No. 90163

In the Nevada Supreme Court

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JOSHUA LAMAR GIPSON,

APPELLANT,

v.

STATE OF NEVADA,

RESPONDENT.

APPEAL
From Judgment of Conviction
Clark County District Court, Hon. Eric Johnson

APPELLANT'S APPENDIX
VOLUME 4

WILLIAM H. BROWN (7623)
BROWN MISHLER, PLLC
911 N. Buffalo Dr., Ste. 202
Las Vegas, Nevada 89128
(702) 816-2200
WBrown@BrownMishler.com

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of BROWN MISHLER, PLLC, and that I served the foregoing **APPELLANT'S APPENDIX VOLUME 4** via the Supreme Court of Nevada's e-filing and e-service system.

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TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, vs. JOSHUA LAMAR GIPSON, Defendant.	CASE NO. C-23-377839-1 DEPT. XX

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

THURSDAY, OCTOBER 10, 2024

TRANSCRIPT OF HEARING:

JURY TRIAL - DAY 4

APPEARANCES:

For the State: MICHAEL ALLMON, ESQ.
DOMINIQUE BOSA-EDWARDS, ESQ.
Deputy District Attorneys

For the Defendant: THOMAS D. BOLEY, ESQ.

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

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Las Vegas, Nevada, Thursday, October 10, 2024

[Trial began at 11:15 a.m.]

[Outside the presence of the jury]

THE COURT: Calling State of Nevada versus Joshua Gipson, Case No. C377839. Counsel, make your formal appearances for the record.

MR. ALLMON: Michael Allmon and Dominique Bosa-Edwards for the State.

MR. BOLEY: Tom Boley for Mr. Gipson. He is present to my right in custody.

THE COURT: Okay. Well, the jurors are all out there and we're ready to get going. I had hoped to try to get going about half hour earlier than this. We started talking yesterday about -- his name is Nobleton?

MR. ALLMON: Kimbrough --

MS. BOSA-EDWARDS: Kimbrough.

THE COURT: Kimbrough.

MR. ALLMON: -- Your Honor.

THE COURT: Kimbrough. Okay, Mr. Kimbrough coming up and mentioning to the Marshal that he is familiar with that area as he has family members out there. I know the State expressed some interest in possibly talking to him. I'm just sort of concerned that in talking to him, we're emphasizing some reason that he might -- should be fearful about something. So that was sort of my

hesitancy, and I said let's think about it, and let me ask, State, what's your thought at this point in time?

MR. ALLMON: So my thought would be to ask just kind of an open-ended question of -- and if the Judge would prefer to do it instead of me doing it -- something along the lines of, you know, you passed the note to the Bailiff or, you know, whatever manner that he did, and just simply why did you do that?

THE COURT: Okay.

MR. ALLMON: And then a follow-up of, you know, does any of that cause you concern that you can be a fair and impartial juror --

THE COURT: Okay.

MR. ALLMON: -- in this case?

THE COURT: What's the Defense -- what do you think that idea?

MR. BOLEY: I think that's fine.

THE COURT: All right. That sounds reasonable. I'm not going to do it right now. I figure we're in --

MR. ALLMON: That's fine.

THE COURT: -- it for -- I want to get going with the jury.

MR. ALLMON: And we have the alternates so --

THE COURT: Yeah.

MR. ALLMON: -- if it happens later, it's still --

THE COURT: So yeah, we --

MR. ALLMON: Okay.

THE COURT: We'll do -- we'll plan on when we have a break next time, we'll try to do it right then.

MR. ALLMON: Thank you, Your Honor.

THE COURT: Okay. All right. Anything else before we need -- we can get started? State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No.

THE COURT: All right. What happened to my Marshal? Oh, there he is.

THE MARSHAL: Making sure that my -- the remand is taken care of.

THE COURT: Oh, okay.

THE MARSHAL: So I should be good now.

THE COURT: All right, very good. All right. Bring them in.

THE MARSHAL: Yes, sir.

THE COURT: Oh, let me ask real quick before they come in, anything more with the jury instructions? State?

MR. ALLMON: I think --

THE COURT: Ally sent those --

MR. ALLMON: -- there is --

THE COURT: -- to you last night.

MR. ALLMON: Yes, yes. There was --

[In the presence of the jury]

THE MARSHAL: All rise for the jury.

THE COURT: All right. While they're getting lined up, let me have a sidebar.

MR. BOLEY: Yes, sir.

MR. ALLMON: Yes, Your Honor.

[Sidebar Begins]

THE COURT: Okay.

MR. ALLMON: Ms. Bosa-Edwards noticed we were missing a malicious definition and one of the -- the charge for discharging is willful and malicious.

THE COURT: Okay.

MR. ALLMON: And so we'll probably have to supplement that. If we did something --

THE COURT: Did Ms. Bosa-Edwards get a malicious instruction done up?

MS. BOSA-EDWARDS: I can -- because it's usually --

THE COURT: All right.

MR. ALLMON: It's --

THE COURT: I know you're busy. Can you dig it up while he's -- are you doing the exams?

MR. ALLMON: I'll do the exams, yeah.

THE COURT: All right. Can you dig it up? All right. Let's get it because I -- let's get it to Ally.

Do you have anything else?

MR. BOLEY: No.

MR. ALLMON: I'd assume you want that too; right?

MR. BOLEY: Well yeah, it makes sense to have it.

THE COURT: I don't have any problem with it, but I just want to -- so nothing else on your end?

MR. BOLEY: Nothing else. No, I went over it, and it looks good to me.

THE COURT: Okay. And that's the only thing on your end?

MR. ALLMON: We think we missed that, yes.

THE COURT: All right. We're going to get that to Ally very quickly; right?

MS. BOSA-EDWARDS: Yes.

THE COURT: All right. Good deal. All right. Thank you, everybody.

[Sidebar Concludes]

THE COURT: All right. Good morning, Ladies and Gentlemen. It's great to see you here. Again, I apologize, we got started a little late again because of my calendar. I apologize for that. The fault is all mine. But I do appreciate everybody getting here and for us to be able to get started now. We still anticipate getting the case to you today, so everything is on track in that regard.

We were going -- you guys can all sit down.

MR. BOLEY: Oh, thank you.

THE COURT: So we were having the State present

evidence, and we'll continue that process. The State may call it's next witness.

MR. ALLMON: The State calls Hillary Rapson.

She's on a different floor.

THE COURT: Okay. But we don't have a 13th floor here because that --

MR. ALLMON: No, it was --

THE COURT: -- that'll throw you off, I guess.

MR. ALLMON: Right.

THE COURT: I'm sure that fools the forces of bad luck.

Did she say she'd be here quick?

MR. ALLMON: She is.

THE COURT: Okay.

All right, very good. Ma'am, can I ask you to come up to the witness stand? When you get there, there will be a couple steps.

THE MARSHAL: Watch your step, ma'am.

THE WITNESS: Thank you.

THE COURT: When you get to the top, stay standing for a second, our Clerk over here will swear you in.

HILLARY RAPSON

[having been called as a witness and being first duly sworn, testified as follows:]

THE CLERK: Go ahead and be seated.

THE WITNESS: Thank you.

THE CLERK: And once you're settled, please state and spell your name for the record.

THE WITNESS: Hillary, H-I-L-L-A-R-Y. Rapson, R-A-P-S-O-N.

THE CLERK: Thank you.

THE WITNESS: You bet.

THE COURT: Whenever you're ready, Counsel.

DIRECT EXAMINATION

BY MR. ALLMON:

Q Ms. Rapson, will you introduce yourself to the jury?

A Hillary Rapson.

Q Okay. What do you do for a living?

A I'm a custodian of records for T-Mobile.

Q And what does that job entail?

A My main duty is to travel and testify to T-Mobile's business records. Part of that can include receiving the legal demands requesting those records, processing those relevant records and sending them to the requesting agencies.

Q Now Exhibit 158 has already been admitted, but I'm going to show it to you as well.

THE COURT: Can you confirm that has been?

THE CLERK: Yes. 158, yes.

THE COURT: Okay.

BY MR. ALLMON:

Q So do you see the files that are listed here?

A Yes.

Q And did you and I previously go through these to make sure they were accurate?

A Yes.

Q Okay. So what are these records?

A They are subscriber information, call detail records and timing advance records.

Q Okay. And so can you tell the jury what the call detail records are?

A It is the list of the incoming and outgoing calls and texts for a particular number during the date range requested.

Q Do those provide some kind of location data?

A Yes.

Q All right. What kind of location data do they provide?

A It would be the GPS coordinates and the address for the tower that the calls are connecting to.

Q And then timing advance, what is timing advance?

A It is a list of all of the data and voice activity of the phone connecting two towers within a date range.

Q Okay. And did you provide these -- let me just ask you further. The timing advance, does that have to be current or can that be historical?

A It is historical.

Q Okay. And so CDRs are historical, and timing advance are both historical?

A Correct.

Q Okay. All right. And did you provide these records in response to a search warrant?

A Yes.

Q And do you remember the author of that search warrant?

A It was an S. Montgomery.

Q And you understood that to be a law enforcement officer?

A Correct.

Q Now, do you remember what they -- what records were provided to law enforcement by T-Mobile?

A It was subscriber information, call detail records and timing advance records for a phone number ending in 9500.

Q Did it have a date range?

A I don't recall. I know it was September and -- or August and September, but I don't recall the exact date range.

Q So --

THE COURT: What year in August and September?

MR. ALLMON: Thank you, Your Honor.

THE WITNESS: I believe it's on the -- 2023.

BY MR. ALLMON:

Q Okay. Is it in the records that are here?

A Yes.

Q Would looking at these -- okay. If you want to just tell me where those would be.

A In the start date and end date column, it lists a date range

for those records that we provided.

Q All right. And we see that right there in a file called 464254, approximate dash -- or squiggly dash 1.pdf. Is that the file?

A Correct.

Q Okay. And then we see a start date. Let me make that a little larger. So a start date and end date; correct?

A Correct.

Q Okay. And so that end date, what was it?

A It was September 25th of 2023.

Q Okay. Now, even though it went to September 25th, 2023, was there an actual -- did you go through the records and find out that the last data entry was before that?

A Correct. Yes.

Q And so when was the last data entry you recall?

A It was September 23rd of 2023.

Q Okay. So September 23rd, 2023, is the last data. What does that mean?

A It means that is the last time the phone was on to receive calls or text messages.

Q And then with the historical tower data, is it -- what does it capture? Is it -- does someone have to actually call or use the phone for it to actually show a tower data location with CDRs?

A On a CDR, yes, the phone or the device would have to be powered on or out of airplane mode for it to connect to the tower.

Q And does some kind of communication have to happen at

that point --

A Yes.

Q -- for the CDR record?

A Yes.

Q So it's not just pinging on a CDR non-stop, it's actually -- fair to say it's waiting till it gets a text message, call, something else that connects to a tower to register a time and a location?

A Correct.

Q Okay.

MR. ALLMON: Nothing further.

THE COURT: All right. Cross-examination.

MR. BOLEY: No cross for this witness.

THE COURT: Does any member of the jury have a question for this witness? If you do, write it on a clean sheet of paper with your juror number and signal the Marshal or myself.

I'm not seeing any signaling.

All right. Thank you very much, ma'am, for your testimony. You are excused.

THE WITNESS: Thank you.

THE COURT: The State may call its next witness.

MR. ALLMON: The State calls Detective Dave Kennedy.

THE COURT: All right. Detective, if I could have you come up to the witness stand.

THE MARSHAL: Watch your step, sir.

THE COURT: There are a couple of steps. When you get

to the top, stay standing for a second and our Clerk over here will swear you in.

DETECTIVE DAVID KENNEDY

[having been called as a witness and being first duly sworn, testified as follows:]

THE CLERK: Thank you. Go ahead and be seated. And once you're settled, please state and spell your name for the record.

THE WITNESS: All right. It's Dave Kennedy. Kennedy, K-E-N-N-E-D-Y.

THE COURT: And how do you spell your first name?

THE WITNESS: David, D-A-V-I-D.

THE COURT: Okay.

THE CLERK: Thank you.

THE COURT: Whenever you're ready, Counsel.

MR. ALLMON: Thank you.

THE COURT: Can I get you to scoot up just a little bit --

THE WITNESS: Yeah.

THE COURT: -- to that red light?

Thank you.

DIRECT EXAMINATION

BY MR. ALLMON:

Q Detective Kennedy, will you introduce yourself to the jury?

A Yes. Detective Kennedy. I'm employed by the North Las Vegas Police Department for just over 23 years now. I've been in Robbery/Violent Crime for the past three years, which is we

investigate any shootings that don't involve death and also obviously robbery and other violent crimes.

Q Were you working on September 23rd, 2023?

A I was off, but I got called into work.

Q Okay. So you're an on-call detective at times; right?

A Yes.

Q Okay. So on that day, were you called in to investigate a crime that took place at 404 W Carey Ave.

A Yes, the Quick Check.

Q All right. So at the Quick Check and that's in North Las Vegas, Clark County, Nevada.

A Correct.

Q Okay. And so when you got there, what was the first step you took in your investigation?

A First step of any investigation you get briefed by the officers who are there. They tell us what the crime is, what happens, where the victim is. In this case, the victim was at UMC Hospital. From there, we just continue down with the investigation, collecting video from inside the store. The pointed out a magazine with some rounds in the driveway -- or the parking lot of the store. And also I think two shell casings were also inside the parking lot of the store. That was the initial part, and we got briefed from the detectives -- or the officers?

Q Okay. You mentioned some surveillance video. Were you able to look at that surveillance video yourself?

A Yes.

Q Where did you look at it?

A A dozen times. Inside the store at first, and then obviously later on, it was downloaded and at the office.

Q Okay. And so you looked at it inside the store on their surveillance camera or monitors?

A Yes.

Q Okay. Was that with an employee of the store or?

A I don't remember. I know there was an employee -- two or three employees in there. One knows how to work the system, but -- I won't say this. We know how to work the system in that store as well and I believe one of our officers was also in there and knew how to work the system was working it and she watched the video.

Q Okay. So with the permission of the store employees, you went and looked at the surveillance system; fair to say that?

A Yes.

Q Okay. And you're looking at it on their system and then you got a copy of it. And --

A Yes.

Q -- did you send that copy to the DA's office, eventually?

A Of course.

Q Okay. All right. Now, in the video, what did you see?

A In the beginning part of the video, you see the victim, Johnny pulls up in his truck, goes in the store. Every -- it's a

Saturday. Everybody in the store knows everybody; shaking hands, fist bumping. Later on you see -- he's actually at the slot machines playing. Later on in the video you see the suspect, Joshua, come into the store. Also, you see another person that Johnny knows, Vandemere, comes in the store just talking. People went in and out the store. They both go in and out the store. All three of them go in and out the store.

At one point it looks like there may be an argument, I can't really say, because there's no volume. Words were being said between the two, possibly three of them. Johnny goes into the store, sits down, plays some of the slots again, and then he's leaving. Oh, sorry. While he's sitting there playing slots you see Joshua sitting behind the car, just sitting there like waiting and waiting.

When Johnny comes out, he gets into his truck, he kind of sits there. You see Vandemere kind of walk up to the side of the truck, kind of look -- do one of these here [witness leans head to the right.] He walks back, starts walking off. At this time, Joshua gets up, he starts walking behind another Tahoe. He's out of the videos for I'd say three to five seconds and then he comes running out, puts two rounds into the Tahoe where Johnny's sitting and then runs off up the street out of view.

Q And that Tahoe, did you see it yourself?

A Yes.

Q Where did you see it at?

A I saw it on Princess St.

Q Okay.

A Maddock.

Q Would looking at your report refresh your memory --

A Yes.

Q -- of the location of it?

A Yeah. Or maybe -- I think it was Duke.

Q Okay. So it was Duke?

A Yes. There was a party there for -- birthday party and we were actually there for a while, and she stayed -- they invited us for the party.

Q Okay. Now, when you were watching the video, did anything stand out in the video? Any articles of clothing or anything like that of the shooter that you were looking for?

A There were several things that stood out. The hairstyle, hat -- it was a black hat with a, you know that sticker on the top of it -- on the brim. A shirt -- kind of like a -- not rest in -- well, I mean, was a Rest in Peace type shirt with a picture of a girl on it, with angel wings on it, white, with maybe a baby blue or the clouds behind it. So the black jeans, long jeans -- or sorry shorts, and then black sneakers.

Q Okay. And so that kind of gave you an idea of the clothing that the shooter was wearing at the time; right?

A Correct.

Q And then did you develop a lead on the identity of the

Defendant quickly?

A Well, very quickly the -- Johnny knew right away who he was. He's saying, oh, yeah, you know, Joshua shot me. Him and Vandemere were scheming the whole time. He was talking about the, you know, every -- he was talking about the scheming him to shoot him. Confirmed with him through a Facebook photo that it was who we were looking for.

I also confirmed through another picture that was the person we were looking for that was Joshua and then from there that was going to be our main suspect.

Q So when you had a name, you mentioned that you confirmed another picture.

MR. ALLMON: Showing Defense, State's Proposed 174.

Your Honor, may I approach?

THE COURT: Go ahead.

BY MR. ALLMON:

A Yes.

Q Okay. Do you recognize 174?

A Yes, that's going to be photo of Joshua.

Q Okay. Is that one of the photos that you looked at to confirm that that was him?

A That's the photo.

Q Okay. Fair and accurate depiction of it?

A Yes.

MR. ALLMON: Move to admit 174.

THE COURT: Any objection to 174?

MR. BOLEY: No objection.

THE COURT: 174 will be admitted.

[STATE'S EXHIBIT 174 ADMITTED]

BY MR. ALLMON:

Q Okay. And so you had a picture of who you were looking for at that point.

A A picture and a name.

Q Okay. A picture and a name. Did you ever interview Johnny yourself?

A Yes. I went down to UMC Hospital and talked to him there.

Q Okay. And when you interviewed him, you mentioned a Facebook -- he showed you a Facebook account?

A Yes.

Q Or a picture at least.

A No, the full Facebook account.

Q Okay. Now at that point, did you have a suspect identified that you were going to be searching for?

A Yes.

Q Okay. What did you do to make an arrest? Did you refer that to any other detective or investigator?

A Well, once I got everything together, all the accounts, possible leads that we had, I sent it off to Investigator Montgomery who's with the Fugitive Task Force, let them do their thing and I

think three days later he called me up and says they got him in custody.

Q Okay. So the shooting happened on 9/23, so that -- would that be 9/26 then?

A Yes.

Q All right. And where did he arrest him at?

A I believe it was Fullerton in Henderson.

Q Okay. Was that 247 Fullerton Ave?

A Yes.

Q Okay. And did you go out there yourself at some point?

A Of course.

Q So what did you do when you got out there?

A I went out there just -- I wrote a search warrant for the house before I got out there because we were going to do a search warrant on the premises. Investigator Montgomery saw him there. But with the search warrant, I went out there, I just looked around the scene and see if anything stood out. At this point the rest of my team showed up. I -- myself and Joshua got in the car, and I drove Joshua to the jail.

Q Okay. So you actually met face to face with the Defendant that you just pointed out here?

A Yes.

Q And can you identify an article of clothing he's wearing?

A Oh, sorry. He’s wearing a black shirt with a nice tie with white stripes on it -- or -- yeah, white stripes.

MR. ALLMON: Okay. Your Honor, may the record reflect the in-court identification of Defendant.

THE COURT: Do you have any issue with the identification?

MR. BOLEY: No.

THE COURT: All right. The record will reflect the identification of the Defendant.

BY MR. ALLMON:

Q Now you then -- you know, fair to say it's teamwork when you're doing a case; right?

A Especially then because this was quitting time so I was going to -- I took him to jail, the rest of the team went inside and did the search warrant inside the house and looked for -- we were looking, obviously for the gun, the shirt, the clothing, the hat and anything else that could have been found inside the house.

Q Okay. And so you specifically had a few things in mind that would be relevant to prove the identity of the shooter; right?

A Yes.

Q Okay. You mentioned a hat, a shirt, and gun?

A Correct.

Q Right. How about phones?

A Obviously, yes. Phones as well. I always look for phones.

Q All right. And to your knowledge, was that hat ever found?

A I don't believe the hat was found.

Q Okay. Was the gun ever found?

A No, the gun was not found.

Q All right. What was found instead?

A We found a shirt that was worn in the video, as well as two cell phones.

Q All right.

A We found two cell phones.

Q Two cell phones. Okay.

And ultimately, did -- none of those cell phones were that 9500 number that you were searching for?

A No.

Q Okay. Now you mentioned too that you went to the scene, and you saw a magazine there?

A At the Quick Check?

Q Yes.

A Correct.

Q Did you do something -- some kind of laboratory testing with that magazine as the prosecution of this case continued forward.

A I didn't do anything. I pointed out to our CSI investigators who collect the magazine, the rounds, process the scene, do all the photos and everything. They would take the DNA from the magazine and any other things that could be of value at the time.

Q Okay.

A So at this point, we're still looking for a possible suspect,

so we took the DNA.

Q So later on, did you then do a buccal swab?

A Yes, after we got to -- had a search warrant for the -- for his DNA. When I drove him from the house on the 26th to the jail, at the jail, I then did a buccal swab.

Q What's a buccal swab?

A Like a -- Q-Tips and just take them to inside of the cheek, two of them, and you put it inside the bag or box, and then it preserves the DNA.

Q Okay. Now, did you then submit a request to have that buccal swab tested against the DNA on the magazine?

A I did.

Q Okay. And who did you submit that to? Like what body?

A I submit it to our evidence vault and then our evidence vault will send it off to the Metro evidence vault.

Q Okay. And did you do that under Case 2309230019080?

A Yes.

Q All right. And when you do that -- when you get a buccal swab, is your P Number associated with the impounding of that?

A Yes, when you put the evidence -- whenever you have any type of evidence, you got to sign it.

Q And what is your P Number?

A 1483.

Q Now -- and you submitted that for DNA testing, and did you get a result back?

A I don't -- I didn't --

Q [Counsel holds up documents.]

A Okay. Yes.

Q Would looking at the report refresh your memory?

THE COURT: Would looking at the report refresh your memory?

MR. ALLMON: Yes or no? Would looking at the report refresh your --

THE WITNESS: Yes.

THE COURT: Go ahead.

BY MR. ALLMON:

A Yes.

Q All right. And then as well, you mentioned the Facebook account. Was a search warrant done for the Facebook account?

A Yes, a search warrant was done on -- I believe on the main -- on one of his Facebook accounts, because I think we found two or three in his name. But they did a search warrant on one of them.

Q Okay. And did you ever go through the records of the Facebook account?

A Yes, I went through -- yes.

Q Okay.

[Colloquy between the Clerk and Counsel]

BY MR. ALLMON:

Q Before we get to the Facebook account, I do want to

briefly go over -- you've been to the various addresses that were relevant to the investigation; right? 404 W Carey, 305 Duke Ave., and 247 Fullerton Ave.?

A Yes.

Q Showing you Exhibit 156.

MR. ALLMON: Showing the Defense first. Apologies.

BY MR. ALLMON:

Q Do you recognize what we're looking at there?

A A map of Nevada -- or Las Vegas area.

Q Okay. And there's three pins on there. Do those fairly and accurately depict the --

A Oh, okay. I didn't even see the pins.

Yes. Yep.

Q Do those fairly and accurately depict the locations of those addresses?

A Yes.

Q Okay.

MR. ALLMON: Move to admit 156 into evidence.

THE COURT: Any objection?

MR. BOLEY: No.

THE COURT: 156 will be admitted.

[STATE'S EXHIBIT 156 ADMITTED]

BY MR. ALLMON:

Q Can you take your mouse -- sorry, yellow print on a yell -- with yellow highway lines, I -- is a little bit --

THE WITNESS: It is tough to see; right?

THE COURT: I'm sorry, what?

THE WITNESS: It's tough to see; right?

THE COURT: Yeah.

BY MR. ALLMON:

Q All right. So do we see 404 W Carey? Can you just kind of highlight with the mouse?

A Yes. Maybe. If the mouse will move over here.

Right here is 404 W Carey [points at screen with white cursor arrow].

Q All right. And then do we see the Duke address?

A Duke is going to be the pin right here [points at screen with white cursor arrow].

Q Okay. And then do you see Fullerton?

A Yeah. That's going to be way down here in Henderson. Right here [points at screen with white cursor arrow].

Q Okay. So down there -- down in Henderson, along the 95 or the I-11 as it's now called.

A Yes.

Q Okay. All right.

Now, you mentioned that you pulled the surveillance video. Do you remember also seeing a video that was a composite video at some point?

A Yes.

Q Okay.

MR. ALLMON: So showing the witness State's Proposed 173.

THE COURT: Is 173 admitted?

MR. ALLMON: It's not been admitted --

THE CLERK: It's not admitted.

MR. ALLMON: -- yet, Your Honor.

THE COURT: And you saw this?

MR. BOLEY: Yes. I assume he's referring to the composite video, yeah.

MR. ALLMON: Yes.

BY MR. ALLMON:

Q Do you recognize what we're looking at in State's Proposed 173?

A The parking lot of the Quick Check.

Q All right. And the video -- we'll just fast forward to a couple key points. Does this fairly and accurately depict the surveillance video of the Defendant at the scene?

A Yes.

MR. ALLMON: Move to admit 173 into evidence.

THE COURT: Any objection to 173?

MR. BOLEY: The composite video? No.

THE COURT: All right. 173 will be admitted.

[STATE'S EXHIBITS 173 ADMITTED]

MR. ALLMON: All right. I'm going to publish to the jury.

THE CLERK: It should automatically go to your laptop if

you're connected.

MS. BOSA-EDWARDS: You have to do the mirror.

MR. ALLMON: I got to hit the play button.

There we go.

[Video Starts Playing]

BY MR. ALLMON:

Q All right. So we're going to start from the beginning of this video. It is a 21 minute and 38 second video. Make sure -- there we go. 21:41; 21 minute and 41 second video. And if you'll just narrate what we're looking at.

A This right here is the parking lot of the Quick Check. The Tahoe there with the sunroof is going to be Johnny's ride.

Q Okay. So there's -- is that the one that's parked up front? You said the Tahoe --

A Yeah, the silver Tahoe --

Q -- with the sunroof?

A -- with the sunroof right --

Q Okay. So I'm circling with my mouse. Is that the accurate one?

A Yes.

Q All right. And then we see another vehicle, maybe an older model Tahoe or other SUV; is that accurate?

A Correct.

[Video Continues Playing]

...

BY MR. ALLMON:

Q Then we see a person getting out there. Did you recognize that person?

A Oh, that's got to be Joshua.

Q Okay.

[Video Continues Playing]

BY MR. ALLMON:

Q So where do we see Joshua at now?

A He's at the -- standing by this -- like an old Crown Vic that had the hood up. There's a bunch of people working on it or hanging out by that car.

[Video Continues Playing]

Q Where do we see the Defendant going now?

A Walking -- putting his hat on his head and walking to the front door, walking in.

Q Okay. We're at 15:18:03.

A Yep. Saying hi to Vandemere.

Q And that shirt that we see there with -- was that relevant to the investigation there?

A Yeah, that's the shirt with the -- I say Rest in Peace because it looks like someone at a funeral, and they printed out some shirts that have a girl on there with angel wings. So like a Rest in Peace shirt.

Q Pausing it there at 15:18:07.

And then playing.

[Video Continues Playing]

BY MR. ALLMON:

A And you see the hat has the sticker on the top of the brim.

Q At that same location -- or same timestamp?

A Yeah, you -- I mean, you can still see it right now.

Q Just for the -- I'm trying to make a record --

A Okay.

Q -- to go with the timestamps.

A I'm sorry.

[Video Continues Playing]

BY MR. ALLMON:

A There was quite a few people with white shirts. When you go -- I mean, I know this is easier because you got the composite video where you can watch through there and sometimes they'll have white socks, so it doesn't matter if you could clearly follow a lot easier when you know with the black pants, the black things. So it was --

Q And so it wasn't just a white shirt. There's other clothing that stood out to you.

A No, 100 percent. The hat going on backwards, the long braids in the back. Obviously, the black shorts with the black socks, not white socks, because there's a guy that has white socks on. He's quite a bit older though.

[Video Continues Playing]

...

BY MR. ALLMON:

A Just saying hi because like I said everybody in the store knows everybody. It's all everybody from the neighborhood.

[Video Continues Playing]

BY MR. ALLMON:

Q All right. 15:19:42 is where we're at.

A Obviously getting ready to exit the store.

Q And where do we see him at 15 -- or --

A Walking --

Q -- 3:19:52?

A Walking down the side of the store towards the Crown Vic with the hood up. Now he stops and he goes over to the --

[Video Continues Playing]

BY MR. ALLMON:

A Now he's walking past the green car over towards the -- where the hood of the old Crown Vic is.

Q All right. And that's about --

A There's a group of people there.

Q -- 15:20:25.

[Video Continues Playing]

BY MR. ALLMON:

A And it -- I believe Johnny's actually right there as well now.

Q At 15:20:43?

A I believe so.

Q Okay.

[Video Continues Playing]

BY MR. ALLMON:

Q All right. Now we're at 15:22:01. What are we looking at?

A Yep. He's walking back towards the front of the store.

Q So fair to say there's a couple moments when he's a little off camera maybe?

A Yes. You can't see the side corner by the front of the Crown Vic.

[Video Continues Playing]

BY MR. ALLMON:

Q And 15:22:14?

A Back inside.

[Video Continues Playing]

BY MR. ALLMON:

A Here, he's holding a phone in his pock -- in his hand, he just put it in his pocket. Smoking.

Q That was at approximately 15:22:50?

A Yes.

Q All right. Do we see someone else coming in that was relevant?

A Not yet. I just see Vandemere --

Q Okay.

A -- with the tan shirt on and --

Q So that's at 15:23:11, we'll say, we see Vandemere with

the cream shirt?

A Yes.

[Video Continues Playing]

BY MR. ALLMON:

A So now here's the other old guy; white shirt, black pants but you see, he's got the white socks and not -- and slippers on. He also has a hat on so he -- you can see where that could -- you could see where that -- you could say all right, he's definitely older guy, white socks, little bit different -- well obviously a lot different build.

Q Okay. So 15:23:29, we see the guy with the black hat, white shirt, black shorts, but white socks and slides, instead of shoes

A Correct.

Q And a different build to you.

A Oh, 100 percent. He's -- well, I'm not saying he's overweight but he's a little chunky.

Q Okay.

[Video Continues Playing]

BY MR. ALLMON:

Q At 15:23:22, what do we see?

A He just checks his phone and then rolls out.

[Video Continues Playing]

BY MR. ALLMON:

Q And 15 --

A And then right here by the Tahoe, big guy, that's going to

be Johnny, talking to somebody.

Q All right. So 15:24:07. And then where did we see Josh Gipson going?

A He's out of view because the door is kind of blocking it, but it looks like he's walking towards the front of the broken Crown Vic with a hood up.

Q Okay.

[Video Continues Playing]

BY MR. ALLMON:

A And it looks like he's standing right there by the front of the Crown Vic by the tire.

Q You see that at 15:24:25.

A And our -- Johnny's out, he's walking. You can just see the tip of his baby blue shirt. He was talking to Vandemere right now.

Q About 15:24:40.

[Video Continues Playing]

BY MR. ALLMON:

A There's the old guy leaving. So you can see the two people right here with the white socks, they kind of pass each other. So, yes, it can be confusing, but they pass each other and you can definitely tell the difference between the two people.

Q All right. So we see that at 15:25:08.

A And he kind of walks over -- I thought he was going to go in the store here like he's -- I mean, he turns around right at the

front door and changes his mind and doesn't go in the store after they just have a little bit of an argument.

Q And where do we see the Defendant going back to?

A He's going to be out of view here for a couple seconds because he's going to be at the front of the car. And then he's going to -- oh, I'll wait till it happens.

[Video Continues Playing]

BY MR. ALLMON:

A You can still see the old guy with the slides and white socks, he's standing there.

Q That was at 15:26:02.

[Video Continues Playing]

BY MR. ALLMON:

A Still can't really see him because he's at the front hood of the car. Vandemere is there talking to the old guy with the slides.

Q Okay. When you said he's at the front hood of the car, are you talking about the Defendant?

A Yes. Joshua is still at the front of the car. You can't really -- you can't see him.

[Video Continues Playing]

BY MR. ALLMON:

Q Now we see -- about 15:27:19, we see a Tahoe kind of re -- that older model Tahoe, not the victims, repositioning; is that right?

A Yes.

[Video Continues Playing]

BY MR. ALLMON:

A And now you see Joshua walking up.

Q So you see Joshua walking up at 15:27:41. And where is he at?

A He's at the back of the -- I don't know if it's Crown Vic, I just keep saying that, but the back of the car with the hood open.

Q It appears to be to be a Crown Vic --

A Like an older one.

Q -- like an old police car.

A Yeah.

Q And then that Tahoe that was backing up, where is it going now?

A Well it's just driving -- or it looks like it's about to leave.

Q Okay.

[Video Continues Playing]

BY MR. ALLMON:

Q And now 15:27:46, can we still see Joshua?

A Yep, he's right next to the sign.

[Video Continues Playing]

BY MR. ALLMON:

A He's just pointing. We don't know what he points at. Here comes -- Vandemere comes out of the store. Joshua now is on the driver's side of the car and kind of going back -- now he's walking back out --

Q Okay.

A -- to the side of the --

Q So we're at 15:20:45. Is where I'm circling with the mouse accurate --

A Correct.

Q -- just behind the -- what you believe is a Crown Vic?

A Yes.

Q Or Crown Victoria.

[Video Continues Playing]

BY MR. ALLMON:

A And now he -- as soon as he sits down, he's going to sit here for about five minutes. You can kind of see -- you'll only see the top of his head.

Q Okay. So that's 15:29:10. Right now we can see the top of his head behind the Crown Victoria; is that right?

A Correct.

Q And you know that because you're tracking him, essentially, right, as you're watching this video?

A Yes.

Q Okay.

[Video Continues Playing]

BY MR. ALLMON:

Q 15:30:14. Do we see a vehicle come back in?

A Yes. Another ta -- an older model Tahoe Suburban.

Q Okay. And where does it park?

A It parks to the rear of the Crown Vic.

Q Is there a parking space open still?

A Oh, I don't know?

Q Okay.

A I don't know if that's a spot right there because they're working on a car and because it was slanted in.

Q And where do we see Joshua at?

A Still sitting behind the car.

[Video Continues Playing]

BY MR. ALLMON:

Q And do we see Vandemere?

A Yep, he just walked out.

Q So at 15:30:42, Joshua is still behind the car, Vandemere just walked out of the store.

A And then right now, a Corvette is going to pull up and some guy's getting out of his Corvette that Vandemere knows and this is --

Q Where's Vandemere right now?

A Right next to the -- like, I don't know why I'm pointing at the screen -- so I'm pointing at my screen, sorry.

Q You have a -- you actually have a mouse if you want to --

A He's at the rear of the Crown Vic on the driver's side.

Q Let's do that. Let's have you use your mouse right now and just kind of point out for the jury.

A [Witness complies; used white arrow to point at screen.]

Q There we go.

A Joshua's right here, still sitting; Vandemere is right here.

Q Okay. So for the record, we're talking about right -- Joshua is behind that Crown Victoria, and then just to the left of the -- next to that sign that's posted on the wall there is Vandemere?

A Yes. And the only reason I bring up this Corvette here is -- This Corvette's parked right here.

[Video Continues Playing]

BY MR. ALLMON:

A Johnny's still inside gambling. Getting another drink.

Q And you know that based on your review of the surveillance --

A The whole video --

Q -- that the other angles --

A -- not just --

Q Okay.

[Video Continues Playing]

BY MR. ALLMON:

Q All right. We're at 15:32:11. Where is the Defendant at still?

A The Defendant is sitting behind the car -- you can't see his white shirt, but you can just see the tip of his head still. Vandemere is walking right here to the back of the Suburban Tahoe that pulled in, the tan one.

[Video Continues Playing]

BY MR. ALLMON:

Q And at 15:32:33, where do we see Vandemere going?

A He's just walking to the front of the Crown Vic.

Q And is Josh still in the same spot?

A Yep. Still just sitting behind the door.

[Video Continues Playing]

BY MR. ALLMON:

A You just seen Vandemere. He kind of walked off -- came up here, walked off, and now he's behind the wall. You can't really see what he's doing behind the wall.

Q So that was at -- I rewound it just a little bit. Was at 15:33:16 accurate?

A Yes.

Q Do you want to rewind a little more so you can see --

A No, that's --

[Video Continues Playing]

BY MR. ALLMON:

A But Joshua is still sitting right there.

Q Okay. At 15:33:29, still behind that same vehicle, the Crown Victoria?

A Yes.

Q With -- the one with the hood up?

A Yes.

[Video Continues Playing]

...

BY MR. ALLMON:

A That was a spot. That little car just pulled in there. The one you were asking about.

Q Okay. So 15:33:44, we have a car pulled into that open spot.

A And I -- here -- right here, Johnny just walked out.

Q Okay.

A Blue shirt getting into his Tahoe. Oh, I'm pointing again, sorry.

Q That's okay.

A Johnny just got out.

Q I'm going to rewind it in just a second here so we can talk about the timestamps there.

A Okay.

Q So right now you're saying 15:33:49, Johnny --

A Johnny.

Q -- has just walked out of the store. If you'll just circle with your mouse.

A [Witness complies.]

Q There you go. And then where is the Defendant at still?

A Still sitting right here [points at screen with white arrow].

Q Still sitting right here.

[Video Continues Playing]

BY MR. ALLMON:

A Still sitting here. Vandemere is back up here by that

Corvette.

Q Okay. 15:34 --

A And Johnny's in --

Q -- 20.

A Johnny's now sitting in his car.

Q All right. So we have Johnny, the victim, in his car, that Tahoe. Vandemere's up top, next to the Corvette, you said, and then the Defendant is still at that same spot.

A Correct.

[Video Continues Playing]

BY MR. ALLMON:

A All right. Once Vandemere starts -- he starts moving, Vandemere is coming up. He --

Q We're at 15:24:49.

A Here's our -- Joshua has now got up [points at screen with white arrow.]

Q Okay. And I -- sorry, I was looking at my screen. Were you circling there?

A [Points with white arrow] Joshua is now up, Vandemere is -- it's a little blurry right here, but he's right in here.

Q So for the record 15:34:52, Vandemere's in front of that kind of gray or tan -- I'm going to say tan Tahoe, older model one that's parked sideways and Josh, the Defendant is between that vehicle and the Crown Victoria; is that correct?

A Correct.

THE COURT: Hold on just a second. Put your arrow where Vandemere is again.

BY MR. ALLMON:

A It's -- I'm not 100 percent -- if you go back a little bit --

Q Okay.

A -- because the shirt matches the color of the Tahoe. Right here [points at screen with white arrow.] So you see --

Q I'm going to rewind --

A Okay. So here he is right here.

Q So I'm pausing now at 15:34:46.

THE COURT: All right.

UNIDENTIFIED SPEAKER: I got it.

THE COURT: You got that.

UNIDENTIFIED SPEAKER: Yeah.

THE COURT: All right.

MR. ALLMON: Okay.

THE COURT: And then could you go to where you're saying that the Defendant is standing.

THE WITNESS: He's still sitting out -- he -- right here, you can see him -- now you can see his white shirt and he's about to get up and start walking.

BY MR. ALLMON:

Q And so for the record, that's at 15:34:48. We could rewind just a little bit. And I'm going to play, and you can just tell me when you see a move.

A All right. Both moving.

Q So 15:34:51, we see him moving from which direction to which direction?

A Joshua is moving towards the back of the Crown Vic, towards the front of the Tahoe Suburban.

Q Okay.

[Video Continues Playing]

BY MR. ALLMON:

Q And at 15:34:59, where do we see him?

A Now he's -- the driver's side of the Tahoe Suburban. Vandemere kind of walks back down to the Corvette.

[Video Continues Playing]

BY MR. ALLMON:

A Now he's going to -- you can see a little bit of him through the driver window. This is the last time you're going to see him for probably about five seconds -- maybe ten seconds; five to ten seconds.

Q All right. And that's at 15:35:02.

A And then he's going to pop out of the back.

Q Okay. And you said he's going to pop out of the back where?

A The back of the Suburban Tahoe.

Q Okay.

A Not him right here; old man still. This is the old man.

Q So the man we see there with the white shirt standing,

showing outside of the Tahoe is the old man with the white shirt -- or older man, we should say --

A With the white socks.

Q With the white socks, okay. And then -- so right now we can't see Josh; is that correct?

A Correct.

Q All right. And what's blocking his view again?

A The Tahoe Suburban.

Q Okay. 15:35:12 and playing.

[Video Continues Playing]

BY MR. ALLMON:

A So the reason I brought up the Corvette, there's nobody in the passenger seat but someone's in the driver's seat, obviously. Vandemere and this dude here are going to walk off. As soon as they hit this wall right here, you'll see Joshua come running out.

Q And that's at 15:35:29.

A And the Corvette drives up the street. See, there's the Corvette rolling, they go around the block wall. Here he comes. Gun out.

Q Okay. And we're at 15:35:34.

A And Johnny's sitting in the car right here [points with white arrow]. Two shots, runs off.

[Video Continues Playing]

BY MR. ALLMON:

A Now Johnny backs up and he says he can see down the

wall -- I won't speak for what he said. Sorry.

Q Okay.

[Video Continues Playing]

BY MR. ALLMON:

Q Now when you interviewed him, you said -- you -- so as part of your investigation, you interviewed him; right?

A Correct.

Q Okay. And was he able to positively identify based on what happened there?

A Yes.

Q Okay. Now, do we get anymore camera footage of the Defendant after this?

A No, he -- he run -- just exactly what Johnny said when I interviewed him. He runs around that block wall where you saw Vandemere come. About the same time, Vandemere is going to come walking back up the street and back into the parking lot.

Q Okay.

A But that is the last time you see him and Johnny tells the exact same thing. He says he knew them both.

There goes Vandemere back --

Q So 15:36:16 --

A Back into the parking lot.

Q And where's Vandemere?

A Right here.

Q Okay. So bottom there in that cream shirt still; right?

A He comes back in.

Q Okay. All right. And so would it be fair to say that when you watch the video, you're able to track the Defendant from inside the store, outside, through his movements up until the shooting.

A Correct.

Q And you met with him in person when you transported him? The --

A Who?

Q -- Defendant?

A Yes.

Q Okay. And can you positively identify him in that video based on your in-person meeting with him?

A Yes. From the -- inside the store and following him all the way around. You can't see from the --

Q Okay.

A -- because you -- from follow -- in the store, following from everyone, yes.

Q Okay. So it requires the tracking, fair to say; right?

A Correct. And you can see in this one here when he comes running up, hat has -- well, if you want to pause it -- you can see the sticker on the hat still, you can still see the baby blue with the figure on it, and the shorts. When he runs off back, you can see the hair flopping in the back.

[Video Playing]

...

BY MR. ALLMON:

Q So we're talking about here where -- we're saying 15:22:29.

Now you said that that hat here that we're looking at; right? Is that correct, Detective?

A Yes.

Q Okay. So here at 15:22:28, you mentioned that hat was relevant. Did you later see that hat somewhere else?

A Yes.

Q Or a hat similar to it in [indiscernible]?

A Yes. Yes, a similar hat with the same sticker at the top.

Q Okay. So Exhibit 159 has previously been admitted. These are Facebook records.

All right. Do you see in Exhibit --

A I did.

Q -- 159 -- All right. On 465, what are we looking at?

A That's one of the Facebook pictures that Joshua posted to his site. Wears the similar hat -- black hat with the sticker on the top. And I can't say for sure, but this looks to be at house in Henderson based on the stucco and stuff like that and the trees out front.

Q Okay. So it looks to be similar with the Fullerton address.

A Correct.

Q And do you see the date that that was uploaded there?

A Yes.

Q All right.

A September 5th. Oh -- yep, September 5th.

Q So where I highlighted there, is that accurate?

A Yeah, September 5th.

Q Okay.

A That's UDT time. I don't know -- it's like a seven-hour difference. I don't really remember but it should be --

Q Okay. So it's --

A -- within seven hours of that --

Q Within seven hours of that time is our local time for --

A Yes.

Q -- UTC. Got it.

So we could say it could be September 5th or September 4th, poss -- it looks like it would be September 4th, if we went down seven from UTC.

A Yes.

Q Okay. But either way, at a minimum, we're saying early September, we see that post with that hat.

A Correct.

Q Now, did you also look through some of his actual posts?

A Of who?

Q From the Defendants' Facebook posts.

A Yes, all of them.

Q All right. So directing your attention there to page 981, highlighted a portion. Did you see this post at some point?

A I did.

Q Okay. Would you read that into the record?

A Uncle Marlo, you forever with me. You taught me a lot. Not having you around, it's tough, but one thing for sure -- and I don't know what the abbreviations -- live long UB --

Q If you'll just read the abbreviations as you --

A Okay.

Q -- see them.

A UU -- or sorry. LLUBD.

Q You can explain what the square brackets are.

A I know it's -- there's some kind of image in there and then long -- or LLK.

Q Okay. And was there another post about an uncle?

A Yes.

Q Directing your attention to 1156.

Do we see a post there?

A We do.

Q All right. And I'm going to make it a little easier for you to read that.

A All right.

Q Okay.

A One --

Q Would you read that?

A One thing about me, I love my family. We've been through a lot and it's like we all we got -- just like all we got. I love

all with my -- all my heart and can't nothing or anybody take that from me. I cry but nothing comes down. I ask myself a lot if I was here with my -- wait, a lot if I was here with my uncle was around would this family be like this. We know the answer to that hell y'all because everybody will be respectful. Well -- behalf, I don't know yon -- don't here and I want all y'all to know it's LLKLL Josh LLJLS. Some kind of emojis in there. I have to keep my family close and protected, even if it kills me. Love the Gipson family. Love my cousins. Obviously, some more emojis. Josh.

Q All right. And do we see the date that that was posted?

A Yes. It'd be the -- again, the UDT time, it's going to be the day before or right before the shoot -- the incident at the Quick Check.

Q Okay. So 2023-09-22, 6:55 UTC. So we're looking at either the day before or up into the night.

A Right.

Q So before the Quick Check shooting.

A Right.

Q And then what's the Defendant's full name?

A Joshua Lamar Gipson.

Q Okay.

MR. ALLMON: I have nothing further.

THE COURT: All right. Before we go to cross, can I have a quick sidebar with everybody?

MR. BOLEY: Yes, sir.

[Sidebar Begins]

THE COURT: Does this look good to everybody? State?

MR. ALLMON: Yes, Your Honor.

THE COURT: Defense?

MR. BOLEY: Yes, Your Honor.

THE COURT: All right. And good with an imposition as Instruction 14?

MR. ALLMON: Yes, Your Honor.

MR. BOLEY: What's Instruction 13? Yeah, but what's 13? What's right before it? Do you know?

THE LAW CLERK: [Indiscernible.]

MR. BOLEY: Oh, okay. We're fine. Sorry, never mind.

THE COURT: All right. So everybody's good with the instructions so I can have her print them off? State?

MR. ALLMON: Yes, Your Honor.

MR. BOLEY: Yes, Your Honor.

THE COURT: Thank you.

THE LAW CLERK: Thank you.

[Sidebar Concludes]

THE COURT: Cross-examination.

MR. BOLEY: Yes, sir.

Okay. So the State's grabbing the charger for this laptop.

CROSS-EXAMINATION

BY MR. BOLEY:

Q Okay, Detective, I'll go ahead and get started with you

here. So let me sort of walk through this investigation with you here. So at what point were you brought on for this investigation?

A I don't under-- the very beginning?

Q Yeah. So I'm sure somebody called police; right?

A Yes.

Q And then some police officers responded.

A Yes.

Q Right. And then there's obviously an emergency situation and that was handled. So how much time passed between that and when you became involved?

A Around two -- I don't -- I can't give an exact time. Two hours?

Q Two hours, okay. But it was the same day.

A Oh yes.

Q Okay. And the first thing you did was go out to the scene?

A Correct.

Q Okay. And you looked at some videos at the scene; right?

A I did look at videos at the scene, yes.

Q And you talked to whoever you could find at the scene; right?

A Yes.

Q Okay. Did you talk to any potential witnesses at the scene?

A I don't believe there was any -- just -- the only person I talked to at the actual scene was going to be the clerks.

Q Okay. So -- and they let you see the video --

A Correct.

Q -- that you saw that day; right?

Okay. And then what was the next thing you did after that?

A After that we watched the video, then I went to the -- I pointed out some of the stuff at the scene as we walk it. We saw the two cartridges on the -- by the Tahoe, the magazine on the ground.

Q So what I'm getting at here -- sorry, I kind of -- I asked you an open-ended question there. So you left the scene, and did you go to the Duke Ave. address next?

A No.

Q You didn't. So when did you talk to Johnny --

A At the hospital.

Q -- for the first time?

At the hospital, okay.

And obviously, at the hospital, how much time passed between you arrived -- arriving at the scene of the store and arriving the hospital, approximately?

A I guess I've got -- so from the time -- I've already been called, I responded to the Quick Check. I've been at the Quick Check for probably an hour, hour and a half doing my investigation and now from the time I drive from the Quick Check to UMC?

Q Yes, sir.

A 20 -- 10/15 minutes.

Q 10 to 15 minutes. Okay.

And of course one of the first things that it sounds like you asked is you determine who Johnny thought shot him; right?

A Yes.

Q Okay. So at that point, you determine that your primary suspect is Joshua Gipson; right?

A Yes.

Q Were there any other suspects?

A Just Vandemere.

Q Okay. So there was an alternative theory at one point?

A They were conspiring, yes.

Q Okay. What about any of the other people at that gas -- so we talked about Vandemere, and we talked about Josh Gipson. What about any of the other people at that Quick Check?

A No.

Q No. All right. So we're really following -- we're kind of zoning in on the two people, Josh Gipson and Vandemere -- what's his last -- he's also Gipson?

A Yes.

Q Okay.

A Cousins.

Q Let me pull up the video.

MR. BOLEY: How do I pull up the video? I'm sorry.

Good. Thank you.

So I'm not referring to a specific moment in video right now.

THE COURT: What exhibit is this?

MR. BOLEY: This is 173, the composite.

THE COURT: All right.

MR. BOLEY: And I'm not referring to a specific time in the video.

BY MR. BOLEY:

Q So when -- who put this composite together; was it you?

A No.

Q Okay. But when you're looking through this composite, you're focused on the two characters that were talking about, Joshua Gipson and Vandemere; right?

A In this -- and the Defendant -- or and Johnny.

Q Okay. All right. So let me take you to 15:34:52.

[Video Playing]

THE COURT: You're starting playing it at 15:34:00.

MR. BOLEY: Yes, Your Honor. So I'm going to stop it here because this is a similar scene. So 15:34:07, I've got published for the jury to see.

BY MR. BOLEY:

Q And you testified, I believe, that Josh Gipson was behind a Crown Victoria sort of in the corner; right?

A Correct.

Q Okay. So from this scenario, from this scene, if this was

all the video that you had, could you tell that was Josh Gipson?

A Nope.

Q Okay. So the only way to get the fact that Josh Gipson, or at least the theory of this case, is to follow him from other scenes in this video to determine that that's him behind that car?

A Correct.

Q Okay. So then as an extension of that, that he was ultimately the shooter of Johnny Jones.

A Correct.

Q So the same logic train got you to the same conclusion.

All right. And a little bit later in the video -- and I'm going to take the video off actually for now, that's all I'm going to go through with the video.

A little bit later in the video, you said that Josh Gipson disappears from the scene completely for five to ten seconds.

A Correct. When he's behind the Tahoe.

Q Okay.

A Or Tahoe Suburban.

Q Got it. All right. So he completely disappears from view. And you also testified, I believe, that the scene that we just talked about was blurred; right?

A Yes.

Q Okay. Did you ever see any video or anything suggesting that there was a Ford Escort at this scene?

A I did not.

Q Okay. I believe we talked a little bit about the hat. So there was a hat in this video that we talked about quite a bit with a sticker on it?

A Yes.

Q A black hat. Just to be clear, that's a common style; right?

A Yes.

Q So it's conceivable that there's a lot of people out there wearing black hats with a --

A Saw a guy walk in with a black Raider hat on.

Q Exactly.

A Minus the sticker.

Q Yep, exactly. But it is a style to wear the stickers, so it's conceivable that there's more than one hat that looks like that probably in North Las Vegas.

A 100 percent.

Q Okay. Now you testified -- of course, this happened later when you finally located your suspect that you were in the car that actually drove him to Clark County Detention center, right.

A Just him and I, yes.

Q Okay. And you said it was near quitting time. What does that mean?

A It was 5:00.

Q Got it, okay. Fair enough. So it -- you were about to get off your shift?

A Yes. But now I'm on overtime making big money.

Q Oh, got you.

A Everybody likes overtime.

Q Fair enough, Fair enough. Okay. I was just curious.

MR. BOLEY: I'll pass the witness.

THE COURT: All right. Redirect.

REDIRECT EXAMINATION

BY MR. ALLMON:

Q Detective, is it pretty common for you in investigations that involve surveillance video to track them through the scene?

A Yes.

Q Okay. And -- so Defense asked you if you could only -- if you only had the video with him behind the Crown Victoria and you -- and that was all we had, we could not identify him, but is that what we have in this case?

A No, we have the great video from inside the store, the great video from when -- through the other angle when he runs up and shoots him. And -- so yes, we have very good video, except for that one because it was so far away. But no, you cannot tell from -- it was just a snapshot.

Q Okay. So that relied on the tracking?

A Correct.

MR. ALLMON: All right. Nothing further.

THE COURT: Recross.

MR. ALLMON: Oh, you know what, actually I do have something.

THE COURT: All right.

BY MR. ALLMON:

Q Two, when we talked about some of the items that were seized in the -- the search warrant was brought up; right? You mentioned previously the shirt was seized, right and we talked about some DNA testing as well?

A The shirt was found in -- at the house at Fullerton, yes.

Q Okay. And then that was not tested; right?

A For?

Q The shirt, for gunshot residue; right?

A No, it was not.

Q Okay. And why not?

A The Metro labs only do four hours. You can't test from three days later.

MR. ALLMON: Okay. Nothing further.

THE COURT: All right. Recross.

MR. BOLEY: Very briefly.

THE COURT: Okay.

RECROSS-EXAMINATION

BY MR. BOLEY:

Q Okay. So back to the video.

A Okay.

Q So I'm sort of following up here on the State's question. There is about, and I'm throwing out an estimate here, 30 seconds of that video where you can't identify Josh Gipson at all, except to

follow him from the previous --

A It was more than that. It's almost five minutes when he's sitting behind the car. You -- I mean, in that picture --

Q Okay.

A -- you follow him, he sits down behind the car. When he's behind the car you can't -- like if that was his picture, you can't say that's him.

Q So there's about --

A But as you --

Q -- five minutes -- so there's about five --

A But when you follow him it's --

Q -- minutes of that video where you can't identify Josh Gipson except for --

A If it was a snapshot. Except for --

Q Except for --

A -- the fact that we follow him from all of those spots --

Q Okay.

A -- yes.

Q All right.

MR. BOLEY: I don't have anything further.

MR. ALLMON: No redirect, Your Honor.

THE COURT: I'm sorry, redirect?

MR. ALLMON: No redirect.

THE COURT: Any member of the jury have a question for this witness? If you do, write it on a clean sheet of paper with your

juror number and signal the Marshal or myself.

Not seeing any signaling.

All right. Thank you very much for your testimony.

THE WITNESS: Thank you, Your Honor.

THE COURT: You're excused.

Can I see Counsel at sidebar?

MR. BOLEY: Yes, sir.

[Sidebar Begins]

THE COURT: Okay. Is that your last witness?

MR. ALLMON: It is, Your Honor.

THE COURT: I'm going to ask you to call your next witness and you're going to stay the State rests. I'm going to turn to you and I'm going to ask you if you have any -- want to present any evidence. What are you doing?

MR. BOLEY: Resting.

THE COURT: Okay. So we're at the conclusion here with that. I'll give them a break at that point in time. I've asked the Marshal to ask Mr. Kimbrough when they're going out of the courtroom to stay behind to -- because we want him -- to talk to him about what he reported to the Marshal. We'll bring him in at that point and I'll handle the questioning, at least initially. If you need to, I'll pass it off or you can signal to me --

MR. BOLEY: Let me ask this because I know one of the State's concerns. Do you want the Defendant in the room?

THE COURT: He has a right to be here so I'm not going to

exclude him here.

MR. ALLMON: Yeah. That's fine.

THE COURT: All right. So --

MR. ALLMON: No objection.

THE COURT: And then we'll move right away into jury instructions and closing arguments. All right. Anything else?

MR. ALLMON: No, Your Honor.

THE COURT: No? Okay. Good deal.

[Sidebar Concludes]

THE COURT: All right. State may call its next witness.

MR. ALLMON: Your Honor, the State of Nevada rests.

THE COURT: All right. Ladies and Gentlemen, what that means is the State has concluded its presentation of evidence to you for its Case in Chief.

At this point in time, we do give the Defendant an op -- side -- the Defense side, an opportunity to present any evidence that it wishes to present to you; however, I want to emphasize, as I have several times that the Defendant is under no obligation to do or present anything at trial. The burden of proof in a criminal case always remains upon the State to prove the elements of the offenses charged beyond a reasonable doubt and the Defense has no obligation to prove innocence or to do anything at the criminal trial; however, we do give the Defense the opportunity if it wishes to do so, to present evidence.

And so does the Defense wish to present any evidence?

MR. BOLEY: The Defense rests, Your Honor.

THE COURT: All right. Ladies and Gentlemen, that means that the evidence that you're going to have to take back to the jury deliberation room has been presented to you.

The next process here is for me to read to you the jury instructions that will guide your final deliberations in this case. Let us -- the parties then do closing arguments and then go to you for deliberation.

At this point, I'm going to take a quick break to make sure we're in the process of getting the jury instructions copied off. I like to have you all have a copy of the instructions as I read them to you and so I want to check on that. And then also I'd like to see if we can get through the jury instructions into closing arguments without a bathroom break so go to the restroom while you're out there.

All right. While you're out there, though, I know we're getting close, but you must not discuss or communicate with anyone, including fellow jurors in any way regarding the case or its merits either by voice, phone, email, text, internet, or other means of communication or social media. Do not read, watch, or listen to any news or media accounts or commentary about the case. Do not do any research such as consulting dictionaries, using the internet or using reference materials. Do not make any investigation, test the theory of the case, recreate any aspect of the case, or in any other way investigate or learn about the case on

your own. And do not begin to form or express any opinion regarding the case until it's submitted to you.

Let's just do a -- let's do a 15-minute break. It's 12:41, so let's get back in action at 12:55. Like I said, we'll do jury instructions and closings and get the case to you.

THE MARSHAL: All rise for the jury.

[Outside the presence of the jury]

THE COURT: All right. My guess is the Marshal will signal to me when he's ready.

THE MARSHAL: Mr. Kimbrough is --

THE COURT: All right. Bring on -- Mr. Kimbrough in, please.

[In the presence of Juror No. 4]

THE COURT: All right. Mr. Kimbrough, you can just sit down anywhere in that front row near one of the little black things.

No, no. Be -- yeah.

THE MARSHAL: There you go.

THE COURT: There you go. They're more directional.

All right. Mr. Kimbrough, I just wanted to bring you in. The other day the Marshal indicated you came up to him and indicated you had some familiarity with the area and that you had some family living in the area. So I just wanted to sort of talk to you about that and make sure that you felt comfortable; that that had no impact in terms of your ability to consider the evidence presented here and be fair to both sides.

Just for the record, my Marshal obviously doesn't keep a tape recorder -- well I guess a recording device on him. What exactly did you say to the Marshal so that we have a record of that?

JUROR NO. 4: I'm just -- I'm familiar with the Quick Mart. I used to go there a lot as a kid.

THE COURT: Okay.

JUROR NO. 4: I used to visit. I have some family in the area, more specifically on Princess Ave.

THE COURT: Okay.

JUROR NO. 4: A cousin and a auntie.

THE COURT: All right.

JUROR NO. 4: My auntie passed and they're no longer there and my cousins moved away, so.

THE COURT: All right. The Marshal indicated you thought some of your family was involved with gangs?

JUROR NO. 4: I believe so.

THE COURT: Oh.

JUROR NO. 4: I didn't ask questions, I just played video games.

THE COURT: All right. Well, that's a good thing to. I used to do that when I was your age too.

All right. Let me just ask, is there anything -- I really do appreciate you letting us know that you're familiar with that area and having been there, but is there anything about that past experience that you had there that would impact in any way on

your ability to focus on the evidence presented in this case and be fair to both sides?

JUROR NO. 4: No, sir.

THE COURT: Okay. I don't think that requires anything further. Does State have anything?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, sir.

THE COURT: Again, I really do appreciate that. I know -- you know, people sort of sit there and go, gosh, you know, I couldn't bring it up beforehand because I didn't recognize where we were talking about when we were doing jury selection. So I do really appreciate you bringing it up to let us know.

All right. Run to the restroom and we'll see you back in just a few.

[Court recessed at 12:46 p.m., until 12:59 p.m.]

[In the presence of the jury]

THE MARSHAL: All rise for the jury.

THE COURT: Thank you. Do parties stipulate to the presence of the jury panel?

MR. ALLMON: Yes, Your Honor.

MR. BOLEY: Yes, sir.

THE COURT: We'll let everybody get situated.

My law clerk handed out the copies of the -- written copies of the instructions while you are all out. Did everybody get a copy?

Is there anyone who doesn't have a copy?

All right. I'm going to read now the instructions to you. Each of you have a printed-out packet. You're free to -- that's your copy. You're free to write on it if you want, make notes on it if you want. You'll find sometimes the attorneys in closing arguments will refer to specific instructions, so you can read along with them if you want to and make some notes there if you want to. You can -- this is yours; you can take it back to the jury deliberation room with you.

After I'm done, we'll move right away into the closing arguments. The State will give its opening closing argument, Defense will then give a closing argument, and then the State because the State has the burden of proof in a criminal trial will give a short rebuttal argument. And that'll be the way we go until then. And then after that, we begin -- you begin jury deliberations

So let's get started.

[The Court read the instructions to the jury.]

THE COURT: All right. That concludes the reading of the jury instructions. We'll now move into closing arguments. State will be the one giving the opening closing argument because the State has the burden of proof in this trial as a criminal trial, to prove all the elements of the offenses charged beyond a reasonable doubt so they'll go first. Then the Defendant will go. And then the State again because it has the burden of proof, will give a short rebuttal argument.

I want to emphasize what the attorneys say in these

closing arguments is not evidence. If the attorney in one of the closing arguments says that Witness X testified to 1, 2, 3, but your recollection is that Witness X testified to 8, 9, 10, it's your recollection of the evidence that controls. What the attorneys say is not evidence, but these arguments are very important. It gives the attorneys a chance to refresh what they remember of the evidence and to suggest to you how that evidence fits in with the law that I've given you as their point of view in terms of the presentation of the case. So I encourage you to listen closely to the closing arguments.

With that, we'll be pleased to hear the opening close of the State.

MS. BOSA-EDWARDS: Yes, Your Honor.

I do have a copy of the PowerPoint.

THE COURT: Thank you.

CLOSING ARGUMENT BY THE STATE

BY MS. BOSA-EDWARDS:

Ladies and Gentlemen of the Jury, on September 23rd, 2023, a crime in Clark County, Nevada, in the parking lot of the Quick Check was committed. Ladies and Gentlemen, Defendant Joshua Gipson committed it.

The one who shot me was Josh Gipson.

[Video Played Twice]

BY MS. BOSA-EDWARDS:

If we look to the timeline, prior to September 23rd, 2023,

as evidence has shown, in 2001, Defendant's Uncle Marlo shoots Johnny Jones and goes to prison for it. And then in about August of 2007, Defendant's Uncle Marlo dies. On August 16, 2023, at about 4:45 p.m., Defendant verifies his cell phone number, the cell phone number we heard through the evidence, 775-297-9500, in his Facebook account. Further, also that month, August 26, Defendant posts to Facebook about his Uncle Marlo. A month later, September 22nd, Defendant sends a message on Facebook telling another person to call me at that same phone number.

We also have evidence from the video surveillance. Now all of you just watched almost about 20 minutes of the video surveillance with Detective Kennedy and through that timeline, on September 23rd, 2023, 2:51 p.m., we have Johnny Jones arriving in the parking lot of the Quick Check. At about 3:09 p.m., we have Vandemere Gipson, the Defendant's uncle walk into the Quick Check.

The same day, 3:16 p.m., Defendant Joshua Gipson gets dropped off in that tannish color SUV vehicle. And then in the video we saw Defendant Joshua Gipson interact with Victim Johnny Jones, who was outside at the time in the parking lot.

At about 3:18 p.m., we see Joshua Gipson enter the Quick Check and then for the next minute or so, we see him walking around inside the Quick Check, see him speaking to various people, you can see him pull the bottom of his face mask down around the bottom of his mouth. And then we also see him exit the Quick

Check.

Two minutes later, at about 3:22 through about 3:23 p.m., we see Defendant Joshua Gipson walk back inside the Quick Check, kind of stand towards the front door of the Quick Check, smoking the cigarette, holding his cell phone, looking out the front of the -- the glass door of the Quick Check. And then he -- after standing by the door and looking out, he then leaves the Quick Check.

3:23 p.m., we see Johnny Jones walking to his car. And as he mentioned in his testimony, he had to grab some nip, and then he walks back inside the Quick Check.

About that time, 3:24 through 3:25 p.m., we see Johnny walk back outside and he interacts with Defendant Joshua Gipson again. And at this point is when Johnny is called a snitch, and he's asking, you know, who called him a snitch. Then Johnny walks back inside the quick mart -- the Quick Check and Vandemere Gipson argues with Johnny Jones over the Defendant inside the Quick Check.

At about 3:25, we see Defendant Joshua Gipson walking up to the front of the Quick Check, kind of pacing in front of the door, does not go in, turns around and walks away.

3:27 p.m., we see Defendant standing by the back brick wall by the Crown Vic that Detective Kennedy mentioned. And then he's just kind of pacing, waiting. We see his head on the other side of that vehicle, otherwise mentioned as the Crown Vic. That's 3:27 p.m.

3:33 p.m., Johnny Jones leaves the Quick Check.

3:35 p.m., victim, Johnny Jones is inside his vehicle in the driver's seat and that's when Defendant Joshua Gipson fires two quick shots in -- through the driver's side window.

We also have evidence of phone records. So the phone records show Defendant Joshua Gipson's phone traveling from the area of 247 Fullerton, where he was arrested at around 2:40 p.m. on September 23rd, 2023. And if you can see the arrows, the phone travels towards the area of North Las Vegas and the phone records place Defendant Joshua Gipson's phone within the general area of the Quick Check at the time of the incident. And then, around five minutes after the incident, we also know that Defendant's cell phone number, the 775-297-9500 number connects to a tower for the last time.

Another piece of evidence that we have is the DNA analysis on the PMAG 15. The probability of observing this mixture of DNA profile being approximately 42.7 trillion times more likely if it originated from Joshua Gipson. And this is the magazine that was found located in the parking lot of the Quick Check on the same day as an incident.

Finally, we also have the timeline right after the incident. So the incident happened on September 23rd, 2023. On the 24th, Defendant makes a call from his new cell phone with that new cell phone number at 7:16 p.m.

The same night, 9:01 p.m., Defendant sends his message

from his new phone. And then a few days later, on September 26th, Defendant is arrested at the 247 Fullerton Ave. Police also find the shirt that he wore during the shooting at that location, as well as his new cell phone.

Ladies and Gentlemen of the Jury, you have listened to testimony from witnesses, viewed various exhibits, all related to the following four charges against Defendant Joshua Gipson. First charge is attempt murder with use of a deadly weapon. Second, battery with use of a deadly weapon resulting in substantial bodily harm. 3 and 4 are the same, discharging firearm at or into occupied vehicle. And then another count for discharging a firearm at or into an occupied vehicle.

Okay. Starting with attempt murder with use of a deadly weapon. An attempt -- the definition of attempt is an act done with the intent to commit a crime, but failing to accomplish it. and then the elements of attempt murder include a defendant needs to act with a specific intent to kill unlawfully another person, the defendant performed some act towards the committing that killing and defendant failed to consummate the commission of the killing.

Well, as we know in this case, because you saw Johnny Jones testify, he's still alive. So Defendant failed Number 3 -- Defendant failed to consummate the commission of the killing. And also, the crime here is the attempt murder.

Defendant acted -- so this is going through the three elements just a little bit more specific. The Defendant acted with

specific intent to kill unlawfully another person. Specific intent requires that Defendant intentionally commit an act and intend to cause a particular result. The Defendant performed some act towards committing the killing and he failed to consummate the commission of that killing.

Here, we know Defendant waited for the victim to exit the Quick Check and then enter his vehicle -- the driver's seat of his vehicle. Then Defendant quickly moved his body towards the victim's vehicle, Defendant pulled out a firearm, aimed the firearm at the victim's vehicle, specifically at the window, pulled the trigger firing two quick shots.

So here we have Defendant intentionally committing the act. He intentionally ran towards Defendant's ve -- the victim's vehicle Johnny Jones's vehicle, pulled out a firearm, pointed it at the window in a specific area and pulled the trigger more than once. And because of the location of where he was trying to pull it, Defendant was intentionally trying to commit an act and he intended a particular result when committing the act.

And 2 and 3, Defendant performed some acts towards committing the killing. He ran up to the vehicle, pulled his firearm out and pulled the trigger. And then, as we mentioned, Number 3, Johnny Jones is still alive, so he failed to consummate the commission of the killing.

Attempt murder with use of a deadly weapon. Now the definition of a deadly weapon includes pistol, revolver or firearm.

And as we know, Defendant used the firearm in the commission of this crime. A firearm, just a little bit more of the definition, is typically used as a weapon in which a projectile may be expelled through the barrel, by force of expulsion or other combustion. And as we went over, Defendant Joshua Gipson pulled out a firearm, fired two quick shots into the vehicle.

The next charge, battery with use of a deadly weapon resulting in substantial bodily harm. Battery is any willful and unlawful use of force or violence upon the person of another. Willful is the willingness to commit the act in question. And if that force being used is used with a deadly weapon, the person would be guilty of battery with a deadly weapon.

Here, Defendant, as we have said pulled out a firearm and fired two quick shots into the victim's vehicle, striking the victim in the arm and hand, thus Defendant used force -- willful and unlawful use of force and violence upon the person of another, the other person would be Johnny Jones, and he accomplished that with the use of deadly weapon, the firearm we mentioned. Thus so far we have battery with a deadly weapon.

Next, substantial bodily harm. If that force results in substantial bodily harm, then Defendant -- then that person would be guilty of battery resulting in substantial bodily harm. Substantial bodily harm means any type of bodily injury that results in a serious, permanent disfigurement or the impairment of a bodily organ or a bodily member, or prolonged physical pain.

Now as we know in this case, we had Johnny Jones testify. He showed us his right hand. He can't close it. He also showed us his index finger can't close all the way. And he showed us his left hand, he can make a fist and close it all the way. Thus, he has serious permanent disfigurement and impairment of his right hand. We also know that there's still a bullet lodged in the palm of that hand.

Further, he also mentioned he does still suffer pain and that pain -- well the incident happened a little over a year ago, thus the pain he's still having is prolonged physical pain as it has lasted longer than immediately resulting from that act.

And the charge that we have here -- we just went through all of it, but just putting everything together, if that force is accomplished with the use of the deadly weapon, which is the firearm and substantial bodily harm results of that victim, Johnny's hand, his index finger, his palm, his pain, the person is guilty of battery with the deadly weapon, resulting in substantial bodily harm.

Finally, the third and fourth element -- the third and fourth charges, which are the same, discharging a firearm at or into an occupied vehicle. There are three elements for this charge. The first one, Defendant willfully and maliciously; second, discharges a firearm; third, at or into any occupied vehicle.

We'll start with the most simple one, Number 3. Johnny Jones was sitting inside the vehicle, thus, the vehicle was occupied.

2, a firearm was discharged. The Defendant discharged his firearm into the victim's vehicle. And then No. 1, willful and malicious. Malicious imports and evil intent, it also means an act that is done to injure another person, and it also can be inferred from an act done in the willful disregard of the rights of another or an act that's wrongfully done. Thus, in this case, Defendant clearly, willfully and maliciously discharged a firearm into an occupied vehicle, and thus this -- the elements of this charge have been met.

We also have the location of the two quick shots. The victim's height and large stature are what saves his life. Then we have a picture of the inside of the vehicle.

Also, there's no mistaken identification. Johnny Jones saw the Defendant arrive at the Quick Check in the parking lot, saw him jump out of the SUV, they had a conversation. Also, right after Johnny Jones gets shot, he's leaning back, and he testified he saw the side of the Defendant's face right as soon as he got shot. He saw through the passenger window on the driver's side, the side of his face. He also saw Johnny Jones run away.

Also, when Johnny Jones was leaving the parking lot, he stopped at the end of the parking lot, kind of looked to the right and saw Defendant get into a blue four-door sedan.

You will receive a verdict form which is going look like this. It will have all the charges listed on there and all the choices. And here's where the State will be asking you to find Defendant, Joshua Gipson, guilty on all counts. Here is a little blown-up view.

So when you're filling out the verdict form, there will be little boxes with each count.

So the attempt murder with use of a deadly weapon, the State would ask that you check the first box saying guilty of attempt murder with use of a deadly weapon, as we just went through all the elements for that crime.

For Count 2, the State will ask you to checkmark the first box, guilty of battery with use of a deadly weapon resulting in substantial bodily harm, as we have also met all the elements for that charge beyond a reasonable doubt.

And then Charge 3 and 4 are the same, thus, once you find the Defendant guilty of discharging a firearm at or into an occupied vehicle, you can checkmark the first box for Count 3, also checkmark the first box for Count 4. Make sure you date for this date and then whoever you select as your foreperson, you'll just have the foreperson sign right there.

Thank you.

THE COURT: Thank you, Counsel.

All right, Ladies and Gentlemen, that concludes the State's opening closing argument.

And we'll be pleased to hear the State -- not -- the Defense closing argument.

MR. BOLEY: Thank you, Judge.

May I use the ELMO?

THE COURT: Sure. Do you need --

MR. BOLEY: I think I just need --

THE COURT: -- any help to get it --

MR. BOLEY: -- to open it and turn it on.

THE COURT: -- set up or are you --

Okay. We're all set.

CLOSING ARGUMENT BY THE DEFENSE

BY MR. BOLEY:

So over the past few days you've heard some evidence and I want to direct your attention with some things, obviously. Now, you know, you can hear about a lot of crimes and investigations and analyze them, but generally when there's some kind of investigation, it's seeking a conclusion. But here we have the opposite, we have a conclusion that's seeking an investigation. Within hours of this crime being committed, the detective testified he was talking to Johnny Jones in his hospital room.

Now we heard from Johnny Jones. He had very mixed feelings about the Gipson family. Obviously, he'd been previously shot by Marlo Gipson. You know, this is 2001 and eventually, you know, and understandably so, he might have some kind of beef with their family. Of course, what's the first thing that he says? Exactly what the State said, the one who shot me was Josh Gipson. And that kind of closes the investigation on anybody else.

You know, we saw video, we saw the parking lot of this this Quick Check Market, we know that there were more than one person -- people there that fit Mr. Gipson's description. Johnny

Jones testified that he was looking at a very strange angle over his shoulder to see who this was. But this ongoing beef made him make this assumption, which he then forwarded to the police officer -- the detective that testified. And then the rest of the investigation went from there.

So the rest of the investigation was to not only prove Josh Gipson was the person who committed the offenses, but also to find him. They employed a lot of police tactics here, so they -- you know, obviously the detective contacted several other investigators and detectives that were involved. You know, they got on his Facebook profile to try to find a phone, a phone that was never recovered. And then you know, they followed through and they got a search warrant for a residence that, you know, they think was Josh Gipson's residence. They don't -- they're not sure who else lived in that residence.

Two phones -- two completely different phones that were not connected to that phone number, the original phone number that they were looking at were recovered from that residence. There's no evidence that Josh Gipson ever had any of those phones in his pocket.

They found a magazine where four people's DNA were found on that magazine and only one of them matched Josh Gipson. None of the three others were even investigated. And the one thing that we've reiterated over and over again with the State's witnesses is not only that, but that magazine was run over by a

truck. It had been smashed into pieces by a large full-size truck that broke it into three pieces that we saw in evidence, so it was badly damaged, badly contaminated, and there are these four people's DNA on it at that point.

Now great care was taken by the State of course, when they picked up this evidence. You know, they wear their masks and they wear their gloves and they make sure that they don't contaminate anything. But the problem was, by the time the police were even involved, those pieces of evidence were contaminated. That Quick Check had tons of junk in the parking lot. We know it was a high crime area, so when you talk about bullet casings, bullet casings, obviously from different brands, there's no evidence that they came from the same weapon. And in fact, a weapon was never recovered.

Then in the residence that was searched they found what the detective referred to as a Rest in Peace shirt. Now if you guys know what that is, that's when people print out shirts to go to a funeral to celebrate their loved one that passed away. So it -- the logic follows through that there's probably more than one of these shirts. Now to prove that it was Josh Gipson's shirt that he was wearing at some point in history, they could have tested it, maybe for gunpowder residue to see that somebody had actually fired a weapon, or maybe for Josh Gipson's DNA, which they obviously had at some point. But they didn't do that at all. In fact, that instruction was never handed down. They thought they had this

thing sewn up, they thought they had their guy. Why do that? Why go to that extra step?

But all of that stack of stuff that they did, the one thing they never were able to clearly state was motive. You know, let's go back to the State's timeline. So at some point in 2001, Johnny Jones was shot by Marlo Gipson. And then, much later, six years later, Mr. Gipson passed away from an unknown murderer. Now, Johnny Jones, testified he doesn't know who killed the guy, he had nothing to do with it. And he testified even that with Josh Gipson, he had no beef. So where is the beef? Where did Josh Gipson have any motive against uncle -- this Johnny Jones because of a past trial?

In fact, you know, they used the word snitch. This is a snitch that never was because Johnny Jones testified himself he never snitched on anybody. He never testified in open court. There was never a trial in that case where he was victimized in 2001. And in fact, this is the first time you saw him testify -- that's the first time he'd actually testified in a court proceeding. So where's the snitching? It didn't exist. So the State really has a big hole in their case there where why did this happen. So I'd ask you to consider that.

The State's asking you to find -- well obviously because of the reasons that I've stated that -- I'd ask you to find Mr. Gipson not guilty on all counts; however, the State's asking you to make a pretty big assumption here. The burden is on the State to prove

intent and there's been no testimony on intent. We don't know what the person who shot Johnny Jones' intent was. Nobody was there to talk to this person; we don't have testimony from this person. We could only assume, and the State's going to ask you to assume, that there was intent to kill in this action.

Let me highlight some things from Detective Kennedy's testimony. Obviously, he was the lead detective on the case and, you know, sort of oversaw everybody else that we heard from. He said, there are a lot of people in white shirts in that video. He said, contrary to what Johnny Jones had testified to that he didn't hear about a Ford Escort or a small blue sedan.

He said, you know, part of the video, I noted this very clearly because he actually corrected me on this because I said that it was about 30 seconds where you can't really recognize Josh Gipson from that time alone. And he corrected me. He said no, that's about five minutes.

So the assumption -- so Detective Kennedy, when he looks at the video during that investigatory phase -- and he's already talked to Johnny Jones and he says, okay, Josh Gipson's the guy, he shot him. So in Detective Kennedy's head, he's looking for Josh Gipson. He says, okay, that's the guy standing there in the mask, in the hat, and I'm going to follow him all around this parking lot. So when you look for Josh Gipson, you shall find Josh Gipson. But there's about five minutes where, you know, that it's too blurry to really recognize Josh Gipson. So if there was any error at all in

following people around this parking lot, he might have a problem.

We heard a lot of testimony about fashion too, and I think this goes without saying, but I'm going to say it anyway because I'm a lawyer. People wear hats with a sticker on them -- flat rimmed hats, black hats. People wear white t-shirts, Rest in Peace t-shirts. People wear that stuff. It's common. This isn't something where the person was wearing something really, really easy to point out. This is something very common.

And when you look at all these things, Ladies and Gentlemen, I want you to consider the definition of reasonable doubt. And the State's asking you to find Mr. Gipson guilty beyond this standard. And I'm not going to define it for you. Obviously, the jury instruction is right here and you're going to have this with you. But it's very important. This is one of the things that our justice system is based on, and it protects all of us as citizens.

And I would just ask you to carefully read that and consider that standard. And when you do and you pull out that verdict form that the State showed you to check not guilty by all these counts.

Thank you for your attention and consideration and I'd ask for a not guilty verdict today.

THE COURT: Thank you, Counsel.

All right. Ladies and Gentlemen, that concludes the Defense closing argument. The State will have about a seven-minute closing rebuttal. Is everybody good? Anyone need to go to

the restroom? Are we good to last another 7 minutes?

All right. We'll be pleased to hear the State's closing rebuttal.

REBUTTAL CLOSING ARGUMENT BY THE STATE

BY MR. ALLMON:

[Video Played]

The double tap to the head. That's what the Defendant did. The Defendant did a double tap to Johnny Jones's head; that was his intent when he did this. You can watch that video. There is no other person in a white shirt and a black hat and black shorts with a logo on the white shirt. There is no other person in the Quick Check that is wearing those clothes. You can track him because that's the shooter. There's no question about it.

If there -- if it was just the video surveillance, then we -- the investigation continues, and the prosecution continues. That's why you have the DNA. This isn't a wrap it up, we got it. This was going through phone records, putting his location there with his phone, going through his phone and seeing what he did with his phone afterwards, he turns it off. That phone is gone. That's destruction of evidence. That's consciousness of guilt, okay?

So the fact Defense points to the point that we didn't find the phone. You're right, we didn't find the phone. That's more damning to the Defendant than anything. Had we found the phone and he just leaves it on, yeah, there's -- maybe that's not the guy; right? Maybe that's not the guy; he's not looking to destroy the

evidence. He's destroying all the evidence. What's not found? The gun, the phone, the hat, the mask.

What is found though? The thing that he doesn't think to get rid of, the shirt and something that has some sentimental meaning. The Rest in Peace shirt, okay? That's the one thing that's got some sentimental meaning, that's kept. He's not thinking that that's going to tie it to him too.

He's also not thinking a new phone number. When you get rid of a phone and you get a new phone number, that upends your life. You have to tell people your contact, you have to reach out to everyone again; hey, I got a new phone number; right? You see the Defendant in his Facebook messaging, call me, text me at the 9500 number. Now all of a sudden that number is gone and he's got a new phone number; it starts the day after. What are the chances this poor man, the Defendant just also happens to get a phone at the same time and start a new phone the day after the shooting? The shooting that he's at, the shooting that he looks like he's the shooter in, the shooting that his DNA shows that he's the shooter of and the shooting that he has motive to do.

He called him a snitch. Ladies and Gentlemen, you don't have to actually sit up in the witness stand and testify to be considered a snitch on the street, okay? What the Defendant considered a snitch was talking to the cops at all. Talking to the cops, telling them what happened, telling them that he was shot by Marlo Gipson in the Defendant's view made him a snitch. And so,

yes, there was no testimony, but what we do know is the Defendant's uncle went to prison.

So he says there's no evidence of motive. Let me tell you, Ladies and Gentlemen, sending someone to prison and that person dying shortly after getting released from prison, that's motive, okay? The -- Johnny Jones was shot by Marlo Gipson, Johnny Jones spoke to the police making him quote, unquote, a snitch. And Marlo Gipson goes to prison for that. Marlo Gipson, shortly after, is released and dies, okay? We know that that impacts the Defendant.

How do we know that impacts the Defendant? Because Uncle Marlo taught me everything. Uncle Marlo taught me everything. And then the day before he shoots Johnny Gipson, the day before, if my uncle was still here, his family would still be together, okay?

There's two people he's probably angry at and I can rank them. The person he's probably the most angry at is the person who killed his uncle, no doubt about it. If he could kill his uncle -- if the -- if it's between Johnny Jones and the guy that killed his uncle, no -- and he went for Johnny Jones, sure I'd have some questions; right? But the guy who killed his uncle, No. 1, but Johnny Jones will do too. Johnny Jones is No. 2 because Johnny Jones ruined his uncle's life. Johnny Jones sent his uncle to prison and his uncle died shortly after, and in the Defendant's interpretation, his family is ruined because the uncle is gone, the guy who taught him

everything.

So it's motive, its identity, an eyewitness identification. A guy who knows him, a guy who's met him a few times, they've talked. They talk face to face on the video, you see them, they shake hands. There's no question about that. Johnny Jones is a very reliable witness, he testified honestly. Johnny Jones walked up into this box right here, he sat down, and he spoke to you, under oath, and he told you everything that happened that day. He told you everything he remembered, and he walked you through that video and what he told you matched up on that video.

I will say the one exception, the one thing he probably got wrong is the car. He probably got that wrong. It's probably --

THE COURT: Two minutes, Counsel.

MR. ALLMON: Excuse me?

THE COURT: Two minutes, Counsel.

BY MR. ALLMON:

It's probably that Corvette. I don't doubt that. That's probably the one thing he got wrong. He just got shot and he's keeping his eyes on the Defendant. That's his focus. And so maybe he got that car wrong. Everything else he says, reliable. The video evidence, reliable.

Actions speak louder than words with intent; right? We talked about that. Actions speak louder than words. We actually know a lot of what the Defendant's thinking based on his Facebook posts, but we don't know afterwards why he -- exactly what he was

thinking when he pulled the trigger twice. But I can tell you this, a double tap to the head, that's an intent to kill. And I can tell you this, Johnny Jones is quote, unquote, a snitch, so you know, that if you shoot Johnny Jones, you better shoot to kill because he's going to talk to the cops so he better be dead. That, I can guarantee, is the Defendant's thought process when he's going in there.

Ladies and Gentlemen, the DNA, Instruction No. 6, you are not to consider whether or not someone is guilty. We all have suspicions about Vandemere. We all think -- the detective thought he was part of a conspiracy. We can watch that video and we can have a lot of suspicions, okay? So there's other people's DNA, maybe his DNA is on the gun, I don't know. But what I do know is the Defendant's DNA is on that magazine, the internal part of that gun.

So you have that, you have the identity, you have the motive, you have the video surveillance, you have the DNA. And if the DNA was stopping there, why is he turning his phone off if he's just randomly touching it, if he's just a mistaken identity, all poor circumstances? Ladies and Gentlemen, the Defendant is not the most unlucky man in the world, the Defendant is the man who shot Johnny Jones. Make no mistake about it, you are sharing this room right now with a man who had every intent of being a cold-blooded killer. Find him guilty of all counts.

THE COURT: Thank you, Counsel.

All right, Ladies and Gentlemen, that concludes the closing arguments for the case. Now is the time for you to go back to the jury deliberation room and begin your deliberations. Unfortunately, going back to the jury deliberations for -- a couple of your number won't go back with you.

In every jury trial we always select a couple people to be alternate jurors, in case somebody becomes ill, or an emergency arises and they're not able to perform their duties as a juror. They -- so we can go ahead and continue on with the trial. And in this instance, our two alternates jurors is Mr. Sarda and Ms. Hogue. I'm sorry you won't be going back to -- with the jury to deliberate.

I'm sure you're disappointed after having spent four days of your life down here at the courthouse, but I do appreciate the time that you've spent here, and the parties all appreciate that too. I'm not going to excuse you though at this point in time. The reason for that is there's always a chance once the jury goes back to deliberations, that somebody there may become ill, or an emergency might arise, and we can then call you back in and continue on with the deliberations if that occurs.

And if you think that that never happens, right before COVID hit back in 2019, I had a jury go out for deliberations and then half an hour later, one of the jurors got a call from their spouse at the hospital emergency room and they had to leave, and we were able to bring back the alternates. So I'm not going to excuse you at this time.

In fact, you get to hear one more time until you are excused, do not discuss or communicate with anyone, including fellow jurors in any way regarding the case or its merits either by voice, phone, email, text, internet, or other means of communication or social media. Do not read, watch, or listen to any news or media accounts or commentary about the case. Do not do any research such as consulting dictionaries, using the internet or using reference materials. Do not make any investigation, test the theory of the case, or recreate any aspect of the case, or in any other way investigate or learn about the case on your own. And do not begin to form or express any opinion regarding the case until it's submitted to you.

All right. Again, thank you for your time these last four days. I hope you take something away from the experience.

I'll ask the clerk to swear in Kelly to take our alternate jurors out.

[The Clerk swore in the Judicial Executive Assistant to take charge of the alternate jurors]

THE COURT: All right. If you'd go with Kelly, she'll -- what do you guys -- what do you normally do? You can take the jury instructions with you, if you want to do that. Leave your notebooks there and follow Kelly out.

All right. I'll ask the Clerk to swear in our Marshal to take the jury out to begin deliberation.

[The Clerk swore in the Marshal to take charge of the jury panel]

THE COURT: All right. Ladies and Gentlemen, get your notepads, get your copies of the jury instructions, and any personal items that you have and follow the Marshal out. He'll take you back to the jury deliberation rooms to begin your deliberations.

THE MARSHAL: All rise for the jury.

[The jury retired to deliberate at 2:03 p.m.]

THE COURT: Okay. Everybody stay close to your phones. I usually try to do any questions from the jury over the telephone rather than make everybody come back.

We need to talk about in case the jury does come back -- well, once the jury comes back, what we're going to do in terms of Count 5, which was the ownership and possession of firearm by prohibited person.

Let me just ask you, Mr. Boley. Are you going to stipulate that the Defendant has a prior felony conviction or do -- is the State going to need to introduce certified copies of the conviction?

MR. BOLEY: I think we already saw certified copies, so I mean.

THE COURT: I mean -- but I'm -- the only thing I'm just saying is if you don't stipulate to -- I just want to make sure you understand if you don't stipulate to the fact that he has a --

MR. BOLEY: True. Yeah.

THE COURT: -- prior felony, the jury gets to see the Judgment of Convictions and what the crimes were that he was convicted of.

MR. BOLEY: It's better that we stipulate then.

THE COURT: Well, I mean, a lot of people sort of go that route, but I want to make sure that --

MR. BOLEY: Sure. Yeah.

THE COURT: -- you know, if you don't want to, that's certainly your right not to do that.

MR. BOLEY: Of course.

MR. ALLMON: Your Honor, the State typically requests to prove-up its Judgment of Conviction. At this point there's no issue of prejudice with the -- with any other charges there.

THE COURT: Well, I think *Old Chief* indicates that if he's prepared to stipulate to that element, that the individual is a prohibited person because he has a prior felony conviction that you don't get to show that he's a really bad felon. So I've -- if you were prepared to stipulate that the Defendant is a prohibited person who may not -- who has a prior felony conviction, I think that that's sufficient.

MR. BOLEY: I think if I remember the last trial I did in here, you just sent the jury back out to deliberate on that and bring them back?

THE COURT: Well, essentially the jury would accompany -- you know, be instructed as to the elements of ownership or possession of firearm by a prohibited person, just that there was a stipulation as to the Defendant being -- let me see here, the -- I've got a verdict form.

MR. ALLMON: I don't believe that we actually -- I believe I excluded that from the verdict form to avoid the --

THE COURT: Yeah. I've got --

MR. ALLMON: -- potential --

THE COURT: My Clerk --

MR. ALLMON: Yeah.

THE COURT: -- had made up a verdict form for that. I'm looking to see if she pulled -- yeah, instruction -- let's see.

All right. Do you have a proposed elements instruction for Count 5?

MR. ALLMON: Yes, Your Honor.

THE COURT: I can go back and see -- well --

MR. ALLMON: I've --

THE COURT: -- the Clerk had --

MR. ALLMON: I've got the stock one right here, Your Honor.

THE COURT: Okay, great.

MR. ALLMON: It's a matter of pulling it up.

THE COURT: Why don't you -- do you have my J -- my law clerk had to go to a dentist appointment. You sent -- do you know Kelly's email address?

MR. ALLMON: I believe I have it saved, but let me double check here.

Yeah, if you'll give it to me again.

Yes, I got you right there.

THE COURT: All right.

MR. ALLMON: Do you want it on the stock paper, or do you want it just in an email?

THE COURT: Just send it in an email and I'll have Kelly print it out and we'll distribute and make sure we're all in agreement on it. Why don't you do that? Why -- let's take five minutes, run to the restroom if you need to run to the restroom and then we'll finalize everything in regard to Count 5.

MR. BOLEY: Okay.

THE COURT: And the hopefully by then Kelly will have gotten the email and we can print that out.

[Pause in proceedings]

THE COURT: Are we still on?

THE COURT RECORDER: Yes, we are.

THE COURT: Okay. All right. Let's show the laptop to Mr. Boley.

MR. ALLMON: All right. I'm going to just keep it up here for a second because it's projecting now. I previously cleared it. These ones here are recent files.

THE COURT: Do you want to get up with him and look at what he's doing and --

MR. BOLEY: Yeah.

THE COURT: -- make sure that we're all on the same page.

[Colloquy between Counsel]

THE COURT: Mr. Boley, you had a chance to look at the clean laptop to go back to the jury?

MR. BOLEY: I did.

THE COURT: All right. Any issue with it?

MR. BOLEY: I don't think so. I don't see anything that would be objectionable.

THE COURT: Okay. That's -- are you sure there's nothing in the bag?

MS. BOSA-EDWARDS: Yes. In the pockets?

MR. BOLEY: Like an envelope of money or something?

THE COURT: Well I've just been researching the issue of unadmitted evidence going back to the jury and one of the cases talks about finding marijuana in a bill fold that was sent back. And then another case talks about a folder with more than just the admitted documents. So I've become more conscious of the issue.

All right. Do we have gloves?

THE CLERK: I gave some --

THE MARSHAL: There is gloves --

THE CLERK: I provided them.

THE MARSHAL: -- inside of the bag [indiscernible.]

THE COURT: All right. I'm going to need -- I need to run to the restroom, so five minutes. It's 2:13. Let's get back in action at 2:20, okay, and we'll get the instructions, and everything set up for that.

[Court recessed at 2:13 p.m., until 2:24 p.m.]

[Outside the presence of the jury]

THE COURT: Here's the verdict form my Clerk printed off. I haven't looked at it yet. And then here is the preliminary instruction to the instruction.

MS. BOSA-EDWARDS: Oh, thank you.

MR. BOLEY: So the one you just handed me is the State's version?

THE COURT: No, no. That -- what I just handed you -- you have the -- because it -- remember Instruction No. --

MR. BOLEY: Oh, okay.

THE COURT: -- 3 says this is what's charged in the Information.

MR. BOLEY: Oh, I see. Okay.

THE COURT: Then this would --

MR. BOLEY: Yeah, you're right.

THE COURT: -- essentially come right before the State's proposed instruction as to the elements of the offense and then that's the verdict form.

MR. ALLMON: For some reason in the model instructions it says to include the definition of knowingly; however, that appears to be erroneous based on the Information where it would be willfully and willfully was defined other -- in other areas. So my last paragraph of knowingly is, I believe, not needed. Although the model instructions recommend that it is included.

THE COURT: All right. Did -- Mr. Boley, did you hear what

Mr. Allmon said?

MR. BOLEY: I'm sorry, I did not.

MR. ALLMON: It said -- so basically what was being said was the instructions say -- that I just gave, admittedly say knowingly. I did include that based on the model instructions. The model instructions say to include a definition of knowingly; however, I don't see why the model instructions recommend that when the language says willfully, unlawfully, and feloniously own, which is our charging language which I have no reason to believe is incorrect. I will say willfully is a higher burden than knowingly anyway, so -- and willfully is defined elsewhere in the instructions, so I don't see a point in including knowingly. And if I'm wrong, I still -- it's willfully which is a higher burden, so.

THE COURT: All right. Mr. Boley, what's your thought? Do we need that third paragraph?

MR. BOLEY: I think Mike's right. I think we can --

MR. ALLMON: Yeah.

MR. BOLEY: -- get rid of that because it's -- yeah, he's right. And I -- it's been a minute since I've read this statute, but I think the State of Nevada correctly pleads them.

THE COURT: Okay. Hold on, let's just pull up the statute, make sure we're --

MR. BOLEY: All right.

THE COURT: 202.368.

MR. ALLMON: So also, to supplement that, maybe, Ms.

Bosa-Edwards is, I think correctly correcting me. She points out that the possession definition says a person who knowingly has direct physical contact over a thing but then -- and then that's why the model jury instructions say to include a definition of knowingly as well.

THE COURT: Well, I'm looking at the statute and it doesn't say willfully or knowingly or intentionally, it just says a person shall not own or have in his or her possession, or under his or her custody or control any firearm if the person, subsection B, has been convicted of a felony in this state or any other state, or in any political subdivision thereof or of felony in violation of the laws of the United States of America unless the person has received a pardon and the pardon does not restrict his or her right to bear arms. So --

MR. BOLEY: Well, here's the thing. I think this conver -- in this particular trial that conversation is kind of moot because if they convict of the other crimes, whatever standard, he knew he had a gun. Assuming the conviction on the other stuff.

THE COURT: Well, I mean, I think you're right about that, but we still want to get the instruction right.

MR. BOLEY: Sure.

THE COURT: Where did you see knowingly in the instruction?

MR. ALLMON: So --

[Colloquy between Counsel]

MR. BOLEY: If you're talking about the instructions, the second big paragraph, second sentence.

[Colloquy between Counsel]

MR. ALLMON: Okay. So the instruction there was 22.15 in the model instructions. And then --

THE COURT: And may -- I think maybe -- she may be right; a person who knowingly has direct physical control over a thing at a given time is then in actual possession of it. Then you go down, person acts knowingly when he or she has knowledge that the fact exists, which constitutes each element of the crime, even if he does not know that they are unlawful.

I tend to favor just going ahead and using the model instruction.

MR. ALLMON: And I missed a part there too. It's actually on -- it's multiple pages, is the problem here. I'm going to resend this.

THE COURT: So there's more than one instruction for the prohibited.

MR. ALLMON: It's a multi-page instruction and I thought that it was done, and I missed that. All right. I'm just going to use the complete model one instead of -- this is very --

THE COURT: Well, let's go ahead and send it and we'll take a look at it, and we'll see if we agree with that.

MR. ALLMON: Of course, that's what I meant, Judge.

THE COURT: Let me know when you send it, and I'll go

back and --

[Colloquy between Counsel]

THE COURT: How are we doing?

MR. ALLMON: Close, Your Honor. They're just -- for some reason, one of the annoying things is the model instructions like to use different phrases and -- at different points and so.

That's sent.

THE COURT: Okay. Let me go grab that.

[Pause in proceedings]

THE COURT: All right. Let's take a look at this.

MR. ALLMON: Your Honor, I wasn't sure about the constructive possession. I just included it because the victim's -- I mean --

THE COURT: I mean, I don't think that -- again, as Mr. Boley sort of indicated in terms of this, depending on what they come back on the other it's probably not necessary, but like I said I don't have any problem letting the jury wade through it. I like this better than your other one because I do prefer to have the elements broke out. I think that's easier for the jury than just reading them the statute again.

So the crime of ownership of possession of a firearm by a prohibited person consists of following elements. 1, Defendant knowingly owned or had in his possession or under his custody or control; 2, any firearm; 3, having being convicted of a felony Nevada. Firearm means, et cetera. Possession may be actual or

constructive. A person acts knowingly when he has knowledge that the facts exist which constitute each element of the crime, even if he does not know that they are unlawful. Such knowledge may be actual or constructive, et cetera.

A person commits the ownership of -- offensive ownership or possession of the firearm by prohibited person if he or she knowingly owns or possesses firearm having been convicted of a felony in Nevada or another State or under the laws of the United States. A person needs not know, have known that his position of a firearm was illegal and need not have intended to violate the law. Ignorance or misapprehension of the law is not a defense to this crime.

All right. Mr. Boley, any comments about the instruction?

MR. BOLEY: I think it's appropriate.

THE COURT: All right. As I said, I'm -- if you're prepared or your client is prepared to stipulate to the third element, which is having been convicted of a felony in Nevada then I would want to add in there right after the, before firearm, the line, Defendant stipulates that in 2011, he was convicted of a crime -- of a felony in violation of the laws of the State of Nevada.

Does that sound all right with you?

MR. BOLEY: I think it's better that we do that. Yeah.

THE COURT: All right. Mr. Gipson, I would like -- talk with your client and --

MR. BOLEY: Okay.

THE COURT: -- I want him to be on record as having waived the State's stipulating to the third element of the offense.

MR. ALLMON: Okay. And for the record, I will say too, I do have in my possession the Judgment of Conviction for that.

THE COURT: Okay. I mean, like I said, if he isn't prepared to stipulate, I'll let you put in them, all the Judgment of Convictions.

MR. ALLMON: And I'm just making a record of it that it's --

MR. BOLEY: Sure.

MR. ALLMON: -- I do have it in my possession if needed.

MR. BOLEY: If he's got it available and it's not going to create a big hassle, let's just let him prove it up because at that point the nature of the conviction really doesn't matter.

MR. ALLMON: I'm willing to stipulate. My point is just making a record that it's not a question of if I have it or not. That's all.

THE COURT: I mean, it's -- I mean, if you want to make the State introduce those exhibits, I mean --

MR. BOLEY: Well, it's not hard for them to do I think.

THE COURT: That's not -- well, I'm -- you -- I'm giving you the option of not having the State introduce the exhibits which talk about robbery. I mean --

MR. BOLEY: Sure. But it's after they've decided --

THE COURT: Well, I mean --

MR. BOLEY: -- a conviction and they're not on the other --

[indiscernible] counts.

THE COURT: -- admittedly it may, you know --

MR. BOLEY: Sure.

THE COURT: -- from a totally practical perspective, it may not make any real difference but I'm just saying if you want the State to put the State to their proof, they can introduce the certified copies, and we'll go from there. If you don't want to put the State to their proof on that and have the jury get the certified Judgment of Convictions, then I'll accept a stipulation from your client as to the third element that he's been convicted of a felony in Nevada.

MR. BOLEY: Well, Judge, and I mean, I'm only thinking about should this end up in appellate court at some point, less stipulations, generally from Defense is better in my mind.

THE COURT: Well that's why I want your client --

MR. BOLEY: Yeah.

THE COURT: -- to have been discussed with this --

MR. BOLEY: Okay. If I --

THE COURT: -- and be the one to stipulate to the third element if you want to go that route. Like I said, it is totally up to you and your client.

MR. BOLEY: Sure.

THE COURT: I don't have an issue and the State, I'm sure, does have certified copies of the judgement of conviction which would be -- they can mark and the Court will --

MR. BOLEY: Okay.

MR. ALLMON: For the record, I am handing Defense a copy -- a certified copy of the Judgment of Convictions so he can go over it with the Defendant.

MR. BOLEY: Can we take him in the back?

THE COURT: Sure. I'll let him discuss that with his attorney.

MR. ALLMON: That's my only copy though.

MR. BOLEY: Oh, okay. Yeah, I'll give it back.

[Pause in proceedings]

MR. BOLEY: We're not going to stipulate.

THE COURT: Fine. Not a problem.

MR. BOLEY: Okay.

THE COURT: State can introduce the certified Judgment of Convictions.

All right. Then I propose that in terms of additional jury instructions that we give the preparatory instruction, which -- and marked Instruction No. 25, we'll strike, given District Court Judge from this page. It says an Information is but a formal method accusing a person of a crime and is not in itself any evidence of guilt. In this case, it's charged in the Information that on or about the 23rd day of September 2023, Defendant committed of offense of ownership or possession of a firearm by a prohibited person.

Count 5, did willfully and unlawfully and feloniously own or have in his possession or under his control a firearm to whit an unknown make/model firearm Defendant having been convicted a

felony in Nevada. If we're going to have the State prove the felony, do you want to have it listed out? Have Defendant having been convicted in 2011 of robbery, case such and such, in the Eighth Judicial District Court, felony under the laws of the State --

MR. BOLEY: Yes.

THE COURT: -- of Nevada. Do you want that changed to that?

MR. ALLMON: We can just email you the copy that was in the Information originally.

THE COURT: We've got the Information.

MR. ALLMON: Do you have it in a Word document, though? That's all I was --

THE COURT: No, but I mean, she's capable of typing four lines. I mean, that's --

MR. ALLMON: I'm not. I always ask for a Word so I can copy and paste.

THE COURT: So, if everybody's good, what I will do is firearm by prohibited person. Count 5, did willfully, unlawfully, and feloniously own or have in his possession or under his custody or control a firearm to whit an unknown make/model firearm; Defendant being convicted -- being a convicted felon, having in 2011 been convicted of robbery in Case Number C271461-1 in Eighth Judicial District Court Clark County a felony under the laws of the State of Nevada.

And then it will read, it is duty of the jury to apply the

rules of law contained in these instructions to the evidence presented in this case and determine whether the prosecution proved each element of the offense beyond a reasonable doubt. If you find that the prosecution failed to meet its burden, then you must return a verdict of not guilty.

Is the State good with that?

MR. ALLMON: Yes, Your Honor.

THE COURT: Defense good with that?

MR. BOLEY: Yeah.

THE COURT: All right. Then we'll go to the State's Proposed Instruction Number -- which will be No. 26. And it has the crime of ownership or possession of firearm by prohibited person consists of the following elements, 1, 2, 3. The felony we're using is the one here in Nevada; right?

MR. ALLMON: It is, Your Honor.

THE COURT: Okay. Then we don't need to change having been convicted of a felony in Nevada. Firearm means et cetera. Possession may be actual or constructive, et cetera. Person acts knowingly, et cetera. And then the final paragraph. A person commits ownership or possession of a firearm by a prohibited if he or she knowingly possess a firearm having been convicted of a felony in Nevada or another state or under the laws of the United States. Person may not have known his or her possession. Firearm is illegal and need not have intended to violate the law. Ignorance or misapprehension of the law is not a defense to this crime.

State good with that?

MR. ALLMON: Yes.

THE COURT: Defense?

MR. BOLEY: Yes.

THE COURT: Okay. And then the verdict form.

THE CLERK: They have a verdict already.

Your Honor?

THE COURT: Okay. I heard that.

THE CLERK: Okay.

THE COURT: The verdict form. The verdict form, I handed that out that one that Ally did. It says Count 5, ownership or possession of a firearm by a prohibited person guilty of ownership or possession by a prohibited person; not guilty.

Is the State good with that?

MR. ALLMON: Yes.

THE COURT: All right. Defense?

MR. BOLEY: Yes, Your Honor.

THE COURT: All right. Type that and put my signature at the end.

THE LAW CLERK: Is that a 26?

THE COURT: 26, yeah.

THE LAW CLERK: Great. And is everyone okay if I strike her from these?

THE COURT: Yeah, go ahead and strike her.

All right. The Marshal indicated to me that the jury has

reached a verdict. Let's wait until Ally has made the changes on the instructions so that we can move right into the felony possession charge.

And we can have the State present.

Be prepared to read the count.

THE CLERK: Well, you took it from me but yes.

THE COURT: All right. I just gave it to Ally.

THE CLERK: I'll [indiscernible].

THE COURT: All right.

THE CLERK: So am I going to be reading --

THE COURT: I'll have you read it --

THE CLERK: -- the case --

THE COURT: -- I'll open the case up for the State to present evidence. State, I assume, will offer the Judgment of Conviction.

MR. ALLMON: Yes, Your Honor.

THE COURT: And then I'll ask -- I assume you're going to -- that's all you're pretty much going to present?

MR. ALLMON: There will be no other witnesses, Your Honor.

THE COURT: Are you going to be present anything?

MR. BOLEY: No.

THE COURT: All right. Then we'll move right away into me reading them the two additional instructions on the law. I will advise them that they are to apply the previous instructions that

have been given by the Court. Any objection to that, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No.

THE COURT: And then I'll allow each side whatever time they need to argue this.

[Colloquy between Counsel]

[Pause in proceedings]

THE COURT: Okay. Are we on?

THE COURT RECORDER: We're on.

THE COURT: All right. I handed out Proposed Instruction No. 25 and 26. Look at it and tell me if everybody's good with that.

MR. ALLMON: Yes from the State, Your Honor.

MR. BOLEY: Yes, Your Honor.

THE COURT: All right. And then I think we've already determined it, but the verdict form handed out for 5, is that good with the State?

MR. ALLMON: Yes, Your Honor.

THE COURT: Defense?

MR. BOLEY: Yes, Your Honor.

THE COURT: All right. And you've got the Information to read?

THE CLERK: Yes.

THE COURT: All right. Let me tell the Marshal to bring them in. Any reason not to bring them in, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No.

THE COURT: Okay.

THE MARSHAL: Judge, we're ready.

THE COURT: All right. Bring them in.

[In the presence of the jury]

THE MARSHAL: All rise for the jury.

THE COURT: All right. Parties stipulate to the presence of the jury panel.

MR. ALLMON: Yes, Your Honor.

MR. BOLEY: Yes, Your Honor.

THE COURT: All right. Ladies and Gentlemen, it's good to see you back.

Ms. Vargas, it's my understanding that you are the foreperson?

THE FOREPERSON: Yes.

THE COURT: It's also my understanding that the jury has reached a verdict.

THE FOREPERSON: Yes.

THE COURT: It was a unanimous verdict?

THE FOREPERSON: Yes.

THE COURT: And did you sign -- fill out the paperwork and sign and date it?

THE FOREPERSON: Yes.

THE COURT: Would you hand that to the Marshal, please?

Thank you.

All right. The Clerk will now read the verdict. I'll ask the Defendant to rise.

THE CLERK: District Court Clark County Nevada, The State of Nevada, Plaintiff, versus Joshua Lamar Gipson, Defendant. Case Number C-23-377839-1, Department Number XX. Verdict.

Count 1, Attempt murder with use of a deadly weapon; Guilty of attempt murder with use of a deadly weapon.

Count 2, Battery with use of a deadly weapon resulting in substantial bodily harm; Guilty of battery with use of a deadly weapon resulting in substantial bodily harm.

Count 3, Discharging firearm at or into occupied vehicle; Guilty of discharging firearm at or into occupied vehicle.

Count 4, Discharging firearm at or into occupied vehicle; Guilty of discharging firearm at or occu -- into occupied vehicle.

Dated this 10th day of October 2024, Christy Vargas, Foreperson.

Ladies and Gentlemen of the jury, are these your verdict as read; so say you one, so say you all?

THE JURY: Yes.

THE COURT: Does either side wish to have the jury polled as to this verdict? State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, Your Honor.

THE COURT: All right. Ladies and Gentlemen, this doesn't end your service here today. For various legal reasons, one of the counts against the Defendant was bifurcated; in other words separated for separate presentation to you. So I'm going to keep you here for at least a little bit longer. I'm going to ask at this point in time for the Clerk to read the additional count against the Defendant.

[The Clerk read the Information]

THE COURT: All right. At this point in time I will allow the State to present additional evidence in regard to that count. The State continues to have burden of proof in the criminal case to prove every element of the offense charged beyond a reasonable doubt. Defendant has no obligation to present or do anything in a criminal trial.

After the State has made a presentation of evidence on the new -- on the additional count, I will give the Defense an opportunity, if they wish to, to present any evidence that they wish to do. Again, they have no obligation to do so because Defendant in a criminal case has no obligation to do anything or prove innocence. But as we did before, I will give the Defense an opportunity to present evidence if it chooses to do so.

All right. At this point, I invite the State to present any evidence it wishes to do so as to Count 5.

MS. BOSA-EDWARDS: Yes, Your Honor.

May I approach the Clerk?

THE COURT: Sure.

MS. BOSA-EDWARDS: Your Honor, the State has a certified Judgment of Conviction, Case Number C27146-1.

THE COURT: All right. Let me ask you -- what's the exhibit number for that?

MS. BOSA-EDWARDS: The exhibit number is State's Proposed Exhibit Number 175.

THE COURT: All right. And is it a certified copy of a Judgment of Conviction?

MS. BOSA-EDWARDS: Yes, Your Honor.

THE COURT: All right. And is that -- and who does that Judgment of Conviction concern?

MS. BOSA-EDWARDS: For Defendant Joshua Gipson.

THE COURT: All right. Are you offering that into evidence?

MS. BOSA-EDWARDS: Yes.

THE COURT: Do you have any objection to the exhibit?

MR. BOLEY: No objection.

THE COURT: All right. Exhibit -- what was the number again?

MS. BOSA-EDWARDS: 175.

THE COURT: 175 will be admitted.

[STATE'S EXHIBIT 175 ADMITTED]

THE COURT: Do you wish to read the Judgment of Conviction?

MS. BOSA-EDWARDS: Yes.

THE COURT: All right. Go ahead.

MS. BOSA-EDWARDS: May I publish to the jury?

THE COURT: Sure.

[Ms. Bosa-Edwards read the Judgment of Conviction]

THE COURT: All right. The State may present any additional evidence.

MS. BOSA-EDWARDS: That's all we have, Your Honor.

THE COURT: So you rest?

MS. BOSA-EDWARDS: Yes, we rest.

THE COURT: All right, very good. That concludes the evidence that the State was -- is presenting to you, in addition to the evidence that was presented to you earlier in this trial.

At this point, again, I will give Defense an opportunity to present any evidence it wishes to do so. Again, the Defense has no obligation to present any evidence. In a criminal case, the burden of proof is always on the State to prove the elements of the offense beyond a reasonable doubt.

Does the Defense wish to present any evidence?

MR. BOLEY: The Defense also rests.

THE COURT: All right. So with the evidence that was presented to you previously in this case and the evidence that was presented to you just now, all the evidence that you'll have for

deliberations on Count 5 has been presented to you.

At this point in time, we will essentially go through the same process that we did before. Why don't you hand out those -- oh, James will hand those out. James is -- or excuse me, Marshal Trimidal, I apologize, is handing out to you two additional instructions to guide you along with your deliberations.

These are additions to the instructions that you were provided earlier today. In going back and deliberating on Count 5, you should consider all the instructions that were given to you earlier, Instructions 1 through 24, and these two instructions that specifically relate to ownership or possession of firearm by a prohibited person.

[The Court read the instructions to the jury]

THE COURT: All right. The next process, again, will be similar to what we did today. I'll give the State an opportunity to give a closing argument. I'll then give the Defense an opportunity to provide a closing argument. After Defense provides a closing arguments, the State will have an opportunity to do a rebuttal argument.

The State may present its closing argument.

CLOSING ARGUMENT BY THE STATE

BY MR. ALLMON:

Ladies and Gentlemen of the jury, when you saw the Defendant fire that gun into Johnny Jones, that's the possession. That's the same firearm that we asked you to find him guilty of on

the other counts. We ask you to find him guilty of the fifth count. Thank you.

THE COURT: All right.

Defense may give a closing statement.

MR. BOLEY: Thank you, Judge.

CLOSING ARGUMENT BY THE DEFENSE

BY MR. BOLEY:

I would ask you to consider the same standards of reasonable doubt, obviously, and while the law does not require the State to prove that a firearm was recovered, consider that fact that a firearm was not recovered in your deliberations. Thank you.

THE COURT: The State have a rebuttal argument?

MS. BOSA-EDWARDS: Yes, Your Honor.

REBUTTAL CLOSING ARGUMENT BY THE STATE

BY MS. BOSA-EDWARDS:

As you're well aware, Defendant pulled out at a firearm and fired two shots at the victim's vehicle, Johnny Jones. You're also aware, as you saw the bullet holes within the vehi -- the victim’s vehicle and there's also a bullet lodged -- still lodged in the victim’s hand.

THE COURT: All right. Ladies and Gentlemen, that concludes the closing arguments for Count 5 of the Information.

I'll ask the Clerk to swear in the Marshal again to take the jury back to begin their deliberations on Count 5.

[The Clerk swore in the Marshal to take charge of the jury panel]

THE COURT: All right. Ladies and Gentlemen, if you'd follow the Marshal, he'll take you back to the jury deliberation room and you can begin your --

THE MARSHAL: All rise for the jury.

THE COURT: -- deliberations on Count 5.

[The jury retired to deliberate at 3:18 p.m.]

THE COURT: All right. Why doesn't everybody just stay here?

[Court recessed at 3:19 p.m., until 3:24 p.m.]

[Outside the presence of the jury]

THE COURT: All right. Any reason -- the jury has indicated it's prepared to come back. Any reason we shouldn't bring them in? State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, Your Honor.

THE COURT: All right. Bring them in.

[In the presence of the jury]

THE MARSHAL: All rise for the jury.

THE COURT: All right. Do parties stipulate to the presence of the jury panel?

MR. ALLMON: Yes, Your Honor.

MR. BOLEY: Yes, Your Honor.

THE COURT: All right. Thank you, Ladies and Gentlemen. I appreciate your time that you're spending here today.

Ms. Vargas, the Marshal indicates you've reached a verdict; is that correct?

THE FOREPERSON: Yes.

THE COURT: Is it a unanimous verdict?

THE FOREPERSON: Yes.

THE COURT: And have you filled out the verdict form and dated it and signed it?

THE FOREPERSON: Yes.

THE COURT: All right. Would you hand that to the Marshal?

THE COURT: All right. The Clerk will read the verdict. I ask the Defendant to rise.

THE CLERK: District Court, Clark County, the State of Nevada, Plaintiff versus Joshua Lamar Gipson, Defendant, Case Number C-23-377839-1, Department Number XX, Verdict.

Count 5, Ownership or possession of firearm by prohibited person; Guilty of ownership or possession of firearm by prohibited person.

Dated this 10th day of October 2024, Christy Vargas, Foreperson.

Ladies and Gentlemen of the Jury, is this your verdict as read; so say you one, so say you all?

THE JURY: Yes.

THE COURT: Does either side wish to have a jury polled as to the verdict on Count 5?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, Your Honor.

THE COURT: All right. Then -- you may be seated.

All right, Ladies and Gentlemen, with that, you are discharged as jurors. You're discharged with my thanks, the parties' thanks. I know that we've taken up four days of your time and I really do appreciate it. You are now free, if you wish, to discuss the case with anyone to talk to anyone about the case. At the same time, you are free if you don't want to talk about the case, to not talk about the case.

And I haven't had any problem in the 30 or now close to 41 years that I've been involved with litigation where somebody has said they didn't want to talk about their time as a juror and the verdict that they've ever received any problem or hassle with it. So if you want to talk to somebody, go ahead. If you don't, just say you don't want to, and you can go on.

If you have just a couple minutes, I would really appreciate it if you go back with the Marshal to the jury deliberation room. I'll be back in there in just a minute, and I'd like to thank you personally for your service here on the jury and also to find out if there was anything you saw that we could have done better or improved upon in terms of working with you and the presenting of evidence at trial. If you don't have the time, I understand. We've taken up four days and so if you need to take off, fine.

I -- again, appreciate and the parties appreciate the time and effort that you've put into this. But if you do have the time, I'd appreciate it if you'd go with the Marshal back to the jury deliberation room. I shouldn't be too long before I get back there.

All right. Thank you, again.

THE MARSHAL: All rise for the jury.

[Outside the presence of the jury]

THE COURT: All right. Is there any motion for the Court to consider?

MR. ALLMON: No, Your Honor. Pass to the Defense.

THE COURT: Any motion --

MR. BOLEY: No.

THE COURT: -- for the Defense?

All right. Then I'll order that per -- the Defendant to interview the pretrials -- pretrial? Probation for a pretrial investi --

MR. ALLMON: I apologize, Your Honor. I did actually have a -- my apologies. Your Honor, just -- I would like the -- I would request the Defendant be remanded into the custody of the sheriff without bail at this time. That was my oversight.

THE COURT: That was what I was anticipating you --

MR. ALLMON: It was my --

THE COURT: -- were going --to say

MR. ALLMON: I apologize, my --

THE COURT: -- you were going to make --

MR. ALLMON: -- Your Honor, it's --

THE COURT: -- but I -- c'est la vie.

All right. Defense position on that motion?

MR. BOLEY: Obviously we would oppose, but, you know.

THE COURT: All right. In view of the life tail on the attempt murder with use of a deadly weapon and the other serious offenses, I will -- and the potential sentence on those, I will remand the Defendant into custody without bail.

I'll order the Defendant interview with parole and probation for a pretrial service -- pretrial sent -- presentencing investigation and report. We will set an in-custody sentencing date.

THE CLERK: It's going to be December 5th at 8:30.

THE COURT: All right. Anything else at this point in time?

MR. ALLMON: Can we get a new date? I'll be out of the jurisdiction.

THE COURT: Okay. When are you out of the jurisdiction?

MR. ALLMON: The following week is fine.

THE CLERK: I can do December 10th at 8:30.

MR. ALLMON: Okay.

THE COURT: All right. That work for you, Mr. Boley?

MR. BOLEY: I'm going to check it real quick if you don't mind. That's perfect.

THE COURT: You good with that, Mr. Boley?

MR. BOLEY: I'm sorry?

THE COURT: Are you good with that?

MR. BOLEY: Oh yes, yes, sorry.

THE COURT: Okay.

MR. BOLEY: Sorry, I forgot to answer.

THE COURT: All right. Anything else then at this point in time?

MR. ALLMON: No, Your Honor.

MR. BOLEY: No, Your Honor.

THE COURT: All right. Thank you all for working together and cooperating in terms of putting on the presentation. I appreciate it. If you are interested in speaking to any of the jurors, they'll come out of the middle doors here in just a little bit.

MR. ALLMON: Thank you, Your Honor.

THE COURT: All right. And then next one can get set up while I go thank the jurors.

[Trial concluded at 3:30 p.m.]

* * * * * *

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



Brittany Mangelson
Independent Transcriber