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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff/Appellee v. RAMI ALI JABER, Defendant/Appellant.	MSC No. 162970 COA No. 352092 Circuit Case No. 18-005065-01-FC

KYM L. WORTHY (P38875) Wayne County Prosecutor/Appellee 1441 Saint Antoine Street Detroit, MI 48226 (313) 224-5777	ALONA SHARON(P68782) Attorney for Defendant/Appellant 28411 Northwestern Highway Suite 875 Southfield, MI 48034 (248) 545-4755

APPELLANT RAMI JABER'S APPENDIX

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Approved, SCAO Original – Court | Original Court; 1st copy – Corrections; 2nd copy – Corrections (for return) | 3rd copy – Michigan State Police CJIC; 4th copy – Defendant; 5th copy – Prosecutor

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS ☐ Amended	CASE NO. 18-005065-01-FC

ORI MI – 821095J Court Address 1441 St. Antoine, Detroit, MI 48226 Courtroom 701 Court Telephone No. 313-224-2491

Police Report No.

THE PEOPLE OF THE STATE OF MICHIGAN

v

Defendant name, address, and telephone no.
Rami Ali Jaber
Alias(es) -
27285 W Pleasant Ridge S Dearborn Heights, MI 48127

CTN/TCN	SID	DOB
18709683-01	MI-4538192L	10/01/1991

Prosecuting attorney name: William Charles Lawrence Bar no.: 70481

Defendant attorney name: James C. Thomas Bar no.: 23801

THE COURT FINDS:

1. The defendant was found guilty on 09/26/2019 of the crime(s) stated below:

	CONVICTED BY			DISMISSED BY*	CRIME	CHARGE CODE (S) MCL citation/PACC Code
Count	Pleas*	Court	Jury			
1			X		MURDER 2ND	750.317
2			X		FF	750.227B-A

*Insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff.

☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b).

☐ 3. HIV testing and sex offender registration are completed.

☐ 4. The defendant has been fingerprinted according to MCL 28.243.

☐ 5. A DNA sample is already on file with the Michigan State Police from a previous case. No assessment is required.

MI-J160730048757
Defendant's driver license number

IT IS ORDERED:

☐ 6. Probation is revoked.

7. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.

8. Defendant is sentenced to custody of Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM			DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.	Days		Mos.	Days	
1	12/05/2019	35	0	0	50	0	0	12/05/2019	0	0	
2	12/05/2019	2	0	0	2	0	0	12/05/2019	0	572	

☒ 9. Sentence(s) to be served consecutively to: (if this item is not checked, the sentence is concurrent)

☒ each other. ☐ case numbers _____

10. The Defendant shall pay:

State Minimum	Crime Victim	Restitution	DNA Assess.	Court Costs	Attorney Fees	Fine	Other Costs	Total
$ 68.00 x 2 = $136.00	$ 130.00	$ 0	$0	$ 1,300.00	$ 0	$ 0	$ 0	$ 1,566.00

The due date for payment is _____. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

11. The concealed weapon board shall ☐ suspend for ☐ days ☐ permanently revoke the concealed weapon license, permit number _____ issued by _____ County.

☐ 12. The defendant is subject to lifetime monitoring pursuant to MCL 750.520n.

13. **Court recommendation: COUNT 2 - FF IS TO BE SERVED PRECEDING AND CONSECUTIVE TO COUNT1 - MURDER 2ND .**

12/05/2019
Date

Judge Regina D. Thomas 53883
Bar no.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

Deputy court clerk

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22,

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STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	ORDER OF CONVICTION AND SENTENCE	CASE NO. 18-005065-01-FC

ORI MI- 821095J Court Address 1441 St. Antoine, Detroit MI 48226 Courtroom 701 Court Telephone No. 313-224-2491

THE PEOPLE OF THE STATE OF MICHIGAN vs. Rami Ali Jaber
Defendant

1. At a session of the court on 09/26/2019 before the Hon. Regina D. Thomas

a Judge of the court, the defendant was convicted by: ☒ Jury ☐ Bench ☐ Plea

of the offenses(s)	PACC code(s)
CT 1 - MURDER 2ND	**750.317**
CT 2 - FF	**750.227B-A**

2. The defendant was in court for sentence on 12-05-19 and was sentenced by the court to:

☐ Probation, for a term of _____ years. (see separate probation order)

☒ Michigan Department of Corrections, confined for a term of not less than nor more than _____

CT 1 -MURDER 2ND - 420 mos - 600 mos (35 yrs - 50 yrs)
CT 2 - FF - 2 YRS — years.

The maximum statutory penalty for the crime(s) of which said defendant stands convicted is _____ years.

☐ Jail confinement for _____ days/months.

☐ The conviction is reportable to the Secretary of State under MCL257.732 or 281.1040.

The defendant's drivers license number is MI-J160730048757

RECOMMENDATION CT 2 -FF IS TO BE SERVED PRECEDING AND CONSECUTIVE TO CT 1 - Murder 2nd .

Attorney Fees $ 0 Court Costs $1,300 Restitution $ _____ DNA Fee $ _____

Crime Victims $ 130 State Minimum Costs $ 136 Supervision Fee $ _____

☐ HIV testing was ordered on _____

The defendant was represented by ATTORNEY James C. Thomas BAR NO 23801

and is to be given credit for 572 days served in JAIL.
SAID CREDIT TO BE APPLIED TO MINIMUM AND MAXIMUM SENTENCE.

53883
Honorable Regina D. Thomas

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REGISTER OF ACTIONS

CASE NO. 18-005065-01-FC

PARTY INFORMATION

Defendant	**Jaber, Rami Ali**	**Attorneys** **James C. Thomas** *Retained* (586) 726-1000(W) Attorney Unreported *Retained* Doraid B. Elder *Court Appointed* (313) 582-5800(W) Gerald K. Evelyn *Retained* (313) 962-3500(W)
Plaintiff	**State of Michigan**	**William Charles Lawrence** (313) 224-4074(W)

CHARGE INFORMATION

Charges: Jaber, Rami Ali	**Statute**	**Level**	**Date**
1. Homicide - Murder First Degree - Premeditated	750/316-A	.	05/13/2018
2. Weapons Felony Firearm	750/227B-A	.	05/13/2018
3. Homicide - Murder - Second Degree	750317	.	05/13/2018

EVENTS & ORDERS OF THE COURT

DISPOSITIONS

05/15/2018 **Plea** (Judicial Officer: Sherman, Millicent D)
1. Homicide - Murder First Degree - Premeditated
Defendant Stand Mute: Plea of Not Guilty Entered by Court

05/15/2018 **Plea** (Judicial Officer: Sherman, Millicent D)
2. Weapons Felony Firearm
Defendant Stand Mute: Plea of Not Guilty Entered by Court

09/26/2019 **Disposition** (Judicial Officer: Thomas, Regina D.)
1. Homicide - Murder First Degree - Premeditated
Not Guilty - Found Guilty of Lesser Offense
2. Weapons Felony Firearm
Found Guilty by Jury
3. Homicide - Murder - Second Degree
Found Guilty by Jury

12/05/2019 **Sentence** (Judicial Officer: Thomas, Regina D.)
2. Weapons Felony Firearm
Fee Totals:
- Standard FEL Fees (SMCF, JCVF) $1,566.00
Fee Totals $ $1,566.00
State Confinement:
Agency: Michigan Department of Corrections
Effective 12/05/2019
Term: 2 Yr to 2 Yr
Credit for Time Served: 572 Days
Consecutive, Count Murder 2nd
3. Homicide - Murder - Second Degree
State Confinement:
Agency: Michigan Department of Corrections
Effective 12/05/2019
Term: 35 Yr to 50 Yr
Credit for Time Served: 0 Days

OTHER EVENTS AND HEARINGS

05/14/2018 **Recommendation for Warrant**

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05/14/2018 **Case Needs to Be Abstracted to MI Secretary of State**
05/14/2018 **Warrant Signed**
05/15/2018 **Arraignment on Warrant** (9:00 AM) (Judicial Officer Sherman, Millicent D)
Result: Defendant Stands Mute; Plea Of Not Guilty Entered By Court
05/29/2018 **Pre Exam Hearing** (9:00 AM) (Judicial Officer Nance-Adams, Lydia)
Result: Held
06/05/2018 **Preliminary Examination** (9:00 AM) (Judicial Officer Nance-Adams, Lydia)
Result: Adjourned at the Request of the Court
06/28/2018 **Preliminary Examination** (9:00 AM) (Judicial Officer Nance-Adams, Lydia)
Result: Waived/Bound Over
06/28/2018 **Bound Over**
07/11/2018 **Arraignment On Information** (9:00 AM) (Judicial Officer Edwards, Prentis, Jr.)
Parties Present
07/05/2018 Reset by Court to 07/11/2018
Result: Held
07/11/2018 **Disposition Conference** (9:00 AM) (Judicial Officer Edwards, Prentis, Jr.)
Parties Present
Result: Held
07/11/2018 **Calendar Conference** (9:00 AM) (Judicial Officer Edwards, Prentis, Jr.)
Parties Present
Result: Held
09/07/2018 **Final Conference** (9:00 AM) (Judicial Officer Edwards, Prentis, Jr.)
Parties Present
Result: Adjourned at the Request of the Defense
11/09/2018 **Final Conference** (9:00 AM) (Judicial Officer Edwards, Prentis, Jr.)
Parties Present
Result: Adjourned at the Request of the Defense
12/07/2018 **Final Conference** (9:00 AM) (Judicial Officer Edwards, Prentis, Jr.)
Parties Present
11/30/2018 Reset by Court to 12/07/2018
Result: Held
12/11/2018 *CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer Edwards, Prentis, Jr.)
Adjourned at the Request of the Defense
01/02/2019 **Case Reassigned**
01/02/2019 **Case Reassigned**
01/29/2019 *CANCELED* **Final Conference** (9:00 AM) (Judicial Officer Thomas, Regina D.)
Adjourned at the Request of the Defense
01/29/2019 Reset by Court to 01/29/2019
03/08/2019 **Final Conference** (9:00 AM) (Judicial Officer Thomas, Regina D.)
Result: Continued
03/22/2019 **Final Conference** (9:00 AM) (Judicial Officer Thomas, Regina D.)
Result: Adjourned at the Request of the Defense
04/03/2019 **Final Conference** (9:00 AM) (Judicial Officer Thomas, Regina D.)
Parties Present
04/04/2019 Reset by Court to 04/03/2019
Result: Held
04/05/2019 *CANCELED* **Final Conference** (9:00 AM) (Judicial Officer Thomas, Regina D.)
Adjourned at the Request of the Defense
04/29/2019 *CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer Thomas, Regina D.)
Adjourned at the Request of the Defense
04/29/2019 Reset by Court to 04/29/2019
07/26/2019 **Witness List, Filed**
07/26/2019 **Proof of Service, Filed**
08/19/2019 **Miscellaneous, Filed**
08/19/2019 **Motion in Limine**
08/19/2019 **Proof of Service, Filed**
08/19/2019 **Miscellaneous, Filed**
08/20/2019 **Praecipe, Filed** (Judicial Officer: Thomas, Regina D.)
08/21/2019 **Pre-Trial** (9:00 AM) (Judicial Officer Thomas, Regina D.)
Parties Present
Result: Held
08/23/2019 **Voire Dire, Filed**
08/23/2019 **Proof of Service, Filed**
08/23/2019 **Prosecutors Reply**
08/23/2019 **Proof of Service, Filed**
08/26/2019 **Jury Trial** (9:00 AM) (Judicial Officer Thomas, Regina D.)
Parties Present
Result: Adjourned at the Request of the Court
08/26/2019 **Motion Hearing** (9:00 AM) (Judicial Officer Thomas, Regina D.)
Parties Present
Result: Adjourned at the Request of the Court
08/27/2019 **Jury Trial** (9:00 AM) (Judicial Officer Thomas, Regina D.)
Parties Present
Result: Adjourned at the Request of the Court
08/27/2019 **Motion Hearing** (9:00 AM) (Judicial Officer Thomas, Regina D.)
Parties Present

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	Result: Adjourned at the Request of the Court
09/09/2019	**Motion Hearing** (9:00 AM) (Judicial Officer Thomas, Regina D.)
	Parties Present
	Result: Adjourned at the Request of the Defense
09/11/2019	**Order Signed and Filed** (Judicial Officer: Thomas, Regina D.)
09/16/2019	**Motion Hearing** (9:00 AM) (Judicial Officer Thomas, Regina D.)
	Parties Present
	Result: Held
09/16/2019	**Motion in Limine**
09/23/2019	**Jury Trial** (9:00 AM) (Judicial Officer Thomas, Regina D.)
	Parties Present
	09/09/2019 Reset by Court to 09/23/2019
	Result: In Progress
09/24/2019	**Jury Trial in Progress** (9:00 AM) (Judicial Officer Thomas, Regina D.)
	Parties Present
	Result: In Progress
09/25/2019	**Jury Trial in Progress** (9:00 AM) (Judicial Officer Thomas, Regina D.)
	Parties Present
	Result: In Progress
09/26/2019	**Jury Trial in Progress** (9:00 AM) (Judicial Officer Thomas, Regina D.)
	Parties Present
	Result: In Progress
09/26/2019	**Found Guilty By Jury**
09/26/2019	**Refer to Probation For Pre-Sentence Report**
10/03/2019	**Order Signed and Filed** (Judicial Officer: Thomas, Regina D.)
12/05/2019	**Sentencing** (9:00 AM) (Judicial Officer Thomas, Regina D.)
	Parties Present
	Result: Held
12/05/2019	**Sentenced to Prison Order Signed and Filed**
01/02/2020	**Order For Production Of Trial Transcript**
01/02/2020	**Stenographers Certificate Filed**
02/10/2020	**Notice of Transcript Filed**
	Vol./Book 4 372 pages
02/25/2020	**Order For Production Of Transcript**
02/25/2020	**Stenographer Certificate Required**
03/04/2020	**Notice of Transcript Filed**
	Vol./Book 3 51 pages
03/06/2020	**Order For Production Of Transcript**
03/06/2020	**Stenographers Certificate Filed**
03/10/2020	**Order For Production Of Transcript**
03/10/2020	**Notice of Transcript Filed**
	Vol./Book 1 6 pages
03/11/2020	**Notice of Transcript Filed**
	Vol./Book 3 21 pages
03/17/2020	**Stenographers Certificate Filed**
06/16/2020	**Documents Prior to eFiling**
05/07/2021	**Miscellaneous, Filed**
05/07/2021	**Proof of Service, Filed**

Financial Information

	Defendant Jaber, Rami Ali			
	Total Financial Assessment			1,566.00
	Total Payments and Credits			1,566.00
	Balance Due as of 04/20/2022			**0.00**
12/05/2019	Transaction Assessment			1,566.00
12/13/2019	Counter Payment	Receipt # 2019-102651	Jaber, Rami Ali	(1,566.00)

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COA 352092
MSC 162970

PEOPLE OF MI V RAMI ALI JABER

Lower Court/Tribunal

WAYNE CIRCUIT COURT

Judge(s)

THOMAS REGINA

Docket | Case Documents

Case Information

Case Header

Case Number

COA #352092 | MSC #162970

Case Status

MSC Pending on Application

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Parties & Attorneys to the Case – Court of Appeals

1

PEOPLE OF MI
Plaintiff - Appellee

Attorney(s)

BAUGHMAN TIMOTHY A
#24381, Prosecutor

2

JABER RAMI ALI
Defendant - Appellant

Attorney(s)

THOMAS JAMES C
#23801, Retained

Parties & Attorneys to the Case – Supreme Court

1

PEOPLE OF MI
Plaintiff

Attorney(s)

Timothy A. Baughman
#24381

2

JABER RAMI ALI
Defendant

Attorney(s)

Alona Sharon
#68782

3

PROSECUTING ATTYS ASSN OF MI
Amicus Curiae

Attorney(s)

Prosecuting Attorneys Ass'n of MI
#127489

4

CRIMINAL DEFENSE ATTYS OF MI
Amicus Curiae

Attorney(s)

Criminal Defense Attorneys of MI
#1274890

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COLLAPSE ALL EXPAND ALL

01/02/2020	1 Claim of Appeal - Criminal	+
12/05/2019	2 Order Appealed From	+
01/02/2020	3 Steno Certificate - Tr Request Received	+
01/02/2020	4 Proof of Service - Generic	+
01/03/2020	5 Defective Holding File Letter	+
01/09/2020	6 Telephone Contact	+
01/09/2020	7 Proof of Service - Generic	+
01/09/2020	10 LCt Document	+
01/10/2020	8 LCt Order	+
01/10/2020	9 Other	+
01/15/2020	11 Email Contact	+
01/15/2020	12 Proof of Service - Generic	+
02/11/2020	13 Notice Of Filing Transcript	+

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03/06/2020	14 Steno Certificate - Tr Request Received	+
03/10/2020	15 Notice Of Filing Transcript	+
03/12/2020	16 Correspondence Sent	+
03/12/2020	17 Telephone Contact	+
03/12/2020	18 Notice Of Filing Transcript	+
03/17/2020	19 Steno Certificate - Tr Request Received	+
03/17/2020	20 Notice Of Filing Transcript	+
05/28/2020	21 Brief: Appellant	+
06/04/2020	22 Other	+
06/04/2020	23 Presentence Investigation Report or Other Confidential Material	+
06/04/2020	24 Brief: Appendices in Support of Brief	+
06/15/2020	25 Brief: Appellee	+
06/15/2020	26 Noticed	+
06/18/2020	27 Electronic Record Rejected	+
07/08/2020	28 Record Request	+

07/31/2020	29 Record Request	+
08/25/2020	30 Record Request	+
09/17/2020	31 Record Request	+
09/19/2020	32 Electronic Record Filed	+
11/02/2020	38 Telephone Contact	+
01/04/2021	42 Correspondence Sent	+
01/04/2021	43 LCt Document	+
02/15/2021	48 Email Contact	+
03/02/2021	47 Submitted on Case Call	+
03/02/2021	49 Oral Argument Audio	+
03/11/2021	51 Opinion - Per Curiam - Unpublished	+
05/06/2021	53 Other	+
05/06/2021	54 Application for Leave to SCt	+
05/06/2021	55 Supreme Court Motion: Add Issue	+
05/06/2021	56 Supreme Court Motion: Remand to Tr Ct	+

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05/10/2021	57 Supreme Court: Miscellaneous Filing	+
05/11/2021	58 Supreme Court: SCt Correspondence Received	+
05/12/2021	59 Supreme Court: Miscellaneous Filing	+
05/19/2021	60 Supreme Court: Answer - SCt Application/Complaint	+
05/19/2021	61 Supreme Court: Answer to SCt Motion	+
09/27/2021	63 COA File - Received	+
01/28/2022	65 Supreme Court Order: MOAA -Oral Argument on Lv Appl	+
02/23/2022	66 Supreme Court Motion: Housekeeping	+
02/28/2022	67 Supreme Court Order: Chief Justice - Grant	+

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If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAMI ALI JABER,

Defendant-Appellant.

UNPUBLISHED
March 11, 2021

No. 352092
Wayne Circuit Court
LC No. 18-005065-01-FC

Before: LETICA, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to consecutive prison terms of 35 to 50 years for the second-degree murder conviction, and two years for the felony-firearm conviction. We affirm.

Defendant owned a convenience store and was in the cashier area with his clerk, encased in bulletproof glass, when the clerk and a customer, Derek Roberts, began arguing about the cost of a purchase. The argument escalated, and defendant came out from behind the safe area because Roberts would not leave the store. After more words were exchanged, defendant sprayed Roberts in the face with dog repellant. A couple of seconds later, defendant fatally shot Roberts in the chest, explaining that he thought Roberts was reaching for a gun.

I. LESSER OFFENSE INSTRUCTIONS

Defendant first argues that the trial court erred in denying his motion to instruct the jury regarding the lesser offense of voluntary manslaughter. We disagree.

A trial court's determination that a jury instruction was inapplicable is reviewed for an abuse of discretion, which occurs when the decision is outside the range of principled outcomes. *People v Dupree*, 486 Mich 693, 702; 788 NW2d 399 (2010); *People v Schaw*, 288 Mich App 231, 236; 791 NW2d 743 (2010). A defendant has the right to a properly instructed jury. *People v Mills*, 450 Mich 61, 80; 537 NW2d 909 (1995). "[T]he trial court is required to instruct the jury

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concerning the law applicable to the case and fully and fairly present the case to the jury in an understandable manner." *Id*. "Accordingly, jury instructions must include all the elements of the charged offenses and any material issues, defenses, and theories that are supported by the evidence." *People v McKinney*, 258 Mich App 157, 162-163; 670 NW2d 254 (2003).

Defendant was charged with first-degree premeditated murder and requested a jury instruction of voluntary manslaughter, which is murder without malice. See *People v Mendoza*, 468 Mich 527, 534-535; 664 NW2d 685 (2003). Voluntary manslaughter occurs when "the defendant killed in the heat of passion, the passion was caused by adequate provocation, and there was not a lapse of time during which a reasonable person could control his passions." *Id*. at 535-536. In other words, "the element distinguishing murder from manslaughter—malice—is negated by the presence of provocation and heat of passion." *Id*. at 540. In this case, the trial court concluded that the evidence was not adequate to include manslaughter in the final jury instructions.

The trial court determines, as a matter of law, whether the evidence at trial would support giving the instruction, i.e., whether a reasonable jury could find that the provocation was adequate. *People v Pouncey*, 437 Mich 382, 390-392; 471 NW2d 346 (1991). A person acts in the heat of passion when a reasonable person in the defendant's situation would lose control and act out of passion rather than reason. *People v Roper*, 286 Mich App 77, 87; 777 NW2d 483 (2009).

In this case, Roberts was having a verbal confrontation with the store clerk when defendant, who was also behind the bulletproof glass-encased register area, joined in the verbal jousting. Because of the disrespectful words, the clerk and defendant asked Roberts to leave several times, including after Roberts began unwrapping individual mints that were for sale and dropping them on the floor. Regarding the specific words spoken, defendant characterized Roberts as speaking in a demanding way, but a customer-witness said that the clerk "sassed out to [Roberts]" and was dismissive. The clerk said that Roberts was loud and disrespectful, and was acting up. Defendant testified that Roberts became angry when defendant told him that he should not make them rich and called Roberts the "N" word. According to the customer-witness, Roberts told her that the Arab store owner thought he was better than the African-American customers. According to defendant, other customers left because of the situation, and he became angry when Roberts told another customer not to spend his money at the store because the store owners thought they were better than the customers.

The clerk and the customer-witness testified that defendant opened the door to the protected clerk area with "mace" in his hand. Roberts then said "what are you going to do" and "show me what you got," but Roberts did not stop unwrapping candies. Defendant said that he became very angry and waited at the door of the enclosed area for about five seconds before he entered the sales floor with the intention of using the "mace" to get Roberts to leave. Defendant testified that he demanded that Roberts "get out of here with that shit," and told Roberts repeatedly to "make your move" while waiting a couple of seconds to see if he would leave or stop opening candy before spraying him with the "mace." Defendant stated that it appeared the spray was not effective, and that he saw Roberts move a step and a half toward him and reach down to his waist. Defendant said that he was afraid Roberts was reaching for a gun, so he took a step back and fired.

There was a great deal of testimony from defendant about his level of anger propelling his actions. He said that he put himself in a "stupid predicament" by leaving the enclosed area because

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of his anger, and that he "let my anger get to me." However, to justify giving an instruction there must be sufficient evidence that the defendant could have been convicted of the lesser offense—manslaughter. See *People v Cheeks*, 216 Mich App 470, 479-480; 549 NW2d 584 (1996). The question is whether the interaction would have caused a reasonable person in defendant's situation to lose control and act out of passion rather than reason. See *Roper*, 286 Mich App at 87.

The trial court did not abuse its discretion in concluding that the manslaughter jury instruction was inapplicable under the facts of this case. It would not have been reasonable for defendant to lose his ability to reason when faced with the provocation of Roberts's verbal obstinance and his physical refusal to leave the store, even after defendant sprayed his face with an irritant. The customer-witness testified that she did not see Roberts with a weapon, did not hear him make any threats, and did not see Roberts moving like he was going to fight. The clerk testified that Roberts did not appear to be armed or attempting to strike defendant, and defendant acknowledged that he had not seen Roberts with a gun. Generally, insulting words are not considered adequate provocation. *Pouncey*, 437 Mich at 391. Trading insults, and Roberts's refusal to comply with defendant's directions, would not have provoked a reasonable person to kill Roberts out of fervency, without reason.

Furthermore, defendant's actions support the conclusion that his ability to reason had not been overcome by passion. Despite his anger, defendant did act deliberately with a strategy to eject defendant from his store. Defendant testified that he had reasoned that the police likely would not have responded promptly to this level of dispute, and so he concluded that he would have to personally eject Roberts without support. It was this choice not to wait for Roberts to leave while defendant was in a protected area, or to attempt to apply pressure to Roberts to leave by involving authorities, that eventually culminated in the shooting. Defendant said that he waited briefly by the door to the sales floor—a deliberate act—before deciding that he should enter the sales floor with "mace" to see if he could motivate Roberts to leave. Reasoning that the situation could "get out of hand," defendant moved the spray to his left hand so he could keep his right hand on his concealed gun. Defendant admitted that he repeatedly challenged Roberts to "make your move," apparently attempting to provoke Roberts to physically respond. Defendant testified that, before spraying Roberts, he waited briefly to assess whether Roberts would leave after commanding Roberts to "get out of here with that shit." It took about two seconds for defendant to realize that spraying Roberts's face with an irritant did not subdue him, before he allegedly thought that Roberts may have been reaching for a gun, such that he had to shoot him.

In summary, considering the evidence, the trial court did not abuse its discretion by denying defendant's motion to instruct the jury regarding the lesser offense of voluntary manslaughter.

II. IMPARTIAL JURY

Defendant next argues that there should have been a hearing to determine if jurors saw defendant being escorted from the courtroom in shackles because, if so, he was denied a fair trial. We disagree.

This Court reviews "a trial court's decision whether to hold an evidentiary hearing" for an abuse of discretion. *People v Unger*, 278 Mich App 210, 216-217; 749 NW2d 272 (2008). The Sixth Amendment guarantee of the right to a fair trial means that guilt or innocence is determined

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on the basis of evidence introduced at trial "and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial." *People v Banks*, 249 Mich App 247, 256; 642 NW2d 351 (2002) (internal quotation marks and citation omitted).

Defendant's trial counsel informed the trial court that a deputy approached defendant during a break in the trial to escort him to a holding area while jurors were still present. The trial court stated that one juror may have been "on the way out the door," whereas defendant alleged that it was four or five jurors but was not sure if any of them looked at defendant. Defendant expressed concern that the jury might infer that he was in custody, and the trial court responded that it would be reasonable for a juror to believe that someone on trial for first-degree murder would be in police custody. Defendant requested that the trial court ask the jurors whether they had seen anything unusual as they left the courtroom. The trial court noted, "I saw things differently," adding that it had already instructed the jury to presume defendant's innocence, and concluding: "I'm not going to inquire of the jury if they saw something out of the ordinary in this courtroom because I do believe that it will call attention to something that really is a non-issue as it pertains to this case."

Defendant argues that the trial court erred by not questioning the jurors in light of the possibility that a juror may have seen defendant handcuffed and escorted away, which constitutes an extraneous influence. However, the prohibition against shackling during a trial, except in extraordinary circumstances, *People v Dixon*, 217 Mich App 400, 404; 552 NW2d 663 (1996); see also *People v Dunn*, 446 Mich 409, 425; 521 NW2d 255 (1994), "does not extend to safety precautions taken by officers while transporting a defendant to and from the courtroom," *People v Horn*, 279 Mich App 31, 37; 755 NW2d 212 (2008). Here, defendant was at best handcuffed during transport and, regardless, he has not demonstrated that he was prejudiced by any error. See *People v Payne*, 285 Mich App 181, 186; 774 NW2d 714 (2009).

The record does not demonstrate that a juror witnessed defendant in handcuffs. Defendant's counsel stated that a deputy was approaching defendant while the jury was exiting, and the trial court believed that the last juror was "on the way out the door." That a deputy was "approaching" does not implicate handcuffs. Despite any view a juror may have had of defendant in handcuffs while he was transported out of the courtroom, he was not in shackles, as defendant represents. The trial court reasoned that it would unnecessarily draw the jury's attention to defendant's incarceration to ask the jurors about seeing him in handcuffs. Further, in terms of prejudice, the trial court noted that it would have been reasonable for a juror to assume that defendant was in custody, given that the trial was for first-degree murder. There is nothing in the record to demonstrate that the trial court was mistaken in its conclusions, and denying defendant's request to question the jury in this regard did not amount to an abuse of discretion.

III. VERDICT FORM

Defendant next argues that the trial court plainly erred by presenting the jury with an improper verdict form. We disagree. This issue is unpreserved, and thus, our review is for plain error affecting substantial rights. See *People v Young*, 472 Mich 130, 143; 693 NW2d 801 (2005).

"[A] criminal defendant is deprived of his constitutional right to a jury trial when the jury is not given the opportunity to return a general verdict of not guilty." *People v Wade*, 283 Mich

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App 462, 467; 771 NW2d 447 (2009). In *Wade*, the unacceptable verdict form appeared as follows:

> POSSIBLE VERDICTS
>
> YOU MAY RETURN ONLY ONE VERDICT FOR EACH COUNT.
>
> COUNT 1- HOMICIDE-MURDER FIRST DEGREE-PREMEDITATED (EDWARD BROWDER, JR)
>
> __ NOT GUILTY
>
> __ GUILTY
>
> OR
>
> __ GUILTY OF THE LESSER OFFENSE OF-HOMICIDE-MURDER SECOND DEGREE (EDWARD BROWDER, JR.)
>
> OR
>
> __ GUILTY OF THE LESSER OFFENSE OF-INVOLUNTARY MANSLAUGHTER-FIREARM INTENTIONALLY AIMED (EDWARD BROWDER, JR.). [*Id*. at 465.]

The problem was that the form did not provide the jury with "the opportunity to find defendant either generally not guilty or not guilty of the lesser-included offenses," but the form would have been sufficient if it had "included a box through which the jury could have found defendant not guilty of second-degree murder and not guilty of involuntary manslaughter." *Id*. at 468.

Here, defendant argues that the verdict form likewise did not afford the jury the opportunity to find him generally not guilty or not guilty of lesser-included offenses. The jury was presented with the following form:

> COUNT 1: FIRST DEGREE PREMEDITATED MURDER
>
> ___ Not Guilty
>
> ___ Guilty
>
> ___ Guilty of Lesser Included Offense of Second Degree Murder

There is an obvious difference between the verdict forms in this case and the *Wade* case. In *Wade*, the verdict form allowed for a not guilty verdict and then allowed for a verdict of guilty of the charged crime *or* guilty of lesser-included offenses. It was not apparent that the not guilty selection would apply to the lesser-included offenses, and therefore, the jury did not have an option of selecting not guilty for the lesser-included offenses. In contrast, the verdict form in this case provided that the not guilty option would apply to the charged offense and its lesser-included offenses because it stated that the jury was selecting among not guilty, guilty as charged, or guilty of the lesser offenses. The jury could only mark one of the three options, so it was possible to find

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defendant not guilty of the lesser offense as well as the charged offense. In *Wade*, the conjunction "or" separated the not guilty option for the charged crime from the options for the lesser offenses. But in this case, the jury form provided the jury with the opportunity to find defendant not guilty of the charged offense, and not guilty of the lesser included offense. Accordingly, defendant has failed to establish error warranting appellate relief.

IV. EXPERT TESTIMONY

Defendant argues that the trial court abused its discretion when it excluded testimony from defendant's proposed psychiatric expert who would testify on the issues of malice and self-defense. We disagree.

This Court reviews a trial court's determinations concerning the qualifications of an expert and the admissibility of proposed expert witness testimony for an abuse of discretion. *People v Murray*, 234 Mich App 46, 52; 593 NW2d 690 (1999); *People v Peebles*, 216 Mich App 661, 667; 550 NW2d 589 (1996).

MRE 702 provides for the admission of expert opinion that results from "scientific, technical, or other specialized knowledge," and assists the trier of fact. To determine whether expert testimony is admissible under MRE 702, a searching inquiry is mandated. The opinion of an otherwise qualified expert must be shown to be reliable, as must the data underlying the expert's theories and the methodology by which the expert draws his conclusions. *People v Yost*, 278 Mich App 341, 394; 749 NW2d 753 (2008), quoting *Gilbert v DaimlerChrysler Co*, 470 Mich 749, 782; 685 NW2d 391 (2004). An expert's opinion testimony is limited to the expert's area of expertise. *People v Jones*, 95 Mich App 390, 394; 290 NW2d 154 (1980). The admissibility of expert testimony is generally determined by a three-part test: "(1) the expert must be qualified, (2) the evidence must serve to give the trier of fact a better understanding of the evidence or assist the trier of fact in determining a fact in issue, and (3) the evidence must be from a recognized discipline." *People v Parcha*, 227 Mich App 236, 239-240; 575 NW2d 316 (1997).

In this case, defendant moved to offer the testimony of Dr. Gerald A. Shiener as an expert in psychiatry. He had examined defendant, and ostensibly would have testified about what "was operating on the defendant at the time" of the shooting. In particular, he would have apparently testified that defendant had post-traumatic stress disorder which caused defendant to act impulsively and to be unable to act with malice. The trial court excluded Dr. Shiener's testimony, finding it unusual that defendant's medical records were not examined. The court acknowledged that the video of the event had been reviewed but concluded that the doctor's opinions would be based on "information that the doctor received from the defendant without any corroboration." Thus, the trial court apparently concluded that Dr. Shiener's testimony was not reliable and would not assist the trier of fact to better understand the evidence or to determine a fact in issue because of the deficiencies noted by the court. This determination was within the range of reasonable and principled outcomes, and thus, did not constitute an abuse of discretion.

Defendant also argues that the evidence should have been admitted because it was relevant to his self-defense claim. He urges that Dr. Shiener's testimony would have supported his self-defense argument. However, defendant did not raise an insanity defense. The defense he did raise, self-defense, involves whether defendant reasonably believed that he was in immediate danger of

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unlawful bodily harm necessitating the use of force. See *People v Heflin*, 434 Mich 482, 502-503; 456 NW2d 10 (1990) ("[T]he killing of another person in self-defense is justifiable homicide if the defendant honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm.") In *People v Carpenter*, 464 Mich 223; 627 NW2d 276 (2001), our Supreme Court rejected the "diminished capacity" defense, which permits the defendant "to offer evidence of some mental abnormality to negate the specific intent required to commit a particular crime," *id*. at 232, in deference to the Legislative scheme that makes insanity an "all or nothing" defense, *id*. at 237. "[T]he Legislature's enactment of a comprehensive statutory scheme concerning defenses based on either mental illness or mental retardation demonstrates the Legislature's intent to preclude the use of *any* evidence of a defendant's lack of mental capacity short of legal insanity to avoid or reduce criminal responsibility by negating specific intent." *Id*. at 236. Thus, without defendant asserting an insanity defense, Dr. Shiener's testimony about how defendant's capacity for malice was influenced in the situation did not go to establish a viable self-defense theory.

V. OFFENSE VARIABLE 5

Defendant argues that the trial court erred by assessing offense variable (OV) 5 at 15 points for psychological injury to Roberts's family. We disagree.

This Court reviews the trial court's factual determinations at sentencing for clear error. *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). "Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation, which an appellate court reviews de novo." *Id*. See also *People v Calloway*, 500 Mich 180, 184; 895 NW2d 165 (2017).

"A defendant is entitled to be sentenced by a trial court on the basis of accurate information." *People v Francisco*, 474 Mich 82, 88; 711 NW2d 44 (2006). The court must consult the advisory sentencing guidelines and assess the highest amount of possible points for all offense variables. *People v Lockridge*, 498 Mich 358, 392 n 28; 870 NW2d 502 (2015). The sentencing offense determines which offense variables are to be assessed, and the appropriate offense variables are generally assessed on the basis of the sentencing offense. *People v Sargent*, 481 Mich 346, 348; 750 NW2d 161 (2008).

OV 5 considers psychological injury to a member of a victim's family. The trial court assessed 15 points, which is appropriate when there was "serious psychological injury" to a victim's family member that could require professional treatment regardless of whether treatment has been sought. MCL 777.35(1)(a); MCL 777.35(2). Defendant argues that OV 5 should have been assessed at zero points because there was no evidence that a member of Roberts's family suffered severe psychological injury. The trial court relied on the statements of Roberts's father and brother, and stated:

> And, to Mr. Roberts' mother, I see your pain, and I understand that you are not able to speak today with regard to this issue.
>
> The Court is going to -- notwithstanding the fact that the two gentlemen that stood here and the statements that they made, the Court is going to assess points for OV

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> 5. This has to be psychologically damaging for this family. And, I can see the tears and the trauma that this has caused without anyone even having to speak. So, the Court is going to score OV 5.

While assessing OV 5, a trial court "should consider the severity of the injury and the consequences that flow from it, including how the injury has manifested itself before sentencing and is likely to do so in the future, and whether professional treatment has been sought or received." *Calloway*, 500 Mich at 186. "In this context, 'serious' is defined as having important or dangerous possible consequences." *Id*. (quotation marks and citation omitted). "The trial court may rely on reasonable inferences arising from the record evidence to sustain the scoring of an offense variable." *People v Earl*, 297 Mich App 104, 109; 822 NW2d 271 (2012).

The trial court's consideration of this "be[ing] psychologically damaging for this family" should not be a justification for assessing OV 5. Despite the logic of the assumption, "[t]he trial court may not simply assume that someone in the victim's position would have suffered psychological harm[.]" *People v Lockett*, 295 Mich App 165, 183; 814 NW2d 295 (2012). However, the statement of the victim's brother and the appearance of Roberts's mother were evidence of severe psychological injury. The brother spoke of the continuing long-term consequences of traumatic loss, foreshadowing the pain that he and their mother would experience on the anniversary of the death, exacerbated by the specific date. The mother's severe psychological injury could be inferred by her tearful inability to speak about her loss. While assessing OV 5, it is proper to weigh and consider "[t]he trial court's opportunity to observe the demeanor of [the victim's family] during their testimony[,]" along with victim impact statements made at a sentencing hearing, as well as the traumatic nature of the circumstances surrounding the offense. *People v Steanhouse*, 313 Mich App 1, 39; 880 NW2d 297 (2015), rev'd in part on other grounds 500 Mich 453 (2017). The nature and descriptions of the psychological effects of Roberts's death on his family members were sufficient to establish "serious psychological injury" to a victim's family that could have required professional treatment. As a result, the trial court did not clearly err by assessing 15 points for OV 5.

VI. UNREASONABLE SENTENCE

Defendant also argues that the trial court abused its discretion by imposing a sentence that greatly departs from the guidelines. We disagree.

"A sentence that departs from the applicable guidelines range will be reviewed by an appellate court for reasonableness." *Lockridge*, 498 Mich at 392. When a sentence is determined to be unreasonable, resentencing is required. *Id*. This Court reviews a departure sentence for an abuse of discretion and looks at whether the trial court's sentence violated the principle-of-proportionality test. *People v Steanhouse*, 500 Mich 453, 471; 902 NW2d 327 (2017).

When imposing a sentence, a court must consult the sentencing guidelines, calculate the recommended sentencing guidelines range, and take that range into account when determining a defendant's sentence. *Lockridge*, 498 Mich at 391-392. While a court must score and consider the sentencing guidelines, the court is not compelled to impose a minimum sentence within the calculated range. *Id.* at 391. A sentencing court may depart from the sentencing guidelines range

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without stating substantial and compelling reasons to justify the departure; however, the trial court's sentence must be reasonable. *Id.* at 391-392.

Defendant argues that his sentence was unreasonable because it was a departure that was not justified by the circumstances, and the trial court impermissibly considered several factors. Since the trial court sentenced defendant to a minimum term of 420 months in prison when the guideline minimum range was 162 to 270 months, the sentence departed from the recommended minimum sentence by 150 months.

The reasonableness of a sentence is determined by evaluating whether the sentence violated the principle of proportionality, which requires " 'sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.' " *Steanhouse*, 500 Mich at 474, quoting *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). This Court recited several factors for consideration regarding the proportionality of a sentence, such as:

> (1) the seriousness of the offense, (2) factors that were inadequately considered by the guidelines, and (3) factors not considered by the guidelines, such as the relationship between the victim and the aggressor, the defendant's misconduct while in custody, the defendant's expressions of remorse, and the defendant's potential for rehabilitation[.] [*Steanhouse*, 313 Mich App at 46 (internal citations omitted).]

Here, the trial court explained its sentence by first noting that it had reviewed a number of letters from family members, the presentence report, and victim impact statements, as well as the trial evidence. It noted that it disagreed with the jury's verdict, concluding that defendant "had time to reflect on your actions and to formulate how you would proceed." The court continued:

> [N]ot only did you interject yourself into an argument that Mr. Roberts was having with someone else, you invited Mr. Roberts to stick around so that you could further, whatever was going on there. You came from a place of safety, and prior to doing that, you invited Mr. Roberts back behind bullet proof glass twice. Once you exited from behind the bullet proof glass, you sprayed Mr. Roberts in the face, and then you shot him with another person in very close proximity to you. So much so, that when she testified, and we also saw it on the video, she had to say, "hey, I'm right here." You could have shot her as well.
>
> And, then, when the court reviews the presentence report, the court finds out that you did not spray Mr. Roberts with mace, you sprayed him with dog repellant. You did not see the humanity in Mr. Roberts.
>
> The court believes that your actions were egregious and they were avoidable. The first thing you did after you shot Mr. Roberts, you lied about what you did to the other person that was in the gas station. You told her that the gun was a blank. You then picked up the bullet, walked back and tried to flush it. You did not call for assistance for Mr. Roberts, you first watched the video in the gas station so you could get your story together. You didn't see the humanity in Mr. Roberts.

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> The court is going to depart from the guidelines. The court is going to go above the guidelines for reasons that the court has stated on the record. I believe that your behavior was egregious. I do not believe that you show any remorse. You took the stand in this case, and when you were asked -- and I reviewed your testimony, I had the transcript, I reviewed it. And, when you were asked what you could do different, your response was that you wouldn't come to work that day, not that you would not shoot a person after spraying him with dog repellant.

Defendant argues that the trial court impermissibly considered his refusal to admit his guilt in issuing the sentence. "A sentencing court cannot base a sentence even in part on a defendant's refusal to admit guilt." *Payne*, 285 Mich App at 193-194, quoting *People v Dobek*, 274 Mich App 58, 104; 732 NW2d 546 (2007). However, the court may consider a defendant's lack of remorse as it bears on the defendant's potential for rehabilitation. *Id*. This Court examines three factors in order to determine whether the sentencing court improperly considered a defendant's refusal to admit guilt: " '(1) the defendant's maintenance of innocence after conviction; (2) the judge's attempt to get the defendant to admit guilt; and (3) the appearance that had the defendant affirmatively admitted guilt, his sentence would not have been so severe.' " *Payne*, 285 Mich App at 194, quoting *People v Wesley*, 428 Mich 708, 713; 411 NW2d 159 (1987). When the three factors are implicated, the " 'sentence was likely to have been improperly influenced by the defendant's persistence in his innocence.' " *Dobek*, 274 Mich App at 104, quoting *Wesley*, 428 Mich at 713.

Here, defendant did not continue to maintain his innocence; he admitted to the shooting, as depicted on video, and testified regarding his explanation for the shooting. Therefore, the trial court could not sensibly refer to defendant's refusal to admit guilt, or attempt to persuade defendant to admit guilt, or give a lesser sentence if defendant admitted guilt, because defendant admitted that he killed Roberts. There is also no evidence in the trial court's statement to support a conclusion that if defendant had admitted guilt he would have received a lesser sentence. The trial court explained that it did not believe defendant exhibited remorse because, when asked what he would do differently, he did not state that he would not have been physically aggressive toward Roberts or would not have shot Roberts. Again, a sentencing court may consider a defendant's lack of remorse in sentencing without impermissibly considering the defendant's failure to admit guilt. *Dobek*, 274 Mich App at 104.

Defendant also argues that the trial court impermissibly sentenced him based on a belief that defendant was guilty of first-degree murder. A defendant is presumed innocent after a jury has specifically acquitted the defendant of a charge, and the trial court may not consider acquitted conduct as an aggravating factor at sentencing. *People v Beck*, 504 Mich 605, 626-627; 939 NW2d 213 (2019). The trial court did state that it disagreed with the jury's finding that defendant committed second-degree rather than first-degree murder. However, the trial court also indicated that it respected the verdict and, as defendant noted, scored OV 6 at 25 points for the "offender's intent to kill or injure another individual," rather than at 50 points, which would apply if "the offender had premeditated intent to kill." MCL 777.36(1)(a). Most notably, the trial court did not mention premeditation as a reason for the departure sentence.

Defendant argues that the trial court did not explain or justify its reasons for the longer sentence. The trial court, however, mentioned multiple times that defendant did not see the

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humanity in Roberts and that the shooting was egregious, as well as avoidable. The trial court explained its concern that defendant did not consider Roberts's humanity, as defendant interjected himself into an argument, challenged Roberts, and left a place of safety and then sprayed Roberts with dog repellant before he shot him in the chest at close range. The trial court also noted that another person standing near Roberts had been endangered. Further, the trial court noted that defendant tried to obfuscate his crime and delayed in calling 911. Defendant does not dispute the trial court findings. The trial court clearly considered the seriousness of the offense, as well as several factors not accounted for in the guidelines like defendant's low potential for rehabilitation and lack of remorse, as well as his disregard for the humanity of his victim. Therefore, the trial court justified its determination that the upward departure from the advisory guidelines range was "proportionate to the seriousness of the circumstances surrounding the offense and the offender," *Steanhouse*, 500 Mich at 474, and did not abuse its discretion because it issued a reasonable sentence.

Affirmed.

/s/ Anica Letica
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood

STATE OF MICHIGAN

THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,

COPY

Plaintiff, No. 18-005065-01-FC

v Jury Trial Vol. 1

RAMI JABER,

Defendant.

_____/

JURY TRIAL Vol. 1

BEFORE THE HONORABLE REGINA THOMAS

MONDAY, SEPTEMBER 23, 2019

APPEARANCES:

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(None offered

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Detroit, Michigan

Monday, September 23, 2019

1:55 p.m.

* * * *

THE COURT: We have a jury. Ladies and gentlemen that have been waiting, some of you look too excited. Those who were waiting to perhaps be called to be in the jury box, you're thanked and excused at this time. You may report back down to jury services. I just want to indicate, there's one potential juror in the courtroom that has on shorts, very short shorts. Ma'am, you're not dressed appropriately to be in a courthouse. That's not how you come to handle business. Okay. Shorts are not allowed in this courtroom.

Thank you. Please return back downstairs.

THE BAILIFF: All rise.

(Jurors not selected exit the courtroom)

THE COURT: Ladies and gentlemen, you have been chosen to serve as our jury in this case. At this time, we're going to allow you to go into the jury room. There's a sheet of paper that I'm going to ask you to fill out. You're going to put your name and your telephone number next to your corresponding seat. Because we're going to be here for a couple more days. If you don't show up on time and we have to reach out to

find out if everybody's okay. So that's why we're going to ask to get your telephone numbers. So I'm going to have you go into the jury room right now and fill out that form. Please leave your questionnaires on the seats. We're going to pick those up while you're out and then we may let you know when you can come back out.

THE BAILIFF: All rise for the jury.

(Jury enters jury room at 1:58 p.m.)

THE BAILIFF: You need to be seated.

THE COURT: Is there anything that we need to handle outside the hearing of the jury, gentlemen?

MR. THOMAS: I just need a restroom break.

THE COURT: Go right ahead.

MR. LAWRENCE: What time does the Court usually go to?

THE COURT: 4:00, when we have the Defendant in custody.

MR. LAWRENCE: Okay.

(Recess taken at 1:58 p.m.)

(Back on the record at 2:08 p.m.)

CLERK OF THE COURT: Back on the record on People versus Rami Jaber. Appearances for the record, please.

MR. LAWRENCE: William Lawrence for the People.

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MR. THOMAS: James Thomas on behalf of the Defendant.

THE COURT: We do have a jury and are we ready to bring the jury back out?

MR. LAWRENCE: Yes, Your Honor.

MR. THOMAS: Yes, Judge.

THE COURT: All rise for the jury, please.

(Jury panel enters jury box at 2:09 p.m.)

THE BAILIFF: You may be seated.

CLERK OF THE COURT: Back on the record on People versus Rami Jaber. Appearances, please.

MR. LAWRENCE: Good afternoon, Judge. William Lawrence on behalf of the People.

MR. THOMAS: James Thomas on behalf of Mr. Jaber.

THE COURT: Ladies and gentlemen of the jury, you have been chosen to decide a criminal charge made by the State of Michigan against one of your fellow citizens. I will now ask you to stand and swear to perform your duty to try the case justly and to reach a true verdict.

If your religious beliefs do not permit you to an oath, you may instead affirm to try the case justly and reach a true verdict. Please stand and here is your oath.

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CLERK OF THE court: Jurors, I need you to raise your right hands for me, please. Do each of you solemnly swear or affirm that in this action now before the Court, you will justly decide the questions submitted to you, that unless you are discharged by the Court from further deliberation, you will render a true verdict and you will render your verdict only on the evidence introduced and in accordance with the instructions of the Court, so help you God?

JURY PANEL: I do.

CLERK OF THE COURT: Thank you. You may be seated.

THE COURT: You can see that we have chosen a jury of 14. After you have heard all of the evidence and my instructions, we will draw lots to decide which two of you will be dismissed in order to form a jury of 12.

You must not discuss the case with anyone including your family or friends. You must not even discuss it with the other jurors until the time comes for you to decide the case.

When it is time for you to decide the case, I will send you to the jury room for that purpose. Then you should discuss the case amongst yourselves, but only in the jury room and only when all the jurors are there.

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When the trial is over, you may, if you wish discuss the case with anyone.

If I call for a recess during the trial, I will either send you back to the jury room or allow you to leave the courtroom on your own and go about your business. But you must not discuss the case with anyone or let anyone discuss it with you or in your presence. If someone tries to do that, tell him or her to stop and explain that as a juror, you are not allowed to discuss this case. If he or she continues, leave and report the incident to me as soon as you return to Court.

You must not talk to the Defendant, the lawyers or the witnesses about anything at all, even if it has nothing to do with this case.

It is very important that you only get information about the case in court when you are acting as a jury and when the Defendant, the lawyers and I are all here.

Sometimes the lawyers and I will have discussions outside of your hearing. Also, while you're in the jury room, I may have to take care of other matters that have nothing to do with this case. Pay no attention to these interruptions.

The restrictions I'm about to describe are meant to ensure that the parties get a fair trial. In

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our judicial system, it is crucial that jurors are not influenced by anything or anyone outside the courtroom. Now that many jurors have easy access to information through handheld devices and other technology, jurors may be tempted to use these devices to learn more about some aspect of the case. But if a juror were to do this, it would harm the parties. The parties' attorneys would have no way of knowing that a juror has gotten outside information and would have no chance to object if that information was false, untrustworthy or irrelevant.

Remember, no matter how careful and conscientious news reporters, family members, friends and other people outside the courtroom may be, information about the case from television, radio, the Internet and social media will inevitably be incomplete and could be incorrect. Please bear these things in mind as I read the following instruction. These restrictions apply from this moment until I discharge you from your jury services.

You must decide this case based solely on the evidence you see and hear in this courtroom.

You must not consider information that comes from anywhere else. This means that during the trial, you must not read, watch or listen to news reports about

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the case, whether in newspapers, on television, on the radio or on the Internet.

You also must not research any aspect of the case during the trial. This means researching using a cellular phone, computer or other electronic device to search the Internet, as well as research with traditional sources like dictionaries, reference materials, newspapers or magazines.

You must not investigate the case on your own and conduct any experiments concerning the case, including investigation or experiments using the Internet, computer, cellular phones or electronic devices.

You must not visit the scene of any event at issue in this trial. If it is necessary for you to view or visit the scene, Court staff will take you there as a group, under court supervision.

You must not consider as evidence any personal knowledge you have of the scene.

Before your deliberations, you must not discuss this case with anyone, even your fellow jurors. After you begin deliberation you should discuss the case with your fellow jurors, but you still must not discuss the case with anyone else until I discharge you from your jury services.

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Until I have discharged you from your jury service, you must not share any information about the case by any means, including cellular phones or social media.

If you discover that a juror has violated my instructions, please report that to my deputies.

Now, I will explain some of the legal principles you'll need to know and the procedures we will follow during the trial. My responsibilities as the judge in this trial are to make sure that the trial is run fairly and efficiently, to make decisions about evidence and to instruct you about the law that applies to this case.

You must take the law as I give it to you. Nothing I say is meant to reflect my own opinions about the facts of the case. As jurors, you are the ones who will decide this case. Your responsibility as jurors is to decide what the facts of the case are. This is your job and no one elses. You must think about all the evidence and all the testimony and then decide what each piece of evidence means and how important you think it is. This includes how much you believe what each of the witnesses said. What you decide about any fact of this case is final. Possible penalties should not influence your decision. It is the duty of the judge to fix the

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penalty within the limits provided by law.

During the trial, the lawyers may object to certain questions or statements made by the other lawyers or witnesses. I will rule on these objections according to the law. My rulings for or against one side or the other are not meant to reflect any opinions about the facts of the case.

The questions the lawyers ask the witnesses are not evidence. Only the answers are evidence. You should not think that something is true just because one of the lawyers asked questions that assume or suggests that it is.

I may ask some of the witnesses questions, myself. These questions are not meant to reflect my opinion about the evidence. If I ask questions, my only reason would be to ask about things that may have not been fully explored.

I may give you more instructions during the trial, and at the end of the trial, I will give you detailed instructions about the law in this case. You should consider all of my instructions as a connected series. Taken all together, they are the law that you must follow.

A trial follows this procedure: First, the Prosecutor makes an opening statement where he gives his

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theory of the case. The Defendant's lawyer does not have to make an opening statement, but he may make an opening statement after the Prosecutor makes his, or he may wait until later. These statements are not evidence. They are only meant to help you understand how each side views the case.

As to Count 1, homicide, murder first degree, to prove this charge the Prosecutor must prove each of the following elements beyond a reasonable doubt. First, that the Defendant caused the death of Derek Leon Roberts. That is, that Derek Leon Roberts died as a result of multiple gunshot wounds.

Second, that the Defendant intended to kill Derek Leon Roberts.

Third, that this intent to kill was premeditated; that is, thought out beforehand.

Fourth, that the killing was deliberate, which means that the Defendant considered the pros and cons of the killing and thought about and chose his actions before he did it. There must have been real and substantial reflections long enough to give a reasonable person a chance to think twice about the intent to kill. The law does not say how much time is needed. It is for you to decide if enough time passed under the circumstances of this case. The killing cannot be the

result of a sudden impulse without thought or reflection. Fifth, that the killing was not justified, excused or done under circumstances that reduce it to a lesser crime.

As to Count 2, felony firearm, the Defendant is also charged with a separate crime of possessing a firearm at the time he committed the crime of first degree premeditated murder. To prove this charge, the Prosecutor must prove each of the following elements beyond a reasonable doubt. First, that the Defendant committed the crime of first degree premeditated murder, which has been defined for you. It is not necessary for you, however, that the Defendant be convicted of that crime.

Second, that at the time the Defendant committed that crime, he knowingly carried or possessed a firearm.

The Prosecutor must also prove beyond a reasonable doubt that the crimes occurred on or about May 13, 2018, within Wayne County.

Next, the Prosecutor presents his evidence. The Prosecutor may call witnesses to testify and may show you exhibits like documents or objects. The Defendant's lawyer has the right to cross examine the Prosecutor's witnesses. After the Prosecutor has

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presented all of his evidence, the Defense attorney may also offer evidence, but he doesn't have to. By law, the Defendant does not have to prove his innocence or produce any evidence. If the Defense does call any witnesses, the Prosecutor has the right to cross examine him. The Prosecutor may also call witnesses to contradict the testimony of the Defense witnesses.

After all of the evidence has been presented, the Prosecutor and the Defendant's lawyers will make their closing arguments. Like the opening statements, those are not evidence. They're only meant to help you understand the evidence and the way each side sees the case. You must base your verdict only on the evidence.

You have been given a written copy of the instructions that I've just read to you. You may refer to them during the trial. Since no one can predict the course of a trial, these instructions may change at the end of the trial.

At the close of the trial, I'll provide you with a copy of my final instructions for your use during deliberations. When it is time for you to decide the case, you're only allowed to consider the evidence that was admitted in this case. Evidence includes only the sworn testimony of witnesses, the exhibits admitted into evidence and anything else I tell you to consider.

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It is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is. You do not have to accept or reject everything a witness says. You're free to believe all, none or part of any person's testimony.

In deciding which testimony you believe, you should rely on your own common sense and every day experiences. However, in deciding whether you believe a witness' testimony, you must set aside any bias or prejudice you have based on the race, gender or national origin of the witness.

There is no fixed set of rules for judging whether you believe a witness, but it may help you to think about these questions: Was the witness able to see or hear clearly?

How long was the witness watching or listening?

Was anything else going on that might have distracted the witness?

Does the witness seem to have a good memory?

How does the witness look and act while testifying?

Does the witness seem to be making an honest effort to tell the truth or does the witness seem to

evade the questions or argue with the lawyers?

Does the witness' age or maturity affect how you judge his or her testimony?

Does the witness have any bias or prejudice or any personal interest in how this case is decided?

Have there been any promises, threats or suggestions or other influences that effect how the witness testifies?

In general, does the witness have any special reason to tell the truth or any special reason to lie?

All in all, how reasonable is the witness' testimony when you think about all the other evidence in this case?

It is important for you to keep an open mind and not make a decision about anything in the case until you go into the jury room to decide the case.

After all of the evidence has been presented and the lawyers have given their arguments, I will give you detailed instructions about the rules of law that apply to this case. Then you will go to the jury room to decide on your verdict. A verdict must be unanimous. That means that every juror must agree on it and it must reflect the individual decision of each juror.

You may take notes during the trial, if you wish, but, of course, you don't have to. If you do take

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notes, you should be careful that it does not distract you from paying attention to all of the evidence.

When you go to the jury room to decide your verdict, you may use your notes to help you remember what happened in the courtroom. If you take your notes, do not let anyone except the jurors see them during deliberations.

During recesses, you will leave your notebooks on your chairs. You will not take your notes with you. Your notes will not be examined by anyone. And when your jury service is concluded, your notes will be collected and destroyed.

Are the attorneys satisfied with the instructions as given to the jury at this time?

MR. LAWRENCE: Yes, Your Honor.

MR. THOMAS: We are.

THE COURT: Attorney Lawrence, opening statement.

MR. LAWRENCE: Thank you, Judge.

OPENING STATEMENT BY MR. LAWRENCE:

MR. LAWRENCE: So the case that you're going to hear is a case about ego, just out of control ego and complete disregard for human life.

The events took place back in May of last year. May of 2018. The Defendant, Mr. Jaber, was

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working at a gas station in Detroit. He was functioning as a clerk at this gas station, along with another employee that was doing the same thing as him.

The deceased is a customer on that day of this gas station. And you're going to hear that Derek Roberts went into the gas station and went up to the counter and tried to buy a pack of cigarettes.

Things get out of control quickly, for whatever reason. You're going to see that there's kind of like a macho, you know, male bravado-type exchange that occurs at the counter. Now, this counter, mind you, has got glass. I believe it's bullet proof glass that surrounds the whole thing.

So inside the counter, the clerks would be safe from anybody. And nobody from the outside should be able to get in. And that's a barrier between themselves and the customers.

So that's the setting here, is that the Defendant is behind that glass, behind that counter, the victim is at the register trying to buy cigarettes.

You're going to witness the behavior of the victim. You're going to witness the behavior, also, of the other clerk that's with the Defendant.

You're going to see that the Defendant says, you know what, let me take care of other customers. You

stick around. We'll deal with this situation in a minute.

And you're going to see that the victim, he's just standing there this entire time. Doesn't have any weapon, whatsoever, with him. He sticks around.

The Defendant, at one point, goes and opens up the door to this counter area and says, you're welcome back here.

The situation very quickly gets to a point where the Defendant leaves the counter area, out that door, with a Mace can in one hand. His hand gripping his gun at his side, as well. What pushes him over the edge is the victim, during the course of this macho, ego exchange, grabs a couple pieces of candy and takes the wrappers off and throws the wrappers on the ground.

The Defendant then approaches the victim with his Mace can and just fills his face up with Mace. Direct spray of Mace to the face of the victim.

The victim takes the Mace, takes a step forward. The Defendant takes out his gun and shoots him right in the chest.

The victim takes that bullet, walks outside of the gas station, lays down on the ground, where he is tended to by people, and ultimately, of course, by the police and by EMS, which take him away. He dies of

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gunshot wounds to the chest, right in the middle of the chest.

So you're not going to be speculating what happened in this instance. This is a very unique jury, as far as murder cases are concerned. Because this entire incident is captured on video and audio. The whole thing. The whole thing is on video. The whole thing is audio recorded, as well. So you're going to see everything that happened. You're going to hear everything that happened. I'm going to show you it to you from six different angles, so that you have a 360-degree view of absolutely 100 percent everything that happened. I'm also going to show you a seventh video that's a compilation, where kind of they were put together so you -- almost like you're watching it on television. And then I'll also be showing you some still shots, where we freeze the frames and just go frame by frame by frame at the critical moment.

So this is not a whodunit. You're not going to have to worry about, you know, man, do I know for sure that this is the murderer, that this is the person who killed Mr. Roberts? That's not going to be the issue here. The issue is going to be what is it that you, the jury, conclude the crime is?

The Defendant is charged with first degree

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murder. The second charge is what we call felony firearm. In Michigan, when you commit a crime, a felony, while in possession of a gun, it's an additional charge called felony firearm. Okay. But Count 1 is first degree murder. First degree murder.

So you're going to be deciding, is what I'm looking at on this television and what I'm hearing through the speakers, is this first degree murder? And you'll have the option of also saying, or is it second degree murder? So that's really your task. Is this what I'm watching, a first degree murder, or what I'm watching a second degree murder?

I'll submit to you that the evidence in this case will absolutely show that this is a first degree murder and that that is the just outcome. That is what justice is in this case.

So you've already had the Judge read to you the instruction for first degree murder. I just want to highlight right from the get-go so that -- the main thing I want to achieve in this opening statement is for you all to understand what it is that you're going to be determining so that way when the evidence comes in, you know kind of how to be looking at it.

So what I want to highlight right from the get-go about the difference between first degree murder

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and second degree murder -- and we kind of went over this during voir dire, which is jury selection.

So first degree murder, you'll see there, it says that this intent to kill was premeditated. And it says that it's thought out beforehand. So is there thinking out beforehand when the Defendant shoots and kills Mr. Roberts?

The second thing I want to highlight is the word deliberate there in paragraph No. 5. That the killing was deliberate, which means that the Defendant considered the pros and cons of the killing and thought about and chose his actions before he did it. There must have been real and substantial reflection long enough to give a reasonable person a chance to think twice about the intent to kill. The law does not say how much time is needed. That's why we did that yellow light thing.

The law does not say how much time is needed. It is for you to decide if enough time passed under the circumstances of this case. The killing cannot be the result of sudden impulse without thought or reflection. So that's what you're going to be deciding. When you watch this video from every angle, when you hear the audio in the entire exchange, you're going to be assessing am I seeing sufficient premeditation and am I

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seeing a deliberate act.

If the answer is yes, then it is, as I put to you, a first degree murder case. Not a second degree murder case.

So that's how I want -- or I would suggest that you view the evidence as it comes in. When you're watching the video, don't be thinking, you know, who did it. It's not going to be contested that he shot and killed Mr. Roberts. It could not be more crystal clear. There's only that one exchange.

So you're going to be watching to see evidence of premeditation. You're going to be watching to see evidence of a deliberate act. That's going to be what you're doing as you're watching the video from all the different angles.

You're not going to hear of anything that would amount to a legal justification. Mr. Roberts, at no point in time, does he even so much as raise his hands. He is a taller, skinnier, African-American. And you're going to see no weapons, no posture of being aggressive, no lunging, no fist clenching, no fist throwing. Nothing. It was just an exchange where his ego got himself so hot and his disregard for human life became so apparent that he first Maces and then shoots Mr. Roberts and kills him.

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Now, I don't really want to get ahead of ourselves. That's kind of the challenge for the lawyers in this case, you know, to get ahead of ourselves. You might have maybe picked up on that a little bit during voir dire. You know, it's one of these cases where it's not really about what happened. It's about how you see it. So, naturally, as lawyers we're all ready to make our argument. And when I give my closing argument to you at the end of the evidence, I'm going to break down argument by argument, slowing down the exact moments within the video to show you the premeditation and the deliberate act that you should find.

I'll be making that argument at the end, but I don't want to get ahead of myself right now. Let's watch the video, let's listen to the audio and then I'll make argument at the end. That's what you should be focused on.

The witnesses in this case are --as far as homicide cases go, are not as important as what, you know, usually witnesses are. That's because this whole thing, again, is on video and audio.

I expect to probably put eight witnesses forth in this trial. I'm just giving you a little bit of a road map because, again, I want everyone to kind of take a deep breath and you're not going to have to follow a

lot of crazy stuff in this case. It's like going to be put out right in front of your faces.

So the Defendant, at the time of the shooting, just prior to the shooting, he's on the phone with his girlfriend. Not the Defendant, the victim. I apologize.

The victim at the counter is on the phone with his girlfriend. Before the shot rings out, he hangs up the phone. The conversation ends. But you're going to hear from that person. Hey, you're the person that was on the phone with the victim right up to the point of the shooting. Let's hear from you. We'll hear from that person.

There was one other customer that was right there at the counter when this happened. I mean, I'm talking standing right next to the victim as this all went down. You're going to hear from that customer. Of course, you're going to see that customer in the video and hear the words of the customer in the video. But you're going to have live testimony from that person, as well.

You're going to hear from the other clerk. I told you that there was another clerk that was working side-by-side with the Defendant. You're going to hear from him, as well.

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So I'm going to present to you the people that either were on the phone or live and in person where they're at the gas station at this time, as well.

You're going to hear from one of the initial police officers that arrived. So you'll get to hear, you know, what do the police see when they first got there.

You're going to hear from a couple of what's called evidence technicians. They do a couple things. They collect evidence and they photograph the scene. All right.

So let me, by the way, give you a little bit of heads up as far as how that testimony is going to go.

The Defendant, after he shoots the victim, he is conversing with the other clerk, do I need to call the police? And, of course, the answer is, yeah, dude, your need to call the police.

You're going to see that the Defendant goes and locks the door to the establishment. It's a gas station store. Right? A gas station store.

He goes and locks the door to the gas station, walks over and he picks up the shell casing which had been ejected from the gun when the gun went off, and then he goes behind the counter to a bathroom that's there and flushes it down the toilet. But, of course,

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it doesn't go down the toilet because it's a piece of lead. And so what did the police find? What did the evidence technician find? They find the shell casing there at the bottom of the toilet. But you're literally going to see all of this and hear all of this. You're going to be left with no doubt whatsoever as to what you're looking at and what happened.

The evidence technicians, like I said, took pictures of everything. So I'm going to show you the pictures first so you guys can kind of get an idea through photographs of the scene and then we're going to proceed into the video. And we're going to watch, like I said, seven different videos and then a couple of still shot collections, as well.

So that's the case. And that's going to take us all the way to the point in time where, in closing argument, I'll be making the arguments as to what you saw and what you heard has evidence of premeditation and evidence of a deliberate act. So it's like murder one. That's going to be my argument in this trial. And it's going to be up to you all to decide what is justice?

All I really wanted to do when I was selecting the jury, as far as communicating with y'all, is I just wanted to get everybody to commit to a couple of real basic things. That every single person deserves equal

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justice, which you all committed to. That every single person -- or that you are going to follow the law as it is and as it is given by the Judge. And everybody committed to that. And that the outcome that we all want to see here is the just outcome.

So if the just outcome is first degree murder, then second degree murder is not justice in this case. And the burden that you're going to bear and that you volunteered to do and we all, in advance, thank you for your service, is you're going to bear that burden to view this evidence and to call it as it is, which I strenuously argue is a first degree murder case. Thank you.

MR. THOMAS: Attorney Thomas, do you wish to make an opening statement at this time?

MR. THOMAS: I do.

OPENING STATEMENT BY MR. THOMAS:

MR. THOMAS: You guys have to imagine that I have a different point of view. Opening statement is supposed to be nothing more than what it is that the Prosecutor intends to prove. It's not an attempt to get you to make a commitment to first degree murder. It's not for you to commit as to whether or not he's proven his case or that is justice. Justice is going to be up to you and the Judge in the end in this case.

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You were empowered to be the triers of the facts. Any argument to the contrary is improper. I accept it and I embrace it.

A lot of this case is based on hindsight. And hindsight, as we all know, is 20/20. There's points of view that the People have in this case that are arguably both ways. You have to decide. You decide whether or not it is as the Prosecutor says or another point of view which we intend to be giving you in our opening statement.

The gas station in question is at Six Mile and Coolidge. The gas station is an area that is a high crime area. And of course, as you know, two-inch bulletproof glass isn't there for no reason. There's a justifiable reason for that glass and a reason why people are behind it. And that is because there is fear in the neighborhood. There's fear on one hand and that is of the people that come in and do business. And there's resentment. There's resentment, also, because the people that are there are making money.

If I didn't address this now, I'd be ignoring the most important fact that went on here. And that is that there was a conflict between an Arab American store owner and an African American male, 34 years old, older than my client who is 27, who was under the influence of

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alcohol and who was under the influence of smoking marijuana. And that he was causing a ruckus in the store. What are you going to do? I suggest that in order to do justice, we have to take a look at both sides. You have to take a look at the position of the store owner, as well as the decedent. Frankly, the store owner is the person who you are judging for the criminality in this case and he deserves at least your review, an honest and fair review of what it is that had happened.

The video is here. I want you to look at it more than once. I need you to break it down frame-by-frame.

Mr. Lawrence suggests to you that he Maced him with his right hand. It's not on the report, but if you'll remember, he did that, you'll see that it was his left hand that he Maced him.

I want you to notice that when the Macing takes place whether or not the Defendant's hand is on his gun at that time.

I'm going to speak about Derek Roberts. His family is here. I will say things that hurt. It hurts me to say them. But he was under the influence. He was out of control. He was challenging and taking candy and throwing it on the floor and looking at the cashier and

looking at Mr. Jaber and saying what are you going to do.

Everybody knows that if you're in a store in Detroit, that if there isn't anyone that's bleeding, you're not going to get police coming to the scene. And to me, that was an open and blatant statement of fact, that he was going to be able to do whatever he wanted. And he did. He consciously was littering the store. He consciously was engaging in exaggerated conversation. He was consciously encouraging people that were in the store to leave. And when Mr. Jaber came out from the glass and he's confronting him, what the eff are you doing? At that point, then he Maces Mr. Roberts. And I have a different point of view about what happened.

Roberts, 6' 4", athletic build; Defendant 5'9", 5' 8". He's at the door. Roberts turns this way and you'll see it; obviously, from the effects of the Mace. But what I want you to look at is, take a look at his right leg and see whether or not he plants it. And I also want you to see whether or not he lunges forward. He's two to three feet of the Defendant.

The Prosecution's version is what it is. And I ask you to take a look at the video to see whether or not my view is something that you will raise for purposes of your deliberation.

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As he's throwing his punch and lunging forward towards the Defendant, the Defendant isn't asserting himself and standing forward and pointing. He's falling back. And as he's falling back, he fires it. Now, five shots would be evidence of premeditation and deliberation. One shoot. He shot him in the chest.

Much is going to be made about the bullet after the decedent leaves the store. But what you can't deny is that at or about the same time, within seconds, not more than a minute, the Defendant does call the police, does indicate that there's a shooting, does indicate that he was the shooter and that he was in fear.

Sound different? You decide. The evidence is going to come forward. We're going to hear from the witnesses. You're going to hear about the things that I talked about, but you're also going to have the video and I suggest, as it is with me, that you look at that video and you break it down step-by-step. And the People are going to encourage you to look at it step-by-step in order to find premeditation, to take a look at facts that occurred and make that fit into the puzzle about premeditation.

I suggest that you look at it and you make -- you make a decision. You make a decision on the facts.

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But make it based on the complete review of the witnesses who are going to testify, many of whom have an interest or a bias. You decide.

And the video, which is there in the clear and in the store. The video wasn't destroyed. And I don't know, but I think it was a cartridge. It wasn't a lead bullet. That bullet was retrieved. The weapon was retrieved. The Defendant admitted that it was he who did the shooting. So a red herring over here. Shell casing.

You have to understand the emotion in this case and I hope to bring out with this testimony is the fact that there's an emotion and to point out how much time there was and whether or not there was reasonable time to deliberate. Reasonable time to come back under control because this was a very heated conversation. A very heated conversation. And you can see the Defendant's mood as it elevates it. Was he beyond control? Did he have time to reflect? Was there time to deliberate? That's up to you.

All I ask is that you give it a good ear and that you listen not just to one little piece, but you try to fit the whole package together to make a determination of whether or not there were innocence or guilt, first degree, second degree, or not guilty.

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I know that if you do that, then I'll have a fair decision. Thank you.

THE COURT: Attorney Lawrence, call your first witness.

MR. LAWRENCE: Judge, our first witness is Serena Jones.

CLERK OF THE COURT: Step up here and give your name to the court reporter.

THE WITNESS: Serena Jones. S-E-R-E-N-A, J-O-N-E-S.

CLERK OF THE COURT: Raise your right hand, please. Do you solemnly swear or affirm that the testimony you're about to give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: Yes.

SERENA JONES,

having first been duly sworn, was examined and testified on her oath as follows:

CLERK OF THE COURT: Thank you. You may be seated.

THE COURT: You may proceed, Attorney Lawrence.

MR. LAWRENCE: Thank you very much.

DIRECT EXAMINATION BY MR. LAWRENCE:

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Q. Good afternoon?
A. Good afternoon.
Q. I think there's a microphone next to you that will assist. But make sure that you keep your voice up loud enough so that everybody can hear you. Okay?
A. Okay.
Q. For the record, can you please state your name?
A. Serena Jones.
Q. Ms. Jones, how do you know Derek Roberts?
A. He was my boyfriend for 12 years.
Q. At the time of his death, were you two still dating?
A. Yes.
Q. At the time of his death, do you know how old Derek was?
A. He was 34.
Q. And the day of his death, were you together with him earlier that day?
A. Yes.
Q. And what were you all doing as that day was occurring?
A. Actually, it was Mother's Day. So we were riding around, looking for gifts for my mother and his mother.
Q. Do you remember what day of the week this was?
A. It was a Sunday.
Q. Did you have an opportunity, while you were doing this on that Mother's Day, to have something to eat or drink?
A. We stopped at the store when we first got there, but I

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don't believe we got anything to eat because we were going to my grandmother's for Mother's Day dinner. So we didn't get anything.

Q. Did you have anything to drink?

A. Yes.

Q. Where were the two of you when you had something to drink?

A. At my house.

Q. And what is it that you and Derek had to drink, if you recall?

A. I believe it was like a beer.

Q. Did you each have a beer?

A. Yes.

Q. Was there any alcohol besides the beer?

A. Yes.

Q. What was that?

A. Hennessy.

Q. Did you have some Hennessy?

A. Yes.

Q. And did Derek have some Hennessy?

A. Yes.

Q. Do you remember how much?

A. Like a cup.

Q. How big of a cup?

A. One of those small, clear cups that you get from the

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liquor store.
Q. Okay. Kind of like a shot?
A. Yes.
Q. Did you each have one?
A. Yes.
Q. About what time was it that you had these drinks?
A. Probably about 1:00, when he first came.
Q. Were you intoxicated at all?
A. No.
Q. Would you say that Derek was intoxicated at all?
A. No.
Q. The two of you being together for 12 years, so I assume that there have been times in which, you know, for whatever reason, you're partying, you have a number of drinks. Was this one of those occasions?
A. No. We were just having casual drinks.
Q. All right. So does there come a point where the two of you separate?
A. Yes.
Q. And why is it that he went -- he did his thing?
A. He had to make a run. I'm not sure what it was. And we were getting a room later on that night, so I was going home to pack my bag.
Q. Where were you going to get a room at?
A. At Red Roof. He had just booked it before we separated.

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Q. And so what was the occasion that was going to cause the two of you to get a hotel room?
A. No occasion. Just because.
Q. Did Derek smoke cigarettes?
A. Yes.
Q. So when the two of you separated, you said you stayed at your house?
A. Yes.
Q. And he went to make a run?
A. Yes.
Q. Did you know where he was going?
A. No.
Q. Is there a phone call between the two of you?
A. Yes. He was gone for about 10 minutes. And something just told me to call him. He was supposed to be gone for an hour, but something just told me to call him. And when I called him, that's when he was walking into the gas station.
Q. This gas station that he was walking into, did you know what gas station, in particular?
A. No. Not at this time.
Q. Was there a -- of course, you come to find out what gas station it was?
A. Yes.
Q. The gas station that event took place at, is this a gas

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station that you've been to before?

A. Yes. But not often. We didn't stop there often. It was very seldom.

Q. Why is that, out of curiosity?

A. We really just didn't go that way too many times. So there wasn't a particular reason. We just wasn't in that area all the time.

Q. By the way, can you describe Derek for this jury? What race is he?

A. He's black.

Q. How tall is he?

A. I think he's like 6' 2", 6' 3".

Q. And was he a bigger guy or a skinnier guy?

A. He was a slim build.

Q. This day that he was ultimately shot, on this day, did you see him with any weapon?

A. No.

Q. No gun?

A. No.

Q. No knife?

A. No.

Q. Not even a baseball bat or anything?

A. No.

Q. So as you're speaking with him on the phone, how did you know that he was going into a gas station when you were

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speaking with him on the phone?

A. When he answered the phone, I asked him where he was. He said he was stopping at the gas station to get cigarettes. Because I smoke cigarettes, too. So that morning when we were together, he was smoking my cigarettes. So when he dropped me off, he realized that he didn't have any cigarettes, so he stopped at the gas station.

Q. And over the phone, can you hear if an argument was developing between Derek and someone else?

A. Well, when he walked in, he said let me get a pack of Newports in the box, 100. And he paused. And I couldn't hear the -- you know, the other person. But all Derek said was, man, I don't know what's wrong with you. Can you just give me the cigarettes?

MR. THOMAS: Your Honor, is this not hearsay?

TH COURT: Yes, it is hearsay.

MR. LAWRENCE: That's fine.

THE COURT: So sustained.

BY MR. LAWRENCE:

Q. Let me ask you this, Ms. Jones. You've been together for 12 years with him. Have you seen, over that time period, Derek, on an occasion get upset?

A. Yes.

Q. His demeanor, from what you tell, as far as his voice

and all the rest on the phone, how would you describe it?

A. From the beginning, like, he wasn't upset. He just went in there and asked for what he asked for. I'm not sure what was said because I couldn't hear the other person. But he was like, I'm talking to you. He was just asking for Newports in the box. No anger or anything.

Q. Did you ever hear his voice raised?

A. When the argument -- like later on, maybe right before he was shot.

Q. And so can you describe that? Like what changed between the moments where he was, you know, calm and speaking as you are right now, and then, you know, his voice changing in some way?

A. Well, I'm guessing.

Q. Well, I don't want you to guess.

THE COURT: Do not speculate. Attorney Thomas, you're making faces there. Is there an objection you wish to make?

MR. THOMAS: Well, I was going to say objection. But now that she said speculation, it's even more objectionable.

THE COURT: Well, ma'am, you can't guess. You have to say what you know.

THE WITNESS: Okay.

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MR. THOMAS: And there's been an objection about hearsay. So you cannot say what was said. You can describe, you know, what -- I guess what you heard.

MR. LAWRENCE: It's my fault, Judge. It's my fault, Ms. Jones. I didn't ask the question as good as I should have.

BY MR. LAWRENCE:

Q. What I'm asking you is not what words were occurring from Derek and from anybody else that he might have been talking with. I'm asking you how did his -- you know, his voice change. How did his voice inflection change?

Did he go from talking normal to screaming, or did he go from talking normal to what? That's my question.

A. He was talking normal to like a little -- I guess it was an argument because that's what was happening. He wasn't yelling or anything.

Q. Did you stay on the phone with him?

A. Yes.

Q. Was he also talking to you on the phone still, at that time?

A. Well, he wasn't responding to me because the conversation was going on. I was listening to everything.

Q. So how does this phone call between you and Derek end?

A. The last thing I heard Derek say was you're coming from behind the counter on me? You really coming from behind the counter on me?

MR. THOMAS: Objection, again.

MR. LAWRENCE: Well, I think, Judge, at this point in time she's testified to th voice changing.

THE COURT: Has she testified to that?

MR. LAWRENCE: I'll kind of lay a better foundation, then, Judge.

THE COURT: Yes. Sustained. Please lay a better foundation.

MR. LAWRENCE: Okay.

BY MR. LAWRENCE:

Q. So when he says the final words before your phone call ends, what is his voice like then? As somebody who has known him for 12 years, how has he changed?

A. He was getting upset at this point.

Q. And that's when you hear him say what you just testified to?

A. Yes.

MR. LAWRENCE: I would add, Judge, that I also think it's presence sense of impression.

THE COURT: It's presence sense of impression, yeah. I'll allow it.

BY MR. LAWRENCE:

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Q. So do you hear the gunshot at all?
A. No. The phone went dead right after he said that.
Q. Did you hang up the phone?
A. No.
Q. But the phone call ended?
A. Yes.
Q. So after the phone call ended, what did you do next?
A. I hung up and I called him back. And I ran out the house because I knew he was somewhere on Six Mile, but I didn't know where he was. But steady calling his phone the whole time.
Q. Was the phone --
A. It was just ringing.
Q. Just ringing?
A. Yes. And then I got maybe two blocks from the hospital. And that's when a detective or a doctor, I'm not sure exactly who, answered the phone and let me know that he was shot, sorry, you have to get up here.
Q. And just a moment ago, you said you got two blocks from the hospital?
A. Yes. Because I stay not too far from the hospital. And one of the gas stations is -- that he frequents on Six Mile and Schaefer, that's where I was headed to.
Q. Okay. And is that the gas station where this happened?
A. No.

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Q. So you knew he was at a gas station in the Six Mile area. So you were on your way to a gas station that you had experienced with him?
A. Yes.
Q. And you got the phone call from the Detective?
A. I was calling his phone and they answered his phone when I called.
Q. So you have a conversation with the detective, and based on that conversation, where do you go next?
A. To the hospital.
Q. All right. Ms. Jones, I'm sorry for your loss. Thank you. There will be cross examination now.

MR. THOMAS: Attorney Thomas, cross examination?

MR. THOMAS: Please.

CROSS EXAMINATION BY MR. THOMAS:

Q. Ms. Jones, on the day in question, you acknowledge the fact that you were drinking with Derek Roberts, is that right?
A. Yes.
Q. What were you drinking?
A. We had a shot of Hennessy and beer. And it was a couple hours before the incident happened.
Q. And where was this?
A. At my house.

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Q. Where did the Hennessy come from?
A. We bought it. I bought it.
Q. Before?
A. Uh-huh.
Q. So it was left at the house at the time that he left?
A. Yes.
Q. And you say that he -- you only had one shot?
A. Yes.
Q. And that that would have been at 1:00. Do you know what time it was that he was shot?
A. I believe it was around 3:00, 3:30.
Q. So two hours would have passed between the time that he had the Hennessy and, apparently, there was a beer, as well. Was that a 22 ounce beer?
A. It was a regular size. Like the regular size bottle. I don't know what size that is.
Q. That was a big bottle you just showed me.
A. No. The regular sized bottle. The smallest bottle.
Q. Now, do you know whether or not he had more than one shot of Hennessy?
A. No.
Q. Could he have had one more shot? One other shot or more shots?
A. No.
Q. It was only then the one beer that he had?

A. Yes.
Q. Did you share that beer or did he --
A. No. We both had our own beers.
Q. And those came from your house?
A. Yes.
Q. He didn't bring them with him?
A. No.
Q. Now, what time did he leave, approximately, if you know?
A. I want to say -- I'm not like -- it was 10, 15 minutes before the incident. He wasn't gone from my house long.
Q. For long?
A. Not --
Q. Before the phone call.
A. He was not gone that long. Something just told me to call him.
Q. So if I understand you correctly, there was drinking at 1:00 or so. Stopped drinking. And then close to 3:00, he leaves and then goes over to the gas station.

You didn't know which gas station it was?

A. No.
Q. Okay. And whether or not he had any alcohol after he left you, do you know?
A. He didn't, no.
Q. So you're sure of that?
A. I'm positive.

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Q. Do you know whether or not he had alcohol in his system from the evidence in this case?
A. From 1:00. That would be it.
Q. And do you know how much alcohol he had in his system?
A. I just told you, the shot and the beer.
Q. How much?
A. I just told you, a shot and a beer.
Q. Would you be surprised if his blood alcohol, two hours later, was .06, .07?
A. Yes.
Q. Would you be surprised if he had Marijuana in his system at the time?
A. No.
Q. Did he smoke dope?
A. Not dope. Marijuana.
Q. Marijuana. Did you smoke marijuana that day?
A. Yes.
Q. Did he?
A. Yes.
Q. How much marijuana did he smoke?
A. Probably like a blunt.
Q. Can you describe -- I'm a square, I have to tell you because I just said dope and you said marijuana.

I don't know how big a blunt is. How big is this blunt?

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A. Maybe like this long.
Q. Was this a blunt that you knew about how much marijuana was in it?
A. Yes. I rolled it.
Q. Was it like from a cigar or --
A. I'm sorry?
Q. What was it?
A. It was a cigar and I rolled it. Took the tobacco out and rolled it.
Q. And so how much marijuana was in that?
A. Enough for a blunt.
Q. And did you feel the effects of it when you were smoking it?
A. Yes.
Q. Was he showing the effects of it when he smoked it?
A. No.
Q. Did he appear to be intoxicated at the time that he left you?
A. No.
Q. Have you seen the video?
A. No.
Q. You said that his mood was evaluated. Did you hear him yelling?
A. No.
Q. Did you hear him say "what are you going to do" to the

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store clerk or to the -- or to Mr. Jaber? Did you hear that?

A. No. I don't recall. Everything was happening so fast. I don't remember that part, but I don't -- I don't recall.

Q. That's a natural thing. People argue and things go fast, don't they?

A. Yes.

Q. And you said that had you and Mr. Roberts argued, had he ever gotten to a point where he was arguing with you very passionately?

A. When, that day?

Q. Ever.

A. Yeah.

Q. So he's capable of having an argument. He's capable of showing that his mood is evaluated.

A. Everyone is.

Q. And you understand that when your mood is elevated, would you argue back?

THE COURT: What's the relevance of this line of questioning?

MR. THOMAS: Well, Your Honor, we're being judged here based on the fact that certain things were said. In a situation where --

THE COURT: You're asking her about her mood

and her elevation. The jury is going to see the video. What's the relevance of asking her -- what's the relevance of this particular line of questioning, Counsel?

MR. THOMAS: The Prosecutor has indicated that he wants to talk about the time for the passion to cool, okay, for lack of a better --

THE COURT: You're asking this Defendant about her passion?

MR. THOMAS: I'm asking this witness, if she's had an argument with Mr. Roberts, I was going to ask her about her time and for her to lose her man, and I was then going to ask her about the victims.

THE COURT: Attorney Lawrence?

MR. LAWRENCE: Yeah. My response, Judge, is -- I mean, this witness doesn't have to provide evidence to this jury as to the human beings arguing and how that works.

As far as the Defendant himself, or the victim himself -- that's what you just said -- we'll see what he did and you'll hear what he said. So I just don't think that this witness adds anything, which is why the Court's noted objection of relevancy, is, I think, accurate.

THE COURT: Counselor, I'm going to ask you to

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move on. The jury is going to see the video.

MR. THOMAS: Okay.

BY MR. THOMAS:

Q. Did you go to the gas station?

A. No.

Q. Did you ever go to the gas station after he was shot?

A. No. Well, for the rally we had. But I didn't go up there that day.

Q. Did you know the Defendant prior to the incident?

A. No.

Q. When you had gone there previously to that particular Citgo station, did you get treated well?

A. I never went in.

Q. You never went in?

A. No.

Q. Did someone else go in?

A. Derek went in.

Q. Did you have any conversation with him after he came out?

A. Yes. And nothing happened.

MR. THOMAS: I have nothing further.

THE COURT: Thank you. Any redirect?

MR. LAWRENCE: No, Your Honor.

THE COURT: Call your next witness.

MR. LAWRENCE: Judge, our next witness is --

THE COURT: Ma'am, you're thanked and excused.

MR. LAWRENCE: Yes, Judge. Thank you. I appreciate that and may this witness be excused and able to stay in the courtroom now?

THE COURT: Is she going to be recalled by any of the attorneys?

MR. LAWRENCE: No.

THE COURT: Okay. You may stay in the courtroom.

MR. LAWRENCE: Thank you, Judge. So the next witness is going to be Shataysha Kelley.

CLERK OF THE COURT: Step up here and spell your first and last name for the record.

THE WITNESS: S-H-A-T-A-Y-S-H-A, K-E-L-L-E-Y.

CLERK OF THE COURT: Thank you. Raise your right hand for me, please. Do you solemnly swear or affirm to tell the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

SHATAYSHA KELLEY,

having first been duly sworn, was examined and testified on her oath as follows:

CLERK OF THE COURT: Thank you. You may be seated.

THE COURT: You may proceed.

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MR. LAWRENCE: Thank you, Judge.

DIRECT EXAMINATION BY MR. LAWRENCE:

Q. Good afternoon, Ms. Kelley.

A. Good afternoon.

Q. I'm going to ask you -- I believe there's a microphone to assist, but keep your voice up high enough so that everyone can hear you. Okay?

A. Okay.

Q. For the record, can you state your name?

A. Shataysha Kelley.

Q. And, Ms. Kelley, are you familiar with a gas station -- you know, one of those gas station stores located at 17804 West McNichols in the City of Detroit?

A. Yes.

Q. Do you remember what kind of a gas station it is?

A. No. I just know it was green.

Q. It was green?

THE COURT: Is that a yes?

THE WITNESS: Yes.

THE COURT: I need you to actually say yes. You can't shake your head. You can't hand signal. Attorney Lawrence.

BY MR. LAWRENCE:

Q. Were you at this gas station on May 13, 2018?

A. Yes.

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Q. Had you been to that gas station before?
A. Yes.
Q. Is this a gas station that you would frequent?
A. No.
Q. But it is a gas station that you had been to at least once before?
A. Yes.
Q. Do you remember what took you to the gas station on that day?
A. Yes.
Q. What was that?
A. I was going to buy cigarettes for my sister's friends.
Q. And about what time did you go to the gas station?
A. Between 1:00 and 3:00 p.m.
Q. When you were at the gas station, were there other customers that were there?
A. Yes.
Q. Was there any incident that you could tell, or was everything just kind of like a normal gas station store experience at the time?
A. When I first came in, it seemed normal until I got to the counter.
Q. And so this counter, is this the only counter that you could purchase things at this gas station?
A. Yes.

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Q. Do you remember how many workers were working at the counter?
A. I only seen one.
Q. And do you remember if there was one register or multiple registers?
A. I only remember one register.
Q. Were you at that register?
A. Yes. I was at the side.
Q. And was there a -- did you witness an individual getting shot?
A. Yes.
Q. So where was that individual in relation to you?
A. He was a stranger.
Q. Where was he standing?
A. At what point do you mean?
Q. Did you see him in an argument?
A. It didn't seem like an argument. They were just talking back and forth. Just going back and forth, normal stuff you honestly see in a gas station.
Q. So it would be something that it did not surprise you or that you didn't consider out of the ordinary?
A. No.
Q. And this person who got shot, can you describe, physically, this person?
A. He was tall, about 6' 2". He was brown skin. He had on

a T shirt and I believe shorts.
Q. Is he a bigger guy, a stocky guy?
A. He was skinny.
Q. Who was he in an argument with?
A. The cashier.
Q. How long would you say that this argument was going on for?
A. Just a few seconds before the cashier asked -- he kind of just blew him off and asked me what did I need.
Q. And so the cashier, you think, blew off the skinnier person who got shot and attended to you?
A. Yes.
Q. Did you place your order for the cigarettes?
A. Yes.
Q. Did the argument continue between the cashier and the --
A. Only when the victim said something to me.
Q. So the victim said something to you?
A. Yes.
Q. Was that during this argument with the cashier?
A. It was like -- yeah. It was still kind of in the middle even though he ignored him. But he kind of just said something to me as the -- the cashier took it as if he carried it on, even when he was ignored.
Q. So the person --
THE COURT: Who is the "he"?

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THE WITNESS: I'm sorry.

MR. LAWRENCE: It's my fault, Judge.

BY MR. LAWRENCE:

Q. So you referred to him as the victim because it's the person who is going to get shot?

A. Yes. Yes.

Q. So the victim. The victim is in this argument with the cashier. How far away are you from him?

A. I'm right next to the victim.

Q. At any point in time did the victim take out a weapon at all?

A. No.

Q. At any point in time did the victim -- did you see him look like he was going to fight the cashier?

A. No.

Q. Did you ever see him raise his hands, his arms, like any kind of a fighting type way?

A. No.

Q. Did you see him clenching his fists or anything?

A. No.

Q. Did you hear him making threats, physical threats to the cashier?

A. No.

Q. Now, describe the demeanor of the cashier. You were right there.

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At any point in time, do you see a second person behind the counter?

A. No.

Q. Describe the cashier's demeanor.

A. He wasn't really -- he was sassed out to him, but his demeanor more so was not really caring what he was saying. He responded back to the little stuff he said, but he wasn't fully engaging with him. With the victim, I apologize.

Q. So this counter, does this counter have like a glass barrier between where the cashiers would be and where the customers would be?

A. Yes.

Q. And is there a door or some means of getting behind the counter?

How would a person get from behind the counter into the gas station?

A. There was a door out on the far right end.

Q. So at any point in time, did you see that door open?

A. Yes.

Q. And what did you see? Tell the jury about that.

A. When the door opened, I just saw a man appear and Mace the victim.

Q. And when you say the man Maced the victim, can you tell us what you saw?

A. Well, I'm sorry. The victim opened some peppermints, I believe, and the Defendant appeared to tell him to stop opening the peppermints. And the victim said something as far along as, like, or what? And he proceeded to -- the Defendant proceeded to Mace him.

Q. What was the victim doing when he got Maced?

A. The victim was holding his eyes. And I was screaming, like, hey, I'm right here.

Q. What was the Defendant doing?

A. I don't believe -- I didn't look at him. All I know is I heard a loud pop.

Q. Did you actually see the gunshot?

A. Yes, after I heard the pop.

Q. Did you see a gun?

A. Yes.

Q. Who was holding the gun?

A. The Defendant.

Q. Do you see that person in the courtroom today?

A. Yes.

Q. Can you point to him and just describe what he's wearing?

A. The suit.

THE COURT: Okay. I'm going to need you to say yes. She's been shaking her head.

THE WITNESS: Yes.

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THE COURT: So you do see the Defendant?

THE WITNESS: Yes.

THE COURT: Can you point to the Defendant?

MR. THOMAS: Judge, there's no need. We'll stipulate.

THE COURT: Okay. Stipulation to that identification as to the person who had the gun in the gas station?

MR. THOMAS: Yes.

MR. LAWRENCE: Yes.

THE COURT: Okay. Please proceed with any additional questions.

BY MR. LAWRENCE:

Q. So did you see where the victim was shot, Ms. Kelley?

A. Yes. From my view, it was his front side.

Q. And what did the victim do after he got shot?

A. He was stumbling around.

Q. Did he stay inside the gas station store or did he go outside?

A. Well, I ran out, so I don't know exactly where he was. I ran out.

Q. And when you ran out, do you remember what you initially did?

A. I ran to me car to call 911.

Q. Did you call 911?

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A. Yes.
Q. What happens next?
A. I was put on hold and then I saw the victim stumbling out of the store.
Q. And where did the victim go?
A. He was just stumbling down. And so I got out to help him down to the ground.
Q. So he was on the ground?
A. He was falling down. He was stumbling down to the ground. Yes, the victim was.
Q. And in what way did you try to give him assistance?
A. I grabbed my daughter's coat out of my car to cover the wound that I saw, to try to apply pressure to stop the bleeding.
Q. Do you remember where that wound was?
A. On his side. In the front on his side.
Q. And did other people, other -- I'm not talking about police and whatnot. But just other people, were they around, as well?
A. I saw a man on the phone.
Q. Did the police arrive?
A. Yes. Shortly after the EMS.
Q. So the EMS got there first?
A. Yes.
Q. And they tended to the victim?

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A. Yes.
Q. Did you stick around during this time period?
A. No.
Q. Where did you go?
A. My sister came to get me because I called my sister.
Q. So you left before the ambulance took Mr. Roberts away, the victim away?
A. I don't remember.
Q. When you last saw him, was he still alive?
A. No. It didn't look like it.
Q. So you believe he lost consciousness?
A. Yes.
Q. All right. Other than seeing the person who you pointed out in the courtroom shoot Mace and shoot the victim, did you see anybody else with a gun?
A. No.
Q. Anybody else with a weapon?
A. No.
Q. Did you see the victim ever try to get behind the counter to where the clerks were?
A. No.
Q. Did you see the victim ever try to attack or fight or do anything physical with the Defendant?
A. No.

MR. LAWRENCE: Thank you, Ms. Kelley.

Are you okay if I do that?

A. Yes.

Q. All right. When you were in the convenience portion of the gas station, you said that you only saw one register. Isn't it true, there's two registers there?

A. I did not see two registers.

Q. Did you hear other people talking, other than the defendant, Mr. Jaber?

A. No.

Q. Were you looking behind the counter to see whether or not there was another assistant, another cashier, back there?

A. No.

Q. But as you sit here today, you don't recall that there was another person there?

A. Correct.

Q. And as it relates to what was being said back and forth and who said it, since you only think that there was one person there, there was only one person who you think

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THE COURT: Attorney Thomas, cross examination?

MR. THOMAS: Yes.

CROSS EXAMINATION BY MR. THOMAS:

Q. My name is Jim Thomas. I represent the Defendant in this case, Rami Jaber. I have to ask you questions.

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was talking. Is that what your testimony is?
A. Yes.
Q. If it were true that there was another person who was there, then how is it that -- well, that's an argument. I'll just leave that.
THE COURT: Thank you.
BY MR. THOMAS:
Q. When you came into the store, you were alone?
A. I was by myself, yes.
Q. Yes. There were other people in the store, weren't there?
A. I saw people leaving, yes.
Q. And the reason why they were leaving was because there was a disturbance in the store, isn't that correct?
MR. LAWRENCE: Objection, calls for speculation.
MR. THOMAS: Sustained.
BY MR. THOMAS:
Q. Was there a disturbance in the store?
THE COURT: She said -- she testified that -- she said how was she to know how the people left, why the other people left.
MR. THOMAS: No. I didn't ask that question. I'm now withdrawing it. I'm going to ask whether there was a disturbance in the store.

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THE COURT: Okay. Ma'am, answer the question. Was there a disturbance in the store?

THE WITNESS: To me, no, there wasn't a disturbance.

BY MR. THOMAS:

Q. Okay. You saw the decedent, who was in the store, and you had a chance to view him from where you were, isn't that right?

A. Yes.

Q. Was he in front of you, behind you, or beside you?

A. Beside me.

Q. Was he standing in front of the register and was he, at that point, throwing candy on the ground?

A. No. That wasn't what he was doing initially.

Q. You didn't see him do that in the store?

A. No. Initially.

Q. You didn't see him take white candies, open them up and throw them on the floor?

A. I seen him open one.

Q. Just one?

A. I didn't see exactly what he did with it. I just saw him opening one.

Q. Was he eating it?

A. I don't know.

Q. Did he pay for it?

A. Not to my knowledge.
Q. Okay. Were aware that there was a dispute over cigarettes and the cost of cigarettes?
A. No.
Q. Did you see them give him his money back because he didn't give enough to the cashier?
A. No.
Q. I want to talk to you a little bit about your ability to observe. We're going to see the video, but I'm not going to show it to you. The video has you in a place in the corner by the front of the counter at a certain point. Do you recall that?
A. Yes.
Q. Do you recall why you were there?
A. To get cigarettes.
Q. Do you remember huddling down when there was a dispute between Mr. Jaber and Mr. Roberts?
A. What do you mean huddling down?
Q. When Mr. Jaber came out from behind the glass, did you hide?
A. Yes.
Q. Did you tuck your head down and keep your head down during the period -- that period of the dispute?
A. Yes.
Q. So would you agree that while your head was tucked down

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that your ability to view what was going on was not as good as it was when you were standing next to Mr. Roberts?

A. That's correct.

Q. Isn't it true that Mr. Roberts was in front of the counter and that that clerk asked him to come over here so that you could get served?

A. Yes.

Q. That was a second person. Does that refresh your recollection at all?

A. That was the same one he was arguing with.

Q. The same one that came out of the door?

A. No. I never saw the Defendant until he came out the door.

Q. So there's two people behind the glass, is that correct?

A. No. I was not aware that there were two people. I only seen one cashier the entire time, that they were going back and forth.

Q. Is the person that came out from behind the door the same person that was the cashier that was engaging Mr. Roberts?

A. No.

Q. Okay. So there's two men, then, behind the glass, correct? I'm not trying to confuse you. But when you told me there was only one person, I want to clarify it.

There's two people back there behind the glass, is that right?

A. I'm telling you I did not see two people when I came -- two cashiers when I came into the store. I only noticed one.

Q. Okay. And you don't remember having been moved from the one window where Mr. Roberts was being served to another window where you could be served?

A. Yes, I was.

Q. Okay. Two windows and two people behind the counter, correct?

A. There was one window. So there was two slots, but I don't know if he was standing exactly in front of a register when he was engaging with the cashier. I just know they told me to come to the side to get what I wanted. I was not aware if there were two registers, two windows. I was just pulled to the side.

Q. But you were directed to go to a second window, were you not?

A. I was directed to go to the side window.

Q. To the side where the other window was.

A. It was -- it looked like one window, two slots. So I perceived it as one window.

Q. Okay. When Mr. Roberts was opening up the candy, you said there was only one thrown on the ground.

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A. I didn't see any thrown on the ground.
Q. At all?
A. No.
Q. Was this at a time when you were over in the corner and that you were trying not to pay attention to what was going on because all you wanted to do was get your cigarettes?
A. Yes. I honestly was not listening to everything they were saying. I was letting them have their little back and forth real quick. And then that's when he assisted me. So I didn't think too much of what they were saying because it was just them talking to each other.
Q. When you're saying he assists you, you're talking about the person behind the counter?
A. Correct.
Q. Not Mr. Jaber?
A. Correct.
Q. So did you hear the statement from Mr. Roberts, "what are you going to do?" Did you hear that?
A. Yes.
Q. Was that at or about the time that he was handling the candy?
A. Yes.
Q. And what did you take that to mean?
A. I didn't think nothing of it.

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Q. Do you live in the area?
A. No. I don't live in that area.
Q. Do you live over in the east side?
A. Yes.
Q. And so you're not familiar with store ownership or any tension that exist between the Arab American store owners and --

MR. LAWRENCE: Objection, Judge. Mr. Thomas is testifying.

THE COURT: Sustained.

BY MR. THOMAS:
Q. Ma'am, did you testify in a prior proceeding?
A. No.
Q. So you've never testified under oath before?

THE COURT: Regarding this matter?

MR. THOMAS: Regarding this matter, yes.

THE WITNESS: No. Not in a courtroom.

BY MR. THOMAS:
Q. Well, there are different ways of testifying under oath. Did you attend a deposition?
A. Yes.
Q. That was a deposition as it relates to another matter; this matter in another context?
A. Yes.
Q. It was on Friday, May 10th?

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MR. LAWRENCE: Your Honor, may we approach?

THE COURT: Please approach before you go any further.

(Sidebar held between Court and Counsel)

THE COURT: I'm going to have the jury leave the Courtroom at this time.

THE BAILIFF: All rise for the jury.

(Jury exits jury box at 3:33 p.m.)

MR. LAWRENCE: All rise for the jury.

(Jury enters jury box at 3:34 p.m.)

THE BAILIFF: You may be seated.

THE COURT: So there was a deposition, is that my understanding?

MR. THOMAS: There was a deposition with three people in a civil case. I had three depositions, one was hers. The other one is relating to the clerk. And there's like the third one of the decedent's father, who I probably will not be using for cross examination.

THE COURT: So you have a transcript from a deposition of Ms. Kelley?

MR. THOMAS: I do.

THE COURT: Have you provided a copy of that transcript to the Prosecutor?

MR. THOMAS: Judge, I made an assumption. I did not. Apparently, he says he doesn't have it.

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THE COURT: Okay. So before we proceed down this line of questioning, the Prosecutor needs to have a copy of the statement of this witness that you're trying to impeach her with. Okay? And then we can deal with it in arguments as it relates to whether or not this final questioning is appropriate. So please provide Attorney Lawrence with a copy of the testimony. We can even make a copy of it right here.

MR. THOMAS: I can have my secretary make a copy.

THE COURT: Okay. Because we're not going to proceed any further with this witness until he reviews that deposition testimony.

MR. THOMAS: Your Honor, may I have a second?

THE COURT: You may.

MR. THOMAS: We may not have to rely on electronics.

THE COURT: How long is the deposition testimony? How many pages?

MR. THOMAS: Mr. Saleh's deposition testimony is almost 70 pages.

MR. LAWRENCE: That can just be emailed to me because he's not going to testify today.

MR. THOMAS: And then Shataysha Kelley's testimony is approximately 53 pages, with the index. I

can give it to you now.

MR. LAWRENCE: Okay.

THE COURT: That's the Defendant's copy, isn't it?

MR. THOMAS: Yes, it is. But I'll make another one for him tonight.

THE COURT: Okay. We're off the record while you have the opportunity to do that.

(Off the record at 3:36 p.m.)

(Back on the record at 3:49 p.m.)

THE COURT: We're back on the record on People versus Rami Jaber. Appearances, please.

MR. LAWRENCE: William Lawrence for the People. Good afternoon.

MR. THOMAS: James Thomas on behalf of the Defendant.

THE COURT: Attorney Lawrence, you've had the opportunity to review the deposition testimony of Ms. Kelley?

MR. LAWRENCE: Yes, Judge. Whereas, I don't know specifically, and I guess I'd let Mr. Thomas speak as to what it is that he would be using to try and impeach Ms. Kelley, there's two arguments that the People would like to make.

Number one is that the witness testified at

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the deposition, which was, for the record, on May 10, 2019. From what I can tell completely consistent with how she testified today. There came a point in time in the deposition -- this is 53 pages in testimony. And on Page 36, where the attorney shows her the video and has her comment on the video for the rest of the deposition, saying things like, Ms. Kelley, I know you said that you didn't see wrappers on the floor, but here on the video now you see him throwing a wrapper on the floor. And she said, yes, I see that now on the video.

So it's not a prior inconsistent statement. It's not a she testified to her memory completely the same at this deposition as she did in court. It's just when the video was shown to her and she was asked to confirm what's on the video that she did that.

So I don't, number one, think that there's any grounds on this transcript for impeachment of Ms. Kelley.

And No. 2, the obvious concern for the People is what the video shows and does not show is for the jury to decide.

So now, the cross examination, to go into a transcript of Ms. Kelley commenting on the video and being asked to comment on the video is for her to be drawing conclusions that are within the purview of the

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trier of fact.

So for those two reasons, number one, I don't think there's anything impeachable in this transcript. And number two, because we don't need to now start going through her comments on the video. You know, obviously, Mr. Thomas can speak to if he thinks that there is something that's usable. But that's my position on this transcript.

THE COURT: Attorney Thomas?

MR. THOMAS: So I was going to proceed in two ways. First of all, I'll make a record as to what it is I was going to ask her. And then I was going to proceed to ask her as it relates to each of the questions that I have. And that is regarding the arguing and the peppermints on the ground, wrappers on the floor. She didn't see everything at the time.

THE COURT: That's what she said here, that she didn't see everything. She testified to that.

MR. THOMAS: Page 42. She did testify that she saw certain things. And I think the video is going to show her with her head down now.

MR. THOMAS: Right. What she testified to. She said at one point, she did duck down. She had her head down and over in the corner. She testified to that. So now this is the problem that we have,

gentlemen, the Court hasn't seen the transcript. So I need a copy of the transcript in order for me to rule on this particular issue. It is now 3:55. The Court wants a copy of the transcript. I will provide a ruling in the morning and Ms. Kelley needs to be back on the stand in the morning. We'll start back a 9:00 a.m.

MR. THOMAS: Can I tell you, Judge, that area of controversy are Pages 41, 42, 45, 44, 47, and 50.

THE COURT: This is at the point after which the witness who did the deposition, Ms. Kelley, has already testified based on her memory. And then the video was shown to her and she is asked to comment on what she sees in the video.

MR. LAWRENCE: Correct.

THE COURT: That's what's on these pages that she's just indicated to me, Attorney Thomas?

MR. THOMAS: Yes. And I'm going to ask her whether or not reviewing this refreshes her recollection about that particular area. And if she says yes, then I'm going to ask her to read it. It she says no, then I'm not going to go into it.

THE COURT: Okay. I need a copy of the transcript for the Court to review it.

MR. LAWRENCE: I could make a copy.

THE COURT: We can do all of that once I have

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the jury come back out and then we'll dismiss them for the day.

MR. LAWRENCE: Okay.

THE BAILIFF: All rise for the jury.

(Jury enters jury box at 3:54 p.m.)

THE BAILIFF: You may be seated.

THE COURT: We're back on the record. Ladies and gentlemen, it's 4:00. We're going to break for the afternoon. I'm going to allow you to leave at this point. I want you to return back at 9:00 a.m. You will congregate outside this door in the morning. We cannot begin unless all of you are here. So please try to be on time. The badges that you've been given by my courtroom corporal will allow you to come through a different metal detector as a juror. So you don't have to go through all of the same metal detectors and entry as everybody else that's coming into court today. So that should expedite you getting back into a courtroom or into the courthouse and back into the courtroom.

Please do not discuss this case with anyone, what you heard so far of the case. No one is to discuss the case with you. Please remember that you cannot have any discussion, whatsoever, not even about the weather, with any of the attorneys in this case, the witnesses, the Defendant or their families. If someone tries to

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speak with you regarding the case, please report that to me as soon as you come back in.

We are adjourned for the evening. I'll see you in the morning at 9:00 a.m.

THE BAILIFF: All rise for the jury.

(Jury excused for the day at 3:56 p.m.)

THE COURT: I'll see everyone back at 9:00 a.m.

(Proceeding concluded at 3:58 p.m.)

* * * * *

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CERTIFICATE OF NOTARY

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

I, Carol Dillon, Certified Shorthand Reporter, a Notary Public in and for the above county and state, do hereby certify that the above deposition was taken before me at the time and place hereinbefore set forth; that the witness was by me first duly sworn to testify to the truth, and nothing but the truth, that the foregoing questions asked and answers made by the witness were duly recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to either party nor interested in the event of this cause.

_____

Carol Dillon RPR, CSR 2950
Notary Public,
Oakland County, Michigan

My Commission expires: 9-3-2022

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STATE OF MICHIGAN

THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff, No. 18-0005065-01-FC

v Jury Trial Vol. 2

RAMI JABER,

Defendant.

_____/

JURY TRIAL VOL. 2

BEFORE THE HONORABLE NOAH P. HOOD

TUESDAY, SEPTEMBER 24, 2019

APPEARANCES:

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Detroit, Michigan

Tuesday, September 24, 2019

10:06 a.m.

* * * *

CLERK OF THE COURT: This is Case No. 18-000565, People of the State of Michigan versus Rami Jaber. This matter is here for a jury trial in progress. Appearances, please.

MR. LAWRENCE: Good morning, Your Honor. William Lawrence on behalf of the People.

MR. THOMAS: James Thomas on behalf of Rami Jaber, who is here with me.

THE COURT: Before we proceed, I just want to indicate, for the record, the Court cannot have people moving in and out of the courtroom during testimony. I need to be able to hear and moving in and out of this door allows me to hear what's happening in the hallway and restricts me from what's happening here on the witness stand. So I need you -- if you have to leave, if you're going to go out, stay out. As I said, you're not going to be able to run in and out of the courtroom.

Before we broke for the evening yesterday, there was a witness on the stand, Ms. Kelley. Attorney Thomas was seeking to impeach her with testimony from a deposition that took place on May 10, 2019. The Court

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had an opportunity to review the deposition testimony. The Court is not going to allow that line of questioning and the Court will state these reasons for the record.

Ms. Kelley testified essentially the same here in Court yesterday as she did during the deposition. What is at issue here, and I believe what Attorney Thomas was attempting to elicit was Ms. Kelley's commentary as it related to the video and what went on with the Defendant -- excuse me. Not the Defendant, the decedent in this case as it relates to him picking up peppermints and dropping the wrappers on the floor.

Ms. Kelley testified in Court yesterday, as well as on May 10, 2019, that there were moments where she was not paying attention to what was going on because she was trying to purchase cigarettes and she did not see everything that was happening. I believe the video speaks for itself. Attorney Thomas, you're free to make whatever argument and inferences you wish to make as it relates to Ms. Kelley's testimony and any inconsistencies that you believe exist between her testimony and what is on the video that was going to be played for the jury.

MR. THOMAS: Do you want me to make my argument now?

THE COURT: You may.

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MR. THOMAS: All right. Your Honor, I wanted to go into just a few areas. The first of which you alluded to and that is whether or not she had the ability to see, which I thought was important. I thought she said she saw certain things, but that she didn't see others.

In her deposition testimony, Page 22, she said I didn't see anything. And I wanted to ask her whether she said that. And I thought that that was impeachment and that that was a prior sworn statement under oath and is admissible under the rules.

The second aspect of it was regarding the candies, but I -- the candies are going to be what the candies are. They're on the floor. Everybody can see that. I'm not going to go into that.

But when she said that she didn't see anything, she was shown the video. And her seeing the video had her reconsider whether or not she did see anything or certain portions of it. We asked her -- not we. The civil lawyers had her in the civil deposition, under oath, whether or not she saw him moving, meaning the decedent, Derek Roberts, moving toward the clerk and she said she did. I want to be able to ask her, with the video, do you see him moving towards the clerk.

THE COURT: Show her the video. Show her the

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video in Court and ask her.

MR. LAWRENCE: Well, you're wanting to ask her what she sees in the video?

MR. THOMAS: And whether or not that refreshes her recollection. And was she asked the questions and did she see it and she said yes.

THE COURT: And ultimately, honestly, Attorney Thomas, that's the decision for the finder of fact, which the jury is going to review the video and they're going to determine whether or not the Defendant made any movements toward -- excuse me -- the decedent made any movements towards the Defendant.

MR. THOMAS: Right. And so that's fine. I get that. But this is more. This is a person who said she didn't see certain things, but that she did see others. And it goes to her credibility. So it's actually -- it's 801. It's evidence of impeachment with a prior statement under oath.

THE COURT: The Court is not going to allow that line of questioning. You can bring Ms. Kelley back out and we can also bring the jury back out.

MR. THOMAS: So I won't be able to show her the video?

THE COURT: No. The video speaks for itself. The video speaks for itself. You can make whatever

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arguments and inferences you wish to make as it relates to the video. You still have her on the witness stand for cross examination. Is there any other questions that you wish to ask her, you can.

THE BAILIFF: All rise for the jury.

(Jury enters jury box at 10:14 a.m.)

CLERK OF THE COURT: Ms. Kelley, will you stand and raise your right hand for me, please?

Do you solemnly swear that the testimony you're about to give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

SHATASHYA KELLEY,

having first been duly sworn, was examined and testified on her oath as follows:

CROSS EXAMINATION BY MR. THOMAS:

Q. Good morning. I'm going to continue the questions, but it's like going to be brief. Is that all right?

A. Yes.

Q. You heard the confrontation between the clerk, the person who had the gun and shot, and the decedent, Derek Roberts, didn't you?

A. Yes.

Q. Did you hear him say at any time, what are you going to

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do? Did you hear him make that statement?
A. I heard words in reference to that, yes.
Q. And that was by the decedent, Derek Roberts?
A. Yes.
Q. And was that at or about the time that the person who had the gun came out of the door?
A. Yes.
Q. You are generally aware of tension that exists between store owners and patrons that come into the store. Would you agree?
A. Can you say that again?
Q. All right. I'll ask the simple question. Do you know that black patrons and Arab store owners have conflict throughout the Detroit area?

MR. LAWRENCE: Objection. How could she possibly testify to that?

THE COURT: Sustained.

MR. THOMAS: Well, she can testify by reputation. She can testify from her own personal knowledge.

THE COURT: Ask if she has personal knowledge. She can't speculate as to what goes on in the entire African-American community as it relates to Arab American business owners in the City of Detroit.

BY MR. THOMAS:

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Q. Ma'am, can you answer the question, do you have any knowledge of the conflicts between Arab American store owners and their patrons, black patrons, generally?
A. No, not necessarily, from my own personal knowledge.
Q. Not from your own personal knowledge. But in this instance, you had a chance to hear what was going on, the dialogue between the person who had the gun and the clerk who was behind the counter and the patron who happens to be African-American that ended up getting shot.
A. I didn't hear the full conversation. I heard bits and pieces of it.
Q. And did you hear any portions that related to the subject matter that I was talking about? And that is, aware in the City of some controversy with Middle Eastern store owners and the African-American community?
A. I did not hear exactly what they were arguing about. I just know the deceased spoke to me saying they think they were better than us.

MR. THOMAS: Referring to page 44, I'm going to ask a question and get an answer for impeachment, Judge, with your permission, starting at Line 14.

THE COURT: I'm not there yet. I want to read what you're talking about first. You said 43?

MR. THOMAS: 44, Line 14. Then going on down

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to Line 25.

THE COURT: The Court wants to know what's the relevance of this particular testimony as it relates to this incident?

MR. THOMAS: The relevance of this testimony goes to the state of mind of the Defendant. I'm talking about whether or not this occurred at a time that an argument ensued and before passions had a chance to cool.

MR. LAWRENCE: No objection from the People.

THE COURT: Please proceed.

BY MR. THOMAS:

Q. Ma'am, were you aware -- I'm sorry. I'm going to ask you a question and whether or not this question was asked.

Were you present at a deposition in a civil matter on May 10, 2019, at 10:05 a.m.?

A. Yes.

Q. Were you placed under oath?

A. Yes.

Q. Did you swear to tell the truth?

A. Yes.

Q. Were you asked the question are you aware in the City there's some controversy of Middle Eastern store owners and the African American community as to who owns the

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stores?

Was that the question that was asked?

A. I don't remember that so I --

Q. If I showed you the question and showed you the answer, would that refresh your recollection?

A. Yes.

MR. THOMAS: Permission to approach?

THE COURT: You may.

BY MR. THOMAS:

Q. Ma'am, do you mind? Can I come through?

A. Yes.

Q. Here's the question and here's your answer. I don't want you to say anything. If you will read it, I'll ask you if that refreshes your recollection.

A. Okay.

Q. Ma'am, have you looked at that? Does that refresh your recollection of that dialogue?

A. Yes.

Q. Were you asked the question that I asked you?

At the deposition, were you asked: Are you aware in the City, there's some controversy over Middle Eastern store owners and the African American Community as to who owns the stores?

Was that a question that was asked?

A. Yes.

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Q. And was your answer yes -- was your recollection for us: Yes, I see it all the time.
A. Yes.
Q. And moving on, was there a discussion kind of similar to that, Mr. Roberts was saying they think they're better than us.

Do you remember that question?

A. Yes.
Q. Do you remember your answer?
A. Yes.
Q. And was it yes?
A. Yes.
Q. Mr. Roberts is the deceased, correct?
A. Yes.
Q. Were you asked the question regarding bickering back and forth? Were you asked whether or not there was bickering back and forth about that subject?
A. Between who?
Q. Mr. Roberts and the person behind the glass.
A. Yes. But I don't remember exactly what they were saying because I came in the midst of it. So I don't know what the whole conversation was about.
Q. But at least you can say that the testimony was -- the words that you heard back and forth pertaining to the controversy between the Middle Eastern community and the

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African-American community. You did hear that?

A. Yes. Based on what the deceased spoke on.

Q. And the deceased's position was that they think they're better than us?

A. Yes.

MR. THOMAS: I have nothing further.

THE COURT: Any redirect?

MR. LAWRENCE: No redirect, Judge.

THE COURT: Ms. Kelley, you're thanked and excused. Is this witness going to be recalled?

MR. LAWRENCE: Not from the People.

THE COURT: You're free to leave, Ms. Kelley. Please call your next witness.

MR. LAWRENCE: Our next witness is Officer Kory Dombrowski.

CLERK OF THE COURT: Step up here and say and spell your name, please.

THE WITNESS: Kory Dombrowski.

CLERK OF THE COURT: Do you solemnly swear or affirm that the testimony you're about to give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

KORY DOMBROWSKI,

having first been duly sworn, was examined and testified

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on his oath as follows:

CLERK OF THE COURT: Thank you. You may be seated.

THE COURT: You may proceed when you're ready.

DIRECT EXAMINATION BY MR. LAWRENCE:

Q. Good morning, Officer.

A. Good morning.

Q. Would you please state your name for the record?

A. First name Kory, last name Dombrowski, Badge 1017.

Q. And how are you employed?

A. By the Detroit Police Department.

Q. How long have you been with the DPD?

A. Roughly, three years.

Q. All right. Were you working back on May 13, 2018?

A. I was.

Q. And do you remember what your general assignment that day was?

A. Patrol.

Q. Were you working alone or with a partner?

A. With a partner.

Q. Did there come a point in time when you received a radio communication to respond to an address of 17804 West McNichols in Detroit?

A. Yes.

Q. What was that radio dispatch for?

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A. A GSW.
Q. What does that mean?
A. A gunshot wound.
Q. So you responded to the scene?
A. Yes.
Q. When you got there, were you and your partner the first officers there?
A. No.
Q. There were other officers already there?
A. Yes.
Q. Was EMS already there?
A. Yes.
Q. Was an EMS worker tending to the victim?
A. Yes.
Q. And where did you first observe the victim?
A. In the ambulance.
Q. And so what, if any, efforts did you make, first of all, that deal with the crime scene as you responded to it?
A. Just to minimize the foot traffic inside the gas station.
Q. And what is it that you do as an officer and did in this instance to secure the area?
A. Make sure all the weapons were seized, anybody who was there to remain on scene so my partner can get statements; basically, freeze time in itself there.

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Q. And like you mentioned a moment ago, you made sure that there was no foot traffic, extra people coming into the crime scene and so forth?
A. Yes.
Q. So was there -- were you able to recover any weapons?
A. I did.
Q. And what kind of weapons did you recover?
A. A black semi-automatic.
Q. Where did you recover it from?
A. The waist of the offender.
Q. And when you say the waist of the offender, was it holstered or just under the waist?
A. I can't recall.
Q. Can you recall what side of the body it was?
A. Right side.
Q. So the waist of the right side of the offender?
A. Yes.
Q. By the way, do you see the offender in the courtroom today?
A. I do.
Q. And can you just point to him and describe what he's wearing for identification purposes?
MR. THOMAS: We stipulate to identification.
A. The gentleman wearing all white button up shirt and the black suit.

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THE COURT: The Defense Counsel has stipulated for the record, that the Defendant is the person that Officer Dombrowski encountered with the gun in his waist.

BY MR. LAWRENCE:

Q. So did you place that gun in evidence?

A. Yes, I did.

Q. Did you locate any other weapons in addition to the gun?

A. I located a can of Mace that was used, as well.

Q. And was that recovered and placed into evidence?

A. Yeah.

Q. Other officers responded to the scene?

A. Yes.

Q. Investigators responded to the scene?

A. Yes.

Q. Evidence technicians responded to the scene?

A. Yes.

Q. How long did you stay at the scene?

A. I don't recall. It was a few hours.

Q. The individual that you've identified and took the firearm from, did you speak with that individual?

A. Yes, I did.

Q. Let me first ask you a question about the firearm. Did you check to see if it was loaded?

A. Yes.

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Q. Was it loaded?
A. Yes.
Q. Did you make efforts to secure the weapon, to make it so that it wasn't loaded?
A. Yes.
Q. Was this a semi-automatic firearm or a revolver?
A. A semi-automatic.
Q. And, obviously, you've been an officer for a few years?
A. Yes.
Q. Do you carry a semi-automatic weapon?
A. I do.
Q. And you went to the academy before you became an officer?
A. Yes.
Q. Can you tell the jury what is the difference between a semi-automatic pistol and a revolver?
A. The difference between a semi-automatic and a revolver is the semi-automatic will -- has a slide that moves -- when you fire a weapon and it ejects the casing. Whereas, the revolver, when you fire a round, the round stays inside the cylinder.
Q. So for jurors who may not know, what is a casing? What is ejected from the gun. Not the bullet that's coming out of the barrel, but what else is ejected from the gun?

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A. It's like the brass compartment of the round that holds the projectile powder, the gun powder.
Q. So when one fires a semi-automatic pistol, that casing is ejected from the weapon?
A. Yes.
Q. And tell the jury what is a magazine?
A. Magazine is the part of the weapon that holds all the live rounds.
Q. And that magazine, how is it placed into the gun?
A. From the bottom of the weapon.
Q. So did you check the magazine in this case?
A. Yes.
Q. And do you recall how many bullets were remaining in the magazine?
A. I can't.
Q. Now, Officer Dombrowski, turning again to the conversation that you had from the person that you took the gun from, did they tell you if they fired the gun?
A. They did.
Q. Did they tell you how many times he fired the gun? Did he tell you? I said "they" and I don't why I said "they".

Did he tell you how many times he fired the gun, if you can recall?

A. Not specifically, no.

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Q. All right. Did he tell you if he used the Mace can?
A. I'm sorry?
Q. What did he tell you about the Mace can, if anything?
A. He did not.
Q. You don't recall him saying anything about the Mace can?
A. I don't.
Q. Did you fill out a police report in this case?
A. I did.
Q. If you saw this police report, could that refresh your recollection as to the details that you were told?
A. Possibly.
Q. All right.

MR. LAWRENCE: May I approach the witness, Judge?

THE COURT: You may.

THE WITNESS: This is not my report.

BY MR. LAWRENCE:
Q. So this is your partner's report?
A. Yes.
Q. Is this your report, right here, Officer Dombrowski?
A. It is.
Q. All right. My question is simply about the Mace can, if you were asked about -- if you were asked about whether the Mace can was used, as well.
A. Per my report, I confiscated the Mace that was used on

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the victim.

MR. LAWRENCE: All right. Thank you, Officer Dombrowski. No further questions.

THE COURT: Cross examination?

MR. THOMAS: Yes.

CROSS EXAMINATION BY MR. THOMAS:

Q. Officer Dombrowski, when you met with the Defendant and spoke to him, was he cooperative?

A. Yes.

Q. Did he admit that the gun was his?

A. Yes.

Q. Did he admit that he shot the decedent, Derek Roberts?

A. Yes.

Q. Did he offer an explanation?

A. He did.

Q. What did he say?

A. I can't recall. We had a conversation and I can't recall the conversation.

Q. Did he tell you that he was in fear?

A. I can't recall.

Q. I shot him and that's it?

A. I can't recall that, sir.

Q. As it relates to the weapon, you said that you secured the weapon?

A. Yes, sir.

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Q. You didn't count the number of bullets in it?
A. I don't --
Q. Was it your impression there was one shot?
A. I can't recall.
Q. Do you know whether or not there was a cartridge or bullet in the weapon before it was shot?
A. Sorry. Say that again, sir.
Q. Was there a cartridge in the breach of the weapon before it was shot? In other words --
A. I can't recall.
Q. You testified about your familiarity with semi-automatic weapons. Those are weapons that you fire in rapid succession?
A. Yes, sir.
Q. You don't have any evidence that it was fired more than once, do you?
A. No, I don't.

MR. THOMAS: Nothing further, Judge.

THE COURT: Any redirect?

MR. LAWRENCE: No, Your Honor.

THE COURT: Your thanked and excused. Call your next witness.

MR. LAWRENCE: Our next witness is going to be forensic technician Leona Douglas.

THE COURT: APA Lawrence, are you going to

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play the video?

MR. LAWRENCE: We're going to do photos first.

THE COURT: On the screen?

MR. LAWRENCE: Yes.

THE COURT: I'm going to -- for the jurors in the jury box, you may not be able to see the screen. You may move to the first row in the gallery so that you will be able to see.

CLERK OF THE COURT: Please state you first and last name for the record.

THE WITNESS: Leona Douglas. L-E-O-N-A, D-O-U-G-L-A-S.

CLERK OF THE COURT: Thank you. Raise your right hand, please. Do you solemnly swear or affirm that the testimony you're about to give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

LEONA DOUGLAS,

having first been duly sworn, was examined and testified on her oath as follows:

THE COURT: Go ahead, Attorney Lawrence.

MR. LAWRENCE: Thank you.

DIRECT EXAMINATION BY MR. LAWRENCE:

Q. All right. Forensic Technician Douglas, will you please

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state your name for the record.
A. Leona Douglas.
Q. How are you employed?
A. I'm a crime scene technician for the City of Detroit Police Department.
Q. What does that job entail?
A. To document the scene as we see it and collect evidence pertaining to that scene.
Q. So did you have an opportunity to respond to a scene at 17804 West McNichols, a gas station, on May 13, 2018?
A. Yes.
Q. And were you working alone or was there another forensic technician working with you?
A. I was working with a partner.
Q. Who was that partner?
A. Forensic Technician Michelle Douglas.
Q. And when you arrived, did you -- other officers had already been there and detectives have been there and so forth?
A. Yes.

PEOPLE'S EXHIBIT NOS. 1 - 57
WERE PROPOSED FOR IDENTIFICATION

BY MR. LAWRENCE:
Q. So I've shown you today 57 photos that I've marked as Exhibits 1 through 57.

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MR. LAWRENCE: And, Your Honor, your exhibit sheet notes 1 through 59, but we're only doing 1 through 57.

BY MR. LAWRENCE:

Q. I've had an opportunity to show you those photos. Do those photos fairly and accurately depict the scene as it was that day?

A. Yes.

MR. LAWRENCE: Judge, I had an opportunity to show Mr. Thomas those photographs and I don't believe there's any objection to them.

MR. THOMAS: Yes, he did, and I have no objection.

MR. LAWRENCE: So we are moving for admission of 1 through 57.

THE COURT: The Court will admit People's Proposed Exhibits 1 through 57, which are evidence tech photos.

BY MR. LAWRENCE:

Q. Ms. Douglas, did you also go from the scene at West McNichols to the hospital, where the deceased was?

A. Yes.

Q. And photographs were taken there, as well?

A. Correct.

Q. All right. So the first photo, if I can turn your

attention to the screen, is Exhibit No. 1. What is this? I'm going to hand you the pointer.

A. It's called an ID shot. And it identifies the date, the location, the person requesting us to the scene, what type of scene it is, who took the photos, what our code was that day, and the person we were working with, as well as the report number.

Q. So it's got the date on it, May 13, 2018. What does the time indicate?

A. The time is the proximate time the pictures were being taken.

Q. So that's not the time the events occurred. That's the time the pictures were taken?

A. Correct.

Q. So let's move through the pictures. Exhibit No. 2, what is this a picture of?

A. That is a picture of the outside of the gas station at 17804 West McNichols.

Q. What is Exhibit No. 3?

A. That's a close-up picture of the entry door to 17804 West McNichols.

Q. Can you just point to that entry door?

A. Right here.

Q. And the car in front of that door, do you know whose car that was -- that belonged to?

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A. I was informed it was the victims.
Q. All right. Exhibit No. 4?
A. That's a close-up of the name of the gas station.
Q. Do you see -- we're going to zoom in on it in a second -- but a video camera in this photograph?
A. No.
Q. Okay. We'll zoom in a second. But the window that's right there, do you know what's behind that window?
A. I'm sorry, which window?
Q. The window that's -- we're kind of staring at.
A. This one, here?
Q. Yeah.
A. This is behind the counter.
Q. So that would be into the area where the clerks are?
A. Correct.
Q. All right. Exhibit No. 5?
A. Yes. A camera up here in this area.
Q. Okay. Exhibit No. 6?
A. The front of the victim's vehicle.
Q. Exhibit 7?
A. The passenger side of the victim's vehicle.
Q. And, more generally, what are we looking at kind of in the background here?
A. I'm sorry, can you repeat the question?
Q. What's in the background?

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A. Pumps and the street West McNichols.
Q. So that's looking at like the street. If you were standing, for example, at the front door of the establishment, looking outside?
A. Correct.
Q. Exhibit No. 8?
A. A side view and the back view of the victim's vehicle.
Q. Exhibit 9?
A. A side view and the back view of the victim's vehicle from the driver's side.
Q. Exhibit No. 10?
A. A front view and side view of the victim's vehicle from the driver's side.
Q. Exhibit No. 11?
A. The inside of the victim's vehicle from the driver's side.
Q. That's as you found it?
A. Yes.
Q. Exhibit 12?
A. That is the back door of the driver's side.
Q. Exhibit No. 13?
A. That would be the front door of the passenger side.
Q. Exhibit No. 14?
A. That is a close-up of the entry door to 17804 West McNichols.

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Q. And what was this -- for anybody who can't see, what is the sign on the upper right of the window say, as well?
A. This one here?
Q. No. The one with the phone number underneath it.
A. This here?
Q. Yeah.
A. Cell Phone Repair Center. Ask for Ray.
Q. All right. Exhibit No. 15?
A. Inside of the gas station from the entry door.
Q. Exhibit No. 16?
A. Inside of the gas station showing the cameras.
Q. Can you just point to a couple cameras?
A. Camera here, here, and one here.
Q. Exhibit 17?
A. That is the front counter of the gas station.
Q. So that's where the customer would go to make a purchase?
A. Yes.
Q. Do you know how many registers are at that counter?
A. Not offhand, no.
Q. And did this counter have a glass encasing?
A. Yes.
Q. Was that glass barrier a complete divide between the clerk area and the customer area?
A. Can you repeat the question?

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Q. Did it completely divide the area where the clerks would be and where the customers would be?
A. Yes.
Q. Exhibit No. 18?
A. That is the doorway to where the clerk would be in the gas station.
Q. Exhibit 19?
A. A picture of behind the doorway where the clerks would be.
Q. Exhibit No. 20?
A. That's a picture of the camera, here.
Q. Exhibit No. 21?
A. That is another picture of behind the clerk area.
Q. So if you're standing at that doorway entry into the clerk area and you're looking into the clerk area, that's what you first see?
A. Correct.
Q. Exhibit No. 22?
A. That is a picture to the entry door to the clerk way.
Q. First of all, can you show that door handle and the lock area?
A. This is the door handle, here, and this is the lock area.
Q. And is there anything that is covering that lock area?
A. It appears to be clear tape.

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Q. Then is there a second locking mechanism, as well?
A. Yes.
Q. Can you point to that second locking mechanism?
A. Here.
Q. And was there anything that was covering that?
A. Not to my knowledge, no.
Q. So to your knowledge, there was nothing that stopped that second lock mechanism from functioning?
A. Correct.
Q. And Exhibit No. 23 is a zoomed in version of that?
A. Yes.

MR. THOMAS: Is that 23?

MR. LAWRENCE: Yes.

BY MR. LAWRENCE:

Q. Exhibit No. 24?
A. That is the outside area.
Q. Is that the -- are we inside the clerk area at this point in time?
A. I can't tell.
Q. All right. Do you see a printer in this picture?
A. Yes.
Q. Can you point to the printer?
A. Here.
Q. Do you see a chair in this picture?
A. Yes, sir.

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Q. Can you point to the chair?
A. Here.
Q. Does that help refresh your recollection as to -- do you see like an area where cigarettes would be stored?
A. Yes.
Q. Can you point to that?
A. Here.
Q. So does all of this help refresh your recollection as to whether we're inside the clerk area or out in the main area?
A. It appears to be in the clerk area.
Q. Okay. Exhibit No. 25?
A. Would be the close-up of the inside of the area.
Q. Did you see a laptop?
A. Yes.
Q. Can you point to the laptop?
A. Yes.
Q. All right. Do you see a separate monitor that showed all of the various surveillance videos?
A. Yes.
Q. Can you point to that?
A. Here.
Q. And where would the window be where they would be dealing with customers?
A. I'm not sure. This was the -- I'm not sure.

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Q. That's fine.
A. Not from those pictures.
Q. And Exhibit No. 26?
A. That is a picture of the clerk area.
Q. So this is kind of being shot from the opposite direction as that last one?
A. Correct.
Q. And where would be the entrance door into the clerk area?
A. This area, here.
Q. Well, was there a separate room in the clerk area?
A. Yes. This area, here, is the separate room.
Q. So where -- the door that we just looked at to get into this clerk area, just to give context to the jury, where would that door be?
A. It would be on this side, here.
Q. Exhibit No. 27?
A. That's a picture of the separate area behind the clerk.
Q. So this is a -- so, here, in Exhibit No. 26, if the person taking this photograph were to walk to the left, now we're in Exhibit No. 27?
A. Yes.
Q. And Exhibit No. 28?
A. Is a close-up picture toward the back area.
Q. Exhibit No. 29?

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A. Close-up picture.
Q. Exhibit No. 30?
A. That is a picture of the cameras.
Q. Cameras that are back in the clerk area?
A. Yes. One here, one here.
Q. So Exhibit 31, again, what room are we looking at here?
A. That is a second room behind the clerk area, which is considered to be the bathroom.
Q. And you see a toilet in this picture?
A. Correct.
Q. Can you point to that?
A. Yes.
Q. And Exhibit No. 32?
A. Close-up picture of the toilet.
Q. Exhibit No. 33?
A. Picture of the inside of the toilet.
Q. Exhibit No. 34?
A. A close-up picture of the inside of the toilet.
Q. Was there anything that was located inside the toilet?
A. Yes.
Q. What was it?
A. This, here.
Q. Yep.
A. A .380 shell casing.
Q. That was recovered?

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A. Yes.
Q. Placed on evidence?
A. Correct.
Q. Exhibit No. 35?
A. That's a picture of us recovering the .380 shell casing.
Q. Exhibit No. 36?
A. Another picture of us recovering the .380 shell casing.
Q. Exhibit 37?
A. That is a picture of the .380 shell casing completely out of the toilet.
Q. And when you take this photograph, when you say it's a .380 shell casing, is that information actually on the casing itself?
A. Yes.
Q. So is that why you take the photograph like this, one of the reasons?
A. You can't see it, but that's part of the reason, an attempt to show what the stamping is on the casing.
Q. Exhibit No. 38?
A. A picture of the casing.
Q. Exhibit No. 39?
A. That's a picture of the outside where the victim's vehicle is.
Q. Exhibit No. 40?
A. A picture of suspected blood on the ground outside of

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the victim's vehicle.
Q. Can you point to that?
A. This, right here.
Q. Exhibit 41?
A. A close-up picture of the suspected blood.
Q. Exhibit No. 42?
A. A picture of the victim's vehicle from here.
Q. Were there suspected blood droplets in this area?
A. Yes.
Q. Exhibit No. 43?
A. A picture of the suspected blood droppings.
Q. Can you point to the area where the droplets are?
A. Here, here.
Q. Exhibit No. 44, a close-up?
A. Yes.
Q. Exhibit 45?
A. Picture of the rear of the victim's vehicle.
Q. Were there suspected blood droppings in this area, as well?
A. Yes.
Q. Can you point to those?
A. I can't see them from this picture, I'm sorry.
Q. Let me zoom in with Exhibit No. 46. Does this assist you?
A. Here.

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Q. And Exhibit No. 47, is this a close-up?
A. Correct.
Q. Can you just point to it?
A. Here.
Q. And Exhibit No. 48 is another close-up. Can you point to the blood droplet?
A. Here.
Q. All right. So then what is Exhibit No. 49, here?
A. That's a picture of the gas station, inside, where the pictures were shot.
Q. Okay. So if you were to walk through the front door and instead of turning left to the clerk area, you turned right, is this what you'd be looking at?
A. Correct. If your back was towards the clerk area.
Q. Exhibit No. 50?
A. That's a picture of a weapon and a can of Mace.
Q. The weapon was recovered and placed on evidence. Can you -- was there a magazine with it, as well?
A. Yes.
Q. Can you point to that magazine?
A. Here.
Q. So if you were to put this weapon together, you were to place the magazine inside the weapon -- can you point to where on the weapon that magazine would go?
A. Here.

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Q. And is this a semi-automatic pistol?
A. Yes.
Q. And in your experience as a forensic technician dealing with firearms and so forth, how would you get a bullet, then, from that magazine, which has been placed inside the pistol -- how would you get a round into the chamber ready to be fired?
A. I can't answer that.
Q. Do you see the Mace in that photo, as well?
A. Yes.
Q. Point to that.
A. Here.
Q. All right. Exhibit No. 51 is a close-up?
A. Correct.
Q. And Exhibit No. 52?
A. Correct.
Q. Exhibit No. 53?
A. Yes.
Q. Is Exhibit No. 54 a close-up of the Mace can?
A. Correct.
Q. Exhibit No. 55?
A. Is a picture of the victim.
Q. This is at the hospital?
A. Correct.
Q. All right. Now, do you see -- and if you can't answer

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this, you can't answer this. But do you see any bullet holes in this photograph?

A. Here.

Q. And then this is after the victim has already been operated on and anything done to try to save his life at the hospital?

A. Correct.

Q. So other injuries are -- could be related to the hospital procedure?

A. Correct.

Q. In any event, you're not going to be able to testify to what was done by the hospital or not?

A. Correct.

Q. And Exhibit No. 56 is a close-up?

A. Yes.

Q. Can you point to the bullet hole again?

A. Here.

Q. Exhibit No. 57 is an identification band. What name is on it?

A. It has Derek Roberts on it.

Q. All right. Was it actually yourself, Forensic Technician Douglas, that recovered the shell casing or was it your partner?

A. My partner.

MR. LAWRENCE: Then I don't have any further

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questions for you.

THE COURT: Cross examination?

MR. THOMAS: Yes, Your Honor.

CROSS EXAMINATION BY MR. THOMAS:

Q. Good morning, ma'am?

A. Good morning.

Q. You work for the Detroit Police Department?

A. Correct.

Q. How long have you been there?

A. Three years.

Q. Okay. And what was your job description that day on May 13th?

A. Crime scene technician.

Q. And as a crime seen technician, what are your duties?

A. To document the scene as it is. And when we arrive on the scene, to photograph the scene, to sketch the scene, to collect the evidence and turn the evidence over.

Q. Now, did you take the paragraphs that were referred to, except for the autopsy photographs, in this case?

A. Them pictures you've just seen, yes.

Q. What time did you arrive at the scene?

A. I'm not sure. If I may refer to my progress report.

Q. Do you have it?

A. Yes.

Q. Would that help refresh your recollection?

A. Yes.
Q. Refer to it and then if you would, put it down and then I'll ask you a question.
A. Approximately 5:20 p.m.
Q. Do you know what time the incident occurred?
A. No.
Q. Were police officers still there?
A. Yes.
Q. Were they ready to wrap up?
A. I'm sorry, can you rephrase the question for me?
Q. Were they getting ready to leave?
A. Not that I recall.
Q. Were there any people around the scene?
A. The detectives.
Q. What about citizens?
A. Not that I recall.
Q. Do you remember whether or not the car that we have seen the photographs of, that you took, was surrounded by tape to ward off any onlookers from contaminating the scene?
A. The scene was taped off, but I'm not sure -- like, are you saying, just the vehicle, itself?
Q. Yes.
A. Well, the scene was taped off, so it would have contained the whole scene.

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Q. Can we see Photograph No. 3, please? Is that the vehicle?
A. Correct.
Q. Is the door closed?
A. I'm sorry?
Q. Is the door to that vehicle closed?
A. Yes.
Q. Is the window open?
A. Yes.
Q. And did you take that photo?
A. Yes.
Q. Did you see any tape that would keep onlookers away, the type of yellow tape that you see surrounding a crime scene?
A. Well, if you look here in the picture.
Q. Yes, ma'am.
A. In the reflection, you could see tape.
Q. Is it surrounding the car?
A. It would contain the whole scene.
Q. Show me with your pointer, and then move it around, as do you see where it goes that surrounds the entire scene?
A. I'm sorry, say that one more time for me.
Q. Did you say that it surrounded the scene?
A. The tape would be to contain the scene.

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Q. So show me how the scene is contained with the tape, with your pointer, please?
A. I just said you could see the tape in the reflection.
Q. Do you see tape in that picture?
A. Right here.
Q. Okay. And is that --
A. You might have to use the -- to zoom in on it.
Q. That's the reflection of the tape?
A. Correct.
Q. But your recollection is that there was tape surrounding the scene?
A. Correct.

MR. THOMAS: Can we see Exhibit Nos. 4 and 5 in seriatim? And 5?

BY MR. THOMAS?

Q. And do you remember seeing any photographs of the car with the door open?
A. Yes.
Q. Did you open the door?
A. Yes.
Q. Was that so you could have a clear picture of the inside?
A. Correct.
Q. Did you find any evidence inside the car?
A. No, not to me recollection.

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Q. Were you looking for evidence, is that right?
A. I was documenting the vehicle as it is.
Q. So you were not searching for evidence?
A. No.
Q. So you didn't look for alcohol or the evidence of drug use?
A. No.
Q. You did not look for any type of weapon?
A. No.
Q. I want to take a look at the next thing, photos of the door and lock on 23.

You testified that you saw tape going across the door lock. Can you point with the pointer?

A. What appears to be tape?
Q. Yes, ma'am.
A. Here.
Q. And the purpose of that would be so the door would not lock shut, is that correct?
A. That would be my assumption.
Q. But you do see a latch lock up on the top, do you not?
A. Correct.
Q. And point to that, if you would.

When you went in there, was that locked or unlocked?

A. When me and my partner arrived, the door was open.

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Q. The door was already open?
A. Correct.
Q. So we were talking about the toilet. No. 31, please.
Do you see the edge of the toilet, there, by whatever that appears to be, that white box, on the right-hand side bottom?
A. Correct.
Q. Point to it, please.
It was there that you retrieved the shell casing?
A. Correct.
Q. Shell casings are what type of metal?
A. I'm not sure.
Q. Can you take a look at -- I think I see it in your hand -- whether that's copper or lead?
A. I can't answer that for sure, no.
Q. You being a technician, you don't know the difference?
A. I'm not a firearms expert.
Q. I understand that part, but do you understand that shell casings are usually copper?
A. I'm not a firearms expert, again.
Q. That's not what I asked, whether you were an expert. I was going to ask you, do you carry a weapon?
A. No.
Q. You found an item inside the toilet and that's what you

found?
A. Correct.
Q. One shell casing?
A. Correct.
Q. Not two, not five, not ten?
A. Just the one.
Q. And you don't know how many bullets could be fired by this semi-automatic weapon, do you?
A. No.
Q. But you did retrieve the weapon?
A. No. We photographed the weapon.
Q. Okay.

MR. THOMAS: Can you move, then, to the weapon? There we go.

BY MR. THOMAS:
Q. What is that?
A. 51.

MR. LAWRENCE: 51, yes.

BY MR. THOMAS:
Q. That appears to be a semi-automatic weapon. Do you know enough about weapons to say that?
A. Correct.
Q. Did you count the bullets inside the weapon?
A. No.
Q. So you don't know whether the cartridge -- I'm sorry.

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A. Magazine.
Q. Thank you. And you're not the expert.
A. I'm not the expert.
Q. Okay. That magazine had bullets in it. You can see that, can't you?
A. Correct.
Q. But at that point, are there any bullets in the weapon?
A. No.
Q. Did you clear it, yourself, or that's just what you know?
A. That's what the officers would have done.
Q. So, then, do you know how many bullets were inside the magazine?
A. No.
Q. Did you say that you retrieved the weapon?
A. No.

THE COURT: Officer Dombrowski testified to retrieving the weapon.

MR. THOMAS: Thank you for that. I just had a note and I was looking at it, and in my own mind I had a question. So thank you, Judge. All right. I haven't got any further questions, Judge.

THE COURT: Redirect?

MR. LAWRENCE: No redirect, Judge.

THE COURT: You're thanked and excused. Call

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your next witness.

MR. LAWRENCE: Judge, we had her partner on the witness list, as well. I don't think her partner is going to add anything, so we're moving to not call Forensics Technician Michelle Douglas and proceed with the next witness.

THE COURT: And there's no objection from the Defense?

MR. THOMAS: I don't have any objection.

THE COURT: Call your next witness.

MR. LAWRENCE: So our next witness, then, Judge, is Joe Weekley. Video Forensic Technician Joe Weekley.

MR. THOMAS: If you're done with the pictures, you can take them down, please.

MR. LAWRENCE: Yeah.

CLERK OF THE COURT: Good morning. Please state your name and spell it for the record.

THE WITNESS: Joseph Weekley, J-O-S-E-P-H, W-E-E-K-L-E-Y.

CLERK OF THE COURT: Thank you. Raise your right hand for me, please. Do you solemnly swear or affirm to tell the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

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JOSEPH WEEKLEY,

having first been duly sworn, was examined and testified on his oath as follows:

THE COURT: Go ahead, Attorney Lawrence.

MR. LAWRENCE: Thank you very much.

DIRECT EXAMINATION BY MR. LAWRENCE:

Q. Good morning.

A. Good morning.

Q. Would you please introduce yourself to the ladies and gentlemen of this jury.

A. My name is Joseph Weekley.

Q. And, Mr. Weekley, I have you labeled as a video forensic technician. I know that you're -- it's a little bit longer than that. But can you basically tell the jury what it is that you do?

A. Well, I was a police officer with the City of Detroit for 23 years. I just retired June 3rd of this year. Now I work for the City of Detroit doing other video work.

Q. And that is something that you do full time now?

A. Yes.

Q. Did you have an opportunity to assist in the investigation of a homicide at 17804 West McNichols on May 13, 2018?

A. Yes.

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Q. Did you actually go to that scene?
A. I did.
Q. Was there a video surveillance system at that scene?
A. There were two video systems at that scene, yes.
Q. And could you describe the systems, I guess, to the jury how they were setup?
A. They're called close circuit DVRs. And these particular DVRs had eight cameras each. And it's a box that looks like -- you know, a box yay big, let's say maybe two feet by one foot. It's a digital box. It has a hard drive inside and it has the capability of recording video. And each system had eight cameras attached to that system. So a total of 16 cameras were operational that day.
Q. And were these cameras located both on the interior of this gas station and on the exterior?
A. Yes.
Q. And was there a monitor that was attached to the system so that some -- like a store employee can access the video cameras and watch them and so forth?
A. Like I said, there was two systems. So there was two separate monitors that controlled each system.
Q. Did you check to see if all 16 cameras, eight with each system, did you check to see if they were all operational?

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A. I did.
Q. Were they?
A. Yes.
Q. And as far as audio recording, did you check to see if the system contained the capacity to record both the video and audio?
A. I know for sure one of the systems recorded audio. I don't recall if they both did or not.
Q. And where would be the -- did you investigate to determine where the recording function would be for the audio portion of the system? In other words, did each surveillance camera have its own microphone and audio recording, or was there a certain spot in the store where the audio portion was set up, if you know?
A. I don't recall.
Q. So did you confiscate this system for evidence in this case?
A. I did not.
Q. But did the DPD officers that you were working with do that?
A. I do not know.
Q. Did you access this system?
A. I did.
Q. Where did you access the system?
A. I went up to the system, extracted the digital evidence

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from each individual system.
Q. And, again, you mentioned that there were two systems.
A. Correct.
Q. So can you explain how does extraction work? How do you extract the recording from the two systems?
A. This system was made by a company called Lorex. And they have a USB drive in the front of the system and you plug in a memory stick or a USB stick in the front. And then you can pick the times and dates that you want, and cameras, to download that footage from those particular cameras that you're interested in.
Q. And do you recall what the date and time range was that you extracted?
A. It was the date that I was sent out there, which I believe was the -- if I can refer to my report.
Q. If it would refresh your recollection.
A. Yeah, it would. It was May 13th.
Q. And do you remember what time period you extracted?
A. I don't really recall. I know it was around the time of 3:00 p.m. of that day.
Q. So there was a range of time on May 13, 2018, that you extracted from the system?
A. Correct.
Q. And this would be the period -- did you view the footage before you extracted it? Did you actually view it from

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the store?
A. I did.
Q. So you were able to see the incident as it was captured?
A. I did, yes.
Q. Did you also speak with investigators and so forth, people who had also been investigating the scene?
A. Not too much, no.
Q. In any event, based on your observing the incident on camera, you had a time period in mind and you extracted that time period?
A. Correct.
Q. Covering events on May 13, 2018?
A. Correct.
Q. And so do you check to see if -- does this system have a date and time on it? So the recording will show what the day is and what the time is.
A. Yeah. There's a timestamp on the actual video, so you can see what the timestamp is on the video. And then what I will do is calibrate it by comparing it to my iPhone with the real time, to see if it's off. Sometimes these systems aren't connected with the Internet, so they don't readjust for daylight savings time. So they could be off by an hour or may just be human error. Because they don't reset like our phones do or our computers that are plugged into the Internet.

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So I calibrated both of these systems and found that one system was fast by three minutes and the other system was fast by five minutes.

Q. Okay. So on the camera from the one system, if it says -- do you remember what system it was? Was System 1 three minutes faster or was System 2 three minutes faster?

A. I'd have to refer to my report.

Q. If it would refresh your recollection.

A. It would. System 1 was fast by three minutes. And my report shows that System 2 was fast by five minutes.

Q. So when we're watching video from System 1, if the video says 3:00, it's real 2:57?

A. Correct. You would minus three minutes.

Q. Right. And if we're watching System 2 and it says 3:00, it's really 2:55?

A. Correct. Minus five minutes.

Q. And so what do -- you do the extraction through the USB. What do you do next with the evidence?

A. I take it back to my office and then I'll prepare a viewable copy of each of the cameras that I downloaded. Then I'll create picture stills. Those are still images, frames, of the video of interest. And then I'll also put together a production where you can click and play one video and it will go from camera to camera, to

kind of show the occurrence or the incident and how it transpired.

Q. So let's go through each of those things. When you say viewable copy, what do you mean?

A. A lot of these are -- a lot of these systems are proprietary, where they come with a player.

So if you have a Samsung system, only Samsung players will play that video.

This one was a Lorex, so I had a Lorex player. To make it easier for people to play it on their computers, we'll make what's called a viewable copy. So I'll write Camera 1 and I'll transcoder that video or screen capture it so you can click and play it as an MP format. Basically, it just makes it easier for you guys to watch the video without having the proprietary player to kind of teach you how to work the player.

Q. Okay. And then the next thing you mentioned, I believe, was stills. Still shots. What are those, first of all?

A. So this system captures video at 30 frames per second. Which means for every second of video, there's 30 pictures being taken.

So I can go in and extract or just take one or multiple pictures of that video. That way, I can go frame-by-frame to pick which stills I want to use or keep.

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Q. So if there's a particular moment, you know, a key moment that you want to break down, you can take, you know, five of those photos. Strike that. I'm confusing even myself.

So the bottom line is, you can take those individual photos. You mentioned 30 per second. And you can take those individual photos and create a real slow motion effect, so that the viewer can almost in super slow motion walk through a moment, is that --

A. You could. But the main idea of having stills is to take the best frame of that video, the best picture of that video and just have one picture to look at.

Q. And that's what you did in this instance?

A. I did.

Q. And so you then mentioned production, creating a video production. Can you explain that to the jury again in little more detail?

A. So a lot of times -- you have 16 cameras. Instead of pointing all 16 cameras at once, your eyes will be bouncing around trying to see multiple things at once.

To make it easier for you, I will show you the person of interest on Camera 1, and then he goes into the store, and then all of a sudden Camera 2 will turn on. So you don't miss anything.

I take the best angle from my experience and

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opinion, to show you the incident to the truest ability that I have.

Q. And so that almost comes across as if it's like a television type, you know, where you're not watching a camera, like C-Span. You're following from beginning to end.

A. Correct.

Q. So in this whole process that you've described to the jury, is there any manipulation of video on your behalf other than what you testified to? Do you delete things? Do you redact things? Do you do anything to change this video from what it truly is to, you know, what it is in the import?

A. No. Part of my job is to have an original copy that's unedited, untouched. Then I have a viewable copy. Those viewables that we talked about. Then I have the stills. Then I have the production.

So if you wanted to show my original, the original video from the system compared to the production I made, you can see what edits that I made.

Q. All right.

PEOPLE'S EXHIBIT NO. 60

WAS MARKED FOR IDENTIFICATION

MS. LAWRENCE: May I approach the witness with what I've marked as People's Exhibit No. 60?

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THE COURT: You may.

MR. THOMAS: No objection, Judge.

MR. LAWRENCE: It's a hard copy of the video.

MR. THOMAS: Just for explanation purposes, this is the one compiled video?

MR. LAWRENCE: Yes.

THE COURT: The production video?

MR. LAWRENCE: No. This is the whole thing.

THE COURT: Okay.

BY MR. LAWRENCE:

Q. So it's marked as Exhibit No. 60, I believe. Is this the video that you've created, sir?

A. No.

Q. Is this a copy of the video?

A. I don't know.

Q. So you had an opportunity to review -- what is it -- explain what you actually produced?

A. That top folder there that says 1781 -- 801 West McNichols, I created that. If you open that, I created everything inside that you see. The extra, I typed that out. That's System 1, System 2, everything that's inside there. The video production.

If you click on System 1, let's say.

Q. Yeah.

A. I'll show -- you'll see an original file, picture

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stills, viewables, then an explanation. I created all of this.

Q. Yeah. And so you don't have personal knowledge of whether all of this is what's on that disk?

A. Yeah. I don't know.

MR. LAWRENCE: Well, I'll move for its admission. I don't know if there'll be an objection.

MR. THOMAS: There won't be.

THE COURT: People's Proposed Exhibit 60 will be admitted.

BY MR. LAWRENCE:

Q. All right. So you mentioned that there were two systems. And I know that the typing is very small right now, but it's not really important.

Do you see System 1 up there?

A. Yes.

Q. And do you also see System 2?

A. Yes.

Q. So the videos from System 1 are in that photo and the video from System 2 are in that folder beneath it?

A. Correct.

Q. What is in the extra folder?

A. Extra is -- there's gonna be a -- the video production. The editor that I used to create the production will have -- it'll show you -- I can recreate what I did.

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So if the Defense attorney said, oh, you added fireballs to this video, I can show you exactly what I did to the video. I can recreate every edit that I made to show you what I did to the actual original video.

Q. So this extra folder basically goes with the video production which is what is at the bottom?

A. Right. There's also some other things in there, as well.

Q. So other things used in the process of your work?

A. Correct.

Q. So we have System 1, which is the System 1 videos. System 2, which is the System 2 videos. The video production, which is going to be your putting everything together, your synthesizing everything together. And then the extra folder contains the various, you know, things that you utilized in order to do all this?

A. Correct.

Q. So I have got multiple camera angles that I want to show.

MR. LAWRENCE: Judge, can I just make two copies of this piece of paper? I think it will be helpful if the Court has one copy and the witness has one copy?

THE COURT: You may.

BY MR. LAWRENCE:

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Q. Mr. Weekley, I want to show the order in which we're going to be showing video. All together, there's going to be nine things that you see on this sheet. It lists the system that we're going to use. The camera that we're going to use. And then the times -- this is taken from the video time. So not the actual time of day, but the video time that's indicated on the screen.

Do you know what that is?

A. The timer on the bottom of the screen.

Q. Yeah. Can you tell the jury about -- because not only does it have the date and time on the screen, which we know in System 1 is off by a few minutes and System 2 is off by a few minutes.

But there's also a timer on the screen. Can you tell the jury what that is?

A. It's just running time of that particular video clip.

Q. So, literally, it starts at second one. And if the video clip is ten minutes long, it goes to ten minutes.

A. Correct.

Q. All right. So what I have for you is the system that's being played, the camera from that system, and then the video time that's being played. And so there's going to be, first, six different videos that follow that pattern. And then the seventh thing, the final thing after we show the individual camera angles, we're going

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to show your video production.

A. Okay.

Q. And then after that, two of the sets of still shots that you put together. We're going to show that. So all together, nine different things.

So let's start out with System 2, Camera 4 from video time 1 minute to 10 minutes.

(Video playing for the jury)

MR. LAWRENCE: I'm going to stop at the beginning here. Judge, we have got a stipulation. Defense Counsel and I have gone over these videos. So the stipulation is that the individual in the basketball jersey of LaBron James, No. 6 jersey, that's the Defendant, Mr. Jaber. The other individual with Mr. Jaber, that is Rojgar Saleh, the clerk that was working with him. And then coming into the scene on the other side of the counter, that's the decedent, Derek Roberts.

MR. THOMAS: That is our stipulation.

THE COURT: Thank you.

(Video playing for jury at 11:21 a.m.)

(Video stops at 11:30 a.m.)

MR. LAWRENCE: All right. The second video that we're going to show is the same system, System 2, but we're going to view it from camera seven. And it's

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going to be from 55 seconds to 4 minutes. And, again, that's the video time.

Let me pause it for a second. So this is going to get to what we were talking about earlier as to where the audio recording was.

BY MR. LAWRENCE:

Q. Do all of these videos have audio with it?

A. No.

Q. So some of them are going to be just video and some of them are going to be audio?

A. Correct.

Q. And are you able, in your production video which we'll show at the end, are you able to make it so that the audio runs at the exact same time as all the video that you're playing?

A. Yes.

Q. For example, this particular scene right now, which we're about to watch, just with video and not the audio, in a little bit, we'll be watching it with both the video and the audio?

A. Correct.

MR. LAWRENCE: All right.

(Video playing for jury at 11:31 a.m.)

MR. LAWRENCE: Just pausing it at 1:33 because I want to make sure that I haven't made an assumption.

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The stipulation is this is the deceased. That's Mr. Roberts.

MR. THOMAS: Agreed.

THE COURT: So noted.

(Video playing for jury at 11:32 a.m.)

(Video stops at 11:35 a.m.)

MR. LAWRENCE: The next video we're going to play is going to be from System 1. It's going to be Camera 7, from 3:58 to 8:02.

(Video playing for the jury at 11:35 a.m.)

(Video stops at 11:39 a.m.)

MR. LAWRENCE: All right. The next video that we're going to show is System 2, Camera 1. We're going to show this from 1:10 to 9:15.

(Video playing for jury at 11:40 a.m.)

(Video stops at 11:48 a.m.)

MR. LAWRENCE: So the next camera is System 2, Camera 3. It's going to be from 20 seconds to 4 minutes and 20 seconds.

(Video playing for the jury at 11:48 a.m.)

(Video stops at 11:53 a.m.)

MR. LAWRENCE: Next, we're going to show System 2, Camera 2, 9:25 to 12.

(Video playing for jury at 11:53 a.m.)

(Video stops at 11:56 a.m.)

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MR. LAWRENCE: All right. We're going to play the video production. So the last two things that we're going to do is still shots, which we'll start with System 1. I can click on the first one and then -- so this is from System 1. This is the still shots.

Again, the stipulation is that this is the Defendant, Rami Jaber, and this is the deceased, Mr. Roberts.

(Showing on screen for the jury)

MR. LAWRENCE: Now we'll do the still shots from System 2.

(Showing on screen for the jury)

MR. LAWRENCE: All right. May we approach for a second?

THE COURT: You may.

(Sidebar between Court and Counsel 12:09 p.m.)

THE COURT: We discussed scheduling. At this time, we're going to take a break. I would like the jury back at 1:30. Please leave your notes on your chairs. Congregate outside the courtroom promptly at 1:30. We can't start without you.

THE BAILIFF: All rise for the jury.

(Jury excused for lunch at 12:10 p.m.)

THE COURT: So we're done with the Jaber matter now. I have other matters.

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(Lunch taken at 12:11 p.m.)

(Back on the record at 1:42 p.m.)

THE COURT: Back on the record on People versus Rami Jaber. Appearances, please.

MR. LAWRENCE: William Lawrence on behalf of the People.

MR. THOMAS: James Thomas on behalf of Rami Jaber.

THE COURT: You may be seated. I'm going to address the courtroom. Prior to leaving for lunch, there was an exchange between a member of the deceased's family and Mr. Jaber. I do need to state for the record that I need you all to maintain your composure in this courtroom. You have to maintain yourself. This is a place of business and I need you to be respectful of the courtroom.

I understand this is difficult for the family. I understand that what was viewed on the video was probably heartbreaking for you all, but you still have to be respectful of the process. If you believe that you cannot do that, I'm going to ask you to exit the courtroom now. Otherwise, I'm going to trust that you will be able to compose yourself and be respectful and we'll proceed with these proceedings and we'll bring the jury out.

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I don't see anybody moving, so that is a signal to me that we're going to go forward and be respectful.

Please bring the jury out.

CLERK OF THE COURT: All rise for the jury, please.

MR. LAWRENCE: May I address one issue before the jury comes out?

THE COURT: Sure.

MR. LAWRENCE: I just wanted to mention, there is a -- it's labeled Jaber timeline, Defense Exhibit No. 1, which is essentially a transcript of the --

THE COURT: I wasn't going to address that until the Defense's case -- until the Defendant's case.

MR. LAWRENCE: Okay. Were you planning on using it, though, now on cross examination?

MR. THOMAS: I was thinking I could on cross.

THE COURT: Okay. Well, let's go ahead and address it.

MR. LAWRENCE: So, obviously, Judge, this is not a certified transcript prepared by a court reporter or the like. I have followed the transcript while watching the video. I would say it's like mostly accurate. Obviously, effort was put into it. I would not say that is completely accurate. A couple of

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examples. When the Court sees in the transcript, the Defendant -- it says one time, it says make your move. Well, we just watched your bunch of video where the Defendant says make your move, make your move, player, make your move, player, over and over again. But it's reflected only one time in the transcript.

Likewise, the --

MR. THOMAS: Can we talk about the timeline?

MR. LAWRENCE: 11:15. And then when the witness, the female witness says you didn't have to shoot him -- I mean, the Court knows, having watched this video now over and over again, she says "you didn't have to shoot him" multiple times, many times. It wasn't just one time as reflected in the transcript.

So that's just an easy example of, you know, this is not a word-for-word transcription. But I do think that it is mostly accurate.

One other thing that I'll note is in -- row 53 is an example of where there's -- it's not just the transcript, there's also commentary. And in Row 53, you see the defense has typed up "Derek turns towards Rami after being pepper sprayed. Rami jumps back and fires once."

Well, thank you for the Defense's take on what's happening there. But that's -- you know --

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THE COURT: It's commentary.

MR. LAWRENCE: Yeah. Exactly. So it's helpful. I mean, in some instances, I think it helps me because it's honest and some of the statements are beneficial to the People. I do think the audio recording is good. It's not faint.

So that's the People's take on it. Now, my understanding in talking with Mr. Thomas is even though Mr. Thomas is marking this as Defense Exhibit No. 1, it is not being entered as an exhibit or being moved for as an exhibit. That would be for the jury at any other time, other than in their hands, while Mr. Thomas is playing something on cross examination. It's not an exhibit that would be part of the deliberation process and so fourth. That's what's been relayed to me.

So that's where my thoughts are.

MR. THOMAS: Just for this as being helpful. The test is whether substantially accurate. I hear the changes the he wishes to make. I'll make those changes. I have no problem in doing that. But it is agreed that it is a demonstrative exhibit only and I'm going to use it for cross examination and closing argument.

THE COURT: I want a final redacted copy -- I want a final redacted and changed copy before we proceed with the jury.

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MR. THOMAS: All right. So then we're going to have to sit and agree on that.

THE COURT: You're going to have to.

MR. THOMAS: Okay. I was planning on using this to cross examine --

THE COURT: I understand that. The jury is not going to get it until the changes are made. Because the Court also reviewed the timeline did not find it to be fully accurate as it related to what happened on the video.

So the corrections are going to be made now. Whatever needs to be redacted needs to be done before we proceed with the jury. And we're off the record.

(Recess taken at 1:48 p.m.)

(Back on the record at 2:29 p.m.)

CLERK OF THE COURT: Back on the record on People versus Rami Jaber. Appearances, please.

MR. LAWRENCE: Good afternoon, Judge. William Lawrence on for the People.

MR. THOMAS: James Thomas on behalf of the Defendant.

DEFENDANT'S DEMONSTRATIVE EXHIBIT 1
PROPOSED FOR IDENTIFICATION
2:29 P.M.

THE COURT: You may be seated. We have

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Defendant's Exhibit Demonstrative 1. Both attorneys have had an opportunity to review it.

MR. LAWRENCE: Yes.

MR. THOMAS: Yes.

THE COURT: And both attorneys are satisfied?

MR. LAWRENCE: Yes.

MR. THOMAS: Yes.

THE COURT: Bring the jury out at this time.

CLERK OF THE COURT: All rise for the jury, please.

(Jury enters the jury box at 2:30 p.m.)

THE COURT: You may be seated.

Have the People completed direct examination of Officer Weekley?

MR. LAWRENCE: Yes.

THE COURT: And at this time, if there's going to be cross examination, we can have the Officer brought back into the courtroom.

Juror No. 1, if you could, I'm going to ask you to pick up that stack of paper there and -- take one and pass it around. That's probably the easiest.

Officer, please remember that you're still under oath.

MR. THOMAS: Your Honor, just so the record is clear in front of the jury, what we're doing is, we're

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going to go through the final version, which was the composite of the Government's Exhibit. And for purposes of this examination, we've prepared a transcription that we've agreed that can be used for demonstrative purposes only.

That means only this, Judge, that the jury can look at it, they can see whether or not it comports with what the words are that are being said, hopefully to assist them in understanding what is going on as quickly as what was going on.

But that this is not evidence. That what they hear is evidence and should not be considered any other way, except for the fact that it might be an aid as to what it is that was said.

MR. LAWRENCE: I'll agree to that. It was prepared by Defense.

MR. THOMAS: It was prepared by my investigator, yes.

MR. LAWRENCE: Right. But I will not object to this exhibit, demonstratively being given to the jury to assist them as they watch this again.

THE COURT: Thank you. Go ahead.

CROSS EXAMINATION BY MR. THOMAS:

Q. Mr. Weekley, not officer. I can call you retired Officer or Joseph.

A. Yes.
Q. You prepared a composite of a series of events that occurred that were the subject of possibly 16 different camera views of the incident, is that right?
A. That's right.
Q. As it relates to the items that were actually placed into that exhibit, which was the last one that we played for the jury, that was a collaboration between you, the prosecutor and the investigator of this case?
A. No.
Q. Did you have any input into the choosing of the particular views and the time frame from which those views were being shown?
A. No.
Q. So you were directed, then, to take a look at a camera, take a look at a time frame, prepare a video of that and then put it together with audio and with the other videos that were obtained, is that a fair statement?
A. I was recalled to the scene for a shooting scene. I was there fairly early in the investigation, to conform myself to download the video evidence, review it there at the scene, to see what happened. Then I, by my myself, compiled a presentation of what I felt best depicted the incident.
Q. So you compiled what it is that we saw?

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A. Correct.
Q. But then it was further refined and condensed down into a video that we saw that was the last exhibit that we looked at?
A. No. I did that that day.
Q. Oh, you did that that day?
A. Yes.
Q. So you were the one that chose the time frames?
A. Yes.
Q. And you were the one that chose which cameras to show?
A. Yes.
Q. When you arrived on the scene, was anybody from the gas station or that we could see shot?

Was anyone there prior to -- was anyone there at the time that you got there?

A. Yes.
Q. Did you talk to anybody?
A. I talked to the clerk, briefly.
Q. Now, there's a clerk whose name is -- for lack of -- with the nickname Roger. And then there was the person who was alleged to have been the shooter.

Which one did you speak to?

A. Rojgar. I have it in my report what his name is. I believe it to be a Rojgar Saleh.
Q. Saleh?

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A. Saleh.
Q. You spoke to him?
A. Yes.
Q. Was he cooperative?
A. Yes.
Q. Did he give you access to the server and what it is that you were going to use to gather evidence?
A. Yes.
Q. Did you see that there was any evidence that there was any tampering or attempts to try and hide what it was that was there?
A. No. There was no tampering that I observed, no.
Q. And so you were satisfied that you got what it was that was capable of being obtained at the gas station to put together your exhibits?
A. Yes.
Q. And what I'd like to do, rather than go through each and every time frame, I would like to go through the compilation. I want to call it a composite.

Is that a fair reference to it?

A. We call it a production, but we can call it a --
Q. A production. So let's look at your production video. We'll play it from the beginning to the end.

It's about seven or eight minutes, is that right?

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A. I don't recall. But roughly, it could be. I don't recall the time length of the production.

MR. LAWRENCE: It's just over 10 minutes.

MR. THOMAS: Okay. Thanks. So is that it now?

MR. LAWRENCE: Yes.

BY MR. THOMAS:

Q. So we're starting to show it right now. You can see it, can't you?

A. Yes, sir.

Q. Rather than go into what it is that is happening here, the jury can see that for itself. But there's no audio here.

A. Correct.

Q. Because there wasn't any to be obtained.

A. I didn't add audio to this.

(Video playing for jury at 2:37 p.m.)

(Video stops at 2:41 p.m.)

MR. THOMAS: At this point, Judge, the transcript ends. And for purposes of this Demonstrative A, to the extent that the jury was going look at it, then my cross examination is complete.

THE COURT: Is there any redirect?

MR. LAWRENCE: No redirect.

THE COURT: If you all can pass those back.

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You're not going to keep those. Those were demonstrative evidence only. It's not an exhibit, it's not evidence.

THE COURT: No redirect?

MR. LAWRENCE: No.

THE COURT: Call your next witness. You are thanked and excused.

THE WITNESS: Thank you.

MR. LAWRENCE: Our next witness, if I am pronouncing the first name correctly, Rojgar Saleh.

THE COURT: Is he going to be shown the video?

MR. LAWRENCE: Not by me.

MR. THOMAS: I don't expect that I will.

CLERK OF THE COURT: Step up here and give your first and last name and spell it for the record.

THE WITNESS: R-O-J-G-A-R, S-A-L-E-H.

CLERK OF THE COURT: Thank you. Raise your right hand. Do you solemnly swear that the testimony you're about to give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: Yes.

ROJGAR SALEH,

having first been duly sworn, was examined and testified on his oath as follows:

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THE COURT: You may proceed.

MR. LAWRENCE: Thank you.

DIRECT EXAMINATION BY MR. LAWRENCE:

Q. Good afternoon.

A. Good afternoon.

Q. State your name for the record.

A. Rojgar Saleh.

Q. Mr. Saleh, back in May of 2018, May 13, 2018, were you working at a gas station store by the name of Stop & Shop?

A. Yes.

Q. How long had you been working there?

A. On and off, maybe six months, eight months.

Q. Who was it that you worked for?

A. Rami.

Q. Is that the Defendant in the courtroom today?

A. Yes.

Q. Did you sometimes refer to him by a nickname?

A. Ray.

Q. What was your assignment at that place?

A. Gas station clerk.

Q. And you were working in the afternoon on May 13, 2018?

A. Yes.

Q. And is this the first time that you are testifying in court as to the matters of that day?

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A. Yes.
Q. Previously, a deposition was taken from you. But this is the first time in court that you're testifying?
A. Yes.
Q. Following the incident at the gas station, have you had communications with Rami, with Mr. Jaber?
A. He called me maybe once or twice.
Q. But would you talk about the case with him?
A. Never.
Q. Have you talked with any members of his family?
A. No.
Q. What was your relationship back in May of 2018? Obviously, you worked for him. Were you guys friends, as well?
A. Yes.
Q. Would you still consider him your friend?
A. Yes.
Q. The incident that occurred -- I want to talk a little bit about the layout of the shop. Tell us about the area where the clerks, the glass that is in that area, what kind of glass is that?
A. It's a bulletproof glass.
Q. So on the day the shooting happened, that glass was, to your knowledge, functioning bulletproof glass?
A. Yes.

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Q. Is there any way for a customer to get their hands on you, as a clerk?
A. If the door is locked?
Q. If the door is locked.
A. No.
Q. There is no way?
A. No.
Q. Bulletproof glass. And that bulletproof --
A. If you shot up to the door, maybe. I don't know if the door also. But the glass in front of me is all bulletproof.
Q. Did you believe that you were also protected, then, from any other kind of weapon; a knife or a baseball bat or something like that?
A. Can you say the question again?
Q. Not only was the glass to protect you from intentional -- a gun, but it was also to protect from any other use of weapon?
A. Yes.
Q. Now, let's talk about the door. Was that door a locked door?
A. It would be locked, unlocked. During the day, most of the time it was unlocked because people going in and out. Like, my boss, if he was filling up stuff, stocking up, coming back behind the register, going back

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outside.
Q. So can you describe the lock system to this jury?
A. I'm not sure how the lock system was. If it was a switch, if it was a -- yeah. I'm not sure.
Q. Have you ever locked the door yourself?
A. Yes. The door was -- every time I worked, the door would be locked.
Q. How would that work, then, when you say the door would be locked?
A. Like, I don't remember very good because I work at a gas station now. So I don't know if the door was with a lock with your hands or a switch. Because I have a switch now where I work. So I just hit a switch and it locks automatically.
Q. So was the door capable of being locked and unlocked by human hands?
A. Yes.
Q. Was the door also fitted so that it would automatically lock when it was shut?
A. Yes. If it was locked, it would lock -- or you would have to manually lock it. I'm not 100 percent sure.
Q. You're not 100 percent sure?
A. Yes.
Q. But you did give testimony at a deposition, correct?
A. Uh-huh.

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Q. If I were to show you a page of that transcript, might it refresh your memory on the issue of automatic locking?
A. I never was asked if the door automatically locked or not. Did I?
MR. THOMAS: Your Honor, there's no question to him except will it refresh his recollection.
THE COURT: Right. Will it refresh your recollection if you reviewed the testimony?
THE WITNESS: Yeah. If I could look at it.
MR. LAWRENCE: Yeah. Just read this one page. Page 54.
THE COURT: Yet, the Court doesn't have a copy of what everyone else is looking at.
THE WITNESS: So the door, I think, automatically locked. I think once the door shut, it's automatically locked.
BY MR. LAWRENCE:
Q. So does that refresh your memory?
A. Yes.
Q. So you think once the door is shut, it automatically locks, right?
A. That's what I thought, yes.
MR. LAWRENCE: Can I make a copy of this, Judge?

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THE COURT: Please. Is it possible that the Court could get a copy of the deposition?

MR. LAWRENCE: Yes.

THE COURT: Thank you.

BY MR. LAWRENCE:

Q. Mr. Saleh, before this incident happened on the -- the shooting happened here on May 13, 2018, to your knowledge, had you every seen the victim, the person that was shot before?

A. I don't think I've every seen him.

Q. When this -- on the date and time of this incident, when this incident occurred, did you ever see the victim with a weapon?

A. No.

Q. Did you ever see the victim throw a punch?

A. No.

Q. Were you ever in fear of this victim attacking you?

A. When that door opened, yes.

Q. Who opened that door?

A. Rami opened it because --

Q. I didn't ask you why. I asked you who opened it.

A. Rami.

Q. So when the door opened -- let me first ask you, are you aware of a Mace can that you guys have in the clerk area?

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A. Uh-huh.

THE COURT: Just one moment. I need you to say yes or no.

THE WITNESS: Yes.

THE COURT: Thank you.

BY MR. LAWRENCE:

Q. Where is that Mace can kept?

A. Right by the door.

Q. The door that you exit?

A. And enter.

Q. And enter into the clerk area?

A. Yes.

Q. Is that Mace can just kept on a shelf or is there something that --

A. It was like on a counter thing. Like where the thing spins for groceries, where a bag of groceries, it's like on top of that, I think.

Q. That's where it would normally be kept?

A. Yes.

Q. Do you recall -- is there any reason that it wouldn't be kept anywhere other than there on that day?

THE COURT: The witness shook his head yes, but there was no audible response to the question.

THE WITNESS: Yes. I shook yes.

THE COURT: I need you to say yes or no out

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loud. The court reporter is not looking at you, so she is not going to pick up your shaking your head.

THE WITNESS: Of course. Of course.

BY MR. LAWRENCE:

Q. All right. So there's a Mace can that was there?

A. Yes.

Q. Do you have any firearms in your possession?

A. No.

Q. Do you have any kind of weapon in your possession at all?

A. No.

Q. Did Rami Jaber have a weapon on him?

A. He had a weapon on him.

Q. What kind of a weapon?

A. I'm not sure.

Q. How did you know he had had a weapon on him then?

A. Because he had a CCW. And he always used to carry it, but never -- like it was concealed.

Q. So what was concealed?

A. A pistol.

Q. Okay. So he would carry a concealed pistol. And where would he conceal it?

A. On his hip.

MR. LAWRENCE: For the record, the witness is taking his right hand to his right hip in answering that

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question.

BY MR. LAWRENCE:

Q. Did you see that firearm this day when the shooting happened?

A. No.

Q. At no point in time, you're saying?

A. No.

Q. Not before?

A. No.

Q. Not after?

A. No.

Q. Are there wrapped candies that are in the area where the customers would be when a customer is purchasing something from the register?

A. Yes.

Q. A different assortment of candies?

A. Yes.

Q. And how much would those candies cost?

A. Quarter, to $1.00, to a $1.50 to $2.00. Depends on what it was.

Q. Did you have any 10 cent candies there?

A. 10 cents, 20 cents, 25, 35, 45, 50, all the way.

Q. So there was a large assortment?

A. Yes.

Q. You stuck around during and after this incident?

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A. Uh-huh.
Q. Did you see which candies were taken by the victim and unwrapped and the wrapper thrown on the floor?
A. If I could remember, it was the mint candies, maybe?
Q. And how much are those mint candies?
A. 10 cents.
Q. 10 cents. And so when this incident happens, Rami opens the door. There's an exchange that occurs between the customer and the two of you, correct?
A. Yes.
Q. And then you said Rami opens the door?
A. Yes.
Q. And so I want you right now to take this time and tell this jury your testimony. What happened when Rami opened the door?
A. He opened the door, asked why is he opening candy and throwing it on the floor. And asked him a couple times. The guy just kept on opening candy. He wasn't replying. He just opened the candy and throwing it on the floor. Grabbing a piece of candy and throwing it on the floor.

I had customers in line. And he was -- taking care of the other customers. And that's when I heard Rami tell him, you know, what are you doing? And he kept opening the candy. No reply. Until I heard a gunshot.

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Q. Now, how many candies did you see him open?
A. I'm not sure.
Q. And this is all happening fast?
A. Yeah. It happened in a blink of an eye.
Q. Did you see Rami with a Mace can?
A. I don't remember him grabbing it. But after -- I heard it go off and I heard the sh-sh noise.
Q. And so what did you do when you heard that noise?
A. The guy -- when Rami opened the door, he probably asked him what are you doing? The guy kept opening candy and throwing it on the floor. So Rami, I guess, stopped -- tried to use the Mace can to stop him from what he was doing and get him out of the store. And he -- when he approached Rami and that's when I heard it.
Q. And so after he is -- when you said that's when you heard it.
A. Heard a gunshot.
Q. Okay. Gotcha. So did you say he approached Rami before he's Maced?
A. Maybe after, maybe before. I'm not 100 percent sure. Where I'm standing behind the register, there's a big book of instant tickets right there. So it would be like -- the door would be like may four or five steps.
Q. And the word you're using is that he approached Rami. Can you elaborate what you mean by that?

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A. Well, he was in front of me and I was in front of the register. The register -- and there's bulletproof glass and he's on the other side.

When it happened, when the argument happened and when Rami opened the door, he wasn't in front of me, anymore. He was on the side when they were talking.

Q. So how could you see him approach Rami?

A. He wasn't in front of me anymore.

Q. So the fact that he's not in front of you anymore, you're concluding from that that he must have approached Rami?

A. Of course. Yes.

Q. But you didn't personally see that?

A. No. I can't. There was too much stuff in the way. But he did come -- like he wasn't in front of me no more.

Q. And so you heard the Mace can, but you didn't actually see the Mace?

A. No, no. I didn't see no Mace. It didn't come in back behind the register or nothing.

Q. After you hear the Mace, everything that's happening is out of your view?

A. I just heard a gunshot, like I said.

Q. So did you see -- and after you hear the Mace, did you see Rami --

A. The gunshot?

Q. -- Rami approaching the Defendant?
A. Rami came right back in.
Q. Could you see the -- you said Rami approaching the Defendant. I mean Rami approaching the victim.
Could you see the victim approaching Rami after the Mace?
A. After of Mace, the guy wasn't in front of me any more.
Q. So you couldn't see --
A. So when Rami opened the door, the guy, obviously, looked at Rami, but didn't say a word. And then that's when -- I couldn't -- there's no vision of me seeing him anymore.
Q. Okay.
A. He stepped forward over there. That's when Rami pepper sprayed him.
Q. Gotcha. So when the guy -- I'm calling him the victim.
When the door is open, he steps over and leaves your sight?
A. Yes.
Q. And your testimony is that Rami has stepped out from the clerk area and he's outside of your sight, as well?
A. No. Rami, I could see him. He's to me left. He's not far from me.
Q. Does he have the pepper spray in his hand?
A. I wasn't sure. I was still paying attention to what's

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going on in front of me.
Q. Well, a second ago, you said that he was just to your left and you could see him.
A. He is. Yeah. But I'm not paying attention to what he's grabbing and what he's doing.
Q. Did you see --
A. It was just an argument, at first. He was telling him to leave. We're asking him to leave. And that's when he -- the guy started opening candy and Rami was telling him, you know, why are you opening candy in my store.
Q. Was Rami holding or reaching for his gun?
A. I'm not sure.
Q. And so you can't see the victim at this point in time because he stepped out of your view?
A. Stepped out of my view.
Q. So you hear the pepper spray?
A. Yes.
Q. And so after you hear the pepper spray or the Mace, you -- the next thing that you see or hear is the gunshot?
A. Yes.
Q. So after there's the Mace -- when you hear the Macing, can you see the victim?
A. It happened so fast.
Q. So is the answer no?
A. No.

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Q. When you hear the Mace, could you see Rami?
A. Rami was to me left. I already explained that.
Q. Could you see him?
A. Yeah. He was to my left. I wasn't paying attention to him.
Q. You weren't paying attention to him?
A. Right.
Q. So you can't tell this jury, then, what happened in between you hearing the Mace and you hearing the gunshot?
A. Just that the guy wasn't in my vision no more. I couldn't see him anymore.
Q. You couldn't see him anymore?
A. No.
Q. And you weren't paying attention to Rami.
A. Then he stepped forward towards Rami, towards the door.
Q. What did you just say?
A. The door was to his right, which was to my left. So I'm facing him and he took maybe two, three steps to the left. He was still opening candy at the time.
Q. When did he take those steps to the left?
A. While he was opening the candy, Rami opened the door. When Rami opened the door, the guy faced -- Rami called him and he faced him. And the guy was opening candy, reaching over and opening candy. Reaching over and

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opening candy.

But as soon as I heard the pepper spray, the guy wasn't in like -- I wasn't paying attention to him. I couldn't see his face, nothing.

Q. Okay. So the last vision you have of the victim is him opening the candy?

A. Him opening the pieces of candy and throwing it on the floor.

Q. Him opening the candy and throwing the wrappers on the floor.

A. Yes.

Q. And the last vision you have of Rami is him basically opening the door and being in the doorway?

A. Yes.

Q. Otherwise, all that you're testifying to is you hear the Mace and you hear the gunshot?

A. Yes.

Q. So did you see Rami lock the door of the store after the incident?

A. I don't remember.

Q. Did you see him pick up anything?

A. I don't remember.

Q. Did you see him go to the bathroom area?

A. I don't remember.

Q. You don't remember that?

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A. No, I don't.
Q. Did you see him put anything in the toilet?
A. I wasn't in the bathroom. I was still around the register area.
Q. That's a very tight area, right?
A. Yeah. But the bathroom is all the way in the back of the register area. We still have a huge candy stand and you've got to go around that to go to the bathroom.

Like, I couldn't go to the bathroom if there was somebody in the store at all.

Q. Did you call 911?
A. No. I told Rami to call 911.
Q. Was Rami hesitant to call 911?
A. I don't remember.
Q. You don't remember that?
A. No.
Q. Do you remember if he did call 911?
A. Yes, he did.
Q. Did the person who was shot leave the store after he was shot?
A. Yes.
Q. Could you see this outside of the store?
A. I think I looked out the window to see if he was outside.
Q. Do you recall if Rami also looked out the window?

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A. I'm not sure.
Q. You're not sure. Is there a monitor where you can access the video surveillance footage?
A. Yes.
Q. Did you look at that monitor to try to see what was captured on video before the police came?
A. I don't know how to use it.
Q. You don't know how to use it?
A. No.
Q. Did Rami look at that monitor to try to access video to see what had been recorded?
A. No.
Q. No, he did not?
A. No.
Q. Let me ask you this question. There is another room. Like right when you go into the clerk area, there seems to be some room to the right, something that's behind the door?
A. Office.
Q. That's an office. And what is kept in that office?
A. I don't step foot in there. The boss sits there.
Q. So Rami was in that office?
A. Rami is the only one that goes in there.
Q. And is that office locked?
A. Locked and a key.

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Q. So when the police arrived, do you stay behind the counter?
A. I was behind the counter.
Q. Do the police enter into that area?
A. Yes.
Q. Kind of what happens at that point in time?
A. They just talked to us, asked us what's going on. A lady -- I think it was a lady. She was actually detective. She came in and asked us what's going on, what happened. So we just told her what happened and they -- I think they took me to the outside, like where the -- inside the store. They were asking me questions and I was answering them.
Q. And do you recall being asked if you had any weapons or guns or anything like that?
A. I don't think they asked me that.
Q. Did they ask you where the shell casings might be?
A. They were asking me where the shell case was, I don't know.
Q. And you said you don't know.
A. No.
Q. Did the police put up -- you know, that yellow tape like we see?
A. Around the gas station?
Q. Yeah.

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A. Yes.
Q. Has everything you said today been truthful?
A. Yes.
MR. LAWRENCE: Thank you for your honesty.
THE WITNESS: Thank you.
THE COURT: Cross examination?
MR. THOMAS: Yes, Judge.
THE COURT: I believe, Attorney Thomas, you indicated you wanted to have the video cued up?
MR. THOMAS: Yes, I do. I was going to ask a few preliminary questions, first.
THE COURT: Okay.
CROSS EXAMINATION BY MR. THOMAS:
Q. Mr. Saleh, have we met?
A. No. I just met you in there.
Q. Today?
A. Yeah.
Q. How long did that take?
A. One minute.
Q. Before that, have we had any discussion?
A. No, sir.
Q. You testified in a civil deposition in this case, is that right?
A. Yes, sir.
Q. And you also testified here. This is the first time in

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open court, is that right?
A. Yes.
Q. You were asked the question about Rami having a CPL. What's a CPL?
A. It's license to carry a pistol.
Q. You said you knew he had it. How did you know?
A. He always has it, but he never shows it.
Q. And did he tell you he had one?
A. No. He never tells me anything about him having a gun, but I know he has one.
Q. But you also know that he has a permit to carry it?
A. Yes.
Q. Now, the store is located on McNichols, which is Six Mile and Southfield, is that right?
A. Yes.
Q. What kind of neighborhood is that?
A. Not so good neighborhood.
Q. You had protective glass there?
A. Yes.
Q. The Prosecutor asked you about glass at the window and that's -- it's thick and that's where you do business, behind that counter, correct?
A. Yes.
Q. And were there two areas where people could be served?
A. Yes.

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Q. On this day, were people being served in both of those areas?
A. Yes. All day before the incident, yes. One for lottery and one for the register.
Q. So there's two cash registers there?
A. No. One for the lottery machine and one for the register.
Q. If I wanted to buy cigarettes, I could go to either window?
A. Yeah. I mean, if I had a line in this one, you could come to this one and I could help you.
Q. When you go to work in the morning at this particular place, are you concerned for your safety?
A. Working in Detroit, I was concerned every day for my safety. I work at a gas station now in Detroit.
Q. Coming and going, you watch where you're going?
A. Of course.
Q. You look over your shoulder because you're in fear?
A. Of course.
Q. These are predominantly areas -- well, this particular store, we'll talk about it, the people that are being served are of African-American descent?
A. Yes.
Q. And your name is Rojgar?
A. Rojgar.

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Q. And Saleh. That's an Arabic name?
A. Yes.
Q. Are you Lebanese?
A. No.
Q. You were born in Turkey?
A. Yes. I was born in Turkey? Iraqi.
Q. So would you consider yourself of Arabic descent?
A. Kurdish. I'm not Arabic, I'm Kurdish.
Q. Okay.
A. Middle Eastern.
Q. Middle Eastern?
A. Yes.
Q. And Rami is Middle Eastern?
A. Yes.
Q. Are you aware of the tension between the African-American community and the Arabic community because of your experiences in the stores in Detroit that you work?
A. Right.
Q. Back in this particular case, there was a discussion about the store owner making money and the person who was having to pay money.

Do you remember that?

A. Yes.
Q. Prior to this incident, have you ever seen Rami engaged

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in any physical altercation with a customer?
A. Not at all.
Q. The dispute began between the customer, who is Mr. Roberts, and you, is that right?
A. He came in, I think -- if I remember right, there was an argument over a pack of cigarettes and I couldn't hear him. And that's when he was -- he got upset with me, I guess. He got mad at me.
Q. Did he give you any money?
A. He gave me, but I think it wasn't enough.
Q. He was short?
A. It was short.
Q. Did you give him back his money?
A. I gave him -- I think I gave him back his money and I told him to go across the street. And then that's when Rami said, here. No, we could take care of him. Here's a pack of cigarettes. And I told him he's short and he's the one that was yelling at me.

I'm like, he's -- he's the one that was short. And I told him, I apologized. And I gave him the cigarettes and Rami told me, yes, sell him the cigarettes. That's what we do in here, we make money. We're going to make money. That's what we're open for to make money.

So we grabbed the -- and then the guy said I

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don't want the cigarettes, if I remember correctly. The guy said he didn't want them any more.

Q. But he got his money back?

A. I'm not 100 percent sure. And there was two ladies, old ladies in the store that weren't -- that he wouldn't let me help. That's what I remember.

Q. And do you remember a deposition when you were testifying previously under oath?

That was a question. Do you remember a deposition when you were previously testifying under oath?

A. Yes.

Q. Do you think that looking at the transcript might refresh your recollection about whether or not he got his money back?

A. I'm not 100 percent sure.

Q. Would this help you?

A. Yeah. I could look at it.

MR. THOMAS: Judge, may I approach, Page 40?

THE COURT: You may.

BY MR. THOMAS:

Q. I'm referring to Lines 13 through 20. And I'm going to ask you to review it and don't answer. Just tell me that you reviewed it when you're done. Lines 13 through 20.

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Have you reviewed it?

A. Yes.

Q. Does that help your memory?

A. Yes.

Q. Did Rami give with him the money back?

A. Yes.

Q. And that's what you said under oath, previously, right?

A. Yes.

Q. That's what you said?

A. Yes.

Q. There were customers in the store. Do you recall that?

A. Yes.

Q. Do you recall what, if anything, happened with the customers in the store when Mr. Roberts was acting out?

A. I had customers in the store that he wasn't letting me take care of.

Q. What happened to them?

A. They left.

Q. Were you asked the question: Why didn't you call the police?

A. From you?

Q. Here, today?

A. Why didn't I call the police?

Q. Yes. Why didn't you call the police?

A. As soon as it happened, I was in shock. I told Rami to

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call the police, call the police.
Q. No. But I'm talking about as Mr. Roberts is acting out and you're asking him to leave on multiple occasions.
A. Because I called the police before at this location where I was working and they just don't care. They don't show up to the gas station.

I've had an incident in there where somebody --

MR. LAWRENCE: Objection to whatever he's about to say about a prior incident.

THE COURT: Sustained.

BY MR. THOMAS:
Q. Well, was a prior incident on your mind when you made a decision not to call --
A. Yeah. I called the police --
Q. Hold on. I've got to ask you piece by piece. Say yes or no.
A. Okay.
Q. Was it on your mind when you are considering whether to call the police?
A. Every time I get into an arg -- if somebody gets into an argument with me or, you know, I just ask them to leave. If they don't want to leave --
Q. Right.
A. Yeah. That was on my mind. Of course.

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Q. But I asked you about, at this time, was it on your mind?
A. Every time.
Q. So you didn't call the police to evict him?
A. No.
Q. And the reason why is because you didn't think that they would come?
A. They wouldn't.
Q. Now, I'll ask you, has that been your experience on previous occasions, yes or no?
A. Yes.
Q. The door. We heard about the door. Is the glass on the door two inches thick?
A. I'm not sure.
Q. Is the glass on the door bulletproof, if you know, if you know?
A. Yes. From what I know, yes.

MR. THOMAS: Mr. Lawrence, can we get the photographs up, the still photographs of the door?

(Photographs showing on screen for the jury)

BY MR. THOMAS:

Q. So we're showing you an exhibit that has previously been admitted. It's a photograph of the door.

Can you swivel around. Do you see it?

A. Yes.

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THE COURT: For the jurors that can't see, please, at this time, so that you can see. Can we have the deputies direct the people in the gallery.

Please proceed.

BY MR. THOMAS:

Q. This door, is that the door that -- is that -- this door similar or in the same condition as the door was on the day of the incident, on May 13, 2018?

A. You're asking me if the door was in the same condition?

Q. No. Do you recognize that door?

A. Yes.

Q. Is that the same door?

A. Yes.

Q. Do you see tape there by the lock on the bottom?

A. Yes. On the bottom of the lock?

Q. Yes, sir.

A. Okay.

Q. Do you see tape there?

A. Yes.

Q. Do you know whether or not -- well, did you know it was taped?

A. No.

Q. Is that the locking device?

A. Yes. We locked from the top. Do you see that?

Q. You locked it through the top?

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A. Yeah.
Q. But you testified, did you not, on direct examination that many times that lock was unlocked?
A. Uh-huh.
Q. And on that day or on other days when the owner or you were going to be stocking the shelves, that that would be unlocked?
A. Because he's coming in and out, you know.
Q. And this becomes important because I'm going to show you the video. I'm going to ask you about whether or not that door at the time of the incident was looked or unlocked, if you know.

I'm not able to get there yet. I just want to show you the tape on the door. Okay.

My next question is, you heard the decedent, Mr. Roberts, ask several times, what are you going to do?

Do you recall that?

A. Not really. I don't remember.
Q. So what I'm going to do now is play you the video of a composite that was prepared by the People in this case. That composite is going to have your voice and it's going to have the voice of other people that were there. So I'm going to run you through this and I'm going to take it piece-by-piece because I want you to identify

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your voice.

Will you be able to do that?

A. Identify my own voice?

Q. Sure.

A. Yes.

Q. So we can take it until we have audio. And I want to be careful here. You indicated that you didn't see certain things. I want to not talk about the things that you didn't see. I want to talk about the things that you did see.

A. In the video?

Q. In the video that you're going to be looking at now. Fair enough?

A. Yes.

(Video playing for jury at 3:21 a.m.)

MR. THOMAS: Pause it.

BY MR. THOMAS:

Q. So at this point, are you behind the counter?

A. Yes.

Q. And are you on the right or the left?

A. I'm on the register. I think Rami was to my left.

Q. But I want to talk about what it looks like to the jury when they're facing it. Are you on the right or are you on the left?

A. I'm on the left. I'm on the left of the door.

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Q. You're on the left?
A. If you're facing this way.
Q. Yes.
A. Yes.
Q. And then where is Rami?
A. To my -- Rami will be to my left.
Q. To your left. But as I'm looking at the video --
A. If you're looking this way. If you're standing where he's standing, Rami will be to your right, I'll be to your left.
Q. Thank you. And then who is speaking at this point?
Do you recognize that voice?
A. I think that was me speaking to Rami.
MR. THOMAS: And have you circulated to the jury the transcriptions?
THE COURT: I've pulled them back. Do you want the jury to have it now?
MR. THOMAS: May I?
THE COURT: I don't know where they are now.
(Video playing for the jury at 3:23 p.m.)
MR. THOMAS: Pause it.
BY MR. THOMAS:
Q. All right. What you heard was Derek Roberts' voice. What was he saying to you, if you recall?
A. He said Newport box. He was telling me Newport box.

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But I heard him say it one time. He's like, you don't hear me? He kept telling me, you don't hear me? I tried to tell him I'm behind him, it's a thick glass.

Q. But you intended to serve him quickly?

A. Did I serve him? I told him --

Q. You wanted to serve him?

A. Yeah. Of course.

Q. Because you had other customers behind him?

A. Of course.

Q. Okay.

MR. THOMAS: So can we play it again?

(Video playing for the jury at 3:24 p.m.)

MR. THOMAS: Pause it.

BY MR. THOMAS:

Q. All right. So at this point, is this -- describe what's going on here. I think that's the fairest way for me to go.

A. I couldn't hear him. He was telling me let me get a pack of Newports. I couldn't hear him the first time and the second time. I guess that's what he's saying, like, you don't hear me?

So I ended up grabbing a pack of cigarettes for him and then, I guess Rami heard him, the way he was talking to me and didn't want him in the store and told him to leave, go across the street.

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Q. Well, at this point, did he give you $7.50?
A. I'm not 100 percent sure how much money he gave me, but it was not enough.
Q. Okay. And so, at that point, he is referring to you in a derogatory way, asking you to open up your ears.
A. Yes.
Q. How did that make you feel?
A. I was -- he was just -- I don't know if he was in a bad mood, but he was like very loud and very -- like yelling.

MR. THOMAS: All right. So continue, please.

(Video playing for the jury at 3:25 p.m.)

MR. THOMAS: Pause, please.

BY MR. THOMAS:
Q. Who is that talking?
A. Excuse me?
Q. Who was that speaking?
A. Rami.

MR. THOMAS: And then, continue.

MR. THOMAS: Stop.

BY MR. THOMAS:
Q. Did you hear that phrase, you in here, bro?
A. You in here?
Q. Yes. Did he hear that?
A. No, I didn't hear that.

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MR. THOMAS: Go back, please.

(Video playing for the jury at 3:36 p.m.)

MR. THOMAS: Stop.

BY MR. THOMAS:

Q. Did you hear that part?

A. Yes.

Q. What did Derek say?

A. He said I don't care, basically.

Q. Did he say what you gonna do about it?

A. What you gonna do about it?

Q. Did you hear that?

A. Can you play it one more time?

MR. THOMAS: Real quickly, Judge.

(Video playing for the jury at 3:26 p.m.)

MR. LAWRENCE: I guess -- I'm trying to figure out how to title this objection. Maybe it's like objection to relevancy as it relates to this witness. I mean, showing the video, second by second by second by second at a time and just asking this witness to comment on it is, I don't think, a proper line of questioning, even on cross examination for this witness.

MR. THOMAS: This is a --

THE COURT: Attorney Thomas, what is your response?

MR. THOMAS: Res gestae, Judge. It's exactly

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what happened. He's there. He's a witness and he can testify as to what happened. What I'm trying to show is the demeanor of the decedent and his unreasonable demands directed towards him.

MR. LAWRENCE: I mean, that's not even a question. I mean, it's like, so what we are going to go like second by second and say he's being a jerk right now, isn't he, Mr. Saleh? Now let's play a few more seconds. He's still being a jerk, isn't he, Mr. Saleh?

MR. THOMAS: It's more. It's more. He's threatening him when he said what you gonna do?

MR. LAWRENCE: But I just don't understand why this witness needs --

THE COURT: Well, you're not going to have commentary. What the Court is not going to allow at this point, because the jury has seen this video probably eight times already. The Court is not going to allow you to go minute by minute and ask this witness for his commentary.

MR. THOMAS: All right. Then, absent that, can I at least have him identify who is speaking at a critical time?

THE COURT: If he can. But I will also indicate for the record that the jury has already gone through this production video previously with the

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assistance of your transcript, which points out specifically who is speaking: Derek, Rami, Saleh.

MR. THOMAS: But there may be -- in particular, on Line 81, at 4:06, an area that I think might be confusing.

THE COURT: Well, let's get there.

(Video playing for the jury at 3:29 p.m.)

MR. THOMAS: All right. Pause.

BY MR. THOMAS:

Q. Who is it that fuck him, bro?

A. Me.

Q. You testified on direct that a phone call was made to 911, is that correct?

A. Yes.

Q. Were there other phone calls that were made, do you know?

Were people making other -- other people making phone calls to 911?

A. That's what it seemed like when he walked out. When I looked outside, that's what it seemed like.

Q. So if notification is being given to 911, what further purpose would be served by having somebody else call 911?

A. I told Rami to call 911 as soon as it happened.

Q. But he did eventually call 911, correct?

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A. Right.
Q. When he did, did you hear what he had to say?
A. He just told them somebody was in my gas station, there was an argument and I shot him. If I'm not mistaken, that's what he said.
Q. Do you remember him saying something about being threatened?
A. Yes.
Q. Did you feel threatened?
A. Yes.
Q. Did you feel threatened by the decedent, Derek, when he said what are you going to do?
A. Yes.
Q. Did you feel threatened when he said what do you got? Show me what you got?
A. Yes.
Q. Did you feel threatened at any time before you lost sight of him?
A. When he was opening candy and stuff like that and throwing it around and he kept telling us come outside, come outside, and I was just staying behind the register. I don't want nothing -- I don't want to go outside, I don't want him to come by us. Nothing.
Q. How many times did you ask or did you and/or Rami ask him to leave?

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A. At least 10 times me, by myself. I feel like I asked him at least 10 by myself.
Q. Did he leave?
A. No.
Q. Did you happen to see him reaching out towards a customer on his right, on your right if you were standing behind the counter?
A. If he was reaching out for a customer?
Q. Yes. Did you see that?
A. No.
Q. When the police came, did you cooperate?
A. Yes.
Q. Did you give them the video?
A. I didn't have the video.
Q. Did Rami give them the video?
A. Yes. Yes.

MR. THOMAS: Hold on one second, please. I don't have any other questions.

THE COURT: Redirect?

MR. LAWRENCE: Briefly, Judge.

THE COURT: Are you going to use the video?

MR. LAWRENCE: No.

THE COURT: So the jurors can go back to their seats in the jury box. Thank you.

REDIRECT EXAMINATION BY MR. LAWRENCE:

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Q. All right. I just want to get a couple things clarified, Mr. Saleh. So on cross examination, Mr. Thomas, who is the attorney that was just asking you questions, he asked you if you heard the victim saying what are you going to do. And you answered I don't recall that.

Do you remember that?

A. Yes. But he played it on the video.

Q. He played it on the video?

A. Yes. I think that's what he wanted me to hear, to see if I heard it.

Q. All right. Because I was going to ask you, then, at the end of cross examination, you were asked if you felt threatened by that statement, and you said yes.

A. Yes.

Q. But that's a statement that about two minutes earlier, you didn't even remember being told?

A. Yes.

Q. And then the other question that you were asked as to when you feel threatened, you were asked, did you feel threatened when the victim said what do you got, and you said yes.

A. I said yes to if I felt threatened to?

Q. The victim saying what do you got.

A. What do you got?

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Q. Yeah.
A. I never said that.
Q. So you were behind the bulletproof glass the entire time?
A. Yes.
Q. And you're saying, yet, you felt threatened?
A. I felt threatened.
Q. When I asked you questions the first time, before cross examination, when I asked you questions, said that you only felt threatened when the door was opened.

Do you remember that?

A. Yeah, yeah.
Q. And then I asked you, and who opened the door?

You said, Rami. You started to say something else and I said I only asked you who opened the door. And you said Rami.

Do you remember that exchange?

A. Yes.
Q. So now, though, when Mr. Thomas was asking you questions, you're saying that you felt threatened before that door was opened?
A. I felt threatened when he first -- the first time he walked in and got into an argument with me and he told me what are you going to do and this and that.
Q. And you felt threatened then?

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A. Yeah. Because he was yelling and screaming and not letting customers through and telling me to come -- telling us to come or come back from behind the counter.
Q. Okay. Why didn't you say that when I asked you the question?
Why, when I asked you the question, did you say --
A. You asked me -- you asked me a specific question if I felt threatened at this point.
Q. At what point did you feel threatened, and you said when the door opened.
A. I felt threatened when the door opened. I felt threatened when he walked in. I felt threatened --
Q. Did you think that door was locked?
A. What? The door where we're at?
Q. Yeah. The door --
A. I think Rami opened it.
Q. What's that?
A. I think Rami opened it.
Q. Yeah. Before it was open, did you think it was locked?
A. I'm not sure. I wasn't sure if the door was locked or unlocked.
Q. So on direct examination, you talked about, in answering questions, asking the victim to leave the store, right?
A. Yes.

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Q. And then at the very end of cross examination, you elaborated on that and said you asked him to leave the store like 10 times or so.
A. We asked him to leave.
Q. We, meaning you and Rami?
A. Both of us asked him to leave.
Q. At any point in time, did you ask him to stick around, wait for the customers to leave and stick around?
A. I don't remember.
Q. You don't remember that. At any point in time did Rami ask him to stick around and wait for the customers to leave?
A. I'm not sure.

MR. LAWRENCE: Thank you.

THE COURT: Attorney Thomas?

RECROSS EXAMINATION BY MR. THOMAS:

Q. I'm just on what time it was that he was asking. The Judge allowed me a little bit of time to show you the video.
A. Yes.
Q. Did that video refresh your recollection as to what it is that happened?
A. A little bit.
Q. Did it refresh your recollection about the things that were being said?

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A. Yes.
Q. Did it reflect your recollection about what it was that you were feeling?
A. Yes.
Q. You didn't tell them about the fear that you had before the door was open because you didn't have the advantage of the video, is that correct?
A. Uh-huh.
Q. Is that correct?
A. Yes.
Q. Is that the first time you saw the video?
A. Yes. The audio and video, yes.
Q. The audio and the video, the first time that you saw it?
A. Yes.
Q. In the City of Detroit, are you aware of a problem --

THE COURT: That's outside the scope of redirect.

MR. THOMAS: I'm talking about his fear, Judge. I'm sorry. The Prosecutor asked a question related to his fear and I am going to address that, in only a short form, regarding people in the City of Detroit, weapons in the City of Detroit. Concealed weapons in the City of Detroit.

THE COURT: That's outside the scope of redirect. I'm not allowing that question. We've

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already gone into that in your cross examination.

MR. THOMAS: Can I then ask the question as it relates to the number of times that that person who was there, Derek Roberts, was there and he was asked to leave? And refreshing recollection --

THE COURT: It was asked and answered.

MR. THOMAS: -- with the video.

THE COURT: It was asked and answered. He asked 10 times.

Any additional questions for this witness?

MR. LAWRENCE: Not from the People.

THE COURT: You're thanked and excused, sir.

Do the People have any additional witnesses?

MR. LAWRENCE: Basically, one brief question for the officer in charge.

THE COURT: Please call your next witness.

CLERK OF THE COURT: Step up here and spell your name for the record.

THE WITNESS: J-E-S-U-S, C-O-L-O-N.

CLERK OF THE COURT: Thank you. Raise your right hand for me, please.

Do you solemnly swear that the testimony you're about to give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?

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THE WITNESS: I do.

DETECTIVE JESUS COLON,

having first been duly sworn, was examined and testified on his oath as follows:

THE COURT: Please proceed.

DIRECT EXAMINATION BY MR. LAWRENCE:

Q. Good afternoon. Will you please introduce yourself for the jury?

A. Detective Colon with the Detroit Police Department.

Q. How long have you been with DPD?

A. Close to like 20.

Q. At the time of this incident, you were working in the Homicide Unit?

A. Correct.

Q. What unit are you working in now?

A. I'm currently assigned to the FBI's violent crime task force.

Q. And were you the officer in charge of this case?

A. Yes, sir.

Q. What does it mean to be the officer in charge?

A. Officer in charge is basically -- the way it works is this: In the office, each district -- we have districts. In part of this district where this incident happened is the Northwest District. And we have a squad. Within the squad, we have a roster. And it goes

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down in order. And the day it happened -- the day the incident happens, you go from next, you're the one. You're the officer in charge of the case.

Q. So the -- in your experience as a police officer, are you familiar, it goes without saying, with firearms?

A. Yes.

Q. And you're familiar with semi-automatic pistols?

A. Yes.

Q. Way back when, you received -- you went through the police academy?

A. Correct.

Q. And over the many years, you've investigated many scenes involving semi-automatic pistols?

A. Yes.

Q. And how long have you carried one, yourself?

A. As I said, I've got almost 20 years in the department. Before that, I was in the military for many years.

Q. So as much experience as one could have with a semi-automatic?

A. Correct.

Q. So I want to ask you about Exhibit 51. This was kind of left loose with the forensic technician, so I just wanted to --

(Photo showing on the screen for the jury)

BY MR. LAWRENCE:

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Q. All right. So do you see the semi-automatic pistol which was taken into evidence in this case?
A. Yes, sir.
Q. And is there a magazine, as well?
A. Yes.
Q. And is that magazine at least partially loaded?
A. Yes.
Q. Can you just point to the magazine for me?
A. This is the magazine, right here.
Q. And so can you tell by looking at this photograph, is that magazine fully loaded?
A. Yes. You see you got these holes in here, that basically indicates how many cartridges are in the magazine, itself.
Q. So how many are in this --
A. So this mag will hold six cartridges.
Q. And how many cartridges are still in there, to the best of your knowledge?
A. Six.
Q. You think all six are in there?

MR. THOMAS: Well, can we -- first, I'll object to foundation. If he knows. I don't want him to guess.

THE COURT: I'm going to sustain the objection.

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MR. LAWRENCE: That's fine. So we'll strike that question and answer.

THE COURT: So the jury will disregard that question and answer.

MR. LAWRENCE: Yes.

BY MR. LAWRENCE:

Q. Can you just -- showing us the one live round, can you point to a live round?

A. Here.

Q. So what portion of that live round is this, the projectile that gets sent out the barrel to the target?

A. That was the front. This is the actual projectile right here. The whole thing is -- projectile and the casing are all together.

Q. Okay. And so the casing, which is what was recovered in this instance, from where?

A. From the toilet.

Q. Point to that casing area.

A. Here.

Q. So the top portion is the projectile that goes out the barrel. And then the casing that's ejected from the gun is what you just pointed to?

A. Correct.

MR. LAWRENCE: All right. I don't have any further questions.

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THE COURT: Attorney Thomas, cross examination?

MR. THOMAS: Yes, Judge.

CROSS EXAMINATION BY MR. THOMAS:

Q. As you sit here and look at that photograph, can you see red dots on the magazine?

A. Bright dots?

Q. Bright dots. Common colored dots.

A. Indicating what? Indicating cartridge?

Q. The magazine.

A. Yeah. Magazine.

Q. Do you see bright dots on the magazine?

A. Yes.

Q. Okay. Do those bright dots -- well, in your experience, what do those bright dots signify?

A. It indicates how many cartridges are in the magazine.

Q. Do you know how many cartridges are carried by that magazine?

A. Well, this is a Rueger 380, so it would be six.

Q. Six. How many red dots do you see?

A. Want me to count them up.

Q. Yeah.

A. You've got one, two, three, four, five, and six.

Q. Those are all bright dots to you?

A. Well, I can see them. You can see them, right here.

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Q. Well, you can see a hole because --
A. It's not bright because the picture itself is not bright.
Q. Okay. So what is a casing made out of?
A. Like I said before, the casing is made of a metal projectile.
Q. No. I asked you the casing.
A. Exactly. The projectile inside it, the gun powder. Where it ignites once it hits the -- once the firing pin hits the cartridge in the back, that sends the projectile out.

THE COURT: So you're being non-responsive to the --

MR. THOMAS: Maybe I'm not expressing myself correctly.

BY MR. THOMAS:
Q. Let me just cut to the chase. If I see something that's bright in copper color, does that signify a bullet in the magazine?
A. Yes.
Q. Okay. I see two bright objects and then once -- a bullet sticking out, which in my view, I see potential for three or at the very most four bullets?
A. From your view.
Q. Yeah. Do you agree?

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A. No, I won't agree. Not from my view.
Q. So you think from your view that it's full?
A. Yes.
MR. THOMAS: Okay. Nothing further. Thank you.
THE COURT: Any redirect?
MR. LAWRENCE: Just to clarify.
REDIRECT EXAMINATION BY MR. LAWRENCE:
Q. In a situation of a semi-automatic pistol, would there be a round -- if it were wrapped and ready to fire, would there be a round in the chamber, as well?
A. Well, you could have a full magazine and an additional round racked, like you said, on the actual weapon.
Q. Okay.
A. So like this magazine holds six. But in reality, you have seven rounds. You've got one racked already.
Q. All right.
A. Release the mag. Put another cartridge in and reload.
MR. LAWRENCE: Okay. Thank you.
THE COURT: Any recross?
MR. THOMAS: Yes.
RECROSS EXAMINATION BY MR. THOMAS:
Q. But as we stand here today, you don't remember how many bullets are inside the magazine? You don't know how many bullets are inside the magazine, correct?

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A. I never said I remember because I didn't recall this weapon. You asked me how many do I see here.
Q. That's not what I asked.
A. You did.
Q. I asked you if you remember.

THE COURT: Okay. So don't argue with the attorney.

THE WITNESS: Sorry, Your Honor.

MR. THOMAS: I thought we got along. It's been a long day and I won't ask anything further. I think we're where we need to be.

THE COURT: Thank you. You're thanked and excused.

Any additional witnesses for the People?

PEOPLE'S EXHIBIT NO. 61
WERE PROPOSED FOR IDENTIFICATION

MR. LAWRENCE: No additional witnesses for the People. We just have two stipulations.

THE COURT: And the first stipulation is?

MR. LAWRENCE: To Exhibit 61, which is the postmortem report. The report of the autopsy that was performed on Derek Roberts.

This exhibit consists of four pages, which is a summary and opinion and a narrative summary, a diagram, and then four pages of the toxicology. And,

finally, an identification datasheet, which is the sheet for the identification of the remains being that of Derek Roberts.

We are stipulating to its admission as Exhibit No. 61. So I guess, first, we move for its admission.

THE COURT: Exhibit 61 is admitted.

MR. TAYLOR: I have no objection.

MR. LAWRENCE: And it indicates that the cause of death was a gunshot wound to the chest and the manner of death is homicide.

THE COURT: I believe the stipulation also included the toxicology report as it relates to the decedent?

MR. LAWRENCE: Yes.

MR. THOMAS: And it does. And the toxicology report shows a blood alcohol concentration of .060 and the presence of cannabinoids.

MR. LAWRENCE: That is true, Judge. And it is all in the exhibit that the jury will have.

THE COURT: And the next?

MR. LAWRENCE: The next one, we have essentially covered Exhibit 61.

The next and final stipulation is that the deceased was, indeed, identified as being Derek Leon

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Roberts.

MR. THOMAS: Yes.

THE COURT: And with that, the People rest?

MR. LAWRENCE: Yes, Judge.

THE COURT: It is 10 to 4:00. Rather than have the Defense Counsel start their case at this point, we're going to break for the evening. I will allow the jury to go into the jury room to gather their belongings. Please leave your notes on the chair, along with the timeline which is a demonstrative evidence. It's not an exhibit. I will expect you back here in the morning at 9:00 a.m. promptly.

THE BAILIFF: All rise for the jury, please.

(Jury excused for the day at 3:48 p.m.)

THE COURT: We're still on the record. I just want to indicate for the record that the Court is in receipt of Defendant's trial brief. Are the People going to provide a response?

MR. LAWRENCE: Yeah. Judge, I would like to have an opportunity to -- I've had a chance to read it, as well as to read Dr. Shiner's report. And, you know, as we --

THE COURT: The Court does not have the benefit of Dr. Shiner's report. Is that something that the Court -- I only have the trial brief.

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MR. THOMAS: You do not have the trial brief?

THE COURT: I have the trial brief. I do not have a report from the doctor that evaluated the Defendant.

Okay. Gentlemen, honestly. The Court needs copies.

MR. THOMAS: I can only tell you that I'm operating remotely and that my secretary sent that. It was specifically said that it was sent to the Court.

The other matters have been sent to the Court. I'll have to figure out why. But I can't call her and yell at her until I get off the record.

THE COURT: Well, I'm not asking you to yell at anybody. But I mean, you have transcripts that haven't been provided to the Court that are being presented to witnesses that I haven't had an opportunity to review. I don't have the benefit of seeing what the witnesses have seen and what the attorneys are seeing.

So as it relates to Dr. Shiner's report, the Court will make a copy and review it. I expect that the People have a -- will you be able to provide a written response?

MR. LAWRENCE: Yeah. I'll be able to provide a written response. I wanted to, though, just give an overview so that we're not all of a sudden in the moment

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dealing, obviously, with an important issue.

THE COURT: Can I also state for the record that the Court prefers to have briefs and documents provided to the Court that do not have things underlined or highlighted. I'm perfectly capable of reading and identifying what is important and what is not. So if I could get a clean copy of Dr. Shiner's report, I would appreciate it.

So Attorney Lawrence, you said you wanted to kind of outline things for the record?

MR. LAWRENCE: Right, Judge. So the brief that has been submitted mentions nothing of Dr. Shiner's report. It mentions nothing of the diagnosis of PTSD that Dr. Shiner has done with this Defendant. It doesn't speak at all to the issue of diminished capacity.

THE COURT: Which does not exist in this state.

MR. LAWRENCE: Which does not exist in this state. What this brief and its primary case, which is the People verus Reese, which I've had a chance to read. It's like a 2012 Michigan Supreme Court case.

What this brief and that case stands for is the idea that, okay, in Michigan, we do not have imperfect self-defense. We don't have that in Michigan.

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However, arguments that would exist within the framework of imperfect self-defense can be used by the defense in trying to negate the element of malice.

I agree with that. I don't disagree with Reese or anything that is in this brief.

The Defense can pull from any and all of the evidence in this case to try to argue that the People have not proven premeditation and deliberation, or that the People haven't proven specific intent as it relates to the specific intent to kill. That's what the law allows. I don't disagree with that. And so if the Defense wants to continue through it's argumentation with arguments that, you know, whether it's City of Detroit arguments, Arab-American, African-American arguments, it's a violent area around the shop, the victim was being aggressive, the victim was threatening -- you know, these are guys that have to stand behind bulletproof glass, for goodness sake. Certainly and probably most importantly, all of the arguments about what the victim was doing at the time of the critical confrontation, he can do all of that. And he has done all of that. And I would expect him to do all of that.

What he cannot do and what his brief doesn't speak to at all, is use an expert diagnosis of a mental illness, which is what the PTSD diagnosis is, as a

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mitigating factor to specific intent, as diminished capacity. That was outlawed in Michigan under People versus Carpenter, 464 Mich, 223, a 2001 case. And that case is crystal clear. There's been not an iota of issue as far as challenging it or overturning it since it happened in 2001.

So when I was initially preparing for this, I was -- you know, I was wondering, well, I don't know what the Defense is going to argue, that PTSD isn't a mental illness? They're not arguing that. If they were to argue that, I'd be ready right now to, you know, give the lowdown to the Judge as to why that's not the case. But that's not an argument that's been made and there's just no answer to the fact that Michigan has no defensive diminished capacity in the People versus Carpenter case.

So my answer to this brief is that it would be almost like two ships passing in the night. On one hand, I agree with the Reese case and the arguments of this brief. But on the other hand, if you try to extend what it is in this brief to say that you get to argue mental illness as mitigation for specific intent, I would say completely no. And the Carpenter case, which is not even dealt with at all in this brief, is an unanswered complete rejection of that argument.

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So, you know, that's the position. And I feel the People have not -- and the Court has not held the Defense to the fire. Now, it's certainly not -- by that, I don't mean Mr. Thomas who has been on this case for a few weeks. But by that, I mean a defense that was extremely well represented for over a year.

I literally have now closed my case in chief and this argument is being raised. If the Court were to allow the Defense to have Dr. Shiner testify to diminished capacity, I will have never had the opportunity to get my own expert to review the findings of his report.

Judge, you just got his report a couple minutes ago.

THE COURT: And it's almost as if you're reading my mind. The way things usually work here in this court is if there is any inkling that there is a lack of competency or a lack of criminal responsibility, the Court has asked very early on to have the Defendant evaluated. If Defense Counsel does not agree with the evaluations that have been done by the forensic center, then, generally, the Court is requested to order an independent evaluation.

So what we have here is an independent evaluation at what the Court perceives to be the 11th

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hour as it relates to this Defendant.

MR. LAWRENCE: It's 1:00 a.m. It's past midnight, as far as I'm concerned.

THE COURT: Attorney Thomas?

MR. THOMAS: Any chance for me to respond?

MR. LAWRENCE: Let me just say this. By the way, when you look at Dr. Shiner's report, look and see what Dr. Shiner used to evaluate besides his psychological assessment, personal assessment of the Defendant.

You're not going to see on there the video. So I think it's unbelievable how he's able to reach his conclusions without ever having even watched, reviewed, et cetera the video in this case. It's amazing to me.

But whether you want to talk about the midnight notice, whether you want to talk about the adequacy of Dr. Shiner's report, we don't need to worry about any of that, Judge, because this is all a diminished capacity attempt, which is crystal clearly not allowed in Michigan.

So everything else that might be spoken to by the Defense, I'm in agreement with, as far as what they can do to try to challenge the elements of specific intent. But, unless he stands up right now and tells you why he gets to advance an argument of mental illness

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as a means of producing specific intent, then there's nothing for me to really even answer.

And, frankly, I mean, have no problem creating a written response to this, but I'm also going to be doing closing argument tonight and I just think it's a little unfair to have to -- you know, if the argument is going no where, which is what I'm suggesting to this Court, for me to have to do that instead of focusing on my case.

THE COURT: Attorney Thomas?

MR. THOMAS: Well, as the Court knows, I had asked permission for Dr. Shiner to go see the Defendant. That was my request. An order was entered. And the Prosecution was aware that he was going to be evaluating the Defendant.

I said -- and I stand by it -- that I did not have him cite for purposes of competency, because I felt that he was competent. I came into a case where he had written letters that very, very clearly showed that he understood what the Court proceedings were about, what the Defense attorneys were supposed to do and so forth.

I was preempted from any consideration on that and I recognize that. But Dr. Shiner was going to take a look into what, if anything, was operating on the Defendant at the time. Not for purposes of mental

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illness. But what I propose under Reese, which is a Supreme Court precedent that followed Carpenter, to show facts that were operating at or about the time that it occurred. Whether we label it as PTSD or we label it something about being bombed in Lebanon on two occasions, finding out later on at some point in time, the next day that the places that they were going to be or had been were bombed. Recognizing the frailty of life. Working in the inner city as he does and the difficulties that are presented by that. Nobody has any sympathy for store owners.

THE COURT: I wouldn't say that.

MR. THOMAS: Well, don't get me started.

THE COURT: Well, that's not important.

MR. THOMAS: But in any event, Judge, I think that, yes, the late hour is there. I talked to the Prosecutor about the late hour. I asked them before we were able to get the report. Does he need time. He wanted to go forward. And I said, okay, we're prepared.

THE COURT: Well, it's not up to the Prosecution whether or not they go forward. The Court put a drop dead deadline on this particular case. This is case is over 400 days old. This is over a year old. And I'm going to be perfectly honest with you, Attorney Thomas, the number of adjournments that took place on

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this case were at the request of Defense.

MR. THOMAS: Not with me.

THE COURT: I hear what you're saying. But the requests were -- these adjournments were at the request of Defense.

MR. THOMAS: Just remind --

THE COURT: And the Court allowed --

MR. THOMAS: Well --

THE COURT: At a very, very -- I'm speaking right now. The Court allowed at a very, very late hour for you to substitute in, where this Defendant had three very capable attorneys. And for whatever reason, he did not want to continue with them and -- you know, things happen. And we made a record with regard to that and I allowed you to substitute in on this case. But the Court is not going to allow Dr. Shiner to testify. The Court is not going to allow it.

I am very concerned, as I look at even just the front page of this evaluation, which indicates what was reviewed in terms of the documentation. The medical records of the Defendant weren't even examined. That is absolutely unheard of as it relates to looking at criminal responsibility or competency or even evaluating a patient. So the Court is shocked that the Defendant's own records weren't even reviewed.

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But I will note, for the record, that the scholastic records of the victim were reviewed. And I don't know how that impacts at all the mental health of the Defendant.

So the Court is not going to allow Dr. Shiner to testify.

I will see everyone back here in the morning at 9:00 am. We arm adjourned.

MR. THOMAS: Judge?

THE COURT: You can make your arguments in the morning.

MR. THOMAS: Can I ask the Court at least a decision on how I can proceed?

THE COURT: It's your case. You can proceed however you wish. We're adjourned until 9:00 a.m. in the morning. I'm not allowing the doctor to testify.

(Proceeding concluded at 4:04 p.m.)

* * * * *

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CERTIFICATE OF NOTARY

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

I, Carol Dillon, Certified Shorthand Reporter, a Notary Public in and for the above county and state, do hereby certify that the above proceeding was taken before me at the time and place hereinbefore set forth; that the proceeding was duly recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to either party nor interested in the event of this cause.

/s/ Carol Dillon_____
Carol Dillon RPR, CSR 2950
Notary Public,
Oakland County, Michigan

My Commission expires: 9-3-2022

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STATE OF MICHIGAN

THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff, No.18-005065-01-FC

v Jury Trial Vol. 3

RAMI JABER,

Defendant.

_____/

JURY TRIAL VOL. 3

BEFORE THE HONORABLE REGINA THOMAS

WEDNESDAY, SEPTEMBER 25, 2019

APPEARANCES:

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Detroit, Michigan

Wednesday, September 25, 2019

9:16 a.m.

* * * *

CLERK OF THE COURT: This is Case No. 18-005065, the People of the State of Michigan versus Rami Jaber. This matter is here for a jury trial in progress. Appearances, please.

MR. LAWRENCE: Good morning, your Honor. William Lawrence on behalf of the People.

MR. THOMAS: Good morning, Your Honor. James Thomas appearing on behalf of Mr. Rami Jaber.

THE COURT: Good morning. The People have rested. We had some discussion before we left yesterday regarding Dr. Shiner. Are there any additional arguments that either Counsel wish to make as it relates to Dr. Shiner testifying?

MR. THOMAS: No, Judge. You ruled. I'm not going to argue it again.

THE COURT: Okay. The Court just wants to make sure that the record is clear as to why it's not allowing fMr. Shiner to testify. The Court did review the report again. It would appear that Dr. Shiner did review the video of this event. The Court will state, however, for the record, that the Court finds the report

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deficient in a number of ways.

First, Dr. Shiner made his decision without any confirmation of the traumatic exposure via collateral information.

Additionally, the Court finds this report is lacking in that these scholastic records of Mr. Jaber, nor his medical records, were reviewed in preparation for this report. This report seems to be based solely on the impressions that the doctor receive, or information that the doctor received from the Defendant without any corroboration. There is also no documentation of any PTSD symptomology or treatment prior to the criminal act in question in this particular case.

For those reasons in particular, this Court is not going to allow the testimony.

I understand that you have a motion that you wish to make, Attorney Thomas?

MR. THOMAS: Your Honor, at this time, it's appropriate for me to make a motion for a directed verdict based on the theory that considering the evidence in the light most favorable to the Prosecution, that they have not proved first degree murder, which includes premeditation, deliberation and intent to kill.

I think that what we've seen is a video which

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shows a confrontation between a patron and the owner which turns into an argument and that hot blood is obvious and it's existent before there's a time for -- there's any chance for him to cool.

The actual confrontation at the door was a matter of just a few seconds. The drawing of the weapon and the firing of the weapon was only one shot. It was over a period of less than two seconds. And I don't think that, at that time, it was sufficient time for evidence, and in the light most favorable to the Prosecution, for the emotions to cool and for a second look at what it is that was occurring at that time before the shot was fired.

THE COURT: Attorney Lawrence?

MR. LAWRENCE: Yes, Judge. The confrontation -- that's probably maybe even too strong of a term. The argument that was occurring between the deceased and the clerk, and the Defendant, started minutes before the final outcome of the shooting occurred.

In that time period, where there were breaks in the conversation, other customers were dealt with -- in that time period, the Defendant communicated with the victim to stick around, let the customers leave, we'll deal with this then.

The Defendant tells the victim the door is

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open, inviting an exchange, inviting a confrontation.

The Defendant leaves, then, the secured area and for at least seven seconds, has his hand on his waist, holding his gun, as he confronts, make your move, make your move, make your move, the victim -- sprays him in the face with Mace. And then, when the victim, rather than falling to the floor running out of the building, takes a step forward, he pulls that gun that he's had on his side with his hand on for all that time. And he fires it and shoots the victim directly in the middle of his chest.

So for all of those reasons in the light most favorable to the Prosecution, a jury could conclude that this was a premeditation, a deliberate act. As the Court, of course, knows, there's no requirement of a timeline. That's up for the jury to decide. So we would ask the Court to deny the motion.

THE COURT: Any additional arguments, Attorney Thomas?

MR. THOMAS: No, Judge.

THE COURT: The Court is going to deny the directed verdict in the case at this time. How are you going to proceed, Attorney Thomas?

MR. THOMAS: So that we can make a record, Your Honor, the Defendant wishes to testify.

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THE COURT: Would you please have the Defendant stand and voir dire him?

MR. THOMAS: Yes. Mr. Jaber, do you understand that you have a right either to testify or not testify in a jury trial such as this?

DEFENDANT JABER: Yes.

MR. THOMAS: We discussed it?

DEFENDANT JABER: Yes.

MR. THOMAS: Are you satisfied that we've discussed it fully?

DEFENDANT JABER: Yes.

MR. THOMAS: You do understand that you don't have to testify in a criminal case?

DEFENDANT JABER: Yes.

MR. THOMAS: And that if you do not testify, the Judge will actually instruct the jury, tell the jury that there should be no adverse interest because you have no obligation to say anything against yourself.

DEFENDANT JABER: Yes.

MR. THOMAS: You also understand that there are various statements that you made, whether they're on video or -- as it relates to police officers in the case. And that those statements can be introduced against you?

DEFENDANT JABER: Yes.

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THE COURT: Knowing that and understanding that, is it your firm conviction that you want to testify in this case?

DEFENDANT JABER: Yes.

MR. THOMAS: Without any reservation or hesitation?

DEFENDANT JABER: Yes.

THE COURT: Mr. Jaber, has anyone forced you or threatened you to testify in your case, sir?

DEFENDANT JABER: No, Your Honor.

THE COURT: The Court is satisfied. Please have a seat. Bring the jury out at this time.

THE BAILIFF: All rise for the jury, please.

(Jury enters jury box at 9:37 a.m.)

THE COURT: So it's now the Defense's case. Attorney Thomas, please call your next witness.

MR. THOMAS: Your Honor, at this time, we're going to call the Defendant.

Mr. Jaber, would you stand up and be sworn, please.

CLERK OF THE COURT: Stand in front of me, please. Spell your first and last name for the record.

DEFENDANT JABER: Rami, R-A-M-I. Last name Jaber, J-A-B-E-R.

CLERK OF THE COURT: Thank you. Raise your

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right hand for me, please.

Do you solemnly swear or affirm to tell the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

RAMI JABER,

having first been duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION BY MR. THOMAS:

Q. State your name for the record.

A. Rami Jaber.

Q. And you're the Defendant in this case, is that correct?

A. Yes, sir.

Q. And I'm going to ask you questions relating to the incident that occurred.

A. Yes.

Q. You're obviously charged and you have been sitting through the testimony in this case?

A. Yes.

Q. How old are you?

A. I'm currently 27.

Q. And are you married or do you have children?

A. I'm not married, but I do have one son.

Q. How old?

A. He's two year old.

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Q. So at the time on May 13, 2018, were you employed?
A. Yes.
Q. Where were you employed?
A. Stop & Shop.
Q. And where is that located?
A. On McNichols and Southfield.
Q. How long prior to May were you working at that place?
A. I owned it since 2012 of January. And I worked there since 2010, I want to say.
Q. Since 2010?
A. Yes.
Q. You're how old right now?
A. 27.
Q. So that's seven years ago. You were 21 years old when you first started working there?
A. When I owned it, yes.
Q. You don't own the land, you own the --
A. The business.
Q. What is the address?
A. 17804 West McNichols.
Q. Can you tell me that particular neighborhood? Can you describe it for the jury?
A. It isn't a good neighborhood. It was a dangerous neighborhood.
Q. Okay. Could you describe it any further as it relates

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to the demographics of the people who live there?
A. There's a lot of gang members over there in between -- it's just a bad neighborhood overall.
Q. When I suggest to you the word "tagging", do you know what that means?
A. Yes.
Q. What is tagging?
A. Where gang people come and spray the name of the gang they're from and they spray it on the buildings and on the walls, graffiti. Graffiti.
Q. Did you experience any of that tagging on your building at or about the time this occurred?
A. Yes.
Q. And I'm going to have you take a look at two exhibits.

DEFENSE EXHIBIT NOS. 6 and 7
PROPOSED FOR IDENTIFICATION
9:40 A.M.

MR. THOMAS: May I approach, Judge?

THE COURT: You may.

BY MR. THOMAS:
Q. Sir, I'm going to give you these two exhibits and ask you what does Exhibit No. 6 show?
A. It shows a wall that was painted over, that was tagged.
Q. Do you know who the gang is that did tag it?
A. I know it was red. It was a red tag.

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Q. Are you familiar with gangs in Detroit?
A. Kind of.
Q. Okay. Are there -- well, red is significant of one particular type of gang. Can you describe it?
MR. LAWRENCE: Judge, I'm going to object to the particular type of gang, for two reasons. No. 1 is, it's not relevant. Frankly, I think the whole kind of argument is not relevant. But certainly what specific gang it is is not relevant.
Secondly, there's been no foundation laid that this Defendant is any kind of expert in th familiarity in gangs.
THE COURT: Sustained.
BY MR. THOMAS:
Q. As relates to your state of mind, were you aware that that tagging was from a violent street gang?
A. Yes.
Q. And you say red, as opposed to any other color?
A. No. It was just red.
Q. Okay. Take a look at Exhibit No. 7. Can you see any evidence of tagging in whether or not it actually was apparent in No. 7?
A. No.
Q. Can you see any attempt to obliterate the tagging and paint over it?

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A. No. I don't see none over it in this one.
Q. All right. Was your building tagged at or about the time that this incident had occurred?
A. Yeah. Before the incident.
Q. And tell me what the impact of tagging is to you, as a store manager or owner?
THE COURT: Counselor, if I could, could you lay a time frame? You said prior to.
MR. THOMAS: I did, in a way, Judge. And if it's not enough, I'll try to do it better.
THE COURT: Please. Thank you.
BY MR. THOMAS:
Q. I asked you whether or not it was before the incident occurred. How far -- how long before?
A. Maybe a year.
Q. Okay. It seems to me that the store appeared to be fully stocked, would you agree?
A. Yes.
Q. It seems to me that at the time, that the store --
MR. LAWRENCE: Objection, leading.
THE COURT: Sustained.
BY MR. THOMAS:
Q. What did you do to make sure that your store was a pleasant and attractive surrounding to bring in the customers?

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A. I kept it clean. I stocked all the inventory in there. I cleaned it daily, on a daily basis. Keep everything stocked, so that way, when the customers came in, if they wanted a specific thing, it would be there. It wouldn't be empty.

Q. And can we see from the evidence that's already been introduced, the condition of the inside of the store.

Is that consistent with what you're telling me?

A. Yes, sir.

Q. And the outside of the store, what, if anything, did you do to make sure that that was a pleasant surrounding and attractive to people that would be coming in?

A. We keep the parking lot clean in the daily clean-up. Any trash on the floor would get swept up. Any tagging or anything on the building, we'd want to cover it up right away. I want to keep it a clean looking gas station.

Q. Why would you cover up the tagging?

A. Because if customers see it, they would be scared to go there.

Q. You had to go to work every day?

A. Yes.

Q. Can you give the jury an idea of what it was like to go to work in that neighborhood on a daily basis?

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A. I mean, when I'd walk in, I'd always check my surroundings. I'd always look left to right. I'd try to park as closest to the door so I could go in. When I'd leave, obviously, I'd leave with the money to make deposits, so I always had to make sure that it's clear. Looking left, right, checking the cameras before I walk out.

Q. And did you have a weapon on the day of the incident?

A. Yes.

Q. Did you carry a weapon throughout the time that you were the owner of the store?

A. Yes.

Q. Can you describe to the jury how it is that you obtained a weapon and why it is that you carried it?

A. When I turned 21, I took the CPL class, which is the concealed pistol license. I took the class. It was a ten hour course. I qualified. I got my license and I went and purchased a weapon from the gun store.

Q. The weapon that we saw in this case?

A. That was later purchased.

Q. But that weapon that was in this case, that we see in the photographs that were the exhibits in the Prosecution's case, whose gun was that?

A. That was mine, registered.

Q. Did you purchase it legally?

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A. Yes.
Q. Did you register it?
A. Yes.
Q. Do you have a concealed weapon permit for that weapon?
A. Yes.
Q. Now, we've heard from testimony that's already been presented that there were conversations regarding Arabic store owners and the community.

Can you describe to the jury whether you were subjected to any criticism because of the fact that you had a store on Six Mile and Southfield?
A. Yes. It happened often. I mean, I don't know if they didn't like me owning a business or what it was. I guess it's normal in the area.
Q. How did you feel about it?
A. There was nothing I could do about it.
Q. How, if anything, did that make you feel in terms of what you described about carrying a weapon and going into the building and making sure that --
A. I just wanted to make sure I was safe. Make sure I was protected.
Q. We heard conversations here in the exhibit that the government has put together, both a composite and all the other cameras.

But the conversation that you had with

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Mr. Roberts, can you describe -- well, first of all, do you remember that conversation?

A. Yes.

Q. And the conversation relating to you being the store owner and money made and so forth like that?

A. Yes.

Q. What was that all about? Can you describe that for the jury?

A. He was angry and I got angry. And it was just words being exchanged back and forth. I got angry. I let my anger get to me.

Q. But as it relates to the subject matter, I'm talking about that. And this dichotomy between store owners and the community, what was going on with that?

What was your perception of what was going on with that?

A. I don't know if he didn't want to pay the full amount for the cigarettes or if he thought he could get over on shorting us on getting the cigarettes and walking out.

Q. Did you see where he parked his car?

A. Yeah.

Q. Was that before or after?

A. After.

Q. Was that in a parking space?

A. It was on the gas pump.

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Q. It was on the --
A. Gas pump.
Q. It wasn't at the gas pump, was it?
A. Yeah. He has pulled his car by the pump.
Q. How close to the door was that?
A. Right across the door.
Q. Could the gas pump have reached his car?
A. Yes.
Q. From where it was parked?
A. Yes.
Q. Because the gas cap was on the driver's side?
A. I didn't pay attention to where it was.
Q. But in any event, he came into the store?
A. Yes.
Q. Did you have an opportunity to observe him?
A. Somewhat.
Q. Where were you sitting at the time, or if you were sitting, where were you?
A. I was standing to the left of the clerk.
Q. So if I was looking and we -- from our perspective and I want you for purposes of this examination, is looking at the window where you're behind. Okay?
A. From the store.
Q. So if we say left or right, were you on the left side or the right side?

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A. If you are standing in the store looking towards the cashier, I would be on the right side.
Q. And for all my questions, I want you to remember that, because that's what I'm going to do for purposes of the framing of my questions. Okay?
A. Okay.
Q. All right. And who was on the left side?
A. Rojgar Saleh, the clerk.
Q. And Rajgar Saleh, what was his job?
A. He's part-time. He was a cashier, a clerk. He would be on call if anybody wanted a day off or was sick or couldn't make it in, he'd be on call.
Q. And you heard him describe himself as a friend?
A. Yeah. He was a friend.
Q. But he also worked for you that day?
A. Yes.
Q. We had the testimony of the young lady that was in the store, Shiritha. And she testified that there was only one window. How many windows were there for service to the patrons?
A. There was one big window with two slots. One for the lottery and one for the register and the merchandise.
Q. And if things got busy, would the lottery register be used for purchases?
A. Yes.

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Q. In essence, there were two windows where people could get served?
A. Yes.
Q. Did you notice that they were patrons in the store?
A. Yes.
Q. When Mr. Roberts had come in, did you have an opportunity to observe him when he first came in?
A. I mean, there was another customer that I was talking to that had walked in. He was wearing all white. And when I heard him and the clerk exchange a word or two, that was when I looked and I observed him.
Q. When you say "he", you mean Mr. Roberts?
A. Mr. Roberts, yes.
Q. And anything unusual about the way that he was relating to the clerk?
A. He was kind of demanding.
Q. What was the transaction? What was he buying?
A. I believe it was a pack of cigarettes.
Q. You've seen the video, right?
A. Yes.
Q. You know it was a pack of cigarettes?
A. Yes.
Q. Was there any issue relating to him paying full value or full price for the cigarettes?
A. Yes.

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Q. Was he being charged extra for the cigarettes?
A. No.
Q. What was the cost of the cigarettes?
A. $7.49.
Q. And when he tendered his money at the register, what was it that you saw?
A. He had put $6 in the slot. And he told the clerk about being deaf. And he kept telling him the cigarettes he wanted multiple times. And then he told him he didn't have enough.
Q. So were the cigarettes returned to him?
A. No.
Q. You didn't see him get the cigarettes?
A. No.
Q. Was his money returned to him?
A. Yes.
Q. I'm sorry, I apologize, I misspoke. Were the cigarettes returned is not correct. You never gave him the cigarettes?
A. No. Still didn't put it in the slot.
Q. And was his money returned?
A. Yes.
Q. Did he leave?
A. No.
Q. Did he come up with an additional dollar?

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A. No.
Q. Was there a dialogue between he, you and Mr. Saleh regarding --
A. What does dialogue mean?
Q. Was there talking back and forth?
A. Yes.
Q. What was the nature of that talking? Was it good natured, friendly?
A. No.
Q. What was his demeanor at that time?
A. I believe he was mad because I told him get out the store. And I said get the fuck out the store. And I gave him his money back.
Q. Throughout this time, how many times did you tell him to leave the store?
A. I told him multiple times. The clerk told him multiple times, too.
Q. Did he leave?
A. No.
Q. Did he continue to cause a disturbance?
A. Yes.
Q. What evidence do you have that he was continuing to cause a disturbance with respect to the customers?
A. First, he -- the clerk told him to get out of the way, I have other customers. And he responded I don't give a

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fuck about your other customers. And those customers left. They walked out.

Q. The assumption was that they were within hearing distance?

A. Yes.

Q. And they can see what was going on?

A. Yes.

Q. And some left?

A. Yes.

Q. Then what happened?

A. The argument ensued. It was words going back and forth. And that's when he started opening up the candies and throwing them.

Q. Did you see him making any movement towards the one customer that was still in there, the witness who testified?

A. I believe he had reached over to her and said something.

Q. Now, I want to talk about what your feelings were when you're going to the door. Can you describe your language?

A. I was very angry.

Q. Were you expressing it in the words that you were saying?

A. Yes.

Q. Why were you angry?

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A. Because he was demanding. He was turning away customers. He was running business away. He was opening up merchandise and throwing it on the floor.
Q. Did you have an ability to observe the way that he walked, the way that he carried himself and his language to you, or to -- within earshot -- Mr. Saleh?
A. He was kind of aggressive with his words.
Q. When you say kind of, did you take it to be aggressive?
A. Yes.
Q. Did you have any opinion -- I guess I should give a documentation. Have you ever seen a customer come in that was under the influence?
A. I was there most of time during the morning, but not really in the morning time. It's usually during the night.
Q. Have you ever seen anybody under the influence?
A. Rarely in the morning time.
Q. This is in the afternoon, at 3:00?
A. Yes.
Q. Did you hear him ever say the words, what are you going to do?
A. Yes.
Q. And when he says what are you going to do, not what he meant, but what did it mean to you?
A. That if I call the police or anything, that they're not

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going to show up. He knew he basically could do whatever he wants.

MR. LAWRENCE: Objection, calls for speculation.

THE COURT: Sustained.

BY MR. THOMAS:

Q. I want to focus maybe not so much on the fact that he said it, as much as what it is that you heard and what you were thinking when he said it?

A. Basically, that I'm not going to leave. You got to do something for me to leave.

Q. And were you going to get the assistance from the Detroit Police Department?

A. Not at all.

Q. Have you called 911 before?

A. Plenty of times.

Q. And that's because of disturbances that you had in the store?

A. Yes.

Q. What was your experience when you did call?

A. I'd leave. I'd get home maybe five, six hours later and I'd receive a call from one of the clerks telling me, hey, did you call the police earlier? The cops are here.

Q. What, if anything, did you think at the time that he

says what are you going to do?
A. That if I call the police, that he personally knew that they weren't going to come.
Q. What did you think? Do you think the police were going to come if you did?
A. No.
Q. Did you think that the police were going to evict him because he was acting out?
A. No.
Q. Do you think you had the right as a business owner to ask him to leave?
A. Yes.
Q. And did he leave?
A. No.
Q. Approximately, how many times did you ask him to leave?
A. I want to say three times.
Q. And at the time you were telling him as time went on, what was your tone with him and how was it that you were being -- maybe I should do it separately.

What was your tone with him?

A. I was angry. I was very angry.
Q. I guess that answers both. You were angry at him?
A. Yes.
Q. Were you frustrated that you didn't have the assistance of the police department?

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A. Yes.
Q. Did you figure that you would have to handle him yourself?
A. Yes.
Q. Okay. Sitting here on reflection?
A. What was I doing?
Q. Sitting here, thinking about what it is that had occurred at that time, could you have had another choice in how it was that you handled the situation?
A. Yes.
Q. At that time, had you formulated the fact that you were going to shoot anybody?
A. Not at all.
Q. At that time, had you formulated the idea that you were even going to Mace him?
A. Not at all. At the time that I stepped out or before?
Q. Yes. I'm going to talk about before and then I'm going to talk about at the door.

And so at the time that you -- well, it was before. You indicated that your language was getting elevated and that you were angry and that you were mad at him, in essence?

A. Yes.
Q. At that point, you had a gun on you?
A. Yes.

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Q. Did you show the gun?
A. No.
Q. Did you think about the gun?
A. No.
Q. Did you think about the Mace?
A. I mean, it was right there, right by the door.
Q. Okay. So then I'm going to get you to the door. When you got to the door, what was your intention at the door?
A. That I want to go out and get him to leave.
Q. Did you ask him to leave at the door?
A. I told him get out of here with that shit.
Q. And did you -- is that asking him to leave?
A. Yes.
Q. And at what point, which hand did you have the Mace in?
A. At first I grabbed it with my right hand.
Q. Are you right-handed?
A. Yes.
Q. And at the time that you grabbed the Mace, was it your intention to spray him?
A. Yes.
Q. And describe what it is that you did with your hands.
A. I grabbed the Mace with my right hand. When I came out, the way my body was positioned, my left hand was closer to his face. So I grabbed the Mace into my left hand

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and I waited a second to see if he would stop opening the candies or leave. After I said what I said, he didn't leave and stop opening the candies and that's when I sprayed him.

Q. At this point in time, how close are you to him?

A. Within feet. Two, three feet.

Q. Did you consider yourself in a zone of danger?

A. Yes.

Q. Did you consider the fact that he was taller than you?

A. Yes.

Q. And if he overcame you in that situation, in that close distance -- I want you to describe the gas station. We've seen the videos and we've seen a glass enclosure and the door that closes the glass. Behind the door, the place where the employees are sitting, is there another door to leave the premises?

A. No. Only one main door for entering and exiting.

Q. So in essence, the only way out is to go out that way?

A. Yes.

Q. Is there any -- was there any other weapon, a baseball bat or any other item, such as -- that could be used, like a gun, besides the Mace and the gun that you had on you?

A. No.

Q. If you had been overcome by Mr. Roberts at that time, do

you remember having any thoughts about whether or not you were going to be able to assist him?

A. No.

Q. If he did overcome you and did get the gun, what's going to stop him from doing anything?

A. Nothing that I recall.

Q. Was that in your mind at all at the time?

A. Yes.

Q. You opened the door?

A. Yes. As a matter of fact, I did.

Q. Tell the jury what you were thinking when you did that?

A. Stupid. I put myself in a stupid predicament.

Q. What do you mean by you put yourself in a stupid predicament?

A. Because I was so angry, I just wanted him to leave the store and I basically opened the door.

Q. You and I have gone through the video. You looked at it. And we're going to show the jury the video and ask in a frame-by-frame way of what it is that occurred. But I want to get your testimony for the jury. If you could have done it over again, would you?

A. Of course. Or to -- the way it happened, the outcome of it or --

Q. Yeah.

A. If I could change the outcome, of course, I would.

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MR. THOMAS: Just a second. Can I get some water? Should I go outside.

THE COURT: We can get you some from the back.

MR. THOMAS: All right. Thank you. Shall I continue?

THE COURT: You can.

MR. THOMAS: I appreciate it. I'm sorry.

THE COURT: It's okay.

BY MR. THOMAS:

Q. Once you got to the door and the confrontation to the door occurs, over what time frame was that, in your mind? Have you measured it?

A. I want to say it was in seconds. Five seconds.

Q. Did you lose your mad at the door?

A. Yes.

Q. You lost your mad at the door. What I mean to say is, you had passions that were inflamed. You testified to the fact that --

MR. LAWRENCE: Objection, leading.

THE COURT: Sustained.

BY MR. THOMAS:

Q. Let me do it this way. You testified that you were angry. Did you lose your anger at the door?

A. Yes.

Q. You did. Okay. Why?

A. Because I was mad he continued opening the candy. I mean, basically, challenging me what are you going to do?
Q. So you were angry?
A. Yes.
Q. Did you understand my question when I said did you lose your mad at the door?
A. No.
Q. Did you have time to reflect?
A. No.
Q. Were your passions still up?
A. Yes.
Q. You said it was over a period of a few seconds.
A. Yes.
Q. Describe to the jury what you saw without looking at the video but knowing that you did see it. What was it that you saw when he was at the door? Take it step by step, if you can.
A. Before the Mace or --
Q. I want it right at the door. You opened the door. You know you're wrong for doing it.
A. Yes.
Q. But you opened the door?
A. Yes.
Q. Why did you do that?

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A. I wanted him to leave.
Q. On reflection, was that a good move?
A. No.
Q. What was it that happened next, step-by-step?
A. I came out. I told him to get out with that shit. He told me what am I going to do. And I had the Mace. By that time, I put the Mace in my left hand and I sprayed him. I had my right hand on my weapon just in case anything got out of hand.
Q. Did the Mace work?
A. From what I saw, no.
Q. Why did you have your hand on your weapon then? At that point, had you already, in your mind, formulated the idea that you were going to shoot him?
A. No.

MR. LAWRENCE: Objection.

THE COURT: What's the objection?

MR. LAWRENCE: The objection was he said that he had right hand -- his gun in his right hand in case he had to use it.

DEFENDANT JABER: No.

MR. LAWRENCE: So it's an asked and answered follow up.

DEFENDANT JABER: No. It wasn't in my hand.

THE COURT: Okay. Sir, we have an objection

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on the floor. So I have an objection. I'm going to give your attorney an opportunity to respond. The Court is going to rule. And based on my ruling, you may or may not be able to answer that question. Okay?

DEFENDANT JABER: Okay.

THE COURT: All right. Thank you. Attorney Thomas.

BY MR. THOMAS:

Q. You have the Mace in your left hand and you just transferred the Mace from your right hand to your left hand?

THE COURT: I haven't ruled on the objection. Do you have a response to the objection that was made?

MR. THOMAS: I'm going to reformulate the question so that it can be clear.

THE COURT: Okay. So I'm going to sustain the objection and you're reformulating the question.

MR. THOMAS: Thank you.

THE COURT: Thank you. Proceed.

BY MR. THOMAS:

Q. When you switched the Mace from your right hand to your left, what was your intention with the Mace?

A. To spray him.

Q. If he was sprayed, what was your hope that he would do?

A. He would hold his eyes and retreat back and walk out.

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Q. And that was, in essence, to comply with what it was that you were requesting and Mr. Saleh was requesting, right?
A. Yes.
Q. Where was your hand when you Maced him?
THE COURT: Which hand?
MR. THOMAS: I'm sorry.
BY MR. THOMAS:
Q. Left hand Mace, correct?
A. Yes.
Q. Where was your right hand?
A. On my weapon.
Q. Was your weapon drawn?
A. No.
Q. Did you intend, at the time that you had your hand on the weapon, to draw it and shoot him at that time?
A. No.
Q. What changed?
A. He reached down by his waist and I thought he was going for a weapon.
Q. So what happened then?
A. I felt fear and I retreated back and I drew my gun and fired one shot.
Q. When you were in the process of your hand on the gun and after you Maced him, what did you see him do, besides

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what you described?

A. He turned back and he came back with his hands down and he took a step and a half towards me.

MR. THOMAS: Judge, can I have permission to have him describe the body movement or would there be an objection to that?

MR. LAWRENCE: No objection.

THE COURT: Proceed.

BY MR. THOMAS:

Q. Would you please put down Exhibits 6 and 7? Will you stand towards me?

I want you to assume that you're in the position that Mr. Roberts was in at the time that you Maced him in the face.

Will you show the jury what his reaction to the Mace was?

A. He didn't put his hands up. He just went like this.

Q. Hold it. You've got to speak up, No. 1.

A. Okay.

Q. Because I'm hard of hearing.

A. Okay.

Q. And No. 2 -- okay. And where did his feet go?

A. He turns this way. And then his hands were by here.

MR. LAWRENCE: Noting for the record --

MR. THOMAS: I'm going to do it.

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MR. LAWRENCE: All right.

BY MR. THOMAS:

Q. You have to describe what you just did.

A. He turned around with his face and then he put his hands by his waist and he took the step.

Q. Okay. And was that step towards you, away from your --

THE COURT: You still haven't said, for the record, what the witness has just done.

You still haven't said, for the record, what the witness has done. So the withes has looked to his side, to the right.

MR. THOMAS: Oh, yes. So you want me to do that?

THE COURT: Yes. Thank you.

BY MR. THOMAS:

Q. So what he did is, he then recoiled from the Mace?

A. Yes.

Q. He didn't have his hands up at his face, correct?

MR. LAWRENCE: Judge, can I describe, please?

MR. THOMAS: Wait. This is my witness.

MR. LAWRENCE: But I've given you an opportunity to describe.

THE COURT: Just one moment. Okay. We can all sing together, but we cannot talk together. I'm sorry. Okay.

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So Attorney Thomas, I believe that the objection is that there's commentary from you and that you're testifying versus just describing what the witness is doing with his body. So for this purpose only, I understand this is your witness, I'm going to allow APA Lawrence to state for the record the gestures that the witness is making and then we'll return back to your direct.

MR. THOMAS: May I suggest another way? And that is that I ask my witness.

THE COURT: We've already tried it that way.

MR. THOMAS: Well, Judge --

THE COURT: We've already tried it twice.

MR. THOMAS: I'll make a record as to what it is that he said and if he objects, he can say so.

THE COURT: Well, no. We're going to do it my way. So we're going to let APA Lawrence --

MR. LAWRENCE: Judge, this is a demonstration which Mr. Thomas and I have done probably thousands of times before. We know that you're supposed to describe that a defendant has a --

THE COURT: I've already said that you can do it. So you don't have to put anything further on the record. Thank you.

MR. LAWRENCE: So the Defendant's right and

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left hands were at his side near his belt buckle.

MR. THOMAS: At what point?

MR. LAWRENCE: At the point that he's describing what the victim is doing with his hands.

THE COURT: After he's looked to the side and turned back towards the Defendant.

MR. LAWRENCE: Correct.

THE COURT: And the record is now clear. Please proceed.

BY MR. THOMAS:

Q. You heard the Prosecutor, is that right?

A. Yes.

Q. You heard the Judge?

A. Yes.

Q. Is that accurate?

A. Yes.

MR. THOMAS: Can the sit down or were you going to do any more movements?

MR. THOMAS: Well, Judge, I was going to ask him to go through it, but he could sit down.

THE COURT: Okay. No. If he's going to move somewhere, that's fine. I just didn't want him to stand there and testify. I'm not trying to interrupt your direct. I just wanted to make sure that -- go ahead.

MR. THOMAS: Okay.

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BY MR. THOMAS:

Q. At the time that he had his hands down at his waist, what then did you see next, and we can show the jury?

A. I thought he was going to reach for a weapon. And that's when I retreated back. And I drew my weapon and I fired one single shot.

Q. Can you describe for the jury what it was that you saw with your body movements after his hands were at his side and before you shot?

A. It was physically with his hands by his waist. So I didn't know if he was drawing a weapon or what he was reaching for.

Q. Did you assume that he was going to go for a weapon?

A. Yes.

Q. Was his shirt tail in or out?

A. It was out.

Q. Are you familiar with carrying of weapons?

A. Yes.

Q. And is the belt buckle a logical place for somebody to have a weapon?

A. By the belt buckle, do you mean the --

Q. The waist, if it was --

A. Yeah. Usually around the waist, yes.

Q. And what was your state of mind at that time? What were you thinking.

A. I was in fear that he was going to draw a weapon and all I was thinking was it was my life or his.
Q. You had your hand on your weapon at the time?
A. Yes.
Q. Did you draw your weapon?
A. When he took the step, yes.
Q. And what did you do as you drew your weapon? What was your body doing at the time you drew it?
A. I was retreating backwards.
Q. Were you retreating backwards because he was so close to you?
A. Yes.
Q. And at that point, did you think you had any other alternative?
A. At that point, no.
Q. So then what did you do?
A. After that or --
Q. After.
A. After I fired the shot?
Q. I want to get you to the point where you did fire the shot.
A. Oh, yes. I fired the shot.
Q. Did you have a full magazine?
A. Yes, I did.
Q. Did you have one in the chamber?

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A. Yes.
Q. What is your practice relating to the weapon?
A. When I took the course, the class to get my license, the instructor instructed us to always keep one in the chamber. That a weapon is -- a gun on your hip is no gun without one in the chamber because you never get that one second to pull it out and rack it back. Especially if you're in a life or death situation.

MR. THOMAS: Judge, move to admit 6 and 7.

MR. LAWRENCE: No objection.

THE COURT: Defendant's 6 and 7 are admitted. And you may approach the witness.

DEFENDANT'S EXHIBIT NO. 2
PROPOSED FOR IDENTIFICATION

BY MR. THOMAS:
Q. Did you receive some -- Defense demonstrative Exhibit 1, for purposes of review, has already been admitted. I'm going to ask you to take a look at proposed Exhibit No. 2. Did you see it?

THE COURT: He does not have it. Somehow it ended up here.

MR. THOMAS: I think it was me.

BY MR. THOMAS:
Q. Do You have Exhibits 6 and 7 in front of you?
A. Yes.

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Q. Can you describe what it is?
A. It's like a shot of where he was reaching into his waist.
Q. Okay. I'm going to ask to and I'm going to try and lead you through it. Have you viewed the video?
A. Yes.
Q. Is that consistent with the video?
A. Yes.
Q. Can you tell the time frame that is on Defense Exhibit No. 2?
A. Just the time?
Q. Please. Well, the time of day.
A. It was May 13, 2018, 3:54 and 39 seconds p.m.
Q. Okay. Now, you heard the testimony from the police officer that that might not have been an accurate time frame?
A. Yes.
Q. But that is the time frame that's on the video, correct?
A. Yes.

MR. THOMAS: Move to admit, Judge.

MR. LAWRENCE: No objection.

THE COURT: Defendant's Proposed Exhibit 2 is admitted.

BY MR. THOMAS:

Q. And looking at Defense Proposed Exhibit No. 2, what do

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you see Mr. Roberts to be doing in that still snapshot that was taken from the video?

A. His hands by his waist.

Q. Okay. Now, where are you?

A. Right by the door.

Q. When you were at the door, do you have anything in your hand?

A. Looks like the Mace.

Q. In which hand?

A. My left hand.

Q. This is after you already transferred the Mace?

A. Yes.

Q. And can you describe what your right hand is doing?

A. You can't really tell from this angle.

Q. But what is your testimony, at this point in time, where your right hand is?

A. On my weapon.

Q. Do you have the gun drawn?

A. No.

Q. Do you have your hand on the gun?

A. Yes.

Q. Have you ever seen police officers on the street stopping people for traffic?

A. All the time.

Q. Have you ever seen them with their hand on their gun

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when they approach a car?
A. Yes.
Q. Was it in that fashion?
A. Yes.
MR. THOMAS: I'd ask to publish that, at this time.
THE COURT: You may.
MR. THOMAS: May I approach the witness?
THE COURT: You may.
MR. THOMAS: So, Judge, what I think I'll do is I'll continue to ask questions and then we'll just circulate it to the jury.
THE COURT: That's fine.
MR. THOMAS: If that's okay with you?
THE COURT: That's fine.
DEFENDANT'S EXHIBIT NO. 3
MARKED FOR IDENTIFICATION
10:20 A.M.
BY MR. THOMAS:
Q. Sir, take a look at Exhibit No. 3. Do you see it?
A. Yes.
Q. Is that the store?
A. Yes.
Q. Is that a photograph that accurately depicts what it was that had occurred?

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A. Yes.

MR. THOMAS: Move to admit.

THE COURT: Any objection from the People?

MR. LAWRENCE: No objection.

MR. THOMAS: Defendant's Exhibit No. 3 is admitted.

BY MR. THOMAS:

Q. Can you take a look at that photograph and tell me what it is that you see?

A. Yes. His hand by his waist and him taking a step.

Q. Is that the same picture as No. 2?

A. No.

Q. Can you read the time on that one?

A. I'm going to read the date, too.

Q. Please.

A. May 13, 2018, at 3:54 and 39 seconds p.m.

Q. That photograph is at the exact same time, same second?

A. Yes.

Q. But it's different?

A. Yes.

Q. And why is it different?

A. Because you can see his leg moving forward.

Q. What about your hand?

A. Still on the weapon.

Q. Has it been drawn?

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A. No.
Q. At that point, his body moved?
A. Yes.
Q. And in what way?
A. Towards me.
Q. What about his feet? Do you see anything different about his feet?
A. Yes. They moved.

MR. THOMAS: Move to admit.

THE COURT: It's admitted.

MR. THOMAS: So then I'm going to publish, Judge?

THE COURT: You may.

DEFENDANT'S EXHIBIT NO. 4
PROPOSED FOR IDENTIFICATION

BY MR. THOMAS:
Q. Now, I'm going to show you a somewhat different picture which is going from another camera. And it's taken from -- it's already been admitted into evidence, which is the Defense's composite. There were two views from two separate cameras. This one is a little clearer, would you agree?
A. Yes.
Q. Is it the same place, the same store?
A. Yes.

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Q. Is it you in the picture and is it the deceased in the picture?
A. Yes.
Q. Does that picture fairly and accurately depict what was going on at this time?
A. Yes.

MR. THOMAS: Move to admit.

THE COURT: Any objection from the People?

MR. LAWRENCE: No. No objection.

BY MR. THOMAS:
Q. And what does it show?
A. Shows his hands by his waist.
Q. Is this what you saw?
A. Yes.
Q. Do you have a full view of his waist?
A. Yes.
Q. Not you. But does the camera have a full view of his waist?
A. Yes. Not full view. Just the right side.
Q. But you did?
A. Yes.
Q. What did you see at the time that this occurred?
A. He was fiddling with his waist, like his hands were down.
Q. Okay. What did you take that to mean?

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A. That he had a weapon.
Q. Do you think that your life was in jeopardy at the time?
A. Yes.
Q. And what did you do in response?
A. Retreated back and pulled my gun out and fired.

DEFENDANT'S EXHIBIT NOS. 5 and 6
WAS PROPOSED FOR IDENTIFICATION

.BY MR. THOMAS:
Q. Can you compare -- let's do Exhibit No. 5, please.

THE COURT: Well, the Court is going to admit Defense Proposed Exhibit No. 4. I didn't have an opportunity to do that before you proceeded with the questioning.

MR. THOMAS: Move to admit.

THE COURT: It's admitted.

BY MR. THOMAS:
Q. Can you look at Exhibit No. 5, please?

Are you looking at No. 5?

A. Yes.
Q. Okay. Is that the same place?
A. Yes.
Q. Same time?
A. Yes.
Q. Same people?
A. Yes.

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Q. Fairly accurately reflects what it was that occurred at that time?
A. Yes.
MR. THOMAS: I move to admit No. 5.
THE COURT: Defendant's Proposed Exhibit No. 5 is admitted. There's no objection from the People, is that correct?
MR. LAWRENCE: No objection.
THE COURT: Okay.
BY MR. THOMAS:
Q. Now taking a look, did you compare the time frames of 5 and 6?
Do you see 5?
A. Yes.
Q. Do you see 6?
A. One second.
Q. So the time is not exactly the same?
A. No.
Q. You shot him?
A. Yes.
Q. You shot him after that, as what is depicted in Exhibits 2, 3, 4 and 5?
A. Yes.
Q. You've already indicated what your state of mind was at the time, is that right?

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A. Yes.
Q. If you had to do it over again, would you?
A. No, I wouldn't do it over again.
Q. Okay. Now, I want to queue up the video, please.
THE COURT: Attorney Lawrence, can you also move the Kleenex that is sitting near your end of the jury box located by the witness stand?
MR. LAWRENCE: Yes.
THE COURT: Yes, ma'am?
JUROR: Can we move?
THE COURT: Yes. If you need to move, sit over there to see the video.
We're playing the video at this time.
BY MR. THOMAS:
Q. Mr. Jaber, I'm not going to ask you to do commentary until I ask a question, please.
A. Okay.
Q. All right. I guess I can compress this, but maybe for the completeness of it, Your Honor, I'm just going to play it.
THE COURT: That's fine. All right.
(Video playing for the jury)
MR. THOMAS: Pause, please.
BY MR. THOMAS:
Q. Do you recognize this person?

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A. Yes.
Q. All right. Derrick Roberts?
A. Yes.
Q. The person that you shot?
A. Yes.
Q. Correct?
A. Yes.

MR. THOMAS: Continue, please.

(Video playing for the jury)

MR. THOMAS: Pause, please.

MR. THOMAS:
Q. At this point, who is talking?
A. That would be me.
Q. And who are you talking to?
A. The person in the white.

MR. THOMAS: Please go ahead.

(Video playing for the jury)

MR. THOMAS: Pause, please.

MR. THOMAS:
Q. All right. Did you hear the decedent saying anything?
A. Yes. He said hundreds in a box.
Q. Did he use a derogatory term?
A. Yes. The "N" word.
Q. And who was he speaking to, if you know?
A. Who was he speaking to? The clerk, Mr. Saleh.

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Q. Mr. Saleh. Okay. And did you see patrons in the store?
A. Yes.
Q. Three patrons in the store?
A. Yes.
MR. THOMAS: Please continue.
(Video playing for the jury)
MR. THOMAS: Pause, please.
BY MR. THOMAS:
Q. What is this about, if you know?
A. What was the question?
Q. I want you to listen to what was said. I'm sorry for the distraction, but listen to what was said and describe for the jury what your perception was at that time.
A. That he was basically demanding hundreds in a box, even after we told him that he didn't have enough.
MR. THOMAS: Continue, please.
(Video playing for the jury)
MR. THOMAS: Pause.
BY MR. THOMAS:
Q. Who is talking?
A. That was me.
Q. And so, at this point, what was your mood?
A. I was angry.
Q. And why were you angry?

A. Because the way he was talking. Like as if he came in there and he ran the place.
Q. Do you think he was trying to get one over on you to give you less money and then --
MR. LAWRENCE: Objection, leading.
THE COURT: Sustained.
MR. THOMAS: I'll save that for argument. I'm sorry, Judge.
(Video playing for the jury)
MR. THOMAS: Pause.
BY MR. THOMAS:
Q. At that point, did you see the movement of the patrons at that point?
A. From where I was standing, no.
Q. Did you see it on the video?
A. No. I wasn't. I was paying attention more up there.
MR. THOMAS: Okay. Go ahead.
(Video playing for the jury)
MR. THOMAS: All right. Pause.
BY MR. THOMAS:
Q. Was that your voice?
A. No. That was Mr. Saleh.
Q. And was that the first time he was asked to leave?
A. No.
MR. THOMAS: Continue.

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(Video playing for the jury)

MR. THOMAS: All right. Pause.

BY MR. THOMAS:

Q. "What you going to do about it." Did you hear that?

A. Yes.

Q. Is that the decedent that said that?

A. Yes.

Q. What did you take that to mean?

A. That he wanted us to do something about him not moving.

Q. Did you consider those fighting words?

A. Yes.

THE COURT: Okay. I'm going to have to ask you to ask him what he thought. You're continuing to lead the witness.

MR. THOMAS: All right. I'll try not to and I will just ask this question.

THE COURT: Thank you.

BY MR. THOMAS:

Q. You've already testified about the fact that police don't come when you call?

A. Yes.

Q. What were you thinking at that point in time?

A. That he was challenging us. That he saw two guys and he thought he could basically overpower us.

Q. And how did you feel at that point?

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A. That he was kind of challenging us. He wanted to fight, basically.

MR. THOMAS: Continue, please.

(Video playing for the jury)

MR. THOMAS: All right. Pause.

BY MR. THOMAS:

Q. At that point, who is talking about it going out, if you know?

A. That was Mr. Saleh. He told him twice, back-to-back, to get out.

Q. And did he leave?

A. No.

Q. And did patrons leave?

A. Yes.

Q. Do you know why they left?

MR. LAWRENCE: Objection, calls for speculation.

THE COURT: Sustained.

BY MR. THOMAS:

Q. But they left?

A. Yes.

Q. And this is at a time when you're having a conversation with the decedent?

A. Yes.

Q. This situation here that you see, who is the person on

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the right in this frame?
A. That was another customer.
Q. What did you see him do?
A. I think he grabbed the juice and he was paying for the juice to leave. He had exact change.
Q. What about Mr. Roberts, in relation to the customer?
A. I think he was trying to tell him don't spend the money over here.
Q. How did that make you feel?
You heard it, right?
A. Yes.
Q. How did that make you feel?
A. Angry. I was angry.
MR. THOMAS: Continue, please.
(Video playing for the jury)
MR. THOMAS: All right. Pause.
BY MR. THOMAS:
Q. Okay. So at this point, you heard the dialogue. What do you see Mr. Roberts do as relates to the other patron?
A. This one standing there?
Q. The one on the left, yes.
A. I think he looked at him and he said they think they're better than us.
Q. Okay.

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MR. THOMAS: Can we play that again?

(Video playing for jury)

MR. THOMAS: Okay. Pause, please.

BY MR. THOMAS:

Q. All right. At this point, did you see him do anything with his hands as it relates to the patron?

A. Yes. He didn't touch him, but he reached over.

Q. Did you see that at the time?

A. No. I believe that's when I was coming out.

Q. You opened the door, is that right?

A. Yes.

Q. You had already previously welcomed him to come back?

A. Yes.

Q. Why did you do that?

A. I was angry. I let my emotions get to me and my ego.

Q. Did you want to fight?

A. Basically.

Q. You came out and did you say you did not see him reach over towards that patron?

A. No.

Q. From your perspective, what's he doing now?

A. He's turning around to look at me and he -- he had the candy in his hand and he was opening it up.

Q. Did he pay for that candy?

A. No.

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Q. Did you see any other candy in the store?
A. On the floor or in the store? Yeah, on the floor, I see, yes.
Q. Okay.
MR. THOMAS: I'm going to ask you to stop at the point where you see the Mace, okay. Continue.
(Video playing for the jury)
MR. THOMAS: Pause, please.
BY MR. THOMAS:
Q. Okay. Prior to that, what, if anything, do you see in your right hand in the video?
I'm asking you what did you see in the video. Were you paying attention?
A. I put the Mace in left hand and put my arm on the -- on my weapon. My right arm.
Q. Prior to putting the Mace in your left hand, where was your right hand?
A. Moving it towards my right.
Q. Prior to. Before.
A. Prior to that?
Q. Yes.
A. Can you replay it one more time?
Q. Yes.
(Video playing for the jury)
MR. THOMAS: Pause it. I'm sorry.

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(Video playing for jury)

MR. THOMAS: Right there. Okay.

BY MR. THOMAS:

Q. Did you see that?

A. Yes.

Q. Okay. As you're shooting, what did you do?

A. Retrieving backwards.

Q. How many shots did you fire?

A. One shot.

Q. Did you see where his right foot was prior to shooting the weapon?

A. No. I just --

Q. His right foot, his right hand.

A. No. I was paying attention to his hands. I wasn't paying attention to his feet.

Q. And is this the frame where you had seen the still shots and testified previously?

A. Yes.

Q. And rather than go through it, at that point, what was your state of mind?

A. Fear.

Q. Why were you backing up?

A. Because I was in fear?

Q. Did you have an opportunity to visualize his hands?

A. No. After the --

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Q. At that time?
A. No.
Q. So did you know whether or not he had a weapon in his hands?
A. No.
Q. What was your assumption about what he had in his hands?
A. When he put his hands by his waist, I thought he was reaching in. And all I remember was it was basically my life was in danger and I was retreating backwards. And that's when I drew it.
Q. Did you later determine whether or not he had a weapon on him?
A. Later on?
Q. Yeah.
A. Like after --
Q. After he was shot.
A. If I checked to see if he had a weapon?
Q. Well, I don't know if you could. You would agree that he did not have a weapon on him at the time?
A. At the time of the incident, no.
Q. At the time of the incident, he did not have a weapon on him, is that what you're saying?
A. I don't know if he did or did not.
Q. So you assumed that he did have a weapon?
A. Yes.

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MR. THOMAS: Now, we're going to go forward again. I want to skip past the scene out on the pad -- on the cement. I want to go to the dialogue between Mr. Saleh and Mr. Jaber regarding the 911 call and the bullet.

MR. LAWRENCE: I think that dialogue is before the exterior camera footage.

MR. THOMAS: Okay.

(Video playing for the jury)

MR. THOMAS: Pause.

BY MR. THOMAS:

Q. Did you give to the store clerk your opinion at a short time after this occurred? Right here, in this scene?

A. Of what happened?

Q. What you thought happened.

A. Yes.

Q. And what did you tell him you thought?

A. That he was going to attack me.

Q. And he's asking you to call 911 and you're asking should I call 911?

A. Yes.

Q. And he says yes, is that correct?

A. Yes.

Q. Okay.

MR. THOMAS: Continue, please.

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(Video playing for the jury)

MR. THOMAS: Pause, please.

BY MR. THOMAS:

Q. All right. What is it that you just did?

A. I picked up the shell casing and I went to the toilet and I flushed it.

Q. Tell the jury why you did it.

A. I wasn't thinking correctly. At that point, I was trying to cover it up or hide. I just wasn't thinking correctly.

Q. Did you leave the gas station at that point in time?

A. No.

Q. When the police did come, did you have any conversation with them?

A. Yes.

Q. Did you admit immediately what it is that you did?

A. Yes.

Q. Did you tell them what you thought or what your thinking was at the time?

A. Yes.

Q. There is a discussion, and what was your thinking at the time?

A. That there was a disturbance. I came out. I sprayed him with Mace. And that his hands were by his waist and he charged at me. I pulled out my weapon and fired one

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round.
Q. Did you tell them on the 911 call?
A. Yes.
Q. When you did make the 911 call, would you agree that there was a delay of about 1 minute and 53 seconds?
A. Yes.
Q. What did you tell the 911 operator?
A. That there was a disturbance. I came out. The guy attacked me and I felt fear for my life and I shot him.
Q. Is the fear that you were feeling for your life the same fear that you were describing to the jury here at this time?
A. Yes.
Q. Was this conversation with 911 within minutes of the shooting?
A. Yes.
Q. The police officers, did they arrive promptly?
A. Yes.
Q. Do you know how it was that the police came so quickly this time, as opposed to whether or not they would come in the past?

MR. LAWRENCE: Objection, calls for speculation and foundation.

THE COURT: Sustained.

MR. THOMAS: I will lay a foundation.

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THE COURT: How would he know?

THE COURT: If he saw it out the door, people flagging him down, which is what we were going to present.

THE COURT: Ask the question.

MR. LAWRENCE: Can I say something, Judge? He can ask him that question for that answer, but he can't ask him for the conclusion of that's why the police came so quickly this time.

MR. THOMAS: I'll do it another way.

THE COURT: Thank you.

BY MR. THOMAS:

Q. Did you observe anything as it relates to the traffic out on the street after the person who died was outside of the store?

A. No. I wasn't paying attention to outside.

Q. Did you see the police arrive?

A. I heard them and then looked.

Q. And how did they arrive, if you know?

A. They arrived quickly.

Q. But why is it that they came?

MR. LAWRENCE: Objection.

THE COURT: Sustained.

MR. THOMAS: Let's continue, please.

(Video playing for the jury)

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MR. THOMAS: Pause, please.

BY MR. THOMAS:

Q. At this point, what is it that you just said?

A. Should I call them.

Q. And then what did you say again?

A. Did he call them.

Q. Okay. And who are you referring to when you say "he"?

A. Earlier, he told me that he's calling them. So I figured somebody outside was already calling.

Q. Okay. What, if anything, more could be done with 911 if someone was already calling 911?

THE COURT: Well, I'm going to -- well, this actually calls for speculation. If there are people outside on the phone, he doesn't know who they're calling. He doesn't know who these people are calling.

BY MR. THOMAS:

Q. All right. Did you hear anybody on the phone?

A. No. I was inside.

Q. Did you see people on the phone?

A. No. I didn't look out.

Q. Okay. So you had no assumption as to whether or not somebody else was?

A. No. I was going off what Mr. Saleh, the clerk, was saying, that they were calling.

Q. In your mind, did you feel a necessity to call if others

were calling, as Mr. Saleh said?
A. No.
Q. Did you eventually call?
A. Yes.
Q. And when you did call, did you talk to the 911 operator?
A. Yes.
MR. THOMAS: Can we play the 911 call? Has that been admitted?
THE COURT: No. The 911 call has not been admitted.
MR. LAWRENCE: I don't have that to the --
THE COURT: This portion of the file is a part of the video.
MR. THOMAS: Is there going to be an objection to playing the 911 call?
MR. LAWRENCE: No. I don't know what -- there's two 911 calls. I don't know which one is his.
THE COURT: Do we need to take a moment to allow the jury to go into the jury room and you all can listen to the 911 calls and determine which one can and should be played?
MR. LAWRENCE: Yes.
THE BAILIFF: All rise for the jury.
(Jury is excused at 10:47 a.m.)
(Recess)

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CLERK OF THE COURT: Back on the record on People versus Rami Jaber. Appearances, please.

MR. LAWRENCE: William Lawrence for the People.

MR. THOMAS: James Thomas on behalf of Mr. Jaber.

THE COURT: Have the attorneys located or identified the 911 call that they wish to play?

MR. LAWRENCE: Yes.

THE COURT: Mr. Jaber, you can take the witness stand again. We can bring the jury back out.

THE BAILIFF: All rise for the jury, please.

(Jury enters the jury box at 11:01 a.m.)

THE COURT: Mr. Thomas, you still have one video to show.

MR. THOMAS: I don't think I'm any longer on the video. So now I'm moving to the 911 call and I think, at that point, I'll offer him for cross examination.

THE COURT: I just wanted to be sure because I want to allow the jurors to move if they wanted to see the video. You may continue with your direct.

MR. THOMAS: Your Honor, we have queued up one of the two 911 calls. This one is the one purported to be between Mr. Jaber and the operator. I'd like to move

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to have that admitted as Defendants Exhibit 8.

MR. LAWRENCE: No objection.

PEOPLE'S EXHIBIT NO. 8

ADMITTED FOR IDENTIFICATION

THE COURT: Admitted.

MR. THOMAS: I know that we've got a lunch break. What I'll do is I'll put it on some format that the jury will be able to hear it if it is admitted.

THE COURT: It is admitted and we'll publish to the jury and put it on a format over lunch, if they wish to hear it.

MR. THOMAS: All right. Will you please play Mr. Jaber's 911 call.

(911 call playing for the jury)

MR. THOMAS: Pause.

BY MR. THOMAS:

Q. Okay. Whose voice was that?

A. That was me.

Q. Who was it that initiated the call?

A. That made the call?

Q. Yes.

A. That was me.

Q. On whose phone?

A. On the work phone. The gas station.

Q. Did you identify yourself?

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A. Yes.

MR. THOMAS: Nothing further, Your Honor. I'll offer him for cross examination.

THE COURT: Cross examination, Mr. Lawrence?

MR. LAWRENCE: Thank you, Judge.

CROSS EXAMINATION BY MR. LAWRENCE:

Q. Good morning.

A. Good morning.

Q. So I'm going to follow kind of the pattern of the questions that you were just asked by your attorney. If you don't understand my question, just let me know and I'll try to make them clear. Okay?

A. Yes, sir.

Q. So I want to start off by asking you about your relationship with the -- what is it called, the Stop N Shop?

A. Stop N Shop.

Q. So that's the store that's associated with that gas station?

A. Yes, sir.

Q. And you said that you have been the owner of that store since 2012?

A. Yes, sir. January.

Q. Who owned the store before you got it?

A. I believe it was called F&A Properties.

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Q. And then you were able to get it from them?
A. Yes.
Q. At what age was that?
A. I want to say -- I think I was 20. I was 20 years old at the time.
Q. So at age 20, you purchased a gas station?
A. Yes, sir.
Q. And then, Mr. Jaber, did you own that gas station continuously from 2012 to the present time?
A. Yes.
Q. And, obviously, your ownership was voluntary, right?
A. What does that mean?
Q. It means that you didn't have to be the owner of that business?
A. I chose to be.
Q. You chose to be?
A. Yes.
Q. And you chose to be at that business in 2012, '13, '14, all the way to the present time?
A. Yes.
Q. And so you had mentioned on direct examination about this is a bad neighborhood.
A. Yes.
Q. But despite it being a bad neighborhood, you maintained ownership of that gas station?

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A. Yes.
Q. And you mentioned that, in particular, this neighborhood suffers from gang activity, correct?
A. Yes.
Q. But despite this supposed gang activity, you continued to own and operate this business?
A. Yes.
Q. And this gang activity actually would sometimes show itself in the form of tagging, where gang graffiti would be written on your store?
A. Yes.
Q. But despite that tagging, you still continued to voluntarily own this business?
A. Yes.
Q. And you had talked about how -- like I said, the neighborhood is dangerous, and so on and so forth. But I want to ask you, is that -- because it's dangerous, what you just said, because of the gang activity, what you just said, you carried a firearm?
A. Yes.
Q. And that was a firearm that you legally purchased?

MR. THOMAS: Did you say illegally?

MR. LAWRENCE: Legally.

A. Legal purchased, yes.
BY MR. LAWRENCE:

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Q. And it's a firearm that you would carry with you all the time?
A. Yes.
Q. And where you would carry it is on your waistband?
A. Yes.
Q. On your right side?
A. Yes. In a holster.
Q. In a holster?
A. Yes.
Q. Did you have it in a holster on that day?
A. Yes.
Q. And that's the holster that we've seen in the pictures?
A. I don't think they showed the holster in the pictures. I didn't see it.
Q. All right. So this was a semi-automatic?
A. Yes.
Q. And had you practiced firing that weapon before?
A. Of course.
Q. And because you had a bullet in the chamber, if you point it and pull the trigger, it's going to fire?
A. Yes.
Q. And that was the state of this gun at the time that you had it?
A. Yes.
Q. And you carried this gun, certainly, probably in large

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part because of the dangerousness of this neighborhood?
A. Yes.
Q. It's also the reason why you would have the bulletproof glass protecting the clerk area from the customer area?
A. Correct.
Q. And you were a CPL carrier?
A. Yes.
Q. And you took training for that. I think you said 10 hours of training?
A. Yes.
Q. And you were trained in the operation of firearms?
A. Yes.
Q. You were trained in the safe use of firearms?
A. Yes.
Q. And this would have been back -- when was your CPL training?
A. October, 2012.
Q. And had you had any training since then?
A. Yes. I mean, like going to the gun range and firing the guns, yes.
Q. But had you had any formal training like a CPL setting?
A. No. After that, no.
Q. And so you had this gun because you felt there might be a situation where you were at where you would have to use it?

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A. No.
Q. You never thought you would have to use the gun?
A. No.
Q. So you had this gun. You were trained on this gun. You carried this gun. It was loaded. There was a bullet in the chamber. But it's your testimony to this jury that you never thought there was a situation where you would use this gun?
A. No. I had it just for protection.
Q. Protection from what?
A. In case I had to use it.
Q. That's what I'm talking about.
A. But I never thought I would have to use it.
Q. But nonetheless, you -- well, when you say you never thought you would have to use it, is that because -- I mean, on one hand, you're saying that this neighborhood is so dangerous?
A. Yes.
Q. There's gang activity there.
A. Yes.
Q. But on the other hand, you're saying I never thought that I would have to use the gun.
A. During the morning times and along that time in the afternoon, it's kind of quiet. It's not peaceful, but there's no problems like versus the late afternoon and

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the night shift.
Q. Is it safe to say, though, that you -- you carried this gun with you all the time?
A. Yes.
Q. Like everybody else, you probably carry a cell phone?
A. Yes.
Q. You probably carry keys?
A. Yes.
Q. You probably carry a wallet?
A. Yes.
Q. Those are fundamental things that you carry with you that you'll have on your person at all times, right?
A. Not the firearm at all times.
Q. A lot of time?
A. Just at work.
Q. Every time you're at work?
A. Yes.
Q. And so you have these items. And in the case of the firearm, the reason why you have it is in case you're faced with a situation where you need to use it, correct?
A. Yes. Of course.
Q. So as somebody who carries a loaded firearm and, as you said, with a bullet in the chamber, I'm sure that you have envisioned circumstances where your gun would need

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to be used?
A. No.
Q. You never thought about that?
A. No.
Q. You never thought about, you know, a scenario when somebody would be attacking you or attacking the store and you'd have to use it?
A. No.
Q. So you then, in your mind, had never thought about when to use the firearm before this day?
A. No.
Q. You never thought about, you know, what my responsibilities might be if I were to pull that and fire that firearm before that day?
A. What do you mean?
Q. Well, if you never thought about the scenario of firing your firearm, then you never thought about -- you know, what would I need to do, what cautions should I take?

That kind of responsibility with gun ownership is nothing that you considered prior to that day?
A. Of course. If I had to feel -- this is all part of the class. If your life is in danger, if you feel fear, to -- if you have to use it, you know, then use it.
Q. What I'm kind of getting from you, as well, is that you never thought you would have to use the gun?

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A. Right.
Q. You had it for protection in case.
A. Yes. Of course.
Q. But you also had other means of protection that wouldn't result in somebody else maybe getting killed, right?
A. Which is the bulletproof.
Q. That's an example. And the Mace can.
And the Mace can was over by the door that goes from the clerk area to the customer area, right?
A. That's --
Q. That's where you would keep it.
A. Yes.
Q. And what was that purpose of having that Mace can?
A. Just in case somebody had to use it, a clerk or somebody had --
Q. So what would be a situation? Why would somebody need to use a Mace can?
A. In case they're not leaving the store. They're destroying stuff.
Q. And in your mind, what would be the benefit of using that Mace can?
A. It would basically make somebody put their hands on their eyes and walk out.
Q. Okay. Because the Mace can is -- it's not a gun, obviously.

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A. Of course.
Q. But it's still something that's dangerous, you would agree with that?
A. Yes. I've never heard of anybody dying from Mace.
Q. No, I'm not saying it's something that is deadly like a firearm would be. But you would agree that it's dangerous?
A. Yes.
Q. And that's why you carry it or have it at the store?
A. Yeah. I never carry it.
Q. Right. And that's -- so it's there for protection as an effective weapon that might not kill somebody, but might protect a clerk or yourself or something like that?
A. Yes.
Q. All right. So another mechanism that you had to protect yourself is, you had locks on this door that goes from the clerk area to the customer area, correct?
A. Yes.
Q. And there were two locks on this door?
A. One of them was taped off, as you guys see in the picture. Two days prior to that, the mechanism was locking and it was locking us in the room and we -- the handle -- we keep hitting it and it wouldn't open because it was a malfunctioning door.

So one of the employees was like, hey, I'm

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going to put the dead bolt that you guys see, the smaller one -- and it was two days before that -- he screwed on the dead bolt.

Q. Who screwed that on?

A. One of the employees.

Q. And so was that dead bold then used as a new means of locking the door?

A. Yeah.

Q. On this day, while this incident occurs, that door was originally locked between you and -- your area and the customer area, correct?

When I say the incident, I'm talking about the stuff going on at the counter between the victim and yourself and Mr. Saleh.

A. Usually, that door on there is not locked because I'm in and out.

Q. But it was locked at that time?

A. I don't recall.

Q. You don't recall that?

A. No.

Q. So do you recall unlocking that door and opening it and saying come on in?

A. I do recall opening the door and telling him to come on in.

Q. But you don't recall if you had to unlock it?

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A. Yeah. I don't recall.
Q. All right.
MR. LAWRENCE: Let's see if the production video at 2:20 will help us out. And when I say 2:20, I'm talking that video clip.
I apologize. I want to go to System 2, Camera 4.
THE COURT: You're showing video. I'm going to have the jury move.
(Video playing for the jury)
BY MR. LAWRENCE:
Q. All right. Did you see that?
A. Yes.
Q. So you saw how you unlocked the bolted lock and then reached down to open the door, correct?
A. Yes.
Q. So had you not locked that door, there would be no way for a customer to get into the clerk area, correct?
A. You mean that lock that was there wasn't reliable. It was a very small dead bolt that was temporary. I had had a door guy coming the following day.
Q. Do you have any reason to believe that somebody was going to be able to open the door with that dead bolt locked?
A. If they pulled it hard enough, yes, they could.

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Q. Had you ever experienced somebody pulling that lock off the door?
A. Not when I was there.
Q. Thank you. So the -- other than this being just, generally being dangerous crime area, is what you've said, you also talked about there is an issue and -- a significant issue between the Middle Eastern community and the African-American community.
You mentioned that?
A. Yes.
Q. And you mentioned that, as a Middle Eastern store owner in a primarily African-American neighborhood, that you have experienced criticism?
A. Yes.
Q. And on direct examination, you have referred to that as criticism that happened often?
A. Yes.
Q. So did you have disdain for the African-American community as a result of that?
A. What is disdain?
Q. Disdain means did you think less of them?
A. No.
Q. You did not?
A. Never.
Q. Would you -- for example, when you said don't make us

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rich, we'll just spend that, what were you talking about there?

A. I mean, it says it for itself. Don't make us rich.

Q. What's your explanation for the "N" word? And by the way, I mean kind of saying the "N" word?

MR. THOMAS: Can he finish his answer? He was interrupted by another question.

MR. LAWRENCE: I thought he had answered it. He said that it speaks for itself.

BY MR. LAWRENCE:

Q. And now I'm asking you, Mr. Jaber, we clearly heard you using the "N" word toward Mr. Roberts in this video. And when I say "N" word, you actually said the word, as you well know.

So what's your explanation for that?

A. I mean, it's not like I don't say it. I do say it. And I don't mean it in a racist term or nothing like that. That's just how I talk.

Q. In this video, did you use the "N" word in reference to anybody other than an African-American?

A. No. I -- when I was talking to Mr. Saleh, I --

Q. And that's the way you talk?

A. Yes.

Q. And quite different than the way you're talking in court today, correct?

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A. Of course.
Q. The fact that there's this issue between the Middle Eastern community and the African-American community, did that make you more concerned that you might, at some point in time, get attacked by an African-American?
A. No.
Q. It didn't. So even though there's this supposed issue that we've been hearing about all over the City of Detroit between Middle Easterners and African-Americans, you're saying that in no way, shape or form, do you view African-Americans as a little bit more dangerous as a result of that?
A. It's not African-Americans, in general. It's like more being under the influence of drugs, alcohol, that would make them want to attack me.
Q. Did you have any reason to believe that Mr. Roberts was an African-American under the influence of drugs at that time?
A. No.
Q. Do you have any reason to believe that Mr. Roberts was an African-American under the influence of alcohol at that time?
A. No.
Q. So then did you feel -- because you've said on direct examination when your attorney was asking you questions

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over and over again, that you felt threatened, right?
A. Yes. Of course.
Q. And so what -- and you're saying that that, in no way, shape or form is a result of the historical animosity that you personally experienced between Middle Easterners and African-Americans?
A. Me feeling threatened had nothing to do with what you're talking about.
Q. Well, why have we been talking about that for the last three days, then?

Why did you -- what were the questions on direct examination about?

A. It had to do with the tension between them, between African-Americans and Middle Easterners.
Q. But it had nothing to do with this accident, that's your testimony?
A. He was angry that -- when I told him that don't make us rich, it angered him.
Q. Why would that be, sir?
A. And that's how --
Q. Why would that be, sir?

MR. THOMAS: Your Honor, I want --

THE COURT: Okay. So what I want to happen is for you not to talk over the witness. Allow him an opportunity to respond and then you can ask your next

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question. And it's almost to the point of badgering just a little bit.

MR. LAWRENCE: Okay.

THE COURT: So just allow him to answer before you ask your next question. Thank you.

BY MR. LAWRENCE:

Q. Mr. Jaber, I believe you said that he took offense to the words don't -- let me quote from your transcript. Don't make us rich. You don't want to do that, bro. We just going to spend that shit. And you're saying that you observed Mr. Roberts take offense to that.

So my question is, why would that be?

A. I mean, he took offense because he's thinking that I'm better than him at that point.

Q. Well, did you try to make him think that?

A. No.

Q. All right. So let me ask you this now. Let's get down to -- I guess this Middle Eastern stuff doesn't matter, so let's just talk about this incident.

MR. THOMAS: Objecting to the conclusion.

THE COURT: It's commentary. Please disregard the statement by the Prosecutor.

BY MR. LAWRENCE:

Q. So Mr. Jaber, you testified on direct examination that when you left this area, the secured area with the

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bulletproof glass and the locked door, when you left that area, it was your intention to get Mr. Roberts to leave?

A. Yes.

Q. And you said something, initially, to that effect -- or even did you? I'm reading your transcript here. Hey, Bro. What you doing, my man? Bro, come on with that shit. You opening that shit, bro.

That doesn't sound like asking him to leave.

A. No. I was telling him to come on with that shit. Like you're opening that shit. Now, come one.

Q. Yeah, but you just -- on direct examination, you said that your intent and your expression was to get this patron that was acting up to leave.

A. Yes.

Q. But your words don't seem to comply with that intent, correct?

How about these words which you said next: Make your move. Go ahead. Make your move. Make your move. Make your move. Make your move. Make your move.

This is your transcript. Do those words sound like somebody who is trying to get another person to leave?

A. He originally told me what you going to do? And I told him what you going to do. And then I don't know what he

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said, but I was telling him make your move because I was angry.

Q. You testified that you were angry.

A. Yes.

Q. Okay. And you testified that the reason why you unlocked the door is because -- you actually said you wanted to fight him. That's what you said on direct examination, correct?

A. I didn't say I wanted to fight him. He was challenging us to a fight.

Q. But it sounds like you are also challenging him, aren't you?

A. Yes.

Q. Because let's be fair here --

A. Yes.

Q. So this is two sides that are talking crap to each other, right?

A. Yes.

Q. All right. And you leave the secured area and you go out to where he is, right?

A. Yes.

Q. And you mentioned on direct examination that before you left the secured area, you had not formulated an intent to shoot, correct?

A. Yes.

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Q. So you testified on direct examination, when your attorney was asking you questions, that in your mind, what you were worried about, is if the victim, Mr. Roberts, were to approach you and overcome you and get your gun that you could be in grave danger, correct?
A. Yes.
Q. And that was on your mind as you exit the secured area with a gun and with the Mace can.
A. Yes.
Q. And so you had this gun on your right side, is that correct?
A. Yes.
Q. And, initially, you had your Mace can in your right hand, as well?
A. Yes.
Q. You kind of had your right hand at your side for a couple of seconds. But then your deciding that you're just going to Mace him, so you put your Mace in your left hand?

MR. THOMAS: Objection to the form of the question.

THE COURT: Please, rephrase.

MR. LAWRENCE: Okay.

BY MR. LAWRENCE:
Q. Well, let me have you --

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MR. LAWRENCE: We're going to put the video production up.

(Video playing for jury)

BY MR. LAWRENCE

Q. All right. So I want you to watch your right hand now. Okay?

A. Okay.

(Video playing for the jury)

BY MR. LAWRENCE:

Q. So I see what you did there. You switched your Mace can.

MR. THOMAS: Objection. He's testifying.

MR. LAWRENCE: All right.

BY MR. LAWRENCE:

Q. Did you switch your Mace can from your right hand to your left hand?

A. Yes, I did.

Q. And now you have your right hand where?

A. On my weapon.

Q. And it's holding your weapon. You've got your hand on your weapon.

A. I lifted up my shirt at that time and it was right by my weapon.

Q. All right. And so what's in your mind, then, is that you're worried about if he overcomes you, he could take

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your gun and be a threat to you. That's what you testified to on direct examination, correct?

A. Yes.

Q. And you have your hand on your right side where your gun is in order to use it, if necessary?

A. That's fair to say.

Q. And, in fact, on direct examination, Mr. Thomas used the example of a police officer approaching a vehicle with his hands on his weapon?

A. Yes.

Q. Do you remember that?

A. Yes.

Q. And you agreed that that would be a similar circumstance to what was happening with you?

A. Yes.

Q. So at that point in time, you are not going to just shoot Mr. Roberts, but if something happened, it was then your intention to, if you need to, shoot him?

A. Can you rephrase that question, I didn't understand.

Q. At this exact moment, when your Mace can is now being transferred to your left hand, at this point, you were thinking I'm going to Mace him, fair?

A. Of course.

Q. But your right hand is on your gun because if something happens in a certain way, you have determined that you

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will use your gun?
A. By something, him reaching down into his pants or him having a weapon, yeah.
Q. So you, at this moment, have determined a circumstance in which you will use this gun against Mr. Roberts?
A. No.
Q. Why do you have your gun at your side then?
A. Just in case anything got out of hand.
Q. That's what I just said. So in case something, in your mind, got out of hand, you were going to use your gun?
A. Well, it had to be a life or death situation for me to use it.
Q. Okay.
A. Not just to pull it out.
Q. So, in your mind, you considered there to become a life or death situation. At this moment, you have determined that you will use your gun?
A. Yeah.
Q. Okay. And this is not something that is -- you are a CPL holder?
A. Yes.
Q. And this is not something that you're suddenly thinking about. This is something that you -- there's a rationality to what you're doing, correct?
A. What does that mean?

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Q. It means you're thinking about what you're doing right now. You're not just being stupid, correct?
A. Correct.
Q. And not just acting impulsively. You're trying to be careful, correct?
A. You could say that.
Q. And so you have seen what's happened. You have considered your options, the benefits, the disadvantages, and you decided I'll Mace him at this point in time and only if something else happens will I shoot him, correct?
A. No. Not necessarily. That's me being angry and saying that I want to Mace him. I just want him out. That's what was in my head.
Q. But you were thinking through this situation. That's why you switched the Mace from the right hand to the left hand, right?
A. That was closer to his face.
Q. Exactly. So you're thinking through the situation. I want to get the Mace can because that's what I want to use first, from my right hand to my left hand, because it's closer to his face and I can Mace him.
A. Yes.
Q. And your right hand then stays on your right side where your gun is.

A. Yes.
Q. In case something happens where your life is in danger and you have to use the gun?
A. Yeah. But I didn't anticipate for it to reach --
Q. But you anticipated -- well, you anticipated that possibility. That's why your hand is on your right side, correct?

MR. THOMAS: Objection. He's already answered that.

THE COURT: Sustained. Asked and answered.

BY MR. LAWRENCE:
Q. Well, how would you consider your body position and where you froze in this, which, for the record, is at the 2:57 video time mark.
A. What do you mean by how am I --
Q. Well, your left leg is in front of your right leg, right?
A. Yes.
Q. Would you consider that to be a normal stance or an aggressive stance?
A. It looks like a normal stance.
Q. Well, you're about to use a Mace can on somebody, right? That's a pretty big deal. Would you consider that a pretty big deal, Mr. Roberts?
A. To do what?

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Q. To Mace somebody in the face?
A. I'm sorry. If they're acting out and there had to be --
Q. That's not an every day occurrence.
MR. THOMAS: Objection.
THE COURT: Let him respond, please.
MR. LAWRENCE: All right.
THE COURT: So your response was it's not an every day occurrence?
DEFENDANT JABER: Yeah. It's not --
THE COURT: Okay.
BY MR. LAWRENCE:
Q. All right. So what did you -- and you answered this on direct examination.
On direct examination, you answered Mr. Thomas by saying you thought when you used the Mace he would hold his eyes and retreat, right?
A. Yes.
Q. So that's what you thought would happen if you sprayed him in the face with a Mace can?
A. Yeah. He would leave.
Q. What if that didn't happen, what were you going to do then?
A. I mean, he put me in a life or death situation by reaching down by his waist.
Q. And if he were to reach down by his waist, it was your

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intention, then, to shoot him?
A. Yeah. I didn't say it. If he reaches down, I'm going to shoot him.
Q. You thought your life was in danger is what you said in your head, right?
A. Yes.
Q. Okay. And on direct examination, you said that's what you think happened, that your life became in danger.
A. I didn't think that's what happened. That's what I knew happened.
Q. That's what you know happened. In fact, you were so sure about that that you said that you felt it was my life or his.
A. Yes.
Q. That either you -- you had to either take his life or he was going to take your life?
A. Correct.
Q. And, in fact, you used the words on direct examination that it's a life or death situation?
A. Yes.
Q. So you felt that you needed to take his life in order to protect your own?
A. Yeah. I wasn't intending to take his life.
Q. You weren't intending to take his life?
A. I was just trying to protect myself.

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Q. By taking his life?
A. Unfortunately, that's what happened. That wasn't the intention for me to do.
Q. Well, you said that you --
A. I just wanted him to retreat.
Q. Well, you said that you felt that it was your life or his, sir. What does that mean? How is anybody to take it?

MR. THOMAS: Well, it's multiple questions. He's already been asked and answered what his intention was. So I think that what's happening is he's trying to get him to say --

MR. LAWRENCE: He doesn't have to --

MR. THOMAS: It's asked and answered.

THE COURT: So the objection is asked and answered?

MR. THOMAS: Yes.

THE COURT: Sustained.

MR. LAWRENCE: All right.

BY MR. LAWRENCE:

Q. So you said on direct examination that you thought he was just -- the victim, Derek Roberts, was going to reach for a weapon?
A. Yes.
Q. Was going to reach for a weapon, is that what you

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thought? That's what you said on direct examination. Is that what you thought?

A. He reached out --

THE COURT: Objection to the form of the question. If we can talk about a time frame. All right. There's many different things going on here. But at what time was it that he felt it?

MR. LAWRENCE: I mean, I appreciate the suggestion, but I'd like to --

THE COURT: Overruled.

BY MR. LAWRENCE:

Q. All right. So Mr. Jaber, you said that when Mr. Roberts was approaching -- and by approaching, taking a step toward you, that you thought he was going to reach for a weapon?

A. Yeah.

Q. Was that your testimony?

A. It looked like he was reaching for a weapon.

Q. So is it your testimony that you thought he was going to reach or that he did reach?

A. He did reach.

Q. And on direct examination, when Mr. Thomas was asking you questions, you said -- this is toward the end -- I don't know if he did or did not have a weapon. I assumed.

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Is that correct?

A. Yes.

Q. So at no point in time did you see a weapon on him?

A. No.

Q. And at no point in time had you said anything at all about seeing something in his clothes that could possibly have resembled a weapon?

A. You mean --

Q. You've not said that yet, have you, sir?

THE COURT: If he has to have a chance to answer. I think that he'll probably have a better chance, at least to have a fair cross examination.

THE COURT: A better chance at what?

MR. THOMAS: Fair cross examination.

THE COURT: Oh, okay.

MR. THOMAS: Objection, unfair. Objection, not letting him answer.

THE COURT: Is that an objection? Unfair is an objection?

MR. THOMAS: Yeah. Now let him please answer.

THE COURT: Okay. Please.

MR. LAWRENCE: Yes. I'll allow him to complete his answer.

THE COURT: Thank you.

BY MR. LAWRENCE:

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Q. So the question is, have you ever said a single word up until this moment about seeing anything in his clothing that you thought resembled a weapon?
A. No. I didn't say I seen anything.
Q. So you'd agree with me that Mr. Roberts is a tall individual, right?
A. Yes.
Q. And you would agree with me that he's a slender individual?
A. Yes.
Q. In fact, would you agree with me that the stipulated medical examiner's exhibit says he's 151 pounds?
A. I didn't see that.
Q. Okay. So this individual that we're looking at right here, you'd agree, has no weapon, correct?
A. After -- from what I know up to this date, I agree that he didn't have a weapon.
Q. Okay. All right. So at this point in time, you don't see a weapon on him, right?
A. It's not that I did see. It's that it could be concealed.
Q. But you didn't even see like a -- like what we describe sometimes as like a bulge or something that looked like a gun or any other kind of weapon in his clothing. You've never even testified to that.

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A. Well --

THE COURT: It's a yes or a no.

DEFENDANT JABER: What was the question, again?

BY MR. LAWRENCE:

Q. You'd agree that you never testified to that?

A. To what?

Q. To seeing anything in his clothes that would make you think there was a weapon in there?

A. No. I never testified to that.

Q. So we have a skinny black man whose got no obvious weapon. You don't see any weapon in his hands, right?

A. Yes.

Q. You don't see anything in his clothing that would make you think that he's got a weapon on him, right?

A. Not that I was looking to see if he had a weapon.

Q. So all you got going on is in one second of time, you think he's reaching for something that causes you to have a right to take his life. That's what you think, right, sir?

A. I mean, the way you worded it, no. He reached and I thought he was going to pull a weapon, so I retreated backwards and I fired a shot.

Q. All right. So all of the exhibits that you all just admitted with you on the stand, all these pictures are

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the same time as the pictures that were shown yesterday by the -- you know, surveillance guy. Okay.

So here we are -- for the record, this is System 2, still shots. So let's go frame-by-frame. You see it's 3:56 and 42 seconds on the clock at the bottom left. Do you see that, Mr. Jaber?

A. Yes.

Q. So now a couple seconds later you come outside, right?

A. Yes.

Q. Now, is the -- when you come outside, Mr. Roberts, is his front to you or is his back to you?

A. His back.

Q. Okay. And then two seconds later, you're communicating with him right? Make your move. Make your move. Make your move. Make your move. And he take his -- he turns around towards you, correct?

A. No. I didn't tell him make your move at that point in time.

Q. But you're communicating with him, right?

A. Yes.

Q. And he turns around toward you?

A. Yes.

Q. And you can see his arms and his hands very plainly, right?

A. Yes.

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Q. And you don't see any weapon in his hands, do you?
A. No.
Q. And you don't see anything under his clothing that in any way resembles a weapon, correct?
A. I mean, I wasn't looking -- at that moment, I wasn't looking to see if he had a weapon on him.
Q. At this moment, you're angry. That's what you testified to, right?
A. Yes. I was angry.
Q. At this moment, you have changed the Mace can from your right to your left hand, correct?
A. No. It's still in my right hand.
Q. It's about to be changed to your left hand?
A. Yes.
Q. And you're about to use it to spray him in the face, right?
A. Yes.
Q. And at this point in time when you're going to spray this man in the face, you don't see any weapon in his hand, correct?
A. Yes.
Q. And you don't see any weapon or anything resembling a weapon in his clothing, correct?
A. I wasn't looking at his clothing.
Q. All right. So now here we are. We went from 46 seconds

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to 50 seconds.

Now, what hand is your Mace in?

A. The left hand.

Q. And where is your right hand?

A. Pulling up my shirt.

Q. Which is where your gun is?

A. Right by my weapon.

Q. And Mr. Roberts is just staring at you, correct?

A. Yes.

Q. Still no weapon with Mr. Roberts, right?

A. Not in his hand.

Q. Still no reason to believe he's got anything in his clothing, right?

A. No. I mean, I wasn't paying attention to his clothing.

Q. So, therefore, you have no reason to believe that he had anything in his clothing, correct?

A. Yeah. You could say that.

Q. All right. Now, that's when the exchange happens, the make your move. Make your move. Make your move. Make your move. Make your move. And then here we are five seconds later, you're macing him in the face, right?

A. Yes.

Q. You got him directly in the face with the Mace, right?

A. Yeah. I believe so.

Q. And at this point in time, he's not lunging forward to

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you, correct?
A. No.
Q. So as you're Macing him, he's just taking it. He's taking a face full of Mace, right?
A. It wasn't a total bottle. I sprayed him. You know, it wasn't a full bottle.
Q. And here are a couple more frames, I think still within that same second of the Macing. He turns away from you, in fact, when you Mace him in the face?
A. Yes.
Q. And when he turns away from you, again, there's no weapon in his hands, right, sir?
A. Yeah.
Q. And at this stage, there's nothing in this skinny man's clothes that suggests that he's got any kind of a weapon, right?
A. I mean, I wasn't looking at his waist.
Q. At this stage, he's never thrown a punch at you, right?
A. No.
Q. At this stage, he's never lunged at you, right?
A. No.
Q. At this stage, he's never attacked you in any way, right?
A. No.
Q. And, yet, you're Macing him now, right?

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A. Yes.
Q. Okay. See that step between 55? The second clicker at the bottom is 55. Now here's 56. So he's taken a step forward, at least a half a step. He's moved his left leg, right?
A. Yes.
Q. And what are you doing with your right arm now?
A. I'm retreating back.
Q. What are you doing with your right arm?
A. It's like still on the gun.
Q. Are you pulling the gun?
A. I mean, not that it looks like from here.
Q. Well, we'll look at it -- you know, I'm not necessarily with the questions here, but in closing argument, we're look at it from different ways.
A. Okay.
Q. So what's going through your mind, then, sir, at this point in time as his left foot has moved forward by the man who you just Maced in the face?
A. That his arms were going down by his waist.
Q. That his arms are going down by his waist?
A. Yes. Left hand.
Q. And is that something that you can see in any picture that you have, any exhibit that you have?
A. On those, yes. His arm was -- was -- was up here, on

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the last photo. See. His arms are up.
Q. Yeah. I see.
A. The second photo.
Q. Let's --
A. The one that you just showed us before this one.
Q. So here he is getting Maced.
A. Yeah.
Q. And now a second later.
A. Arms go down.
Q. His arms go down. And so, to you, that is you being in fear now of deadly force?
A. Yeah. He was reaching down.
Q. So the fact that somebody gets a face full of Mace and is in the process of dropping his arms, somebody who you've not seen any weapon, not seen anything in his clothes to suggest he has a weapon. You're telling this jury that is time -- it's shooting time. That's what you're telling them?
A. No. By you saying he dropped his arms, dropping your arms would be dropping your arms. He didn't drop his arms all the way. He came right here, by his waist.
Q. So this is --
MR. THOMAS: Objection. I'm sorry. Objection. Can we at least have an agreement as to the fact that he is indicating that it's towards his pelvic

area or his belt area?

MR. LAWRENCE: Sure. The witness is doing that.

MR. THOMAS: Yeah. I know, but the record doesn't show that.

MR. LAWRENCE: Okay. It does now.

THE COURT: For the record.

MR. LAWRENCE: Yeah.

BY MR. LAWRENCE:

Q. So here we are then at 57. Boom. See the gun out, aimed and firing?

A. Yes.

Q. And this is your life or his life, right?

A. Yes.

Q. This is that horrible contingency that you were worried about, that is the reason why you had been grabbing your waist. I may have to use my gun, right?

A. Yeah.

Q. All right. And then here within the same second, you can actually see the muzzle fire. See that?

A. Yes.

Q. So here's our case, Mr. Jaber. Here he is at 55 seconds getting sprayed by Mace by you. Here is the justification for you to take this man's life. That's what you're telling the jury?

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A. No. I still didn't pull my weapon out yet.
Q. One second later, your weapon is firing into his chest.
A. Yeah. That's basically when I pulled it. When you see the video, it happened so quick.
Q. No. I know that. Mace. One second later. That's -- this is what caused Mr. Roberts' life, right here, according to you.
THE COURT: Is there a question? Is there a question posed to the witness?
BY MR. LAWRENCE:
Q. Is that correct?
A. What was? I didn't hear it.
Q. This is it. What we're looking at right here, this is the basis for shooting and killing this man.
A. Yeah. Because he reached to his waist.
Q. So if someone gets Maced in the face and, in the process, that one second, their hands drop toward the waist, to you that constitutes I can now shoot and kill this man?
A. No. But the way you're doing it is he closed his eyes and he went --
Q. Well, didn't he?
A. He looked to the right.
Q. Here he is one second before you pull the gun and two seconds before you shoot him.

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A. Okay. Now go to the next one.
Q. Yeah?
A. He's looking right at me. His eyes are not closed.
Q. Okay. And you were pulling your gun. Because this step right here, this left step by Mr. Roberts, is this what allows you to shoot and kill him, according to? You.

MR. THOMAS: Objection to the form of the question. That's not what his testimony was.

THE COURT: Sustained.

BY MR. LAWRENCE:
Q. And here we are a second later, gun aimed and fired. That's what you're telling this jury.
A. No. He reached down and is retreating back.
Q. So at this moment, you felt that you were in danger of death or serious physical injury?
A. I don't know if --
Q. Because Mr. Roberts did this in response to Mace, you think that you were in danger of death or serious physical injury?

MR. THOMAS: Objection.

THE COURT: Attorney Lawrence, you've done it again. You asked a question and didn't allow the witness to respond and then you asked another question.

BY MR. LAWRENCE:
Q. Is that correct, what I'm saying, Mr. Jaber?

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MR. THOMAS: Judge, I don't know what he means by that question.

THE COURT: I don't either. Please ask the question again.

BY MR. LAWRENCE:

Q. Because Mr. Roberts, one second after you Maced him in the face, does this, you think that you're in danger of death or serious physical injury?

A. Yeah. He clearly put his hands by his waist. He was reaching in.

Q. And so in the build up to this, when you decided I'm going to Mace him first, but I'm going to be ready with the gun in case something happens. And if something happens, I'm going to intentionally do what I have to do to protect myself.

This has now happened, correct?

MR. THOMAS: First of all, the question that he formed before he asked the second question was argumentative. An this one now, he's not giving him a chance to answer.

His argument is going to be his argument when we have the closing. But to make an assumption that he agrees with what it is that he said --

THE COURT: Well, this is cross examination. Overruled.

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BY MR. LAWRENCE:

Q. Yeah. So basically what I'm getting at, Mr. Jaber, and I'm not going to go on too much longer, is that you said on direct examination with your own attorney asking you questions that your concern was that if Mr. Roberts were to approach you, your life could be in danger, correct?

A. Not that he approached me. If he reached down to --

Q. Right. If Mr. Roberts did this, you thought your life would be in danger. That's what you were talking about in direct examination?

A. Yeah. Because he reached down.

Q. And so based on that concern, you had your right hand at your gun, on your right side, in case you needed to use it?

A. I mean, I just had it on there just in case I had to protect myself.

Q. Right. Just like what the police do when they approach a vehicle?

A. Yeah. They have their hand on their weapon.

Q. In the case they need to protect themselves. They're thinking about the worst case scenario and having to use it, correct?

A. Correct.

Q. All right. So Mr. Jaber, what was the first thing you said after you shot Mr. Roberts?

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A. To the customer that was in the store?
Q. Yeah.
A. That it was a blank gun.
Q. It was a blank gun. We haven't heard you say it was a black gun at all until this very second of your testimony, correct?
A. Yes. I wasn't asked if I said it or not.
Q. So you didn't say anything about I thought my life was in danger and I needed to use deadly force. Your very first out of your mouth words were it was a blank gun, correct?
A. Correct.
Q. And that's not true, right?
A. What do you mean?
Q. It wasn't a blank gun.
A. No, it wasn't.
Q. And you knew it wasn't a blank gun.

MR. THOMAS: I thought --

MR. LAWRENCE: He said, no, it wasn't.

DEFENDANT JABER: No. I was trying to finish my question.

MR. THOMAS: I think that the nature of this question, accept what it is that has occurred and then move on. Once he gets -- he's got to give him a chance to answer.

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THE COURT: Were you going to say anything else?

DEFENDANT JABER: Yes, Your Honor. On multiple times, I was going to say something, but he --

THE COURT: Well, I didn't ask you that. But the issue was whether or not what you're going to say is responsive to the question.

DEFENDANT JABER: To the question, yes.

THE COURT: If it's not responsive to the question, then he has every right to --

DEFENDANT JABER: I was --

THE COURT: -- cut you off.

DEFENDANT JABER: I was --

THE COURT: I'm --

DEFENDANT JABER: I was --

THE COURT: But I'm talking and you're cutting me off.

DEFENDANT JABER: I'm sorry.

THE COURT: Okay. Attorney Lawrence, ask youR question.

BY MR. LAWRENCE:

Q. You knew your gun wasn't blank, correct?

A. Yes.

Q. You mentioned on direct examination that you were trained to have it not only loaded, but with a bullet in

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the chamber, correct?
A. Yes.
Q. And so the very first thing you did was completely lie about what had just happened, correct?
A. Yes. I said it was a blank gun.
Q. And then the second thing you did was pick the shell casing up off the floor and walk it back to the toilet and tried to flush it, correct?
A. The reason why I did say it was a blank gun --
THE COURT: No.
BY MR. LAWRENCE:
Q. Is that correct?
A. I wanted to finish the answer.
THE COURT: No. He asked you if that was correct. It's a yes or no question.
DEFENDANT JABER: Yes. It was correct.
BY MR. LAWRENCE:
Q. So the first thing you do is you lie about what happened. The second thing you do is try to destroy evidence, correct?
A. Yes.
Q. And then the next thing that you do is that you argue with Mr. Saleh about whether to call 911, correct?
A. Yes.
Q. And you were just saying all of that is a coincidence, I

had valid self-defense. That's what you're telling the jury here today?

A. Yes.

Q. So when the police arrive, did you talk with the police officers?

A. Yes.

Q. Did you tell the police officers that Mr. Roberts charged at you?

A. Yes. With his hands around his waist.

Q. Sure. Did he charge at you, sir? Is this Mr. Roberts charging at you?

A. Yes.

Q. Okay. And did you tell the police that, oh, I blacked out. I don't really know what happened.

A. I never saw the statement that I told the police.

Q. But you recall telling the police, oh, there was a blackout during this sequence. Do you recall telling the police that?

A. No, not to my knowledge.

Q. So are you friends, or at least were friends with Mr. Saleh?

A. Yes.

Q. And he was present during the shooting?

A. Yes.

Q. And you talked with him after you were arrested, is that

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correct?

A. After they put me in handcuffs?

Q. Yeah. After they -- no. After they took you away, you had conversations with him?

A. On the phone, basically.

Q. Yes.

A. Yeah.

Q. So even though he was a witness to this event, you were talking to your friend on the phone, correct?

A. Never about the case.

Q. Never about the case. Why wouldn't you talk with him about the case?

A. Because I didn't have to.

Q. And you heard his testimony yesterday, right?

A. Yes.

Q. About all those things he didn't remember. You heard that?

A. Yes.

Q. Did you try to influence him?

A. Not at all.

Q. So the summary is, here, at 55 seconds, is the victim turning away from you because of the Mace, correct?

A. Yes.

Q. One second later, this is why you took his life, correct?

A. Yeah. He charged at me with his hands on his --

MR. LAWRENCE: Thank you.

THE COURT: Redirect?

MR. THOMAS: Yes.

REDIRECT EXAMINATION BY MR. THOMAS:

Q. So we're up at 3:56.

MR. THOMAS: Can we go back to 55, please?

(Video playing for the jury)

BY MR. THOMAS:

Q. Do you see the decedent moving his hands towards his face in any way?

A. Not at all.

Q. Did you see him in any way try to rub his eyes with his shirt?

A. No.

Q. Do you see him in any way respond, other than turning to the side after he was sprayed, to address what was implied by the Prosecutor, was a great amount of spray in his face?

A. Can you repeat the question?

Q. Long question. He didn't wipe off his face?

A. No.

Q. Do you think you got him full in the face?

A. I mean, I know I sprayed him in the face, yes.

Q. But do you think you got him full in the face, like the

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Prosecutor said?
A. No.
Q. Is there any evidence that he was full in the face?
A. No.
Q. Okay. When he was looking back at you after he turns?
MR. THOMAS: Go to 56, please.
BY MR. THOMAS:
Q. Is he looking at you right in the eyes?
A. Yes.
Q. Is he leaning forward?
A. Yes.
Q. Has he planted his right foot?
A. Yes.
Q. What are you doing?
A. Retreating back.
Q. And at that point, are you in fear?
A. Yes.
MR. THOMAS: Next, 3:57.
BY MR. THOMAS:
Q. At that point, do you pull your handgun?
A. Yes.
Q. Do you shoot?
A. Yes.
Q. How long does that whole scenario take? 55 to 57, in case you can't add.

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A. Two seconds.
Q. Two seconds. A split second decision that you had to make?
MR. LAWRENCE: Objection, leading.
MR. THOMAS: Okay.
THE COURT: It is leading, so sustained.
BY MR. THOMAS:
Q. When he was there with you, did he ever have his shirt tucked in?
A. Mr. Roberts?
Q. Yes.
A. No, I didn't see his shirt.
Q. You testified to the fact that there was no weapon. What, if anything, did the fact that the shirt was out on a thin man tell you about whether he might have a weapon?
A. It could have been concealed.
Q. You had fear. In the end, it turned out to be a mistake.
A. Yes.
Q. If you had to do it all over again, what would you do?
A. I would never have been at work that day.
Q. I thought you were starting to answer a question about the bullet. And the fact that you said it was a blank.
Were you going to tell the Prosecutor anything

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about that?
A. Yes.
Q. There was an objection.
A. Yes.
Q. All right. I'm going to give you a chance. Tell the jury what the heck was going on with that.

THE COURT: Well, what's the question?

MR. THOMAS: The point is it's based on his cross examination. I want to clear it up.

THE COURT: What are you asking him?

MR. THOMAS: I'm going --

THE COURT: You're asking what did you want to say?

MR. THOMAS: Why did he announce that it was a blank.

THE COURT: Okay. Why did you announce that it was a blank?

DEFENDANT JABER: I didn't want it to be real.

THE COURT: Excuse me? What did you say? I didn't hear you.

DEFENDANT JABER: I said I didn't want it to be real, after I said that.

THE COURT: Okay.

BY MR. THOMAS:
Q. You did call the police on 911?

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A. Yes.
Q. Within minutes?
A. Yes.
Q. And you gave them full information, correct?
A. Yes.
Q. Did you tell them that you shot a blank?
A. No.
Q. Did you tell them that you -- well, you told them what it is that you saw?
A. Yes.
Q. Did you deny that it was you?
A. No.
Q. Did you deny that you were the shooter?
A. No.
Q. And that was just two minutes later?
A. Yes.

MR. THOMAS: I'll offer him for redirect.

THE COURT: Actually, the Court has just a couple of questions, if the attorneys will indulge me. Can we hand to the Defendant Defendant's Exhibit Nos. 6 and 7? Who has those?

Well, I'll give him my copy.

EXAMINATION BY THE COURT:

Q. I want you to look at Defendant's Exhibits 6 and 7. There's a sign on the side of your building that says

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it's a Green Light location?
A. Yes.
Q. What's a Green Light location?
A. To my knowledge, it's like monitored by the police. It's a contract between you and the police. They set up their own cameras that they can monitor and watch the premises.
Q. How long have you been part of the Green Light Project?
A. I was never a part of it.
Q. Okay. So those signs are just on your building and you're not a part of Green Light?
A. No. These pictures, if I'm correct, are after the incident.
Q. Oh.
A. Yeah. But this --
Q. So we were -- you can hand them back to me. I guess I'm a little confused why we admitted pictures of a location that's after the incident with --

MR. THOMAS: They show the obliteration of the tagging, Judge. That was the relevance.

DEFENDANT JABER: Yeah. Just the --

THE COURT: I'm not talking to you.

DEFENDANT JABER: I'm sorry. I apologize.

BY THE COURT:
Q. I want you to -- I'm going to hand you this pointer.

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Are you familiar with sagging, sagging pants?
A. Yes.
Q. You're familiar with that?
A. Yes.
Q. Can you point on this picture and show me the pockets on the victim's pants?
A. The back pocket or the --
Q. The back pocket, yes.
A. Here.
Q. So is there something in his pocket?
A. Yes. It looks from here, yes.
Q. And so does he appear to be sagging to you?
A. Well, I wasn't paying attention to that.
Q. Does he appear to be sagging to you in this picture?
A. Not that much. His shirt is covering it.
THE COURT: Thank you. I don't have any additional questions.
MR. LAWRENCE: I have just one follow-up, Judge, based on the recross. Literally just one.
RECROSS EXAMINATION BY MR. LAWRENCE:
Q. So when Mr. Thomas just finished asking you questions, Mr. Jaber, he asked you if -- because the shirt is untucked, a weapon could have been concealed.
Do you recall that question?
A. Yes.

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Q. And you answered yes to that question?
A. Yes.
Q. But when I was asking you questions, you said that you weren't paying attention to his clothes, correct?
A. Is this a yes or no or can I say something?
Q. Well, first of all, yes, you agree with me that you said that you weren't paying attention to his clothes?
A. Yes.
Q. So you weren't paying attention to whether or not his shirt was tucked or untucked and whether it might have been concealing a weapon, correct?

MR. THOMAS: At what time are we talking?

MR. LAWRENCE: At this time, right here. 3:56 and 57 seconds.

THE COURT: Thank you.

DEFENDANT JABER: I knew his shirt wasn't untucked. I mean, he's standing right in front of me, but I'm not physically staring at his -- right here. I'm face-to-face.

BY MR. LAWRENCE:
Q. So in your mind, you're not thinking that he's concealing a weapon with his shirt, correct?
A. No.
Q. So you're saying -- it's kind of weird when you word it that way. Do you agree with my statement?

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A. Yes.

MR. LAWRENCE: Thank you.

THE COURT: Attorney Thomas?

REDIRECT EXAMINATION BY MR. THOMAS:

Q. So as a result of that last series, it's after 3:56:57 that he drops his hands, is that correct?

MR. THOMAS: Let's go back to 3:56:55. Hold on.

BY MR. THOMAS:

Q. At 55, you see him turning away, is that correct?

A. Yes.

Q. Do you have a view of the back of his pants where they are sagging or whatever?

A. Not at all.

Q. Had you ever -- before it was pointed out by the Court, did you every think about that?

A. No.

Q. You were looking at him from what position?

A. From the front.

Q. And at that point, his shirt is below his waistline, would you agree?

A. Yes.

MR. THOMAS: All right. Next picture.

BY MR. THOMAS:

Q. Is this him advancing toward you?

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A. Yes.
Q. At that point, where are his hands?
A. Going down.
Q. And what was it, at that time, you were thinking?
A. That he was going to reach for a weapon.
Q. Did you think the possibility of a weapon existed in that neighborhood with this particular individual --

MR. LAWRENCE: Objection, leading.

THE COURT: Sustained.

MR. THOMAS: Judge, I can -- at this point, bring out facts that were brought out in cross examination.

THE COURT: Sustained. It's the form of the question.

MR. THOMAS: Okay.

THE COURT: The objection was to the form of the question which was leading. So you can rephrase it.

MR. THOMAS: Thank you, Judge.

BY MR. THOMAS:
Q. What factors were in play at this point?
A. That if he had a weapon, he would reach.
Q. Did you consider your surroundings?
A. Yes.
Q. What, if anything, did you consider about his activity all up till now?

A. That he was intoxicated. That if he would have got back there, that he could have took over me. He could have had a weapon and he could have pulled it out and shot me.
Q. How tall is he? You heard the Prosecutor say he's 6' 4". How tall are you?
A. 5' 9", 5' 10".
Q. He may not be heavier, but he's much taller than you.
A. Yes.
Q. And how close is he to you at this point in time when he's squaring up to you again, in 3:56:56?
A. I want to say two feet.
Q. And in spite of the Judge's examination, the Prosecutor's cross examination, what is your position regarding your emotional state at that time?
A. At that time, like how I felt? Fear.
Q. Had you lost your anger?
A. Yes. Very angry.
Q. I asked if you lost it and you said yes --

MR. LAWRENCE: Judge, we are so far beyond the scope of my recross.

THE COURT: We are beyond the scope. These questions have been asked and answered on direct.

MR. THOMAS: Can I clarify the answer?

THE COURT: What answer?

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MR. THOMAS: He said the word "yes" and --

THE COURT: I was very angry.

MR. THOMAS: Thank you.

THE COURT: You're thanked and excused, Mr. Jaber. Are there any additional witnesses for the Defense?

MR. THOMAS: Your Honor, no additional witnesses for the Defense, Judge. I just want to make sure that Exhibit 1, the demonstrative exhibit, is as it is and that we'll be able to argue from it.

THE COURT: You'll be able to argue from it but it will not go into the jury room.

THE COURT: And the 2, 3, 4, 5, 6 and 7 are admitted.

THE COURT: As well as 8, which is the 911 call.

MR. THOMAS: That is correct.

THE COURT: Okay. At this time, we're gonna take a break for lunch. When we come back, it's my expectations that we will be doing closings, as well as instructing the jury.

So I'm going to allow the jury to go into the jury room and gather their belongings. Go to lunch and I'll expect you back here at 1:15.

THE BAILIFF: All rise for the jury.

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THE COURT: I will give you until 1:30. I'll give you until 1:30.

THE BAILIFF: All rise for the jury.

(Jury goes to lunch at 12:07 p.m.)

THE COURT: At 1:30. I'll give you till 1:30. Again, do not discuss the case.

What I would like is for me to be in charge of the courtroom, if that's okay.

So are we on the record, still? Thank you.

Gentlemen, I want you back here at 1:20. I want to go over the jury instructions. If we're going to do closing arguments and go right into instructions, I want you here at 1:20 so that we can go over the instructions and make sure that there is not going to be any problems with instructing the jury.

We're off the record.

MR. THOMAS: Your Honor, I need to put something on the record.

MR. THOMAS: You can put it on the record when we come back at 1:30. Thank you.

MR. THOMAS: Ma'am, do you know that you're grabbing interference?

THE COURT: Okay. So this is what I want to not happen in my courtroom.

MR. THOMAS: He's in custody.

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THE COURT: Listen. We're off the record. Unless you're here for another record.

(Lunch recess taken at 12:09 p.m.)

(Back on the record at 1:29 p.m.)

CLERK OF THE COURT: Back on the record on People versus Rami Jaber. Appearances, please.

MR. LAWRENCE: Good afternoon, Judge. William Lawrence for the People.

MR. THOMAS: James Thomas on behalf of the Defendant, who is here with me.

THE COURT: Attorney Thomas, prior to us leaving for lunch, you indicated that you wanted to make a record when you came back. Now is your opportunity.

MR. THOMAS: Judge, I want to say that the way that I've been treated in this Court has been wonderful, nothing short of that.

THE COURT: Okay.

MR. THOMAS: And that I have great deference, not only you, but also your deputies and their job, because it's a tough job. I want to tell you, at one point, I thought that I was protected by one of them yesterday when we had somebody act out. And I want to tell you that I've been in situations where people have been attacked in Court and I'm sensitive to the fact that they're here for my protection, as well as

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everybody else.

THE COURT: Okay.

MR. THOMAS: But I also recognize that, as a mere defense lawyer, I don't have the ability to control, although sometimes I lapse into something that's not correct.

THE COURT: Okay.

MR. THOMAS: Now, with all the niceties being said, what happened here and the reason why it became exercised is because my client, who is in custody and has been in custody since May of --

THE COURT: 2018.

MR. THOMAS: 2018. Was approached by one of your deputies and maybe the other, but certainly one, who I have affection for. But when she approached the Defendant, I said -- I tried to bring her attention to the fact that the jury was still in the room.

THE COURT: There was one that was on the way out the door. Okay.

MR. THOMAS: Your recollection is different than mine.

THE COURT: Okay.

MR. THOMAS: I thought there were four or five.

THE COURT: Okay.

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MR. THOMAS: I don't know whether they looked at me or looked at him. I didn't do it in such a way that I thought was going to be drawing attention to it.

THE COURT: Okay.

MR. THOMAS: But I was concerned because it is -- one of the Defendant's rights it's not to have the jury know that he's already in custody. We've got him dressed up in street clothes so that he's not giving evidence of the fact that he's in custody.

THE COURT: Are you suggesting that anybody in this room, including the jurors, would link that the Defendant is out, considering the charges? That he walked in the front door?

MR. THOMAS: Well, I recognize the presumption of innocence. Many magistrates do not. Whether or not he gets a bond or doesn't is something that's not relevant for the jury. But we do know that if a marshall takes a guy by the arm, or deputy, and puts handcuffs on him, but when they do that, then the jury is going to know that and I believe that that's reversible error. And I have a humble opinion that it's improper.

Now, I don't know whether the jury had seen it or not.

THE COURT: Okay.

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MR. THOMAS: But I do think that an inquiry should be made as to whether or not the jurors had seen anything unusual as they were leaving the courtroom. If they say yes, to have an independent inquiry of that juror of whether or not they saw it, and then the last inquiry would then be, the ultimate question is what did they see.

I think that that's necessary in order for me to preserve the record. I don't need to name the deputies. We know who they are. Not for the record or but for me to do. But I want to tell you I do have deference to them.

THE COURT: Attorney Lawrence?

MR. LAWRENCE: I would certainly think that that would bring attention to an issue that probably is not an issue at all right now. To my knowledge, there's been nothing said to Your Honor or to Court staff, or to the deputies, about seeing anything, about there being any issue with the jury.

I can't personally speak to what it is that happened because I didn't see it. So I can't add my two cents. But I think that the course of action that's proposed is almost certainly going to bring attention to something here that doesn't have it.

What you said earlier, by the way, is correct.

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That is, you know, if we're speaking honestly and practically here, the purpose of having the Defendant in street clothes, dressed up nice, is because it's almost every Defendant's desire to appear nice and good and normal to a jury, when a jury is looking at him as it goes forward.

THE COURT: And also because the Defendant stands before the Court cloaked in innocence, unless and until the People meet their burden. The Court has instructed the jury and the Court will instruct the jury again that the presumption of innocence has to be overridden by the People to prove beyond a reasonable doubt in this case.

I saw things differently, Attorney Thomas. I believe that you made a record with regard to that. I'm not going it inquire of the jury if they saw something out of the ordinary in this courtroom because I do believe that it will call attention to something that really is a non-issue as it pertains to this case.

MR. THOMAS: Not to argue, but if it did occur that they saw it, and the inference that comes from it, that be reversible error.

THE COURT: What's the -- the inference is what, that he's in custody?

MR. THOMAS: Yes. That he's in custody and

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that he was going to be taken into the back.

THE COURT: And as the Court has already indicated, your client is charged with first degree murder. Anyone sitting in this courtroom or sitting on this jury that thinks that he is out at large -- that doesn't even make sense to this Court that someone who is charged with first degree homicide would be on the streets. And I can't imagine that someone on the jury would make that assumption.

MR. THOMAS: Well, I know that bond statute says where the presumptions are evident and the evidence is great, there is a chance -- I mean I had --

MR. THOMAS: There is a chance.

MR. THOMAS: I've had first degree murder cases back when there was a constitution in the 70s --

THE COURT: Okay.

MR. THOMAS: Where there were bonds given. But I'll abide by the Court's ruling. Thank you for letting me make a record.

THE COURT: Yes. Gentlemen, could you please approach quickly so that we can look at what I have in terms of jury instructions. And then if you agree to what I have, I'll make copies for you to go over.

(Sidebar between Court and Counsel 1:35 p.m.)

THE COURT: In terms of the jury instructions

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that the Court already had here, the People have asked for 7.16 and 7.18 to be included. There was no objection by Defense Counsel with regard to those additional instructions, correct?

MR. THOMAS: That is correct.

THE COURT: And Attorney Thomas, you did request another instruction, manslaughter.

MR. THOMAS: I did and I tried --

THE COURT: And the Court has declined to add that. And I understand that you wanted to make a record.

MR. THOMAS: Well, nothing other than what has already been laid on the record by the Defendant's own testimony. I believe that he satisfied the elements of manslaughter. If the jury so finds it, they could come to that conclusion. It's not a mandatory included offense, but it is something that if the facts are warranted, it's necessary and I'd ask that you do it.

THE COURT: Attorney Lawrence?

MR. LAWRENCE: Judge, as the Court knows, the instructions we're talking about is 16.9 and requires adequate cause and requires the Defendant act in a way that a reasonable person would have acted. The Michigan Criminal Law & Procedure desktop manual, I've got the 2012 edition, indicates that: Words are insufficient

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provocation to mitigate the killing to manslaughter. Citing from the LaFave & Scott, the Handbook on Criminal Law.

And assault and battery is ordinarily insufficient provocation to mitigate the killing to manslaughter.

And this situation is below, I would argue, certainly assault and battery, you know, as it relates to words and it is not sufficient to mitigate it to manslaughter.

This desktop manual talks about mutual fighting can get you manslaughter, an adultery situation can get you manslaughter. But that's not what we have here. So I don't think that the facts have been laid out to suggest adequate cause and I don't think the facts as laid out suggest that a reasonable person would have acted in the manner that the Defendant acted.

Just noting that people versus Sullivan, 231 Mich App, 510, which is a 1998 case and affirmed in 2000. It rejected the claim that the test should be a reasonable person with the same mental disturbance as the accused. So it's just a reasonable person in general.

And so a reasonable person in this situation, you know, would not act the way that the Defendant did

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and there was no adequate cause on behalf of Mr. Roberts to trigger this.

So for those reasons, we do think that it's appropriate to exclude 16.9.

THE COURT: Attorney Thomas, do you wish to be heard further?

MR. THOMAS: Just that my client testified that he thought that he had a weapon when he was going down to his waistband. The fact that he was mistaken in that, we believe, does not take this outside the realm of --

THE COURT: The Court agrees with the Assistant Prosecuting Attorney with regard to the evidence that was presented in this case and does not believe that there is adequate evidence in the record at this point that would be sufficient for the Court to include manslaughter as the final jury instruction.

Is there anything further that we need to handle on the record prior to bringing the jury out, gentlemen?

MR. LAWRENCE: No, Your Honor.

MR. THOMAS: No.

THE COURT: Bring the jury out.

THE BAILIFF: All rise for the jury.

(Jury enters at 1:45 p.m.)

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THE COURT: We're back on the record. Ladies and gentlemen, you've been provided the Defendant's demonstrative Exhibit No. 1. For some reason, I can't get that word out. It's going to be used or referred to during the Defense's closing argument. I already provided it to you so that we can move more efficiently. I'm going to ask that you not refer to that document during the People's closing argument. Okay.

So please stick them in your binders and whenever the People are ready to begin their closing.

MR. LAWRENCE: Thank you, Judge.

CLOSING ARGUMENT BY MR. LAWRENCE:

MR. LAWRENCE: Thank you to the ladies and gentlemen of this jury who have given your time for the last three days and your attention. And more than anything, I want to thank you for being willing to be the voice of this jury on this burden to get this case right, to get justice right in this particular case.

Obviously, it's a very important case to the Defendant. It's an extremely important case to the family of Mr. Roberts, as well. We are all very aware it's a murder case and it is well attended by both sides, that emotions run high in this type of situation. And I am completely aware of the way that that must weigh on you as you go about evaluating this evidence,

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evaluating the charges and making a determination in this case.

The only thing that I can say to you is that if you focus on the law, get the law right, get this decision right under the law of the state of Michigan, that's what's going to allow you to sleep well at night.

If you start worrying about the victim's family, if you start worrying about the Defendant's family and the burden of all of that, A, you're probably not going to get the decision right; and, B, it's just not going to work for you. You have to focus on the law and whether the law was broken, and if so, what law. And if you do that, that's how you're going to be able to walk out of here with your head held up high knowing that you did the right thing.

This is a case, obviously, that's important to all sides, but it's also important to the topic of the dignity of human life. Because what you saw here on this video is a complete disregard for human life. We're going to find out with your decision what you all think of it.

You know, we had inappropriate behavior, kind of macho-type behavior that went on with both sides. Everybody obviously knows that. Derek Roberts, as a result of this ego exchange that was going on takes some

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ten cent candies, takes the wrapper off and throws the wrapper on the floor.

Ladies and gentlemen, his life still matters in this situation and he is due the respect of the law, just the same as anybody else. And so, the law is what we're going to focus on.

And before I get into this ridiculous issue of self-defense, I want to focus on the same thing that I focused on when I started out with my opening statement, and that is, why this is first degree murder. Okay. Why this is first degree murder. That's what we're going to talk about. And I actually think that the vast majority of arguments that have been made by the Defendant on the stand and by the Defense is completely the same as the arguments that I'm making to you in this regard and actually will go together and harmonize together to present the case that what this is was a premeditated and deliberate act. So we're going to talk about it.

I'm going to be showing a couple short clips of video in a little bit, but I have a PowerPoint that's going to kind of be our guide as we're walking through the closing argument.

So the first question you've got to get right is what is the difference between first and second

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degree murder? I have to know what's the difference between first and second degree murder before I can look at the facts and say was this a first degree murder case or was this a situation of second degree murder?

So we're going to get into the actual jury instruction in a second that you're going to be given. But the simplest way to understand this is, first degree murder -- listen. Ego, anger, loss of temper, that happens in first degree murder situations. And that happens in second degree murder situations.

Somebody committing first degree murder is angry. Somebody committing second degree murder is angry.

Somebody loses their temper in first degree murder situations. Somebody loses their temper in second degree murder situations.

The difference is, in first degree murder, that anger leads to a predetermined conclusion. That anger leads to a predetermined conclusion. The Defendant doing something predetermined based on that anger.

And second degree murder, that anger leads to an unplanned conclusion. An unplanned conclusion.

So as we go forward, is this a situation where we have a predetermined conclusion or an unplanned

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conclusion?

More specifically, the elements. So the jury instructions that you get and you've all agreed to follow are going to contain what is called elements. Those are simply the Prosecutor has to prove this, this, this, and this, all beyond a reasonable doubt. Each of those things are an element.

So the elements of first degree murder are that the Defendant killed the victim. That the Defendant intended to kill the victim. And that that intention was in some way premeditated and deliberate. And then at the bottom it says not reduced to second degree murder.

So if I prove beyond a reasonable doubt the Defendant killed the victim and that he intended to kill the victim, and that intention was premeditated and deliberate, then I've proven beyond a reasonable doubt that he's guilty of first degree murder. That's what first degree murder is.

Second degree murder has the same first element that the Defendant killed the victim. But instead of the intention being one to kill, in second degree murder, you can also just have the intention of committing great bodily harm. Or you can have the intention of creating a higher risk of death or great

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bodily harm.

Here's how I explain these things. If you intend to shoot somebody but not kill them -- two roommates in an argument. One roommate takes a gun out, shoots the person in the foot. Or maybe shoots the person in the leg and happens to hit some kind of an artery and the person bleeds out. He wasn't trying to kill him. He was trying to shoot him. That's an intent to do great bodily harm. That would be a second degree murder situation.

And then the third one, knowingly creating a high risk of death or great bodily harm, an example of that would be if you're in a crowded parking lot or you're in an argument, and one of the people in the argument gets so ticked off that he takes his gun out and maybe like fires into the engine of the car that the other person has. And, of course, the bullet ricochets and hits somebody in that crowded parking lot, that's what that third situation is.

So you're not intending to actually shoot anybody. But you created a high risk by firing a gun in a crowded parking lot. So that's not our situation here.

Intent to do great bodily harm, shooting somebody like in the leg or something, but not intending

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to kill them, that's not our situation here. Our situations is an intent to kill.

So second degree murder is distinct from first degree murder in those regards. This chart kind of shows you the difference. The first element is the same, the Defendant killed the victim, which, of course, is an undisputed fact in this case.

The second element for first degree murder is you've got to think that he intended to kill him. If you think that he intended to just shoot him but not kill him, it would be second degree murder. Are you getting the distinction?

The third and fourth lines in this column is with first degree murder it has to be premeditated or deliberate; whereas, with second degree murder, it doesn't have those requirements.

So, basically, in order for me to do what I've done, which is tell you guys that this is a first degree murder case, that means I'm telling you that I've proven beyond a reasonable doubt that the intention was to kill and that it was a premeditated and deliberate act. That it was planned beforehand. That if something happens, if this situation goes in a certain direction, I'm going to shoot him. That's what I believe I've proven beyond a reasonable doubt.

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So proof that the defendant killed the victim, there's no question to this element. Right? So element No. 1 on that chart, it's not even an issue.

So when you get to the question, then, Bill, was that intention to kill or was it some other kind of intention?

Well, one of the things that you get instructed by the Court on is that you can infer the intent to kill based on the fact that a gun was used, right?

You can infer based on the fact of the nature of the wounds inflicted, that big hole in his chest. But beyond that, what are the real reasons? What are the reasons for the intent to kill?

No. 1, the gun was aimed. This wasn't just pull out a gun and fire in a sudden situation. This was a specifically aimed firearm. You've now seen this video and seen these photos over and over again.

No. 2, the shot was to the middle of his chest. So wasn't a situation where someone shoots at the feet of someone because they're so pissed and the bullet hits the other person's feet or leg or something like that.

This is a situation where that gun was aimed right at the chest, the middle of the chest of

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Derek Roberts. And this shooting happened immediately following the confrontation.

So this isn't a situation that there's some kind of a time gap which makes you question the intention. He steps back. He, being the Defendant. He pulls, aims his gun at the chest of Derek Roberts and fires a bullet into him.

Now, listen. This is very important. This is one of the things that, as Prosecutors, we like to get at when a Defendant takes the witness stand and tries to talk himself out of what he did.

The Defendant explained his situation as a my life or his situation. He explained the situation as a life or death situation. So this Defendant was not trying to just hurt Derek Roberts. This Defendant says it was my life or his and so I had to take his life.

So he concedes the issue of intent to kill. He wasn't intending to scare him. He didn't say that. He said it was a my life or his situation as he aimed the gun at the chest and fired at Derek Roberts. That's the intent to kill. Not intent to do great bodily harm. An intent to kill.

This is an intent to kill. That's the bullet hole, the big hole in the chest, right there. That is an intent to kill, ladies and gentlemen. That is not an

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intent to just scare somebody or just harm somebody.

So the next element is the proof of premeditation and deliberation. Okay, Bill, he clearly killed the victim. He intended to kill the victim. His argument is that it was going to be my life or his life. And I'll deal with self-defense in a little bit.

So his argument is that it was either my life or his life, so he intended to kill the victim. So what's your evidence of premeditation and deliberation? Because, otherwise, I'm going to have to look at murder two. What's your evidence of premeditation and deliberation?

So is the evidence first of all, that the Defendant tells the victim to stick around? I have a question mark on that. And the reason is because this starts to build the case. But I'm not going to look you guys in the eyes and tell you that this was a premeditated act simply because the Defendant told the victim to stick around. Just based on that, you can't say, well, he was intending to kill him at that time, to shoot him at that time. But it does go to that issue ultimately.

To this end, we have our first switch to a video clip. In this video, all -- all this -- this video is System 2, Camera 4, if you're writing it down.

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System 2, Camera 4.

I'll take you to the bottom clicker, 2:08.

(Video playing for the jury.)

MR. LAWRENCE: So that's the Defendant telling him, stick around, stick around. That's the beginning stage of what he's planning. I'm not at beyond a reasonable doubt at this point in time, but that's the beginning stage.

The Defendant, when he testified and Mr. Saleh, when he testified, wanted to say, well, we just asked him 10 times to leave. Well, clearly there wasn't, you know what, let the customers get out of here, stick around.

So we're at the beginning stage. So the second point is the -- the next thing chronologically that happens is the Defendant tells the victim that the door is open. The Defendant tells the victim that the door is open. Is that, at that point in time, evidence of premeditation and deliberation? No, it isn't. But we're building toward it. We're building toward it.

And you saw that in the video, same one, System 2, Camera 4. We'll just move it along a tiny bit, starting at 2:23.

(Video playing for the jury)

MR. LAWRENCE: All right. So now we're

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building our way toward it because we have the Defendant saying stick around. So he's planning something. You wouldn't say stick around if you weren't planning something.

He's saying, you know, the door is open, which is the first evidence that, like what he said on the stand that he's angry. He's got like a mentality of fighting at that point in time.

And third thing in our build-up before we kind of start to get to the climax, is when the Defendant leaves the secured area. Because everything was safe. If he would have never left that area, Derek Roberts would be alive today. But he leaves the secured area protected by bulletproof glass, protected by a bulletproof door. Not only at this point is he saying stick around, not only at this point is he open the door and saying let's get it on, but now he's leaving the secured area. And we saw this, in fact, continue, same camera -- I'll just move it a number of seconds later to 2:58.

(Video playing for the jury)

MR. LAWRENCE: All right. So now we're building up. And this is at the key moment right here. This is the moment that is going to prove premeditation and deliberation.

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The critical point is when the Defendant starts grabbing his gun. When the Defendant starts grabbing his gun at the doorway, that's when he's premeditating the condition upon which he will use it. This is what the Defendant is doing. And he said so much on the stand. And we're going to get to this in a second. This is why I think that, basically, what he said on the witness stand proves first degree murder.

He said -- what the evidence shows in this case is that he was going to go first with the Mace option, right? He switches the Mace from the right hand to the left hand, puts his had on his gun at his side and Maces Derek in the face.

What is he hoping is going to happen? That Derek runs out of the store having just been Maced in the face and the Defendant is the bigger man.

Or, maybe Derek collapses to the ground, his face filled with Mace and the Defendant is the bigger man.

That's what he's hoping is going to happen. But he's premeditated and he's deliberated what would happen if Derek doesn't run out of the store? What will happen if Derek doesn't fall to the ground? What happens if he actually takes a step towards me? What happens if he gets pissed that I'm Macing him in the

face? In that situation, I'm going to shoot him. That is a premeditated -- remember we talked about it the first time, that is a predetermined scenario in which he would shoot to kill Derek Roberts. That's why this is first degree murder. Because he said I'm going to try to get him out of here with Mace. I'm going to try to be the bigger man by getting this guy on his knees via Mace. But if that doesn't work, I've got my hand on my waist. I'm going on pull it and I'm going to shoot him, and that's actually what he does. That's a premeditated, deliberate act. The act of I'm going to shoot and kill Derek Roberts if, instead of running out of here with the Mace, he comes towards me. That's what the Defendant is doing when he's at the door with his gun.

So let's show the examples of that. The first of which is the System 2 still shots, which we've now all seen about ten million times. And so this is the -- so here we are, he comes out, Dude, whatcha doing? And the dude, which is Derek Roberts, turns round. And this is when the Defendant starts, you know, saying, come on player, come on player, come on player.

And the Defendant -- now look at his right hand. Can you see -- look at the seconds at the bottom. 46, 50. 46, 50.

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So when it comes to this point, this is when the plan is in place to Mace Derek and if Derek doesn't succumb to the Mace, to shoot Derek. That is the premeditated and deliberate plan to shoot the Defendant.

So five seconds later, the implementation of let's Mace him in the face occurs. His right hand is still at his side with his gun. These are a couple more clips. We're a still on the same 55 second timeline.

So now, if Derek runs out the door, the Defendant beats his chest, he's won, he's the bigger man.

If Derek falls to the floor, then the Defendant is the stronger guy, he's won this exchange.

But what happens if Derek doesn't do that? What happens if Derek is a strong guy and he responds to getting Maced in the face by taking a step forward to the Defendant? Which is exactly what happens right here as the Defendant squinches back, grabs his gun, begins to -- as you'll see on the video -- removes his gun, and aims it directly at Derek and muzzle shot.

So this didn't work. The Mace didn't work. So now, the Mace in the left hand is not effective. The Defendant takes a step toward him. So now, part two, the condition that was necessary for him to shoot and kill Derek, the condition of Derek not running out the

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door, but instead standing up for himself, that has been satisfied. So the second part of the plan, which is in this instance, in this situation now, I've got to pull that gun that I've been holding at my side out and I've got to shoot and kill Derek Roberts. That's what happened. That's why this is a premeditated, deliberate act.

It's not as if -- if he would never have had that gun, if he would never have done this with that gun and had that gun ready to go in the situation where the Mace doesn't take affect, then I probably wouldn't have the argument that I need to be beyond a reasonable doubt.

But the fact that he's at that doorway with the Mace transferred to his left hand and that right hand on his side pocket grabbing that gun, that means that he's ready to use that gun if the circumstances create the situation. And it created the situation when, instead of the Mace scaring him out of the store, he takes a step forward. And so before he even completes that step, you'll see gun move, shot to the chest. He premeditated that action. He deliberated that action.

And when you see it on video. We'll watch System 2, Camera 4. You can write that down because I

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told you the System 2 still shots is one source. The other source is System 2, Camera 4, you guys are kind of seeing -- like right now, I'm sure you all are experts as to how you'll be able to move in and out of this video.

Now, Camera 4, watch his right hand. Watch his right hand. Watch the Defendant's right hand as he has now exited the secure area.

(Video playing for the jury)

MR. LAWRENCE: Look at him. Look at that right hand grabbing his pistol at his side, make your move, make your move. The Mace doesn't work.

Make your move, player, as I'm holding my right side where the gun is. Make your move, player, as I'm taking the Mace with my left hand up and I'm about to Mace you.

Maces him. Now, if Derek runs out the door, you probably don't have a shooting. Rami probably leaves that gun in his side. But if something else happens, Rami is determined and he's got his hand ready to go at his waist, at his side, I'm going to pull this weapon and I'm going to shoot and kill him. And watch what happens.

Boom. And watch how quickly he does that. He does not -- you know, they want to act as if he just

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stands there and the Defendant takes a step or two towards him. Just watch the Defendant for a second. This Defendant is like -- he hardly even moves before that gun is unholstered the shot to the chest occurs.

Watch. Watch the victim, is what I'm talking about. See the victim in the window? Watch him.

Come on. And the fact that this is going to be argued as self-defense, by the way, is insane.

He hardly -- he hadn't even completed that first move before Rami had seen enough. He's not going to collapse with a face full of Mace. He's not going to turn and run out the door with a face full of Mace. I need to immediately go to Plan B, which is to pull the gun out, to aim it, fire it, to shoot to kill.

That's what this is. That's what this case is. That's why this is a premeditated, deliberate murder and not a murder 2.

So the other camera, I want to show you, is System 2, Camera 1 at the -- so we're going to take this to video time 3.

(Video playing for the jury)

MR. LAWRENCE: See the gun? Watch him right here. Watch Rami, again, as he's doing the make your move, player. Watch what he's doing with his hand at his right side with the gun.

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(Video playing for the jury)

MR. LAWRENCE: Mace. Didn't work. Gun. That's all premeditated. How can you not say that that's premeditated? His hand is at his side jostling the gun, waiting to have a moment occur which would require him using it. That's premeditated. That's not spur of the moment. That's not -- if this situation -- if he would have had the gun -- you know, even cocked it, had it at his side, but he's not prepped with it, I don't expect to probably persuade you guys.

But the fact that he has got himself in a shooter's position with his hand at his side, grabbing the gun while he's Macing Derek, and then when the Mace doesn't cause Derek to go out that door, he immediately takes the gun out and shoots him square in the chest to kill. That's the premeditated plan.

At that doorway, that's the evidence that you're seeing. You're seeing a guy say I'm going to try to Mace this guy out of the store. I'm going to try to Mace my way to being the bigger man. And if that doesn't work, I'm going to shoot and kill him. That's the thought. That's the deliberation.

So when you stack that up with the other things that I just told you about that set this whole thing up, telling the victim to stay, telling the victim

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the door is open, and you're angry, you're wanting to fight him. And then you leave the secured area where everything was peaceful. And you go out there and immediately get yourself in a shooting position with your hand at your side on your gun, with Mace in your left hand. The scenario there is I'm going to Mace him, if that works, we're good. If it doesn't, I'm going to shoot him right away to kill.

How many times have you seen this now? 100 times. And that's what you've seen.

The law in this case is first degree murder fact pattern, not a second degree murder fact pattern.

And so the next thing I want to mention -- we'll go back to the closing slide -- you know, I have mentioned at the bottom of this screen, other than the stuff I've just showed you. You know, the transcript created by the Defendant, where he says it's up to you -- where the Defendant, rather, says, make your move. Go ahead, make your move, make your move, make your move, make your move. That's a guy that's gotten himself cocked and ready for the situation. I got my hand on my gun. I'm grabbing it. I'm jostling it. I've got the Mace in this hand. I'm going to Mace you first. If that doesn't work and you try to -- and you even so much as start to take a step forward to me, I'm

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unholstering this thing and I'm firing a bullet in your chest. That did not happen su sponte. That didn't just suddenly happen. That was premeditated at that doorway when he gets there and starts saying make your move and puts his hand on his waist. That is premeditated and deliberate. That's the law in this case. That's justice in this case.

So further evidence, the Defendant concedes when he's on the witness stand that he thought through the scenario where he would deliberately shoot to kill in the event where the Mace did not cause the victim to retreat. His argument is, I went to Mace first, hoping that he turns around and runs out the door. But in the event where that doesn't happen, in the event where I'm worried that he's going to, you know, somehow some way be able to attack me, I've got my gun ready to go. I'm going to shoot and I'm going to kill him.

So the question you have to ask yourself, ladies and gentlemen, is he -- is this something that he is thinking about? Is this the weighing of pros and cons? I should use the Mace first and if that doesn't work, I'll use the gun. Is this something that's being premeditated, meaning that it's being thought out beforehand? Or is this something that literally just happens without any thought into it at all?

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How can you see what you see at the doorway there and say that there's no thought being put into this? That there's no deliberation being put into this? That there's no plan in place?

That's what the Defendant, himself, says when he's on the witness stand, that there is a scenario in which I was going to use my gun.

Additional evidence is the fact that the Defendant is right handed and his right hand was on the weapon. So he's right handed. Now, he says, of course, well, the left hand was closer to the victim's face and, therefore, that's why I sprayed him with my left hand.

But what does that also enable him to do? It enables him to keep his shooters hand on his gun, so that if something happens here, let me tell you what's not going to happen, no one's laying a hand on me. No one's laying a hand on me. If the Mace doesn't work, I'm going to shoot. That's what the evidence suggests. There's no other way of looking at that evidence at the doorway.

Beyond that, a couple of -- you know, just a couple of miscellaneous points, you might be thinking, but, Bill, the Defendant is angry, isn't that murder 2? No. People who are doing first degree murders are angry, as well.

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Bill, the Defendant clearly in his entire situation is, you know, losing his temper. You can see that. Yeah, if you can lose your temper and can commit first degree murder just as much as you can lose your temper and commit second degree murder.

But, Bill, didn't he kind of have regret right afterwards? Didn't he say like, you know, oh, crap, what did I just do, like a couple minutes later? Yeah, you have regret from first degree murder situations right afterwards, just like you have regret for second degree murder situations right afterwards. Both of these things exist in first degree murder and second degree murder.

The fact that he was angry. The fact that he may have regretted afterwards does not have any effect on whether what you're seeing at that doorway is premeditation and deliberation or not.

But, Bill, this is a short period of time. Don't we need a day or at least an hour or something like that to achieve premeditation?

This is why when I initially went over this with you, I used what I referred to as the yellow light analogy.

In your jury instruction for first degree murder, you're going to see that it says that the law

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does not say how much time is needed. The law does not say however much time is needed. It is for you to decide if enough time passed under the circumstances of the case.

So the yellow light analogy, if you remember if you remember back when we weree picking the jury, is that as you approach a yellow light, there are various things that are going through your head in making the decision whether you should go through the yellow light or not. You're looking to see is it -- is there somebody right on my tail that might run into me if I slam on the brakes? Is there a cop at the corner that might, you know, write me a ticket? Are the weather conditions sufficient? If I slam on the brakes, might I slide because it's raining? Might I slide because it's snowy. There are various things that go through your mind right away, even though it's a short period of time.

And look, you might fly through that yellow light and a cop you didn't see pulls you over and writes a ticket and you have immediate regret. Or maybe somebody coming through the intersection really lays on the horn and you feel immediate regret. None of that changes the fact that you made a calculated decision, a premeditated decision, a deliberate decision taking into

account various factors in a short period of time. And I would contend to you that the Defendant had at least seven seconds at that doorway where he's holding his waist and he's holding the gun and he's planning if Derek Roberts doesn't do what I want him to do when I Mace him, I'm going to shoot him.

If you don't find him guilty of first degree murder, you're saying I have a reasonable doubt as to whether or not the Defendant was going to shoot him under that condition. I think he -- you know, I'm doubting that. I believe it's reasonable to include based on that evidence, at that doorway, based on how quickly he shot Derek Roberts right after the Macing -- you know, I have a reasonable doubt as to whether or not this was a premeditated plan, where if it goes a certain way, he's going to shoot Derek Roberts.

All right. So felony firearm is the other charge in this case. This one is extremely easy: The Defendant committed a felony. So no matter what felony you find him guilty of, the fact that he was in possession of a firearm at the time that he committed that felony means he's guilty of felony firearm. So Count 2 is a no-brainer.

So the question is Count 1, murder 1 or murder 2? Count 2 is a guilty, in either scenario. In either

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scenario.

All right. So now we get to the ridiculous self-defense argument. And I'm not trying to be demeaning, but that's the best way to describe it.

MR. THOMAS: It sounds like it.

MR. LAWRENCE: So the use of deadly force in self-defense. You're going to get instructed on what it means to be able to use deadly force. When can I use deadly force? You're going to get an instruction on that. And the instruction is going to say that the Defendant can use -- this is a shortened version of it. The Defendant can use deadly force in self-defense only where it is necessary to do so.

Here's how -- here is the grounds for using deadly force. Here's the grounds for using deadly force. You have to have an honest and reasonable belief. Honest and reasonable. Which means you have to think that he truly feared for his life, or for great bodily harm, and you have to believe that that honest view in his head is a responsible view. Which means you've got to look at that whole exchange that I did with him there, at the end, where I'm like you're telling me -- in this one photograph, right here, where in response to the Mace, he moves one foot forward and his hands go like this. You know, that has created a

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reasonable situation where you can shoot and kill this guy? Because that's their position. That's their position.

And by the way, the idea that -- I don't know if anybody -- you know, in our personal experience, has ever been Maced or Maced in the face. But I can't possibly --

MR. THOMAS: Objection, he's testifying.

MR. LAWRENCE: I'm not testifying. I'm just doing it based on the evidence.

THE COURT: It's argument. All right.

MR. LAWRENCE: Yeah. So the fact that -- you know, if you get Maced in the face, maybe you fall flat on your back. Maybe you -- you know, crawl up and get down on the floor. Maybe you take a step forward. Maybe your hands go up. Maybe your hands go down. And in that one second, what you looked at, that is a reasonable belief that Derek Roberts has opened himself up to being murdered? How can you possibly conclude that?

So it has to be an honest and reasonable belief that deadly force is needed to prevent immediate death or great bodily harm. Honest and reasonable.

Check this out. This destroys the entire argument. A person who started an assault on someone

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else with deadly force, or with a dangerous or deadly weapon cannot claim that he acted in self-defense -- this is an instruction that you're going to be given. Cannot claim that he can act in self-defense unless he genuinely stopped fighting or making his assault and clearly lets the other person know that he wanted to make peace.

So why is dangerous highlighted up there? Because Mace is a dangerous weapon. Mace is a dangerous weapon. If you use Mace on another person, you have given up your ability to use self-defense, unless you clearly withdraw and make that known, which obviously did not occur.

Mace is a dangerous weapon. It says "or deadly weapon." So you're like, well, Mace can't kill a person. Yeah, but it's dangerous. It's a dangerous weapon. That's why you have it. That's why you have it for protection. That's why he had it for protection. It's a dangerous weapon. If your kids are playing with Mace, that's a dangerous situation. It's a dangerous weapon. If you don't think it's a dangerous weapon, that means you think it's a non-dangerous weapon. How can you say that about a can of Mace?

Mace is a dangerous weapon. If you Mace somebody, as he did, you forfeit your ability to have

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self-defense. You cannot claim it. You cannot claim it. This argument doesn't even get off the ground. You shouldn't even consider it for one second.

Mace, pepper spray, is a dangerous weapon. And what did this Defendant say on the witness stand just a little earlier today? He said, yeah, it's a dangerous weapon. I asked him, well, it's not a deadly weapon, Mr. Jaber. But you would agree with me that it's dangerous. Yeah, I would agree with you that it's dangerous.

So he concedes the point. And really, honestly, it's -- you know, who could even make the argument that it's not a dangerous weapon?

So by using that Mace by initiating the force -- because the Defendant had not used any weapon against him, had not thrown a punch, had not attempted to attack him in any way. He initiated -- he was the initial aggressor of force by using the Mace. Under the law of the State of Michigan, that forfeits his ability to claim self-defense. Which means that, even if you think that self-defense, there was an honest and reasonable belief of self-defense and Derek Roberts exposed himself to being shot and killed legally, even if you believe that, he can't argue that. He can't win that. You can't decide that. Because he was the initial aggressor

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by using a dangerous weapon, the Mace can. So there's no self-defense consideration here. The Defendant was the initial aggressor.

Another self-defense instruction you're going to get is that the Defendant can use deadly force in self-defense only where it is necessary to do so. If the Defendant could have safely retreated -- oh, I wonder if there's an area that's bulletproof and has a bolt lock door that happened to be nearby. If the Defendant could have safely retreated but did not do so, you may consider that fact in deciding whether the Defendant honestly and reasonably believed he needed to use deadly force in self-defense.

There is no chance that this is a self-defense situation. None. Legally speaking, it doesn't even get off the ground. The car doesn't even start. So there's no self-defense to be considered here. You are merely going to be considering exactly what I told you in my opening statement, which is, this is either a first degree murder or second degree murder. And I strongly believe that the evidence --

MR. THOMAS: Objection as to what he believes.

MR. LAWRENCE: I said the evidence.

MR. THOMAS: Objection as to what he believes.

THE COURT: It's noted for the record.

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MR. LAWRENCE: Yeah. So the evidence in this case, what you've seen on this video over and over and over again of what he's doing at the door with his gun, that, every click of that, is premeditation. Every click of that is a deliberate act.

The Defendant's actions afterwards, by the way also disproves self-defense. Right? What are the first words he says? It was a blank gun. What is the first thing he does? Destroys the evidence.

Is this somebody who just validly used self-defense? He didn't want to call 911. We heard that.

The Defendant lies to the police. He says the victim charged at him. He says he blacked out. But, I mean, this lie -- this is overkill at this point in time because you can't even consider self-defense.

So the People's burden of proof in this case is beyond a reasonable doubt.

A reasonable doubt is a doubt based on -- right in the middle there -- reason and common sense. So what is your reason telling you? What is your common sense telling you? Is your reason and common sense telling you that this was something that, as I mentioned in our very first slide, is your reason and common sense telling you that this was a complete, unplanned

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conclusion, the shooting of Derek Roberts? Or does your reason and common sense tell you that this was a predetermined conclusion: You're going to try the Mace first. You're going to shoot him right away if that doesn't take effect.

Which of those two things does your reason and tell you? That's what beyond a reasonable doubt is.

You all made me some commitments during jury selection. This is my very last point. You committed to me that everyone deserves justice. That justice is going to be applied to every individual whether you are a saint or whether you're somebody who's got, you know, an obvious and -- you know, an impatient attitude problem, at least in this moment. You told me that you would give justice to everybody. You're going to give justice to somebody in Detroit like you would give justice to somebody in Sterling Heights or in Birmingham. You will follow the jury instructions. You told -- you know what the law is. You told me you would follow the law. And if the law shows that this is first degree murder, you are not going to come back with second degree murder because you just feel like compromising. You told me you would follow the law. You told me that you won't consider things that are up to the judge, like the penalty phase of this. You're

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not going to be worried about that. You're simply going to say is what's happening at that doorway premeditation or not?

And then, finally, you told me, if the evidence is there and what's happening at that doorway is a premeditated, deliberate effort, a plan where if the Mace doesn't work, I'm going to shoot him. If the Mace doesn't work, I'm going to shoot him. That you can find somebody guilty of first degree murder.

Ladies and gentlemen, this the only way that you're going to sleep good at night following such a heavy responsibility like you have: Did I follow the law? Did I set aside emotion and follow the law? If you do that in this case, then it's first degree murder. Thank you.

THE COURT: Attorney Thomas, closing?

MR. THOMAS: Thank you.

CLOSING ARGUMENT BY MR. THOMAS:

MR. THOMAS: Ladies and gentlemen, I've been practicing for 45 years. I never, ever saw a prosecutor ask you to make a promise to him. That promise has nothing to do with what your obligation as a juror are. And that is to listen to the Judge's instruction and for you to make a determination as to what the facts of the case are.

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My intention in this case is cross examination and presenting you with what it is that's an exhibit that you can look at now. It's to show you that what happens in these types of cases with the Prosecutor and murder prosecutions is they try and break things down step-by-step and ignore the fact that it happens in a very short period of time when passions are high.

And so you see what it is and the activity of what it is, but you're not considering the issue of an action that was done before there was time for passions to cool.

The law is what the Judge is going to instruct you. I submit to you that it is what it is, in writing, that you saw. But as jurors, you have the ability to make a determination, as the judges of the fact, as to what the facts really were.

This whole case is revolved around the Defendant's intention. And they make a great deal of issue over the fact that he wore a gun that day. And that he had his hand on the gun at some point during the confrontation. But I thought what happened is, in his argument and in the case, itself, he lost sight of the idea of all that came before it. All that there was that the Defendant knows based on his experience in the community, which he'd be very happy to have you ignore.

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But what you can consider, for purposes of determining, what was his intention at the time? And I'm not going to demean, as he did with us, regarding his argument and the fact that there was a pre-planned idea that there was going to be a Macing and a shooting.

What you saw happened, like that. When you tell me that when you look at it, you don't see the decedent reeling towards him, not retreating and not acting in any way that the Mace has affected him. And it's approaching him in a way that's threatening and he's within this distance. And I'm going to ask you, what would you do? Or as the jury instructions would say, what would a reasonable person do?

Would you be in fear, based on all that went before? Would you be in fear -- would a reasonable person be in fear and would have a right at that point to be in fear? And the answer is, of course, you would; of course, they would.

You, as jurors, are chosen based on the fact that you have 21 years of experience and because your name came up on some sort of a computerized list. We don't expect you to look at this with blinders on. We don't expect you to ignore what it is that you've experienced in your life. The fears that you feel, the regrets that you feel when you acted improperly. And

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this is no yellow light. This isn't going through a yellow light. You know, the scenario is, you know, you see the yellow light and intentionally go through it and you have the ability to stop.

Well, I mean, there's a lot of questions with the yellow light. But the truth is, that's not an analogy when your passions are high. That's an analogy when you have a period of time to reflect and then act. And in this case, this all occurred in a period of two, one, a second.

And we're going to go through the clip and I'm going to show you that I believe that the Prosecutor's argument was unfair. I'm going to say I have great respect for him. He's helped me out with the computer in showing me and I'm going to ask him to do it again. And he's a very, very experienced, and a very good Prosecutor, and I'll give him that.

But you, as jurors, get a chance to take a look beyond the fact. Beyond his argument and look at the facts.

First degree premeditated murder is different than second degree murder. And the question revolves around the Defendant's intention. He suggests to you that the fact that they invite him to stay is more than just saying, okay, let's do business. We'll get these

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people taken care of. If you want to stay, you want to make your argument, that's okay.

Now, the argument escalates and he acknowledges to you that that may not have been part of the plan. But it's what happened at the door, in light of all that occurred before. And the Defendant told you on the witness stand about him going to work every day. What it is that he fears and he faces when he goes to work. What are the situations that might occur. And that also goes to the formulation of his intention.

Not a safe neighborhood. Gang activity. People carry weapons. And the argument that this movement was not a gesture that would have led you or I or any other reasonable person not to be in fear, ignores human nature, ignores facts and it ignores the circumstances that the Defendant was in, which you have to look at his point of view.

The Judge asked the question about the back of pants and the fact that they were down. The Defendant didn't see that. But this move, this move, any move that goes down, as opposed to going up to the face, to cover what was supposed to be the Mace that was going to affect him, which that didn't happen. Okay.

No. He turns to his right, plants his right foot here and then goes like this. Now, the Defendant

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said, at this point, I'm not looking at this hand.

What are you going to do? What are you going to do? Are you going to defend yourself or not?

Now, you have a right. When there is death -- where there is the possibility of death or great bodily harm. And the Judge is going to give you these instructions. He says you should ignore it. The instructions are what they are. Okay.

Great bodily harm can occur in a fight. Great bodily harm can occur in the event that somebody is about ready to plant one on you and he's 6' 4" and you're only 5' 9" or 5' 10". I thought I heard the Prosecutor say that Rami was a bigger person than Mr. Roberts. And I thought he said that, but that's arguable. That's not the truth.

I thought I heard the Prosecutor, in his opening statement, say that the Defendant Maced him with his right hand. That's not the truth. That's why argument is not going to be evidence. The Prosecutor's argument is not going to be evidence. The evidence is what you heard on the witness stand and what the Judge has ruled upon in terms of stipulations. And the evidence is what you, as jurors, as the judges of the fact have a right to look at and not worry about being humiliated or goaded or in any fashion compelled because

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of what the Prosecutor says. I trust in the jury system. And I told you in my opening statement, you decide.

One of the stipulations in this case was that the medical records be introduced and that we not have a medical examiner come in to testify. The portion of that record, you have a right to look at that. You can make a determination as to whether or not Mr. Roberts, at the time that this occurred, was under the influence of alcohol or drugs. Take a look at his blood work, you'll see.

You can take a look at the way he was acting inside and make a determination as to whether he was under the influence of alcohol or drugs, or whether he was being reasonable or unreasonable, or whether or not he was posing a disturbance, because it goes to the elevation of the passions that were involved in this case, which you see by the raising of the voices and the actions of the Defendant.

We had a witness who came in and testified, Shataysha Kelley. She testified that she was in there. Take a look at the video. Take a look at the body language of her as the victim is looking at and going over to reach out to her. That's when the Defendant gets up and his mood elevates. That's when he comes

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through the door.

This is not a situation over 10 cents worth of candy. This is a situation where a person who was drunk, who was disorderly, who was causing a ruckus, he was asked to leave, the Defendant said 10 times. You decide based on what you heard. The Defendant was asked to leave and he didn't.

In a situation where he has no control over his store and he's got no place to retreat. There's no back door. And Mr. Roberts is within two, three feet of him.

The Prosecutor suggests that he could have locked the door. He could have ran back in there and hid behind the door. And then waited for what? Six hours for the police to arrive? You get to decide.

I thought, that there was a mischaracterization, just based on the argument, as to what Mr. Roberts' conduct was. And so what I've done is I have prepared a demonstrative exhibit. You're going to be able to you go into the jury room and look at what it is that is being said. And, frankly, at this stage of my life, I don't think I can remember everything that is being argued here. You're not going to be able to take this back with you. I don't think that you're going to be able to take your notes with you.

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THE COURT: They will not. They can take their notes. They cannot take that.

MR. THOMAS: So if you -- if I can address your attention to a couple things. First of all, when you're looking at the video, I need you to look at the timing of it. The still photographs that the Prosecutor presented didn't include the photographs that I presented. It shows a second, one brief second. Your judgment of what it is that the Defendant did and what he formulated is based on one second. He's trying very hard to break it down. But there's innocent reasons for a person to have a gun. There's innocent reasons for a person to carry a gun. And there's innocent reasons for him to put his hand on the gun when he's got the door open and he's being confronted by Mr. Roberts.

The first part of it is, and I want you to take a look at Line 4. It was not the Defendant that used the N word. And that was kind of an issue in cross examination when the Defendant had to use that N word. It was Mr. Roberts. He was the one that used it first. It was at 1:17, where he says, niggas, 100 in a box. Okay.

Now, whether that was meant to be demeaning or whether that was a term of endearment, cousin, brother. You decide. Because you're going to hear what he said.

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He came in with an attitude.

He parked his car right in front of the gas station. I suggest if you look at it, it's not to be able to pump gas. The Defendant said he thought that it could have been to pump gas, but there was no gas pump and he parked it right straight in front of the door.

He comes in like he owns the joint on the phone. And then he goes towards the cashier and says, you know, what it is that he wants, and he's using the derogatory term.

Now the Defendant is being judged and you're supposed to be inflamed in passion because the N word. Okay. He said it. We embrace it. But don't judge him based on that. But if you're going look truly at the conduct of the decedent to determine whether or not passions were inflamed, the conduct of the decedent to determine what was the Defendant's true intent and whether his passions were inflamed, or he had a chance for the passions to cool. You decide.

He proceeds to talk to the clerk. And as you'll see in Paragraph 14, there was -- the word was used. And we have to take heat for it and embrace it. But it was a conversation between the two and it was started with Mr. Roberts. Okay.

And there is conversation back and forth,

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that's bullshit. And then the idea about getting rich, which goes to the issue that I talked about. And that is, you know, Arab store owners becoming wealthy. It was a resentment that Mr. Roberts had. And it was also -- it seemed to be a pressure point. A point which touched the emotion of the Defendant because the Defendant responded. And he responded very, very clearly.

He asks, at 1:53, that he's got customers and that a ruckus is being -- this is now trying to get him out. And he said, in no uncertain terms, get the fuck out. And his answer was, do you think I really care about your customers?

He came in to cause a ruckus. He came in to try to buy cigarettes for less than the value of the cigarettes. And when he was confronted over it, he started an argument. And when he started the argument, what was he going to do? He was going to chase the customers out, which happened. And then he would tell you he don't care about that.

Another pressure point causing passions to inflame. We ask now you to consider what it is that happened. The Prosecutor would suggest that, oh, well, he's acting in a calm and deliberate way. He had preplanned and premeditated. All of these facts and the

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statements and how the Defendant reacts all go to whether or not his passions were inflamed. All go to whether or not this is murder in the first degree, murder in the second degree, or, as we've argued and the Judge is going to give you the instruction to consider, self-defense.

Within a very short time, four seconds, after being confronted about the fact that he said he didn't care about the customers.

Now, I said, I don't care. I'm chasing your customers out. What are you going to do about that? What was that geared towards? That's on Line 24. Derek says, what are you going to do about it? I'm here. I'm in your store. No respect for the store. So respect for the store owner. No respect for the customers.

What are you going to do about it? He knows -- this is an inference -- that the police aren't going to be coming.

The Judge asked you a question about being on a neighborhood watch. That wasn't in effect. I don't think it would have mattered, but there wasn't any video that the police are going to be seen and you heard from the Defendant. And the Defendant told you that he knew that if he called, that they're not coming, based on his experience. They're not coming at all, they're not

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coming within six hours.

What does that matter? It's here and now. And you've got somebody who is unruly in your store who says what are you going to do about it? What would you do about it? Okay. Retreat behind the door and stay there and call the police and wait for six hours? Is that what you're going to do?

Were you going to go out a back door that doesn't exist? And God knows when he reached over towards Shataysha Kelley, what was he capable of doing? Because he interfered with her, interfered with other customers. And now you got a situation that God knows what's going to happen.

Is this something that a reasonable person would consider at the time that they're there and seeing what it is to be seen? The answer is for you to decide. Whether or not the Defendant acted reasonable, that's for you to decide.

I'm not telling you that you must do anything or you have to do anything, or the Court says that you must do anything, or the instructions say that you must do anything. You're the judges of the facts. And I've played that tape enough times. The Prosecutor has played it. You're going to have it back there with you. All right. I encourage you to look at it and break it

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down step-by-step.

On Line 27, Derek is challenging when he says -- after Saleh tells him to get the fuck out, he says, yeah. You behind here, right? Well, what was that? You behind here. You're behind the glass. You're behind the glass. You're behind the protection of glass. You're telling me something. You're going to make me do whatever you're going to make me do, but you're behind the glass. And that's when hindsight is 20/20. Rami goes to the glass and he opens the door.

Was it premeditation, deliberation, and intent? Or was it a person who is inflamed by the passion of the moment?

I'll tell you what. When you see how he opens that door? Take a look at that video because at that point, Ms. Kelley is being approached by Mr. Roberts. He goes over like this. And at that point, Rami says -- the first thing out of the door -- what the fuck are you doing? Interfering with a customer. Who knows what he was going to do? His demeanor was in a way that was unpredictable. You decide.

The door gets open. Take a look at Line 30 on the second page. Derek says, let's do it. What was that? Let's do what? Let's act like I'm supposed to act? Let's not harass anybody? Let's give deference to

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somebody who has ownership?

I want to say something. If I choose to do business in Detroit, that's my choice. I get it. And if I choose to make money and I do, I say congratulations. But if I choose to do it, it doesn't mean that I am any less fearful of what goes on in the City. Any less fearful of the fact that somebody might come in and draw a weapon on me and kill me. Like that.

Let's do it. A door gets open at that point, at 2:22. And a customer can be heard saying I ain't gonna do none of that. In other words, come back. I'm going to stand right here and I'm going to do whatever I'm going to do for a little dollar. Okay.

Do you think that wouldn't make anybody mad? Would that make you mad if you had an investment in the City?

Would that make you mad if you had a store that you were taking care of in the fashion in which Mr. Jaber was taking care of his store?

Stocks clearly shelved to the brim. Clean. And you can see it in the videos.

Why is that important? Because it's passion. And it's anger, as he described it. And it is frustration. And the Prosecutor likes to make you think that anger and frustration occurs in all first degree

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murder or in second degree murder cases. Well, that may or may not be true. But did that passion, did it happen that it was in a situation where you had time for reflection? Time to cool off? Time to think about what you were going to do, or were you elevated in what it was that you were doing? And because of that elevation, it caused you to do an act which you now regret. And that is, the furtive gesture, reacting to the gesture and thinking that, oh, my God, I got one second to draw. I draw because it's clear the furtive gesture occurs before he pulls the weapon out. And that's this:

Now, what would I do that for?

And then this, great bodily harm, what would I do that for? When I clearly have a door that I can walk out of. And I could expect that there would be a response of great bodily injury or great bodily harm.

Later on, again, and you'll hear it, well, what are you going to do? And it's going to go back, what are you going to do, what are you going to do? Okay. And at that point there was a Macing and there was a drawing of the weapon after the Macing.

What I thought was critical and what we did with the exhibits, and you'll be able to take this back to the jury room with you and give them whatever weight you think. Okay.

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We have two cameras, one is fuzzy and one is not. But they're about the same time, even though the time frames are different because you've heard that the technology expert from the Prosecution team had said that there was an inaccuracy in the actual time. But the point that I'm trying to make with these and what I want you to consider as jurors is the time frame in which this occurred. And you're going to see 3:54:39 you see a shift in Mr. Roberts' foot position, which is after he's been Maced and after he's leaning forward. His shift in foot position goes towards the Defendant. And it's interesting that we want to talk about fear and perception and what was reasonable under the circumstances.

You will see in the video that Defendant backs up. All right. He doesn't stand his ground. He's not -- he's not -- there was no evidence that there was clearly formed intent to pull the gun after the Macing until he backs up. And as he backs up, of course, that's towards an oncoming assaultive behavior on the part of Mr. Roberts.

That's what a reasonable person would do. That's what a jury could conclude. And I ask you to consider that because it's only -- this was within the same second. You can see how fast everything happened.

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And foot changes. And then you'll see -- that's Exhibits 1 and 2 that I was looking at.

Now we're looking at Defendant's Exhibit No. 4 and 5, and I suggest that at 3 hours 56 minutes and 56 seconds, what you saw from the technician did not include this, which clearly shows the Defendant's hands dropping. He's blind and he's reeled to the right, either to avoid the Mace or in some fashion because of the Mace. It's pretty clear that his reaction to the Mace was not what you'd typically expect.

Was it because there was too much or the Mace was ineffective? You decide.

But the point is that, after that, he doesn't go up and look at his eye. He doesn't go with his face and rub it off. He's not showing signs that the Mace effected him in any way. All right. And what he does is he leans forward. And you're going to see him lean forward with his hands down here.

Would a reasonable person wait and draw his gun? Was he still operating under the passion of the moment? Machismo? Whatever it was on both sides that caused this thing to occur? Or was it planned, premeditated with not any resolution? Except for the fact that he wanted to kill a black man, which is what the Prosecutor would have you believe. It was not.

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This was a highly inflamed situation between two people who happened to be black and white, in a situation where there was fear in the neighborhood and a person who was operating a business in the neighborhood. And he wasn't going to take anything for granted.

That is a responsible conclusion that you can come to. And so that is what I want you to consider for purposes of your deliberations.

The Prosecution has a very heavy burden. Their burden is not only to prove beyond a reasonable doubt that the elements of the offense, in each one of them, exists. It is also to prove that self-defense did not exist. Because they have this heavy burden and because they have such a job, they get to talk first. They did it in opening statement. They get to talk first in closing arguments. But there's an interesting thing in closing arguments and that is that the Prosecutor gets a chance to rebut what it is I'm going to say. And I expect that he'll spend some time on it. But he's going to raise issues that, hopefully, I've contemplated, and, hopefully, that you'll remember. So I want to apologize in advance if I have been offensive or in way acted that may have offended you. I don't want you to take that out against my client. I want you to understand that my job is to zealously represent my

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client. But I won't get a chance to talk to you and I'd like you to at least talk about, well, what did Mr. Thomas ask? What did Mr. Thomas introduce into evidence? What was the point that I was trying to make in response to the government's case?

This is fairness. This is justice. And while we have to consider the deceased in this case and that's rightfully so. It is the Defendant that stands before you. It is the Defendant that is being judged. And he is asking for fairness. And he is asking for justice. I can't get it unless you consider both sides.

So I ask you, when you come back, and you announce your verdict, that you consider -- would have considered my evidence and my arguments and my questions.

Evidence isn't just what it is that I present in terms of paper or in terms of exhibits or stipulations. It's the questions that I ask of the jurors. And if you thought that Ms. Kelley, who had a description what it was that she saw, had an opportunity to see, take a look at the video and see where she is when the confrontation occurs. She's over in the corner and she's hunched down. She's not looking at anything. Of course, when the shots are fired, she exclaims. But take a look at what the Defendant's girlfriend had said.

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She's here. She tried to show you that the Defendant wasn't under the influence of alcohol. You can decide that. You can decide it based on the way that he was acting, and you can decide that it was based on the way that he was carrying himself, his argumentative nature, and the fact that she said that it was two hours earlier that he had only one drink and one beer. And his blood alcohol is .06. Come on. Perspective. People have their perspectives.

And if you think that Mr. Jaber's answers to crafty questions by the Prosecutor in some fashion conceivable to say that we've illuminated premeditation, deliberation, or self-defense. You heard his testimony and your heard his answers. You decide. And when you do, I think the answer you're going to come back with is a just verdict for my client. Thank you for your attention.

THE COURT: Attorney Lawrence, rebuttal?

MR. LAWRENCE: Yes.

REBUTTAL ARGUMENT BY MR. LAWRENCE:

MR. LAWRENCE: Mr. Thomas is right. The reason they have a rebuttal -- and it's going to be a short rebuttal. And I think at this point in time, you guys have seen all of the evidence and are ready to deliberate.

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But it's because I have the burden of proof. And so being that I'm the one who has to prove beyond a reasonable doubt, I get to comment on a couple of things about the Defense's closing. So that's what I'm going to do right now. I'm not going to get into the details of when he calls the victim drunk because he's .06 or .07, which is, of course, below the legal limit, or things like that.

What's really key here is that you understand what your job is, what you are deciding. And if I had to label the Defense's closing, I would label it as the word the word he kept using over and over again, which was this is all about inflamed passions, or passions inflamed. That kind of summarized what he says, passions inflamed.

This can't be first degree murder because Mr. Jaber's passion was inflamed. This can't be first degree murder because, you know, the victim this or the victim that, you know, all they were thinking about was what was in the mind of Mr. Jaber or what does the evidence show was in the mind of Mr. Jaber.

So the jury instruction -- an this is what you're going to follow when I'm done talking after this. Mr. Thomas is done talking after this. All that you're going to get is -- there's going to be 12 of you and a

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stack of instructions. And, of course, you'll have the evidence in this case.

So you're going to go to the instruction on first degree murder and you're going to read it and say is this a first degree murder situation or has the Prosecutor not proven that and, therefore, it's second degree murder?

And, again, when you look at the elements, this is my copy of the instruction that you're going to be given. It simply says this is -- you know, you're going to hear words like, well, you know, passions inflamed and stuff like that. Let's see what the language is in the instruction that you have to decide.

First, that the Defendant caused the death of Derek Leon Roberts. That is that Derek Leon Roberts died as a result of a gunshot wound. Okay. So that is an undisputed fact.

So let's go to the next element. Second, that the Defendant intended to kill Derek Leon Roberts. Remember, even though the Defendant, himself, says that he intentionally was going to kill Derek Roberts. That he felt in fear. Now, that fear was unreasonable, based on what we've all seen over and over and over again in the video. The fear that you would have to kill Derek Roberts in that situation. But you also know that

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he has forfeited his right to self-defense, based on his use of the Mace, being the initial aggressor.

But, nonetheless, the Defendant has said I intended to kill Derek Roberts. And the evidence shows that. The gun was pointed at the chest, hole in the chest. When you shoot somebody in the chest, it's not intent to commit great bodily harm.

So the evidence agrees with the words of the Defendant, himself, and shows that there was an intent to kill.

So then you go to the next element, the third. That this intent to kill was premeditated. That is, thought out beforehand. So that's the definition of premeditated. That's a big word. What's the definition of it? Thought out beforehand. So it either happened instantaneously. He had no predetermined plan where he might have to use his gun. It either happened instantaneously or it was premeditated. It was thought out beforehand.

So when he is at that doorway and he's got that gun with his right hand on it, at his side, moving it around in a shooting position, he's transferred the mace to his left hand, he's used the Mace. It doesn't take immediate effect, so he takes his gun out, aims it at Derek's chest and pulls the trigger.

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You're telling me that's not thought out beforehand? That is thought out beforehand. That he has put his hand on his gun because he's thinking about if this Mace doesn't take affect, I'm going to shoot him. And you saw on the video clip I played how quickly that happens.

Derek hardly even -- Derek basically simply does not fall back and, instead, is starting to move forward and so let's get that gun out.

So either that -- how is that not -- with him at that doorway, like this, how is that not thought out beforehand?

And then the last element, that the killing was deliberate, which means -- so let's find out what the word deliberate means. Which means that the Defendant considered the pros and cons of the killing and thought about it and chose his actions before he did it.

What did he chose to do? I'm going to Mace him in hopes that he runs out of the store. If that doesn't happen, I'm going to draw that pistol that I'm ready with my hand on and shoot him.

So that's him choosing his action beforehand. Going to Mace him first. If that doesn't work, I'm going to take out my pistol and shoot him in the chest.

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He's thinking about that beforehand as he's at the door. There must have been real and substantial reflection for long enough to give a reasonable person a chance to think twice about the intent to kill. So does the reasonable person that's at that doorway, you know, initially, as he leaves the area of safety and he enters that doorway and he puts the Mace in his left hand, thinking it's close to the face of Derek Roberts and he grabs the gun with his right hand and he's got it at his side, there's that -- you know, a second goes by, two seconds go by, three seconds go by. It goes up at least through seven seconds.

A reasonable person would think let's simmer down here. Let's simmer down on the idea that if the Mace doesn't work, I'm going to shoot him. Heaven forbid you don't Mace him in the first place. But if the Mace doesn't work, a reasonable person would have had a chance to say keep the gun in the holster, dude. That's called respecting life. I know that that's in vogue right now, but that's called respecting life.

So he goes on to say the law does not say how much time is needed. It is for you to decide if enough time passed under the circumstances of the case. The killing cannot be the result of the sudden impulse without thought.

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So what's the definition of sudden impulse? Without thought. Is this a without thought situation? As he's at that doorway, as he leaves the area of safety, opens it up, starts saying make your move, make your move, make your move, transfers the Mace to the left hand, puts his gun on his side, is jostling the gun around, sprays him with the Mace. As soon as the Mace doesn't eliminate Derek all together, take the gun out, aims at his chest and shoots him.

What I just described to you is without thought. That's without thought.

So the key words here. That he chose his actions before he did it. Yes, he did. He chose the path that he was going to take. I'm leaving the area of safety to go out here to confront this guy, spray him with Mace and if that doesn't work, I'm going to shoot him. Before he did it, he thought about it.

He had a chance to think twice. Keep the gun in the holster, dude. Keep the gun in the holster. Let's respect life. And that killing was not a sudden impulse with thought. There was some thought that went into it. It's first degree murder. We just walked through all the elements of first degree murder.

So the question is, are you going to -- what's justice in this case, what the law has applied to this

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facts says it should be.

So Derek Roberts, who can't speak for himself, what does the law say the verdict should be in this case, the case of the death of Derek Roberts?

The jury instruction is clear. I just want to speak to one last thing. And this kind of goes to the passion inflamed theme. Well, Bill, I hear what you're saying. And maybe in certain situations, you're right and you just walked through the jury instruction. And this jury has a first degree murder case before it. But are you taking into account that this is the City of Detroit, which isn't a safe neighborhood? Are you taking into account this Arab-American/African-American conflict that's going on? You should take that into account and somehow that means the jury should come back second degree murder.

But isn't the fact that he considered that -- that Mr. Jaber considered the city that he was working in, that he chose to work in, a dangerous city? Doesn't the fact make it all the more likely that when he's at that doorway, he's planning on if the Mace doesn't work am I going to shoot? Right?

Isn't the fact that, apparently, there's like some kind of disdainment between Arab-Americans and African-Americans? Doesn't that show that, in that

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doorway, as he's got that gun with his hand on it, and he's shaking it, and he's got that Mace and he's playing it, doesn't it show that it's all the more likely that his plan is if the Mace doesn't work, I'm going to shoot? All of the evidence suggests that.

There's no reasonable alternative view in that. If there was reasonable alternative view in that, then that would be your reasonable doubt. But you don't have that. You have a first degree murder case, that is the just outcome. That is the final words of the final chapter of the story of the death of Derek Roberts and I hope that you return a verdict of first degree murder. Thank you.

THE COURT: Members of the jury, the evidence and arguments in this case are now finished. I will now instruct you on the law. That is, I will explain the law that applies in this case. Remember that you have taken an oath to return a true and just verdict based only on the evidence and my instructions on the law.

You must not let sympathy or prejudice influence your decision. As jurors, you must decide what the facts of this case are. This is your job and nobody else's. You must think about all of the evidence and then decide what each piece of evidence means and how important you think it is.

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This includes whether you believe what each of the witness said, what you decide about any fact in this case is final.

It is my duty to instruct you on the law. You must take the law as I give it to you. If a lawyer says something different about the law, follow what I say.

At various times, I have already given you some instructions about the law. You must take all my instructions together as the law you are to follow.

You should not pay attention to some instructions and ignore others.

To sum up, it is your job to decide what the facts of the case are, to apply the law as I give it to you, and in that way, decide this case.

A person accused of a crime is presumed to be innocent. This means that you must start with the presumption that the Defendant is innocent. This presumption continue throughout the trial and entitles the Defendant to a verdict of not guilty unless you are satisfied beyond a reasonable doubt that he is guilty.

Every crime is made up of parts called elements. The Prosecutor must prove each element of the crime beyond a reasonable doubt. The Defendant is not required to prove his innocence or to do anything.

If you find that the Prosecutor has not proven

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every element beyond a reasonable doubt, then you must find the Defendant not guilty.

A reasonable doubt is a fair, honest doubt growing out of the evidence or lack of evidence. It it's not merely an imaginary or possible doubt, but a doubt based on reason and common sense.

A reasonable doubt is just that, a doubt that is reasonable after a careful and considered examination of the facts and circumstances of this case.

When you decide the case and decide on your verdict, you may only consider the evidence that has been properly admitted in this case. Therefore, it is important for you to understand what is evidence and what is not evidence.

Evidence includes only the sworn testimony of witnesses. The exhibits admitted into evidence and anything else I told you to consider as evidence.

Many things are not evidence and you must be careful not to consider them as such. I will now describe some of the things that are not evidence.

The fact that the Defendant is charged with a crime and is on trial is not evidence. Likewise, the fact that he's charged with more than one crime is not evidence. The lawyers' statements and arguments and any commentary are not evidence. They're only meant to help

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you understand the evidence and each side's legal theories. You should only accept things the lawyers said that are supported by the evidence or by your own common sense and general knowledge.

The lawyers' questions to the witnesses and my questions to the witnesses are also not evidence. You should consider these questions only as they give meaning to the witness' answers. My comments, rulings, questions and instructions are also not evidence.

It is my duty to see that the trial is conducted according to the law and to tell you the law that applies to this case. However, when I make a comment or give an instruction, I am not trying to influence your vote or express an opinion about the case.

If you believe that I have an opinion about how you should decide this case, you must pay no attention to that opinion. You're the only judges of the facts and you should decide this case from the evidence.

At times during the trial, I have excluded evidence that was offered, or stricken testimony that was heard. Do not consider those things in deciding the case. Make your decision only on the evidence that I let in and nothing else. Your decision should be based

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on all the evidence regardless of which party produced it.

You must use your own common sense and general knowledge in weighing and judging the evidence. But you should not use any personal knowledge you may have about a place, person or event.

To repeat once more, you must decide this case based only on the evidence admitted during this trial. As I said before, it is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is.

You do not have to accept or reject everything a witnesses said. You're free to believe all, none or part of any person's testimony. In deciding which testimony you believe, you should rely on your own common sense and everyday experience. However, in deciding whether you believe a witness' testimony, you must set aside any bias or prejudice you may have based on the race, gender or national origin of the witness.

There are no fixed set of rules for judging whether you believe a witness, but it may be helpful for you to think about this question:

Was the witness able to see or hear clearly?

How long was the witness watching or

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listening?

Was anything else going on that might have distracted the witness?

Did the witness seem to have a good memory?

How did the witness look and act while testifying?

Did the witness seem to be making an honest effort to tell the truth or did the witness seem to evade the questions or argue with the lawyers?

Does the witness' age and maturity effect how you judge his or her testimony?

Does the witness have any bias, prejudice or personal interest in how this case is decided?

Have there been any promises, threats, suggestions or other influences that affected how the witness testified?

In general, does the witness have any special reason to tell the truth or any special reason to lie?

All in all, how reasonable does the witness' testimony seem when you think about all the other evidence in the case?

Sometimes the testimony of different witnesses will not agree and you must decide which testimony you accept. You should think about whether the disagreement involves something important or not and whether you

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think someone is lying or simply mistaken.

People see and hear things differently and witnesses may testify honestly, but be wrong about what they thought they saw or remember. It is also a good idea to think about which testimony agrees best with the other evidence in the case. However, you may conclude that a witness deliberately lied about something that is important to how you decide. If so, you may chose not to accept anything that witness said.

On the other hand, if you think the witness lied about some things but told the truth about others, you may simply accept the part you think is true and ignore the rest.

You should not decide this case based on which side presented more witnesses. Instead, you should think about each witness and each piece of evidence and whether you believe them. Then you must decide whether the testimony and the evidence you believe proves beyond a reasonable doubt that the Defendant is guilty.

You have heard testimony from witnesses who are police officers. That testimony is to be judged by the same standard you used to evaluate the testimony of any other witness.

You've heard that a lawyer talked to one of the witnesses. There's nothing wrong with this. A

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lawyer or a lawyer's representative may talk to a witness to find out what the witness knows about the case and what the witness' testimony will be.

Facts can be proved by direct evidence from a witness or an exhibit. Direct evidence is evidence about what we actually see and hear. For example, if you look outside and see rain falling, that is direct evidence that it is raining.

Facts can also be proved by indirect or circumstantial evidence. Circumstantial evidence is evidence that normally or reasonably leads to other facts. For example, if you see a person come in from outside wearing a rain coat covered with small drops of rain, that will be circumstantial evidence that it is raining.

You may consider circumstantial evidence. Circumstantial evidence by itself or a combination of circumstantial evidence and direct evidence can be used to prove the elements of a crime. In other words, you should consider all the evidence that you believe.

When the lawyers agree on a statement of facts, these are called stipulated facts. You may regard such stipulated facts as true, but you are not required to do so.

As to Count 1, first degree premeditated

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murder, to prove this charge the Prosecutor must prove each of the following elements beyond a reasonable doubt. First, that the Defendant caused the death of Derek Leon Roberts. That is, that Derek Leon Roberts died as a result of a gunshot wound.

Second, that the Defendant intended to kill Derek Leon Roberts.

Third, that this intent to kill was premeditated. That is, thought out beforehand.

Fourth, that the killing was deliberate. Which means that the Defendant considered the pros and cons of the killing, thought about and chose his actions before he did it. There must have been a real and substantial reflection for long enough to give a reasonable person a chance to think twice about the intent to kill. The law does not say how much time is needed. It is for you to decide if enough time has passed under the circumstances of this case. The killing cannot be the result of a sudden impulse without thought or reflection.

Fifth, that the killing was not just identified, excused or done under circumstances that reduce it to a lesser crime.

Second agree murder is a lesser and included charges of first degree murder. To prove this charge

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the Prosecutor must prove each of the following elements beyond a reasonable doubt.

First, that the Defendant caused the death of Derek Leon Roberts. That is that Derek Leon Roberts died as a result of multiple gunshot wounds.

Second, that the Defendant had one of these three states of mind. He intended to kill or he intended to do great bodily harm to Derek Leon Roberts or he knowingly created a very high risk of death or great bodily harm, knowing that death or such harm would be the likely result of his actions.

Third, that the killing was not justified, excused or done under circumstances that reduce it to a lesser crime.

The Defendant claims that he acted in lawful self-defense. A person has the right to use force or even take a life to defend himself under certain circumstances. If a person acts in lawful self-defense, the person's actions are justified and he is not guilty of homicide, murder in the first degree, premeditated.

You should consider all of the evidence and use the following rules to determine whether the Defendant acted in lawful self-defense. Remember to judge the Defendant's conduct according to how the circumstances appeared to him at the time he acted.

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First, at the time he acted, the Defendant must have honestly and responsibly believed that he was in danger of being killed, seriously injured or sexually assaulted.

If the Defendant's belief was honest and reasonable, he could act immediately to defend himself even if it turned out later that he was wrong about how much danger he was in.

In deciding if the Defendant's belief was honest and reasonable, you should consider all the circumstances as they appear to the Defendant at the time.

Second, a person may not kill or seriously injure another person just to protect himself against what seems to be like a threat of only minor injury. The Defendant must have been afraid of death or serious physical injury.

When you decide if the Defendant was afraid of one or more of these, you should consider all of the circumstances: The condition of the people involved, including their relative strength; whether the other person was armed with a dangerous weapon or had some other means of injuring the Defendant; the nature of the person's attack or threat; whether the Defendant knew about any previous violent acts or threats made by the

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other person.

Third, at the time he acted, the Defendant must have honestly and responsibly believed that what he did was immediately necessary. Under the law, a person may only use as much force as he thinks is necessary at the time to protect himself.

When you decide whether the amount of forces used seemed to be necessary, you may consider whether the Defendant knew about any other ways of protecting himself. But you may also consider how the excitement of the moment effected the choice that the Defendant made.

A person can use deadly force in self-defense only where it is necessary to do so. If the Defendant could have safely retreated but did not do so, you may consider the fact in deciding whether the Defendant honestly and reasonably believed he needed to use deadly force and self-defense. However, a person is never required to retreat if attacked in his own home or if the person reasonably believes that an attacker is about to use a deadly weapon. Nor if the person is subject to a sudden fierce or violent attack.

Further, a person is not required to retreat if a person has not or is not engaged in the commission of a crime at the time of the deadly force is used and

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has a legal right to be where the person is at the time, and has an honest and reasonable belief that the use of deadly force is necessary to prevent imminent death or great bodily harm of the person or another.

A person who started an assault on someone else with deadly force or with a dangerous or deadly weapon cannot claim that he acted in self-defense unless he genuinely stopped fighting or his assault and clearly let the other person know that he wanted to make peace. Then if the other person kept on fighting or started fighting again later, the Defendant had the same right to defend himself as anyone else and could use force to save himself from imminent physical harm.

The Defendant does not have to prove that he acted in self-defense. Instead, the Prosecutor must prove beyond a reasonable doubt that the Defendant did not act in self-defense.

As to Count 2, the Defendant is also charged with a separate crime, the crime of possessing a firearm at the time he committed the crime of first degree murder or second degree murder. To prove this charge, the Prosecutor must prove each of the following elements beyond a reasonable doubt. First, that the Defendant committed the crime of first degree murder or second degree murder, which has been defined for you. It is

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not necessary, however, that the Defendant be convicted of that crime.

Second, that at that time, he knowingly carried or possessed a firearm. The Prosecutor must also prove each element beyond a reasonable doubt that the crimes occurred on or about May 13, 2018, within Wayne County.

The Defendant's intent may be proved by what he said, what he did, how he did it or about any other facts and circumstances in evidence.

When you go to the jury room, you'll be provided with a written copy of the final instructions. You should first choose a foreperson. The foreperson should see to it that your discussions are carried on in a business-like way and that everyone has a fair chance to be heard.

A verdict in a criminal case must be unanimous. In order to return a verdict, it is necessary that each of you agrees on that verdict. In the jury room, you will discuss the case amongst yourselves but, ultimately, each of you will have to make up your own minds. Any verdict must represent the individual considered judgment of each juror.

It is your duty as jurors to talk to each other and make every reasonable effort to reach

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agreement, express your opinions and the reasons for them, but keep an open mind as you listen to your fellow jurors, rethink your opinions and do not hesitate to change your mind if you decide you were wrong. Try your best to work out your differences. However, although you should try to reach an agreement, none of you should give up hour honest opinion about the case just because other jurors disagree with you or just for the sake of reaching a verdict. In the end, your vote must be your own and you must vote honestly and good conscience.

If you have any questions about the jury instructions before you begin deliberations or questions about the instructions that arise during deliberations, you may submit them in writing to the bailiff.

Possible penalties should not influence your decision. It is the duty of the judge to fix the penalty within the limits provided by law.

If you want to communicate with me while you're in the jury room, please have your foreperson write a note and give it to the deputy. It is not proper for you to talk directly with the Judge, lawyers, court officers or other people involved in this case. As you discuss the case, you must not let anyone, even me, know how your voting stands. Therefore, until you return with a unanimous verdict, do not reveal this to

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anyone outside the jury room.

When you go to the jury room to deliberate, you may take your notes and a full set of instructions. If you want to look at any or all of the exhibits that have been admitted, just ask for them.

I have prepared a verdict for listing the possible verdicts in this case. When and if you reach a verdict in this case, I need you to send a note out. On the note, please indicate only that you have reached a verdict, not what the verdict is.

Are the attorneys satisfied with the final instructions as provided to the jury?

MR. LAWRENCE: Yes, Your Honor.

MR. THOMAS: Yes.

THE COURT: At this time, we will choose two alternates.

CLERK OF THE COURT: The Court would like to thank and excuse juror in Seat No. 14.

The Court would also like to thank and excuse juror in Seat No. 3.

THE COURT: Juror seated in Seat No. 14 and juror seated in Seat No. 3, at this time, you can go into the jury room and if you have any of your belongings in there, collect your belongings and exit the courtroom. If you will wait just outside of the

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courtroom on the benches, one of the deputies will come out and bring you a letter and certificate for your service. Thank you for your service.

If something happens during the deliberation, however, and we need to call you back in, then we will give you a call if we need you.

THE BAILIFF: All rise for the jurors, please.

(Jurors No. 14 and No. 3 exit the courtroom at 3:33 p.m.)

THE BAILIFF: You may be seated.

THE COURT: Let's swear in the deputies.

CLERK OF THE COURT: Deputies, raise your right hand for me, please. Do you solemnly swear or affirm to keep this jury in a manner formed as prescribed by law?

THE BAILIFF: I do.

THE BAILIFF: I do.

THE COURT: Thank you.

THE COURT: Ladies and gentlemen of the jury, the Court is going to ask you to rise at this time. Please leave Defense demonstrative Exhibit No. 1 in your chair. You may take your notes with you.

Gentlemen, I'm handing to Corporal Bowen the final jury instructions, as well as a verdict form.

Ladies and gentlemen of the jury, once you

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enter the jury room, you may begin deliberations.

THE BAILIFF: All rise for the jury.

(Jury begins deliberations at 3:35 p.m.)

THE BAILIFF: You may be seated.

THE COURT: Gentlemen, who has the exhibits?

MR. THOMAS: Your Honor, I'm going to submit Exhibits 2 through 7. I think the Prosecutor has Exhibit No. 8.

MR. LAWRENCE: Yeah. Exhibit No. 8 is the 911 call that's going to be on the laptop.

THE COURT: Attorney Thomas, have you reviewed the laptop that may go back with the jury? Are you satisfied that there are not any extraneous items on the laptop that would impact the jury's deliberation in any way?

MR. THOMAS: Will do. I haven't done it yet, but I will.

THE COURT: Okay. Thank you. And we are off the record.

Do you have a matter that you wish to put on the record?

MR. THOMAS: One last thing.

THE COURT: Attorney -- excuse me. Mr. Jaber, before you go, Attorney Thomas has something for the record.

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MR. THOMAS: Dr. Shiner's report was not admitted.

THE COURT: It was not.

MR. THOMAS: I need to have it somehow identified and placed as a separate -- just for purposes of potential appeal.

THE COURT: Okay. It wasn't marked. We can mark it as Court's Exhibit 1 and it will be made part of the file that does not go back with the jury for consideration.

COURT EXHIBIT NO. 1

WAS MARKED AND ADMITTED FOR IDENTIFICATION

MR. THOMAS: It should be sealed because of the fact that it contains sensitive medical information.

THE COURT: And the Court will make sure that that is done.

MR. THOMAS: Thank you.

THE COURT: Anything further for the record?

MR. THOMAS: No, Your Honor.

MR. LAWRENCE: No.

MR. LAWRENCE: This is all good.

THE COURT: With that said, nothing further for the record. We're all done.

(Proceeding concluded at 3:37 p.m.)

* * * *

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CERTIFICATE OF NOTARY

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

I, Carol Dillon, Certified Shorthand Reporter, a Notary Public in and for the above county and state, do hereby certify that the above proceeding was taken before me at the time and place hereinbefore set forth; that the proceeding was duly recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to either party nor interested in the event of this cause.

/s/ Carol Dillon_____
Carol Dillon RPR, CSR 2950
Notary Public,
Oakland County, Michigan

My Commission expires: 9-3-2022

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

VS. CASE NO. 18-005065-01-FC

RAMI ALI JABER,

Defendant.
_____/

SENTENCING

BEFORE THE HONORABLE REGINA THOMAS
Detroit, Michigan - Thursday, December 5, 2019

APPEARANCES:

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LAURIE A. JEFFERSON, CSR-6909
OFFICIAL COURT REPORTER (313) 573-0741

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(None)		

Detroit, Michigan

Thursday, December 5, 2019

9:37 a.m.

THE CLERK: This is case number 18-05065, the People of the State of Michigan versus Rami Jaber. This matter is here for Sentencing. Appearances, please?

MR. LAWRENCE: Good morning, Judge, William Lawrence on behalf of the People.

THE COURT: Will you please place your P number on the record, as this is a video courtroom?

MR. LAWRENCE: Thank you, Judge. My P number 70481.

THE COURT: Thank you.

MR. THOMAS: Your Honor, James Thomas on behalf of the Defendant who is here with me.

THE COURT: I need your P number as well.

MR. THOMAS: P23801.

THE COURT: Thank you. Mr. Jaber, please state your name for the record.

THE DEFENDANT: Rami Jaber.

THE COURT: Today is the date and time set for sentencing. We have before the Court Rami Ali Jaber, date of birth, 10-1-1991, is that correct, sir?

THE DEFENDANT: Yes.

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THE COURT: Have the attorneys had an opportunity to review the pre sentence report?

MR. LAWRENCE: We have, Your Honor.

THE COURT: Are there any additions, corrections, or deletions?

MR. LAWRENCE: Not to the body of the report, I will let Defense speak on that, as well. But, there are going to be a couple changes to the guidelines.

THE COURT: Okay, and we'll get to that in a moment. Attorney Thomas, do you have any changes to the body or corrections to the body of the pre sentence report?

MR. THOMAS: Yes, Your Honor. On page one, the very first page of the report, it reflects two misdemeanors. I'm going to argue that it is zero misdemeanors, and I can argue that basis right now.

THE COURT: Well, no, well, just, well, what I have says one misdemeanor.

MR. THOMAS: One misdemeanor. Upon checking the record over at the Dearborn District Court, he was charged originally with a misdemeanor, he pled down to an ordinance violation, it was a traffic ordinance violation.

The traffic provision of the local jurisdiction, which is Dearborn, allows for an under

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advisement for a period of six months. But, my argument is that a traffic offense is not a misdemeanor.

THE COURT: Was he on probation?

MR. THOMAS: He was on probation for a period of six months as the report reflects. But, the probation was in order to qualify to have his case dropped down to an ordinance. And, it was dropped down to an ordinance. So, he has no prior misdemeanors.

THE COURT: Attorney Lawrence?

MR. LAWRENCE: Obviously, Judge, it's included in the pre sentence report. But, I have had a chance to speak with Mr. Thomas, he showed me some documents from the district court in question in Dearborn.

The PRV 5, which is the scoring of misdemeanors, instructs that only those prior misdemeanor convictions or prior misdemeanor juvenile adjudications, that are offenses against a person or property, weapon offenses, or offenses involving controlled substances, and then any prior misdemeanor involving basically drinking and driving, or drug driving. That's what gets scored under PRV 5.

Littering, as classified as an ordinance violation by Dearborn, I don't have a compelling argument to this Court as to how it meets --

THE COURT: We're not even at the scoring yet,

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we are just listing or correcting the body of it.

MR. LAWRENCE: I know, I know, we are kind of blending the two together, and (indiscernible) the Court wants to separate that.

THE COURT: Okay. But, it's your position that PRV 5, both attorneys' position is that PRV 5 should not be scored, is that correct?

MR. LAWRENCE: That's certainly his position, and I don't have a compelling answer to it is what I'm saying.

THE COURT: Okay, all right. So, we'll address that when we get to that point. Are there any other corrections?

MR. THOMAS: Under the criminal justice juvenile history on page four, on the first adult history, number one, it reflects as littering. It says M for misdemeanor. Having reviewed with the Prosecutor, the docket entries, it's clear that it was an ordinance violation.

THE COURT: The Court would like to see those docket entries, do you have a copy for the Court to review?

MR. THOMAS: Judge, I was only able to obtain them this morning. I picked up the pre sentence report yesterday.

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THE COURT: Okay, I will look at what you have.

MR. THOMAS: All right, may I approach?

THE COURT: It's on the phone?

MR. THOMAS: It's on my phone.

THE COURT: Oh, okay, never mind.

MR. THOMAS: The Prosecutor looked at it, I don't think he argues with me about that.

THE COURT: Okay.

MR. THOMAS: And, then, we also reviewed in addition to the docket entries in the case, we reviewed the ordinance itself. And, I want to recite the ordinance to the Court.

THE COURT: You don't have to, I'm taking it off.

MR. THOMAS: All right.

THE COURT: What's the next correction that you have?

MR. THOMAS: So, then, it was that amendment. The only other reflection that we have is that towards the issue of restitution, Judge, there was an inflection that there was some sort of insurance that had paid for the -- for the funeral expenses of the victim. I have two checks from my client's father, who paid restitution in the amount of $17,500.00.

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And, I can't see him, is that number correct?

UNKNOWN SPEAKER: Yes.

MR. THOMAS: Okay. And, so, it was not paid for by insurance, it was paid for by the Defendant's father. He is incarcerated, obviously. So, that money went towards funeral expenses. And, there was also a cremation expense that was --

THE COURT: So, you want the report to reflect that it was not the gas station owner's association that paid for the funeral, but it was the father of Mr. Jaber?

MR. THOMAS: That's correct.

THE COURT: Okay.

MR. THOMAS: And, the amount was $17,500.00.

THE COURT: And, the family is not requesting or seeking any additional restitution according to the pre sentence report?

MR. LAWRENCE: That's correct, Judge.

MR. THOMAS: And, just so the record is clear, there is civil litigation, there's insurance involved, and we expect that that is going to be resolved.

THE COURT: Okay.

MR. THOMAS: Other than that, Judge, I don't have any additions, corrections, or deletions of the pre sentence investigation report. And, I should reflect,

that I did review it with the client last night for a couple of hours.

THE COURT: Okay.

MR. THOMAS: All right. The -- the only thing then we have to address is guidelines.

THE COURT: And, as to the guidelines, let's start with the PRV's. Attorney Lawrence?

MR. LAWRENCE: Well, the only PRV scoring that occurred, was PRV 5 for being convicted of the littering. And, then, PRV 6 for being on probation for that littering conviction at the time of this offense. So, both of those PRV's are subject to the arguments we've already made to this Court; because PRV 6 requires that you be on probation for a misdemeanor. And, Defense's argument is that in Dearborn, the offense of littering that he was actually convicted of, is under the traffic code and is considered an ordinance violation as opposed to a misdemeanor, as far as their classifications are concerned.

I think that when you read PRV 5, and the instructions to it, it has been my experience certainly that traffic offenses or other ordinance offenses that don't fit within the definition and the instructions, are not scored. So, not to put up a lack of resistance to the Defense's argument, I do think that's probably

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the appropriate thing to do with PRV 5 and 6.

THE COURT: The Court will score PRV 5 at zero, and PRV 6 at zero. And, the total PRV's will be zero, and the PRV level then moves to A.

As to the offense variables?

MR. LAWRENCE: Judge, there are two offense variables that were not scored, the Prosecution thinks should be scored. PRV 5, we think should be scored 15. I think I said PRV, I meant OV 5 should be scored 15, which is for the psychological injury to the family members.

The Defense's argument is going to be that in the body of the report, it indicates that there has not been psychological treatment sought by -- in reference, I think a couple of the family members anyways. But, in the instructions, it says assess 15 points if the family members' serious psychological injury may require professional treatment.

The fact that treatment has not been sought is not determinative. So, we think that PRV 5, or OV 5, being scored 15 points is appropriate in this situation. You will be hearing from a couple of the family members in a moment. So, if the Court wishes, it could wait until you hear from them before making a ruling on OV 5.

The other OV that should be scored is OV 19,

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which is the threat to security or interference with the administration of justice. That should be scored ten points, Judge, which it states the offender otherwise interfered with or attempted to interfere with the administration of justice.

He clearly on video, picks up the shell casing and tries to flush it down the toilet. I mean, it's as clear of a OV 19 score as you could pretty much have. I'm not even sure Defense is going to object to it.

THE COURT: We'll see.

MR. THOMAS: Well, the facts are that --

THE COURT: Let's start with OV 5.

MR. THOMAS: OV 5.

THE COURT: Let's start there. I'm sorry, Attorney Lawrence, were there -- just one moment, Attorney Lawrence, you said you had two. There aren't any additional OV's, correct?

MR. LAWRENCE: Correct.

THE COURT: Attorney Thomas, as to OV 5?

MR. THOMAS: Thank you, Judge. OV 5, we haven't heard about psychological as it relates to the family members. The report itself indicated that -- that there was no report of that. And, so, I was relying on that, I think that's why it was scored at zero.

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I guess we will have to listen to what the witnesses have to say. You're going to have, I understand, three people coming up to testify. And, we can see how that goes. But, I recognize what the -- what the guideline provides, and I'm not going to argue, I'm not in a position to argue and especially we don't have any evidence of that right now.

THE COURT: And, as to OV 19?

MR. THOMAS: OV 19, it is the obstruction. It's clear that he did call the police, and that he didn't leave the premises, and that he preserved the premises for the police when they came.

There was evidence of the shell casing actually going into the toilet, and we can hear flushing. And, so, with that, I have no strong argument.

So, I believe that the government's position is more correct than not.

THE COURT: OV 19 will be scored at ten. The Court will hold its decision as to OV 5 in abeyance until I hear from the family, okay.

MR. THOMAS: So, we added an additional ten points.

THE COURT: Ten points so far.

MR. THOMAS: All right.

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MR. LAWRENCE: There are two people on behalf of the family, the deceased, that would like to address the Court.

THE COURT: Okay. At this time, the members of Mr. Roberts family who wish to address the Court, may stand up and proceed to the jury box. Please stand directly in front of chair number four, we're going to do this one at a time.

Before you begin to speak, please say your name for the record. I'm sure that Attorney Lawrence has already discussed with you the parameters under which you are to make your victim impact statement to the Court. Please, do not address the Defendant or his family. Please, just make the Court aware of how this incident has impacted you and your family. You may proceed when you're ready, sir.

MR. ROBERTS: Yeah, my son, Derrick --

THE COURT: Can I have your name, sir?

MR. ROBERTS: I'm sorry, my name is Carnell (ph) Roberts.

THE COURT: Thank you, proceed.

MR. ROBERTS: My son, Derrick, was a long distance semi truck driver. And, his off day, was Sunday, and he would come over to the house, and we would have a couple beers, talk about issues that were

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important to him. It also gave me an opportunity to give him quality advice on issues.

Who would have thought -- I really didn't like him doing that job, because it was a dangerous job, especially in the winter time. Who would have thought that he would have got killed while trying to buy a pack of cigarettes?

The only thing I have to say is that, I wish the Defendant had a made a different decision. Because if he did, I would have my son, he would have his freedom. That's all I have to say.

THE COURT: Thank you, Mr. Roberts.

MR. ROBERTS: My name is Carnell Roberts, Jr., Derrick Roberts is my brother. My brother was killed on Mother's Day. My mother has to for the rest of her life have to deal with that, and have to live with that. A mother shouldn't have to bury her son on Mother's Day.

Consequently, also, my brother was killed on my birthday. So, not only was it Mother's Day, it was also my birthday. And, I have to live with that for the rest of my life, my birthday for the rest of my life, has to be known as my brother's death day. And, that's all I got to say.

THE COURT: To Mr. Roberts' family, I will -- I thank for coming to court. I want you to know that I

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see you, and I see that this is traumatic for the family. I watched you during the trial, listen to the testimony, and also view the evidence which included the video, which had also audio, which showed the death of Mr. Roberts. I do appreciate the fact that you have come to court, and you've been respectful, and you sat through the testimony. We had just one instance, and I do appreciate you for coming. And, you are a family, just hold on to one another in this, okay. And, to Mr. Roberts' mother, I see your pain, and I understand that you are not able to speak today with regard to this issue.

The Court is going to -- not withstanding the fact that the two gentlemen that stood here and the statements that they made, the Court is going to assess points for OV 5. This has to be psychologically damaging for this family. And, I can see the tears and the trauma that this has caused without anyone even having to speak. So, the Court is going to score OV 5.

MR. THOMAS: (indiscernible) objection.

THE COURT: I understand, you're objecting for the record.

MR. LAWRENCE: And, I am noting for the record too, that the second witness just testified that the deceased was killed on Mother's Day and killed on his

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birthday, which to the extent you can even enhance the pain of their suffering, if this Court has outlined, that adds to it.

THE COURT: So, the OV levels go to 105?

MR. LAWRENCE: Correct.

THE COURT: And, I believe that moves us to OV level three?

MR. LAWRENCE: Correct.

THE COURT: Does my math add up, Attorney Thomas?

MR. THOMAS: You added five?

THE COURT: And, 15 --

MR. THOMAS: And, we added 15, is that correct?

THE COURT: Fifteen and ten.

MR. THOMAS: Fifteen and ten, then, you are correct, Judge.

THE COURT: Okay. Anything from the People?

MR. LAWRENCE: Just briefly.

MR. THOMAS: We should make a record that with PRV's at zero, and 105 offense variable, that we are at A3, which is 162 to 270, as I see it, is that correct, Judge?

THE COURT: Or life, correct, or life.

MR. LAWRENCE: That's correct, Judge.

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THE COURT: So, 162 to 270 are life, are the guidelines, the minimum guideline range. And, both of the attorneys agree?

MR. LAWRENCE: Yes.

THE COURT: Okay, the Court will make that change. Well, there isn't a change to make, it's the same. Attorney Lawrence?

MR. LAWRENCE: Yes, Judge. Obviously, the courts in Michigan have it a big point in recent times, to change the guidelines from something that are encouraged to be followed to something that is advisory, it's advice to the Court. But, the decision, of course, is entirely up to Your Honor.

And, I think that that was an appropriate change in Michigan; because when you look at what we're talking about today, we're talking about, well, does littering fall under an ordinance, or does littering fall under a misdemeanor? And, that somehow is supposed to make a difference in what this Court is about to sentence this Defendant to.

You look at something like OV 5, I believe, or OV 6, rather, which says, score 25 points for unpremeditated murder, as if every single second degree murder, every single unpremeditated murder is the exact same. They're all 25 point values.

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So, the guidelines are a -- are just advice. It is a bunch of numbers that are supposed to somehow summarize a terrible event that involved human lives. The witnesses that just testified to this Court, obviously, testified to their great loss.

The Court had an opportunity not only to obviously sit and watch, and make rulings throughout the entire trial, but, to view the video, to view the audio, where you clear as crystal saw what happened in this situation.

So, my point is that all murder twos are not equal, Your Honor. And, this situation, you have a family that has asked this Court in the body of the pre sentence report for 35 years. I will advocate on behalf of their wishes, I think that's an appropriate sentence here, as far as a minimum term. And, you know, otherwise, I don't have anything further to add. Thank you.

THE COURT: Attorney Thomas?

MR. THOMAS: Well, the guidelines paradigm were meant to, actually the ideal was to have uniformity in sentencing. And, what it took out of the sentencing paradigm was the ability for a judge to depart or vary, they were mandatory.

And, there were exceptional circumstances that

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would take place that the Court would be aware of, but then at that point, then factor in with compelling pressures on the Court to sentence within the guidelines.

This has now changed, and that is now, you have discretion. And, while you did hear the case, and you were paying attention throughout the court, and I want to tell you how much I appreciate that. I think that there's other factors aside from the crime itself that this Court has to consider in terms of determining what an appropriate sentence would be in this case.

Towards that end, I sent several letters to the Court, which I know you read. And, those letters were a different view of Mr. Jaber, from a family who knew him.

He has, except for these ordinance violations which we talked about, which the Court should not consider really in my view, and certainly for guidelines should not have been considered. Otherwise, a compelling life of being crime free, he's 28 years old, and spent the last two years in jail.

While in jail, and after publicity and obviously the media has a right to know, but after publicity about this case, he was beaten in the jail, and he's been threatened, and his life has been

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threatened. And, he's been told, when he gets to Jackson, which he most certainly will be after your sentence, that they will be waiting for him, all right.

There is things that you can consider, his crime free life, the fact that he was a hard working gentleman, the fact that he has family relationships, all of whom are here, and you've seen them throughout the dates of court; Mom, Dad, cousins, brothers, all here because they are concerned about him. This is not a person who is a -- a -- well, he is a person that's capable of your consideration at least in terms of his life prior to this time.

Factors that you should consider in addition to his crime free life, is the fact that restitution has been made, and that even though he's testified in court, during his testimony, he realized this, and you could see it, that he has put the family through quite a bit.

He had protested that he was innocent of first degree murder, he was acquitted of that. He protested that he was not guilty of second degree murder, but he didn't deny that he committed the offense.

When he was arrested prior to that, he let the police in. He made a statement, he said what it was that was going through his mind at the time. It's got to count for something. The jury didn't agree that it

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was manslaughter, they didn't have a choice, there was no manslaughter instruction. But, they -- they did not acquit, and he didn't ask to deny the fact that this had occurred.

Now, I will not speak (indiscernible), you saw the circumstances of this. The victim of this case had a little baggage of his own that day, okay. But, certainly, it was not a justified -- the jury did not find that it was justified.

And, so, we stand in front of you now with compelling evidence from two family members, one of whom was very aggressive during the trial, and had to be restrained by officers, and, others who are here, who obviously have heartfelt feelings for the deceased.

But, the other alternative is to consider, A, what is too much time. And, B, whether or not this individual under these circumstances, can be rehabilitated, and can serve his sentence, and come back into society.

Thirty five years from now, there is no -- at this point, there's no credit for -- for good behavior. And, while he has two years in, and computation of the pre sentence report is correct, about 500 and some odd days.

Eventually, he's going to come out of prison,

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and it's hope that he will get parole first time up. What age do you want him to come out, Judge, okay, 35, 28, you're talking about 55 years less two, 53 years, okay, plus the two for the weapons offense. Is that too much time? And, I ask the Court to take that into consideration. I understand the family's feelings, I understand that someone has died here, and I understand the circumstances. And, there are some mitigating factors on those circumstances, which I know you know. How much time is too much time for this gentleman?

I urge you not to go over the guidelines. I urge you that you have guidelines that now will allow you to sentence him to getting less than 15 years, all right.

I'm asking you to be fair. I'm asking you to consider the fact that in all of the (indiscernible) of these family members and friends, that this man is salvageable. Thank you.

THE COURT: Mr. Jaber, is there anything that you wish to say to the Court?

THE DEFENDANT: No thank you.

THE COURT: Okay. The Court is going to give Mr. Jaber his appellate rights prior to the Court imposing sentence.

Mr. Jaber, you have the right to file a claim

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of appeal regarding your conviction and sentence. If you wish to do so, you must do so within 42 days. If you cannot afford to hire an attorney, the Court will appoint an attorney and furnish the attorney with portions of the transcript and record necessary to handle your appeal. This request must be made within 42 days.

The Court has received letters, a number of letters from the family of Mr. Jaber. The Court did review all of those letters. The Court has also reviewed the pre sentence report. The Court takes those into consideration along with the victim impact statements, as well as the testimony elicited at trial and the exhibits admitted.

While the Jury has spoken in this case, the Court respects the Jury's verdict. The Court doesn't agree with it. This Court believes that, Mr. Jaber, you had time to reflect on your actions and to formulate how you would proceed.

Mr. Jaber, not only did you interject yourself into an argument that Mr. Roberts was having with someone else, you invited Mr. Roberts to stick around so that you could further, whatever was going on there. You came from a place of safety, and prior to doing that, you invited Mr. Roberts back behind bullet proof

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glass twice. Once you exited from behind the bullet proof glass, you sprayed Mr. Roberts in the face, and then you shot him with another person in very close proximity to you. So much so, that when she testified, and we also saw it on the video, she had to say, "hey, I'm right here." You could have shot her as well.

And, then, when the Court reviews the pre sentence report, the Court finds out that you did not spray Mr. Roberts with mace, you sprayed him with dog repellant. You did not see the humanity in Mr. Roberts.

The Court believes that your actions were egregious and they were avoidable. The first thing you did after you shot Mr. Roberts, you lied about what you did to the other person that was in the gas station. You told her that the gun was a blank. You then picked up the bullet, walked back and tried to flush it. You did not call for assistance for Mr. Roberts, you first watched the video in the gas station so you could get your story together. You didn't see the humanity in Mr. Roberts.

The Court is going to depart from the guidelines. The Court is going to go above the guidelines for reasons that the Court has stated on the record. I believe that your behavior was egregious. I do not believe that you show any remorse. You took the

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stand in this case, and when you were asked -- and I reviewed your testimony, I had the transcript, I reviewed it.

And, when you were asked what you could do different, your response was that you wouldn't come to work that day, not that you would not shoot a person after spraying him with dog repellant.

Mr. Jaber, it is the sentence of this Court that you will be sentenced to count two, for count two, felony firearm, two years, which is the mandatory two years. You will receive 572 days credit. Your sentence for count two will be proceeding and concurrent to your sentence for count one, which is homicide, murder in the second degree. The statutory maximum penalty is life. The Court will sentence you to 420 to 600 months in the Michigan Department of Corrections.

You must pay a crime victim assessment in the amount of $130.00. You must pay court costs in the amount of $1,300.00. You must pay $136.00 state costs, and you must comply with DNA testing and pay a $60.00 fee.

That is the sentence of this Court, excuse me, consecutive, proceeding and consecutive too for count one and count two. That is the Court's sentence. Is there anything further for the record?

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MR. LAWRENCE: Not from the People, Your Honor, thank you.

MR. THOMAS: No thank you, Judge.

THE COURT: Thank you, we're adjourned.

(At 10:07 a.m., matter concluded.)

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CERTIFICATE OF REPORTER

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, Laurie A. Jefferson, CSR-6909, Official Court Reporter acting in and for the Third Judicial Circuit, State of Michigan, do hereby certify that the foregoing pages 1 through 27 was reduced to typewritten form and comprise a true rendition of the proceedings taken by means of video recordation without the benefit of a court reporter present during the proceedings.

I further certify that I will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party or parties that are not discernable on the video of the proceedings.

Laurie A. Jefferson
Laurie A. Jefferson
CSR-6909

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STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Petitioner-Appellee,

v.

RAMI ALI JABER
Defendant-Appellant.

No. 162970

LC No. 18-005065-01-FC
COA NO. 352092

OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL

Filed under AO 2019-6

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V. The scoring of OV 5 does not require proof that a victim's family member has already sought or received, or intends to seek or receive, professional treatment. The victim's father testified as to his loss, the victim's brother testified that the murder occurred on his birthday which was also mother's day, which would both be known in the future as the day of the murder of his brother, and the trial court took note of her observations of the pain of the victim's mother. OV 5 was properly scored ..... -29-

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VI. An appellate court reviews an out-of-guidelines sentence for reasonableness; that is, whether the sentencing court abused its discretion in applying the principle of proportionality, given the seriousness of the circumstances surrounding the offense and the offender. In determining a proportionate sentence, the sentencing judge considered defendant's lack of remorse, noted disagreement with the jury's acquittal on 1st-degree murder but did not enhance the sentence because of it, and gave reasons for the sentence given. It cannot be said that no reasonable sentencing court would have imposed the same sentence on the defendant for the reasons the sentencing judge provided . . . . . -32-

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Statement of Jurisdiction

The People accept defendant's statement of jurisdiction.

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Counterstatement of the Questions

I.

A manslaughter instruction is appropriate where there is evidence of adequate provocation that would cause a reasonable person to act out of passion rather than reason. Defendant argued self-defense, claiming that after he sprayed dog repellant in the victim's face the victim, who he had not seen with any weapon, reached toward his waist. Did trial judge abuse her discretion in concluding that no manslaughter instruction was appropriate?

Defendant answers: YES

The People answer: NO

II.

Defendants may not routinely be observed shackled by the jury during trial proceedings. Defendant was not shackled during proceedings but only "approached by the deputy" to remove him from the courtroom during a break, and the trial judge's recollection was that one juror (defense counsel believed several more) was not yet into the jury room when the deputy approached defendant. Was the trial judge's decision that no evidentiary hearing was necessary or appropriate within the range of principled outcomes?

Defendant answers: NO

The People answer: YES

III.

A verdict form must provide the jury an opportunity for a general verdict of not guilty. The jury verdict form here contained a verdict of not guilty, followed by the possibility of guilt on the charged offense and the lesser included. Did the verdict form provide a general verdict of not guilty?

Defendant answers: NO

The People answer: YES

IV.

The exclusion of expert testimony is reviewed for abuse of discretion. Based on an expert report filed the day trial began, the defense wished to call an expert to testify that because of PTSD the defendant had impaired impulse control and lacked malice. Did the trial judge abuse her discretion in excluding the testimony.

Defendant answers: YES

The People answer: NO

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V.

The scoring of OV 5 does not require proof that a victim's family member has already sought or received, or intends to seek or receive, professional treatment. The victim's father testified as to his loss, the victim's brother testified that the murder occurred on his birthday which was also mother's day, which would both be known in the future as the day of the murder of his brother, and the trial court took note of her observations of the pain of the victim's mother. Was OV 5 properly scored?

Defendant answers: NO

The People answer: YES

VI.

An appellate court reviews an out-of-guidelines sentence for reasonableness; that is, whether the sentencing court abused its discretion in applying the principle of proportionality, given the seriousness of the circumstances surrounding the offense and the offender. In determining a proportionate sentence, the sentencing judge considered defendant's lack of remorse, noted disagreement with the jury's acquittal on 1st-degree murder but did not enhance the sentence because of it, and gave reasons for the sentence given. Can it be said that no reasonable sentencing court would have imposed the same sentence on the defendant for the reasons the sentencing judge provided?

Defendant answers: YES

The People answer: NO

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Statement of Facts

The People accept defendant's statement of facts, with the exception of any argument and characterization, and the addition of those facts stated in the argument.

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Argument

I.

A manslaughter instruction is appropriate where there is evidence of adequate provocation that would cause a reasonable person to act out of passion rather than reason. Defendant argued self-defense, claiming that after he sprayed dog repellant in the victim's face the victim, who he had not seen with any weapon, reached toward his waist. The trial judge did not abuse her discretion in concluding that no manslaughter instruction was appropriate.

Standard of Review

A trial judge's decision as to whether a requested lesser-included-offense instruction is applicable under the facts of a particular case is reviewed for an abuse of discretion, and an abuse of discretion occurs only when the judge's decision falls outside the range of principled outcomes.[1] And "it is only when there is substantial evidence to support the requested instruction that an appellate court should reverse the conviction."[2]

Discussion

Defendant says that "[a]nything which would cause the defendant to act rashly, from passion rather than judgment, is considered to be adequate provocation,"[3] and that the Michigan Supreme Court "has

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[1] People v. Jones, 497 Mich. 155, 161 (2014).

[2] People v. Cornell, 466 Mich. 335, 365 (2002).

[3] Defendant's brief, p.8 (emphasis in the original).

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clearly stated that the determination of what constitutes reasonable provocation is a question of fact for the jury,"[4] citing People v. Pouncey.[5] But in this citation defendant is wounded in the house of his friends,[6] for the denial of a manslaughter instruction to Pouncey was upheld by the Court, which is to say the Court did not in that case find that that which constitutes a reasonable provocation is always for the jury; defendant's quotation is taken without its context. The sentences following say "However, the judge does play a substantial role. The judge furnishes the standard of what constitutes adequate provocation, i.e., that provocation which would cause a reasonable person to act out of passion rather than reason."[7] As Pouncey shows, without evidence of adequate provocation under the law, as well as the lack of a sufficient cooling period, an instruction on voluntary manslaughter should not be given.

Here, the defense was self-defense. Malice may be negated by justification, excuse, or where under the circumstances the offense is mitigated—not excused or justified—by an adequate provocation.[8] Defendant argued justification—that after he sprayed the victim in the face with dog repellant, the victim approached him and reached toward his waist. By its verdict the jury rejected this claim. Defendant's argument for the instruction on manslaughter was that "my client testified that he thought that he had a weapon when he was going down

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[4] Defendant's brief, p. 12-13.

[5] People v. Pouncey, 437 Mich, 382, 390 (1991).

[6] NIV Bible, Zechariah 13:6.

[7] Pouncey, at 390.

[8] See People v. Morrin, 31 Mich. App. 301, 310 (1971).

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to his waistband. The fact that he was mistaken in that, we believe, does not take this outside the realm of – "[manslaughter; self-defense?].[9] This was a claim of self-defense, and, at best, a sideways effort to justify the instruction on the ground of the discredited doctrine of imperfect self-defense.[10] While it is true that on occasion the "factual circumstances that have been characterized as imperfect self-defense may negate the malice element of second-degree murder,"[11] this is not such an occasion. Here, as the testimony and video show, defendant sprayed the victim in the face with dog repellant and then shot him. Defendant claimed this was an honest and reasonable response to his claim that the victim's hands were either around his waist level[12] or that he reached at his waist level, though defendant had never seen the victim with a weapon nor did

---

[9] T 9-25, 139.

[10] People v. Reese, 491 Mich. 127 (2012).

[11] Id., at 130.

[12] At one point defendant testified:

> Q. At the time that he had his hands down at his waist, what then did you see next, and we can show the jury?
>
> A. I thought he was going to reach for a weapon. And that's when I retreated back. And I drew my weapon and I fired one single shot.
>
> T 9-25, 40.

Later he said:

> Q. So is it your testimony that you thought he was going to reach or that he did reach?
>
> A. He did reach.
>
> T 9-25, 98.

anything on his body suggest the presence of a weapon. The jury rejected this claim under proper instructions; either defendant was justified or he was not, and the jury determined that question. No manslaughter instruction was appropriate on these facts. The Court of Appeals properly so held.

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II.

Defendants may not routinely be observed shackled by the jury during trial proceedings. Defendant was not shackled during proceedings but only "approached by the deputy" to remove him from the courtroom during a break, and the trial judge's recollection was that one juror (defense counsel believed several more) was not yet into the jury room when the deputy approached defendant. The trial judge's decision that no evidentiary hearing was necessary or appropriate was within the range of principled outcomes.

Standard of Review

The trial judge's decision whether an evidentiary hearing is necessary on a point is reviewed for abuse of discretion; an abuse of discretion does not occur unless the trial judge's decision is outside the range of principled outcomes.[13]

Discussion

During a break in the trial defense counsel raised the issue that he believed a deputy had approached the defendant to take him back to the lockup while the some jurors were still in the room, the argument being that this suggested defendant was in custody. The trial judge responded that "There was one that was on the way out the door. Okay." Defense counsel replied that he "thought there were four or five."[14] Defense counsel did not know whether the juror or jurors had looked at the defendant at the time, but believed an inquiry of the jurors should be

[13] People v. Unger, 278 Mich. App. 210, 216–17 (2008).

[14] T 9-25, 132.

made.[15] The trial court said "I saw things differently . . . . I'm not going it inquire of the jury if they saw something out of the ordinary in this courtroom because I do believe that it will call attention to something that really is a non-issue as it pertains to this case."[16] The trial court also said "your client is charged with first degree murder. Anyone sitting in this courtroom or sitting on this jury that thinks that he is out at large — that doesn't even make sense to this Court that someone who is charged with first degree homicide would be on the streets. And I can't imagine that someone on the jury would make that assumption."[17]

The question here involves a claim that the deputy's approach to take defendant from the courtroom during a recess is the same as shackling during trial, which might lead to the inference to the jurors that he was viewed as dangerous, and might influence their consideration of the evidence. But as the trial judge noted, it is not reasonable to believe that the jury would think a person charged with 1st-degree murder was at large, or that custody itself would influence their verdict. A number of federal cases have distinguished between shackling during trial and observation by jurors of shackling to and from the courthouse or courtroom. Those cases hold that "[e]xposure of the jury to a defendant in shackles requires a mistrial only when the exposure is so 'inherently prejudicial' as to deny the defendant's constitutional right to a fair trial. . . . Defendants are required to show actual prejudice where the conditions under which defendants were seen were routine security

[15] T 9-25, 133, 134.

[16] T 9-25, 135.

[17] T 9-25, 136.

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measures rather than situations of unusual restraint such as shackling of defendants during trial."[18] Restraining a defendant during the trial itself and restraining the defendant for transport to and from the courtroom are "two very different things." . . . . Reasonable jurors expect deputies to restrain all defendants in transport so that the sight of a shackled [defendant] in this context could cause no prejudice."[19]

Here, the charge was 1st-degree murder, defendant was not shackled during proceedings but only approached by a deputy to take him to the lockup during a recess, and the trial judge's recollection was that one juror (defense counsel believed several more) was not yet into the jury room when the deputy approached. Under these circumstances, the trial judge's decision that no evidentiary hearing was necessary or appropriate was within the range of principled outcomes. The Court of Appeals properly so concluded.

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[18] United States v. Moreno, 933 F.2d 362, 368 (CA 6, 1991) (cleaned up). See also United States v. Diecidue, 603 F.2d 535, 549 (CA 5, 1979).

[19] Earhart v. Konteh, 589 F.3d 337, 349 (CA 6, 2009). See also Wharton v. Chappell, 765 F.3d 953, 965 (CA 9, 2014).

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III.

A verdict form must provide the jury an opportunity for a general verdict of not guilty. The jury verdict form here contained a verdict of not guilty, followed by the possibility of guilt on the charged offense and the lesser included. The verdict form provided a general verdict of not guilty.

Standard of Review

There was no objection to the verdict form employed, and thus review is for plain error; that is, defendant must show (1) error, (2) that is plain or obvious, (3) that affects his substantial rights, and (4) to the extent that reversal is necessary to prevent a miscarriage of justice.[20]

Discussion

The verdict form here does not contain the defect found in the Wade[21] case. The verdict form there as to murder was:

Possible Verdicts

You May Return Only One Verdict for Each Count.

Count 1–homicide– murder First Degree–premeditated (Edward Browder, Jr)

____ Not Guilty

____ Guilty

Or

[20] People v. Carines, 460 Mich. 750, 763 (1999).

[21] People v. Wade, 283 Mich. App. 462 (2009).

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____ Guilty of the Lesser Offense Of–homicide– murder Second Degree (Edward Browder, Jr.)

Or

____ Guilty of the Lesser Offense Of–involuntary Manslaughter–firearm Intentionally Aimed (Edward Browder, Jr.)[22]

This court held that "because of the way the verdict form was set up, the jury was not given the opportunity to find defendant either generally not guilty or not guilty of the lesser-included offenses such that his constitutional right to a trial by jury was violated."[23] That is not the case with the verdict form used here, and used without objection.

Though the People have not had access to the actual form employed here, and defendant has not attached it, the People believe it was the following:

Count 1:FIRST DEGREE PREMEDITATED MURDER

___ Not Guilty

___ Guilty

___ Guilty of Lesser Included Offense of Second Degree Murder

This format, contrary to defendant's suggestion, does contain a general verdict of not guilty—the jury is to return a general verdict of not guilty, or a verdict of 1st degree murder or 2nd degree murder. This is perfectly proper.

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[22] Id., at 465.

[23] Id., at 468.

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This court so noted in an unpublished case, where the following verdict form was employed:

> Not Guilty; or
>
> ___ Guilty of First Degree Felony Murder; or
>
> ___ Guilty of First Degree Premeditated Murder; or
>
> ___ Guilty of Both; or
>
> ___ Guilty of the lesser included offense of Second Degree Murder.[24]

This court said

> [A] plain review of the verdict forms highlights that the deficiency that was present in Wade is not present here. . . . the verdict form here does not limit or restrict a finding of 'not guilty' to only one offense. The 'not guilty' option provided is set apart from the offenses, thereby indicating to the jury that it has an option to find defendant generally 'not guilty' of all of the listed offenses below. Accordingly, defendant was not deprived of his right to have the jury presented with the opportunity to return a general verdict of not guilty.[25]

So also here. There was nothing wrong with the verdict form, and the Court of Appeals correctly rejected defendant's argument.

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[24] People v. Moore, No. 298682, 2012 WL 6178274, at 5 (2012).

[25] Id.

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IV.

The exclusion of expert testimony is reviewed for abuse of discretion. Based on an expert report filed the day trial began, the defense wished to call an expert to testify that because of PTSD the defendant had impaired impulse control and lacked malice. The trial judge did not abuse her discretion in excluding the testimony.

Standard of Review

The exclusion of expert testimony is reviewed for abuse of discretion.[26] A trial court abuses its discretion when it chooses an outcome that falls outside the range of principled outcomes.[27]

Discussion

Defendant wished to present expert testimony from a psychiatrist who had examined defendant that, because of "two near-death experiences at the age of 15" in bombings in Lebanon, defendant suffered a "significant trauma capable of causing a psychiatric illness."[28] That illness was, says the report, post-traumatic stress disorder, which caused defendant to act impulsively, and to be unable to "formulate his actions with malice."[29] Given that malice is a legal term of art, not a medical term, which means the intent to kill, cause great bodily harm, or to act with wanton and wilful disregard of the

[26] People v. Hardesty, 139 Mich.App 124, 133 (1984).

[27] People v. Musser, 494 Mich. 337, 348 (2013).

[28] See Report, p. 8.

[29] Id.

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probable consequence of death or great bodily harm,[30] and defendant here deliberately shot the victim in the chest, it appears that the doctor was using the term in the sense of evil intent, spite, or ill will. In any event, the testimony was properly denied.

Defendant was attempting to smuggle in a diminished-capacity defense through the proposed testimony, and diminished capacity is not a defense in Michigan; rather, defendant would have needed to file an insanity notice.[31] In an unpublished opinion,[32] concerning proposed testimony by the same expert,[33] that testimony also going to the defendant's alleged PTSD diminishing his capacity to control his impulses when he felt threatened, this court upheld exclusion of the testimony:

> Although Foy correctly recognizes that his state of mind and the circumstances as they appeared to him at the time of the shooting would have been probative of his claim of self-defense, the proposed testimony by Dr. Shiener was not relevant to this purpose. Dr. Shiener's opinion that Foy's PTSD condition limited his ability to control his impulses, especially when he felt threatened, was not probative of Foy's state of mind at the time of the shooting. Dr. Shiener was not otherwise qualified to offer an opinion regarding

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[30] People v. Goecke, 457 Mich. 442, 464 (1998).

[31] People v. Carpenter, 464 Mich. 223, 226 (2001).

[32] People v. Foy, No. 345793, 2020 WL 2095987 (Apr. 30, 2020).

[33] Dr. Gerald Shiener.

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> Foy's actual state of mind or understanding of the circumstances at the time of the shooting.[34]

The trial judge did not abuse her discretion in disallowing the testimony.[35]

The Court of Appeals did not err in rejecting this claim.

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[34] Foy, at 1-2. See also People v. Doughtery, No. 320998, 2015 WL 3874549, at 2–4 (June 23, 2015).

[35] There was also a timing issue, with the expert offered late in the proceedings. The report is dated September 23, 2019, and trial commenced on that date. The prosecutor noted that "I literally have now closed my case in chief and this argument is being raised. If the Court were to allow the Defense to have Dr. Shiner [sic] testify to diminished capacity, I will have never had the opportunity to get my own expert to review the findings of his report. Judge, you just got his report a couple minutes ago." T 9-24, 138.

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V.

The scoring of OV 5 does not require proof that a victim's family member has already sought or received, or intends to seek or receive, professional treatment. The victim's father testified as to his loss, the victim's brother testified that the murder occurred on his birthday which was also mother's day, which would both be known in the future as the day of the murder of his brother, and the trial court took note of her observations of the pain of the victim's mother. OV 5 was properly scored.

Standard of Review

The sentencing court's factual determinations in scoring offense variables are reviewed for clear error, and must be supported by a preponderance of the evidence; whether the facts, as found, are adequate to satisfy the scoring under the statute—that is, the application of the facts to the law—is reviewed de novo.[36]

Discussion

The victim's father and brother spoke at sentencing:

MR. ROBERTS: My son, Derrick, was a long distance semi truck driver. And, his off day, was Sunday, and he would come over to the house, and we would have a couple beers, talk about issues that were important to him. It also gave me an opportunity to give him quality advice on issues.

Who would have thought — I really didn't like him doing that job, because it was a dangerous job, especially in the winter time. Who would have thought that he would have got killed while trying to buy a pack of cigarettes?

[36] People v. Hardy, 494 Mich. 430, 438 (2013).

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> The only thing I have to say is that, I wish the Defendant had a made a different decision. Because if he did, I would have my son, he would have his freedom. That's all I have to say.
>
> THE COURT: Thank you, Mr. Roberts.
>
> MR. ROBERTS: My name is Carnell Roberts, Jr., Derrick Roberts is my brother. My brother was killed on Mother's Day. My mother has to for the rest of her life have to deal with that, and have to live with that. A mother shouldn't have to bury her son on Mother's Day.
>
> Consequently, also, my brother was killed on my birthday. So, not only was it Mother's Day, it was also my birthday. And, I have to live with that for the rest of my life, my birthday for the rest of my life, has to be known as my brother's death day. And, that's all I got to say.[37]

The sentencing judge also took note of defendant's mother, present in the courtroom, saying to her "And, to Mr. Roberts' mother, I see your pain, and I understand that you are not able to speak today with regard to this issue."[38] The sentencing judge thus determined to score OV 5, saying based on her observations and the statements of the victim's brother and father that "[t]his has to be psychologically damaging for this family. And, I can see the tears and the trauma that this has caused without anyone even having to speak."[39]

OV 5 is scored at 15 points if the "serious psychological injury to the victim's family may require professional treatment. In making this determination, the fact that treatment has not been sought is not

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[37] ST 13-14.

[38] ST 15.

[39] ST 15 (emphasis supplied).

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conclusive."[40] Indeed, "the statute does not require proof that a victim's family member has already sought or received, or intends to seek or receive, professional treatment."[41] The victim's father spoke of the importance of his son and what he would miss, and the victim's brother spoke to the murder having occurred on his birthday, which was also mother's day, and how those days would always now be the day of the murder of his brother. And the sentencing judge took note of the pain and tears of the victim's mother, who was unable to speak at sentencing. The "trial court's opportunity to observe the demeanor of the victim's family members supported its factual findings that they sustained psychological injury,"[42] and the scoring was correctly upheld.

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[40] MCL 777.35(2).

[41] People v. Calloway, 500 Mich. 180, 186 (2017).

[42] People v. Schrauben, 314 Mich. App. 181, 197 (2016). See also People v. Steanhouse, 313 Mich. App. 1, 39 (2015), aff'd in part, rev'd in part, 500 Mich. 453 (2017).

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VI.

> An appellate court reviews an out-of-guidelines sentence for reasonableness; that is, whether the sentencing court abused its discretion in applying the principle of proportionality, given the seriousness of the circumstances surrounding the offense and the offender. In determining a proportionate sentence, the sentencing judge considered defendant's lack of remorse, noted disagreement with the jury's acquittal on 1st-degree murder but did not enhance the sentence because of it, and gave reasons for the sentence given. It cannot be said that no reasonable sentencing court would have imposed the same sentence on the defendant for the reasons the sentencing judge provided.

Standard of Review

Review of an out-of-guidelines sentence is a "reasonableness review for an abuse of discretion informed by the 'principle of proportionality' standard."[43] But what does that mean? Defendant says the trial judge must justify "why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been," and this court indeed has so said, and continues to say.[44] This is mistaken, and is inconsistent with the review standard set out by this Court. It renders the guidelines mandatory, simply changing the review standard for departures from mandatory guidelines from that set out in statute.

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[43] People v. Steanhouse, 500 Mich. 453, 476 (2017).

[44] See People v. Dixon-Bey, 321 Mich. App. 490, 525 (2017), and dozens of unpublished opinions.

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A. An issue of terminology: there is no such thing as a "departure sentence" after Lockrdige

This Court in Lockridge[45] amended the statutory sentencing scheme so that the guidelines are now advisory rather than mandatory. Review of out-of-guidelines sentences is now for an abuse of discretion, examining the reasonableness of the sentence, informed by the principle of proportionality, rather than for the statutory requirement of the articulation of substantial and compelling reasons for departure from the guidelines that justify the departure. Though the guidelines must be scored, and "taken into account [by the sentencing judge] when imposing a sentence,"[46] they do not form a presumptive sentence range or norm from which the sentencing court must justify departure, or else the guidelines are not truly advisory. Lockridge and Steanhouse instead would have simply have changed the standard of review for an out-of-guidelines sentence from review of the substantial and compelling reasons for the departure given by the sentencing court, to review of the reasons given by the trial judge for the departure under a standard of reasonableness informed by the principle of proportionality.

But this Court has explicitly disclaimed any presumption that an out-of-guidelines sentence is unreasonable, and rightly so. That the fact that the guidelines are advisory means that there is no presumption against an out-of-guidelines sentence was made clear by the Court in meeting concerns expressed by the Masroor[47] panel of the Court of Appeals, a companion to Steanhouse, that a "proportionality test cannot be reconciled with Gall v.

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[45] People v. Lockridge, 498 Mich. 358 (2015).

[46] Id., at 392.

[47] People v. Masroor, 313 Mich. App. 358 (2015).

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United States."[48] In Gall, the United States Supreme Court rejected any requirement that deviations from the guidelines range be justified in proportion to the extent of the deviation, or that the sentencing court must justify a sentence outside the guidelines by articulating "extraordinary" circumstances, as these approaches would "'come too close to creating an impermissible presumption of unreasonableness for sentences outside the Guidelines range.'"[49] This Court found no such problem in the principle of proportionality that informs the appellate court's review of the trial judge's exercise of sentencing discretion to sentence outside the guidelines in Michigan, expressly because the "Michigan principle of proportionality . . . does not create such an impermissible presumption."[50] And it does not precisely because "[r]ather than impermissibly measuring proportionality by reference to deviations from the guidelines, our principle of proportionality requires 'sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.'"[51] The concern of the Masroor panel that "dicta in our proportionality cases could be read to have 'urg[ed] that the guidelines should almost always control,' thus creating a problem similar to that identified in Gall,"[52] was thus obviated. Dicta so suggesting was consequently disavowed, including the notion that an out-of-guidelines sentences "should 'alert the appellate court to the possibility of a misclassification of the seriousness of a given

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[48] People v. Steanhouse, 500 Mich. 453, 473 (2017).

[49] Id.

[50] Id. (emphasis supplied).

[51] Id. (emphasis supplied).

[52] Id.

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crime by a given offender and a misuse of the legislative sentencing scheme'" as "inconsistent with the United States Supreme Court's prohibition on presumptions of unreasonableness for out-of-guidelines sentences."[53] The bottom line for the Court was that, as it had said in Lockridge, "the guidelines 'remain a highly relevant consideration in a trial court's exercise of sentencing discretion' that trial courts 'must consult' and 'take . . . into account when sentencing,'" but the "'the key test is whether the sentence is proportionate to the seriousness of the matter, not whether it departs from or adheres to the guidelines, 'recommended range.'"[54]

Because, then, the reasonableness of a sentence that is not within the guidelines is not measured "by reference to deviations from the guidelines," to call a sentence that is not within the guidelines a "departure sentence," though understandable, is misleading, for the guidelines being but a highly relevant consideration in sentencing, a sentence that is not within them is not a departure from a presumptive range. The reason to distinguish a sentence that falls within the guidelines range from one that falls without it is because the former is not subject to review for its length for reasonableness, the legislature having set those sentences beyond appellate review for other than consideration of inappropriate material,[55] and the Court in Lockridge having specifically limited reasonableness review to

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[53] Id.

[54] Id. (emphasis supplied). The Court of Appeals has fallen into the error of treating an out-of-guidelines sentence as presumptively unreasonable, as the People will discuss.

[55] MCL § 769.34(10).

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sentences not within the guidelines.[56] To avoid the implication that a sentencing judge who takes into account the guidelines as a factor in sentencing and then imposes a sentence that is not within the guidelines range has thereby departed from a presumptively mandatory range, and that an appellate court reviews for appropriate justifications for the departure rather than the reasonableness of the sentence under an abuse of discretion standard,[57] informed by the principle of proportionality, these sentences should be denominated "out-of-guidelines sentences," whether above or below the guidelines, rather than "departure sentences." The Court used that term in Steanhouse,[58] and though the Court of Appeals

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[56] "A sentence that departs from the applicable guidelines range will be reviewed by an appellate court for reasonableness." People v. Lockridge, 498 Mich. at 392.

[57] See e.g. People v. Smith, 482 Mich. 292, 316, 317 (2008) under the mandatory-guidelines scheme ("When a trial court renders a departure sentence, Michigan appellate courts must review whether the court abused its discretion in concluding that extraordinary circumstances justified it"; and "the judge abused his discretion because he imposed a departure sentence without adequately justifying the extent of the departure") (emphasis added). But justifying the extent of the departure is no longer the test, though Smith and this language continue to be cited by this court, as it disregards Steanhouse and "impermissibly measur[es] proportionality by reference to deviations from the guidelines." See e.g. People v. Steanhouse (On Remand), 322 Mich. App. 233 (2017) ("the trial court's articulation of the reasons for imposing a departure sentence must explain how the extent of the departure is proportionate to the seriousness of the circumstances surrounding the offense and the offender. See People v. Smith.") (emphasis added).

[58] "We agree that such dicta [that dicta from Milbourn being disavowed by the Court] are inconsistent with the United States Supreme Court's prohibition on presumptions of unreasonableness for out-of-guidelines sentences. . . and so we disavow those dicta." People v. Steanhouse, 500 Mich. at 474 (emphasis supplied).

Unfortunately, the Court also has referred to out-of-guidelines as "departure sentences," which carries the misleading connotation that an out-of-guidelines sentence is a departure from the legally expected norm—the

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often refers to "departure sentences," it also frequently refers to "out-of-guidelines" sentences.[59]

To say, then, that the sentencing judge must justify why the out-of-guidelines sentence "is more proportionate than a sentence within the guidelines range,"[60] and that the sentence is reviewed as to the justifications for the departure,[61] is to "measure proportionality by reference to deviations from the guidelines," that which the Supreme Court expressly prohibited. This Court should apply the standard set out in Steanhouse.

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guidelines. See People v. Steanhouse, 500 Mich. at 471 (2017) (the Court thus using "out-of-guidelines" sentence and "departure"sentence in the same opinion).

[59] See e.g., People v. Odom, 327 Mich. App. 297, 301 (2020); People v. Lampe, 327 Mich. App. 104, 110 (2020).

Judge Boonstra observed in Lampe that "The term 'departure' derives from an earlier time when the sentencing guidelines were mandatory, such that substantial and compelling reasons were required before a sentencing court could deviate from them. Although the term 'departure has multiple definitions, principal among them is that a "departure" is a 'divergence or deviation, as from a standard or rule.' See Random House Webster's College Dictionary (2d ed.), (2005). Because our Supreme Court has held that the sentencing guidelines are now 'advisory only,' ..., or 'merely advisory' . . . and has struck down the substantial-and-compelling-reason standard . . . I find the 'departure' nomenclature to be of questionable continuing utility and suggest that sentences such as defendant's are more accurately referred to as 'out-of-guidelines sentences.'"Lampe, at 334 (Boonstra, J., concurring).

[60] People v. Dixon-Bey, 321 Mich. App. 490, 525 (2017).

[61] See e.g., People v. Bosca, 310 Mich. App. 1, 55 (2015), saying that "The trial court must justify on the record both the departure and the extent of the departure," rather than that the sentence is reviewed for an abuse of discretion, guided by the principle of proportionality, in light of the "seriousness of the circumstances surrounding the offense and the offender," not the deviation from the guidelines.

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B. A necessary consequence of rendering mandatory guidelines advisory is that they become but a factor to be consulted by the sentencing judge in determining an appropriate sentence, so that a sentence outside the range cannot be presumptively unreasonable.

> The Supreme Court's decision in Booker implicitly rejected the position that no additional weight could be given to factors included in calculating the applicable advisory Guidelines range, since to do otherwise would essentially render the Guidelines mandatory. . . . This necessarily means that the sentencing court is free to conclude that the applicable Guidelines range gives too much or too little weight to one or more factors, either as applied in a particular case or as a matter of policy.[62]

This quotation from the Fifth Circuit states a necessary consequence of guidelines that are advisory rather than mandatory. This court's current approach is inconsistent with our "Booker-ized" system of review as explicated by the Court in Lockridge and Steanhouse, and as compelled by the cases of the United States Supreme Court. Those cases reveal the error of the current approach..

In Lockridge, this Court rendered the guidelines advisory, saying that it was adopting the same remedy that the United States Supreme Court had decided on with regard to the federal guidelines.[63] The Court said that the guidelines must still be scored, and "remain a highly relevant consideration in a trial court's exercise of sentencing discretion" which the sentencing court "must consult . . . and take . . . into account when sentencing," citing Booker. An out-of-guidelines sentence "will be reviewed by an appellate court for

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[62] United States v. Williams, 517 F.3d 801, 809 (CA 5, 2008).

[63] "We agree that this is the most appropriate remedy. First, it is the same remedy adopted by the United States Supreme Court in Booker." People v. Lockridge, 498 Mich. at 391.

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reasonableness," said the Court, again citing Booker, with resentencing required if the sentence is determined to be unreasonable.[64]

Steanhouse further explicated the meaning of review of an out-of-guidelines sentence. The Court said that the question before it was not actually one of the standard for appellate review, as the there is no question, said the Court, that "the standard of review to be applied by appellate courts reviewing a sentence for reasonableness on appeal is abuse of discretion."[65] Rather, the question was the sentencing standard to be applied by the sentencing judge, who is no longer bound by the guidelines, but must consult and consider them. The Court said that "[t]he sticking point is the rule of decision to be applied by the trial courts: the principle of proportionality adopted by our opinion in Milbourn, or the federal statutory factors listed in 18 USC 3553(a). In other words, is the relevant question for appellate courts reviewing a sentence for reasonableness (1) whether the trial court abused its discretion by violating the principle of proportionality or (2) whether the trial court abused its discretion in applying the factors set forth in 18 USC 3553(a)?[66] The Court opted for the former; the rule of decision guiding the sentencing judge is proportionality, and then appellate courts must review of out-of-guidelines sentences "for an abuse of discretion, i.e., engage[] in reasonableness review for an abuse of discretion informed by the 'principle of proportionality' standard."[67]

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[64] Id., at 391-392.

[65] People v. Steanhouse, 500 Mich. at 471.

[66] Id. (emphasis supplied).

[67] Id., at 476

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The Court in Lockridge and Steanhouse thus established that review of a sentence above or below the guidelines is for reasonableness, and that it is the sentence itself that is reviewed for reasonableness informed by the principle of proportionality, not whether the trial judge has justified departing from the guidelines, as this re-establishes the guidelines as mandatory. This Court said in Lockridge that "A sentence that departs from the applicable guidelines range will be reviewed by an appellate court for reasonableness. . . . Resentencing will be required when a sentence is determined to be unreasonable."[68] There is no such thing as an "improper departure" from the guidelines range—the guidelines are only advisory—there are instead sentences that are above or below the guidelines that are an abuse of discretion when reviewed for reasonableness informed by the principle of proportionality.

Discussion

A. The sentencing court may consider lack of remorse in setting a reasonable sentence in light of the seriousness of the circumstances surrounding the offense and the offender

Defendant says that the trial court may not consider the lack of remorse of the defendant as a "basis for the sentencing departure."[69] But that is not the question. The question is whether in view of the seriousness of the circumstances surround the offense and the offender the sentence given was an abuse of discretion, and in setting the sentence a judge may consider a defendant's lack of remorse.

What the trial judge said, placed in context, was:

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[68] People v. Lockridge, at 392 (emphasis added).

[69] Defendant's brief, p. 36.

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> The Court is going to go above the guidelines for reasons that the Court has stated on the record. I believe that your behavior was egregious. I do not believe that you show any remorse. You took the stand in this case, and when you were asked — and I reviewed your testimony, I had the transcript, I reviewed it.
>
> And, when you were asked what you could do different, your response was that you wouldn't come to work that day, not that you would not shoot a person after spraying him with dog repellant.[70]

And so it appears that the lack of remorse, though noted by the judge, was not a factor in the decision that the guidelines were inadequate, as the sentencing judge stated that she was going to impose an out-of-guidelines sentence for reasons already stated on the record. But in any event, consideration of lack of remorse is permissible.

1. The metaphysical nature of the inquiry

Suppose parents leave their three children at home for several hours, with one admonition: no baseball playing in the yard. On their return, they see a broken window in the house. A neighbor working outside sees them, and says "yep, that ball was hit well!" The parents go inside, and see that the children's bat, ball, and gloves have been moved from their place when the parents left. They sit their three children down and say, "we have concluded that you broke the window playing baseball. Do you have anything to say for yourselves?" The first child says "I don't know how the window got broken." The second says nothing. The third says "I'm sorry for not obeying you." The parents say to the third child, "since you understand that you did wrong and are sorry, you are grounded for three days." To the other two children they say "you disobeyed and aren't even sorry; you are

[70] ST 24-25 (emphasis added).

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grounded for a week." Is there anything unjust—indeed is it not natural?—in punishing the remorseful child less severely than the two who expressed no remorse? Should the one who remained silent have been treated the same or less severely than the one who proclaimed his innocence? Is that a distinction without a difference? When viewed through the lens of a criminal prosecution, do these questions implicate the constitution in any fashion? Such is the metaphysical nature[71] of the inquiry.

2. The Michigan "rule" appears to have developed ex nihilo.

That consideration in setting sentence of a defendant's continued insistence of innocence is inappropriate had its genesis in Michigan in People v. Grable.[72] There, after the trial judge had convicted the defendant at a bench trial of assaulting police and resisting arrest, where defendant testified that an officer was the aggressor, the judge pressed the defendant at sentencing for an admission of guilt, asking the defendant whether he was saying that "every one of those witnesses was lying or are you just rationalizing these events again?" Defendant answered that "in the beginning it was as I testified on the stand." The trial judge responded that "the first problem in rehabilitation is to find a man that will at least be honest with himself and society. If I can't establish that, then, I don't have much hope on rehabilitation or probation," and sentenced defendant to 12 months to 2 years. This court found that improper, though as a matter of

[71] See opinion of Justice Cavanagh in People v. Wesley, 428 Mich. 708, 727 (1987), discussed infra: "While a defendant is certainly free to continue to assert innocence, a sentencing judge should not be required to tip-toe through the metaphysical distinctions required to separate that continued assertion from a lack of remorse."

[72] People v. Grable, 57 Mich. App. 184 (1974).

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ipse dixit, without citation of statute, constitutional provision, or precedent: "we believe that an accused has the right to maintain his innocence after conviction. No additional penalty is to be imposed for continuing to proclaim one's innocence. . . . . The court made a reference to probation but concluded that the defendant was not honest with himself and then imposed sentence. The plain inference is that if defendant will be honest with himself (admit the crime) rehabilitation through probation could be a possibility. But, since defendant refused, the sentence may have been enhanced."[73] The court vacated the sentence and remanded for resentencing by a different judge.

In People v. Gray[74] Grable was distinguished. At sentencing when the trial court gave the defendant the opportunity to allocute his response was "I would just like to know would it be okay if you'll appoint the State attorney for my appeal?" The trial judge then noted to defendant's counsel that defendant did not seem to be remorseful, but was only worried about an appeal. This court said that

> It would be unfair to assume that the trial court arrived at his conclusion that defendant was without remorse merely from the statement made by defendant at the sentencing proceeding. Indeed, the trial court specifically mentioned that the probation authorities had remarked upon defendant's lack of remorse for either this or his prior conviction. Also, it is unclear whether or not defendant's lack of regret was even a factor in the sentence he received. The court had recited many other items as factors he had considered in arriving at defendant's sentence.[75]

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[73] Id., at 188-189. Or was it that the judge did not discount the sentence as he would for a remorseful defendant? Such is the metaphysical nature of the inquiry.

[74] People v. Gray, 66 Mich. App. 101 (1975).

[75] Id., at 109.

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But the court went on to say that "if indeed the trial court did consider defendant's lack of remorse in passing sentence, such was not error."[76] Thus a distinction between consideration at sentencing of an assertion of innocence and consideration of a perceived lack of remorse was established.

The Court of Appeals addressed this distinction at length in People v. Yennior.[77] The majority opinion said that "[t]he error requiring resentencing in Grable was the court's attempt to reopen, at sentencing, the fact-finding process that a finding of guilt terminated."[78] It was the questioning of the defendant by the trial judge that the court saw as "plac[ing] defendant in a bind" of risking his appeal by cooperating, and "encouraging a spiteful sentence" if he did not.[79] The court concluded that "there is more than semantics involved in distinguishing between properly giving consideration to remorse or its absence at sentencing and improperly penalizing an assertion of innocence at sentencing,"[80] quoting from the concurring opinion of Judge Leventhal in Scott v. United States:[81]

> There is a natural, and I believe sound, disposition to adjust sanctions when an offender admits his responsibility. This blends in with a readiness to accept the conclusion that such a person has the stuff that portends future improvement. I dare say that many judges, possibly the overwhelming majority, respond in this way, and I am not ready, at least as of this writing, to say that their

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[76] Id., at 110-111.

[77] People v. Yennior, 72 Mich. App. 35 (1976), rev'd, 399 Mich. 892 (1977).

[78] Id., at 40.

[79] Id., at 41.

[80] Id.

[81] Scott v. United States, 419 F.2d 264 (CA DC, 1969).

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> approach is inadmissible. The wellsprings of human experience are known to every parent concerned with bringing up children, and who has invoked, consciously or not, Parson Weems' account of George Washington and the cherry tree.
>
> What we have before us is the difference of degree that amounts to a difference in kind. There is a line between responding favorably to an individual's sincere expression of remorse, and reacting in a hostile way because of a personal belief in the guilt of one who maintains his innocence and seeks review of the judgment.[82]

After his attorney pleaded with the court for a sentence to probation, defendant, when given his opportunity for allocution, had said "I would like to be given a chance to show you." The trial judge, responding to the plea for probation made by counsel, then said that "It is rather difficult for the court to relate to one in your position, Mr. Yennior, where you still deny that you committed the crime of which you have been convicted. The court doesn't hold that against you. One of the things the court always seeks in determining disposition in criminal matters is the attitude of the accused with respect to whether they admit — how readily they admit they have done wrong. I can't talk to you about that because you don't admit it. That's your prerogative. I don't hold that against you, I just want to explain it, it makes it difficult."[83] Given the absence of any question by the court designed to elicit a confession of guilt, as in Grable, the court concluded that the trial court had not "improperly enhanced defendant's sentence for refusing to admit guilt" but rather had taken into account a lack of expression of remorse, "an attitude as legitimate as the 'natural . . . disposition to adjust sanctions when an offender admits his responsibility . . . a readiness to

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[82] Id., at 282.

[83] People v. Yennior, at 43.

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accept the conclusion that such a person has the stuff that portends future improvement.'"[84] The sentence was affirmed.

Judge Riley, however, dissented, saying in effect that considering a continued assertion of innocence and considering a lack of expression of remorse "are but two sides of the same coin," and found that the majority, despite its "laudable effort to clarify this muddled area," had instead "perpetuate[d] the confusion."[85] This Court reversed the sentence and remanded for resentencing before a different judge in an unenlightening order. The order said simply "A court cannot base its sentence even in part on a defendant's refusal to admit guilt. See People v. Yennior, 72 Mich. App. 35, 45, 248 N.W.2d 680 (1976)."[86] The cited page in the order of this court's opinion, p. 45, is from then-Judge Riley's dissent, which simply noted the holding in Grable that "(W)e believe that an accused has the right to maintain his innocence after conviction. No additional penalty is to be imposed for continuing to proclaim one's innocence." And then came People v. Wesley.[87]

The opinion was severely fractured, the lead opinion being written by Justice Archer, joined by Justice Griffin. That opinion maintained the distinction between consideration of a refusal to admit guilt/maintaining innocence and consideration of a lack of remorse: "We would hold that while a sentencing court cannot, in whole or in part, base its sentence on a

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[84] Id., at 43-44 (emphasis supplied).

[85] Id., at 47.

[86] People v. Yennior, 399 Mich. 892 (1977).

[87] People v. Wesley, 428 Mich. 708 (1987).

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defendant's refusal to admit guilt . . . evidence of a lack of remorse can be considered in determining an individual's potential for rehabilitation." Because in the case before it "the trial court made clear when stating its reasons for exceeding the sentencing guidelines that defendant's assertion of innocence was not the reason for imposing the harsh sentence," Justice Archer's opinion affirmed the sentence given.[88]

The lead opinion noted what the trial judge had said at sentencing:

> though you deny the offense, Mr. Wesley, a jury found you guilty of the offense. There were three witnesses that testified that you did it. One of the problems here that I see, as far as any kind of rehabilitation is concerned, is that you do not feel you have a problem in this area and, therefore, any kind of rehabilitation or counseling would have to be on some sort of a forced effort. Because, if you don't believe you have a problem, which is your position, and you have a right to take that position, the hope of recovery or rehabilitation, however one wants to put it, diminishes, in my opinion, and makes the situation a difficult situation. If you believe you don't need counseling, then it has a negative impact on any counseling that's required by the Court. Also, that in—is a situation which leads the Court to believe that any kind of rehabilitation would have to take place in prison. Not only because of the less likelihood of rehabilitation taking place, but also the fact that it would be the threat to the safety of society, more particular in this case, the safety of children, if you're out in some sort of a program on the outside being forced to have this kind of counseling.[89]

Justice Archer's opinion concluded from this court's opinions on this issue that this court had focused on three factors: "(1) the defendant's maintenance of innocence after conviction, (2) the judge's attempt to get the defendant to admit guilt, and (3) the appearance that had the defendant affirmatively

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[88] Id., at 711.

[89] Id., at 711-712.

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admitted guilt, his sentence would not have been so severe. . . .if there is an indication of the three factors, then the sentence was likely to have been improperly influenced by the defendant's persistence in his innocence. If, however, the record shows that the court did no more than address the factor of remorsefulness as it bore upon defendant's rehabilitation, then the court's reference to a defendant's persistent claim of innocence will not amount to error requiring reversal."[90] Justice Archer, joined by Justice Griffin, endorsed this approach.[91]

Justice Brickley, joined by Justice Levin, said that the trial judge in fact had not relied on a lack of remorse in imposing sentence (which was also the basis of Chief Justice Riley's concurring opinion, see infra), and thus concurred in affirmance, but disagreed with the opinion of Justice Archer. That opinion, said Justice Brickley, rested "on a distinction between two concepts: a defendant's continued refusal to admit his guilt and a defendant's lack of remorse" which is "illusory, since the finding that the defendant in this case was unremorseful rested solely on his continued assertions of innocence."[92] Justice Brickley was baffled that the lead opinion could say that the sentencing judge considered "defendant's failure to appreciate the detrimental effect of his sexual actions, as opposed to his failure to admit guilt," without explaining "how a defendant who denies that the alleged sexual actions ever took place can 'appreciate' their detrimental effect."[93]

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[90] Id., at 713.

[91] "We would approve of the Court of Appeals analysis and would adopt its conclusion that a defendant's lack of remorse may be considered by a court in imposing sentence." Id., at 713-714.

[92] Id., at 720 (opinion of Justice Brickley).

[93] Id., at 721.

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Justice Brickley would have allowed consideration of "remorselessness" only when it exists apart from continued assertions of innocence, as where a defendant admits his guilt but has no remorse, or when a defendant, even though maintaining innocence, is callous or indifferent to the plight of the victim.[94] But since "the trial judge stated with specificity his reasons for departing from the guidelines and the 'lack of remorse' consideration was not among them," Justices Brickley and Levin concurred with the affirmance of the sentence.[95]

Justice Cavanagh wrote for himself and Justice Boyle, also concurring in the affirmance of the sentence, and concurring also in Justice Brickley's observation that "the distinction between a defendant's continued refusal to admit guilt and a lack of remorse is largely illusory,"[96] but to a different end. Justice Cavanagh wrote that he would not attempt the distinction, because "reality and common sense require the sentencing judge to act upon the basis of the central presumption that the defendant is guilty. Following a plea of guilty or a trial, a convicted defendant stands before the sentencing judge no longer clothed with the presumption of innocence. While a defendant is certainly free to continue to assert innocence, a sentencing judge should not be required to tip-toe through the metaphysical distinctions required to separate that continued assertion from a lack of remorse."[97] "[A] sentencing judge surely must begin with an honest belief that the defendant is in fact guilty," continued Justice Cavanagh, and "[g]iven the acceptance

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[94] Id., at 725.

[95] Id., at 726.

[96] Id., at 726-727 (opinion of Justice Cavanagh).

[97] Id., at 727.

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of defendant's guilt as a premise, the sentencing judge's perception of the defendant's truthfulness (lack of credibility) or lack of remorse (refusal to acknowledge guilt) is, to a certain degree, predetermined. The logic is sophistic which would require that this perception merely be unstated on the record."[98] Chief Justice Riley also concurred, finding that the trial judge had not relied in sentencing on either lack of remorse or an assertion of innocence, and so it was "unnecessary to decide whether the lack of remorse, inferred from the defendant's refusal to admit guilt of the crime of which he was convicted, may properly have been relied upon to increase the defendant's sentence."[99]

Four justices, then—a majority of the Court—found the distinction between consideration of a continued assertion of innocence and consideration of a lack of remorse to be illusory. But they did so to different ends, and thus the apparent rule is that of the lead opinion.[100]

Since Wesley this Court has not again attempted to establish some clarity on the matter. In a peremptory order in People v. Jackson[101] the Supreme Court relied on Justice Archer's opinion in Wesley in setting aside a sentence where the trial judge had said that "she did not believe that defendant was entitled to the same sentence as his accomplices, 'who were able to step up to the plate and say what they did and to admit their guilt,'

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[98] Id.

[99] Id., at 727-728 (opinion of Justice Riley).

[100] See e.g. People v. Stewart, 219 Mich. App. 38, 45 (1996); People v. Payne, 285 Mich. App. 181, 193 (2009); People v. Dobek, 274 Mich. App. 58, 104 (2007). See also People v. Houston, 448 Mich. 312, 323 (1995).

[101] People v. Jackson, 474 Mich. 996 (2006).

while defendant subjected the victims to 'having to testify.'" The Court set aside the sentence on the ground that "A sentencing court, cannot, in whole, or in part, base its sentence on a defendant's refusal to admit guilt," citing Wesley and Yennior.

Here the matter rests.[102] A doctrine, which has never been moored to any constitutional or statutory provision, appears to stand,[103] with a majority of the justices writing in a single case describing it as "largely illusory," but to different ends (compare the opinions of Justices Brickley and Cavanagh in Wesley). Is there a basis in the constitution for limiting sentencing

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[102] See e.g. People v. Dobek, supra; People v. Payne, 285 Mich. App. 181, 193–194 (2009).

[103] See People v. Calabro, 166 Mich. App. 389, 394 (1988):

> [In] People v. Wesley . . . two justices of the Supreme Court held: "[W]hile a sentencing court cannot, in whole or in part, base its sentence on a defendant's refusal to admit guilt . . . evidence of a lack of remorse can be considered in determining an individual's potential for rehabilitation." . . . In the concurring opinion of Justice Brickley in Wesley (concurring in the result of the case since he did not think the trial court relied on defendant's lack of remorse to support the sentence imposed), the conclusion was drawn that a distinction between a defendant's continued refusal to admit guilt and a lack of remorse was largely illusory. Justice Levin concurred with Justice Brickley, and Justice Cavanagh, writing separately, reached the same result, with Justice Boyle concurring. These four opinions amount to an imprecision which affirms the Court of Appeals. Not resonantly perhaps, but that may come later (emphasis supplied).

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judge's consideration of lack of remorse or assertion of innocence (if there be a distinction) at sentencing?

3. The Fifth Amendment does not support the Michigan "rule"

It has been argued in some cases that the Fifth Amendment precludes consideration of lack of remorse—assuming for the moment that it can be distinguished from maintaining innocence—in sentencing. But there are two difficulties with this approach: 1) it is applicable only when a defendant remains silent and not when he says something showing a lack of remorse, and 2) it is not justified by the Fifth Amendment as construed by the United States Supreme Court.

The lead case is Mitchell v. United States.[104] The Court said that the question was "whether, in determining facts about the crime which bear upon the severity of the sentence, a trial court may draw an adverse inference from the defendant's silence," and held that "a sentencing court may not draw the adverse inference"[105] because the Fifth Amendment precludes it.[106] But what did the Court mean by "determining facts about the crime which bear upon the severity of the sentence"? This was a pre-Apprendi[107] case, and thus the Court had not yet held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and

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[104] Mitchell v. United States, 526 U.S. 314 119 S. Ct. 1307, 143 L. Ed. 2d 424 (1999).

[105] Id., 119 S. Ct. at 1309.

[106] Id., 119 S. Ct. at 1315.

[107] Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).

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proved beyond a reasonable doubt."[108] The defendant was charged with conspiring to deliver five or more kilograms of cocaine. The defendant pled guilty, and at that time the drug quantity, which determined the severity of the sentence, was to be determined at her sentencing hearing. Based on testimony the court found that defendant had made deliveries that totaled over the threshold of 5-kilograms, which mandated an enhanced sentence of 10 years. "One of the things" persuading the court to rely on the testimony of the codefendants was defendant's "not testifying to the contrary." The sentencing judge said to defendant "I held it against you that you didn't come forward today and tell me that you really only did this a couple of times. . . . I'm taking the position that you should come forward and explain your side of this issue."[109]

Thus, when the Court said that "To say that an adverse factual inference may be drawn from silence at a sentencing hearing held to determine the specifics of the crime is to confine Griffin [110] by ignoring Estelle.[111] We are unwilling to truncate our precedents in this way," so that ""[t]he Government retains the burden of proving facts relevant to the crime at the sentencing phase and cannot enlist the defendant in this process at the expense of the self-incrimination privilege,"[112] the Court was referring to

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[108] Id., 120 S. Ct. at 2362–2363.

[109] Id., 119 S. Ct. at 1310-1311.

[110] Griffin v. California, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965).

[111] Estelle v. Smith, 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981).

[112] Id., 119 S. Ct. at 1316. Justice Scalia cogently disagreed with this proposition, in the pre-Apprendi world, for himself and three other justices:

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the establishment of facts that enhance the statutory penalty. After Apprendi this can only be done by a determination by the fact-finder beyond a reasonable doubt, and Mitchell means that in this process the silence of the defendant cannot be used against him or her in establishing the facts requiring sentence enhancement; in the case of defendant Mitchell in the pre-Apprendi world, the sentencing judge could not take into account the silence of the defendant as a factor in establishing the fact that enhanced the statutory penalty.

Arguments have been made that Mitchell compels the result that consideration of silence as lack of remorse in setting sentence within statutory limits violates the Fifth Amendment, but this is not so, and is not what happened here, the judge taking into account defendant's statement expressing no remorse. The Supreme Court of Wyoming considered the question in Smith v. State,[113] observing properly that, as the People have pointed out, "[t]o correctly understand the holding in Mitchell, one must

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> If . . . the Court ultimately decides—in the fullness of time and after a decent period of confusion in the lower courts—that the extension of Griffin announced today is not limited to "determining facts of the offense [that enhance the statutory penalty]," then it will have created a system in which we give the sentencing judge access to all sorts of out-of-court evidence, including the most remote hearsay, concerning the character of the defendant, his prior misdeeds, his acceptance of responsibility and determination to mend his ways, but declare taboo the most obvious piece of firsthand evidence standing in front of the judge: the defendant's refusal to cooperate with the court. Such a rule orders the judge to avert his eyes from the elephant in the courtroom when it is the judge's job to size up the elephant. . . . the Court's extension of Griffin is a mistake.

119 S. Ct. at 1321.

[113] Smith v. State, 119 P.3d 411 (Wyo. 2005).

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understand the particular facts from which the holding emerged."[114] Smith alleged that the trial judge erred in considering lack of remorse, pointing to the trial judge's reading at sentence of that part of the presentence report concerning his lack of remorse and his maintaining his innocence, and arguing that this violated the Fifth Amendment as construed in Mitchell. But the Wyoming Supreme Court noted that the "critical fact about Mitchell's crime bearing upon the severity of her sentence was the drug quantity attributable to her," that this critical fact was contested at sentencing, and that the Supreme Court held that "an "adverse inference as to the existence of that critical fact could not be drawn from Mitchell's silence about that critical fact."[115] But the sentencing judge in Smith was not making a factual finding that, as in Mitchell, enhanced the statutory range of the sentence. Rather, the "jury which had found Smith guilty of crimes against . . . had already determined the critical facts which had bearing upon the severity of the sentences. No contested critical fact about those crimes which had bearing upon the severity of the sentences remained for the prosecution to prove. Mitchell is inapposite and of no value to Smith in this aspect of his appeal."[116] In a post-Apprendi world, facts that enhance the statutory range must be found beyond a reasonable doubt by the fact-finder.

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[114] Id., at 423.

[115] Id., at 424.

[116] Id.

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In the federal circuits, the course of true law has not run smooth.[117] Laying out the disarray is *Miller v. Lafler*,[118] a curiously unpublished decision from the Sixth Circuit concerning habeas corpus and a Michigan conviction. The offenses were home invasion and 2nd-degree criminal sexual conduct. At sentencing, defendant denied the event had happened. The trial judge said to defendant "to be honest with you, if you wanted to do your family a favor, you would turn to them and you would admit [the crime] to them. You would say, look I absolutely did this. Because they need to know that you did it, so they can get you help. . . . Tell them what you did, so that they can go on with their lives and not think that you've been railroaded. But you're not gonna do it. So everyone continues to suffer." Defendant responded "Because I didn't do it."[119] The trial judge imposed discretionary consecutive sentences at the high end of the sentencing guidelines, and said "based on the discussion that I've had here, I'm convinced that you've not learned anything. That you have no remorse for what you've done. And—and because of that, I am going to exercise my discretion to run consecutive instead of concurrent."[120] This court affirmed, holding that "[a]lthough defendant maintained his innocence at sentencing, and the trial court commented on it, the trial court did not attempt to get defendant to admit guilt or indicate that if he did so, his sentence would be less severe." This court concluded that ""[m]any of the trial court's comments regarding

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[117] Cf. *Chapman v. United States*, 365 U.S. 610, 618, 81 S. Ct. 776, 780, 5 L. Ed. 2d 828 (1961) (Frankfurther, J., concurring): "The course of true law pertaining to searches and seizures, as enunciated here, has not—to put it mildly—run smooth."

[118] *Miller v. Lafler*, 505 F. App'x 452 (CA 6, 2012).

[119] Id., at 455.

[120] Id.

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defendant's refusal to be honest with his family related to defendant's potential for rehabilitation, i.e., that defendant would not receive the help he needed and would likely re-offend, which was a proper factor for the trial court to consider when fashioning a sentence," citing *Wesley*.[121] The Supreme Court denied leave, but the federal district court on habeas granted relief, finding that the trial court had violated *Mitchell*, in that "the trial judge did not merely comment upon petitioner's lack of remorse, 'but referred negatively directly and indirectly to [defendant's] 'continued assertion of his belief in his innocence.'"[122] The Sixth Circuit Court of Appeals in turn reversed.

The Sixth Circuit laid out the differing views in the federal circuits, observing that "*Mitchell* has divided courts across the country."[123] The court discerned two groups of decisions: "those cases that expand *Mitchell*'s underlying principle to related but ultimately different legal questions, and those cases that take *Mitchell*'s limitation at face value and restrict it to its express rule of decision."[124] As illustrative of the second group, the court pointed to the Seventh Circuit decision in *Burr v. Pollard*,[125] which held that "silence can be consistent not only with the exercise of one's Fifth Amendment right, 'but also with a lack of remorse,'" and said that the "latter

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[121] *People v. Miller*, No. 286771, 2010 WL 446050, at 3 (2010).

[122] *Miller v. Lafler*, 2011 WL 4062410, at 7 (E.D. Mich. 2011), rev'd, 505 F. App'x 452, 2012 WL 5519677 (CA 6, 2012).

[123] *Miller*, 505 F. App'x at 461, citing *United States v. Caro*, 597 F.3d 608, 629 (CA 4, 2010) as "collecting conflicting cases on *Mitchell*'s applicability to the nonstatutory sentencing factor of remorse."

[124] Id.

[125] *Burr v. Pollard*, 546 F.3d 828 (CA 7, 2008).

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is properly considered at sentencing because it speaks to traditional penological interests such as rehabilitation (an indifferent criminal isn't ready to reform) and deterrence (a remorseful criminal is less likely to return to his old ways)."[126]

The court concluded from its review that "[b]oth the express language and the majority circuit interpretation of Mitchell favor a narrow application of the no-adverse-inference rule." But in the end, the case being on federal habeas review, the court did not have to "decide the correct interpretation of Mitchell," as on habeas it was "enough that fair minded jurists can and do disagree on the applicable scope of Mitchell" for this court to be upheld.[127]

Also of note is that in the federal system there exists a statutory "acceptance of responsibility" factor in the calculation of the guidelines range, which lowers the range.[128] In Mitchell "the Supreme Court

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[126] Miller, at 461.

The court also noted that "Additionally, three of our sister circuits have balked at and expressed apparent skepticism toward expanding Mitchell's no-adverse-inference rule beyond its clear holding. United States v. Seward, 583 F.3d 1045, 1048–1049 (8th Cir.2009); Lee v. Crouse, 451 F.3d 598, 605–606 (10th Cir.2006); United States v. Romero–Rendon, 220 F.3d 1159, 1163 n. 4 (9th Cir.2000)."

[127] Id., at 461, 462. The court said that "To the extent that Miller asks us to expand Mitchell, he asks to grant relief based upon a rule that is not "clearly established Federal law, as determined by the Supreme Court of the United States" (emphasis supplied).

[128] (a) If the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by 2 levels.

(b) If the defendant qualifies for a decrease under subsection (a), the offense level determined prior to the operation of subsection (a) is level 16 or

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deliberately . . . left unresolved [] whether, consistently with the Fifth Amendment, a court may rightfully consider a defendant's silence or refusal to answer questions about relevant conduct when deciding whether to grant § 3E1.1's downward adjustment for acceptance of responsibility."[129] This consideration of acceptance of responsibility—which means that one not accepting responsibility receives a higher guidelines range—has been upheld against a Mitchell Fifth Amendment challenge; "rewarding a defendant who expresses contrition and cooperates with the government is not the same as compelling him to incriminate himself. . . . 'To hold the acceptance of responsibility provision unconstitutional would be to say that defendants who express genuine remorse for their actions can never be rewarded at sentencing. This the Constitution does not require.'"[130]

> greater, and upon motion of the government stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by 1 additional level.
>
> U.S.S.G. 3E1.1

Though the commentary says the reduction "is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse," it further says that "Conviction by trial, however, does not automatically preclude a defendant from consideration for such a reduction." U.S.S.G. 3E1.1 (Commentary). In any event, the Fifth Amendment question is the same.

[129] United States v. Preciado-Delacruz, 801 F.3d 508, 511 (CA 5, 2015).

[130] Id.

And see United States v. Cruzado-Laureano, 527 F.3d 231, 237 (CA 1,

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This returns the matter to the points made by then-judge Riley, by Justice Cavanagh, joined by Justice Boyle, and by Justice Brickley, joined by Justice Levin. Considering a continued assertion of innocence and considering a lack of expression of remorse "are but two sides of the same coin"; the "distinction between a defendant's continued refusal to admit his guilt and a defendant's lack of remorse" is "illusory"; and "[w]hile a defendant is certainly free to continue to assert innocence, a sentencing judge should not be required to tip-toe through the metaphysical distinctions required to separate that continued assertion from a lack of remorse." Justice Cavanagh's statement that "[A] sentencing judge surely must begin with an honest belief that the defendant is in fact guilty," so that "[g]iven the acceptance of defendant's guilt as a premise, the sentencing judge's perception of the defendant's truthfulness (lack of credibility) or lack of remorse (refusal to acknowledge guilt) is, to a certain degree, predetermined. The logic is sophistic which would require that this perception merely be unstated on the record" has much force. To sentence a defendant who expresses remorse less severely that a defendant who remains silent or expresses innocence is to treat more severely a defendant who remains silent or expresses innocence than one who expresses remorse. Is the one being rewarded or the other punished? Justice Cavanagh was right that "a sentencing judge should not be required to tip-toe through the metaphysical distinctions required to separate that continued assertion [of innocence] from

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2008): "'[N]ot every burden on a right or encouragement to waive a right is invalid,' . . . and it is well established that lack of remorse is a proper consideration in sentencing . . . United States v. Thompson, 476 F.2d 1196, 1201 (7th Cir.1973) ('A show of lenience to those who exhibit contrition by admitting guilt does not carry a corollary that the Judge indulges a policy of penalizing those who elect to stand trial.'). Accordingly, we find no error in the court's reliance on lack of remorse among the factors it considered in setting appellant's sentence at the high end of the applicable Guidelines range."

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a lack of remorse," and that to so require simply requires that the trial judge's perception "merely be unstated on the record." The approach of Justices Cavanagh and Boyle should be adopted.

4. The trial court did not aggravate defendant's sentence because of any continued assertion of innocence

Here, in any event, the trial judge considered lack of remorse, not a continued assertion of innocence, or silence. Defendant had taken the life of an unarmed man, and his only expression of regret was that he came to work that day, not that he took a life (that he took it was uncontested, the issue being self-defense, which the jury rightly rejected). As in this court's discussion in *Miller*, "the trial court did not attempt to get defendant to admit guilt or indicate that if he did so, his sentence would be less severe." Though it does not appear that lack of remorse aggravated the sentence, its consideration by the trial judge was proper in any event.

B. The trial court did not aggravate defendant's sentence based on conduct for which he was acquitted

The sentencing judge gave her reasons for departing from the guidelines, and when so doing noted her disagreement with the jury with regard to the 1st-degree murder charge, the jury returning a verdict of 2nd-degree murder:

> While the Jury has spoken in this case, the Court respects the Jury's verdict. The Court doesn't agree with it. This Court believes that, Mr. Jaber, you had time to reflect on your actions and to formulate how you would proceed. . . . you invited Mr. Roberts to stick around so that you could further, whatever was going on there. You came from a place of safety, and prior to doing that, you invited Mr. Roberts back behind bullet proof glass twice. Once you exited from behind the bullet proof glass, you sprayed Mr. Roberts in the face, and then you shot him with another person in very close

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> proximity to you. So much so, that when she testified, and we also saw it on the video, she had to say, "hey, I'm right here." You could have shot her as well.
>
> And, then, when the Court reviews the presentence report, the Court finds out that you did not spray Mr. Roberts with mace, you sprayed him with dog repellant. You did not see the humanity in Mr. Roberts.
>
> The Court believes that your actions were egregious and they were avoidable. The first thing you did after you shot Mr. Roberts, you lied about what you did to the other person that was in the gas station. You told her that the gun was a blank. You then picked up the bullet, walked back and tried to flush it. You did not call for assistance for Mr. Roberts, you first watched the video in the gas station so you could get your story together. You didn't see the humanity in Mr. Roberts.
>
> The Court is going to depart from the guidelines. The Court is going to go above the guidelines for reasons that the Court has stated on the record. I believe that your behavior was egregious.[131]

Under the guidelines, a sentencing court scores 50 points if the offender had premeditated intent to kill, and 25 points if the offender had an unpremeditated intent to kill; the trial judge must score the variable consistent with the jury verdict, as the trial court did, unless the judge has information that was not presented to the jury.[132]

In People v. Beck[133] the Michigan Supreme Court held that the Sixth and Fourteenth Amendments preclude the use by a sentencing judge of acquitted conduct to increase a defendant's sentence. Though the trial judge here noted her disagreement with the jury verdict on 1st-degree murder, she

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[131] ST, 23-24.

[132] MCL 777.36.

[133] People v. Beck, 504 Mich. 605, 618 (2020).

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said that she respected it, and did not enhance her sentence based on that disagreement. Rather, the sentencing judge noted particular facts established on the record:

- you invited Mr. Roberts to stick around;
- you came from a place of safety, and prior to doing that, you invited Mr. Roberts back behind bullet proof glass twice;
- once you exited from behind the bullet proof glass, you sprayed Mr. Roberts in the face, and then you shot him with another person in very close proximity to you. So much so, that when she testified, and we also saw it on the video, she had to say, "hey, I'm right here." You could have shot her as well.
- you did not spray Mr. Roberts with mace, you sprayed him with dog repellant. You did not see the humanity in Mr. Roberts.
- the first thing you did after you shot Mr. Roberts, you lied about what you did to the other person that was in the gas station. You told her that the gun was a blank;
- you then picked up the bullet, walked back and tried to flush it.
- you did not call for assistance for Mr. Roberts, you first watched the video in the gas station so you could get your story together;
- you didn't see the humanity in Mr. Roberts.

While the trial judge, then, may have noted her respectful disagreement with the jury verdict, there is no indication that she increased or aggravated defendant's sentence based on that conduct of acquittal, and it is aggravation of the sentence because of such a consideration that is prohibited by Beck.[134]

[134] For purposes of preservation, the People would note their position that Beck is inconsistent with authority from the United States Supreme Court and the federal circuits, and was wrongly decided.

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C. The sentence was within the range of principled outcomes, considering the seriousness of the circumstances surrounding the offense and the offender

The sentencing judge concluded that defendant's conduct was egregious for the reasons noted above, and that a sentence of a minimum of 420 months was appropriate; the advisory, non-presumptive guidelines top end was 270 months, and so the sentence given was 55.5% higher than the top end of the guidelines. But the question is not whether a departure from the guidelines was justified by substantial or compelling reasons, or even whether the sentence give is "more proportionate" than a guidelines sentence, but whether the sentence itself, which may not be "impermissibly measured" by "reference to deviations from the guidelines," is "proportionate to the seriousness of the circumstances surrounding the offense and the offender." And even here this is essentially the test for the sentencing judge; the appellate standard is abuse of discretion; that is, whether the sentence given is within the range of principled outcomes, or, as put in the federal system where sentences are reviewed for reasonableness, "we will affirm it unless no reasonable sentencing court would have imposed the same sentence on that particular defendant for the reasons the district court provided."[135] This cannot be said about the sentence imposed by the trial judge here, for the reasons given, and given the circumstances surrounding the offense. The sentence was properly affirmed.

[135] United States v. Tomko, 562 F.3d 558, 568 (CA 3, 2009).

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Relief

WHEREFORE, the People request that leave to appeal be denied.

Respectfully submitted,

KYM WORTHY
Prosecuting Attorney
County of Wayne

JON W. WOJTALA
Chief of Research, Training,
and Appeals

/s/ Timothy A. Baughman
_____
TIMOTHY A. BAUGHMAN (24381)
Special Assistant Prosecuting Attorney
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Detroit, Michigan 48226
(313) 224-5792

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with AO 2019-6. The body-text font is 12 point Century Schoolbook set to 150% line spacing. This document contains _13,076_____ countable words.

/s/ Timothy A. Baughman
_____
TIMOTHY A. BAUGHMAN (P24381)
Special Assistant Prosecuting Attorney

SENTENCING INFORMATION REPORT

Offender: Jaber Ram Ali SSN: 000-00-0000 Workload: 1938 Docket Number: 18005065-01-FC

Judge: The Honorable Regina D. Thomas Bar No.: P53883 Circuit No.: 03 County: 82

Conviction Information

Conviction PACC: 750.317 Offense Title: Homicide - Murder, Second Degree

Crime Group: Person Offense Date: 05/13/2018

Crime Class: Murder II Conviction Count: 1 of 2 Scored as of: 05/13/2018

Statutory Max: Life Habitual: No Attempted: No

Prior Record Variable Score

PRV1: 0 PRV2: 0 PRV3: 0 PRV4: 0 PRV5: 0 PRV6: 0 PRV7: 0

Total PRV: 70

PRV Level: B A

Offense Variable

OV1: 25 OV2: 5 OV3: 25 OV4: 0 OV5: ~~0~~ 15 OV6: 25 OV7: 0

OV8: 0 OV9: 0 OV10: 0 OV11: 0 OV12: 0 OV13: 0 OV14: 0

OV16: 0 OV17: 0 OV18: 0 OV19: ~~0~~ 10 OV20: 0

Total OV: ~~80~~ 105

OV Level: III

Sentencing Guideline Range

Guideline Minimum Range : ~~162~~ 270 to 270 ~~270~~ L

Minimum Sentence

	Months	Life
Probation:		
Jail:		
Prison:	420-600	

Sentence Date: 12/05/2019

Guideline Departure: yes

Consecutive Sentence: NO

Concurrent Sentence: Yes

Sentencing Judge: Regina Thomas Date: 12/5/19

Prepared By: WISSER, BRITTANI

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MICHIGAN DEPARTMENT OF CORRECTIONS
PRESENTENCE INVESTIGATION REPORT

CFJ-145
Rev. 11/09

Honorable: Regina D. Thomas **County:** Wayne County **Sentence Date:** 12/05/2019

MDOC Nbr.: 602155 **Attorney:** James C. Thomas **Appointed/Retained:** Retained

Defendant: Jaber, Rami Ali **Age:** 28 **D.O.B.:** 10/01/1991

CURRENT CONVICTION(S)

Final Charge(s)			Max Yrs	Max Mo.	Max Days	Jail Credit Days	Bond	Convicted By	Conviction Date
Charge(1): 18005065-01-FC	750.317	Homicide - Murder, Second Degree	LIFE			0	N/A	Jury	09/26/2019
Charge(2): 18005065-01-FC	750.227BA	Weapons - Felony Firearms	2			572	N/A	Jury	09/26/2019

SOR Required: No **Date SOR Completed:** N/A

Plea Agreement: N/A - Defendant was found guilty by Jury verdict on 09/26/2019. **HYTA:** No

Pending Charges: None **Where:** N/A

Status at Time of Offense: District Court Probation

PRIOR RECORD

Conviction: Felonies: 0 **Misdemeanors:** 1 (2?) **Juvenile Record:** No

Probation: Active: Yes **Former:** Yes **Pending Violation:** No

Parole: Active: No **Former:** No **Pending Violation:** No

Current Michigan Prisoner: No

Currently Under Sentence: No

Sentence Date	Offense	County/State	Sentence	Min.	Max.
N/A					

PERSONAL HISTORY

Where Employed: Unemployed **Education:** Twelfth Grade

Psychiatric History: No **Physical Handicaps:** No **Marital Status:** Single

Substance Abuse History: No

What	How Long
None	

Investigating Agent: BRITTANI WISSER **Caseload No.:** 1938 **Date:** 10/29/2019
Worksite: Wayne/Detroit Court Serv./Probation **Phone No:** (313) 224-7935

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DEPARTMENT OF CORRECTIONS RECOMMENDATION

Jail Credit:

DOCKET NO. 18-005065-01-FC			
Date(s)	**Action**	**Sentence Details**	**Days**
05/13/2018-12/05/2019	Arrest		572
		Total Days Jail Credit	**572**

Count 1 - The Michigan Department of Corrections recommends a term of incarceration. Count 2 - Incarceration is mandated by statue. Consecutive sentencing applies.

1. (08.2) You must pay a crime victim's assessment in the amount of $130.00 as ordered by the court.

2. (08.4) You must pay court costs of $1,300.00 as ordered by the court.

3. (08.18) You must pay $136.00 State Cost as ordered by the Court.

4. (08.16) You must comply with DNA testing and pay a $60.00 fee as ordered by the Court.

Supervisor: DEBRA A WARREN **Date:** 10/29/2019

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Evaluation and Plan

Appearing before the Court for sentencing before the Honorable Regina D. Thomas, 3rd Circuit Court, is Rami Ali Jaber. He was convicted of (1) Count of Homicide Murder-2nd Degree and (1) Count of Weapons Felony Firearm which he was found guilty by a Jury Verdict on 09/26/19. The defendant will be before the Honorable Regina D. Thomas on 12/05/19 for sentencing under Docket #18-005065-01-FC.

The defendant is a 28-year-old (DOB: 10/01/91) male who reported residing at the address of 27285 W. Pleasant Ridge Dr., Dearborn Heights, Michigan, 48127 with his brother, Mohammed Jaber. He stated he has since lost his home due to his incarceration. The defendant was positively identified by his Wayne County Jail Bracelet, Wayne County Sheriff's, information obtained from a Detroit Police Department Investigator's Report and LEIN. He reports being born in Mecca, Saudi Arabia and relocated to the United States as a young child. The defendant's mother provided a copy of his Certificate of Citizenship No. A1554712 dated 05/26/99. He reported being a United States citizen and verbally provided his Social Security Number which matched the number listed in LEIN. Writer established contact with the defendant's mother, Leila Jaber, via telephone 09/30/19, at which time she was able to verify the defendant's residence, legal name, birthdate, citizenship, family history, substance abuse, employment, and education history. She further stated the defendant has love and support and they will be present for his sentencing.

An Immigration Notification form (CFJ 204) was completed and sent to the U.S. Immigrations and Customs Enforcement.

Positive attributes for the defendant include his cooperation during the Presentence Investigation interview. He reports having the support of his immediate family members and significant other. A copy of the defendant's high school diploma was received from his mother which indicates he obtained a High School Diploma from Westwood Alternative High School on 06/11/09. A certificate of completion for Cell Phone Repair Academy was also received and indicated the defendant earned the certificate for cell phone repair on 02/24/17. At the time of the instant offense the defendant reported being the business owner at the Stop N Shop Petro Mart, INC which was verified on LARA with a date of Incorporation of 12/12/11. He reported being in good physical and mental health, denying the need for physical care or psychiatric care. Lastly, he denied having any assets, liabilities, military involvement and or past or present gang affiliations. He disclosed losing his house, job and everything else on the day of the instant offense, 05/13/18.

Negatively speaking, the defendant disclosed previously experimenting with alcohol and marijuana, stating he tried marijuana at 17 and alcohol at 21. He reports discontinuing his use and has not used marijuana since 2008 and last used alcohol in 2012. He denied being under the influence of any mind-altering substances at the time of his arrest. He stated he has never abused any legal or illegal substances and has never participated in substance abuse treatment. At the time of his arrest, the defendant was on active probation at the 19th District Court for Littering. The case has since been closed as of 08/03/18. An email request was sent to Agent Breanna Petriches requesting a probation adjustment, which is contained in the report.

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The defendant does not appear to have any juvenile contacts with the criminal justice system. As an adult, He has one prior misdemeanor conviction for Littering for which he received 6 months' probation, a fine and community service. The case has been closed as of 08/03/18. He does not appear to have any other contacts with the criminal justice system, nor does he have any active or pending warrants. Per LEIN the defendant had a Concealed Pistol License dated 10/19/12.

Offender's Name	Offender Number	Assessment Date
Jaber, Rami	602155	09/30/2019
Core COMPAS Need Scale	**Score**	**Supervision Recommendation**
Criminal Associates/Peers	Unlikely	None
Criminal Opportunity	Probable	Will be assessed upon incarceration
Leisure/Recreation	Unlikely	None
Social Isolation	Highly Probable	Will be assessed upon incarceration
Substance Abuse	Unlikely	None
Criminal Personality	Probable	Will be assessed upon incarceration
Cognitive Behavioral	Unlikely	None
Family Criminality	Unlikely	None
Vocational/Education	Probable	Will be assessed upon incarceration
Residential Instability	Probable	Will be assessed upon incarceration
Social Environment	Unlikely	None

The State of Michigan sentencing guidelines range is 162 to 270 months. He was screened for as ineligible for P.A. 511 services and the S.A.I. program due to his high guideline score. The defendant was found guilty by a Jury Verdict on 09/26/19 for the charges Homicide Murder - 2nd Degree and Weapons Felony Firearm. The Michigan Department of Corrections respectfully recommends a term of incarceration. The offense Weapons Felony Firearm is not contained in the Michigan Sentencing Guidelines. There is a mandatory sentence of two years incarceration. As it pertains to restitution the complainant's family is not requesting any restitution at this time.

Agent's Description of the Offense

The following information was garnered from a Detroit Police Department Investigator's Report dated 05/13/18:

On 05/13/18, "Officers Dombrowski and Shukur made the location of 17804 W. McNichols Rd, Citgo Gas Station for a shooting/cutting/stabbing police run. Medic 22 was at the scene and conveyed the victim, Derek Leon Roberts to Sinai Grace Hospital. Assisting Scout 8-7 made the location at Sinai Grace and the condition of the victim per Dr. Malik was deceased, chart #20005411570. Officers Dombrowski and Shukur spoke with employee (defendant) Rami Ali Jaber who stated he was armed with a weapon which officers recovered. The defendant stated the victim was causing a disturbance at the location. After a verbal altercation between the two, the defendant asked the victim to leave the location multiple times, which he refused. The victim was not allowing customers to purchase items and began grabbing candies from the front counter and unwrapping them

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and throwing them on the floor.

The defendant, Mr. Jaber stated he opened the clerk glass door and maced the victim which he missed with the mace. The victim turned around and charged at the defendant at which time the defendant stated he felt threatened by the individual and aimed his gun (Black Remington RM 350 containing six live rounds in the magazine and one live round in the chamber) at the unknown person and fired one live round into the victim's body. The defendant then closed the secured glass door and made the 911 call and reported he shot the unknown offender for self-defense. The defendant told officers it all happened so fast and he blacked out. Video surveillance camera at the location was reviewed and the defendant was arrested for negligent homicide.

Officers spoke to another employee, Rojgar Saleh who informed officers the unknown victim arrived at the location on his cell phone and appeared to be agitated and angry from the phone conversation. He requested to buy cigarettes from Mr. Saleh but Mr. Saleh was unable to understand his request. The victim was asked to repeat his request of what he wanted, and he began yelling and cursing at Mr. Saleh. Mr. Saleh indicated the victim did not have enough money to purchase the cigarettes and a short argument between them began. Mr. Saleh gave the cigarettes to the victim for $7.00 and asked the victim to leave the store at which time he refused to leave and was not allowing other customers to purchase items. Mr. Jaber then began to argue with the victim and the victim (Derek Leon Roberts) began grabbing candies from the front counter and throwing them at the floor. At that time the defendant, Mr. Jaber opened the secured glass door, maced and shot the unknown person one time in the center of the chest."

Consecutive Sentences

The Prosecuting Attorney's Office did not provide a statement with regards to consecutive sentencing. Due to the Felony Firearm conviction, consecutive sentencing applies.

Victim's Impact Statement

Writer telephoned the complainant's mother, Joanne Roberts, and a voice mail was left requesting a return phone call as it pertains to a Victim's Impact Statement. Writer also telephoned the complainant's father, Mr. Carnell Roberts who indicated the family is not seeking any restitution at this time. He stated the Detroit Gas Station Owners Association covered all funeral expenses for his son. He indicated he, the complainant's mother, Joanne Roberts and brother, Carnell Roberts plan to provide a verbal statement at the time of sentencing on 12/05/19. He indicated the family has not sought out psychological services at this time nor are they receiving therapy or counseling. Per Mr. Rodgers, he believes an appropriate sentence for the defendant would be 35 years in the Michigan Department of Corrections. A Victim's Impact Statement was also e-mailed to Mr. Rodgers on 10/01/19.

Defendant's Description of the Offense

The defendant was interviewed at the Wayne County Jail on 09/30/19 at which time he declined to make a

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written statement and stated he would like to provide a statement at the time of sentencing.

/s/ Rami Jaber 09/30/19

Criminal Justice

Juvenile History:

This investigation revealed no juvenile criminal history for this offender.

Adult History:

NO. 1 OF 2

Offense Date:	12/11/2017
Status at Time of Offense:	Not Applicable
Arrest Date:	12/11/2017
Arresting Agency:	Dearborn Police Department
Charge(s) at Arrest:	Poss Paraphernalia
Court of Jurisdiction:	19th District Court, case #17C26087OM
Final Charges:	Littering (M)
Conviction Date/Method:	02/26/2018 / Plea
Sentence/Disposition:	6 months probation, $715 fine, 1 day jail, 3 days C.S. in lieu of jail.
Sentence Date:	02/26/2018
Attorney Present:	Unknown
Discharge Date:	08/03/2018
Notes:	Per Probation Officer Petriches, the defendant's probation was closed successfully on 08/03/2018. He did not appear to have any violations through his term of probation.

NO. 2 OF 2

Offense Date:	05/13/2018
Status at Time of Offense:	District Court Probation
Arrest Date:	05/13/2018
Arresting Agency:	Detroit Police Department
Charge(s) at Arrest:	Homicide- Murder 1st Degree, Premeditated; Weapons- Felony Firearm; Homicide- Murder 2nd Degree
Court of Jurisdiction:	Third Circuit Court, Dkt #18-005065-01-FC
Final Charges:	Homicide- Murder 2nd Degree; Weapons- Felony Firearm
Conviction Date/Method:	09/26/2019 / Jury
Sentence/Disposition:	Pending
Sentence Date:	12/05/2019
Attorney Present:	Yes
Discharge Date:	N/A
Notes:	

Probation Adjustment:

On February 26, 2018 the defendant pled guilty to Littering at the 19th District Court, Case #17C260870M and

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was sentenced to 6 months' probation, Fine $715, 1-day jail or 3 days community service in lieu of jail. Per the Judicial Data Warehouse, the defendant's probation was closed on 08/03/18 and it appears he paid the $715 in fines/costs. An email was sent to Agent Breanna Petriches requesting an adjustment to community supervision. A response was received from Agent Petriches which indicated the defendant successfully completed his term of probation and the case was closed on 08/03/18. She also indicated that it did not appear there were any violations throughout his term of probation.

Personal Protection Order(s): None

Gang Involvement:

There has been no known prior gang involvement for the defendant.

Gang Marks, Scars, & Tattoos: None

Gang Names: None

Family

Name	Relationship	Age	Address	Phone	Occupation
Jaber, Ali	Father	64	6915 Fairwood Dr. Dearborn Heights, Michigan 48127	(313) 663-1991	Unemployed
Jaber, Leila	Mother	60	6915 Fairwood Dr. Dearborn Heights, Michigan 48127	(313) 675-0291	Homemaker
Jaber, Hassan	Brother	36	5917 Rockland Ct. Dearborn Heights, Michigan 48127	(313) 995-5262	Factory Worker
Jaber, Farah	Sister	34	5912 Dacosta St. Dearborn Heights, Michigan 48127	(313) 903-5977	Unemployed
Jaber, Mohammed	Brother	29	7001 Rosemary Dearborn Heights, Michigan 48127	(313) 713-1181	Physical Therapist

Comments:

The defendant is a 28-year-old, male who reported previously residing at 27285 W. Pleasant Ridge Dr. in Dearborn Heights, Michigan, however, he has since lost the home due to his incarceration. The defendant was born on October 1, 1991, in Mecca, Saudi Arabia to the wed union of his mother, Leila Jaber and father, Ali Jaber. He reports being the youngest of four children born to his parents' union. He has two brothers, Mohammed Jaber and Hassan Jaber and a sister, Farah Jaber. He described his childhood as good denying any exposure to physical, mental, verbal or sexual abuse. He also denied ever being exposed to any drug use by his mother, father or siblings. He disclosed the normal sibling arguments between him and his brothers however, they have a close bond and remain supportive of him. He reported actively participating in school and playing

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football while in Jr High and High School and his hobbies include video games and working a lot to help financially provide for his mother and father.

Writer spoke to the defendant's mother, Leila Jaber on 09/30/19 at which time she verified the information contained in the Presentence Investigation Report. She described her son as a good person who assisted frequently with the household needs at their home. She stated he was very helpful with her and her husband financially and with duties required at the home such as cutting the grass and assisting with shopping duties. She further stated her son is a very quiet, honest and intelligent individual and she and the rest of the family remain supportive of him. Lastly, Mrs. Jaber indicated her husband worked as a Nurse in Saudi Arabia prior to him coming to the United States in 1989 and she followed shortly after in 1992 with the children and Rami Jaber. She provided a copy of the defendant's Certificate of Citizenship dated 05/26/99.

Marriage

Name	Relationship	Age	Address	Phone	Occupation
Newton, Shannon	Former Significant Other	25	Sterling Heights, Michigan	(419) 308-7226	Unemployed
Abdallah, Zeinab	Significant Other	23	Dearborn, Michigan	(313) 717-0039	Physical Therapist
Jaber, Alexander Ali	Son	2	Dearborn Heights, Michigan	N/A	N/A

Comments:

The defendant reports to be single and claims paternity of one son, Alexander Ali Jaber with Shannon Newton. He disclosed he and Shannon were never in a committed relationship however, they did have a child together. Prior to his arrest he reported actively being in his son's life and adequately providing for him. He reported seeing him on a regular basis and indicated he and Shannon had a great co-parenting relationship. Due to his incarceration he reports seeing his son via video chat and speaks to him regularly. He stated his parents see him frequently which was also verified by his mother who indicated they have their grandson weekly. The defendant reported being in a committed relationship with Zeinab Abdallah and stated they have been together since 2017. He described their relationship as good, denying any domestic disputes. He further stated she is very supportive, and they speak regularly.

Employment

Employer Name	Start Date	End Date	Position	Rate of Pay	Termination Reason
Stop N Shop Petro Mart	1/2012	05/15/2019	Owner	$5000.00 Monthly	Arrested

The defendant is presently unemployed with no verifiable source of income due to the instant offense which occurred on 05/13/18. At the time of the defendant's arrest he reported being gainfully employed as the owner of Stop N Shop Petro Mart, INC which he indicated his employment began in 01/2012. The Department of Licensing and Regulatory Affairs website (LARA) indicates the defendant, Rami A Jaber received his Date of Incorporation in Michigan on 12/12/11, Identification Number 800746621 with an entity type of Domestic Profit Corporation and an All-Purpose Clause. It lists the defendant as the President and his father, Ali Jaber as the treasurer and secretary. It should be noted, news reports indicated the defendant's father owned the business however, the defendant stated he owned the business. The defendant reported earning approximately $5,000

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monthly from his business. He worked full-time and helped support his mother and father with the profit he earned from the business. He stated he has since lost his job, house and everything due to the instant offense. He reported prior employment as a Valet Worker before he began his business in 2012.

Education

High School:

Name	Start Date	End Date	Level Completed	Area of Study	Certificate
Crestwood High School	2005	2008	Eleventh Grade	General Studies	None
Robichaud High School	2008	2009	Twelfth Grade	General Studies	High School Diploma

The defendant reported attending Crestwood High School from 2006-2008 for the ninth, tenth and eleventh grade. He then went on to attend Robichaud High School in 2008-2009 for the twelfth grade. A copy of the defendant's High School Diploma was sent to this writer via his mother. The defendant obtained his high school diploma from Westwood Alternative High School on June 11, 2009. This writer also received a certificate from the defendant's mother which indicated he received a certificate from Cell Phone Repair Academy on 02/24/17. The certificate alleges he successfully completed 32 hours in intermediate and advanced repair training. The defendant denied receiving any other educational certificates or degrees.

College/Advanced Degrees:

Name	Start Date	End Date	Level Completed	Area of Study	Certificate
None					

Vocational/Other Training:

Name	Start Date	End Date	Level Completed	Area of Study	Certificate
None					

Substance Use and Treatment

Substance Use:

Drug	Start Date	End Date	Frequency	Age of First Use
THC (Marijuana, Hashish, etc.)	2008	2008	Occasional	17
Alcohol	2012	2012	Occasional	21

The defendant disclosed trying marijuana at the age of seventeen and alcohol at the age of twenty-one. He has not used marijuana since he was 17 years old nor has he used alcohol since he turned 21. He disclosed trying both substances but did not like them. He discontinued use of the substances and stated he has never abused either substance. He reported being free from any mind-altering substances at the time of his arrest. He further denied being addicted to any substances.

Substance Abuse Treatment:

Treatment Type	Provider	Start Date	End Date	Completed
None				

The defendant denied any past or present substance abuse treatment. He further denied the need for substance

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abuse treatment at this time.

Health

Physical Health:

Health Problem	Medication	Treatment	Treatment Begin Date
None			

The defendant reported being in "good" physical health, denying any physical health conditions that would interfere with his daily activities. He is not presently receiving any medications or under the care of a physician. He disclosed being in an altercation while at the Wayne County Jail where another inmate attacked him on 04/14/19 while he was retrieving his lunch. He stated the other offender attacked him causing bruises to his face and two broken bones on his left hand. He stated he was transported to the Hospital where he received a wrap for the broken bones on his left hand. He denied any other altercations and stated he is currently in protective custody at the Wayne County Jail due to his high-profile case.

Mental Health:

Health Problem	Medication	Treatment	Treatment Begin Date
None			

The defendant reported being in sound mental health. He denied past or present psychiatric care or hospitalization. Per the defendant, he is not under the care of a psychiatrist nor is he receiving any psychotropic medications at this time.

Finances

Income:

Type	Amount	Description
None		

The defendant reports to be unemployed with no verifiable source of income. Prior to his incarceration on 05/13/18 he reported being a business owner of Stop N Shop Petro Mart, INC which was verified via LARA, Department of Licensing and Regulatory Affairs. His date of Incorporation in Michigan was 12/12/2011. He stated he has since lost the business due to his incarceration.

Assets:

Type	Estimated Value	Description
None		

The defendant denied having any assets.

Liabilities:

Type	Amount	Description
None		

The defendant denies any liabilities at this time.

/se

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MICHIGAN DEPARTMENT OF CORRECTIONS
BASIC INFORMATION REPORT

4836-6101
12/06 CFJ-101

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Court Name (Last, First, Middle)	MDOC Nbr.	Given Name(Last, First, Middle)
Jaber, Rami Ali	602155	Jaber, Rami Ali

Name Type	Other Names (Last, First, Middle)
N/A	None

Place of Birth	Citizenship	Last Known Address & Telephone No.
Saudi Arabia	USA	27285 W. Pleasant Ridge St. Dearborn Heights, Michigan 48127 (313) 563-1933
State & DLN Michigan 160730048757	DOB 10/01/1991	
SID No. 4538192L	FBI No. 2100JPCP7	

Race	Sex	Hair	Eyes
White	Male	Black	Brown

Height	Weight	Highest Grade Completed	Occupation	Health Ins.	Assets-$1,500 & Up	Monthly Income of $75 & Up
5' 10"	175	Twelfth Grade	None	No	No	No

Marital Status	Dependents	Religion	Military Branch	Military Dates	Discharge Type
Single	1	Muslim	None	None	None

Marks, Scars, Amputations, Tattoos	Drug Abuse	Alcohol Abuse	Mental Health Treatment
Scar Right Ankle	No	No	No

CRIMINAL HISTORY

Juvenile			Adult				Status at Time of Offense				
Comm.	Prob.	Esc.	Jail	Pris.	Prob.	Esc.			None		Delayed Sentence
0	0	0	0	0	✓	0			HYTA		Parole
Age of First Arrest		Sex Offense Convictions		SAI Eligible					Probation		Jail
26		0		No				X	District Probation		State Prison
Pending Charges in Court		No. of Prior Felony Convictions							Federal Probation		On Bond
No		0							Federal Parole		Juvenile Court Supervision

Type of Report	County	Agent & Caseload No.	
Presentence	Wayne County	BRITTANI WISSER - 1938	
	DOC Recommended Disposition 4	Probation Violation New Sentence No	Probation Violation Technical No

CURRENT OFFENSE

NO. 1 OF 2 Docket No.: Charge (1): 18005065-01-FC Last Name: Jaber

PACC Code	Offense	Max	Consecutive Sentence
750.317	Homicide - Murder, Second Degree	LIFE	Yes

Victim / Relationship	Codefendant(s)
Roberts, Derek L. - No Relationship	None

Circuit	Judge	Attorney	Retained / Appointed
03rd Circuit Court - Wayne County	Regina D. Thomas	James C. Thomas	Retained

Method of Conviction	Date of Offense	Date of Arrest	Date of Bond	Date of Conviction	Jail Credit	Guilty But Mentally Ill
Jury	05/13/2018	05/13/2018	05/15/2018	09/26/2019	0	No

DISPOSITION

Sentence Type	Sentence Date	CTN	Fine	Cost	Restitution
	12/05/2019	821870968301			

MINIMUM			MAXIMUM			LIFE	JAIL		Supervision Fees	Crime Victims Assessment
Years	Months	Days	Years	Months	Days		Months	Days		

Attorney Fees	Forensic Fees	Restitution Fund Fees	Other Fees

Sentencing Guidelines

RANGE		LIFE	NA	Prior Record Total	Offense Variable Total
Low: 162	High: 270	X		7	80

Comments:

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CURRENT OFFENSE

NO. 2 **OF** 2 **Docket No.: Charge (2): 18005065-01-FC** **Last Name: Jaber**

PACC Code	Offense	Max	Consecutive Sentence
750.227BA	Weapons - Felony Firearms	2 yrs.	No

Victim / Relationship	Codefendant(s)
None	None

Circuit	Judge	Attorney	Retained / Appointed
03rd Circuit Court - Wayne County	Regina D. Thomas	James C. Thomas	Retained

Method of Conviction	Date of Offense	Date of Arrest	Date of Bond	Date of Conviction	Jail Credit	Guilty But Mentally Ill
Jury	05/13/2018	05/13/2018	N/A	09/26/2019	572	No

DISPOSITION

Sentence Type	Sentence Date	CTN	Fine	Cost	Restitution
	12/05/2019	821870968301			

MINIMUM			MAXIMUM			LIFE	JAIL		Supervision Fees	Crime Victims Assessment
Years	Months	Days	Years	Months	Days		Months	Days		

Attorney Fees	Forensic Fees	Restitution Fund Fees	Other Fees

Sentencing Guidelines

RANGE		LIFE	NA	Prior Record Total	Offense Variable Total
Low:	High:		X		

Comments: