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 2

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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 2** 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

TUESDAY, OCTOBER 08, 2024

TRANSCRIPT OF HEARING:
JURY TRIAL - DAY 2

APPEARANCES:

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

RECORDED BY: ZACHARY MONCRIEF, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

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Las Vegas, Nevada, Tuesday, October 08, 2024

[Trial began at 11:16 a.m.]

THE COURT: State v Gipson, Case No. C377839. Counsel, go ahead and make your formal appearances for the record.

MR. ALLMON: Michael Allmon and --

MS. BOSA-EDWARDS: Dominique Bosa-Edwards for the State.

MR. BOLEY: And Tom Boley for Mr. Gipson. He's present out of custody.

THE COURT: All right.

MR. BOLEY: Dressed to the nines.

THE COURT: Is there anything we need to discuss before we bring in the jury and start opening statements? State?

MR. ALLMON: No, Your Honor. We are just trying to connect here. We do have someone from our IT because we are not smart enough.

THE COURT: Anything from Defense?

MR. BOLEY: Defense is ready.

THE COURT: Okay.

[Pause in proceedings]

THE COURT: All right. Bring in the jury.

THE MARSHAL: Yes, sir.

[In the presence of the jury]

THE MARSHAL: All rise for the jury.

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

MR. BOLEY: Yes, sir.

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

MR. ALLMON: Yes, Your Honor.

THE COURT: All right. Everybody get situated, get your notepads. Good morning, Ladies and Gentlemen. I apologize. I had you get here for 11:00. I know we're getting started a little bit late. That is all my fault. My morning calendar ran a little longer than I anticipated, and it threw us off in that regard and I apologize. I do appreciate your time is important and valuable to you. We'll try to use it as best we can going forward. But I apologize for the delayed start today.

As we discussed yesterday, what we'll get started with today is opening statements. Each side will have an opportunity to give opening statements. The State will go first, again, because the State has the burden of proof in a criminal case and then Defense will have an opportunity to make an opening statement.

After the opening statements are done, we'll begin the presentation of evidence. State will be presenting evidence, as I said again, State -- that's because the State has the burden of proof in a criminal case to prove all the elements of the crimes charged beyond a reasonable doubt. The Defendant has no burden in a criminal trial to present any evidence or to prove innocence. So the

burden is always on the State to prove the elements of the offense beyond a reasonable doubt. So the State will start presenting evidence and we'll put in a full day of looking at evidence and listening to evidence and get ready for the next day.

All right. Now I'm going to ask the State to give their opening statement. And one thing I want to emphasize in these opening statements is what the attorneys say to you in opening statements is not evidence. The openings are intended to let each side have an opportunity to tell you what evidence they think will be admitted and how that evidence fits together from their perspective, but what they say in the opening statements is not evidence.

So if you hear an attorney in the opening statements say that Witness X is going to testify to 1, 2, 3, and your recollection at the end of the case is that Witness X testified to 8, 9, 10, it's your recollection of the evidence that controls. But these are important, and I encourage you to listen to them because you'll find that evidence doesn't necessarily come in, in a chronological or necessarily logical manner. So this gives you a chance to understand or see how each side looks at the evidence and how each side sees it fitting together so that when somebody testifies, you'll have sort of a sense of how that fits into each side's case.

So with that, I'll ask the State to give their opening statement.

MS. BOSA-EDWARDS: Yes, Your Honor.

THE COURT: Are you trying to get that to a full screen?

MR. ALLMON: We're trying to get it to play from the PowerPoint which it's doing on the computer but not projecting on to the screen for some reason.

THE COURT: Do you still have your IT person?

MR. ALLMON: I'll get him here.

THE COURT: All right. I know this is real exciting for everybody but I'm not going to make you sit here and live through this excitement much longer. We'll just take a quick break. If you need -- we're going to go for about an hour and a half, so if you have any bathroom thing, go quickly out and do that.

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, 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 concerning the case until it's submitted to you.

All right. We'll take a ten-minute break, so we'll be back at 11:35. We will get started at 11:35, one way or another.

THE MARSHAL: All rise for the jury.

Just leave your notebooks, Ladies and Gentlemen.

[Outside the presence of the jury]

THE COURT: As I said, we will get started at 11:35 one way or another.

MR. ALLMON: Absolutely, Judge.

MR. BOLEY: Defense is ready, sir.

THE COURT: You've been saying that all morning, Mr. Boley. I'm glad to hear that.

[Court recessed at 11:26 a.m., until 11:31 a.m.]

[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, sir.

THE COURT: All right. We'll let everybody get seated and organized again. All right. Everybody seems -- got their pads, pens and everything.

Okay. Take two. We'll be pleased to hear the opening from State.

MS. BOSA-EDWARDS: Yes, Your Honor.

OPENING STATEMENT BY THE STATE

BY MS. BOSA-EDWARDS:

Ladies and Gentlemen of the Jury, we're here for the State of Nevada versus Defendant Joshua Gipson. On September 23rd,

2023, Victim Johnny Jones and Defendant Joshua Gipson came into contact with each other outside the Quick Check, which is a convenience store on 404 Carey, which is West of Commerce in North Las Vegas, Nevada, in Clark County.

[Video Playing]

BY MS. BOSA-EDWARDS:

Johnny Jones arrived on September 23rd, 2023, at about 2:52 p.m. After this point, he goes outside and helps a friend with some car issues. During this time, while Johnny is outside, Defendant Joshua Gipson arrives in the parking lot of the Quick Check. Defendant Joshua Gipson and Victim Johnny Jones interact at this point outside the Quick Check. Then Johnny Jones goes back inside the Quick Check.

[Video Playing]

BY MS. BOSA-EDWARDS:

And here you can see Johnny Jones is in the turquoise. It's about 3:11 p.m. at this point.

THE COURT: Counsel, if you want to walk up to the screen and point to who you mean by Johnny Jones --

MS. BOSA-EDWARDS: Okay.

THE COURT: -- I don't have a problem with that.

BY MS. BOSA-EDWARDS:

In the turquoise shirt right here [pointing at screen] the tall guy eating the chicken wing is Johnny Jones. It's 3:11 at this point. And then at about 3:18 p.m., on the same date, September 23rd,

2023, Defendant Joshua Gipson enters the same Quick Check.

The evidence will show that Defendant Gipson was outside the Quick Check lying in wait.

[Video Playing]

BY MS. BOSA-EDWARDS:

At around 3:33 p.m., Johnny right there in the turquoise shirt, walks outside of the Quick Check. He will head to his vehicle, which is a 2015 black Chevy Tahoe, and he will get inside the driver's seat.

[Video Playing]

BY MS. BOSA-EDWARDS:

At about 3:35 p.m., Johnny attempts to leave. Defendant ambushes Johnny's vehicle by running up to it, pulling out a gun, firing two quick shots at Johnny's vehicle.

I'm going to try this one more time. Hopefully it doesn't --

[Video Playing]

BY MS. BOSA-EDWARDS:

Lucky for Johnny, he's a tall man and as he was sitting in the driver's seat, he was sitting farther back so he takes the shots into the shoulder -- well into the left bicep, and then his right finger. Johnny Jones is immediately able to identify the Defendant, Joshua Gipson.

The physical evidence will support -- you can move to the next slide, please.

The physical evidence will support that the phone number

associated with the Defendant was located in the area at the time of the incident. The physical evidence will also support that the shirt the shooter was wearing is located at Defendant's residence.

Finally, the evidence will also support that Defendant's DNA is included in the DNA analysis found on the magazine, located in the parking lot of the Quick Check.

The evidence will show, Ladies and Gentlemen, that Defendant Joshua Gipson attempted to kill Johnny Jones by pulling out a firearm and firing two quick shots through the driver's side of Johnny Jones's vehicle.

At the end of this trial, the State will be asking you to find Defendant Joshua Gipson guilty of attempted murder with use of a deadly weapon, battery with use of a deadly weapon resulting in substantial bodily harm, and two counts of discharging a firearm into an occupied vehicle. Thank you.

THE COURT: All right. Thank you, Counsel. That concludes the opening statement of the State.

We'll be pleased to hear the opening statement of Defense.

MR. BOLEY: Yes, sir.

Can we shut that off?

THE COURT: Can you pull down the --

MS. BOSA-EDWARDS: Yes.

THE COURT: All right. Thank you.

...

OPENING STATEMENT BY THE DEFENSE

BY MR. BOLEY:

Ladies and Gentlemen, the State tells a very clean story here and they're going to show you and you're going to hear from their witnesses, and I think you got a nice summary from the State about what they're going to present.

But, as in all criminal trials, the burden is on them to prove every element of every single charge beyond a reasonable doubt; right? And we're going to hammer on that, and I think the Judge has instructed you to do that, as we do in all trials because that's one of the most fundamental principles of American law.

But there are a few things that we won't see. One, we won't see a reliable identification of Mr. Gipson. And we'll argue later more about these things, but you'll see the angle with which the Defendant could have been identified was a flawed angle.

You'll also see that cell phones -- like some cell phone records that the State will present to you, put Mr. Gipson in the vicinity, but there were a lot of people in that vicinity during that period of time and we're going to dig into how accurate those records are when that comes up in this trial.

And ultimately, at the end of the day, the State does bear burden and one of the burdens that they're going to ask you to find him guilty on is intent to kill a gentleman. And I do believe that we're going to draw out some facts through this trial by examination of State's witnesses that maybe that wasn't the intent

of the person at all.

So it is all -- when all is said and done -- and we of course, ask for your attention to the State's witnesses and argument at the end of the trial, we're going to ask that you find Mr. Gipson not guilty of all charges. Thank you.

THE COURT: Thank you. All right. That concludes the Defense opening statement. Opening statements are now in. The next phase of the trial will begin in which that is the presentation of evidence.

As I've mentioned many times, State will now start the presentation of evidence because it has the burden of proof in a criminal case, and I'll ask the State to call its first witness.

MR. ALLMON: The State calls to Tadele Wolderim.

THE COURT: Sir, if I could have you come up here to the witness stand. The Marshal will -- can help you find the way. There are a couple of steps -- yeah, come on up. When you get up -- come on up. When you get up to the top, stay standing for just a second. Our Clerk over will need to swear you in.

THE WITNESS: All right.

TADELE WOLDERIM

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

THE CLERK: Go ahead and be seated and once you're settled, please state --

THE COURT: You can sit in that chair.

THE CLERK: And once you're seated, go ahead and state and spell your name for the record.

THE COURT: Marshal, can you move a little bit so the jurors can all see?

Can you scoot up a little bit more? You see that red light? Can you scoot that chair up --

THE WITNESS: Yes, sir. [Unintelligible.]

THE COURT: Marshal, can you help him move the chair up?

There we go. All right. We need to speak up and so -- okay, so we all --

Do you work? Yeah.

THE COURT: -- can hear you.

Okay. Did he already give his --

THE CLERK: He has not.

THE COURT: So could you state your first name and last name and spell each of them for us?

THE WITNESS: Tadele, the first name; T-A-D-E-L-E. Last name Wolderim; W-O-L-D-E-R-I-M.

THE COURT: All right. Counsel, whenever you're ready, go ahead.

MR. ALLMON: Thank you.

DIRECT EXAMINATION

BY MR. ALLMON:

Q Good morning, sir.

A Good morning.

Q Sir, what do you do for a living?

A Excuse me?

Q How are you employed, sir?

What's your job, sir?

A Cahier.

Q Where at?

A Quick Check.

Q Where's that at?

A North.

Q North Las Vegas.

A Yeah. 404 W Carey.

Q 404 W Carey. Were you working there on September 23rd, 2023?

A Uh-huh. Yes, I work there.

Q Say that again, sir.

A Yes, I'm there.

Q Okay. And on that day, did the police show up at that business.

A Yeah, I heard shots two times. That's it. That's -- I know that.

Q Okay. And why was that again, you're saying?

A I heard two shots, that's it.

Q Two shots.

A Yeah.

Q Okay. Two gunshots.

A Two gunshots.

Q Okay. And did you see anything else?

A I don't see anything. That's it. I'm working at that time.

Q Where were you at?

A I'm busy.

Q Where were you at?

A I'm store.

Q Inside the store or outside?

A Inside store.

Q Okay. At the cashier's table?

A Yeah.

MR. ALLMON: Okay. Nothing further. Thank you.

THE WITNESS: Thank you.

THE COURT: Cross-Examination.

MR. BOLEY: Nothing.

THE COURT: All right. Let me just make sure I'm clear. Where were you when you heard the shots?

THE WITNESS: Inside the store.

THE COURT: And where inside the store?

THE WITNESS: I'm the cashier.

THE COURT: You're what?

THE WITNESS: I'm the cashier.

THE COURT: So you're at the cashier --

THE WITNESS: Yeah.

THE COURT: -- area when you hear --

THE WITNESS: Yeah.

THE COURT: -- the shots.

THE WITNESS: The shot, yeah.

THE COURT: All right. I'm sorry. Does that generate anything further from the State?

MR. ALLMON: If I could, just one thing.

THE COURT: Sure.

BY MR. ALLMON:

Q Did you ever go outside and investigate?

A Huh?

Q Did you go outside to look to see?

A No.

Q Why not?

A Because I'm busy at that time.

Q Okay. You're at the desk.

A Yes.

MR. ALLMON: Okay. Nothing further.

THE COURT: That generate anything further from the Defense?

MR. BOLEY: No, sir.

THE COURT: All right. Ladies and Gentlemen, as I mentioned during my preliminary instructions to you, you are given the opportunity to ask written questions of any of the witnesses called to testify in this case. You're not encouraged to ask large

numbers of questions, because that's the primary responsibility of Counsel.

If after both lawyers have finished questioning the witness and only at this time, there are additional questions you would like to ask the witness, write your question down with your juror number on a full sheet clean paper and raise your hand.

All questions from jurors must be factual in nature and designed to clarify information already presented. The Marshal will pick up your question and give it to me. All questions must be directed to the witness and not to the lawyers or the judge. After consulting with Counsel, I will determine if your question is legally proper. If I determine that your question may properly be asked, I will ask it.

No adverse inference should be drawn if the Court does not allow a particular question. In addition, jurors must not place undue weight on the responses to their questions.

Is there any member of the jury that has a question for this witness?

Okay. I'm not seeing anybody signal me in anyway.

All right. Thank you, sir, for your testimony. You are excused.

THE WITNESS: Thank you.

THE COURT: All right. You have a good day.

THE WITNESS: You too.

All right. State may call its next witness.

MR. ALLMON: Your Honor, the State calls LaVita Bivens.

THE COURT: All right. Good morning, ma'am.

THE WITNESS: Good morning.

THE COURT: If you can come up to the witness stand.

THE WITNESS: Okay.

THE COURT: There's a couple of steps. Are you going to be okay coming up the steps?

THE WITNESS: Yes, I am.

THE COURT: Okay.

All right. When you get to the top --

THE WITNESS: That should be off.

THE COURT: Huh?

THE WITNESS: I said that should be off, huh?

THE COURT: All right. If you stay standing for just a second, our Clerk over here will swear you in.

LaVITA BIVENS

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

THE CLERK: Thank you. Go ahead and be seated --

THE COURT: Do you need some help with that chair?

THE WITNESS: No, I got it.

THE COURT: Okay.

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

THE WITNESS: Does the chair move?

All right. My name is LaVita, L-A, Capital V-I-T-A. Bivens, B, as in boy, I-V, as in Victor, E-N-S.

THE CLERK: Thank you.

THE COURT: Ma'am, I hate to -- can you put the bag down so that everybody can see you more clearly?

All right. Thank you. I appreciate that.

All right. Whenever you're ready, Counsel.

MR. ALLMON: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ALLMON:

Q Good morning, ma'am.

A Good morning, sir.

Q Ma'am, will you introduce yourself to the jury, please?

A My name is LaVita Bivens.

Q Do you know a Johnny Jones?

A Yes, ma'am -- yes, sir.

Q How do you know Johnny Jones?

A He's my cousin's uncle.

Q Okay. On September 23rd, 2023, were you at a house on Duke Ave.

A Yes, sir.

Q Where's that at?

A On Duke Ave. 305 Duke Ave.

Q So at -- what were you guys doing on Duke Ave. that day?

A My cousin was about to have a birthday party. We was

setting up.

Q And whose house is the house on Duke Ave.?

A My cousin, Derek.

Q Okay. On that day, did Johnny Jones arrive at the house?

A Yes, he did.

Q Do you remember what time that was approximately?

A I don't remember the time.

Q Okay. When he arrived, did he -- how did he appear to you?

A Shot up.

Q Okay. Tell me about that.

A He drove his self to the house, he had a towel on his arm, and he said, I've been shot, I've been shot.

Q Okay. And when he said that he was shot, did he say that he knew who shot him?

A Yes, he did.

Q Okay. And do you remember the name that he said?

A Yes, I do.

Q And what was that name?

MR. BOLEY: Objection, Judge.

THE COURT: Are you seeking to do this as an excited utterance?

MR. BOLEY: Yes, Your Honor. I think --

THE COURT: All right. If you can lay a little bit more --

MR. ALLMON: A little more --

THE COURT: -- foundation for that.

BY MR. ALLMON:

Q So you said he said, I've been shot.

A Uh-huh.

Q Did he appear different than normal?

A Different how?

Q Did he seem excited?

A He didn't seem excited. He seemed like he was in a lot of pain.

Q Okay. And so he was in a lot of pain --

A Uh-huh.

Q -- and he was talking about how he'd just been shot.

A Yes, sir.

Q All right. Have you ever seen him run to you and tell you that he's been shot before?

A No. Run from me, but not to me.

Q Okay. So he's got this wound. Did you see him with his wound?

A Yes, sir.

Q Okay. And where was it at?

A One was in the arm and one was like in his hand area.

Q Okay. And was he actively bleeding?

A Yes.

Q All right. And now at that time, he said that I've just been shot. And did he say who that was?

A Yes.

Q And --

MR. BOLEY: Judge, my objection stands.

THE COURT: All right. Let's have a sidebar.

[Sidebar Begins]

THE COURT: All right. She doesn't give much in terms of excitement. She just says that he's -- says that he -- that's why I called a sidebar. I'm just not sure that being shot is --

MR. ALLMON: I can lay more foundation if you --

THE COURT: You really need to lay more foundation because I just -- I mean, yes, I'm sure after he is immediately shot, it's probably an excited utterance. But the fact is there comes a time when you aren't excited anymore. And so, you know, timing might make some difference in this. Let's see if you can --

MR. ALLMON: Okay.

THE COURT: -- get a little bit more out of her in that regard.

[Sidebar Concludes]

BY MR. ALLMON:

Q Ma'am, at the time that he tells you the name of the person --

A Yes, he did.

Q Okay. At that time, are the police there yet?

A No, sir.

Q Is there an ambulance yet?

A No, sir.

Q Okay. So no medical professional is tending to his care at this time?

A At the time when he got there, no, sir.

Q There's no police officer stopping him from being attacked.

A I'm not sure. No, no, no.

Q You didn't see a police officer present that could have protected him at that time.

A Well, when he got to the house, he was already shot.

Q Okay.

A So no -- I had to call the police to come to the house where he was at --

Q Okay. So you called --

A -- and the ambulance.

Q -- the police.

A Uh-huh.

Q Okay. And --

THE COURT: You need to answer yes or no. You called the police?

THE WITNESS: Yes, sir.

THE COURT: Okay.

BY MR. ALLMON:

Q All right. And you -- did you report the shooting?

A I reported what he told me, yes.

Q Okay. Now when he's telling you this, is he talking to you like he talks to you every single day, if you're just hanging out?

A Not really. He's kind of like in pain and he just was kind of talking like erratic, you know, not his normal behavior.

Q Okay. And it's at this time that he gives you the name of the person that shot him?

A Before the police and the ambulance come, yes.

Q Okay.

THE COURT: Go ahead and ask the question.

BY MR. ALLMON:

Q And what was the name of that person?

A Lamar --

THE COURT: Hold on.

MR. BOLEY: Objection. Same objection.

THE COURT: All right. Excited utterance is the basis.

MR. ALLMON: Yes, Your Honor.

THE COURT: All right. I'll overrule the objection.

BY MR. ALLMON:

Q What was the name?

A Lamar.

Q And last name?

A Gipson.

Q Okay. And then did you stay with him until the police arrived?

A Yes, sir.

Q And the ambulance?

A Yes, sir.

MR. ALLMON: Okay. Nothing further.

THE COURT: All right. Cross-Examination.

MR. BOLEY: Sure.

CROSS-EXAMINATION

BY MR. BOLEY:

Q All right, so -- hello.

A Hi.

Q You said that you saw the wounds where Johnny was shot?

A Yes, sir.

Q Did you look at the wounds themselves?

A I looked at the wounds.

Q Uh-huh.

A Yes. I've seen the wounds, yes.

Q Okay. And then did you try to help him like cover the wounds or anything?

A My auntie was with me also. She was doing more of the covering, and I was telling her to apply pressure.

Q I got you. Okay. And then you called the ambulance?

A I called the ambulance -- I called the police when he got there saying he got shot.

Q Okay.

MR. BOLEY: No further questions.

THE COURT: Redirect.

MR. ALLMON: No, Your Honor.

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 me or the Marshal.

Did I see a signal? Anyone?

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

THE WITNESS: Ooh, I can go. Thank you.

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

MR. ALLMON: The State calls Officer Stafford Edwards.

THE COURT: All right. Officer, if I could have you come up to the witness stand. There are a couple steps. When you get to the top, stay standing for a second and our clerk over here will swear you in.

STAFFORD EDWARDS

[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: Yes. My first name is Stafford, S-T-A-F-F-O-R-D. Last name is Edwards, E-D-W-A-R-D-S.

THE CLERK: Thank you.

THE COURT: All right. Wheever you're ready, Counsel.

MR. ALLMON: Thank you. Can I get switched over to the ELMO?

[Colloquy between the Court, Counsel, and the Marshal].

DIRECT EXAMINATION

BY MR. ALLMON:

Q Officer Edwards, will you introduce yourself to --

MR. ALLMON: I'm sorry. He was sworn in; correct?

THE COURT: Yes.

BY MR. ALLMON:

Q Will you introduce yourself to the jury?

A Hi, how are you doing? I'm Officer Edwards, North Las Vegas Police Department.

Q How long have you been a police officer?

A For close to six and a half years.

Q And that's with North Las Vegas; correct?

A With North Las Vegas; correct.

Q And do you currently work in patrol?

A Yes.

Q And were you working that same role on September 23rd, 2023?

A Yes.

Q Okay. Did you respond to a call of a shooting at 404 W Carey Ave.?

A Yes.

Q And is that in North Las Vegas, Clark County, Nevada?

A Yes.

Q And based on that, did you get redirected to another location?

A Yes.

Q Where was that?

A I believe it was 305 Duke Ave., if I'm not mistaken.

Q Okay. How close is that to 404 W Carey?

A I would say less than a mile. Maybe a mile at the most.

Q Did you drive between the two at some point during that day that you were investigating this crime?

A Yes.

Q And about how long did that take you?

A To drive from one point to the other?

Q Yes.

A I would say less than five minutes; five, ten minutes maybe.

Q Do you remember looking at your bodycam and timing it again?

A Yes.

Q And what time did that come to?

A The time from driving from point --

Q Yes.

A Actually, I did not check the time from Point A to Point B. I did not check that.

Q Okay. But it's a quick drive, fair to say; right?

A Yes.

Q All right. Now when you got there, what did you see on Duke Ave.?

A When I arrived on scene, I observed two things. I observed the victim's name was Johnny Jones. He's a big, tall guy, about 6'6, 300 pounds. I noticed that he had two bullet holes -- gunshot wounds on his person, one of which was on the -- I believe it was the left bicep area, and the other one was like -- I believe was around the right forearm, if I'm not mistaken.

I also noticed that -- he directed me to his -- it was a black Chevy Tahoe and on the Tahoe, there was two bullet holes, pretty high up on the driver's side window and they were grouped closely together. So looking at that and seeing how tall Mr. Jones was in comparison to -- my judgment call based on what I believe was that the shooter was either a hell of a shot, with the grouping being so close together, shooting at the driver side window or he -- it was like shooting like point blank at the driver side door right where Mr. Jones's head would possibly be.

That's why I went with the -- when I spoke with detectives and I asked after everything was said and done, would the charge of attempt murder be appropriate and they agreed. So that's why I went with that charge. So based on what I saw -- visually, what I saw, the grouping of the bullet holes on the driver's side window and where Mr. Jones's head would have possibly been, I went with --

MR. BOLEY: Judge, move to strike the discussion about attempt murder.

THE COURT: All right. I'll sustain that and order the jury to disregard that statement.

Counsel, why don't you control the examination a little bit more?

MR. ALLMON: Okay.

BY MR. ALLMON:

Q So you're talking about a Tahoe that you saw there.

THE CLERK: That hasn't been admitted, Your Honor.

THE WITNESS: Correct.

THE COURT: Wait. Stop. Take it off.

MR. ALLMON: Sorry. I apologize.

Your Honor, may I approach the witness?

THE COURT: Okay.

MR. ALLMON: Sorry.

THE COURT: Are you going to be objecting to any of these?

MR. BOLEY: Probably not.

THE COURT: All right. Why don't you show him what -- A, I'm going to want you to show it to him anyway, even if you ask it to go up there.

MR. ALLMON: Your Honor, may I approach --

THE COURT: Show him all of those so that he knows what you're showing him.

MR. ALLMON: Yes.

All right. I've shown it to Defense Counsel, Your Honor. May I approach the witness?

THE COURT: Sure.

BY MR. ALLMON:

Q All right. I'm showing you -- we're going to start with Exhibit 157 and Exhibits 152 through -- I'm sorry, 151 through 154. Go ahead and take a look at all of those and let me know when you're done with that.

A Yes. This first one --

Q Hold on, hold on. Just look through all of them first.

A Okay.

Q Do you recognize all those?

A I do.

Q All right. So let's start with 151 through 154. What are we looking at?

A I'm looking at the driver's side of the Chevy Tahoe.

Q Let's start with how did these photos -- how did we get these photos? Where do they come from?

A I believe I -- CSI, they're the ones that actually took the photos.

Q Redirect -- do you remember -- if you look at the timestamp there, do you remember going through on your bodycam?

A Yes. So do you want me to read the timestamp?

Q Does it have a timestamp there?

A Yes.

Q Is that consistent with your bodycam?

A Yes.

Q Okay. So are these all fair and accurate depictions of the scene as you saw it from your bodycam?

A Yes.

MR. ALLMON: Move to admit 151 through 154.

THE COURT: Any objection to 151 to 154?

MR. BOLEY: No.

THE COURT: All right. 151 to 154 will be admitted.

[STATE'S EXHIBITS 151 to 154 ADMITTED]

BY MR. ALLMON:

Q So let's start with 151. We see a hand in there?

A Yes.

Q Is that your hand from your bodycam?

A I believe that is from the CSI, if I'm not mistaken.

Q Do you remember meeting with me earlier?

A Yes.

Q And doing some screenshots?

A Yes.

Q Do you recognize that as a screenshot from the bodycam?

A Okay. Take a look at it again just to make sure.

THE COURT: What are you showing?

MR. ALLMON: 151, sorry.

BY MR. ALLMON:

A Yes.

Q Okay. So what are we looking at here? What's this a photo of?

A That's a photo of the driver's side of the vehicle and you can see the bullet holes on the driver's side window.

THE COURT: There's a mouse -- you see -- there should be a mouse and that should move a -- there it is.

THE WITNESS: I can't see it up here.

THE COURT: You should have your -- on your screen. Do you see it on your screen?

THE WITNESS: No.

THE COURT: There it is.

THE WITNESS: Okay.

BY MR. ALLMON:

A Okay. So this is the driver's side window, and these are two bullet holes that I saw on scene that day, right here.

MR. ALLMON: For the record, the witness is indicating on the driver's side window, upper right portion.

THE COURT: You know you can go -- see the red pencil down at the bottom? Click on that --

THE WITNESS: Uh-huh.

THE COURT: -- and go up and then try to draw around that.

THE WITNESS: Okay.

BY MR. ALLMON:

A [Witness draws on screen]. So right around here is where I seen -- where I saw the two bullet holes penetrate through the driver's side window.

Q Okay. Now, while you were there, did an ambulance arrive?

A Yes, they did.

Q And did they treat the victim there?

A Yes. They did treat him, but they actually transported him to the hospital eventually.

Q And did you get his name at the time?

A The victim?

Q Yes.

A Yes. It was Johnny Jones.

THE COURT: All right. Officer, I need you -- see the little trashcan down at the bottom? Click on that.

THE WITNESS: Yes.

THE COURT: All right. And I think that should allow you to change the pictures. I'm not sure.

MR. ALLMON: Maybe try clicking off of the red pencil again.

THE WITNESS: Okay.

MR. ALLMON: No. There you go. We're back. All right.

THE COURT: Is that what he needs to do is click the trash can or what to re -- to turn that --

THE COURT RECORDER: To take off the --

THE COURT: Just for future reference.

THE COURT RECORDER: I'm not personally sure. I thought it was just --

THE MARSHAL: Just click the arrow.

THE WITNESS: Just click --

THE COURT RECORDER: Yeah.

THE WITNESS: -- the arrow?

THE COURT RECORDER: Yeah. Clicking [indiscernible] take the menu off.

THE COURT: THE COURT: Marshal, let's put a call into IT so we have somebody who can tell us how to handle the equipment.

MR. ALLMON: There's an arrow right there to your left -- to the left of that. Click that arrow. There you go.

THE WITNESS: Okay.

MR. ALLMON: There you go.

BY MR. ALLMON:

Q All right. Do you recognize this person here depicted?

A Yes. That --

Q Okay. Who is it?

A That's Johnny Jones.

Q And is this at the Duke Ave. address still?

A Yes, it is.

Q Are all those photos that we were talking about at the

Duke Ave. address?

A Yes.

Q All right. And you said you could see some apparent gunshot wounds. Can you circle those with the red pencil again?

A [Witness circles]. So here is the other -- here is the one gunshot wound that I saw right here. That's the one on the left bicep shoulder area.

Q Okay. Now, 153.

THE COURT: Okay. Let's try again.

THE WITNESS: Okay.

THE COURT: Click on the trash can.

THE WITNESS: Trash can. Okay. Put it back on there.

THE COURT: Let's see.

MR. ALLMON: There we go.

THE COURT: Okay.

BY MR. ALLMON:

Q Okay. I'm going to bring this back to you so you can see it because it's a little hard to see on the ELMO, but on 153, looking at his right hand, do you see anything?

A Yeah. I see blood on his right hand.

Q Okay. And so that -- the hand that we see sticking out right there -- yeah, If you'll circle that again.

A [No audible response; witness circles on screen].

Q And if you'll click back to the arrow.

154. On his left arm, do you see the injury?

A Yes.

Q Okay. Can you describe it there?

A That's -- looks like a bullet went through and through -- like it went here, and it came out this way. Let me --

Q If you'll just circle each wound that you see --

A Okay.

Q -- on the right bi -- or the left bicep.

A So you can see one here [witness circles on screen] I believe that's the entry. And believe this is an exit wound [circles on screen.]

Q All right. Now when you -- did you stick around long enough to see him transported?

A Yes, I saw him loaded onto the -- into the ambulance.

Q Okay. And what did you do next?

A After that I was directed to go to the 404 Quick Check.

Q Okay. And is -- we talked about 1 -- Exhibit 157, is that a -- do you recognize that?

A Yes.

Q What is it?

A It's a map of the victim's home in comparison to where the 404 Quick Check is located.

Q So the Duke Ave. address where you found him

A Correct.

Q And then the 404 Quick Check.

A Correct.

Q Is it a fair and accurate depiction of those two locations?

A Yes.

MR. ALLMON: Move to admit Exhibit 157 into evidence.

THE COURT: Any objection to --

MR. BOLEY: No objection.

THE COURT: -- 157?

MR. BOLEY: No objection.

THE COURT: 157 will be admitted.

[STATE'S EXHIBIT 157 ADMITTED]

BY MR. ALLMON:

A Do you want me to circle?

Q No, that's okay.

THE COURT: And that's what you're showing the jury right now?

MR. ALLMON: Yes, Your Honor. I'm publishing --

THE COURT: Okay.

MR. ALLMON: -- it for the jury. Thank you.

BY MR. ALLMON:

Q So on that map that we're looking at, this is all in North Las Vegas; right?

A Correct.

Q All right. We see a Main Street down at the bottom. What street is that?

A It's W Carey.

Q And the Quick Check is on W Carey; right?

A Correct.

Q And then we see a North/South running street. What street is that?

A North Commerce.

Q And then up at the top, there's a yellow pin where it says 305 Duke Ave. Does that accurately reflect where that's at?

A Correct.

Q And down at the bottom here, I'm indicating my finger and it says 404 W Carey Ave. That accurately reflects where the check -- where the Quick Check is at?

A Correct. Yes.

Q Okay. And the Quick Check was determined to be what, in the investigation?

A That was the scene where the victim was shot.

Q And when you went there, were you able to find any witnesses?

A The only person that I spoke to directly was the clerk who stated that he heard two gunshots inside the -- while he was working. He never saw the suspect or anything, he just heard two gunshots. He remained inside because he was afraid that -- you know, for his own safety, he just stayed inside.

Q Okay. And now when -- were any other witnesses found at the W Carey address that could identify the Defendant?

A I don't recall. I just recall the other officers that were there on scene.

Q Okay. So you did not identify anyone that could identify him; right?

A No.

Q You did not find a witness.

A No.

Q Okay. Now, at some point, did a detective take over the investigation?

A Yes.

Q And who was that?

A I believe it was Detective Kennedy, if I'm not mistaken.

Q Okay. And when you were at the scene on Duke Ave., did the victim tell you if he could ID the suspect?

A Yes, it was --

Q Without saying the name. So did he tell you if he could identify the suspect?

A Yeah, he immediately told me who the two people were who were involved.

Q Okay. And based on that, did you give that inform -- or did you give that information to detectives?

A Yes, I did.

MR. ALLMON: Okay. Nothing further.

THE COURT: All right. Cross-Examination.

MR. BOLEY: Yes, please.

...

...

CROSS-EXAMINATION

BY MR. BOLEY:

Q Hello, Officer. So your testimony was when you were talking to Mr. Allmon that when you went to the Carey address -- or, excuse me, the Quick Check, you interviewed some people, but nobody could identify who did this shooting; is that correct?

A I did not respond to speak with witnesses on scene. I respond to the officers who found the shell casings on the scene, and I also spoke with the clerk. That was the only thing I did.

Q Okay. So you didn't interview witnesses at all on the scene?

A No.

Q Did you -- were there any witnesses that you know of at that scene?

A Not to my knowledge.

Q So just the clerk.

A Because I went directly to 305 Duke, where the victim -- I responded directly to the victim's address.

Q When you arrived at the Quick Check, were there people there?

A There are other officers there.

Q Had they closed it down because it was a crime scene?

A They were setting up the crime scene tape. Yes, they were setting up the -- they're putting up the crime scene tape and I don't recall all the people that were there. The only thing -- the only

people I recall speaking to or talking with were the other officers on the scene.

Q Okay. But there were still some customers or potential customers milling about?

A I couldn't tell you offhand. I couldn't tell you whether there were or not. They had this -- the crime scene tape was being placed up. I don't know whether or not they had him at a different location in that area, if they were standing by for the detectives to speak to him. I don't know. I focused on the officers and what they found.

Q Got you.

MR. BOLEY: Okay. No further questions.

THE COURT: Redirect.

MR. ALLMON: No, Your Honor.

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 me.

Not seeing any signaling.

All right. Thank you, Officer, for your testimony. You are excused.

THE WITNESS: Thank you, Your Honor.

THE COURT: The State may call its next witness.

MR. ALLMON: The State calls Crime Scene Analyst Reed.

THE COURT: All right. Ma'am, if you'd come up to the witness stand. There are a couple steps. When you get to the top,

stay standing for just a second. Our Clerk over here will swear you in.

NADIYA REED

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

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

THE WITNESS: My name is Nadiya Reed. N-A-D-I-Y-A, R-E-E-D.

THE CLERK: Thank you.

THE COURT: All right. Whenever you're ready, Counsel.

DIRECT EXAMINATION

BY MR. ALLMON:

Q CSA Reed, will you tell the jury what you do for a living?

A I am a crime scene analyst employed with the North Las Vegas Police Department.

Q What does a crime scene analyst do?

A We respond to and process crime scenes, which can include photography and collection, identification and preservation of evidence.

Q Now when you impound some evidence, do you have a P Number that's associated with that?

A Yes.

Q What's your P Number?

A My P Number is 2884.

Q Did you respond -- were you working as a CSA on September 23rd, 2023?

A Yes.

Q And on that day, did you respond to a shooting at 404 W Carey Ave.?

A Yes.

Q When you got there, what did you see?

A When I arrived, I was in front of a convenience store called Quick Check Mark. There were orange cones placed in the parking lot and there was crime scene tape marking off the crime scene.

Q When you get to a scene, what's kind of the usual process?

A When I get to a scene I am usually briefed by one of the patrol officers. Usually it will be the first responding officer and then detectives and I will discuss the actions after the briefing.

Q And then do you go maybe look at any surveillance data or anything like that?

A On this occasion I did because the patrol officer had told us that there was surveillance video to be viewed.

Q Okay. And did you get a chance to view that yourself?

A I did.

Q All right. That surveillance video that you saw, where was it from?

A It was from the Quick Check Mark -- Mart, excuse me.

Q And when you looked at that surveillance video, what did

you see?

A I observed a male go up to the driver's side of a SUV and fire a handgun and flee out of the parking lot.

Q Did that direct you as to relevant areas to start your investigation?

A Yes.

Q What did -- what kind of physical evidence did you see at the scene?

A At the scene, there were ammunition along with cartridge cases which indicate a firearm had been fired, along with pieces that belong to a magazine which is inserted into a firearm.

Q Did you document those?

A I did.

Q Did you take photographs of those to document them?

A Yes.

Q Showing the witness State's Proposed 2 through 75.

Go ahead and look through all those for me and when we're done, just go ahead and look back up.

A Okay.

Q Do you recognize 2 through 75?

A Yes, I do.

Q How do you recognize them?

A Those are the photographs that I took.

Q Okay. Are they all fair and accurate depictions of the photographs you took as it relates to the shooting at 404 W Carey

Ave.?

A Yes, they are.

MR. ALLMON: Move to admit 2 through 75.

THE COURT: Any objection to 2 to 75?

MR. BOLEY: No objection to that.

THE COURT: All right. Exhibits 2 through 75 will be admitted into evidence.

[STATE'S EXHIBITS 2 THROUGH 75 ADMITTED]

MR. ALLMON: Request to publish.

THE COURT: Go ahead.

BY MR. ALLMON:

Q All right. Exhibit 2, what are we looking at?

A That is a photograph of me photographing the crime scene. The shadow is my person with a Eastbound point of view of Carey.

Q Okay. Where is the Quick Check in comparison to you at this time?

A That is down the sidewalk, beyond the cars and to the left.

Q 3?

A That is now me walking more towards the Quick Check Mart.

Q 4?

A Again, walking towards the Quick Check Mart and now I can see the address and I can see the lettering, along with some cones.

Q 5?

A More cones and a better shot at the Quick Check Mart.

Q All right. Where do these cones come from?

A One of the officers had placed them prior to my arrival to indicate found evidence.

Q 6?

A Another perspective of the convenience store.

Q 7?

A Another perspective and more cones now in view.

Q 8?

A Another perspective. Same thing as 7 pretty much.

Q Is it fair to say that these pictures are kind of you walking down Carey and into the parking lot?

A Yes.

Q 9?

A That is a close up of the address.

Q 10?

A That is another view of the parking lot, so I -- so you can get a full surrounding of what was there that day.

Q 11?

A Another view of the parking lot.

Q 12?

A Another perspective of the parking lot.

Q 13?

A An additional perspective of the parking lot.

Q All right. And, again, these cones, do they still depict where some evidence was found by patrol officers?

A Yes.

Q 14?

A That was the sidewalk with a Westbound point of view.

Q Why was this relevant based on your review of the video surveillance?

A Because in the surveillance, I viewed the suspect fleeing with -- going Westbound, so I thought it was appropriate to show the direction he was fleeing in.

Q 15?

A Another picture of the Quick Check Mart, now establishing that I'm going back to photographing the crime scene itself.

Q And 16?

A Those are some of the cones where found evidence was. So now I'm starting to take photographs of the evidence that was at the crime scene.

Q 17?

A That is another evidence shot to show both the cones that are in close proximity to me and their relationship to the other cones in the background.

Q Okay. What kind of evidence do we see depicted here between the cones?

A Between the cones and close proximity to me were ammunition, along with a magazine.

Q And 18?

A That was the cone in the far corner.

Q All right. So this one is a close up between 18 and 17.

A Yes.

Q So if I'm looking at 18 right now, that's a close up. And 17, where is that cone at?

A That is in the far-left corner.

Q Okay. 19?

A That is that same cone in the far-left corner, just with a different perspective.

Q Okay. And what do we see next to that cone?

A I believe it's ammunition.

Q Okay. 20?

A Just another picture now relating that far-left cone in the corner to the other two cones that are in one of the parking stalls.

Q Okay. 21?

A That is a perspective of all the cones from the far-left corner where I would be standing.

Q 22?

A Those are the two cones that were in one of the parking stalls.

Q All right. So 22, and we're looking at this -- we compare that, again, to 17. So when we're looking at 22, these two cones, where are those two cones in 17?

A Those two cones are in the far-right corner of that image.

Q Okay. 23?

A That is now a straight on photo of the parking stall, the two cones in the parking stall, along with the address of the crime scene.

Q 24?

A Is a closer view of the -- those two cones in the parking stall.

Q Okay. And we go 25 through 27; 25, 26, 27?

A Additional perspectives of the cones from a different point of view.

Q 28?

A I am now going to photograph the camera in the far-right corner where it says no loitering. That was the purpose of that photograph.

Q And 29?

A I'm now going to photograph the camera on the left-hand side of the building and that was the purpose of that photograph, to show the camera in relation to the building.

Q 30?

A That's just another perspective of the crime scene, just straight on.

Q Okay. Do we now have some kind of placards there?

A Yes. Yeah, there are placards in place now marking the evidence.

Q And who placed those placards?

A I did.

Q All right. Do those placards have some kind of meaning to you?

A Yes, they notate the evidence that I have found in the crime scene with numbers associated.

Q So, 31?

A That is now a closer view of the cluster of cones with the evidence markers with Evidence Nos 1 through 6.

Q Okay. And what our Items 1 through 6?

A 1 through 6 -- if I can just refer to my report?

Q Would looking at your report refresh your memory on what Items 1 through 6 are?

A Yes.

Q All right. So go ahead and look at that and don't read directly from it, but look at it and if your memory is refreshed, look back at me.

A Okay. I'm finished.

Q All right. What was Item 1?

THE COURT: Does that refresh your recollection?

MR. ALLMON: Sorry. Thank you.

THE WITNESS: Yes, it does.

MR. ALLMON: All right.

THE COURT: We're good.

BY MR. ALLMON:

Q What was Item 1?

A Item No. 1 was a 9mm cartridge.

Q All right. Item 2.

A Item No. 2 is also a 9mm cartridge.

Q Item 3?

A A 9mm cartridge.

Q All right. Item 4.

A A black magazine.

Q And a magazine again, is what?

A It is used to hold ammunition in a firearm.

Q Item 5?

A A 9mm cartridge.

Q All right. And Item 6?

A A 9mm cartridge.

Q So do we see it goes closer in Exhibits -- or in Exhibit 32?

A I do.

Q So -- and Exhibit 33?

A Yes, that is Items No. 1 through 5.

Q All right. Is that clear enough that you can go off of that picture and walk through what they are again?

A Yes.

Q All right. So Item 1, if you will just point that out for the jury, what that is.

A That is a 9mm cartridge next to the cone.

Q Okay. If we go to Item 2, what else do we have?

A A 9mm cartridge.

Q And Item 3?

A A 9mm cartridge.

Q And a-- what's a cartridge?

A It's also known as ammunition. Some people know it as a bullet, but it holds all components. It's just ammunition.

Q So this would be -- the cartridge goes to the bullet -- or the cartridge goes to the gun and then fires a bullet.

A Yes.

Q Is that correct?

A Yes.

Q Okay. And then when that happens, what comes out of the gun?

A The cartridge case is ejected from the side of the firearm.

Q Okay. So I have a cartridge which is a full round --

A Yes.

Q -- and a cartridge case which is the ejected portion.

A Yes.

Q Okay. And then the bullet, which is what's actually fired; correct?

A Yes; correct.

Q All right. Item 34?

A That is now getting a close up of -- I have No. 1, which is a cartridge.

Q Sorry. And I should say Exhibit 34, showing Item 1; correct.

A Yes.

Q 35?

A That is now a close-up showing Item No. 1.

Q And 36?

A That is an even closer shot of Item No. 1.

Q 37?

A Now I'm trying to display Items No. 2 through 6.

Q And 38?

A Items No. 2 through 5.

Q Okay. Let's look -- let's go to Exhibit 43 here. We see the Item No. 4, is that associated -- that associates with the magazine; you've already testified of that. That magazine there that we're looking -- we see it in 43 and 44 -- is there something unusual about that magazine?

A Yes, the bottom of the magazine is missing.

Q And did you see that magazine itself and look at the top as well?

A I did.

Q All right. What was unusual about the top of it?

A The top of it was also missing.

Q Did you find those pieces as well?

A I did.

Q Okay.

All right. Let's go to Item No. 7. Put that on -- Exhibit 52, what do we have there?

A That is a cartridge?

Q Would looking at your report refresh your memory too or are you good?

A I would like to look at my report. The picture is not too clear.

Q Okay. Go ahead and look at your report.

THE COURT: Would that refresh your recollection?

THE WITNESS: Yes, it would.

THE COURT: All right.

BY MR. ALLMON:

A Item No. 7 is a cartridge.

THE COURT: Does that refresh your recollection?

THE WITNESS: Yes.

THE COURT: All right. Go ahead with your question, Counsel.

BY MR. ALLMON:

Q And did that re -- what was Item No. 7 again?

A A cartridge.

Q Okay. And do we see that in 53?

A Yes.

Q Now, Items 8 and 9, do we see those in Exhibit 54?

A Yes.

Q 54, 55, 56. And let's go to 57. What are we looking at?

A A cartridge case.

Q All right. And you marked that as No. 8?

A Yes.

Q And that cartridge case for Item No. 8, did it have a caliber?

A Yes, it did.

Q What caliber was that?

A 9mm.

Q All right. And then in 58 we see Items 8 and 9 again. 59, 60 and 61, what are we looking at?

A A 9mm cartridge case.

Q Okay. And again, the cartridge case is the expended part of the round?

A That's correct.

Q And can we go -- when we're looking at these real quick, 8 and 9, is this close to the store or far away from the store?

A Close to the store.

Q Okay. So we're seeing those right there again in 55?

A Yes.

Q Okay. Let's go to 63. Is that a little too dark to see?

A Yes.

Q Okay. All right. Is that better?

A Yes, it is.

Q Okay. We see Item 10. What was Item 10?

A Item No. 10 was the top portion of the magazine.

Q All right. So 64?

A Again, Item No. 10.

Q So 64 through 66, all depicting the same?

A Yes.

Q Okay. And that orange piece, you said that that goes to what again?

A It's the top portion of a magazine.

Q All right. So when a magazine, the top portion -- does the magazine work essentially by putting rounds, shoving it down the top end; right?

A Yes. So that portion is what you would see on the top of the magazine. And once you start to enter ammunition into the magazine, that part gets pushed out further and further.

Q 67?

A That is now depicting the relationship between Item No. 10 and Item No. 11.

Q 68?

A Item No. 11.

Q 69?

A An additional photograph of Item No. 11.

Q All right. What was Item No. 11?

A Item No. 11 is the bottom portion of a magazine.

Q Now, did you impound all those items?

A I did.

Q Did you also take photo -- additional photographs in a clean environment?

A Yes.

Q So is that what we see in Exhibits 70 through 75?

I mean, I'll show you real quick.

A Thank you.

THE COURT: Those have been admitted, Counsel if you want to publish them.

MR. ALLMON: Yes, Your Honor.

BY MR. ALLMON:

Q Yes, those are photographs of the evidence.

A Okay. So this is the same items that were impounded, in a clean environment.

Q Yes. All right. So 70?

A Is a picture of a black magazine.

Q 71?

A An additional picture of a black magazine.

Q Okay. 72?

A 72 is trying to display the writing that was on the black magazine.

Q Okay. 73?

A That is Item No. 10, the top portion of a magazine.

Q Okay. And there's some markings on there; right?

A Yes.

Q Do you see those markings?

A I do.

Q What does it say?

A 9x19.

Q And then 74?
A 74 is a picture of Item No. 8, which is a cartridge case.
Q All right. And does it have a head stamp to it?
A It does.
Q What does it say?
A It's a little too dark for me to see still.
Q Okay. I'm going to hand it to you so you can see it.
A The headstamp of Item No. 8 says WIN 9MM LUGER.
Q All right. And that's your impound number, Item 8, showing Photo Exhibit 74; right?
A Yes.
Q Okay. And 75?
A 75, a little blurry still, but I think it says ZQI 9MM.
Q Okay. And I'll just hand it to you here too, this is 75. If you'd take a close look.
A On the headstamp of Item No. 9, it says ZQI 9x19MM.
Q Okay. And you've got your placards in there, that's how we know it's the same number; right?
A Yes.
Q Is that fair to say?
Did you also go to another address?
A I did.
Q Was that 404 -- I'm sorry, was that 305 Duke Ave.?
A Yes, that's correct.
Q What did you see at 305 Duke Ave.?

A When I arrive to the address, it was a residence and out -- parked out front was a dark colored SUV, along with a blood trail and crime scene tape and damage to the front driver window and the front passenger window.

Q Okay. What kind of damage?

A Possible bullet holes.

Q All right. Did you take photos of that too?

A I did.

MR. ALLMON: Your Honor, may I approach again?

THE COURT: All right. Make sure Mr. Boley has seen this and knows what you're showing the witness.

[Colloquy between Counsel]

THE COURT: Are you good?

MR. BOLEY: Yes. I saw them before.

THE COURT: Yes. Go ahead and -- are you going to be objecting to any of these?

MR. BOLEY: Not those -- not that stack, no.

THE COURT: Do you want to move them into evidence now or --

MR. ALLMON: Can I move to admit 76 through 129 into evidence then?

THE COURT: Any objection to 76 to 129?

MR. BOLEY: No objection.

THE COURT: All right. 76 --

MR. BOLEY: And those were disclosed a long time ago.

THE COURT: All right. Again, I'm just making sure your -- no objection?

MR. BOLEY: No objection.

THE COURT: Once -- all right. 76 to 129 --

MR. ALLMON: Yes, Your Honor.

THE COURT: -- will be admitted into evidence. So.

[STATE'S EXHIBITS 76 THROUGH 129 ADMITTED]

BY MR. ALLMON:

Q I'm going to hand these to you just real quick. Go ahead and flip through them real quick before I put them up.

Do you recognize those?

A Okay.

Q Just a quick flip through and then we'll put them up.

A Okay.

I do recognize these.

Q Okay. Did you take those photographs?

A I did.

Q And were these at the 305 Duke Ave. address, generally?

A Yes, they were.

Q All right. So 76?

A That is a photograph of the residence and the vehicles in front of the residence.

Q 77?

A That is me trying to get a closer up of the address on the block pillar.

Q 78?

A That is a clear photo of the block pillar and the ve -- some of the vehicle.

Q 79?

A That is the vehicle, the dark SUV.

Q Is there a license plate there?

A Yes, but it's a bit blurry for me to see.

Q Yeah.

A Would you like me to read off to you?

Q Yes, could you read it?

A The license plate, I'm not sure how to pronounce this so I'm just going to spell it out to you guys. It reads C-A-H-O-O-N-A.

Q Would you disagree with me if I said Cahoona?

A I would not disagree.

Q Okay. So 79?

A Another picture of the rear of the dark SUV.

Q Okay. 80?

A Another perspective of the dark SUV.

Q 81?

A An additional perspective now showing the passenger side of that same SUV.

Q 82?

A That is now the front corner of the driver's side of that same SUV.

Q Okay. And what do we see there in the passenger -- or in

the driver's side window?

A I see damage that could be possible bullet holes.

Q 83?

A Another view now of the driver -- full driver's side of the dark SUV.

Q 84?

A The corner -- the rear corner of the dark SUV.

Q 85?

A A closeup of the license plate.

Q 86?

A Now I'm going back to that was possible bullet holes on the driver's side window.

Q 87?

A A closer up of the possible bullet holes on the window.

Q 88?

A And another close up of the bullet holes on the window.

Q 89?

A Now I am going to the passenger side, depicting that there's also possible bullet holes on the passenger side as well.

Q 90?

A A closer up view of those possible bullet holes.

Q 91?

A And an even a closer view of a possible bullet hole.

Q 92?

A Now I'm going back to the driver's side and marking those

possible bullet holes.

Q 93?

A A closer up view now with the scale in place marking the possible bullet holes.

Q 94?

A And an even close view of the possible bullet holes with the scale in place now.

Q 95?

A That is a -- inside the vehicle. I'm trying to depict the other side of the driver -- the interior of the driver's side window.

Q Okay. So this is the steering wheel, right --

A Yes.

Q -- just like any American car, typically on the left side of the vehicle.

A Uh-huh.

Q All right. So we're on the driver's side and then we see the two holes there; right?

A Yes.

Q 96?

A That is a closer up view of the same bullet holes on the driver's side.

Q 97?

A That is a another close up of the same bullet holes.

Q 98?

A Now I have marked those same bullet holes and

photographing them again.

Q The marking you've given it, do you -- can you read that?

A I cannot.

Q Here, we'll just put it up on the next one. 99?

A It states Defect B.

Q Okay. 100?

A A photo of the passenger side interior window.

Q 101?

A A closer up of the interior window, now with the door ajar.

Q We're going to do 101 through 106 -- or I'm sorry, 102 through 106. Without saying -- I'm just going to put them all up, 102, 103, 104, 105 and 106. What were those?

A Those are pictures with the interior, possible bullet hole of the car marked now with Defect C.

Q 107?

A That is a picture of the front of the vehicle -- the interior of the --

Q Yeah.

A -- front of the vehicle.

Q Is there any apparent markings inside there that you can see?

A It's a little blurry from where I am. Not -- it's not quite bright enough.

Q Is that better?

A Yes, a bit.

Q Are you able to see it now or is it still not clear enough?
A I mean --
Q I can show you the photo.
A Yeah, that might be better.
Q 107.
A I can clearly see what the photo is now.
Q So what are we looking at on the center console?
A On the center console is apparent blood.
Q 108?
A A closer view of that apparent blood.
Q 109?
A Another photograph of now the center console and the driver's side seat, displaying the apparent blood on both.
Q Is that better with the lights off there?
A Yeah, actually it -- yeah.
Q 110?
A That is a picture of the seat and now the armrest of the front driver door and seat with apparent blood.
Q 111?
A A closer up view of apparent blood on those two items of the car.
Q 112?
A And another photograph of the armrest with apparent blood.
Q 113.

A An additional close up of the armrest with apparent blood.

Q 114?

A That is the exterior passenger -- front passenger window.

Q 115?

A That is a closer up of a possible bullet hole on the exterior side of the passenger window.

Q We're going to do 116 through 118.

What are we looking at there?

A That is that same exterior window with a possible bullet hole now marked Defect D.

Q 119 and 120?

I'll give you 120 so you can see a little better what you're looking at there.

A Okay.

Q What were you capturing there with the photograph?

A I was capturing the apparent blood on the sidewalk and driveway and its relation to the vehicle.

Q Okay. It's a little hard to see on the ELMO, probably. Would you take the pen there and just do a circle? There should be a --

MR. ALLMON: Is it a pen or just their finger, Your Honor?

THE COURT: You're going to need to move the -- it's a mouse.

MR. ALLMON: Okay. Mouse, sorry.

THE WITNESS: The mouse, okay.

THE COURT: See the red pencil at the bottom?

THE WITNESS: Yes.

THE COURT: Click on that.

THE WITNESS: And then go ahead and draw.

THE COURT: Go ahead and draw.

THE WITNESS: Oops, it froze on me.

THE COURT: It did?

THE WITNESS: Yeah. I'm frozen.

THE COURT: Go down and -- can -- just move it -- yeah, go down and --

THE WITNESS: Oh, there we go. Oh, it's just a little slow.

THE COURT: All right.

BY MR. ALLMON:

A [Witness marks on screen.] Okay.

Q Okay. And then we're going to just go through 121 through 129.

THE COURT: All right. If you'd go down and click on the trash can.

MR. ALLMON: Oh, thank you.

THE WITNESS: Oh, yes.

BY MR. ALLMON:

Q Click the -- yeah.

There we go. And then try clicking the arrow for us at the bottom.

A [Witness complies.]

Q Okay. 121, 122, 123, 124, 125, 126, 127, 128, and 129. What are we looking at there?

A Those are all apparent blood that extended from just outside the vehicle, up to the driveway and before the front door of the residence.

[Colloquy between Counsel]

MR. ALLMON: All right. I have Exhibit 1, which is going to be a flash drive surveillance video with a certificate of custodian of records from Zelalem Tedla. And I'm going to move Exhibit 1 into evidence at this time?

THE COURT: Any objection to Exhibit 1?

MR. BOLEY: I think we need to lay some foundation, especially with a custodian of records to introduce surveillance video, if that's what they're intending to do.

MR. ALLMON: I would say --

THE COURT: Let's have a sidebar.

[Sidebar Begins]

THE COURT: All right. So your objection?

MR. BOLEY: So essentially, I mean, you've got this surveillance video we don't know anything about. There's no record, there's no foundation laid for it at all. I mean, I don't think you need a custodian of records, that's why we have the custodian of records' affidavit.

THE COURT: So this is a surveillance video from the Mart?

MR. ALLMON: Yes, Your Honor. So it's a check -- from the Check City, 404 W Carey. The owner has filled out a certificate of authenticity, it has not been objected to, and so the foundation has been laid with that custodian of records' affidavit and that's -- without the objection -- if there was an objection, I would have brought him in but there was no objection so I'm admitting through affidavit.

THE COURT: All right. I mean, you do have a custodian of records authenticity affidavit. Do you have a specific issue as to its authenticity?

MR. BOLEY: No, I think we would need to -- we need to talk about angles, we need to talk about, you know, where this is being taken from, we need to talk about, you know, what kind of system it's being taken by.

THE COURT: Well I mean, those are all good issues, but I mean --

MR. BOLEY: Yeah.

THE COURT: -- you didn't raise those issues before. Well -- all right -- I mean, can you get the owner in?

MR. ALLMON: I don't know if I can. I would say that I shouldn't have to because I mean, I did file the notice. It requires ten days' notice. I filed notice, we were specifically asked at the bench conference by Judge Peterson if he was going to object; he indicated orally that he would not. And even had he not done that, the fact is ten days, he has time to object, he didn't file an objection.

Without that, then it comes in. And so things would have changed drastically for me.

THE COURT: Is that true that you said you were not objecting to this at --

MR. BOLEY: I don't remember that discussion at all in front of Judge Peterson. I mean, respectfully, obviously because I -- you know --

MR. ALLMON: Yeah.

MR. BOLEY: -- but I don't remember that discussion at all.

THE COURT: All right. How much more do you have?

MR. ALLMON: With this witness?

THE COURT: Yeah.

MR. ALLMON: I'm going to show her the surveillance video.

THE COURT: All right. Let's take a break and let me take a look at the calendar call with Judge Peterson and we'll go from the there.

MR. ALLMON: I would just direct the Court's attention to the filings in this case. The State filed a Notice of Intent to Admit through Declaration of Affidavit and that -- and followed all proper procedural grounds. This things is -- it absolutely should be coming in at this point.

THE COURT: Well I mean, what's the statute or rule you're relying on for that?

MR. ALLMON: I'd have to look at my notice.

THE COURT: Okay. Look at your notice. We'll give them a 20-minute break and we'll come back

[Sidebar Concludes]

THE COURT: All right, Ladies and Gentlemen, we're going -- we've been at it for about an hour and a half. I'm going to go ahead, and we'll take a break -- we'll take a 20-minute break. We'll get back together at 1:20.

While you're out there, do not discuss or communicate with anyone, including fellow jurors, in any way regarding the case or its merits, either by voice, e-mail, text, internet, or other means of communication or social. Do not read, watch or listen to any news media accounts or commentary about the case. Do not do any research, such as consulting dictionaries, using the internet or use of reference materials. Do not make the 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 is submitted to you.

We'll see you back in just a few minutes.

THE MARSHAL: All rise for the jury.

[Outside the presence of the jury]

THE COURT: All right. I'm going to go back and check the JAVS of the calendar call. And then give me -- give my Clerk the citations that you want me to look at in reference to the use of the affidavit -- Custodian of Records Affidavit in a criminal case.

MR. ALLMON: And Your Honor, so -- again, the State's position is, is that even without that sidebar conversation that this would come in, that's NRS 52.260.

THE COURT: Hold on. 52 --

MR. ALLMON: Sorry.

THE COURT: -- .260.

MR. ALLMON: Subsection 4.

THE COURT: All right.

MR. ALLMON: And the document that was filed is called States Notice To Introduce Certified Records [NRS 52.260(4)] indicating that an affidavit from Zelalem Tedla would be admitted.

THE COURT: Okay. Let me take a look at that. Everybody feel free to take a bathroom break and we'll go from there.

MR. ALLMON: Thank you, Your Honor.

[Court recessed at 1:00 p.m., until 1:31 p.m.]

[Outside the presence of the jury]

THE COURT: We're on the record. Okay. Good deal.

All right. I had an opportunity to go back and listen to the JAVS of the calendar call. Mr. Boley, at the very beginning of the calendar call, Judge Peterson asks for a sidebar. Goes up there, specifically refers to the notice the State filed, referencing 927, I think she even noticed the time at 12:15 and asks if you're going to file an objection and you said probably not. And then she explains that if you were going to give a -- file an objection or opposition, she was going to give you time to do that. You didn't indicate at

that time that you needed any time to file an opposition.

So now we're here today with the State wanting to proceed by affidavit, which they did file, apparently, in timely fashion on September 27th. I've looked at the affidavit the State has provided, and it indicates it's done by a custodian and meets the requirements of 803(6) to authenticate business records by affidavit. And the rules indicate that that's sufficient to authenticate records, unless there is some indicia of lack of trustworthiness.

Do you have any indicia of lack of trustworthiness with that affidavit?

MR. BOLEY: No, I don't have any indicia of lack of trustworthiness.

THE COURT: All right. What is the basis that you're objecting then?

MR. BOLEY: Oh. Well, unfortunately I must have thought that Judge Peterson was talking about something else then because --

THE COURT: I don't know how you could have thought that at all, because she specifically notes the notice, the State then says you mean the notice of the video that we intend to introduce with the certificate, and she said yes. And that's when she said, are you going to object, and you said probably not.

So is there a reason you didn't object?

MR. BOLEY: A reason I didn't object?

THE COURT: Yeah. Indicate then any objection or that

you were going to file an objection?

MR. BOLEY: I mean there -- I'm not sure Judge, honestly, but --

THE COURT: All right. I'm giving you a chance today. Tell me where the indicia of untrustworthy -- of lack of trustworthiness is with the affidavit the State has provided.

MR. BOLEY: I don't see any, to be honest.

THE COURT: All right. What's your basis then for objecting?

MR. BOLEY: So I guess that takes away my basis.

THE COURT: All right. I do want -- State, I want you to proceed with admitting the document first. State, you've got an affidavit, then read the affidavit, and then move for admission.

MR. ALLMON: Does the Court want that out of the presence of the jury, or do you want me to wait for the jury to return?

THE COURT: Well do you -- are you okay with us admitting the -- oh, let me see. Do you need -- what's your position as to him reading the affidavit?

MR. BOLEY: Reading the affidavit to the jury?

THE COURT: Right.

MR. BOLEY: I mean, I think, Your Honor can make a ruling on --

THE COURT: All right. I'll allow you to read the affidavit so that they appreciate that the foundation for the business record

exception is laid.

MR. ALLMON: And I'll -- if that's okay, since it's already a self-admitting document, I'll just publish it to the jury then --

THE COURT: All right.

MR. ALLMON: -- and not go in word by word.

THE COURT: All right.

MR. ALLMON: Okay.

THE COURT: Get that admitted and then you can have her discuss the video. All right. Bring them in.

THE MARSHAL: Yes, sir.

I'll get the witness.

THE COURT: Oh yeah, that's fine too.

[In the presence of the jury]

THE MARSHAL: All rise for the jury.

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

MR. ALLMON: Yes, Your Honor.

MR. BOLEY: Yes, Your Honor.

THE COURT: All right. Counsel, you indicated you have a document you'd wish to introduce through affidavit?

MR. ALLMON: Yes, Your Honor.

THE COURT: Go ahead.

CONTINUED DIRECT EXAMINATION

BY MR. ALLMON:

Q So you mentioned -- CSA, you mentioned that when you

went to the store, you were able to look at the video with the help of some employees?

A Yes, I did.

MR. ALLMON: And so right now the State is going to admit the surveillance video in this case. The State has marked it Exhibit 1, the surveillance video. That's being admitted with an affidavit by the business owner.

THE COURT RECORDER: [Indiscernible] the light is making it too bright.

MR. ALLMON: Yeah.

THE COURT: Well, rather than present that, why don't you just read off what the affidavit said? Okay.

MR. ALLMON: Okay. There was go.

So this being a certificate of the custodian of records from Zelalem Tedla indicating in paragraph 1 that he's the owner, that it's a convenience store, that he was served with a subpoena pertaining to video surveillance, that he examined the original of those records and made a true an exact copy of them and the reproduction is attached hereto. If the original of those records was made at or near the time of the events, conditions or opinions recited therein, from information transmitted by personal knowledge in the course of regularly conducted activity.

THE COURT: Why don't we make that --

MR. ALLMON: And that's --

THE COURT: -- 1A?

MR. ALLMON: -- Exhibit 1A, Your Honor.

THE COURT: All right. Mr. Boley, do you object to Exhibit 1 and Exhibit 1A?

MR. BOLEY: Nothing further than what I've already said.

THE COURT: All right. I've overruled those objections. I'll admit 1A and -- 1 and 1A.

[STATE'S EXHIBIT 1 and 1A ADMITTED]

MR. ALLMON: Thank you, Your Honor.

BY MR. ALLMON:

Q And so 1, there is a green flash drive marked Exhibit 1.

[Colloquy between Counsel and the Marshal]

BY MR. ALLMON:

Q Okay. Do you recognize the camera view that we're looking at there in Exhibit 1, on the filed marked CHO8_20230923151717.mp4?

A Yes, I do.

[Video Playing]

BY MR. ALLMON:

Q Okay. What are we looking at?

A You are looking at the parking lot of the Quick Check Mart, along with a series of vehicles and a dark SUV.

Q Okay.

THE COURT: Counsel, stop it for a second and note the time --

MR. ALLMON: Thank you.

THE COURT: -- and the date.

BY MR. ALLMON:

Q So we're at 3:17:50 p.m. on the timestamp in the upper left corner; is that correct?

A Yes.

Q Okay. We -- I'm paused now. We see a vehicle there -- is any -- are any of the vehicles -- we see several vehicles. Are any of the vehicles relevant to your investigation?

A Yes, the dark colored SUV in the third parking stall is relevant to the investigation.

Q All right. Did you later find this same vehicle?

A Yes.

Q And did you take photos of that same vehicle?

A Yes.

Q Okay. Were those the same photos that we went through showing the apparent gunshots to the driver's side window?

A Yes.

Q And the same one that had the license plate CAHOONA?

A Yes.

Q And as part of this, did you go through and actually look at where the shooting took place?

A Yes, I did.

Q All right.

THE COURT: If you're moving to another point in it, make sure to note the time for me, Counsel.

MR. ALLMON: I will, Your Honor.

Okay. So we're playing from 3:33:13 p.m.

[Video Continues Playing]

BY MR. ALLMON:

Q All right. We see that same vehicle out there; right?

A Yes.

MR. ALLMON: I'm going to fast forward. We're going to go to 3:33:25 p.m.

[Video Continues Playing]

BY MR. ALLMON:

Q And is there any sound to this? Do you --

A I did not view the video with sound.

Q Okay. So what you saw was without sound?

A Without sound, yes.

Q All right. Now, can you narrate who's approaching that Tahoe?

A It --

Q A description's fine.

A A male with a light-colored shirt.

Q And so now the timestamp there, we were approximately 3:34 and 5 seconds at that point.

[Video Continues Playing]

BY MR. ALLMON:

Q Okay. Pausing now at 3:35:47.

What did we just see on that video?

A I just viewed a male with a white t-shirt go up to the driver's side of the dark SUV and shoot two inside the vehicle.

Q Okay. And then based on that, is that consistent with what you found at the scene?

A Yes, it is.

Q Okay. So if we can talk about -- there were a couple of cartridge casings; right?

A Yes, there was.

Q All right. And those cartridge casings, as we're paused right here at 3:35:48, can you mark with a CC for us, real quick, approximately where you found the cartridge casings.

A [Witness attempts to mark on screen.]

Q Is it pausing on you?

A No, it's just moving very slowly. It doesn't like to listen to me.

THE COURT: Can we see if we can get IT up here; get that faster and -- not right this second --

MR. ALLMON: Oh, okay.

THE COURT: -- but --

THE MARSHAL: Next break.

BY MR. ALLMON:

Q So right now, with the way that's kind of freezing on you, we got like a little squiggly line; right?

A Yeah. So that would be kind of where the placement of one of the cartridge cases landed. Obviously, when I arrived at the

scene, the blue truck was not there, so I was trying to then draw again near the red squiggly, another cart case -- where the other one was. So I guess, kind of where the pen is right now is where the other one.

Q Okay. You can make another -- a second mark, approximately showing where the -- and these are approximates.

A Yes. These are approximates. [Witness draws on screen.]

Q Okay. So we see two lines there. And where you found the cartridge casing, was that consistent with what we see where the shooting took place on the video --

A Yes --

Q -- generally speaking?

A It appears to be, yes.

Q Okay. Now, fair to say that sometimes evidence does move around as it gets -- it can get kicked, things like that; right?

A Yes.

Q Now you found a magazine too. And we mentioned that a magazine is what's inserted into a firearm to hold the ammunition --

A Yes.

Q -- right?

A Uh-huh.

Q Can you kind of generally point in the area where you saw -- where you found that? And I can play the video to get you to a different point --

A Okay.

Q -- if you'd like.

A Whatever you would prefer.

Q If you can tell from here, let me know and you can mark it.

A [Witness using cursor to point to screen.] In this general area here, if you see this darker part of the street, almost like a stain of some sort on the street, I believe it was in this general area.

Q Okay. So we're going to continue playing now. And we're playing from 3:52.

[Video Continues Playing]

BY MR. ALLMON:

Q What do we see? At 3:35:52, what do we see?

A The dark SUV is now leaving the parking lot and going into the street. There is also another vehicle attempting to leave the parking lot and another vehicle entering the parking lot at the same time.

Q Okay. And so right now at 3:36:16, the victim's vehicle is gone; correct.

A The victim's vehicle has now left, yes.

[Video Continues Playing]

BY MR. ALLMON:

Q Okay. Do you remember meeting with me previously?

A Yes, I do.

Q And did we go over this video?

A We did.

Q All right. And did we play the video to a point where we

see something kicked up?

A Yes, we did.

Q Okay. All right. So we're at 3:37:06. We're just going to continue watching. And I'd direct your attention -- the time will be 3:37:28, approximately.

[Video Continues Playing]

BY MR. ALLMON:

Q Right now at 21 seconds, what do we see?

A There is a car backing up in the approximate area of the parking lot of where I found the magazine. The video is now paused, and a dark colored truck is also backing out now in the approximate area where I found the magazine.

Q Okay.

[Video Continues Playing]

BY MR. ALLMON:

Q And now I'm pausing at 3:37:43. Did something change that was relevant to the physical evidence that you found?

A Yes. So when we were watching the video before, I did not see a small black object in the parking lot. Now that the dark color truck is now backed out and proceeding to turn to leave the parking lot, I now see a black object near its rear tire.

Q Okay. Can you circle that for us?

THE COURT: Use the pointer.

THE WITNESS: Yes.

MR. ALLMON: Yeah.

BY MR. ALLMON:

A I'm just going to attempt to draw an imaginary circle with the arrow. [Witness uses arrow on screen.] So I'm referring to this area --

Q If you hit the red line again, let's give that a try.

A Okay. [Witness draws on screen.]

Q We had a little more success earlier, so -- there we go.

A Oh, there we go. It's working better now.

That is the black object I am referring to that I did not see previously.

Q Okay. And that's at 3:37:43 where we're paused and the red circle you indicated is just below the view of the left rear tire of that blue truck that's driving out.

A Yes, that's correct.

Q The blue pickup truck, not the tow truck there.

A Yes, a blue pickup truck.

Q Okay. And generally, in that area, you found something that was relevant to this investigation; right?

A Yes, I did.

Q And what was that?

A That was a black magazine.

Q Okay. So again, when you impound something, I want to be clear, you give a P Number, right, that goes with your impound of items?

A Yes.

Q And your P Number is?

A 2884.

Q Okay. And then we talked too about the magazine; right? And that magazine was in three separate pieces; right? Or you at least found three pieces of it -- of a magazine.

A Of a magazine, yes.

Q Okay. And so there was the main magazine that we talked about.

A Yes.

Q You mentioned an orange piece, which was what again?

A The top portion of the magazine.

Q Okay. And then another black piece?

A Which would be the bottom --

Q Okay.

A -- piece of a magazine.

MR. ALLMON: Pass the witness.

THE COURT: All right. Cross-examination.

MR. BOLEY: Court's indulgence.

[Colloquy between Counsel]

THE COURT: Do you want him to leave that up on the screen?

MR. BOLEY: Yeah. What I was going to do was go over some photos and then go back to that exact screenshot.

THE COURT: Okay. That's fine.

MR. BOLEY: That's what I was trying to do.

THE COURT: However you want to do it. I just --

MR. BOLEY: Okay.

THE COURT: If you wanted it taken down, I'd have him take it down.

MR. BOLEY: No, no, no. That's fine. But I want to use the ELMO for a minute, if that's okay.

THE COURT: Is that something we can do?

MR. BOLEY: Or not --

THE CLERK: Just see if --

MR. BOLEY: We can't mix it?

THE CLERK: Wait, hold on one second.

MR. ALLMON: You should be able just to click back and forth.

THE CLERK: You have to tap the blue button.

MR. BOLEY: Oh, I'm sorry. You guys are waiting on me to do something.

THE COURT: No, no. The blue button in front of the --

MR. BOLEY: Oh, got it.

THE COURT: Hold on. Don't touch it again for a moment. Let's see if it -- it's not coming up. Can you hit the blue button again?

THE CLERK: Okay. Go.

MR. BOLEY: Do it again?

THE CLERK: Yeah, tap it again, please.

Okay. Tap it one more time.

MR. BOLEY: Sure.

THE CLERK: There you go.

THE COURT: There we go.

MR. BOLEY: Okay, perfect. I'm not going to get too specific here.

CROSS-EXAMINATION

BY MR. BOLEY:

Q Okay. Hello.

A Hi.

Q Hey. So we talked about that you examined the scene of this this Quick Check Mart and I'm showing what's been marked as Exhibit -- or State's Exhibit 63. I think you testified that this is a photo you took; right?

A Yes, I did.

Q Okay. And the cones and the placards represent different pieces of evidence as investigatory tools; right?

A Yes, they do.

Q Okay. But there's a lot of junk in this parking lot; right?

A Yeah, you could say that.

Q So there's a bunch of stuff that's kind of strewn about that's not evidence all.

A Not that I found as evidence, no.

[Mr. Allmon assists with the screen.]

MR. BOLEY: Thank you, State.

BY MR. BOLEY:

Q Anyway, sorry. You said -- what'd you say? I'm sorry.

A Can you repeat the question?

Q Okay, I will. I'll rephrase it actually. There appears to be some junk in this parking lot. Was that the condition of the parking lot when you examined it?

A Yes.

Q Okay. So there's a bunch of stuff that's not relevant to this case all --

A Yes.

Q -- in this parking lot? Okay.

All right. So when you were called out to this scene, were you told kind of what the theory was of what happened?

A I was given a briefing by one of the officers --

Q Okay.

A -- and his briefing detailed what he viewed in the surveillance.

Q Okay. So basically that two shots were fired in this parking lot, and they needed to go see what happened?

A Yes.

Q Okay. So I noticed you were talking about a couple of the cartridges that you were talking about, No. 2 and No. 3 are good examples. Are these cartridges that are potentially fired cartridges?

A No. They are not fired cartridges.

Q So this would have been something you would load into a gun before you fired them?

A Yes, that's correct.

Q Okay. And then I think we saw some other pictures of ones that were actually just the cartridge without the bullet; right?

A Yes.

Q So those were the fired shots.

A Yes.

Q Now, also, I think these might be photos of those, I'll verify with you. Now -- I'm sorry, and I was showing the witness State's Exhibit 39 and I'm now going to show her State's Exhibit 74 and 75.

I think you testified, correct me if I'm wrong, that these are the two spent cartridges that you found in this parking lot; right?

A Yes, they are.

Q Now I noticed that there's different markings on the two bullets. Would that indicate that they're different brands?

A Yeah, that is a -- that could be an indication that they could possibly be different brands, yes.

Q Okay. So it's possible that these two cartridges are completely unrelated to each other?

A It's possible.

Q And it's possible that the unspent bullets are completely unrelated to this incident completely?

A It's possible.

Q So it's possible that the magazine is unrelated to this incident?

A It is possible.

Q Okay.

MR. BOLEY: If I could bring up that scene there. How do I bring up the --

MR. ALLMON: Hit the button up on the ELMO.

MR. BOLEY: Go ahead and hit the button; okay.

[Colloquy between Counsel and the Clerk]

MR. BOLEY: Okay, great.

THE COURT: All right. And we're looking at Exhibit 1. The last three numbers of the file are 717.mp4.

BY MR. BOLEY:

Q So I think Mr. Allmon walked you through some of this video slightly before this and slightly after this. There's a tan car in the middle. Do you remember somebody getting out of that car?

A My attention wasn't to that car specifically, so no, I cannot recall.

Q Okay.

MR. BOLEY: Can we back it up just a little bit?

MR. ALLMON: Yeah, you can --

MR. BOLEY: If I can just play it on here.

MR. ALLMON: Yeah, go for it.

MR. BOLEY: Thank you. I appreciate it.

BY MR. BOLEY:

Q So is it fair to say --

THE COURT: Where are --

MR. BOLEY: -- the dark SU --

THE COURT: you starting? What time?

MR. ALLMON: 3:34:34 p.m. on the timestamp.

THE COURT: Okay.

BY MR. BOLEY:

Q So is it fair to say that the dark SUV that you were talking about is in the same parking spot as that tan car later pulls into?

A Yes, that's fair to say.

Q Okay.

MR. BOLEY: And I'm just going to hit play and let this play while I ask a couple questions.

[Video Playing]

BY MR. BOLEY:

Q But I know you had testified that sort of on the driver's side of that Tahoe, that's where you found the shell casings or approximately where you found the shell casings?

A That's correct.

Q And then we see at some point this Tahoe pull out; correct?

A Yes.

Q And then the tan car pulls in?

A Yes.

Q And then somebody gets out of the tan car?

A I don't recall.

Q You don't -- okay. But say that happened, is it possible

that these casings that you found were disturbed?

A Yes.

Q And I think especially from the scene at 3:37, we were talking about a blue truck. It's possible that that disturbed -- when it pulled out, disturbed all of this evidence?

A Yes, that's possible.

Q So we're not sure if these particular casings are in the same location as directly after the shooting.

A Yes, that's very -- it's very possible. I mean they're circular in nature so they're prone to roll.

Q Roll? Okay.

A Yeah.

MR. BOLEY: All right. I'll pass the witness.

THE COURT: Redirect.

MR. ALLMON: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. ALLMON:

Q So to be clear, we have an empty magazine; right?

A Yes.

Q We have cartridges in the parking lot.

A Yes.

Q General vicinity at least; right?

A Yes.

Q Cartridges go into a magazine?

A Yes.

Q Is it possible to load different brands of the same caliber into the same magazine?

A Yes, I've seen it various times.

Q Okay. So you've been to scenes where you've seen multiple brands of the same caliber ammunition?

A Yes, I see -- I would say that's -- most of my scenes are various brands of the same caliber.

Q And to be clear, we talked about two in the video how some of these vehicles possibly disturbed the scene; right?

A Yes.

MR. ALLMON: All right. Nothing further.

THE COURT: Recross?

MR. BOLEY: Very briefly.

RECROSS-EXAMINATION

BY MR. BOLEY:

Q I'm sure you've had firearms training as police.

A Minimally, yes,

Q Okay. When you load a firearm, do you tend to take all the ammunition from one box, or do you tend to mix brands?

MR. ALLMON: Objection, relevance.

THE COURT: I'll overrule. If she knows.

BY MR. BOLEY:

A It would depend on the person.

Q But you, you would buy a box of ammo and put it in your gun; right?

A Sure.

Q Okay. So you probably wouldn't mix brands most of the time?

A If it's the same caliber, I don't really see the difference. I could empty one box of a different brand and load into a new brand, have mixed brands. As long as it's the same caliber, it would fit into the magazine.

MR. BOLEY: No further questions.

THE COURT: Redirect?

MR. ALLMON: No, Your Honor.

THE COURT: Any member of the jury have a question for this witness?

Ah, I see a hand. If you do have a question write it on a clean sheet of with -- and put down your juror number.

All right. Counsel, can I see you at sidebar?

All right. Anybody else?

THE MARSHAL: I have two more, Judge.

THE COURT: All right, very good.

Let's get to -- get started with this one then.

[Sidebar Begins]

THE COURT: All right. Juror No. 14. Can you clarify for me, the significance of the top and the bottom part of the magazine being separate from the rest of the magazine?

Any objections, State?

MR. ALLMON: No.

THE COURT: Defense?

MR. BOLEY: She asked the meaning of it?

THE COURT: She said what's the significance of the top and bottom parts of the magazine being separated from the rest of that.

MR. BOLEY: I don't have an objection to that; no.

THE COURT: Okay. So we got two more that are supposedly coming, so don't get too excited here. Every now and then one wants to write a book, so.

Is this the rest of them?

THE MARSHAL: Yes, sir.

THE COURT: Okay. Oops.

Can you hold that for me?

UNIDENTIFIED SPEAKER: Yes, Judge.

THE COURT: Thanks. Juror No. 5. Where were the spent cartridges found in the parking lot? We sort of went through that but obviously he didn't -- or she didn't get it. Any problems, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: I think it's already been answered but I don't have a problem with it.

THE COURT: I think it's already been answered but if it's something they missed, I'd rather them hear it from the witness rather than not, so. Can you hold that for me?

And Juror No. 6. Where -- were there two exits for bullets

in the vehicle? How many casings -- how many used casings? Any objection, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: I mean, I think she already answered that but no.

THE COURT: All right. Very good.

[Sidebar Concludes]

EXAMINATION BY THE COURT

BY THE COURT:

Q All right. Ma'am, were there any exits -- were there two exits for the bullets in the vehicle?

A Can you say the question again?

Q Sure. Were there two exits for the bullets in the vehicle? So you had the firing into the vehicle, was there anything showing the bullet exiting the vehicle?

A I -- there was no way for me to determine as to my training experience what was an entrance and what was an exit. You would need more of an expert to be able to make that determination.

Q All right. How many used casings did you find in the parking lot?

A Referring to used casings, I think you're referring to cartridge cases that have already been fired and in the parking lot I found two.

Q And where did you find the spent cartridges in the parking lot?

A The spent cartridges or cartridge cases were found on or near one of the parking stalls in the parking lot that was near where the dark SUV was parked.

Q And can you clarify the significance of the top part and bottom part of the magazine being separated from the rest of the magazine?

A Can you ask that question again?

Q Is there some significance as to the top and bottom part of the magazine being separated from the main body?

A I'm just going to answer this as best as I can. I'm sorry, can you restate -- can you ask the question for one more -- once more?

Q Is there some significance in terms of the magazine with the top part in the bottom part being separated from the main body of the magazine?

A The only significance to that was that at some point something caused the magazine and those parts to be separated, whether it was thrown, dropped, ran over, but something caused that separation of the magazine.

THE COURT: All right. Does that generate anything further from the State?

MR. ALLMON: Yes, Your Honor.

Could I get the exhibit [indiscernible]?

Apologies to the Clerks.

THE COURT: That's all right.

FOLLOW-UP EXAMINATION

BY MR. ALLMON:

Q All right. I'm going to show you Exhibit -- so there was some questions about where the cartridge casings were found; right?

A Yeah.

Q So 64 here, what we're looking at, you've already testified this was the parking lot looking at store; right? So this, in 64, we would see the store at the top line where it's cut off; right?

A That's correct.

Q All right. And where were the cartridge casings found?

A The cartridge cases were found at the top here -- let me use the mouse here. At the top portion of the photograph here, with these two cones, that's where the two cartridge casings were found.

Q Okay. And then we see that in 58 as well; right? If you'll just click the arrow again. Yeah, click the arrow. There we go. We see that in 58?

A Yes.

Q So that's a closer view of it basically right up against the curb --

A Yes.

Q -- kind of in -- on the parking line, right up against curb;

fair to say?

A Yes.

Q Okay.

MR. ALLMON: All right. Thank you.

THE COURT: Is there anything further from Defense?

MR. BOLEY: No, Judge.

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

THE WITNESS: Okay.

THE COURT: The State may call its next witness.

MS. BOSA-EDWARDS: We would like to call Officer Diaz.

THE COURT: All right. Officer, if I could ask you to come up to the witness stand. There are a couple of steps. When you get to the top, stay standing for just a second; our Clerk over here will swear you in.

JUAN DIAZ

[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: My name's Juan Diaz. It's J-U-A-N, D-I-A-Z.

THE CLERK: Thank you.

THE COURT: All right. Whenever you're ready, Counsel.

...

DIRECT EXAMINATION

BY MS. BOSA-EDWARDS:

Q And Officer, please introduce yourself to the jury.

A I'm Officer Juan Diaz. I'm a patrol officer with the North Las Vegas Police Department.

Q And how long have you worked there?

A I've worked with the Police Department for two years as a patrol officer. Prior to two years of patrol with the North Las Vegas Police Department, I was an officer in Washington State with the Tacoma Police Department for four years.

Q And on September 23rd, 2023, did you respond to 305 Duke Ave?

A Yes. I began responding to that address.

Q And is that here in Clark County, Nevada?

A Yes, ma'am.

Q And at some point were you redirected to another address?

A Yes, ma'am.

Q And what is that address?

A 404 W Carey. It's a Quick Check Mini Mart.

Q Okay. And what did you do once you arrived at that address?

A Once I arrived -- as I was redirected there, once I arrived, I began kind of canvassing the parking lot and talking to the few people that were left. And there was a few vehicles left in the

parking lot and I began asking people if they had seen or heard any gunshots or seen a shooting take place in the parking lot recently.

Q Okay. And did anyone see anything?

A The occupants of the parking lot -- people in the parking lot were very uncooperative and most of them had said that they had just arrived, or they had -- didn't see or hear anything.

Q Were you surprised?

A Not really.

Q And what did you do next?

A After I had talked to them, we continued canvassing the parking lot looking for evidence of a shooting like shell casings, spent shell casings, or anything that would show evidence of a shooting and at which time I spotted what looked like a magazine at a distance. And there was other officers with me, and I had them walk over to it to make sure it was a magazine lying in the parking lot. And they confirmed it was a magazine.

After we confirmed there was a magazine laying there and we were talking to people that had said they didn't see anything --

Q Okay. I'm just going to clarify really quick. So the magazine you observed, can you describe it for the jury?

A Yes, it was a black pistol-style magazine, and it appeared as if it had been damaged because there was live ammunition on the outside of it, like it wasn't intact.

Q And do you recall where in the parking lot you saw that magazine?

A It was on the western portion of the parking lot.

Q And you said you were on scene with other officers as well?

A Yes.

Q And did you or the other officers mark the location of where the magazine was?

A Yes. I'm not sure exactly what officer marked it, but I know it was Officer Delarco and Officer Gutierrez that were there with me --

Q And the --

A -- and one of them marked it with some cones -- some traffic comes that we utilize, and we have in the back of our patrol vehicles.

Q I am publishing State's Exhibit No. 32.

And is that a -- tell us what this is?

A Looks like a photograph of the front parking lot that leads up to the store. There's a magazine lying there at number -- Cone No. 4, and then I believe the other markings are placed by our CSI.

Q Okay. And is this the magazine that you located?

A Yeah.

Q Publishing State's Exhibit No. 16.

Is this another view of the same area?

A Yeah. That looks like it's prior to CSI arriving on scene and starting to mark everything.

Q Publishing State's Exhibit No. 17.

Is this a view of the same magazine?

A Yes, it is.

Q And can you please describe the location in the parking lot?

A So this is the like West portion of the parking lot. If you notice at the top of the photo, there's two windows there. To the right of those two windows would be the front door of the market. So this is facing North in the parking lot.

Q Publishing State's Exhibit No. 44.

Can you tell the jury what this is?

A That's the magazine that we located. And as I said earlier, it appeared as it had been damaged because it wasn't intact completely.

Q And this is how you saw the magazine when you arrived on scene?

A Yes.

Q Where it was located?

Okay. Did you locate anything else in the parking lot?

A We located live ammunition that was around the magazine, and then we also located spent shell casings near -- closer to the front of the store, along the curb that runs parallel to the front of the store.

Q Publishing State's Exhibit No. 64.

Is this what you just described?

A I'm not sure exactly what -- which one this is, but I can see

in this photograph at the top of the photograph, past the cones where, I believe, the magazine is, that's where -- there's two cones at the top of that photograph, that's where the two spent shell casings that I located -- that we located were at.

Q And if you can use, I believe, the mouse on the computer, if you can click the red -- at the bottom, there's a red pencil. If you can kind of circle where you were just speaking about.

A [Witness marking on screen.] So these cones right here.

Q Okay.

A There's a --

Q And can you just repeat your statement one more time?

A So those cones right there are right beside the curb that runs parallel across the front of the store, and there's a yellow post there that prevent people from driving into the store, and that's where we found some spent shell casings that I observed there while I was on scene.

Q Okay. And then can you click the arrow, please, at the bottom?

A [Witness complies.] Yeah.

Q Showing you State's Exhibit No. 58.

And is this a zoomed-in version of the area you just circled?

A Yes.

Q I probably should have done this one first, but showing you State's Proposed Exhibit No. 55.

Is this the same picture?

A Yes. So like I spoke of earlier in one of the photographs that only had the windows on it, that door's to the right of it, and that's the front of the store facing north.

Q Now, were you at the Quick Check when the incident occurred?

A No.

Q After canvassing the parking lot, what did you do next?

A So after canvassing the parking lot and talking to people who said that they didn't see anything or didn't witness a incident took place, we started securing the parking lot, locking it down and setting up a crime scene because we had found the magazine, the spent shell casings, which is procedure for us to lock --

Q And can --

A -- down --

Q Sorry, can you just explain to the jury exactly what locking down the crime scene is?

A So it's securing -- basically what we're doing is we're securing a crime scene. We're putting up yellow police tape, which I'm sure you have seen at some point in your life. We're -- we -- it says, Police Line - Do Not Cross because it's a crime scene that we're investigating and we don't want people coming into the crime scene, contaminating it.

And if people inside the crime scene are not victims or witnesses to the crime or anything, we get all of those people out of

it so that they're not contaminating the crime scene, manipulating anything or trying to take any type of evidence or conceal any evidence. So we get those people out of the crime scene.

Q And when you went inside the Quick Check, did you have to ask people to leave?

A Yes.

Q So, safe to say, the scene was secure.

A Yes.

Q What else did you do inside the Quick Check?

A I began talking to the store employees, asking them if they had seen or heard anything. I believe one of them had told me they heard something, but they didn't see anything because they were inside working. And then I began asking them if they had access to the surveillance cameras that I observed outside the store.

Q And what did you learn based upon that conversation?

A They didn't have access, but their owner had access, and they provided me his phone number.

Q Okay. And subsequent to that conversation that same day, did you get a chance to view the video surveillance?

A Yes.

Q And based upon the video surveillance that you watched, can you please explain what you saw?

A So in the video surveillance that I saw, there is several vehicles parked in the parking lot. There is a darker color SUV that the victim was seated in. I observed him get into the driver's seat

and sit inside the vehicle. As he's seated inside the vehicle, his vehicle's facing north, so the front of his car is facing the store. It was pulled into a parking stall just to the West of the front door. And while he's seated there in the car, the windows are all up.

At some point, while he's seated inside the vehicle, a suspect is seen entering the camera view from the West portion -- like Southwest portion of the parking lot and he seemed kind of skipping, running along towards that specific vehicle, that darker SUV and as a suspect gets right up to the driver door of this -- of the vehicle, he produces a handgun and fires two rounds right into the upper portion of the window -- the driver door window that's like closest to what we call the B-pillar.

He fires -- it appears as if he fires two rounds and then after firing those two rounds, he immediately runs away from the vehicle back towards the direction where he came from and out of the view of the camera.

Q And do you recall what angle you watched the video surveillance from?

A There's -- there was a couple different angles. There's one angle from if you had a photo of the -- if you were looking at the store from the South, you're facing the store, there was a camera at the top right corner of the building and then there was another camera at the top left corner of the building. So they had two different angles kind of facing the front of the store.

Q And can you describe the suspect in the video that you

saw?

A I'd have to double check my report, but I believe I -- it was like a black male. He was wearing like what appeared to be like a black -- I think it was a black hat, white shirt and it was like black shorts and possibly black shoes. It was a very vague description that I could get because of the quality of the video and the angles of the camera and stuff. So it wasn't -- I wasn't able to zoom in to get exactly what he was wearing, it was just kind of colors of what he was wearing and what it appeared to be.

Q Okay. And can you just describe one more time the location of the shots fired into the window?

A So the shots were fired in the driver door window. So they were fired closer, center portion of the window from the top to the bottom, but closer to the B-pillar. So each vehicle has an A-pillar, B-pillar, C-pillar and SUVs have D-pillars. And the one --

Q Okay. Sorry, one second. Can you explain what a B-Pillar is?

A So they're portions of the vehicle where the door kind of like hinges at. So the A-pillar is where the front of the door hinges at, the B-pillar is where it secures at, where the door latch is typically closed. So the shots were placed right in the middle of the window from the top to bottom, but closer to the back of the window towards the B-Pillar, which to me is very specific because where they're placed, an average male or anybody -- an average person sitting inside the driver's seat, it'd be placed towards like the

top of your body towards your face and head or your -- the shots are specifically placed because you're trying to injure this person seriously or kill them because they're shooting at their face or head.

MR. BOLEY: Judge, sidebar.

THE COURT: All right.

[Sidebar Begins]

THE COURT: Okay.

MR. BOLEY: So what the State's trying to do here is use the police to sort of define what's actually a question for the ultimate trier of fact, which is the jury, right, and say that the intent was, you know --

THE COURT: Well, say objection.

MR. BOLEY: Oh, objection. Sorry, yeah.

THE COURT: Almost everything he's been saying you could probably object to. You've got to object, otherwise I assume that you know what you're doing and you're letting him testify to something for some reason. All right. What was the question again?

MS. BOSA-EDWARDS: Oh, the question I asked.

THE COURT: Yes.

MS. BOSA-EDWARDS: The location of the rounds into the window and then he explaining A, B, C-Pillar.

THE COURT: Right.

MS. BOSA-EDWARDS: So basically my question is just where the bullets were fired into the window and then in his

training and experience, is there anything significant about that location?

THE COURT: Okay. And --

MR. BOLEY: Yeah.

THE COURT: -- why didn't you say objection before he answered the question?

MR. BOLEY: I apologize for that. I was like -- I saw where she was going with this and I -- you know, he's opining -- he's been --

THE COURT: Right. He is and I -- might be able to opine if he's got a sufficient background to make that.

MR. BOLEY: Sure.

THE COURT: I don't think you laid enough foundation for him to make that statement at this point. Do you think you can lay that foundation? Have you talked to him enough that you feel comfortable to do that?

MS. BOSA-EDWARDS: [Indiscernible].

THE COURT: All right. I will strike his last statement as to how did he frame it -- how did he frame it?

MR. BOLEY: It was essentially just that I think that they were trying to shoot an average size male in the head or neck area. And then he kind of went on from there a little bit.

MR. ALLMON: I would say that is an accurate lay witness description. It was in the head or neck area, as far as -- what I think is fairly objectionable is the with an intent to kill.

THE COURT: Okay. I'll allow -- say that they can consider his description of where the gun -- shooter was appearing to shoot but they can't -- they should disregard his testimony as it relates to any intent on the part of the shooter to -- any intent on part of that shooter; all right? Okay.

[Sidebar Concludes]

THE COURT: All right. Ladies and Gentlemen, you may consider the testimony of the witness as to the shooters -- where he was shooting into the window, but you are not to consider, and I order you to disregard any testimony concerning the intent of the shooter either to kill or to do anything. So any testimony related to the intent of the shooter, you are instructed to disregard.

BY MS. BOSA-EDWARDS:

Q And were you surprised when you canvassed the area that nobody told you they saw anything?

A Not really surprised.

MS. BOSA-EDWARDS: Pass the witness.

[Colloquy between Counsel]

MS. BOSA-EDWARDS: Oh, sorry.

BY MS. BOSA-EDWARDS:

Q And why is that?

A That area is kind of a rough area of the South jurisdiction and that that store's kind of ran by the neighborhood basically. So a lot of the time -- most of the time when we go into that parking lot or anytime we respond to anything, not very many people are fond

of the police and don't like to cooperate with us or don't want to talk to us, so.

Q Thank you.

THE COURT: All right. Cross-Examination.

MR. BOLEY: Thank you.

CROSS-EXAMINATION

BY MR. BOLEY:

Q Okay. Officer Diaz, so sort of just to continue on what you were saying, would you consider the area of this Quick Stop, high crime?

A Yes.

Q Okay. So it wouldn't be abnormal to find the occasional spent shell casing in an area like that?

A No.

Q Okay. So when you arrived at that location that day, how many people were in that parking lot?

A I can't tell you exactly, but it wasn't more than a dozen people.

Q Okay. A dozen people were in the parking lot. How many people did you talk to out of that, approximately?

A I would say less than four or five people?

Q Okay. Now I know you've watched the -- some surveillance and you talked to some people. How much activity occurred in that parking lot between the actual shooting and when you arrived?

A There was a lot of activity. There was several vehicles in the parking lot, several people in there, more than -- I would say, more than a dozen people in that parking lot and people hanging out, loitering outside of it by their vehicles and stuff prior to us getting there.

Q I think that you talked about shutting down the scene so it wouldn't get contaminated; right?

A Yeah, after I have got there; yes.

Q Okay. But really in this case it was at least partially contaminated before you even arrived.

A I guess I'm not understanding your question -- your direct question.

Q Sure, I can rephrase. So you talked about one of the reasons you shut down a crime scene is so it doesn't get contaminated; right?

A Yes.

Q But you talked about there was a lot of activity in that parking lot. There was at least a dozen people -- or around a dozen people in that parking lot, walking around, driving cars. So really, the evidence that was collected from that crime scene was already contaminated before you even arrived.

A Yeah. You can say that, and it could have been contaminated. So from the moment that I arrived, I'm locking down the scene and securing it to make sure that it doesn't get contaminated any further.

Q And you could never be sure about what happened before you arrive?

A No, but there's video surveillance that we were --

Q Okay.

A -- able to observe that showed us what happened prior to us arriving.

Q So when you -- and I'm showing you what's been marked as -- what's been admitted as State's Exhibit 64, just as a general view of the parking lot. So when you mark these with placards and the cones, the shell casings and things we've heard of, we're not sure if that was the original placement of those items.

A Are you talking about like when the incident happens or --

Q Sure, yes. So a shooting occurred and then these things were somehow on the ground?

A Yes.

Q Because of the contamination of the crime scene, we're not sure if those were in the same place; they could have been disturbed?

A Yes.

Q Okay. And especially given the nature of these -- showing the witness what's been marked as exhibit -- well because there are multiple shell casings found, it's possible that some of those shell casings had nothing to do with this incident at all.

A I would say yes, but based off of the video surveillance --

MR. BOLEY: Okay. No further questions.

THE COURT: All right. Redirect.

MR. BOLEY: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. BOSA-EDWARDS:

Q Do you recall about what time you arrived on scene?

A I don't know the exact time. I'd have to look back at the CAD notes to figure out exactly what time, but it was roughly around -- I know it was like 3:00 p.m., like later, almost maybe 4:00.

Q Okay. And based upon the question that Defense Counsel just asked, based upon your investigation, were any other gunshots heard around that time of the incident?

A From the people we talked to and we asked and the video that we observed, it appeared that there was only two gunshots that were fired at that time.

Q Okay. And if two gunshots were fired, were those gunshots fired -- based upon your view of the surveillance video, were the casings found consistent with the bullets fired in the video?

A Yes, those were -- the photographs you were showing --

Q Yes.

A -- of where I circled, that they were closer to where the vehicle was parked --

Q Yes.

A -- those are the casings that were consistent with what we observed on video showing the shots being fired.

Q And how many casings did you locate?

A Two.

Q And showing -- I'm going to be showing State's Exhibit No., is it 1? State's Exhibit No. 1, which is the video surveillance. It's already been admitted but you also mentioned that you did view it.

A Yes.

Q And we are looking at Timestamp 3:30 --

THE COURT: Go back so that -- refer to the -- at least the last three numbers of the file that you're looking at.

MS. BOSA-EDWARDS: Okay. The last three numbers of the file are 717.

THE COURT: Okay.

BY MS. BOSA-EDWARDS:

Q And we are looking at Timestamp No. 3 -- it's 3:35 p.m. on September 23rd, 2023.

A Yeah.

Q And is this the video surveillance that you watched?

A Yes.

[Video Playing]

MR. BOLEY: Is there any question right now?

THE COURT: Well, I was assuming you're wanting to show that -- the amount of disturbance to the area.

MS. BOSA-EDWARDS: Yes, Your Honor.

THE COURT: Okay, we done?

MR. ALLMON: Sorry, let's just skip to there. I'm going to go back.

[Video Playing]

THE COURT: What -- we've gone now to 3:17:37. So you went back.

MR. ALLMON: Yeah. I'm trying to fix it, Your Honor.

THE COURT: All right. I'm -- we're not going to keep playing this, so where did we end up before when you went -- it went off and went back to the cars all in the lot?

[Video Playing]

THE COURT: All right. You're showing about 3:40:54.

[Video Playing]

THE COURT: All right. We're getting to where I'm not quite sure I'm following what you're trying to do here. Are we wanting to play this -- stop it for a moment.

MR. ALLMON: Sorry, Your Honor.

THE COURT: Are you wanting to play this until the police show up; is that it?

MS. BOSA-EDWARDS: Yes, Your Honor. We're just having --

MR. ALLMON: That's correct, Your Honor. We're --

THE COURT: All right.

[Video Playing]

THE COURT: And you're at 3:52:15.

BY MS. BOSA-EDWARDS:

Q Okay. We're at Timestamp 3:52. Is this you arriving on the scene?

A Yes.

Q And in watching the video surveillance, did the scene appear to be disturbed from the time before you arrived from the incident -- from the time of the incident to the time you arrived?

A Yes.

Q The scene appeared to be disturbed?

A Well, there's several vehicles pulling in and out of the parking lot --

Q Uh-huh.

A -- so it's kind of hard to say that nothing has been disturbed as far as what happened because there's so many cars coming in and out and people aren't paying attention and they're just walking nonchalant as they -- kind of how their demeanor was when we got there, and we're asking people, hey, did you see anything?

Q Just let me rephrase a little bit. Did the scene seem to be purposely disturbed?

A Not purposely disturbed, no.

Q And you were going to begin to answer a question when Defense Counsel just finished referencing the shell casings. Do you recall what you were going to say?

A I think I -- I think he was alluding to the fact that there's -- there may be other evidence there that may have not been part of

that case. I think that's what he was trying to say. But what I was trying to answer is the shell casings I specifically circled in the photo, and I pointed out to you were closer to the front curb along the front of the store and those were consistent with where the video shows that the gunshots took place that day. And it appears that there's two shots that were fired at that time.

We found two casings in that same general area where the fire -- the shots were fired, so that led me to believe that those casings are consistent with the shooting that took place that day at that time that we saw on video.

Q And one last clarifying question. The location -- can you, I guess, circle about where the location where the magazine was located that you found?

A Yeah. It's like right here [witness circles on screen] and you can actually see it in the video.

Q Okay. And in watching the video surveillance, did you see disturbance as to the location of that magazine?

A Yeah. Watching it here, you can see it actually get struck by a car -- kind of ran over by a car, but --

Q Uh-huh.

A -- it's not like it was done intentional. The car's backing out and leaving the parking lot, so.

Q And is that area -- that location of the magazine generally consistent with the view of the suspect in the video that you watched?

A Yes.

MS. BOSA-EDWARDS: No further.

THE COURT: Recross.

MR. BOLEY: Nothing further.

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 -- oh, I see a single. All right.

Can I see Counsel at sidebar?

Oh, there's two. Okay, very good. You got to be more definitive with the signaling.

[Sidebar Begins]

THE COURT: All right. Juror No. 8. How far were the broken pieces of the broken magazine; the bottom and actual magazine?

MR. ALLMON: I don't think he can actually testify to that.

THE COURT: If he can't then he'll just say he can't.

MR. BOLEY: [Indiscernible].

THE COURT: Yeah, I think that's what he's asking, how far away from it that -- it's one on the other side of the lot and the other one on the other side.

Juror No. 9. After the shooter ran, many cars/vehicles ran through the crime scene. Could one of the -- one of them have ran over and broke the magazine or move the spent or unspent cartridges around before the officers got there?

Any objection to that, State?

MR. ALLMON: No.

THE COURT: Defense?

MR. BOLEY: I think that's the point I was trying to make.

THE COURT: Okay. So I take it you don't have an objection.

MR. BOLEY: No.

THE COURT: Okay, very good.

[Sidebar Concludes]

EXAMINATION BY THE COURT

BY THE COURT:

Q Officer, did you observe the magazine while you were there?

A Yes, I did.

Q All right. And did you observe it one piece or multiple pieces?

A In multiple pieces.

Q And how far apart were the various pieces of the magazine?

A I would estimate not more than a foot, a foot and a half apart. Not far apart. They were all fairly clustered together. This circle that I placed right there, I would it's not much -- I'd say that's probably a little bit bigger than the placement of where everything was.

Q All right. After the shooter ran away from the SUV, many

cars or vehicles ran through the crime scene. Could one of them have run over and broke the magazine or moved the spent cartridge -- spent or unspent cartridges around before police got there?

A Yes. As we were observing this video, I was able to see specifically, there's a silver sedan that pulls by and it appears that that's when it gets like ran over by one of the tires as it's pulling out.

Q And when you say it's ran over by the tire, you're --

A The magazine.

Q -- referring to the magazine?

A The magazine appears -- because you can see it move in the video where I circled it.

Q All right. Does that generate anything further from State?

MS. BOSA-EDWARDS: No, Your Honor.

THE COURT: Anything further from Defense?

MR. BOLEY: No, Judge.

THE COURT: All right. Thank you very much for your testimony, Officer. You are excused.

State may call its next witness.

MS. BOSA-EDWARDS: Investigator Montgomery.

THE COURT: Okay.

All right, sir, if I could get you to come up to the witness stand. There a couple of steps, when you get to the top, stay standing for just a moment, our Clerk over here will swear you in.

SEAN MONTGOMERY

[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: Sean Montgomery. S-E-A-N, M-O-N-T-G-O-M-E-R-Y.

THE CLERK: Thank you.

THE COURT: Whenever you're ready, Counsel.

MS. BOSA-EDWARDS: And --

THE COURT: And sir, can I get you to scoot up a little bit to that red light; that's our microphone.

THE WITNESS: Got you.

DIRECT EXAMINATION

BY MS. BOSA-EDWARDS:

Q Investigator Montgomery, can you please introduce yourself to the jury?

A Hi. My name is Sean Montgomery. I'm a police officer with North Las Vegas Police Department since 2005, currently assigned to Criminal Apprehension Team, which is a FBI Task Force that goes after violent fugitives.

Q And on September 23rd, 2023, were you assigned to apprehend a suspect by the name of Joshua Gipson?

A Yes.

Q And do you see that person here in court today?

A Yes.

Q Can you please point to that person and describe an article of clothing he's wearing?

A Right there [points]. He's got a -- looks like a black shirt on.

MS. BOSA-EDWARDS: Okay. Your Honor, may the record reflect that the witness has pointed to and identified the Defendant.

THE COURT: I'd like to have a little bit more of an identification.

MS. BOSA-EDWARDS: Okay.

BY MS. BOSA-EDWARDS:

Q So what happened after you first --

THE COURT: Well, no, no. I mean --

MS. BOSA-EDWARDS: Oh --

THE COURT: -- in terms of --

MS. BOSA-EDWARDS: -- description?

THE COURT: -- describing something he's wearing or something identifying him.

BY MS. BOSA-EDWARDS:

Q Can you please --

A Black shirt, glasses, it looks like gold trim, looks hair in a bun on top.

THE COURT: All right. Any objections to the identification?

MR. BOLEY: No.

THE COURT: All right. The record will show the identification by the witness of the Defendant.

BY MS. BOSA-EDWARDS:

Q So what happened after you were assigned to this case?

A After -- what happens is the North Las Vegas Detective Bureau, whosever assigned to the case, will reach out to me with all the information that he or she may have, whether it's phone, social, media, family, everything that he investigated in the case and found out about it that may help me lead to the apprehension of that person.

Q And in this case, what information were you given?

A He provided me with a phone number and two Facebook accounts.

Q So I guess we'll start with the phone number. What methods did you use for that information?

A What method?

Q Yes. What did you do with the phone number?

A Oh, with the phone number, we --

MR. BOLEY: Objection, Judge

THE WITNESS: -- verify it --

MR. BOLEY: What it gets into here is going to be hearsay.

THE COURT: Well, he asked what he did with the phone number. He can say what he did with the phone number. Overruled.

MR. BOLEY: The information he get from the other --

THE COURT: Well --

MR. BOLEY: -- the other --

THE COURT: Well --

MR. BOLEY: -- officer.

THE COURT: All right. Let's have a sidebar.

MR. BOLEY: Okay.

[Sidebar Begins]

THE COURT: All right. Where are you going to be going with the use of the phone number?

MS. BOSA-EDWARDS: Just the course of the investigation, the purpose of the investigation, what he did.

THE COURT: Okay. I mean, is there something -- what do you anticipate he's going to say when you say what did you do with the phone number?

MS. BOSA-EDWARDS: He verified that the phone number belonged to the Defendant.

THE COURT: Okay. How did he do that?

MS. BOSA-EDWARDS: That's when I'm going to go through his training and experience how he came up with that.

MR. ALLMON: Just briefly, when he -- he goes through and does a public records search, he finds that phone number, sees that that phone number was verified -- associated with that through any kind of apps or other things. He did find that. And then he also did a Facebook search warrant. Then he also goes up on that

phone and he tries to use that phone to track the Defendant. He's got a phone number.

Once he gets it -- how he got the number is irrelevant at that point. He gets it and then what's he -- what he does with it from there, I should say -- I mean, he did do some steps that would verify that that is associated with him; that should come in. And then anything that he does with that phone number afterwards is --

THE COURT: Well anything he does with the phone number I'm not so concerned about. I mean, does he ultimately definitively identify that as his phone number?

MR. ALLMON: Yes, we can definitively -- we can piece that together in closing through all the records that we have as the Defendant's phone number.

THE COURT: And so he's going to say I did a public records search and found this phone number as -- I mean, that's -- essentially is relying on hearsay information to establish that.

MR. ALLMON: But he's relying on public information that he's found. He then gets that number and then is up and running on that number and he's talking -- I think that what he finds publicly, with public records come in -- it's public records; he finds it.

THE COURT: Well that's -- that doesn't make it not hearsay. You're saying public records shows that this is his number, then you're introducing that information for the truth of the matter asserted. I mean, I'm not going to let you ask him about

that. If he gets a number that he's -- believes may be associated with the Defendant and he then uses it in some way which identifies it as the Defendant -- in other words, he calls him or they, you know, do something like that, then that's fine. But I mean, saying that I found a public record and it showed that this was his phone number, I'm not going to let you go there.

MR. ALLMON: That's fine. So what we really want to do is what the number is that he got and what number he started investigating.

THE COURT: I don't have a problem saying I received a number relevant to the ca -- you know, to my investigation, I followed up investigation and here's what I did.

MR. BOLEY: I'm concerned about [indiscernible] and obviously I would object to this too is if they said well, this is Josh Gipson's phone number, the guy we think who did it. You know, obviously --

THE COURT: I mean --

MR. BOLEY: -- it leaves it as --

THE COURT: Yeah.

MR. BOLEY: -- [indiscernible] hearsay.

THE COURT: Well, they obviously have some basis as we've already gotten so far is that Josh Gipson is the person who did this. So I mean, that's not going to be a shocker to the jury. So -- but let's focus on what he -- he got a number and what he did with the number. And direct him a little bit on this.

[Sidebar Concludes]

BY MS. BOSA-EDWARDS:

Q Okay. We were speaking about the phone number. Following up on that, what did you do with that phone number?

A With the phone number, verified that it belonged to him through some private --

THE COURT: Hold on. We just went through that. You need to direct him or lead him on this. I'll instruct the jury to disregard the last answer.

BY MS. BOSA-EDWARDS:

Q Without stating who you believe the phone number belonged to --

THE COURT: What he personally did with the phone number.

BY MS. BOSA-EDWARDS:

Q Yeah. What did you personally do with the phone number?

A With the phone number, I wrote a search warrant.

Q And. Did that search warrant produce anything?

A No, it did not.

Q And you mentioned you also had Facebook profiles?

A Yes.

Q What did you do with those Facebook profiles?

A Well, when we submit search warrant for Facebook, which I did for both of them, we don't give them back for at least five

days. So I submitted them, I believe, on the 25th and he was -- the Defendant was in custody on the 26th. So at that time I didn't have them back. When I did get them back, I go through them, read the content -- that's our main focus is the content of the Facebook.

Q Okay. And with regards to that Facebook search warrant of the two profiles, what exactly were you looking for?

A The reason why we do the search warrants on the Facebook is to try to find information in their content which is their messaging, their private content, where they do message back and forth to friends, family, posts. So what we're looking for in that is phone numbers, addresses, family, friends, anything that can possibly lead us to the subject.

MS. BOSA-EDWARDS: And Court's indulgence.

THE COURT: Sure.

MS. BOSA-EDWARDS: Showing Defense Counsel what's been marked as State's Proposed Exhibit 159.

[Colloquy between Counsel]

MS. BOSA-EDWARDS: Your Honor, may I approach the witness?

THE COURT: All right. What are you approaching with --

MS. BOSA-EDWARDS: Oh, these are the Facebook records. The exhibits -- or State's Proposed Exhibit 159.

THE COURT: Okay. And these are what you're representing are Facebook records?

MS. BOSA-EDWARDS: Yes. Information pertaining to --

THE COURT: All right.

MS. BOSA-EDWARDS: -- the search warrants.

THE COURT: Do we have an affidavit for these?

MS. BOSA-EDWARDS: Yes.

THE COURT: And was notice given?

MS. BOSA-EDWARDS: Yes.

THE COURT: All right. Let me see -- do you have the affidavit? It's all digital?

MS. BOSA-EDWARDS: A little bigger.

THE COURT: All right. Let me have a sidebar again.

Mr. Boley, are you going to be objecting to the admission?

MR. BOLEY: No.

THE COURT: Oh.

MR. BOLEY: I was not.

THE COURT: Then we don't need to have a sidebar. All right.

[Colloquy between the Court and the Clerk]

THE COURT: All right. Are you move -- going to move the admission of these Facebook records?

MS. BOSA-EDWARDS: Oh, I'm sorry, Your Honor?

THE COURT: Are you going to be moving the admission of the Facebook records?

MS. BOSA-EDWARDS: Yes.

THE COURT: All right. And you don't -- this is Exhibit 150 --

MS. BOSA-EDWARDS: 9.

THE COURT: -- 9. Any objection to 159?

MR. BOLEY: No objection.

THE COURT: All right. 159 will be admitted.

[STATE'S EXHIBIT 159 ADMITTED]

THE CLERK: And the certificate as well?

THE COURT: Yes. We'll make the certificate 159A.

THE CLERK: Yes. I'll have to have that printed out.

MS. BOSA-EDWARDS: Okay.

THE COURT: All right.

MS. BOSA-EDWARDS: May I approach the witness?

THE COURT: Yes.

Mr. Boley, you've seen this stuff; right?

MR. BOLEY: I have; yes.

THE COURT: Okay, very good.

MS. BOSA-EDWARDS: Okay. I'm showing the witness State's Admitted Exhibit No. 159.

BY MS. BOSA-EDWARDS:

Q Do you recognize this? You can go through them.

THE COURT: I need you to move, Counsel, just a little bit more this way to make sure -- I need you to move this --

MS. BOSA-EDWARDS: Oh, sorry.

THE COURT: Not -- just a little bit.

MS. BOSA-EDWARDS: Okay.

THE COURT: I mean, I just want to make sure all the

jurors can see the witness.

BY MS. BOSA-EDWARDS:

A Yes, I recognize this.

Q And how do you recognize it?

A This is the Facebook content for the Defendant, Joshua Gipson.

Q And the Facebook content, this reflects the information that you warranted from your Facebook search warrant?

A Yes.

MS. BOSA-EDWARDS: May I publish, Your Honor?

THE COURT: Sure.

Can you take your mouse and when you move the mouse it should stuff -- a little bar at the bottom should come up and click on the arrow. Over -- keep -- see the red pencil?

THE WITNESS: Yeah.

THE COURT: See the plus sign?

THE WITNESS: Yes.

THE COURT: And then the arrow is next to the plus sign. There you go. That should free it up.

THE WITNESS: Okay. Definitely not an IT guy.

THE COURT: All right. You're showing page 1 of Exhibit 159.

MS. BOSA-EDWARDS: Yes.

THE COURT: Okay.

MS. BOSA-EDWARDS: And we are going to go to page 3.

THE COURT: All right.

BY MS. BOSA-EDWARDS:

Q And so can you just explain to the jury, just really quick what this is one more time? This information?

A As far as the phone number is concerned, that's the phone number that Facebook actually verifies if it -- sometimes it's -- it'll say verified and sometimes it won't. If Facebook actually verifies the cell phone number for the Facebook user, it'll say cell verified, which this does and that's the --

Q Oh.

A -- phone number that --

Q Can you please use your mouse?

A Oh --

Q If you --

A -- sorry.

Q -- drag it to the bottom, you'll find a little red pencil and then you'll be able to circle -- drag your mouse to the bottom of the screen and --

THE COURT: Click on --

MS. BOSA-EDWARDS: -- there's a red --

THE COURT: -- the red pencil.

THE WITNESS: Oh, okay.

BY MS. BOSA-EDWARDS:

Q Yes. And then you can circle -- can you please circle the phone number?

If you just press the trash can at the bottom.

A Yeah, I'm not this -- I'm not good at this.

THE COURT: That's all right.

BY MS. BOSA-EDWARDS:

A Let's try again.

Q You can do a big circle.

A All right.

Q And can you just read that phone number aloud?

A 775-297-9500.

Q And going to page 465.

Can you describe what this is for the jury?

A It's a picture of Josh Gipson that was on his Facebook.

Q And so this information that we're viewing, this is information that would have been from the Facebook profile that you --

A Yes.

Q -- applied a search warrant.

And as you said, that's connected to the phone number you just read out loud?

A Yes.

Q And on page number 466 --

[Colloquy between Counsel]

BY MS. BOSA-EDWARDS:

Q On page 468, can you explain what that is to the jury?

A I believe that it could be -- I know at the time that we

apprehended Josh, Josh with -- he's with this brother. I'm not sure if that is his brother or not. And Josh --

Q So which one are you saying is Josh?

A Oh, the one on the right with the blue hat.

Q And going to page 533 of the same record --

MS. BOSA-EDWARDS: Court's indulgence.

BY MS. BOSA-EDWARDS:

Q Page 499 and scrolling down to the bottom half of the page, is there a name associated with the author on this page?

A Oh, Josh Gipson.

Q And maybe can you just put a little point with your mouse?

A [Witness complies.]

Q And are there multiple -- and if you scroll down to the second to last entry, can you write what date it was sent?

A Where the phone number is?

Q Yes.

A It says 9/22/2003 -- or 2023.

Q And who was the author of that?

A Josh Gipson.

Q And what is the phone number associated with that?

A 775-297-9500.

Q And so what does this message say?

A He's sending that to someone, saying to call him on that number saying that that's his phone number.

Q And he -- who are you referring to as he?

A Josh Gipson, the author.

Q I'm going to page 533. If you can just briefly -- on page 532 --

MS. BOSA-EDWARDS: Okay. Court's indulgence.

BY MS. BOSA-EDWARDS:

Q Page 533, if you can just state who the author is on multiple of those messages?

A Josh Gipson. Looks like him; all of them.

Q And at the top of the page, can you describe what date this post would have been?

A Very top one is 9/21/2023.

Q And the phone number -- well, the body of the message that would have been sent?

A The phone number that he keeps repeating that is his; the 775-297-9500.

Q And directing you to page 545 -- 543. Once again, I'm directing to the third -- two, three -- oh. Well, this highlighted portion. You can look at that highlighted portion and let the jury know who the author is of that.

A Josh Gipson.

Q And if you can read the date on that message that was sent.

A 9/20/2023.

Q And the message that was sent.

A He writes, tell her to call me at 775-297-9500.

Q You mentioned that the search warrant -- information you can receive from the search warrant could potentially lead you to the location of a suspect?

A Yes.

Q And as the result of these search warrants that you provide -- that you prepared in this case, did you receive anything related to Defendant's location?

A No, because I didn't receive the records until after he was in custody.

Q Okay. And so did your investigation stop there?

A Yes, because once he's in custody, my part of the job is done.

Q All right. Let me clarify. Did your investigation stop after you didn't receive anything regarding the Defendant's location?

A Did it stop?

Q Yes.

A Yes.

Q Did you apprehend the Defendant?

A Yes.

Q And how did you go about doing this since you mentioned the -- you didn't find anything related to his location?

A Yes. The detective in charge of the case provided me with a possible address for his sister that he was advised he might be staying at.

Q And --

A So --

Q -- what did you do?

A I went and set up surveillance out at that residence.

Q And based on that surveillance, what did you see?

A I see a black male and a black female exit the address from the front, walk South. The person -- the male subject had a hoodie up. I could tell that it was, you know, like pushed out like this, like back -- like as someone has a lot of hair. So that gave me an indication that it was most likely the subject because I know he had the long, thick braids.

So they went to the corner, went out to sight for a minute. She left. When the black male turned around, I could see his face through binoculars and identified him as Josh Gipson.

Q And how are you able to identify that that person you saw was Josh Gipson?

A Through -- I had a picture of his driver's license, and I believe that the detective provided me with some pictures of him.

Q Do you recall what the address was where you located him?

A It was 247 Fullerton Ave. in Henderson.

Q Okay. And is that here in Clark County, Nevada?

A Yes.

Q So after you saw Defendant at 247 Fullerton Ave. What did you do?

A I notified the rest of my team. They came out and then we do what's called a surround and call out. We surround the residence and then either try to call into them or we get on a PA system and have them all exit their residence.

Q And did that happen in this case?

A Yes.

Q And ultimately, was Defendant apprehended?

A Yes.

Q Did you transport him?

A No.

Q Do you know if Defendant was taken into custody at that point?

A I'm sorry?

Q Do you know if Defendant was taken into custody at that point?

A Yes.

Q And one more question as it relates to the search warrant that you drafted. The search warrant for the -- for Defendant's phone number that you mentioned, the 775-297-9500 --

A Yes.

Q -- phone number. What type of search warrant was that?

A It was a -- it's a precision search warrant, where -- it's a live search warrant where we can -- the phone gets pinged every 15 minutes and then we can locate that phone and see who has that phone.

Q And what information did you receive from that search warrant?

A There was no live data. It was -- the phone was shut off when the search warrant came back, which was, I believe, the 25th.

Q And the phone being shut off, is that a common thing?

A When individuals are running from law enforcement, they usually get a new phone number. They dump their original phone number and/or usually social media. They know that we utilize those tactics so that's the first thing they do is drop their phone and get a new one.

Q So were you surprised to find that happened in this case?

A No, not at all.

MS. BOSA-EDWARDS: I'll pass the witness, Your Honor.

THE COURT: All right. How long do you think your cross is going to be, Mr. Boley?

MR. BOLEY: Probably pretty short, to be honest.

THE COURT: All right. Then we'll -- is everybody good to sit for a few more minutes then, to see if we can get this witness done?

All right. Go ahead. Cross-Examination.

MR. BOLEY: I'll go as fast as possible.

THE COURT: Well, do what you need to do.

MR. BOLEY: Absolutely.

...

...

CROSS-EXAMINATION

BY MR. BOLEY:

Q Okay. Investigator, so -- just so I understand your role here, generally, when a case gets passed on to you, the detective has determined who they think committed a crime; right?

A Yes.

Q So just like in this case, you don't really determine who you think committed a crime, you're just looking for the person because they can't find them?

A Exactly.

Q And that's what you did. You used a search warrant to get some Facebook records and ultimately dug through some phone records and things like that and ultimately found Josh Gipson?

A Yes.

Q But you didn't participate in the investigation of the underlying crime at all?

A No.

MR. BOLEY: Okay. That's all.

THE COURT: That was pretty quick.

All right. Redirect?

MS. BOSA-EDWARDS: No, Your Honor.

THE COURT: All right. 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, signal to Marshal or myself.

Okay. Not seeing any signaling, although you guys aren't real signalers. But any signaling?

All right. No. Okay.

Thank you very much for your testimony. You are excused.

THE WITNESS: Thank you, sir.

THE COURT: All right. Let's take a 15-minute break. It's 3:20, let's get back in action at 3:35.

During the break, you must not discuss or communicate with anyone, including your 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 a theory of the case, recreate any aspect of the case, or in any other way investigate or learn about the case one your own. And do not form or express any opinion regarding the case until it's submitted to you.

We'll see you back in a few minutes.

THE MARSHAL: All rise for the jury.

[Outside the presence of the jury]

THE COURT: All right. I'm going -- I want to try to get started, right at -- I said at 3:35. I want to keep them thinking that we're going to not waste their time and be here and be timely. So

go to the restroom and get back and we'll keep moving.

MR. ALLMON: We've actually got everyone today, Your Honor. That's everyone I've got today.

THE COURT: I told you yesterday --

MR. ALLMON: I know.

THE COURT: -- you know, make sure we aren't finishing up at 3:00.

MR. ALLMON: I know. I've got a doctor testifying tomorrow morning first thing and the victim is coming back tonight and that's pretty much it. I can -- yeah, the other -- and I've got a couple other ones too but that's pretty much it [indiscernible] nothing. We went --

THE COURT: All right.

MR. ALLMON: -- faster than I thought for sure.

THE COURT: All right. So what do we have tomorrow then?

MR. ALLMON: Tomorrow we've got --

MR. BOLEY: You're not going to call the detective?

MR. ALLMON: Not today.

MR. BOLEY: Okay.

THE COURT: I --

MR. ALLMON: We've got six witnesses tomorrow. And then Thursday, I have an out-of-state witness and then two more witnesses after that.

THE COURT: All right. The ones on Thursday, they can't

come in tomorrow? Other than the out-of-state witness?

MR. ALLMON: They possibly could. I will say that the presentation of the evidence would be a little bit weird because it would be -- I could talk to them about coming -- having --

THE COURT: Talk -- I'm not -- I mean -- I don't want to finish at 3:00 tomorrow.

MR. ALLMON: Okay.

THE COURT: You know, like I warned you that we move pretty quickly utilizing -- you know, going straight through. And so what we'll do today, once I let the jury go is get the jury instructions out and we'll go through the jury instructions and try and get those ironed out. At least get something -- value out of the time that we have here.

MR. BOLEY: Yes, sir.

THE COURT: All right. So, go ahead, go to the restroom. Come back. I'll excuse jurors for the day, but let's make sure we've got a full day tomorrow.

[Court recessed at 3:24 p.m., until 3:37 p.m.]

[In the presence of the jury]

THE MARSHAL: All rise for the jury.

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

MR. ALLMON: Yes, Your Honor.

MR. BOLEY: Yes, Your Honor.

THE COURT: Okay. All right. Ladies and Gentlemen, I

want to apologize. We've moved quicker today, apparently, than the State anticipated that we would, and the State has gone through its witnesses for the day. I've talked to them and State is assuring me that they will have a full day tomorrow when we get back together.

We're moving this along pretty well and so we're on track with the schedule that I told you yesterday that we were looking at. But at this point, we're going to excuse today. I promise you -- we'll keep working on this end. We'll try to get the jury instructions done so that as soon as we get all the evidence in, we can do the closing arguments and move right into your deliberations.

So with that -- well, you just heard it ten minutes ago. During this break today, do not discuss or communicate with anyone, including your 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 a 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 form or express any opinion regarding the case until it is submitted to you.

We'll get started tomorrow at 11:00. Again, the plan will be to go straight through with some bathroom breaks. So eat

ahead of time or bring a snack. If you need anything with refrigeration, just let Marshal know.

If you could get here about 10:50, so that we can get started at 11:00. Tomorrow's my civil calendar. It's not near as long as my other calendars, and so we shouldn't have any reason not to be getting started right at 11:00 tomorrow.

So have a great evening. It's 100 -- oh, it's 98 degrees out there. Try to stay cool. Sooner or later it will cool down here.

THE MARSHAL: All rise for the jury.

[Outside the presence of the jury]

THE COURT: Ally is running off copies of the State's proposed instructions. And so -- I want each of us to have a packet to make sure we're on the same page. I have a couple instructions that I always use for credibility. And if the jurors have -- need further instructions, she'll make copies of that. Let's see if we can get through and finalize -- not finalize, but get a next-to-finalized copy of the jury instructions.

Mr. Gipson, you aren't required to be here for discussion of jury instructions, but you're more than welcome, since this is your case, to stay and listen to the discussions on the jury instructions if you'd like to. It's up to you.

MR. BOLEY: You can stay here or whatever you want.

THE COURT: It's up to you.

MR. BOLEY: This is what we were talking about that he reads to them before the closing arguments.

THE COURT: This is the instructions on the law I'll give to the jury just before the attorneys do closing arguments, and the jury will take it back -- why don't you -- you know -- is it all right if he stays? No issue in terms of you guys?

Most defendants stay, but like I said, the statute specifically provides that you don't have to be here for this, so I just leave it up to you.

THE DEFENDANT: I'll stay.

THE COURT: Okay. So Ally should be here in a second.

[Pause in proceedings]

THE COURT: Are we on the record?

THE COURT RECORDER: Yes, Your Honor.

THE COURT: Okay. While we're waiting for Ally, I had meant to put on the record earlier today the underlying basis for my ruling relating to the second witness repeating what the victim said to her as to who had shot him. I did admit that as an excited utterance; that is a statement relating to a startling event or condition made while the Defendant[sic] was under the stress of excitement that it caused.

Things you must consider include how close the event was to the time the statements were made. Technically, excited utterances can be made at any time after the event as long as the declarant is still under the stress of excitement. And the most common kind of excited utterance generally would be crime -- at or near a crime scene within minutes of it occurring when the victim is

injured or upset. And the victim's spontaneous result will usually qualify as an excited utterance.

The key issue is whether the victim is under such stress that rational thought is difficult. The crucial point is that the Court must be able to find the declarant's mind -- state of -- state at the time of the making of the statement ruled out the possibility of fabrication. And pain is one factor that is to be considered in prolonging the period in which the risk of fabrication is reduced.

Consequently, in this case, my initial concern was the witnesses were saying that the alleged victim didn't appear to be excited, that he just appeared to be in pain. I had the sidebar at that point because I thought arguably pain, if significant, could -- would be in itself an excited condition. But I was -- felt that the -- there would -- it would be even better to have more on the record.

And the State going back and talking with the witness or questioning the witness, what was significant to the Court was she indicated that his speech -- and that he was clearly in pain and that his speech was rambling or in some way not consistent with how he usually speaks. That -- when you consider pain and the appearance of blood and injury to his limb, which would suggest harm has occurred and may be serious, convinced the Court that the Defendant was in a position where it was unlikely that he was fabricating any -- his testimony at that time.

Also, the time period between the event and the -- him going over and seeking health at his relative's house was relatively

minimal. So for those reasons, I did decide to allow the statement to come in as an excited utterance.

Okay. You got the packets?

THE LAW CLERK: Yes.

THE COURT: Okay.

MR. BOLEY: Thank you.

MS. BOSA-EDWARDS: Thank you.

THE LAW CLERK: Of course.

THE COURT: Okay. I like to go through each of the instructions separately and ask each side, even though the State has submitted all these, I'm not anticipating the State to object to anything, but I always like to get it on the record.

All right. First Instruction, Members of the jury, it's now my duty as Judge to instruct you in the law that applies to this case, et cetera.

Any objection, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No.

THE COURT: All right.

If in these instructs -- page 2, Instruction No. 2, If in these instructions, any rule, direction or idea is repeated or stated in different ways, et cetera.

Any objection, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, sir.

THE COURT: All right.

Instruction No. 3, An Information is but a formal method of accusing a person of a crime and is not itself any evidence of guilt.

I notice you've got noted a Category B felony in the statutes. I don't read those off.

MR. ALLMON: Sorry. I'll take. I'll -- I can take that off.

THE COURT: Ally will make all the changes.

MR. ALLMON: Okay.

THE COURT: I just want to get it cleared with you guys. So essentially, I don't think it's -- I don't like telling the jury this is a Category B felony or Category A felony or D, or whatever it may be. This -- they have no idea what the statutes are.

I -- any objection if I have Ally delete the felony category in the statute, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No objection.

THE COURT: All right. Let's see.

And then as to Counts 3 and 4, does the State have any problem if I have Ally modify the titles to, discharging firearm at or into occupied vehicle?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: That's fine.

THE COURT: All right.

Let's see, the second page. It's the duty of the jury to apply the rules of law contained in these instructions. If the facts determine the State has proved beyond a reasonable doubt the Defendant is guilty of any of the offenses charged -- if you find the Defendant -- that the State has failed to meet that burden, you must return a verdict of not guilty as to those charges.

Okay. So with those mod -- two modifications, removal of the offense category, the statutes, and modifying the headings on Counts 3 and 4, is State good with Instruction No. 3?

MR. ALLMON: Yes, Your Honor.

THE COURT: Defense?

MR. BOLEY: Yes, Your Honor.

THE COURT: Okay.

Instruction No. 4, To constitute the crime charged there must exist a union or joint operation of an act forbidden by law and intent to do the act. The burden is upon the prosecution to prove this union or joint operation of both act and intent beyond a reasonable doubt, et cetera.

Any objection to this instruction, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

Take your time.

MR. BOLEY: No.

THE COURT: Okay. Instruction No. 5, Defendant is presumed innocent unless the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt, every element of the crime charged, and that the Defendant is the person who committed the offense. Reasonable doubt is one based on reason, et cetera.

Any objection, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No.

THE COURT: Instruction 6, You're here to determine whether the Defendant is guilty or not guilty from the evidence in the case. You're not called upon to return a verdict as to whether someone else is guilty or not guilty. So if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the defendant, you should so find, even though you may believe one or more persons are also guilty.

Any objection to that, State?

MR. ALLMON: No. I did realize the typo that I had.

THE COURT: Oh, where's that? Ally can --

MR. ALLMON: Line 4, it's guilty or not guilty with a y, I missed.

THE COURT: Oh. Okay, very good.

It seems like I never -- every time -- I've gone through

these instructions a hundred times. Every time I'm sitting up here reading the instructions, I always like uh, there's a typo.

MR. ALLMON: Yeah. And I just -- they glossed over it.

THE COURT: All right. Any objection to that instruction, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, Your Honor.

THE COURT: Okay. The evidence which you are to consider in this case consists of testimony of the witnesses, the exhibits and any facts admitted or agreed to by Counsel. There are two types of evidence, direct and circumstantial evidence, et cetera.

Statements, arguments, and opinion of Counsel are not evidence in the case; however, if the attorneys stipulate to existence of a fact, you must accept the stipulation as and regard that fact as proved. You must not speculate to be true any insinuation suggested by a question asked a witness.

A question is not evidence and may be considered only as it supplies meaning to the answer. You must disregard any evidence to which an objection was sustained by the Court and any evidence stricken by the Court. Anything you've seen or heard outside the courtroom is not evidence and must also be disregarded.

Any objection to that State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, Your Honor.

THE COURT: All right. No. 8 is the State's Proposed Credibility Instruction. I had Ally give you the credibility instruction that I use. This is the Ninth Circuit Credibility Instruction that I'd like to use. So everybody take a look at it and see if you have any issue with it.

Although, I have to say your Instruction 8 is very similar to mine. Is that the new proposed or the criminal?

MR. ALLMON: Yes, Your Honor. I believe -- I might have gotten it from the -- we have two sets floating around. There's the model instructions and then we still have --

THE COURT: Okay. Anyway, I'd like to use the Ninth Circuit instruction so take a look at it and see if you're good with that for taking the place of State's Instruction No. 8.

MR. BOLEY: I like the Court's a little better. It expounds on it a little more, I think.

MR. ALLMON: I have no objection to the Court's.

MR. BOLEY: Yeah. We'll just -- if he's okay with that --

THE COURT: All right. We use the Court's Credibility Instruction in place of State's Instruction No. 8.

All right. Does the State concur?

MR. ALLMON: Yes, Your Honor.

THE COURT: Defense concur?

MR. BOLEY: Yes, Your Honor.

THE COURT: All right. Good.

All right. No. 9, A witness who has special skill -- or special knowledge, skill, experience, training and education et cetera.

I assume that you -- I saw based on the opening you're going to have a DNA expert?

MR. ALLMON: Yes, Your Honor.

THE COURT: Okay. So --

MR. ALLMON: A DNA expert, a doctor, phone analyst.

THE COURT: Okay. So we've got experts. Any objection to No. 9, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No objection to that. Well, it kind of brings up an idea in my mind but I guess we can talk about it later.

THE COURT: What's that?

MR. BOLEY: Maybe we do need a *Fry* instruction if we're -- if they're going to be bringing in science.

THE COURT: Okay.

MR. BOLEY: But I mean, I can draft one. That's no problem.

THE COURT: All right. I mean, I'm not precluding you from --

MR. BOLEY: Okay.

THE COURT: Although I will say you should have been on

notice that they were going to be putting on --

MR. BOLEY: Of course, yeah.

THE COURT: -- phone records and --

MR. BOLEY: I knew that.

THE COURT: -- DNA records.

MR. BOLEY: I did know that, but this just came up in my brain right now. I do have another drafted jury -- suggested jury instruction as well.

THE COURT: Okay. For witness or for --

MR. BOLEY: No, no. For specific intent.

THE COURT: Okay. That's fine. All right. That's fine. Okay. But as to this one on expert witness, are you good with it? No. 9?

MR. BOLEY: Yeah, that's fine.

THE COURT: Okay. All right. So now we look at the charges. An attempt is an act or acts done with the intent to commit a crime; intending but failing to accomplish it. The elements of attempted murder are the following, 1, the Defendant acted with specific intent to kill, unlawfully another person. 2, the Defendant performed some act toward committing the killing. And 3, the Defendant failed to consummate commission of the killing.

Mere preparation to commit a crime, such as by advising or arranging the means necessary for the commission of the offense, is insufficient to constitute an attempt. The act done must be a direct movement toward the present commission of the crime,

although it may not amount to the commission of an actual element of the crime. When the intent to commit the crime is clearly shown, there need only be slight acts in furtherance of the crime to commit -- constitute an attempt.

Even though the actual commission of a crime is impossible because of circumstances unknown to the Defendant, he or she is guilty of an attempt to commit the crime if he or she has specific intent to commit the offense and under the circumstances, as he or she reasonably sees them, he or she does not -- does any act that would be a direct movement toward consummating the offense he or she intended to commit.

A person who attempts to commit a crime is liable even if, after taking a direct movement toward committing the intended crime, he or she abandoned further efforts to complete the crime and even if the failure to complete the crime was due to an intervention or interruption by someone or something beyond his or her control. On the other hand, if the person freely, involuntarily abandoned his or her plan before taking a direct movement toward committing the offense, then the person is not guilty of attempting the crime.

State have any objection to that instruction?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, Your Honor.

THE COURT: I just -- does anybody -- I know -- I'm not -- I

would like to change he or she to just he because that's --

MR. ALLMON: Yeah, that makes --

THE COURT: -- what we're dealing with here. I just think it makes it easier, but does anybody --

MR. ALLMON: It does, Your Honor. I just copied and pasted that from the --

THE COURT: I know.

MR. ALLMON: -- model instructions.

THE COURT: I mean, we all want to be sort of general neutral in this -- gender neutral, but I mean since we aren't talking about more than just a he here, just I would prefer to leave it as a he. Is the State good with that change?

MR. ALLMON: Yes, Your Honor.

THE COURT: Defense?

MR. BOLEY: Yeah, that's fine.

THE COURT: All right.

And then 11, As used in these instructions, a deadly weapon means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death. Or any weapon, device, instrument material or substance, which under the circumstances it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death. Or pistol, revolver or other firearm. Firearm means any device designed to be used as a weapon which -- from which projectile

may be spelled through there by force of any explosion or other form of combustion. Firing is deadly weapon whether loaded or unloaded, operable or inoperable.

I mean, I always like to just try to cut to the chase here. I mean, the only deadly weapon we're talking about is a pistol, revolver or other firearm. Do we need to include one or two in here?

MR. ALLMON: No, Your Honor. I provided that just because I generally do but I'm fine with cutting down --

THE COURT: Oh, I know. Everybody always just lists everything in the statute. It drives me crazy. I hate your domestic violent -- battery domestic violence thing because it lists out every --

MR. BOLEY: Oh yeah.

THE COURT: -- relationship when ultimately it's either a dating relationship, a marriage, a child in common, or whatever.

MR. BOLEY: Could we just say as used in these instructions, a deadly weapon --

THE COURT: Means --

MR. BOLEY: -- contains --

THE COURT: -- or --

MR. BOLEY: -- a pistol, revolver, or other firearm --

THE COURT: Includes a --

MR. BOLEY: -- and just stop there?

THE COURT: How about deadly weapon includes a pistol,

revolver or other firearm? And then a firearm is any device.

MR. BOLEY: Do we need to define firearm here because I know -- we're not like biting around the edges of a firearm, we're actually talking about a real gun?

THE COURT: I know. I -- do you want to leave in the definition of what a firearm means? I tend to sort of favor that.

MR. ALLMON: I think we should.

THE COURT: Yeah.

MR. ALLMON: I don't -- I mean, I don't expect argument on it, but at the same time, I think like it's there.

THE COURT: Yeah. Let's leave it in there. So let's just change it to as used in these instructions, a deadly weapon includes a pistol, revolver, or other firearm. Firearm means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force, and any explosion or other form of combustion. A firearm is a deadly weapon, whether loaded or unloaded, operable or inoperable.

With that change, is State good with that?

MR. ALLMON: State's good.

THE COURT: Defense?

MR. BOLEY: That's fine.

THE COURT: All right.

Battery means any willful and unlawful use of force or violence upon the person of another. Battery is a general intent crime. Force used by the Defendant need not be violent or severe

and need not cause bodily pain or bodily harm. Any slight unprivileged touching by the Defendant upon the person of another suffices as long as touching was intentional and unwanted.

The word willfully, when applied to the intent with which an act is done, implies simply a purpose or willingness to commit the act in question. It does not require in its meaning that the Defendant held any intent to violate any law, or to injure another, or to acquire any advantage.

If that force is accomplished with use of a deadly weapon, the person is guilty of battery with a deadly weapon. If that force results in substantial bodily harm to the victim, the person is guilty of battery resulting in substantial bodily harm. If that forces is accomplished with the use of a deadly weapon and substantial bodily harm results to the victim, the person is guilty of battery with a deadly weapon, resulting in substantial bodily harm.

Any objection to that State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, Your Honor.

THE COURT: All right. No. 13, As used in these instructions, substantial bodily harm means bodily injury, which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

Or 2, prolonged physical pain. Prolonged physical pain

encompasses some physical suffering injury that lasted longer than the pain immediately resulting from the wrongful act.

Any objection to that, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, Your Honor.

THE COURT: Okay. Instruction 14, The crime of discharging a firearm at or into an occupied vehicle consists of the following elements. 1, The Defendant willfully and maliciously. 2, Discharged a firearm -- discharged his firearm. 3, At or into any occupied vehicle. Firearm means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by force of any explosion or other form of combustion.

Do you think we need to repeat the firearm -- what firearm is again?

MR. ALLMON: No, Your Honor.

THE COURT: So -- and if you have -- any problem with us getting rid of lines 8 through 10 on that, State?

MR. ALLMON: No, Your Honor.

THE COURT: Otherwise, you're good with it?

MR. ALLMON: Yes, Your Honor.

THE COURT: Defense?

MR. BOLEY: Same answer; yes, that's fine.

THE COURT: All right.

Instruction No. 15. The State is not required to prove that

the specific firearm or deadly weapon at issue was recovered nor is the State required to produce the subject weapon at trial. Any objection, State?

MR. ALLMON: No.

THE COURT: Defense?

MR. BOLEY: No.

THE COURT: All right. 16. Destruction or discarding of evidence after the commission of a crime is not sufficient in and of itself to establish a person's guilt; however, if destruction or discarding of evidence is proved, it may be considered by you in light of all other evidence in deciding the question of guilt. The essence of destruction, or discarding evidence embodies the idea of deliberately hiding evidence with consciousness of guilt and for the purpose of avoiding prosecution.

Any objection to that instruction, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, Your Honor.

THE COURT: Instruction No. 17. The flight of a person after the commission of a crime is not sufficient in and of itself to establish that person's guilt; however, if flight is proved it may be considered by you in light of all other evidence in deciding the question of guilt. The essence of flight embodies the idea of deliberately going away with consciousness of guilt and for the purpose of avoiding apprehension of prosecution. Whether or not

evidence of flight shows a consciousness of guilt and significance to be -- and the significance to be attached to such circumstance or matters for your deliberation.

Any objection, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, Your Honor.

THE COURT: All right. It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

Any objection to that, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, Your Honor.

THE COURT: All right. Now technically I'm not supposed to give this instruction unless you specifically request it. If your client decides not to testify, are you requesting this instruction?

MR. BOLEY: I think it's very, very likely he will not testify unless we change our minds.

THE COURT: I'm not trying to make a decision --

MR. BOLEY: Yeah, yeah.

THE COURT: -- today. I'm just wanting to be clear on the record --

MR. BOLEY: Sure.

THE COURT: -- that if your client does not testify, you're requesting this instruction.

MR. BOLEY: Absolutely, yes.

THE COURT: Okay, very good.

All right. Instruction No. 19. Although you are to consider only the evidence in the case in reaching a verdict, you must bring in bring in -- bring to the consideration of the evidence your everyday common sense and judgement as reasonable men and women. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess. The verdict may never be influenced by sympathy, prejudice, or public opinion. Your decision should be product of sincere judgment and sound discretion in accordance with these rules of law.

Any objection to that, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, Your Honor.

THE COURT: All right. Instruction 20. In your deliberations, you may not discuss or consider the subject of punishment as that is a matter which lies solely with the Court. Your duty is confined as to the determination of whether the Defendant is guilty or not guilty. Your duty is confined to the

determination of whether the State proved -- State's --

MR. ALLMON: Has proven.

THE COURT: Has proven.

MR. ALLMON: Because --

THE COURT: Each element --

MR. BOLEY: Oh yeah.

MR. ALLMON: So -- if we can insert that.

THE COURT: -- of each offense against the Defendant beyond reasonable doubt.

With that correction any objection, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: With the correction, no objection.

THE COURT: All right.

During the course of trial, you're not -- in your deliberations you're not to, 1 -- let's see.

I've never really liked this instruction, but I guess it's okay.

During the course of trial and during your deliberations, you're not to, 1, communicate with anyone in any way regarding this case or by its merits by phone, text, internet or other means.

I don't like that because obviously they're going to communicate with each other.

2, Read, watch, or listen to any news or media accounts or commentary about the case. 3, Do any research such as consulting dictionaries, using the internet or using reference materials. And 4,

make any investigation, test the theory of the case, recreate any other aspect of the case or in any other way investigate or learn about the case on your own.

All right. Any objection to that, State?

MR. ALLMON: No. Would the Court want to add communicate with anyone outside of the jury or --

THE COURT: Outstand -- communicate with -- in any -- with anyone outside jury deliberations? No, let's just leave it the way it is. Everybody seems to be happy with this one.

MR. ALLMON: Okay.

THE COURT: All right. Are you good leaving it the way it is?

MR. BOLEY: Yeah, yeah.

THE COURT: Okay.

MR. BOLEY: I think it would be -- if they sit back there in silence, I think it'd be --

THE COURT: I need to sit down someday and look at that one.

MR. BOLEY: Yeah.

THE COURT: I've just -- I've never really been keen on it.

22, When you retire to consider your verdict, you must select one of your members to act as foreperson who will preside over your deliberations and to be your spokesperson here in court. During your deliberations, you will have all the exhibits which are admitted into evidence, these written instructions, and forms of

verdict which have been prepared for your convenience. You verdict must be unanimous. As soon as you have arrived at an agreed upon verdict, have it signed and dated by your foreperson and return with it to this room.

Any objection to that, State?

THE COURT: Defense?

MR. BOLEY: No, Your Honor.

THE COURT: All right. Instruction 23, I have my own instruction for that, which is similar, but that's the second page of the packet Ally handed out to you. Take a look at that and see if you're good with my instruction?

MR. BOLEY: Yeah. The Court's proposed instruction is more thorough.

THE COURT: Well, I like to tell them don't give me the count when you send out a question because for some reason they feel compelled to let me know how they stand whenever they communicate with me. And so that always complicates things if we reach a point where we may want to use an *Allen* charge. So anyways, any objection to me using my instruction in place of State's Proposed 23? State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No objection.

THE COURT: All right. And then Instruction 24. Now you will listen the argument of Counsel who will endeavor to aide you

to reach a proper verdict, et cetera.

Any objection, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, Your Honor.

THE COURT: All right. And then the verdict form. Now Count 2 should be broken up into more, shouldn't that?

MR. ALLMON: I did not include it without the Defense asking for a lesser included, and I did note that I had, as to Melissa Garabay[phonetic], that's from a previous trial of mine, that's --

THE COURT: I'm sorry, say that again.

MR. ALLMON: On Count 2, it says as to Melissa Garabay. That's from a previous trial of mine.

THE COURT: Oh --

MR. ALLMON: I apologize --

THE COURT: -- okay.

MR. ALLMON: -- I missed that in my copy and paste.

THE COURT: All right. Well we can take that out. Do you see what he's talking about in the jury verdict form? Count 2 there's as to Melissa something or other. You have the heading and then at the bottom in parens --

THE LAW CLERK: Uh-huh.

THE COURT: -- as to Melissa --

THE LAW CLERK: Yes.

THE COURT: Take that out.

THE LAW CLERK: Okay.

THE COURT: Do you want to all or nothing on Count 2?

MR. BOLEY: It think it's probably more thorough to do lesser included offenses.

THE COURT: Okay. I --

MR. BOLEY: The facts here are really --

THE COURT: If we're going to give them the instruction that you proposed, which breaks it down into every one of the lesser included offenses, I think that makes sense.

MR. BOLEY: Yeah.

MR. ALLMON: That's true.

THE COURT: All right. We'll fix that.

MR. BOLEY: Obviously, it's kind of clunky with the facts here, but -- yeah, it's the more thorough way to do it.

THE COURT: I've seen juries come back where they find sub -- battery with substantial bodily harm, and not find on the gun. So, you're not -- you know, it may have been done with a rock, I don't know. But I mean, even though that you see a gun --

MR. BOLEY: I don't know.

THE COURT: -- I -- anyway, I would prefer to do that. So if there's not a problem with that, let's -- we'll type out the other options.

Aside from that, any objection with the verdict form, State?

MR. ALLMON: No, Your Honor.

THE COURT: Defense?

MR. BOLEY: No, Your Honor.

THE COURT: Okay. That gets us through to the end.

Now you indicated there was a couple things you might want to add, Mr. Boley?

MR. BOLEY: Yeah. I did want to add a specific intent instruction. I did draft one here. I can either email it around or -- I emailed --

THE COURT: Can you email it --

MR. BOLEY: -- one around --

THE COURT: -- to my Clerk and she can go print it out right now.

MR. BOLEY: Okay. I emailed one out, but I changed it after that, so here's a better --

Okay. I just emailed a new one.

MR. ALLMON: You got another one, you said?

MR. BOLEY: Umm --

MR. ALLMON: I got your email. I'll put that in here and take a look at it.

MR. BOLEY: Oh, I was going to maybe look into something about *Fry* testimony because I was thinking about the expert witness --

MR. ALLMON: Which one?

MR. BOLEY: -- instruction.

MR. ALLMON: Okay.

MR. BOLEY: But just to supplement that.

I was kind of looking into it over here a few minutes ago. I would want to research a little bit. I don't know exactly how you say that properly on top of what we already have.

MR. ALLMON: Okay.

[Colloquy between Counsel]

MR. ALLMON: Is that a specific intent instruction?

MR. BOLEY: Yeah. Well, I pulled out of a Nolo article.

MR. ALLMON: Out of a what article?

MR. BOLEY: Nolo.com. It's like out of a law review thing that they have on Nolo. I omitted the citations, but I'll send you the version with the citations.

THE COURT: Where'd you get this?

MR. BOLEY: It's from a law review article on nolo.com. I just sent Mr. Allmon the version with citations.

THE COURT: State's thoughts?

MR. ALLMON: I mean, we have one from *Bolden*. I can reply back with it. The case name is *Bolden v State.*

THE COURT: I've heard of it. I don't remember the instruction specifically.

MR. ALLMON: I will share this with everyone here.

I did look in the pattern jury instructions, there is not one for specific intent, but we do have one that has been commonly used here in Nevada.

MR. BOLEY: Oh, did you just --

MR. ALLMON: That's the *Bolden* -- yeah, I just emailed it now with the citation.

THE COURT: Did you get his email, Mr. Boley?

MR. BOLEY: Yes.

THE COURT: What's your thought of that?

MR. BOLEY: I mean, that describes more what a general intent crime is. I was trying to be a little more specific --

THE COURT: Well I mean --

MR. BOLEY: -- with what I drafted.

THE COURT: -- we can -- let's see, where's the -- was Instruction 10 the intent instruction?

MR. BOLEY: Yeah. I think something like that because that would make sense to put it right next to that one.

THE COURT: All right. Let's see.

MR. ALLMON: Yeah. I do think that specific intent is largely covered through the attempted murder instruction which I think is why the pattern instructions don't have an additional one for specific intent; it does tend to cover it in the area where it does. It's -- such as in attempted murder, burglary, et cetera.

THE COURT: Mr. Boley, I mean, I -- the Defendant acted with the specific intent to kill unlawfully another person. I mean, I'm not inclined to give the second sentence of your instruction in that regard, merely knowing that a result is likely isn't the same as specifically intending to bring it about. I mean, I'd have to see the citations for that, but to me if you know something is likely to

happen and you do it there's a -- you're specifically -- have some intent to bring it about.

But I do -- you know, specific intent crime -- you know, specific intent requires that a defendant intentionally commit an act and intend to cause a particular result when committing that act. I don't have a problem, really, with including that somewhere within Instruction No. 10.

MR. BOLEY: Okay. Works --

THE COURT: Do you have a --

MR. BOLEY: -- for me.

THE COURT: -- suggestion where?

MR. BOLEY: Maybe at the end because it talks about intent brief -- or excuse me, attempt pretty thoroughly. It would make sense to talk about intent at the bottom of the page.

MR. ALLMON: I would ask for it at the -- after Element 3.

THE COURT: So between Element 3 and before mere preparation?

MR. ALLMON: Yes, Your Honor.

MR. BOLEY: That works too.

THE COURT: You're okay with that?

MR. BOLEY: Yeah.

THE COURT: All right. And you're okay with me using -- so specific intent requires that the defendant intentionally committed -- commit an act and intends -- intended to cause a particular result committing that act. Put that in at essentially line

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MR. BOLEY: Yeah.

THE COURT: All right. State good with that?

MR. ALLMON: Yes, Your Honor.

THE COURT: Okay. So specific intent requires the Defendant intentionally commit an act and intend to cause a particular result when committing that act. Get all that.

THE LAW CLERK: Uh-huh.

THE COURT: Okay.

THE LAW CLERK: And you wanted to delete the word crime out of there, so specific intent requires?

THE COURT: Yeah. Well, specific intent -- don't write to have specific intent crimes, just say specific intent requires --

THE LAW CLERK: Uh-huh.

THE COURT: -- the Defendant intentionally commits an act and intend -- and intent -- intentionally commit an act and intends to cause a particular result when committing that act.

THE LAW CLERK: Okay.

MR. ALLMON: And then I just -- since it was shared this way with an italic on the and --

THE COURT: I don't plan to italicize the and.

MR. ALLMON: You do not plan to --

THE COURT: No.

MR. ALLMON: Okay. That was going to be my objection.

THE COURT: I don't want -- I don't like doing that because

they're -- we're not supposed to be emphasizing any instruction and so sticking an italicized and in there tends to emphasize the instruction.

All right. You got all that?

THE LAW CLERK: Uh-huh.

THE COURT: Okay, good deal.

Anything else, Mr. Boley?

MR. BOLEY: No, sir.

THE COURT: All right. You mentioned something about a *Fry* instruction. If you want to do something, you know, write it out and send it out -- on to us, but otherwise, I'll treat that as -- you know, that we've got a packet here.

MR. BOLEY: Okay. That's fine.

THE COURT: All right. Like I said, I'm just trying to get a final packet so that we're not spending this hour while they're all sitting there waiting for us on, hopefully, Thursday afternoon.

So -- but, you know, if you see something or you think of something between then and when I read the instructions to the jury, you know, we can make changes. But for right now, I'll treat this as essentially our final packet. Okay?

MR. ALLMON: Okay.

MR. BOLEY: Sounds good.

THE COURT: All right. Anything else we need to discuss tonight?

MR. BOLEY: I don't think so.

THE COURT: All right.

MR. ALLMON: Yeah. Just as far as scheduling, Your Honor. So the lead detective is not able to be in tomorrow and then the one out of state would -- also will not able to be in. So those would be my two. I'm working -- hold on.

MR. BOLEY: We could take a day off tomorrow.

MR. ALLMON: Well, no, I have plenty of witnesses tomorrow, trust me, but I will need at least two on Thursday.

THE COURT: Okay. That's fine. We get started on Tues -- Thursday at 11:00. What's the doctor testifying to?

MR. ALLMON: Just that he treated him for injuries.

THE COURT: Okay. That's not --

MR. ALLMON: He'll be very quick.

THE COURT: Yeah. I was going to say that's -- shouldn't be too long. He's not going to say that the injuries came from the Defendant; he's just going to say he's got a gunshot wound.

MR. ALLMON: Just a gunshot; that's it.

THE COURT: Yeah. So -- and he's out of state?

MR. ALLMON: No, he's not the one.

MR. BOLEY: The doctor --

MR. ALLMON: He's testifying tomorrow at 11:00. Doctors are just hard to get if -- you know, that's --

THE COURT: Yeah.

MR. ALLMON: So he's tomorrow at 11:00. No, I have a custodian of records from T-Mobile testifying on Thursday.

THE COURT: Oh, that's your witness from out of state.

MR. ALLMON: Yeah.

THE COURT: He shouldn't be too, too long. So let's plan on doing closing arguments on Thursday.

MR. ALLMON: They will be a little longer just because they will go into some details about how cellphone data works, et cetera.

THE COURT: No, I understand that but, I mean, I still think that we should -- if we're talking two witnesses, be able to get to arguments on Thursday.

MR. ALLMON: I agree.

THE COURT: So be ready.

MR. BOLEY: Oh, I will be.

THE COURT: Okay. All right. Anything else for the night?

MR. ALLMON: No, Your Honor.

MR. BOLEY: No, sir.

THE COURT: All right, very good. All right. Thank you, guys.

[Evening recess at 4:27 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