

FILED
COURT OF APPEALS
DIVISION II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

2017 MAR -6 PM 1:11
STATE OF WASHINGTON

In the Matter of the) No.
Personal Restraint of:)
CORY RANDON LEWIS,) PERSONAL RESTRAINT PETITION
Petitioner.) RAP 16.3

BY _____
DEPUTY

A. STATUS OF PETITIONER

1. Petitioner, Cory Randon Lewis, hereinafter: "Lewis," is an individual confined at the Coyote Ridge Corrections Center, restrained pursuant to a Felony Judgment and Sentence imposed by the Honorable Judge Jack Nevin in Pierce County Superior Court, Cause No. 15-1-00348-0, on April 28, 2016. See, Attachment A: Judgment and Sentence.

B. PROCEDURAL FACTS

2. On January 27, 2015, the Pierce County prosecutor charged Mr. Lewis with one count of second degree murder and unlawful possession of a firearm. Following a bench trial in Pierce County Superior Court, Lewis was convicted as charged.

3. The trial court sentenced Mr. Lewis to a standard range sentence of 300-months confinement. Mr. Lewis filed a timely Notice of Appeal.

4. Mr. Lewis is represented on appeal by attorneys Jennifer L. Dobson and Dana M. Nelson, of Nielsen, Browman, and Koch. The Brief of Appellant argues:

(I). Lewis Received Ineffective Assistance of Counsel at Sentencing;

(II). Remand is Necessary so the Trial Court may Enter Findings Sufficient to Permit Appellate Review of its Denial of a Downward Departure From the Standard Range;

(III). The Trial Court Erred When it Ordered a Mental Health Evaluation as a Condition of Community Custody Without First Determining Whether Lewis was a Mentally ill Person and;

(IV). The Criminal Filing Fee is not Mandatory and Thus Should not Have Been Ordered in this case.

See, Appellant's Opening Brief, COA No. 49006-4-II.

5. This Personal Restraint Petition has been filed while direct review proceedings are pending. Mr. Lewis has filed a motion to consolidate this matter with direct review proceedings to best serve the ends of justice.

C. STATUTORY AND RULE BASED PROCEDURAL BARS

6. This petition has been filed within one-year from the date the underlying judgment and sentence becomes final. It is, therefore, timely filed within the meaning of RCW 10.73.090(1). Because Mr. Lewis has filed no prior nor previous motion or petition collaterally attacking his underlying judgment and sentence, this Court may review this petition as it's review is not barred by RCW 10.73.140.

D. STANDARD OF REVIEW

7. To obtain relief in a personal restraint petition, Mr. Lewis must show actual and substantial prejudice resulting from an alleged constitutional error, or for alleged nonconstitutional errors, a fundamental defect that inherently

results in a complete miscarriage of justice. In re Pers. Restraint of Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990).

E. FIRST GROUND FOR RELIEF

8. The Trial Court Included Prior Convictions in the Calculation of Mr. Lewis' Offender Score That had Washed Out.

The offender score is the sum of points accrued under RCW 9.94A.525 rounded down to the nearest whole number. Id. A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. RCW 9.94A.525(1). According to RCW 9.94A.525(2)(c), in relevant part:

(C) Class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement . . . pursuant to a felony conviction . . . the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

Id.

9. Here, Mr. Lewis submit's according to RCW 9.94A.525(2)(c), his prior class C 1999 Felony Harrasment; 2006 Unlawful Possession of a Firearm in the Second Degree, and; 2009 Attempting to Elude a Pursuing Police Vehicle, convictions should not have been included in the offender score calculation for his current offenses because since the last date of his release from confinement, for the 2009 Attempting to Elude a Pursuing Police Vehicle conviction, a class C felony, he had spent five consecutive years in the community without committing a crime that subsequently resulted in a conviction.

10. Prior to Mr. Lewis' convictions for his current offenses, which occurred on March 24, 2016, the last date of Mr. Lewis' release from confinement pursuant to a felony conviction was February 10, 2010, the date he was released from confinement from his 2009 Attempt to Elude a Pursuing Police Vehicle conviction. In addressing the trial court at sentencing with respect to Mr. Lewis' 2009 Attempting to Elude a Pursuing Police Vehicle prior conviction, the State, represented by Deputy Pierce County Prosecutor Lori Kooiman, informed Judge Nevin:

Ms. Kooiman: Your Honor, if I could address one issue on the 2009 case, just for the record, the sentence on that included a year and a day, and the last time the defendant was released on that one from prison was February 10th, 2010.

See, Attachment B: RP (4-28-16) 4, ln. 17-21.

11. Between the date Mr. Lewis was released from confinement for his 2009 Attempting to Elude a Pursuing Police Vehicle sentence, which occurred on February 10, 2010, as the prosecutor advised the trial judge at sentencing, to the date of his next, underlying, felony convictions, which occurred on March 24, 2016, Mr. Lewis had spent over five consecutive years in the community without committing any crime that subsequently resulted in a conviction. Thus, according to RCW 9.94A.525(2)(c), the trial court err'ed in including Mr. Lewis' prior class C 1999 Felony Harrassment, 2006 Unlawful Possession of Firearm in the Second Degree, and 2009 Attempting to Elude a Pursuing Police Vehicle, convictions, in the offender score calculation of his

current offense.

12. Mr. Lewis was prejudiced by the trial court's inclusion of his prior 1999 Felony Harrassment, 2006 Unlawful Possession of a Firearm in the Second Degree, and 2009 Attempting to Elude a Pursuing Police Vehicle, convictions, in his current offense offender score calculation because inclusion of those prior convictions added 2 1/2 points to his offender score calculation making his offender score 7 1/2, resulting in a standard range of 216-316 months, when his offender score should have been 5 1/2, resulting in a standard range of 175-275 months.

13. At sentencing the trial judge imposed a sentence 24-months above the bottom of the 216-316 month standard range, or 240 months, plus a 60-month firearm enhancement, for an actual confinement term of 300-months, as punishment for Mr. Lewis' Murder in the Second Degree conviction. Following that same math pattern, this Court should remand the matter to the trial court for resentencing 24-months from the bottom of the corrected 175-275 month standard range, or 199 months, plus a 60-month firearm enhancement, for an actual confinement term of 259-months, as punishment for Mr. Lewis' Murder in the Second Degree conviction.

F. SECOND GROUND FOR RELIEF

14. The Trial Court's Finding That Mr. Lewis was not Justified in Killing Mr. Page was Base Upon Untenable Grounds. As a criminal defendant, Mr. Lewis beared the initial burden of providing some evidence of self-defense. State v. Walden,

131 Wn.2d 469, 473, 932 P.2d 1237 (1997). Once Mr. Lewis produced some evidence of self-defense, the burden shifts to the State to disprove self-defense beyond a reasonable doubt. Walden, 131 Wn.2d at 473.

15. Here, the trial judge heard testimony that in November 2013, Mr. Page and Mr. Lewis became roommates. See, Attachment C: Report of Proceedings ("RP"), (3-17-16), pg. 37. Mr. Lewis and Mr. Page had a mutual friend, Mookie, who had been renting a room in the same residence as Page. RP (3-17-16) 12-13. However, after Page became angry and tried to choke Mookie, Mookie moved out and Lewis moved in. RP (3-17-16) 12-13.

16. Page had a history of anger problems reaching back to his childhood. RP (3-17-16) 17, RP (3-16-16) 35-39, 45, 48-49, 54, 56. He would "go off" on people for no good reason. RP (3-16-16) 39. He admitted to his therapist that he felt anger and fury a lot, often "going from 0 to 60." RP (3-16-16) 48-49. He reported himself as violent and aggressive. RP (3-16-16) 49. Page's anger management problems led to his being expelled from Tacoma Community College. RP (3-16-16) 45. He was also fired from his job due to a confrontation at work. RP (3-16-16) 52.

17. One day in September 2014, Page became irate that Lewis and his children ate all the cheese in the house. RP (3-17-16) 16. After the children left, Page followed Lewis into another room, belligerently yelling at him. RP (3-17-16) 17. Page provoked a fistfight in which Lewis engaged to defend himself. RP (3-17-16) 17. Lewis ended up having to go the

hospital by ambulance and was treated for a dislocated shoulder. RP (3-17-16) 17. After this, Lewis stopped having his kids come over to the house and began looking for a new place to live. RP (3-17-16) 18.

18. On December 8, 2014, Lewis arrived home and went to his room to work on his music. RP (3-17-16) 21. Page called Lewis into his room and began to yell and belittle him for no apparent reason. Page cursed at Lewis, calling him a "little bitch." RP (3-17-16) 23. Lewis did not understand what had set Page off. RP (3-17-16) 24. Page wanted to get into another fistfight with Lewis, but Lewis said he did not want to. RP (3-17-16) 25.

19. At one point, Page picked a gun up from off his bed and started waiving it around. RP (3-17-16) 23. He eventually pointed the gun directly at Lewis. RP 25. As Lewis went into the hallway, Page said "I'll clap you right now." RP (3-17-16) 25. Lewis interpreted this to mean that Page would shoot him. RP (3-17-16) 25.

20. Page continued to get into Lewis' face, spitting on him as he went back to his room. RP (3-17-16) 26. Page paced back and forth, screaming at Lewis and saying he could do whatever he wanted to Lewis. RP (3-17-16) 26. Page followed Lewis back to his room and demanded Lewis return some clothing that Page had given Lewis. RP (3-17-16) 26. Page continued to waive his gun. RP (3-17-16) 27. After he pointed the gun at Lewis, Lewis quickly gave the clothing back. RP (3-17-16) 26.

21. After Page left Lewis' room, Lewis grabbed his own gun and went in the hallway to leave. RP (3-17-16) 27. In order to leave the residence, however, he had to pass by Page's bedroom door. RP (3-17-16) 28. As Lewis left his room, he saw Page facing away just inside the doorway entrance of Page's room. RP (3-17-16) 29. Page began to turn back toward Lewis. RP (3-17-16) 29. Lewis testified he feared Page was going to shoot him and fired two shots at Page, which eventually resulted in Page's death. RP (3-17-16) 30, 32-33; RP (3-15-16) 95.

22. Lewis left the residence in a panic and did not return until December 11, 2015. RP (3-17-16) 30, 33. In the meantime, he threw the gun away in Snake Lake. RP (3-17-16) 31. After he returned to the apartment, Lewis called 911 and reported that he had come home to find his roommate lying on the floor possibly dead. RP (3-3-16) 46-47. When police came to investigate, Lewis denied knowing anything about Page's death. RP (3-7-16) 26-29.

23. Police found Page dead on the floor. RP (3-3-16) 48. Page's gun was found on the floor next to him. RP (3-3-16) 49. Eventually, police identified Lewis as a suspect. RP (3-9-16) 120. When Lewis came to the station to retrieve a computer police had collected via a search warrant, they asked if he would take a polygraph, to which Lewis agreed. RP (2-29-16) 68; RP (3-9-16) 118.

24. After the polygraph was concluded, police decided Lewis was not free to go and interviewed him more. RP (2-29-16) 90. Eventually, Lewis admitted to shooting Page and provided a

detailed statement. RP (3-9-16) 121-35. Lewis also showed officers where he had dropped the gun in the lake. RP (3-10-16) 13. Police later retrieved the gun. RP (3-9-16) 12-14.

25. A trial, Lewis asserted he acted in self-defense. RP (3-21-16) 87-92, 116. The trial court determined, however, that at the time of the shooting Lewis did not have a reasonable belief of imminent danger of harm, injury, or death because any threat had ended when Page left Lewis' room. RP (3-24-16) 16-18.

26. In making the determination that Mr. Lewis did not have a reasonable belief of imminent danger of harm, injury, or death because any threat had ended when Mr. Page left Mr. Lewis' room, Mr. Lewis submit's, the trial judge, as the trier of fact, after reviewing "all the appropriate Washington Pattern Jury Instructions as they relate to this case and to its facts," Attachment D: RP (3-24-16), based that determination on untenable grounds.

27. A person commits the crime of Murder in the Second Degree when the defendant, with intent to cause the death of another person, but with[out] premeditation, causes the death of such person unless the killing is justified. RCW 9A.32.050(1)(a); WPIC 16.02

28. It is a defense to a charge of murder that the homicide was justifiable as defined in WPIC 16.02. Homicide is justifiable when committed in the lawful defense of the Defendant and/or any person in the Defendant's presence or company when:

- (1) the Defendant reasonably believes that the person slain intended to commit a felony, or to inflict death or great personal injury;
- (2) the defendant reasonably believed that there was imminent danger of such harm being accomplished; and
- (3) the Defendant employed such force and means as a reasonably prudent person would use under the same or similar conditions as they reasonably appeared to the Defendant, taking into consideration all the facts and circumstances as they appeared to him, at the time of and prior to the incident.

State v. Allery, 101 Wn.2d 591, 595, 682 P.2d 312 (1984); WPIC 16.02. Moreover, under Washington law, a person is entitled to act on appearances in defending himself or another, if that person believes in good faith and on reasonable grounds that he or another is in actual danger of great bodily harm, although it afterwards might develop that the person was mistaken as to the extent of the danger. Actual danger is not necessary for a homicide to be justifiable. See, Comments to WPIC 16.02.

29. The facts found by the trial judge to support the Court's conclusion that Mr. Lewis' slaying of Mr. Page was not justified are set forth in detail at RP (03-24-16), 12-18. On page 18, ln. 21-25, thru page 19, ln. 1-15, the judge summarizes those facts as follows:

The court finds that the elements of Murder in the Second Degree have been satisfied beyond a reasonable doubt. More precisely, the Court finds in this case that the State, which has the burden of proving beyond a reasonable doubt that the homicide was not justifiable, has met that burden of proof. I do not find that there was reasonable belief on the part of Mr. Lewis as such is defined under Washington Pattern Jury Instruction 16.02, I do not find there was a reasonable belief of

imminent danger of harm, whether it be great personal injury or death, I don't believe that requirement existed as a matter of fact in this case. I do not believe that Mr. Lewis employed force and means as a reasonably prudent person would under the same or similar circumstances as in the remaining portions of 17.03 and Washington Pattern Jury Instruction 16.02. I find that the State has met its burden beyond a reasonable doubt that the homicide was not a justifiable homicide. Accordingly, I find the defendant guilty of the offense of Murder in the Second Degree.

RP (3-24-16), 18-19.

30. The Trial Judge's Determination That There was no Reasonable Belief on the Part of Mr. Lewis That Mr. Page Intended to Inflict Death or Personal Injury Upon Mr. Lewis Rests on Untenable Grounds. A decision rests on untenable grounds if it "rests on facts unsupported in the record or which was reached by applying the wrong legal standard." State v. Dixon, 159 Wn.2d 65, 75-76, 147 P.3d 991 (2006); State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). Here, the trial judge's determination is both unsupported by the record and was reached by applying the wrong law.

31. The record, as found by the trial judge himself belies the conclusion that there was no reasonable belief on the part of Mr. Lewis that Mr. Page intended to inflict death or personal injury upon Mr. Lewis during the events leading to Mr. Page's death. The trial judge specifically found in convicting Mr. Lewis that Mr. Lewis and Mr. Page had:

(a) an acrimonious relationship marked on occasion by fistfights;

(b) that Mr. Page prevailed in the fist fights, one of which resulted in Mr. Lewis having a separated shoulder and seeking emergency assistance; and

(c) On the night in question, Mr. Page was looking to have a fist fight with Mr. Lewis.

RP (3-24-16), 12.

32. There was also testimony introduced at trial that:

(a) Page had a history of anger problems reaching back to his childhood;

(b) He would "go off" on people for no good reason;

(c) He admitted to his therapist that he felt anger and fury a lot, often "going from 0 to 60";

(d) He was expelled from college due to his anger management problems;

(e) He had tried to choke his prior roommate Mookie; and

(f) He was fired from his job due to a confrontation at work.

See, RP (3-17-16), 12-52.

33. There was further evidence introduced at trial that on December 8, 2014, the evening Mr. Page was slain, that after Mr. Lewis came home from work that Mr. Page:

(a) called Mr. Lewis into his room and belittle Mr. Lewis for no apparent reason, calling Mr. Lewis a little bitch;

(b) wanted a fistfight with Mr. Lewis;

(c) picked a gun up from off the bed and starting waiving it around, pointing it at Mr. Lewis, threatening to "clap" Mr. Lewis;

(d) spat on Mr. Lewis telling Mr. Lewis he could do whatever he wanted to do to Mr. Lewis, and continued to waive his gun at Mr. Lewis.

See, RP (3-17-16), 21-26.

34. Despite the above outlined overwhelming evidence of aggression on the part of Mr. Page, Mr. Page's history of violence, the fact that Mr. Page had beat Mr. Lewis up before,

dislocating Mr. Lewis' shoulder requiring emergency medical assistance, and the fact that on the night in question Mr. Page, for the first time during his and Mr. Lewis' acrimonious relationship, was armed with a gun, pointed the gun at Mr. Lewis several times, threatened to "clap" [kill] Mr. Lewis, and told Mr. Lewis he could do whatever he wanted to do to Mr. Lewis, the trial judge concluded "I do not find there was a 'reasonable' belief of imminent danger of harm" on the part of Mr. Lewis during the events leading to Mr. Page's death. RP (3-24-16), 19.

35. Because the record below belies the trial court's determination that Mr. Lewis had no reasonable belief of imminent danger or harm from Mr. Page, and supports a conclusion that, viewed subjectively, Mr. Lewis reasonably believed that Mr. Page intended to inflict death or great personal injury upon him, this Court should vacate Mr. Lewis' conviction of Murder in the Second Degree.

G. CONCLUSION

36. WHEREFORE, premises considered, this Court should GRANT this petition and VACATE Mr. Lewis' murder in the second degree conviction. Alternatively, this Court should REVERSE AND REMAND this matter to the trial court for RESENTENCING without inclusion of Mr. Lewis' washed out prior convictions.

It Should be so Ordered.

DATED this 1 day of March, 2017.

Respectfully submitted,
BY THE PETITIONER:



CORY RANDON LEWIS
DOC No. 890418, B-B-42-1L
Coyote Ridge Corrections Center
P.O. Box 769
Connell, Washington
99326-0769

ATTACHMENT

" A "

JUDGMENT and SENTENCE

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 15-1-00348-0

vs.

JUDGMENT AND SENTENCE (JS)

CORY RANDON LEWIS

- Prison
- RCW 9.94A.712&9.94A.507 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Alternative to Confinement (ATC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
- Juvenile Decline Mandatory Discretionary

aka: CORY RANDEN LEWIS

Defendant.

SID: 18816921

DOB: 12/11/1985

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 3/24/2016 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	MURDER IN THE SECOND DEGREE (D4-FASE)	9A.32.050(1)(a) 9.94A.530 9.94A.533	(F) FIREARM	12/7/14	PCSD 143450104
II	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66)	9.41.010 9.41.040(1)(a)		12/7/14	PCSD 143450104

JUDGMENT AND SENTENCE (JS)

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* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the AMENDED Information

- A special verdict/finding for use of firearm was returned on Count(s) I RCW 9.94A.602, 9.94A.533.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	FELONY HARASSMENT	09/09/99	PIERCE, WA	06/10/99	J	NV
2	ASSAULT 4	09/02/99	PIERCE, WA	06/03/99	J	MISD
3	ASSAULT 4	09/02/99	PIERCE, WA	06/03/99	J	MISD
4	ASSAULT 4	09/02/99	PIERCE, WA	06/03/99	J	MISD
5	ASSAULT 4	09/02/99	PIERCE, WA	06/03/99	J	MISD
6	ASSAULT 4	09/02/99	PIERCE, WA	06/03/99	J	MISD
7	ASSAULT 4	10/06/99	PIERCE, WA	09/18/99	J	MISD
8	UDCS	01/17/06	PIERCE, WA	08/09/05	A	NV
9	UNL POSS FIREARM 2	01/09/06	PIERCE, WA	11/18/05	A	NV
10	UPCS W/ INT TO DEL	01/09/06	PIERCE, WA	12/08/05	A	NV
11	PSP 1	01/09/06	PIERCE, WA	12/08/05	A	NV
12	UPCS MDMS/ECSTASY	05/08/06	PIERCE, WA	04/11/06	A	NV
13	ATT TO ELUDE	10/05/09	PIERCE, WA	09/13/09	A	NV
14	ASSAULT 4	03/31/09	PIERCE, WA	01/27/09	A	MISD

The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	7	XIV	216-316 MONTHS	+60 MONTHS (FASE)	276-376 MONTHS	LIFE
II	7	VII	67-89 MONTHS		67-89 MONTHS	10 YRS

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:

within below the standard range for Count(s) _____

above the standard range for Count(s) _____

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

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[] Aggravating factors were [] stipulated by the defendant, [] found by the court after the defendant waived jury trial, [] found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. [] Jury's special interrogatory is attached. The Prosecuting Attorney [] did [] did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

[] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

[] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 FELONY FIREARM OFFENDER REGISTRATION. The defendant committed a felony firearm offense as defined in RCW 9A.10.010.

[X] The court considered the following factors:

[X] the defendant's criminal history.

[] whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

[] evidence of the defendant's propensity for violence that would likely endanger persons.

[X] other: Facts of current conviction

[] The court decided the defendant [] should [] should not register as a felony firearm offender.

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [] The court DISMISSES Counts _____ [] The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTNRJN \$ 600 Restitution to: _____

\$ _____ Restitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

PUB \$ _____ Court-Appointed Attorney Fees and Defense Costs

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1
2 FRC \$ 200.00 Criminal Filing Fee
3 FCM \$ Fine

4 OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

5 \$ Other Costs for: _____

6 \$ Other Costs for: _____

7 \$ 800⁰⁰ TOTAL

8 [] The above total does not include all restitution which may be set by later order of the court. An agreed
9 restitution order may be entered. RCW 9.94A.753. A restitution hearing:

10 [] shall be set by the prosecutor.

11 [] is scheduled for _____

12 [] RESTITUTION. Order Attached

13 [] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll
14 Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

15 [X] All payments shall be made in accordance with the policies of the clerk, commencing immediately,
16 unless the court specifically sets forth the rate herein: Not less than \$ per CCO per month
17 commencing per CCO. RCW 9.94.760. If the court does not set the rate herein, the
18 defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to
19 set up a payment plan.

20 The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide
21 financial and other information as requested. RCW 9.94A.760(7)(b)

22 [] COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the
23 defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is
24 ordered to pay such costs at the statutory rate. RCW 10.01.160.

25 COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial
26 obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

27 INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the
28 judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

29 COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal
30 financial obligations. RCW 10.73.160.

31 4.1b ELECTRONIC MONITORING REIMBURSEMENT. The defendant is ordered to reimburse
32 _____ (name of electronic monitoring agency) at _____
33 for the cost of pretrial electronic monitoring in the amount of \$ _____

34 4.2 [X] DNA TESTING. The defendant shall have a blood/biological sample drawn for purposes of DNA
35 identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the
36 county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from
37 confinement. RCW 43.43.754.

38 [] HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as
soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 NO CONTACT

The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

[] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 OTHER: Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

[Empty table with 6 rows and 2 columns]

4.4a Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days unless forfeited by agreement in which case no claim may be made. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b BOND IS HEREBY EXONERATED

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

240 months on Count I _____ months on Count _____
89 months on Count II _____ months on Count _____
_____ months on Count _____ months on Count _____

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

60 months on Count No I _____ months on Count No _____
_____ months on Count No II _____ months on Count No _____
_____ months on Count No _____ months on Count No _____

Sentence enhancements in Counts _ shall run
[] concurrent [] consecutive to each other.
Sentence enhancements in Counts _ shall be served
[] flat time [] subject to earned good time credit

Actual number of months of total confinement ordered is: 300 months Total = 240 + 60 (hr)

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: Subject to DOC

Calculations

4.6 [] **COMMUNITY PLACEMENT** (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

The defendant shall be on community custody for:

Count(s) I 36 months for Serious Violent Offenses

Count(s) _____ 18 months for Violent Offenses

Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

(B) While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully

JUDGMENT AND SENTENCE (JS)

issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The court orders that during the period of supervision the defendant shall:

- consume no alcohol.
- have no contact with: _____
- remain within outside of a specified geographical boundary, to wit: _____

not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

participates in the following crime-related treatment or counseling services: _____

- undergo an evaluation for treatment for domestic violence substance abuse mental health anger management and fully comply with all recommended treatment.

comply with the following crime-related prohibitions: _____

Other conditions:
For CCO consider ~~the~~ Mental Health treatment & Anger Management. Eval. in trial, D diagnosed w/ PTSD.

For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the

defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

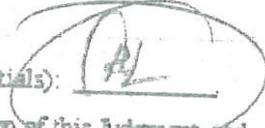
V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**

Defendant waives any right to be present at any restitution hearing (sign initials): 

5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

N/A

5.8 [] The court finds that Court _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER: Comply w/ DAA Order, payment to LFO's
App. E

DONE in Open Court and in the presence of the defendant this date: 4/23/16

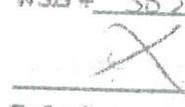
JUDGE Jack Nevin
Print name Jack Nevin


Deputy Prosecuting Attorney

Print name: Lori Kodman
WSB # 30370


Attorney for Defendant

Print name: John McNeil
WSB # 16911


Defendant
Print name: Cory Lewis

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: 

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 15-1-00348-0

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date:

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

Court Reporter

*9-14-15
Jack Mevin*

IDENTIFICATION OF DEFENDANT

SID No. 18818921 Date of Birth 12/11/1985
(If no SID take fingerprint card for State Patrol)

FBI No. 626338KC4 Local ID No. UNKNOWN

PCN No. 541338055 Other

Alias name, SSN, DOB:

Race: [] Asian/Pacific [X] Black/African-American [] Caucasian [] Hispanic [X] Male
[] Native American [] Other: [] Non-Hispanic [] Female

FINGERPRINTS

Left four fingers taken simultaneously Left Thumb
Right Thumb Right four fingers taken simultaneously

I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, _____

Dated: _____

DEFENDANT'S SIGNATURE: X.g.

DEFENDANT'S ADDRESS: DOC

APPENDEK "F"

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC;

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

- (I) The offender shall remain within, or outside of, a specified geographical boundary: per CCO
- (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____
- (III) The offender shall participate in crime-related treatment or counseling services;
- (IV) The offender shall not consume alcohol; _____
- (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or
- (VI) The offender shall comply with any crime-related prohibitions.
- (VII) Other: txt per CCO

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 15-1-00348-0

vs.

CORY RANDON LEWIS,
aka CORY RANDEN LEWIS

Defendant.

STATEMENT OF PRIOR RECORD AND
OFFENDER SCORE
(Verdict of Guilty)

Upon a verdict of guilty in the above cause number, charge MURDER IN THE SECOND DEGREE-FASE; UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, the defendant CORY RANDON LEWIS, comes now the State and hereby submits that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions. The State further submits that any out-of-state convictions listed below are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525:

ALL CURRENT CONVICTIONS, THIS CAUSE NUMBER

Count	Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	A or J Adult Juv	Type of Crime	Class	Score by Ct	Felony or Misdemeanor
I	MURDER IN THE SECOND DEGREE-FASE	4/28/16	PIERCE, WA	12/7/14	A	SV	A	82	FELONY
II	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	4/28/16	PIERCE, WA	12/7/14	A	NY	B		FELONY

The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

OTHER CURRENT CONVICTIONS, OTHER CAUSE NUMBERS (if any)

None Known or Claimed, or:

PRIOR CONVICTIONS INCLUDED IN OFFENDER SCORE (if any)

[] None Known or Claimed, or:

Crime	Date of Sentence	Sentencing Court	Date of Crime	A or J Adult Juv	Type of Crime	Class	Score by Ct	Felony or Misdemeanor
FELONY HARASSMENT	09/09/99	PIERCE, WA	06/10/99	J	NV	C		FELONY
ASSAULT 4	09/02/99	PIERCE, WA	06/03/99	J	MISD			MISDEMEANOR
ASSAULT 4	09/02/99	PIERCE, WA	06/03/99	J	MISD			MISDEMEANOR
ASSAULT 4	09/02/99	PIERCE, WA	06/03/99	J	MISD			MISDEMEANOR
ASSAULT 4	09/02/99	PIERCE, WA	06/03/99	J	MISD			MISDEMEANOR
ASSAULT 4	09/02/99	PIERCE, WA	06/03/99	J	MISD			MISDEMEANOR
ASSAULT 4	10/06/99	PIERCE, WA	09/18/99	J	MISD			MISDEMEANOR
UDCS	01/17/06	PIERCE, WA	08/09/05	A	NV	B	1	FELONY
UNL POSS FIREARM 2	01/09/06	PIERCE, WA	11/18/05	A	NV	C	1	FELONY
UPCS W/INT TO DEL	01/09/06	PIERCE, WA	12/08/05	A	NV	B	1	FELONY
PSP 1	01/09/06	PIERCE, WA	12/08/05	A	NV	B	1	FELONY
UPCS MDMS/ECSTASY	05/08/06	PIERCE, WA	04/11/06	A	NV	C	1	FELONY
ATT TO ELUDE	10/05/09	PIERCE, WA	09/13/09	A	NV	C	1	FELONY
ASSAULT 4	03/31/09	PIERCE, WA	01/27/09	A	MISD			MISDEMEANOR

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct:

COURT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENT ²	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	7	XIV	216-316 MONTHS	+60 MONTHS (FASE)	276-376 MONTHS	LIFE
II	7	VII	67-89 MONTHS		67-89 MONTHS	10 YRS

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom. See RCW 46.61.520, (JF) Juvenile present.

DATED this on the 28 day of April, 2016.


LORIKOOIMAN
 Deputy Prosecuting Attorney
 WSB# 30370

~~Refused - did not stipulate to any~~
CORY RANDON LEWIS

~~Refused - did not stipulate to any~~
JOHN A. MCNEISH
 WSB# 16912

mac

ATTACHMENT

11

B

11

REPORT OF PROCEEDINGS 4-28-16



HEALTH SERVICES KITE

This form must be used to request non-emergency health care services, except in facilities where kiosks or sign-up sheets are used.

THOMAS ATTA

PLEASE PRINT

SUBMISSION OF HEALTH SERVICES REQUEST MAY RESULT IN A CO-PAY

LAST NAME			FIRST NAME		
DOC NUMBER	FACILITY	UNIT/CELL	DATE	TIME	
JOB/PROGRAM		JOB/PROGRAM HOURS		DAYS OFF	

If you feel you have an actual medical emergency, alert the staff and do not use this form.

TYPE OF REQUEST (check only one box per form)

- MEDICAL
- DENTAL
- MENTAL HEALTH
- MEDICATION REFILL - List medication(s) with prescription number(s) or place sticker below
- OPTOMETRY
- OTHER: _____

REASON FOR REQUEST (list problem or medications needing refill)

Handwritten notes and scribbles in the reason for request section.

OFFENDER SIGNATURE

HEALTH SERVICES RESPONSE/ENCOUNTER

This form must be filed if any information is entered below except for: simple prescription refills, finance, non-medical work/bunk change, religious diets, shoes, classification, non-health services issues

- Schedule within _____ days/weeks/months
- Next available sick call
- No visit required

Handwritten text: REPORT OF PROCEEDINGS 70-85-4

RESPONDER signature and stamp (all copies)

DATE and TIME

PRESCRIPTIONS MUST BE WRITTEN ON DOC 13-435 PRIMARY ENCOUNTER REPORT (PER) OR IN CIPS

Distribution: WHITE/YELLOW - Responder, PINK - Offender keeps
Distribution upon completion: WHITE - Health Record, YELLOW - Return to Offender with Response

State law (RCW 70.02) and/or federal regulations (42 CFR Part 2) prohibit disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law.

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF PIERCE
3

COPY

4 STATE OF WASHINGTON,)
5)
6 Plaintiff,)
7 Vs.) NO. 15-1-00348-0
8 CORY RANDON LEWIS,)
9 Defendant.) COA. 49006-4-II

10 VERBATIM REPORT OF PROCEEDINGS
11 April 28, 2016
12 (Sentencing - VOLUME IX)

13
14 A P P E A R A N C E S

15 For the State: MS. LORI KOOIMAN
16 DEPUTY PROSECUTOR
Tacoma, Washington

17 For the Defendant: MR. JACK MCNEISH
18 ATTORNEY AT LAW
Tacoma, Washington

19
20 Presiding Judge: JACK NEVIN
21 DEPARTMENT 6

22
23 KATHLEEN M. MAHR, CSR NO. 2311
24 OFFICIAL COURT REPORTER
PIERCE COUNTY SUPERIOR COURT
TACOMA, WASHINGTON 98402
25 (253) 798-7556

1 April 28, 2016

2 * * * * *

3 THE COURT: Good morning, please be seated.

4 MS. KOOIMAN: Good morning, your Honor.

5 MR. MCNEISH: Good morning, your Honor.

6 MS. KOOIMAN: State of Washington versus Cory
7 Lewis, Cause No. 15-1-00348-0. Lori Kooiman for the
8 State. The defendant is present in custody represented
9 by Jack McNeish. We're here this morning for
10 sentencing. I can let the Court know a few things
11 before we get going with that. One, the parties have
12 signed off on and agreed on Findings of Fact Conclusions
13 of Law for the 3.5 hearing that was held prior to trial.
14 I do need to prepare the Findings of Fact, Conclusions
15 of Law for the bench trial findings. If the Court
16 hasn't already done that, the State will do that and we
17 will need to set a date for that.

18 THE COURT: Very well.

19 MS. KOOIMAN: In addition to that, Mr. McNeish
20 and I were speaking this morning, he advised me they
21 were not stipulating to the offender score on this case
22 and will not sign off on that stipulation. With that, I
23 provided the Court multiple certified copies of the
24 defendant's prior criminal history. The only one that
25 is not provided this morning is the one the Court

1 previously had and reviewed for UPOF finding which was
2 the 06-1-03704-1, Pierce County Superior Court, Unlawful
3 Delivery of an Illegal Substance. Those have been
4 provided to the Court, I apologize, I would have
5 provided them to you earlier had I known there wasn't
6 going to be a stipulation to the offender score.

7 THE COURT: I'm assuming there has been no
8 sentencing memoranda or anything of that nature
9 submitted by either side. I didn't see anything on
10 LINX.

11 MS. KOOIMAN: That's correct, your Honor.

12 MR. MCNEISH: That's correct, your Honor.

13 THE COURT: Very well. All right. And I've
14 just for the first time this morning received a document
15 from a citizen who wanted to weigh in, and I will take
16 the time to read this. By the way, I apologize for our
17 delay, I had some unforeseen circumstances that delayed
18 me in arriving here today.

19 Well, let's see, what would you have us take up
20 first, the offender score issue?

21 MS. KOOIMAN: I would ask the Court to review
22 those first, your Honor, that way we can make sure
23 everybody is on the same page.

24 THE COURT: Now, I'm going to do two things
25 here. Since I'm addressing this precise issue for the

1 very first time in this case, at least insofar as
2 sentencing, I'm going to take a moment or two, I'll go
3 through these, and I'm going to state what my
4 understanding is based upon these documents that I'm
5 reviewing. If there are issues either in favor of or
6 opposed to what conclusions I'm drawing, each side is
7 going to have an opportunity to weigh in on those.

8 The first matter I have before me, and this is the
9 Exhibit 1, is a Warrant of Commitment in a prior
10 conviction of Cory Randon Lewis. It bears the date of
11 October 5th, 2009. And it is a felony conviction for
12 Attempting to Elude a Pursuing Police Vehicle in
13 violation of RCW 46.61.024(1) and the date of the crime
14 is 9/13, 2009. This is a felony and I believe that this
15 would constitute part of a prior criminal record for
16 purposes of calculating points.

17 MS. KOOIMAN: Your Honor, if I could address
18 one issue on the 2009 case, just for the record, the
19 sentence on that included a year and a day, and the last
20 time the defendant was released on that one from prison
21 was February 10th of 2010.

22 THE COURT: Very well, thank you.

23 Next, Exhibit 2, another Warrant of commitment, and
24 this is dated May 8th, 2006. In this case, the
25 defendant was charged with UPCS MDMA, Schedule I, in

1 violation of RCW 69.50.4013(1). The date of that crime
2 was April 11th, 2006. This was pursuant to a plea of
3 guilty. And in this matter, it is, likewise, my
4 understanding that the defendant was found guilty. As
5 of the date of this incident, he had an offender score
6 of 4 with a seriousness level of 1. His standard range
7 was 6 plus to 18 months in this matter.

8 Does the State wish to add anything onto that?

9 MS. KOOIMAN: No, thank you, your Honor.

10 THE COURT: I believe this will count for
11 purposes of calculating offender score. If at any time
12 the defense takes issues with any conclusions I'm
13 arriving at, and to say conclusions, well, they're not
14 even necessarily legal conclusions, I'm basically
15 telling both counsel what it is I understand to have
16 been the case.

17 MR. MCNEISH: The only exception up to this
18 point, your Honor, is, I don't believe the State saying
19 what date my client was supposed to have gotten out of
20 custody is sufficient. If they have some documentation
21 to show that, I think that's necessary.

22 MS. KOOIMAN: Your Honor, I do have a copy of
23 the FORS which I can provide to the Court, which is the
24 offender reporting system.

25 THE COURT: And as to the second matter, when

1 does it reflect that the defendant was released --

2 MS. KOOIMAN: Your Honor.

3 THE COURT: -- if at all?

4 MS. KOOIMAN: That, I don't have on here. The
5 importance of the 2009 release date is to prevent the
6 washing. There's no issue of washing on any of the
7 other counts.

8 THE COURT: I understand.

9 Exhibit 3 is yet another Warrant of Commitment.
10 Now, the date of this filing was January 9th of 2006.
11 Two matters, Count I, UPCS With Intent to Distribute
12 Marijuana, Schedule I, in violation of RCW 69.50.401,
13 date of the crime was December 8th, 2005. Second Count,
14 Possession of Stolen Property First Degree, date of
15 crime also December 8th, 2005. On Count I, the
16 defendant had an offender score of 2, seriousness level
17 was 0 to 6 -- sorry, seriousness level was 1, standard
18 range was 0 to 6 months. Count II, also an offender
19 score of 2, but a seriousness level of 2, standard range
20 of 4 to 12 months, both felonies with a maximum term of
21 5 years.

22 I do find that these are felony convictions. They
23 seem to be in order for purposes of offender score
24 calculation. The fourth and last prior conviction
25 before me is also dated January 9th, 2006. This is

1 Possession of a Firearm in the Second Degree, violation
2 of RCW 9.401.010 and 040 et seq, date of crime,
3 November 18th, 2005. It would also seem to the Court
4 this qualifies as a prior conviction for purposes of
5 calculation of offender score.

6 MS. KOOIMAN: Thank you, your Honor. The only
7 issue left is the Unlawful Delivery of a Controlled
8 Substance which the State previously provided and was
9 marked and admitted as an Exhibit in the trial which I
10 know the Court reviewed for the purposes for the UPOF to
11 find a valid conviction.

12 THE COURT: I did.

13 MS. KOOIMAN: And I would just make that
14 statement for the record and that the Court would also
15 consider that as a prior point in this case.

16 THE COURT: I would.

17 MS. KOOIMAN: Thank you. With that, your
18 Honor, the state's calculation would be that the
19 defendant, with the other current of the UPOF in the
20 first degree, would make his score a 7 sitting before
21 the Court today. As that, his standard range on the
22 Murder in the Second Degree charge with a firearm
23 enhancement, which is listed as 216 months to
24 316 months, plus the 60-month firearm enhancement.

25 THE COURT: Okay, now, it's 216?

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MS. KOOIMAN: 216 to 316 is the range.

THE COURT: And the firearm.

MS. KOOIMAN: Plus the firearm, making a total range of 276 to 376 months. The Unlawful Possession of a Firearm in the First Degree carries a standard range of 67 to 89 months. There's no enhancement, obviously, on that one.

I believe the parties are prepared to proceed to sentencing in this case. At this time, I would let the court know we do have several members of Cory Page's family that are present, flown in from New York. His mother is able to be here, his cousin, and I believe his brother. Thank you.

THE COURT: How many do you wish to present?

MS. KOOIMAN: I do know two of them would like to address the Court, your Honor, and his cousin and his father, who the Court may recall testified in the trial.

THE COURT: I do. So I don't have to double back, I want to make sure that I'm understanding these ranges; 216 to 316 months, that would be the range for the Murder 2. 67 to 89 which would be the firearm matter. And then we would add to that 60 months for the firearm enhancement on the Murder 2.

MS. KOOIMAN: That's correct, your Honor, that would be flat time.

1 THE COURT: Now, Mr. McNeish, I understand
2 that the defendant took issue with the calculation of
3 the offender score, and that sometimes involves
4 different permutations of taking issue with an offender
5 score. Sometimes it is simply a matter of the defendant
6 refraining from stipulating to an offender score, other
7 times it is a position there's some inaccuracy on the
8 calculation of the offender score, and I want to ensure
9 that I understand your position.

10 MR. MCNEISH: Your Honor, my client, did not
11 stipulate to the offender score.

12 THE COURT: Thank you very much.
13 I'm going to invite you to proceed.

14 MS. KOOIMAN: Thank you, your Honor. Would
15 the Court wish to hear from the State on the
16 recommendation prior to hearing from the victim's
17 family.

18 THE COURT: No, I would prefer to hear from
19 the victim's family first, then I'll hear from the
20 state.

21 MS. KOOIMAN: Thank you, your Honor.

22 THE COURT: Sir, you don't have to take the
23 stand, you can stand right up here at the bar and that
24 would be fine.

25 Good morning, sir, I know you've testified here

1 before, you've been here throughout the proceeding, but
2 for purposes of the record, I'm going to ask you to
3 identify yourself, please.

4 MR. QAASIM: My name is Abdullatif Qaasim and
5 I am the father of Cory Page. And as his father, I
6 would just like for it to be known for the record,
7 because during the trial and as evidence was presented,
8 there were a number of things that were said about my
9 son as far as his behavior and the type of person that
10 he was known to be in the community. And it seems, it
11 appears to me that it was more one-sided, so I would
12 like to, on behalf of my family, my son, and myself, to
13 tell you what we knew about my son and the person that
14 he was.

15 I knew my son to be, from an early age, to be a
16 very precocious young man, very bright, very
17 intelligent. He was invited to attend magnet schools
18 when he was growing up in New York City. He was always
19 a very, very bright child, he spoke at a very early age,
20 he walked at a very early age. His conversation was
21 very clear and articulate from the time he was about two
22 years old. I believe that my son was born as a person
23 who was blessed with certain gifts, gifts of
24 intelligence, gifts of vision. He could see a lot of
25 things that a lot of people around him couldn't see, and

1 he could analyze and interpret things on many different
2 levels. And I was always proud of him as a father, even
3 though I would say personality-wise, he and I were like
4 night and day. But he looked just like me and we did
5 have a lot of things in common. But we actually were at
6 odds on a lot of issues when it came down to discussing
7 things on an intellectual, philosophical level, whether
8 we were just pontificating or whatever, but we were
9 often at odds in our opinions. But I always respected
10 him as his father, I always respected him, and even as a
11 child, I always tried to treat him like a man and give
12 him the respect that was due based upon him having his
13 own opinion. Because I always wanted him to be a
14 critical thinker and a person who looks at things
15 differently and not just take things for granted just
16 because someone says it. As an academic in my life,
17 I've always valued the quality of empirical evidence in
18 society when we make decisions about how we're going to
19 come down on a particular issue and I always encouraged
20 that with him as well. I was always proud to see that
21 he did take up the better with that as well.

22 My son was the kind of person whereas if he was in
23 a circle of people that was known to him and he knew
24 them and he felt something was said that he disagreed
25 with, he would let you know. And he would try to let

1 you know intelligently, but if it was on a street level
2 type of thing, he can come at you like that, too, that's
3 just who how he was and he didn't mind doing it. He was
4 a very, in some ways, confident person, and he was a
5 type of person, it could be 100 people over here that
6 had an opinion about one thing, felt some way about it,
7 and if he -- his opinion was different, he wasn't afraid
8 to say so in the face of those odds. That's something
9 that I was always proud of him about.

10 I remember when my son was out here living with me
11 in Washington and it was just he and I together, and as
12 a parent, you always want to feel like you're instilling
13 or you're imparting your values, your ethics, your moral
14 code or whatever, into your children. You want to feel
15 like you're passing that on to your posterity. And as
16 for me as a parent, I know that was always a prime
17 concern of mine. And sometimes, as a teenager, it was
18 like I wasn't thinking that he was getting it. It was
19 like, no, son, you're not getting it. I remember when
20 he left here from New York City, when he left here and
21 went back to live in New York City, he called me about
22 six months later, and he said, dad, you know what, he
23 said, when I was living with you, I know that you
24 thought I wasn't getting it, he said, but I was. He
25 said, and I'm happy that you took the time to teach me

1 and tell me the things. By a law, I could have died
2 right there and I would have been happy, I would have
3 died a happy man right there, you know. But, you know,
4 that wasn't Allah's will. But at the same time, you
5 know -- and you know there's been things about my son
6 brandishing handguns, no one that I know ever saw him
7 brandish a handgun. They might have known he possessed
8 one, but it wasn't like he was -- that I know of. I
9 don't know that he always got into arguments with
10 people. Most of the people that I know and talked to
11 spoke of him very fondly, you know. And even as I was
12 listening to testimony here by his therapist at Greater
13 Lakes, she said when he was in her office, he acted as a
14 gentleman. And I was, as a parent, I was so proud to
15 hear her say that. Just another person saying that
16 about my son.

17 So with that being said, you know, on behalf of me
18 and his mother here, and his other family members that
19 are here, and you'll hear his first cousin come up and
20 speak, too, they grew up as brothers, but my son doesn't
21 have any type of felony record or criminal convictions
22 of that sort in his history. Was he troubled in some
23 ways, yeah. You know, as a young man coming up in this
24 world, it can be difficult trying to find your way. But
25 so he had difficulties working his way through this

1 world, but I was proud of what he did. He was a
2 student, he was an entrepreneur, he was an artist. And
3 even in that, I would say from a community level, he was
4 somewhat of a positive role model for peers and
5 subordinates alike, as far as him imparting whatever
6 information that he thought was of value that could be
7 used to impact someone's life positively. From that
8 standpoint, I just want to say I am proud of my son and
9 the man that he was and was trying to be.

10 And other than that, that's all I have to say. I
11 want to say thank you to the court for allowing me to --
12 other than the impact of losing my posterity and my
13 family losing a loved one, you know, people say, well,
14 yeah, once you go through the trial or whatever, you
15 have closure. You know, for me, it was never about
16 closure. For me, it was just about getting information
17 because I wanted to know what happened to my son, you
18 know. Closure is something you never have. Every day
19 in the morning when I get up, I think about my son. I
20 see visions of my son in my head walking down the street
21 smiling addressing me, saying, hi dad. I still have his
22 number on my cell phone. I miss getting calls from him,
23 I miss having lunches with him, I miss having the
24 discussions that we had. For me, that is a loss that
25 can never be replaced, but life does go on. And the

1 same way I feel, I know a lot of his loved ones and
2 family and associates feel, too. And, again, I just
3 want to thank the Court for allowing me to speak about
4 my son.

5 THE COURT: Thank you very much, sir.

6 Good morning, sir, would you please give me your
7 name for the record?

8 MR. WHITEN: D-o-n-n-e-l-l W-h-i-t-e-n.

9 THE COURT: Sir, what would you like me to
10 know?

11 MR. WHITEN: I would like you to know that my
12 cousin was very big on family and community. I wasn't
13 here throughout the process, but he was very
14 opinionated, but he was very big on family and
15 community. He was very -- if he was a friend, he would
16 embrace you as family. If he was family, he would
17 expect a great deal from you because he would give a lot
18 of himself for you. As far as his community, he was
19 very big on giving back, enlightening, he was a good
20 learner, he was a sponge for learning in life, a sponge
21 for learning anything possible. You couldn't come to
22 him with a thought, a theory, or concept that didn't
23 have a fact to back it up.

24 With that being said, my cousin's worst nightmare
25 came true in this courtroom with a friend posing as an

1 enemy. So there's no court sentence can justify his
2 worst nightmare coming true. Despite what's being said
3 of him and him losing his life, he was a great young man
4 who had a bright future and never took no for an answer.
5 I just want the Court to know that.

6 THE COURT: Thank you very much, sir.

7 Ms. Kooiman, anyone else the State wishes to
8 present?

9 MS. KOOIMAN: No, your Honor, thank you.

10 Your Honor, I won't belabor the facts of this case
11 as the Court heard the testimony and reached a verdict.
12 I do want to note a couple of things in support of the
13 recommendation of the State, and I appreciate the family
14 members coming to address the Court. I think throughout
15 the trial the focus becomes on the defendant and the
16 presented facts, and one of the things we lose in a
17 murder trial is we lose the victim. We don't get as
18 much of an opportunity to know who they are and how they
19 presented what they bring to the community. And I
20 appreciate Mr. Page's family giving us an insight into
21 him.

22 The State's recommendation in this case is for the
23 high end of the range, that's for the 316 months plus
24 the 60 flat, just over 31 years. In addition to the
25 high end, on the UPOF, for the 89 months. The basis for

1 the recommendation, your Honor, is in reviewing the
2 defendant's criminal history, he not only comes in with
3 multiple prior crimes, but also comes in with a prior
4 conviction for Unlawful Possession of a Firearm. I
5 wonder before the Court if he had been abiding by the
6 law which prohibited him from possessing a firearm if we
7 would even be here today. And so it was yet another
8 violation of that law that resulted in the death of
9 another young man.

10 And I think what his cousin states is absolutely on
11 point in this case, and that's that the defendant and
12 the victim started out as friends, started out as
13 roommates, and shared a history together. And then to
14 lose your life to someone who is posed as friend is
15 tragic. Throughout the defendant's testimony in this
16 case, and his statements to law enforcement, he never
17 expressed any remorse, even when he maintained the
18 self-defense claim, he never expressed any remorse for
19 killing him. In addition to that, as the Court heard
20 from the testimony, he left Cory Page there to die,
21 never offering him any help, never calling 911, never
22 seeking assistance. And it didn't end there, when he
23 spent several months not being forthcoming with law
24 enforcement and deflecting the blame to others and
25 accusing others of potentially being involved.

1 Based on the facts of the case, the defendant's
2 criminal history, the lack of remorse, it is the State's
3 position that the high end is appropriate. In addition
4 to the time in custody on Count I, he'll have 36 months
5 of community custody. We'd ask for treatment per
6 community corrections officer regarding what is
7 appropriate given his situation. I do not know if he
8 continues to struggle with the drugs. I do know he has
9 multiple prior convictions for drug offenses, so we'd
10 ask for an evaluation for chemical dependency. We also
11 ask for anger management evaluation, follow-up
12 treatment, and any mental health treatment that the
13 community corrections officer may see if it. In
14 addition to that, he needs to register for the firearm,
15 and that's a newer law that's required. I think it
16 should be imposed based on the facts of this case and
17 based on his prior criminal history. He'll continue to
18 be prohibited from possessing a firearm.

19 There's standard fines on this case; \$500 crime
20 victim penalty assessment, \$200 filing fee, the DNA test
21 with \$100 fee, and State's requesting \$1,500 for DAC
22 recoupment given this was a trial. We provided defense
23 counsel with restitution information. At this point, he
24 would like an opportunity to review it. So we'd ask the
25 Court set a restitution hearing for later order of the

1 Court.

2 There's an issue with the property in evidence that
3 was not used as an exhibit that defense has agreed can
4 go back to Jennifer Whiten, W-h-i-t-e-n, the victim's
5 mother. That includes Cory Page's birth certificate,
6 wallet, social security card, and cellular phone. She
7 had requested the laptop, but that was never processed
8 so the State is not comfortable with having that
9 released. The cell phone was processed and the defense
10 has been provided all the information off that phone. I
11 have an order to that effect for the Court to review and
12 sign off on. That is the extent of the State's
13 recommendation in this case, your Honor.

14 THE COURT: Thank you. Mr. McNeish.

15 MR. MCNEISH: Your Honor, my client's mother
16 is here, she would like to address the court if that's
17 permissible. We can wait for her, that's fine.

18 MS. KOOIMAN: Your Honor, while we're waiting,
19 I have the order on the property for the court.

20 THE COURT: Thank you. Ma'am, would you
21 please state your name for our record.

22 MS. WHITEN: My name is Jennifer Whiten.

23 THE COURT: Thank you. I'll ask you to keep
24 your voice up. And if you need any tissue or something,
25 it's right there. What would you like the Court to

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know?

MS. WHITEN: First, I would like to say to the family, I regret what has happened. It wasn't like I didn't know your son, your son became a part of our family. And I'm not even sure, but we do, from our entire family, we do regret what happened because those two were just like brothers. So I still remember, your son and I used to fuss all the time, and I'd tell him I still love you anyhow. What you shared today about your son is who he was. No matter what I fussed about, I still loved him. Those two were going about their business, and I love my son, too. So what I wanted you to know today is that I'm not going to go through a whole lot of this, that, and the other, because I've been with him since he was born. And there's always been struggles, yes, there is a criminal history. But when it comes to the criminal process and what have you, we work to try to get things right. I worked very hard, you know, on his behalf. I have four children, he's my only son. And so there's no excuse for what has happened, I'm not trying to do all that. But what I'm here today is I'm still a mother and I'm standing before a judge and I'm asking for some leniency for my son. I know what's been presented before you, but my son is still good. There is still hope in him, still life in

1 him, he has a family as well. And they will be taken
2 care of, they will go through different things, they
3 will be taken care of. But I'm here as his mother today
4 standing before you to ask you for leniency and setting
5 all the other stuff aside. I'm quite sure there is a
6 number of information has been submitted to you
7 regarding his character, regarding me, what have you.
8 But that's what I have to say is to ask for some
9 leniency and some mercy as you are the judge making the
10 decision today. Thank you.

11 THE COURT: Thank you, ma'am.

12 Is there anyone else, other citizens, we'll finish,
13 of course, with anything you want to tell me, Mr.
14 McNeish, and your client's right of allocution.

15 MR. MCNEISH: We do have one other person,
16 your Honor, close family friend.

17 THE COURT: That's fine. Good morning, ma'am,
18 what is your name?

19 MS. STEWART: Velma Stewart.

20 THE COURT: Okay.

21 MS. STEWART: First, I'd like to greet the
22 family, the mother, the father, other relatives. I'd
23 like to add my condolences with that of the mother. I
24 didn't know the young man very well, but I knew him a
25 little bit. Cory is like a son to me as well. And on

1 behalf of all young American Negro men in Washington, in
2 Tacoma, and throughout this country, we know that there
3 are problems, and I'm asking along with the mother and
4 the family that you give some mercy for Cory.

5 Our other Cory is no longer with us. But things
6 that he has said and done are still playing in my mind
7 as well. And I'm sure that the Cory that we have can
8 take some of the lessons that his other Cory left with
9 him and give to other young men that he's going to meet
10 as he goes to the next part of this journey. But I just
11 ask for mercy also for this young man.

12 And I'm sorry that this thing happened the way it
13 did. But not it's the first and I'm sure we're not
14 going to be the last to suffer this kind of tragedy.
15 But if you would just consider what they, both of the
16 Corys, have had to endure as young Negro men. People
17 are offended when I say Negro, because we say
18 African-American men to be politically correct. But
19 we're American Negroes and we have suffered many
20 hardships. And these hardships, I feel, affect how we
21 deal with each other. Ultimately, we see what they call
22 black-on-black crime. And I just ask, again, for mercy
23 on behalf of Cory Lewis. And, again, my condolences to
24 the family that lost their son. Thank you.

25 THE COURT: Thank you. Mr. McNeish, and, of

1 course, Mr. Lewis has the right of allocution.

2 MR. MCNEISH: My client would like to address
3 the Court.

4 THE DEFENDANT: What I'd like to say is I'm
5 sorry to the family, everybody, my family, your family.
6 Cory was my friend. I never posed as a friend to become
7 an enemy. He was my friend, period. What anybody else
8 thinks, I have to say. Yes, we treated each other like
9 brothers. There was ups and downs, but there was also
10 smiles, too. We had fun together, we did our music, did
11 the clubbing.

12 I never thought in a million years this is what
13 would happen. But at the end of the day, I felt like my
14 life was in danger and I defended myself from an
15 unprovoked attack. I'm not making excuses, I do have
16 remorse, I do feel, I won't say bad, but I do feel bad.
17 That's not the word I want to use, but I do feel bad, it
18 does hurt to have to go through this, to have to be in
19 this situation, put somebody else's family in this
20 situation.

21 But what happened is what happened. It can't be
22 changed. But in my heart of hearts, I know that I never
23 wanted this to happen, I never thought it would happen.
24 All I wanted to do was to continue to do our music,
25 continue our friendship. I'm sorry the Court doesn't

1 see things how I seen it or feel what I felt or
2 understand things from my shoes.

3 That's all I have to say.

4 THE COURT: Thank you, sir, Mr. McNeish.

5 MR. MCNEISH: Yes, your Honor. Your Honor,
6 anytime somebody dies, it's a tragedy, obviously. And
7 this situation is a little bit different, I would say,
8 than with people considered black-on-black violence.
9 This is not a situation where there's an allegation that
10 one gang member shoots another gang member. These were
11 people that were friends. As Mr. Lewis says, they were
12 like brothers. They lived together for a substantial
13 period of time.

14 My client has three children; a five- and a
15 six-year-old that live with their mother, and a
16 13-year-old that lives down in Arizona, that as you can
17 see from Pastor Dawes' letter, that hopefully will be
18 back in Washington sometime being cared for by Cory
19 Lewis's family. He's 30 years old, grew up in
20 Washington. He grew up with a single mom, really didn't
21 have any contact, very limited contact, with the father,
22 the father is deceased. He had, I think, been turning
23 his life around. He was in counseling himself, as you
24 know, you also saw documents and heard testimony that
25 he's also been diagnosed with PTSD. He was going to

1 school, was also working at South Bay Motors here in
2 Lakewood. So he had done a lot to change his life.

3 You heard some of the testimony about why he had a
4 firearm, that living where he was living in UP, he had
5 been taunted by people, racially, had eggs thrown at
6 him. Now, obviously, he broke the law having a firearm,
7 but it wasn't something that I don't -- well, I think a
8 lot of people, especially black people, can understand
9 why somebody may feel threatened at time and why he may
10 have had a gun.

11 Your Honor, I'm asking the Court to look at the
12 Sentencing Guidelines, to look at RCW 9.94A.535, which
13 are the departures from the guidelines. And in that,
14 mitigating circumstances that the Court is to consider,
15 it says: The Court may impose an exceptional sentence
16 below the standard range if it finds that mitigating
17 circumstances are established by a preponderance of the
18 evidence. So it is only a preponderance of the evidence
19 that you have to find this by, your Honor. It says:
20 The following are illustrative only and are not intended
21 to be exclusive reasons for exceptional sentences. The
22 first one is (a) to a significant degree, the victim was
23 an initiator, willing participant, aggressor, or
24 provoker of the incident.

25 Now, you heard the testimony. Obviously, the Court

1 did not find that my client was acting in self-defense,
2 but I think, clearly, the testimony would substantiate
3 that mitigating circumstance. The second one is (c) the
4 defendant committed the crime under duress, coercion,
5 threat, or compulsion, insufficient to constitute a
6 complete defense, but which significantly affected his
7 or her conduct. So, again, your Honor, we're looking at
8 an issue where this is a, I guess, what is described as
9 failed self-defense. But I think that my client
10 certainly felt that he was being threatened under the
11 circumstances and that would be an additional reason why
12 the Court can use that circumstance.

13 There's a case, your Honor, that was decided in
14 1987, it is a Supreme Court case in the State of
15 Washington, *State of Washington v. Mary Pascal*, the cite
16 is 108 Wn.2d 125, 1987 case. It is a case, your Honor,
17 where a woman who was probably a battered woman was
18 found guilty of Manslaughter in the First Degree. At
19 that time, the presumptive sentence was 31 to 41 months.
20 The trial court sentenced her to 90 days consisting of
21 30 days of total confinement, 30 days of partial
22 confinement, and 240 hours of community service. And
23 they used the same circumstances that I've just
24 described, the same sections of the sentencing
25 guidelines in upholding the sentence that the trial

1 judge gave Mary Pascal. So she served 90 days on a
2 sentence where the standard range was 31 to 41 months.

3 Now, I'm not asking the Court to go down to that
4 kind of a level, your Honor, what I'm asking the Court
5 to consider doing is to sentence my client to ten years,
6 which I don't think is an insignificant amount of time.
7 And the ten years being five years being flat time on
8 the gun enhancement, the weapon enhancement, and five
9 years as an exceptional sentence downward. My client
10 would only get off approximately six months of that
11 since he would only get ten percent off, and he would
12 still do nine and a half years.

13 Your Honor, so I think that the Court can consider
14 the circumstances, the Court, obviously, listened to all
15 of the testimony. This is not to downplay that Mr. Page
16 is now deceased, but I think that the Court was able to
17 listen to the testimony and listen to the circumstances
18 of what was happening and can take the mitigating
19 circumstances that are authorized by statute into
20 consideration when crafting what would be an appropriate
21 sentence. Thank you, your Honor.

22 MS. KOOIMAN: Your Honor, just for the record,
23 the State would object to any exceptional sentence
24 downward. The State has not been put on notice for any
25 request for that nor has the Court. In addition to

1 that, no parties received any briefing as to that issue,
2 and this is the first that we're hearing of it.
3 Further, I don't believe there is -- I disagree
4 strenuously with defense counsel's basis for that in
5 this case. If the Court has any questions of the State,
6 I will gladly answer them.

7 THE COURT: I do not. I'm going to take a
8 short recess and review the correspondence that I
9 received from the pastor, and I will be back. I don't
10 intend to take a protracted period of time, but I do
11 intend to take a few moments to reflect on the options I
12 have here.

13 MS. KOOIMAN: Thank you, your Honor.

14 (Recess taken)

15 THE COURT: Please be seated, everyone.

16 In arriving at the sentence, I do find that 7 is
17 the appropriate offender score, and that I accept that
18 calculation from the State. I do not find under the
19 provisions of RCW 9.94A.535 that there is a basis to
20 depart from the standard range. And I am familiar with
21 the authority that was cited by Mr. McNeish. And I
22 don't believe -- although it is an intellectually sound
23 argument by Mr. McNeish, I simply don't find there is a
24 basis here. And I'm not, necessarily, hanging my hat on
25 the issue of notice to the State or the procedural

1 nuances of this, I just don't see there is a basis for
2 this.

3 So I had a family member, subsequent to the
4 findings in this case, ask me what my observations were.
5 And I had one phrase that continues to be the one phrase
6 that just resonates with me and that's heartbreaking.
7 We have two young men trying to make their way in the
8 world, two young men that face significant challenges in
9 doing so. Two young men connected to, if not a life of
10 violence, a climate of violence, and the challenges that
11 sometimes come with that. The challenges that Ms.
12 Stewart made reference to in some of her comments. And
13 while Mr. Lewis had a prior record, it seems to me he
14 also was trying to make his way in the world. Both he
15 and Mr. Page were trying to make their way in the world
16 addressing mental health issues, going to school, both
17 having aspirations in music, trying to be part of the
18 world, trying to make their way to an important place, a
19 place where they could fulfill their aspirations and
20 ultimately support their families. Something that Mr.
21 Lewis wanted to do and he showed concern for his family.

22 So two young men, equally, in some respects,
23 situated. Both come from loving families, families who
24 both appear to have strong spiritual grounding, yet they
25 found themselves, again, part of the cycle of violence,

1 violence as we so often see, again, in this court
2 culminating with firearms. Violence, young men, and
3 firearms equals tragedy, again. So one young man has
4 lost his life and a family has lost a son. Another
5 young man will have lost a significant portion of his
6 life, and for that period of time, another family will
7 have lost a son.

8 Mr. Page is the victim. Two families are also
9 victims here. But one instance, Mr. Page's family has
10 lost a son forever and that's a the difference between
11 the two losses that these families have encountered.
12 Both sides have provided, I think, compelling comments
13 and observations. And it is as if the presence of
14 firearms, these two young men desperately trying to get
15 out of this climate, to get to a different place in the
16 world, that they got sucked back in, they were sucked
17 back in in this climate of violence. So that's why it
18 is heartbreaking. So what to do in this case.

19 The State has asked for the maximum sentence. The
20 defense has asked for a sentence below the recommended
21 median, the recommended lower end of the standard range.
22 And I don't find that either extreme is appropriate in
23 this case. I am going to impose the following sentence:
24 My sentence is going to be the lowest end, including the
25 60 month firearm enhancement, under the presumed

1 guidelines, under our Sentencing Reform Act, is
2 276 months. The highest end is 376 months. I am
3 imposing a sentence of 300 months. It is 240 months
4 with an additional 60 months on the firearm enhancement.
5 The nature of the 60 month enhancement is that is as a
6 matter of law straight time. In other words, there is
7 no good time calculation on that five year period.

8 The defendant will receive credit for time served,
9 and there will be a \$500 crime victim penalty
10 assessment, \$200 in costs, and \$100 DNA fee. The \$1,500
11 DAC recoupment is subject to the Blazina criteria. And,
12 Mr. McNeish, I'm going to invite you, as an officer of
13 the court, to correct me on this, but I don't see your
14 client in a position under the Blazina criteria for that
15 DAC recoupment.

16 MR. MCNEISH: No, your Honor, neither do I. I
17 think he's screened as being indigent. He was trying to
18 make a living, but was having a difficult time. With
19 the sentence being imposed, I don't think there is any
20 realistic way that he would be considered to be able to
21 pay that \$1,500. So I'd ask the Court waive that.

22 THE COURT: I am going to waive it under the
23 Blazina criteria. I do not believe the \$500 crime
24 victim penalty assessment, \$200 costs, \$100 DNA fee are
25 waivable. I think these are mandatory and

1 nondiscretionary. On the firearm offense, as the
2 maximum of that offense falls well within the range and
3 the sentence that the Court has imposed, this Court is
4 going to impose 89 months on that concurrent with the
5 sentence that I've already imposed, and, therefore, that
6 sentence is merely subsumed by the other sentence.
7 Restitution will be per later order of the Court.

8 Is there anything else?

9 MS. KOOIMAN: 36 months on community custody?

10 THE COURT: Thank you for reminding me of
11 that.

12 MS. KOOIMAN: And I don't know what
13 conditions.

14 THE COURT: Yeah, there will be 36 months.
15 I'm going to recommend treatment within the discretion
16 of the community correction officer. I mean, there's
17 been anger management here, and, certainly, I think the
18 community correction officer should consider that. I
19 think community correction officer should consider any
20 mental health treatment. I also think that the
21 Department of Corrections, to the extent that those
22 options exist, defendant should also be considered for
23 any sort of programs that exist in the Department of
24 Corrections.

25 Is there anything else from either counsel?

1 MS. KOOIMAN: Nothing from the State, your
2 Honor. We'll have to set a date for restitution and
3 findings on the bench trial.

4 THE COURT: I'm signing the Findings of Fact,
5 Conclusions of Law as it relates to the admissibility of
6 the statement.

7 MS. KOOIMAN: Thank you. Defense counsel and
8 I spoke earlier, the month of May for the time that the
9 Court has for the Friday afternoon, the State's not
10 available on those two Fridays. I think we're looking
11 out to June which would be June 10th is the first
12 available date.

13 THE COURT: All right.

14 MR. MCNEISH: Your Honor, would the Court be
15 doing their own Findings of Fact?

16 THE COURT: I would ask counsel to provide me
17 a proposed, I'll go from there.

18 MS. KOOIMAN: I'll do that, your Honor, thank
19 you.

20 THE COURT: Anything else?

21 MS. KOOIMAN: Nothing else from the State,
22 your Honor, I'm just completing the paperwork.

23 THE COURT: Anything else from the defense?
24 Obviously, I'll wait for the paperwork.

25 MR. MCNEISH: No, sir.

1 Your Honor, in the sentencing paperwork, the State
2 has listed criminal history that includes a bunch of
3 misdemeanors and juvenile offenses that I don't think
4 were part and parcel of the Court's decision. So I
5 guess I can either object to them or tell the Court that
6 we would be objecting to them being the criminal
7 history.

8 THE COURT: Ma'am.

9 MS. KOOIMAN: Your Honor, the assault in the
10 juvenile convictions in this case actually don't matter
11 in the sense they don't create any points, nor do they
12 change whether or not one of the felonies that the Court
13 relied upon washing. So I wouldn't have any issue if
14 defense wants to just note an objection and put a
15 bracket around the ones objected to.

16 THE COURT: That's fine. And I did not
17 consider any of those offenses for purposes of
18 calculating the offender score. I arrived at my
19 conclusion based upon what the State provided to me here
20 at the outset, which would exclude those matters to
21 which you're taking objection.

22 MR. MCNEISH: That's correct, your Honor. So
23 I think probably the proper way to do it is to cross
24 them out as opposed to them being on the paperwork,
25 because the way the paperwork would be delineated, it

1 would be the Court has made a finding that these are
2 actually part of the criminal history.

3 MS. KOOIMAN: I do have the certified of
4 those if the Court wants to review them.

5 THE COURT: Well, the question becomes are
6 they legitimately part of a criminal history, which is a
7 separate question from are they part of how the Court
8 arrived at its calculation of the offender score.
9 Assuming that the State has proof that they, in fact,
10 existed then they are part of the criminal history.
11 Yet, they are not part of the Court's calculation of
12 arriving at the 7 offender score.

13 MR. MCNEISH: I would agree with you
14 completely, your Honor. All I'm saying is the way it is
15 delineated on here would seem to imply that the Court
16 has made a finding that the State has proven these, and
17 the Court was never provided them, so that's why I'm
18 just --

19 THE COURT: Your objection is going to be
20 noted and the record will reflect that the matters that
21 I used to arrive at the 7 offender score are the matters
22 to which we made reference to and I found at the
23 beginning of this.

24 MR. MCNEISH: Okay.

25 MS. KOOIMAN: Does the court wish to have the

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certifieds of the --

THE COURT: Sure, I'll make them part of the court file.

MS. KOOIMAN: Thank you.

Your Honor, as far as the fingerprints are concerned, the defendant is refusing to sign, so I'll just note that in the signature block.

MR. MCNEISH: Your Honor, I don't think he's refusing to sign it, I think it become difficult so he put an X there because he still has handcuffs on.

MS. KOOIMAN: I would note for the record the defendant stated the X on the fingerprint page is his signature. I would note he's refusing to sign on the DNA. He has put an X down on the Advisement of Right to Appeal. I would ask the Court to inquire if that's his signature.

MR. MCNEISH: Your Honor, I can state that I saw him put that X in my presence.

THE COURT: I'm going to accept this as Mr. Lewis's signature.

MS. KOOIMAN: I'd also note in the judgment and sentence, he signed with an X.

Your Honor, on the findings, would you like an electronic version of that when completed so you can make changes to them? .

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THE COURT: Yes, I would.

MR. MCNEISH: Your Honor, I don't know if the
judicial assistant has time to do this, but I'm supposed
to be in Judge Costello's courtroom.

JUDICIAL ASSISTANT: I already emailed
Michelle.

MS. KOOIMAN: That completes everything, your
Honor, thank you.

MR. MCNEISH: Thank you, your Honor.

THE COURT: Thank you. The court will be at
recess.

(Conclusion of Sentencing Proceeding)

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STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

I, Kathleen Mahr, Official Court Reporter for the Honorable Judge Jack Nevin, do hereby certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

That the foregoing Verbatim Report of Proceedings consisting of 37 pages was reported by me and reduced to typewriting by means of computer-aided transcription;

That said transcript is a full, true, and correct transcript of my shorthand notes of the proceedings heard before Judge Jack Nevin on the 28th day of April, 2016, at the Pierce County Superior Court, Tacoma, Washington;

That I am not a relative or employee of counsel or to either of the parties herein or otherwise interested in said proceedings.

WITNESS MY HAND this 14th day of November, 2016.

KATHLEEN MAHR
Official Court Reporter
Department 6
Pierce County Superior Court

ATTACHMENT

11 C 31

REPORT OF PROCEEDINGS 3-17-16



T M E M H C A T T A
HEALTH SERVICES KITE

This form must be used to request non-emergency health care services, except in facilities where kiosks or sign-up sheets are used.

PLEASE PRINT SUBMISSION OF HEALTH SERVICES REQUEST MAY RESULT IN A CO-PAY

LAST NAME			FIRST NAME		
DOC NUMBER	FACILITY	UNIT/CELL	DATE	TIME	
JOB/PROGRAM		JOB/PROGRAM HOURS		DAYS OFF	

If you feel you have an actual medical emergency, alert the staff and do not use this form.

TYPE OF REQUEST (check only one box per form)

- MEDICAL
- DENTAL
- MENTAL HEALTH
- MEDICATION REFILL – List medication(s) with prescription number(s) or place sticker below
- OPTOMETRY
- OTHER: _____

REASON FOR REQUEST (list problem or medications needing refill)

OFFENDER SIGNATURE

HEALTH SERVICES RESPONSE/ENCOUNTER

This form must be filed if any information is entered below except for: simple prescription refills, finance, non-medical work/bunk change, religious diets, shoes, classification, non-health services issues

<input type="checkbox"/> Schedule within ___ days/weeks/months	<input type="checkbox"/> Next available sick call	<input type="checkbox"/> No visit required
--	---	--

REPORT OF PROCEEDINGS 3-11-19

RESPONDER signature and stamp (all copies)

DATE and TIME

PRESCRIPTIONS MUST BE WRITTEN ON DOC 13-435 PRIMARY ENCOUNTER REPORT (PER) OR IN CIPS

Distribution: WHITE/YELLOW – Responder, PINK – Offender keeps
Distribution upon completion: WHITE – Health Record, YELLOW – Return to Offender with Response

State law (RCW 70.02) and/or federal regulations (42 CFR Part 2) prohibit disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law.

COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

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STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 Vs.) NO. 15-1-00348-0
)
)
 CORY RANDON LEWIS,) COA. 49006-4-II
)
 Defendant.)

VERBATIM REPORT OF PROCEEDINGS
March 17, 2016
(VOLUME VI)

A P P E A R A N C E S

For the State: MS. LORI KOOIMAN
DEPUTY PROSECUTOR
Tacoma, Washington

For the Defendant: MR. JACK MCNEISH
ATTORNEY AT LAW
Tacoma, Washington

Presiding Judge: JACK NEVIN
DEPARTMENT 6

KATHLEEN M. MAHR, CSR NO. 2311
OFFICIAL COURT REPORTER
PIERCE COUNTY SUPERIOR COURT
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I N D E X

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RYAN SALMON

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ADAM ANDERSON

Direct Examination
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Redirect Examination

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Exhibit No.

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1 MS. KOOIMAN: Your Honor, the State has not
2 signed off on that stipulation and here's why. It does
3 not include the dates of the offense, it doesn't include
4 the violation. I don't find it to be sufficient in that
5 regard. By not including the dates of the conviction,
6 it doesn't serve the purpose of showing that he had a
7 prior conviction to the date of this incident. I would
8 like to have this issue resolved. I'd really like to do
9 this by stipulation. I anticipated him coming in here
10 today with a stipulation that was done according to WPIC
11 4.78 even without the waiver that's suggested in the
12 comments of the section. But I'm stuck with it. It
13 doesn't even have the date of the offense which leaves
14 me in a position of it's not sufficient to prove that he
15 was convicted prior to this incident.

16 THE COURT: All right. The only stipulation
17 ~~I'll accept is the one that qualifies with Washington~~
18 Pattern Jury Instruction 4.78, which I believe is the
19 correct statement of the law in the State of Washington,
20 and *State v. Humphries*. The defense is telling me that,
21 for reasons I don't entirely understand, yet, I respect,
22 that they cannot comply with those requirements.
23 They've not complied with *Humphries*, which is a
24 prerequisite here, in my opinion, and I am going to
25 accept, and I can only -- and I think, with due respect

1 to Mr. McNeish, I think I have to clarify this for the
2 record. I am considering the fact -- the doctrine of
3 invited error here. I don't necessarily think this is a
4 tactical ploy, but I do think that this can be a matter
5 of invited error as well, and I don't intend to be
6 become subsumed by that. The waiver the -- stipulation
7 does not comply with 4.78. Arguably, it does comply
8 with the *Old Chief* criteria. I am not satisfied that
9 there is a compliance with *State v. Humphries* in this
10 matter, and without compliance with *State v. Humphries*,
11 I cannot accept this stipulation.

12 Accordingly, I'm going to accept the documents
13 presented by the State, understanding that this is a
14 bench trial and I am only considering the existence of
15 the prior offense, period. I'm not going to consider
16 the charging documents that have been provided me. In
17 fact, I haven't looked at the charging documents. I'm
18 going to consider the dates of the offenses and where
19 those dates fall in relation to this particular matter
20 that is alleged to have occurred. I am taking the
21 criteria of RCW 9.41 and I will apply the law to those
22 facts as presented to me for only the purpose of
23 ascertaining whether in fact there was a prior offense
24 that qualified as a serious offense under RCW 9.41 and
25 the date of that prior offense.

1 MS. KOOIMAN: Thank you, your Honor. I would
2 ask that the Court allow for that judgment and sentence
3 to be admitted as an exhibit with the qualifications
4 that the Court just noted that you would consider it
5 for. As far as the charging document and the guilty
6 plea is concerned, I would ask to have those marked
7 separately, similar to a 3.5 hearing, for the purposes
8 of having them admitted for a prior conviction hearing
9 which the Court is not going to consider them, but they
10 are available for the appellate record if necessary.

11 THE COURT: Very well.

12 MR. MCNEISH: Your Honor, if I can make a
13 record. Your Honor, I think that the *Humphries* case
14 clearly indicated that when the defendant was asked
15 whether or not he was agreeing to the stipulation, he
16 objected. And that the *Humphries* case was a case where
17 the attorney then said that he was entering into the
18 stipulation. And I think the whole question in
19 *Humphries* is whether or not the defendant was agreeing
20 to it or not. Since the defendant did not agree to it
21 when asked the questions by the Court on the record, and
22 yet the Court then allowed the stipulation to be entered
23 over his objections, that was the problem. I believe
24 that this stipulation that we have entered or provided
25 to the Court complies with *Old Chief*, complies with

1 Johnson, and so for those reasons, your Honor, we would
2 ask again -- I understand the Court's ruling, but I just
3 want to state that for record.

4 THE COURT: The trial court judge should
5 accept an *Old Chief* stipulation only if the judge is
6 convinced the stipulation is voluntarily made, *United*
7 *States v. Ferrevoeuf*, 632 F.2d 832, Ninth Circuit, 1980.
8 To meet this burden, this court is required -- this
9 judge should inquire personally of the defendant before
10 accepting the stipulation, *State v. Roswell*, 165 Wn.2d
11 186, 1998. Failure to object will only give rise to a
12 presumption of voluntariness, *State v. Humphries*. The
13 best practice is to have the defendant sign a written
14 stipulation and to knowledge the stipulation in open
15 court.

16 MR. MCNEISH: Your Honor, the best practice is
17 not the only practice. That's what my position is.

18 THE COURT: All right. And your position is
19 that your client will not make a representation in open
20 court and your client will not sign a stipulation, is
21 that correct, Mr. McNeish?

22 MR. MCNEISH: No, your Honor. If the Court
23 asked my client whether or not he was willing to do this
24 and voluntarily sign this, I think he would acknowledge,
25 yes, that he did go over this with me and that it is his

1 desire and willingness to have this document entered.

2 THE COURT: Is that what you're saying? Tell
3 me, Mr. Lewis, what your statement is.

4 THE DEFENDANT: What my lawyer just said is
5 the fact.

6 THE COURT: I don't find that qualifies for
7 the *Humphries* criteria, sir. I don't know why it is
8 that you do not want to follow the Washington Pattern
9 Jury Instructions, unless in so far as you're attempting
10 to curry error for the record.

11 MR. MCNEISH: Your Honor, I'm not attempting
12 to curry. I think, again, that the WPIC is designed for
13 a case where there's a jury involved and that is not the
14 case here. And if you look at the criteria that was
15 required to *Old Chief*, again, I think we have met that
16 burden. And I'm not attempting to invite error. I
17 believe that this is sufficient, it is legally
18 sufficient. That's why I drafted it and I drafted it in
19 the way I did to comply with *Old Chief* and *Johnson*.

20 THE COURT: Very well. It will be part of the
21 record.

22 MR. MCNEISH: Thank you, your Honor. Your
23 Honor, Mr. Wickens had left his file here. I don't know
24 if I can put it over perhaps by the officer.

25 THE COURT: Why don't you leave it with Ms.

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Rockett.

JUDICIAL ASSISTANT: He'll be back in, he's bringing in a document back for signature.

MR. MCNEISH: Your Honor, at this time, I call my client to the stand.

THE COURT: Well, let me say one more thing, parenthetically, here, not to belabor the point much more, but counsel makes reference to this being a bench trial, which is the reason that there should not have been a dispute in the first place between counsel. The State should not have proffered a stipulation as contained in the facts yesterday, and we shouldn't be having this conversation, nor should we ever have had this conversation.

MS. KOOIMAN: I'm sorry.

THE COURT: Call your witness, please.

MR. MCNEISH: Yeah, thank you, your Honor.

MS. KOOIMAN: Your Honor, just so I know for the future, what was it that you were not satisfied with what the State did?

THE COURT: The sentence that said he was on knowledge of this ever since the date of the events, and that's just not appropriate. That's totally inconsistent with *Old Chief*, and it is the reason that my colleagues have had to send these back a number of

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times and I talked to my colleagues yesterday about that.

MS. KOOIMAN: Thank you, your Honor, I appreciate the Court's direction in that. I'll make sure that direction gets followed in the future and gets relayed to additional DPAs. I appreciate that.

THE COURT: Call your witness.

MR. MCNEISH: At this time, I'd call my client, Mr. Lewis, to the stand.

CORY LEWIS, having been first duly sworn on oath, testified as follows:

THE COURT: Be seated, sir. I want you to project your voice for us, Mr. Lewis.

THE DEFENDANT: I'll try.

~~THE COURT: Ms. Mahr, I'll take a second and make sure I'm hooked up well with the real time.~~

I'm good.

MR. MCNEISH: Your Honor, perhaps I'm spacing out, did you swear my client in?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. MCNEISH:

1 Q Mr. Lewis, can you state your name?
2 A Cory Randon Lewis.
3 Q Mr. Lewis, where were you born?
4 A Tacoma, Washington.
5 Q Where did you grow up?
6 A In Tacoma, Washington.
7 Q How old are you?
8 A I'm 30.
9 Q Do you have any family that lives in the area?
10 A Yes.
11 Q Who do you have?
12 A My mother, grandmother, cousins, aunts, nieces.
13 Q Do you have any children?
14 A Yes.
15 Q How many children do you have?
16 A I have three.
17 Q How old are they?
18 A 13, 5, and 6.
19 Q The 13-year-old, where does the 13-year-old live?
20 A She's in Arizona.
21 Q Who does she live with?
22 A She's in a -- she's in a group home right now.
23 Q Had she, prior to that, been living with her mother?
24 A Yes, she was living with her mother.
25 Q Now, what about the two younger children, how old are

1 they?

2 A 5 and 6 at the time.

3 Q Where do they live?

4 A They live with their mother.

5 Q Where does their mother live?

6 A In Lakewood.

7 Q Now, Mr. Lewis, how did you meet Cory Page?

8 A I met Cory Page through a friend of mine in Spanish Hill
9 Apartments.

10 Q Do you know approximately when that would have been?

11 A Sometime in 2012, I'm not exactly sure of the exact
12 time.

13 Q We have already heard testimony that you lived with him,
14 when did you first start living with him?

15 A November 28th of 2013.

16 Q Now, is that when you moved in?

17 A Yeah, that's when I moved in.

18 Q When you moved in, was anybody else there before you?

19 A Um, Cory was the minute that -- people that owned the
20 house was and a friend of mine named Mookie.

21 Q So when you moved in was Mookie still living there?

22 A No, Mookie had just moved out.

23 Q You took his spot in the house?

24 A Yes.

25 Q Do you know how long Mr. Page had been living there?

1 A I'm thinking about two years almost, close to two years.

2 Q When you say two years, so he had been there, would you
3 say, for about a year before you arrived?

4 A Yes.

5 JUDICIAL ASSISTANT: The stipulation presented
6 to the Court by the defense is now marked as
7 Exhibit 192, and the Court has admitted that exhibit.
8 The statement of the defendant -- back up, the Amended
9 Information filed by the State will be marked as
10 Exhibit 193, is that admitted as well, your Honor?

11 THE COURT: Yes. These are all admitted for
12 purposes of our record for maintaining integrity of the
13 record.

14 (WHEREUPON, Exhibits 192 and 193
15 admitted)

16 JUDICIAL ASSISTANT: The Statement of
17 Defendant on Plea of Guilty is marked as Exhibit 194 and
18 admitted. And the warrant of commitment is marked as
19 Exhibit 195 and admitted.

20 (WHEREUPON, Exhibits 194 and 195
21 admitted)

22 THE COURT: Thanks. Mr. McNeish, please
23 proceed, sir.

24 MR. MCNEISH: Yes, your Honor.

25 Q (By Mr. McNeish) You indicated that Mookie had been

1 there prior to the time that you moved in, is that
2 correct?

3 A Yes.

4 Q Now, do you know if Mookie and Mr. Page ever had any
5 problems together?

6 A Yes.

7 Q Can you describe what that was?

8 MS. KOOIMAN: Objection, your Honor,
9 relevance.

10 MR. MCNEISH: I think it will tie in with
11 testimony that was admitted yesterday.

12 THE COURT: I'll allow it under the provisions
13 of Evidence Rule 103 and 104.

14 MR. MCNEISH: Thank you, your Honor.

15 THE WITNESS: Part of the reason why he moved
16 out, there was a situation at the studio one day and
17 Cory had put his hands on --

18 Q Put his hands on who?

19 A On Mookie.

20 Q Do you know where he put his hands on him?

21 A He, like, choked him or something.

22 Q But that had been, obviously, prior to the time that you
23 moved in?

24 A Yes.

25 Q Now, how long have you known Mookie?

1 A I've known Mookie since 2010.

2 Q Does Mookie have any kind of a professional relationship
3 with -- or in the past, had he had a professional
4 relationship with you?

5 A Yes. He owns the studio I go to.

6 Q When you say a studio, what kind of a studio?

7 A Music studio.

8 Q Like recording studio?

9 A Yes.

10 Q Do you know if Cory Page had been to that studio?

11 A Yes, I took him there before, that's how they got
12 acquainted.

13 Q When you moved in, how did you and Mr. Page get along?

14 A I mean, it was cool at first, and then stuff just
15 started getting bad.

16 Q Do you have any common interest between the two of you?

17 A Music and art.

18 Q So you said things started getting bad, what kind of
19 things are you talking about?

20 A Arguments, just wasn't -- I couldn't describe it, as in
21 no peace in the house, that's the best I can say. He
22 always had an issue with me, always some type of
23 disagreement.

24 Q Now, how would you describe Mr. Page emotionally, did he
25 have any emotional problems, would you say?

1 A He seemed like off and on, sometimes he's cool,
2 sometimes he's not. You know, kind of bipolarish,
3 always trying to make you see things his way or get in
4 your face.

5 Q Have you ever seen him angry?

6 A Yes, a lot of times.

7 Q Was it always with you or was it with other people or
8 how would you describe it?

9 A Me, different people, just whoever, he didn't really
10 pick and choose who it was. It just seemed like, you
11 know, he was always making things hard with anybody.

12 Q Did you ever talk to your counselor at Greater Lakes
13 about having problems with your roommate?

14 A Yes.

15 Q Did the two of you ever physically fight?

16 A Yes.

17 Q Approximately when was that?

18 A I think that was in September sometime of 2014.

19 Q Can you tell us how that started?

20 A Pretty much right after my children left and their
21 mother had left the house, I was in the back room
22 cleaning out the microwave so I could fix something to
23 eat, and so Cory comes in the back room, says something
24 like, I like how you left me some cheese. I'm like, my
25 bad, I made the kids some sandwiches before they left,

1 you know, basically, my bad.

2 Q When you say, my bad, what does that mean?

3 A My fault, I apologize, sorry for that, you know. But
4 before that, we don't have a kitchen, but we don't have
5 a refrigerator or anything down there like that. So,
6 you know, he's always saying like, you know, we got to
7 eat this up. But at the time, I didn't want to touch
8 his stuff because of how he acts about it. But so he
9 leaves for a second, then a couple of minutes later he
10 comes back and he's still going on and on about it. I
11 already told him I apologize. He's still in my face.
12 He's still acting irate and belligerent about the food.
13 And so I try to go in my room, he follows me into my
14 room. He's still yelling, cursing. I try to go into
15 the living room, he follows me into the living room,
16 still same thing, we end up getting into a fight.

17 Q When you say you got into a fight, was it a physical
18 fight?

19 A Yes, it was a physical fight.

20 Q Did you receive any injuries as a result of that fight?

21 A Yes, my shoulder got dislocated.

22 Q After the fight happened, did you actually go to the
23 hospital?

24 A Yes.

25 Q And how did you get there?

1 A The ambulance.

2 Q When you were taken in the ambulance, did you tell them
3 how you were injured?

4 A No, I didn't.

5 Q I should say, what did you tell them or how did you tell
6 them that you got injured?

7 A I told the ambulance that I was in the back yard playing
8 soccer with my kids and I tripped and fell.

9 Q Why did you tell them that?

10 A Because I didn't want him to get arrested. I didn't
11 want the police to get involved in the situation.

12 Q Okay. Now, after -- well, during that fight, did you
13 see any weapons? Did he have a weapon at that time?

14 A No.

15 Q After that fight, did you make any kind of decisions
16 about whether you wanted to continue to live there?

17 A ~~No. No, I did make a decision that I was going to try~~
18 to get out of there. I stopped having my kids come to
19 the house, and I was trying to find away to move out.

20 Q Were you actually working at that time?

21 A No, I wasn't working at the time, but I was in school.

22 Q How did you pay your rent?

23 A In-housing, Housing Essential Needs through DSHS.

24 Q How much was your rent per month?

25 A 450.

1 Q Did they pay your rent or give you additional money or
2 how did that work?
3 A No, they paid the rent, that's it.
4 Q Where were you going to school at that time?
5 A Pierce College.
6 Q After that physical fight, did you your relationship
7 with Cory Page change?
8 A Yes.
9 Q How?
10 A I just started staying away from him. I wasn't really
11 talking, you know, was cordial, but most of the time
12 when I came home, I'd go to my room. I just tried to
13 avoid him, that's it.
14 Q Now, did the two of you ever make music together?
15 A Yes.
16 Q And when did that happen?
17 A We made a couple of songs, like, in 2013, towards the
18 end of it, and we shot a video at that time, too. And
19 then we shot another video together sometime in the
20 beginning of 2014.
21 Q Now, did the two of you have the same kind of -- did the
22 two have you have any kind of business relationship?
23 A That's what we were working on.
24 Q Did you have your own separate kind of recording --
25 A Yes.

1 Q -- entity?

2 A Yes. I was already recording before I met him, yes. I
3 came with my own.

4 Q Who was that with?

5 A The group was called MOBMC.

6 Q What about he, did he have his own kind of recording
7 group?

8 A He had GAG Squad.

9 Q In 2014, were you still recording?

10 A Yes.

11 Q And was he still recording?

12 A Yeah, I think he was, yes.

13 Q Now, in December of 2014, where were you living?

14 A 5404 Cirque Drive West.

15 Q That's still the same location you had been living in
16 for about a year with Cory Page?

17 A Yes.

18 Q What about on Sunday, December 8th, 2014, do you
19 remember that day?

20 A Somewhat.

21 Q Do you remember where you were that day?

22 A Um, you mean the whole day or --

23 Q Let's say during the day, do you remember where you
24 were?

25 A Not exactly, not necessarily.

1 Q Do you remember being at your location on Cirque Drive
2 at any time during that day?

3 A Yes.

4 Q What time, if any, do you remember being there?

5 A Sometime after seven.

6 Q And what do you remember about -- well, let me ask you
7 this, so is it fair to say that you were not at the
8 condo or don't remember being at the condo before
9 seven o'clock that night?

10 A Positive, yes.

11 Q When you arrived at the condo that evening, do you know
12 if anybody else was in it?

13 A I think Cory was there.

14 Q When you arrived, what did you do?

15 A Well, like, I got there, I just went to my room and
16 started working on music.

17 Q When you say, started working on music, what do you mean
18 by that, how do you do that?

19 A I have a program on my computer, so I ran the program, I
20 go through -- what I did was I went -- I started the
21 program, went on the program and looked for -- searched
22 for a beat that I wanted to finish that I was working
23 on, and I started it.

24 Q Now, what kind of music would you say you do what genre?

25 A Hip Hop.

1 Q When you say beats, those are -- what do you mean by,
2 what's a beat?

3 A Composition, music, instrumental.

4 Q So this actual musical sounds that you're putting voice
5 to is, that fair to say, or you're adding your voice to?

6 A Not my voice, but just other instruments. Not at this
7 moment in time, I don't record at the house, I just make
8 the beat, the music.

9 Q So you do that, then you take that stuff with you to a
10 recording studio to actually make music?

11 A Yes, or I give another artist, sell them to other
12 artists.

13 Q When you were doing this, you indicated you were doing
14 that in your room, is that correct?

15 A Yes.

16 Q So where was Mr. Page at that time?

17 A He was in his room.

18 Q Do you know what he was doing?

19 A No, I'm not -- I don't know.

20 Q Now, when you were doing this, do you remember the first
21 time you would have had any contact with him that night?

22 A Yeah, he came, knocked on my door. I opened the door,
23 stuck my head out, I say, what's good.

24 Q What you say, what's good, what do you mean by that?

25 A What's up, what's going on, what's happening.

1 Q Okay.

2 A He shows me his phone, he shows me some website on his
3 phone that I think he's uploading music to or sharing
4 some of his songs on, he's like, that's what I'm doing
5 right now. I was like, oh, that's what's up, and closed
6 my door.

7 Q And then you went back into your room again?

8 A Yes.

9 Q So what did you do when you went back into your room?

10 A I went back to making beats.

11 Q Do you remember how long you were in there doing that
12 before you saw him a second time?

13 A I'm not sure.

14 Q Describe what happened when you saw him the second time
15 that night?

16 A So sometime later, he comes knocking on my door again,
17 he motioned me to come out. I told him to hold on, I go
18 back in my room, I pause the program. I go out and I'm
19 going into his room. He asked me, what are you doing
20 with your music. I'm like, I'm doing what I'm supposed
21 to do with my music. He's like, that's too crippy for
22 me, starts going off, you're not doing shit, I'm just
23 about bitches, I'm a bitch, I'm all this stuff.
24 Sometimes he picks the gun up off his bed, and while
25 he's talking to me, he has the gun in his hand, he's

1 cursing at me, all this other crazy stuff.

2 Q Do you know why he was mad?

3 A I kept asking him why he was upset, but, no, I never got
4 a clear understanding what he was upset about.

5 Q How long did this go on?

6 A I can't say. It was a while.

7 Q Now, you said he had a gun on the bed, have you ever
8 seen him with a gun before in the past?

9 A Yeah.

10 Q Do you know how long he'd had a gun?

11 A Since -- I'm not sure, since sometime the middle of 2014
12 he got his license.

13 Q But you had seen him with the gun in the past?

14 A Yes.

15 Q Now, had he ever pointed the gun at you prior to this
16 time?

17 A ~~I mean, like playing around and shit. Like, I wouldn't~~
18 necessarily say he pointed it at me, but I seen him play
19 with it and stuff like that, like on the -- there wasn't
20 anything threatening.

21 Q When he was making these statements to you, you
22 indicated he had the gun in his hand, is that correct?

23 A Yes.

24 Q And what else was he doing with the gun?

25 A Pointing, talking with it, basically, like he was making

1 a point. At one point in time, he pointed it at me, so
2 it was just --

3 Q Were there any statements about fighting?

4 A He was like, shoot me the five.

5 Q Shoot me the five, what does that mean?

6 A Means give me a five-minute round.

7 Q When you say, give me a five-minute round, do you mean
8 like a punching match?

9 A Yeah, like a boxing match.

10 Q Did you make any statements? I mean, were you like,
11 okay, let's fight, put the gun down, or what did you do?

12 A I was like, I don't want to fight you, man, I don't want
13 to fight you. And you got a gun in your hand, what are
14 you mad about, what are you really mad about. That's
15 all I kept saying. I don't want any problems with you.
16 I don't want to fight with you, I don't want to do
17 anything like that.

18 Q Did he say anything at that point in time about
19 threatening to shoot you?

20 A When we was in the hallway, he was, like, I'll clap you
21 right now.

22 Q What does that mean?

23 A That means I'll shoot you.

24 Q So you indicated that you were in his room at that time
25 and then were you backing out of his room?

1 A I was -- I had -- by this time, I had backed out of his
2 room. His room is small, we're in a closed space, he
3 got a weapon, I backed out of his room.

4 Q Where did you go then?

5 A Into the hallway.

6 Q All right. And did he continue to make statements to
7 you when you were in the hallway?

8 A Yes, he was spitting on me, he was all in my face. And
9 just -- I can't give every single detail what happened,
10 I'm just telling you that this is the basis of what's
11 going on.

12 Q Now, after that was going on in the hallway, what did
13 you do next?

14 A I went into my room.

15 Q What did he do?

16 A He was still in the hallway pacing back and forth,
17 ~~talking, not talking, but screaming, yelling still,~~
18 calling me a bitch still, you know, basically, telling
19 me he could do whatever he wants to me in this house,
20 ain't nobody going to do shit. And, you know, and I'm
21 sitting on the edge of my bed, he's still going off.
22 Finally, he just comes in here, points the gun at me and
23 says, as a matter of fact, give me my fucking clothes
24 back. I'm like, fine, you can have the shit. I went
25 and grabbed the clothes out of my closet, I tried to

1 give him everything back that had anything to do with
2 him. It was I guess it's only the shirt and stuff ne
3 wanted. And the whole time, he's standing right over me
4 while I'm getting his stuff out.

5 Q Do you remember what clothes you gave back to him?

6 A It was a pair of checkered shorts, a blue Tommy Hilfiger
7 top, an orange cardigan sweater, and like a pair of tan
8 shorts, and I think it was some army fatigue shorts.

9 Q When you gave it back to him, do you know where the gun
10 was at that time?

11 A I'm not sure. I just know he never put the gun down in
12 front of me. The whole time this was going on, he had
13 it, so I didn't see where he put it at that moment in
14 time. He still could have had it at his side or
15 anything, I don't know, I wasn't paying attention at
16 that moment in time, I was just trying to get his stuff
17 back.

18 Q So after he takes his clothes, what do you do?

19 A He takes his clothes, I grabbed my gun out of my bucket
20 that I had some shirts folded up in.

21 Q Now, where did he go at that time?

22 A He left my room, went into his room.

23 Q So do you know how much time it was after you gave him
24 the clothes until the time he went into his room? I
25 mean, did he immediately take the clothes and leave or

1 what did he do?

2 A He took the clothes. I mean, he was still talking and
3 shit, so I don't know how much time it was, I'm not too
4 sure.

5 Q So you said that at that point in time, you got out a
6 gun that you had, is that correct?

7 A Yes.

8 Q Why did you take that gun out?

9 A Because I felt like my life was in danger.

10 Q Now, to get out of that apartment, or out of that condo,
11 however you describe it, do you have to go by his room?

12 A Yes.

13 Q So there's no exit that you could have left unless you
14 were to take down your monitor and go through the
15 window, is that fair to say?

16 A Yes, but even that is difficult because the ledge of the
17 window comes all the way up to my chest.

18 Q Now, you said you picked up a gun, what do you remember
19 happening after that?

20 A After that, I walked out into the hallway. I see him,
21 like he was coming back, like he was coming back to my
22 room, he turned, he's still talking, saying something
23 about 48 Laws of Power, something like that, turns
24 around quickly and I fired two shots.

25 Q When you say you fired two shots, how quickly did you

1 fire the shots?

2 A Like boom-boom.

3 Q You said he was turning back towards you, is that
4 correct?

5 A Yes.

6 Q Do you remember approximately where he was when you
7 fired the shots?

8 A I'm not sure, but he was just inside the doorway or
9 maybe a little bit out, I'm not sure.

10 Q So, generally, he was somewhere around the entrance or
11 just inside of his room, is that fair to say?

12 A Yes.

13 Q And where were you at the time?

14 A I was in the hallway.

15 Q Now, after you fired the shots, what did he do? In
16 other words, did he stand there --

17 MS. KOOIMAN: Objection, leading.

18 THE COURT: Overruled.

19 Q (By Mr. McNeish) What did he do?

20 A He was moving like he was trying to get away from the
21 shots.

22 Q So was he then moving away from you?

23 A Yes.

24 Q What did you do?

25 A I fired two shots. The gun jammed, I seen it was

1 jammed, and I left.

2 Q Now, at the time you fired the shots, why did you fire
3 those shots?

4 A I thought he was going to shoot me.

5 Q You said you got up and left, so did you just leave the
6 hallway, did you leave the apartment, where did you go?

7 A I left the whole apartment.

8 Q Did you go back into your room and take anything or
9 directly leave?

10 A I just left.

11 Q When you left, how did you leave? In other words, did
12 you walk?

13 A I got in my car.

14 Q Where did you go?

15 A I drove around to the apartments right behind me.

16 Q And when you said you drove around to there, what did
17 you do when you got there?

18 A I just sat there.

19 Q Why did you do that?

20 A I was kind of in a panic mode, I just sat there. I was
21 waiting to hear ambulance, police sirens, anything. I
22 just sat there, I just sat there.

23 Q Do you know approximately how long you sat there?

24 A It was a long time. I'm not sure, but it was -- I'm not
25 sure.

1 Q All right. Do you know approximately what time this
2 would have been when you left the place, your place?
3 A I'm not sure.
4 Q Well, was it like midnight?
5 A Huh-uh. I know it wasn't that late in the night, I
6 can't tell you exactly what time.
7 Q Now, after you sat there for a while in the car, where
8 did you go, or what did you do?
9 A After I sat there, I finally left and went straight to
10 my kids.
11 Q That's with the mother of your children?
12 A Yes, lives.
13 Q At some point in time, did you get rid of the gun?
14 A Yes.
15 Q Do you know -- where did you get rid of the gun?
16 A I threw it in Snake Lake.
17 Q What about the clip, do you know what happened to that?
18 A I launched everything in Snake Lake.
19 Q At the time that you left, did you know what had
20 happened to Mr. Page?
21 A No, I wasn't sure.
22 Q So you indicated that you fired two shots, did you know
23 at that time that you actually hit him?
24 A I wasn't sure. In my mind, the way he was moving and
25 stuff, I just -- I wasn't sure. I didn't think -- I

1 thought it was a possibility that I missed.

2 Q Approximately how far away from him would you say you
3 were when you fired those shots?

4 A Probably like three or four feet, I'm not totally sure.

5 Q But you weren't, like, standing right next to him, were
6 you?

7 A No.

8 Q Now, you said he was talking about the 48, what was it,
9 what did you say?

10 A He said something about the 48 Laws of Power. I know
11 the last sentence was 48 Laws of Power, but I'm not sure
12 what he said before that or after that. I just remember
13 that that was part of his statement or something.

14 Q Do you know what the 48 Laws of Power are?

15 A Yes.

16 Q What is it?

17 A ~~The 48 Laws of Power is a book dealing with, you know,~~
18 basically, building strength. To me, what it means to
19 me is, basically, building strength in how -- the
20 tactics to maneuver in this world, in any other
21 situation, business, war, anything.

22 Q Now, when you fired those shots, what was going through
23 your head?

24 A Man, I can't really say what was going through my head,
25 I was just protecting myself, that's it. All this stuff

1 was going through -- my kids, trying to make it out
2 alive, man. I can't say everything that was going
3 through my life, but my life was going through my mind I
4 guess. The situation I had, all the things that just
5 transpired.

6 Q Now, did you ever understand why he got so upset that
7 night?

8 A No.

9 Q Now, you came back to the location a couple of days
10 after that, is that correct?

11 A Yes.

12 Q At the time you came back, did you know what had
13 happened to Mr. Page?

14 A No.

15 Q Do you remember approximately what time it would have
16 been that you came back?

17 A It was sometime very early in the morning.

18 Q When you got back, do you remember what day that would
19 have been?

20 A It was the morning of the 11th.

21 Q Okay. When you got back, what did you?

22 A I went, I checked in his room. I still seen him there,
23 seen him laying down. So --

24 Q At that time, did you know what had happened to him?

25 A No.

1 Q After you saw him laying down, did you figure out what
2 happened to him?

3 A Yes.

4 Q What did you do?

5 A Man, I left. I seen the shells in the hallway, I picked
6 them up, and then I got in my car. I still wasn't sure
7 if I was going to call 911 or not, then I finally
8 decided to. So I went and called the police.

9 Q What did you do with the shell casings?

10 A I think I tossed them out the window or something while
11 I was driving.

12 Q Mr. Lewis, looking at this, which is admitted as
13 Plaintiff's Exhibit No. 114, can you see the location
14 where you were living?

15 A Right there 5404 Cirque Drive West.

16 Q That little arrow pointed to a location, is that
17 correct?

18 A Yes.

19 Q Can you tell the Court how you drove when you went to
20 make the phone call?

21 A Came out, made a right.

22 MR. MCNEISH: Do we have a pointer that's
23 still here?

24 MS. KOOIMAN: I have the laser pointer that he
25 can use, does that work?

1 MR. MCNEISH: Your Honor, can I have him -- if
2 it's okay with the officer and everybody, can I have him
3 stand up and just physically point the way he drove?

4 THE COURT: If it's okay with the officer,
5 it's is okay with me.

6 MR. MCNEISH: Thanks.

7 Q (By Mr. McNeish) So pointing with your finger, can you
8 describe how you drove?

9 A Came out of here --

10 Q Turned?

11 A -- turned right.

12 Q Onto what street, do you know?

13 A This isn't Cirque yet, but this is 56th.

14 Q Okay.

15 A Then made a right on Hannah-Pierce Road.

16 Q And then where do you go?

17 A Started down all the way to Orchard.

18 Q Where is the location of the spot that you made the
19 phone call, do you know?

20 A Down here. Yeah, right here.

21 Q So that's the direction you drove?

22 A Yes.

23 Q So you didn't get to Orchard where it is Orchard and
24 56th, you turned before that?

25 A Yeah, I turned before that.

1 Q Thank you, you can sit down.

2 Was there any rhyme or reason why you picked that
3 place to make the phone call?

4 A At that moment in time, I wasn't sure if I was going to
5 report it or what I was going to do. But I made up my
6 mind I was going to call 911.

7 Q And if you were to drive that way, say, for example, you
8 didn't call 911, you didn't stop there, where would that
9 have taken you to?

10 A To my kids' house.

11 Q And where do they live?

12 A In Lakewood.

13 MR. MCNEISH: I don't have any further
14 questions. Thank you.

15 THE COURT: Let's take a break if we can, all
16 right.

17 (Recess taken)

18 THE COURT: Prior to Mr. Lewis taking the
19 stand, I assume you had an opportunity to talk to him,
20 not about the substance of his testimony, but about the
21 rights that he had to testify or not testify.

22 MR. MCNEISH: Yes, your Honor, I did.

23 THE COURT: Very well. Go ahead, ma'am, thank
24 you.

25 MS. KOOIMAN: Thank you, your Honor.

1
2 CROSS EXAMINATION

3 BY MS. KOOIMAN:

4 Q Mr. Lewis, you moved in with Cory Page back in November
5 of 2013?

6 A Yes.

7 Q And you knew him for about two years before his death?

8 A Yes.

9 Q And you actually went to his dad's house and spent some
10 time with him when he came back from New York?

11 A Yes.

12 Q The two of you had similar interests with the music?

13 A Yes.

14 Q Including writing music?

15 A Yes.

16 Q And making videos?

17 A Yes.

18 Q You also helped him with his clothing line a little bit?

19 A Yes.

20 Q You helped him get into that residence before you could
21 get in, correct?

22 A Yes.

23 Q That was with your friend Mookie?

24 A Yes.

25 Q You testified about that incident with Mookie, you never

1 observed that, did you?

2 A No.

3 Q And you weren't part of that incident, were you?

4 A Not per se.

5 Q Even after knowing that incident, you moved in with Cory
6 Page?

7 A Yes.

8 Q And when you moved in is when you helped him with his
9 clothing line?

10 A Yes.

11 Q The way your rent was set up there at that residence,
12 you paid separately, correct?

13 A Yes.

14 Q And you paid the landlords, he would pay the landlords?

15 A I didn't pay the landlords, the housing paid the
16 landlords directly. I sent the money directly to them.

17 Q ~~And you share the common living area and the bathroom?~~

18 A Yes.

19 Q And the little area that you used as a makeshift
20 kitchen?

21 A Yes.

22 Q The living room?

23 A Yes.

24 Q But you each had your own individual bedrooms?

25 A Yes.

1 Q And that was your private space?
2 A Yes.
3 Q And his private space?
4 A Yes.
5 Q You didn't share the bedrooms at all, did you?
6 A No.
7 Q And you were with that, the right to exclude anybody
8 from your bedroom?
9 A Yes.
10 Q Now, Mr. Page is from New York, right?
11 A Yes.
12 Q He's kind of a big personality?
13 A Yes.
14 Q A little loud at times?
15 A Um-hmm.
16 Q I need you to answer yes or no.
17 A Yes.
18 Q He often would tell you what his opinion was?
19 A Yes.
20 Q When he shared his opinion, he wanted to make sure you
21 knew that was his opinion?

22 MR. MCNEISH: I object, calls for speculation,
23 conjecture.

24 THE COURT: I'll allow it, it is cross
25 examination. If Mr. Lewis is able to answer that

1 question and knows, he can do so, if he doesn't know the
2 answer, he doesn't.

3 THE WITNESS: Yes, not always in the right
4 way, though. So it wasn't necessarily a good thing or a
5 bad thing at times.

6 Q (By Ms. Kooiman) Sometimes it was a little overbearing,
7 as you said before?

8 A Extremely, yes.

9 Q He wanted things done his way?

10 A Yes.

11 Q If your way didn't line up with his way, your way was
12 the wrong way?

13 A You could take it as that sometimes, yes.

14 Q He made sure that you knew he did something nice for you
15 when he went out of his way to do things for you?

16 A I mean, yeah, if you want to call it that, yes.

17 Q During your relationship and the time you knew him, it
18 was pretty much all about what Cory Page wanted?

19 A I mean, I wouldn't necessarily say that either because
20 we was doing music together at the same time. I
21 wouldn't say he was always about what he wanted, but if
22 he felt that strongly about it, then, yes, it was.

23 Q So if he had a strong opinion about something, it had to
24 go his way?

25 A Pretty much.

1 Q And he would let you know that?

2 A Yes.

3 Q And he liked nice clothes, correct?

4 A Yes.

5 Q He had quite a few nice clothes?

6 A Yes.

7 Q At times, he shared the clothes with you?

8 A I wouldn't say that. I mean, as far as the stuff that

9 he had given me, he had given to me so it wasn't like I

10 was borrowing anything from him.

11 Q At times, he actually gave you his clothes to keep?

12 A Yes.

13 Q And he would make statements to you about doing that for

14 you and that you pretty much have to recognize that he

15 did that for you, correct?

16 A I don't remember him saying anything about the clothes

17 until that night, so, no. But as far as other stuff,

18 yes.

19 Q You knew his mom sent him clothes from New York?

20 A When?

21 Q During time in which you knew him?

22 A No.

23 Q Your mom lived locally?

24 A Yes.

25 Q And she'd come over sometimes?

1 A Yes, she would.

2 Q In fact, she came over the Saturday before this
3 happened?

4 A I don't know, I don't remember.

5 Q Do you remember telling Detective Benson that she
6 dropped off a few dollars for you?

7 A Yes.

8 Q And she helped you out financially at times?

9 A Yes.

10 Q She was available for you if you needed help?

11 A Yes.

12 Q That fistfight that you were testifying about, you told
13 Detective Benson about that fistfight when he met you at
14 your residence?

15 A Yes, I did.

16 Q But you didn't tell Detective Jimenez or Detective Stepp
17 on the night you called 911 when they asked you if you
18 had any problems with Cory?

19 A No, I didn't.

20 Q You didn't tell Deputy Petersen, the deputy that you
21 spoke to before Detective Jimenez and Stepp?

22 A No, I never mentioned it, no.

23 Q When the 911 operator answered your call and she asked
24 you, what do you mean, Cory being Cory, you didn't tell
25 her that detail, did you?

1 A No, I didn't explain any of that. No, I didn't.

2 Q You testified that when you went to the hospital, you

3 told them it was from falling playing soccer with your

4 kids?

5 A Yes, I did.

6 Q And you did that to protect Cory?

7 A Yes, pretty much.

8 Q That was a mutual fistfight?

9 A I didn't want to be involved in that situation so I

10 can't say it was mutual, but when punches were thrown,

11 we're both at each other.

12 Q You both went at it?

13 A Yes.

14 Q You weren't afraid of him then?

15 A I was weary of him because you never know what could

16 happen or would happen, so at that time, yes, I was. I

17 wouldn't necessarily use afraid, but I would use there

18 is apprehension.

19 Q You recovered from that injury?

20 A Yes.

21 Q And you went to your counselor after you sought

22 treatment, told her about that incident?

23 A Yes, I did.

24 Q And Regina Hicks, you felt really comfortable with her?

25 A I did.

1 Q And you told her everything that was going on in your
2 life?

3 A I did.

4 Q You never told her you were ever afraid of Cory Page?

5 A All the stuff you -- that I told her, you could infer
6 that I felt some type of apprehension.

7 Q You never told her that you were afraid of Cory Page in
8 the entire time you were receiving treatment from her?

9 A I never told her I was afraid of Cory Page, no.

10 Q You told her that you were irritated by his annoying
11 questions?

12 A What I meant by that was his nitpicky attitude and how
13 he would continue to -- yes, it was just -- I was
14 talking about how he is as far as how he won't quit and
15 how he nitpicks every single thing.

16 Q You were looking for another place to move?

17 A Yes, I was.

18 Q And you never mentioned that you were looking for
19 another place to move because you were afraid of him?

20 A I told her I was looking for another place to move
21 because of the situation with him.

22 Q You bought a car prior to this incident, correct?

23 A Yes, I did.

24 Q How much did that car cost you?

25 A All together, it was \$1,800.

1 Q Where did you buy the car?

2 A South Bay Motor.

3 Q You bought that what month?

4 A I think in the beginning of October, very, very end of

5 September sometime, maybe.

6 Q Cory Page had never pulled a gun on you in the past?

7 A No.

8 Q He had never threatened you before that?

9 A He said things, he made threats, but, no.

10 Q You never felt threatened by him to the point of calling

11 911?

12 A Not until the night of this incident.

13 Q On the night of this incident, you never did call 911,

14 did you?

15 A No, I didn't.

16 Q You never sought to discontinue your lease?

17 A At that moment in time, no, it is not that easy.

18 Q You've previously been convicted of a serious offense?

19 MR. MCNEISH: Objection, beyond the scope of

20 my direct.

21 THE COURT: Unless there's a basis to explore

22 this under Evidence Rule 607, 608, or 609, I won't allow

23 the inquiry.

24 MS. KOOIMAN: Your Honor, the basis to explore

25 it is he's charged with UPOF. I'm asking him

1 specifically about the elements of that. He's been on
2 the stand and has answered questions on it.

3 THE COURT: Tell me under the rules of
4 evidence where that comes from, Ms. Kooiman.

5 MS. KOOIMAN: Well, it actually is under 803,
6 it is not part of hearsay, but I will find it, your
7 Honor, thank you. It's relevant under 401 and 402
8 because it goes to an element of the crime. It is not
9 unfairly prejudicial under 403 because it goes to an
10 element of the crime.

11 THE COURT: Isn't there already substantive
12 evidence before the Court from both the State and
13 defense as it relates to that point?

14 MS. KOOIMAN: That's a question for the
15 factfinder, your Honor.

16 THE COURT: That would be me.

17 MS. KOOIMAN: ~~That would be you. So if~~
18 there's no issue about it, then I will discontinue the
19 questioning.

20 THE COURT: Well, I'm not going to -- look,
21 the two of you want to ask questions, one objects to the
22 other, then it becomes incumbent upon that party who's
23 making the inquiry to tell the Court the basis under the
24 rules of evidence.

25 MS. KOOIMAN: And, your Honor, under 401, 402

1 it's relevant because it goes to an element of the
2 crime. Under 403, it is not unfairly prejudicial
3 because it goes to the element of the crime.

4 THE COURT: I'll allow it.

5 MR. MCNEISH: Your Honor, if I can, again,
6 object, it is clearly beyond the scope of my direct.

7 THE COURT: Well, it is and it isn't because
8 on the direct examination, your client admitted that he
9 shot this man. And you can't shoot a man without having
10 a weapon in your possession.

11 MR. MCNEISH: I understand that, your Honor.

12 THE COURT: And he is charged with someone
13 who's ineligible to possess a firearm.

14 MR. MCNEISH: I understand that, your Honor,
15 but I didn't -- the only thing I asked him is whether he
16 fired it. This is asking a different question of
17 whether he has a previous conviction.

18 THE COURT: I think, first of all, the defense
19 has already stipulated to this which they are objecting
20 to.

21 MR. MCNEISH: I tried to, your Honor.

22 THE COURT: The State has already presented
23 evidence of this as well. And the defendant is on the
24 stand, and I do think this falls within the scope, and I
25 don't find there to be a basis to exclude it. Proceed.

1 MS. KOOIMAN: Thank you.

2 Q (By Ms. Kooiman) You were previously convicted of a
3 serious offense?

4 A Yes.

5 Q The conviction was in 2007?

6 A Yes.

7 Q Based on that conviction, you're not permitted to
8 possess firearms?

9 A Yes.

10 Q In fact, you told Detective Jimenez and Detective Stepp
11 that you didn't have a gun?

12 A Yes, I did.

13 Q You testified that Cory's room is small?

14 A Yes.

15 Q It is about eight by ten, seem correct?

16 A I don't know the exact measurement.

17 Q ~~And closed space?~~

18 A Yes.

19 Q You testified that you fired two rounds at Cory?

20 A Yes.

21 Q And you tried for a third, but your gun jammed?

22 A I just -- yes.

23 Q When you fired those rounds, Cory was within about three
24 or four feet of you?

25 A That's what I'm thinking, I'm not sure. I don't know

1 the exact measurement or distance or anything like that.

2 Q Was Mr. Lewis as close as I am to you?

3 A No.

4 Q Further?

5 A Yes.

6 Q What about here?

7 A I think a little further than that. I'm not sure, but I
8 know it wasn't as close as you just were.

9 Q What about here?

10 A I'm not sure.

11 MR. MCNEISH: Again, he's already said how
12 many times, he said he is guessing approximately three
13 to four feet.

14 THE COURT: Well, I'm going to allow the cross
15 examination. When the inquiring party says, how far,
16 about this far, I think it's helpful for the record to
17 reflect how far that actually is.

18 MS. KOOIMAN: Thank you, your Honor,
19 absolutely.

20 THE COURT: The objection is overruled.

21 Q (By Ms. Kooiman) So right now about the distance that
22 you and I are apart is approximately about five feet?

23 A Somewhere around in there, maybe a little further maybe,
24 something like that. I can't be sure. It wasn't as
25 close as you were when you first asked me the question.

1 Q When I first asked you the question, for the record, I
2 was about three feet from you.

3 A Yes, so it was further than that then.

4 Q So fair to say between four and six feet, a foot in
5 front and a foot behind me?

6 A Yeah, I would say that.

7 Q He was standing right in front of you about four to
8 six feet away?

9 A What do you mean, standing in front of me?

10 Q He was completely visible to you at four to six feet
11 away?

12 MR. MCNEISH: Your Honor, I object and ask
13 that she say at what point in time are we talking about.

14 THE COURT: Please clarify.

15 Q (By Ms. Kooiman) At the time you fired off two rounds,
16 he was completely visible to you?

17 A Yeah, yeah.

18 Q You could hear him clearly?

19 A Yeah. I mean, I could hear everything he was saying.

20 Q After you shot him, you saw him squirming around on the
21 ground?

22 A I just seen the way he was moving. I didn't see him
23 squirming on the ground, that's what I seen when he kind
24 of moved for the bed.

25 Q You told the detectives when you went in in January you

1 saw him squirming around on the ground?

2 MR. MCNEISH: Object to the term squirming, I
3 don't think that was the term that was used.

4 THE COURT: Rephrase.

5 Q (By Ms. Kooiman) Today, to your recollection, how would
6 you describe him moving on the floor?

7 A I don't really remember seeing him on the floor at that
8 moment in time. I just remember the way he was moving
9 kind of away from the shots.

10 Q So he was moving away from the shots at the time you
11 were firing the shots?

12 A Yes.

13 Q In fact, you described to the detectives in your
14 interview that he had raised his hand up towards his
15 head, correct?

16 A I could have been mistaken, I'm not sure. But I did say
17 that, but I am not sure if I seen that or not.

18 Q That's what you told them at that time?

19 A Yes. But at that moment in time, I was still kind of
20 confused. I don't necessarily know if I seen that or
21 not.

22 Q On January 26th, 50 days after the shooting, you were
23 still kind of confused?

24 A Well, as far as all the questions and stuff goes, you
25 know, what I mean.

1 Q When you finally confessed to law enforcement about
2 shooting Cory, you wanted to paint yourself in the best
3 light possible, didn't you?

4 A No. I just told them the truth.

5 Q You wanted to get some help from them, right?

6 A No. I just asked them what kind of help he was talking
7 about. I didn't ask for any help. I didn't ask for any
8 help.

9 Q You just asked what kind of help they were talking
10 about?

11 A I just wanted to know what he was talking about.

12 Q That was after you confessed?

13 A Yes, that was after I confessed, yes.

14 Q You testified today that Cory Page walked in your room
15 and pointed the gun at you?

16 A Yes.

17 Q ~~And said, give me my fucking clothes?~~

18 A Something like that. He said, as a matter of fact, give
19 me back my fucking clothes, or something like that.

20 Q Mr. Lewis, I'll hand you what's marked as State's
21 Exhibit 163, previously identified as a transcript from
22 an interview with Detective Sergeant Benson and
23 Detective Merod.

24 A Okay.

25 Q Where in that interview did you ever say that to them?

1 MR. MCNEISH: Your Honor, I object. If she's
2 going to try and cross examine about a prior
3 inconsistent statement, I think she needs to show what
4 the statement is that he's made.

5 THE COURT: Well, if the witness doesn't know
6 what she is referring to, then the witness should seek
7 some kind of clarification. I think for the sake of
8 efficiency, it might be helpful if you were to drill
9 down, identify which one of the many statements made you
10 are referring to.

11 MS. KOOIMAN: Certainly, your Honor.

12 Q (By Ms. Kooiman) Mr. Lewis you never told him --

13 A Can you show me where that's at?

14 Q I can't because it is not in there.

15 A Well, from my knowledge, I didn't tell them everything.
16 I kind of gave an abridged -- I didn't say everything I
17 thought I said, there's stuff I left out. But at the
18 moment in time, I was under a lot of stress so I didn't
19 say every single thing that happened. It's been a while
20 and certain things are coming back to me. After sitting
21 here so long, I actually got a chance to sit down and
22 think about every single thing that happened. Certain
23 details escaped me, certain details came back. I didn't
24 even tell them every single thing that happened from
25 beginning to end in my confession to begin with.

1 Q And it escaped you that Cory Page walked into your room
2 and pointed the gun directly at you at the time?

3 A It wasn't that it escaped me, I just answered the
4 questions according to what I was asked and what I was
5 remembering at that specific point in time right there.
6 But when he did ask me if he ever pointed the gun at me,
7 I said, yes, and what I was referring to was that
8 instance, so, yes.

9 Q You said, yeah, he was waving the gun around at me?

10 A And he asked me specifically if he pointed a gun at me,
11 I said, yes, he was doing all that shit. That's what I
12 said in my statement.

13 Q You've read that statement numerous times, haven't you?

14 A Yes.

15 Q Gotten to know it pretty well?

16 A Not gotten to know it pretty well, but going through
17 ~~this trial, so I went over my statement. I have seen~~
18 the video, sat here, watched it while we were in here.

19 Q So back to when you shot Cory, he was in his room at the
20 time?

21 A Yes, he was in his room at the time, or just cross the
22 -- over the threshold.

23 Q Threshold in his room?

24 A Yes.

25 Q That's his area?

1 A Yes.

2 Q An area you had no right to go into?

3 A I can't answer that because I have been in his room
4 plenty of times, so.

5 Q You weren't invited in there that time?

6 A Yes, I wasn't invited there that time, yes.

7 Q And you knew that he didn't have his gun out at that
8 time?

9 A I didn't know.

10 Q You didn't see his gun at that time?

11 A I said I wasn't sure, I wasn't paying attention. I
12 wasn't positive if I seen it or not. I was under a lot
13 of stress. And I know that previous to that, he had his
14 gun out in my room, and he had his gun out when we was
15 in the hallway, he had his gun out when I went into his
16 room the first time in the beginning of the incident.
17 So at that moment in time, I can't be sure of what was
18 going on.

19 Q And he didn't have his gun out when you handed him his
20 clothes?

21 A If you refer to my statement, I said I wasn't sure what
22 he did with it. He could have had it down at his side,
23 he could have put it in a pocket or his waistband. I
24 wasn't sure, I just know he didn't put the gun down in
25 front of me at any point in time when he was in my room.

1 Q But you were sure he didn't have it in his hand?

2 A I wasn't sure if he had it in his hand or not, I wasn't
3 positive.

4 Q Today you're not positive, but when you talked to the
5 detectives, you were sure he didn't have it in his hand
6 when you gave him the clothes?

7 MR. MCNEISH: Your Honor, again I'm going to
8 object. I ask she point out whatever section she's
9 referring to so he can look at it. I think that's
10 required under the rules if you're trying to impeach.

11 THE COURT: At the very least so that counsel
12 can get a handle on what you're referring to, if you
13 would abide by that.

14 MS. KOOIMAN: Certainly, your Honor.

15 Q (By Ms. Kooiman) Page 49 is one of the pages in which --
16 refer you to the last -- second from the last, bottom of
17 it, Detective Benson asked you: So he didn't have
18 anything in his hand, or did he have anything in his
19 hand. You answered, no, I don't think so. I think he
20 might have put it down somewhere, put it down or
21 something, excuse me, I don't know.

22 A Yes, I said I don't know, I wasn't sure. That's what --
23 I wasn't sure at the time. Like I said, I wasn't sure
24 if he put it in his pants or pocket, I don't know. I
25 don't know if he had a gun at his side, I wasn't paying

1 attention to that. Where he was at was right over me in
2 my closet still when I was giving him the stuff. I'm
3 not sure what he did with it at that moment in time.
4 But he never put the gun down in front of me when he was
5 in my room at any point in time.

6 Q Mr. Lewis, you don't know where he put the gun, but you
7 know it wasn't in his hand at the time you shot him?

8 A I don't know if that's for sure or not.

9 THE COURT: That was page 49?

10 MS. KOOIMAN: 49 of 59, yes, your Honor.
11 That's on the original transcript.

12 THE COURT: Of the statement --

13 MS. KOOIMAN: To Benson.

14 THE COURT: Got it, thank you.

15 Q (By Ms. Kooiman) Then on page 55 of 59, middle of the
16 page, Detective Sergeant Benson says: He just didn't
17 have it in his hands anymore is what you're -- and your
18 answer: That's what I'm saying?

19 MR. MCNEISH: Again, your Honor, I have the
20 original statement, I don't know --

21 MS. KOOIMAN: That's what --

22 MR. MCNEISH: What page are you talking about?

23 MS. KOOIMAN: 55.

24 Q (By Ms. Kooiman) So, Mr. Lewis, it's clear you don't
25 know where he put the gun, but he didn't have it in his

1 hands?

2 A Like I said, I'm not -- I wasn't totally sure. I don't
3 know what he did with the gun because it could have
4 still been in his hands. I'm pretty sure I said that in
5 the statement somewhere, I just don't know where it's
6 at. I don't know what he did with the gun at that point
7 in time. I know I didn't see him put it down or put it
8 away in front of me.

9 Q So now, today, you're saying, I don't know if he had a
10 gun in his hand or not?

11 MR. MCNEISH: Your Honor, I object, I think
12 that's a mischaracterization. I think he said that
13 before to Benson and saying he doesn't remember if he
14 had it in his hands at that time.

15 THE COURT: I'll allow you to redirect and
16 clarify any ambiguities you perceive in his testimony.
17 Proceed.

18 Q (By Ms. Kooiman) Mr. Lewis, today, you don't know if he
19 had a gun in his hands?

20 A All I remember is when I was in my room, he had the gun
21 in his hands. When I handed him the clothes, I don't
22 know what he did with the gun. I don't know if he put
23 it away or if he still had it in his hand down to the
24 side. I wasn't paying attention at that moment in time.
25 I know I was under a lot of stress being threatened with

1 a weapon, so I don't remember exactly what he did with
2 the gun. I don't know when I handed him the clothes, I
3 don't know if he put it in his waist or pocket. He
4 still could have had it in his hand down at his side. I
5 don't remember clearly exactly what the position of the
6 gun is in all that. I'm not too positive. I just know
7 before that moment, he had the gun.

8 Q And after you gave him his clothes, you gave him his
9 clothes in your bedroom, correct?

10 A Yes.

11 Q And he took those clothes in his hands?

12 A Yes.

13 Q And he turned around?

14 A Um-hmm.

15 Q And he walked out of your room?

16 A Yes.

17 Q And into the hallway?

18 A Yes.

19 Q And then into his own bedroom?

20 A Yes.

21 Q And he stayed in his own bedroom?

22 A I don't know what he did. I just know when I left my
23 room that it was like he was coming out and we met each
24 other in the hallway.

25 Q He was coming out and you kind of met each other in the

1 hallway?

2 A Our rooms are very close to each other, so it is not
3 like he took all the way down to the end of the hallway,
4 our rooms are real close.

5 Q They're real close to each other and you saw him leave
6 and go into his room, you went into your closet,
7 correct?

8 A Yes.

9 Q And you looked for a bucket that you keep in your
10 closet, correct?

11 A I didn't have to look for it, it's right there, but,
12 yes.

13 Q That bucket has clothes in it?

14 A It is has T-shirts.

15 Q And it had a gun in it?

16 A Yes.

17 Q ~~And it had State's Exhibit 158 in it, the gun that was~~
18 found in Snake Lake?

19 MR. MCNEISH: Your Honor, I don't know if he
20 knows what exhibit it was.

21 MS. KOOIMAN: That's why I clarified. I
22 followed up with, the gun found in Snake Lake.

23 THE WITNESS: Yes, it did.

24 Q (By Ms. Kooiman) And you took that gun out of the
25 bucket?

1 A Yes.

2 Q And you did that when Cory Page was out of your room?

3 A Yes.

4 Q And you made sure that gun was loaded?

5 A I didn't make sure anything, I just grabbed it.

6 Q You had it loaded in your room?

7 A Yes.

8 Q And you had one in the chamber?

9 A Yes.

10 Q In order to have that one in the chamber, you have to

11 rack the slide, correct?

12 A I didn't rack the slide at that moment in time, no.

13 Q So you kept it loaded, one in the chamber, in your

14 bedroom?

15 A Yes, I did.

16 Q You had more than one round in that gun?

17 A Yes.

18 Q And you had a magazine in it?

19 A Yes, I did.

20 Q And you took that gun out of your closet?

21 A Yes.

22 Q And you turned and walked about six feet out of your

23 room from where your closet is located?

24 A I don't know the distance.

25 Q You walked from your closet out of your bedroom,

1 correct?

2 A Yes.

3 Q And into the hallway?

4 A Yes, I did.

5 Q When you walked into that hallway, you turned toward

6 Cory Page's room?

7 A Um, I wouldn't say I turned towards his room, his room

8 is right there. I didn't -- I just walked out in the

9 hallway.

10 Q If you walked right out into the hallway, you walked

11 straight, you're walking right into the wall. The wall

12 is right in front of your room?

13 A I'm saying I have to turn into the hallway anyways, his

14 room is right there. It is not like I intentionally

15 turned into his room, no, it wasn't like that.

16 Q So you turned left out of your room?

17 ~~A I have to make a left out of my room, yes.~~

18 Q Are you right-handed or left-handed?

19 A Right-handed.

20 Q Can you shoot the gun with your right hand?

21 A I don't know what hand I shot the gun with, I just know

22 I shot the gun.

23 Q You didn't put the gun in a holster when you got it out

24 of your room, did you?

25 A No, I didn't have a holster.

1 Q You didn't put the gun in your pocket when you walked
2 out of the room, did you?

3 A I don't know, I'm not sure.

4 Q You had the gun out in your hand when you walked out of
5 the room?

6 A Yes, I did.

7 Q You walked out of that room and you turned toward Cory
8 Page's room, and you fired a round at him?

9 A It didn't happen like that, but, no, it didn't happen
10 like that.

11 Q You never warned him you were going to shoot him?

12 A No, I didn't.

13 Q You didn't say a word to him before you shot him?

14 A No, I didn't.

15 Q And you told the officers that his back was turned
16 towards you when you first walked over to his room?

17 A I think that was a mistake, but that's what's in the
18 report, but I'm not necessarily sure. Like I said, I
19 was under a lot of stress then. I don't think I was
20 remembering everything correctly.

21 Q Today you testified that he was coming back towards your
22 room, but when you walked over to him, he had to turn
23 toward you?

24 A What I said was when we met in the hallway, he started
25 walking back towards his room. He was still talking and

1 he was still cursing me and saying he'd could do
2 whatever to me, when he turned, now he got the firearm
3 in his hand, I fired.

4 Q So you guys actually met back in the hallway after you
5 retrieved your gun?

6 A I couldn't say met like that, it was like he was coming
7 back to my room, but since he seen me coming back, I
8 can't say.

9 Q Since he seen you coming back, he turns back into his
10 room to go back into his room?

11 A I don't know what he was doing, I can't say what he was
12 doing. If you look at the pictures, you see how close
13 our rooms are together, you know, you would get a better
14 understanding what I'm saying.

15 Q Your rooms are right close together, there's about a one
16 foot wall in between.

17 A ~~So that's what I'm saying. It wasn't like -- it was~~
18 like, I come out, he's coming out like this.

19 Q So you're now motioning with your hand that you're both
20 coming out towards each other, facing each other?

21 A I wouldn't know that he was doing that when I was coming
22 out my room, that's just what I seen.

23 Q What you seen was him meeting you in the hallway now?

24 A Yes.

25 Q Not inside of his room?

1 A . He was kind of like, yeah, but it wasn't like he was
2 that far out of his room. I turned the corner and he
3 turned the corner, but it's real close. So it wasn't
4 like in the middle, it was like coming out of both our
5 doors.

6 Q You're both coming out of your doors, but then he sees
7 you and he turns to back into his room?

8 A But he was still talking and cursing and screaming
9 stuff. I don't know what he was doing.

10 Q And he was, he was talking and cursing at you, wasn't
11 he?

12 A Yes, he was. But it wasn't -- I'm saying talking, but
13 it wasn't like that, it was irate and belligerent.

14 Q He was going off on you?

15 A Yes, for no reason.

16 Q And he was back in his room going off on you?

17 A That's what he was doing, said something about the 48
18 Laws of Power, I thought he would shoot.

19 Q And you never saw the gun in his hands at that time?

20 A I am not sure if I saw the gun in his hands at that time
21 or not. I just remember the motion and I remembered
22 that he did have a gun previous to this situation, he
23 was threatening me with a weapon.

24 Q He wasn't threatening you with a weapon when he was in
25 his room?

1 A I thought he was.

2 Q Based on what?

3 A The way he was moving, the way he was talking, I thought
4 he was going to shoot me.

5 Q He didn't say, I'm going to kill you, when he's in his
6 room?

7 A He told me he could clap me.

8 Q He told you that before. He doesn't say that when he
9 was in his room, correct?

10 A This is all one incident. It is not like there was
11 different parts to it. This is all one continuous
12 incident.

13 Q You told law enforcement his back was turned towards
14 you?

15 A I also told them that he turned, that's when I fired.

16 Q Okay.

17 A ~~He turned towards me, that's when I fired. So I don't~~

18 -- I think that was kind of a mistake. I wasn't
19 remembering everything properly.

20 Q He wasn't taking any steps towards you?

21 A I don't know what he was doing, ma'am.

22 Q You didn't see him take any steps towards you?

23 MR. MCNEISH: I object, I think he's already
24 said he was turning around towards him.

25 THE COURT: Overruled.

1 Q (By Ms. Kooiman) You didn't see him take any steps
2 towards you?
3 A All I seen was him turn around, I thought he was going
4 to fire on me.
5 Q You didn't say anything to him before you pulled that
6 trigger?
7 A No, I didn't.
8 Q He wasn't blocking your path to get to the front door?
9 A Not anymore, no, he wasn't.
10 Q And you had the option of staying in your room?
11 A Well, he had came in there with a weapon, so I didn't
12 feel like I had options to stay anywhere in that house.
13 Q He left your room leaving you in your room alone?
14 A The way he was talking, it was like he was going to come
15 back or something, all the stuff he was saying.
16 Q Yes or no, he left you in your room alone?
17 A Yes, he did.
18 Q And at that point, you grabbed your gun?
19 A Yes, I did.
20 Q You grabbed your gun and followed his path?
21 A I wouldn't say I followed his path, it is the only path
22 to go. So it wasn't like I followed him.
23 Q The two of you hadn't been getting along for quite a
24 while, correct?
25 A Yes, I would say that.

1 Q You didn't want to have anything to do with him?

2 A Not really, no.

3 Q You wanted him to leave you alone?

4 A I mean, yeah.

5 Q You wanted him to stop pushing his ideas on you?

6 A Well, he wasn't pushing his ideas on me, anything like
7 that. He was just -- I mean, I can't explain it. You
8 have to actually know this person to know where I'm
9 coming from, so I can't get you to understand or see
10 where I'm coming from.

11 Q Mr. Lewis, it would be nice to get to know him, but,
12 unfortunately, you shot him.

13 MR. MCNEISH: Objection, is that a question?

14 THE COURT: Sustained.

15 Q (By Ms. Kooiman) You were tired of him treating you like
16 you were weak?

17 A No.

18 Q You felt like he thought of your kindness as a weakness?

19 A Yes, that's the same, but I think at times he did.

20 Q You were tired of him acting like he could do whatever
21 he wanted to do in your house?

22 A No. I said I didn't like the fact that he felt at this
23 instant he could do whatever he wanted to me. That's
24 what made me feel apprehension and fear because of what
25 he is doing. As far as do whatever, he can do whatever

1 he wants to in the house as well as I can. I don't have
2 no control over that. I don't try to control his
3 activities.

4 Q But he tried to control your activities, dictating the
5 food that you gave people?

6 A I mean, yeah, that's the type of person he was. But I
7 mean it wasn't enough to make me so mad or so angry, you
8 know what I mean, I just wanted to get away.

9 Q You just wanted to get away?

10 A Yes.

11 Q And you grabbed a gun to do that, yes or no?

12 A I only grabbed that weapon to defend myself, period.

13 Q Mr. Page was not up in your face at the time that you
14 shot him?

15 A No, he wasn't.

16 Q He wasn't pointing a gun at the time that you shot him?

17 A No, he wasn't.

18 Q You fired both those rounds with the intent to kill him?

19 A Just intended to defend myself, that's it.

20 Q You're standing four to six feet away from him when you
21 fired two rounds at him and he goes down to the ground?

22 A Well, he -- I wouldn't say he went down to the ground
23 like that, no. From my point of view, it looked like he
24 was trying to get away from the shot so he could return
25 fire.

1 Q With a gun you didn't see at the time?

2 A I know he had the gun. That's all I remember, I just
3 don't remember exactly what happened.

4 Q Now, you know he had the gun?

5 A Like I said, he had the gun previously, so all I know is
6 I thought he was going to fire on me.

7 Q When he was down on the ground he didn't have the gun?

8 A I'm not sure.

9 Q I'll ask you to look at page 31. You tell the detective
10 at the bottom of page 31: He might have put it back
11 under the bed, he might have put it down, I don't know?

12 A I was talking about when he walked out of the room when
13 he grabbed the clothes. Like I say, I wasn't paying
14 attention to all that, he walked to his room doing that
15 shit, you know what I'm saying. He might have put it
16 back on the bed, he might have put it on him, I don't
17 know. ~~I don't know what he did. I don't know what he~~
18 do with the gun, you know what I'm saying. It wasn't
19 thinking about all that. I was thinking what I was just
20 going through.

21 Q I know what you're saying and you're saying you didn't
22 see the gun in his hand when he was on the ground?

23 MR. MCNEISH: Your Honor, again, if she's
24 going to ask the questions --

25 THE COURT: Sustained as argumentative.

1 Please ask another question.

2 Q (By Ms. Kooiman) You didn't see the gun when he was down
3 on the ground in his hand?

4 A Like I said, I thought he was going to return fire. I
5 can't say everything I seen or didn't see.

6 Q Mr. Lewis, yes or no question, did you see the gun in
7 his hands at the time he was on the ground?

8 A I'm not sure.

9 Q And after that first round that you shot at him, he
10 plead with you to chill, to stop?

11 A I think that was like before, I think, when he seen it
12 or something. I don't know, I'm not sure. I'm not even
13 sure if he said that. I just know something like, Peso,
14 chill or something, but it wasn't like pleading or
15 nothing, I don't know.

16 Q So it might have been before you shot him he said, Peso,
17 chill, when he saw the gun?

18 A I'm not sure, I don't remember. I just know that that's
19 what I remember him saying or something, Peso, chill, or
20 something like that. But it wasn't like that.

21 Q That was when he was in his room?

22 A 'Yup.

23 Q So after you saw him down on the ground, you had fired
24 two rounds, tried to fire a third, you didn't call 911?

25 A Nope, I didn't call 911.

1 Q You didn't call for help for yourself?

2 A No, I didn't.

3 Q You didn't go into the room to help him?

4 A I just left. Like I said, I thought he was going to
5 return fire, and I just left.

6 Q You went and sat in a parking lot for quite a long time,
7 right?

8 A Yes, I did.

9 Q A parking lot that had law enforcement officers parked
10 there?

11 A Yes, it did.

12 Q You sat there thinking about if the cops were going to
13 be coming for you, didn't you?

14 A I was thinking about everything that just transpired,
15 what could have happened, what couldn't have happened.

16 If I hit him or not, all type of things, you know. I
17 wasn't necessarily thinking about if the cops were
18 coming for me or not.

19 Q You started thinking about what you were going to do
20 with that gun that you used to shoot and kill him?

21 A Nope, I didn't start thinking about any of that. I was
22 thinking about the situation, and I was kind of
23 panicked, I didn't know what to do at the time.

24 Q You were panicked because you just shot your roommate?

25 A I was panicked because I didn't know what happened. I

1 was panicked because of what I was just going through,
2 the fact he threatened me, all that stuff, numerous
3 things. I can't say either way, a lot of things that
4 was running through my mind.

5 Q Over that weekend, you drive to Snake Lake, correct?
6 A Sometime, I don't remember exactly when.

7 Q You went to Snake Lake with the gun that you used to
8 fire two rounds at Cory Page?

9 A Yes, I did.

10 Q And you got rid of the gun?
11 A Yes, I did.

12 Q You got rid of the magazine?
13 A Yes, I did.

14 Q And you got rid of the evidence that tied you to that
15 shooting?

16 A I got rid of the gun and the magazine, yes.

17 Q You told the detectives you didn't know where the
18 magazine was at?

19 A That's what I told them, yes.

20 Q And you told them you didn't know where the shells were
21 at too, correct?

22 A Actually, I don't think I told them I don't know where
23 the shells was at.

24 Q But you did know that you had retrieved the shells from
25 the house and tossed them?

1 A Yes.

2 Q And you did that when you returned back to the house?

3 A Yes, I did.

4 Q Over this four days that you were gone, you had a place
5 to stay, right?

6 A I don't think it was four days, but, yes, I went to
7 numerous places.

8 Q You spent the night at numerous places?

9 A Yes.

10 Q Then you go back to the house on the 11th?

11 A Yes, early in the morning. That's when I made the
12 decision to go see what was going on.

13 Q And you turned the lights on in the house?

14 A The lights were on.

15 Q You left the door cracked open?

16 A When, when I went and called 911?

17 Q Yes.

18 A Yes, I left the door open.

19 Q You picked up the spent shells that were on the ground?

20 A Yes, I did.

21 Q You actually saw the blood that was on Cory Page from
22 you shooting him?

23 A Ma'am, I seen everything at that moment in time, yes, I
24 did.

25 Q And you seen that you had killed your roommate?

1 A Yes, I did see that.

2 Q You left that house, figuring out what to do next?

3 A 'Yup. I figured out if I was going to call 911 or not.

4 Q When you called 911, you lied to them?

5 A Yes, I did.

6 Q You set up this elaborate scenario to deflect the

7 attention from you?

8 A I wouldn't say elaborate scenario, but, yes.

9 Q You fabricated an account of what happened that would

10 not involve you shooting your roommate?

11 A Yes, I did.

12 Q And you maintained that account with the 911 operator?

13 A Yes, I did.

14 Q You maintained it when you spoke with Deputy Petersen?

15 A Yes, I did.

16 Q And you fabricated again when you spoke with Detective

17 Jimenez and Detective Stepp?

18 A Yes, I did.

19 Q And when you spoke with Detective Benson?

20 A Yes, I did.

21 Q And when you came in in late January --

22 A Um-hmm.

23 Q -- you spent at least two hours continuing to lie to the

24 detectives?

25 A Yes, I did.

1 Q You maintained that lie for several weeks?

2 A Are you saying prior to my confession?

3 Q Yes, sir.

4 A Yes, I did.

5 Q You never needed to call the police before due to
6 anything that happened before with you and Cory Page?

7 A I did call the police -- well, not the police, but I
8 called 911 for assistance with my shoulder, yes.

9 Q You never called the police because you were afraid of
10 Cory Page, ever?

11 A No, because that's not necessarily something I would do
12 or I'm used to doing. I have issues with the officers,
13 with the police in general, so I didn't. No, I didn't.

14 MS. KOOIMAN: Nothing further at this time.

15 THE COURT: Redirect?

16 MR. MCNEISH: No, your Honor, not at this

17 ~~time. And I have witnesses -- I can tell the Court that~~

18 trying to get Ryan Salmon, Mr. Anderson, Adam Anderson,

19 forensic tech back, and Ben Benson, I got a message Ryan

20 Salmon is available at 1:30 today. Detective Benson

21 apparently is not available this afternoon, supposed to

22 be around all next week. And I haven't heard back on

23 the tech, forensic tech. He usually works swing shift,

24 so I'm hoping to have him here before he starts working.

25 But we have sent out emails this morning and my legal

1 assistant gave me this message through your assistant.
2 THE COURT: Okay. So your next witness is at
3 1:30?
4 MR. MCNEISH: Yes, sir.
5 THE COURT: Okay.
6 Mr. Lewis, you can go ahead and step back down.
7 Shall we recess to 1:30?
8 MR. MCNEISH: That's my thought, your Honor.
9 And I'm hoping that we can -- I have to find out about
10 Detective Benson. When we talked to him earlier, I
11 think this week, he said he was going to be available
12 all this week. So I don't know why he's not available
13 today, this afternoon. I'll try to find out.
14 MS. KOOIMAN: Your Honor, if there's extra
15 time this afternoon given that we have gone through the
16 defendant's testimony, I would ask that we address some
17 of the motions that have been lingering and hopefully
18 address -- obviously, the Court doesn't need a packet of
19 jury instructions, but I would like us to be on the same
20 page of what charges we're going to be considering.
21 THE COURT: I think that's actually a pretty
22 good idea because I intend to use the pattern jury
23 instructions. I mean, I'm going to take them and
24 basically do what a juror would do. I understand that
25 it's technically not what happens in a bench trial, but

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I think it is the best jumping off point.

MS. KOOIMAN: So if we have extra time this afternoon, I'd ask we take the time to address that. Obviously, I haven't put anything together, but knowing generally which ones I want to be on the same page.

MR. MCNEISH: Your Honor, just as an aside, and for a timing standpoint with Detective Benson and with Anderson, may not be able to get them until Monday. Even if we don't get them to Monday, is it acceptable to the Court we do closing Monday morning? There is a lot of exhibits and whatever that are out there, or Friday if the Court wanted to do it Friday.

THE COURT: You want to do closings before the end of your case in chief?

MR. MCNEISH: No, your Honor. What I'm saying is that at the earliest I can envision us doing closings would be Monday, and that's all I'm trying to say.

THE COURT: Okay.

MR. MCNEISH: I wanted to make sure the Court was not going to be upset with me if I couldn't get the witnesses here until Monday morning.

MS. KOOIMAN: Even if we are able to get all the witnesses on, I would still ask for Monday.

THE COURT: I think that's reasonable. What I'm going to do once this case is finally over, assuming

1 that it is not still going at this time next week, let's
2 assume hypothetically we conclude the case on Monday
3 sometime, probably what I'll do is I'll take all day
4 Tuesday and Wednesday, and I'll do that for
5 deliberations. I've already talked with my staff and
6 they have communicated to the Criminal Division
7 Presiding Judge I won't take any cases. I'll take all
8 the exhibits and do what a jury does; go back in. And
9 the only difference is I'll be back out here on the
10 bench. This is the only machine that has the realtime,
11 so I'll be out here doing that.

12 (Noon recess taken)

13 THE COURT: Be seated, please.

14 MR. MCNEISH: Your Honor, just a little update
15 for the Court in regards to witnesses, as you can see,
16 we have Detective Salmon here. At two o'clock, I have
17 Mr. Anderson coming back, however, Mr. Benson is not
18 available until Monday morning. I did get a chance to
19 see him, I told him I would send him an email tomorrow
20 what time we would be starting on Monday. So at some
21 point, we need to figure that out, okay.

22 THE COURT: All right, great.

23 MR. MCNEISH: Thank you.

24 THE COURT: Give me just a second here would
25 you. Please proceed.

1 MR. MCNEISH: Thank you.

2 Q (By Mr. McNeish) Detective Salmon, you're the same
3 Detective Salmon that testified last week under oath?

4 A Yes.

5 THE COURT: Yeah, thank you, good point. Do
6 you wish me to reswear him?

7 MR. MCNEISH: I don't care.

8
9 RYAN SALMON, having been first duly
10 sworn on oath, testified
11 as follows:

12 THE COURT: Be seated. I realize I don't
13 necessarily have to do that, but I also realize I've
14 done that for almost all the witnesses throughout the
15 course of this proceeding, so for the sake of
16 consistency, if nothing else.

17 ~~MR. MCNEISH: Thank you, your Honor.~~

18 Q (By Mr. McNeish) Detective, you testified last week
19 concerning your involvement in this case is that
20 correct?

21 A Yes, sir.

22 Q And you looked at cell phones in this case, is that
23 correct?

24 A Yes.

25 Q And, in fact, you looked at some cell phones that were

1 belonging to Mr. Lewis, is that correct?

2 A Yes.

3 Q And when you looked at those cell phones, can you again

4 tell the Court what was your findings in regards to

5 whether those were operational?

6 A If I can refer to my dot 12?

7 Q That would be great, thank you. And that is --

8 A Exhibit 140.

9 Q Thank you very much, sir.

10 A As I described it in my report, the roommate, there were

11 two phones, a Samsung Gusto and a Nokia GSM. The Gusto

12 appeared to have old data, or at least not current data,

13 and the GSM had data up until about December 2nd, 2014.

14 Q Then was there any indication that perhaps that phone

15 had been turned off by the phone company in any way?

16 A Yes.

17 Q What did it indicate?

18 A There were incoming messages that I'm quoting from

19 saying: Your monthly payment is due. To make a payment

20 dial 233 to redeem or through your card. So, to me,

21 that indicates that it is a possibility that there was a

22 bill due that potentially hadn't been paid.

23 Q Was there any data entered on that phone then after --

24 or what's the latest there was data entered into the

25 phone?

1 A It appeared to be December 2nd. The activity that was
2 extracted from the phone stopped.

3 Q In your experience as a phone detective expert, if
4 there's no data entered after December 2nd, would you
5 say it's fair to say that the phone was probably not
6 being used or wasn't operational?

7 A I would say the former rather than the latter is fair to
8 say. It's definitely possible and fair to say that the
9 phone was not regularly being used after December 2nd
10 based on my exam. I would say as far as saying it is
11 not operational, and not able to be used in certain
12 circumstances, I would say that is maybe not as fair to
13 say, that it's definitely possible you can use that
14 phone.

15 Q But if the person hadn't paid the bill and the phone had
16 been turned off, would you agree that a person would
17 believe perhaps they could use the phone?

18 A That's a possibility.

19 Q Now, and the other phone that you had talked about you
20 indicated that there wasn't any recent data in it?

21 A Correct. According to my report, it says that the calls
22 and texts from May and June appeared to end around June,
23 2014.

24 Q Okay. Now, you also looked at Mr. Page's phone, is that
25 correct?

1 A That is, sir.

2 Q And you did an extraction report concerning that phone,
3 is that correct?

4 A I did.

5 Q And, again, I'm going to hand you now what's marked
6 Plaintiff's Exhibit 172, do you recognize that?

7 A Yes.

8 Q And what, in fact, is that document?

9 A This is a document I prepared initially for Ms. Kooiman.
10 It details what data was extracted from the phone
11 starting December 7th and ending on December 9th.

12 Q Now, I think you also testified about this earlier, but
13 is it fair to say that it looks like the last time that
14 this phone was being used regularly would have been on
15 December 7th, is that correct?

16 A Yes.

17 Q And is it fair to say that the calls, or the -- I don't
18 know if calls is the right term -- the information that
19 you can extract from the phone would indicate when the
20 last usage probably was on the 7th?

21 A Yes. So there's obviously data that was extracted from
22 the phone after the 7th, but when I say used or usage,
23 what I typically am referring to as something that I can
24 definitively say appears to be something that a person
25 would have had to have entered into the phone, meaning

1 making an outgoing phone call or text message or
2 visiting a website rather than just data coming into the
3 phone.

4 Q I understand. So to the best of your ability, by
5 looking at that extraction report, can you see the time,
6 the last indication would be somebody was using the
7 phone on the 7th?

8 A Yes. It appears -- I'm looking at the last web visit,
9 21:35 on December 7th.

10 Q That would be about 9:35 at night?

11 A Yes, sir.

12 Q Now, that extraction report gives you information about
13 the use of that actual phone, is that correct?

14 A Yes.

15 Q But it can be using the phone for accessing the
16 internet, is that correct?

17 A Yes.

18 Q Can also be used to access Facebook, is that correct?

19 A Yes.

20 Q It also can be utilized to not make an actual phone
21 call, but to send texts, is that correct?

22 A Yes.

23 Q Were there examples on there during that timeframe where
24 it would look like the individual was talking about
25 music or uploading a video that they had created?

1 A Yes. There's messages on the 7th at about 8:45 talking
2 about the Wi-Fi having issues. And then another message
3 at 20:53, somebody sending an incoming message saying,
4 how was the video coming out. Then -- is that what
5 you're referring to?

6 Q That's part of it. Are there also entries where it
7 looked like there was some entry that concerns GAG?

8 A Yes.

9 Q And --

10 A There's a web visit to that website, yes.

11 Q And what does the website that was visited --

12 A Read it?

13 Q Yes, sir.

14 A It's called GAG Squad Reverb Nation Control Room, and
15 that was visited on the 7th at 21:34.

16 MR. MCNEISH: Thank you. No further
17 questions.

18

19 CROSS EXAMINATION

20 BY MS. KOOIMAN:

21 Q Detective Salmon, has anything changed since your
22 testimony last week about the ability to call 911 on a
23 phone that's no longer -- that isn't up to date on its
24 billing?

25 A No.

1 Q You can still call 911 on those?

2 A Yes.

3 MS. KOOIMAN: Thank you. Nothing further.

4 THE COURT: Based on that?

5 MR. MCNEISH: No, your Honor.

6 THE COURT: May we excuse this witness?

7 MR. MCNEISH: I guess there is a question, I
8 apologize.

9

10 REDIRECT EXAMINATION

11 BY MR. MCNEISH:

12 Q Detective, if you know, when you received that phone or
13 the phones of Mr. Lewis, were they fully charged?

14 A That, I don't recall, I don't know.

15 Q If you were to try to extract information from it,
16 though, you would have to --

17 A Charge it up.

18 Q -- charge it up, is that correct?

19 A Yes, I would.

20 Q And you didn't put anywhere in your reports whether or
21 not these phones were charged up or not?

22 A No, I did not.

23 Q You can't testify about whether or not they were or
24 weren't charged?

25 A When we found them, I can't, no.

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MR. MCNEISH: Thank you.

MS. KOOIMAN: I don't have any questions.

THE COURT: Sir, you're excused. Thank you.

(Recess taken)

THE COURT: Be seated everyone.

MR. MCNEISH: At this time, I call Adam Anderson back to the stand.

THE COURT: Okay.

ADAM ANDERSON, having been first duly sworn on oath, testified as follows:

THE COURT: Be seated.

DIRECT EXAMINATION

BY MR. MCNEISH:

Q I'll hand you what's marked Plaintiff's Exhibit No. 121, do you, in fact, recognize that?

A Yes, I do.

Q And what is it?

A It's a copy of my report.

Q Does it indicate when you would have made that report?

A Yes.

Q When did you make a report?

A This report was written on 12/12, 2014.

1 Q Did you do an additional report in regards to this case?

2 A I did an ECT report, evidence collection tool report, at
3 the scene.

4 Q Do you know when the date of that report would be?

5 A That should have been the night of the incident, or the
6 morning of.

7 Q Let me hand you what's marked Plaintiff's Exhibit 120,
8 is that the other report that you created?

9 A Yes, it is.

10 Q And did that indicate when that report was created?

11 A Yes, it does.

12 Q When was that?

13 A 12/11, 2014.

14 Q Did you do any supplemental dot reports after these two
15 reports?

16 A Not to my knowledge.

17 Q ~~Now, I'll hand you what's marked and admitted as~~
18 Exhibit 122. Do you recognize that?

19 A Yes.

20 Q What is that?

21 A This is a copy of the sketch that I did on the computer
22 aided drawing program.

23 Q Do you refer to that in any of your reports?

24 A Yes.

25 Q And what report do you refer to?

1 A The first one you handed me.

2 Q Would that be Plaintiff's Exhibit 121?

3 A Yes.

4 MR. MCNEISH: At this time, your Honor, I move
5 to admit Plaintiff's Exhibit 121 into evidence.

6 MS. KOOIMAN: Objection, your Honor, it is
7 hearsay, it is a police report.

8 MR. MCNEISH: Your Honor, I think it goes to
9 -- when you say it is a police report, it is an official
10 record, it goes to things that he testified to, it goes
11 to the testimony that he's already made.

12 THE COURT: I'm going to allow its admission
13 for the limited purpose of impeachment as opposed to
14 substance.

15 MS. KOOIMAN: Was that the dot 3 or --

16 MR. MCNEISH: The dot 7.

17 MS. KOOIMAN: Thank you.

18 Q (By Mr. McNeish) I'll hand you back Plaintiff's Exhibit
19 Number 121. Now, you had done some additional drawings,
20 did those get made and distributed as part of your
21 investigation?

22 A It was after my report was written.

23 Q And those were supplied to who?

24 A To the prosecutor.

25 Q Do you know when that, approximately, would have been?

1 A Off the top of my head, I don't remember the date.

2 Q Would it be fairly recent, would you say?

3 A Yes.

4 Q And I met with you fairly recently at that time also, is
5 that correct?

6 A Correct.

7 Q And it was at that time that you handed me copies of
8 your handwritten or hand drawings that you made that
9 day?

10 A Correct.

11 Q And it was it fair to say it was about -- I mean, within
12 a month to two months since you gave those to the
13 prosecutor?

14 A Since today?

15 Q Yes.

16 A Yes.

17 Q ~~And, again, those were kept in your own private working~~
18 ~~file, is that fair to say?~~

19 A Correct.

20 Q Now, if you need this, can you tell me what was your
21 instructions on what you were supposed to do concerning
22 this case?

23 A From the initial?

24 Q Yes.

25 A When I was called to respond to the scene, I was called

1 out, I responded to the scene, met with the detective,
2 waited for a search warrant to be written. After the
3 search warrant was written, I documented the scene with
4 photographs, with a video, took measurements for the
5 sketch, did my rough draft. And then collected evidence
6 that was located by detectives.

7 Q Okay. Did you receive any instructions from either
8 Detective Benson or any of the other detectives in
9 regards to what you were supposed to do as part of your
10 investigation?

11 A I was notified by Detective Benson that we needed to go
12 back to the scene after we had left to look for possibly
13 another bullet.

14 Q Prior to that, when you first arrived that night, did
15 you receive any instructions from Detective Benson on
16 what he wanted you to do in regards to your work?

17 A No.

18 Q So it was left up to you to decide what was important in
19 regards to the case?

20 A What I do at a crime scene is I work hand-in-hand with
21 the detectives that are searching the scene. After I
22 photograph and video, then I'm basically attached at the
23 hip to whoever is the scene detective. From there, they
24 locate evidence, I place a number beside it, I take
25 pictures of it, and I collect it.

1 Q So that's my question to you. During that timeframe,
2 did you receive any other instructions from any of the
3 detectives concerning what you should do in regards to
4 this case?

5 A No.

6 Q So was it left up to you to decide the extent of the
7 forensic investigation then?

8 A Pretty much, yes.

9 Q Now, have you ever taken any classes in bloodstain
10 pattern analysis?

11 A Yes.

12 Q Can you tell me what investigations you did in regards
13 to that?

14 A I didn't do one.

15 Q Now, in regards to that, are you aware that there can be
16 latent blood at the scene of a shooting?

17 A Yes.

18 Q And that would be as a result of a gunshot, is that fair
19 to say?

20 A Yes.

21 Q And a latent amount of blood would be blood that you
22 couldn't see unaided, is that fair to say?

23 A Yes.

24 Q And there can be blood spatter which comes out in a
25 spray that is so fine that you cannot see it with the

1 human eye, is that correct?

2 A Correct.

3 Q Now, there's a way to detect if that is present in a
4 room, isn't that correct?

5 A Yes.

6 Q And, in fact, you do it with the --

7 MS. KOOIMAN: Object, your Honor, to the
8 leading.

9 THE COURT: I'll allow it for this stage of
10 your inquiry. Go ahead.

11 MR. MCNEISH: Thank you.

12 Q (By Mr. McNeish) Well I'll ask you, how is it done?

13 A We use what's called an alternate light source.

14 Q Are there also any other kinds of ingredients that you
15 have to use to be able to see that latent blood?

16 A There's other tools we can use called reagents. What
17 they do is they chemically react to the proteins and the
18 fluids that are in the blood. And then they either
19 fluoresce, or under a black light you'll be able to see
20 them.

21 Q So is it fair to say the process is that these agents
22 are dispersed in the room in some fashion?

23 A Yes.

24 Q And then it creates a chemical reaction, is that fair to
25 say?

1 A Yes.

2 Q Then with the use of special lighting, you can actually
3 see the latent blood by the use of this artificial
4 lighting and you take a photograph of it?

5 A Yes.

6 Q Was any of that done at this investigation?

7 A No.

8 Q Now, after Mr. Page was removed from the location, did
9 you take any photographs concerning what was underneath
10 Mr. Page?

11 MS. KOOIMAN: Object to this line of
12 questioning. He asked him this on the cross examination
13 in the State's case. It is cumulative.

14 THE COURT: I'll allow you.

15 MR. MCNEISH: Thank you.

16 THE COURT: I mean, I assume you're going
17 somewhere as opposed to rehashing what you did before.

18 MR. MCNEISH: Yes, sir.

19 THE COURT: Okay.

20 MR. MCNEISH: Thank you.

21 Q (By Mr. McNeish) Did you take any photographs
22 underneath where Mr. Page's body had been?

23 A Not directly underneath. If I took any other pictures,
24 they were probably taken with where the evidence markers
25 were placed.

1 Q But is it fair to say that there wasn't any photographs
2 taken that would show the blood stains that were under
3 Mr. Page's body?

4 A No.

5 Q And you didn't attempt to seize, for example, or cut out
6 the carpet or any of the other pieces of areas that were
7 near Mr. Page's body?

8 A No.

9 Q You didn't save the bedspread that was on Mr. Page's
10 body, is that fair to say?

11 MS. KOOIMAN: Objection, your Honor, there
12 wasn't a bedspread.

13 MR. MCNEISH: Excuse me, I misstated
14 something, I apologize. I'll rephrase the question.

15 Q (By Mr. McNeish) In Mr. Page's room or room that you
16 found Mr. Page, there was a bed in there, is that
17 correct?

18 A Correct.

19 Q On that bed there was a bedspread, is that correct?

20 A I don't recall.

21 Q Okay. Underneath Mr. Page, underneath one of his legs
22 there was also an orange sweater, is that correct?

23 A From the pictures I saw, there was something orange, I
24 don't know if it was clothing or not.

25 Q But you didn't take that as a piece of evidence, did

1 you?

2 A No.

3 Q Did you take any of the items that were around Mr.
4 Page's body other than the gun and the bullet that was
5 underneath his bed as evidence?

6 A No.

7 Q Did you do any kind of testing at all on either the
8 clothes or any of the surrounding area to test whether
9 spots there may have been blood?

10 A No.

11 Q And there are tests that you can use where you use
12 chemicals to test to see whether a stain is actually
13 blood, is that fair to say?

14 A Yes.

15 Q And you didn't do any of that, is that correct?

16 A Correct.

17 Q ~~You did do the trajectory analysis, is that correct?~~

18 A Yes.

19 Q And you testified to that before. Would you agree that
20 to get an accurate reading that it is best to have two
21 points of reference for the trajectory rod?

22 A Yes.

23 Q And, in fact, you created a second point by putting it
24 through the piece of luggage that was behind the door
25 that held the backpack, is that correct?

1 A Correct.

2 Q And so, in theory, what that did was that gave you two
3 points, one point going through the piece of luggage,
4 correct?

5 A Yes.

6 Q And that trajectory rod came through the door and out
7 the spot where the bullet hole was, is that correct?

8 If I'm confusing you, just tell me, I may be
9 confusing everybody now. So my question to you is you
10 anchored one end of the rod in the piece of luggage that
11 was behind that door, is that correct?

12 A Yes.

13 Q And then you continue that rod out through the closet
14 door where you believe the bullet entered that closet,
15 is that fair to say?

16 A Yes.

17 Q So, again, the importance of that is you now have two
18 points to create what you believe is the line of fire,
19 is that correct?

20 A Yes.

21 Q So you're not supposed to move anything when you do
22 that, is that correct?

23 A Yes.

24 MR. MCNEISH: Your Honor, this is defense
25 Exhibit 196, I'll ask this be played.

1 MS. KOOIMAN: I would ask it first be admitted
2 and identified.

3 MR. MCNEISH: Okay.

4 Q (By Mr. McNeish) Mr. Anderson you took photographs at
5 the scene, is that correct on that night?

6 A Yes.

7 Q And let me generally ask you about that then. The
8 photographs that you take, I think you testified that
9 you did a video, is that correct?

10 A Yes.

11 Q And then after that, you did take photographs, is that
12 correct?

13 A I took the photos, then did the video. That's the
14 order, I take the photos first and then the video.

15 Q So are you sure about that?

16 A Yes.

17 Q Okay. So when the video is taken, you would have
18 already taken the photographs?

19 A Yes.

20 Q Okay. What do you do with the video after you take the
21 video?

22 A Once the videoing is complete, we upload it onto our
23 case image server. That's where it is stored.

24 Q Then in regards to the photographs, what do you do with
25 those?

1 A Same thing, stored on the case image server.

2 Q And then do you know if those are ever provided to the
3 Prosecutor's Office as in a disk form?

4 A I believe so.

5 MR. MCNEISH: Your Honor, at this time I move
6 to admit Defense Exhibit 196. I believe the State --

7 MS. KOOIMAN: No objection, your Honor.

8 THE COURT: There being no objection, it is
9 admitted.

10 (WHEREUPON, Defense Exhibit 196
11 admitted)

12 MR. MCNEISH: Thank you, your Honor.

13 Q (By Mr. McNeish) Now, let me ask you this, when you
14 take these photographs, the photographs come up in a
15 chronological order, is that fair to say?

16 A Yes.

17 Q So the first photograph that you would take of the
18 photographs that we're going to see today would, in
19 theory, show the card that you create when you start
20 taking photographs, is that correct?

21 A Yes.

22 Q And then from there, they go in a chronological order
23 into your last photograph, is that correct?

24 A Yes.

25 Q Mr. Anderson, the screen that you see, is this something

1 that you might have seen in the past where it would show
2 the order of photographs?

3 A Yes.

4 Q And you would agree with me that, in theory, the first
5 thing I'm about to hit now should be the beginning --

6 A Yes.

7 Q Of somebody's.

8 MS. KOOIMAN: Your Honor, I'd just note for
9 the record that on the screen at this time is the file
10 for the thumbnails of the photographs listing the JPEGs,
11 so the number of JPEGs.

12 MR. MCNEISH: That's correct.

13 Q (By Mr. McNeish) Now, Mr. Anderson, this was not your
14 set of photographs, is that correct?

15 A Correct.

16 Q There was somebody there before you taking photographs?

17 A Yes.

18 Q Just quickly go through this, that's the outside,
19 correct?

20 A Correct.

21 Q I may or may not ask you questions, I'll try to go
22 through this quickly to get to yours. Now, this
23 photograph was not taken from you, is that correct?

24 A Correct.

25 Q But does this scene look familiar, though?

1 A Yes.

2 Q Now --

3 MS. KOOIMAN: I'll note for the record it is
4 the -- what number is that, what image was that on the
5 CD.

6 MR. MCNEISH: It says at the top 0609 JPEG.

7 MS. KOOIMAN: Thank you.

8 Q (By Mr. McNeish) Now, underneath Mr. Page's left leg,
9 do you see a piece of orange something?

10 A Yes.

11 Q I've now gotten to the section that says, I think, 2665
12 JPEG, do you recognize this one?

13 A Yes.

14 Q What would this be?

15 A This is my rear card that I take a picture of before I
16 start taking photos.

17 Q It indicates the date and the time?

18 A Yes.

19 Q Again, we're going in a direct order of how you would
20 take these photographs, is that fair to say?

21 A Yes.

22 Q So this is the first photograph you took outside, is
23 that correct?

24 A Yes.

25 MS. KOOIMAN: I'd just note that's 2666.

1 MR. MCNEISH: Okay. I'll try to be better
2 when I ask him questions about it.

3 Q (By Mr. McNeish) This is 2670, again, this is the
4 entrance way into the location, is that correct?

5 A Correct.

6 Q Now, you stepped back, this is 2671, is that correct?

7 A I tilted the camera down.

8 Q Okay. Does this camera have the ability to do
9 close-ups?

10 A Yes.

11 Q How close can you get to an item when you want to
12 photograph it?

13 A It just depends on if the camera would focus on it.
14 Usually, anywhere from three to six inches away is the
15 focal point. Usually, I try to stay a little bit
16 farther and try to zoom in and focus on it.

17 Q Okay, thank you. Now, this is 2677, this is the dining
18 room area, is that correct?

19 A Yes.

20 Q Now, you see in the middle right-hand side of that
21 photograph is a box, is that correct?

22 A Yes.

23 Q Now, behind that box is what looks like a doorknob, do
24 you see that?

25 A Yes.

1 Q Do you know what that goes to?

2 A I believe it goes to the upstairs residence.

3 Q Now, you're looking from, in this one at 2679, this is
4 from the -- approximately from the box looking back to
5 the living room area, is that correct?

6 A Yes.

7 Q On that table you see an item, do you know what that
8 item is?

9 A It's the sign-in clipboard for the scene.

10 Q Again, I'm going through these, but would you agree,
11 again, these are in the order that you have taken them?

12 A Yes.

13 Q Now, this is nine -- excuse me 2694, again, you have
14 taken this photograph, is that correct?

15 A Yes.

16 Q And on the left-hand side, do you know whose room that
17 was supposed to have been?

18 A On the left-hand side, it is the southwest corner
19 bedroom.

20 Q But you don't know who would have been living in that
21 room?

22 A No.

23 Q But the one on the left is not where Mr. Page's body was
24 found, is that correct?

25 A Correct.

1 Q This is 2704JPEG, in the lower right-hand corner do you
2 see a computer stack?

3 A Yes.

4 Q And, again, that was not in the room that Mr. Page's
5 body was found, is that correct?

6 A Correct.

7 Q Now, I've now got 2706 JPEG, do you see this monitor
8 that's in the top right half of the photo?

9 A Yes.

10 Q Do you know what's behind that monitor?

11 A Looks like a window.

12 Q But you don't -- you never attempted to access that
13 window?

14 A No.

15 Q Do you know how high off the floor that window was?

16 A Not offhand.

17 Q ~~Now, again, this is now a photograph that was taken,~~
18 this is 2711, and this depicts the area just inside the
19 room looking back at the closet with the backpack, is
20 that fair to say?

21 A Yes.

22 Q Again, you would have just been in the entranceway of
23 that room? In other words, on the right-hand side, can
24 you see the outside wall to that room?

25 A Yes.

1 Q Would you agree that the spot you were standing when you
2 took this photograph must have been just inside the
3 room?
4 A Yes.
5 Q Now, again, you see in this photograph, this is 2712,
6 did you notice whether the monitor was on in that room?
7 A It was on.
8 Q Okay. Then in the lower right-hand corner there, did
9 you see there's a laptop, is that correct?
10 A Yes.
11 Q Do you know if that was seized as evidence?
12 A I would have to refer to the evidence collection report.
13 Q Okay. Can you look at that? Do you have that in front
14 of you, sir?
15 A It is the one you took back.
16 Q I'll hand you back what's marked Plaintiff's
17 Exhibit 120. Again, is that the exhibit that you
18 created?
19 A Yes.
20 Q Could you look at that?
21 A Says property number 54 was an HP Pavilion laptop on the
22 bedroom floor.
23 Q You're saying that was the laptop that was seized?
24 A Yes.
25 Q That was taken into evidence, is that correct?

1 A Yes.

2 Q It is the one we can see in the photograph 2712?

3 A Yes.

4 Q And, again, the monitor was on, is that correct?

5 A Correct.

6 Q You can see that in the photograph, is that correct?

7 A Yes.

8 Q And you can see it again in this one, this is 2713, is
9 that correct?

10 A Correct.

11 Q Now, I'm asking, this is 2714, again, the piece of
12 clothing that's underneath Mr. Page's left foot, you
13 didn't see that, is that correct?

14 A Correct.

15 Q And you see the notepad that looks -- I'm a little bit
16 colorblind, but aqua in color, to me, by his left knee
17 that's on the floor?

18 A Yes.

19 Q Did you see that?

20 A I don't think so.

21 Q How about any of the other items that you see, like
22 those plastic bags?

23 A No.

24 Q Again, this is still photographs that you've taken, is
25 that correct, this is 2717?

1 A Yes.

2 Q This depicts the gun that was found next to Mr. Page's
3 body?

4 A Yes.

5 Q Now, this -- now we have zoomed in a little bit on this
6 photograph, is that fair to say?

7 A Yes.

8 Q On the pants that you see there, do those look like
9 stains to you in any way?

10 A Yes.

11 Q What about on the piece of paper that's there on top of
12 that aqua notebook that I referred to earlier, does that
13 look like that's also blood stains?

14 A Yes.

15 Q You didn't seize that, though, did you?

16 A No.

17 Q Now, this is 2721, do you know if that was your hand
18 that was holding that back?

19 A No, that was the medical examiner.

20 Q So by this time, the medical examiner was there?

21 A Yes.

22 Q And the medical examiner was taking photographs also
23 generally about the same time as you were?

24 A Yes.

25 Q Now, by this time, the gun had been removed, is that

1 correct?

2 A Yes.

3 Q In fact, his hand had been moved, hadn't it?

4 A I'm not sure if had or not.

5 Q Well, earlier we looked at a photograph, do you see that
6 stain --

7 MS. KOOIMAN: What number?

8 MR. MCNEISH: I'm sorry, 2723.

9 Q (By Mr. McNeish) Do you see that now we can see what
10 looks like a blood stain on the left-hand side of the
11 hand in the carpeting?

12 A Yes.

13 Q Now, I'll go backwards, now, do you see the same stain
14 there on the carpet that we saw in that other
15 photograph?

16 A No.

17 Q ~~So by that point in time, his hand must have been moved,~~
18 is that correct?

19 A Yes.

20 Q And this is 2717 I'm referring to where the gun is
21 visible. Here, obviously somebody has -- this is 2724,
22 somebody is actually holding up Mr. Page's arm, is that
23 correct?

24 A Correct.

25 Q So somebody else was holding his arm while you took

1 photographs, is that fair to say?

2 A Yes.

3 Q Now, again, here it looks like, this is 2726, it looks
4 like you're actually taking photographs of the blood
5 stain, is that correct?

6 A Yes.

7 Q Would you agree with me that it's important to locate
8 and take as many photographs of the blood that would be
9 at a scene of a gun shooting?

10 A Yes.

11 Q And here, this is 2727, you, in fact, actually took a
12 close-up of that, is that fair to say?

13 A Yes.

14 Q Now, here we have got the box again, is that correct,
15 this is in 2728?

16 A Yes.

17 Q So you now left the room, apparently, and are taking
18 photographs of the box. The box has been moved, though,
19 hasn't it?

20 A Yes.

21 Q Now, this is in 2730, now, is this when you begin
22 documenting the evidence, is that correct?

23 A Correct.

24 Q And this is a photograph of the bullet that you found
25 under the bed, is that correct?

1 A Correct.

2 Q Number 4 is actually 2732, this is actually the computer
3 that we were talking about earlier, is that correct?

4 A Correct.

5 Q Now you see 5 and 6 in 2733, these are the two phones
6 that you located, is that correct?

7 A Yes.

8 Q By this time, though, things had been moved, hadn't
9 they?

10 A Yes.

11 Q Now, this is, in fact, in a different location, is that
12 correct?

13 A Same room up on the shelf by the monitor.

14 Q These books, you took a photograph, this is 2738, is
15 that correct?

16 A Correct.

17 Q ~~Is there a reason why you would have taken photographs~~
18 ~~of those books?~~

19 A The detective asked me to.

20 Q This is in 2739, this is how these items were actually
21 found?

22 A Which is what the detectives located and found that they
23 wanted to be collected as evidence and I took a picture
24 of it.

25 Q But what I'm saying is somebody looked through that bag

1 and found those items, put them out there so you could
2 take a photograph of them, is that correct?

3 A Yes.

4 Q And, again, now we have a close-up of that, isn't that
5 correct?

6 A Correct.

7 Q That is in 2740, letters to Mr. Page, is that correct?

8 A Correct.

9 Q Now, are we in the same room or a different room?

10 A In the southwest corner bedroom.

11 Q Again, all the items there had been items moved to put
12 them in those locations?

13 A Yes.

14 Q For example, where it says number 11, that wasn't on the
15 bed when you arrived there, is that correct?

16 A Correct.

17 Q Now, is this the last photograph you took before you
18 left the location?

19 A Yes.

20 Q And then I think you testified that you were then asked
21 to come back at a later time, is that correct?

22 A Yes.

23 Q Now, this is 2763. This would be the first photograph
24 that you took when you came back, is that correct?

25 A I believe so.

1 Q Things had already been moved in that room, is that
2 correct?

3 A Yes.

4 Q In fact, that door had been opened already?

5 A I don't know if the door was opened or not. I didn't
6 take any pictures the first time.

7 Q Well, do you ever play that game where you look at two
8 photographs and try to find out what's missing and
9 what's been moved?

10 A Yes.

11 Q I'm asking you to look at this photograph, okay. I'm
12 going to go back. Do you see anything in that
13 photograph that you don't see in the other one?

14 MS. KOOIMAN: I'll note that's 2712.

15 Q (By Mr. McNeish) Do you see anything?

16 A Looks like something hanging on the doorknob.

17 Q ~~Yes. So when you went back the second time, that,~~
18 ~~apparently, was gone, is that correct?~~

19 A Yes.

20 Q Do you know when somebody does a clear a scene, whether
21 or not they're supposed to look in closets for people?

22 A I imagine.

23 Q Okay. But that's not your expertise, is that fair to
24 say?

25 A Correct.

1 Q When you went back the second time, you had another
2 person there with you with, is that correct?
3 A Yes.
4 Q Who was that?
5 A Detective Simmelink was with me.
6 Q He was assisting you in trying to locate this additional
7 piece of evidence you thought was going to be found
8 there?
9 A Yes.
10 Q Now, we're back to 2763, do you agree that you don't see
11 whatever that piece of clothing or article was on the
12 door anymore?
13 A Correct.
14 Q Again, this is when you had gone back later in the day?
15 A Yes.
16 Q Is this the backpack you testified to earlier that you
17 believe the bullet went through, is that correct?
18 A Yes.
19 Q At some point in time, you had to take the backpack off
20 there, is that correct?
21 A Correct.
22 Q Did you attempt to just open this door instead?
23 A I believe that's how I got into the closet.
24 Q My question is, do you believe this is how you got in
25 there?

1 A Yes.

2 Q Didn't you take the backpack off and open that door?

3 A Yes.

4 Q Well, there's two sets of doors here, is that right?

5 A I can't see it in that picture, it looks like there is.

6 Q But there is no door handle here, is there?

7 A Correct.

8 Q Now, this is 2764, this is a relative close-up of that
9 bullet hole, is that correct?

10 A Correct.

11 Q This is 2766, this is the back of that backpack, is that
12 correct?

13 A Correct.

14 Q So at this point in time, you must have taken it off to
15 take this photograph, is that fair to say?

16 A Yes.

17 Q ~~Now, this is 2767, this is a blurry photograph of a~~
18 ~~hole, is that fair to say?~~

19 A Yes.

20 Q Now, here is 2768, is that a better photograph of the
21 hole that you found?

22 A Yes.

23 Q Did you at any point in time put up a ruler or do
24 anything to indicate the size of that hole?

25 A No.

1 Q So the trajectory rods that you used, those come in
2 different sizes, is that fair to say?
3 A Yes.
4 Q Did you note anywhere in your report the size of the
5 trajectory rod that you used?
6 A No.
7 Q Now, this is 2769, by this time you must have opened a
8 door, is that correct?
9 A Yes.
10 Q Now, and that door folds outward, is that correct?
11 A I believe so.
12 Q So the door would have been opened, and, now this is the
13 scene of the front of that piece of luggage, is that
14 correct?
15 A Yes.
16 Q And you can see here it looks like fiber, is that
17 correct?
18 A Yes.
19 Q And there are these pieces of something on this piece of
20 luggage, do you see those?
21 A Yes.
22 Q Do you know what those are?
23 A No idea.
24 Q No idea. Well, I'll show you. This is also a
25 photograph of that entrance hole, is that correct?

1 A Yes.

2 Q Now, there is a hand holding that item, who would be
3 holding that?

4 A That's my hand.

5 Q So you're holding it and taking a photograph at the same
6 time?

7 A Yes.

8 Q Are you lifting it up?

9 A No, just holding it in place.

10 Q Why aren't you just sitting on your knees like I am and
11 taking this photograph?

12 A I don't know.

13 Q Now, these items here, does this look like wood from the
14 hole that came out of that closet?

15 A Yes.

16 Q So you think that's what it is probably?

17 A It could be, yes.

18 Q Now, we also have, again, this is another photograph of
19 this fiber, is that correct?

20 A Yes.

21 Q And that was 2771. And then, again, you're saying that
22 you're holding that and taking a photograph at the same
23 time, is that correct?

24 A Yes.

25 Q Now, this is the back of that, is that correct?

1 A Correct.

2 Q Where are you taking this photograph from?

3 A Above it, straight down.

4 Q So you're not behind it, is that correct?

5 A Correct.

6 Q But this is the back of the backpack, or not the
7 backpack, this piece of luggage, is that correct?

8 A Yes.

9 Q Now, we have the next photograph, and this is important,
10 this is 2773, what does this photograph depict?

11 A The spent round found in the closet.

12 Q At this time, you pulled that box back away from the
13 wall, is that correct?

14 A Yes.

15 Q So, now, you must have moved that piece of luggage in
16 the front of that box to get there, isn't that correct?

17 A I would assume so, yes.

18 Q That's the only way you could get to that location is to
19 move that piece of luggage, to move that box, is that
20 correct?

21 A Yes.

22 Q The next one, 2774, now, this is the spent round, is
23 that correct?

24 A Yes.

25 Q Now we have the first photograph, would you agree, in

1 2775 of the rod?

2 A Yes.

3 Q So now, you've already moved the piece of luggage, you
4 moved the box, and now you're attempt to go recreate
5 where the piece of luggage was, is that correct?

6 A Yes.

7 Q So this is 2776, and now you're putting a rod in through
8 the piece of luggage, is that correct?

9 A Yes.

10 Q But you would have to agree that you've already moved
11 the box and piece of luggage, is that correct?

12 A Yes.

13 Q So would you agree that you can't state with any degree
14 of certainty that that piece of luggage is in the exact
15 same spot as when a bullet was supposed to have gone
16 through it?

17 A Correct.

18 Q Now, this is 2778, this, again, is a photograph that you
19 took attempting to measure the angle, is that correct?

20 A Yes.

21 Q And you have to put this black cone at the bottom of
22 that rod going in there to stabilize it, is that
23 correct?

24 A Yes.

25 Q Because the hole is so big --

1 MS. KOOIMAN: I'm going to object to this
2 portion of questioning. He's already gone through all
3 this on cross examination the first time, as far as the
4 black cone.

5 THE COURT: Sure seems like we have.

6 MR. MCNEISH: If I can be heard, your Honor.

7 THE COURT: All right.

8 MR. MCNEISH: I think it is important.

9 THE COURT: I'm sure it is, but it's been
10 asked and answered, wouldn't that preclude it being
11 asked again?

12 MR. MCNEISH: If you can give me some leeway,
13 I would appreciate it. If I can ask one or two
14 questions, your Honor.

15 THE COURT: So what you're telling me is
16 you're going to show it has relevance above and beyond
17 what you asked it for.

18 MR. MCNEISH: Yes, sir.

19 THE COURT: Thank you.

20 Q (By Mr. McNeish) Again, the whole idea is to find the
21 actual trajectory, that you have to find a stable two
22 sets of points, is that correct?

23 A Yes.

24 Q And without that cone on the end, would you agree that
25 that rod would be able to be moved left and right?

1 A Yes.

2 Q It would also be able to move up and down?

3 A Yes.

4 Q Now, you moved -- this is 2781, you've now put the box
5 and the piece of luggage back in the original locations,
6 is that correct, what you believe is the original
7 location?

8 A Yes.

9 Q So would you agree with me that your testimony that you
10 gave earlier was not correct in regards to when you
11 would have moved and put the cones and the rods through
12 the door?

13 A In sequence?

14 Q Yes.

15 A Yes.

16 Q And, again, unless you can get two stable points, your
17 ~~ability to get any kind of accuracy in regards to the~~
18 angle of fire is faulty, is that correct?

19 A There's going to be some leeway in it, but, yes.

20 Q Well, again, you're supposed to get it and put the rod
21 in before you move anything, is that correct?

22 A Yes.

23 Q Now, detective, was that the end of your photographs?

24 A Yes.

25 Q And, again, what about when you came back the second

1 time, did you take any photographs of where Mr. Page's
2 body had been earlier that day?

3 A No.

4 Q You took three sections of video, is that fair to say?

5 A Yes.

6 Q Two of them were very, very short, is that fair to say?

7 A Yes.

8 Q One was longer, is that correct?

9 A Yes.

10 Q And, again, you took the video, you said, after the
11 actual photographs you were taking?

12 A After the initial overall photographs, the ones before
13 we started collecting evidence. So I took my initial
14 overall photos, then I took a video, then everybody came
15 in and started searching.

16 Q Okay. So is this video that you would have taken that
17 day?

18 A Yes.

19 Q Now, you didn't take any photographs of this closet, did
20 you?

21 A Not that I'm aware.

22 Q We went through all the photographs, do you think you
23 did or do you not remember or --

24 A No, I didn't.

25 Q Previously, you'd been asked questions by Ms. Kooiman

1 about whether or not you saw a pile of clothes anywhere
2 in that room, and you -- I believe you indicated, no,
3 you did not, is that fair to say?

4 A Correct.

5 Q In looking at this video do you now see a pile of
6 clothes that are in the middle right part of the video
7 screen?

8 A Yes.

9 Q And do you see a pair of checkered pants or checkered
10 something that's below the bluish looking item?

11 A Yes.

12 Q Now, again, this item that's underneath Mr. Page's left
13 foot, you don't know what that is?

14 A No.

15 Q You didn't seize that?

16 A No.

17 ~~Q Now, that's the gun that was seized that night, is that~~
18 ~~correct?~~

19 A Yes.

20 Q And you subsequently picked that up and emptied it, is
21 that correct?

22 A Yes.

23 MS. KOOIMAN: Objection, all this has been
24 covered previously.

25 MR. MCNEISH: I'll be done fairly quick.

1 THE COURT: Go ahead.
2 Q (By Mr. McNeish) You testified earlier as far as that
3 item, is that correct?
4 A Yes.
5 Q In fact, didn't the individual from the medical
6 examiner's office also pick up that gun?
7 A I picked it up.
8 Q Do you know if he held it at any time that day?
9 A I believe I held it and he took pictures of it.
10 Q Okay. Other than test firing it, did you do any
11 additional testing on it?
12 A No.
13 Q Were you asked to do additional testing on it?
14 A No.
15 Q There's also what looks like a brown bag underneath his
16 leg, left leg?
17 A Yes.
18 Q Do you see that? Again, does that look like it has got
19 blood on it?
20 A It appears so, yes.
21 THE COURT: You're talking about the paper
22 bag?
23 MR. MCNEISH: Yes.
24 THE COURT: Is that a live round we just saw?
25 THE WITNESS: Yes.

1 Q (By Mr. McNeish) On that bed, did you notice whether
2 there was any kind of covering on it?

3 A Not a sheet, but looked like a blanket.

4 Q There was also clothes on it?

5 A Yes.

6 Q Did you ever collect any of those items?

7 A No.

8 Q Did you ever test any of those items for latent blood?

9 A No.

10 Q Is that the extent of the photography that you did in
11 this case?

12 A Yes.

13 Q Again, there was never any photographs taken of the area
14 where Mr. Page's body was?

15 A Correct.

16 Q There was no attempt to collect any items for blood
17 spatter, is that correct?

18 A Correct.

19 Q And there was no request for any kind of specialist to
20 come in and to look for blood spatter, is that correct?

21 A Correct.

22 Q And Detective Benson never instructed you to do anything
23 like that, is that correct?

24 A Correct.

25 Q And you never tested anything to find blood on it, is

1 that correct?

2 A Correct.

3 MR. MCNEISH: Thank you. I don't have any
4 further questions.

5

6 CROSS EXAMINATION

7 BY MS. KOOIMAN:

8 Q Mr. Anderson, why didn't you do any blood spatter
9 analysis?

10 A I was not asked to.

11 Q You've answered several questions about latent blood
12 being present, why didn't you look for that?

13 A I was not asked to.

14 Q So everything else that you did you weren't asked to do
15 by Detective Sergeant Benson either, but you did go
16 through and take photographs, why the difference?

17 A What I do -- we have a set procedure we do when we're at
18 major scenes which is collecting video, collecting
19 photos, and documenting what the sketch is. Specialty
20 things likes trajectory analysis, blood spatter
21 analysis, are requests made by detectives.

22 Q You talked about sketches in your testimony with defense
23 counsel, you actually handed him the same sketches you
24 provided me at the same time, correct?

25 A Correct.

1 Q So he received those at the exact same time the State
2 did?

3 A Yes.

4 Q And you utilize those sketches in making your diagram,
5 the computer generated diagram, correct?

6 A Correct.

7 Q He asked you questions about monitors in both the
8 southwest bedroom and the west bedroom. Are those
9 monitors or televisions?

10 A They looked like televisions.

11 Q So monitors is his word?

12 A Yes.

13 Q And when you reviewed the photos and based on the time
14 of the search, the laptop that was found in Cory Page's
15 room, the room he was located in, is that laptop
16 connected to that television?

17 A It didn't appear so.

18 Q You don't recall ever having to take anything apart to
19 take the laptop into evidence?

20 A No.

21 Q And defense counsel provided you the ETC report, State's
22 Exhibit 120, reviewing that, were there any other
23 laptops taken into evidence?

24 A No.

25 Q There was only one laptop taken into evidence?

1 A Yes.

2 Q That was found in Cory Page's room, correct?

3 A Yes.

4 Q The tower that was found in the defendant's room, was
5 that hooked up to anything that you recall?

6 A Not that I recall.

7 Q You did overall photos of the scene prior to moving any
8 of the evidence?

9 A Yes.

10 Q When you did that overall photo, now that you've had an
11 opportunity to review those, could you see that backpack
12 on the closet door? Were you able to see in those
13 photographs that there actually was a hole in the
14 backpack?

15 A Yes.

16 Q You guys just missed that?

17 A Yes.

18 Q You testified today that some of your testimony that you
19 gave last week, or the week before -- whenever you were
20 here, sorry, I don't remember the date -- some of the
21 testimony that you gave then wasn't accurate in as far
22 as the order things were done once you returned and did
23 the trajectory analysis, and you testified that the rods
24 were done now after you had moved some of the items, and
25 then you put them back in place, is that correct?

1 A Yes.

2 Q Your testimony that you gave previously about that, why
3 was there a difference in it?

4 A I didn't recall at the time.

5 Q So just now seeing the photos and the order in which
6 they were done, you acknowledge that, yeah, you moved
7 those first?

8 A Yes.

9 Q Although you moved those items first, you didn't change
10 anything about where the holes were located in those
11 items, did you?

12 A No.

13 Q You didn't make the hole bigger in that luggage?

14 A No.

15 Q So you still lined up that luggage with the hole in the
16 closet door?

17 A Yes.

18 MS. KOOIMAN: Your Honor, I do have one
19 question. The Court had admitted for impeachment
20 purposes I believe State's Exhibit 120, but there's no
21 follow-up questions done on it. I'm not sure where the
22 impeachment was at.

23 THE COURT: Well, of course, I don't know
24 enough about the document to know whether the follow-up
25 questions were or were not about the document, so I'm

1 not quite sure how to respond. Here's what happens,
2 even if it is admitted for impeachment, the Court cannot
3 consider it for substantive information.

4 MS. KOOIMAN: I understand, your Honor, I just
5 want to be able to follow up on some of the stuff.

6 THE COURT: If you wish to follow up on that
7 item which I allowed for impeachment, you may do so.

8 MS. KOOIMAN: Thank you, your Honor, I
9 understand that, but I don't -- defense counsel didn't
10 follow up with any questions once he offered it into
11 evidence, so it wasn't actually utilized for
12 impeachment.

13 THE COURT: Understand, that's something the
14 two of you would know that I couldn't possibly know.

15 MS. KOOIMAN: Right. Just give me a minute to
16 take a look at it, it is 21 pages.

17 Q (By Ms. Kooiman) Mr. Anderson, based on your testimony
18 today and the questions that were asked by defense
19 counsel, is anything that would change any of your
20 findings in this case?

21 A No.

22 Q And I just want one clarification, in your testimony on
23 direct examination, defense counsel was going through
24 photos with you, and it wasn't until he got to the photo
25 where you have the number placard for evidence items

1 that he says that's when you started to document
2 evidence. You actually start documenting evidence as
3 soon as you start taking photos, before those placards
4 are put out, correct?

5 A Correct.

6 Q So you do an overall documentation of the entire scene?

7 A Yes.

8 Q Then you go back through and do a video of the entire
9 scene?

10 A Yes.

11 Q And then you go back through and do the evidence
12 placards?

13 A Yes.

14 Q So although items are moved during service of the
15 warrant and for the photos for the evidence placard, you
16 have already gone through once and done an overall
17 scene?

18 A Yes.

19 Q And that bloodstain that he drew your attention to, that
20 was underneath the arm of Cory Page, and then was not
21 visible until that arm was moved?

22 A Yes.

23 Q You had already photographed and documented where the
24 arm was at when you initially entered into the
25 residence, correct?

1 A Yes.

2 Q And although you didn't take the first set of photos
3 that were done by Deputy Smith, you have had an
4 opportunity to review those?

5 A No.

6 Q The first set of photos that were up there?

7 A Yes.

8 Q And those photos were taken prior to your arrival?

9 A Yes.

10 MS. KOOIMAN: Thank you. Nothing further.

11

12

REDIRECT EXAMINATION

13

BY MR. MCNEISH:

14

Q Do you have your dot 7 there? Now, last week I asked
15 you specifically questions on the dot 7, your report,
16 about the order in which you found the evidence, is that
17 correct?

18

A I believe so.

19

Q And I specifically asked you to read your report on page
20 six of six and read the order in which you collected the
21 evidence, is that correct?

22

A Yes.

23

Q And, in fact, in your report you document it correctly
24 that you did the search, you found the spent round, and
25 then after that, you conducted your trajectory analysis,

1 isn't that correct?

2 A Yes.

3 Q Your report actually had it correct, is that correct?

4 A Yes.

5 Q But your testimony was different, you said it the other
6 way, is that correct?

7 A Yes.

8 Q Now, you've already testified that those rods can move
9 around if it's just going through the closet door, is
10 that correct?

11 A Yes.

12 Q So when you moved the piece of luggage, you can't state
13 with any degree of certainty that it was in the exact
14 same location?

15 MS. KOOIMAN: Objection, asked and answered.

16 THE COURT: I'm sure you've asked that at
17 least twice before.

18 MR. MCNEISH: Your Honor, this is the last set
19 of questions, it will take two questions.

20 THE COURT: Sure.

21 MR. MCNEISH: Thank you.

22 Q (By Mr. McNeish) So you moved the suitcase, is that
23 correct?

24 A Yes.

25 Q If you move -- if you put it down in a spot that's two

1 inches to the left or two inches to the right, that
2 would be a major difference in regards to the angle of
3 the trajectory, is that correct?

4 A Yes.

5 Q Okay. So you can't state that the piece of luggage was
6 in that exact same location, is that fair to say?

7 A Not really. With the cone being in the hole in the
8 door, it held it stabilized. When the door was closed,
9 it lined up with where I placed the luggage back.

10 Q But you had already moved the luggage, and you would
11 agree that can be moved in so many different ways?

12 A Yes.

13 MR. MCNEISH: Thank you. No further
14 questions.

15 MS. KOOIMAN: Nothing from the State, your
16 Honor.

17 THE COURT: You're excused, Mr. Anderson.

18 MR. MCNEISH: The last witness we would have
19 would be Detective Benson.

20 THE COURT: Very well. He's available Monday
21 morning?

22 MR. MCNEISH: Yes, your Honor.

23 THE COURT: Well, let's have him with us
24 Monday morning. Anything else you want to do today?

25 MS. KOOIMAN: Your Honor, I think what we had

1 hoped to do today was discuss potential WPICs, but in
2 speaking with defense counsel, he needs to talk with his
3 client about some of those issues.

4 MR. MCNEISH: We can at least address some of
5 the instructions.

6 MS. KOOIMAN: Okay.

7 (Recess taken)

8 THE COURT: Back on the record. Even though
9 this is a bench trial, I think we will talk about what
10 instructions the Court should consider and the legal
11 criteria the Court should apply. I think that's a
12 reasonable area of inquiry for counsel. So go ahead and
13 -- I don't know I'll have a definitive answer for you on
14 the concerns that you raise, but we will get the issues
15 identified and I'll have an answer for you eventually.
16 So tell me what we're talking about.

17 MS. KOOIMAN: Your Honor, as the State noted
18 in its motions in limine, the State is requesting that
19 if the Court's going to give a self-defense instruction
20 the State is requesting the first aggressor instruction.
21 The threshold for that is *Lowe*, and it's my opinion we
22 have satisfied that threshold given that the victim
23 retreated from the defendant's room.

24 THE COURT: Give me the number on that, would
25 you, please?

1 MS. KOOIMAN: I'm trying to find the WPIC on
2 it right now, I thought I put the WPIC in my --

3 THE COURT: You know, you did somewhere.

4 MS. KOOIMAN: I did, I'm not seeing it.

5 THE COURT: It's somewhere in these thousands
6 of pages we've got.

7 MS. KOOIMAN: 1604, your Honor.

8 THE COURT: Okay.

9 MR. MCNEISH: Your Honor, just as the Court
10 can probably guess, I would argue that it should not be
11 considered by the Court, just as I would argue the same
12 thing in regards to a jury based on the testimony that
13 we have heard so far. I don't think detective Benson's
14 testimony is going to change this issue. I think
15 looking at the statements that were given by my client
16 to the police, to Detective Benson, and Detective Merod
17 and the testimony that was presented today, I don't
18 think there's any indication that my client was the
19 first aggressor at all.

20 And when the State uses the term, he retreated into
21 his room, I think that is perhaps an artful way to argue
22 what she thinks, but the fact that he left the room
23 doesn't mean he retreated because my client at that
24 point in time was not the aggressor at any time when Mr.
25 Page was in his room. So it wasn't like Mr. Lewis

1 pulled out his firearm and chased Mr. Page out of the
2 room. He had left the room, was in his room when my
3 client came out of his room. And his testimony, I think
4 even his statement to the police, is that Mr. Page was
5 either just inside his room or at the doorway when Mr.
6 Lewis fired the two shots. So there's no indication
7 whatsoever that my client was the aggressor based on the
8 testimony that we've heard.

9 THE COURT: I'm going to get back to you, but
10 I need to ask Ms. Kooiman a question. Remind me, from
11 your perspective, of what the evidence is that the
12 defendant's conduct or his act provoked or precipitated
13 an incident for which self-defense is claimed. Because
14 my recollection is that -- understand, I'll be reading,
15 actually, probably read the entire trial again -- but
16 Mr. Lewis is in his room, Mr. -- I'm sorry, no, I was
17 right. Mr. Lewis is in his room, Mr. Page comes to the
18 room, whatever happens, happened in the room, then Mr.
19 Lewis left the room, he's going back to his room.

20 MS. KOOIMAN: Mr. Page left the room.

21 THE COURT: See, there I go. Mr. Page goes
22 back to his room, and then at least some evidence
23 suggests that Mr. Lewis followed him. Now, of course,
24 in the abstract, it can look one way, then when you look
25 at the architecture of the dwelling, it is probably

1 closer than the three of us are to one another right now
2 as I speak. So my question is, what is it from your
3 perspective that Mr. Lewis did that would constitute
4 provoking this?

5 MS. KOOIMAN: Your Honor, from the State's
6 perspective, had the defendant shot Mr. Page while he
7 was in the defendant's room with the firearm, we likely
8 wouldn't be here today.

9 THE COURT: Say that one more time.

10 MS. KOOIMAN: Had the defendant shot Mr. Page
11 in the defendant's bedroom when Mr. Page allegedly was
12 pointing a firearm at him, we wouldn't be here today.
13 But after Mr. Page got what he wanted, which was the
14 clothes, when it was all said and done, got what he
15 wanted and exits the room, the defendant never sees a
16 gun after that point, his hands had the clothes in them
17 at that point, he tells the officers and he testifies,
18 doesn't have a gun at that point, today he says, I don't
19 remember, but does tell the officers didn't have a gun
20 at that point. The victim leaves the room, goes out to
21 the hallway and gets into his own living space, which is
22 completely his, not threatening the defendant with a
23 firearm after that point, not pointing the gun at the
24 defendant. The defendant then retrieves his own gun and
25 takes the path of the victim back to the victim's room.

1 THE COURT: Okay, I get it. It is the walking
2 down the hall.

3 MS. KOOIMAN: It's the walking down the hall
4 as the victim has left the scene of the bedroom and
5 removed himself from it. He's still jawing and making
6 statements, according to the defendant.

7 THE COURT: Bearing in mind that this is a
8 bench trial, really, aren't we just saying, Judge Nevin,
9 this isn't something you should even consider. You
10 shouldn't even weigh this part of the matter into the
11 equation, from your perspective?

12 MR. MCNEISH: From my perspective, your Honor?

13 THE COURT: Yeah.

14 MR. MCNEISH: Yes, because I don't believe
15 that there's any evidence that my client provoked the
16 situation, started the situation. You saw the diagram
17 of the room. When the State says that he comes out of
18 his room, we're not talking about he went down 20 feet
19 down the hallway and goes into the guy's room, we're
20 talking about he comes out of the room and he's right
21 next door to the room.

22 THE COURT: And since we have the relative
23 luxury of this being a bench trial, I'll just ask you
24 this question; I mean, I can look at the question of
25 whether he's the first aggressor, and I can dismiss it

1 out of hand because while there may or may not be that
2 issue, there's not proof beyond a reasonable doubt that
3 it was thereby eliminating the specter of first
4 aggressor anyway, right?

5 MR. MCNEISH: Yes, your Honor, if you're
6 looking at it, then I'm going to say that it is a proper
7 instruction and then I'm going to weigh the evidence and
8 decide whether the State has proven beyond a reasonable
9 doubt that my client was a first aggressor. But I would
10 argue to you, as if we had a jury, I would argue that
11 there's insufficient evidence to give this instruction
12 and that that is a -- if you look at the case law, that
13 can be the ultimate downfall in self-defense cases when
14 the Court gives that instruction improperly.

15 THE COURT: Yes, especially, I mean, in a jury
16 case because the jury stops right there and never gets
17 to the question of self-defense.

18 MR. MCNEISH: That's correct, your Honor.

19 THE COURT: I understand.

20 MR. MCNEISH: And so I would, again, argue
21 that I understand that we have the luxury of this being
22 a bench trial, but --

23 THE COURT: Well, perhaps that was a poor
24 choice of words, perhaps at this juncture it doesn't
25 seem like a luxury at all.

1 MR. MCNEISH: That having been said, it would
2 be an interesting concept I guess if the Court decided
3 to say, okay, I'm going to consider the first aggressor
4 instruction and then an appellate court were to say,
5 well, the Court shouldn't have considered that. I just
6 don't believe the fact pattern is here, the evidence is
7 here, for you to even consider it based on the testimony
8 that you've heard.

9 THE COURT: Okay. Since this is a bench
10 trial, notice, I omitted the word luxury, I won't say
11 that again.

12 MR. MCNEISH: Okay.

13 THE COURT: I'll tell you on Monday what my
14 position is because I'm going to study it, and I'll go
15 back over the transcripts. But I'll be honest with you,
16 I don't see it. Maybe I'll change my mind if I look at
17 everything on Monday, but I don't necessarily see it.
18 I'm really mindful of a case law in this state which
19 says it needs to be looked at sparingly. Your concern
20 is -- I mean defense counsel's concerns are always well
21 taken, but in the context of jury trials, particularly
22 well taken because this can be a devastating instruction
23 in a self-defense case, which is the reason the case law
24 says use it sparingly. Here, I'm just looking at the
25 sequence of events. If this were a room the size of

1 this room, and if Mr. Lewis's room was, for example,
2 right in that door, and if, for example, Mr. Page's room
3 was that door there, might be having a different
4 conversation in this context. So my point is that
5 there's the whole, I guess, the space question here. I
6 mean, this was a pretty small space.

7 MR. MCNEISH: Your Honor, as I hope the Court
8 noticed, there hasn't been any evidence, other than
9 perhaps a theory, that my client could have climbed out
10 his bedroom window. But you saw the photographs in the
11 videotape of all the stuff there, to include the
12 monitor, and the only way, really, to get out of his
13 room in a logical fast way would be to go through the
14 hallway, which requires him to go right past Mr. Page's
15 bedroom to go out the door. So that's an additional
16 factor.

17 I was going to ask as part of this that there is no
18 duty to retreat, and I would ask that instruction be
19 considered. I'd ask that 16.02, justifiable homicide,
20 be considered. Also, 16.07, which is that actual danger
21 is not necessary. I was also going to ask -- this is
22 something the Court would probably want to look at
23 because I don't believe there is an instruction for
24 this, but I would propose an instruction, but the Court
25 can look at the case and see the issue, it is *State v.*

1 Andrew Janes, J-a-n-e-s, 121 Wn.2d 220, and it talks
2 about what imminent danger means versus what is
3 immediate danger.

4 MS. KOOIMAN: I think the Court already has
5 that one. I provided it to the Court early on in your
6 stack.

7 MR. MCNEISH: Anyway, it goes into an issue of
8 self-defense and talks about the definition, and they
9 use these definitions, what it means, and I think I
10 would be asking the Court to consider that.

11 THE COURT: Okay. Any other instructions you
12 guys want me to focus on?

13 MS. KOOIMAN: There's nothing out of the
14 ordinary for the State, your Honor. Defense hasn't
15 determined whether they will be asking for manslaughter.

16 THE COURT: In view of or as a result of that
17 case that I finished after this case started, I've been
18 spending a little time looking at that how it fits into
19 the facts. I was wondering if you were thinking of
20 arguing that as well. I would be interested based upon
21 these facts how that would fit into this, if at all.
22 And you don't need to answer the question right now, I'm
23 just telling you what I would be sort of thinking about.

24 MR. MCNEISH: I understand that, your Honor,
25 and I do want to talk to my client somewhat. But I

1 looked at some of the cases, and in just looking at
2 lessers and looking at the argument and trying to figure
3 out how the fact pattern that we have here would fit
4 that scenario. So I'm still kind of up in the air
5 whether or not, but, again, I want to talk to my client.

6 THE COURT: Sure, I respect that. Anything
7 else until Monday?

8 MR. MCNEISH: No, sir. But did you tell us or
9 did your judicial assistant tell us what time we should
10 start on Monday?

11 THE COURT: You know, things have been just
12 so, as my mother used to say, cattywampus with our
13 schedule, I have to look at my calendar to be sure. I'm
14 doing jury orientation again on Monday morning, I would
15 think we'd be ready to go at 9:15, 9:20 at the latest.

16 MR. MCNEISH: I'll tell Detective Benson 9:15.

17 THE COURT: I think that's safe.

18 MS. KOOIMAN: Your Honor, with the Court still
19 making determinations on jury instructions and defense
20 not having finished speaking with his client, is the
21 Court anticipating we're going to close on Monday or
22 Tuesday?

23 THE COURT: I would prefer to close on Monday,
24 if at all possible.

25 MR. MCNEISH: Your Honor, I guess if the State

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thinks that we need some additional time, perhaps we can do closing at one o'clock. I think I told you that I will be giving you the information tomorrow that would address these issues, and so --

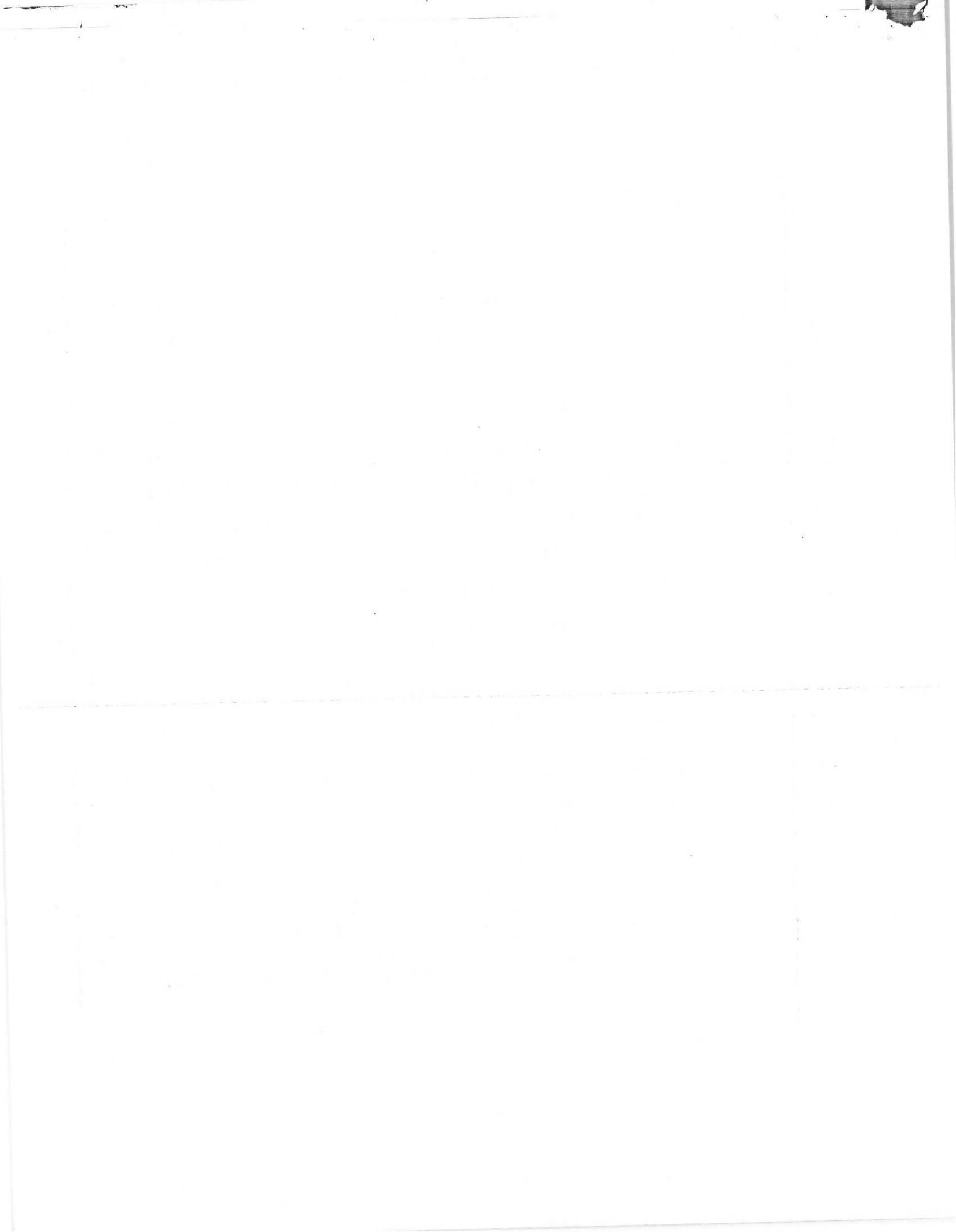
MS. KOOIMAN: That's fine.

MR. MCNEISH: I'll inform the Court if I decide I think we're going to be asking for any additional instructions. I'll send you an email with the WPIC numbers to your judicial assistant and send the same email as a copy to the State.

THE COURT: That would be great, thank you. Thank you very much. That's all we have, see you Monday.

(Court adjourned for the day)

* * * * *



ATTACHMENT

" D "

REPORT OF PROCEEDINGS 3-24-16

HEALTH SERVICES KITE



This form must be used to request non-emergency health care services, except in facilities where kiosks or sign-up sheets are used.

PLEASE PRINT SUBMISSION OF HEALTH SERVICES REQUEST MAY RESULT IN A CO-PAY

Form with fields: LAST NAME, FIRST NAME, DOC NUMBER, FACILITY, UNIT/CELL, DATE, TIME, JOB/PROGRAM, JOB/PROGRAM HOURS, DAYS OFF

If you feel you have an actual medical emergency, alert the staff and do not use this form.

TYPE OF REQUEST (check only one box per form)

- MEDICAL, DENTAL, MENTAL HEALTH, MEDICATION REFILL, OPTOMETRY, OTHER

REASON FOR REQUEST (list problem or medications needing refill)

Handwritten 'D' in a circle and several horizontal lines for notes.

OFFENDER SIGNATURE

HEALTH SERVICES RESPONSE/ENCOUNTER

This form must be filed if any information is entered below except for: simple prescription refills, finance, non-medical work/bunk change, religious diets, shoes, classification, non-health services issues

Form with checkboxes: Schedule within ___ days/weeks/months, Next available sick call, No visit required

Handwritten 'REPORT OF PROCEEDINGS' and '3-5-12' written upside down.

RESPONDER signature and stamp (all copies)

DATE and TIME

PRESCRIPTIONS MUST BE WRITTEN ON DOC 13-435 PRIMARY ENCOUNTER REPORT (PER) OR IN CIPS

Distribution: WHITE/YELLOW - Responder, PINK - Offender keeps. Distribution upon completion: WHITE - Health Record, YELLOW - Return to Offender with Response

State law (RCW 70.02) and/or federal regulations (42 CFR Part 2) prohibit disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law.

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF PIERCE
3

COPY

4 STATE OF WASHINGTON,)
5)
6 Plaintiff,)
7 Vs.) NO. 15-1-00348-0
8 CORY RANDON LEWIS,) COA. 49006-4-II
9 Defendant.)

10 VERBATIM REPORT OF PROCEEDINGS
11 March 24, 2016
12 (Court's Verdict - VOLUME VIII)

X

13 A P P E A R A N C E S

14
15 For the State: MR. NEIL HORIBE
16 DEPUTY PROSECUTOR
Tacoma, Washington
17
18 For the Defendant: MR. JACK MCNEISH
ATTORNEY AT LAW
Tacoma, Washington
19
20 Presiding Judge: JACK NEVIN
21 DEPARTMENT 6

22 KATHLEEN M. MAHR, CSR NO. 2311
23 OFFICIAL COURT REPORTER
24 PIERCE COUNTY SUPERIOR COURT
TACOMA, WASHINGTON 98402
25 (253) 798-7556

1 March 24, 2016

2 * * * * *

3 THE COURT: Please be seated. Mr. Horibe,
4 would you please call the case?

5 MR. HORIBE: Absolutely, your Honor, this is
6 the State of Washington versus Cory Lewis, Cause No.
7 15-1-00348-0. Neil Horibe for the State, I'm standing
8 in for attorney of record Lori Kooiman. The defendant
9 is present in custody with Mr. McNeish, his counsel. My
10 understanding is that we are here for the court's
11 verdict after a bench trial. Thank you.

12 THE COURT: We are, thank you. Mr. McNeish,
13 is the defense prepared to proceed to findings?

14 MR. MCNEISH: Yes, sir.

15 THE COURT: Very well. I want to take a
16 moment and share with the citizens who are present, as
17 well as with counsel, and, obviously, the most important
18 person here, Mr. Lewis, what I have looked at and how I
19 have analyzed this matter.

20 The first issue -- well, first of all, I, in going
21 over this, went through all of the Washington Pattern
22 Jury Instructions as they relate to the issues in this
23 case. That includes, of course, the elements of
24 self-defense, and it also includes the burden of proof
25 that the State has on issues of justifiable homicide, it

1 includes the elements of Murder in the Second Degree.
2 And, in fact, because I was using the 2015/2016 edition
3 of the Criminal Jury Instructions Handbook, I actually
4 went over what I believe is literally every single
5 instruction that should be given in a case like this. I
6 use that as guidance in how to apply the law to the
7 facts in this case.

8 I want to begin first with the issue of the felon
9 in possession of a firearm. Now, for reasons that I'm
10 not entirely sure I grasp, even at this late date in
11 time, counsel from the defense and counsel for the State
12 just seemed to be unable to arrive, for a variety of
13 reasons, at what, in my opinion, and it is quite
14 conceivable that I was missing something, should have
15 been a fairly simple matter to resolve by way of
16 stipulation. The reason I say this is we have a pattern
17 jury instruction which the defense emphasized, and I
18 grant is advisory, and that is Washington Pattern Jury
19 Instruction 4.78.

20 Initially, the State submitted a proposed
21 stipulation to the defense. And its language, in my
22 opinion, is not consistent with *Old Chief*, and it
23 included surplusage, and, understandably, the defense
24 would not accept it. Now, the State then submitted --
25 and I believe it is Exhibit 135 -- a conformed copy of

1 the documents of sentencing as it relates to the
2 underlying matter.

3 And, Ms. Rockett, I think I actually handed that to
4 you in the envelope, but 135 should be -- I put the
5 manila folder on your desk of the exhibits. I think 135
6 is actually right at the -- I think you'll find it at
7 the front end of it. Yeah, says Warrant of Commitment,
8 perfect, thank you.

9 All right. So then the defense provided the
10 following morning a stipulation to the State for
11 signature and the State refused to sign it. And the
12 reason they did so, I guess, is because they felt that
13 it wasn't specific enough with dates, that's at least my
14 recollection. Well, at this point, finding, frankly, an
15 inverse correlation between the level of simplicity
16 associated with that particular endeavor and the degree
17 of debate associated with it, what the court did was the
18 court accepted Exhibit 135 which is a Warrant of
19 Commitment in Cause No. 06-1-03704-1.

20 And I want to be very clear, I accepted this only
21 for the following purposes. And I followed the criteria
22 of Evidence Rule 4.78 -- I'm sorry, yeah, Washington
23 Pattern Jury Instruction 4.78, and, in fact, did not
24 even look at other areas of this exhibit other than that
25 which is required to be part of WPIC 4.78 and what I

1 believe to be is consistent with the parameters of the
2 *Old Chief* case. And, of course, we know as a backdrop
3 that this invariably presents itself in the context of
4 jury trials, but the judge occupying both the role as
5 factfinder as well as the trier of law, I embraced it.
6 I did the same thing I would have done with a jury,
7 only, if you will, I did it to myself, so to speak. And
8 I found that the copies of the Plea and Sentence and the
9 Warrant of Commitment provided here in Exhibit 195
10 convinced me that in fact the defendant did in fact have
11 an offense that constitutes a serious offense and that
12 this serious offense and the date of the filing of the
13 Judgment and Sentence was January 17th, 2007 on the
14 certified document. The offense was UDCS(J80) Cocaine,
15 Schedule II, date of crime as alleged 8/9, 2006. I find
16 that this does constitute a serious offense. And I do
17 find that in this case title is State of Washington
18 versus Cory Randon Lewis, and this was a Pierce County
19 Cause Number and I have just given you the Cause Number.
20 Accordingly, I do find that it constitutes the predicate
21 required for this particular crime, and, accordingly, I
22 enter a plea, and I am convinced that there is a basis
23 for criminal liability with proof beyond a reasonable
24 doubt as it relates to that allegation as charged by the
25 State in this matter.

1 Now, taking you to the next part of this --

2 MR. HORIBE: Your Honor, before we move on
3 from that count, I'm looking at the Information, I
4 didn't have the benefit of being here for the whole
5 trial, can I make sure the elements are covered for that
6 UPF count?

7 THE COURT: I'm sorry, you mean for the -- I'm
8 sorry --

9 MR. HORIBE: I think that your Honor just
10 rendered a verdict in Count II, is that correct?

11 THE COURT: The felon in possession.

12 MR. HORIBE: Correct. And your Honor is
13 finding him guilty beyond a reasonable doubt?

14 THE COURT: I am.

15 MR. HORIBE: So your Honor is convinced that
16 he had the predicate conviction for a serious offense?

17 THE COURT: Yes.

18 MR. HORIBE: Your Honor is also convinced that
19 he did knowingly have in his possession or under his
20 control a firearm?

21 THE COURT: It is. It is, as a matter of
22 fact, uncontroverted in this matter in this case that on
23 the day in question, the defendant did have a firearm in
24 his possession.

25 MR. HORIBE: And your Honor is convinced

1 beyond a reasonable doubt that the item that he had in
2 his possession or control was a firearm, that it could
3 propel a projectile by force of gun powder?

4 THE COURT: And the evidence in this case, in
5 fact, is that it did. And I would point out that in the
6 course of reviewing every exhibit in this case, except
7 the clothing worn by the deceased, I actually examined
8 both firearms in this matter. And they were secure and
9 I did not extend, of course, to firing them, but I
10 actually had them here. I actually did this in the
11 courtroom in front of my staff just with a view towards,
12 I don't know, appearances, propriety, so on. Yes, and
13 it was an operative firearm and it did in fact in this
14 matter dispel two projectiles, 45-caliber bullets to be
15 specific.

16 MR. HORIBE: Thank you, your Honor.

17 THE COURT: Is there anything else you would
18 like me to clarify?

19 MR. HORIBE: No, I just wanted to make sure
20 that it was very clear.

21 THE COURT: And I appreciate your efforts in
22 that, so thank you for asking those more precise
23 questions.

24 MR. HORIBE: Yes, your Honor.

25 X THE COURT: All right. The next matter takes

1 us to essentially the court's analysis as it relates to
2 the issue of what the current state of the law is. Now,
3 the defense argued, and has made reference a couple of
4 different times, to the case of *State v. Janes*, and
5 appropriately so. In having reviewed the criteria and
6 the law that I must apply, I relied, among other cases,
7 on the following: *State v. Allery*, 101 Wn.2d 591, *State*
8 *v. Painter*, which basically is referred to by *Allery*,
9 that's found at 27 Wn. App. 708, and the *Janes* case at
10 121 Wn.2d 220. And as factfinder, I'm required under
11 the *Janes* case to assess the evidence of self-defense
12 from the standpoint of the reasonably prudent person,
13 knowing all the evidence knows and seeing all that the
14 defendant sees. That's a direct quote from *Janes*.

15 In other words, this self-defense inquiry has both
16 a subjective and an objective portion. Now, the
17 subjective portion ensures that the factfinder fully
18 understands the defendant's actions from the defendant's
19 own perspective, while the objective portion allows the
20 factfinder to determine what a reasonably prudent person
21 similarly situated would have done. And I am required,
22 and did, follow those standards.

23 Additionally, I'm required and did follow the
24 mandate that the justification of self-defense must be
25 evaluated in light of all the facts and circumstances

1 known to the defendant, including those known
2 substantially before the killing. And the cite for that
3 is a case that was actually referenced in this cause
4 early on in our trial and that is *State v. Wanrow* at 88
5 Wn.2d 221.

6 And it is, of course, my job as factfinder to
7 answer the inquiry of whether the defendant acted
8 reasonably based upon everything that the defendant knew
9 at the time, understanding that a person using or
10 offering to use force may employ such force and means as
11 a reasonably prudent person would use under the same or
12 similar circumstances as they appear to that person,
13 taking into consideration all of the facts and
14 circumstances known to the person at the time of the
15 incident.

16 Now, the facts of this case -- and I'm trying to be
17 thorough, and when you attempt to be thorough you run
18 the risk of being redundant, and if I am redundant, I'll
19 err on the side of redundancy. Now, I have related to
20 you the issues regarding the stipulation and I believe
21 that we have answered sufficiently Count II.

22 Here's what I did in attempting to and in answering
23 the allegation of Murder in the Second Degree. I looked
24 at all of the exhibits in this case including the
25 weapons, but excluding clothing that was worn by Mr.

1 Page. I reviewed all the appropriate Washington Pattern
2 Jury Instructions as they relate to this case and to its
3 facts.

4 I think the operative question here is whether,
5 first, the defendant took the life of Mr. Page. I
6 realize that given the tenor of this trial and those
7 facts that have been in issue, and, more precisely,
8 those facts which are not in issue, that would tend to
9 -- it would be easy to pass over that, but the facts of
10 this case support the uncontroverted proposition that
11 Mr. Lewis did take the life of Mr. Page, and he did so
12 by firing rounds from a firearm which struck Mr. Page
13 and did result in his death. Naturally, given the
14 nature of the primary issue in this case, that's just
15 the threshold of our analysis.

16 Of course, the question, the operative question
17 here, is whether the State has proven the absence of
18 justifiable homicide and done so with proof beyond a
19 reasonable doubt. And, of course, was the defendant's
20 conduct reasonable and his beliefs reasonable and did he
21 act prudently with the standards that I have already
22 outlined from the Washington Pattern Jury Instructions.
23 At this point, my notes reflect that I was actually
24 going to quote from that jury instruction, but I think
25 that I perhaps already have.

1 The elements, of course, of Murder in the Second
2 Degree that are on the day in question, the defendant
3 discharged a firearm, that he acted with intent to cause
4 the death of, in this instance, Mr. Page, and that Mr.
5 Page died as a result of the defendant's acts, and that
6 this occurred in the State of Washington. I do find
7 that everything that occurred in this case occurred in
8 the State of Washington. And I've already indicated
9 that the court is satisfied beyond a reasonable doubt,
10 at least insofar as the cause of death of Mr. Page, that
11 it was Mr. Lewis firing the firearm.

12 As it relates to the issue of justifiable homicide,
13 of course, it is a defense to a charge of murder that
14 the homicide was justifiable as defined, that in this
15 case Mr. Lewis reasonably believed that Mr. Page
16 intended to inflict death or great personal injury, that
17 Mr. Lewis reasonably believed there was imminent danger
18 of such harm being accomplished, and that Mr. Lewis
19 employed such force and means as a reasonably prudent
20 person would use under the same or similar circumstances
21 as they reasonably appeared to Mr. Lewis, taking into
22 consideration all the facts and circumstances as they
23 appeared to him at the time of and prior to the
24 incident. And, of course, most importantly, that the
25 State has the burden of proving a reasonable doubt that

1 this homicide was not justifiable.

2 The facts presented were as follows: This was an
3 acrimonious relationship between two roommates marked on
4 occasion by fistfights between the two. Both possessed
5 firearms. Both were young men, young men trying to find
6 their way in life, as I perceived both of their
7 situations to be and their aspirations. There's a
8 logical inference that I have drawn from the evidence
9 that when they did fight, that more often -- well, I can
10 only be sure of one particular fistfight, and in that, I
11 infer that Mr. Page prevailed and resulted in Mr. Lewis
12 having a separated shoulder and seeking emergency
13 medical assistance. But it also appears to the court
14 that their chosen means of dispute resolution was with
15 their fists. Even in the night in question, my
16 understanding and my notes and my recollection of the
17 evidence was that Mr. Page's overture was, put up your
18 dukes, or some words to that effect, suggesting an
19 overture for a fistfight, apparently, again looking to a
20 fistfight as the means to resolve some dispute.

21 Now, there are a series of events beginning with
22 that night and they begin with this argument and then
23 finally the shooting. But there are also events beyond
24 the night, following the night, at which helped in some
25 ways to shed perhaps a bit more light on what occurred.

1 Now, that night they argued. Now, there has been much
2 said and observed about the forensics in this case.
3 Throughout this trial the defense argued that the
4 forensics were inadequate. And the State in its closing
5 argument acknowledged that the forensics were shoddy in
6 this matter. There's been a tremendous focus here on
7 forensics. But at the end of this day, I think that the
8 heart of this case lies with what Mr. Lewis was
9 perceiving at that point in time as such is incorporated
10 into the jury instructions that I've made reference to,
11 and what he was perceiving, and whether his conduct
12 based upon those perceptions was reasonable under the
13 statutes and under the pattern jury instructions that I
14 have already provided.

15 It is not as much about where people were standing.
16 Clearly, that's part of the issue and that certainly
17 lends itself to the defense theory in this case, but the
18 heart of this matter, again, is what was in the heart of
19 Mr. Lewis, the heart and mind of Mr. Lewis at the time.
20 And I understand and I acknowledge how the relative
21 position of the parties did lend itself to the analysis
22 of self-defense, but I also think that the forensics in
23 this case is not the dispositive analysis in looking at
24 this issue of self-defense.

25 Factually, it's important to note, from this

1 court's perspective, that this was a purely verbal
2 conflict on the night in question. And from the
3 evidence in this case, it had subsided when Mr. Page
4 retrieved whatever clothes Mr. Lewis had that he had
5 either borrowed or -- I'm sorry, that Mr. Page retrieved
6 from Mr. Lewis which had been, I don't know, borrowed,
7 given, taken back, some such thing, and the evidence was
8 that he left the defendant's room and returned to his
9 room. Now, the evidence was, as the court understands
10 it and concludes it, that when he left that room, the
11 gun was not in Mr. Lewis's hand when he left. Now, it
12 is unclear where the gun was, perhaps in his pants
13 pocket or in his belt, but there does not appear to be
14 credible evidence that he was holding it, nor is there
15 any evidence suggesting that he had it in his hand when
16 Mr. Lewis shot him.

17 The location of the gun adjacent to Mr. Page's body
18 is at best puzzling. And there's virtually no evidence
19 which in this trial adequately explains how the gun came
20 to be placed or otherwise end up exactly at that
21 X location. Fingerprints, forensic printing of that gun
22 could have helped to answer that question, but,
23 unfortunately, that was not done.

24 The evidence is from the statement of Mr. Lewis
25 that at least initially Mr. Page's back was to Mr. Lewis

1 and then Mr. Lewis in his statement to detective Morad
2 goes on to explain how Mr. Lewis -- sorry, Mr. Page
3 turned, and I infer from the testimony that Mr. Page's
4 back was to Mr. Lewis, that Mr. Lewis -- I'm sorry, Mr.
5 Page turned at which point Mr. Lewis fired. And at that
6 time, Mr. Page's hand was up somewhere in the upper
7 portion of his torso and the bullet went through his
8 wrist and into his upper chest. And my recollection of
9 Dr. Clark's testimony is it compromised either a
10 pulmonary artery or a pulmonary vein, and I, frankly, do
11 not recall which, but ultimately led to Mr. Page's
12 death.

13 There was not evidence at that point either that
14 there was a weapon in Mr. Page's hands. And that ended
15 his life. He was also shot in the deltoid area of I
16 believe the same arm and that shot actually fractured
17 part of his arm. The evidence was that Mr. Lewis
18 attempted a third shot and that his weapon jammed and he
19 was unsuccessful in that. The evidence is that Mr.
20 Lewis left the scene, he visited family, and some time
21 later called law enforcement to suggest that he had, my
22 words, not a direct quote of Mr. Lewis, discovered Mr.
23 Page's body.

24 From this point on until his final statement to law
25 enforcement, the defendant engaged in efforts to deflect

1 attention away from him, and, at least in one instance,
2 toward others. Specifically, he suggested to Mr. Page's
3 father, my notes reflect, that perhaps of those people
4 who would do Mr. Page harm, they were members of a
5 Lakewood gang or words to that effect, and perhaps maybe
6 they had something to do with it.

7 Later he disposed of the handgun with which he had
8 killed Mr. Page. He dropped it in a lake. A reasonable
9 inference is that he did not want the weapon to be
10 found. Further, reasonable inference, logical inference
11 of the evidence, is that he did not want to be connected
12 to that weapon. And I believe that this is evidence
13 that the factfinder is entitled to consider when
14 applying the law to the facts.

15 So what happened that night. Well, obviously, no
16 one will know for sure other than, at this point, Mr.
17 Lewis. I conclude that Mr. Page was agitating the
18 defendant. I think the defendant had experienced this
19 before, I think Mr. Page was inappropriate in his
20 conduct and his verbiage. He was, and I use the phrase
21 that Mr. Lewis used in his testimony, he said he was
22 woofing. He was making the overtures towards having
23 another fistfight, and, yes, he had a gun in his
24 possession. I am satisfied that he had it in his hands,
25 but then he left, he left the room. And the gun was

1 apparently not in his hands as he was carrying clothing
2 that he had retrieved from the defendant. The gun,
3 according to the defendant, was not in Mr. Page's hand.
4 My recollection is that while the defendant cannot
5 identify precisely where the gun was, he did not say the
6 defendant was holding it, perhaps in a pocket, perhaps
7 in a waistband. The point here is that Mr. Page left
8 the room.

9 The threat, to the extent there was one, and please
10 bear in mind that the evidence seems to support more of
11 a fist dispute to be resolved by a fistfight as opposed
12 to something more serious, subsided. After Mr. Page
13 left the room, the defendant retrieved his gun from a
14 laundry or clothing basket in which he kept his gun. He
15 went from his room to Mr. Page's room. There is, of
16 course, evidence of just how close he was to Mr. Page
17 when he fired, but he was at least within six feet of
18 Mr. Page's body. His shots, to the extent possible,
19 were in critical portions of Mr. Page's anatomy.
20 Understanding, of course, that when he first
21 encountered -- and perhaps this is just a matter of
22 seconds -- Mr. Page, Mr. Page's back was turned to Mr.
23 Lewis when Mr. Lewis entered that room. His hand, which
24 was not holding a gun, came up and he was shot through
25 the wrist, second shot to the deltoid area, apparently

1 fracturing his arm, the third unsuccessful.

2 The logical inference of the evidence, certainly,
3 that Mr. Page was once again agitating Mr. Lewis. His
4 words were offensive, and this had happened more than
5 once. He was picking a fistfight as he had before, and
6 one in which one could conclude that the defendant did
7 not prevail, having been taken by an ambulance with a
8 separated shoulder. But on this night the defendant
9 declined.

10 Again, no one will know for sure what happened, but
11 from the court's perspective, to the extent there was a
12 threat, and I'm not suggesting that I'm satisfied there
13 was a threat at that time upon which Mr. Lewis could
14 perceive that he was looking at imminent harm as such is
15 defined under the statute, but even at that, whatever
16 the threat was, it subsided when Mr. Page left the room.
17 Mr. Page's back, at least initially, was turned to Mr.
18 Lewis. Mr. Lewis found his gun where he kept it secured
19 and he began what is admittedly the short walk to Mr.
20 Page's room at which point he took Mr. Page's life.

21 The court finds that the elements of Murder in the
22 Second Degree have been satisfied beyond a reasonable
23 doubt. More precisely, the court finds in this case
24 that the State, which has the burden of proving beyond a
25 reasonable doubt that the homicide was not justifiable,

1 has met that burden of proof. I do not find that there
2 was reasonable belief on the part of Mr. Lewis as such
3 is defined under Washington Pattern Jury Instruction
4 16.02, I do not find there was a reasonable belief of
5 imminent danger of the harm, whether it be great
6 personal injury or death, I don't believe that
7 requirement existed as a matter of fact in this case. I
8 do not believe that Mr. Lewis employed force and means
9 as a reasonably prudent person would under the same or
10 similar circumstances as in the remaining portions of
11 17.03 and Washington Pattern Jury Instruction 16.02. I
12 find that the State has met its burden beyond a
13 reasonable doubt that the homicide was not a justifiable
14 homicide. Accordingly, I find the defendant guilty of
15 the offense of Murder in the Second Degree.

16 THE DEFENDANT: Not fair.

17 THE COURT: Mr. Horibe.

18 MR. HORIBE: Yes, your Honor, for the purposes
19 of the firearm sentencing enhancement, is your Honor
20 finding that the defendant was armed with a firearm at
21 the time of the commission of Count I?

22 THE COURT: He was.

23 MR. HORIBE: Yes, your Honor.

24 THE COURT: Gentlemen, at this time, I suggest
25 that we set out our scheduling, please.

1 MR. HORIBE: Yes, your Honor. I was asked by
2 Ms. Kooiman to request that sentencing be set over for
3 at least three weeks. Ms. Kooiman believes that the
4 victim's mother is going to be coming in from out of
5 state and she needs time to effectuate that. I'm not
6 sure what the court's schedule is, but --

7 THE COURT: Ms. Rockett can tell you.

8 MR. HORIBE: Maybe April 29th?

9 MR. MCNEISH: Would you be looking on a
10 Friday?

11 THE COURT: Yes, sir.

12 MR. MCNEISH: I wouldn't be available on the
13 22nd of April, I can tell the court that.

14 THE COURT: Okay. Ms. Rockett, let's see if
15 we can accommodate. Well, I'm not available on the 29th
16 so -- morning of the 28th at 9:00 a.m.?

17 MR. MCNEISH: I'm supposed to be in another
18 murder case that's supposed to start I think on the 26th
19 with Mr. Neeb.

20 THE COURT: Just tell me who to call.

21 MR. MCNEISH: I don't know who to call yet.

22 THE COURT: When you do, tell me and I'll call
23 them. If you want, I'll tell Judge Rumbaugh right now
24 what the deal is, it is what it is. All right, the
25 morning of the 28th.

1 Mr. Horibe and Mr. McNeish, all bail is now revoked
2 in this matter as the defendant has been found guilty.
3 He will be held without bail.

4 MR. HORIBE: Understood, your Honor.

5 THE COURT: So I'll invite you to fill out the
6 appropriate conditions of release form.

7 MR. HORIBE: I'm filling it out right now,
8 your Honor, I'm just trying to make sure I match up all
9 the priors. I assume the court will impose all
10 conditions.

11 MR. MCNEISH: If it is a no bail hold, I don't
12 think there is any conditions other than the no bail
13 hold.

14 THE COURT: I think maintaining law abiding
15 behavior and maintaining contact with your attorney, I
16 think that continues to apply, but, admittedly, there
17 are different opinions on that, there are those that say
18 once it's no bail, you don't fill out anything else.

19 MR. HORIBE: Is there anyone that your Honor
20 feels needs to have a no contact provision?

21 THE COURT: Mr. Page's father, at least at
22 this point. Obviously, we can readdress this
23 subsequently, but that I can think of at this time would
24 be no contact with Mr. Page's father.

25 MR. HORIBE: Very well, your Honor.

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THE COURT: I've signed this.

MR. MCNEISH: Is there a scheduling order we
will have to sign?

THE COURT: I expect so.

(Conclusion of Proceeding)

* * * * *

