurors.

13 (Within the presence of the jurors at 2:24 p.m.)

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

16 THE MARSHAL: Thank you, everyone.

17 MR. PESCI: Yes, Your Honor.

18 THE MARSHAL: Please be seated.

19 THE COURT: And the defense?

20 MR. SANFT: Yes, Your Honor.

21 MR. RUGGEROLI: Yes, Your Honor.

22 THE COURT: Okay. The State of Nevada may call
23 their next witness.

24 MR. PESCI: State calls Dr. Jennifer Corneal.

25 THE MARSHAL: If you'll please remain standing,

1 raise your right hand, and face the Clerk.

2 DR. JENNIFER CORNEAL, STATE'S WITNESS, SWORN

3 THE CLERK: You may be seated. Please state and
4 spell your first and last name for the record.

5 THE WITNESS: Jennifer Corneal. J-e-n-n-i-f-e-r,
6 C-o-r-n-e-a-l.

7 MR. PESCI: May I proceed, Your Honor?

8 THE COURT: You may.

9 MR. PESCI: Thank you.

10 DIRECT EXAMINATION

11 BY MR. PESCI:

12 Q Ma'am, what do you do for a living?

13 A I'm a medical examiner.

14 Q Where do you work?

15 A I work at the Clark County Office of the
16 Coroner/Medical Examiner.

17 Q And how long have you been working there?

18 A Since July 2015.

19 Q And what is your training and experience that brings
20 you to that job?

21 A I am a doctor; I completed medical school. I then
22 completed four years of pathology residency training, and I'm
23 a board-certified anatomic pathologist. I subsequently
24 completed a year of forensic pathology sub-specialty training,
25 and I'm a board-certified forensic pathologist as well.

1 Q What is a forensic pathologist?

2 A A forensic pathologist is a doctor who performs
3 autopsies and external examinations on deceased individuals,
4 and interprets toxicology, and sometimes histology, which are
5 slides, in order to determine cause and manner of death.

6 Q Okay. And now, you're speaking of an autopsy. What
7 is an autopsy?

8 A An autopsy is just the name of a procedure where you
9 look at a deceased individual, document hair color, eye color,
10 scars, anything externally, any injuries. And then you open
11 the body and you look internally at the organs for natural
12 disease processes, and again, for injuries, looking for cause
13 and manner of death.

14 Q So after looking externally and internally, do you
15 form an opinion as to a cause and manner of death?

16 A Yes.

17 Q Let's break that down. What is a cause of death,
18 and then we'll move onto what a manner is.

19 A A cause of death is just the reason somebody died,
20 the underlying reason, be it a heart attack, a gunshot wound,
21 blunt force trauma from a car accident.

22 Q Okay, and then what does manner of death mean?

23 A A manner of death is just the classification system.
24 There are five manners: natural, accident, homicide, suicide,
25 and undetermined when they don't fit into any of the other

1 four.

2 Q Okay. Now, in a situation where it's homicide, is
3 that a legal conclusion or a medical conclusion?

4 A That is a medical conclusion. It just means the
5 death at the hands of another person.

6 Q Now, do you work with other doctors at the coroner's
7 office?

8 A I do.

9 Q How many doctors?

10 A Right now, there are three full-time doctors besides
11 myself.

12 Q Are you understaffed right now?

13 A We are.

14 Q Okay. Did you have to -- were you on-call this
15 morning?

16 A I was.

17 Q Okay.

18 A On-call until midnight, actually.

19 Q All right, so what does that mean if you're on-call?
20 What happens?

21 A Being on-call, we take any phone calls from midnight
22 to midnight, answer any questions from our investigators,
23 determine anything for the NDN, Nevada Donor Network,
24 procurement issues, determine which cases are ours sometimes.
25 And then, when we come in that morning, we are the one who

1 assigns the cases, and we take the more complicated cases; the
2 homicides, child death cases. Anything that's going to take
3 more time, the on-call doctor usually assigns that to
4 themselves, and then gives the other doctors the other cases.

5 Q Okay. And now, based on the fact that you're
6 understaffed, have there been doctors who've worked there
7 before that have retired or otherwise moved on?

8 A Yes.

9 Q Are you familiar with an individual by the name of
10 Dr. Lary Simms?

11 A I am.

12 Q Did he work there previously?

13 A He did.

14 Q And is he the individual that performed the autopsy
15 under your Coroner's Office Number 17-08259?

16 A He did.

17 Q All right. Are you, in essence, filling in for him
18 as he's retired?

19 A I am.

20 Q Okay. Now, speaking about that unique case number,
21 what is that?

22 A Every person who comes into our office is designated
23 a unique identifying number. The first two digits are the
24 year, so 17 would refer to 2017. And then, they come in
25 sequentially, so his case was 8259 for the year.

1 Q Now, did he perform this specific autopsy?
2 A Dr. Simms?
3 Q Yes.
4 A Yes.
5 Q All right. So when you were describing autopsies
6 previously, the methodology of doing it, in this particular
7 case, you didn't perform it on this body?
8 A Correct.
9 Q All right. However, when you are performing your
10 own autopsy, do you dictate or take notes as you're doing it?
11 A I do.
12 Q And is that for the purposes of generating a report?
13 A It is.
14 Q In fact, is your office tasked with generating
15 reports in contexts with deaths like this?
16 A Yes.
17 Q Okay. And then, after, is a report generated, and
18 does it have that unique number associated with it?
19 A It does.
20 Q Based on that unique number, were you able to get a
21 copy of the Autopsy Report authored by Dr. Lary Simms?
22 A I was.
23 Q And have you been able to review it in anticipation
24 of your testimony?
25 A I did.

1 Q Okay. Does it notate what his findings were inside
2 the body and outside the body?

3 A It does.

4 Q All right. Now, in addition to this report, while
5 you're performing your own autopsy, are there technicians that
6 work in the coroner's office in the autopsy room with you
7 while you're performing it?

8 A There are.

9 Q What do they do?

10 A The technicians help with the actual autopsy;
11 cutting organs out of the body. They also take photographs.
12 They help us collect the samples for toxicology.

13 Q Now, if there is a thought that it could potentially
14 be a homicide, are there also sometimes individuals from the
15 Metropolitan Police Department present during parts of the
16 autopsy?

17 A Yes.

18 Q You've spoken of people that work for the coroner's
19 office taking photographs. Are there individuals that work
20 for Metro that also take photographs?

21 A Yes.

22 Q Does that happen concurrently or at the same time at
23 times?

24 A Usually.

25 Q Okay. So photographs taken by crime scene analysts,

1 and there's photographs taken by a technician from the
2 coroner's office?

3 A Yes.

4 Q Now, do you in your office maintain the photographs
5 that are unique to each individual autopsy?

6 A We do.

7 Q So in addition to reviewing Dr. Simms's report, did
8 you also review the photographs from his autopsy?

9 A I did.

10 Q All right. Based on the fact that you weren't there
11 when this was done, were you able to see what was going on
12 with the body based on those photographs?

13 A I was.

14 Q Okay. Now, based on the review of the report, and
15 based on the photographs, were you able to come to your own
16 independent conclusions?

17 A Yes.

18 Q Okay. Let's talk first about what you noted as far
19 as injuries on this body. Did you note any gunshot wounds?

20 A Yes.

21 Q Where were they?

22 A There was a gunshot wound of the head, a gunshot
23 wound of the left lower chest, a gunshot wound of the right
24 ankle, and a gunshot wound of the left ankle.

25 Q And then, in the course of this autopsy, were there

1 any pieces of firearms-related evidence that was recovered?

2 A There were.

3 Q And were you able to see that in photographs?

4 A Yes.

5 Q In the process of the photographing of the body, are

6 there also x-rays that are done?

7 A There are.

8 Q Do you do that so you can try to see inside the body

9 before you actually cut inside the body?

10 A Yes.

11 Q Okay. Were you able to review some x-rays in this

12 particular case?

13 A I did.

14 MR. PESCI: May I approach the witness?

15 THE COURT: You may. And will you, just for the

16 record, identify all the exhibits?

17 MR. PESCI: I will, Your Honor.

18 THE COURT: Yeah. Well, can you do it now?

19 MR. PESCI: I will.

20 THE COURT: Because the Clerk didn't -- we didn't

21 get it down before you --

22 MR. PESCI: Okay.

23 THE COURT: -- took the exhibits. Does that make

24 sense?

25 MR. PESCI: Sure.

1 THE CLERK: Just --
2 MR. PESCI: 93 to 129 --
3 THE CLERK: With the --
4 MR. PESCI: -- with the exception of 96.
5 THE CLERK: Yes.
6 THE COURT: Any objection?
7 MR. SANFT: No objection, Your Honor.
8 MR. RUGGEROLI: Subject to my previous objection,
9 nothing further.
10 THE COURT: Absolutely. They're admitted.
11 (State's Exhibits 93, 94, 95, and 97 through 129 are admitted)
12 MR. PESCI: Thank you very much. All right.
13 They're admitted, so I'm going to publish them, and it will
14 show up on your screen to the right. Is that okay, Your
15 Honor?
16 THE COURT: Yes.
17 BY MR. PESCI:
18 Q Showing you State's 93. A moment ago, we talked
19 about a unique number that's associated with this autopsy.
20 What is that -- or do you see that number here?
21 A Yes.
22 Q Where is that?
23 A The number is on this gray placard, as well as on
24 the identification tag that's attached to the body bag.
25 Q Now, the body bag seems to still be sealed at this

1 point, correct?

2 A Correct.

3 Q And now, that identification number on the body bag
4 and on that placard lets you know it's the body associated
5 with this particular autopsy?

6 A Correct.

7 Q And there's even the name of the decedent, correct?

8 A Yes.

9 Q Okay. Now, you talked about some different gunshot
10 wounds. There was a gunshot wound of -- to the head, you
11 said, correct?

12 A Yes.

13 Q Showing you State's 94, what is that?

14 A This is the entrance gunshot wound on the right side
15 of the head.

16 Q I want to focus in -- looking at State's 95, how is
17 it that looking at this can let you know it's an entrance
18 wound versus an exit wound?

19 A Entrance wounds typically are more of a punched out
20 injury where you cannot re-approximate or put the skin back
21 together. Other things you note on entrance wounds that are
22 -- show you that they are entrance wounds is an abrasion rim.
23 This one's slightly eccentric, or off-center, but it is there.
24 On skull -- in gunshot wounds of the skull, you can also see
25 beveling internally. Other things you look for are stippling,

1 which are not present here, but --

2 Q What is stippling?

3 A Stippling is punctate abrasions caused by unburnt
4 gunpowder striking the skin. It usually makes it so we can
5 say that a gunshot wound is intermediate range, inches to feet
6 away from the body.

7 Q Okay. So if you were to shoot me right now, would
8 you expect to have that evidence on a wound on my body?

9 A Possibly.

10 Q Okay, and the distance from the person would dictate
11 that?

12 A The distance, and then, also, the ammunition used.

13 Q Okay. You described this as eccentric; did I hear
14 that correctly?

15 A Yes.

16 Q What does that mean?

17 A Just off-center. So the abrasion ring, instead of
18 being all the way around the wound, is only on -- only on this
19 side here.

20 Q Is that indicative of the bullet coming in at an
21 angle?

22 A Yes.

23 Q Okay. And then, the trajectory, do you in autopsies
24 try to track the travel of the bullet through the head and
25 give a trajectory?

1 A Yes, we do trajectory through the body only.

2 Q Okay, but you spoke earlier about how entrance
3 wounds are normally more like something punched out, correct?

4 A Correct.

5 Q Now, exit wounds -- looking at State's 97, what kind
6 of a wound is that?

7 A This is an exit wound. This wound can actually be
8 -- the skin can be re-approximated. There are very large
9 lacerations from the exit, but it is an exit wound on the left
10 side of the forehead.

11 Q Okay, and is that in line with the entrance on the
12 right side?

13 A Yes.

14 Q Okay. So that's the exit to the entrance we saw
15 earlier?

16 A Correct.

17 Q Okay. Now, you talked about how there was another
18 gunshot wound. I want to show you State's 98. Do you
19 recognize that?

20 A Yes, this is a photograph of Mr. Valenzuela's left
21 side.

22 Q Is that wound -- showing you, up-close, State's 99.
23 How is this one different from the earlier entrance wound we
24 saw on the right back side of the head of the victim?

25 A This one, you can see that it has the abrasion ring

1 circumferentially or all around the wound.

2 Q And is that more indicative of the bullet entering
3 straight on as opposed to an angle?

4 A Yes.

5 Q And is this wound, as far as the entrance, a smaller
6 wound than the other one? As far as the entrance; the size of
7 it?

8 A Slightly, yes.

9 Q Okay. And then you talked about, in addition to the
10 head and the stomach area, there were also injuries to the
11 ankles?

12 A Yes.

13 Q Looking at State's 100, do you notate any injuries
14 there?

15 A Yes, the entrance wound on the outer right ankle is
16 here.

17 Q You know, and you just said the outer right ankle.
18 So everyone knows, when you are speaking of right and left on
19 the individual that's having the autopsy, is it unique to that
20 person, so their right hand or their right leg?

21 A Yes.

22 Q Okay. And that's -- on the right outside ankle,
23 that's an entrance wound?

24 A Yes.

25 Q Showing you State's 101, is that a close-up of that?

1 A Yes.

2 Q Okay. And again, does that have more of that
3 collar, or how would you describe that?

4 A Yes, it has the abrasion collar that we were
5 discussing earlier.

6 Q Okay. And then, showing you 102, is that still the
7 right leg?

8 A It is.

9 Q Okay, and then what are we looking at there?

10 A The exit wound on the inner right ankle.

11 Q Okay. And then, are there also sometimes DNA
12 samples or swabbing that would be done on victims' hands or
13 other parts of their bodies?

14 A Yes.

15 Q Okay. In State's 103, is there -- is this a picture
16 of the fingernails or the hand of the decedent?

17 A Yes.

18 Q And that is his left side?

19 A Yes.

20 MR. PESCI: Court's indulgence.

21 BY MR. PESCI:

22 Q Now, we spoke of x-rays a moment ago; is that
23 correct?

24 A Yes.

25 Q And then, we were looking at the left and right

1 legs, correct?

2 A We just looked at the right leg; we haven't looked
3 at the left yet.

4 Q All right. I'm going to show you State's --

5 MR. PESCI: Well, move for the admission of State's
6 122, 123, 126, and 127, if they're not in that --

7 THE COURT: Yeah.

8 MR. PESCI: -- list I already asked for.

9 THE COURT: They've already been admitted.

10 MR. PESCI: Okay, thank you, Your Honor.

11 BY MR. PESCI:

12 Q Looking at State's 126. You said we were talking
13 about the right leg, correct?

14 A Yes.

15 Q All right. Is there evidence of injury to the bones
16 of the decedent manifested in this x-ray?

17 A Yes.

18 Q Could you show the ladies and gentlemen of the jury?

19 A There are fractures of the tibia and fibula in the
20 area of the ankles, so the two bones in your lower leg near
21 your ankle.

22 Q Okay. So is that caused by the bullet passing
23 through those bones?

24 A Yes.

25 Q Are those important bones for your legs?

1 A Yes.

2 Q Is it -- are you really able to move around if you
3 have that -- a break like that?

4 A It would be painful.

5 Q Okay, let's say this. If we also add in State's
6 127, which is the left leg, are there -- is there evidence of
7 injuries also to the bones in that?

8 A Yes.

9 Q Okay. If both -- well, what are the injuries there?

10 A The same two bones, but in the left ankle, are
11 fractured here.

12 Q Okay. So, in both legs, you said the tibia and
13 the --

14 A Fibula.

15 Q -- fibula -- fibula are broken?

16 A Yes.

17 Q All right. Would that impede someone from moving?

18 A Yes.

19 Q Okay. Now, we also seem to see something almost
20 floating in air in that exhibit. What is that?

21 A This is a bullet that was recovered from the left
22 leg on the outer side of the calf area.

23 Q Okay. Showing you State's 104, was there evidence
24 that the bullet was recovered during the autopsy?

25 A Yes.

1 Q And in fact, State's 105, is that a photograph with
2 that unique placard, showing the bullet's condition after
3 coming out of the body?

4 A Yes.

5 Q And then, in State's 106, is there also a photo
6 showing a different angle?

7 A Yes.

8 Q Okay. Now, sometimes during an autopsy, can pieces
9 of a bullet be recovered?

10 A Yes.

11 Q What we've just looked at is the entirety of a
12 projectile, correct?

13 A Yes.

14 Q Looking at State's Exhibit 122, do you recognize
15 that?

16 A Yes.

17 Q What is this?

18 A This is an x-ray, what we call a lateral head. It's
19 from the side of the head.

20 Q And what does it show?

21 A It shows multiple skull fractures here, and then
22 small pieces of metal that, when recovered, were pieces of
23 projectile and jacket.

24 Q Okay. And transitioning to State's 123, what is
25 that in contrast to the prior photo?

1 A This is an x-ray of the head from the front. So
2 it's just another angle looking at the head, showing the same
3 thing.

4 Q Okay. And in 123, do you see some pieces of the
5 fragments?

6 A Yes.

7 Q However, in 122, can you see more of them because
8 it's the -- what was the angle you said?

9 A Lateral.

10 Q The lateral? Can you see more in that x-ray?

11 A Yes.

12 Q Okay. Now, in State's 109, were those pieces that
13 are seen in the x-ray recovered during the autopsy?

14 A Three of them, yes.

15 Q Okay. And then, does -- is the head opened normally
16 during an autopsy?

17 A Yes.

18 Q And especially if there's an injury to the head?

19 A Yes.

20 Q All right. Is that how you all can get to where
21 those pieces of a bullet could be?

22 A Correct.

23 Q All right. Speaking of a bullet, was there a bullet
24 recovered from the stomach area?

25 A Yes, the left lower back.

1 MR. PESCI: Court's indulgence.

2 BY MR. PESCI:

3 Q Showing you State's 118, what is -- oops, spin it
4 around. What is that?

5 A This is the abdominal x-ray of Mr. Valenzuela,
6 showing the small projectile that was recovered from the left
7 lower back.

8 Q Okay. And earlier, looking at State's 98, we had an
9 entry wound. Where would you describe that on the body?

10 A The left lower chest.

11 Q Okay. And then, when we line that up with 118, is
12 that bullet beyond the hole inside of the body?

13 A Yes.

14 Q Okay. And then, in State's 117, is that -- is
15 "lateral" the right term?

16 A Yes.

17 Q All right. Is that a lateral view?

18 A It is.

19 Q And then, can we see where it ended up?

20 A Yes. So it's in the back -- I believe -- yeah.
21 Just looking. Right behind the first lumbar vertebra.

22 Q Okay. Even though you weren't there, having
23 reviewed the photos and knowing anatomy from your experience
24 and training from actually opening up bodies, what's in the
25 body between where the hole was and where the bullet ended?

1 A The diaphragm, the spleen, the left kidney, possibly
2 left adrenal gland, possibly the stomach.

3 Q Okay. So this injury to the body, is that also
4 something that could cause death?

5 A Yes.

6 Q I should have asked this earlier, but the shot to
7 the head, is that something that can cause death?

8 A Yes.

9 Q Okay. Now, this bullet that we're looking at in
10 State's 117, that was recovered, correct?

11 A It was.

12 Q State's 107, does that have that unique placard
13 number associated with this autopsy?

14 A It does.

15 Q Now, when bullets go through bodies -- and you just
16 described a bunch of different objects between where that hole
17 started in the stomach and where it ended -- can they be
18 deformed from hitting things inside the body?

19 A They can.

20 Q Showing you State's 108, is that the same bullet in
21 State's 107, just rotated?

22 A It is.

23 Q Does it have evidence of deformation to it?

24 A It does.

25 Q Okay. In your experience in autopsies you've done

1 on your own, have you seen that happen before?

2 A Yes.

3 Q Okay. So, reviewing all of those photographs and
4 the report, did you come to your own independent conclusion as
5 far as what the cause of death was?

6 A Yes.

7 Q What was that?

8 A Multiple gunshot wounds.

9 Q And then, as far as the manner of death, what was
10 that?

11 A Homicide.

12 Q Okay. Now, during the course of an autopsy, are
13 there different pieces -- I don't know if I should say pieces.
14 Are there things taken from the body to try to assess the
15 toxicology of the individual?

16 A Yes.

17 Q What is a toxicology?

18 A A toxicology is where we take samples of blood,
19 sometimes tissue, and sometimes fluid from the eyes, and send
20 it to a lab to look for medications, drugs of abuse, alcohol
21 levels to see what was in their body at the time of death, and
22 sometimes whether or not that contributes to death.

23 Q And in this particular case, was there a toxicology
24 done on the decedent?

25 A It -- there was.

1 Q And you -- you have reviewed those results?
2 A I have.
3 Q And what were the results of the toxicology?
4 A There were no drugs, or alcohol, or medications in
5 his system that were tested for.
6 MR. PESCI: Thank you very much. I'll pass the
7 witness.
8 THE COURT: Cross-examination?
9 MR. SANFT: No cross, Your Honor.
10 THE COURT: Mr. Ruggeroli?
11 MR. RUGGEROLI: No questions. Thank you.
12 THE COURT: Okay. Thank you very much for your
13 testimony here today. You may step down, and you are excused
14 from your subpoena.
15 THE WITNESS: Thank you.
16 THE COURT: You may call your next witness.
17 MR. PESCI: State calls Jeff Scott.
18 THE WITNESS: If you'll please remain standing,
19 raise your right hand, and face the Clerk.
20 JEFFREY SCOTT, STATE'S WITNESS, SWORN
21 THE CLERK: You may be seated. Please state and
22 spell your first and last name for the record.
23 THE WITNESS: Jeffrey Scott. J-e-f-f-r-e-y,
24 S-c-o-t-t.
25 MR. PESCI: May I proceed, Your Honor?

1 THE COURT: You may.

2 DIRECT EXAMINATION

3 BY MR. PESCI:

4 Q Sir, what do you do for a living?

5 A I'm a crime scene analyst with the Las Vegas
6 Metropolitan Police Department.

7 Q How long have you been doing that?

8 A Over 13 years.

9 Q Back in August of 2017, specifically on August 9th
10 of 2017, did you attend the autopsy of Gabriel Valenzuela?

11 A Yes, I did.

12 Q Were you there with some detectives from the
13 Homicide Detail?

14 A I believe so.

15 Q Okay. And then, were you there when the autopsy was
16 performed by Dr. Lary Simms?

17 A I was in the building; I wasn't in the room with
18 him.

19 Q Okay.

20 A I was in the adjacent room.

21 Q I apologize. Are you aware that he was the doctor
22 that performed the autopsy?

23 A Yes.

24 Q And then, were you in the room at a point with the
25 body so that you could photograph it?

1 A Yes.

2 Q Okay. Showing you what's marked as State's 110 to
3 129, do you recognize those? They've already been admitted.

4 A Yes.

5 Q When you were at this autopsy, were you present when
6 the body first came in and was still in the body bag?

7 A Yes, I was.

8 Q Showing you State's 110, did you take this
9 photograph?

10 A Yes, I did.

11 Q Does it show that the seal was still intact when it
12 arrived at the autopsy, having been brought from the hospital?

13 A Yes.

14 Q Okay. And then, did you notate the body with
15 certain photographs?

16 A Yes, I did.

17 Q When the body first comes to the autopsy, do you
18 take some photographs as-is when it first gets there?

19 A Yes. I take photographs of the body while it's
20 still in the bag before we open it, and then after we open the
21 bag, and then as we remove the sheets and clothing, and as we
22 -- after we clean the body. We take photos at every stage.

23 Q Okay, you just mentioned after you clean the body.
24 So I want to show you State's 111. Do you photograph the body
25 before it's cleaned?

1 A Yes.

2 Q And then, also, after it's cleaned?

3 A That's correct.

4 Q Okay. So looking at State's 113, do you have some

5 photographs also after it's been cleaned to show kind of the

6 margins and the edges of those wounds?

7 A That's correct.

8 Q Okay. Now, in the course of this autopsy, did you

9 take a picture of the decedent's back?

10 A Yes, I did.

11 Q Is that the normal course to try to show photographs

12 of the entire body?

13 A Yes.

14 Q All right. And were there any injuries or exits, I

15 should say, that you saw on the back?

16 A Not that I'm aware of.

17 Q All right. And then, when the body comes to you,

18 sometimes does it have its clothes on it still?

19 A Yes, sometimes.

20 Q Sometimes, is -- are the clothes in a -- in a bag

21 that you receive?

22 A Yes.

23 Q Are you tasked with taking photographs of those

24 pieces of clothing?

25 A Yes, I am.

1 Q Showing you State's 116, did you take a photograph
2 of this particular item?

3 A Yes, I did.

4 Q And is that a shirt?

5 A Yes, it is.

6 Q Okay. And then, also, did you have a picture of the
7 decedent's shorts in State's 121?

8 A Yes.

9 Q Okay. During the course of an autopsy, if there are
10 projectiles recovered, are they then given to you as the crime
11 scene analyst?

12 A Yes, they are.

13 Q Do you impound that item?

14 A Yes, I do.

15 Q What does it mean to impound something? How does
16 that work?

17 A I take the items, and in the case of bullets or
18 bullet fragments, we place them usually in a vial, and label
19 each vial with the item number and information such as the
20 event number, the date, and my initials and P number. Then,
21 the vials are placed inside packaging, which is sealed with
22 evidence tape. The tape is marked with the date that it's
23 sealed, along with my P number and initials. And then a label
24 is affixed to the front of the package that has a list of the
25 contents of the package, along with all the identifying

1 information.

2 Q And speaking of that labeling and the identifying
3 information, will you also notate where it is that the item
4 came from from the body?

5 A Yes.

6 Q Looking at State's 125, you spoke a moment ago about
7 your P number. Are we seeing that here on the left of that
8 item?

9 A Yes, it is. That's my initials and my P number.

10 Q So those items that are impounded under 9618 have
11 been impounded by you?

12 A Yes.

13 Q Okay, and we're looking at some items that you in
14 fact did impound?

15 A That's correct.

16 Q All right, and did you notate which part of the body
17 these things came from?

18 A Yes, I did.

19 Q And specifically, Items 12, did you take pictures
20 rotating those fragments around to see both sides?

21 A That's correct.

22 Q And did Items 12 come from the hand of the doctor to
23 you, or to someone else that got it to you?

24 A Yes. The doctor removes them from the body, then
25 turns them over to me.

1 Q All right. And the doctor took Items 12 from the
2 head of the victim?

3 A Yes.

4 Q All right. Showing you State's 119, were there
5 other -- another fragment or bullet that was recovered?

6 A Yes. There was also a fragment, which you're
7 showing there, and also a bullet.

8 Q All right. Showing you State's 13 -- oh, no, that's
9 not 13, sorry. 120. Is that the bullet rotated?

10 A That's a fragment, yes.

11 Q Okay, and was that the one recovered from the left
12 back?

13 A Yes, it was.

14 Q All right. Showing you State's 128, did you also
15 recover and impound that item?

16 A Yes, I did.

17 Q And did that come from the left leg?

18 A Yes, it did.

19 Q In your experience as a crime scene analyst, do you
20 have some experience recovering different caliber -- calibers
21 of bullets?

22 A Yes, I do.

23 Q Do you have experience firing firearms?

24 A Yes, I do.

25 Q Are you familiar with different calibers?

1 A Yes, I am.

2 Q All right. Looking at State's 128, is that a larger
3 caliber than State's 120?

4 A Yes, it is.

5 Q Okay. And then, in State's 129, did you rotate that
6 same bullet that you notated as coming from the left leg of
7 the decedent?

8 A Yes, I did.

9 Q Okay. In addition to items of physical evidence
10 that are recovered, do you often take what's referred to maybe
11 as a buccal swab or a DNA sample?

12 A Yes, I do.

13 Q In this particular case, did you take a buccal swab
14 -- buccal swab from the victim?

15 A Yes, I did.

16 Q How do you do that, and where is it from?

17 A The buccal swab kit consists of a package containing
18 items for the buccal swab. The items include two swabs,
19 similar to a Q tip, but with just a swab on one end. And each
20 one of those swabs is rubbed on the inside of each cheek in
21 order to collect DNA cells. The swabs are then placed in a
22 small cardboard package, and that comes with the kit. And the
23 information is filled out on the package, and then it's placed
24 inside an envelope, and impounded.

25 Q So when you impounded that particular package, did

1 you label it as Package number 2?

2 A Yes.

3 Q And then, the item inside the buccal swab kit, was
4 that Item number 2?

5 A Yes, it was.

6 Q All right, so that when DNA analysts are referring
7 later on to a package numbered with P number 9618, and Package
8 2, Item 2, that's this item?

9 A That's correct.

10 Q Okay. In addition to the buccal swab, did you take
11 some swabs of possible DNA from the fingernails of the
12 decedent's right hand?

13 A Yes, I --

14 Q Sorry.

15 A Yes, I did.

16 Q And then the left hand?

17 A Yes.

18 Q Okay. Same procedure?

19 A There's not a kit for it, but we have sterile swabs
20 that we use. We add a little bit of distilled water to the
21 tip of the swab, and then we use that to rub any possible DNA
22 off of the tips of the fingers and the fingernails.

23 Q And did you impound that as a Package number 3 and
24 Items 5 and 6?

25 A Yes.

1 Q Okay.

2 MR. PESCI: Court's indulgence. Pass the witness.

3 THE COURT: Cross-examination?

4 MR. SANFT: No cross, Your Honor.

5 MR. RUGGEROLI: No questions. Thank you.

6 THE COURT: Okay. Thank you very much for your

7 testimony here today. You may step down. You are excused

8 from your subpoena.

9 MR. PESCI: Judge, can we approach?

10 THE COURT: Sure.

11 (Bench conference)

12 MR. PESCI: So we're almost at 3:00.

13 THE COURT: Okay.

14 MR. PESCI: So I don't know if we want to take a

15 break to try to get it set up as far as this internet witness.

16 THE COURT: Okay. All right, okay.

17 MR. PESCI: And then, I don't know if you want to

18 say anything as far as -- Parker's going to probably leave now

19 so he can get there on time.

20 THE COURT: Okay. Yeah, that's a good idea that I

21 let them know. Okay.

22 (End of bench conference)

23 THE COURT: All right. At this time, ladies and

24 gentlemen, we're going to take a short recess because we need

25 to get ready for the next witness.

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

9 It will probably be a short recess. Officer Hawkes
10 will let you know when we're ready.

11 Also, Mr. Brooks is going to leave. He is being
12 excused with the permission of the Court. Thank you very
13 much.

14 THE MARSHAL: Thank you. All rise for the exiting
15 jury, please.

16 (Outside the presence of the jurors)

17 THE MARSHAL: Thank you, everyone. Be seated.
18 Thank you.

19 (Court recessed at 2:59 P.M. until 3:09 P.M.)

20 (Outside the presence of the jurors)

21 MR. PESCI: Are you seeing us?

22 THE CLERK: She might have her mute on.

23 THE COURT: Can she see us?

24 THE CLERK: She should be able to see us.

25 THE COURT: Can you see us and hear us? Yes? Well,

1 we can't hear --

2 THE WITNESS: I can see and hear you, yes.

3 MR. PESCI: Awesome.

4 THE COURT: Perfect. Yeah.

5 THE WITNESS: Yes.

6 THE COURT: Let's bring them in.

7 (Pause in the proceedings)

8 THE CLERK: Mr. Pesci, do you have 300 over there?

9 MR. PESCI: I have 277 through 319 in consecutive

10 order.

11 THE CLERK: I'm just making sure I'm not withholding

12 anything. I've got some of your exhibits that you'll need to

13 come up and grab them. These two I think belong in there.

14 MR. PESCI: Yeah, thank you.

15 THE CLERK: You're welcome.

16 MR. PESCI: Not that I'm going to be able to show

17 her, but we're going to wing it.

18 THE MARSHAL: All rise for the entering jury,

19 please.

20 (Within the presence of the jurors at 3:12 p.m.)

21 THE MARSHAL: Thank you, everyone. Please be

22 seated.

23 THE COURT: Does the State stipulate to the presence

24 of the panel?

25 MR. PESCI: Yes, Your Honor.

1 THE COURT: Mr. Sanft?
2 MR. SANFT: Yes, Your Honor.
3 MR. RUGGEROLI: Yes, Your Honor.
4 THE COURT: Mr. Ruggeroli? Thank you very much.
5 The State may call their next witness.
6 MR. PESCI: State calls Noreen Charlton.
7 THE CLERK: Can you please raise your right hand?
8 NOREEN CHARLTON, STATE'S WITNESS, SWORN
9 THE CLERK: Can you please state and spell your
10 first and last name for the record?
11 THE WITNESS: Noreen Charlton. N-o-r-e-e-n,
12 C-h-a-r-l-t-o-n.
13 THE COURT: Are you okay, Mr. Sanft?
14 MR. SANFT: Your Honor, if we could just move the
15 mouse off of her eyes.
16 THE COURT: Apparently, we can't.
17 MR. SANFT: Oh, we cannot? Okay.
18 THE COURT: Right. So, sorry.
19 MR. SANFT: No, it's okay.
20 THE COURT: Now -- yes, it would be easier.
21 MR. PESCI: Yeah. If you move a little to the left
22 or the right, that works. You can move your chair if you
23 want.
24 THE WITNESS: All right, we good?
25 THE COURT: Yeah.

1 MR. SANFT: I'm sorry. Yes, thank you. Appreciate
2 it.

3 MR. PESCI: May I proceed, Your Honor?

4 THE COURT: You may.

5 DIRECT EXAMINATION

6 BY MR. PESCI:

7 Q Ma'am, where are you now?

8 A I am currently in Cleveland, Ohio.

9 Q And are you meeting with us via some sort of a
10 Skype-type system?

11 A Yes, I am.

12 Q Okay, and do you live now outside of Nevada?

13 A Yes, I do.

14 Q Back in 2017, specifically in August, did you work
15 for the Metropolitan Police Department?

16 A Yes, I did.

17 Q What did you do?

18 A I was a senior crime scene analyst.

19 Q And on August the 15th of 2017, did you respond to
20 3300 Civic Center Drive?

21 A Yes, I did.

22 Q Specifically, Unit 2F as in Frank?

23 A That's correct.

24 Q And when you went there, were there other crime
25 scene analysts with you?

1 A No, I was the only one there.

2 Q Even though you were the only crime scene analyst,
3 were there other members of the Metropolitan Police
4 Department?

5 A Yes, there were.

6 Q Specifically, were there other detectives; a Darren
7 Cook, A Detective Merrick, and Detective Cody, and a Detective
8 Sonny Bogatay?

9 A Yes, that's correct.

10 Q Typically, will you work in conjunction with the
11 detectives when you are documenting a particular scene?

12 A Yes.

13 Q And in this particular case, one of those forms of
14 documentation was photography; was it not?

15 A That's correct.

16 Q Okay.

17 MR. PESCI: We have marked here in court Exhibits
18 277 through 319. I believe there's a stipulation to their
19 admissibility.

20 MR. SANFT: That is correct, Your Honor.

21 MR. RUGGEROLI: Yes, Your Honor.

22 THE COURT: Okay, they're admitted.

23 (State's Exhibits 277 through 319 are admitted)

24 BY MR. PESCI:

25 Q So, unfortunately, we can't really show it to you.

1 If I hold it up like this, can you see much?

2 A I -- I can sort of see it.

3 Q Okay. Does it look familiar?

4 A Yes, it does.

5 Q Okay. So we know these are the photographs that you
6 took of that particular location?

7 A Correct.

8 Q Okay. And you took photographs from throughout the
9 apartment; is that correct?

10 A Yes, I did.

11 Q Do you take kind of overall photographs at first,
12 where everything's still in the position as you first came
13 upon it?

14 A Yeah. So, upon entry, I did all of my overall
15 photography before any searching was conducted.

16 Q All right. Now, when the searching was done, the
17 detectives had a search warrant, and they were telling you
18 things of interest to them?

19 A That's correct.

20 Q And were those items pointed out to you so that you
21 could document them via photography or potentially impounding
22 some items?

23 A Yes, they were.

24 Q Okay. And then, do you make a report or do you
25 generate a report listing out what you did there and the items

1 that you impounded?

2 A Yes, I did.

3 Q In anticipation of your testimony, did we email you
4 those reports for your review?

5 A Yes, you did.

6 Q And were you able to review those?

7 A I was.

8 Q And are you familiar with the items that you
9 impounded and the scene based on reviewing these documents?

10 A Yes.

11 Q Okay. To kind of shortchange the photography, we'll
12 go to kind of some of the items specifically that you
13 impounded. Did you impound items here?

14 A Yes, I did; impounded several items.

15 Q Okay. Was there a semiautomatic Taurus handgun?

16 A Yes, there was.

17 Q And there was -- specifically, was it a Millennium
18 PT145 Pro .45 caliber ACP?

19 A Yes, it was.

20 Q And was the serial number NCY05584?

21 A That's correct.

22 Q Do you recall where you found that?

23 A Yes. So as soon as you walked in the front door,
24 there was a red chair, and it was wedged between the armrest
25 and the couch -- the chair cushion.

1 Q And in your report, do you notate that?

2 A Yes, I did.

3 Q Okay. And then, did you do anything to that firearm

4 to try to preserve any evidence?

5 A Yes. So the firearm was swabbed for possible DNA,

6 and then it was chemically processed for possible latent

7 prints.

8 Q Did you swab first?

9 A Yes, I did.

10 Q And then, you said you processed for latent prints.

11 Were -- what were the results of your processing the prints?

12 A There were negative results on the firearm.

13 Q What does that mean?

14 A That means that I did not find any latent prints of

15 value.

16 Q Okay. "Of value," does that mean that there wasn't

17 sufficient individual ridge detail or specifics that you could

18 make a comparison with?

19 A Correct.

20 Q Okay. Now, the firearm itself, did it contain a

21 magazine?

22 A Yes, it did.

23 Q What did you do with that?

24 A The magazine was removed from the firearm, and it

25 was also swabbed for possible DNA, and then chemically

1 processed as well for latent prints.

2 Q Was the -- what was the result of that?

3 A The -- the results on the magazine were positive.

4 Q Okay, so was there a print on the magazine?

5 A There was sufficient ridge detail for it to be
6 photographed and submitted to the Latent Print Detail.

7 Q Did you take a photograph of that fingerprint?

8 A Yes, I did.

9 Q All right. Is there something that you do with the
10 camera to try to expose that or make that come out?

11 A Yes. So in this case, I used a chemical, which
12 required the laser for viewing the print, so it was
13 photographed with the use of the laser.

14 Q All right. Does that enhance the ability to see the
15 print?

16 A Yes, it does.

17 Q Okay. Now, speaking of this magazine, was there any
18 ammunition in the magazine?

19 A Yes, there were.

20 Q Do you recall how much and what it was?

21 A There were ten cartridges, and they were RP45 Auto.

22 Q So when we say a cartridge, what does that mean to
23 you?

24 A A cartridge is a unit of ammunition, so that's all
25 one piece together that contains the cartridge case, the gun

1 powder, and the bullet.

2 Q So is that -- sometimes, people might refer to it as
3 an unfired bullet?

4 A Correct.

5 Q Okay. And then, you said there were ten of them?

6 A Yes.

7 Q And you said they were RP45 Auto. What does that
8 mean?

9 A So that's just the brand and the caliber of the
10 cartridge.

11 Q Okay. So are there different manufacturers or
12 brands of .45 caliber ammunition?

13 A Yes -- yes, several.

14 Q And where is that on the cartridge so you know which
15 type it is?

16 A It is on the headstamp.

17 Q Is that where the firing pin would strike?

18 A That's correct, yeah.

19 Q Okay. Separate from this firearm, were there shoes
20 that you took into evidence or you noted?

21 A Yes.

22 Q What did you find?

23 A They were red and white Nike shoes, and they were at
24 the south wall of the kitchen.

25 Q And did you notate their size?

1 A Yes, they were size 11.

2 Q Okay. So that's -- speaking of some shoes, were
3 there other pieces of clothing that were pointed out by the
4 detectives of interest?

5 A Yes, there were.

6 Q Was there a hat?

7 A Yes.

8 Q Can you describe that?

9 A It was gray and black, and it had a Chicago
10 Blackhawks logo on the front of it.

11 Q Do you recall, did it have a sticker still on the
12 brim?

13 A I don't recall specifically.

14 Q Okay, but you photographed it?

15 A Yes, I did.

16 Q Okay. Was there also a hooded sweatshirt that you
17 found there?

18 A Yes.

19 Q What color was it?

20 A It was black.

21 Q And did you impound that item?

22 A Yes, I did.

23 Q Okay. Were there other articles of clothing that
24 you came across there?

25 A Correct.

1 Q Okay. Did you in fact also find some other item of
2 firearms-related nature?

3 A Yes, I did.

4 Q What was that?

5 A There were a total of three other RP45 Auto
6 cartridges, and they were on the floor in a bedroom -- or, I'm
7 sorry, on the floor in a bedroom on the second floor, and then
8 there was another cartridge in the pocket of a pair of jeans.

9 Q Okay.

10 A Or, I'm sorry, jean shorts, I believe they were.
11 Jean shorts.

12 Q All right. So in your packaging, did you have that
13 as your Package 6?

14 A Yes, I did.

15 Q And Items 11 and 12?

16 A That's correct.

17 Q Specifically, as to Item 11, even though you refer
18 to it as one item, was that corresponding to two pieces of
19 evidence?

20 A Yes, it was.

21 Q And were those the two cartridges found on the
22 floor?

23 A Correct.

24 Q What was the headstamp on those?

25 A RP45 Auto.

1 Q All right. So, separate from those two on the
2 floor, you found one, if I understood correctly, from a pocket
3 on some shorts?

4 A That's correct.

5 Q All right. And then, the firearm, you spoke of
6 earlier how you swabbed it. Did you impound those swabs?

7 A Yes, I did.

8 Q And did you take one swab from the trigger, slide,
9 and grips of that particular firearm?

10 A Yes, I did.

11 Q And did you take a second swab from the bottom and
12 the feeding area of that item?

13 A That was from the bottom and the feeding area of the
14 magazine.

15 Q The magazine, I'm sorry. Thank you. And now, you
16 impounded all of these items under your unique personnel
17 number?

18 A Yes, I did.

19 Q And do you recall what that was when you still
20 worked with Metro?

21 A 13572.

22 Q Okay. And all that evidence was impounded in the
23 vault so that later on, DNA analysts or fingerprint analysts
24 could review it?

25 A That's correct.

1 Q And all the photographs that we've spoken of,
2 they're uploaded to where they can be analyzed by others
3 later?

4 A Yes.

5 Q Okay. And have you moved out-of-state for work?

6 A For family and work, yes.

7 Q Okay, so that's why you're not here now?

8 A That's correct.

9 MR. PESCI: All right, thank you very much. Pass
10 the witness.

11 THE COURT: Cross-examination?

12 MR. SANFT: No cross, Your Honor.

13 MR. RUGGEROLI: Court's indulgence.

14 THE COURT: You bet.

15 MR. RUGGEROLI: Can I see the photos? Thank you,
16 Your Honor. I have no questions.

17 THE COURT: Okay. Thank you very much for your
18 testimony here today, and thank you for doing it this way, and
19 you're excused.

20 THE WITNESS: Okay, thank you very much.

21 THE COURT: State may call their next witness.

22 MR. PESCI: Judge, that's all the witnesses that we
23 have for today. I apologize.

24 THE COURT: You're not kidding, are you?

25 MR. PESCI: I'm not, because we were trying to gauge

1 how long thing were going to go, so I'm sorry.

2 THE COURT: Okay. Well, looks like we're done for
3 the day.

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

13 Before you go, can I just have the attorneys
14 approach so we can make sure everyone's okay?

15 (Bench conference)

16 THE COURT: Okay. I have a hearing on Monday, so we
17 can't start until 1:00 o'clock.

18 MR. RUGGEROLI: Tuesday?

19 THE COURT: Oh my gosh, it's a --

20 THE CLERK: Oh, yes, Tuesday. I'm sorry, yes.

21 THE COURT: Oh my gosh, that's right. It's a
22 three-day weekend.

23 MR. RUGGEROLI: I tried to have witnesses here on
24 Monday, and that's not going to work either, so.

25 THE COURT: Okay, so 1:00 o'clock. I just want to

1 make sure.

2 MR. RUGGEROLI: On Tuesday?

3 THE COURT: Yes.

4 MR. RUGGEROLI: Thank you.

5 THE COURT: On Tuesday. Okay.

6 (End of bench conference)

7 THE COURT: Ladies and gentlemen, I do want to

8 remind you that Monday is a holiday, so the courthouse will be

9 closed, so we will resume again on Tuesday afternoon at 1:00

10 o'clock. Thank you very much, and have a good weekend.

11 THE MARSHAL: Thank you. All rise for the exiting

12 jury, please. Jurors.

13 (Outside the presence of the jurors at 3:25 p.m.)

14 THE MARSHAL: Thank you, everyone. Please be

15 seated.

16 THE COURT: Okay, have a good weekend, everyone.

17 MR. RUGGEROLI: Thank you, Your Honor.

18 MR. SANFT: Thank you, Your Honor.

19 MR. PESCI: Okay, thank you.

20 DEFENDANT WHEELER: Thank you.

21 (Court recessed at 3:26 P.M., until Tuesday,

22 February 18, 2020, at 1:04 P.M.)

23 * * * * *

24

25

INDEX OF WITNESSES

STATE'S WITNESSES:

	<u>PAGE</u>
<u>DETECTIVE LORA CODY</u>	
Direct Examination by Mr. Pesci.....	35
Cross-Examination by Mr. Ruggeroli.....	51
<u>SHAWN FLETCHER</u>	
Direct Examination by Mr. Brooks.....	56
Cross-Examination by Mr. Ruggeroli.....	71
<u>CLAIRE BROWNING</u>	
Direct Examination by Mr. Brooks.....	72
<u>DESHAWN ROBINSON</u>	
Direct Examination by Mr. Brooks.....	91
Cross-Examination by Mr. Sanft.....	151
Cross-Examination by Mr. Ruggeroli.....	174
<u>DR. JENNIFER CORNEAL</u>	
Direct Examination by Mr. Pesci.....	217
<u>JEFFREY SCOTT</u>	
Direct Examination by Mr. Pesci.....	239
<u>NOREEN CHARLTON</u>	
Direct Examination by Mr. Pesci.....	251

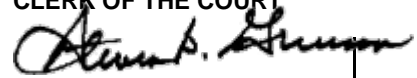
LIST OF EXHIBITS

<u>STATE'S EXHIBITS:</u>	<u>PAGE</u>
332.....	43
150.....	44
150 through 154.....	57
155 through 159.....	57
160 through 175.....	58
176 through 180.....	58
181 through 214.....	58
144 through 148.....	100
130 through 134.....	101
309.....	114
312.....	115
333.....	118
334.....	119
335.....	119
336.....	126
149.....	128
235.....	135
337.....	145
93, 94, 95, and 97 through 129.....	225
277 through 319.....	252
<u>DEFENDANT WHEELER'S EXHIBIT:</u>	
A1.....	88

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

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

TUESDAY, FEBRUARY 18, 2020

RECORDER'S TRANSCRIPT OF PROCEEDINGS:
JURY TRIAL - DAY 5

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, TUESDAY, FEBRUARY 18, 2020

2 (Case called at 1:03 P.M.)

3 THE COURT: Anything before we bring the panel in?

4 MR. SANFT: Not from the State.

5 MR. RUGGEROLI: No, Your Honor.

6 THE COURT: Okay, let's bring them in.

7 MR. PESCI: We've got eight witnesses lined up for
8 today, Judge.

9 THE COURT: Okay.

10 MR. PESCI: I'm not sure that we'll get through all
11 that, but.

12 (Pause in the proceedings)

13 THE MARSHAL: All rise for the entering jury,
14 please. Jurors.

15 (Within the presence of the jurors)

16 THE MARSHAL: Thank you, everyone. Please be
17 seated.

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

20 MR. PESCI: Yes, Your Honor.

21 THE COURT: Mr. Sanft?

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

23 THE COURT: Mr. Ruggeroli?

24 MR. RUGGEROLI: Yes, Your Honor.

25 THE COURT: Thank you. The State may call their

1 next witness.

2 MR. PESCI: State calls Detective Sonny Bogatay.
3 May I approach your Clerk?

4 THE COURT: You may.

5 MR. PESCI: Thanks.

6 THE MARSHAL: Please step up into the witness stand.
7 Remain standing, raise your right hand, and face the Clerk,
8 please.

9 OFFICER MAUREEN SONNY BOGATAY, STATE'S WITNESS, SWORN

10 THE CLERK: You may be seated.

11 THE WITNESS: Thank you.

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

14 THE WITNESS: My name is Maureen, M-a-u-r-e-e-n. I
15 do go by my middle name, Sonny, S-o-n-n-y. Last name,
16 Bogatay, B-o-g-a-t-a-y.

17 DIRECT EXAMINATION

18 BY MR. PESCI:

19 Q Ma'am, what do you do for a living?

20 A Presently, I work for the Las Vegas Metropolitan
21 Police Department.

22 Q In what division?

23 A In the Homicide Section.

24 Q How long have you been with homicide?

25 A It will be three years this June.

1 Q Prior to homicide, where did you work within Metro?

2 A In Metro, I worked in Sexual Assault Section for
3 about six-and-a-half years.

4 Q And then, prior to that?

5 A Prior to that, I was a field training officer, where
6 I trained other officers about how to be a good officer.

7 Q So, all told, how long have you been with Metro?

8 A It will be 17 years this August.

9 Q Okay. And so, if I heard you correctly, it's about
10 three years with Homicide?

11 A Yes, almost three years.

12 Q I want to focus your attention to August of 2017.
13 Did you assist in a homicide investigation that was out on
14 West Dewey Avenue?

15 A I did assist in an investigation, yes.

16 Q And did you work with some other detectives in that
17 investigation?

18 A That is correct.

19 Q And do you recall some of their names?

20 A Yes. I worked with Detective Mitch Dosch, Detective
21 Ryan Jaeger, Detective Lara Cody, and others.

22 Q All right. And then, in the course of this
23 investigation, did it take you as a detective to different
24 locations other than just the West Dewey address where the
25 murder actually occurred?

1 A That is correct. We were at multiple locations
2 during that time.

3 Q All right. And specifically, on August the 15th of
4 2017, did you respond with other Metro personnel to 3300 Civic
5 Center Drive, Unit 2F?

6 A Correct.

7 Q Okay, and do you remember a crime scene analyst by
8 the name of Noreen Charlton?

9 A I do.

10 Q Did she work the scene with you?

11 A Yes, she did.

12 Q Now, when you work a scene with crime scene
13 analysts, how do you do that? What's the way that you
14 approach it, meaning you and the crime scene analysts?

15 A Typically, the crime scene analysts will enter first
16 and take photographs, overall photographs of the scene before
17 anybody touches it so that everything is in place and how it
18 is. After they let us know that they are finished, then we
19 will go in, we put on our gloves, and we will systematically
20 start to search pretty much every area in the place that is
21 within the scope of our search.

22 Q Now, as that search is occurring, and during this
23 process, do the crime scene analysts take photographs?

24 A That is correct.

25 Q And are some items of evidence that are found

1 actually impounded or retrieved and taken into evidence?

2 A Yes.

3 Q In this particular case, Ms. Charlton was the
4 individual that took the photographs and impounded the
5 evidence?

6 A That is correct. She did.

7 Q All right. And are you aware of the fact that she's
8 moved out of Las Vegas and is currently working on the east
9 coast?

10 A Yes, she did.

11 Q All right. So, unfortunately, she couldn't see the
12 photographs from her testimony over the computer. We're going
13 to show some photographs to you. Is that okay?

14 A That's fine.

15 Q Showing you State's exhibits which have been
16 admitted 277 to 280, I'm going to ask you if you recognize
17 277.

18 A I do recognize 277.

19 Q And what do you recognize this to be?

20 A That is the -- I'll call it the outer entryway into
21 -- before you enter the apartments. There's two apartment
22 doors there, 2F and 2G.

23 Q And you spoke of kind of overall photographs as
24 kind of showing the scene as it first was when you arrived?

25 A Correct.

1 Q Now, when you get inside that little kind of alcove
2 or entryway, when you look at State's 278, does it show the
3 two different apartments inside that little entryway?
4 A It does.
5 Q And then, on the right, or at least on the left on
6 State's 278, is that Apartment 2G?
7 A It is.
8 Q And then, to the right, which one is it?
9 A That is 2F.
10 Q Okay. Looking at State's 279, was the door open to
11 2F?
12 A Yes, the door is open in that photograph.
13 Q All right. Above the door, do we have some
14 indication as to which particular apartment this is?
15 A Yes. It has a "2F" right at the top of it, which is
16 different than the other door where it said "2G" on the door.
17 Q All right. In 280, is that a close-up of the door
18 so we know which particular apartment we're about to go in?
19 A Correct.
20 Q Okay. And again, this was being done by Noreen
21 Charlton while you're there, correct?
22 A That is true.
23 Q Now, inside of the apartment where the search was
24 occurring -- this was pursuant to a search warrant, correct?
25 A That is correct.

1 Q All right, so a Court had authorized you, and the
2 other detectives, and the crime scene analysts to go in and to
3 look around this area?

4 A Yes, a judge authorized.

5 Q All right. 281, inside of that apartment, or is
6 that actually the door to the outside that we can see here?

7 A Yes. You can see right there the door is standing
8 open, as the last photograph where you saw the door as
9 standing open. Now we're inside. She's taking a picture from
10 the inside.

11 Q All right. So it appears that there's something
12 kind of red along here. Is it a bed or a couch?

13 A I think it's a -- you know, a small couch, small
14 chair. I mean, it's -- or a big chair. It's -- it looks like
15 both. You could sleep on it, but you certainly could sit on
16 it as well.

17 Q So 282, does that help us to orient to know we're
18 looking at that same location, and we still have the door to
19 the outside common area?

20 A Correct.

21 Q Okay. Was a phone located there?

22 A Yes, the phone was right on the armrest --

23 Q Showing you --

24 A -- you see in the photograph.

25 Q -- 283. Is that a close-up of that phone?

1 A Yes, it is.

2 Q Often, will there be photographs taken of the phone,
3 looking at 284, from the opposite side?

4 A Correct.

5 Q Okay. Now, in this particular case, based on the
6 investigation that had already occurred, was there an effort
7 to try to locate some hooded sweatshirts, dark sweatshirts?

8 A There were some efforts. We open drawers, we look
9 for things in bags. We don't just search right -- the
10 surface-level stuff; we do go into things to look for
11 clothing.

12 Q And that was a focus, however, as to what you were
13 looking for?

14 A Yes.

15 Q One of the things?

16 A Yes, there was a focus.

17 Q Showing you State's 285. Was there a hooded black
18 sweatshirt there?

19 A There was.

20 Q All right. And then, State's 286, was there a
21 photograph of a sweatshirt in that location?

22 A Correct, nearby on the blue couch.

23 Q All right. And then, over here on the left, do you
24 see what that is?

25 A That's a tag.

1 Q Okay. Let me just move it in.

2 A I believe.

3 Q See if we can get the -- does that help you a little

4 bit?

5 A I mean, it's called Dutch.

6 Q Okay.

7 A But I don't know if they're those little cigarette

8 wrapper.

9 Q Right. And that's only showing part of the wrapper,

10 correct?

11 A Correct, it's kind of tucked in there. Hard to

12 see --

13 Q All right.

14 A -- from just looking at it like that.

15 Q Staying inside that area of that kind of

16 couch/chair, we talked about the phone. Was there another

17 piece of evidence that was found, State's 287? Was there a

18 holster, or did you see a holster in the area?

19 A There is a holster, which you -- it's hard to see

20 from this angle, but it is on that armrest, the red armrest.

21 Q Showing you State's 288, is it a better view of that

22 holster?

23 A Correct. You can now see that holster on the other

24 side of the water bottle.

25 Q And then, in tight on 289, using that water bottle

1 as a reference point, is that -- is that the same holster?

2 A Yes, it is.

3 Q Okay. Nearby, kind of stuck in between that red
4 edge and the couch, did you find something -- or was something
5 found in State's 290?

6 A Yes. It's very hard to see in that photograph, but
7 under that picture frame, you can see something very small,
8 but it, to us, appeared to be a butt of a gun.

9 Q So, 291, is that a better close-up of that item?

10 A Better --

11 Q All right.

12 A -- close-up.

13 Q So that wasn't in the holster, and it wasn't on top
14 of that little ledge?

15 A Correct, it was not. It was tucked in like that.

16 Q It was wedged down in there?

17 A Correct.

18 Q And then, was that item retrieved, pulled out, and
19 photographed?

20 A It was.

21 Q Showing you State's 292, do you recognize that as
22 being that particular firearm?

23 A That is. That particular firearm was a Taurus
24 Millennium.

25 Q Okay. Showing you State's 293, is it common to show

1 both sides of the firearm when photographs are taken?

2 A Correct, because there's multiple engravings on each
3 side, so you want to make sure it's accurate and you have all
4 the details.

5 Q And speaking of details, in State's 294, are there
6 photographs that show the details of the manufacturer, the
7 serial number, and things of that nature?

8 A Yes, correct.

9 Q Okay. And then, was this -- do you recall the
10 firearm had a magazine in it? Showing you State's --

11 A It had a magazine in it, correct.

12 Q State's 295. Was the magazine then pulled out of
13 the firearm?

14 A It was.

15 Q Okay. As we see it right now with the slide back,
16 what's going on?

17 A With the slide back, it just shows that there's --
18 it's safe, and nothing is chambered, and there's not a bullet
19 in the chamber.

20 Q All right. Can we see, however, a bullet in the top
21 of the magazine?

22 A Correct, you can.

23 Q All right. Was the magazine itself photographed?
24 Showing you State's 296.

25 A Yes, it was.

1 Q And both sides of that, 297?

2 A Correct.

3 Q And then, the projectiles taken from it, 298, were

4 they unloaded from the magazine?

5 A Yes.

6 Q Okay. And then, 299, does that show the headstamp

7 of those particular bullets?

8 A It does.

9 Q Okay. And if we zoom-in, are these R-P .45 Autos?

10 A It is. You can see the stamp, .45 R-P.

11 Q Okay. And again, these are what are retrieved from

12 inside the magazine, which was inside the firearm that was

13 stuffed down in the corner?

14 A Correct.

15 Q Okay. The rest of the apartment, looking at State's

16 300, was that searched as well?

17 A Yes.

18 Q Okay. Were there some bullets that were found

19 outside of the gun itself?

20 A Correct. On the second floor of the apartment, we

21 did find some bullets.

22 Q State's 301. Is that a photograph of one of those

23 bullets?

24 A It is.

25 Q State's 302. Was there another one on the floor,

1 just loose on the floor?

2 A Yes, there was one loose on the floor.

3 Q Okay. And then, was there one -- well, those two
4 that were loose on the floor, looking at State's 303, was a
5 photograph taken of the headstamp of those two projectiles?

6 A Yes, that is a photograph of them.

7 Q Same manufacturer of the R-P .45 Auto?

8 A Yes.

9 Q Okay. And this is at 3300 Civic Center; this is not
10 the Bagpipe address, correct?

11 A Correct, 3300 Civic Center.

12 Q All right. In State's 304, was there another
13 projectile found, not those two on the floor, and not those
14 that were in the firearm, but inside the pockets of some
15 jeans?

16 A Yes, there was. We did find some in a pocket of a
17 jean.

18 Q And then --

19 A Jean shorts.

20 Q State's 305. Was the headstamp again photographed
21 to be able to show manufacturer?

22 A Correct.

23 Q Was it the same manufacturer?

24 A It was.

25 Q All right. Now, Crime Scene Analyst Noreen Charlton

1 also, in addition to photography and impounding the items, she
2 tried to process this item, particularly the firearm; is that
3 correct?

4 A Yes, she did.

5 Q And when we say process, meaning to try to develop
6 any fingerprints, things of that nature?

7 A Yes.

8 Q Showing you State's Exhibit 306, did she work on
9 that magazine to try to develop any latent fingerprints?

10 A Yes.

11 Q State's 307. Do you see that photograph?

12 A I do.

13 Q All right. And is this a part of that process of
14 trying to develop the fingerprints?

15 A That is part of the process to see if you can lift a
16 fingerprint. Correct.

17 Q All right. And then, Noreen Charlton has a unique P
18 or personnel number; is that correct?

19 A Yes, that is hers.

20 Q Many times when you're doing a report, do you put
21 your first initial, your P number, and your last initial?

22 A Yes, we do.

23 Q And does that help show that this is you that's
24 doing this particular action?

25 A Yes.

1 Q In addition to the firearms-related evidence, were
2 there other articles of clothing that were being looked for in
3 this case?

4 A Yes, there were.

5 Q Pursuant to that search warrant?

6 A Yes, we were looking for other articles of clothing
7 and shoes.

8 Q State's 308. Was there a hat of interest?

9 A Yes. There was a hat on -- I didn't know whether to
10 call it a dresser or a stand -- that we were looking at.

11 Q State's 309. Is that a close-up of that hat?

12 A That is the close-up.

13 Q Okay. Now, this is occurring -- again, for the
14 ladies and gentlemen of the jury, this is August the 15th of
15 2017?

16 A Correct, August 15th.

17 Q You said you were working with Detectives Jaeger and
18 Dosch, correct?

19 A Correct.

20 Q Were you aware of the fact that video surveillance
21 from a convenience store had been obtained prior to your
22 search?

23 A Yes.

24 Q And was that surveillance reviewed prior to the
25 search?

1 A It was reviewed, and I had seen it also.

2 Q Okay. And based on that, was that why some of these
3 items were looked at?

4 A Correct.

5 Q State's 310. Is that the same hat we were just
6 looking at in 309, but just turned upside-down?

7 A Yes.

8 Q Okay. And then, in State's 311, were there some
9 shoes that were found and were searched for?

10 A Yes, especially a pair of the red shoes.

11 Q All right, let's focus in on those then. In State's
12 313, are those the red shoes you just referred to?

13 A Correct, they are.

14 Q And then, often, are there different angles of the
15 same set of sneakers to be able to show all sides?

16 A Yes.

17 Q 312, is that the same pair of sneakers?

18 A Yes, it is.

19 Q Okay. And then, specifically, in State's 316, is a
20 photograph taken to be able to show the size of the shoes?

21 A Yes.

22 Q Now, the other apartment -- we were just speaking of
23 2F, correct?

24 A Correct.

25 Q All right. And was there some photography done of

1 2G?

2 A There was.

3 Q Showing you 317, is that the outside portion of that
4 apartment?

5 A It is.

6 Q And then, in State's 318, does this show entering
7 into that apartment?

8 A It does.

9 Q And lastly, State's 319, does that show inside of
10 2G?

11 A That is inside of 2G.

12 MR. PESCI: Okay, thank you very much. Pass the
13 witness, Your Honor.

14 THE COURT: Mr. Sanft, any cross?

15 MR. SANFT: Just a couple questions.

16 CROSS-EXAMINATION

17 BY MR. SANFT:

18 Q Detective, you explained to the jury a little bit
19 earlier that CSAs go into a house first, and then you follow
20 after, or you're with them during that time period?

21 A We do not go in when they're taking the photographs.
22 Sometimes, for -- the reason is that we would accidentally be
23 in a photograph or maybe bump into something. So typically,
24 they go in first, take the photographs of how the area is
25 prior to our entry.

1 Q Now, would it be fair to say, of course, that even
2 prior to crime scene analysts going into some type of place,
3 like in this case, these apartments, that it has to be cleared
4 first to make sure that there's nobody in there that could be
5 of any danger to either crime scene analysts or other people?

6 A There are times when it is cleared before that.

7 Q In this case, were the apartments that you went into
8 cleared prior to you entering into them with CSA?

9 A They were cleared.

10 Q Okay, meaning that police officers went in, they
11 looked through doors or in closets to make sure no one was in
12 there before they --

13 A I can't tell you if they may have went through the
14 closets because I wasn't in there with them. But typically,
15 people go in to make sure that there are not children or other
16 people in there while we're going to conduct the service of
17 our search.

18 Q All right. And during the time that you're in
19 there, fair to say that you wear gloves as kind of standard
20 operating procedure when you're doing that kind of search or
21 that kind of thing?

22 A Correct. We wear gloves.

23 Q And as you're doing and conducting those types of
24 searches, crime scene analysts are the ones rummaging through
25 things, or are you helping them rummage through those things

1 to get things of interest?

2 A Crime scene analysts are not the ones who conduct
3 the service; as he put it, the rummaging. I -- we are
4 searching, so we have our gloves on. They are usually waiting
5 for an announcement that we have located something, or, "Could
6 you photograph this for us?" So typically, it is just us
7 detectives who have the gloves on, and we are the ones going
8 through the property.

9 Q I see. And just, finally, with regards to the
10 gloves, the reason why you wear them is for what reason?

11 A So that we don't leave our own prints, our own DNA,
12 items like that, into a scene.

13 MR. SANFT: No further questions. Thank you.

14 THE COURT: Mr. Ruggeroli?

15 CROSS-EXAMINATION

16 BY MR. RUGGEROLI:

17 Q Good afternoon.

18 A Good afternoon.

19 Q Who did you interview in this case?

20 A In this case, DeShawn Robinson.

21 Q Okay, anybody else?

22 A There were people that were related to Raekwon, but
23 that was at a different address.

24 Q And that would have been prior to the August 15th
25 date, 2017, for the photos we were just looking at, correct?

1 A Yes, especially the DeShawn Robinson interview was
2 prior to that search.

3 Q You were shown a number of photos. One of them --
4 or a couple of them had a sweater; is that right?

5 A Sweater, then hoodie. I mean, I called them black.

6 Q Okay.

7 A Like, black sweater, black hoodies, black --

8 Q You had seen the video from the Short Line Express,
9 correct?

10 A I had.

11 Q And was it your understanding that the Civic Center
12 address was located with the individual that was wearing that
13 white hat on the video?

14 A I understood that some of the information that --
15 during our interview, we discovered that those were one of the
16 addresses involved with one of the people. Exactly who or
17 what, I wasn't sure until we got to the scene.

18 Q And so, the video, you recall because you actually
19 watched the surveillance?

20 A Correct.

21 Q One of the four that were in the store had that hat?

22 A Had a hat on that -- yes, that we thought was
23 similar to that hat.

24 Q And the shoes that were kind of maroon?

25 A Correct. We also saw the person with red shoes on,

1 so we saw red shoes, and we assumed that those could be
2 related.

3 Q Now, in the video, that individual had a maroon top
4 on, correct?

5 A Correct.

6 Q The photo you were shown was black sweater though,
7 right? Just now.

8 A Well, the pictures that we took that were on the
9 ground --

10 Q Right.

11 A -- was of a black sweater. Correct.

12 Q Okay. The Taurus firearm, were you aware that there
13 were two .45 caliber Taurus firearms; one located at this
14 address, and one supposedly located at a different address?

15 A I was not at the other address where search warrants
16 were served and guns were retrieved. I was only at this one
17 where a gun was retrieved.

18 Q Okay. Were you aware that this firearm was excluded
19 as having been the firearm that shot Mr. Valenzuela?

20 A Eventually, I was aware of that.

21 Q And you did testify just now about the magazine that
22 you observed in this firearm located at the Civic Center,
23 correct?

24 A Correct.

25 Q That magazine held ten bullets?

1 A It did.

2 Q And when you retrieved them and laid them out for
3 the photos, there were ten in the magazine itself that you
4 pulled out of it?

5 A Correct, there were ten.

6 Q Did you write any reports for this event?

7 A What we write is part of something called an
8 Officer's Report. So we write our summary; we include it in
9 an Office's Report.

10 Q And that would have probably been reviewed by
11 Detective Jaeger?

12 A Detective Jaeger, Detective Dosch, and ultimately a
13 sergeant, a supervisor.

14 Q Okay.

15 MR. RUGGEROLI: Thank you. I have nothing further.

16 THE COURT: Any redirect?

17 MR. PESCI: Yes, thank you.

18 REDIRECT EXAMINATION

19 BY MR. PESCI:

20 Q Detective, you were just asked questions about
21 gloves. He talked about how you as a detective and the other
22 detectives are the ones doing the actual searching, correct?

23 A Correct.

24 Q All right. Then you said you will sometimes say,
25 hey, we've got something here; could you take a photograph of

1 it or impound it, correct?

2 A Correct.

3 Q All right, and that's the crime scene analyst that
4 does that?

5 A Yes, it's the crime scene analyst.

6 Q And would you agree the crime scene analyst is also
7 wearing gloves when they impound these items?

8 A That is correct. They not only wear gloves; a lot
9 of times, we wear those medical masks so that they don't
10 breathe on anything or get any of their DNA or spit.

11 Q All right. You were asked questions about the video
12 surveillance that you reviewed from the Short Line Express.
13 Do you remember those questions?

14 A I do.

15 Q And do you recall that's from August the 8th of
16 2017?

17 A I do recall.

18 Q And your search is August the 15th of 2017?

19 A Yes, about a week later.

20 MR. PESCI: Thank you very much.

21 THE COURT: Mr. Sanft, any recross?

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

23 THE COURT: Mr. Ruggeroli?

24 MR. RUGGEROLI: No, Your Honor. Thank you.

25 THE COURT: Detective, thank you very much for your

1 testimony here today. You may step down, and you are --

2 THE WITNESS: Thank you.

3 THE COURT: -- excused from your subpoena.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you very much for being here. And
6 you may call your next witness.

7 MR. PESCI: State calls Brooke Cornell.

8 THE MARSHAL: Straight ahead to the witness stand,
9 please. If you'll please step up into the witness stand,
10 remain standing, raise your right hand, and face the Clerk.

11 LAURA BROOKE CORNELL, STATE'S WITNESS, SWORN

12 THE CLERK: You may be seated. Please state and
13 spell your first and last name for the record.

14 THE WITNESS: My first name is Laura, L-a-u-r-a. My
15 last name is Cornell, C-o-r-n-e-l-l, but I go by and sign my
16 reports by my middle name of Brooke, B-r-o-o-k-e.

17 MR. PESCI: Thank you.

18 THE COURT: You may proceed.

19 DIRECT EXAMINATION

20 BY MR. PESCI:

21 Q Ma'am, what do you do for a living?

22 A I'm a crime scene analyst with the Las Vegas
23 Metropolitan Police Department.

24 Q How long have you been doing that?

25 A 11-and-a-half years.

1 Q All right. Were you asked to assist in an
2 investigation that was tied to an Event Number 170809-0029?

3 A Yes, I was.

4 Q Specifically, did you respond to 6647 West Tropicana
5 Avenue, Apartment 104 on the 15th of August 2017?

6 A Yes, I did.

7 Q And was that at about 4:00 P.M.?

8 A Yes, it was.

9 Q Okay. Did you respond there with another crime
10 scene analyst?

11 A Yes, I did.

12 Q Who was that?

13 A Glezzelle Tapay.

14 Q Okay. And then, what did the two of you do at the
15 scene?

16 A We were with detectives and conducting a search
17 warrant on the apartment.

18 Q Okay. And when you say you were conducting a search
19 warrant -- is that what you said?

20 A Yes.

21 Q Okay. What does that entail?

22 A The crime scene analyst goes through, takes overall
23 photos of the entire residence. Then the detectives conduct
24 the search, and then we photograph whatever items that they
25 deem interesting and collect the evidence.

1 Q Okay. And then, this was done pursuant to a search
2 warrant?

3 A Yes.

4 Q Meaning that a court had authorized this search?

5 A Yes.

6 Q Okay. I'm going to show you what's been marked as
7 State's Exhibits 235 through 266.

8 MR. PESCI: Any objections to them?

9 MR. SANFT: No objection, Your Honor.

10 MR. RUGGEROLI: No objection, Your Honor.

11 MR. PESCI: Move for their admission.

12 THE COURT: They're admitted.

13 (State's Exhibits 235 through 266 are admitted)

14 MR. PESCI: May I approach?

15 THE COURT: You may.

16 BY MR. PESCI:

17 Q Ma'am, in anticipation of your testimony, did you
18 review the photographs from this particular incident?

19 A Yes, I did.

20 Q And do you recognize these photographs as being the
21 ones that you took?

22 A Yes.

23 Q And I should more specifically say -- do you want it
24 back? Did you -- as far as your responsibilities and duties
25 at that scene between you and Ms. Tapay, what did you do

1 versus Ms. Tapay?

2 A My job was to take photographs, and then write the
3 Crime Scene Report.

4 Q Okay.

5 A And her job was to collect the evidence and impound
6 them.

7 Q So I want to show you those photographs. We'll go
8 through that, and then ask you some follow up questions.
9 Showing you first -- I don't know how to stop that feedback
10 from happening. So do you take some overall photographs of
11 the location before you go inside to search?

12 A Yes, I do.

13 Q Showing you State's 235. What do you recognize that
14 to be?

15 A That's the outside of the apartment with the -- the
16 outside of the building with the building number and street
17 address.

18 Q Do you do that in order to orient within an
19 apartment complex which particular building it is?

20 A We do that just to get the address and building
21 number to match the address that we have in our report.

22 Q All right. State's 236. Did you take a photograph
23 which included the stairs?

24 A Yes.

25 Q And then, was it upstairs, this particular

1 apartment?

2 A It was a downstairs apartment.

3 Q Okay. State's 237. Was that the front door to the
4 apartment?

5 A Yes, it is.

6 Q Now, when you make your way into the apartment,
7 showing you State's 238, do you do an overall kind of upon
8 entry?

9 A Yes.

10 Q And then, do you work your way through the
11 apartment?

12 A Yes.

13 Q Including different bedrooms?

14 A Yes.

15 Q Showing you State's 239, do you recognize this as
16 being an apartment within that particular -- or a bedroom
17 within that apartment?

18 A Yes.

19 Q This particular photograph, State's 239, is inside
20 the apartment, looking to the door to exit the apartment -- I
21 mean, the bedroom?

22 A Yes. That's looking out the bedroom door, and that
23 would be the living room back behind.

24 Q In State's 240, are you photographing the bed, and
25 also a closet area?

1 A Yes.

2 Q In State's 241, inside the closet, was there a
3 bureau or a chest of drawers?

4 A Yes, there was.

5 Q Now, this chest of drawers, in the process of
6 searching this area, was a firearm found?

7 A Yes.

8 Q Showing you State's 242, is this now taken from
9 inside of that closet inside that bedroom?

10 A Yes.

11 Q And the chest of drawers has all of the drawers in
12 it, correct?

13 A Yes, it does.

14 Q However, did you search inside those drawers or pull
15 those drawers out to look underneath?

16 A The detectives did.

17 Q Okay. State's 243. Do you recognize what this is?

18 A Yes, that's the bottom left drawer of that same
19 dresser that's -- the drawer's been pulled out, and then
20 there's a weapon and ammunition underneath.

21 Q State's 244. Is that a closer-up picture to show
22 the weapon?

23 A Yes.

24 Q And then, 245, does that show the ammunition?

25 A Yes.

1 Q Okay. Now, were those items retrieved from that
2 location inside of the chest of drawers and taken outside?
3 A Yes, they were.
4 Q Showing you State's 246, were those items put out so
5 that you could see all of them?
6 A Yes.
7 Q Specifically, State's 247, are those the two boxes
8 of ammunition?
9 A Yes, they are.
10 Q And then -- well, I should say the two Federal boxes
11 of ammunition, correct?
12 A Yes.
13 Q And then, 248, was there another item of note?
14 A Yes. We had another box of .22 caliber ammunition,
15 we had what appeared to be a laser sight possibly, and then
16 there was another box that had a tool and just some
17 miscellaneous cartridges in it.
18 Q Okay. So we're looking at this box with the tool
19 and the miscellaneous cartridges, and then also the laser-type
20 item?
21 A Yes.
22 Q Okay. You mentioned some .22 caliber ammunition,
23 correct?
24 A Yes.
25 Q State's 249. Is that this?

1 A Yes.

2 Q Okay. And then, the firearm itself, State's 250,
3 was that photographed?

4 A Yes.

5 Q And 251, is there a close-up on the manufacturer and
6 the serial number?

7 A Yes, there is.

8 Q And then, is the firearm photographed kind of from
9 all different angles? 252, does it show the other side of
10 that firearm?

11 A Yes.

12 Q And 253, kind of a close-up on that same side?

13 A Yes.

14 Q You talked about some loose ammunition; is that
15 correct?

16 A Yes.

17 Q State's 254. Were those those pieces of loose
18 ammunition that were in that red box earlier?

19 A Yes.

20 Q All right. When I say red box, we're talking about,
21 in State's 249, this red box here?

22 A Yes.

23 Q In fact, you can see some of those bullets?

24 A Yes.

25 Q Okay. And then, was this photograph taken so that

1 you could see the different calibers?

2 A Yes.

3 Q Now, the gun itself, was it disassembled to some
4 degree to take photographs?

5 A Yes.

6 Q Showing you 255, what's gone on here?

7 A We removed the magazine from the gun, and we've
8 opened the barrel, just -- it was just to clear it to make
9 sure it wasn't loaded.

10 Q Speaking of clearing it, State's 256, is that a
11 photograph looking into the barrel to verify that it's in fact
12 cleared?

13 A Yes.

14 Q What does it mean to be cleared?

15 A That there's no ammunition in there.

16 Q Okay. Speaking of ammunition, we saw some red boxes
17 earlier. Looking at State's 257, was that a photograph of
18 some of that ammunition?

19 A Yes, it is.

20 Q All right. Now, this particular box, what kind of
21 ammunition was it?

22 A .45 caliber.

23 Q Okay. And then, can you tell --

24 A And the headstamp says Federal .45 Auto.

25 Q Federal .45 Auto? Okay. I'm going to keep it kind

1 of zoomed-in, show 258. The other box, what type was it?

2 A It's Federal .357 Magnum.

3 Q Okay. And then, 259, we had the .22. Is that what
4 we're looking at as far as the box of ammunition for the .22?

5 A Yes, it is.

6 Q Okay. Put that into perspective. Is that that
7 plastic container opened up?

8 A Yes.

9 Q All right. And those pieces of evidence, were they
10 impounded by Ms. Tapay?

11 A Yes, they were.

12 Q Were there items of clothing that were looked at and
13 photographed inside of this apartment?

14 A Yes, there were.

15 Q Showing you State's 260. Was there a hooded black
16 sweatshirt that was found and photographed?

17 A Yes.

18 Q State's 261. Did you take a photograph of the label
19 of that item?

20 A Yes.

21 Q And then, 262, did you kind of work your way around
22 the closet and different pieces of clothing there?

23 A Yes, we did.

24 Q 263. Were there some hats and other items?

25 A Yes.

1 Q And then, going to 264, is that a black hooded
2 sweatshirt?

3 A Yes.

4 Q All right. Now, there seems to be some hands in
5 this photograph. Do you know whose hands those are?

6 A I can't say. It was probably a detective's.

7 Q All right. Are they gloved?

8 A Or maybe Glezzelle's. Yes, they are gloved.

9 Q Okay. When you were doing all this, were your hands
10 gloved?

11 A Absolutely.

12 Q Okay. Were there some shoes that were found and
13 notated in this investigation?

14 A Yes, there were.

15 Q 265. Did you find some shoes that were of interest?

16 A The detective did, yeah. It was on a shelf in the
17 closet.

18 Q All right. And then, 266. If the detectives ask
19 you to retrieve something, will you take it from that
20 location, and then display it somewhere else where you can
21 take further photographs?

22 A Yes, we do.

23 Q 266. Is that that same pair of shoes that were
24 found in the closet?

25 A Yes, they are.

1 Q Okay. Now, in the course of your time at that
2 particular location, you took the photographs, and Glezzelle
3 Tapay was the one that impounded the evidence?

4 A That is correct.

5 Q All right, and you said that was about 6:00 P.M. on
6 the 15th?

7 A I believe we arrived around 4:00 P.M.

8 Q 4:00 P.M. I apologize. Military time would be
9 16:00?

10 A Yes, it would.

11 Q All right, I apologize. All right. Later that same
12 day, on August the 15th at about 8:00 P.M., did you respond to
13 Metro headquarters?

14 A Yes, I did.

15 Q All right. And when you went to Metro's
16 headquarters, what was your job or your responsibilities?

17 A The detectives had me photograph two males, collect
18 buccal swabs, and they had me collect a pair of shoes from one
19 of the males.

20 Q Okay. When you take the photographs of an
21 individual, do you have them move into different directions,
22 different angles?

23 A Yes, we take all four sides; front, back, and both
24 sides.

25 Q And then, you talked about some buccal swabs; is

1 that correct?

2 A Yes.

3 Q What is a buccal swab?

4 A Buccal swab is a -- it's a cheek swab. You swab the
5 inside of the cheek, and it's a known sample of DNA from a
6 particular person.

7 Q Okay. In this particular case, the two individuals
8 that you took photographs of and buccal swabs from, was that a
9 Raekwon Robertson and a Davontae Wheeler?

10 A Yes.

11 MR. PESCI: Objections?

12 MR. SANFT: No objection.

13 MR. RUGGEROLI: Could you clarify the time? Were
14 they taken on different days?

15 MR. PESCI: Okay.

16 BY MR. PESCI:

17 Q So trying to follow back up, we're still on August
18 the 15th of 2017 at about 8:00, or later in the evening, P.M.;
19 is that correct?

20 A Yes.

21 Q All right. So it's the same day as the search on
22 West Tropicana, but a few hours later?

23 A Yes.

24 Q Is that accurate?

25 A That's accurate.

1 Q All right.

2 MR. PESCI: I'd move for the admission, Your Honor,
3 of State's 135 through 143.

4 MR. SANFT: No objection, Your Honor.

5 MR. RUGGEROLI: No objection.

6 THE COURT: They're admitted.

7 (State's Exhibits 135 through 143 are admitted)

8 BY MR. PESCI:

9 Q The photographs that you said you took of these
10 individuals a moment ago, State's 135, is that the individual
11 Davontae Wheeler that you took photographs of?

12 A I don't remember who was who, but that's one of the
13 males, yes.

14 Q Do you recall taking these photographs?

15 A Yes.

16 Q Okay. State's 2 -- or 136, is that the same
17 individual we just saw a moment ago?

18 A Yes.

19 Q More of a close-up of the face?

20 A Yes.

21 Q State's 137. Are you now taking photographs of the
22 individual from different angles?

23 A Yes, I am.

24 Q State's 138. Does it show the opposite side of that
25 individual?

1 A Yes.

2 Q Sometimes when people have tattoos, will you often
3 take photographs of the tattoos?

4 A Yes, we do.

5 Q Showing you State's 139, was that the chest of the
6 individual we've been seeing other photographs --

7 A Yes, it is.

8 Q All right. Now, you said you took a buccal swab
9 from this individual?

10 A Yes.

11 Q All right. And then, also, you photographed someone
12 by the name of Raekwon Robertson. Looking at State's 140, do
13 you recognize taking a photograph of this person?

14 A Yes.

15 Q Again, did you follow the same procedure as far as
16 in State's 141; different angles of the same person?

17 A Yes, we do.

18 Q State's 142. Is that the same individual?

19 A Yes, it is.

20 Q And then, State's 143?

21 A Yes.

22 Q Okay. And did you take a buccal swab from this
23 particular individual?

24 A Yes, I did.

25 Q All right. Now, when you take a buccal swab from

1 somebody, did you impound it under this particular event
2 number?

3 A Yes, we do.

4 Q All right. And you have a unique personnel number;
5 is that correct?

6 A Yes, I do.

7 Q What is yours?

8 A 13576.

9 Q Okay. And when you impounded these buccal swabs,
10 did you impound them as a Package 1, Item 1 and a Package 2,
11 Item 2?

12 A Yes, I did.

13 Q All right. So that way, when the DNA individual
14 pulls up the evidence and they have those samples, they know
15 it's unique to your personnel number in the way you packaged
16 it?

17 A Yes, it is.

18 Q Okay.

19 A Or yes, they do. Sorry.

20 MR. PESCI: Pass the witness, Your Honor.

21 THE COURT: Mr. Sanft?

22 CROSS-EXAMINATION

23 BY MR. SANFT:

24 Q Ms. Cornell?

25 A Yes.

1 Q We've asked a lot of questions, specifically about
2 the -- or there was one question asked by the State
3 specifically about the use of gloves?

4 A Yes.

5 Q Fair to say that that's to prevent yourself
6 inadvertently contaminating a scene with either DNA or
7 fingerprints?

8 A Yes, it is.

9 Q Okay. And so, when you are handling potential items
10 of evidence, you do not want to put your DNA, because
11 potentially that could happen in a case, right?

12 A It potentially could, yes.

13 Q All right. So fair to say, of course, that that
14 could happen inadvertently as well, meaning that just by being
15 in the area, you know, somebody could spit and it could fall
16 on something, and that could be DNA that was transferred onto
17 something, fair?

18 A Yes, it could.

19 Q Okay. Now, at some point in the future, the items
20 that you see and document, those items are then taken from
21 that location and they're put into an evidence vault, right?

22 A Yes.

23 Q And at some point from that, somebody else comes
24 along and says, okay, I'm going to now do a further
25 investigation of these particular items, looking for things

1 like fingerprints or DNA, fair?

2 A Fair. Yes.

3 Q Are you hesitating about the fingerprints?

4 A Well, I don't know exactly what all the forensic lab
5 does. That's past our -- once we've impounded it, I'm not
6 sure.

7 Q And it's out of your responsibility?

8 A Yes, yes.

9 Q Okay, then I won't ask you any questions about that.
10 But let me ask you this though. In this particular case,
11 there's a firearm that you locate underneath a drawer?

12 A Correct.

13 Q Did you locate that firearm?

14 A No. Either the detectives or Glezzelle did.

15 Q Okay.

16 A The detectives usually do all the searching and say,
17 hey, we found something, and we come in and photograph it.

18 Q Right. So, and I want to make sure the jury
19 understands, when you arrive on the scene, typically, it's a
20 team effort, right? There's detectives and other crime scene
21 analysts that help you do your job in locating and identifying
22 information that may be helpful evidence?

23 A Yes.

24 Q Okay. And in this particular case, you're in charge
25 of photography. Did you ever take pictures of everything

1 prior to the search being conducted?

2 A Yes.

3 Q Okay. So some of the photographs we saw was the
4 ones of the bedroom, and it showed that the bed was made, and
5 everything else was looking normal, right?

6 A Yes.

7 Q But would it be fair to say that once detectives
8 have an opportunity to go through and look for something as
9 small as a bullet or a gun that they're going to be moving
10 things around, right?

11 A Correct.

12 Q They're going to move that mattress; they're going
13 to move all kinds of stuff to try to find potentially where
14 these items may be located?

15 A Yes.

16 Q Okay. Now, with regards to the firearm that you
17 found in there, you laid it out at some point, and you took
18 everything out of the firearm, right?

19 A Correct.

20 Q You were careful not to transfer any of your DNA
21 onto that firearm, meaning you wore gloves, and you weren't
22 spitting, or sneezing, or anything like that, right?

23 A Right.

24 Q Okay. And so, when you laid it out, there was a
25 photograph of the firearms, and it looks like it was laid on

1 some type of paper, like a brown paper bag. Do you recall
2 that?

3 A Could be.

4 Q Here, I'll try to find it for you. Let's see if I
5 can just pull it up here. So, showing you what's been marked
6 and admitted as -- let's see here. State's Exhibit number
7 255, right?

8 A Okay.

9 Q Right. And so that --

10 A Yes.

11 Q -- particular item, my guess is -- and you tell me
12 if I'm wrong -- that would be the evidence bag that it would
13 eventually go into after photographing it, correct?

14 A Yes, correct.

15 Q So evidence bag is a device that you use to document
16 an item, maybe the location where the item's located; it would
17 have somebody's P number on it, either yourself or whoever it
18 is that's capturing this evidence; and then that's given to
19 somebody else in an evidence locker for further discussion,
20 further analysis?

21 A Yes.

22 Q Okay. So in this case, this particular item that we
23 have in here is the firearm that you located in 6647 West
24 Tropicana?

25 A Yes.

1 Q Okay. Now, the items are photographed, and they're
2 photographed every which way, right?

3 A Yes.

4 Q At the scene?

5 A Yes.

6 Q They're not photographed anywhere else besides that?

7 A It depends. In this case, it was photographed at
8 the scene. Sometimes -- depending on what the evidence is,
9 sometimes we'll have to photograph it back at the lab.

10 Q Okay. And once again, the idea is you want to
11 preserve the evidentiary integrity of whatever it is that you
12 find, so you make sure that everything's done in a way where
13 you don't believe there will be any cross-contamination?

14 A Correct.

15 Q Okay. And so this particular item here, when you
16 remove a clip from a firearm like that, how does that work? I
17 mean, do you just grab it; eject the clip out of it? I mean,
18 I'm envisioning what it would look like, maybe a little bit
19 more daintily than that, where you'd just kind of trigger
20 the --

21 A Yes. You hit the release button, and then you hold
22 onto it at the bottom, pull it out, set it down --

23 Q Okay.

24 A -- and take photos.

25 Q And once again, you're doing this in a way that

1 you're trying to preserve the evidentiary integrity of this
2 particular item, right?

3 A Yes.

4 Q Okay. So it's not like you're smearing your gloves
5 all over this thing because you want to make sure that if
6 there's fingerprints or if there's DNA, that you are capturing
7 that --

8 A Yes.

9 Q -- on this particular firearm? Okay. And that
10 would go the same with the boxes of ammunition and so forth
11 that's shown here in State's Exhibit 259?

12 A Yes.

13 Q As well as 258?

14 A Yes.

15 Q So, once again, you're looking for things like DNA,
16 fingerprints, to help you with your investigation?

17 A I don't know if any of that was done on the boxes of
18 ammunition or not, but yes, in general, we try to handle the
19 evidence as little as possible to preserve any evidence.

20 Q Okay. So for instance -- and that's a good point.
21 With these particular boxes, how do you determine what to
22 fingerprint and what not to fingerprint?

23 A Depends on the evidence. On that, if we were to
24 process it, it would probably just be -- the box would
25 probably just be prints. There'd be a better chance of

1 getting prints on that.

2 Q Right. Versus, say, DNA?

3 A Yes.

4 Q Okay. So in this case, as far as you know, was that
5 box dusted for fingerprints?

6 A I do not believe so.

7 Q Okay. And then, there's another box that's on here,
8 this box I'm showing you. Again, this is State's Exhibit 259.
9 Was that dusted for fingerprints as far as you know?

10 A I don't think so.

11 Q So would it be fair to say -- I'm just going to cut
12 to the chase -- that out of all the items that was located in
13 that drawer area, it was the gun and the magazine inside the
14 gun that was at least considered dusting for prints, or was
15 there anything else besides that?

16 A I -- I don't even know if the gun -- you'd have to
17 ask Glezzelle. She was the one in charge of processing any
18 evidence, since she collected it.

19 Q Okay.

20 A But I don't believe she processed the gun either. I
21 don't know.

22 Q All right. And showing you once again, just for
23 clarification for the jury, State's Exhibit number 246, the
24 items that were located inside -- underneath that drawer.

25 A Yes.

1 Q What you're telling the jury now is you don't know
2 for sure if any of these items were dusted for actual
3 fingerprints themselves?

4 A That is correct.

5 Q Okay. But you know for sure -- well, you don't know
6 for sure, but you did capture each item with the understanding
7 that if there was any DNA, that could be tested at some point
8 later down the line, but you don't have anything to do with
9 that?

10 A Correct.

11 Q Okay. Just one moment, please. Okay, one final
12 thing. The buccal swab.

13 A Yes.

14 Q You conducted that?

15 A Yes, I did.

16 Q And just for the jury's edification, this is where
17 you are collecting DNA from an individual that could be used
18 later in comparison for other DNA samples that are found
19 wherever, right?

20 A Correct.

21 Q Okay. Buccal swab is done where you take a -- is it
22 a cotton --

23 A Cotton swab.

24 Q -- swab, and you swab the inside of their mouth?

25 A Yes.

1 Q And then you carefully put that inside a vial of
2 some sort?

3 A Yeah, we have a little box that comes in the kit --

4 Q Okay.

5 A -- and we put the two swabs in the box.

6 Q All right. And the person that's in front of you,
7 you make sure that you document, this is the person that I'm
8 taking the buccal swab from, and it goes into a vial, and that
9 vial is very carefully labeled to make sure that there's no
10 confusion as to whose buccal -- or swab that you've just done
11 or whose DNA is on that buccal swab?

12 A Correct.

13 Q All right. You don't do the DNA analysis of that;
14 that's done by somebody else in the lab?

15 A Yes. That's done by the DNA Section.

16 Q Okay.

17 MR. SANFT: I have no further questions, Your Honor.
18 Thank you.

19 THE COURT: Mr. Ruggeroli?

20 CROSS-EXAMINATION

21 BY MR. RUGGEROLI:

22 Q Afternoon.

23 A Good afternoon.

24 Q Who directed you to take the buccal swabs?

25 A The detectives.

1 Q Which one?

2 A I don't remember.

3 Q You would not do that normally on your own volition;

4 somebody would tell you, this is somebody that I want you to

5 collect a sample from, correct?

6 A Correct.

7 Q And you just don't know which one it was?

8 A I don't remember which detective, no. But yeah, the

9 detectives request us to headquarters, they say they have a

10 search warrant for buccals, and then we go and collect them.

11 Q And the photographs of the individuals that you were

12 shown, there were two, correct?

13 A Correct.

14 Q You don't know who was who just based on name or

15 anything like that?

16 A Correct.

17 Q And you were not present when they were first

18 contacted that day prior to you taking the photographs?

19 A No, I was not.

20 Q You don't know if they were together --

21 A No, I have no idea.

22 Q -- correct?

23 MR. RUGGEROLI: Thank you. Nothing further.

24 THE COURT: Any redirect?

25 MR. PESCI: Thank you.

1 REDIRECT EXAMINATION

2 BY MR. PESCI:

3 Q Ma'am, as you sit here today, you look at these two
4 individuals, and you're telling us you don't know who one is
5 versus the other; is that correct?

6 A Correct.

7 Q But your testimony is, is you know these are the two
8 individuals that you responded to headquarters and took
9 photographs and buccal swabs?

10 A That is correct.

11 Q And then, you said you generated a report; is that
12 correct?

13 A Yes, I did.

14 Q And then, in your report, you designate the
15 particular items from one individual, and particular items
16 from another?

17 A Yes, I did.

18 Q Specifically, your Package 1, Item 1 is a buccal
19 swab from Davontae Wheeler? And would your -- looking at your
20 report refresh your recollection?

21 A Yes, it would.

22 MR. PESCI: May I approach, Your Honor?

23 THE COURT: You may.

24 BY MR. PESCI:

25 Q Ma'am, do you write the report close in time to when

1 these events occur?

2 A Yes, we do.

3 Q Is it the standard operating practice for you to
4 create a report and notate what you impounded?

5 A Yes, we do.

6 Q Is that so that, later on, you could review it to
7 refresh your recollection?

8 A Yes.

9 Q All right. And as far as Package 1, Item 1, who is
10 that coming back to as far as the buccal swab?

11 A Davontae Wheeler.

12 Q And Package 2, Item 2, who is that coming back from?

13 A Raekwon Robertson.

14 Q All right.

15 MR. PESCI: Nothing further.

16 THE COURT: Any recross?

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

18 MR. RUGGEROLI: No further questions. Thank you.

19 THE COURT: Okay. Thank you very much for your --

20 THE WITNESS: Thank you.

21 THE COURT: -- testimony here today. You may step
22 down, and you are excused from your subpoena.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Thank you for being here. And you may
25 call your next witness.

1 MR. PESCI: State calls Glezzelle Tapay.

2 THE MARSHAL: If you'll please step up into the

3 witness stand. Remain standing, raise your right hand, and

4 face the Clerk.

5 GLEZZELLE TAPAY, STATE'S WITNESS, SWORN

6 THE CLERK: You may be seated. Please state and

7 spell your first and last name for the record.

8 THE WITNESS: My first name is Glezzelle,

9 G-l-e-z-z-e-l-l-e. Last name, Tapay, T-a-p-a-y.

10 MR. PESCI: Thank you.

11 DIRECT EXAMINATION

12 BY MR. PESCI:

13 Q Ma'am, are you a crime scene analyst with the

14 Metropolitan Police Department?

15 A Yes, I am.

16 Q And have you been working with them -- well, how

17 long have you been working for them?

18 A Approximately four years now.

19 Q And focusing your attention to August the 15th of

20 2017, did you respond to 6647 West Tropicana, specifically

21 Apartment 104?

22 A Yes, I did.

23 Q And was that pursuant to a search warrant that

24 detectives had to search that area?

25 A Yes, it was.

1 Q Did you work that scene with another crime scene
2 analyst?
3 A I did work it with another crime scene analyst.
4 Q Who was that?
5 A Brooke Cornell, or Laura Cornell.
6 Q And is Brooke her nickname?
7 A Correct, yes.
8 Q Okay. Is she the woman that just stepped out?
9 A She is.
10 Q Okay. At that particular scene, was Brooke
11 responsible with taking the photographs?
12 A Yes, she was.
13 Q And then, were you responsible for impounding the
14 evidence?
15 A I did impound the evidence, yes.
16 Q Showing you State's Exhibit 250, do you recognize
17 this as the firearm that you impounded at that particular
18 scene?
19 A Yes, that is the firearm.
20 Q All right. Was this particular firearm found in a
21 chest of drawers under the bottom left drawer?
22 A Correct.
23 Q Okay. When you impounded this particular item, did
24 you have your gloves on?
25 A I do wear gloves, yes.

1 Q Okay. And then, this particular firearm, when you
2 impound it, what physically do you do?

3 A First, when we collect the firearm, we take a photo
4 of where it is to show its location. After that, we take a
5 closer photo of the item so that we can show exactly what the
6 item is. After that, we take it, and then we go ahead and put
7 it in a bag where we impound it later.

8 Q Okay. And when you put it in a bag, in this
9 particular case, did you package it under your P number, your
10 personnel number?

11 A Yes.

12 Q And is your personnel number 15709?

13 A Yes, it is.

14 Q All right. So your Package 1, Item 1, was it in
15 fact that semiautomatic Taurus P22 handgun?

16 A Correct.

17 Q All right, and it has serial number ANC29177?

18 A Correct.

19 Q Okay. Did you have a second package, which was
20 where you had the cartridges from that item?

21 A Yes.

22 Q Okay. So in one package, it was the firearm; in a
23 second package, it was the cartridges you had taken out?

24 A Correct.

25 Q All right. Now, did you at this particular scene

1 process this firearm for fingerprints?

2 A I did not.

3 Q Did you process it for DNA?

4 A I did not.

5 Q Okay. By putting it in the package, was it
6 preserved so that that could be done later?

7 A Yes.

8 Q In fact, it could be done back at the lab?

9 A Yes, it can be.

10 Q All right. So, by not doing it at the scene, that
11 doesn't stop anybody down the road from processing for
12 fingerprints and/or DNA?

13 A Correct.

14 Q Okay.

15 MR. PESCI: I'll pass the witness, Your Honor.

16 THE COURT: Cross-examination?

17 CROSS-EXAMINATION

18 BY MR. SANFT:

19 Q Detective, how does that work in terms of processing
20 for, say, fingerprints? Because fair to say, of course, that
21 when you're processing for fingerprints, you're taking some
22 type of dust and you're -- I'm being very, very simplistic
23 about it -- but you're coating it over a surface to determine
24 whether you see ridges, something that would tell you there's
25 fingerprints in them, and you lift those fingerprints using

1 some type of adhesive; is that a fair way of putting it?

2 A There are different ways to -- to process for latent
3 prints. In that case, you can use powder and lift it that
4 way, or you can use chemicals as well.

5 Q Okay. Now, when you are at the scene, like in this
6 case, you're at a scene where there's items that potentially
7 could be items where you could lift fingerprints, right? The
8 firearm you've been shown a picture of, showing you what's
9 been admitted as State's Exhibit 246, there were other items
10 besides that firearm that was located in that same vicinity as
11 the firearm, fair?

12 A Those items? Yes.

13 Q Yeah. Okay.

14 A Yes.

15 Q You have items here that potentially could be items
16 that could render fingerprints, right? You have flat
17 surfaces; you've got boxes; you've got plastic box; looks like
18 cardboard box; flat surfaces on this plastic over here that
19 I'm pointing to; even potentially surfaces on the firearm
20 itself. You could have done those things, right?

21 A Correct.

22 Q But was it a decision on your part not to test on
23 that point, leaving it for somebody else to do? Or, I mean,
24 what was the reason for not, you know, at least lifting prints
25 at that particular point?

1 A At that point, we can go ahead and, by impounding
2 it, the items can be processed later at the lab, or they could
3 have been processed there, but we can still preserve the
4 evidence just by impounding it.

5 Q So there was just a conscious decision at that point
6 to not do anything other than to capture the evidence in its
7 current state, put it into bags so that it could not be
8 contaminated, and then give it to somebody else to handle
9 that, fair?

10 A Correct.

11 MR. SANFT: Okay, all right. I have no further
12 questions. Thank you.

13 THE COURT: Mr. Ruggeroli?

14 MR. RUGGEROLI: No questions. Thank you.

15 THE COURT: Okay. Any redirect?

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

17 THE COURT: Okay, thank you very much for your
18 testimony here today. You may step down, and you are excused.
19 Thank you for being here.

20 THE WITNESS: Thank you.

21 THE COURT: You may call your next witness.

22 MR. PESCI: State calls Jamelle Shannon.

23 THE MARSHAL: And if you will please remain
24 standing, raise your right hand, and face the Clerk.
25 //

1 JAMELLE SHANNON, STATE'S WITNESS, SWORN

2 THE CLERK: You may be seated. Please state and
3 spell your first and last name for the record.

4 THE WITNESS: My name is Jamelle Shannon.
5 J-a-m-e-l-l-e, S-h-a-n-n-o-n.

6 DIRECT EXAMINATION

7 BY MR. PESCI:

8 Q Ma'am, how are you?

9 A I'm good. How are you?

10 Q Good, thank you. I want to direct your attention
11 back to August, specifically the 9th, of 2017. Were you
12 working back then for the Metropolitan Police Department?

13 A Yes, I was.

14 Q In what capacity?

15 A I was a crime scene analyst.

16 Q How long have you been with Metro?

17 A At that particular moment, I had been with Metro for
18 nine years, working as a crime scene analyst for almost two.

19 Q Okay. Your first involvement in this particular
20 case -- and your involvement was under Event Number -- correct
21 me if I'm wrong -- 170809-0029?

22 A Yes, that's correct.

23 Q Is that a unique, specific number to this case?

24 A Yes, it is.

25 Q Okay. Were you first called out to UMC?

1 A Yes, I was.

2 Q I'm sorry, University Medical Center, the hospital?

3 A Yes.

4 Q Okay. And where in the hospital did you go to?

5 A I went to the quiet room that's located at the

6 Trauma section of UMC.

7 Q And was that at about 1:08 A.M. on -- the early

8 morning hours of August the 9th, 2017?

9 A Yes, it was.

10 Q And what were you asked or tasked with doing there?

11 A I was tasked with taking photographs of the victim.

12 Q Okay. I want to show you a photograph.

13 MR. PESCI: May I approach the witness?

14 THE COURT: You may.

15 BY MR. PESCI:

16 Q It's been previously admitted into evidence, and ask

17 you -- (indiscernible) whole body. Showing you State's

18 Exhibit 94, do you recognize that?

19 A I do not.

20 Q Okay, because you didn't go to the autopsy itself?

21 A I did not.

22 Q All right. Showing you State's 96, does that -- do

23 you recognize that?

24 A That's another autopsy photo. I do not.

25 Q Okay. The person involved, do you recognize?

1 A I do, yes.

2 Q Okay. I was just trying not to show these
3 particular photos.

4 A Gotcha.

5 Q All right. So the person in those photographs from
6 the autopsy photographs, you recognize that?

7 A Yes.

8 Q All right. You didn't go to autopsy, but you went
9 to the hospital?

10 A Yes, that's correct.

11 Q So, in the timeline, your dealing with the body at
12 UMC is prior to it getting to the autopsy?

13 A Yes, that's correct.

14 Q All right, just so we know we're dealing with the
15 same person. When you were there, did you take some
16 photographs of the decedent in the quiet room?

17 A Yes, I did.

18 Q And I just said decedent. Was he in fact deceased
19 when you arrived?

20 A Yes, he was.

21 Q Okay. And were you asked to take photographs of how
22 he appeared at that time?

23 A Yes, I was.

24 Q Okay. Were you also tasked with recovering anything
25 from him?

1 A No, I was not.

2 Q Okay. So, as far as buccal swab, was that taken at
3 the coroner's office later?

4 A Yes, that's correct.

5 Q And that being from the decedent?

6 A Yes.

7 Q Okay. So you take photographs, and then you're done
8 with this particular portion of the investigation?

9 A Yes.

10 Q All right. And then, that same day, August the 9th,
11 2017 at about 11:27 P.M., did you respond to Metropolitan
12 Police Department headquarters?

13 A Yes, I did.

14 Q And where is that located?

15 A It's on 400 Martin Luther King Boulevard.

16 Q Okay. Were you asked to take some photographs
17 there?

18 A Yes, I was.

19 Q Do you recall who you took photographs of?

20 A I took photographs of four individuals: DeMario
21 Lofton-Robinson, DeShawn Robinson, Anthony Robinson, and
22 Johnquiel Brown, I believe.

23 Q Okay. And those photographs have already been
24 admitted. Do you take photographs of the individual kind of
25 showing all the different angles of the person?

1 A Yes, I do.

2 Q Okay. And were you also tasked with obtaining
3 what's referred to as buccal swabs?

4 A Yes, I was.

5 Q They've heard a lot about buccal swabs already. So
6 who did you take buccal swabs from?

7 A I took buccal swabs of all four of those
8 individuals.

9 Q Including DeShawn Robinson?

10 A Yes.

11 Q And DeMario Lofton-Robinson?

12 A Yes, that's correct.

13 Q Okay.

14 MR. PESCI: Pass the witness, Your Honor.

15 THE COURT: Cross?

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

17 MR. RUGGEROLI: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. RUGGEROLI:

20 Q Ms. Shannon?

21 A Hello.

22 Q Who directed you to take the buccal swabs of those
23 four individuals?

24 A I believe the homicide detectives that were there.

25 Q Do you recall which?

1 A I think it might have been Lora Cody, but I don't
2 recall.
3 Q Okay. And there were four individuals, you said?
4 A Yes.
5 Q DeMario?
6 A Yes.
7 Q DeShawn?
8 A Yes.
9 Q Anthony Robinson?
10 A Yes.
11 Q And Johnquiel Brown?
12 A Yes.
13 Q Not an Adrian Robinson?
14 A No, I believe it was Anthony.
15 Q Okay.
16 MR. RUGGEROLI: Thank you. I have nothing further.
17 THE COURT: Any redirect?
18 MR. PESCI: No, Your Honor.
19 THE COURT: Okay. Thank you very much for your
20 testimony here today. You may step down, and you are excused.
21 You may call your next witness.
22 MR. BROOKS: Your Honor, the State calls Jessica
23 Flink.
24 THE MARSHAL: If you'll please remain standing,
25 raise your right hand, and face the Clerk.

1 DETECTIVE JESSICA FLINK, STATE'S WITNESS, SWORN

2 THE CLERK: You may be seated. Please state and
3 spell your first and last name for the record.

4 THE WITNESS: Jessica Flink. J-e-s-s-i-c-a,
5 F-l-i-n-k.

6 DIRECT EXAMINATION

7 BY MR. BROOKS:

8 Q Ms. Flink, how are you employed?

9 A I'm a detective with the Las Vegas Metropolitan
10 Police Department.

11 Q And how long have you been so employed?

12 A Just started my 22nd year.

13 Q And what capacity are you a detective in?

14 A I'm currently assigned to a Digital Investigations
15 Unit.

16 Q And give us a little bit about what your day-to-day
17 duties would be and what that unit does.

18 A We do the analysis of digital media, so computers,
19 phones, video, infotainment centers, any type of digital
20 recording.

21 Q And what education, training, and experience do you
22 have that allows you to have this position?

23 A Well, once I went to the unit, I was sent to several
24 different schools, to include the Secret Service's Computer
25 Forensic Institute. I've been there on six -- six, maybe

1 seven times, as well as we are trained in each of the tools we
2 use. We have to hold tested certifications, and we have to
3 maintain those certifications.

4 Q What certifications do you hold?

5 A I hold 11. I'd have to look at my phone to give you
6 all the names, but particular to this exam, I'm a Cellebrite
7 certified mobile examiner.

8 Q And when you say particularly this exam, do you
9 recall a Las Vegas Metropolitan Police Department event number
10 that brings us here to court today?

11 A Yes.

12 Q And is that Event Number 170809-0029?

13 A Yes.

14 Q Tell me a little bit about how you would get
15 involved in a case like this.

16 A Well, on this particular occasion, Detective --
17 Homicide Detective Dosch brought it to our lab for analysis.

18 Q And when you say brought it to your lab, what is --
19 what is he --

20 A Brought phones. He brought phones to our lab for
21 analysis.

22 Q In this case, did you do one report or two?

23 A Two.

24 Q So let's start with just that first report then.

25 A Okay.

1 Q The first report, do you recall when Detective Dosch
2 brings you the phones?

3 A I believe it was August 12th.

4 Q And when he brings you the phones, is it pursuant to
5 a search warrant?

6 A Yes.

7 Q On that search warrant, does it give you kind of
8 like the scope of what you're allowed to look in and what
9 they --

10 A What they're looking for, yes.

11 Q What was the scope of the examination for this first
12 report?

13 A It would have been a -- I don't remember everything,
14 there's quite a few things, but it would have been call logs,
15 SMS's, GPS locations, pictures, videos.

16 Q So when he brings you the phone, how does he -- how
17 does it come?

18 A On this particular occasion, he brought them in our
19 evidence envelopes with a label on the front, but they weren't
20 sealed.

21 Q So it's in an evidence impound thing?

22 A Correct. Envelope, yes.

23 Q Envelope? Does it have his name and P number on it?

24 A The front is filled out. Yes, it does.

25 Q So when he brings it to you, tell me about what you

1 do to start your process.

2 A Well, I'll photograph the package, and I'll
3 photograph -- then take the phone out and photograph the
4 pieces and parts of the phone.

5 Q And with regard to this first report, did you do
6 that for two different phones?

7 A Yes.

8 Q Would it have been Package 1, Item 1; Package 2,
9 Item 1?

10 A Yes.

11 Q Or is it Package 2, Item 2? How do you do it?

12 A I thought it -- I think they came in two separate
13 packages. Is that -- am I correct on that? I don't remember
14 specifically if they were in one. But it would have been --
15 if they were in one package, it would have been Package 1,
16 Item 1; Package 1, Item 2. If it was in two, Package 1, Item
17 1; Package 2, Item 2.

18 Q Okay. And you took photos of these two phones?

19 A Yes.

20 Q Initially, in the envelopes, and then with them out
21 of the envelopes?

22 A Yes.

23 MR. BROOKS: Your Honor, permission to approach the
24 witness?

25 THE COURT: You may.

1 BY MR. BROOKS:

2 Q I want to start specifically with Package 1, Item 1.
3 Would you recognize some photos if I showed you --

4 A Yes.

5 Q -- State's Proposed Exhibit 338 through 344?

6 A These were pictures that I took of a ZTE phone that
7 was brought to the lab.

8 Q And do they fairly and accurately depict the phone
9 as you got it that day?

10 A Yes.

11 MR. BROOKS: Your Honor, State moves for admission
12 of those particular exhibits.

13 MR. SANFT: No objection, Your Honor.

14 MR. RUGGEROLI: No objection.

15 THE COURT: Okay, they're admitted, 338 through 344.

16 (State's Exhibits 338 through 344 are admitted)

17 BY MR. BROOKS:

18 Q Showing you State's Proposed Exhibit 348, 349, 350,
19 351, and 352, do you recognize these?

20 A Yes. Photos I took of a Samsung phone brought to
21 the lab.

22 Q And is that the second package --

23 A Yes.

24 Q -- that we referred to?

25 A Yes.

1 Q Even though it's the first report?

2 A Yes.

3 Q Okay.

4 MR. BROOKS: Your Honor, move for admission of those
5 particular exhibits.

6 MR. SANFT: No objection.

7 MR. RUGGEROLI: No objection.

8 THE COURT: They're admitted.

9 (State's Exhibits 348 through 352 are admitted)

10 BY MR. BROOKS:

11 Q So take us through the process. I want to start
12 initially --

13 MR. BROOKS: Permission to publish, Your Honor?

14 THE COURT: You may.

15 BY MR. BROOKS:

16 Q Exhibit 338. Is that kind of the package that you
17 were discussing?

18 A Yes.

19 Q Eventually, do you open it up?

20 A Yes.

21 Q State's Exhibit 340, and then State's Exhibit 341.
22 Why do you take that -- that one?

23 A I just take a picture of the front and the back.

24 Q Now, now that you have the phone out of the package,
25 what's the first step in your process?

1 A Would be to remove it from the network. So I'm
2 going to either remove the SIM or I'm going to put it into a
3 Ramsey box and power on to see if it's even got power at this
4 point.

5 Q So explain that to us though. I don't know what a
6 SIM or a Ramsey box is.

7 A A SIM is the -- it's the subscriber identity module.
8 It's the little card that's in -- that is your account for
9 that particular phone that's going to be inside the phone.

10 Q So where's the data stored that you're trying to get
11 to?

12 A It's on the chip -- on the hardware of the phone;
13 not the SIM.

14 Q Oh, it's on the hardware? Okay.

15 A Yeah.

16 Q So what are you doing when you take the SIM out?

17 A The SIM is -- will be the phone number.

18 Q Okay. And in this particular case, the Package 1,
19 Item 1, do you recall the phone number for that?

20 A No, I would have to review my report. I don't
21 remember the phone numbers for any of the phones.

22 Q Would it refresh your recollection to look at your
23 report?

24 A Yes.

25 MR. BROOKS: Your Honor, may I approach?

1 THE COURT: You may.

2 THE WITNESS: So the phone number attached to this
3 is 702-619-7426.

4 BY MR. BROOKS:

5 Q So after you get that from the SIM card, what's the
6 next step in the process?

7 A To make sure the battery's charged up, and that it
8 is in some way disconnected from the network, the phone.

9 Q And what do you mean by disconnected from the
10 network?

11 A Well, taking the SIM out will take it away from the
12 data network, which means it doesn't have the capability of
13 potentially being remote-wiped, for somebody to be able to
14 send signals to it, which is why we put it into the Ramsey box
15 before we power it on. It's an aluminum box that I stick my
16 hands through some aluminum-lined gloves and power it on in
17 the box with the intention of determining, is it already in
18 airplane mode? Is it -- or to put it in airplane mode.

19 Q Why would you put it in airplane mode?

20 A To prevent the ability for any type of -- well, one,
21 so new data doesn't come in, so we're not getting calls and
22 we're not getting texts, for one. And then, two, again, to
23 prevent the possibility of a remote wipe command.

24 Q And so how are you charging the battery? Are you
25 charging the --

1 A If it's -- the battery will come out, I will take
2 the battery out and put it into a universal charger, separate
3 from the phone.

4 Q Once it's charged, what do you do with it?

5 A Then I'll put it back into the phone, and then make
6 -- again, make sure it's powered on in the box, put it in
7 airplane mode, and then take the phone out of the box.

8 Q Okay. So now that we have that, what's your next
9 step?

10 A Then take it and connect it to a device called
11 Cellebrite 4PC, which will extract the data in a digital form,
12 a file form. And then I take that file and I will process it
13 in another program called Cellebrite Physical Analyzer, which
14 will then give me the data in a readable form.

15 Q Do you get all the data; do you get some of it? How
16 does it work?

17 A No. What is extracted is dependent on what the tool
18 supports; in other words, what Cellebrite supports. So at
19 this time, this particular model phone would only give me
20 what's called a partial logical extraction; logical being the
21 data that, if you turn on the phone, anybody can see. It's
22 not deleted data.

23 But this didn't even pull out all of that. It just
24 supported a partial, which I think it was just like the
25 default stuff; call history, SMS, and I believe some pictures.

1 Q Okay. Sorry, I don't really know phones. So back
2 up --

3 A Okay.

4 Q -- and take me through partial and logical
5 extraction.

6 A So a logical -- when you say, I have a logical
7 extraction of a phone, it means that I have, if you turn on a
8 phone, what anybody can see drilling through the phone. I can
9 see the call history on the phone, you can see the SMS's or
10 the texts that are on the phone, the pictures that are on the
11 phone. It's nothing that's deleted, it's no databases. It's
12 just the information that people are used to dealing with on
13 their phones is a logical, as opposed to a physical
14 extraction, which would get you some deleted data, some apps,
15 databases, and some system stuff that's on the phone.

16 This particular model phone was only supported for a
17 partial logical, which means not even -- not even everything
18 that you would see if you turned it on, just certain -- it
19 looked to me like just the default stuff.

20 Q And that's what you could, I guess, extract?

21 A Correct.

22 Q And put into a report?

23 A Correct.

24 Q And who would get that report once you do that?

25 A Detective Dosch.

1 Q The detective? So if something had been deleted on
2 this phone prior to you being -- prior to it being impounded
3 and then you getting it, you would not get to --

4 A No.

5 Q -- get that information?

6 A I -- no, I don't have access to deleted data at that
7 time.

8 Q Exhibit 342. What are we looking at?

9 A That's just the screen. It was unlocked, so I just
10 took a picture of the opening screen.

11 Q Now, would the process be different if the phone had
12 like a passcode or if it was locked?

13 A Well, it would -- again, that's just another
14 obstacle you have to hurdle to determine if the -- we do have
15 some password bypassing and breaking abilities. Fortunately,
16 this was not, so I didn't have to encounter any of that. This
17 was not passcoded.

18 Q So when Detective Dosch brings you this phone on
19 August 12th, if it had been -- just ballpark it for me. If it
20 had been passcode or locked, would you have been able to do
21 this extraction on the same day?

22 A Again, that -- being able to get into a locked phone
23 is going to be dependent on the profile that's supported and
24 the tool. Being that I was only able to get a logical -- a
25 partial logical with it even open tells me that, no, there

1 would not -- this particular phone would not have been
2 supported had it been locked, and I wouldn't have gotten any
3 data.

4 Q And Exhibit 344, what is that?

5 A That's the SIM card.

6 Q All right. And then, Exhibit 343, what are you
7 doing there?

8 A Looks like I just took a picture of the screen
9 again.

10 Q Just the clean screen?

11 A Yeah, the clean screen.

12 Q Okay. So once you start taking photos of the
13 screens, in this case, did Detective Dosch request something
14 specific, or what kind of information do you have when you're
15 looking at a phone?

16 A Well, personally, he had asked me if I would check
17 for a -- something like a "Sace" or an "Ace" person, a
18 contact, and then a phone number that began like 702-934.

19 Q And so did you start your search there?

20 A Yes. I can do word searches and phone number
21 searches just over the whole phone without having to drill
22 through everything, and so that's -- I started there.

23 Q So that -- that phrase, "Sace," do you recall how
24 it's spelled?

25 A S-a-c-e.

1 Q So did you find any related information in this
2 phone, which is the ZTE 981 Max Pro?

3 A It was a saved contact.

4 Q It was?

5 A Yes.

6 Q Were there any text messages?

7 A There was text messages and call history.

8 Q So it was a saved contact in this phone of the Sace?

9 A Yes.

10 Q And the call history, do you recall what the call
11 history was like?

12 A I believe it was in the -- like 20-plus calls.

13 Q 20-plus calls --

14 A Back and forth.

15 Q But for all of history, or was it a truncated time
16 period?

17 A I believe I put in the report the time frame. I
18 don't remember it off the top of my head.

19 Q Would it refresh your recollection to look at that
20 report?

21 A Yes.

22 MR. BROOKS: Permission to approach, Your Honor?

23 THE COURT: You may.

24 THE WITNESS: So there were 29 calls between this
25 phone and Sace from 8/2/17 at 1:43 to 8/9/17 at 1:41.

1 BY MR. BROOKS:

2 Q So, 29 calls during that kind of week of August that
3 you looked at?

4 A Yes.

5 Q Do the 29 calls, do they include the text message,
6 or is the text message that you talked about --

7 A They would be separate.

8 Q Separate?

9 A They would be listed separately, yeah.

10 Q And the Sace that was the saved contact, does the
11 phone number 702-801-0516 sound correct?

12 A Yes.

13 Q Was that the number that you were -- you were told
14 to look for some names and a number. Was that the number?

15 A No, that wasn't the number.

16 Q So that wasn't the number? Okay.

17 A No.

18 Q Do you do any web history extraction on this phone?

19 A This particular phone did not extract with the tool
20 the web history, so I did look at it manually.

21 Q I want to direct your attention to August 4th or 5th
22 of a time period on the web search. Do you recall something
23 of evidentiary value that was being searched for?

24 A I believe it was extensive searches for guns and
25 gun-type accessories.

1 Q Now, I want to move forward to around that August
2 9th, 2017 date.

3 A Um-hum.

4 Q Do you recall something of evidentiary value of the
5 web history on this phone?

6 A It was searches for shootings.

7 Q And when you said you couldn't get it to extract,
8 did you do something different then?

9 A I took pictures.

10 MR. BROOKS: Your Honor, may I approach?

11 THE COURT: You may.

12 BY MR. BROOKS:

13 Q Detective Flink, showing you State's Proposed
14 Exhibits 345, 346, and 347, do you recognize these?

15 A Yes, these are pictures I took.

16 Q And the 345, what was that, and why were you taking
17 it?

18 A That's a text picture -- a picture of a text with
19 Sace.

20 Q And then, 346 and 347, why were you taking those?

21 A This is some of the web history of the -- the
22 shooting.

23 Q The news searches?

24 A News. Yeah, news searches of shootings.

25 MR. BROOKS: Your Honor, State moves for admission

1 of 345, 346, and 347.

2 MR. SANFT: No objection, Your Honor.

3 MR. RUGGEROLI: Judge, could I see those, please?

4 THE COURT: Of course.

5 MR. RUGGEROLI: No objection.

6 THE COURT: They're admitted.

7 (State's Exhibits 345, 346, and 347 are admitted)

8 BY MR. BROOKS:

9 Q Detective, 345. So this telephone that you were
10 examining, is this text messages to Sace and from Sace?

11 A Yes.

12 Q And then tell us, on 346, what are you doing?

13 A That is the Chrome history for this phone.

14 Q So is this what this phone was searching?

15 A Yes.

16 Q And you said, "Chrome." Is --

17 A Yeah.

18 Q Do we use another word?

19 A Google.

20 Q Google?

21 A Yeah.

22 Q So these are Google searches?

23 A Yes.

24 Q On this phone?

25 A Yes.

1 Q So see this Saturday, August 12th?

2 A Yes.

3 Q Is that you doing that, or --

4 A No.

5 Q Okay. So that -- is that you going into Google to

6 start the search, is what I mean?

7 A No, I'm not accessing Google because the phone is in

8 airplane mode; it's not connected to the network. So I don't

9 have -- this is -- I just hit the little three little buttons

10 up there and went to the history that's already cached onto

11 the phone. I'm not accessing websites.

12 Q So this Wednesday, August 9th, what are you seeing

13 here?

14 A Google searches for news.

15 Q And then, do you kind of scroll down and take more

16 photos?

17 A Yes.

18 Q Exhibit 347?

19 A Just more news searches.

20 Q Okay. And were these -- some of these what caused

21 you, I guess, to -- to take photographs of this and --

22 A Yes.

23 Q -- capture it?

24 A Yes.

25 Q Would you have relayed this information then to

1 Detective Dosch?

2 A Yes, it was put in my report.

3 Q So I want to stay with that first phone -- or sorry,
4 that first report, but move to the second phone. Do you
5 recall the Samsung Galaxy that you examined?

6 A Yeah, J7.

7 Q And was the phone number associated with that J7
8 702-338-4380?

9 A Yes.

10 Q Showing you State's Exhibit 41. Is that kind of a
11 blurry picture?

12 A Yeah, it's my bad picture-taking.

13 Q And then, is the process with this phone kind of
14 similar to the last one?

15 A Yes.

16 Q So, showing you State's Exhibit 352, what are you
17 about to do to the phone in there?

18 A I'm -- this is a picture of the battery taken out,
19 and the picture of the model sticker that's underneath the
20 battery.

21 Q I'm sorry, I missed that.

22 A The battery is taken out of this phone, and that's
23 the picture of the model and just identifying information on
24 the phone itself underneath the battery, and the SIM card is
25 still in.

1 Q Showing you State's Exhibit 333. Is that the phone?
2 A Yes.
3 Q So, after you kind of document this, do you turn it
4 off?
5 A Do I -- I'm sorry?
6 Q Do you turn the phone off?
7 A Well, it goes into the box.
8 Q Same process with the --
9 A Same process, yeah.
10 Q -- Ramsey box?
11 A Correct.
12 Q And same Cellebrite situation?
13 A Correct.
14 Q So, once using Cellebrite, do you recognize 3 --
15 335?
16 A That would be the screen; it was also unlocked.
17 Q It was also unlocked?
18 A Yes.
19 Q I want to turn your attention to the app here on the
20 top left. Do you go into Facebook Messenger?
21 A Correct.
22 Q While in there, did you find some communication of
23 interest?
24 A Yes.
25 Q Showing you State's Exhibit 336, did you take that

1 photo?

2 A I did.

3 Q And was that with this phone --

4 A With the Samsung, yes.

5 Q -- talking to another Facebook account?

6 A Correct.

7 Q All right. And what Facebook account was that?

8 A Ray Logan.

9 Q Do you at that point document all that in your

10 report?

11 A Yes.

12 Q Do you recall the phone number that Detective Dosch

13 told you to look for initially?

14 A It began 702-934.

15 Q When reviewing these Facebook messages, did you find

16 something that you alerted Detective Dosch to?

17 A The note of the number of 934-4851 provided.

18 Q Now, did -- was this phone able to extract all the

19 web data and all the texting data?

20 A No, I believe this was just a partial as well, so I

21 took pictures. A partial logical.

22 Q Partial logical?

23 A Yeah.

24 Q And so is that why you took the photos?

25 A Correct.

1 Q Do you search -- do you go through the web history
2 search of this phone?

3 A I believe I did, yes.

4 Q And when you do, do you, I guess, screenshot it the
5 same way as last time?

6 A With a camera, yeah.

7 Q Okay.

8 MR. BROOKS: Your Honor, permission to approach?

9 THE COURT: You may.

10 BY MR. BROOKS:

11 Q When you do that, do you document some of the
12 searches in your report?

13 A Yes.

14 Q Do you recognize State's Proposed Exhibit 353?

15 A Yes, and it looks like this actually extracted
16 because this is me screenshotting; my tool, my software. So
17 this -- it looks like the history came out on this one.

18 Q So that history did come out?

19 A Yeah, this would have been from the Cellebrite
20 program, Physical Analyzer.

21 Q And does it fairly and accurately depict the web
22 history that you pulled off this phone?

23 A Yes.

24 MR. BROOKS: Your Honor, State moves for admission
25 of Exhibit 353.

1 MR. SANFT: No objection, Your Honor.

2 MR. RUGGEROLI: No objection.

3 THE COURT: It's admitted.

4 (State's Exhibit 353 is admitted)

5 BY MR. BROOKS:

6 Q So this web history search on August 9th, what time
7 would that have been?

8 A At 7:22 P.M.

9 Q And how did you do that? So take us through the
10 UTC.

11 A Well, we are -- here in Pacific, we are negative 7
12 or negative 8, depending on daylight savings. So the fact
13 that it says here "UTC negative 7" tells you that it's
14 displaying it in Pacific Time, as opposed to, if it was in
15 UTC, it would say, "UTC 00."

16 Q Oh, okay, so --

17 A So the math is already done.

18 Q So one more time. Sorry. In real people time, what
19 is that 19:22?

20 A 7:22 P.M.

21 Q 7:22 P.M. And what is being searched for?

22 A It's news again, and it's, "Young Man Shot in
23 Driveway by Four People in Hoodies." "Man Shot, Killed in
24 Driveway by Four People in Hoodies," just a longer version of
25 that at a different -- I think that might be the same because

1 that's the same time. And then you have a different time
2 here, again, the same, "Young Man Shot in Driveway by Four
3 People With Hoodies." News.

4 Q I want to move now to your second report. Do you
5 recall, around August 18th, Detective Dosch brought you
6 something else?

7 A I thought it was September. What does my report
8 say? It was later. I don't think it was --

9 Q Would you have conducted the actual examination in
10 possibly September?

11 A Yeah.

12 Q Could Detective Dosch have drafted a search warrant
13 earlier?

14 A Yes, he could have.

15 Q So if Detective Dosch drafts a search warrant in
16 August, sometimes you won't get it?

17 A We won't get it for a little bit, yes.

18 Q So that September 2017 time period, I want to
19 discuss the Samsung Emerge telephone, Package 1, Item 1.

20 A Okay.

21 Q Do you recall that?

22 A Yes.

23 Q And the phone number for that one, does it sound
24 correct, 702-801-0516?

25 A Yes.

1 Q Do you recall what you went through to get into this
2 phone?

3 A It would have been the same process of removing the
4 SIM, putting it into the Ramsey box, charging the battery,
5 connecting it to the 4PC, analyzing it in the Cellebrite.

6 Q No password or passcode on this one?

7 A I don't think so, no.

8 MR. BROOKS: Your Honor, may I approach?

9 THE COURT: You may.

10 BY MR. BROOKS:

11 Q Detective, I'm going to show you State's Proposed
12 Exhibits 354 through 361. Did you take photographs of this
13 phone in the entire process similar to the last two?

14 A Yes.

15 Q Will you flip through those and see if they fairly
16 and accurately depict the process you went through and what
17 you uncovered when you went into the phone?

18 A Yes.

19 MR. BROOKS: Your Honor, State moves for admission
20 of these particular exhibits.

21 MR. SANFT: No objection, Your Honor.

22 MR. RUGGEROLI: No objection.

23 THE COURT: Okay, they're admitted.

24 (State's Exhibits 354 through 361 are admitted)

25 BY MR. BROOKS:

1 Q Showing you 354. Do you recognize that?

2 A Yes.

3 Q Is that just the same case?

4 A Yes. Same event, yes.

5 Q Eventually, did you take the phone out?

6 A Yes.

7 Q Exhibit 356. In Exhibit 359, what are you

8 depicting?

9 A That's the -- the identifying label underneath the

10 battery and the SIM card.

11 Q What was the Gmail account associated with this

12 particular phone?

13 A I remember it was "Davontae.Wheeler," and I think

14 there were some numbers, "@Gmail.com."

15 Q Would "62" sound correct?

16 A Yes.

17 Q And what were you searching for when you started

18 looking through the phone?

19 A More or less, the same data. Ties to the other two

20 phones, and --

21 Q At this point in time, did you have full names and

22 the similar, I guess, Facebook handles that you had earlier?

23 A Yeah -- well, yes. I looked in the Facebook to see

24 if anything matched from the other phones, yes.

25 Q And because we're in September, you've already at

1 least done two phones --

2 A Correct.

3 Q -- and had other feedback?

4 A Correct.

5 Q And I guess, feedback, I meant interaction with the

6 detective?

7 A Correct.

8 Q Showing you Exhibit 360, do you find some Facebook

9 messages in this phone with an account you had seen earlier?

10 A Yes.

11 Q And what account was that?

12 A Ray Logan.

13 Q Additionally, did you have a chance to look at the

14 Facebook Messenger in this phone and kind of see whose it was?

15 A You mean the logged in account?

16 Q Yes.

17 A Yes.

18 Q Do you recall the name?

19 A Young Sace Versace.

20 Q And so, in 361, would that kind of fairly and

21 accurately depict the Facebook Messenger account --

22 A Yes.

23 Q -- associated with this phone, which is the --

24 A Samsung.

25 Q -- Samsung Emerge?

1 A Yes.

2 Q Detective, you remember the first -- very first
3 phone we talked about?

4 A Yes.

5 Q When you analyzed that phone number, and you
6 analyzed the name that you were given for that particular
7 phone --

8 A Yes.

9 Q -- did you search the last phone we just talked
10 about for contacts or interaction saved from that first phone?

11 A I would have, yes.

12 Q Do you recall if you found any?

13 A I believe I did, and I thought it was extensive, so
14 I would need to look at my report to be able to -- because we
15 got a lot of names and a lot of numbers rolling at this point.

16 Q Would it refresh your recollection to look at your
17 report?

18 A Yes. So in the Emerge, I found call history with
19 Ray Logan, DeShawn Robinson, and DeMario Lofton. Logan is
20 saved as "Ray Login." DeMario Lofton is saved as "Lil Homey
21 DeMario." And Robinson is not saved as a -- as a contact, but
22 there was -- it was -- his number was identified, but not a
23 saved contact.

24 MR. BROOKS: Nothing further. Pass the witness,
25 Your Honor.

1 THE COURT: Cross-examination?
2 MR. SANFT: No cross, Your Honor.
3 THE COURT: Mr. Ruggeroli?
4 CROSS-EXAMINATION
5 BY MR. RUGGEROLI:
6 Q Detective, I'm going to go back over a couple of
7 things --
8 A Okay.
9 Q -- so you can clarify them. You had two reports,
10 correct?
11 A Correct.
12 Q The first report you did, I believe you testified to
13 longer than the second one. Your first report involved two
14 phones; is that right?
15 A Correct, uh-huh.
16 Q Are you familiar with the individuals who those
17 phones are alleged to be from or through?
18 A What do you mean? Do I know them personally, or do
19 you mean --
20 Q No, just the names.
21 A I would have to look at the labels. I don't
22 remember off the -- they were -- they were each labeled. Each
23 of the envelopes that were given to me were labeled with
24 names.
25 MR. RUGGEROLI: Judge, if I could have the Court's

1 indulgence for a moment?

2 THE COURT: Sure.

3 MR. RUGGEROLI: Thank you.

4 BY MR. RUGGEROLI:

5 Q I'm going to jump ahead --

6 A Okay.

7 Q -- to the second report, the third phone. That was
8 the one that you were talking about --

9 A The Emerge?

10 Q That's the one, yes --

11 A Yes.

12 Q -- that you were talking about most recently?

13 A Yes.

14 Q That one is -- it goes back to Mr. Wheeler?

15 A Correct.

16 Q Okay. Now, on that phone, you don't have any
17 specific messages other than the photos that you provided us
18 with, and they were rather limited. And showing you State's
19 360.

20 A This is the Facebook.

21 Q Okay.

22 A Yeah.

23 Q That's one of the things. If you found something
24 important or noteworthy for this event and case, you would
25 have documented that by taking a photo?

1 A Yes.

2 Q Okay, so that was 360. State's 360 was one, and it
3 had Ray Logan?

4 A Correct.

5 Q No content to that?

6 A I don't -- there's more pictures than this in my
7 final report, so what's being shown to me, I -- it's being
8 shown to me.

9 Q And I'm showing you 361. And that's the individual
10 name that this Facebook account was --

11 A Is logged into.

12 Q Yes, okay. Other than those photos, do you have
13 anything specific with that phone connecting or making any
14 messages, text messages to the other two phones?

15 A Yeah, I thought we discovered that.

16 Q Okay.

17 A Yeah.

18 Q And what was that though?

19 A I thought it was they were saved contacts, and I
20 believe -- and I'm sorry, I don't recall specifically. Other
21 than what's in my report, I don't recall as I sit here.

22 Q Saved contacts, but no specific texts or messages
23 from Facebook for that phone?

24 A Not that I can recall without looking at my -- the
25 pictures. This is not them in their entirety.

1 Q Okay, now I'm going to go back to the first report
2 that had the other two phones. You indicated that there were
3 29 calls between August 2nd, 2017 and August 9th, 2017?

4 A Correct.

5 Q But you don't have any indication of how long those
6 were?

7 A Well, those would be in the digital report. I did
8 note that in my report, but two reports are provided; the
9 report from Cellebrite, which I generate, and then my written
10 report. So the durations would be in those.

11 Q Going back to the phone with Mr. Wheeler. You had
12 looked specifically for texts between that phone and a Ray
13 Logan, correct?

14 A Correct.

15 Q And you did find a couple of texts hours before the
16 crime, and hours after, but there was no mention of any crime
17 in those texts?

18 A Correct.

19 Q And also, the Facebook Messenger, the phone was not
20 connected to the network, correct?

21 A Correct.

22 Q And so that particular phone, you did not have the
23 dates and times, only the days of the week; is that correct?

24 A Correct.

25 Q For the phone with Mr. Wheeler, you were asked a

1 question about an article -- a news article. That was sent to
2 him from somebody else, correct?

3 A I don't recall. I just have it -- it shows up in
4 the web history.

5 Q So just dealing with that third phone that we were
6 talking about, Mr. Wheeler's, most recent that you had
7 testified about, I just want to hit on this one last time.
8 Although there was some communication with Ray Logan, there's
9 nothing about a crime --

10 A Correct.

11 Q -- that crime? And there's a limited amount of
12 information that you had as far as dates and times? You were
13 really looking at days of the week, not specific times?

14 A Right. Well, when it's disconnected from the
15 network and you're looking at Facebook Messenger, I don't get
16 a date if it's within a day or two of when it's removed from
17 the network. So say I'm looking at it on a Wednesday, and I
18 look at the Messengers and it says Tuesday, it's going to be
19 the Tuesday previous to that Wednesday, or the Monday, or the
20 Sunday. And I believe after about a week, then it will start
21 putting in dates.

22 Q And that third phone, you did that analysis in
23 September --

24 A Correct.

25 Q -- 2017?

1 A Well, but it would have been disconnected whenever
2 it was -- yeah.

3 Q Okay, thank you.

4 MR. RUGGEROLI: Court's indulgence, Judge.

5 (Pause in the proceedings)

6 MR. RUGGEROLI: Thank you, Judge. I have nothing
7 further.

8 THE COURT: Thank you. Any redirect?

9 MR. BROOKS: Judge, can we take a brief break?

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

19 We'll be in recess for 15 minutes. Thank you.

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

22 (Outside the presence of the jurors at 2:46 p.m.)

23 THE MARSHAL: Thank you. Please be seated.

24 THE CLERK: Did you need Judge?

25 MR. BROOKS: Yeah.

1 THE CLERK: Oh, you got to say that.

2 THE MARSHAL: I'll grab her.

3 (Pause in the proceedings)

4 THE COURT: Sorry about that.

5 MR. BROOKS: I'm sorry, I should have been more
6 clear. I just didn't want to have this up while the jury was
7 still in the room.

8 THE COURT: Okay, so the record will reflect that
9 the hearing is taking place outside the presence of the jury
10 panel. And do you want the witness in here still?

11 MR. BROOKS: Probably not.

12 THE COURT: Okay. Okay, and the witness has left
13 the courtroom.

14 MR. BROOKS: Judge, here's my problem. Mr.
15 Ruggeroli just got up during cross and put up Exhibit 360, and
16 showed Mr. Ray Logan's -- just, it's kind of the screen name
17 on Facebook Messenger -- and said, "Other than this, you
18 didn't find any contacts between the two?" And then kind of
19 tried to correct himself, and then said, "Limited contacts,"
20 and then went so far as to say, "Do you have anything
21 connecting these two? There's nothing about a crime?" And
22 then he catches himself and said --

23 THE COURT: Yeah, the text messages.

24 MR. BROOKS: And then he said, "Nothing about this
25 crime." Here's the problem. So I intentionally only did

1 Exhibit 360 just to show that Mr. Wheeler and Ray Logan were
2 in each other's phone, and you know, they talked over Facebook
3 Messenger.

4 THE COURT: Um-hum.

5 MR. BROOKS: I didn't include any of the texts on
6 purpose, and it was in her report because when she's making
7 the report she doesn't know what is and isn't evidentiary
8 value here or what can be admitted. The problem is that there
9 are texts between Ray Logan and Davontae Wheeler.

10 THE COURT: Okay.

11 MR. BROOKS: Ray Logan is sending Davontae Wheeler a
12 link to the "Two Suspects in a West Valley Armed Robbery,"
13 then they're sending each other a photo of a new gun that's --
14 a picture of the gun, and then, "Do you think they make
15 extendos? It only holds eight." Send the barrel to see the
16 size. "Oh, nigga, my hope you not doubting if the .45 bigger.
17 LOL, I'll show you tonight, bros. I got my shells so we can
18 go shooting if y'all want, but don't tell nobody what I got.
19 Low key. I want to stop showing my heats. That I see if that
20 got extendo" (sic). Should I -- can I -- should I put them up
21 here so you can kind of --

22 THE COURT: Sure. And what are the dates of these?

23 MR. BROOKS: This would have been the week before
24 our incident. So --

25 THE COURT: Okay.

1 MR. BROOKS: This is essentially them communicating
2 -- Mr. Ray Logan, or Raekwon Robertson, and Young Sace
3 Versace, who's Davontae Wheeler, sending each other those
4 messages. And see this -- see that Monday?

5 THE COURT: Uh-huh.

6 MR. BROOKS: That Monday is the Monday right before
7 our Tuesday and Wednesday of this incident. So, like, this
8 Monday is screenshots of them talking to another guy. They're
9 going to meet up at that guy's apartment later on; I can't
10 remember if it's Nellis or something like that. Then they
11 meet together on Monday night, even before they meet together
12 on Tuesday night and commit this.

13 So the jury is left with this impression that
14 there's no -- real little contact between the two, no evidence
15 of a crime, or I should say this crime, and it's just not
16 actually what the phones show.

17 THE COURT: What do you want to do? I mean, do you
18 want to follow up questioning? What is it you want to do?

19 MR. PESCI: So, Judge, we need to cure the
20 impression that's been put in front of this jury.

21 THE COURT: Um-hum.

22 MR. PESCI: And we purposely avoided this because
23 the reference to that other incident is the earlier charges
24 that were severed out.

25 THE COURT: Right.

1 MR. PESCI: And so this jury's been painted with the
2 impression that there is nothing going on between these two
3 when they're referencing a prior criminal act. And the
4 specific question was, "There's nothing about a crime," and
5 then followed up, "This crime," and that there's no
6 interaction between these two when there are, and they're
7 talking about guns and ammunition.

8 And so we just -- we can't allow that falsity to be
9 put in front of the jury. So we need to cure that, and I'm
10 open or we're open to ways of doing it in a somewhat sanitized
11 fashion, but it can't be so sanitized that it seems completely
12 innocuous.

13 MR. RUGGEROLI: Thank you, Judge. Your Honor, I did
14 correct myself because I wasn't thinking of the other crime; I
15 was thinking of this crime, because specifically contained
16 within her report, it says there are texts between this phone
17 and Ray Logan. She answered my question about that, and I
18 said that there were texts, but here was the point of it:
19 there are texts a couple hours before the crime, and several
20 hours after, but no mention of the crime. And that, after
21 clarifying it, is exactly what I asked her and exactly what
22 she answered.

23 So I think what the State is suggesting is that I
24 somehow opened the door to uncharged crimes or to other
25 discussions that had to do with things that are not relevant

1 to this event at all. They can clean this up without going
2 into any of those details. I never misled the jury with a
3 question saying, "There are no other contacts." My point was
4 about this particular event. And I even used that phrase,
5 "This event," and then I did clarify, "This crime."

6 And so this is taken directly from her report, and
7 that was the gist of it. This should not in any way open the
8 door to the State, and they can cure any inference, and that's
9 all it would be. They can cure any inference that there was
10 limited contact by either focusing on this particular 24 to
11 36-hour period of time that is specifically noted in the
12 report, or they can do it by much less extensive means than to
13 go into unrelated prejudicial information that I didn't in any
14 way open the door to and suggest there's no communication. I
15 was talking about this event.

16 THE COURT: Okay. What is your suggestion?

17 MR. BROOKS: My suggestion would be to let me ask
18 three leading questions to the effect of, "Isn't it true that
19 when looking at Facebook Messenger between Ray Logan and
20 Davontae Wheeler, within three days prior to this incident,
21 they are communicating about various things, some of which are
22 guns, the caliber of guns, and possibly going out shooting
23 together?" So it doesn't -- you know, there's no crime to go
24 shoot together. They are talking about guns, they are talking
25 about different caliber of guns, and it is --

1 THE COURT: But why do you have to get in what they
2 were talking about?

3 MR. BROOKS: Well, because the jury was left with
4 this impression that, oh, and there's -- they're not talking
5 about any criminal activity and it's such minimal. I mean,
6 that's not what actually was going on in this text thread.

7 THE COURT: Yeah.

8 MR. RUGGEROLI: Judge, I --

9 THE COURT: I'm not sure it opens up the door for
10 you to talk about other criminal activity.

11 MR. RUGGEROLI: And that's the thing, Judge, is I
12 heard it without thinking I'm referencing it at all, and I
13 caught it within a second of, "This crime," because that is
14 the exact language of this report. So if I unintentionally
15 opened a door, I immediately shut it. And I limited my
16 question to this particular event, which is exactly what the
17 report referenced.

18 So if there were any suggestion, number one, I think
19 I closed my own door to the extent that that might be an idea
20 that the jury would gather from this. But I think that if
21 they wanted to follow up, it should be limited to this period
22 of time because I didn't even go down the path of anything
23 beyond this event. I'm talking about -- she used the exact
24 words, "There are also texts with Lofton, but nothing
25 logically around the time of this crime."

1 And then, before that, there are texts a couple of
2 hours before the crime, and several hours after, but no
3 mention of the crime. And that's why we're here. I don't
4 think there's been any taint to the jury that they would think
5 -- because those things are not relevant, and they're
6 certainly prejudicial.

7 Going out shooting, that's going to have a big
8 impact in this kind of case, and I didn't reference that at
9 all. It was catching my word "crime" and linking it
10 specifically to this crime, and I did that intentionally. And
11 so they've been limited, and their attention was directed to
12 this particular event and the report that she made these
13 findings regarding.

14 MR. PESCI: So, Judge, to follow up, specifically,
15 the language that I wrote as I was trying to write this down
16 was, the question by Mr. Ruggeroli, "There was limited contact
17 between Wheeler's phone and the other phones, other than these
18 photos?" So he's saying that these photos is the limited
19 contact. So there clearly is contact.

20 THE COURT: Right.

21 MR. PESCI: And we sanitized it because it
22 referenced these other situations. So we need to be able to
23 go back and say, "Detective, isn't it true that there is
24 actual contact other than this photo? There are these other
25 instances where there's contact between these individuals,

1 right?"

2 And then, the question was, "Do you have anything
3 connecting this phone, Wheeler's phone, to the other phones?"
4 Again, there are these text messages back and forth. He said
5 specifically, "There's nothing about a crime," then did, I
6 agree, quickly went up and said, "This crime," right?

7 THE COURT: Uh-huh.

8 MR. PESCI: So it's in front of this jury that
9 there's really little to connect these guys, and there's
10 nothing about crimes. Now, I understand he's not trying to
11 open the door to any other crimes, we're not trying to do
12 propensity, but if there's some sort of an argument made later
13 on, like, there's nothing about this crime, I get that, right?
14 But if he says, there's nothing about any crimes, that's a big
15 problem.

16 So at a minimum, we have the ability and the right
17 to say there is actual connection between these two. And I
18 think what we should do is get the detective back in here
19 after you make your ruling and lead her as to what she can and
20 cannot say, because we've been very careful to exclude these
21 things, and that's exactly what these texts and communications
22 are about; that earlier crime that's been severed. So we need
23 to be able to show they are.

24 And why is it not relevant that they're talking
25 about firearms with each other? They're trying to say that

1 there isn't a connection between these two individuals and a
2 firearm. This is specifically talking about firearms.
3 They're trying to say he's got nothing to do with this, Mr.
4 Wheeler's got nothing to do with this, it's not his ammunition
5 that was fired, but you have connections between these two
6 defendants talking about firearms in anticipation -- prior to
7 the actual connection. If you want to exclude the --

8 THE COURT: And this is three -- three days before?

9 MR. BROOKS: 18 hours, actually. It's -- Your
10 Honor, these texts begin Monday around 11:00 A.M. The
11 incident happens as Tuesday turns into Wednesday, so --

12 THE COURT: Oh, okay, so it's just the day before?

13 MR. BROOKS: Yes.

14 MR. PESCI: Correct.

15 MR. BROOKS: And when I say texts, it's extensive,
16 Your Honor. I only read a few, but it goes -- you know,
17 there's seven pages in that Monday/Tuesday time frame.

18 THE COURT: Between those two phones?

19 MR. BROOKS: Between Ray Logan and Davontae
20 Wheeler's phone, yes.

21 THE COURT: Okay. I don't think there's any problem
22 with asking her that, but my concern is if you're going to ask
23 her the content of those text messages. That's my concern.

24 MR. BROOKS: Yeah, no. No.

25 THE COURT: But you want to redirect her that there

1 actually was contact between these two on Monday and that it
2 was extensive?

3 MR. BROOKS: Yes.

4 THE COURT: Okay.

5 MR. RUGGEROLI: And if they wanted to --

6 THE COURT: I don't see any problem with that.

7 MR. RUGGEROLI: -- prep her up beforehand, I would
8 only follow up by just clarifying -- and I'll read it from the
9 report rather than paraphrase it. I just want it acknowledged
10 again, quote, "There are also texts between this phone and Ray
11 Logan. There are texts a couple of hours before the crime,
12 and several hours after, but no mention of the crime. There
13 are also texts with Lofton, but nothing logically around the
14 time of the crime."

15 And honestly, I mean, I think that kind of says
16 everything, but if you're going to limit it without content,
17 that would be certainly the defense's preference, and that
18 will probably be the gist of my recross.

19 MR. BROOKS: Am I allowed to ask if they were
20 discussing firearms?

21 MR. RUGGEROLI: Judge, I just think that --

22 THE COURT: Well, what would be the objection?

23 MR. RUGGEROLI: That -- well, the time frame. Is he
24 talking about the day --

25 THE COURT: The day -- well, they said these text

1 messages were the day before, because it happened Tuesday
2 night going into Wednesday morning, correct?

3 MR. BROOKS: Yes.

4 MR. PESCI: Judge, you can see it, maybe that's a
5 little better, because the actual firearm is right there in
6 the text. So you've got the time frame, and you've got a gun,
7 so you got these two talking about guns. We can keep out the
8 shooting part, but they keep trying to distance,
9 understandably, Mr. Wheeler from guns, and here you've got a
10 conversation between these two defendants about guns in the
11 hours preceding this crime.

12 MR. RUGGEROLI: Judge --

13 THE COURT: I mean, I understand that this, I guess,
14 news story wouldn't be relevant, but I'm not sure why the -- a
15 day before, there's communication and actually photos of
16 firearms.

17 MR. RUGGEROLI: It's because --

18 THE COURT: How is that not relevant?

19 MR. RUGGEROLI: The prejudicial impact outweighs any
20 relevance because that discussion I don't think has anything
21 to do with what happened later. The fact -- I didn't open the
22 door to this, and the State did not go into this
23 intentionally.

24 So what they're doing is they're suggesting that
25 because I said, "a crime," and within a fraction of a second

1 corrected it to, "the crime," because that's what's written in
2 the report, that somehow that now gives them the ability to go
3 back through things that they very wisely, I think, originally
4 did not go into. That is because of the prejudicial impact
5 that this would have. There's no reason to do that. It's --
6 I quoted in a paraphrase rather than directly from the report,
7 but I didn't allow or open the door to go into anything that
8 would be that prejudicial that doesn't have anything to do
9 with this event.

10 The things that are important for this event are
11 exactly what's contained in the report, because it references
12 the time frame of the murder and it references the time frame
13 of any conversations. That was the whole point of what I
14 said. And so there's no reason to give them the ability to go
15 any further than that because all it does is it makes it look
16 prejudicial. Here's gun talk, here's shooting talk, or -- you
17 know, I don't have those in front of me right now.

18 But anything connected to firearms in that time
19 frame doesn't correspond with her report, because what I read
20 to you earlier that I want to clarify with her and limit it
21 to, it was limited specific to this time frame. That's all
22 I'm trying to get out on that questioning, and now what we're
23 doing is we're opening it up to the State because it will be
24 prejudicial.

25 MR. BROOKS: Your Honor, one more thing. And I

1 don't know if you heard this, and I don't know if I heard this
2 correctly, but the part that struck me was when Mr. Ruggeroli
3 put Exhibit 360 on the screen and said -- I believe he said
4 even something to the effect of, "And you don't have any
5 screenshots of texts or communication between these two?" He
6 said something to that effect, and, "There's very limited
7 contact between these two?" And that's when I looked at Mr.
8 Pesci and was like --

9 THE COURT: Well, clearly, there was contact between
10 the two of them, and I think it's totally appropriate for you
11 to now go into that --

12 MR. BROOKS: Right.

13 THE COURT: -- so the jury's not left with the
14 impression that there wasn't contact. My only concern is the
15 substance of the contact.

16 MR. BROOKS: It would just be: extensive, the time
17 frame, and about firearms.

18 THE COURT: Why do you have to -- why do you have to
19 say it's about firearms?

20 MR. BROOKS: Because that is really relevant to why
21 we're here. We're here because they used a firearm to rob
22 people and it turned into a murder.

23 MR. PESCI: And the question was, "Do you have
24 anything connecting Wheeler's phone to the other phone?" You
25 have a photograph of a firearm. That's the connection. It's

1 not the one question; there's three questions that bring --

2 MR. RUGGEROLI: Were you done?

3 THE COURT: Okay, so you want to be able to ask,
4 "There was extensive contact between the two, and the contact
5 included discussions regarding firearms?"

6 MR. BROOKS: Yes.

7 MR. RUGGEROLI: Judge, this is why we're here.

8 THE COURT: And this was the day before?

9 MR. BROOKS: Yes.

10 THE COURT: Correct?

11 MR. RUGGEROLI: Okay, but this again -- I'm going to
12 quote it because this is why we're here, and this is what she
13 testified to. "There are texts a couple of hours before the
14 crime, and several hours after, but no mention of the crime.
15 There are also texts with Lofton, but nothing logically around
16 the time of the crime." That was my time frame. And I
17 understand that if the State says, well, you know, now we're
18 going to broaden the time frame, then allow them the
19 opportunity to say there were --

20 THE COURT: Well, I think the inference here is that
21 there was no contact between these two when that's just not
22 true.

23 MR. RUGGEROLI: I don't have a problem with them
24 saying that there were contacts. The content of what they
25 want to open this up to is what I very strenuously would

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.