

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 6

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1 object to, because they can clean it up without going into
2 talking about things that are really unrelated, because it's
3 the time of this crime, and that's why she wrote the report
4 the way she did. That's where my focus was.

5 So, if you allow them to cure this, it doesn't need
6 to go beyond establishing there were extensive contacts, but
7 we don't need to go into the details of that. And then I
8 would clean it up by going and reiterating word-for-word what
9 the report says, and I'm going to limit it to that, and it's
10 going to be her own language, and that's all I want to get.

11 But I really think the damage, if you open this up
12 to firearms -- if that was important, then she should have put
13 it in her report as well, and she didn't. What she put in the
14 report was limited to this period of time, and that's why I
15 quoted, and I -- I didn't read it word-for-word, but I did
16 catch myself very quickly. Again, this is only coming up
17 because of the change almost instantaneously from "a crime" to
18 "the crime," and that is because that's what's in her report.

19 So I would object. I don't think they need to go
20 into content. It's too prejudicial. They can clarify, the
21 point is, there were contacts, there were other contacts, but
22 there's no need to go into prejudicial information.

23 THE COURT: Okay. Mr. Brooks, I am going to allow
24 you to redirect her, and you can ask her, and she can discuss
25 that there was extensive contact. I'm not going to allow you

1 to go into the substance of the contact --

2 MR. BROOKS: Okay.

3 THE COURT: -- and that it was the day before. I

4 think these are yours.

5 MR. BROOKS: Thank you.

6 MR. PESCI: And can we talk with her before --

7 MR. BROOKS: And can we --

8 MR. PESCI: -- so we can make it clear to her --

9 THE COURT: Sure.

10 MR. PESCI: -- to not do that?

11 THE COURT: Sure.

12 MR. PESCI: May I approach to retrieve that?

13 THE COURT: Absolutely.

14 MR. PESCI: Thank you.

15 THE COURT: Right. Why don't we take about five

16 minutes --

17 MR. RUGGEROLI: Thank you, Judge.

18 THE COURT: -- and then we'll come back in.

19 MR. PESCI: Thank you, Your Honor.

20 (Court recessed at 3:06 P.M. until 3:18 P.M.)

21 (Outside the presence of the jurors)

22 MR. PESCI: Your Honor, may the witness return to

23 the stand?

24 THE COURT: Absolutely, yes. Thank you.

25 MR. PESCI: Thank you. And Judge, while we're here,

1 as far as scheduling, so we have the detective to finish with
2 cross, we have the fingerprint expert outside, I believe the
3 firearms expert is outside.

4 THE COURT: Okay.

5 MR. PESCI: We have a detective that was involved in
6 the search trying to get daycare resolved to get here, but
7 then the last witness would be Detective Dosch, but he's not
8 really available until tomorrow because he was in California
9 until 2:00 A.M. on another case.

10 THE COURT: Okay.

11 MR. PESCI: So we've got, in essence, two, maybe
12 three left for today.

13 THE COURT: Okay.

14 MR. RUGGEROLI: Judge --

15 THE COURT: It's almost 3:30.

16 MR. RUGGEROLI: For tomorrow morning, I do have a
17 number of things at around 9:00 to 9:30, 9:45.

18 THE COURT: I have a homicide calendar, so --

19 MR. RUGGEROLI: Thank you.

20 THE COURT: -- we're not going to be able to start
21 until about 10:30 anyways.

22 MR. SANFT: Okay.

23 THE COURT: Is that going to be enough time?

24 MR. RUGGEROLI: It should be, yes. Thank you.

25 THE COURT: Okay.

1 THE MARSHAL: All rise for the entering jury,
2 please. Jurors.

3 (Within the presence of the jurors at 3:20 p.m.)

4 THE MARSHAL: Thank you. Please be seated.

5 THE COURT: Does the State stipulate to the presence
6 of the panel?

7 MR. PESCI: Yes, Your Honor.

8 THE COURT: Mr. Sanft?

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

10 THE COURT: Mr. Ruggeroli?

11 MR. RUGGEROLI: Yes, Your Honor.

12 THE COURT: Thank you. You may continue with your
13 redirect.

14 REDIRECT EXAMINATION

15 BY MR. BROOKS:

16 Q Detective Flink, do you remember the questions about
17 the limited nature of the contacts between Davontae Wheeler's
18 phone and Ray Logan via Facebook Messenger?

19 A Yes.

20 Q Isn't it true that Davontae Wheeler's phone and Ray
21 Logan via Facebook Messenger actually had quite extensive
22 communication?

23 A Yes.

24 Q Back and forth?

25 A Yes.

1 Q And although there are no texts a couple hours
2 before the time period of this crime, and no texts several
3 hours after -- and although there are texts several hours
4 after, there's no mention of the crime?

5 A Correct.

6 Q What about with regard to DeMario Lofton-Robinson?
7 Was there any texts relating to this crime around that time
8 period?

9 A No.

10 Q And what was DeMario Lofton-Robinson saved as in
11 Davontae Wheeler's phone?

12 A "Little Homey DeMario."

13 MR. BROOKS: Thank you. Nothing further.

14 THE COURT: Mr. Sanft, do you have any recross?

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

16 THE COURT: Mr. Ruggeroli, go ahead.

17 MR. RUGGEROLI: Just briefly.

18 RE CROSS-EXAMINATION

19 BY MR. RUGGEROLI:

20 Q Detective, from your report, you indicated that
21 there are also texts between this phone and Ray Logan
22 regarding Mr. Wheeler's phone, correct?

23 A Correct.

24 Q Correct?

25 A Correct.

1 Q And there are texts a couple hours before the crime
2 and several hours after, but no mention of the crime?

3 A Correct.

4 Q And there are also texts with Lofton, but nothing
5 logically around the time of the crime?

6 A Correct.

7 MR. RUGGEROLI: Thank you. I have nothing further.

8 THE COURT: Thank you. Anything else for this
9 witness?

10 MR. BROOKS: No, Your Honor.

11 THE COURT: Okay. Thank you very much --

12 THE WITNESS: Thank you.

13 THE COURT: -- for your testimony here today. You
14 may step down, and you are excused from your subpoena. You
15 may call your next witness.

16 MR. BROOKS: Your Honor, the State calls Linda
17 Manigault.

18 THE MARSHAL: If you'll please step up into the
19 witness stand. Remain standing, raise your right hand, and
20 face the Clerk.

21 LINDA MANIGAULT, STATE'S WITNESS, SWORN

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

24 THE WITNESS: My first name is Linda, L-i-n-d-a. My
25 last name is Manigault, -a-n-i-g-a-u-l-t.

1 THE COURT: Thank you.

2 DIRECT EXAMINATION

3 BY MR. BROOKS:

4 Q Ms. Manigault, how are you employed?

5 A I'm employed by the Las Vegas Metropolitan Police
6 Department in their forensic laboratory, specifically in the
7 Latent Print Detail.

8 Q And how long have you been there?

9 A I've been working there for approximately four years
10 now.

11 Q What are your primary duties and responsibilities?

12 A I analyze and I compare latent print evidence.

13 Q And what training, education, experience do you have
14 that enables you to be able to do that?

15 A I've been doing it for approximately nine years now.
16 I was trained initially when I used to live in New York for
17 the Suffolk County Police Department. I also graduated
18 college with a Bachelor in Science in forensic science.

19 Q And do you have to keep up-to-date on certain
20 certifications and continuing legal -- or continuing
21 education?

22 A Yes, I do. In order for me to even start casework,
23 particularly with the Las Vegas Metropolitan Police
24 Department, I have to pass a competency test, as well as
25 finish their training program successfully. And then, each

1 year, I have to complete a proficiency test which allows me to
2 continue doing casework for the following year.

3 Q Now, we previously had a DNA person from your lab
4 come in and testify during this trial. Do you do DNA-type
5 stuff, or do you only do what you refer to as fingerprints?

6 A I only do what I refer to as fingerprints.

7 Q Okay. So take us through, what is a fingerprint?

8 A Well, if you notice the skin on your hand, it's very
9 different from the skin on the rest of your body. So that
10 palmar surface of your hand, that specialized skin is called
11 friction ridge skin. And it has raised portions and lowered
12 portions, and so when we come into contact with an object, an
13 impression that we leave behind would leave a fingerprint. So
14 that's what a fingerprint is.

15 Q What is it that leaves that impression?

16 A It's usually the residues that -- from either your
17 body or from sweating that leave that impression.

18 Q And tell us a little bit about -- every time I touch
19 something, am I going to leave a print? Or what causes prints
20 to be left, and sometimes, what causes them not to be left?

21 A Generally, when somebody comes into contact with an
22 object, there's a chance that they can leave that residue
23 behind, but there's also a chance that they may not leave that
24 residue behind. And some of the reasons for that is because a
25 person just could have very dry hands in general, so they

1 don't have a lot of residue on their hands. Maybe they just
2 washed their hands.

3 Also, the environment can have an impact. So a
4 person can touch something, a residue could be there, but the
5 environment, if it's a hot environment or if it's a cold
6 environment, it could make it very fragile.

7 Another reason is some objects are textured. So if
8 it has a rough texture, or a lot of the newer appliances these
9 days have anti-fingerprint coatings. So there are several
10 reasons why an object might not be left behind even though
11 it's been touched by a person.

12 Q So right now, if I'm nervous questioning you, and I
13 touch this table, is that kind of a good way to leave prints,
14 or no?

15 A Usually, the best surfaces to leave prints are
16 really flat, smooth surfaces. Whether a person leaves some
17 residue behind or not, it could depend on if they're sweating
18 a lot. That can also make a print not suitable as well
19 because it's too much sweat. So it depends. There are some
20 good situations, and there are of course some bad ones.

21 Q When we talk about suitability, like, I've been
22 obviously using my iPhone all day and touching it. Is this a
23 good surface, and if so, are there some reasons it would also
24 be a bad surface?

25 A Yeah. There are some reasons that, like, something

1 like a smooth cell phone surface would be a good surface,
2 because it's smooth. One of the reasons why it might be a bad
3 surface is because it's constantly touched, so you can
4 inadvertently wipe away that fragile fingerprint residue.

5 Q Does the environment that the object or the print
6 would be on have anything to do with whether you could process
7 it or find it and compare it?

8 A Yes, the environment also plays a role. For
9 instance, fingerprint residues are very fragile. They're made
10 up of mostly water and some other constituents, so you can
11 imagine, if it's in a very hot environment, it would evaporate
12 away. If it's in a cold environment, that would make it
13 brittle. Depending on the types of residues and the type of
14 process that's going to be used, it might be that there's not
15 enough residue to make a print visible to the naked eye.

16 Q Okay, so what is an exemplar or a known print?

17 A An exemplar or a known print is a situation where
18 the fingerprint of a specific individual is taken, usually
19 using ink or an electronic means, and also, the rest of their
20 -- excuse me -- identifying information is also placed along
21 with that record. So, for instance, I've had my fingerprints
22 taken for job employment. So they would roll all ten of my
23 fingers onto a fingerprint card, possibly my palms, but they
24 would also put my name, possibly my date of birth.

25 Q And so, what we sometimes refer to then as latent

1 prints, is that what you've been discussing previously?

2 A So a latent print would be a print that's not
3 readily seen by the naked eye, so some other form of -- some
4 further form of processing has to be done to make it visible
5 to the naked eye. Some of those forms could be either
6 physical or chemical. A physical process might be something
7 simple like fingerprint powder, and then there are chemical
8 processes as well that make that visible to the naked eye.

9 Q So how would you -- how do you go about comparing
10 then a known or an exemplar with a latent print after it's
11 been processed?

12 A Well, generally speaking, when I start my analysis,
13 I'm looking for that detail in that print that is suitable;
14 but first, I would be looking at the overall aspects of, are
15 there any suitable prints? And so some of the things I'm
16 looking for are, is there an overall pattern? There are three
17 general pattern types to fingerprints, and it's how they're
18 categorized.

19 So that first type of pattern is what we call an
20 arching pattern, and it's a pattern where the friction ridge
21 flow comes in one side, rises slightly, and goes out the
22 opposite side, sort of like a wave. The second type of
23 pattern is a circular pattern; it's sort of like maybe a
24 bull's eye. And then the third type of pattern we call a
25 looping pattern, and it's where the ridge flow rises up, and

1 then actually recurves, and exits out the same side that it
2 came in.

3 So some of those -- that's some of the general
4 features. There are some other type of features like deltas,
5 which are features that are triangular in shape, so the ridge
6 flows are converging, making that triangle-type shape, and
7 then I would be looking for the center of the pattern.

8 In order to have enough information to make an
9 identification, what I would be looking for is actually some
10 smaller-type details. We call them minutia, sometimes you may
11 hear me say points, and those are what happens along an actual
12 ridge path.

13 So an actual ridge path can do one of two things.
14 It could stop abruptly or it can split into two, and we call
15 those points -- you might hear me say ridge ending also, or
16 bifurcations, which is when it splits into two. So I would be
17 looking at all that information, and I would be looking to see
18 if I had enough of that information that I could say this is
19 suitable for me to possibly make a comparison or possibly put
20 it into a latent fingerprint database.

21 Q And what is it about the nature of fingerprints that
22 makes them suitable or good for identification purposes?

23 A The reason why we're able to take fingerprints and
24 use them for identification purposes, one is that, when you're
25 born, that arrangement of the friction ridges on the fingers

1 and the palms of the hands, and also the soles of the feet as
2 well, that arrangement stays with you throughout your
3 lifetime, barring any permanent scarring to that skin.

4 The other thing is that they -- they're easily
5 accessible, which means we constantly come into contact with
6 objects, so therefore, it's something useful that we can use.
7 And that -- so that arrangement, you're born with it, it stays
8 in place, and it lasts throughout your lifetime. So as you
9 get older and older, that arrangement is not going to change.

10 Q Are they unique to an individual?

11 A They're also distinguishable to each individual.
12 They're actually even distinguishable from finger to finger;
13 each arrangement of friction ridge detail is different. And
14 even identical twins do not have the same friction ridge
15 detail.

16 Q So did you conduct some print -- latent print
17 comparisons in this case --

18 A Yes, I did.

19 Q -- that brings us here to court today? Was that
20 under Las Vegas Metropolitan Police Department Event Number
21 170809-0029?

22 A Yes, it was.

23 Q And do you guys have like a different lab number
24 that corresponds with --

25 A Yes, we do.

1 Q Okay, and is that 17-07217?

2 A Yes.

3 Q Why? What's the difference?

4 A Well, the difference is, when a case starts, and

5 police officers, possibly, or CSA respond to a scene, an event

6 number, which was that first number, it is uniquely tied to

7 that case. But when it comes to my specific lab, we tie -- we

8 tie a unique lab case number to it, and then we might put a

9 record identifier on the end, and that helps us distinguish

10 that that work is being done on it in our specific lab.

11 Q And fair to say your report's quite lengthy?

12 A Yes.

13 Q Nine pages?

14 A Yes.

15 Q Have you memorized all of it?

16 A No, I have not.

17 Q Would it refresh your recollection to be able to

18 look at your report while I ask you these questions?

19 A Yes.

20 MR. BROOKS: Your Honor, with defense permission,

21 could she look at her report while I --

22 MR. SANFT: No objection, Your Honor.

23 MR. RUGGEROLI: No objection.

24 THE COURT: Go ahead. You can approach and hand her

25 her -- or does she already have her report?

1 MR. BROOKS: I believe --

2 THE WITNESS: Yes, I do.

3 THE COURT: Okay, all right.

4 BY MR. BROOKS:

5 Q So, Ms. Manigault, fair to say that different things
6 were impounded by different CSAs in this case?

7 A That's correct.

8 Q So I want to start by asking you about the items
9 impounded by P number 5221.

10 A Okay.

11 Q How do you know it was impounded by that P number?

12 A That P number would be listed on the latent print
13 packet which that CSA signed into or impounded into our
14 evidence -- secure evidence location.

15 Q And what's a Q card?

16 A A Q card is an actual lift card, and so the letter Q
17 designates that that lift card was generated from a crime
18 scene analyst.

19 Q Is that a term that the lab uses, or is that a term
20 that crime scene analysts use?

21 A It's actually a term that the lab uses.

22 Q Oh, okay, so they don't use that term?

23 A No.

24 Q Then I want to specifically ask you about -- did you
25 make some comparisons on Q Card 4 and Q Card 5, numbers 4 and

1 5 that were impounded by P number 5221?

2 A Yes, I did.

3 Q And were you able to come to any results?

4 A With Q Card 4, yes, I did; and also Q Card 5. Do
5 you want me to list them one at a time?

6 Q Could you -- yeah. Could you tell me what those Q
7 cards -- where they were from and what the results were?

8 A Sure. So, Q Card 4, it came from the exterior
9 driver's door of a 2003 Mercury Grand Marquis with a Nevada
10 license plate of 473, Y as in yellow, Z as in Zebra, and B as
11 in boy, and it was also marked number 4. And there were two
12 suitable latent prints that I marked on that card. I marked
13 each one A and B. So the one that I marked A was identified
14 to the right index finger of DeMario Lofton-Robinson, and then
15 the latent print that I marked B was identified to the right
16 middle finger of DeMario Lofton-Robinson.

17 Q And so, in this situation, you've identified it as
18 DeMario Lofton-Robinson. How did you identify it to him? Did
19 you have any exemplars with him?

20 A Yes, I did.

21 Q Okay. And so, when you make identifications that we
22 talk about from your report, are they all from known exemplars
23 that you had?

24 A Yes, generally, it will be.

25 Q And Q Card 5, is it fair to say from the same

1 vehicle?

2 A Yes.

3 Q And what were the results?

4 A I had one suitable latent print marked A, and that

5 was identified to the right ring finger of DeMario

6 Lofton-Robinson.

7 Q And where was the location on that vehicle?

8 A The exterior driver's door.

9 Q Now, did you receive some items impounded by P

10 number 15291?

11 A Yes.

12 Q So I want to turn your attention to Q Card 13,

13 Latent Print 6.

14 A Okay.

15 Q Did you come to any conclusions as to that latent

16 print?

17 A I'm sorry, hold on a second. I don't see Lift Card

18 6.

19 Q Oh, sorry. Q Card 13, Latent Print 6. So, Q Card

20 13.

21 A Yes, okay. That Q Card 13 came from the exterior

22 right rear quarter panel of the vehicle.

23 Q And can we just use "vehicle"?

24 A Yes.

25 Q And what was your results?

1 A It was identified to the left palm of DeShawn
2 Robinson.

3 Q Could you go to Q Card 20 for me?

4 A Yes.

5 Q What were -- what did you examine, and what were the
6 results?

7 A Q Card 20 came from the exterior right rear window,
8 and there were two suitable prints marked A and B on that
9 card. A was identified to the left middle finger of DeShawn
10 Robinson, and B was identified to the left ring finger of
11 DeShawn Robinson.

12 Q Did you do some comparisons with Q Card 23?

13 A Yes, I did.

14 Q What were your results, and what did you compare?

15 A Q Card 23 came from the exterior right front window
16 of the vehicle. There were three suitable latent prints
17 marked A, B, and C. A was identified to the left ring finger
18 of DeShawn Robinson, B was identified to the left middle
19 finger of DeShawn Robinson, and C was identified to the left
20 index finger of DeShawn Robinson.

21 Q So I want to talk about that one just briefly. See
22 how you've identified a left ring finger, a middle finger, and
23 index finger? Are you able to tell whether that was a
24 simultaneous touch or not, or is that something that you
25 wouldn't even put in the report?

1 A It is something that I'm able to discern sometimes,
2 depending on how much connectivity there is. So it did appear
3 to be a simultaneous. It's not something we generally state
4 in the report, but it would be something that I would state in
5 my notes, possibly.

6 Q Could you go to Q Card 26 for me? Did you make some
7 comparisons, and what were the results?

8 A Yes. Q Card 26 came from the exterior right front
9 window of the vehicle. It was one suitable print that I
10 marked and labeled A, and it was identified to the right index
11 finger of Davontae Wheeler.

12 Q Q Card 27?

13 A Q Card 27 also came from the exterior right front
14 door -- I'm sorry, right door frame, not window. It was
15 marked A, and it was identified to the right palm of DeShawn
16 Robinson.

17 Q So we've talked about fingerprints. Are palm prints
18 similar?

19 A Yes. So the friction ridge skin that's on your
20 fingers also extends throughout the rest of your hand, which
21 would be the rest of the palm of the hand.

22 Q Would you need a more extensive known or exemplar in
23 order to make some comparisons with palm prints?

24 A To make comparisons with palm prints, I would
25 generally need a palm print known exemplar record to do that.

1 Q So you couldn't just have fingerprints of someone
2 and identify a palm print?

3 A That would be correct.

4 Q Okay. Q Card 30, please?

5 A Q Card 30 came from the exterior front hood of the
6 vehicle. There were two suitable prints that I marked and
7 labeled A and B. A was identified to the right palm of
8 Davontae Wheeler, and B was also identified to the right palm
9 of Davontae Wheeler.

10 Q So could you look at Q Cards 34 through 38, and tell
11 me about those, please?

12 A Yes. So Q Card 34, I'll start with. It came from
13 the exterior front hood of the vehicle. There were three
14 suitable prints that I labeled A, B, and C. A was identified
15 to the left palm of Davontae Wheeler, B was also identified to
16 the left palm of Davontae Wheeler, and C was also identified
17 to the left palm of Davontae Wheeler.

18 Q Card 35 came from the exterior front hood of
19 Vehicle 1 as well. There was one suitable print that I marked
20 and labeled A, and that was identified to the left palm of
21 Davontae Wheeler.

22 Q 36 as well came from the exterior front hood of
23 Vehicle 1. There was one suitable print that I marked and
24 labeled A, and that was also identified to the left palm of
25 Davontae Wheeler.

1 Q And Ms. Manigault, I apologize.

2 A Um-hum.

3 Q I realize we've been using "Q card" references.

4 A Um-hum. Oh, yes. But you would also like the

5 latent print references?

6 Q Because if you had been looking at, let's say

7 photographs of this car, Q Card wouldn't be on that, correct?

8 A That's correct.

9 Q It would be -- when a CSA pulls a print, they would

10 have a --

11 A Yes.

12 Q -- latent print --

13 A They would have a -- in this case, an LP number.

14 Q Okay. So could you give me the LP numbers that

15 correspond with those Q cards you just read out, 34 to 38?

16 A Sure, I can. So, Q 34 is LP 27. Q 35 is LP 28. Q

17 36 is LP 29. Q 37 is LP 30. And then, Q 38 is LP 31, and I

18 don't think I got a chance to read off that one yet.

19 Q Okay, so what was the results on that one?

20 A So that was -- Q 38 was also from the exterior front

21 hood of Vehicle 1. There were two suitable prints that I

22 marked A and B, and the A was identified to the left ring

23 finger of Davontae Wheeler, and B was identified to the left

24 middle finger of Davontae Wheeler.

25 Q Now, if you could tell us your results on Q Card 39,

1 Latent Print 32.

2 A That also came from the exterior front hood of the
3 vehicle. Two suitable latent prints were marked and labeled A
4 and B. A was identified to the right ring finger of DeMario
5 Lofton-Robinson, and B was identified to the right little
6 finger of DeMario Lofton-Robinson.

7 Q Q 40, Latent Print 33, please?

8 A That came from the exterior front hood of the
9 vehicle. Two suitable latent prints were marked and labeled A
10 and B. A was identified to the right ring finger of DeMario
11 Lofton-Robinson, and B was identified to the right index
12 finger of DeMario Lofton-Robinson.

13 Q Q Card 41, Latent Print 34, please?

14 A This came from the exterior front hood of the
15 vehicle. There was one suitable latent print labeled and
16 marked -- excuse me, and labeled A, and it was identified to
17 the right palm of DeMario Lofton-Robinson.

18 Q Could you tell us what your results were for Q Card
19 42, Latent Print 35, please?

20 A It came from the exterior front hood of the vehicle.
21 There was one suitable latent print labeled A, and that was
22 identified to the left palm of Davontae Wheeler.

23 Q If you could tell us what your results were for Q
24 Card 44, Latent Print 37, please.

25 A There was one lift card from the exterior front hood

1 of the vehicle again, one suitable latent print marked and
2 labeled A, and that was identified to the left palm of Raekwon
3 Robertson.

4 Q Q Card 50, Latent Print 43, please?

5 A That lift card came from the exterior top edge of
6 the left rear door of the vehicle. It was one suitable latent
7 print marked and labeled A, and that was identified to the
8 left palm of Raekwon Robertson.

9 Q And Q Card 51, Latent Print 44, please?

10 A That came from the exterior left rear window of
11 Vehicle 1. There was one suitable latent print marked and
12 labeled A.

13 Q And so, just -- did you get results for that?

14 A Yes. That was identified to the left index finger
15 of Raekwon Robertson.

16 Q And lastly, did you examine something that was
17 impounded by P number 13572?

18 A Yes.

19 Q And was there something different about the way this
20 was processed as opposed to what you just discussed?

21 A Yes. So this was not actually a lift card; it was a
22 photograph. It was processed by the CSA that collected this
23 piece of evidence. And the photograph was of the -- from the
24 side of a Taurus weapon magazine, and it was labeled number 1.

25 Q And is -- are photographs, if done correctly, any

1 worse or any better than doing processing any other way?

2 A No, they're actually totally appropriate pieces of
3 evidence. They are done a specific way. For instance, a
4 label would be placed in the photograph so that I could -- if
5 I needed to print out or look at this piece of evidence, which
6 was a latent print on the magazine, on the screen, I could
7 make it a one-to-one or life size, and it would just have to
8 be in focus, basically.

9 Q And what were the results of the photograph of that
10 Taurus weapon magazine?

11 A There was one suitable latent print in the
12 photograph. It was marked and labeled A, and it was
13 identified to the left thumb of Davontae Wheeler.

14 Q And you said that's from the magazine?

15 A Yes.

16 Q So is there something -- what is the policy for
17 let's just say a handgun as far as swabbing for DNA versus
18 doing fingerprint processing? Can you do both? Can you do
19 both at the same time? Tell me a little bit about that.

20 A Well, our policy is that we would swab for DNA. I'm
21 sorry, excuse me. I would not swab for DNA, but it would be
22 swabbed for DNA. They would generally try and swab it in
23 areas where it's generally -- they know the hands would have
24 touched it, but they would try to also be careful, if there is
25 latent print evidence there, not to destroy that evidence by

1 rubbing a cotton swab through it.

2 So in this case, that -- you know, it was swabbed
3 for DNA prior to when I got it. This photograph was taken
4 from the CSA, and I only handled the photograph part of it.

5 Q Is there something about the way handguns are made
6 that makes certain parts more suitable for DNA, and certain
7 parts more suitable for fingerprint processing?

8 A Yes, there is. There are parts of the gun that are
9 textured, and those are excellent areas for DNA because you
10 can imagine skin cells might be getting rubbed off in those
11 areas; whereas there are parts of the gun that are smooth, and
12 those are good for latent prints because a smooth surface is
13 normally the best surface that you can leave a latent print
14 behind. And also, it's not textured in that area, so it makes
15 it kind of nice sometimes.

16 Q So where does a magazine fit in?

17 A Well, a magazine has at least two smooth sides of
18 it, and it's generally handled by the hands, so it tends to be
19 a good place to find latent print evidence if there is some.

20 MR. BROOKS: Thank you. Pass the witness, Your
21 Honor.

22 THE COURT: Mr. Sanft, any cross?

23 CROSS-EXAMINATION

24 BY MR. SANFT:

25 Q Ma'am, your testimony with regard to fingerprints

1 and how they're found, do you know how they're -- like, can
2 you date a fingerprint?

3 A No, you cannot.

4 Q All right. So -- and once again, I think you had
5 told the jury earlier that it does depend on certain things,
6 like environment, for instance, right? If you're in an
7 environment that's, say, rainy or snow, that could have an
8 effect on how long a fingerprint remains on a surface, fair?

9 A That's fair to say, yes.

10 Q Okay. I'm sure you're aware that this is a
11 fingerprint that took place -- or fingerprints that you
12 analyzed in this case were all fingerprints that were found in
13 the State of Nevada, roughly around August of 2017?

14 A Okay.

15 Q Not necessarily the worst time, but not necessarily
16 the best time with regards to fingerprints because it's dry or
17 hot? How does that -- how would that work?

18 A Well, it depends. Like you said, August can be kind
19 of hot. It would depend on when -- on several factors; when
20 it was placed, the type of surface. It depends on many of
21 those things. But fingerprints can also survive those things
22 too, so, you know, it really depends.

23 Q Okay. Now, when you receive a case and an
24 assignment to do fingerprint analysis, it's a package of
25 information that you receive? Like, these Q cards that we've

1 been talking about, you just receive those Q cards, you then
2 receive an exemplar, and then you compare those items to each
3 other? Is that how it works?

4 A Yeah. So, generally speaking, I would receive a
5 packet, like you said, that contains these lift cards or --
6 which I then label as Q cards, and I might receive some names
7 that I am to compare.

8 Q Okay. But you don't do any additional work outside
9 of analyzing the fingerprints, right? Meaning, you don't look
10 at that and say, you know what, I need more fingerprint
11 analysis; can someone go back to the evidence and pull
12 additional fingerprints from this or that? That's not your
13 job, fair?

14 A No, I'm not at the crime scene, so I'm just
15 receiving that packet.

16 Q Okay. And that's -- that's somebody else's decision
17 to make, not yours? You're just there specifically to compare
18 apples and apples, and oranges to oranges?

19 A Yeah, to compare what was collected and submitted.

20 MR. SANFT: All right. I have no further questions,
21 Your Honor.

22 THE COURT: Mr. Ruggeroli?

23 MR. RUGGEROLI: Just one.

24 CROSS-EXAMINATION

25 BY MR. RUGGEROLI:

1 Q The Taurus that you examined that was 56, that was
2 the .45 caliber Taurus?

3 A Um-hum.

4 Q Yes?

5 A I'm sorry, let me look and make sure. I'm not that
6 familiar with guns. It doesn't say that it's a .45. It just
7 says, "A Taurus weapon magazine."

8 Q Okay, and --

9 A So I'm not sure about the rest.

10 Q The CSA that -- or that collected this would
11 probably be the better witness --

12 A Yeah.

13 Q -- for that item?

14 MR. RUGGEROLI: Thank you. I have nothing further.

15 THE COURT: Thank you. Any redirect?

16 MR. BROOKS: Briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. BROOKS:

19 Q Ms. Manigault, do you recall the CSA P number that
20 impounded that fingerprint that we were just discussing, the
21 magazine?

22 A That P number -- excuse me -- was 13572.

23 Q And showing you State's Exhibit 307, do you see that
24 P number here?

25 A Yes.

1 Q And is this the photograph you used to make a
2 comparison?
3 A It is.
4 Q And what was the result?
5 A The result was it was identified to the left thumb
6 of Davontae Wheeler.
7 MR. BROOKS: Thank you. Sorry, nothing further.
8 THE COURT: You're done?
9 MR. BROOKS: Yes, sorry.
10 THE COURT: Okay. Mr. Sanft?
11 MR. SANFT: No cross, Your Honor.
12 THE COURT: Mr. Ruggeroli?
13 MR. RUGGEROLI: No cross.
14 THE COURT: Okay. Thank you very much for your
15 testimony here today. You may step down, and you are excused
16 from your subpoena. You may call your next witness.
17 MR. PESCI: State calls Anya Lester. May I approach
18 your Clerk?
19 THE COURT: Yes.
20 THE MARSHAL: Straight ahead, please. And if you'll
21 please step up into the witness stand, remain standing, raise
22 your right hand, and face the Clerk.
23 ANYA LESTER, STATE'S WITNESS, SWORN
24 THE CLERK: You may be seated. Please state and
25 spell your first and last name for the record.

1 THE WITNESS: My name -- my name is Anya, A-n-y-a.
2 Lester, L-e-s-t-e-r.

3 MR. PESCI: May I proceed?

4 THE COURT: Um-hum.

5 MR. PESCI: Thank you.

6 DIRECT EXAMINATION

7 BY MR. PESCI:

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

9 A I am the manager of the Firearms Detail at the Las
10 Vegas Metropolitan Police Department Forensic Laboratory.

11 Q And what do you do in that capacity?

12 A In that capacity, I am in charge of 14 people, their
13 annual reviews, their training. I do administrative reviews
14 of their casework, and a lot of quality control and technical
15 manual writing --

16 Q Prior --

17 A -- procedure writing.

18 Q Sorry to interrupt you. Prior to being the manager,
19 what did you do?

20 A I was a forensic scientist in the Firearms Detail.

21 Q And what brings you to this job? What training and
22 experience do you have?

23 A I have a Bachelor of Science Degree in forensic
24 science from Michigan State University, and I was hired by the
25 LVMPD actually in December of 2008 as a forensic lab aid. I

1 did that position for about ten months. I learned a lot about
2 the lab as a whole. I did a lot of quality control work, a
3 lot of support staff work, things like washing dishes, doing
4 laundry, doing ordering.

5 And from there, I promoted into the forensic
6 scientist position. Once I did that, I underwent an extensive
7 training program; lasted 18 to 24 months. I got my first
8 competency at 18 months, my last one at 24. It entailed about
9 2,500 hours of training. I did both in-house training and
10 external training. I trained on firearms, ammunition,
11 ammunition components, microscopic comparisons. I went to
12 various manufacturing facilities for both firearms and
13 ammunition. Did a series of mock cases, supervised cases.

14 And then, at the end of that extensive training, I
15 took a series of competency exams, which allowed me to begin
16 my own supervised casework, and then proceed into independent
17 casework, and that was in the spring of 2011 when I started
18 doing that.

19 Q So if I heard you correctly, you said that you have
20 training and experience when it deals with firearms and
21 ammunition?

22 A Yes.

23 Q And have you testified in this capacity in courts of
24 law?

25 A Yes.

1 Q Now, kind of the anatomy of a firearm and
2 ammunition. Let's start with ammunition, for those that are
3 not as familiar with firearms. I want to show you State's
4 Exhibit 228. Do you recognize what's depicted there?

5 A I recognize it's a firearm.

6 Q Okay.

7 A Semiautomatic pistol.

8 Q And there's a mouse to the right, and I think if you
9 click at the bottom, you might get -- and see if that mouse
10 will move up above.

11 A Not getting anything on the screen though.

12 Q Well, let's do this. As we start --

13 THE MARSHAL: Oh, I'm sorry. You know what? That
14 mouse might not be on.

15 MR. PESCI: I apologize.

16 THE WITNESS: Oh, it's probably on at the bottom.
17 Ah. Thank you. Oh, there we go.

18 MR. PESCI: Thank you very much.

19 THE WITNESS: Okay.

20 BY MR. PESCI:

21 Q So let's start with ammunition on the lefthand side.
22 Tell us, in essence, the anatomy of what sometimes people
23 refer to as a bullet, and what do you refer to it as?

24 A So all of these here, we refer to these as
25 cartridges. Some people do refer to it as a bullet; however,

1 the correct term is cartridge. It's a single unit of
2 ammunition. Cartridge contains a case that holds everything
3 together; also contains powder. That's what burns and creates
4 gas that pushes the bullet, which is the projectile, this part
5 right here, down the barrel and out of the muzzle of the gun.

6 Here in this rear area, there's also contained a
7 chemical compound called a primer. It's a chemical --
8 chemically sensitive compound that when you pull the trigger
9 on a gun, and the firing pin hits it, that's what creates a
10 spark that ignites that powder inside that cartridge case,
11 causing it to burn, which liberates the gas, and that's what
12 pushes the bullet down the barrel and out of the muzzle.

13 Q All right. Now, as we're looking at this firearm,
14 do we have a magazine depicted in the photograph?

15 A Yes.

16 Q Could you show that, please?

17 A Um-hum. So this here would be the magazine.

18 Q And also, the firearm itself, could you point to
19 that?

20 A Um-hum. So you have your firearm over here.

21 Q Okay. And in particular, is this a Star .45 caliber
22 and firearm?

23 A Unfortunately, I can't see the manufacturer in this
24 view. I do see it says, "Caliber .45 ACP here."

25 Q Okay.

1 A But I -- I don't see the -- it's I think on the
2 other side.

3 Q All right. But as we look at this, can you tell us
4 what will happen to a cartridge when it's fired in a firearm;
5 in particular, this firearm?

6 A Um-hum. So these cartridges here, they get loaded
7 into this magazine. This here is your source of ammunition.
8 It's got the spring inside here; it has a follower up here at
9 the top. It acts kind of like a Pez Dispenser. It actually
10 pushes these cartridges up by the spring and this follower
11 here to cycle them into a firearm in order to fire the
12 firearm.

13 Q And --

14 A This -- oh, sorry.

15 Q Oh, I cut you off.

16 A This magazine here, once you've loaded it with
17 cartridges, you insert it here. This is a magazine well;
18 inserts into this firearm. This firearm here, this part is
19 called a slide. In order to load one of these cartridges out
20 of the top of the slide here into the chamber, which is the
21 rear part of the barrel -- you see the barrel right here --
22 you would have to close this slide.

23 So the slide has a lever -- I think it's on the
24 other side, you can't see it -- that if you release that, this
25 slide will spring forward. There's a spring inside here right

1 now; it's compressed. When you spring that slide forward,
2 what it does is it strips the top cartridge off this magazine
3 here, loading it into the gun, and readying for it to fire.

4 Q Showing you State's 227, is that that same firearm
5 with the slide moved forward?

6 A Appears to be so, yes.

7 Q Okay. So what are we looking at, that silver part
8 at the top?

9 A Um-hum, so this right here?

10 Q Yes.

11 A This piece? So this is the barrel here. You see
12 this cut-out in the slide. This part that I formally referred
13 to here was the slide. This is a cut-out. This is called the
14 ejection port. So this is after the firearm has fired that
15 the expended cartridge case can be ejected out of the firearm
16 through this port.

17 Q So is this a semiautomatic firearm?

18 A Yes.

19 Q Okay. Is that based on the fact that it will expel
20 the cartridge case after it's been fired out of the firearm?

21 A The definition of semiautomatic is just like what it
22 sounds. "Semi" means partial, and "automatic" is like the gun
23 does something for you. So this gun does part of the cycle of
24 operation for you. Normally, on a semiautomatic pistol, what
25 it does is the extracting, ejecting, and loading process.

1 So what happens is, here, we have this magazine
2 inserted; the slide is closed. If you have a cartridge here
3 in the chamber, you pull this trigger -- this -- this hammer
4 would need to be cocked. You pull this hammer -- this
5 trigger, excuse me. The hammer would fall forward, hitting
6 the firing pin, which hits the primer, which is on the rear of
7 that cartridge like I explained before, detonating that
8 chemical compound, lighting that powder, creating the gas
9 which pushes the bullet down the barrel and out of the muzzle.

10 For every action, you have an equal and opposite
11 reaction, so that bullet's going forward. What happens is
12 that cartridge case that's left in here is pushed backwards,
13 back against the rear part of that slide, and that drives this
14 slide backwards like we saw in the previous photo where the
15 slide was in the rearward position. When that slide goes
16 backwards, there's a little hook here, which is the extractor,
17 this piece here. It's a little hook that hooks on the rim of
18 that cartridge case, pulls it backwards out of the chamber.

19 There's a piece called the ejector here in the back
20 breechface of the slide, which actually kicks that cartridge
21 case out. When the slide goes forward, it will strip the next
22 cartridge off the top of that magazine, and loading it into
23 the chamber. So that's the semiautomatic part. You as the
24 operator, you have to pull the trigger for each shot, but the
25 firearm does that unloading and loading process for you.

1 Q Now, if we compare this to a revolver, how would
2 that be different for a revolver?

3 A So this firearm here, it just has one chamber here
4 at the rear of the barrel. A revolver, like you've seen in
5 old westerns, it has a cylinder that actually rotates, so
6 there's multiple chambers inside there. So instead of having
7 a magazine, you load your cartridges into those chambers in
8 that cylinder. And then when you pull the trigger, the same
9 type of action happens. You have a firing pin, you have a
10 detonation of a cartridge, but then, to get to the next
11 cartridge to fire, when you pull the trigger, that cylinder
12 rotates to the next one that's in the cylinder as opposed to
13 that extraction and ejection motion like what happens in a
14 pistol such as this.

15 Q So if you fire a revolver, it will not automatically
16 extract and expel the cartridge case?

17 A That's correct.

18 Q All right. Now, looking at this same exhibit,
19 State's 227, you talked about how a bullet will be projected
20 out of the firearm, down the barrel, correct?

21 A Yes.

22 Q What happens to the bullet as it travels through the
23 barrel?

24 A So, inside the barrel, there's these grooves that
25 are cut spiral into the barrel, and they're like -- what they

1 look like is like stripes on a candy cane. So that's called
2 riffling. So they're cut with a tool; spiral grooves inside.
3 The area in between those grooves is called the lands.

4 When the bullet goes from the end of -- excuse me --
5 the end of that chamber here and it starts to travel down the
6 barrel, it engages with those grooves and lands, and those
7 impart a spin upon the bullet, and that's to give it stability
8 when it comes out of the muzzle and it flies through the air.
9 So the bullet's actually spinning when it comes out of the
10 muzzle of the gun.

11 Q Does that imprint something unique on the bullet
12 based on that barrel?

13 A Yes.

14 Q Explain that to us.

15 A Yes. So those grooves that I talked about, they're
16 made by a cutting tool. So a cutting tool, what it's doing is
17 -- what you have is a harder object is always going to leave a
18 mark or act on a softer object. So the harder object is the
19 cutting tool, and it has to be in order to cut those spirals
20 into the barrel.

21 So what happens when you're cutting, every time that
22 tool goes either down or forward in the barrel, depending on
23 what their process is, it's microscopically changed a little
24 bit. So that tool is constantly changing every single time
25 it's cutting those grooves in there.

1 Also, every time it cuts, that's a unique event. So
2 when you're cutting, you're removing pieces of material, like
3 small little chips. You know how like if you grate cheese,
4 you get those small little chips, it's like sawdust? So those
5 chips that are cut out are different every single time and
6 random. And when those are cut out, they actually even build
7 up along the edge of the tool and they're scraped along as
8 that tool moves either forward or backwards in the barrel.

9 And all of those things contribute to those marks
10 that are inside the barrel that are unique to that barrel, and
11 that's what we use as firearms examiners when we're comparing
12 a bullet to a particular firearm.

13 Q Now, that's dealing with a bullet. How about a
14 cartridge case? Is there something unique that happens or is
15 imprinted on the cartridge case?

16 A So a cartridge case -- any surface here on this gun
17 that the cartridge case interacts with can leave an
18 impression. And I've talked about some different things; how
19 when you have the bullet going forward, the cartridge case
20 goes backwards.

21 The cartridge case here, when it slams up against
22 the rear of the slide here -- this is called the breechface --
23 you can get impressed marks there. We call those breechface
24 marks. When the firing pin hits the primer and it makes a
25 little divot in there, we call that that firing pin

1 impression. You can get marks in there.

2 That extractor, that hook that I talked about to
3 remove the cartridge case from the chamber, that can leave a
4 mark. The ejector that actually kicks the cartridge case out
5 of the firearm can leave a mark. And when it's here inside
6 this chamber, when the cartridge is detonated, when that
7 firing pin hits that primer and you have that gas burning, the
8 edges of the walls of the cartridge case actually swell
9 against the inside of the chamber, and any marks from inside
10 of the chamber, those get imparted on the cartridge case.

11 So all of those different types of marks are marks
12 that we can use as a firearms examiner to compare an expended
13 cartridge case to a firearm.

14 Q And do you compare that microscopically?

15 A Yes.

16 Q Okay. So if you have a firearm, let's say the one
17 that's in this picture, and you test fire it, can you then
18 make determinations as far as what the barrel will imprint and
19 what -- as you've talked about, what could happen to a
20 cartridge case; how that will be imprinted with this unique
21 particular firearm?

22 A Yes. So when I'm asked to examine a firearm and to
23 perform a comparison, I have to test fire the firearm, and I
24 use the actual firearm that's provided to me. I use the
25 magazine, if it is provided to me. Normally, we use

1 ammunition from our reference collection.

2 We test fire the firearm. We can do that a couple
3 of different ways. Normally, it's done into a water tank.
4 It's a large, stainless steel tank; it has about 600 gallons
5 of water. It has a port that we can shoot into, and when we
6 shoot into it, the bullet goes into the water, travels through
7 the water, falls down to the bottom. There's a net around
8 that port that catches the extracted and ejected cartridge
9 cases.

10 Once I'm done test firing it, I can open that tank
11 up, retrieve the bullets out, and then I have pristine
12 samples. I have samples of bullets and of cartridge cases
13 that are from that gun, and I know they're from that gun
14 because I fired them myself.

15 So then I compare those to each other to look for
16 the types of marks that that gun is leaving. I'm looking for
17 the quality of marks, quantity of marks. I'm looking for the
18 reputability between the marks on those test items before I
19 ever take one of those to compare it to an evidence item.

20 Q Okay. So you will generate, in essence, examples
21 from test firing the particular firearm?

22 A Yes, that's correct.

23 Q And then you can compare that to question evidence
24 or evidence from a particular case?

25 A Yes.

1 Q All right. So in this case, let's kind of focus on
2 the particular evidence that you had in question. Did you
3 generate a report in this case under Event Number 170809-0029?
4 A Yes.
5 Q Do you have that report with you for reference
6 purposes?
7 A Yes.
8 Q Okay.
9 A May I refer to it?
10 MR. PESCI: Any objection?
11 MR. SANFT: No.
12 MR. RUGGEROLI: No, Your Honor.
13 THE COURT: Okay, you may.
14 MR. PESCI: Thank you, Your Honor.
15 BY MR. PESCI:
16 Q So I want to kind of go over, first, the items of
17 evidence that you utilized, and then we'll talk about your
18 results. Is that okay?
19 A Yes.
20 Q Okay. Starting off with what you referred to as a
21 lab item number, is that a number that you assigned to this
22 particular report that you did?
23 A Yes. We have a computer system; it's called the
24 LIMS. It's our Laboratory Information Management System, and
25 it automatically generates a lab item number for every item of

1 evidence that we analyze in a case, so that way, even if a
2 latent print analyst, firearms analyst, DNA analyst examines
3 the same piece of evidence, it has one unique number that's
4 assigned by the computer.

5 Q And that's the unique number for your lab report?

6 A Yes, correct.

7 Q But that corresponds to a unique number from, let's
8 say, the crime scene analyst that impounded it?

9 A Yes, correct.

10 Q And in this particular situation, we have four
11 pieces of evidence -- well, let me see. 1, 2, 3, 4. Yes,
12 four pieces of evidence impounded by P number 5158; is that
13 correct?

14 A Yes.

15 Q And that would be Ebony Stephens, her Impound
16 numbers 1 through 4?

17 A Yes.

18 Q Okay. Now, your Lab Item 1, Ebony Stephens's number
19 1, was that a .22 Long Rifle cartridge case?

20 A It was a .22 Long/Long Rifle cartridge case.

21 Q Was there a headstamp on it?

22 A Yes.

23 Q What is a headstamp?

24 A Headstamp is -- either it can be letters or numbers
25 that are stamped into the head or the base area of the

1 cartridge by the manufacturer. It's usually an identifying
2 mark. It can either have the -- say, the manufacturer's
3 initials or name might be there, or often, the caliber is also
4 stamped in there.

5 Q In this particular situation, this item, was it
6 headstamped with the letter C?

7 A Yes.

8 Q Now, you talked about how it was .22 caliber
9 Long/Long Rifle cartridge case. Does this mean it goes into a
10 rifle, or can it be fired by a handgun?

11 A So a couple-part question there.

12 Q Sorry.

13 A It can be fired by a handgun, pistol, revolver, or a
14 rifle. The term .22 Long or .22 Long Rifle just refers to the
15 name of the cartridge. For this particular cartridge case,
16 the same cartridge case is used by manufacturers when they
17 manufacture .22 Long and when they manufacture .22 Long Rifle.

18 So when I just got the cartridge case, all I can say
19 is this is a cartridge case from a cartridge that was either a
20 .22 Long or a .22 Long Rifle. The Long Rifle does not refer
21 to the fact that it could only be fired in a rifle; it's just
22 the name of the cartridge.

23 Q Okay, so one cartridge case was to a .22?

24 A That's correct.

25 Q Were there three .45 cartridge cases?

1 A Yes.

2 Q Corresponding to Ebony Stephens, P number 5158, her
3 Impound Items 2, 3, and 4?

4 A Yes.

5 Q And did they have different headstamps on them?

6 A Different from each other?

7 Q Yes.

8 A Yes.

9 Q Okay. Now, is that different manufacturers?

10 A Yes.

11 Q Okay. So number 2, your Lab Item 2, Ebony
12 Stephens's Impound Item number 2, was that an R-P .45 Auto
13 cartridge?

14 A Yes.

15 Q And then your Lab Item 3, Ebony Stephens's Item 3,
16 was that a FCNR .45 Auto cartridge?

17 A Cartridge case, yes.

18 Q I'm sorry, I keep saying that. And then the last
19 one, your number 4, Ebony's number 4, was that a Winchester
20 .45 Auto cartridge case?

21 A Yes.

22 Q All right. So three .45 cartridges, all from
23 different manufacturers?

24 A Cartridge cases, yes.

25 Q Someday, I won't say that. All right. So moving

1 onto your Lab Item 11, was impounded under P number 15709,
2 Item 1. What was that item?

3 A So that was a Taurus Model PT22. It was a .22 Long
4 Rifle caliber, semiautomatic pistol.

5 Q Okay. And that particular item, did you test fire
6 that?

7 A Yes.

8 Q All right. What did you do with that particular
9 item before you test fired it?

10 A So for that particular item, that firearm and the
11 magazine, I swabbed those both for DNA prior to my test firing
12 them.

13 Q Okay. How did you go about that?

14 A Um-hum. So to swab for DNA, we have to make sure
15 that our surfaces are completely decontaminated, so we
16 actually have a separate room that we swab for DNA in. I --
17 first, I'll put on a lab coat, gloves, a mask, and I use a
18 disinfectant spray; it's like a commercial bleach-type spray.
19 Spray on the surface, wipe it off, and then I'll put down a
20 clean white paper, like butcher block paper.

21 Then I'll take that evidence, I'll set it on the
22 paper. I'll make sure that I have everything I need to
23 perform my swabbing all set and ready to go. I'll have my
24 swabs ready. I have molecular grade water; that's water that
25 is tested by our DNA Section to make sure there's no

1 contaminants in it. I have my booking materials, like the
2 envelope, the sticker, everything I need to book the swabs
3 after I've done the swabbing, get that all ready to go. Then
4 I'll take some of that bleach, put it on my gloves, make sure
5 my gloves are all clean.

6 Then I go ahead and open the package, and I'll
7 remove the firearm. I do each one separately; I'll do the
8 firearm likely first. Firearm from the package. I'll take
9 one of those swabs, put a drop or two of that water on it, and
10 then I just swab the entire surface of the firearm. So I
11 usually concentrate on the ridged areas, so that would be the
12 grip areas, the trigger, maybe the slide serrations, but our
13 policy is that we do a swab of the entire surface area of the
14 firearm.

15 Q Okay.

16 A Then I'll take that swab, go ahead and put it in the
17 envelope, seal it up so that it gets booked. And then I'll
18 change out my gloves, make sure everything's clean, maybe put
19 on a new mask if I think it got contaminated. Then I'll go
20 ahead and make sure my gloves are clean before I take the next
21 item, which is the magazine, then I'll repeat the same
22 process. I'll take a different swab, different clean swab,
23 put some of that water on it, swab the entire surface of that
24 magazine, and then go ahead and book that swab.

25 Q Showing you State's 250. You followed this

1 procedure that you just said for the Taurus Model PT22 .22
2 Long Rifle caliber semiautomatic pistol with serial number
3 ANC29177?

4 A Yes.

5 Q All right. So that was done before you test fired?

6 A Yes.

7 Q All right. So after you got those swabs, did you
8 impound those swabs?

9 A Yes.

10 Q Okay, so now DNA could work on that down the road?

11 A Yes.

12 Q All right. Now, turning to this particular firearm
13 and test firing it, did you do the procedure that you told us
14 earlier about firing into the thing of water?

15 A Water tank?

16 Q Yes.

17 A Yes. Let me just -- if I may refer to my notes
18 really quick.

19 Q Please.

20 A So I did -- I did test fire this gun three times,
21 and I did fire those three test fires into our water tank like
22 I described.

23 Q Okay. And so you had that particular item that was
24 your number 11, and you also had your number 12, which was the
25 magazine associated with this firearm?

1 A Yes.

2 Q All right. In addition to that firearm, looking at
3 State's Exhibit 295, did you also examine a Taurus Model PT145
4 Pro Millennium .45 caliber semiautomatic pistol, serial number
5 NCY05584?

6 A Yes.

7 Q Was that your Lab Item 14?

8 A Yes.

9 Q Impounded by P number 13572, Impound Item 1?

10 A Yes.

11 Q All right. Did you follow that same procedure there
12 as far as getting some test fires to use for comparison
13 purposes?

14 A Yes. I also test fired that firearm three times
15 into our water tank.

16 Q And did it have a magazine associated with it?

17 A Yes, it did.

18 Q Which is your Item 15?

19 A Yes.

20 Q Earlier, I said that there were four items from P
21 number 5158. Was there in fact another item, your Lab Item
22 17, P number impounder was 5158, and that was her Item 5,
23 which is one bullet?

24 A Yeah, and that was in a separate package. So her
25 Package 2, and that was one bullet.

1 Q All right. So we had cartridge cases and in fact
2 one bullet from that same CSA?

3 A Yes.

4 Q All right. And then, did you also have items given
5 to you that were impounded by P number 9618, which were metal
6 fragments and bullets?

7 A Yes.

8 Q Corresponding to your Items 22, 23, and 24?

9 A Yes.

10 Q Which correspond to P number 9618, Items 12, 13, and
11 14?

12 A Yes.

13 Q All right. So tell us about the -- the three
14 different firearms. And specifically, starting with the Ruger
15 .22, what did you learn about the functionality of that item?

16 A The Taurus .22?

17 Q Yeah, sorry.

18 A Okay. So the Taurus pistol, Lab Item 11, I did
19 examine it, test fire it. I did test fire it into the water
20 tank as I had described. I did find that gun was operational,
21 and I did not note that there were any malfunctions.

22 Q Okay. And then, as far as the Taurus pistol, which
23 was the .45 depicted in State's 295, what did you find out
24 about that?

25 A So that pistol, I did the same procedure; examined

1 it, test fired it, and I did find it to be operational, and I
2 did not note any malfunctions.

3 Q And then circling back to State's Exhibit 227, did
4 you examine and test fire the one Star, unknown model, .45
5 caliber semiautomatic pistol?

6 A Yes.

7 Q All right. Now, there is a serial number associated
8 with this particular item, correct?

9 A Yes.

10 Q And in your report, what did you notate that number
11 was?

12 A In the report, I notated that the number was
13 1949428.

14 Q All right. But then, when you looked at it
15 up-close, did you figure out that there was a number that was
16 transposed?

17 A Yeah, so -- whoops. If you see this last digit
18 right here, this digit is actually a 9, it's not an 8, but you
19 can almost see how it sort of looks like an 8 because the tail
20 of the 9 came up really high right here.

21 Q All right.

22 A So I do believe this is actually a 9. It was typed
23 on my report as an 8.

24 Q Okay, but we know we're dealing with a -- that's the
25 same firearm?

1 A Yes.

2 Q It's just that last number was just transposed as
3 far as an 8 versus a 9?

4 A Correct.

5 Q All right. And you said that this one was
6 functional?

7 A Yes. This firearm, I did test fire it, and I did
8 find it to be operational, and I did not note any
9 malfunctions.

10 Q All right. So after test firing all three of those
11 and getting some known samples, did you compare it to the
12 various pieces of evidence that had been impounded,
13 specifically cartridge cases, and bullets, and bullet
14 fragments?

15 A Yes.

16 Q And did you come to some conclusions?

17 A Yes, I did.

18 Q So specifically, looking at your first conclusion
19 referring to Lab Item 1, which would be the headstamped C .22
20 Long/Long Rifle cartridge case, correct?

21 A Yes.

22 Q And what did you find out about that?

23 A For that cartridge case, I identified it as having
24 been fired by the Taurus pistol, which was my Lab Item 11.
25 That was the PT22 pistol.

1 Q All right. So the cartridge case that had headstamp
2 C impounded by Ebony Stephens was fired by the .22 Taurus?

3 A I identified it as so, yes.

4 Q Okay. And is that based on those unique imprints
5 that are done going -- or when it's fired?

6 A Yeah, it's based on my microscopic comparison, my
7 observation of those -- those individual microscopic marks,
8 and I'm looking for sufficient agreement in the number, in the
9 quantity, the quality of those marks for me to make that
10 determination that it is an identification.

11 Q Okay. Then, shifting away from the .22 caliber
12 cartridge case, the three .45 caliber cartridge cases all
13 impounded by Ebony Stephens, did you come to a conclusion on
14 those?

15 A Yes.

16 Q What did you conclude?

17 A I identified the three cartridge cases, my Lab Items
18 2 through 4, as having been fired by the submitted Star
19 pistol, which was my Lab Item 20.

20 Q Okay. So the -- all three of those .45 caliber
21 cartridge cases impounded by Ebony Stephens all came back to
22 having been fired by that particular Star .45 firearm?

23 A I identified them as so, yes.

24 Q Okay. And then, as far as Lab Items 17, which
25 corresponds to one bullet impounded by Ebony Stephens, and

1 your Lab Item 24, which corresponds to one bullet impounded by
2 Crime Scene Analyst Jeffrey Scott with P number 9618, what did
3 you conclude?

4 A The two bullets, those two Lab Items 17 and 24, I
5 identified those as having been fired also by the submitted
6 Star pistol.

7 Q Okay, so that same firearm we just spoke of a moment
8 ago?

9 A Yes.

10 Q Then your Lab Item 23, which would correspond to a
11 bullet recovered by P number 9618, Jeffrey Scoot, what could
12 you determine based on that bullet?

13 A So that particular bullet, it did share similar
14 general riffling characteristics with the Taurus pistol, my
15 Lab Item 11, the PT22. However, there was some damage to this
16 bullet, and that caused -- there was a lack of microscopic
17 marks due to that damage. And because of that, I could not
18 make an identification to or an elimination from that
19 particular pistol.

20 Q Okay. However, sometimes, are you able to make an
21 elimination?

22 A Yes.

23 Q In this case, you were not able to eliminate or
24 identify?

25 A That's correct.

1 Q Okay. And then, the last items, the metal
2 fragments, were you able to do anything with those?

3 A No. The metal fragments had no riffling
4 impressions, and were therefore of no value for microscopic
5 comparisons.

6 Q All right. Now, when you test fire a firearm into
7 the tank of water, is there damage to that bullet?

8 A There's usually not. Some bullets, if we have a
9 real high-speed -- like a high-speed rifle, like a .223 rifle,
10 some of those bullets might break apart when they hit that
11 water in the tank.

12 But normally for a handgun, if we use a full metal
13 jacket type bullet or a jacketed hollow point, when it goes
14 into the water, water is denser than air, so it goes into that
15 water, and it just flows down, and then just falls down onto
16 the bottom of the water tank when it loses its velocity. So,
17 like I said earlier, it's basically a pristine sample that
18 came from that gun.

19 Q Okay. In your experience, have you seen bullets
20 that have passed through objects like bodies?

21 A Yes.

22 Q Have you reviewed pieces of bullets or fragments of
23 bullets that have come from autopsies?

24 A Yes.

25 Q And in your experience, can the bullet traveling

1 through let's say a skull damage the bullet itself?

2 A It's possible, yes.

3 Q Okay. If the bullet is damaged to such a point, is
4 it impossible to make a comparison?

5 A Completely depends on what the condition of the
6 bullet is, and that would depend on the caliber, the type of
7 firearm it was fired from, how far away the shot was fired
8 from, you know, what velocity it was going when it impacted.
9 I've -- I've seen bullets in all kinds of different conditions
10 when I've been asked to examine them.

11 MR. PESCI: Okay, thank you very much. Pass the
12 witness.

13 THE WITNESS: Thank you.

14 THE COURT: Cross-examination?

15 MR. SANFT: Yes, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. SANFT:

18 Q Ms. Lester, can you determine who fires a gun or --

19 A I cannot, no.

20 Q Okay, and that's really not the scope of what you
21 do. You just want to determine whether or not a certain
22 firearm at some point causes a bullet to be fired, right?

23 A Whether or not a certain bullet was fired from a
24 particular firearm --

25 Q Yes.

1 A -- or a certain cartridge case, yes.

2 Q Yes, both of those things, right?

3 A Yes.

4 Q Okay. And with regards to your work that you do,

5 it's -- I'm guessing that's probably going to be under a

6 microscope, because you said it's microscopic in terms of what

7 you're looking for --

8 A Yes.

9 Q -- with regard to a known sample versus whatever it

10 is that you're examining comparatively, correct?

11 A Yes, that's done under a microscope.

12 Q Okay. And is that something that you take pictures

13 of to at some point show a jury what you're looking for in

14 terms of the grooves, or the microscopic details that you are

15 examining with your own eye through this microscope?

16 A Yes.

17 Q Okay. With regards to the examination of the

18 firearms that you've been asked to in this case, were

19 photographs of those things taken in terms of your

20 observations of each of those things?

21 A Yes.

22 Q Okay. In addition to that, are you aware of any

23 studies in the last ten years or so with regards to the

24 concern of false positives?

25 A Yes.

1 Q Okay. With regards to the -- let me ask you this.
2 The National Institute of Standards and Technology, are you
3 aware of what that is?

4 A The NIST?

5 Q Yes.

6 A Yes.

7 Q Are you certified at all through NIST?

8 A I am not.

9 Q Okay. And are you aware that NIST can perform the
10 study with regard to that specific issue of false positives in
11 terms of firearms and so forth?

12 A I am not aware of what specific study you're
13 referring to. I try to keep up and read the studies that are
14 out there. I know there are studies that have been done about
15 false positives, false negatives, et cetera, in firearms.

16 Q Okay. And would it be fair to say though that that
17 would be one of the things of concern that you would always
18 have as someone who potentially could come across a false
19 positive in your line of work?

20 A So I know in most of the studies that are done, the
21 errors where there's false positives on known samples are
22 usually just limited to a particular scientist or a particular
23 laboratory. In our laboratory, we have layers of precautions
24 that we use to prevent things like false positives, false
25 identifications, false eliminations, and that is all of our

1 identifications are independently verified by a second trained
2 examiner, and all of our case files go through a technical
3 review process and an administrative review process.

4 Q Okay, so --

5 A And that's -- oh, sorry.

6 Q I'm sorry, go ahead. I didn't mean to interrupt
7 you.

8 A No, I was going to -- that's -- since we're an
9 accredited lab, those are standards that we have to adhere to.

10 Q All right. And when you say you're accredited, my
11 guess is, at some point, you have to renew that accreditation
12 with whatever the institute is that you've been accredited by?

13 A Yeah, the accrediting body. We do an internal
14 re-accreditation audit every year, and I think the body comes
15 in -- I think it's every three years and renews our
16 accreditation.

17 Q All right. And with regards to that accreditation,
18 do you know who it's through?

19 A It's through ANAB.

20 Q What is that? We don't know.

21 A Yeah, so I believe it's the ANSI National
22 Accrediting body. I don't want to say the wrong thing, so.

23 Q That's --

24 A It's quite a long acronym.

25 Q That's all right. But as far as you know, are there

1 multiple accreditation type of organizations out there besides
2 that one ANSI, or is ANSI the national standard?

3 A For forensic labs, I'm not sure if there is another
4 one other than that one. I don't actually know.

5 Q Okay. So for instance, if I'm quoting to and
6 referring you to the National Institute of Standards and
7 Technology, that's not an accreditation?

8 A I don't believe that NIST accredits forensic
9 laboratories.

10 Q Okay. So, and once again, you're not an expert with
11 that, you don't know for sure, you're just saying that's what
12 you believe, right?

13 A I -- that's correct, yeah.

14 Q Okay. Finally, in terms of the item that you
15 observed in this case, which was the spent bullet, the one
16 that you said that you saw had some markings on it but you
17 couldn't determine at this particular point where that bullet
18 was fired from -- the particular gun that I'm concerned with,
19 which is the Taurus P2 -- or PT22, the markings that are on
20 there --

21 A Yeah. Sorry, was there a question?

22 Q Yeah, well, I'm getting to it.

23 A Oh, sorry.

24 Q I'm just winding it up here.

25 A Okay.

1 Q In terms of that particular bullet, you took
2 pictures of it, right?

3 A Yes.

4 Q All right. And once again, that would have been
5 part of your report that you used that you've talked about
6 here today in court?

7 A So it's not part of my report; it's actually part of
8 my notes --

9 Q I see.

10 A -- in my case file.

11 Q I see. So the notes that you have in front -- or
12 the report you have in front of you is just a written report,
13 but with regards to what you actually observed, that would
14 have been part of your case file and your notes during the
15 course of your work?

16 A Yes, and I have that all in front of me as well.

17 Q Okay.

18 MR. SANFT: And Your Honor, may I approach?

19 THE COURT: You may.

20 BY MR. SANFT:

21 Q Can I see that?

22 A The picture of that particular bullet?

23 Q Yeah.

24 A Sure. Getting there. Okay, that's this one right
25 here.

1 Q Okay.

2 MR. SANFT: And I don't know how to do this.

3 (Pause in the proceedings)

4 BY MR. SANFT:

5 Q Is this a copy?

6 A Yes, you may have that one.

7 Q Okay.

8 A Yeah.

9 Q Well, thank you.

10 A You're welcome.

11 MR. SANFT: Your Honor, I do have a document here.

12 I'm going to show defense counsel as well.

13 THE COURT: Sure.

14 MR. SANFT: I'm probably going to propose this as a

15 defense exhibit to be admitted at this point.

16 MR. PESCI: No objection from the State.

17 THE COURT: Sure. Go ahead and show Mr. Ruggeroli.

18 So it will be marked as B1.

19 MR. SANFT: B1?

20 THE COURT: Any objection?

21 MR. RUGGEROLI: No, Your Honor.

22 THE COURT: Okay, and there's no objection from the

23 State. It's admitted.

24 (Defendant Robertson's Exhibit B1 is admitted)

25 MR. SANFT: Thank you, Your Honor. May I publish?

1 THE CLERK: Can I please mark it so it doesn't get
2 lost? Thanks.
3 BY MR. SANFT:
4 Q Showing you what's been marked and admitted as
5 Defense Exhibit B1. Ma'am, the item that we are talking about
6 is specifically this item number 23; is that correct?
7 A Just let me make sure 100 percent. I do believe so.
8 Yes. So, Item 23, it's this one here. So this is the one
9 that I testified to that I could not identify or eliminate it
10 as having been fired from the submitted Taurus pistol.
11 Q Okay.
12 MR. RUGGEROLI: Judge, could we just clarify the
13 Taurus .22, please?
14 THE WITNESS: Oh, yeah. The Taurus .22. The PT22.
15 MR. SANFT: All right, thank you.
16 BY MR. SANFT:
17 Q And in terms -- did you have any other photographs
18 that helped you with that determination outside of this
19 photograph that we're showing the jury identifying Item 23?
20 A I don't believe so.
21 MR. SANFT: Okay. I have no further questions, Your
22 Honor.
23 THE COURT: Thank you. Mr. Ruggeroli?
24 MR. RUGGEROLI: Thank you, Your Honor.
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CROSS-EXAMINATION

BY MR. RUGGEROLI:

Q Good afternoon, Ms. Lester.

A Good afternoon.

Q I'm going to try and simplify my portion.

A All right.

Q You were shown a number of pictures. The -- this is State's 250. That's that Taurus .22, correct?

A The one that I've been referring to, yes.

Q Yes. Okay, and the .22 is a small caliber firearm, correct?

A Yes.

Q The size of the bullet is quite small in comparison to other types of -- other calibers of firearms, correct?

A So what a .22 is, it refers to the diameter of the base of that bullet. So it's actually .22 inches, so it's less than one quarter inch in diameter. I'm -- yeah, one quarter inch. Less than .25.

Q Thank you.

A Yeah.

Q I'm also showing you State's 227. That's the Star?

A Yes.

Q .45?

A Yes.

Q Similar-type designation. Can you give the jury a

1 little information --

2 A Um-hum.

3 Q -- about how that's designated as .45?

4 A Um-hum. Same thing that I just said. The .45

5 refers to .45, which is the diameter of the base of that

6 bullet. So that bullet is .45 inches across the base, so it's

7 more than double what the .22 is.

8 Q Okay. Now I'm going to show you the State's 295.

9 Now, that's also a .45 caliber, correct?

10 A Yes.

11 Q But I only represent Mr. Wheeler, okay? And so I'm

12 concerned with this one. This is the Taurus PT145 Pro

13 Millennium .45 caliber pistol, correct?

14 A Yes.

15 Q You determined, after going through all the things

16 that you were questioned about previously, that in comparison

17 and reviewing all the evidence that you had, none of the

18 bullets or cartridge cases were fired from this particular

19 firearm?

20 A None of the bullets or cartridge cases that I

21 examined under this particular case did I identify as having

22 been fired from that firearm. That is correct.

23 Q Thank you.

24 A You're welcome.

25 MR. RUGGEROLI: I have nothing further.

1 THE COURT: Thank you. Any redirect?

2 MR. PESCI: Yes.

3 REDIRECT EXAMINATION

4 BY MR. PESCI:

5 Q For purposes of the swab that you took on the .22,
6 State's 250, the .22 caliber Taurus, is your P number 13771?

7 A Yes, it is.

8 Q Okay. So for reference purposes, for a DNA report
9 down the road, if it's referencing your P number, that's the
10 number there?

11 A Yes. It would be my P number, my package number,
12 whatever that was -- it was probably 1 -- and then my item
13 numbers of the swab from the gun and from the magazine.

14 Q All right. So the item that you swabbed, State's
15 250, is the Taurus .22, correct?

16 A And the magazine.

17 Q I'm sorry, and the magazine.

18 A Yes.

19 Q You did not swab the .45 Star or the .45 Taurus
20 Millennium?

21 A I did not.

22 Q Okay. And then, defense counsel asked you some
23 questions about what's now B1, and specifically, focusing in
24 on this bullet here. Do you remember those questions?

25 A I do.

1 Q All right. Now, if I've understood your testimony
2 earlier, you said that that bullet actually did share similar
3 general riffling characteristics with --

4 A With -- yes.

5 Q -- the Taurus pistol, Item 11. The Taurus pistol,
6 Item 11 is the Taurus .22, correct?

7 A Yes.

8 Q All right. So there are some similarities; you just
9 cannot identify it as coming from there?

10 A Yes. Remember when I talked about the riffling? So
11 when the manufacturer cuts that riffling into the barrel, it
12 puts a certain number of grooves in there, so the manufacturer
13 might put five of them or six of them in there. Those grooves
14 might be spiraled to the right or spiraled to the left. Those
15 things are called general riffling characteristics. Also, the
16 width of those grooves that are cut into there, those are
17 general riffling characteristics.

18 Those are class characteristics, things that can
19 like restrict something down to a certain group, but not
20 individualize it. In order to individualize it, I need those
21 small microscopic individual characteristics. So for this
22 particular bullet, it did share those general riffling
23 characteristics. The number of land impressions, direction of
24 twist, and width of those impressions shared that with that
25 Taurus pistol -- the Taurus .22 pistol.

1 Q What do you mean, the number of land impressions?
2 What is that?

3 A Um-hum. So, like I talked about earlier with the
4 manufacturer cutting those spiral grooves into that barrel, as
5 I just said, the manufacturer chooses how many of those to put
6 in there, so it might be -- there might only be three. You
7 know, I said it's like stripes on a candy cane. So there
8 might only be three, or there might be four, or five, or six.
9 Just -- it's just based upon the manufacturer's choice.

10 So here, the number of grooves -- and then,
11 correspondingly, in between those grooves, like I said before,
12 is what's called a land. So the number of grooves, the number
13 of lands on this particular bullet was the same number of land
14 and grooves that is in the Taurus .22 caliber pistol.

15 Q And then you talked something about directionality
16 of those lands and grooves?

17 A Um-hum.

18 Q What's that?

19 A So remember how I said when the bullet goes down the
20 barrel, it has as spin imparted upon it; that's to give it
21 that stability? It's kind of like when a football player
22 throws a football through the air. You know, if I throw it,
23 it's going to go like -- go, you know, off-center; but if a
24 football player puts a spin on it, it gives it stability as it
25 flies through the air.

1 So the manufacturer, as it's imparting those grooves
2 in there, it can twist to the right or twist to the left.
3 It's just based on manufacturer's preference. It doesn't
4 matter if it's twisting to the -- you know, clockwise or
5 counter-clockwise; that's just based on a manufacturer's
6 preference. So here in this particular case, that twist that
7 was imparted upon that bullet also was the same as the twist
8 that was exhibited in the barrel of the Taurus .22 pistol.

9 Q So those are all similar?

10 A Yes, that's correct.

11 Q But you did not make an identification?

12 A I did not.

13 Q But you also said that you could not eliminate it?

14 A Yes, that's correct.

15 Q All right. So, being as you were asked questions
16 about false positives, you didn't make a positive on that
17 particular item?

18 A I did not.

19 Q All right. And you talked about layers of
20 precaution, and explain that to me again. You have --

21 A Um-hum.

22 Q What are those layers of precaution that you have in
23 your lab?

24 A So anytime that an analyst does a microscopic
25 comparison, like I said, an individual qualified analyst, a

1 second analyst, does have to verify that. So if I have my
2 microscope and I'm doing a comparison, I have a test fired
3 bullet on one side, I have an evidence bullet on the other
4 side, I do my comparison, take my photographs, make my
5 decision as to whether or not it's an identification, an
6 elimination, or an inconclusive, then I have to take that
7 evidence and give it to another qualified analyst.

8 They do that same microscopic examination. They do
9 it independently and they make their own independent
10 conclusion, and that is to help prevent what was alluded to
11 earlier with false positives or false negatives. It's a
12 second independent examination and independent conclusion.

13 Q That's Layer 1?

14 A That's Layer 1, yes.

15 Q What's the next layer?

16 A So the next layer is what I alluded to earlier,
17 which is a technical review. So a technical review is where
18 your entire case file is reviewed by a second qualified
19 analyst. They are looking at everything that the first
20 analyst did, making sure that you follow all the technical
21 procedures correctly from our technical manual, that you're
22 following the accreditation procedures, and that you
23 basically, you know, did your case following our correct
24 procedures.

25 They look and see what was requested in the case,

1 make sure you've performed all of the examinations, and they
2 give you suggestions; if you've missed anything, look out for
3 anything, and just double-check what you did.

4 Q That's Layer number 2?

5 A That's correct.

6 Q You had a Layer number 3?

7 A Yeah, Layer number 3 is an administrative review.

8 So administrative review is, after all that's done, that
9 review is for accuracy for things such as typos, numbers,
10 letters, page numbers, things like that. However, that's also
11 done by someone who is a qualified analyst, so it's kind of
12 impossible to do that review without looking at everything
13 technically as well.

14 Q And then, the lab's accredited?

15 A Yes, that's correct.

16 Q That's another layer of protection, correct?

17 A Yes.

18 MR. PESCI: Thank you.

19 THE COURT: Any recross?

20 MR. SANFT: Yes, Your Honor.

21 RECROSS-EXAMINATION

22 BY MR. SANFT:

23 Q So I want to make sure we're clear. Could you take
24 a look at the -- when we talk about riffling, we're talking
25 about the inside of the barrel, right?

1 A Yes.

2 Q Is riffling specific or unique to a manufacturer?

3 Meaning, would a Glock manufacturer have certain riffling

4 that's different from, say, in this case, the Taurus versus a

5 Smith and Wesson, for instance?

6 A So a Glock does have different riffling than a

7 Taurus, yes.

8 Q Okay. So you could take a look inside, say, just --

9 if you were tested and shown the inside of a barrel, you could

10 say, oh, that's a Glock riffling versus this is a Smith and

11 Wesson or some other manufacturer?

12 A So --

13 Q Is that what you're telling us?

14 A I usually don't observe that from looking down the

15 barrel. I would do a test fire, and then I would observe it

16 on the test fired bullet.

17 Q Okay. So -- okay, let's make it that way then.

18 Just by looking at a bullet that's been fired in the water,

19 and you pick it up, that's a pristine sample --

20 A Um-hum.

21 Q -- you would be able to determine the manufacturer

22 of the riffling of the barrel that it came shooting out of?

23 A So it's a little bit of a long answer.

24 Q Yeah.

25 A So what we actually do is we look under the

1 microscope, look at those number of lands and grooves that I
2 talked about, the direction of twist, and we also measure the
3 width of those land impressions and those groove impressions
4 on that bullet.

5 Then we can put that information into a database,
6 it's an FBI database, and that can give you a list of possible
7 manufacturers that make firearms with those similar riffling
8 characteristics so that we can provide a list of possible
9 manufacturers that make guns that could have fired that
10 bullet.

11 Q So there's not a unique fingerprint for this
12 riffling; it could be a number of different manufacturers that
13 produce that same sort of riffling distance or whatever the
14 case is, right?

15 A Right. So that's why I said it's the general
16 riffling characteristics, and I said those are class
17 characteristics, not those individual characteristics. So if
18 this was six land and grooves, and a right-handed twist, and
19 you know, whatever the width measurement was, there may be
20 multiple manufacturers that make guns that are six land and
21 grooves, right-handed twist, with those similar measurements,
22 yes.

23 Q Okay. So going back again to Defense Exhibit B1,
24 Item number 23 that we're showing the jury at this particular
25 point, fair to say that it could have come from a whole group

1 of potential manufacturers out there; you just don't know?

2 A Ones that share those same general riffling
3 characteristics, yes.

4 Q Right.

5 A Um-hum.

6 MR. SANFT: Okay, no further questions.

7 THE COURT: Thank you. Any recross?

8 MR. RUGGEROLI: Just one point of clarification for
9 that same exhibit number and that item number.

10 THE COURT: Are you talking about B1?

11 MR. RUGGEROLI: Yes.

12 THE COURT: Okay.

13 RECCROSS-EXAMINATION

14 BY MR. RUGGEROLI:

15 Q This Item 23, your testimony is that's fired from a
16 .22 caliber?

17 A It's consistent with .22 caliber, yes.

18 Q All right. Silly question, but a .45 caliber
19 firearm could not fire a .22 caliber cartridge case?

20 A Not without an adapter or some other type of
21 modification, no.

22 MR. RUGGEROLI: Thank you. Nothing further.

23 THE COURT: Okay. Anything else for this witness?

24 MR. PESCI: No, thank you.

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

1 testimony here today. You may step down --

2 THE WITNESS: Thank you.

3 THE COURT: -- and you are excused. Are -- did we
4 get through?

5 MR. PESCI: We do have another one.

6 THE COURT: Sure, call your next witness.

7 MR. PESCI: State calls Adrian Sandoval.

8 THE MARSHAL: If you'll please remain standing,
9 raise your right hand, and face the Clerk.

10 HECTOR ADRIAN SANDOVAL, STATE'S WITNESS, SWORN

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

13 THE WITNESS: Yes. First name is Hector,
14 H-e-c-t-o-r. Last name is Sandoval, S-a-n-d-o-v-a-l.

15 DIRECT EXAMINATION

16 BY MR. PESCI:

17 Q Sir, do you go by something other than Hector?

18 A Adrian.

19 Q Okay. Sir, I want to direct your attention back to
20 August of 2017. Where did you work by then?

21 A I was assigned to the Major Violators Section in --
22 for LVMPD.

23 Q And then, did you work with dogs?

24 A Yes, I did. I was a K-9 handler and a trainer.

25 Q Okay, and tell us a little bit about that, what you

1 would do with a K-9.

2 A For about nine years, I was actually a narcotics
3 detective dog handler. About three years before the end of my
4 career, I became the trainer for the Narcotics Section. And
5 the last two years, we began a pilot program where we put a
6 firearms detection dog into service, so I put together the
7 protocol and the training program for that.

8 Q And do you know a dog named Trigger?

9 A Yes.

10 Q Did you work with Trigger back in August of 2017?

11 A Yes.

12 Q What type of dog was Trigger?

13 A Trigger was a Springador, and she was a firearms
14 detection dog.

15 Q Okay, so what does that mean? How could she be a
16 firearms detection dog?

17 A Well, what Trigger was trained to find is the odor
18 of the burnt nitrates that occurs when a firearm is
19 discharged, so nitroglycerin, nitrocellulose, the burnt
20 residue left over after a firearm is fired.

21 Q Were you a part of Trigger's training?

22 A Yes.

23 Q Okay. And were you asked by other detectives to
24 respond to a 919 Bagpipe address back on August the 15th of
25 2017?

1 A Yes, I was.

2 Q Showing you State's Exhibit 215, do you have a
3 recollection of responding out to this scene?

4 A Yes.

5 Q Okay. Now, this was pursuant to a search warrant?

6 A Correct.

7 Q Okay. Now, was it the policy or was it -- I should
8 say -- not policy. Often, would SWAT be the first individuals
9 from the Metropolitan Police Department to go inside of a
10 house?

11 A That's correct.

12 Q And did SWAT go in first?

13 A Yes.

14 Q And then, after SWAT, did you go in with Trigger?

15 A Typically, I would -- I would walk through to make
16 sure there was nothing -- without Trigger, make sure there was
17 nothing out in the open that she could get into and injure
18 herself, and at that point, then I would bring Trigger in.

19 Q Okay. And then, looking at State's 216, did you
20 make your way towards the front door of this particular
21 residence?

22 A Yes.

23 Q And State's 217, did you walk around and go
24 throughout the residence with Trigger?

25 A Yes.

1 Q Specifically, 218, did you eventually make your way
2 to some bedrooms?

3 A Correct. If I remember correctly, I actually
4 started my deployment of Trigger at the second floor of the
5 house.

6 Q Okay. And then, looking at State's 219, were there
7 two different bedrooms that you entered?

8 A That's correct.

9 Q And State's 220. Did you see anything that Trigger
10 -- or did Trigger alert on anything?

11 A Yes, sir. There's -- in this picture, on the
12 mattress, there's a pink backpack, a smaller one.

13 Q 221, is that a better picture?

14 A Yes.

15 Q Okay. And how does Trigger alert or point that out
16 to you?

17 A Trigger puts her nose to source. So basically,
18 she'll -- you know, she'll sniff the area. Once she locates
19 the odor she was looking for, she'll place her nose as close
20 to the item as she can get it to, and she stands stationary.

21 Q And showing you State's 22, is that a close-up of
22 the backpack that Trigger alerted on?

23 A That appears to be to me, yes.

24 Q Okay, and then did you open that backpack?

25 A No.

1 Q All right. Did you then inform other officers and
2 detectives, hey, Trigger alerted on this particular backpack?

3 A Yes. I normally would complete my sniff of the
4 house, and when I leave, I'd contacted whatever detective was
5 in charge. In this particular one, I believe I spoke to
6 Sergeant Luzignot (phonetic) from Homicide to let him know the
7 results of my deployment.

8 Q Okay, and then those detectives then continue on
9 with their search?

10 A That's correct.

11 MR. PESCI: Pass the witness.

12 THE COURT: Cross-examination?

13 MR. SANFT: Yes, Your Honor, one question.

14 CROSS-EXAMINATION

15 BY MR. SANFT:

16 Q Trigger's not here today to be subject to his
17 cross-examination?

18 A Unfortunately, no.

19 Q All right. Just real quick, with regard to how
20 Trigger is able to detect --

21 A Yes.

22 Q -- you said something about the nitrates. How does
23 that work?

24 A So typically, most modern gun powders have one or
25 two components, nitrocellulose and nitroglycerin, whether

1 they're single-base or double-base. Rifle rounds as opposed
2 to handgun rounds -- handgun rounds would be double-base;
3 usually, rifle rounds are single-base. So obviously, when a
4 firearm's discharged, the powder burns, and what's left over
5 is the burnt odor of those two components. So that's what she
6 was trained to find as opposed to let's say the metal that's
7 in the gun itself.

8 Q I see. So if a gun has never been fired, for
9 instance, would that be something that would hamper her
10 ability to locate it?

11 A It would depend on the time frame. Typically, every
12 gun is fired at the manufacturer. Usually, if you buy a gun,
13 you get some -- there's usually some spent casings with the
14 gun that shows that the gun was fired and it worked. I have
15 had guns that were only fired by the manufacturer, maybe I
16 obtained them two or three months later, that she could still
17 alert on, depending on how well they were hidden. If we're
18 talking in terms of years, probably not.

19 MR. SANFT: Okay. I have no further questions.
20 Thank you.

21 MR. RUGGEROLI: No questions, Your Honor. Thank
22 you.

23 THE COURT: Okay, anything else?

24 MR. PESCI: No.

25 THE COURT: Okay. Thank you very much --

1 THE WITNESS: Thank you.

2 THE COURT: -- for your testimony here today. You
3 may step down, and you are excused from your subpoena.

4 THE WITNESS: Thank you.

5 THE COURT: You got through them all?

6 MR. PESCI: We don't have any more for today, Your
7 Honor.

8 THE COURT: Okay.

9 MR. PESCI: Sorry.

10 THE COURT: Can I just have the attorneys approach
11 for a moment?

12 (Bench conference)

13 THE COURT: I think it's just Detective Dosch. So
14 you just have the detective left?

15 MR. PESCI: Yes.

16 THE COURT: So he's going to be a long witness?

17 MR. PESCI: He'll be long, not outrageously long
18 because we're not introducing statements, so that's not going
19 to be coming in.

20 THE COURT: Okay. Well, if we start tomorrow at
21 10:30, we'll probably have the detective done by lunch. So
22 you guys have to, if you're going to call witnesses, be ready
23 to call witnesses.

24 MR. RUGGEROLI: And it's just --

25 THE COURT: Okay?

1 MR. RUGGEROLI: -- one, Detective Dosch?

2 MR. PESCI: That's who we're planning on, yeah,

3 Detective Dosch.

4 THE COURT: And that's your final witness?

5 MR. PESCI: Unless something changes over the night,

6 but we expect that Dosch will be able to do the things that we

7 want to go over.

8 THE COURT: Okay.

9 MR. SANFT: Can we advise our clients tonight about

10 the right to testify so they can think about it over the night

11 before tomorrow?

12 THE COURT: Sure, I'm happy to do that.

13 MR. SANFT: Thank you.

14 MR. PESCI: What time are we starting tomorrow?

15 THE COURT: 10:30.

16 MR. PESCI: Okay.

17 THE COURT: Okay, thank you.

18 (End of bench conference)

19 THE COURT: Okay. At this time, ladies and

20 gentlemen, we are going to conclude for the evening. We're

21 going to start tomorrow morning at 10:30.

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

23 converse amongst yourselves or with anyone else on any subject

24 connected with this trial, or read, watch, or listen to any

25 report of or commentary on the trial, or any person connected

1 with this trial, by any medium of information, including,
2 without limitation, newspapers, television, the internet, or
3 radio, or form or express any opinion on any subject connected
4 with this trial until the case is finally submitted to you.

5 Have a good night. We'll see you tomorrow morning.

6 THE MARSHAL: Thank you. All rise for the exiting
7 jury, please. Jurors.

8 (Outside the presence of the jurors at 4:55 p.m.)

9 THE COURT: Okay. The record will reflect that the
10 hearing is taking place outside the presence of the jury
11 panel.

12 Mr. Robertson and Mr. Wheeler -- Mr. Robertson and
13 Mr. Wheeler, your attorneys have asked me to advise you of
14 your right to testify. I will advise you, you can have
15 overnight, but you don't have to tell me whether you're going
16 to testify or not until tomorrow.

17 So, Mr. Robertson and Mr. Wheeler, you understand,
18 under the Constitution of the United States and the
19 Constitution of the State of Nevada, you cannot be compelled
20 to testify in this case? Do you understand that, Mr.
21 Robertson?

22 DEFENDANT ROBERTSON: Yes, I understand.

23 THE COURT: Mr. Wheeler?

24 DEFENDANT WHEELER: Yes, ma'am, I do.

25 THE COURT: Okay. You may at your own request give

1 up this right and take the witness stand and testify. If you
2 do, you'll be subject to cross-examination by the deputy
3 district attorney, and anything that you may say, be it on
4 direct or cross-examination, will be the subject of fair
5 comment when the deputy district attorney speaks to the jury
6 in his final argument. Do you understand that, Mr. Robertson?

7 DEFENDANT ROBERTSON: Yes, I do.

8 THE COURT: And Mr. Wheeler?

9 DEFENDANT WHEELER: Yes, ma'am, I do.

10 THE COURT: Okay. If you choose not to testify, I
11 will not permit the deputy district attorney to make any
12 comments to the jury because you have chosen not to testify.
13 Do you understand that, Mr. Robertson?

14 DEFENDANT ROBERTSON: Yes.

15 THE COURT: And Mr. Wheeler?

16 DEFENDANT WHEELER: Yes, I do.

17 THE COURT: Okay. And if you elect not to testify,
18 I will instruct the jury, but only if your attorneys
19 specifically request, as follows: "The law does not compel a
20 defendant in a criminal case to take the stand and testify,
21 and no presumption may be raised and no inference of any kind
22 may be drawn from the failure of a defendant to testify." Do
23 you understand these rights so far, Mr. Robertson?

24 DEFENDANT ROBERTSON: Yes, I understand.

25 THE COURT: And Mr. Wheeler?

1 DEFENDANT WHEELER: Yes, ma'am, I do.

2 THE COURT: Okay. And you are further advised that
3 if you have a felony conviction, and more than ten years has
4 not elapsed from the date that you've been convicted or
5 discharged from prison, parole, or probation, whichever is
6 later, and the defense has not sought to preclude that from
7 coming before the jury, and you elect to take the stand and
8 testify, the deputy district attorney, in the presence of the
9 jury, will be permitted to ask you the following: have you
10 been convicted of a felony, what was the felony, when did it
11 happen; however, no details may be gone into. Do you
12 understand that, Mr. Robertson?

13 DEFENDANT ROBERTSON: Yes.

14 THE COURT: And Mr. Wheeler?

15 DEFENDANT WHEELER: Yes.

16 THE COURT: Okay. And if you have any questions
17 about that, Mr. Ruggeroli can answer those, or I'm happy to
18 answer any of your questions.

19 Okay. Now, the decision as to whether you should
20 testify or not obviously should be made after consultation and
21 discussion with your lawyers, but whatever your lawyers say
22 and any advice you get, I just want to make sure you
23 understand, Mr. Robertson, that it is your decision and your
24 decision alone as to whether to testify. Do you understand
25 that?

1 DEFENDANT ROBERTSON: Yes, I understand.

2 THE COURT: And Mr. Wheeler, you understand that?

3 DEFENDANT WHEELER: Yes, I do.

4 THE COURT: Okay. And tomorrow, it's my

5 understanding the State has one more witness, and then you

6 will have heard all of the evidence that's coming in against

7 you. And so, at that time, Mr. Robertson and Mr. Wheeler, I

8 will ask you if you're going to testify or not.

9 DEFENDANT ROBERTSON: Okay.

10 THE COURT: And if you have any questions, I'm happy

11 to ask them either today or tomorrow -- answer them.

12 DEFENDANT ROBERTSON: Okay.

13 DEFENDANT WHEELER: Yes, ma'am.

14 THE COURT: Do you have any questions?

15 DEFENDANT ROBERTSON: No, I don't.

16 THE COURT: Mr. Wheeler?

17 DEFENDANT WHEELER: No, I don't.

18 THE COURT: Okay.

19 MR. SANFT: And Your Honor, just for the record as

20 well with regard to my client's criminal history, what the

21 State could comment on if --

22 THE COURT: Okay.

23 MR. SANFT: -- he was thinking about testifying, in

24 speaking with the State, I don't recall there being a criminal

25 history.

1 DEFENDANT ROBERTSON: No, I've never been arrested.
2 MR. SANFT: Okay.
3 MR. PESCI: I don't recall any --
4 THE COURT: Okay.
5 MR. PESCI: -- prior felony convictions.
6 THE COURT: For either?
7 MR. PESCI: I don't believe for either.
8 THE COURT: Okay, so --
9 MR. PESCI: But I'll double-check and --
10 MR. SANFT: Yeah.
11 THE COURT: The district attorney has indicated that
12 you would not be subject to cross-examination about any prior
13 felonies. You understand that, Mr. Robertson?
14 DEFENDANT ROBERTSON: Yes, yes, I understand.
15 THE COURT: And Mr. Wheeler?
16 DEFENDANT WHEELER: Yes, ma'am, I do.
17 THE COURT: Okay, thank you very much.
18 MR. PESCI: So, Judge, as far as scheduling
19 tomorrow, if I've understood correctly, we will come in at
20 10:30, we'll rest, and then defense is instructed if they have
21 any witnesses, to have them prepared for tomorrow, correct?
22 THE COURT: Yes.
23 MR. PESCI: And in the spirit of what we've been
24 doing so far, will the defense tell us who they're going to
25 call? Because we've been telling them who we're calling.

1 THE COURT: Absolutely. I like --

2 MR. RUGGEROLI: Judge, I've subpoenaed one witness.

3 That did not include Mr. Mason, the jogger. So, Marcell

4 Solomon is the one that I intend to call, and we would have

5 him here. I'm not sure if you'd like him here before lunch or

6 after, but --

7 THE COURT: How long do you think the detective will

8 last?

9 MR. PESCI: I don't know if he'll go all the way

10 until noon.

11 THE COURT: Okay.

12 MR. PESCI: So I would say probably have someone

13 here by 11:00.

14 THE COURT: By 11:00?

15 MR. PESCI: Just to be safe.

16 THE COURT: Okay.

17 MR. PESCI: What do you think? How long?

18 THE COURT: Well, it doesn't hurt --

19 MR. BROOKS: Yeah, sure.

20 THE COURT: -- if you have a witness here early,

21 right?

22 MR. PESCI: Yeah, right. And then, as far as

23 instructions, Your Honor, I've never received from the defense

24 any proposed instructions. So, you know, what we've sent over

25 the weekend was kind of a rudimentary beginning of it.

1 THE COURT: Okay.

2 MR. PESCI: And I still don't know. Like, I asked
3 them if they wanted voluntary; if they want self-defense.
4 I've been given nothing and I know nothing. All I've been --
5 all I've given is what we have put forth, which is first and
6 second.

7 THE COURT: Okay.

8 MR. SANFT: That's strategic, Your Honor.

9 THE COURT: What is strategic?

10 MR. PESCI: Not giving it. Sorry.

11 THE COURT: Not -- oh, okay. A little joke? Okay.

12 MR. SANFT: It's a little joke. I thought it was a
13 big joke, but it was a little joke. I will speak with Mr.
14 Ruggeroli. Because there's -- we have potentially separate
15 conflicting interests with regard to what my client should
16 have versus what Mr. Ruggeroli, I'll speak with Mr. Ruggeroli,
17 and whatever we propose, we'll give to Giancarlo.

18 MR. PESCI: So, Judge, we would ask though if we'd
19 get that tomorrow because we need to settle them tomorrow.

20 THE COURT: Sure. We'll need to settle instructions
21 tomorrow, so if you have any instructions you want to propose,
22 you need to --

23 MR. SANFT: We'll do it tonight.

24 THE COURT: -- submit them tomorrow.

25 MR. SANFT: Yeah. Okay.

1 THE COURT: Okay?

2 MR. SANFT: Yes, Your Honor.

3 THE COURT: All right.

4 MR. PESCI: We'll have some tweaks on ours, because

5 I was just going through it. There's not -- all of our

6 experts are females, so I need to switch that expert

7 instruction to "female."

8 THE COURT: Okay. All right, thank you.

9 MR. PESCI: Thank you.

10 MR. SANFT: Thank you, Your Honor.

11 (Court recessed at 5:01 P.M., until Wednesday,

12 February 19, 2020, at 10:43 A.M.)

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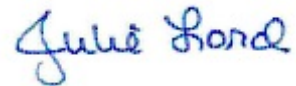
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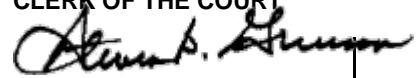
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ATTEST: I hereby certify that I have truly and correctly
transcribed the audio/visual proceedings in the above-entitled
case to the best of my ability.



JULIE LORD, COURT TRANSCRIBER
VERBATIM DIGITAL REPORTING, LLC



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	CASE NO. C-17-328587-2
)	CASE NO. C-17-328587-3
Plaintiff,)	
)	DEPT. NO. XII
v.)	
)	
RAEKWON SETREY ROBERTSON,)	
a/k/a RAEKWON ROBERTSON,)	
and DAVONTAE AMARRI WHEELER,)	
)	
Defendants.)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, FEBRUARY 19, 2020

RECORDER'S TRANSCRIPT OF PROCEEDINGS:
JURY TRIAL - DAY 6

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, WEDNESDAY, FEBRUARY 19, 2020

2 (Case called at 10:43 A.M.)

3 (Outside the presence of the jurors)

4 THE MARSHAL: Please come to order. Court is now in
5 session.

6 THE COURT: Okay. The record will reflect that the
7 hearing is taking place outside the presence of the panel.
8 Mr. Ruggeroli?

9 MR. RUGGEROLI: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. RUGGEROLI: Judge, my client informed me this
12 morning that he has a migraine. I've provided him with a
13 glass of water, but I know that the jail has protocols that
14 they have to follow, and --

15 THE COURT: Okay, yeah. The transport officers -- I
16 was told for him to tell the transport officers, and that the
17 transport officers would call for relief.

18 MR. RUGGEROLI: Thank you, Judge.

19 THE COURT: I mean, I don't know -- I just talked to
20 Sandy Molina. She said that's what your policy was, so I
21 assume the transport officers will follow their policy. Okay?

22 MR. RUGGEROLI: Very good.

23 THE COURT: Anything else?

24 MR. SANFT: No, Your Honor.

25 THE COURT: Did you -- did everybody hear me?

1 THE CORRECTIONS OFFICER: Yeah, we weren't aware.
2 He didn't mention anything to us.

3 THE COURT: Okay. I mean, you got to tell the
4 transport officers.

5 THE CORRECTIONS OFFICER: And he's been sitting down
6 there, like, all morning.

7 DEFENDANT WHEELER: Yeah, I basically thought it
8 would be more of an issue, I would bring up to my lawyer and
9 to you more than the COs, because at the same time, I felt
10 like they seem -- it seemed like, in county, if you -- if it's
11 not a real medical reason, then they ain't going to call the
12 medical nurse, which I felt like we in trial, so that's a
13 medical reason. But I felt like it would just be blown over
14 if I just --

15 THE COURT: Okay.

16 DEFENDANT WHEELER: -- if I just --

17 THE COURT: Well, the only thing I can do is tell
18 the transport officers to do what they're supposed to do.

19 DEFENDANT WHEELER: All right.

20 THE COURT: Okay?

21 MR. RUGGEROLI: Thank you, Judge.

22 THE COURT: Anything else? We can bring in the jury
23 panel. I think we have them all here now.

24 THE MARSHAL: All rise for the entering jury,
25 please.

1 (Within the presence of the jurors at 10:47 a.m.)

2 THE COURT: Does the State stipulate to the presence

3 of the panel?

4 MR. PESCI: Yes, Your Honor.

5 THE COURT: Mr. Sanft?

6 MR. SANFT: Yes, Your Honor, we do.

7 THE COURT: Mr. Ruggeroli?

8 MR. RUGGEROLI: Yes, Your Honor.

9 THE COURT: Thank you. State may call their next

10 witness.

11 MR. BROOKS: Your Honor, the State calls Detective

12 Mitch Dosch.

13 THE MARSHAL: And Detective, if you'll please remain

14 standing, raise your right hand, and face the Clerk.

15 DETECTIVE MITCHELL DOSCH, STATE'S WITNESS, SWORN

16 THE CLERK: You may be seated.

17 THE WITNESS: Thank you.

18 THE CLERK: Please state and spell your first and

19 last name for the record.

20 THE WITNESS: My name is Mitchell, M-i-t-c-h-e-l-l.

21 Dosch, D-o-s-c-h.

22 DIRECT EXAMINATION

23 BY MR. BROOKS:

24 Q Detective, how are you employed?

25 A As a detective with the Las Vegas Metropolitan

1 Police Department, currently assigned to the Homicide Section.

2 Q And how long have you been so employed?

3 A With Las Vegas Metro, this March, it will be 17
4 years.

5 Q And how long with Homicide?

6 A Seven years.

7 Q So tell us a little bit about how Homicide's set up;
8 how the detectives on Homicide are set up as opposed to some
9 of the other units in Metro.

10 A The Homicide Section of the Las Vegas Metropolitan
11 Police Department is -- has 24 detectives broken into four
12 different squads, and then there's a sergeant for each one of
13 those squads. Within the squad of six, there are teams of
14 partnerships, and in which case, we work off of -- probably
15 the best way to describe it would be to use some baseball
16 parlance, where we work off of a rotation; basically, a
17 batting order.

18 So if Squad A is the next squad up for the next
19 homicide, then the team designated within that squad will take
20 that next murder or homicide investigation. After that team
21 takes the investigation, it would then drop to the bottom of
22 the order, and then the second team from Squad B, and that
23 repeats the process.

24 Q So were you working on August 8th, August 9th of
25 2017?

1 A Yes, I was.

2 Q And who was your partner at that time?

3 A Ryan Jaeger, J-a-e-g-e-r.

4 Q So at that point in time, were you guys up, for lack
5 of a better word?

6 A Yes. Following the baseball parlance, that we were
7 the up team, then there would be a team that's on-deck, and
8 in-the-hole.

9 Q Do you recall an incident that brings us here to
10 court today?

11 A I do.

12 Q Tell me a little bit about how you initially got
13 involved in this incident.

14 A It was the early morning hours of the 9th of August,
15 2017. We received a call-out from our then-supervisor asking
16 us to respond to 5536 West Dewey Drive to investigate the
17 shooting death of Gabriel Valenzuela.

18 Q And this shooting death, at that point in time, did
19 it have a Las Vegas Metropolitan Police Department event
20 number associated with it?

21 A It did.

22 Q And was that Event Number 170809-0029?

23 A Yes.

24 Q So did Metro used to have a good way of doing event
25 numbers that's since changed?

1 A I would agree with that statement.

2 Q Okay, tell me what the old way of doing -- when this
3 event number was generated.

4 A If you think of the anatomy of the event number that
5 we're dealing with in this case, these first six digits
6 represent the date. 17 would be the year, 08 would be the
7 month, August, and the 9th would be the day of that particular
8 month.

9 The last four digits constitute the amount of
10 activity generated in that 24-hour period of time by Las Vegas
11 Metropolitan Police Department officers, whether it's a
12 proactive or reactive response. But every time the officers
13 are doing something, that is the -- that generates a number:
14 1, 2, 3, 4, and then it concludes at whatever number for the
15 day.

16 Q So if it's the first call after midnight into 911,
17 what would the number be, the last four digits?

18 A 0029 in this particular case.

19 Q I -- okay. I was saying, like, in theory, if it was
20 the very first event that day, would it be 0001?

21 A Yes, it would.

22 Q So this event, you said it was 0029?

23 A Correct.

24 Q Approximately what time does the 911 call come out?

25 A 00:12 hours, which is 12 minutes after midnight.

1 Q Now, was there also initially another event number
2 for a brief period of time that had some association with this
3 case?

4 A There was.

5 Q And what was that, and why did that happen?

6 A So that call was 0027, and it occurred approximately
7 one minute before the 0029 event. So, in essence, there's a
8 0028 being conducted somewhere in Las Vegas Metropolitan
9 Police Department's jurisdiction.

10 Q Did you subsequently merge those two events?

11 A Yes, we became very aware of that first event.

12 Q Now, that first event that caused the 27 call, what
13 was that?

14 A That was a call to Las Vegas Metro regarding a
15 suspicious circumstance in that same general area.

16 Q And for lack of, I guess, a better term, do you
17 subsequently learn that was the jogger's wife?

18 A Yes.

19 Q And when you kind of were putting things together,
20 does everything get merged under that 29 event number?

21 A Yes. Typically, what we would do is we would revert
22 back to the first event; in this case, 0027. But because the
23 officers at the scene had generated so much activity on the
24 0029 event, it just made sense to keep that the event number
25 that we will use for purposes of this investigation.

1 MR. BROOKS: Your Honor, permission to publish
2 exhibits that have previously been admitted freely?

3 THE COURT: Sure, you may.

4 MR. BROOKS: Thank you.

5 BY MR. BROOKS:

6 Q So you mentioned this West Dewey address?

7 A Correct.

8 Q Do you eventually arrive there?

9 A I did.

10 Q I want to show you State's Exhibit 10. Could you
11 set the scene for us as what it looked like when you initially
12 arrived?

13 A So, 5536 West Dewey Drive is a two-story,
14 single-family residence. This particular photo is showing the
15 residence. And normally, what you have -- in this case, this
16 is an east-west street, Dewey is, so you'll have opposing
17 residences. You'll have houses on the south side that
18 typically face north, and conversely, you have houses on the
19 north side that face south.

20 In this particular setting, this residence is
21 rotated 90 degrees, so it's west-facing on -- I don't know
22 what the traffic engineers would refer to that little area
23 that's just off the street, but in my mind, it's similar to
24 like a cul-de-sac, a very small cul-de-sac.

25 Q Let me show you Exhibit 3 and see if that kind of

1 helps you. And if you want to use the mouse to kind of
2 explain where you were, where everyone was, and the dynamics.
3 Do you recognize that?

4 A I do.

5 Q So --

6 A This -- oh, go ahead.

7 Q Go ahead.

8 A No, no, I'm done.

9 Q Just give us the general set up with the mouth.
10 Where are you; where is the perimeter?

11 A So this is an aerial photo of that same address.
12 This photo is not -- I repeat -- is not taken by the Las Vegas
13 Metropolitan Police Department. This photo is almost looking
14 practically 90 degrees downward. But this, Dewey, is that
15 east-west street. This is Lindell that runs north to south.
16 The officers had blocked off the east end of Dewey to a
17 designated area west that was -- would not be depicted in this
18 photograph, to give us, the investigators, an opportunity to
19 investigate our crime scene.

20 Q Show us the cul-de-sac area that you were kind of
21 using as your term.

22 A If I could draw everyone's attention to centrally
23 located in the photograph, there almost looks like a rectangle
24 of what is a dark texture. It's actually asphalt. That
25 little area, in my mind, is a mini cul-de-sac. But again, I

1 don't know what the traffic engineers would refer to that, but
2 in my mind, that's what it is similar to.

3 Q And I want to direct your attention now to these two
4 houses that compose that little cul-de-sac area. Were there
5 -- because of the way it was oriented, were there any
6 streetlights along this area?

7 A There was ambient lighting in the area; it is a
8 residential neighborhood. But the streetlights in that
9 particular neighborhood appeared to line the south side of
10 Dewey, and then there were other lights that were on Lindell,
11 again, which is the north-south street just to the east of our
12 target residence.

13 Q So I want to go -- show you Exhibit 12. Was it this
14 bright, or do the CSAs do something to kind of illuminate the
15 area for you?

16 A Well, part of the CSAs or the crime scene analysts
17 is that they document the scene right after they get there as
18 they found it, if you will. And then, as they -- as they do
19 their work, then they'll start to document evidence. This
20 particular photograph is just looking from west, to east, to
21 the front of the residence.

22 Q So when the CSAs are there, are you and Detective
23 Jaeger there?

24 A Yes.

25 Q And what are you guys concerned with? What are you

1 guys looking for and trying to document?

2 A Well, if I could back up and give a little context.
3 As part of our response as homicide detectives is that we
4 don't just roll out with two detectives. We will typically
5 take upwards of six, maybe even more, depending on that
6 particular investigation. And then, what occurs when we get
7 there is we receive what is known as a briefing from the
8 patrol officers. They have in fact conducted a preliminary
9 investigation, which that will be imparted to us.

10 Now, we as the Homicide Section working in
11 conjunction with the Crime Scene Section, we will now divide
12 our labor. What I mean by that is that the detectives are
13 assigned different roles in these investigations.

14 Detective Jaeger, his responsibility this particular
15 night was to document the crime scene in accordance with the
16 crime scene analysts. My job is to go out and interview
17 percipient witnesses, as well as locate sources of video
18 surveillance. And you can see that, as these investigations
19 go, there is a lot of work to be done that can't just be
20 handled by two detectives.

21 Q Take me to that ramp there, RV ramp, I guess, for
22 lack of a better word. Did you guys direct your attention to
23 that area, and, I guess, why?

24 A Yes. I'm going to take the mouse over to that.
25 It's actually on the south side of the house. It's a -- for

1 lack of a better term, it's like an RV parking area, and that
2 was our crime scene.

3 Q Showing you State's Exhibit 17. Is that what you're
4 referring to?

5 A Yes.

6 Q So take me through, when you're looking at this as a
7 homicide detective, what parts are you looking at? What's
8 this telling you?

9 A Well, it's telling me as the investigator is that
10 that's where the victim came to rest and was removed from,
11 where he was then being transported to the hospital. But
12 then, of course, all of those personal effects have to be
13 viewed and examined to see what role, if any, they have in
14 this investigation.

15 Q Was there any blood trail coming to this area or
16 going away, or was it this static pooling we see?

17 A No. The blood that you see depicted kind of on the
18 lefthand side of that photo as well as on the right hand photo
19 was the source of the blood, and it didn't leave that
20 particular area, meaning it didn't extend beyond the RV
21 parking.

22 Q The pieces of paper in the photo, what were they?

23 A Mail.

24 Q Was there something unique about some of the pieces
25 of mail?

1 A Yes. Some of the mail appeared to have been torn in
2 half.

3 Q I want to show you State's Exhibit 23. Do you
4 recognize that vehicle?

5 A I do.

6 Q Did you subsequently learn whose vehicle it was?

7 A Yes.

8 Q And whose was it?

9 A It belonged to the victim.

10 Q And this area back here, is it bright? Is it light?
11 Is -- did you -- did the CSAs darken this? Take us how this
12 scene actually appeared.

13 A So this is a photograph of the rear of the vehicle,
14 so the person taking the photograph is going from west to
15 east. The area to the left and to the right of the vehicle is
16 running along that south edge of the residence, 5536 West
17 Dewey Drive, and going in toward the direction of their
18 backyard.

19 Q Remember how I asked you about the pooling versus
20 blood trail?

21 A Correct.

22 Q Was this vehicle processed for prints that night?

23 A It was not.

24 Q And was there a discussion and a determination made
25 as to why not?

1 A Yes.

2 Q And why?

3 A The evidence at the scene suggested that the vehicle
4 did not have a role as it relates to the shooting. Where the
5 shooting approximately takes place, where you had earlier seen
6 the blood and the mail, is that is approximately 20 feet west
7 of the vehicle.

8 Q Were there items inside the vehicle?

9 A Yes.

10 Q Who did they belong to?

11 A Mr. Valenzuela.

12 Q So how long do you guys stay at the scene; do you
13 know?

14 A Many, many hours.

15 Q Only at night? Or is it --

16 A No, this -- this investigation extended into the
17 early morning hours. I believe, in some of these photographs,
18 you may even begin to depict that the sun is coming up.

19 Q And showing you State's Exhibit 59, is that the
20 morning?

21 A Yes.

22 Q So why do you guys stay until the morning, and what
23 are you doing?

24 A There's a lot to do. There are many witnesses to
25 interview. Again, I had talked about looking for sources of

1 video surveillance. These are residential areas. We also
2 conduct what is known as a canvass. That canvass is twofold.
3 That is to locate potential witnesses who may have gone back
4 into their residence, because that's their home, they don't
5 want to be out in front of their houses; and also, sources of
6 video surveillance, as well as utilizing the sun to help us
7 locate evidence.

8 Q So let's go to that, and then I want to back up to
9 when it was night. Showing you Exhibit 63. When the sun
10 comes up, do you guys locate something else?

11 A Yes.

12 Q What was it?

13 A I believe it was a bullet or bullet fragment.

14 Q And could it have been both?

15 A Yes.

16 Q This particular one, do you know what this cone
17 would have represented?

18 A That is on the north side of the vehicle, which is
19 -- and then, in between that landscape areas on the south side
20 of the residence, I believe it was a bullet fragment, but I
21 could be mistaken on that.

22 Q And do you remember if it was a large or small
23 caliber?

24 A No, I believe that was -- I take that back. I
25 believe that was the bullet. Small or large caliber?

1 Q Yeah. Do you remember, or no?

2 A No.

3 Q Okay. At night, when you guys were still there at

4 night, do you guys recover some spent cartridges?

5 A Yes.

6 Q Do you recall what kind?

7 A Yes, there were two different calibers of cartridge

8 cases.

9 Q And what were they?

10 A .45 and .22.

11 Q And how many of each? Do you remember?

12 A One .22, and three .45 caliber cartridge cases.

13 Q So, showing you Exhibit 39, do you see those yellow

14 markers?

15 A Yes.

16 Q What are they?

17 A That is -- when I was talking about the photographs,

18 how the crime scene analysts come in and they take overall

19 photographs of the scene before any evidence markers go down,

20 well, in subsequent photos they will take are going to

21 document the evidence. Those are evidence markers.

22 Q And I'm going to show you two kind of photos at the

23 same time. So if we look at those evidence markers --

24 MR. BROOKS: And I'm going to put, Your Honor, two

25 at the same time, Exhibit 46 and Exhibit 50, up on the screen.

1 BY MR. BROOKS:

2 Q Is there a difference between those two spent
3 cartridges, and what is it?

4 A Yes. The one on the left marked number 1 is a .22
5 caliber cartridge case. The one on the right, which is marked
6 2, that's a .45 caliber cartridge case.

7 Q And 3 and 4, would they have also been .45s?

8 A Yes.

9 Q In this photograph, where would the victim have
10 been?

11 A If I can draw everyone's attention up to that small
12 wall, just forward of that small wall, you'll see some
13 clothing, as well as some apparent blood right along that
14 planter wall.

15 Q During the course of the night, do you get some
16 information from a patrol officer who's on the perimeter?

17 A Yes.

18 Q What was the information concerning?

19 A That there was video surveillance potentially of the
20 suspects involved in this murder at a nearby convenience
21 store.

22 Q Well, at this point in time, would you have had a
23 car or something that you were interested in?

24 A Yes.

25 Q Why?

1 A Part of the interview with the jogger was that he
2 was able to provide a license plate.

3 Q And did you guys take that down?

4 A Indeed.

5 Q At this point in time though, do you have any idea,
6 you know, whether that's valid or what kind of car that is?

7 A It's just part of the preliminary investigation;
8 part of our role to investigate.

9 Q And then, subsequently, you talked about this
10 surveillance video at a -- is it a convenience store?

11 A Yes.

12 Q What was the tip you got there, and who do you send
13 to the -- to the convenience store?

14 A That there was several individuals that had
15 congregated at the convenience store, and it was somewhat
16 concerning to the Clerk. And the Clerk just wanted to pass
17 the information along, which prompted us to take a further
18 look into what it was that he was observing. And we were able
19 to then recover that video, I believe sometime after 6:00
20 A.M., by having one of the other detectives -- I believe in
21 this case, it was Detective Cody. She was able to respond out
22 to the convenience store and get a copy of the video
23 surveillance once management, who provides access to the video
24 surveillance system, was made available to us.

25 Q So did you go to Short Line Express, or just

1 Detective Cody that night?

2 A I did not go to the convenience store.

3 Q Okay.

4 MR. BROOKS: Your Honor, may I approach?

5 THE COURT: You may.

6 BY MR. BROOKS:

7 Q Detective, showing you State's Proposed Exhibit 2
8 and 7, do you recognize the addresses and the overhead aerial
9 maps depicted in these two photos?

10 A I do.

11 Q And do they fairly and accurately depict the
12 convenience store in one, and the convenience store's distance
13 from the crime scene in the other?

14 A Approximately, yes.

15 MR. BROOKS: Your Honor, State moves for admission
16 of Exhibits 2 and 7.

17 THE COURT: Any objection?

18 MR. SANFT: No objection, Your Honor.

19 MR. RUGGEROLI: No objection.

20 THE COURT: They're admitted.

21 (State's Exhibits 2 and 7 are admitted)

22 BY MR. BROOKS:

23 Q So, Detective, before we get to that convenience
24 store, take us -- you mentioned getting a briefing from patrol
25 officers initially. Is there something else that happens at

1 the very beginning when people are deployed to the scene?

2 A I'm not following you. Sorry.

3 Q So is the victim usually still present at the scene
4 in this case?

5 A Oh. In this particular case, the victim had been
6 transported to the hospital, which is where he died.

7 Q Did first responders show up at his house?

8 A Which is the scene of the shooting. Yes, they did.

9 Q Yes. And what is their main goal when they show up?

10 A First responders, at least in the case of the Las
11 Vegas Metropolitan Police Department, is patrol officers are
12 given specific assignments about -- because they will be the
13 first individuals to arrive at scenes. Our officers are
14 tasked with doing numerous things, and the first thing that
15 they're -- is to preserve life. What I mean by that is they
16 need to be positioned that if the threat is still at that
17 particular scene, then they can take action, or if the threat
18 is gone, then at which time, they're concerned about the
19 welfare of the individuals at that particular scene.

20 So in some cases, the officers may engage in
21 life-saving efforts as a supplement to the responding EMS
22 personnel, typically the fire department and ambulance
23 personnel, who will then come, assess the situation, and if
24 the individual that was injured needs to be transported,
25 meaning not deceased at the scene, then transport that person

1 to a nearby hospital.

2 Q Is their concern scene preservation or life-saving
3 treatment?

4 A I'm sorry?

5 Q So is your concern as a detective -- a homicide
6 detective more the investigative side?

7 A Well, I would -- mine is actually both.

8 Q Okay.

9 A If the opportunity to save a life is there, let's
10 save a life, and then the scene preservation comes secondary.

11 Q Were there some photos of the blood and shoe prints
12 taken in this case?

13 A Yes.

14 Q And I want to show you State's Exhibit 90. Did you
15 subsequently look at the photographs taken of the
16 firefighters' and EMS' shoes?

17 A Yes.

18 Q And showing you 83, was there a reason why further
19 footprint analysis wasn't done in this case?

20 A Yes. In this particular case, when I made reference
21 to that we want to examine the items that were out there, and
22 I made mention of the mail, well, in this particular case, as
23 you can see in the previous photograph, there is apparent
24 footwear in blood on that mail.

25 Now, as a detective, I have to view that and I have

1 to determine, is this related to the suspects, or is this
2 related to first responders who are occupying a very small
3 part of, you know, an area; many, many people trying to save a
4 life? And in this particular case, the apparent footwear in
5 blood that was visible at the scene was related -- or was
6 limited to first responders and family members that had come
7 out of the residence following the gunshots.

8 Q When you say family members, I want to show you
9 Exhibit 87. Do you recognize that?

10 A Yes.

11 Q And whose was that?

12 A It was one of the occupants of the residence; a
13 family member.

14 Q And so, after doing -- even looking at that, you
15 didn't do further testing on footprint analysis on --

16 A No, because we were able to identify whose feet were
17 causing the impressions, meaning it was not going to be
18 connected to the suspects. It was limited to the individuals
19 that responded immediately after the shooting.

20 Q So, Short Line. Is video surveillance recovered?

21 A It was.

22 Q Did you and Detective Cody have a chance to look at
23 it?

24 A We did.

25 Q Did you have a chance to look at it with the

1 knowledge of the license plate that the jogger gave you?

2 A Yes.

3 Q I want to show you just a still shot, so Exhibit
4 325. Fair to say that's kind of blurry and not as clear as
5 you saw it that day?

6 A Yeah, this particular photograph is a little on the
7 pixelated side.

8 Q And so, when you and Detective Cody were looking at
9 this, what -- did you guys make a determination?

10 A Well, we'd been given a vehicle description, and the
11 vehicle that is in the middle -- because, as you can tell,
12 there's three white vehicles there. One's an SUV, one's a
13 larger four-door sedan, and then I believe the -- kind of on
14 the lefthand side is a smaller four-door sedan. The vehicle
15 that we were interested in was the vehicle in the middle.

16 Q What was the vehicle description? Do you recall
17 what you were told?

18 A It originally was a white Crown Victoria. Now, that
19 is manufactured by Ford. Ford had another company connected
20 to Ford called Mercury. I don't know if they still exist, but
21 Mercury put out an identical vehicle, which a lot of the auto
22 makers do that. In this particular case, it's a Crown -- or,
23 excuse me, it's a Grand Marquis. But from appearances, unless
24 you were looking at the emblems, the Crown Victoria and the
25 Grand Marquis look almost identical.

1 Q And do you see where I'm taking this mouse right
2 here?

3 A Yes.

4 Q Did you guys watch it, back it up, pause it
5 repeatedly, and were you able to come to a determination as to
6 any of the numbers?

7 A Yes. So, on that front license plate, which I know
8 it's a little blurry, but one of the corners of the front
9 license plate was sort of bent upward, and that allowed the
10 surveillance camera, which was exterior mounted to the
11 building, to pick up what appeared to be the first three
12 digits of the license plate. In this case, they were 473.

13 Q Did that match what the jogger had told you?

14 A It did.

15 Q So if Detective Cody gets this video surveillance
16 around 6:00 A.M., and you're watching it, what's the next step
17 that you do in the investigation? Where do you go next?

18 A Well, staying with the video, is that this is the
19 exterior footage, but there's going to be some interior
20 footage, and there's going to be individuals of note to us
21 that we need to review; how they're depicted, how they're
22 dressed, where they go, what they do. And then we will
23 utilize the stills or snapshots from that video as we move
24 forward with our investigation.

25 Q And turning your attention around 9:10 A.M., did you

1 -- that day, so August 9th, did you go somewhere, and where
2 did you go here in Las Vegas?

3 A Specifically?

4 Q Were you part of an autopsy?

5 A Yes.

6 Q Explain what that means.

7 A From the scene, we -- my partner and I, Detective
8 Jaeger, were able to then go to the Clark County Coroner's
9 Office and attend the autopsy of the victim.

10 Q Do you recall who the doctor was that did it?

11 A It was Lary Simms.

12 Q Have you -- had -- are you aware that he
13 subsequently retired?

14 A Yes.

15 Q Were you there when the bullets or spent cartridges
16 were taken out of the body?

17 A Yes.

18 Q Do you recall how many gunshot wounds there were?

19 A Approximately, but understanding that one bullet
20 caused multiple injuries. So not necessarily counting holes,
21 and then identifying every hole to a -- to a cart -- or,
22 excuse me, a bullet projectile. Keeping in mind that
23 sometimes bullets travel through bodies and strike multiple
24 limbs.

25 Q Okay, then we'll just stay with the ones that are

1 easily definable. Was there a head shot?

2 A Yes.

3 Q Was there also one in the stomach or abdomen?

4 A Yes.

5 Q Do you recall where the one in the abdomen entered,
6 and where was it pulled out during the autopsy?

7 A It was left of center, if you think of the midline,
8 so to the left of it. And it was sort of a downward angle,
9 and I believe it ended up coming to rest near the flank or the
10 back.

11 Q Do you recall any organs that Dr. Simms mentioned it
12 hitting?

13 A Yes, I believe spleen and the left kidney.

14 Q So after the autopsy -- and where do you go? Do you
15 recall?

16 A Well, we -- continuing with the investigation, we
17 will meet with the other detectives, see what they've
18 discovered, see what they've learned, relay information
19 related to the autopsy, and then our first order of business
20 is the location of that vehicle and who's connected to it.

21 Q Are you able to track down who recently bought the
22 vehicle?

23 A Eventually, yes.

24 Q And are you able to get an address for that person?

25 A Are we referring to the registered owner, or?

1 Q No, who had bought the vehicle on the day it was
2 being used there on August 9th, 2017.

3 A Yes, we were eventually able to identify the new
4 owner.

5 Q And did you get an address at some point?

6 A Yes.

7 Q Do you go to that house?

8 A We did.

9 Q What was that address?

10 A 919 Bagpipe Court in North Las Vegas.

11 Q So, by the time you've finally identified who owns
12 the vehicle and identified an address, what time is it, and
13 how long have you guys been on?

14 A Well, we worked this investigation into the late
15 afternoon hours, and it was decided at that point by Detective
16 Jaeger and myself that we needed to break because we needed
17 sleep. In fact, all of the team needed sleep. So at which
18 point, we ended the investigation for the day with the intent
19 to go back to our respective homes and get some much-needed
20 rest, and then we would reconvene and continue with the
21 investigation.

22 Q Does someone do a little extra work?

23 A Yes, Detective Cody, an outstanding detective. On
24 the way home, she elected to spot check the 919 Bagpipe Court
25 residence again, and found the vehicle in front of the

1 residence.

2 Q Does she alert the other detectives?

3 A Yes, she --

4 Q So --

5 A Oh.

6 Q Go ahead, yep.

7 A Yeah, she immediately brought that to the attention
8 of all of us as we were migrating to our homes.

9 Q And what happens when she alerts you guys?

10 A Well, then obviously we're not getting sleep, and we
11 are now focused on dealing with that particular vehicle.

12 Q So your job when everyone gets alerted, what do you
13 start doing in relation to this 919 Bagpipe address and the
14 car?

15 A Well, Detective Jaeger and I returned to the office,
16 where we were doing a work-up. And as the detectives -- the
17 other remaining detectives were going to where Detective Cody
18 was, because our vehicle did in fact at one point go mobile,
19 and then they were following it, preparing to stop the
20 vehicle.

21 Q Eventually, is that vehicle stopped?

22 A It is.

23 Q Like a Dotty's parking lot area?

24 A I believe it was a dispensary at the -- sort of the
25 intersection of Martin Luther King Boulevard and Cheyenne

1 Avenue.

2 Q Okay. Showing you Exhibit 150. Is -- I guess, is
3 that what you're referring to when you talk about dispensary?

4 A Yes.

5 Q Is this the vehicle?

6 A It is.

7 Q What are the first three numbers?

8 A 473.

9 Q And does the rest of it match what the jogger told
10 you?

11 A It does.

12 Q So what happens with the vehicle at this point?

13 A Well, the vehicle -- the officers are going to
14 remove the occupants of the vehicle and take them in custody,
15 and then the vehicle's going to be preserved. What I mean by
16 that, it's going to be sealed, and then brought to the LVMPD
17 Crime Lab for further processing and searching.

18 Q The -- is the driver taken in -- into custody?

19 A He was.

20 Q Do you have an opportunity to come into contact with
21 him at some point?

22 A I did.

23 Q Showing you Exhibit 144, who was the driver and
24 owner of that vehicle at that point?

25 A His name is DeMario Lofton, hyphen, Robinson.

1 Q And the 919 Bagpipe address, what's happening at
2 that address or for that address?

3 A Based on Detective Cody's observation of seeing
4 individuals come from the house and occupy the vehicle, and
5 then drive the vehicle away, then obviously the nexus to that
6 particular residence is made, in which case, it causes my
7 partner, Detective Jaeger, to obtain what is known as a search
8 warrant, not only for the vehicle, but for that particular
9 residence.

10 Q Is a search warrant executed on that 919 Bagpipe
11 address?

12 A It was.

13 Q Was a firearm and some bullets found?

14 A Yes.

15 MR. BROOKS: Your Honor, permission to approach?

16 THE COURT: You may.

17 BY MR. BROOKS:

18 Q Detective, showing you State's Proposed Exhibit 228
19 and 229, do you recognize what's depicted therein?

20 A Yes.

21 Q And what is it?

22 A It's a firearm, a handgun magazine, and cartridges,
23 which are unspent bullets. And then, the other photo are
24 up-close -- or, excuse me, up-close photo of the cartridges to
25 identify their headstamp.

1 Q And based on the ruler in this photo, are you aware
2 of who took that?

3 A Yes, it's a crime scene analyst.

4 MR. BROOKS: And Your Honor, State moves for
5 admission of these particular exhibits.

6 MR. SANFT: No -- no objection, Your Honor

7 THE COURT: Any objection?

8 MR. RUGGEROLI: No objection.

9 THE COURT: Thank you. They're admitted.

10 (State's Exhibits 228 and 229 are admitted)

11 BY MR. BROOKS:

12 Q Does that Interarms firearm -- Interarms Star .45
13 end up becoming relevant later on in your investigation?

14 A Yes.

15 Q So when the officers get to 919 Bagpipe, is a second
16 suspect who you end up coming in contact with taken into
17 custody?

18 A Yes.

19 Q Do you recognize State's Exhibit 130?

20 A I do.

21 Q Who is it?

22 A That is DeShawn Lofton -- or, excuse me, DeShawn
23 Robinson.

24 Q So DeMario goes by Lofton-Robinson?

25 A Yes. His -- DeMario's last name is hyphenated,

1 Lofton-Robinson. DeShawn, his younger brother, is just
2 Robinson.

3 Q When making contact with DeMario and DeShawn, do you
4 take their cell phones into custody?

5 A Yes.

6 Q So, showing you Exhibit 338, do you recognize the
7 handwriting there?

8 A I do.

9 Q Do you recognize your initials and P number?

10 A Yes, and my signature.

11 Q And what kind of phone was this?

12 A That is going to be a ZTE, I believe it was like a
13 Max Pro cell phone. In this case, it's showing ZTE 981.

14 Q And if I show you 342, do you recognize the person
15 depicted therein?

16 A Yes.

17 Q Who is that? And by "person," I guess I mean the
18 one in the background.

19 A Yes. In the background, the male of the male/female
20 combination, that is DeMario.

21 Q And do you learn that the phone number for DeMario's
22 cell phone is 702-619-7426?

23 A I do.

24 Q Eventually, do you execute a search warrant and have
25 a forensic examination done on the phone and the contents

1 therein?

2 A I do.

3 Q Showing you a blurry Exhibit 348, do you recognize
4 that?

5 A I do.

6 Q Showing you Exhibit 333, is that the cell phone that
7 was inside there?

8 A Yes. So the previous photo was the evidence
9 packaging bearing my signature on it. That is the actual
10 device that was within the evidence packaging, which was a
11 Samsung Galaxy cell phone.

12 Q And is this the phone you got from DeShawn Robinson?

13 A Yes.

14 Q And was the phone number 702-338-4380?

15 A It was.

16 Q Your first kind of evidentiary lead here, do you get
17 a break as far as a message in this phone?

18 A Which phone are we referring to?

19 Q DeShawn's.

20 A Yes.

21 Q And do you recall just kind of generally what the
22 substance was?

23 A Yes. It was a Facebook Messenger thread, meaning a
24 conversation.

25 Q And were there people referenced that were of

1 interest to you?

2 A Yes.

3 Q And what were the names?

4 A Because it's Facebook Messenger, it's -- it's
5 communication between two Facebook accounts, or in some cases,
6 more; but in this particular case, it was just two Facebook
7 accounts. The person communicating with DeShawn's phone was a
8 Facebook vanity name of Ray Logan, L-o-g-a-n.

9 Q And --

10 THE COURT: Okay, Mr. Brooks, we just need to take a
11 short recess.

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

20 We'll be in recess for probably at least five
21 minutes. Officer Hawkes will let you know when we're ready.
22 Thank you.

23 THE MARSHAL: Thank you. All rise for the exiting
24 jury, please. Jurors.

25 (Outside the presence of the jurors at 11:25 a.m.)

1 THE MARSHAL: Thank you, everyone. Please be
2 seated.

3 THE COURT: Okay. The record will reflect the
4 hearing is taking place outside the presence of the panel.
5 Medical came over to, I guess, give him his aspirin.

6 MR. SANFT: Thank you, Your Honor.

7 (Pause in the proceedings at 11:25 a.m., until 11:31 a.m.)

8 (Outside the presence of the jurors)

9 THE COURT: Okay, everybody good? You're good, Mr.
10 Wheeler?

11 DEFENDANT WHEELER: Yeah, thank you.

12 THE COURT: Okay.

13 MR. PESCI: Judge, I apologize. If we could just
14 make a record to -- to just what has been done. Is that okay?

15 THE COURT: Okay.

16 MR. PESCI: To some extent.

17 THE COURT: Right. Apparently, someone called
18 medical. Medical came over. And then I left. So I assume
19 that Mr. Wheeler went back and he was attended to. And you're
20 okay now?

21 DEFENDANT WHEELER: Yes.

22 MR. PESCI: Okay.

23 THE COURT: And they gave you something for your
24 headache?

25 DEFENDANT WHEELER: Yes, ma'am.

1 THE COURT: Okay.

2 MR. PESCI: Thank you, Your Honor.

3 (Pause in the proceedings)

4 THE MARSHAL: All rise for the entering jury,
5 please.

6 (Within the presence of the jurors at 11:33 a.m.)

7 THE MARSHAL: Thank you, everyone. Please be
8 seated.

9 THE COURT: Does the State stipulate to the presence
10 of the panel?

11 MR. PESCI: Yes, Your Honor.

12 THE COURT: Mr. Sanft?

13 MR. SANFT: Yes, Your Honor.

14 THE COURT: Mr. Ruggeroli?

15 MR. RUGGEROLI: Yes, Your Honor.

16 THE COURT: Thank you.

17 You may proceed with your direct.

18 BY MR. BROOKS:

19 Q Detective, I'm not totally sure where I was, so I'm
20 going to back up to DeMario Lofton-Robinson's phone. When you
21 get it and give it to Detective Flink, do you ask her to
22 search for a couple things in particular?

23 A Yes.

24 Q And what were those things that you asked her to
25 search for?

1 A It's a particular number, as well as some key words.
2 Q And what was the key words?
3 A Sace, S-a-c-e.
4 Q And what was the particular number at that point in
5 time?
6 A At that time, it was limited to just a handful of
7 digits, but it was 702, and then 934. As far as the other
8 four, I did not know.
9 Q And were those two separate possible things, or were
10 they the same thing?
11 A That was to be determined.
12 Q Okay. So at that point in time, you wanted Sace,
13 and you wanted some number with 934?
14 A Yes. It was unclear if those two things were
15 connected or if they were involving different individuals
16 potentially.
17 Q Now, turning to that line of questioning when we
18 were talking about DeShawn Robinson's phone and the Facebook
19 Messenger thread in it.
20 A Yes.
21 Q Who was it from?
22 A It was from another Facebook account by the vanity
23 name of Ray Logan.
24 Q At that point in time, was it a private account, or
25 were you able to look at the person's Facebook account?

1 A After that information was made available to us,
2 specifically me from Detective Flink, I was then able to go to
3 Facebook and conduct just an online check of Ray Logan and had
4 some access to the particular account, meaning that with
5 Facebook, if you're familiar with it, you can essentially set
6 up your privacy to significant, to open, and somewhere in
7 between, and it had allowed me to navigate through the
8 account, looking at photos.

9 Q Showing you Exhibit 360. Do you recognize the name
10 Ray Logan there?

11 A I do.

12 Q And is there like a profile picture associated with
13 it?

14 A There is.

15 Q When searching Facebook, were you able to locate
16 that photo?

17 A Yes.

18 Q Showing you Exhibit 149. Do you recognize that?

19 A I do.

20 Q Is Ray Logan in that photo?

21 A The person using the account under the vanity name
22 Ray Logan, yes.

23 Q And which one is that person using that name?

24 A It would be the individual that's on the right hand
25 side, wearing a white shirt, looks like a goatee, and then a

1 white hat.

2 Q Subsequently, are you able to learn that person's
3 legal name?

4 A Yes.

5 Q What is it?

6 A Raekwon Robertson.

7 Q And do you see that person here in court today?

8 A I do.

9 Q Could you point to him and identify an article of
10 clothing they're wearing?

11 A Unfortunately, he's behind the monitor, but he's
12 wearing a blue button-up shirt.

13 MR. BROOKS: Your Honor, let the record reflect
14 identification of Defendant Raekwon Robertson.

15 THE COURT: So reflected.

16 BY MR. BROOKS:

17 Q So the Facebook thread, or the text thread in
18 DeShawn's phone from Ray to DeShawn, was there a particular
19 text that had evidentiary value to you, and was there any
20 names in it?

21 A Yes. This communication appeared to occur
22 approximately 12 hours before the shooting death of the
23 victim, so somewhere around 11:53 A.M. on the 8th of August
24 2017. And it -- there were two parts of it. It was -- one of
25 them was asking if DJ was interested in hitting a house, and

1 then the follow up correspondence almost was like a roll call.
2 And what I mean by that is it went through several individuals
3 by their monikers and talking about their potential
4 involvement in the aforementioned text, which was hitting a
5 house.

6 Q And when you say monikers, you don't necessarily
7 mean anything bad, you just -- do young people refer to it as
8 Facebook handles sometimes?

9 A Indeed.

10 Q Like a nickname?

11 A A nickname.

12 Q Okay. Showing you that text thread, Exhibit 336, do
13 you recognize what you were just referring to?

14 A I do.

15 Q Could you read me that second part that you were
16 just talking about?

17 A Starting under the Tuesday at 11:40, or?

18 Q Yes.

19 A Yes. The incoming would be, "Ask DJ if he trying
20 hit a house tonight," which is then followed by, "Me, you,
21 Sace, and him. Sace already said yeah."

22 Q At this point in time, had you identified who went
23 by the name Sace?

24 A Not yet. We were still working on it.

25 Q Is that one of the reasons why you asked Detective

1 Flink to look into --

2 A Yes, that was one of the particular words that we
3 were interested in seeing if there's anything connected to it.

4 Q Do you subsequently have the opportunity to learn
5 who Sace was?

6 A Yes.

7 Q Showing you State's Proposed Exhibit 326, do you
8 recognize this, and what is it?

9 A Yes. This is a photograph from a different Facebook
10 account under the vanity name of Young Sace Versace.

11 Q Do you recognize the person depicted in that
12 photograph?

13 A Yes. We would later identify the person depicted in
14 that photograph as a Davontae Wheeler.

15 MR. BROOKS: Your Honor, State moves for admission
16 of Exhibit 326.

17 MR. SANFT: No objection, Your Honor.

18 MR. RUGGEROLI: No objection.

19 THE COURT: It's admitted.

20 (State's Exhibit 326 is admitted)

21 BY MR. BROOKS:

22 Q So that person that you just referred to, Davontae
23 Wheeler, do you see him here in court today?

24 A I do.

25 Q Could you point to him and identify an article of

1 clothing he's wearing?

2 A Yes, he's at the end of the table. He's wearing a
3 gray blazer, and a black tie, blue shirt.

4 MR. BROOKS: Your Honor, let the record reflect
5 identification of Defendant Davontae Wheeler.

6 THE COURT: So reflected.

7 BY MR. BROOKS:

8 Q At this point in time, I want to fast-forward to
9 August 15th, 2017. Had you guys been investigating from
10 August 9th all the way to the 15th?

11 A Yes.

12 Q And do you subsequently -- or do you at some point
13 learn the residences for Raekwon Robertson and Davontae
14 Wheeler?

15 A I did.

16 Q When you do that, what do you do?

17 A We -- in my particular case is I made Application
18 for Search Warrants for those particular residences.

19 Q Let's start with Raekwon Robertson. Do you
20 recognize what's depicted here in 235?

21 A I do.

22 Q And what is it, and what do you do for this
23 residence?

24 A This is a building within a condominium complex
25 located at 6647 West Tropicana Avenue.

1 Q Do you send officers there?

2 A Yes. That -- there were officers that ultimately
3 went to that location, specifically Space or Unit number 104,
4 and were able to make contact with the occupants and freeze
5 the residence in anticipation of serving the search warrant.

6 Q Is Raekwon Robertson taken into custody that day?

7 A He was.

8 Q Did you have an opportunity to come into contact
9 with him at some point?

10 A I did.

11 Q Showing you Exhibit 140, do you recognize the person
12 depicted therein?

13 A I do.

14 Q Who is it?

15 A It's Raekwon Robertson.

16 Q At this point in time, do you have a search warrant,
17 and then an execution for a buccal swab?

18 A Yes.

19 Q For Raekwon Robertson?

20 A I did.

21 Q And what is that, and why do you do it?

22 A That is the manner in which we recover skin cells
23 via the application of what looks like an elongated Q-tip, and
24 then it just goes inside the mouth of the individual that you
25 are wanting those cells from, and this is for purposes of DNA

1 comparison at a later date. But it's just the application of
2 those swabs inside the mouth to scrape the inner lining of
3 some skin cells.

4 Q Do you do it, or does someone else do it?

5 A Typically, the crime scene analysts, as part of
6 their function, do it, but on cases -- in some cases, the
7 detectives in such cases will do it ourselves.

8 Q If a crime scene analyst had done a buccal swab on
9 Mr. Robertson, would she necessarily know a lot about the
10 investigation or even who he is?

11 A I'd be speculating. Most the time, it's -- it is
12 going to be the same -- we try to keep the same crime scene
13 analyst crew with us throughout the duration of these
14 investigations, but depending on the date, and the time, and
15 days off, we may not. So I can't answer that question
16 specifically.

17 Q And after doing the buccal swab on Mr. Robertson,
18 would she though put it in an envelope, seal it, put her P
19 number on it, so that you could then have that tested later
20 on?

21 A Absolutely, because that item -- that buccal swab
22 kit represents evidence.

23 Q At the same time that this is happening at this West
24 Tropicana address, is something else happening in the north
25 side of town?

1 A Yes. So the searching of these particular
2 residences, depending on how large they are, can take quite a
3 bit of time in light of manpower. So if you only have a
4 limited number of detectives and crime scene analysts, and
5 it's a large structure, then it's going to take a while.

6 Once this residence was prepared for searching, I
7 had requested detectives from my squad to go and start that
8 search. And then, throughout their search, they're going to
9 report back to Detective Jaeger and I, depending on the
10 circumstance. At the same time, there was another
11 apprehension that was taking place across town. And as it
12 related to that particular individual being arrested, also, we
13 had to then search the residence connected to that person as
14 well.

15 Q So who was that other person?

16 A That was Davontae Wheeler.

17 Q And do you remember the address?

18 A I do. It was 3300 Civic Center -- I believe it's
19 Drive, and it's in North Las Vegas.

20 Q And were there two apartments of interest with
21 regard to Mr. Wheeler?

22 A Yes. There -- the two apartments, they were
23 separate units, but they shared the same patio.

24 Q Showing you Exhibit 278. Is that what you're
25 referring to?

1 A Yes.

2 Q And I don't know if you remember, but do you
3 remember who lived in who? Was it someone related to Mr.
4 Wheeler? What was it?

5 A Yes. Based on some information that we had gathered
6 from representatives of the apartment complex, we learned that
7 the two groups were connected, and I believe there was some
8 kind of kinship that existed there as well.

9 Q And Mr. Wheeler's taken into custody that day?

10 A He was.

11 Q Do you have an opportunity to come in contact with
12 him at that point that day?

13 A I did.

14 Q Showing you State's Exhibit 135, do you recognize
15 the person depicted therein?

16 A I do.

17 Q Who is it?

18 A Davontae Wheeler.

19 Q Was a buccal swab taken pursuant to a search warrant
20 of Mr. Wheeler?

21 A It was.

22 Q And the search of their houses, was that pursuant to
23 a search warrant also?

24 A Indeed.

25 Q I want to show you a couple maps, Detective.

1 Showing you State's Proposed Exhibits 6 and 7 [sic], do you
2 recognize the addresses that are depicted and highlighted in
3 these maps?

4 A I do.

5 Q And do they fairly and accurately depict the
6 addresses of interest in this case?

7 A Yes, they do.

8 Q At least some of them?

9 A Yes.

10 MR. BROOKS: Your Honor, State moves for admission
11 of these particular exhibits.

12 MR. SANFT: No objection, Your Honor.

13 MR. RUGGEROLI: No objection.

14 THE COURT: They're admitted.

15 (State's Exhibits 6 and 8 are admitted)

16 BY MR. BROOKS:

17 Q So, Detective, if you could -- it's not the clearest
18 map. Could you explain to the jury kind of the layout and
19 where everything is?

20 A And I'll try to go in chronological order, utilizing
21 this mouse. So down here in the lower lefthand corner of the
22 map, which is a satellite imagery of Las Vegas Valley, 90
23 degrees to it, you'll see a pin which is dropped at 5536 West
24 Dewey Drive, which was our crime scene, which is where the
25 victim was shot and killed.

1 Then, just above that -- well, let me back up.
2 Going south, almost to the bottom of the page, you'll see
3 another pin that's dropped, and that's at 7325 South Jones
4 Boulevard, which was the convenience store where we had
5 recovered video surveillance from.

6 Going all the way to the top, almost centrally
7 located to the map is 919 Bagpipe Court; this is in North Las
8 Vegas, which is where the first search warrant was executed
9 and where the vehicle was located as well. Dropping back down
10 to 6647, which is going to be just above the Dewey, is Raekwon
11 Robertson's address. And then going finally back up again to
12 the top of the page at 3300 Civic Center Drive, in the
13 apartments was Davontae Wheeler's residence.

14 Q Since you ended there, let's pick up our question
15 there. And Detective, I messed up. For purposes of the
16 record, the two maps I just showed you were Exhibit 6, which
17 was what you were just putting on the overhead, and 8.*

18 THE COURT: Thank you, thank you.

19 BY MR. BROOKS:

20 Q So that 3300 Civic Center, did you get a chance to
21 look at all the evidence and compare it with the video
22 surveillance that had been of primary interest to you?

23 A Yes.

24 Q Were there any items from Mr. Wheeler's residence
25 that had evidentiary value?

1 A Yes.

2 Q What were they?

3 A Beginning with a firearm that was recovered from the
4 residence. There was also a holster that was recovered from
5 the residence, there was a pair of shoes that were recovered
6 from the residence, as well as a ball cap that was recovered
7 from the residence.

8 Q And that firearm, was it processed for prints?

9 A It was.

10 Q And did you submit to have those prints analyzed by
11 the Las Vegas Metropolitan Police Department Forensic
12 Laboratory?

13 A Yes.

14 Q The firearm and the magazine inside it?

15 A Yes.

16 Q And do the results help you in the investigation?

17 A They do.

18 Q And what was the result?

19 A There was a fingerprint on the magazine that came
20 back to Davontae Wheeler.

21 Q And you mentioned -- was it hats and shoes?

22 A Yes.

23 Q What -- I want to show you Exhibit 324. Do you
24 recognize that?

25 A I do.

1 Q Is it a blurry, albeit fair and accurate depiction
2 of the video surveillance that you watched?

3 A Yes, but now this is interior footage of the
4 convenience store.

5 Q And I want to turn your attention to the person with
6 his hand on his right hip, wearing a hat. Do you see him?

7 A I do.

8 Q Was that hat of interest to you?

9 A It was.

10 Q Do you locate something at this 3300 Civic Center
11 address in relation to that hat?

12 A We do.

13 Q What was it?

14 A It was a Chicago Blackhawks, which is a NHL hockey
15 team, ball cap. And then, if you notice on the bill, there is
16 actually a circular sticker. That sticker was still on the
17 hat when it was recovered.

18 Q Showing you Exhibit 309, do you recognize that?

19 A Yes.

20 Q Is that the hat?

21 A It is.

22 Q And then, I want to show you Exhibit 323. Do you
23 see the hat and the person wearing it in this photograph?

24 A I do. He has his back turned to the camera.

25 Q And you mentioned some shoes. What kind of shoes

1 were you looking for?

2 A I'm not going to be able to say this correctly, but
3 I believe they're a line of Nikes. And in this case, they
4 almost look like a maroon, but sometimes video surveillance
5 can alter the color. When it could be red, it looks maroon or
6 vice versa. They're Nike Huaraches. I know I'm not stating
7 that correctly.

8 Q Showing you Exhibit 311, do you recognize the shoes
9 depicted there?

10 A Yes. On the bottom of that photograph, not the
11 black pair, but the red or maroon pair, it appears to be the
12 same shoes.

13 Q So, showing you now at the same time Exhibits 323
14 and 324 side by side. After viewing the video surveillance
15 and having contact with these people, do you have an
16 identification as to who this is in that video?

17 A Yes.

18 Q And who is this person in the hat?

19 A Davontae Wheeler.

20 Q And what was the name that he went by?

21 A Sace.

22 Q So now, let's jump to the Bagpipe address, even
23 though it was earlier in time. And could you identify here in
24 Exhibit 323 the two people associated with that address?

25 A Yes. Beyond Davontae, you'll see three males. They

1 all appear to be wearing black tops. The one that's in line
2 with him, it's actually not black, it's just a darker color.
3 He's looking -- he appears to be looking back at Davontae.
4 That is DeMario. And to DeMario's right, in the direction of
5 the front counter, is his younger brother, DeShawn.

6 Q And could you use the mouse, just for purposes?
7 A I can. So, Davontae Wheeler, DeMario
8 Lofton-Robinson, DeShawn Robinson.

9 Q Now, turning your attention to this West Tropicana
10 address that's closer to Dewey, were any items of evidentiary
11 value found during the search of that residence?

12 A Yes.

13 Q What were they?
14 A A firearm, ammunition, and clothing.

15 Q And the firearm, what was it?
16 A It was a Taurus, I believe Model PT22, .22 caliber
17 semiautomatic pistol.

18 Q Was it the smaller gun?
19 A Yes, it's a .22 caliber handgun. It's smaller in
20 size and it shoots a smaller-caliber round.

21 Q Did you find any unspent cartridges there?
22 A Yes.

23 Q And what was the headstamp on them?
24 A Predominantly, the letter C.

25 Q Did that have interest to you?

1 A Yes.

2 Q Why?

3 A It appeared to match the .22 caliber cartridge case
4 found at 5536 West Dewey.

5 Q Did you find any clothing of interest at Mr.
6 Robertson's apartment?

7 A Mr. Robertson's apartment or condominium?

8 Q Residence.

9 A Yes, a pair of shoes and a black hooded sweatshirt.

10 Q Showing you Exhibit 266, are those the shoes?

11 A Yes.

12 Q Now, I only have the photos, so I can't show you any
13 shoes. But in Exhibit 323, do you see Raekwon Robertson in
14 that photograph?

15 A Yes, I'll utilize the mouse, but to the left of
16 DeMario is Raekwon Robertson.

17 Q Detective, are you familiar with the acronym GSR?

18 A I am.

19 Q What does it stand for?

20 A Gunshot residue.

21 Q And is it an investigative tool that sometimes you
22 would use?

23 A It can be utilized as a forensic technique.

24 Q In this particular case, I want to turn your
25 attention to DeShawn Robinson. When was the time of the

1 shooting in this case, and when was the first point in time
2 that you made contact with DeShawn Robinson?

3 A Well, based on the -- the two event numbers that we
4 had talked about earlier, I believe that the shooting took
5 place within those two calls, the 0027 and the 0029 events,
6 which is in that area of 11 to 12 minutes after midnight. The
7 interviews that will take place with the brothers don't occur
8 until around midnight that same day -- excuse me, August 9th,
9 2017, so almost a 24-hour period of time.

10 Q So, with DeShawn, how many -- how many hours would
11 you say? Almost 24 until you come into contact with -- or a
12 police person comes in contact with DeShawn?

13 A Approximately.

14 Q So, with gunshot residue, would it have been
15 possible, probable, or smart to gunshot residue test DeShawn?

16 MR. SANFT: Your Honor, I'm going to object to this
17 particular question. I don't believe that this detective is a
18 gunshot residue expert. I believe that should have come
19 through a crime scene analyst.

20 THE COURT: Okay. If you can lay a little --

21 MR. BROOKS: Sure.

22 THE COURT: -- more foundation.

23 BY MR. BROOKS:

24 Q Detective, does Las Vegas Metropolitan Police
25 Department have a policy with regard to gunshot residue, and

1 what is it?

2 A Yes, they do. The policy is in place to help
3 prevent contamination, because it is a forensic test that's
4 utilized and applied by the crime scene analysts on whoever
5 the detective or the officer is dealing with, but just like a
6 lot of tests, there has to be limitations, again, to ensure
7 that we don't get contamination. And the Las Vegas
8 Metropolitan Police Department, regarding gunshot residue
9 testing, has like five -- or I believe four or five different
10 items of criteria that prohibit the use of the test.

11 Q And what are those criteria, and how did it apply in
12 this case?

13 A Well, most notably, the first one is that if it's in
14 excess of four hours from the shooting episode, then the test
15 is not to be used. The second one is if a person is placed in
16 handcuffs, it is not to be used, because again, that area that
17 they're typically going to swab is the hands; and if you think
18 about how handcuffs work, they're in close proximity to the
19 hands. Another thing is if they are placed -- if that
20 individual is placed in the back of a -- or in a patrol
21 vehicle, a police car. And then, the other ones deal with I
22 believe suicide and some other matters.

23 Q Had Mr. DeShawn Robinson been cuffed?

24 A Yes.

25 Q Had Mr. DeShawn Robinson been in the back of a

1 police car?

2 A I don't know if it was marked or unmarked, but yes,
3 he would have traveled from his apprehension site to the LVMPD
4 headquarters via an LVMPD vehicle.

5 MR. RUGGEROLI: Judge, I'm going to object. I don't
6 believe he has personal knowledge. I think he's relying on
7 information gathered from other sources, and so he can't
8 testify.

9 THE COURT: If you want to lay a foundation.

10 BY MR. BROOKS:

11 Q Did DeShawn Robinson drive himself to the Metro
12 headquarters?

13 A No, sir.

14 Q Was he taken into custody at the 919 Bagpipe
15 address?

16 A DeShawn Robinson?

17 Q DeShawn.

18 A Yes.

19 Q And so how would he have gotten from 919 Bagpipe --
20 do you allow family or friends to drive a suspect?

21 A No, sir.

22 Q So would a Metro officer or detective have taken
23 him?

24 A Yes.

25 Q So rather -- regardless of whether he was in a

1 detective's unmarked car or a patrol officer's car, would the
2 policy apply?

3 A Indeed.

4 Q The last line of questioning -- back up. Sorry,
5 Detective. Davontae Wheeler's phone. Do you come in contact
6 or come into custody of Mr. Wheeler's phone?

7 A Yes.

8 Q Is it a -- what kind of brand?

9 A It's a Samsung Emerge, I believe, but it's spelled
10 E-m-e-r-g-e.

11 Q And is the phone number associated with that and the
12 Facebook handle that we referred to 702-801-0516?

13 A Yes, it was.

14 MR. BROOKS: Nothing further, Your Honor.

15 THE COURT: Mr. Sanft, cross-examination?

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

17 CROSS-EXAMINATION

18 BY MR. SANFT:

19 Q Detective, would it be fair to say that in terms of
20 what you do, investigating potential crime scenes, that you
21 have a lot of tools at your disposal, right?

22 A Yes.

23 Q Meaning -- and what I mean, tools, I'm talking that
24 when you're determining whodunit or who done what, not only is
25 it yourself that's involved; you've got other officers to lean

1 on for assistance in terms of other detectives, you've got
2 other officers that are at the scene, you've got crime scene
3 analysts, you've got people that work in a lab that can help
4 you make that determination as to what happened and who done
5 what, fair?

6 A Correct.

7 Q Okay. Now, in terms of your work on this particular
8 case, we talked a little bit about the details of it. I
9 represent Mr. Robertson that's over here to my left -- or to
10 my -- yeah, to my left.

11 With regard to Mr. Robertson, you had said at some
12 point there was a warrant that was executed on his home. And
13 just for the jury's edification once again, State's Exhibit
14 number 6, located at this particular address that's down here
15 at the bottom left, which is the 6647 West Tropicana Avenue;
16 is that fair?

17 A Correct.

18 Q Okay. How far away from this map, for instance, is
19 the address of 5536 West Dewey Drive compared to 6647 West
20 Tropicana?

21 A The distance between those two residences?

22 Q Yes.

23 A Without looking at the map, I couldn't give you -- I
24 would be approximating, and I don't think that's fair. But as
25 you can tell just by the placement of the two pins, it's

1 close.

2 Q Okay. And once again, the distance between the 7325
3 South Jones Boulevard, which is where the convenience store
4 is, it's quite a distance further from where the Dewey
5 residence is in comparison to where the Tropicana residence
6 is, fair?

7 A Quite a bit, sir.

8 Q Well, I'm just looking at the map again.

9 A Yeah, I would -- I would, you know, approximate that
10 just to be a handful of miles.

11 Q Sure, okay. Now, in addition to that, when you had
12 searched the 6647 West Tropicana Avenue, you talked to this
13 jury about what you found inside the home. How did you
14 determine that that was Mr. Robertson's residence?

15 A As a matter of clarification, I did not participate
16 in the search. I was the affiant for the search warrant, but
17 because of my duties related to interviews with Detective
18 Jaeger, we dispatched the other detectives and the crime scene
19 analysts on our behalf to go and fulfill those roles. Part of
20 their job, those detectives that are working on my -- our
21 behalf, rather --

22 MR. BROOKS: Judge, can we approach briefly?

23 THE COURT: Sure.

24 (Bench conference)

25 MR. BROOKS: I just -- I -- I just --

1 MR. PESCI: About how he got the address.
2 MR. BROOKS: I just --
3 MR. SANFT: Oh, no, I --
4 MR. BROOKS: I didn't want you to get surprised.
5 There's a misdemeanor citation with some booking information,
6 and then the CAT team and the pen --
7 MR. SANFT: I'm not getting into any of that.
8 MR. BROOKS: Oh, okay.
9 MR. PESCI: You just asked about how he got to the
10 address.
11 THE COURT: Okay, but you just asked him, how did
12 you know that was my client's address?
13 MR. SANFT: Well, I guess we can ask the question.
14 I opened the door, right? On the misdemeanor --
15 MR. PESCI: No, no, no, we're not trying to get that
16 in. We're just saying that's how he (indiscernible).
17 MR. SANFT: Okay. Yeah, then I'm not going to --
18 I'll move onto the next question.
19 THE COURT: Okay, well then just withdraw your
20 question.
21 MR. SANFT: Yeah.
22 (End of bench conference)
23 MR. SANFT: I'm going to withdraw that last
24 question.
25 BY MR. SANFT:

1 Q Let me ask you this. Showing you what's been marked
2 and admitted State's Exhibit number 235. As far as you
3 understand, this is the residence where the search occurred,
4 fair?

5 A Yes.

6 Q Okay. And as part of this team effort, the
7 residence was searched?

8 A Yes.

9 Q Are you aware that multiple people lived in that
10 residence?

11 A It was my understanding that the residence was
12 occupied by two individuals based on the interviews that were
13 performed with the occupants.

14 Q Okay, meaning Raekwon Robertson and his brother?

15 A It was my understanding that Raekwon lived there
16 with his mother, and that the other brother that was there
17 that particular day was visiting.

18 Q Okay. Now, I'm showing you what's been marked and
19 admitted as State's Exhibit number 239. Would it be accurate
20 to say that, based upon your training and experience with
21 regard to searches of homes, that one of the things you do is
22 verify who lives where?

23 A Absolutely.

24 Q Okay. So, for instance, personal information like
25 mail, pictures, that kind of thing will help you determine who

1 resides where?

2 A Potentially.

3 Q Okay. As far as you know, was any of that
4 information gathered during the course of this search?

5 A I am unaware if the detectives recovered any mail,
6 but they may have documented it with photographs.

7 Q Okay. Now, you talked a little bit about this
8 brother that you understood did not live there?

9 A It was my understanding that he was a visitor;
10 almost a daily visitor though.

11 Q Okay. And this particular individual, do you have
12 any photographs of this individual that we can show the jury?

13 A No.

14 Q And him being a brother with regards to my client,
15 that was your understanding; is that fair?

16 A Yes.

17 Q Okay. Now, in addition to that, we talked a little
18 bit about the sweatshirt or the hoodie that was found in this
19 particular residence. Let me make sure. I don't know if I
20 have it here. Do you recall that line of questioning by the
21 State? I apologize.

22 A Yes, I do. I believe it was two garments.

23 Q A sweatshirt and something else?

24 A I think there were almost two sweatshirts, so they
25 must have been very similar, that were recovered.

1 Q Okay. With regards to those sweatshirts, I guess
2 the reason why you picked them up is because the individuals
3 that were allegedly involved -- or that were involved in the
4 actual shooting were wearing potentially black hoodies, fair?

5 A It wasn't me, just a matter of note, that did pick
6 it up. It was the other detectives that would have picked up
7 those or requested the crime scene analyst to recover them.

8 Q Okay. And once again, the reason why that was of
9 interest to people on your team was because the individuals
10 that were present at the scene of the shooting were wearing
11 those black hoodies?

12 A And also, going back to the video surveillance, the
13 officers and the detectives, when they went out there, they
14 actually were equipped with the stills from the service
15 station -- or the convenience store, excuse me.

16 Q So with regards to that particular photograph,
17 showing you what's been marked and admitted State's Exhibit
18 number 323, the individual that you say is Raekwon Robertson
19 is the one that's standing right here, right?

20 A Indeed.

21 Q Just based upon this photograph alone, you couldn't
22 tell this jury with absolute certainty that that is Raekwon
23 Robertson, right? Just based upon this photograph.

24 A No.

25 Q So there's nothing that's necessarily distinguishing

1 in terms of characteristics, outside of the fact that you've
2 got a black male adult wearing what looks like to be a black
3 hoodie that resembles potentially this person that's sitting
4 over here to my left?

5 A You're correct.

6 Q Okay. Now, in terms of that hoodie that this
7 particular person is wearing, is there anything that tells you
8 that this is a unique hoodie, or anything at all that would
9 indicate to you that it's different from any other black
10 hoodie that's out there?

11 A Not that I can note.

12 Q Okay. Now, we talked a little about the shoes in
13 this case. State's Exhibit number 266. These are shoes that
14 I believe was from -- taken from this particular address that
15 we're talking about?

16 A That's correct, sir.

17 Q Okay. Do you know whose shoes those are?

18 A The shoes were recovered from the residence, but I
19 don't know if the detectives, when they actually selected
20 them, turned to somebody and said, whose shoes are these?

21 Q Okay. And did you ever at any point ever run any
22 type of DNA testing to determine whose shoes these were?

23 A No.

24 Q Okay. Now, were you aware that the firearm that was
25 recovered from that residence was tested for DNA?

1 A Yes.

2 Q And that the DNA did come back with a potential
3 match for this person over here to my left?

4 A I wouldn't call the identification potential.

5 Q Okay, let -- okay. So it came back with a match of
6 this person over here being one of the people that was in the
7 DNA profile, right?

8 A Yes.

9 Q But you're also aware that there is another profile
10 that was on that firearm as well?

11 A Yes.

12 Q Okay. And then, are you also aware that the clip
13 that was inside the firearm was actually not to a profile from
14 my client, but from some other person?

15 A Yes.

16 Q Okay. Going back again to the search of the home.
17 You had said something about GSR, right?

18 A Yes.

19 Q The gunshot residue testing. And you said that that
20 was, according to -- that you have a policy with Metro about
21 when testing was supposed to be done?

22 A The parameters that allow us to then use that
23 testing, yes.

24 Q You're talking about the rule, right? This is the
25 policy that's in place by Metro; by your employer?

1 A Yes.

2 Q Okay. Do you know the reason for the four-hour
3 rule?

4 A It's my understanding, based on the policy, is to
5 avoid contamination.

6 Q Okay. And when you say contamination, tell the jury
7 what you mean by contamination.

8 A I would -- I would believe that contamination is
9 going to be referred to maybe as a false positive, or -- or
10 given the fact there's been such a duration of time, that it's
11 conceivable that the person may have washed their hands or
12 their -- or maybe taken a shower, in which case, you could --
13 the longer that goes, the likelihood that that's probably
14 going to happen -- because people are going to bathe, they're
15 going to clean, they're going to change their appearance, and
16 that evidence -- that forensic evidence may not be existent
17 anymore. It may have been there at one point.

18 So I think it's important to set a standard that,
19 beyond that, the likelihood is that won't be there, or -- or
20 in the case that if they come into contact with other
21 surfaces, or the handcuffs, or something like that, they would
22 get a false positive, which wouldn't be appropriate either.

23 Q Let me ask you this though. Once again, you're not
24 an expert in the realm of gunshot residue. You're talking
25 specifically about the policy behind why there's a limit of

1 four hours and not something else, right?

2 A Yes, because that policy governs my work.

3 Q Okay. But once again, with gunshot residue, just
4 explain to the jury a little bit. This is when you discharge
5 a firearm, there are things that come out of that discharge
6 that could cling onto things like skin, clothes, that kind of
7 stuff, or it's particles that get ejected with the bullet when
8 it comes out of a gun, right?

9 A Yes.

10 Q And that would help you make a determination whether
11 a person actually fired a firearm within a certain period of
12 time? In this case, you're saying four hours?

13 A Not necessarily fired. You can get a positive hit
14 on it is if the person who is not discharging the firearm is
15 actually standing next to another person that's discharging a
16 firearm, which I think also speaks to why our officers, when
17 they go out to the range, and they shoot, and they wear their
18 handcuffs and their duty belts, is that that could be
19 contamination going onto their property, which they will then
20 use to effect arrests. You can see why we have some concern.

21 Q Right. But once again, this is based upon your
22 experience with this area; not necessarily being an expert,
23 but in terms of your experience in this area. If no one
24 touches something -- say you discharge a firearm, and then you
25 have a piece of clothing you have on, but you don't do

1 anything with the piece of clothing. You don't wash it; you
2 just take it off and you put it in a corner of a room. Are
3 you telling this jury that somehow it evaporates -- that the
4 gunshot residue evaporates at some point?

5 A Well, because I'm not an expert, I couldn't tell you
6 what ultimately will happen to that potential evidence.

7 Q Okay. Thank you, I appreciate that. In addition to
8 -- going back to the photograph that we have here, you had
9 videotape that you looked at as part of your investigation in
10 this case, right?

11 A From the convenience store?

12 Q Right.

13 A Yes.

14 Q Anything at all in the mannerisms and the way these
15 individuals were there that would indicate to you that,
16 potentially, you know, they were out to commit a crime?

17 A I would be speculating, sir.

18 Q No, well, I'm just asking in terms of their -- their
19 behavior in the store. I'm talking -- we've looked at some of
20 the video, but I'm just asking you, was there anything that
21 tells you as a trained, you know, police officer, hey, you
22 know what, these guys look like they're going to do something?

23 A No.

24 Q Okay. In fact, like this photograph right here, it
25 looks like the individual that you -- you're saying is Raekwon

1 Robertson is laughing with these other individuals that are
2 there, right?

3 A Or having a conversation.

4 Q Sure, okay. Now, in addition to that, with your
5 tools and what you could use to help you make a determination
6 in this case as to whodunit, right? The idea is someone
7 committed a crime, someone shot someone in cold blood, and
8 killed them. In terms of you determining who those people
9 are, how about electronics? We've talked a little bit about
10 cell phones. At some point, you do believe that you have the
11 cell phone number of this individual here, this Raekwon
12 Robertson, right?

13 A Yes.

14 Q Did you at any point ever subpoena the cell phone
15 records in terms of the pinging of towers to try to
16 triangulate where this particular person's cell phone was at
17 the time of the shooting?

18 A Yes. As part of this investigation, cell phone
19 records were obtained pursuant to search warrant.

20 Q Okay. And I would be interested to know, with
21 regards to that part of the investigation, was there any
22 determination at that point that this person's cell phone was
23 pinging off of any towers in the area of -- going back again
24 to State's Exhibit number 6, this area of the Dewey Drive
25 area?

1 A Well, the one thing about cell phone towers is that
2 the distance which they'll service can vary. Sometimes they
3 can be upwards of three miles; sometimes they can be -- the
4 cell site, not necessarily a cell tower, can be literally
5 yards. So it just depends on the circumstances and what
6 device is in that particular area. But as you can imagine,
7 those two residences are fairly close, and I would -- and I
8 would gather that they're within three miles.

9 Q Okay. So, once again, based upon your experience in
10 dealing specifically with cell phone towers and so forth, can
11 you tell this jury, for instance, the cell phone towers that
12 are located around the area of 5536 West Dewey?

13 A No, not without reviewing the telecommunications
14 companies and then correlating that with the provider in the
15 particular service. So each one of the four major
16 telecommunication companies, the cell phone companies, they
17 have their own towers. Sometimes the towers are together,
18 albeit -- for instance, Verizon and Sprint. But as far as
19 where they are as related to this map, I couldn't tell you
20 without looking at a list first.

21 Q Okay. But you are telling this jury that it was
22 done?

23 A Yes, the records were sought in this investigation.

24 Q Okay, "sought" is not the same thing. You know, I'm
25 a lawyer, so I deal with semantics all the time. I'm asking

1 you, you may have requested those records, but did you ever
2 receive those records and conduct that kind of analysis that
3 you're telling this jury about right now?

4 A Yes, I did review those records.

5 Q Okay. And with regards to your records, do you have
6 any testimony that, for instance, this area down here, that my
7 client's cell phone was pinged off of 7325 South Jones
8 Boulevard?

9 A Without looking at the records, I couldn't tell you.

10 Q Now --

11 MR. SANFT: I apologize. If I could just have a
12 quick second here.

13 THE WITNESS: Take your time.

14 MR. SANFT: Thank you. Your Honor, I have no
15 further questions. Thank you.

16 THE COURT: Thank you. Mr. Ruggeroli?

17 CROSS-EXAMINATION

18 BY MR. RUGGEROLI:

19 Q Good afternoon, Detective.

20 A Sir.

21 Q I'm going to pick up on a couple of the things
22 you've talked about. You understand I only represent Mr.
23 Wheeler, which is at the -- he's at the far end of that table
24 to your right, correct?

25 A I do.

1 Q You indicated that no prints of Mr. Valenzuela's
2 vehicle were processed?

3 A Yes.

4 Q Was that your call or Detective Jaeger's?

5 A Detective Jaeger's.

6 Q And so you have a general idea of the conclusion
7 that was made not to process it, but it was his call and not
8 yours?

9 A Yes, in concert with the crime scene analysts.

10 Q Now, some of the decision-making, did you play a
11 role in? Did you give any feedback?

12 A Well, there's -- there is a -- ongoing conversations
13 that Detective Jaeger and I would have, as well as with the
14 other detectives, because, you know, we deploy out, we do some
15 aspect of the investigation, we come back together, we discuss
16 what we've learned, we go back out. This happens multiple
17 times at a scene. Specific, that night, I can't tell you.

18 Q Right. And so, who was lead on this?

19 A We're co-detectives on it.

20 Q And so, you really can answer for your ultimate
21 decisions, but Jaeger, he's separate from you? This
22 particular incident -- or instance of requesting for the --
23 Mr. Valenzuela's vehicle to be processed, that wasn't your
24 ultimate decision?

25 A That was not my decision, sir.

1 Q And you showed up at what time on the early morning
2 of August 9th, 2017?

3 A Unfortunately, without reviewing the CAD, I can't
4 tell you my exact arrival time.

5 Q It was still dark though?

6 A Oh, yes.

7 Q And so, a number of detectives have different
8 responsibilities during the investigation. You show up, and
9 it's really the early portion of the investigation, correct?

10 A Yeah, we -- that's why we have that very essential
11 portion of the investigation, what is known as a briefing,
12 where the patrol officers -- in some cases, the patrol
13 detectives -- will share with us the preliminary details of
14 the preliminary investigation, and then we move as a unit in
15 the follow up investigation.

16 Q Now, there was a section of Lindell that had police
17 or caution tape. That's that yellow tape, crime scene tape
18 that was put up; is that correct?

19 A Correct.

20 Q And who would have made the determination to place
21 it there?

22 A That night, it would have been -- that
23 responsibility would have fallen on the patrol officers and
24 probably their supervisors.

25 Q Okay. Did you have any responsibility in making the

1 determination how wide the scope of the crime scene was?

2 A No.

3 Q Did you have information later though from the
4 jogger that the suspected vehicle was actually beyond the
5 scope of that containing crime scene tape out on the side of
6 Lindell?

7 A My understanding is that the vehicle was -- if you
8 were looking at 5536 west to east, you're staring at the front
9 of the entrance, if you could look through the house to
10 Lindell, that's where the vehicle was parked, facing south, so
11 on the west side of Lindell.

12 Q Right. And so you did not personally decide to
13 limit the taping of the crime scene to where it was,
14 sectioning off Lindell?

15 A No, sir.

16 Q That was not your decision?

17 A That is not my decision, sir.

18 Q You did look for evidence that night?

19 A Yes.

20 Q Early morning of the 9th?

21 A Yes.

22 Q You did a number of things. Did you personally ever
23 go over on Lindell to where that vehicle was said to have been
24 earlier to view and see if there was any evidence?

25 A Absolutely. I actually parked on Lindell.

1 Q And did you ask to expand the crime scene?

2 A No.

3 Q You also testified to looking at some photos of the
4 blood pooling, correct?

5 A Yes.

6 Q And the shoes that were worn by some of the
7 individuals that had been present?

8 A Yes.

9 Q Now, you were not there when those individuals were
10 present?

11 A I don't recall if -- typically, what will happen in
12 those matters is that we will bring the -- or the first
13 responders, EMS, back to the scene, because that is a decision
14 regarding the footwear impression that detectives make. That
15 is not requested by patrol officers.

16 Q Right. And so, limiting it to you specifically, did
17 you make that determination?

18 A No.

19 Q Okay. And I noticed that you were using glasses to
20 look at the photographs of the shoes. You had those with you
21 today on the stand, correct?

22 A Yeah. Who knew when you turn 45 that you have to
23 wear the readers?

24 Q And was it your call -- again, it was Detective
25 Jaeger's call to not consult with a footprint expert?

1 A Yeah. Under these circumstances, there was no need
2 to.

3 Q Well, you weren't the one that made that call?

4 A With respect to?

5 Q The footprints in particular.

6 A Oh, it was evident that the footwear -- the
7 impressions were made by first responders and family
8 responding. They were not indicative of the suspects'
9 footwear.

10 Q Okay. So you actually observed that?

11 A Oh, I've seen that many times that night.

12 Q Did you do that with the naked eye?

13 A Yes.

14 Q And did you use your glasses when you did that that
15 night?

16 A And my flashlight.

17 Q Did you take the photos, or were you present when
18 the photos were taken?

19 A I would have been there, yes.

20 Q Do you recall specifically how many footprints
21 total? And if a person has two feet, how many total
22 footprints would you have been aware of?

23 A No, I'd have to look at some photographs to -- to --
24 to see the number of -- of footwear impressions.

25 Q And you're not a footprint expert?

1 A No, sir.

2 Q Never testified as one?

3 A No, sir.

4 Q This investigation stretched out into the daytime
5 hours and then later into the night on August 9th, correct?

6 A A very long day.

7 Q And you indicated that because of some extra work by
8 Detective Cody, your much-needed break for sleep was
9 interrupted and you responded to the Bagpipe address?

10 A Yes.

11 Q Okay, but you also went downtown and did paperwork
12 for warrants, things like that?

13 A The -- the paperwork that you're referring to would
14 have been done out of headquarters, and then -- but that was
15 done telephonically for the follow up search warrant as
16 authored by Detective Jaeger.

17 Q Did you author any reports?

18 A Yes.

19 Q Which ones specifically?

20 A The subsequent search warrants at 6647 West
21 Tropicana Avenue, Unit 104. The search warrants related to
22 the electronic storage devices, i.e., cell phones, I authored,
23 as well as the search warrant for 3300 Civic Center Drive.

24 Q Now, you were shown a photograph of the firearm
25 located at Bagpipe. Were you there at the time?

1 A No.

2 Q Okay. Your understanding is that the .45 recovered
3 from Bagpipe -- because there were two .45s recovered
4 regarding this incident, correct?

5 A During the investigation, yes, sir.

6 Q All right. So we're still dealing with the October
7 9th, correct?

8 A Yes.

9 Q The Star .45 caliber firearm located at Bagpipe,
10 correct?

11 A Yes.

12 Q And the Lofton-Robinson -- or Robinsons lived at
13 that address?

14 A They did.

15 Q Later -- and I'm skipping ahead a little bit, just
16 to kind of clarify. On August 15th, you did a search warrant,
17 same year, of the Civic Center Drive, and that's when the
18 Taurus .45 caliber firearm was located?

19 A Yes.

20 Q That firearm was later forensically tested, correct?

21 A For latent prints, yes.

22 Q But also, for the -- the -- whether or not it had
23 fired the expended cartridge cases and the bullets?

24 A Yes. There was ballistic testing sought with all
25 three firearms.

1 Q Right. And so, you're aware that the Taurus .45
2 caliber firearm located at Civic Center was excluded as firing
3 any of the cartridge cases or bullets?

4 A That's correct, sir.

5 Q Now, you also testified that you had viewed a cell
6 phone string between -- and I wanted to ask you if you would
7 clarify between -- I thought you had originally said DeShawn
8 and Mr. Robertson. You followed up and got information about
9 Mr. Wheeler's cell phone, correct?

10 A Yes.

11 Q And you're aware that, as far as Mr. Wheeler's cell
12 phone, there was an analysis -- a Cellebrite analysis done,
13 and the conclusion of that was that there are texts a couple
14 of hours before the crime and several hours after the crime,
15 but no mention of the crime for Mr. Wheeler's phone?

16 A For Mr. Wheeler's phone. That is correct, sir.

17 Q And there are also some texts between -- or some
18 communication texts between Lofton with Mr. Wheeler, but
19 nothing logically around the time of the crime?

20 A Yes, sir.

21 Q You mentioned that you were aware of or were
22 involved with some buccal swabs, correct?

23 A Yes, sir.

24 Q And you actually had the opportunity to follow up on
25 a number of individuals regarding potential suspects in this

1 case, correct?

2 A There was talk of other individuals.

3 Q So, going back to closer to August 9th, you're

4 learning information and you're following up on leads; that's

5 what you do, correct?

6 A Yes.

7 Q And the vehicle and the surveillance footage was

8 very important information because it led you to the next

9 step?

10 A Yes.

11 Q The vehicle led you to Mr. Robinson -- or

12 Lofton-Robinson?

13 A Yes, sir.

14 Q But also his brother DeShawn? And you were shown a

15 picture of DeShawn?

16 A Correct.

17 Q Now, DeShawn lives -- or resided at the same

18 location at Bagpipe, correct?

19 A Yes.

20 Q I'm going to skip ahead a little bit, because you

21 were asked about gunshot residue. Just reiterating again,

22 you're not an expert?

23 A I am not an expert.

24 Q Never testified as an expert --

25 A Never testified as --

1 Q -- regarding --
2 A -- an expert in GSR.
3 Q Okay. You claimed that he was interviewed 24 hours
4 after the shooting?
5 A That's an approximation.
6 Q Okay. It wouldn't surprise you that you're several
7 hours off?
8 A Well, I'd have to look at the time of the transcript
9 when it was initiated, but I know that it was closer to 24
10 hours than certainly within four hours of the shooting
11 incident.
12 Q You were not present when DeShawn Robinson spoke to
13 detectives?
14 A I was not in the interview. Yes, sir, but I was in
15 the building conducting a simultaneous interview.
16 Q And you -- I know why you are saying you wouldn't
17 have done it, but you did not request that he was processed
18 for any gunshot residue?
19 A We would have been in violation of the policy.
20 Q But you personally?
21 A Me personally, no.
22 Q And just one more time, if you could clarify, does
23 the policy apply equally to hands and to clothing?
24 A The policy just says, within an excess of four
25 hours, it's not to be conducted.

1 Q Now, are you sure that it's limited or not limited?
2 I really would like to know if you know specifically, does
3 that apply to any item, including skin or -- and/or fabric?

4 A It doesn't make -- it doesn't discern between the
5 two surface areas. It just says that it won't be done within
6 four hours -- or after four hours, excuse me, of the shooting
7 incident.

8 Q Now, I was asking you some questions about -- part
9 of your role as a detective -- and you were co-lead,
10 detective, correct, with Jaeger?

11 A Yes.

12 Q You would be able to direct crime scene analysts to
13 follow up and do certain things?

14 A Throughout the duration of the investigation,
15 absolutely.

16 Q And so you -- you did make some directives regarding
17 collection of buccal swabs so that you can collect DNA from
18 certain individuals, correct?

19 A Yes.

20 Q And that would have included DeShawn Robinson?

21 A Yes.

22 Q DeMario Lofton-Robinson?

23 A Yes.

24 Q Anthony Robinson?

25 A Yes.

1 Q And that Anthony Robinson is DeShawn and DeMario's
2 brother -- one of their brothers, correct?

3 A Yes.

4 Q You also requested and received DNA from a buccal
5 swab regarding the sister's boyfriend, and his name is
6 Johnquiel Brown, correct?

7 A Yes.

8 Q These are all African Americans approximately within
9 the same age range, correct?

10 A They were close. Yes, sir.

11 Q Now, later in your investigation, not -- not all the
12 way to August 15th, 2017, but after August 9th, you became
13 aware that there's another individual -- another brother named
14 Adrian Robinson, correct?

15 A We were familiar with Adrian, yes.

16 Q And he's also an African American?

17 A He is.

18 Q Within the same age range approximately?

19 A Slightly older.

20 Q Okay. You did not cause him to have a buccal swab?

21 A No.

22 Q Now, a number of items -- and I'm going back to the
23 9th. A number of items were located at the scene that you
24 would have -- or Jaeger would have ordered to be collected,
25 including cigarette butts?

1 A Two of them.

2 Q And there was a fidget spinner?

3 A Yes.

4 Q There were some glasses?

5 A Yes.

6 Q And some other items located at the crime scene?

7 A Yes.

8 Q In order to do a full analysis in terms of DNA, they

9 can only test for subjects that they have exemplars from,

10 correct? So if they have Adrian Robinson, they can check to

11 see if Adrian Robinson is one of the sources from the

12 cigarettes?

13 A They?

14 Q The experts that do the DNA analysis that we've

15 heard from.

16 A I wasn't here for their testimony, so if a forensic

17 scientist did testify, I don't know.

18 Q Okay, but if they don't have a source to test with

19 -- and my point is, you didn't get DNA from Adrian Robinson?

20 A We did not.

21 Q Okay. Early on, you were making some personal

22 determinations as far as suspects, correct?

23 A Based on the evidence.

24 Q And the open carry in the video from the Short Line

25 Express initially was very important?

1 A It is of note.

2 Q Right. You find out later that that gun is excluded
3 as being a part of the shooting of the expended cartridge
4 cases and the bullets?

5 A Well, I believe that that's going to be the same
6 firearm as depicted in the video, but I don't know.

7 Q And so, also along the course, you're getting
8 information and following up regarding other potential
9 suspects?

10 A Well, as the investigation moves forward, we are
11 gathering the information, but it's coming from very reliable
12 sources, so it's starting to narrow down, narrow down, narrow
13 down.

14 Q And it's fair to say that you would have viewed
15 Adrian Robinson at some point as a potential suspect?

16 A We did, but it was -- it was fairly easy to
17 eliminate him as a potential suspect.

18 Q I'm going to maybe let you answer some other
19 questions on that, but it's fair to say that you did have some
20 information that could have implicated him as one of the
21 people involved?

22 A We'd gotten some information that he was potentially
23 involved or otherwise depicted in the video surveillance from
24 the convenience store, but it's not the same individual.

25 Q And you've talked about nicknames a little bit,

1 correct?

2 A I referred to them as monikers, I believe, which is
3 akin to a nickname.

4 Q Okay, and he goes by Gotti?

5 A Gotti, G-o-t-t-i.

6 Q Okay. And you also had received some information
7 that there would have been a fifth person present at the Short
8 Line Express?

9 A That information we were never able to confirm.

10 Q Well, but you did speak with an individual that had
11 been present at Short Line Express, correct?

12 A His name?

13 Q Marcell Solomon.

14 A Yes.

15 Q Okay.

16 MR. RUGGEROLI: I have nothing further. Thank you.

17 THE COURT: Any redirect?

18 MR. BROOKS: Briefly, Your Honor. May we approach?

19 THE COURT: Of course.

20 (Bench conference)

21 MR. BROOKS: Hey, Judge, two things. So I just
22 wanted to lead him through this, because I didn't want to do
23 this, but Mr. Sanft asked, based on this photo alone, is there
24 any way you can determine that it's Raekwon Robinson.

25 THE COURT: Right.

1 MR. BROOKS: The problem is, he also has
2 surveillance photos from the other incident. So he's looking
3 not only at video, but the surveillance from the other
4 incidents, and speaking to other people. So I just wanted to
5 say, you know, were there other independent sources of
6 verification for the reason that you make the identification
7 in that video.

8 MR. SANFT: We have no objection to that.

9 THE COURT: Yeah.

10 MR. BROOKS: And then, Mr. Sanft was asking about
11 the CDRs and stuff, and you know how --

12 THE COURT: Yeah.

13 MR. BROOKS: -- Mitch Dosch didn't remember? Sorry,
14 I don't have a hard copy. Can I show him his Affidavit for a
15 Search Warrant for Raekwon Robertson where he actually details
16 the CDR for the specific thing that Mr. Sanft is asking to
17 refresh his recollection?

18 THE COURT: Yeah, that's fine. That's fine.

19 (End of bench conference)

20 THE COURT: Okay, you may proceed.

21 REDIRECT EXAMINATION

22 BY MR. BROOKS:

23 Q Detective Dosch, do you remember the line of
24 questioning when the photo -- the surveillance photo was up,
25 and it said -- Mr. Sanft asked you, based on this photo alone,

1 is there any way you can determine that this is Raekwon
2 Robertson? Do you remember that question?

3 A I do.

4 Q Did you have other independent sources that
5 confirmed your identification that you gave here in court
6 today that that's Raekwon Robertson?

7 A Yes.

8 Q Do you remember the line of questioning about CDRs
9 and cell phones?

10 A CDRs, yes. That's call detail records.

11 Q And do you remember Mr. Sanft was asking you about
12 Mr. Robertson's cell phone and whether you analyzed and
13 reviewed the cell phone records in that case?

14 A The cell phone records connected to his cell phone.

15 Q And the tower sites?

16 A Yes.

17 Q You said you did, but you didn't remember?

18 A Yes.

19 Q If I showed you your Application for a Search
20 Warrant and allowed you to read a certain portion of it, would
21 that help refresh your recollection?

22 A Yes.

23 Q If you could, I want you to start right here on page
24 10 when it says "On August 8th" for me. Read that, down into
25 this page.

1 A I will. Just give me a second to -- I just want to
2 make sure that I've got it on -- cued up correctly.

3 Q If you could read right there. Yeah.

4 A Got it. "On August 8th" --

5 Q Oh, no, not out loud. Just read it to yourself,
6 please.

7 A Oh, sorry. And then keep reading to down there?

8 Q Just down here, briefly.

9 A All the way down, concluding at --

10 Q Yeah.

11 A Yes.

12 Q Does that refresh your recollection on the analysis
13 you did on Mr. Robertson's cell phone on August 8th, 2017?

14 A It does.

15 Q So, call detail records, do they give you a location
16 all the time, or do you have to be using the phone?

17 A Well, there's sort of multiple parts of that. Call
18 detail records, CDRs, as they're known, dealing with the
19 incoming/outgoing phone calls and/or text messages. As
20 another component to those phone records, we get what is known
21 as -- what most people would refer to as cell tower, but the
22 truth is, is that cell tower -- I mean, "cell sites" is the
23 term that we like to use because they can affix that equipment
24 to not just towers, but to buildings. So cell sites is
25 another part, and that means where that phone is interfacing

1 -- where that phone call is interfacing with.

2 Q So, Mr. Robertson's phone, do you recall on August
3 8th around 11:36 P.M. what tower it hit off of?

4 A Yes. There was a one second in duration phone call
5 that hit off a tower that was 16 -- approximately 1,600 feet,
6 I believe, north of the convenience store. Now, this was the
7 time that the men were gathered at the convenience store.

8 Q When you analyzed these records for Mr. Robertson,
9 did you also analyze it with an eye toward that residence?

10 A The 6647 West Tropicana?

11 Q His historical usage, yes.

12 A Yes.

13 Q And did you have other independent sources of
14 verification as to that being his residence?

15 A Yes.

16 MR. BROOKS: Nothing further, Your Honor.

17 THE COURT: Any recross?

18 MR. SANFT: Yes, Your Honor.

19 RECROSS-EXAMINATION

20 BY MR. SANFT:

21 Q So, going back to these call detail records, I just
22 want to make sure we're clear. The only ping that we had was
23 1,600 feet from the 7325 South Jones Boulevard location?

24 A Yes.

25 Q And with regard to these pings that come off these

1 towers, it's fair to say that you're talking about
2 information, data that comes off of those towers onto a phone,
3 or vice versa, right?

4 A That's probably the best way to describe it. Yes,
5 sir.

6 Q Okay. So, for instance, in a case where you have
7 say apps on a smart phone that are constantly accessing data,
8 meaning, for instance, if you're just having it update even
9 when you're not looking at a phone, that would be pinging as
10 well, wouldn't it?

11 A Yes. Some -- for the phones, for the smartphones,
12 they refer to them as data sets, and they come from different
13 sources, not necessarily always the same tower where the
14 telecommunications is going on.

15 Q So in this particular case, with regard to data sets
16 and so forth, we don't have any information about that?

17 A We do not, sir.

18 Q Okay.

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

20 MR. RUGGEROLI: I had no questions, Your Honor.

21 Thank you.

22 THE COURT: Okay. Anything else for this detective?

23 MR. BROOKS: No, Your Honor.

24 THE COURT: Okay. Thank you very much for your
25 testimony here today. You may step down, and you are excused

1 from your subpoena. Can I have the attorneys approach for a
2 moment?

3 MR. PESCI: Yes, Your Honor.

4 (Bench conference)

5 THE COURT: Thank you. So you're going to rest,
6 right?

7 MR. PESCI: Assuming 8 is actually in, because he
8 said 7, and I'm not sure if 8 was ever moved in.

9 THE COURT: Is 8 in? Exhibit 8?

10 MR. PESCI: At this point, I believe everything is
11 in. 8's the only one I have a question about.

12 THE CLERK: Yes.

13 MR. PESCI: So everything's --

14 THE CLERK: Oh, yeah. (Indiscernible).

15 MR. PESCI: Everything's in?

16 THE CLERK: Everything except for what was objected
17 to.

18 MR. PESCI: Gotcha.

19 THE COURT: Do you have -- I can't remember if you
20 told me you were calling any witness. I know Mr. Ruggeroli
21 did.

22 MR. RUGGEROLI: And he's been here since 11:00. I
23 could do him very quick. I don't know how much you have.

24 THE COURT: Okay, I was just going to ask you if it
25 was going to be quick.

1 MR. RUGGEROLI: Very quick.

2 THE COURT: And then we could let them go to lunch,
3 and then we could do instructions, and --

4 MR. RUGGEROLI: Yes.

5 THE COURT: -- come back and do closings.

6 MR. SANFT: I think we still need to ask the
7 defendants whether they want to testify or not.

8 THE COURT: That's right. I'll have to do it
9 before --

10 MR. RUGGEROLI: Well --

11 THE COURT: Well, I could do it after --

12 MR. RUGGEROLI: Yeah, let's --

13 THE COURT: -- your person testifies.

14 MR. SANFT: Sure, okay.

15 MR. RUGGEROLI: If we have my guy testify, and then
16 break for lunch.

17 THE COURT: Yeah, perfect.

18 MR. RUGGEROLI: Okay, thank you.

19 THE COURT: Perfect. Thank you.

20 (End of bench conference)

21 THE COURT: Okay. Does the State have any other
22 witnesses or evidence to present?

23 MR. PESCI: No. Assuming everything has been
24 admitted, Your Honor, the State rests.

25 THE COURT: Thank you. And Mr. Ruggeroli, you can

1 call your first witness.

2 MR. RUGGEROLI: Thank you, Your Honor. The defense
3 calls Marcell Solomon.

4 THE MARSHAL: He's not back yet. He had to run
5 downstairs and feed the meter. And that was about halfway
6 through his testimony, so he should be coming up any second.

7 THE COURT: Okay, okay. Those darn meters.

8 THE MARSHAL: Maybe a short break, Your Honor? He's
9 not out there.

10 THE COURT: Why don't we just wait a couple
11 minutes --

12 THE MARSHAL: Okay.

13 THE COURT: -- and see if --

14 (Pause in the proceedings)

15 THE MARSHAL: And if you'll please step up into the
16 witness stand. Remain standing, raise your right hand, and
17 face the Clerk.

18 MARCELL SOLOMON, DEFENDANT WHEELER'S WITNESS, SWORN

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

21 THE WITNESS: Marcell Solomon.

22 THE CLERK: Please spell your first and last name.

23 THE WITNESS: M-a-r-c-e-l-l. Solomon,
24 S-o-l-o-m-o-n.

25 MR. RUGGEROLI: May I, Your Honor?

1 THE COURT: Thank you. You may.

2 MR. RUGGEROLI: Thank you.

3 DIRECT EXAMINATION

4 BY MR. RUGGEROLI:

5 Q Mr. Solomon, good afternoon.

6 A Hello.

7 Q Thank you for your patience. Have you ever had a
8 chance to meet with me or speak with me?

9 A No.

10 Q I'm going to direct your attention to an incident
11 that occurred on August 9th, 2017.

12 A Okay.

13 Q Do you recall that incident?

14 A Vaguely.

15 Q Did you have occasion to speak with police at some
16 point about what you had observed?

17 A Yes.

18 Q And was that at a Short Line Express?

19 A No. They came to my house.

20 Q Okay, but were you answering questions about what
21 happened at a Short Line Express?

22 A Short Line Express? I'm not too familiar with that.

23 Q Do you recall speaking with the detectives?

24 MR. RUGGEROLI: And Judge, may I approach to refresh
25 his recollection?

1 THE COURT: Sure.

2 BY MR. RUGGEROLI:

3 Q If you could read this to yourself, please.

4 A "Short Line Express" --

5 Q No, no, just to yourself, please.

6 A Okay, okay.

7 Q Okay. Does that refresh your recollection?

8 A Yes.

9 Q Okay. During this conversation with police, you

10 were specifically asked about if you remember how many people

11 were in the car.

12 A Yes.

13 Q Do you recall that?

14 A Yes.

15 Q And you answered, "Five. I'd say two in the front

16 and" --

17 MR. PESCI: Judge, objection, leading. This is

18 direct examination.

19 THE COURT: You are leading. The objection's

20 sustained.

21 BY MR. RUGGEROLI:

22 Q Do you recall how you described the individuals in

23 the car?

24 A Not -- I just said it was four guys and they asked

25 me for a Black and Mild. So that was pretty much --

1 Q Do you recall indicating five; two in the front,
2 three in the back?

3 A I said four or five.

4 MR. RUGGEROLI: May I approach?

5 THE COURT: You may.

6 BY MR. RUGGEROLI:

7 Q If you could read this to yourself, please.

8 A Yes.

9 Q Okay. So you did make a number of statements. It
10 is accurate -- did this refreshed your recollection --

11 A Yes.

12 Q -- that you did say five?

13 A Yes.

14 Q Two in the front, and three in the back, correct?

15 A Yes.

16 MR. RUGGEROLI: I have nothing further.

17 THE COURT: Cross -- cross-examination?

18 MR. PESCI: Yes, thank you.

19 CROSS-EXAMINATION

20 BY MR. PESCI:

21 Q Sir, this that you're being asked about occurred
22 back in August of 2017; is that correct?

23 A Yes.

24 MR. RUGGEROLI: Judge, I'm sorry. I was required to
25 refresh after learning that he didn't remember. Are we

1 refreshing his recollection?

2 THE COURT: Are you trying to refresh his
3 recollection yet?

4 MR. PESCI: Yeah, I'm following up on what he
5 asked --

6 THE COURT: Okay.

7 MR. PESCI: -- with specific cites --

8 THE COURT: I'll allow it. Go ahead.

9 MR. PESCI: -- that he referenced. Portions, and
10 not all of it.

11 BY MR. PESCI:

12 Q Sir, do you remember the event happening back in
13 August of 2017?

14 A Yes, vaguely.

15 Q Okay. Vaguely, right? It's been a long time?

16 A Yeah.

17 Q Okay. Now, do you recall, as defense counsel just
18 asked you, being approached by some detectives about a month
19 after the event occurred, and they asked you some questions?

20 A Yes.

21 Q All right. And do you remember them talking to you
22 and showing you some video?

23 A Pictures.

24 Q Pictures? Okay, and then recording your
25 conversation?

1 A Yeah, I vaguely remember they were recording it.

2 Q Okay.

3 A Yeah.

4 Q So this transcript of that incident, would that help
5 to refresh your recollection as to what you said?

6 A Yes.

7 Q All right. So that would be beneficial to you to be
8 able to kind of review what it is you said?

9 A Yes.

10 Q All right. Looking at the top, there seems to be
11 page numbers. Do you see those at the center?

12 A Yes.

13 Q Okay. Now, on page 3, directing your attention,
14 there are A's and there are Q's. Do you see those letters on
15 the far left?

16 A Yes.

17 Q A being an answer, Q being a question. Do you
18 follow that?

19 A Yes.

20 Q Okay. So is it accurate that you in fact told the
21 detectives that your interaction with these people, it was a
22 real quick interaction?

23 A Yes.

24 Q All right. And then, they -- they showed you some
25 video or some surveillance; is that correct?

1 A Showed me pictures.

2 Q Okay. I want you to look to your right and see if
3 you recognize what's been marked and is in evidence as video
4 from the Short Line Express. Do you recognize the vehicle on
5 the lefthand side?

6 A Yes.

7 Q What do -- do you recognize that as being your
8 vehicle?

9 A Yes.

10 Q All right. And as you told the detectives, you pull
11 into the Short Line Express, there's a brief interaction with
12 some individuals in a car, and you go inside and make a
13 purchase?

14 A Yes.

15 Q And if we're going to watch this for a second --

16 MR. RUGGEROLI: Judge, could we have the exhibit
17 number, please?

18 MR. PESCI: It's the Short Line Express video. I
19 don't know the number; I can ask really fast. Court's
20 indulgence. Short Line Express video, it's 328. We've got a
21 cued up portion --

22 THE COURT: Thank you.

23 MR. PESCI: -- so we don't have to put that in and
24 go through all of that.

25 BY MR. PESCI:

1 Q So do you recognize yourself in that video?

2 A Yes.

3 Q And that's the extent of your interaction with the

4 people in the car; isn't that correct?

5 A I went --

6 Q On the front end; at the beginning?

7 A On the front end, yes.

8 Q Okay, so that's how fast it was that you interacted

9 with them?

10 A Yeah.

11 Q Okay. And so, based on that being a fast

12 interaction, you were not able to definitively say if there

13 were four or five people in there?

14 A No.

15 Q Okay. In fact, looking at your statement, isn't it

16 accurate that you originally told them there was like four or

17 five of them in the car?

18 A Yes.

19 Q That's on page 3, correct?

20 A Yeah.

21 Q All right, so --

22 A (Indiscernible).

23 Q No doubt, there are portions where you say five, but

24 there are also portions where you say four?

25 A Yes.

1 Q Okay. And then, in fact, on page 3, staying with
2 that same page, the last A from the bottom, don't you in fact
3 describe it, "Two in the front, and two in the back"?
4 A On page 3?
5 Q Yeah, page 3, the last A.
6 A Yeah, I do.
7 Q And do you -- so you're describing two people you
8 saw on the front, and two people in the back?
9 A Um-hum.
10 Q Is that -- I'm sorry, is that a yes?
11 THE COURT: Is that a yes?
12 THE WITNESS: Yes.
13 THE COURT: Thank you.
14 BY MR. PESCI:
15 Q It's okay, it's just because we're recording
16 everything, so I apologize.
17 A Gotcha.
18 Q And that's based on this limited time frame you have
19 right here, correct?
20 A Yes.
21 Q All right. And then, after you make the purchase,
22 do you come back out and hand those items off?
23 A Yes.
24 Q Okay. And was it a long time, or did you just kind
25 of hand it off and go your way?

1 A Hand it off and went my way.

2 Q Is about, in essence, the same amount of time that
3 we saw at the front end?

4 A Just about.

5 Q Okay. So it's pretty safe to say that this was a
6 very brief interaction with them, correct?

7 A Yes.

8 Q All right. I want to turn to page 6 of that
9 statement, last answer at the bottom. Did you again indicate
10 that you knew that there were two guys in the back seat?

11 A Yes.

12 Q Okay. And then, when you first interacted with
13 them, did you explain to the cops that you were kind of a
14 little bit taken off guard when you first saw them?

15 A I don't know if I said taken off guard, but yeah, I
16 was -- I had noticed that they were in the car and they were
17 looking my direction, so --

18 Q Okay.

19 A -- it immediately got my attention.

20 Q Good point. I apologize. If you look at page 5,
21 were you specifically asked -- second to last Q at the bottom,
22 were you specifically asked, "Were you a little bit
23 apprehensive of seeing them?"

24 A Yes.

25 Q And you said, "Yeah"?

1 A Yeah.

2 Q Okay. And that was -- that was the hit or the --

3 that you got off of that initial interaction; is that correct?

4 A Yeah, I was -- he asked me apprehensive, but he also

5 asked me was I intimidated by them.

6 Q Right.

7 A And so, I'm sorry, I got confused by that point.

8 And I said, no, I was not.

9 Q Right. So you weren't intimidated, but at first,

10 you're just kind of like --

11 A Yeah, I mean, I got out of the car, yeah, and they

12 got my attention.

13 Q What's going on here?

14 A Yeah.

15 Q Okay. And then, did you -- did you get a sense that

16 you were a little bit concerned of what they might be up to?

17 A When I got out the car, I just -- if I can just dive

18 in deeper what I seen.

19 MR. RUGGEROLI: Judge, I'm going to object to

20 relevance.

21 THE COURT: Overruled. You can answer.

22 THE WITNESS: Yeah. I just -- I seen them drinking

23 beers and stuff like that, so that's what caught my attention

24 first was just that. I'm like, oh, don't get caught driving

25 with that, you know? That's -- that's pretty much it, you

1 know?

2 BY MR. PESCI:

3 Q Did you relay some of that -- those ideas or
4 feelings you had to a friend of yours named Gabby after the
5 fact?

6 A Yes.

7 Q Okay. So that was kind of your thought process as
8 to what you encountered with them at that time?

9 A Yes.

10 MR. PESCI: Okay, thank you. Pass the witness.

11 THE COURT: Mr. Sanft, I'm assuming you didn't have
12 any questions?

13 MR. SANFT: I do have one question, if I can ask it.

14 THE COURT: Okay, go ahead.

15 CROSS-EXAMINATION

16 BY MR. SANFT:

17 Q Sir, and once again, I forget your name. Mr.
18 Solomon?

19 A Yes.

20 Q All right. These individuals that came up to you,
21 they asked you for something, for a favor, and that was to go
22 into the store and buy them cigarettes?

23 A It was Black and Mild, I believe.

24 Q Black and Mild, that's a form of cigarette?

25 A Yes.

1 Q Okay.

2 A Tobacco, or --

3 Q And I mean, you understand that they were asking you
4 to do something that -- why wouldn't they do that themselves?

5 MR. PESCI: Objection, calls for speculation.

6 MR. SANFT: Well, let me ask you this.

7 THE COURT: You can ask him if he knows.

8 BY MR. SANFT:

9 Q Do you know?

10 A I believe they didn't have ID.

11 MR. SANFT: Okay. No further questions, Your Honor.

12 THE COURT: Mr. Ruggeroli?

13 MR. RUGGEROLI: Thank you, Judge.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. RUGGEROLI:

17 Q Mr. Solomon, do you still have that transcript?

18 A Yes, I do.

19 Q Could you look at the front page?

20 A Yes.

21 Q You were asked about Q's and A's, right?

22 A Yes.

23 Q On the first page, looking at the A's, there's no
24 number five or four, correct?

25 A Just Q1, A -- I'm not exactly sure what you're

1 asking me. I apologize.

2 Q Well, why don't we go through to page 3, okay?

3 A Page 3? Okay.

4 Q Okay, and then your answer, the A, right?

5 A Um-hum.

6 Q The very first thing you said regarding a number,

7 you said, "There was five of them." That's the very first

8 thing you said, correct?

9 A Yes.

10 Q And then, later, you added, "Four or five," correct?

11 A Yes.

12 Q But that was the first mention -- that was the --

13 A "Five of them," yeah.

14 Q -- first number, five?

15 A It was.

16 Q And then, go to page 4.

17 A Um-hum.

18 Q You were asked specifically how many people in the

19 car, and the A there says, "I want to say five."

20 A "Say five," yes.

21 Q "Two in the front, and three in the back"?

22 A Yeah.

23 Q Correct? Just a little further down, asked again

24 about believe there was a number five. Answer, "I want to say

25 five of them," right?

1 A Um-hum.

2 Q Is that a yes?

3 A Yes.

4 Q And we're now a number of years past the time that

5 you made these statements, correct?

6 A Yes.

7 Q All you were trying to do was try and be helpful?

8 A Yes.

9 Q But there's no doubt that you used the number five?

10 A Yeah, I did.

11 Q And that was the first number you used?

12 A Yes.

13 MR. RUGGEROLI: Nothing further.

14 THE COURT: Thank you. Any recross?

15 RE CROSS-EXAMINATION

16 BY MR. PESCI:

17 Q And there's no doubt you said to them in that very

18 same sentence, "Four or five"?

19 A Yes.

20 Q And that this was a very short interaction?

21 A Yeah.

22 MR. PESCI: Thank you very much.

23 THE COURT: Okay. Anything else for Mr. Solomon

24 from either side?

25 MR. SANFT: No, Your Honor.

1 MR. PESCI: No, Your Honor.

2 MR. RUGGEROLI: No.

3 THE COURT: Okay. Mr. Solomon, thank you very much
4 for being here.

5 THE WITNESS: All right, thank you.

6 THE COURT: Thank you for your testimony. You may
7 step down, and you are excused from your subpoena.

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

17 We'll be in recess until 2:30. Thank you.

18 THE MARSHAL: All rise for the exiting jury, please.
19 Jurors.

20 (Outside the presence of the jurors at 12:59 p.m.)

21 THE COURT: Okay. The record will reflect that the
22 hearing is taking place outside the presence of the jury
23 panel.

24 Mr. Robertson, you do understand that you have heard
25 all the evidence that will be introduced by the State of

1 Nevada against you in this matter, correct?

2 DEFENDANT ROBERTSON: Yes.

3 THE COURT: And we talked yesterday about your right
4 to testify?

5 DEFENDANT ROBERTSON: Yes.

6 THE COURT: And you've had an opportunity to discuss
7 with your lawyer whether you should testify or not?

8 DEFENDANT ROBERTSON: Yes, I discussed with him.

9 THE COURT: Okay, and have you made a decision?

10 DEFENDANT ROBERTSON: Yes, I would not like to
11 testify.

12 THE COURT: Okay. And Mr. Wheeler, you know, we
13 talked about this yesterday, and you understand that you have
14 heard all of the evidence that will be introduced against you
15 by the State of Nevada in this matter?

16 DEFENDANT WHEELER: Yes, ma'am.

17 THE COURT: And you've had an opportunity to discuss
18 with your lawyer whether you should testify or not; is that
19 correct?

20 DEFENDANT WHEELER: Yes, ma'am.

21 THE COURT: And have you made a decision?

22 DEFENDANT WHEELER: I still -- no, I still haven't.

23 THE COURT: You still have not made a decision?

24 DEFENDANT WHEELER: No, I still -- I think I need a
25 little bit more time to talk to my lawyer, just a little bit

1 more time. Just small circle of --

2 THE COURT: Okay, because we're at the end of the

3 trial.

4 DEFENDANT WHEELER: Yeah, small --

5 THE COURT: I mean, if you want more time to talk to

6 your lawyer --

7 DEFENDANT WHEELER: Yeah.

8 THE COURT: -- that's fine. We're going to break

9 for lunch, and when you come back, you're going to have to

10 tell me whether you're going to testify or not. If you want

11 to testify, that's fine, I just need to know --

12 DEFENDANT WHEELER: Okay.

13 THE COURT: -- before we end the case.

14 DEFENDANT WHEELER: All righty.

15 THE COURT: Okay?

16 DEFENDANT WHEELER: All right.

17 THE COURT: So, Mr. Ruggeroli, you'll talk to him

18 before --

19 MR. RUGGEROLI: I'll talk to him right now.

20 THE COURT: All right, perfect. And what I thought,

21 you could come back in like 45 minutes, and then we could do

22 -- is that -- 45 minutes to an hour, and then we could do

23 instructions back in chambers, and then come out and formally

24 settle them.

25 MR. PESCI: Okay.

1 THE COURT: They don't look that -- they don't look
2 that bad.

3 MR. SANFT: No, Your Honor, they don't.

4 THE COURT: And Mr. Sanft, you're not going to
5 submit any?

6 MR. SANFT: No, Your Honor. I believe that the
7 instructions that I would want are currently in the proposed
8 instructions by the State.

9 THE COURT: Okay. And so, I just want to ask, the
10 defense is going to request the second degree murder
11 instructions?

12 MR. RUGGEROLI: This is --

13 THE COURT: They're in.

14 MR. RUGGEROLI: I know. This is something that I
15 was going to finalize with him. I believe that -- I don't
16 have an objection at this time because it was provided.

17 THE COURT: Okay, because they're in. I just need
18 to know, because if you're going to want that --

19 MR. RUGGEROLI: Right.

20 THE COURT: There's other instructions regarding
21 aiding, and abetting, and conspiracy that we need.

22 MR. RUGGEROLI: Thank you, Judge.

23 MR. SANFT: Yes, Your Honor.

24 MR. RUGGEROLI: Can we make it an hour, please?
25 Because I do need to talk to him for a minute.

1 THE COURT: Can we what?
2 MR. RUGGEROLI: Make it an hour to come back?
3 THE COURT: Yeah.
4 MR. RUGGEROLI: Okay.
5 THE COURT: Yeah.
6 MR. BROOKS: And Judge --
7 THE COURT: Okay.
8 MR. BROOKS: -- I am doing a PowerPoint, so I do
9 need to know if I need to pull some like second degree murder
10 slides. And that's --
11 THE COURT: Yeah.
12 MR. PESCI: We have to give the instruction. We
13 can't -- we can't not give second. We're going to get
14 reversed if we do that.
15 MR. SANFT: We -- and we don't -- on behalf of Mr.
16 Robertson, we don't have an objection to the inclusion of
17 second.
18 THE COURT: Okay.
19 MR. SANFT: I just want -- I don't --
20 THE COURT: All right.
21 MR. SANFT: I don't know what the issue would be
22 over here with regards to that, but on behalf of Mr.
23 Robertson, we don't have any concern of that.
24 THE COURT: Okay. All right, so I'll see you after
25 lunch.

1 (Court recessed at 1:02 P.M. until 3:16 P.M.)
2 (Outside the presence of the jurors)
3 THE MARSHAL: Please come to order. Court is now in
4 session. Please be seated.
5 THE COURT: Okay. The record will reflect that the
6 hearing is taking place outside the presence of the jury
7 panel. Is the State familiar with Court's Proposed 1 through
8 39?
9 MR. PESCI: Yes, Your Honor.
10 THE COURT: Any objections?
11 MR. PESCI: No, Your Honor.
12 THE COURT: Any further instruction that you would
13 like to propose at this time?
14 MR. PESCI: No, Your Honor.
15 THE COURT: And you're familiar with the Verdict
16 Forms?
17 MR. PESCI: Yes, Your Honor.
18 THE COURT: Any objection?
19 MR. PESCI: No, Your Honor.
20 THE COURT: Okay. Mr. Sanft, you're familiar with
21 Court's Proposed 1 through 39?
22 MR. SANFT: I am, Your Honor.
23 THE COURT: Any --
24 MR. PESCI: I apologize, I interrupt. I actually
25 don't have the Verdict Form attached.

1 THE COURT: Yeah, I usually don't attach it, but
2 it's --
3 MR. PESCI: Okay, all right.
4 THE COURT: They're lodged with the Clerk. If you
5 want -- do you need a copy?
6 MR. PESCI: Is it all right if I look, just --
7 THE COURT: Yeah, of course.
8 MR. PESCI: -- a last double-check --
9 THE COURT: Absolutely.
10 MR. PESCI: -- because you just asked if we agree
11 with them? Thanks. Thank you, Your Honor.
12 THE COURT: No objection?
13 MR. PESCI: No objection.
14 THE COURT: Okay. Mr. Sanft, you're familiar with
15 Court's Proposed 1 through 39?
16 MR. SANFT: I am, Your Honor.
17 THE COURT: Any objection?
18 MR. SANFT: No, ma'am.
19 THE COURT: Any further instructions you'd like to
20 propose?
21 MR. SANFT: No, Your Honor.
22 THE COURT: Okay. Mr. -- I'm sorry. And you're
23 familiar with the Verdict Form, Mr. Sanft?
24 MR. SANFT: I am, Your Honor.
25 THE COURT: Any objection?

1 MR. SANFT: No objection, Your Honor.

2 THE COURT: Thank you. Mr. Ruggeroli, and you're
3 familiar with Court's Proposed 1 through 39?

4 MR. RUGGEROLI: Yes, Your Honor.

5 THE COURT: Any objection?

6 MR. RUGGEROLI: Judge, I, as you know, submitted --

7 THE COURT: Sure.

8 MR. RUGGEROLI: -- a proposed set of instructions
9 that had three. Those are my proposals. You heard and have
10 those. I would have preferred --

11 THE COURT: Do you have them for the Clerk to mark?

12 THE CLERK: I have them.

13 THE COURT: Perfect, thank you.

14 MR. RUGGEROLI: So, other than those, Judge, I have
15 no further objections. And those are not really objections;
16 those are proposed instructions.

17 THE COURT: Right. And it -- it was my belief that
18 all of those instructions that you had proposed, almost
19 identical language is already in the instructions, so --

20 MR. RUGGEROLI: Thank you, Judge.

21 THE COURT: Those will just be marked and made part
22 of the record. And you're familiar with the Verdict Form?

23 MR. RUGGEROLI: Yes, Your Honor.

24 THE COURT: Any objection?

25 MR. RUGGEROLI: No, Your Honor.

1 MR. PESCI: Judge, can I perfect the record on what
2 was last done as far as the defense proposed?

3 THE COURT: Absolutely.

4 MR. PESCI: So in the document that I believe is now
5 a defense proposed, or --

6 THE COURT: It's -- well, it's Court's exhibit next
7 in line.

8 MR. PESCI: Court's exhibit. So instruction --

9 THE CLERK: (Indiscernible). Yes. Okay.

10 THE COURT: Yeah, it's Court Proposed --

11 THE CLERK: I just --

12 THE COURT: Yeah, sorry. I usually mark these as
13 Court's exhibit next in line.

14 THE CLERK: It will be number 4.

15 THE COURT: So it will be Court's Exhibit next in
16 line number 4.

17 MR. PESCI: Thank you, Your Honor. It's a four-page
18 document. Pages 2 of 4 and 3 of 4 I believe were covered by
19 the State's, as you've marked it now, 8. And there was
20 discussion about that, how this was covered by the State's
21 proposed exhibit, and the same arguments can be made from
22 that.

23 Additionally, page 4 of the defense proposed
24 instruction corresponds to what's now been marked as the
25 Court's 9. I want to make an additional record. Originally,

1 what read in the record in the State's original proposed was a
2 portion that said, quote, "If the prosecutor does not believe
3 DeShawn Robinson testified in a way that secured the
4 negotiation, they have the right to ask the Court to void the
5 negotiation, and he could be recharged with the original
6 offenses."

7 It was the defense's request; specifically, Mr.
8 Wheeler's request, his counsel, to have that line stricken.
9 That was in the State's proposed, and we need to, I think,
10 make a record of the fact that it was the defense's request to
11 strike that.

12 MR. RUGGEROLI: Correct.

13 THE COURT: Okay.

14 MR. PESCI: Additionally --

15 THE COURT: And Mr. Sanft, you had no objection?

16 MR. SANFT: I have no objection, Your Honor. We'd
17 submit it.

18 THE COURT: Okay.

19 MR. PESCI: Additionally, on defense's proposed
20 instruction, now Court's exhibit next in order, page 4,
21 there's also a line that talks about -- let's say lines 5
22 through 9. The State objected to that language because the
23 position of the State was it was superfluous language as far
24 as what would or would not possibly be utilized as evidence
25 against DeShawn Robinson, as he is not in trial on this case.

1 MR. RUGGEROLI: I have nothing further, Judge.

2 THE COURT: Okay. Mr. Ruggeroli, I just wanted to
3 ask you one more thing. I know a couple days ago, you
4 indicated you were going to propose another exhibit regarding
5 the Agreement to Testify.

6 MR. RUGGEROLI: Thank you, Judge. After
7 consideration, I want to withdraw that. There was discussion
8 about --

9 THE COURT: Okay.

10 MR. RUGGEROLI: -- how far we may have opened up
11 with our line of questioning, specifically allowing -- we had
12 a long conversation about this and argument. But in looking
13 at the language, I did take it out, so I went and I followed
14 up. And thinking about it strategically, I think we're better
15 off not altering the exhibit that the State has already
16 submitted that does not have the language.

17 THE COURT: Okay.

18 MR. RUGGEROLI: So you're accurate. That exhibit
19 doesn't need to be changed at all in my opinion.

20 THE COURT: Okay. I just want to make sure we --
21 it's the -- DeShawn Robinson's Guilty Plea Agreement and
22 Agreement to Testify.

23 THE CLERK: Yeah.

24 THE COURT: I just had this up here for the last few
25 days. I wanted to make sure that you were able to pose it if

1 you wanted to.

2 MR. RUGGEROLI: Thank you, Judge.

3 Judge, are you looking for the one that I would have
4 generated?

5 THE COURT: No.

6 MR. RUGGEROLI: Okay.

7 THE COURT: I'm looking for the one --

8 MR. RUGGEROLI: The one the State did?

9 THE COURT: -- that we actually admitted so that
10 it's clear that you're satisfied with that and you don't want
11 any modifications.

12 MR. PESCI: Hey, Parker?

13 MR. BROOKS: Yes, sir.

14 MR. PESCI: Do you know what number, the Agreement
15 to Testify?

16 THE COURT: Yeah. Mr. Robertson --

17 MR. BROOKS: 337, if I remember correctly.

18 THE COURT: Did you say 327?

19 MR. BROOKS: I thought 337, but I could be totally
20 wrong.

21 THE CLERK: Yes, it is 337.

22 THE COURT: That's pretty good. Okay. So, again,
23 Mr. Ruggeroli, you're satisfied with 337 --

24 MR. RUGGEROLI: Correct.

25 THE COURT: -- as being admitted --

1 MR. RUGGEROLI: Yes.

2 THE COURT: -- with the things that the State had
3 taken out?

4 MR. RUGGEROLI: Yes. They removed the portion
5 regarding truth out. And our discussion had been that if they
6 -- the defendants waived, which they did, then we would want
7 the opportunity to include other language because our desire
8 was to go beyond the portion regarding truth. I am
9 withdrawing my request to submit that as a defense proposed
10 exhibit.

11 THE COURT: Okay. And then, Mr. Wheeler, have you
12 made a determination as to whether you're going to testify or
13 not?

14 DEFENDANT WHEELER: Yes, ma'am, I have.

15 THE COURT: Okay.

16 DEFENDANT WHEELER: I'm not going to testify.

17 THE COURT: Okay. So when the panel comes in, the
18 defense is going to rest?

19 MR. RUGGEROLI: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. RUGGEROLI: Can I make a request based on --

22 THE COURT: Of course.

23 MR. RUGGEROLI: -- logistics for the closure of the
24 case? Are we able to finalize instructions, read them to the
25 jury, but can we do closing tomorrow; tomorrow morning?

1 THE COURT: I was just hoping we could --
2 MR. RUGGEROLI: I know.
3 THE COURT: -- do them tonight.
4 MR. PESCI: Judge, the State's objection is that we
5 now have what was Alt. number 1 --
6 THE COURT: Right.
7 MR. PESCI: -- is taking position of Juror number --
8 THE COURT: 10.
9 MR. PESCI: -- I think it's 10.
10 THE COURT: Um-hum.
11 MR. PESCI: And she is the one that, respectfully,
12 you have promised --
13 THE COURT: Right.
14 MR. PESCI: -- she can go to --
15 THE COURT: I did.
16 MR. PESCI: -- her granddaughter's -- or she can
17 take her granddaughter to -- I believe it's Salt Lake for a
18 gymnastic competition.
19 THE COURT: Yeah, it's Friday, so, I mean, I
20 wouldn't be able to start until 10:30. So I would rather get
21 them out tonight so when they come back tomorrow they can just
22 deliberate.
23 MR. RUGGEROLI: Understood.
24 THE COURT: Okay.
25 MR. RUGGEROLI: Thank you, Judge.

1 THE COURT: Let's bring them in.

2 MR. SANFT: Your Honor, I do have one further
3 matter. In speaking with my client earlier today, he'd
4 informed me that while we were at sidebar during today's
5 trial, that he observed Juror number 1 and Juror number 2
6 speaking specifically to the issue of guilt, saying that Juror
7 number 1 had told Juror number 2, "They're guilty." Right?

8 DEFENDANT ROBERTSON: Yes.

9 MR. SANFT: So I don't know what to do with that
10 information, but they're -- if that is true, we have two
11 jurors sitting in the jury box discussing this case prior to
12 deliberation, then I think that there is a problem. And I
13 don't know how to fix it; I don't even know how to handle that
14 particular issue.

15 MR. PESCI: So I think you'd have to take those
16 jurors in individually and canvass them. And for the record,
17 I have seen nothing of the sort. I did not hear anything to
18 that effect. Mr. Brooks, you sit closer to this jury pool.
19 Did you --

20 MR. BROOKS: Well, I haven't been paying attention.

21 THE COURT: And --

22 MR. SANFT: This happened while we were at sidebar,
23 Your Honor. That's the reason why I don't anticipate that the
24 State would have known.

25 THE COURT: When? Which sidebar? While the

1 detective was -- well, I guess he's the only one that
2 testified today.

3 MR. SANFT: Yeah. I think the very last time we
4 were at sidebar today, Your Honor, is when Mr. Robertson had
5 observed that interaction occurring.

6 THE COURT: And you heard them?

7 DEFENDANT ROBERTSON: Yes.

8 THE COURT: Okay. Why don't we bring in Juror
9 number 1.

10 (Within the presence of Juror No. 1)

11 THE COURT: Okay. The record will reflect that
12 Juror number 1, Vito Casucci, is present in the courtroom
13 outside the presence of the other jurors. Thank you very
14 much. I just need to ask you a question. At any time --
15 everything okay?

16 THE MARSHAL: Yes, ma'am.

17 THE COURT: Okay. At any time today during the
18 proceedings, were you ever talking with any of the other
19 jurors about an ultimate conclusion in this case?

20 JUROR NO. 1: No, Your Honor.

21 THE COURT: Okay. I am going to ask you to step
22 outside, but before I do, I am going to order you not to
23 discuss with any of your other fellow jurors anything that
24 we've discussed in here, and if anyone insists on speaking to
25 you further, you can make that fact known to me by telling

1 Officer Hawkes.

2 I just have one more question. Have you heard any
3 other juror discuss the ultimate conclusion in this matter --
4 and you haven't deliberated -- prior to any deliberations?

5 JUROR NO. 1: No, ma'am.

6 THE COURT: Okay, thank you very much.

7 (Outside the presence of Juror No. 1)

8 (Within the presence of Juror No. 2)

9 THE COURT: Okay, the record will reflect Ms.
10 Morrison is present in the courtroom and that this hearing is
11 taking place outside the presence of the other jurors. Thank
12 you very much for coming in here. I just have a couple
13 questions for you.

14 JUROR NO. 2: Okay.

15 THE COURT: During any of the proceedings today,
16 have you discussed with any other juror what your ultimate
17 decision or verdict would be in this matter?

18 JUROR NO. 2: No.

19 THE COURT: Okay. And you're willing to obviously
20 keep an open mind and wait until you've been instructed on the
21 law by the Court --

22 JUROR NO. 2: Absolutely.

23 THE COURT: -- and until you go back to the
24 deliberation room to reach a decision?

25 JUROR NO. 2: Yes.

1 THE COURT: Okay. Have you heard any other jurors
2 discussing an ultimate conclusion?

3 JUROR NO. 2: No.

4 THE COURT: Okay, thank you very much.

5 JUROR NO. 2: Um-hum.

6 THE COURT: I'm going to ask you to step back
7 outside with the other jurors. Ms. Morrison, I just need to
8 give you further instructions.

9 JUROR NO. 2: Okay.

10 THE COURT: So -- no, you can stand right there.

11 JUROR NO. 2: Okay.

12 THE COURT: I just don't want you to discuss with
13 any of your fellow jurors anything that we've discussed in
14 here.

15 JUROR NO. 2: Okay.

16 THE COURT: And if anyone insists on speaking to you
17 about what we have spoken about in here, I'd ask that you
18 obviously not respond, and then let Officer Hawkes know so he
19 can bring it to my attention.

20 JUROR NO. 2: Okay.

21 THE COURT: Okay? Thank you, Ms. Morrison.

22 JUROR NO. 2: Sure.

23 (Outside the presence of Juror No. 2)

24 THE COURT: The record will reflect that Ms.
25 Morrison has left the courtroom, and that this hearing is

1 taking place outside the presence of the jurors.

2 MR. SANFT: We have nothing further, Your Honor.

3 THE COURT: Okay, and Mr. Ruggeroli?

4 MR. RUGGEROLI: No, Your Honor.

5 THE COURT: And the State?

6 MR. PESCI: No, thank you.

7 THE COURT: Okay. We can bring them all in.

8 THE MARSHAL: All rise for the entering jury,

9 please.

10 (Within the presence of the jurors at 3:30 p.m.)

11 THE COURT: Does the State stipulate to the presence

12 of the panel?

13 MR. PESCI: Yes, Your Honor.

14 THE MARSHAL: Thank you, everyone. Please be

15 seated.

16 THE COURT: Mr. Sanft?

17 MR. SANFT: Yes, Your Honor.

18 THE COURT: Mr. Ruggeroli?

19 MR. RUGGEROLI: Yes, Your Honor.

20 THE COURT: Okay. Mr. Ruggeroli, do you have any

21 further witnesses that you intend to call?

22 MR. RUGGEROLI: No, Your Honor. On behalf of Mr.

23 Wheeler, the defense rests.

24 THE COURT: Okay. Mr. Sanft? Are you --

25 MR. SANFT: We have no further witnesses. We also

1 rest as well, Your Honor.

2 THE COURT: Okay, and nothing further from the
3 State?

4 MR. PESCI: That's correct, Your Honor.

5 THE COURT: Okay. At this time, ladies and
6 gentlemen, I am going to instruct you on the law that applies.
7 Officer Hawkes is passing the jury instructions to you. As I
8 told you in the beginning of this trial, you will all be given
9 a packet of jury instructions. I am required by law to read
10 them to you; however, you can follow along, and each of you
11 will have these instructions when you go back to deliberate
12 upon your verdict.

13 (THE COURT READS THE JURY INSTRUCTIONS TO THE JURY ALOUD)

14 THE COURT: The State of Nevada may open and close
15 the arguments.

16 STATE'S CLOSING ARGUMENT

17 MR. BROOKS: Conspiracy to commit robbery. That's
18 Count 1, and that's where I'm going to start with this closing
19 argument today, and we'll start the explanation because that's
20 where everything really began.

21 So on Tuesday, August 8th, 2017, Gabriel Valenzuela,
22 who at that time was 24-years-old, was a nursing student at
23 CSN. He was returning home just after midnight on Wednesday,
24 August 9th, 2017. Gabriel would become a victim of a
25 well-constructed, but poorly executed plan.

1 What's a conspiracy? Conspiracy is an agreement or
2 mutual understanding between two or more people. A defendant
3 must intend to commit or aid in the commission of the specific
4 crime agreed to.

5 Here, what's the mutual understanding between two or
6 more people? Well, DeShawn Robinson gets a text that day at
7 11:40 A.M. of the day of the shooting, and who's it from?
8 It's from Ray Logan. What did we learn? We learned that
9 Facebook profile picture the detective showed you today, the
10 white -- the person in white right there is Raekwon Robertson.
11 That's his Facebook account sending a message to DeShawn
12 Robinson's phone. We have more than two people, because what
13 is it? "Ask DJ if he trying to hit a house tonight. Me, you,
14 Sace. Sace already said yeah." So we have a mutual
15 understanding between four people.

16 Now, that might not mean anything to you, "Hit a
17 house." Might not be something that's a mutual understanding
18 if you and your kids said it, but it was a mutual
19 understanding and an agreement between those four guys.

20 The crime is the agreement to do something unlawful.
21 So the crime is actually that agreement; it doesn't matter
22 whether it was successful or not. And if you think about it
23 as a public policy reason, you can imagine why that would be
24 something you'd criminalize, because DeShawn, DeMario, and
25 because Davontae Wheeler's house is up there, I submit to you

1 he probably got in the car with them, and what did they do?
2 They drove across the city to where Raekwon Robertson lives
3 and where the victim lives.

4 What was talked about during that car ride? You can
5 think about that and say, oh, I get it, the agreement to do
6 the crime. And then you all get together, you're talking.
7 You got your firearms with you, they're loaded. And you got
8 your friends with you, and that makes you a little tougher.
9 When you're with a group, you're a little stronger. You go to
10 hit on that girl at a bar, it's never fun when you're by
11 yourself, but if you got your boys just down on the other end
12 of that bar, you're more likely to go do it.

13 And that is what happened that night. These four
14 guys get together, three of them carrying firearms. They go
15 to a convenience store at around 11:27 to 11:30 P.M., and that
16 convenience store is near the victim's residence.

17 How do we know who these four guys and what their
18 intent was? Well, their intent was to hit a house and they're
19 armed with loaded handguns. DeMario Lofton-Robinson, depicted
20 right there, look at his pocket. What did DeShawn tell you?
21 He was carrying that Interarms Star handgun, that
22 semiautomatic .45 pistol, and you can see it right there
23 bulging out of his pants. The sweater found in the back of
24 his car that he was wearing that night with the Jordan symbol
25 right there that you can see.

1 And when DeMario and DeShawn's residence is
2 searched, 919 Bagpipe, on August 9th, 2017, that firearm is
3 found by Trigger the dog during the sniffing that Adrian
4 Sandoval told you he released the dog, she goes up, hits on
5 that pink backpack, stays there. The detectives go open it
6 up, and there's the gun with six unspent cartridges left.

7 DeShawn Robinson. DeShawn Robinson came in here and
8 testified in front of you. That's him. He picked himself out
9 right there in the video surveillance. Raekwon Robertson in
10 the black hoodie right there, the black hoodie in August, the
11 reason that Lucy and Robert thought something was odd, and
12 Lucy ends up calling 311 after Robert Mason calls her and
13 says, hey, I just saw four guys in black hoodies kind of
14 against this wall. It's August.

15 What happens when Raekwon Robertson's house is
16 searched? The Taurus .22 handgun with .22 caliber bullets
17 right there, hidden underneath that drawer. When the drawer's
18 pulled out, it's right underneath that dresser. Additionally,
19 the Vans or Top-Siders, whatever the wording would be, that
20 can be depicted in that video surveillance is found in his
21 closet.

22 Davontae Wheeler shown there open carrying on the
23 side, right on his right side. The gun is found wedged in
24 beneath his bed against the -- against that little -- I don't
25 know what that cushion thing is -- with a holster. The

1 Millennium Taurus .45 with his fingerprint on the magazine
2 that's loaded in that gun. His Huaraches found on the floor
3 of the apartment that he's wearing in that video surveillance,
4 and a Chicago Blackhawks hat that's evident right there in
5 that photo. So that's who the four people are that agreed to
6 go do this crime.

7 Why this house? Look at it. You guys have seen the
8 photos over and over; we showed them to you. It's a corner
9 house. The wall. Look how that wall provides concealment
10 from that front door. Look where that front door would be;
11 you're hidden from the street.

12 Where's your getaway car? It's parked on Lindell,
13 facing south. Easy way out. It's on the dark side of the
14 street. Because of that weird mini-cul-de-sac, there's no
15 real lighting there. So, although this is lit up, the garage
16 door is up now -- you guys saw the video surveillance of the
17 body cam -- those garage doors weren't up. That lighting
18 wasn't there when this happened.

19 Why pick that house? Those are why, because you
20 were going to hit that house and it's an ideal spot. Look how
21 dark it is without that artificial lighting behind that Honda
22 right there. Look where the front door would be, hidden by
23 that eight -- I don't know, eight, ten-foot wall. And there's
24 your car, ready to head south and get out of there on Lindell.
25 You have, at most, one neighbor on your side of the street

1 that's actually kind of looking at the house right there.

2 Well-constructed plan, well-constructed conspiracy,
3 but it meets an unexpected jogger. Who expects someone to be
4 jogging at midnight? But Robert Mason jogs past and takes
5 down the license plate number.

6 (Video is played)

7 (Stopped playing of video)

8 MR. BROOKS: And that car was located within 24
9 hours, and it is 473YZE. Notice the curling on that license
10 plate. Notice the curling on the license plate when it's
11 impounded there at the CSA lab for Metro, and right there in
12 the video surveillance.

13 So what happens when the car's impounded? Vehicle
14 is located, and there's .45 caliber bullets right there in the
15 glove box, and the two pair of Jordan shoes; one you can see
16 DeMario wearing, and one you can see DeShawn wearing, size 9
17 and size 11. And then, the car is processed for prints. As
18 you can imagine, DeMario is the driver and owner of that
19 vehicle, so Prints 4 and 5 on that driver's side door come
20 back to him. Additionally, on the hood, his prints are on the
21 hood, almost like you were sitting there, hanging out, talking
22 to people.

23 DeShawn. Where was the younger brother's
24 fingerprints? Back passenger's side, right there. Where
25 else? Window of that back passenger side, which, when you

1 look at the video surveillance, that's right where he's
2 getting out; that's where he was seated that night. And you
3 heard from the DNA expert who came in here and talked about
4 the DNA that was presumptively positive for blood on the back
5 of that seat. Who did that come back to? DeShawn Robinson.
6 Additionally, DeShawn's palm print can be found right there on
7 the corner of that car.

8 What about Davontae Wheeler? When the car was
9 processed and the fingerprints were examined, Davontae
10 Wheeler, who was riding shotgun that night when you look at
11 the video surveillance, right there on the window, on the
12 hood. On the hood, almost like he was sitting there, talking
13 with DeMario. Those right there are all Davontae Wheeler's
14 fingerprints, palm prints on the car.

15 What about Raekwon Robertson? Also on the hood, and
16 then right behind the driver's seat where he was seated.
17 That's what happens when they process that car.

18 Now, the conspiracy, like I said, is the agreement.
19 It doesn't matter whether or not it was successful. Once you
20 agree to commit the crime, you get in the car, got your guns,
21 you're driving that way, you're guilty of a conspiracy.
22 Doesn't matter -- you don't have to actually finish it off.

23 So they went to hit a house that night, but instead,
24 what happened? What did you guys learn? An easier target
25 walked -- not jogged -- right into their plan. Why go into

1 the house? We can't see what's in there. Why kick down the
2 door or why pry open the door? This guy is by himself,
3 walking in a driveway, carrying mail, sorting through mail,
4 paying attention to that around midnight, and that's who they
5 hit instead.

6 Gabriel Valenzuela was wearing his Polo cargo shorts
7 because that's what you wear in August here in Las Vegas.
8 It's not New York City in November. He was wearing a t-shirt.
9 And he became their easy target to hit. They had their guns;
10 they were loaded. It's not like they were trying to sneak in
11 and out of a house. So they said, "Give me everything you
12 got." They saw an opportunity to hit Gabriel Valenzuela.
13 They asked for everything he had, and that right there is when
14 this turns into what we're going to transition now: the
15 attempted robbery.

16 So what's a robbery? Robbery is the unlawful taking
17 of personal property. So that's whether the taking was fully
18 completed with or without the victim's knowledge, and that
19 unlawful taking of personal property has to happen against the
20 victim's will. Well, what was this taking attempted as? The
21 taking was by means of force or violence, or fear of injury to
22 his person.

23 So there's two kind of -- there's a few things, but
24 the two I'm going to focus on is this force, this display of
25 force that you heard about; the grabbing, where the two guys

1 had him by the collar; the display of guns. Why do you have
2 the gun right there on your hip? Why do the other people have
3 guns? Why do you pull the guns? To obtain or retain someone
4 else's property, or to prevent or overcome resistance to the
5 taking of that property.

6 Maybe Gabriel said, no, you can't have my stuff, and
7 so rather than just show the guns, something else happened.
8 But you heard DeShawn say nothing ended up being taken. Once
9 the shots were fired, we all kind of headed to the car, we got
10 out of there. So this is an attempt robbery with use of a
11 deadly weapon.

12 What's an attempt? An attempt is an act done with
13 the intent to commit a crime, and tending but failing to
14 accomplish it. So, because nothing was taken because that
15 plan went awry, they took off running. They intended for it
16 to happen; they intended to take his stuff. "Give me
17 everything you got." They performed some acts towards that,
18 showing guns, grabbing him, encircling him. They failed to
19 consummate because they didn't actually make away with the
20 property. That's why it's an attempt robbery.

21 Not going to spend a lot of time on this. Deadly
22 weapon. You have an instruction in there that says, "You are
23 instructed a firearm is a deadly weapon." I submit to you, a
24 deadly weapon was used.

25 So this is going to be kind of like a weird part.

1 I'm going to try to kind of take this out of order and explain
2 a legal thing here for you guys. In there, when you look at
3 the Indictment that was just read to you, for each crime,
4 you'll see, it says, "By directly or indirectly committing the
5 acts," "By conspiring to commit the crime," or, "By aiding and
6 abetting in the commission of the crime." So there's three
7 different theories of liability where the law will hold you
8 accountable.

9 For instance, you could -- if we drove to a 7-Eleven
10 -- me and Mr. Pesci drive to 7-Eleven. Let's say he's just
11 the getaway driver. Let's say he just stayed in the car the
12 whole time, but he knows my plan, and I'm carrying a gun on
13 me, I go in, and I hold up the store Clerk. I'm directly
14 committing the robbery there, but he conspired with me because
15 we planned it, loaded the gun. He drove me there, took the
16 route, and he aided and abetted me in the commission of that
17 crime. Waited outside, I got the money, I run back to the
18 car, we take off together. So, to put this in kind of just
19 plain words, you can do it, you can agree to do it, and you
20 can help someone do it.

21 Now, you must be unanimous that the defendant --
22 each defendant is liable under one of those three theories.
23 You don't have to agree on the theory of liability. Some of
24 you, three or four, might think, oh, I think they directly did
25 this crime. And then three or four others, you say, oh, I

1 think this defendant did it, but he conspired to do it, and he
2 helped them, and assisted, and he intended that it happen.
3 And then, one or two others might say, yeah, I think he aided
4 and abetted with the specific intent that they go hit this
5 house and that they go rob Gabriel Valenzuela.

6 You just all have to be in -- have a unanimous
7 opinion that the defendants are liable; you don't all have to
8 be unanimous on the specific theory of liability, okay? So if
9 you find there's a conspiracy or the defendants aided and
10 abetted with the intent that the crime be committed, that they
11 actually take Gabriel Valenzuela's stuff, that they hit him,
12 that they hit the house, that they brought those guns to use
13 them, the acts of one are the acts of all. The State's not
14 required to prove what each defendant precisely did.

15 Now, in this situation, you had DeShawn Robinson
16 come in and tell you kind of the interactions. You have some
17 of the forensics that say which gun was fired, which gun --
18 the cartridges go back to this gun, the DNA's on this person,
19 the fingerprints on this one, so you know. But if we didn't
20 have some of that, a defendant doesn't get the benefit --
21 doesn't get to get away because the State can't prove exactly
22 what happened in a dark alley one night. If three people go
23 in this dark alley, and one guy walks away all beat up, and
24 the other three, you know, have his stuff, you can infer what
25 happened. You can infer what happened in that alleyway.

1 So now let's move to Count 3. Now, just like I just
2 went through the three different theories of liability, I'm
3 going to go through two different theories of first degree
4 murder. So the first one, we're going to talk about murder
5 generally, and then I'm going to talk about the theory that we
6 often see on television.

7 So what is murder? Murder is the unlawful killing
8 of a human being with malice aforethought, either express or
9 implied. What does that mean? Malice aforethought is doing
10 something wrong intentionally; intentionally doing a wrongful
11 act without legal cause, or excuse, or what the law considers
12 adequate provocation. So malice aforethought's not an
13 accident. Gun didn't just happen to discharge. Malice
14 aforethought's not mischance.

15 So what is -- now, that's murder. What is first
16 degree murder? Well, we've heard it on television a lot, but
17 let's talk about this willful, deliberate, and premeditated.

18 Willful. So murder of the first degree is that
19 which is perpetrated by the means of any willful, deliberate,
20 and premeditated killing. Willfulness is the intent to kill;
21 you intended to kill someone.

22 What do we have here? A bullet, center mass. Why
23 put a bullet in someone's center mass where all their vital
24 organs are? You heard Detective Dosch today. That
25 smaller-caliber bullet clipped the kidney and the spleen. You

1 do that to incapacitate someone. You do that, you send a
2 projectile into their body, in order to stop their life. This
3 wasn't a warning shot. This wasn't some sort of situation
4 where -- put it in some guy's arm, just, "Hey, back away."
5 What else do you have? Head shot. Why do you put a large
6 caliber round in someone's head? You intend to kill them.

7 Deliberation. Deliberation is the process of
8 determining upon a course of action to kill as a result of
9 thought, including weighing the reasons for and against the
10 action and considering the consequences of the actions.
11 Weighing the pros and cons; discussing it while you're driving
12 there; looking for certain houses with your loaded firearms;
13 knowing that your firearm's loaded, watching one bullet get
14 shot, another, another. Four cartridges at the scene.

15 This was deliberate and the consequences were
16 weighed. The pros and cons, they were decided upon all night.
17 An Interarms Star, the Millennium Taurus .45, and the Taurus
18 .22. Why do you have two .45 caliber semiautomatic handguns?
19 Those are large rounds.

20 Premeditation. Premeditation is a design, a
21 determination to kill, distinctly formed in the mind by the
22 time of the killing. It need not be for a day, an hour, or
23 even a minute. It can be as instantaneous as successive
24 thoughts of the mind. There's no time requirement. Doesn't
25 have to be that premeditated -- when you see someone waiting

1 outside of someone's house, and, you know, an ex-girlfriend's
2 scorning you, and you're hiding in her bushes. That doesn't
3 -- that's not what premeditation is. Premeditation can be
4 instantaneous, successive thoughts of the mind.

5 What do we have here for premeditation? First shot.
6 How's the first shot fired? Davontae Wheeler is on the left,
7 DeMario's on the victim's right. They're holding him, they're
8 grabbing him, take -- "Give us your property, give us what you
9 got," and the first shot's fired in his stomach. The next
10 shot is fired in his head.

11 What about the -- what about the third round that we
12 had evidence of? Now, I submit to you, when you look at the
13 forensics, look at the entry. You see an entry wound on that
14 right side of the leg, and then you saw an exit wound -- you
15 have the photos -- right parallel centrally to that one, as
16 though it went in straight, exiting that right leg. And then
17 an entry wound on the left leg, and a .45 caliber bullet found
18 in the upper portion of that calf area in the left leg.

19 Was it the same bullet? Was it one bullet that
20 entered that right leg and went into the left leg, or was it
21 two? Either way, how does a bullet go right through that
22 right leg and right out in a nice straight line? No one was
23 laying on the ground like a sniper and firing that large
24 caliber bullet.

25 I submit to you, what probably happened was -- we

1 learned the first shot was to the stomach. Was the second
2 shot to his head? Was he on the ground, and do they do one
3 more shot just to make sure he can't get up? Just one more
4 while standing over him? Does it go in the right leg, out the
5 right leg, into the left leg, and get caught right there until
6 it's taken out in the autopsy? The right tibia and fibula is
7 broken. The left tibia and fibula is broken. Can't stand,
8 can't get away. Only thing he can do at that point in time is
9 bleed out right there on the driveway. That's premeditated.

10 Now, there's another way, like I talked about, of
11 being liable for first degree murder. So that one we just
12 went -- we just went over is the willful, premeditated murder.
13 This one we refer to as the felony murder rule, okay? It is
14 first degree murder. And what it says is, "There is a kind of
15 murder which carries with it conclusive evidence of
16 premeditation and malice aforethought." So we just kind of
17 went over malice; we went over premeditation. This is
18 conclusive evidence of it.

19 And what it is, is when a murder's committed in the
20 perpetration of or attempted perpetration of a robbery. So
21 what this law is saying is, you don't get to roll up to
22 someone's house, all with loaded firearms, try to take their
23 stuff, and when something goes bad, oh, a human life was
24 taken, but it's not murder. The law says this is first degree
25 murder if that happens. If you were attempting to rob someone

1 with loaded firearms, and you're intending to take their
2 property against their will, and someone dies, you're guilty
3 of first degree murder.

4 Now, DeShawn kind of laid out the dynamics, and I
5 want to go through it a few different ways. So what did we
6 learn? We learned that Gabriel was in the middle of his
7 driveway, sorting through his mail. Raekwon was directly in
8 front of him, DeMario was on the victim's right, Davontae was
9 on the victim's left, and DeShawn was right near and behind
10 Raekwon. Gabriel was encircled. Why do you encircle him?
11 Why do you put hands on him and grab his collar? Because you
12 intended to take his stuff against his will.

13 Let's look at it with the photo. How did that --
14 where is everyone located? Raekwon, DeMario, Davontae,
15 DeShawn, and Gabriel. What do they have on him? Because
16 Gabriel doesn't have anything on them. What's Raekwon have?
17 .22 caliber Taurus. What does DeMario have? .45 Interarms
18 Star. What does Davontae have? The .45 Millennium Taurus.

19 MR. RUGGEROLI: Judge, I'm going to object, because
20 the testimony was very clear. Mr. Wheeler's gun was excluded
21 as being used for the cartridge cases. And I'm not clear if
22 it's being suggested that this gun is being used at the scene,
23 but the pictures are coming up simultaneously, and that would
24 misstate the evidence that's been presented.

25 THE COURT: Okay. Mr. Brooks, do you want to

1 clarify?

2 MR. BROOKS: My wording was, "What does he have on
3 him?" And the pictures --

4 THE COURT: Okay.

5 MR. BROOKS: -- actually aren't coming up
6 simultaneously; they're coming up in the animation's
7 succession.

8 THE COURT: Okay, thank you.

9 MR. BROOKS: Now, let's look at the evidence.
10 First, with Raekwon and the gun with Raekwon's DNA on it found
11 at his house. Taurus .22. Right there, Marker number 1, is
12 what? You learned it was a cartridge case with a "C" on the
13 headstamp, a .22 caliber cartridge case, which, when tested,
14 was identified as having been fired from that Taurus .22.

15 And when Raekwon's residence is searched, with the
16 gun, what's found? .22 caliber bullets or unspent cartridges
17 with the headstamp "C" matching exactly like that "C" right
18 there left at the scene. And what was in Gabriel? A
19 smaller-caliber bullet that entered on that left side of the
20 abdomen, came to rest around L1, and was taken out during the
21 autopsy.

22 And Anya Lester came in here and testified, and
23 said, I can't identify that bullet as having been fired from
24 that Taurus .22, but it does share similar and general
25 riffling characteristics as having been fired with that

1 Taurus. So the cartridge is identified to that Taurus. The
2 bullet found, which ricochets off organs, has similar general
3 riffling characteristics; twists and spacing. And Raekwon's
4 DNA was individually included in the mixture as being found on
5 that Taurus .22.

6 What about DeMario? DeMario was armed with the
7 Interarms Star .45. Now, when Mr. Ruggeroli just objected
8 there, he's correct, and at no point am I or Mr. Pesci going
9 to stand up here today and tell you that number 2, number 3,
10 or number 4, the .45 caliber cartridge cases found at the
11 scene, came from the gun Davontae Wheeler has his fingerprints
12 on and is found at his house. It was identified, those
13 cartridge cases, to having been fired from that Star .45.
14 Additionally, in the early morning hours, the bullet that's
15 found right there, marked by that cone, was recovered and
16 identified as having been fired from that Star .45.

17 Now, think about where that bullet is, and consider
18 it in conjunction with DeShawn's testimony. DeShawn told you
19 that if where you guys are is Raekwon, and where I am is
20 essentially the victim, Raekwon was in the front of him. Who
21 was to the victim's right? It was DeMario, his brother. Who
22 was to the left? It was Davontae Wheeler. As they're
23 grabbing him, the first shot goes in.

24 Now, think about what would happen. The first shot
25 goes in, they kind of scatter. What happens? What did you

1 learn? You learned that the head shot comes entry wound in
2 the right side, exit wound out of the left front skull here.
3 Where would it have traveled? Where was it found? Right over
4 in those bushes, which would make sense from that direction.
5 Additionally, the bullet found in the victim's leg is found,
6 recovered, tested, and identified as having been fired by that
7 .45.

8 First degree felony murder. They wanted his stuff,
9 they tried to rob him, they killed him while trying. That's
10 first degree felony murder. It's not second degree. The law
11 holds them accountable for conspiring to go and rob some
12 person of their property when a life's taken.

13 Now, you have an instruction in there. "In order to
14 use a deadly weapon, there need not be conduct which actually
15 produces harm, but only conduct which produces a fear of harm
16 or force by means or display of the deadly weapon in aiding
17 the commission of the crime." Think about that.

18 If in that circumstance where I gave that hypo, Mr.
19 Pesci drives me to the store, I go in the store armed, and I
20 hold the gun up, and I tell the Clerk, "Give me all your
21 money," but I don't fire it, I don't shoot it, I still robbed
22 with use of a deadly weapon, because why do I pull the gun?
23 Why am I displaying that gun? As a means of intimidation.
24 Give me what you got so I don't have to ask too many times.
25 Give me what you got; look what I got.

1 So you don't actually have to fire. If you have
2 that gun holstered on the side of your body, and you're
3 grabbing at the victim while your friends are shooting, and
4 you're telling him, "Give all your stuff," why is it there,
5 why is it loaded, and why is it displayed? You use a deadly
6 weapon when you're displaying it for that intimidation
7 purposes. It does not have to be fired.

8 Moreover, in the felony murder rule, when those four
9 guys go to commit that robbery, it doesn't matter who pulled
10 the trigger; they all intended that the robbery be
11 accomplished. It wasn't. They intended to take his stuff,
12 "Give me what you got." So you don't have to be the trigger
13 man. Just because I pulled the trigger, if Mr. Pesci's
14 holding the guy up for me when I pull that trigger, he's
15 liable as though he used the deadly weapon, too. He's liable
16 under the felony murder theory, first degree, also.

17 Now, Raekwon Robertson and Davontae Wheeler can't be
18 merely present. You can't think they were just a spectator.
19 So mere presence at the scene of the crime and knowledge that
20 a crime is being committed, that's not sufficient. You must
21 -- you need to be a participant. Can't be merely a knowing
22 spectator.

23 So let's look at this. Were these two guys merely
24 knowing spectators? They didn't bring crowbars to the house.
25 They didn't bring little devices to pick the lock or tools to

1 go in and shimmy a door. Why do you bring loaded firearms?
2 Because you might need to use it. Why are you wearing hoodies
3 in August and huddled up against a wall? Why do you pick that
4 house? You're not just a spectator.

5 And why do DeMario and Davontae hold Gabriel
6 Valenzuela by the collar while Raekwon fires the first shot?
7 You're not a knowing spectator. You're not just, oh, I was
8 merely present, propping someone up while grabbing them by the
9 collar, and then watching my friends fire more rounds into his
10 skull and legs.

11 29 calls between Sace and Lil Homey DeMario between
12 August 2nd and August 9th, 2017. Weren't just random people.
13 Weren't just, oh, I just happened to be in the store with
14 them, I didn't know them. Marcell Solomon came in here and
15 testified. It's not like, oh, I just -- I was like Marcell;
16 I just happened to be there and I was buying cigarettes for
17 them also. That's not what happened.

18 And DeShawn and Raekwon are calling each other on
19 the day of the plan to hit the house. So you have the text
20 messages of, let's ask DJ if he wanted to hit a house tonight,
21 but DeShawn and Raekwon are also calling each other that day.
22 Merely present?

23 Look at that headstamp. That's the R-P .45s. You
24 had the evidence and you saw there were a couple kind of
25 scattered around on Davontae Wheeler's floor, one in his

1 pocket, where the search warrant -- not his pocket at that
2 same time, but a pocket of his pants at his residence, and
3 then a couple just on the floor, those R-Ps, and his gun was
4 loaded with those R-Ps. And one of the cartridges at the
5 scene is an R-P. You saw three different .45 caliber
6 cartridges: a Winchester, an R-P, and the NFC. And then,
7 didn't really make sense.

8 And then DeShawn came in here, and we were asking
9 him about what was being talked about in the car, and he said
10 they were switching bullets. So why does DeMario's gun have
11 three different headstamp .45s? I submit to you, that's why
12 there's loose bullets; that's where he got them from. Are you
13 merely present if you're switching bullets, giving people
14 different headstamps?

15 Now, if the jury -- if you guys return a verdict of
16 guilty on first degree murder, it must be unanimous; however,
17 it doesn't have to be unanimous on the theory of first degree
18 murder. So some of you could think, "I think it was willful,
19 deliberate, and premeditated. I think it's first degree
20 there." And some of you might think, "I think it was felony
21 murder. I think they were trying to rob him, something went
22 bad, and Gabriel Valenzuela's life got taken." You just have
23 to be unanimous that it's first degree murder; you don't all
24 have to agree which one of those two, okay?

25 Now, if the evidence in the case convinces you

1 beyond a reasonable doubt of guilt of the defendant, you
2 should so find, even though you may believe one or more
3 persons are also guilty. If you guys are sitting there, and
4 have sat through this entire trial, and think, I think DeMario
5 Lofton-Robinson is guilty of first degree murder, I submit to
6 you, you're probably right, but that's not what you're here
7 for. You are not here to consider that. You're here only to
8 consider the charges against Raekwon Robertson and Davontae
9 Wheeler.

10 Second degree murder, there's an instruction in
11 there, "All murder which is not murder of the first degree is
12 murder of the second degree." This isn't second degree
13 murder. This was willful, deliberate, premeditated, and it
14 was committed during the attempted robbery of Gabriel
15 Valenzuela, so this isn't second degree murder.

16 Now, this is your Verdict Form, and I know this
17 seems weird, but sometimes people have trouble filling it out,
18 and so just going to go through it. You're going to select
19 one box in each one of these counts. There's three counts and
20 there's two different defendants, so you have a Verdict Form
21 for each defendant; one for Raekwon Robertson and one for
22 Davontae Wheeler.

23 I submit to you that both of them are guilty of
24 conspiracy to commit robbery, both of them are guilty of
25 attempted robbery with use of a deadly weapon, and both of

1 them are guilty of first degree murder with use of a deadly
2 weapon. Thank you.

3 THE COURT: Thank you. Mr. Sanft, you may address
4 the panel in your closing argument.

5 MR. SANFT: Yes, Your Honor. Your Honor, may we
6 approach, please?

7 THE COURT: Of course.

8 (Bench conference)

9 MR. SANFT: Are we just going to go all the way
10 through with everybody tonight?

11 THE COURT: Yeah.

12 MR. SANFT: Okay.

13 MR. PESCI: What?

14 MR. SANFT: Are we going to go all the way through
15 with everybody --

16 MR. PESCI: Okay.

17 MR. SANFT: -- tonight?

18 THE COURT: Yeah.

19 MR. SANFT: Okay.

20 (End of bench conference)

21 DEFENDANT ROBERTSON'S CLOSING ARGUMENT

22 MR. SANFT: You remember when we first met, and I
23 had an opportunity to address you in the opening about
24 reserving your judgment until the end? If you've been sitting
25 here the entire time, already making a decision as to what you

1 believe the State of Nevada has proven beyond a reasonable
2 doubt, then you haven't done your job.

3 Once again, I don't believe that's the case. I
4 don't believe that anyone here has made up their minds.
5 However, what I need for you to remember the entire time that
6 you're here is it's not until you go back into that
7 deliberation room, and have that conversation, have that
8 deliberation, get an opportunity to review everything, that
9 that decision ought to be made, okay? That's what we picked
10 you as jurors for and that's what we expect from you.

11 Now, in this case, what's going to happen is your
12 notes and your recollection will govern in this case, and you
13 will get back the exhibits. Everything that we've shown to
14 you, the pictures that we have and the maps that we've shown
15 to you, those things go back with you, and that, with your
16 recollection, is what's going to govern this case.

17 Why is that important? It's because during the time
18 that we've spent together in this trial, there may have been
19 things that I have heard that maybe you didn't hear. And when
20 you go back as the 12 individuals that will form this jury and
21 deliberate, whatever you think are the facts in this case will
22 govern, not what I say and not what the State of Nevada says.
23 So what you recall the facts to be is what the facts are. Now
24 I will tell you what I believe the facts have shown in this
25 case, but that doesn't mean anything. It's what you recall it

1 to be.

2 And the jury instructions in this case are the
3 things that the Judge has read to you that you have in front
4 of you, and the most important jury instruction in this case
5 is Jury Instruction number 5. Now, if I can have you turn
6 with me to Jury Instruction number 5. This is the instruction
7 and what the law is in the State of Nevada specifically as to
8 what the definition is of reasonable doubt. It's in here.
9 There's no other explanation for it. It's what is contained
10 within that one page, and this is what the State of Nevada has
11 to prove to you.

12 And in that instruction, it says that, "The
13 defendant," in this case, Mr. Robertson, "is presumed innocent
14 until the contrary is proved. This presumption places upon
15 the State of Nevada the burden of proving beyond a reasonable
16 doubt every element of the crime charged and that the
17 defendant," in this case, Mr. Robertson, "is the person who
18 committed the offense."

19 "A reasonable doubt is one based on reason. It is
20 not mere possible doubt, but is such a doubt that would govern
21 or control a person in the more weighty affairs of life. If
22 the minds of the jurors, after the entire comparison and
23 consideration of all the evidence," all the evidence, "are in
24 such a condition that they can say they feel an abiding
25 conviction of the truth of the charge, there is not a

1 reasonable doubt. Doubt to be reasonable must be actual, not
2 mere possibility or speculation."

3 That's reasonable doubt. That's what the State of
4 Nevada has to demonstrate to you. Why is that important in
5 this case? The idea of mere possibility or speculation. I'm
6 going to come back to that at the end, but that portion of
7 this instruction is important in this case.

8 Now, the core of the State's case, I believe, rests
9 upon the testimony of DeShawn Robinson. He got up on the
10 stand and he testified. The law is very cautious about
11 individuals like DeShawn Robinson. It's very cautious, and
12 let me tell you how. When you look at the jury instruction
13 here, this is Jury Instruction number -- number 9. The jury
14 instruction says this: "You have heard testimony from DeShawn
15 Robinson, who was previously charged with conspiracy to commit
16 robbery, attempt robbery with use of deadly weapon, and murder
17 with use of deadly weapon."

18 And just to get to the point, at the very end of
19 that paragraph, the law says the following: "You should view
20 his testimony with greater caution than that of other
21 witnesses." That's important. That's very important in this
22 case, and I'm going to go over the reasons why. But if you'd
23 turn with me to this instruction, which is Instruction number
24 11.

25 Instruction number 11 tells you how to weigh his

1 testimony against the evidence that's been presented by the
2 State of Nevada. So take out their core, take out Mr.
3 Robinson's testimony, and focus specifically on the evidence
4 that we have in front of you, and imagine that Mr. Robinson
5 isn't even there, and that's what that jury instruction says.

6 "In determining whether an accomplice" -- and this
7 is here at the bottom on line 17 of Instruction number 11.

8 "In determining whether an accomplice has been corroborated,
9 you must first assume the testimony of the accomplice has been
10 removed from the case," meaning you have to basically exclude
11 everything that he said to you on the stand and focus on what
12 the other evidence is.

13 "You must then determine whether there was
14 sufficient evidence which tends to connect the defendant with
15 the commission of the offense. If there is not sufficient
16 independent evidence" -- bless you -- "which tends to connect
17 the defendant with the commission of the offense, the
18 testimony of the accomplice is not corroborated. If there is
19 such sufficient independent evidence which you believe, then
20 the testimony of the accomplice is corroborated."

21 So you have to basically say, let's not even imagine
22 him here. What evidence do we have that tends to connect Mr.
23 Robertson to a murder; to the murder of this innocent person
24 that died here in this case? We have a gun, right? There was
25 a gun that they found that's Mr. -- that's in Mr. Robertson's

1 possession or in his house. You have a text message, you've
2 seen that text message, and we have a convenience store video.

3 What other things do we have besides that? Well,
4 okay, we have fingerprints, but I'm going to get to that in
5 terms of what's on the car. Outside of that one thing, what
6 else do we have? Those are the things that the State of
7 Nevada has demonstrated to you, if you exclude Mr. Robinson's
8 statements up on the stand, that would demonstrate to you that
9 my client's guilty of murder.

10 Now, in this case, let's talk about the gun. Same
11 caliber as the bullet found in the victim. It's a .22. It's
12 not an exotic caliber. Anyone ever heard of a .22 rifle, a
13 .22 firearm? It's not exotic. The gun is found in Mr.
14 Robertson's apartment, and DNA of Mr. Robertson is found on
15 the gun, right? We can all agree to that. That's what you
16 heard, this is what the State of Nevada has proven to you
17 during the time that we spent together, but how do we know
18 that that gun was used in a murder, right?

19 So we had someone testify and talk about riffling on
20 the inside and so forth, but the bullet in this case does not
21 demonstrate that. What does it demonstrate to you? It
22 demonstrates that there is generally similar riffling that is
23 not unique. She said it; she testified to that on
24 cross-examination. There are other gun manufacturers that
25 would have that same riffling.

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.